

No. 14414

Supreme Court of Illinois

Crystal Lake Ice Co. et al

vs.

Buckingham

167
STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No.

171

Crypachet

~~1863~~

Quickerham

1863

101
14414

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SUPREME COURT,

APRIL TERM, 1863.

THE CRYSTAL LAKE ICE COMPANY,
AND JOHN S. WHEAT,

vs.

FRANCIS W. BUCKINGHAM,

Administrator of WILLIAM BACKUS.

BRIEF FOR DEFENDANTS,

BY

C. BECKWITH.

Filed May 15 1863
1863

SUPREME COURT.

APRIL TERM, 1863.



THE CRYSTAL LAKE ICE COMPANY
and
JOHN S. WHEAT,

v.

FRANCIS W. BUCKINGHAM,
Adm'r of William Backus,
and
ALEXANDER C. COVENTRY.

Error to Cook.

On the 13th day of July, 1858, John S. Wheat, one of the defendants in the case of Backus *v.* Baker *et al.*, filed a petition to have the decree set aside, as to him, for the reason that he had not been personally notified of the pendency of the suit. On the 21st day of March, 1859, the prayer of Wheat's petition was granted and the decree set aside as to him. Wheat then filed a demurrer to the bill which was afterwards, on the 1st day of February, 1862, sustained. The complainant then moved for leave to file a supplemental bill, which was granted on the 18th day of February, 1862. The supplemental bill was filed April 24, 1862, making the Crystal Lake Ice Company, and the defendants in the suit of Backus *v.* Baker *et al.*, parties defendants thereto. It sets out the substance of the original bill and avers that all and singular

the allegations, statements, and charges in said original bill contained are true. That on the day of 1857, the defendants in the original bill having been duly notified to appear, made default which was entered, and bill of complaint taken as confessed against them, and the matter referred to the master to take proofs.

That on the 23d of October, 1857, proofs were taken, and master made his report, filed the 17th of December, 1857, stating that all the material allegations in the bill were proved, and on the same day final decree entered, confirming master's report; and by way of supplement, states that before final decree entered, Alexander C. Coventry was appointed receiver, and proceeded to perform his duties as such.

That Backus, at the time he filed original bill, was a stockholder in said Company. That in March, 1857, the Crystal Lake Ice Company was indebted to Wilcox, Lyon & Co., in about \$400, who in April, 1857, commenced suit against them, and afterwards obtained a judgment in Cook County Court of Common Pleas, against said Company, and is the same judgment mentioned in the original bill, and was obtained prior to filing that bill. That execution had then issued thereon, and was a lien on the property of the Company, in Cook county.

That the Crystal Lake Ice Company was then owing about \$3,000 to its servants and laborers, which had not at the time said bill was filed, been due one year, and was also indebted to other persons in about \$12,000, for debts contracted in course of its business, and was threatened with suit upon a large portion thereof, within one year from the time the same was contracted.

That the property of said Company was a trust fund for the payment of its debts, and it was then and there the duty of the Company and its trustees to appropriate the property and effects of the company to the payment of its debts; and to sell and dispose of the same for that purpose; and particularly as said Company was insolvent, and notwithstanding its insolvency was then attempting to carry on its business, which was unprofitable and carried on at a loss; and that it was not possible to carry it on without a loss, and thereby the said

Backus and the rest of the stockholders were put in great jeopardy of becoming liable for a large amount of the indebtedness of said company, of which there was no prospect of their being reimbursed out of the business or profits of said company.

That at the time of filing bill, a small portion of the property of the Company consisted of real estate and the buildings thereon, worth about \$500, and fit for no other purpose except that of storing ice; of wagons specially constructed to carry ice; of horses and harnesses belonging thereto, necessary for the business of the Company, and mainly fit to carry on such a business; and a large amount of ice in ice houses, for the delivery of which the horses, etc., are necessary, and without which the ice would be of little value to any one; and the property could not be sold separately or in parcels to advantage to the Company or its stockholders.

That the trustees, and the Company itself, failed to act in the premises, or cause any sale of the property of the company to be made to apply in payment of its debts, as they ought to have done as soon as the Company became insolvent. That they pretended and gave out it was not necessary to do so, and it was not their or either of their business to do so. Charges that the Company was then insolvent and unable to pay its debts, much of which was due to laborers who were actually necessary to the Company in order to carry on its business.

That at and before the 1st of July, 1857, said laborers were on a strike, in consequence of non-payment of their wages due them, and refused to serve the Company in the delivery of ice, or allow others to do so. That this derangement of its affairs had continued for several weeks prior to filing said original bill. In the meantime, ice which the Company had stored at great expense, was melting away, and would continue to be left to melt away during the summer months, to its entire loss, and no prospect that the Company would have the ability to bring ice into market for sale, and thereby the personal liability of Backus as a stockholder was daily becoming greater, and the ability of the Company less.

That the railroad company was refusing to transport ice, because the company was not able to pay its transportation bills, and that thereby the company could not get its ice from Crystal Lake to Chicago, to supply its customers. That it had large contracts with saloons and hotels, to supply them with ice during the season, which they would not be able to comply with, and so the Company and its stockholders be liable for failure to deliver ice on such contracts.

That the good will of the Company in supplying its customers with ice was another and large element entering into and constituting its capital in business, which could only be made available by the sale of the whole property of said Company, used in its business; that such good will was then in great danger of being lost, owing to the total inefficiency of the Company.

That the sheriff threatened to sell the property of the Company under Wilson, Lyon & Co's judgment, unless it was paid, which the company could not do; and that he would have sold the property and realized but a small sum if a receiver had not been appointed.

That the court appointed Coventry temporary receiver of the property of the Company, with power to act immediately, who went on under the order of the court and took possession of it.

That he sold the property after the bill was filed, and applied the same to the payment of the debts so far as it would go.

That all and singular his proceedings prior to the final decree, were necessary to protect the interests of those interested in the affairs of said Company as creditors and stockholders, and have all been ratified and approved by the court; that his proceedings in paying out said proceeds have been in pursuance of the order of the court; that his acts and doings were performed before any application to the court by any of the stockholders, or by Wheat, to alter, disturb or interfere with said final decree, or any of the proceedings under said original bill.

That said Wheat was duly brought into court by publica-

tion under the statute; that nearly one year after the final decree had been rendered and substantially carried into effect, said Wheat appeared and offered to file his answer, but none other of the defendants have appeared to defend said suit, or disturb said decree.

That said Wheat claims to be entitled, as a stockholder of said Company, to question the acts and doings of this court, because brought in by publication, and not by personal service of notice, but denies that he has any right to, and insists that by his negligence he is estopped from questioning the doings of the court and its officers in executing said decree, so far as executed before he appeared.

That all of the stockholders of said Crystal Lake Ice Company were made parties by name, but that the Crystal Lake Ice Company was not by its corporate name; that under the circumstances set out in original and supplemental bills, the Crystal Lake Ice Company was merely a nominal party in interest, and in its corporate name and capacity had no actual interests or rights in the subject matter of said suit and the relief therein prayed against its stockholders over and above the rights and interests of the stockholders by said bill, brought into court as aforesaid; and that to the end that said Backus and his personal representatives, and all other persons who have acquired rights under said final decree, or by reason of filing said original bill, may have the full benefit thereof, it is necessary that said Crystal Lake Ice Company, by name, should be brought into court and made a party to the proceedings had under said original bill. The bill prays that the Crystal Lake Ice Company, and the other persons who were parties to original bill, may answer the supplemental bill, and that the Crystal Lake Ice Company may be held bound by said final decree, as fully and completely as if originally made a party to the said original bill of complaint, and that John S. Wheat may be held concluded from disturbing the said final decree, as to any action had thereunder, prior to the time of his appearance to defend said suit, with the usual prayer for process.

On the 25th day of February, 1862, the defendant, Wheat,

and some of the other defendants, answered the supplemental bill, to which answer a replication was filed. The Crystal Lake Ice Company filed a general demurrer, which was overruled. On the 28th day of June, 1862, the Crystal Lake Ice Company answered the bill, to which answer a replication was filed. The cause was heard on bill, answers, replications and evidence, and a decree rendered for the complainant. The evidence substantially sustains the allegations of the bill upon this branch of the case.

I. There is but one point to which the defendants in error desire to call your Honor's attention, in addition to the points presented by the defendant in No. 90, *Baker et al. v. Buckingham*. The managing officers of the Crystal Lake Ice Company had personal notice of the proceedings in the case of *Backus v. Baker et al.*, on the 14th day of July, 1857, four days before the receiver's report of sale was confirmed. Those proceedings might have been arrested during those four days, had such officers desired it. The Company had sustained no injury up to that time, by the action of the court, and the only injuries it had then sustained were from the causes alleged in the bill.

The acquiescence of the managing officers in allowing the receiver's report of sale to be confirmed, and the proceeds of such sale to be paid to the creditors of the Company, one of whom was the railroad company represented by Johnson, one of the trustees, created an estoppel, upon the trustees and their co-stockholders, from claiming the property or its proceeds. The property was sold for all that it was worth, and the proceeds were applied in payment of the Company's debts, and in the discharge of the individual liability of the stockholders, with the full knowledge of the trustees, and without any dissent on their part. The acts or omissions of the trustees, which would estop them individually, will be held to estop those whom they represented.

The stockholders cannot, in the name of the corporation recover the property or its proceeds, when they as individuals are estopped from claiming it. Equity and good conscience

forbid their taking advantage of their own laches, and they cannot first recover the proceeds, and put them into the corporation chest, and then, as stockholders, divide them among themselves. The decree of the court below, upon this part of the case, is founded upon the most simple and plain principles of justice.

II. The first error assigned is, that the court below had no jurisdiction to render the decree of December 17, 1857, in the case of *Backus v. Baker et al.* In addition to what has already been said in regard to that decree, it is suggested that the Crystal Lake Ice Company was not a party thereto, and it was set aside as to Wheat, and it is not perceived how either of them can assign errors in its rendition.

The second and fourth errors assigned relate to the power of the court to permit amendments of the record after sustaining a demurrer. The power to do what was done in this case is unquestioned, and its exercise was a matter of discretion not revisable in this court.

Adm'r of Smith v. Adm'r of Wainwright, 25 Verm. 97.

The third and ninth errors assigned are, substantially, that the supplemental bill should have been dismissed for want of equity, and it is deemed unnecessary to add anything to what has already been said upon that subject.

The fifth error assigned is, for not dismissing the original bill, on the motions of the defendants, *Baker et al.*, after opening the case as to Wheat. In addition to what has been said upon that subject, in the case of *Baker et al. v. Backus*, *Adm'r*, it may be suggested that the parties who claim to be aggrieved by the refusal of the court below are not before the court in this case which, it would seem, was necessary in order to have their grievances heard. A consideration of the fifth and sixth errors assigned, requires a statement of the facts in regard to them. In August, 1858, the Crystal Lake Ice Company commenced an action of trespass against A. C. Coventry, and others; and thereupon Coventry filed a bill to restrain the prosecution of the suit, which was on the 1st day of February,

1862, ordered to stand as a petition in the suit of *Backus v. Baker et al.* Upon the bill of Coventry, thus ordered to stand as a petition, an injunction was granted; and afterwards on the 15th of February, 1862, a motion was filed to dissolve the injunction which was brought on to be heard March 26, 1862; and on the 27th day of March, 1862, the defendants withdrew their motion to dissolve the injunction, and for leave to sue the receiver; and thereupon the court ordered, that the injunction stand until further order. The order thus made was not a final decree from which an appeal could be taken, and, as the case then stood, was eminently proper. It is well settled that when a court orders a receiver to take possession of specific property, as in this case, it will not allow its officer to be sued for obeying its mandate. It was a contempt of court to commence the suit.

2 Daniels, Ch. Pr. 1270.

Angel v. Smith, 9 Vesey.

Brooks v. Greathead, 1 J. & W. 178.

Parker v. Browning, 8 Paige, 388.

Astore v. Heron, 2 M. & K. 390.

Froud v. Lawrence, 1 J. & W. 655.

Bailey v. Devereux, 1 Verm. 269.

May v. Hook, 1 Dick. 619.

Anon. 6 Vesey, 288.

In the matter of Merrick, 5 Paige, 131.

Noe v. Gibson, 7 ib. 513.

The positions of the plaintiffs in error in regard to the fifth and sixth errors assigned is, that the Company had been guilty of a contempt of court, and the court made an interlocutory order injoining its proceedings. The Crystal Lake Ice Company moved to dissolve the injunction and then withdrew its motion and there the matter now stands. There may be well noticed in this connection the petition of the Crystal Lake Ice Company, filed April 26, 1852, the prayer of which was denied at the final hearing. This petition was supported by the affidavits of Amos Page and W. T. Burgess, and resisted upon the answer of Coventry, and the affidavits of

Hiram Joy, Augustus Frisbie, George H. French, James Smith, and Charles Edwards. It was an application addressed to the discretion of the court for leave to sue its officer for having executed its mandate, after the party making the application had received for its own use and benefit, the proceeds of the property for the taking of which it desired to commence suit. The Company with a full knowledge of all the facts chose to lie by, have the property sold for its full value, and the proceeds to its use without dissent, so as to get out of debt; but when that desirable end was accomplished, it came to the court, clear of debt if not with clean hands, for leave to replenish its treasury by a suit for the property with which its debts had been paid.

III. On the 25th day of February, 1862, William Baker, Samuel F. Johnson, Amos Page, Joel H. Johnson, Clark Lipe, John S. Wheat, Abel W. Fuller, and James F. Pierson, filed a cross-bill in the supplemental cause then pending, praying to have the decree of December 17, 1857, reversed and set aside. Personal service was had upon these persons except Wheat, and they were all concluded by decree which they prayed to set aside. The supplemental bill sought no relief against any of the defendants in the cross-bill except Wheat, and they could not sustain such a proceeding for that purpose. The decree of December 17, 1857, could only be set aside by a bill of review or writ of error.

2 Barb. Ch. Pr. 90 *et seq.*

2. The original final decree was already set aside as to Wheat, and he could not sustain a cross-bill for that purpose; neither could he sustain the bill to set aside the decree as against the other complainants.

3. The original decree is never opened by reason of filing a supplemental bill, even where the decree is only *nisi*. There must be a decree upon the supplemental bill, and the supplemental cause cannot be heard with the original cause without a special order; and then only where it is desirable to give further directions in the cause as it stands.

Lord Red. p. 64.

15 Sim. 76.

2 Barb. Ch. Pr. 79.

4. It was sought in the court below to re-christen the cross-bill, and turn it into a bill of review, but it was discovered that such a suit is an original one, and not a mere dependency like a cross-bill. The defendants in the original suit were not in court and were not attempted to be brought in, and there would seem to be some difficulty in sustaining a bill of review, where only eight out of twenty-five defendants were before the court.

Chicago Dec 16/62
Clk Sup Court
Ottawa Ill
D Si

Phas
Send me the Sci. pa.
in Baker et al
vs Buchanan
Attor of Baker vs
Yours

W. J. Pump

Chicago Dec 12/62
Chas Sup Court
O'Hara St
Lisii

Inclosed you
have precept for
writ of error in Baku
vs Buckingham adms
of Bakers row to Cook
Co. Ct. & five dollars
for

Phas acknowledge
receipt at once as the
limitation is nearly
up. & I want the
writ to be certainly
issued in time

Yours

W. J. P. King

In the Supreme Court of the State of Illinois
3rd Grand Division

The Crystal Lake Ice Company
et al

vs
Francis W. Pucknigham
administrator of William
Pucknigham Cheider and
Alexander C. Cooney.

} Error to
Circuit
Court

I do hereby enter myself security
for costs in this cause and acknowledge
myself bound to pay or cause to be
paid all the costs that may accrue
therein either to the opposite party
or to any of the officers of this court
under the laws of this State

W. J. Pucknigham

Crystal Lake Ice
Company Inc
vs

Packingham
Inc



Buyers

Filed April 14 1883
L. Leland
Clerk

STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Cook County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Courts of Cook County, before the Judge thereof, between Francis W. Buckingham, administrator of William Backus Deceased & Alexander C. Coventry, who interplead & filed a petition for relief in this cause in the Court below plaintiffs, and The Crystal Lake Ice Company, William Baker, George P. Clark, P. J. Cuyler, Arroy Page, Jacob P. Eastman, A. S. Hobart, Benjamin W. Higbert Jr, Samuel F. Johnson, Joel H. Johnson, Clark Lipe, Charles S. Thompson, John Wheat, John W. Wiggins, Daniel A. Wills, William B. Benson, Jerry J. Mulford, Abel W. Fuller, J. H. Edwards, Louis F. Wilson, Jesse M. Stone, George Tyler, Caleb Rich, James F. Pierson, Alvin W. Judd, and various Taylor defendants, it is said that manifest error hath intervened, to the injury of the said Defendants

as we are informed by them complainants the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Francis W. Buckingham administrator as aforesaid and Alexander C. Coventry

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Francis W. Buckingham and Alexander C. Coventry

notice, together with this writ.

Witness, The Hon. John W. Paton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this first day of April in the year of our Lord One Thousand Eight Hundred and Sixty-Three.



L. Leland
Clerk of the Supreme Court.
by J. B. Rice Deputy

Francis W. Buckingham

vs.

No. 22

The Trustees of the ... Co

vs.

SCIRE FACIAS.

Filed April 27 1863

A. Leland Clerk

Served by reading this writ on the within named Francis W. Buckingham and Alexander C. Coventry this 3^d day of April 1863

David S. Hammond Sheriff
By John A. Nelson Deputy

Fees
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1 retu 10

\$ 1-30 Paid by Messrs



STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Cook County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Cook County, before the judge thereof, between

William Backus Complainant
and Amos Page, Joel H. Johnson, James F. Pierson,
~~plaintiff~~, and Pierson & William Baker inplead
with Jacob P. Eastman & others

defendants, it is said that manifest error hath intervened, to the injury of the said Amos Page, Joel H. Johnson, James F. Pierson & William Baker

as we are informed by them -
complainants the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to ~~the said~~

Francis W. Buckingham
administrator of the estate of the said
William Backus deceased

that he be and appear before the justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next; to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Buckingham

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 17th day of December in the year of our Lord One Thousand eight Hundred and Sixty-two.



L. Island
Clerk of the Supreme Court.

Amos Page et al

No. vs.

Francis W. Buckingham
admr &c.

SCIRE FACIAS.



FILED April 27th A. D. 1863

L. Leland Clerk.

Served by reading this writ to
the within named Francis
W. Buckingham the 28th day
of March 1863

David S Hammond Sheriff
By John A Nelson Deput

Fees
1 den 50
2 val 20 Paid by Dep't
1 rets 20
70c

Charge

STATE OF ILLINOIS,
SUPREME COURT,

ss. The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Cook - Greeting:

Because, In the record and proceedings, as also in the rendition of the ^{verdict} judgments of a plea which was in the Circuit Court of Cook County, before the Judge thereof, between

William Backus, Complainant - & William Baker, Amos Page, Jacob P. Eastman, John H. Higgins, George P. Clark, Benjamin W. Robert Jr., A. A. Robert,
plaintiff, and William B. Benson, S. J. Cuyler, Samuel P. Johnson, Joel H. Johnson, Clark Lipe, Samuel W. Terry, John S. Wheat, Abel W. Fuller, J. H. Edwards, J. M. Stone, George Tyler, Alvin W. Judd, Caleb Rich, James F. Pierson, Daniel S. Wells, Emrus Taylor, Charles E. Thompson, and Lewis S. Chulford
defendants...; it is said manifest error hath intervened, to the injury of the aforesaid Amos Page, Joel H. Johnson, James F. Pierson & William Baker

as we are informed by their complaints and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if verdict judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this thirteenth day of December in the Year of Our Lord One Thousand Eight Hundred and Sixty two.

L. Seland
Clerk of the Supreme Court.



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No.

vs.

WRIT OF ERROR.

FILED

April 27th

A. D. 1869

L. Leland

Clerk.



STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Cook Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Court of Cook County, before the Judge thereof, between ~~The Crystal Lake~~ Francis W. Buckingham administrator of William Backus deceased & Alexander C. Coventry who interplead & filed a petition for relief in this cause in the Court below

Complainants and The Crystal Lake Ice Company, William Baker, George P. Clark, P. J. Cuyler, Amos Page, Jacob P. Gerstman, A. A. Hobbs, Benjamin W. Hobbs Jr., Samuel F. Johnson, Joel H. Johnson, Clark Lipe, Charles & Thompson, John V. Wheat, John W. Wiggins, David S. Wills, William B. Benson, Lewis J. Mulford, Abel W. Fuller, J. H. Edwards, Isaac G. Wilson, Jesse M. Stone, George Tyler, Caleb Rich, James F. Benson, Alvin W. Judd & Emmons Taylor

defendants..., it is said manifest error hath intervened, to the injury of the aforesaid defendants

as we are informed by their complaints and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plea aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this the 5th day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty three

L. Leland
Clerk of the Supreme Court.
By J. D. Rice Deputy



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Francis W. Buckingham
Att.

No. vs.

The Crystal Lake Ice Company
& others

WRIT OF ERROR.

FILED *April 27th* A. D. 1863

L. Leland
Clerk.



The Crystal Lake Ice
Company, William
Baker, Amos Page, Jacob
P. Eastman, John H.
Wiggins, George P. Clark,
Isaac G. Wilson, Ben-
jamin W. Hobert, Jr.,
A. A. Hobert, W. B. Benson,
I. J. Cuyler, Samuel P. Johnson,
Joel H. Johnson, Clark Lips,
Samuel W. Perry, John S.
Wheat, Abel W. Fuller,
J. H. Edwards, J. M. Stone,
George Tyfer, Alvin W. Judd,
Caleb Rich, James T. Persow,
Daniel L. Wells, Emous
Taylor, Charles Thompson,
and Lewis J. Mulford
Plaintiffs in Error

vs.

Francis W. Buckingham,
Administrator of William Backus,
deceased, and Alexander C.
Leventry.

Defendants in Error. And now the said

In the Supreme
Court, of the State
of Illinois.

April Term,
A. D. 1863,

Ruekington moves that the Writ of Error in the above case may be dismissed and held for naught for the reason that said Writ is brought to reverse a decree in Chancery of the Circuit Court of Cook County, and that said decree was not rendered and is not against said William

✓ Baker, Amos Page, Jacob P. Eastman, John S. Wiggins, George P. Clark, Isaac G. Wilson, Benjamin W. Hobert, Jr, A. C. Hobert, W. B. Benson, A. J. Bayler, Samuel ✓ P. Johnson, Joel H. Johnson, Clark Lipe, Samuel W. Perry, Abel W. Fuller, J. H. Edwards, J. M. Stone, George Tyler, Alvin W. ✓ Judd, Caleb Rich, James J. Pierson, Daniel L. Wells, Emmons Taylor, Charles Thompson, and Lewis J. Abulford, ^{parties} of said plaintiffs, in error, as fully appears by the record of said decree on file in this case.

Wherefore as the said William Baker, Amos Page, Jacob P. Eastman, John S. Wiggins, George P. Clark, Isaac G. Wilson, Benjamin W. Hobert, Jr,

a. a. Hobert, W. B. Benson, A. Bayler,
Samuel P. Johnson, Joel H. Johnson,
Clark Lipe, Samuel W. Perry, Abel W.
Fuller, J. H. Edwards, J. M. Stone, George
Tyler, Alvin W. Judd, Caleb Rich, James
J. Pierson, Daniel L. Wells, Emous
Taylor, Charles Thompson, and Lewis J.
Mulford, had no right to see out
or to prosecute said int of error
the said Buckingham moves that
the same may be dismissed.

Francis W. Buckingham

Advs of Mrs Backus

By C. Brekitt (his Atty)

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Motion to dismiss

Crystal Lake Ice Co et al

vs
Francis W Buckingham
Advers.

Filed May 2, 1863

J. L. ...

... ..

In the Supreme Court of the State of Illinois
This Grand Division -
of April Term 1863 -

The Crystal Lake Ice Company
William Prater, George P. Clark
P. J. Cuyler, Amos Page, Jacob
P. Eastman, A. A. Hobbs, Benjamin
M. Hobbs Jr, Samuel F.
Johnson, Joel H. Johnson, ~~Clark~~
Clark Lipe, Charles L. Thompson
John S. Wheat, John W. Higgins
Daniel L. Wells, Wm B. Pearson
Ernie J. Mulford, Abel N. Fuller
J. A. Edwards, Isaac G. Wilson
Jesse M. Stone, George Tyler
Caleb Rich, James F. Pearson
Att. Gen. ~~Wm. B. Pearson~~ ^{Ernest} Taylor
Plffs in error

vs
Francis N. Puckridge
Administrator of William
Prater deceased - and
Alexander C. Coventry, who
introduced this petition
for relief in this cause in
the Court below.

Defts in error

The Clerk of said Court will
issue writ of error in this cause
upon the decree of the Circuit
Court of Cook County ^{against said Plaintiff in error} in favor
of the said Puckridge and
as such administrator filed a

file in the nature of a Supplemental
bill of Complaint against said
Pffs in error. ~~Against said Plain~~
+ upon an order made in said cause
upon the petition of said County filed
therein in his favor & against said
Pffs in error.

W. J. Grubb
for Pffs in error

131

Sups Court

The Crystal Lake
Sec of Prob
vs

Frederick
Adams & Company

Receipts for mts

Filed April 1st 1883
S. Leland
Clerk

In the Supreme Court
to April Term 1863.

The Chief of said Court will
issue writ of error to the Circuit
Court of Cook County - to remove
the record of a case ^{in chancery} wherein
a decree was rendered on the
17th day of December A.D. 1857 -
entered in Book S. of Records
commencing at page 96 -
in favour of the complainant
William Prather - and
against William Prather
Amos Page Jacob P. Eastman
John H. Higgins George P. Clark
Benjamin N. Hobbs A.A.
Robert William B. Benson
S. J. Cuyler Samuel P. Johnson
Jed H. Johnson Clark Lipe
Samuel W. Terry John S. Wheat
Abel N. Fuller J. H. Edwards
J. M. Stone George Tyler Alvin
W. Frost Caleb Rich James F.
Purson Daniel E. Wells Emmons
Taylor Charles E. Thompson
& Lewis J. Mulford Defendants.

This writ of error being applied
for by ^{said} Amos Page & Jed H. Johnson
James F. Purson & William Prather

And the said William Prather
having since this decree departed
this life intestate & Francis W.
Berckingham having been

appointed his administrator -

W. J. Phipps
for app in war -

¹³¹
Sup. Court

William B. Hall
et al

vs
Francis W. Prout
Wigham Adams

Prout vs
Prout

Filed Dec. 13. 1862
L. Deland
Clerk

IN THE
Supreme Court of the State of Illinois,
THIRD GRAND DIVISION,
APRIL TERM, A. D. 1863.

THE CRYSTAL LAKE ICE COMPANY, WILLIAM BAKER, AMOS PAGE, JACOB P. EASTMAN, JOHN H. WIGGINS, GEORGE P. CLARK, ISSAC G. WILSON, BENJAMIN W. HOBERT, JR., A. A. HOBERT, W. B. BENSON, S. J. CUYLER, SAMUEL P. JOHNSON, JOEL H. JOHNSON, CLARK LIPE, SAMUEL W. PERRY, JOHN S. WHEAT, ABEL W. FULLER, J. H. EDWARDS, J. M. STONE, GEORGE TYLER, ALVIN W. JUDD, CALEB RICH, JAMES T. PIERSON, DANIEL L. WELLS, EMONS TAYLOR, CHARLES THOMPSON, and LEWIS J. MULFORD,

Plaintiffs in Error.

versus

FRANCIS W. BUCKINGHAM, Administrator of William Backus, deceased, and ALEXANDER C. COVENTRY,

Defendants in Error.

*Error to Cook
Circuit Court.*

RECORD
PAGE.

ABSTRACT OF RECORD.

2 Bill filed July 1, 1857, sets forth that on the 15th December, 1855, Amos Page of Janesville, Wisconsin, Charles E. Thompson, of Philadelphia; John H. Wiggins, of Wisconsin; George P. Clark, of Boston, Massachusetts, with Daniel L. Wells, of Wisconsin, associated themselves together, and purported to form a corporation for the manufacturing, cutting, working, vending and dealing in ice, under the name of the Crystal Lake Ice Company; said Wiggins, Wells and Thompson, on the 15th of December, 1855, residing in Chicago; and for that purpose they

TRUNK BOOK AND JOB OFFICE, 51 Clark Street, Chicago.

IN THE
Supreme Court of the State of Illinois,
THIRD GRAND DIVISION,
APRIL TERM, A. D. 1863.

WILLIAM BAKER, AMOS PAGE, JACOB P. EASTMAN,
JOHN H. WIGGINS, GEORGE P. CLARK, ISSAC G.
WILSON, BENJAMIN W. HOBERT, JR., A. A. HO-
BERT, W. B. BENSON, S. J. CUYLER, SAMUEL P.
JOHNSON, JOEL H. JOHNSON, CLARK LISSE, SAMUEL
W. PERRY, JOHN S. WHEAT, ABEL W. FULLER,
J. H. EDWARDS, J. M. STONE, GEORGE TYLER,
ALVIN W. JUDD, CALEB RICH, JAMES T. PIERSON,
DANIEL I. WOOD, FRANK THOMAS, CHARLES

*Error to Cook
Commit Court*

VOLUME SEVENTH A. D. 1863

THIRD GRAND DIVISION

Supreme Court of the State of Illinois

IN THE

filed in the office of the clerk of the county of Cook, a certificate of incorporation, a copy of which is annexed to the bill, as follows :

33 "Incorporation of the Crystal Lake Ice Company. To all to whom these presents may come, Greeting : This is to certify, that we, whose names are hereunto subscribed, have, on the 13th day of December, in the year of our Lord one thousand eight hundred and fifty-five, associated ourselves together, and formed a company under the provisions of
34 the act, entitled "An act to authorize the formation of corporations for manufacturing or mechanical purposes," approved February 10th, 1849. That the corporate name of said company shall be the Crystal Lake Ice Company. That the object for which said company is formed, is the cutting, working, manufacturing, vending, and dealing in ice. That the business of said company shall be carried on in the town of Algonquin, in the county of McHenry, and in the city of Chicago, both in the State of Illinois. That the said company shall have succession and a corporate existence for the term of twenty-five years, from and after this date above mentioned. That the capital and stock of said company shall be fifty thousand dollars, divided into five hundred shares of one hundred dollars each. That the number of trustees of said company shall be five, and the following named persons, a majority of whom are citizens of this State, and stockholders in this company, shall be trustees for the first year, viz. : Amos Page, Charles E. Thompson, John H. Wiggins, George P. Clark, and Daniel L. Wells.

32

AMOS PAGE.
CHAS. E. THOMPSON.
JOHN H. WIGGINS.
GEO. P. CLARK.
DANIEL L. WELLS."

A certificate of acknowledgment by them, before L. C. Hall, Notary Public, on the 15th of December, 1855, under his notarial seal.

3 That at the time of the formation of said Crystal Lake Ice Company, the said five hundred shares of stock were taken and held by the following persons : William Baker, 5 shares ; George P. Clark, 34 shares ; E. J. Cuyler, 5 shares ; Amos Page and Jacob P. Eastman, under name of
4 Eastman & Page, 100 shares ; A. A. Hobert, 10 shares ; Samuel F. Johnson, 50 shares ; Joel H. Johnson, 60 shares ; Clark Lisse, 10 shares ; Charles E. Thompson, 33 shares ; Samuel W. Perry, 50 shares ; John H. Wiggins, 33 shares ; John S. Wheat, 10 shares ; Daniel L. Wells, 50

shares; Emons Taylor, 10 shares; and the complainant, 25 shares—in all, 485 shares, (leaving 15 undisposed of), upon which assessments have been levied to \$60 on each share, in all amounting to \$29,100, upon which \$23,055 have only been paid.

- 5 That the names of the present holders of stock are set forth in schedule B.

That assessments have been levied upon the stock, and each and all of the stockholders are in default in paying the same. The bill then states transfers of stock by different stockholders to other persons, giving their names, and that such transfer was without the knowledge or consent of the complainant.

- 9 That since filing said certificate, said Amos Page, John H. Wiggins, Charles E. Thompson, Daniel L. Wells and George P. Clark, next purported to organize said company, by the appointment of Amos Page, as President, and George P. Clark, as Treasurer and Secretary of said company.

That Alexander C. Coventry, was secretary and treasurer of said company.

That in consequence of removals and changes of residence, on the 30th day of March, 1857, Samuel W. Perry, John H. Wiggins and Amos Page, the trustees of said corporation, all became non-resident, and the company had no trustee who was a citizen of the State of Illinois.

- 11 That by the by-laws of said company, the annual meeting of the stockholders thereof was to be held at its office in Chicago, on the first Monday of November in each year, and the trustees were to be elected annually at each meeting.

That no annual meeting was held on the first Monday of November, 1856.

That the secretary of the company did not give thirty days notice of a meeting of the company as required by the by-laws, and the trustees pretended to hold over in their offices without any election.

- 12 That at a meeting of the stockholders of said company, held at their office in Chicago, on or about the 15th of June, 1857, Wiggins, Clark, Perry and Wells, were removed from their office, and Page resigned his

office; and at the same time Amos Page, of Wisconsin, and Samuel F. Johnson and William Baker, of Illinois, were elected trustees.

That the said company have not complied with the law of February, 1849, in this, that they have not kept an alphabetical list of their stockholders, showing their residence, number of shares, and amount of stock paid in, in their office.

13 That they never have published in any newspaper a report showing the amount of capital, the proportion paid in, and amount of existing debts; and that one-half of the capital stock was not paid in within one year of its said organization, and has never yet been paid in.

That the said company has never engaged in any manufacturing, agricultural, mining or mechanical business; but have been engaged in cutting and vending ice, and there is no such business known as manufacturing ice.

That said company has never been legally organized as a corporation, and has never existed as a corporation; but that as a matter of fact, the same has been since its organization, a general copartnership, and that the property of said company is now held as general partnership property.

That if it were legally organized, and ever existed as a corporation, it ceased to exist as such on the 15th day of December, 1856, because one-half of the stock of said company had not been paid in on that day.

15 That the property is now held as partnership property, and the members of said company are severally liable for the debts of the company as copartners.

That soon after the formation of said company as aforesaid, it commenced the cutting of ice, and erection of ice houses at Crystal Lake, in the town of Algonquin, McHenry county, Illinois, for the purpose of storing ice, and purchased some small tracts of land of moderate extent for the purpose of erecting ice houses, and also for right of way for a railroad track from their ice house to the Chicago, St. Paul & Fond du Lac Railroad. The title to all of said grounds and tracts of land, so purchased as aforesaid, being taken in the name of said Amos Page, and by him held as trustee for the company; a full description of which is contained in schedule C—and soon after commenced laying and grading a railroad track of about one and seven-eighths mile in length, all of which

I do want to find that out

*See Page of at
by Peckinpaugh - this term*

were erected and finished at a great and improvident expense, and without regard to the true interests of the stockholders of said company.

That the company did business during the year 1856, at a loss of more than \$6,000.

- 16 That during the winter last past, the company cut and stored ice at a great expense; and in the last spring, (1857,) purchased horses, wagons, harnesses, and other articles, to deliver ice within Chicago; proceeded to the erection of houses and fences, which were nearly completed, for the stabling of horses and the storing of wagons.

That said company is now continuing in its said business, and continuing the same in Chicago, at a monthly loss of five hundred dollars.

- 17 That the company is greatly in debt and embarrassed for want of means—owing \$7,000, and the stockholders refuse to help the company, or advance the means to relieve it of its embarrassments.

That in April, 1857, judgment was obtained by Wilcox, Lyon & Co. against the company, in the Cook County Court of Common Pleas, for \$412.25 and costs, upon which execution has been issued, and is now in hands of sheriff, and the personal property of the company liable to be seized and sold under it.

- 18 That the creditors of the company have long been delayed, and are threatening to commence suits against it. That notes and acceptances of the company are maturing, and no provision made to meet the same.

That the company employs a large number of laborers, whose wages have not been paid, and that some of them were on a strike, and refused to work or permit others to work, for the reason that their wages had not been paid, and the company has no means to pay them with.

- 19 That all the property of said company, excepting its real estate, which is of little value, and of a perishable nature, and cannot be kept except at great expense and deteriorated in value, and that if the property were sold at a forced or sheriff's sale, it would not bring enough to pay demands against the company.

That the business and property of said company is of a peculiar nature, and one which would at the present time, at a fair sale, realize more than sufficient to satisfy all demands against said company; but if held till the season is past, could only be held at an expense to the company, and depreciation upon the amount and value thereof, as it could not be sold for as much as it could now be sold.

*Ice is thought to be
greatly valuable in
warm weather?*

20 That a large portion of the property of said company consists of 10,000 tons of ice, which, if it were carried over or into the warm weather, must greatly deteriorate in value, and lessen in amount.

That the wagons of the company are built expressly for its business, and of comparatively little value for other business, and that the company holds a large number of horses, which are a great expense to it.

21 That said company is hopelessly insolvent, and if the property of the company is not sold by a receiver to pay the debts, then the same will be sold at a sheriff's sale to satisfy judgments against it, at a great sacrifice.

That the real estate held by said company, and standing in the name of Amos Page, is of very little value except for said ice business, and from its situation and position, as well as nature, it is greatly for the interest of all the parties concerned that it should be sold with the other property of said company.

22 That of said 485 shares of stock, 312 shares are held by persons residing in Wisconsin, Michigan, Massachusetts and Minnesota; that the remaining 172 are held by twelve persons, except complainant, who reside in the State of Illinois, two of whom, only, live in the county of Cook.

That all of the shareholders of said company have been advised of its condition, urged to assist it, and failed to do so.

23 That the affairs of the company are daily becoming more embarrassed, and it cannot continue in business for the reasons before stated, and it is absolutely necessary, for the protection of the rights and interests of the creditors, as well as of the stockholders of said company, that a receiver should be appointed for said company, who should have power to take into his possession all and singular the property of said company, both real and personal, and should have full power and authority to make a present sale of the effects and property of said company, both real and personal, on the best terms that can be obtained for the same, and that the proceeds of such sale should be applied first towards the payment of the debts of said company.

That owing to the great number of shareholders in said company, and so many of them residing out of this State, it is impossible to close the said company without the interposition and aid of this court.

That at a meeting of the stockholders of said company, held at their

office in the city of Chicago, on the 15th of June, 1857, the holders of 314 shares being present or represented, the following resolution was
24 unanimously passed: "That the trustees, or a majority of them, have full power and authority, if in their discretion it is advisable so to do, to sell all the lands, houses, horses, wagons, harnesses, tools, ice fixtures, and all other the property of this company, on such terms and conditions as may to them seem best for the interest of the company, provided such sale shall be for a sum not less than ten thousand dollars."

That subsequently, on that day, the trustees levied an assessment upon the stock of said company, payable in ten days, and the secretary was directed forthwith to notify each shareholder of said company of said resolution passed at said shareholders' meeting, and to notify them at the same time of the resolution assessing said ten per cent. on the stock of said company, and to further inform them at same time that if said assessment was not properly responded to within said ten days, by the
25 holders of two-thirds of the stock of said company, that the same and all its property, both real and personal, would be sold by said trustees under the power conferred by said resolution. That the secretary did forthwith notify the shareholders or partners in said company, as he was directed to do, and that the said call has not been responded to by any of the said shareholders.

That a majority of the trustees of said company are now absent from the city of Chicago, and from the State of Illinois; and he has no means of knowing when a majority of them will return to said city.

26 That the said company cannot well and safely be closed up by said trustees, and the property of said company safely sold, under and by virtue of said resolutions hereinbefore referred to.

That he, the complainant, is a person of small means, and is daily in danger of being compelled to meet, and satisfy the demands existing against said company, by reason of his being a general partner in the same, and because the holders of stock in said company residing in the county of Cook, are also persons of small means, and not able to meet and satisfy the demands existing against said company.

27 That this bill is filed as well to protect the complainants' interest, as the interest of all the creditors of said company, and the several members of the same.

Prayer, for answer of defendants under oath; that said Crystal Lake Ice Company may be declared by decree of this court to be a general copartnership. That a receiver might be forthwith appointed by the court, who shall be empowered forthwith to take and receive all and singular, the property of said company, both real and personal, into his possession, and forthwith to proceed to dispose of the same, at such times and on such terms as may be most advantageous for the interest of the creditors and stockholders, if they should be declared to be stockholders, or partners, if they should be declared to be partners, of said company; and that Amos Page be directed and compelled to convey to such purchaser or purchasers at such sale, so made by such receiver, all and singular the real estate of said company held by him, or standing in his name, which of right belongs to said company. That if said Crystal Lake Ice Company should be declared to be a corporation, to direct and order the same to be closed up and dissolved according to law and the practice of this court. That the receiver be at liberty to apply to the court for further directions; to proceed to pay and satisfy all just demands against said company, out of the proceeds of such sale, first applying the same to the costs and expenses of this proceeding, and his charges, and that the surplus, if any, be brought into court; and that the defendants, either as shareholders or as trustees of said company, be enjoined from proceeding any further with said Crystal Lake Ice Company, or with interfering with said company or its property, and from disposing of the property, goods or effects of said Crystal Lake Ice Company, and for further or other relief. Process of injunction and summons prayed for against William Baker, George T. Clark, P. J. Cuyler, Amos Page, Jacob P. Eastman, A. A. Hobert, Benjamin W. Hobert, Jr., Samuel F. Johnson, Joel H. Johnson, Clark Lisse, Charles E. Thompson, John S. Wheat, John H. Wiggins, Daniel L. Wells, William B. Benson, Lewis J. Mulford, Abel W. Fuller, J. H. Edwards, Isaac G. Wilson, Jesse M. Stone, George Tyler, Caleb Rich, James T. Pierson, Alvin W. Judd, and Emons Taylor, who are named in schedule as the holders of the stock of the company that had been issued.

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32 The bill is sworn to on the 30th day of June, 1857, by the complainant. An order, without date, is indorsed for the issuing of a writ of injunction according to the prayer thereof.

35 Attached to the bill is a "Schedule D," referred to in within bill.

	Number of Shares.	Amount Due.	Amount Paid.
William Baker, of Chicago,	5	\$150.00	\$150.00
George T. Clark, of Michigan,	34	1,062.62	977.38
E. J. Cuyler, of Wisconsin,	5	50.00	250.00
Jacob H. Eastman, in partnership with Amos Page, of Wisconsin, }	132	1,320.00	6,600.00
A. A. Hobert,	5	50.00	250.00
Benjamin W. Hobert, Jr., of Boston,	5	50.00	250.00
Samuel F. Johnson, of Chicago,	50	500.00	2,500.00
Joel H. Johnson, of Woodstock,	15	150.00	750.00
Clark Lisse, of Chicago,	10	110.00	440.00
Samuel W. Perry, of Wisconsin,	60	250.00	3,350.00
John S. Wheat, of Woodstock,	10	100.00	500.00
John H. Wiggins, of Wisconsin,	16	520.00	440.00
William B. Benson, of Wisconsin,	50	500.00	2,500.00
Abel W. Fuller, of Woodstock,	10	100.00	500.00
J. H. Edwards, of Massachusetts,	5	50.00	250.00
Isaac G. Wilson, of Kane Co.,	10	300.00	300.00
Jesse M. Stone, of Minn. Ter'ry,	5	50.00	250.00
George Tyler, of Woodstock,	5	50.00	250.00
Alvin W. Judd, of Woodstock,	10	150.00	450.00
Caleb Rich, of Woodstock,	5	75.00	225.00
James F. Pierson, of Crystal Lake,	13	130.00	520.00
William Backus, of Chicago,	25	250.00	1,250.00

35 Præcipe filed for summons to Cook, Kane and McHenry counties.
Summons issued to those counties July 1, 1857.

41 Injunction bond filed July 1, 1857, and same day injunction writ issued
43 by which defendants are enjoined from in any manner proceeding with
45 said Crystal Lake Ice Company, and to desist and refrain from interfering
with said Crystal Lake Ice Company, and from disposing of the property,
goods or effects of said Crystal Lake Ice Company until further order of
the court.

47 Affidavit of Alexander C. Coventry filed with the bill, showing that
he is secretary and treasurer of the company, and that the facts charged
in the bill are true. Sworn to on the 30th of June, 1857; filed July 1,
1857.

50 July 1, 1857. Order of the court appointing Alexander C. Coventry receiver of all the property and effects, both real and personal, of the Crystal Lake Ice Company, and that he have full power forthwith to take into his possession the real estate and personal property of the said company, and that he have full power, when he shall have taken possession, to proceed to sell and dispose of the same at either public or private sale, as to him may seem most advantageous for the interests and for the protection of the rights of the creditors and shareholders or partners of and in said Crystal Lake Company; said sale to be made on such terms and conditions as may to him seem best for all parties concerned, and out of the proceeds of such sale to pay the debts of the said company, according to the prayer of the bill, and to report his proceedings to the court; and to proceed to complete the buildings then in course of erection by the said company.

Bond of receiver filed July 3, 1857.

55 July 4, 1857. Injunction served on Alvin W. Judd, William Baker, Amos Page, Samuel F. Johnson, Clark Lisse and Elliott A. Tarbell; the other defendants not found.

X 56 Report of receiver, filed July 7, 1857, states that being advised and satisfied that the property could not be sold at public sale, he received offers from various individuals, and offered the same to others, who refused to make any offer. That the highest offer he could get was one of \$10,000 from Hiram Joy and Augustus Frisbie, payable, \$1,000 August 1, 1857; \$1,000, September 1, 1857; \$1,000 October 1, 1857; \$1,000 November 1, 1857; \$1,000 December 1, 1857; \$2,500 July 1, 1858, and \$2,500 January 1, 1859, which he deemed best for the interest of all parties, should be accepted. He therefore prayed for an order confirming the sale; and that in order to make said sale, he promised to complete the barn and fence of the company in process of erection, 57 which could be done for less than \$200, and he prayed for an order directing that to be done.

62 On the 8th July, 1857, on filing the said report, and on motion of complainant's solicitor, and on reading affidavits of Elliott A. Tarbell, Frederick Mehring, and John D. Stone, ordered that said report be confirmed and bill of sale and deed be made to the purchasers, Joy & Frisbie, and that the receiver complete the barn and fence, and pay for the same out of the proceeds of the sale.

- 65 Summons issued to McHenry county. Served on the 15th July, 1857, on J. H. Johnson, Abel W. Fuller, Alvin W. Judd, and Caleb Rich ; on the 6th of August, 1857, on James F. Pierson.
- 66 Summons to Kane county, served on Isaac G. Wilson, July 24, 1857.
- 67 Summons to Cook, served on Alvin W. Judd, William Baker, Amos Page, Samuel F. Johnson, Clark Lisse, and Elliott A. Tarbell.
- 69 Notice of pendency of suit by publication in the *Chicago Journal*, published in Cook county, first insertion, August 12, 1857, to *Amos Page*, Jacob P. Eastman, John H. Wiggins, George T. Clark, Benjamin W. Hobert, Jr., E. J. Cuyler, Samuel W. Perry, William B. Benson, J. H. Edwards, Jesse M. Stone, Daniel L. Wells, Emons Taylor, Charles E. Thompson and Lewis J. Mulford. No summons issued accompanying this notice.
- 72 October 15, 1857, default of defendants entered and cause referred to master to take proofs.
- 76 October 29, 1857. Petition of Alexander C. Coventry, states that on the 2nd of July, 1857, he was appointed receiver of the Crystal Lake Ice Company. That he was not, and had not been, a shareholder or partner in said company, but at the time of his appointment the company was justly indebted to him \$3,670.59, for moneys lent and services rendered it, and the same was still then due to him ; and praying a reference to the master to report the amount due.
- 77
- 79 Order October 29, 1857, referring Coventry's petition to master.
- 81 November 19, 1857, bill dismissed as to Isaac G. Wilson.
- 82 December 17, 1857, final decree entered. Sets out *in extenso* the report of the master taken under the order referring the cause to him to take proofs.
- 84 The report contains the testimony of A. C. Coventry, in which he says (p. 65) that he had been the legal adviser of the company since its organization. In March, 1857, he was elected temporary treasurer and secretary of the company, and on July 1, 1861, he was appointed receiver of the company. He states (p. 67) that the company was organized under the act of February 10, 1849, by filing a certificate in the Cook county clerk's office, of the election of different persons as trustees and other officers of the company, giving a history of its official doings,
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- 86

89 (~~p-68~~); he gives a history of its financial affairs, (~~p-71~~); \$20,797.80 was paid into the company by the shareholders; gives in a schedule (which is not now among the files) a statement of the real estate of the company, the legal title of which, he says, is in Amos Page. (~~p-73.~~) 91

94 This report also contains the testimony of R. N. Hayden, the book-
95 keeper of the company, who states the debt due from the company to Coventry for money advanced at \$2,670.69, between April 7th and July 2, 1857. "They were also indebted to Mr. Coventry in the sum of one thousand dollars for services as treasurer, the said sum including interest on advances and general services. I know the services rendered by Mr. Coventry, and think the charge a fair and reasonable one."

110 The decree orders that the report stand confirmed, and after reciting that it appears to the court that the defendants and complainant, although doing business as a corporation, created under and in pursuance of the act of 10th February, 1849, under the name of the Crystal Lake Ice Company, were never legally organized as such corporation, in pursuance of said act, and never complied with the requirements of said act, but that they were doing business as a general copartnership under the name and style of the Crystal Lake Ice Company, orders and decrees that the said Crystal Lake Ice Company be, and it was thereby decreed
112 to have been a general copartnership, composed of the said defendants and the said plaintiff. It then recites that the said copartnership, doing business under the name of the Crystal Lake Ice Company, was insolvent, unable to pay its debts, and the managing members thereof neglected the business of the company; and then orders that the said
113 copartnership be dissolved. That the injunction theretofore issued in the cause be made perpetual, and that the defendants should forever desist and refrain from proceeding with or intermeddling with said Crystal Lake Ice Company, its property, effects, goods, chattels, and accounts, vouchers, books of account, and all and singular the property, both real and personal, of said company. That the order theretofore made, appointing Coventry receiver, be confirmed and made perpetual; that he proceed
115 to continue to pay the debts of the company according to the prayer of the bill, and report of the master. The decree then recites the sale made by the receiver, the moneys received and paid out by him, and orders that his acts therein stand confirmed, and that the company are indebted to him \$3,670.59; and that he pay himself that amount out of the funds in or coming to his hands as such receiver. The decree then
116 recites that Amos Page, one of the defendants, holds the legal title of the

118 real estate described in it, which of right belonged to said Crystal Lake
Ice Company, and the legal title was taken in said Page for greater con-
venience, and was held by him as trustee for said Crystal Lake Ice Com-
pany, which company in fact paid for all of said lands. That since the
sale by the receiver to said Joy & Frisbie, of said lands, that said Page
hath refused to convey to them, and orders that the sale made by the
receiver to said Joy & Frisbie vest in them all the rights, title and inter-
est of said Crystal Lake Ice Company; and that Page convey all his
right, title and interest therein, to said Joy & Frisbie, and if he fail so to
do, then that the master execute such conveyance for him, and that the
costs of the case be paid out of the property of said company.

122 The receiver files the report of the master, that he had made a deed
as commissioner for Amos Page, to Joy & Frisbie, of the lands described
in the decree, which is confirmed by the court.

135. ~~134~~ Petition of Fond du Lac Railroad Company, filed June 3, 1858, for
allowance of claim against Ice Company, and to be paid out of funds
in the hands of the receiver.

142 ~~141~~ July 13, 1858; John S. Wheat, one of the defendants, files his petition,
showing that he has not been served with notice of suit, brought in by
publication in a newspaper, and prays that the decree be opened and set
aside under statute, and to be let in to defend.

it should have been as to all, and suit dismissed.

W. T. BURGESS,
Plaintiff's Attorney.

- 140 July 14, 1858. The claim of St. Paul and Fond du Lac Railroad Company referred to master, and requiring the receiver to account for all assets received, and all moneys paid out as such, and to pay up, *pro rata*, the claims against the Ice Company, which shall be filed with him, and found due by the master.
- 142 March 21, 1859. The petition of Wheat allowed, and decree vacated as to him, and he files a general demurrer to bill.
- 143 October 19, 1861. Defendants file a petition to set aside the decree of 17th December, 1857, as to all of them, stating that Wheat had filed a petition to vacate the said decree which had been allowed, and that he had filed a demurrer to the bill for want of equity, which was pending; that the decree was a joint one, and that upon the face of the record the court had erred in rendering the decree. They, therefore, prayed the court to review and reverse the decree, and set the same aside.
- 145 January 23, 1862. Death of Backus, complainant, suggested, and James P. Root enters his appearance as administrator.
- 147 February 1, 1862. Demurrer of Wheat sustained to Bill. Complainant moves for leave to make Crystal Lake Ice Company a party defendant to bill. Defendants enter cross-motion to set aside and vacate all subsequent proceedings, and dismiss bill of complaint.
- 148 Bill and proceedings in case of Alexander C. Coventry, complainant, against William Baker, the Crystal Lake Ice Company, and others, consolidated with this suit, and considered as a part thereof, and as a petition filed in this cause.
- 149 The bill in that matter, filed the 14th day of June, 1859, states the filing of the original bill of complaint, by William Backus. The order appointing him receiver in that cause, of the property of the Crystal
150 Lake Ice Company. That he entered upon the duties of his receiver-
152 ship, and in pursuance of his appointment took possession of the prop-
153 erty, books, papers, etc., of the said company, and held the same until he disposed of the same as such receiver under the order of the court.
- 154 That the defendants in that suit claiming that said order was not binding on them, on the day of August, 1858, commenced an action of trespass against him, impleaded with Hiram Joy, Stanley H. Fleetwood, Erastus S. Williams and William Backus, in the name of the Crystal Lake Ice Company, in the Cook County Court of Common Pleas, in which they charge that he and the other defendants therein named were

- 155 guilty of a trespass on the premises of the Crystal Lake Ice Company, on the 1st day of July, 1858, and files a copy of the declaration with his bill. That he has been served with summons and filed a plea in the cause; that the same is now pending in said court. That the trespass for which said suit is brought, was the taking possession of the property of said Crystal Lake Ice Company on the 1st day of July, 1857, under the order of the Circuit Court; that the same was not made forcibly, but peaceably, and without any opposition, and done in pursuance of the order of the Circuit Court, appointing him receiver, and that he has not exceeded the order of the court, or taken any property except such as he was ordered to take, and has but carried out the order of the court as a servant of the court, as compelled to do. That no order has been made in said cause of *Backus v. Baker et al.*, allowing said suit to be commenced against him.
- 160 Prayer for an injunction restraining further prosecution of that suit.
- 163 Injunction allowed and bond filed, but not issued; summons served
176 upon some of the defendants February 1, 1862; order for consolidation of the Coventry bill, with the original suit of Backus, and to be treated as a part of it by consent of parties.
- 177 February 18, 1862, leave given to file supplemental bill, and the motion of defendants to set aside all proceedings of the court in this cause, denied.
- 179 February 15, 1862, defendants move a dissolution of the injunction granted upon the petition of A. C. Coventry, and for leave to sue him.
- 180 February 24, 1862, Francis W. Buckingham, administrator of Backus,
201 files a supplemental bill. Sets out the substance of the original bill, and avers that all and singular the allegations, statements, and charges in said original bill contained are true. That on the day of 1857, the defendants in the original bill having been duly notified to appear, made default which was entered, and bill of complaint taken as confessed against them, and the matter referred to the master to take proofs.
- 202 That on the 23rd of October, 1857, proofs were taken, and master made his report, filed the 17th of December, 1857, stating that all the material allegations in the bill were proved, and on same day final decree entered, confirming master's report; and by way of supplement, states
203 that before final decree entered, Alexander C. Coventry was appointed receiver, and proceeded to perform his duties as such.

204 That Backus, at the time he filed original bill, was a stockholder in said company. That in March, 1857, the Crystal Lake Ice Company was indebted to Wilcox, Lyon & Co., in about \$400, who in April, 1857, commenced suit against them, and afterwards obtained a judgment in Cook County Court of Common Pleas, against said company, and is the same judgment mentioned in the original bill, and was obtained prior to filing that bill. That execution had then issued thereon, and was a lien on the property of the company, in Cook county.

205 That the Crystal Lake Ice Company was then owing about \$3,000 to its servants and laborers, which had not at the time said bill was filed, been due one year, and was also indebted to other persons in about \$12,000, for debts contracted in course of its business, and was threatened with suit upon a large portion thereof, within one year from the time the same was contracted.

207 That the property of said company was a trust fund for the payment of its debts, and it was then and there the duty of the company and its trustees to appropriate the property and effects of the company to the payment of its debts; and to sell and dispose of the same for that purpose; and particularly as said company was insolvent, and notwithstanding its insolvency was then attempting to carry on its business, which was unprofitable and carried on at a loss; and that it was not possible to carry it on without a loss, and thereby the said Backus and the rest of the stockholders were put in great jeopardy of becoming liable for a large amount of the indebtedness of said company, of which there was no prospect of their being reimbursed out of the business or profits of said company.

208 That at time of filing bill, a small portion of the property of the company consisted of real estate and the buildings thereon, worth about \$500, and fit for no other purpose except that of storing ice; of wagons specially constructed to carry ice; of horses and harnesses belonging thereto, necessary for the business of the company, and mainly fit to carry on such a business; and a large amount of ice in ice houses, for the delivery of which the horses, etc., are necessary, and without which the ice would be of little value to any one; and the property could not be sold separately or in parcels to advantage to the company or its stockholders.

That the trustees, and the company itself, failed to act in the premises, or cause any sale of the property of the company to be made to apply in payment of its debts, as they ought to have done as soon as the company

became insolvent. That they pretended and gave out it was not necessary to do so, and it was not their or either of their business to do so. Charges that the company was then insolvent and unable to pay its debts, much of which was due to laborers who were actually necessary to the company in order to carry on its business.

210 That at and before the 1st of July, 1857, said laborers were on a strike, in consequence of non-payment of their wages due them, and refused to serve the company in the delivery of ice, or allow others to do so. That this derangement of its affairs had continued for several weeks prior to filing of said original bill. In the meantime, ice which the company had stored at great expense, was melting away, and would continue to be left to melt away during the summer months, to its entire loss, and no prospect that the company would have the ability to bring ice into market for sale, and thereby the personal liability of Backus as a stockholder was daily becoming greater, and the ability of the company less.

That the railroad company was refusing to transport ice, because the company was not able to pay its transportation bills, and that thereby the company could not get its ice from Crystal Lake to Chicago to supply its customers. That it had large contracts with saloons and hotels, to supply them with ice during the season, which they would not be able to comply with, and so the company and its stockholders be liable for failure to deliver ice on such contracts.

That the good will of the company in supplying its customers with ice was another and large element entering into and constituting its capital in business, which could only be made available by the sale of the whole property of said company, used in its business; that such good will was then in great danger of being lost, owing to the total inefficiency of the company.

212 That the sheriff threatened to sell the property of the company under Wilson, Lyon & Co.'s judgment, unless it was paid, which the company could not do; and that he would have sold the property and realized but a small sum if a receiver had not been appointed.

That the court appointed Coventry temporary receiver of the property of the company, with power to act immediately, who went on under the order of the court and took possession of it.

213 That he sold the property after the bill was filed, and applied the same to the payment of the debts so far as it would go.

214 That all and singular his proceedings prior to the final decree, were necessary to protect the interests of those interested in the affairs of said company as creditors and stockholders, and have all been ratified and approved by the court; that his proceedings in paying out said proceeds, have been in pursuance of the order of the court; that his acts and doings were performed before any application to the court by any of the stockholders, or by Wheat, to atter, disturb or interfere with said final decree, or any of the proceedings under said original bill.

That said Wheat was duly brought into court by publication under the statute; that nearly one year after the final decree had been rendered and substantially carried into effect, said Wheat appeared and offered to file his answer, but none other of the defendants have appeared to defend said suit, or disturb said decree.

215 That said Wheat claims to be entitled, as a stockholder of said company, to question the acts and doings of this court, because brought in by publication, and not by personal service of notice, but denies that he has any right to, and insists that by his negligence he is estopped from questioning the doings of the court and its officers in executing said decree, so far as excuted before he appeared.

216 That all of the stockholders of said Crystal Lake Ice Company were made parties by name, but that the Crystal Lake Ice Company was not by its corporate name; that under the circumstances set out in original and supplemental bills, the Crystal Lake Ice Company was merely a nominal party in interest, and in its corporate name and capacity had no actual interests or rights in the subject matter of said suit and the relief therein prayed against its stockholders over and above the rights and interests of the stockholders by said bill, brought into court as aforesaid; and that to the end that said Backus and his personal representatives, and all other persons who have acquired rights under said final decree, or by reason of filing said original bill, may have the full benefit thereof, it is necessary that said Crystal Lake Ice Company, by name, should be brought into court and made a party to the proceedings had under said original bill. To the end, therefore, that the Crystal Lake Ice Company and the other persons who were parties to original bill, may answer the supplemental bill.

217 That the Crystal Lake Ice Company may be held bound by said final decree, as fully and completely as if originally made a party to the said original bill of complaint, and that John S. Wheat may be held

concluded from disturbing the said final decree as to any action had thereunder, prior to the time of his appearance to defend said suit; and a prayer for process.

218 February 25, 1862. General demurrer of Crystal Lake Ice Company to the supplemental bill filed.

220 February 25, 1862. Answer of defendants Baker, Page, Johnson, Lipe, Wheat, Fuller, Pierson, and Judd to supplemental bill filed. States
221 that they and the other defendants were corporators, and held stock as such in the Crystal Lake Ice Company, a corporation duly created and existing under the laws of this State, and doing business as such when said original bill was filed. Deny that they ever were or considered themselves to be copartners, in any sense whatever, in said business, or that they ever did business under that name in any way or manner whatever, but that all the business transactions alluded to or mentioned in said supplemental bill, were done by said corporation as a corporation, and not otherwise; and they deny that it was insolvent, or its business deranged, as charged in the bill; and even if it were so, the complainant has no standing in a court of equity to correct, remedy or reform the
222 same. That by the original bill, the complainant hath not made or stated such a case as doth or ought to entitle him to any relief, and that the decree based thereon is erroneous, and should be reviewed and reversed; and that there is no equity in the supplemental bill; and ask same relief as though they had demurred specially.

223 Buckingham substituted in place of Root as administrator.

February 25, 1862. Cross-bill filed by same defendants who had filed answer to supplemental bill. States the filing of the supplemental bill and their answer thereto. It then states that the decree rendered upon said original bill, and all the proceedings thereon, are erroneous and void.
227 That the title to the property thereby sought to be charged, is and was in the Crystal Lake Ice Company, and not in the defendants to said bill, or any or either of them, and therefore that the said decree should be reversed. That the demurrer of Wheat to the original bill has been sustained, and he is entitled to be discharged from the suit, and at the time of allowance of his petition, all of the defendants moved to set aside the
228 decree as to them. Prayer, that the said Buckingham as administrator, and the other defendants to said supplemental bill, not complainants herein, might be made parties defendants to the cross-bill under the statute, and they required to answer the same. And that the said decree, for the

reasons and under the circumstances aforesaid, might be reviewed, reversed and set aside, and no further proceedings taken thereon. Amendment states that the process in the original cause had not been served on Page, and that the sheriff's return was untrue in fact.

229 March 26, 1862. Demurrer to supplemental bill filed by Crystal Lake Ice Company, overruled, and it ruled to answer.

230 March 27, 1862. Master's report filed, dated February 28, 1859 States that Coventry had received \$6,030, and paid out \$5,886.07, but from what source he had received it, or for what he had paid it out, nowhere appears, as the vouchers alluded to in the report are not filed with it, except his commission of \$335.55.

235 March 27, 1862. Motion by Coventry to confirm master's report, and another one that on filing books, papers, etc., he be discharged from further action as receiver. Motion to sue receiver is withdrawn, and
236
237 injunction continued by order of court.

April 26, 1862. Crystal Lake Ice Company file petition for leave to sue Coventry. States that it is a corporation under the laws of this State; that in July, 1857, Wm. Backus, then in life, filed a bill in that court
239 against William Baker and others, without making it a party to it, or notifying it of its pendency, or of proceedings thereunder; that Coventry was appointed receiver under it; that of that it had no notice; that in July Coventry took and sold all of its property to Joy & Frisbie, without any notice to it, who thereupon converted the same to their own use; that shortly before this, the trustees had held a meeting about the affairs
240 of the corporation, and were then, and always had been, attentive to the affairs of the corporation, either by themselves or agents, whom they supposed trustworthy, and the property of the company was then in the actual charge, custody, and keeping of its agents and servants; that before and after the filing of said bill, Coventry was the secretary, treasurer, and financial agent of the company, and in the absence of the board of directors had charge of its affairs; that Coventry was an attorney at law, and it deemed and considered him as retained and employed in any litigation it might have; that said Coventry, at the instigation of Joy & Frisbie, or of his own head, conceived the idea of selling out the business and property of said company to them (who then were rivals in business)
241 by means of a bill in chancery, and obtaining the appointment of a receiver, and, accordingly, with the intention to wrong, cheat, and defraud

140 the company, and contrary to his duty as its employee, holding office for it, drafted the bill on file in said cause in his own hand-writing, induced Messrs. Williams, Woodbridge and Grant to sign their names as solicitors, though they had nothing to do with drawing said bill, procured the appointment of himself as receiver, and then proceeded, without in any way notifying any of the other officers, or any of the trustees of the company, to sell out said property to Joy & Frisbie; that he having charge of the business affairs of the company, there was no change of the possession of the property made until after the sale was effected to them; that the Crystal Lake Ice Company has sustained damage by the loss and deprivation of its property, and the breaking up of its business, to \$35,000, for which no security is given in the cause, and it has no other
242 remedy save by proceeding at law against said Coventry and those who aided him in unlawfully taking its property as aforesaid; that there is no bond given to it in the cause, and, therefore, prayed that it might be at liberty to sue said Coventry at law.

Petition verified by affidavit of Amos Page, and states that he was present at a meeting of the board a few days before bill was filed, and had no notice or intimation of the filing of the bill or of the proceeding thereunder until after sale to Joy & Frisbie, and believes that none of the other trustees knew of it; that he then resided at Janesville, which was well known to said Coventry.

244 Affidavit of W. T. Burgess, filed May 19, 1862, that Joy & Frisbie are insolvent.

245 Affidavit of Hiram Joy, filed June 18, 1862. States that Joy & Frisbie purchased the property and chattels of the Crystal Lake Ice Company, about 4th of July, 1857, subject to approval of court; denies that he had theretofore any knowledge of condition of the company, except from common rumor, or that application was about to be made for a receiver; that Joy & Frisbie first offered Coventry \$8,000, and they were then induced by the representations of Coventry to offer \$10,000, which
247 was much more than the property was worth. That before confirmation of sale, he authorized Coventry to sell the property to Page, and those associated with him, for \$10,000, but he was informed they could not raise the money. That soon after the 7th of July, 1857, Joy & Frisbie arranged with the St. Paul & Fond du Lac Railroad Company to transport the ice for them, and that the superintendent of that road was Samuel F. Johnson, one of the trustees of the Crystal Lake Ice Company.

- 249 Denies that bill was filed at suggestion of deponent, and says that Joy & Frisbie carried on the business of transporting ice from Crystal Lake at a loss.
- 250 Affidavit of George H. French, filed June 18, 1862. That he knew Amos Page in A. D. 1857; that deponent was one of the keepers of the Briggs House, in Chicago, and that Page stopped there on the 6th and 7th of July, 1857. That it was a matter of public notoriety at that time, that the Crystal Lake Ice Company had passed into the hands of a receiver.
- 251 Affidavit of Frisbie, filed June 18, 1862, substantially the same as that of his partner Joy.
- 256 Answer of A. C. Coventry, filed June 18, 1862, to petition of Crystal Lake Ice Company, for leave to sue. Admits the filing of original bill, and that no process issued or proceedings had against the company by its corporate name until after the commission of the grievances alleged in petition; but denies that it was not notified of the filing the bill and proceedings thereon.
- On the 1st July, 1857, he was appointed receiver, and on the third filed his bond; and denies that the company had no notice of his appointment as receiver.
- 258 That on or about the 4th July, 1857, he sold the property of the company to Joy and Frisbie, subject to the approval of the court, and filed his report of sale July 7, 1857, and on the same day report of master approving said sale, and on the 8th of July sale was confirmed. That thereupon Joy and Frisbie took possession of property and disposed of it. That a majority, if not all, of the trustees had knowledge of the said sale before it was confirmed.
- 259 That the trustees had a meeting on the 15th June, 1857, but none after that until after the bill was filed. Denies that the trustees were themselves, or by their agents, attentive to the business of the company prior to filing said bill; but admits that the personal property of the company was, at the time of filing said bill, in the custody of its agents.
- Admits he was treasurer and secretary of the company, but denies that he was its financial agent, or, in absence of trustees, had general management of its business.

260

Admits that he was an attorney at law, but denies that he was considered by the company as retained to act for it as such.

Denies that the bill was filed, or he appointed receiver, at the instigation of Joy and Frisbie, or that they knew of the proceedings until after they had taken place, or that he conceived the idea of selling out the property and business of the company by any means whatever. States that William Backus desired of him particular and detailed information for the purpose of filing the bill of complaint in this cause, and he being a man of limited means, the respondent drafted the original bill of complaint to save him the expense of such draft, it being no more trouble to make draft than to give information he desired.

261

Denies that the draft was done to cheat or defraud any one, or contrary to the duty of respondent, or that he induced Williams, Woodbridge and Grant to sign the bill as solicitors, or procured himself to be appointed receiver; but says that the court having decided to appoint a receiver, suggested that he should act in that capacity, because he had an intimate knowledge of the affairs of the company, and could in consequence thereof better discharge the duties of the office than a stranger to its affairs.

That he neither asked or sought for the appointment, but accepted it at the suggestion of the court.

Admits that agents of the company remained in possession of its property until sale made to Joy and Frisbie, when they took possession.

262

Denies that the Crystal Lake Ice Company sustained any damage by sale of its property; that it was sold for all it was worth, and the most of it thereby saved from destruction, which otherwise would have taken place, and the avails applied in payment of its just debts under the order of the court.

264

Sets out the meeting of stockholders in June, 1857, and the resolutions passed at it; that notice was duly given to all of the stockholders; that from the 25th June until after the filing of the bill the company was without means and without credit, and a majority of the trustees were absent from the State of Illinois, and giving to the affairs of the company no attention.

States that the summons in the cause was served on Page, Baker and

Johnson, on the 4th July, 1857, and the injunction on Tarbell, the superintendent of the company, July 4, 1857.

- 266 That Page knew of the sale as early as July 7, 1857, and Joy & Frisbie offered to let him have the property if he would procure the discharge of Joy & Frisbie from the purchase, which he declined to do.

That Baker and Johnson knew of the purchase on the 8th July, 1857, and Tarbell knew of it at the time, and filed his affidavit in support of it.

- 267 That the trustees, well knowing the facts, allowed the sale to be confirmed, suffered Joy & Frisbie to pay for property, and the avails to be applied on its debts, without interposing any objection to the proceedings, or any of them, and long after it had received the benefit of it, and its members discharged from liability, it, for the first time, asserted its nominal rights, when in equity it was estopped from so doing by acts of its trustees.

That he has done no act but what he was authorized to do by order of court, and the Crystal Lake Ice Company, having received full benefit of sale, ought not now to be allowed to question the same.

- 268 There is a jurat subscribed to this, but it is not otherwise verified.

- 269 Answer of Crystal Lake Ice Company to supplemental bill, filed June 28, 1862. States that a bill was filed in this court by Backus against Baker and others, and refers to it for its contents. That at that time its property and business were in the hands, control and management of its officers, servants, and agents, persons whom its board of trustees believed to be competent and *honest*, and that they would be faithful to the duties they assumed. That principally among those having charge of its affairs was Alexander C. Coventry, elected or appointed secretary and treasurer, having the charge and custody of its books, etc., the management of its financial affairs, and as an attorney at law employed by it to attend to its legal business. That Backus had his office in same room with Coventry, and was on intimate terms with him. That Coventry claimed that the company then owed him \$3,600, and that Joy & Frisbie were rivals in the trade. That the bill originated and was filed by said Backus at the instigation of said Coventry and Joy & Frisbie, the one to collect his debt, and the other to drive a rival out of the market, without any notice to any of the trustees of the same until after the property was sold to Joy & Frisbie. That it was a plan fraudulently contrived

among and between the said Backus, Coventry, Joy & Frisbie to deprive this defendant of its property unlawfully, ruin its business, and transfer the same to said Joy & Frisbie. That it was not insolvent at the time of filing the bill; that it then had abundant means and property to pay its debts, had not the same been taken surreptitiously out of the hands of its trustees, without notice to them, upon the motion of said Coventry, and it has sustained great loss and damage thereby. That said Joy & Frisbie made out of the ice they got from defendant, \$30,000.

June 28, 1862, affidavit of Amos Page filed. States that a day or two before the 25th of June, 1857, he had a conversation with Coventry about the financial affairs of Crystal Lake Ice Company, and stated to him that if the assessment levied at the meeting of the 15th June, 1857, was not met, that the largest stockholders would expect to raise the amount to pay off the immediate and pressing claims. At the same time he informed Coventry, that he was then about to leave Janesville, his place of residence, for the north part of Wisconsin, to be absent on business about two weeks.

274 That he returned to Chicago as soon as he could; that he did not know of the sale to Joy & Frisbie until after they had taken actual possession of the property sold; that immediately upon his return to Chicago, he saw said Coventry about said sale, and expressed himself much dissatisfied about it.

275 That Coventry then represented to him that the company was a mere partnership, and had no corporate powers; that all its members were mere copartners, and all individually liable for its debts, and that there would be about \$4,000 to \$5,000 left after paying all debts, and if deponent would keep quiet and not contest the said sale that he would "make it all right" with him; that he understood from the conversation, that he should be paid for the stock; that owing to the statements of Coventry, he believed at the time that said corporation had no corporate powers, and was a mere copartnership, and therefore, did not proceed as a trustee to take legal steps to set aside the sale; that such belief prevailed with him and the other trustees for some time, induced in great part by the statements of said Coventry, until upon taking advice from other persons they learned that it was in fact a corporation.

That about that time, a suit was pending in the Circuit Court for a year's service for the company, brought by E. A. Tarbell, against the deponent and other stockholders, and it was concluded to make that a

test suit as to whether the Crystal Lake Ice Company was a corporation or not; that it was tried, taken to the Supreme Court, and decided that it was a corporation, and that any delay in this matter after the deponent was correctly informed of the rights of the corporation, has been only that attending all contested litigated cases; that the belief that the corporation was a mere copartnership, had a tendency to reduce the value of the franchises of the corporation, the business it was carrying on and its property, and to induce all the small stockholders to give up their interests as not worth looking after.

That the company then owned eight two-horse teams, worth, with wagons and harness, \$500 each; some machinery that cost \$2,500, and worth that; about forty thousand tons of ice stored at Crystal Lake, selling in Chicago for twenty-five cents a hundred weight, and costing \$1.25 a ton to bring in on railroad.

277 That if said sale had not been hurried through in the way it was, and under the circumstances of doubt as to character of corporation, created in great measure by said Coventry, there would have been no difficulty in raising out of said property money enough to have paid off all claims that had matured, and then to have preserved and carried on its business. That no process in the cause was ever served on him, as he recollects distinctly he was in Fond du Lac on the 4th of July, 1857.

284 Replication to answer of defendants to supplementary bill filed July 16, 1862.

286 Answer to cross-bill filed September 15, 1862. Consists of a general denial.

Replication to answer to cross-bill, filed October 30, 1862.

291 Affidavit of Charles M. Edwards, filed July, 1862; stating the character of the business done by the company in the summer of 1857.

294 Affidavit of James P. Smith, filed March 13, 1863. States that there was not altogether at Crystal Lake, to exceed 9,000 tons of the ice purchased by Joy & Frisbie, and it was badly secured, and they never realized much from it; that the machinery was not worth over \$280. That the horses were not worth over \$75 each. That the business of cutting and storing ice at Crystal Lake, and carrying it to Chicago for sale cannot be carried on with success. That Joy and Frisbie paid more for the property than it was worth.

301 March term, 1863. Final decree in which the titles of the original and supplemental bill are given ; it states that the original cause came on for hearing as to Wheat ; a final decree having been rendered as to the other defendants, also upon the supplemental bill and the cross-bill, and the petition for leave to sue Coventry.

Certificate of evidence.

307 Plaintiff read the articles of association.

The books of the company showing gross amount of stock paid in,
312 \$, and amount subscribed for and not paid, \$, and debts to the amount of \$12,296.33. These books were objected to because the paging of the books showed that either the journal or the ledger was not an original, the pages of the posting not agreeing.

The organization of the company and its by-laws and assessments. The proceedings of the meetings of its trustees from Nov. 14, 1855, till June, 1857.

The meeting of the stockholders on the 15th of June, 1857, (page 327) was an informal one, as the by-laws (p. 316, art. 2) only provide for an annual meeting, on the first Monday of November, and make no provision for called meetings.

332 The complainant also read the reports of the master, filed Dec. 17, 1857, and March 27, 1862.

And the record in case of *Wilcox, Lyon & Co. v. Crystal Lake Ice Company*, from Superior Court, showing summons served on secretary
335 of company by copy, in absence of president, and a judgment for
342 \$412.25. Execution issued and delivered to sheriff May 5, 1857, and returned satisfied Jan. 25, 1858.

350 *Deposition of R. N. Hayden.* Was book-keeper for Crystal Lake Ice Company, in summer of 1857 ; it was much embarrassed in its business, and unable to meet its current expense at that time. He mailed to
352 each of the stockholders, by direction of Coventry, a copy of the resolutions passed at the meeting of the 15th of June, 1857, and a notification of trustees that they would sell out if assessment of ten per cent. was not paid in ten days. The company was at the time indebted to Coventry in \$2,676.59 for advances, and there was a \$1,000 charge for services.

- 300 Also stipulation that Page and Johnson, the trustees, were absent on a journey from about the 17th of June until 3rd of July, 1857, away from Chicago.
- 356 Defendants then read stipulation. That Coventry drafted the original bill in the cause, and that Backus went, after it was drawn, and procured Williams, of the firm of Williams & Woodbridge, to sign the same as solicitor. That Coventry saw Williams both before and after the bill was drawn, and requested him to sign the same as solicitor for Backus; and that they (Williams & Woodbridge) have never been paid anything for their services in the case; and that the following documents, part of the files in the original cause, are in handwriting of Coventry; that is:
Præcipe (p. 35), bond (p. 41), except signatures to it; writ of injunction (p. 43), except clerk's signature, and is indorsed with names of Williams & Woodbridge, in handwriting of Coventry. The body of the following affidavits: Richard N. Hayden (p. 49), E. Tarbell (p. 59), F. Mehring (p. 60), and of bond (p. 52); and the draft of the following orders: July 1, 1857 (p. 58), July 8, 1857 (p. 62), and April 3, 1858 (p. 21).
- 359 The defendant also read the record of the case in Superior Court of *Crystal Lake Ice Company v. Frisbie, Joy, Coventry et al.*, in trespass, commenced by summons the 14th July, 1858, served the 17th July, 1858. Narr. filed, September 3, 1858, same suit mentioned in Coventry's petition for injunction. The pleas set out as a defense the proceedings in the original bill.
- 380
- 391 The plaintiffs introduce the oral testimony of Charles M. Edwards, who was one of the employees of the company. Shows that the company was embarrassed, and on the 1st July, 1857, the men refused to work.
- 396 Augustus Frisbie states the condition of the property at the time of sale; that he bought it without going out to the lake; somebody was sent out; paid for it all it was worth; did not make any money out of it; and offered to Coventry to give it up if they would release Joy and Frisbie from liability on purchase. Coventry came to him 1st of July; wanted a bid; first he had seen of him; said he had become involved in this matter; had been appointed receiver, and wanted to sell it for the best price he could get for the benefit of creditors; we made him an offer for it same day; was done very quick; closed up before the 4th of July; thinks 2nd or 3rd of July, 1857.
- 397

ASSIGNMENT OF ERRORS.

1. The Circuit Court had no jurisdiction to render decree of December 17, 1857.

2. In allowing supplemental bill to be filed. *by this way by answer*

3. In overruling demurrer to supplemental bill.

4. In not dismissing the original bill on sustaining demurrer of Wheat thereto.

5. In not dismissing the original bill on the motion of the defendants after opening the case as to Wheat.

6. In allowing injunction upon petition of Coventry.

7. In making that injunction perpetual, and refusing leave to sue Coventry.

8. In refusing upon the cross-bill to review and reverse decree of December 17, 1857.

9. In rendering decree of March term, 1863, upon the evidence legally before it.

10. In each and every part of the decree of March, 1863, and should have dismissed the whole proceeding, and granted leave to sue Coventry.

131

The Crystal Lake
Ice Co. & others

128

J. M. Buckingham

Abstract

Filed April 27, 1863

J. Selman
Clerk

MAR 24 1863

RECORDS OF THE DISTRICT COURT OF THE DISTRICT OF COLUMBIA

IN SENATE

GEORGE A. MANN, PLAINTIFF

vs
JAMES W. MANN, DEFENDANT

1863

Case No. 1000

On the 24th day of April 1863, the following case was called for trial, to-wit: The case of George A. Mann, Plaintiff, vs James W. Mann, Defendant. The case was called for trial by the Plaintiff's attorney, and the Defendant's attorney appeared and answered to the charge. The case was then called for trial by the Court, and the Plaintiff's attorney moved for judgment in favor of his client. The Court then proceeded to hear the case, and after hearing the testimony of the witnesses, the Court rendered judgment in favor of the Plaintiff. The Court's judgment was that the Plaintiff was entitled to the sum of \$1000, with interest thereon from the date of the filing of the complaint. The Court's judgment was affirmed by the Supreme Court of the District of Columbia.

IN THE
Supreme Court of the State of Illinois,
THIRD GRAND DIVISION,
APRIL TERM, A. D. 1863.

THE CRYSTAL LAKE ICE COMPANY, WILLIAM BAKER, AMOS PAGE, JACOB P. EASTMAN, JOHN H. WIGGINS, GEORGE P. CLARK, ISSAC G. WILSON, BENJAMIN W. HOBERT, JR., A. A. HOBERT, W. B. BENSON, S. J. CUYLER, SAMUEL P. JOHNSON, JOEL H. JOHNSON, CLARK LIPE, SAMUEL W. PERRY, JOHN S. WHEAT, ABEL W. FULLER, J. H. EDWARDS, J. M. STONE, GEORGE TYLER, ALVIN W. JUDD, CALEB RICH, JAMES T. PIERSON, DANIEL L. WELLS, EMONS TAYLOR, CHARLES THOMPSON, and LEWIS J. MULFORD,

Plaintiff's in Error.

versus

FRANCIS W. BUCKINGHAM, Administrator of William Backus, deceased, and ALEXANDER C. COVENTRY,

Defendants in Error.

*Error to Cook
Circuit Court.*

PAGE.

ABSTRACT OF RECORD.

2 Bill filed July 1, 1857, sets forth that on the 15th December, 1855, Amos Page of Janesville, Wisconsin, Charles E. Thompson, of Philadelphia; John H. Wiggins, of Wisconsin; George P. Clark, of Boston, Massachusetts, with Daniel L. Wells, of Wisconsin, associated themselves together, and purported to form a corporation for the manufacturing, cutting, working, vending and dealing in ice, under the name of the Crystal Lake Ice Company; said Wiggins, Wells and Thompson, on the 15th of December, 1855, residing in Chicago; and for that purpose they

filed in the office of the clerk of the county of Cook, a certificate of incorporation, a copy of which is annexed to the bill, as follows :

33 "Incorporation of the Crystal Lake Ice Company. To all to whom these presents may come, Greeting: This is to certify, that we, whose names are hereunto subscribed, have, on the 13th day of December, in the year of our Lord one thousand eight hundred and fifty-five, associated ourselves together, and formed a company under the provisions of
34 the act, entitled "An act to authorize the formation of corporations for manufacturing or mechanical purposes," approved February 10th, 1849. That the corporate name of said company shall be the Crystal Lake Ice Company. That the object for which said company is formed, is the cutting, working, manufacturing, vending, and dealing in ice. That the business of said company shall be carried on in the town of Algonquin, in the county of McHenry, and in the city of Chicago, both in the State of Illinois. That the said company shall have succession and a corporate existence for the term of twenty-five years, from and after this date above mentioned. That the capital and stock of said company shall be fifty thousand dollars, divided into five hundred shares of one hundred dollars each. That the number of trustees of said company shall be five, and the following named persons, a majority of whom are citizens of this State, and stockholders in this company, shall be trustees for the first year, viz. : Amos Page, Charles E. Thompson, John H. Wiggins, George P. Clark, and Daniel L. Wells.

32 AMOS PAGE.
CHAS. E. THOMPSON.
JOHN H. WIGGINS.
GEO. P. CLARK.
DANIEL L. WELLS."

A certificate of acknowledgment by them, before L. C. Hall, Notary Public, on the 15th of December, 1855, under his notarial seal.

3 That at the time of the formation of said Crystal Lake Ice Company, the said five hundred shares of stock were taken and held by the following persons : William Baker, 5 shares ; George P. Clark, 34 shares ; E. J. Cuyler, 5 shares ; Amos Page and Jacob P. Eastman, under name of
4 Eastman & Page, 100 shares ; A. A. Hobert, 10 shares ; Samuel F. Johnson, 50 shares ; Joel H. Johnson, 60 shares ; Clark Lisse, 10 shares ; Charles E. Thompson, 33 shares ; Samuel W. Perry, 50 shares ; John H. Wiggins, 33 shares ; John S. Wheat, 10 shares ; Daniel L. Wells, 50

shares; Emons Taylor, 10 shares; and the complainant, 25 shares—in all, 485 shares, (leaving 15 undisposed of), upon which assessments have been levied to \$60 on each share, in all amounting to \$29,100, upon which \$23,055 have only been paid.

- 5 That the names of the present holders of stock are set forth in schedule B.

That assessments have been levied upon the stock, and each and all of the stockholders are in default in paying the same. The bill then states transfers of stock by different stockholders to other persons, giving their names, and that such transfer was without the knowledge or consent of the complainant.

- 9 That since filing said certificate, said Amos Page, John H. Wiggins, Charles E. Thompson, Daniel L. Wells and George P. Clark, next purported to organize said company, by the appointment of Amos Page, as President, and George P. Clark, as Treasurer and Secretary of said company.

That Alexander C. Coventry, was secretary and treasurer of said company.

That in consequence of removals and changes of residence, on the 30th day of March, 1857, Samuel W. Perry, John H. Wiggins and Amos Page, the trustees of said corporation, all became non-resident, and the company had no trustee who was a citizen of the State of Illinois.

- 11 That by the by-laws of said company, the annual meeting of the stockholders thereof was to be held at its office in Chicago, on the first Monday of November in each year, and the trustees were to be elected annually at each meeting.

That no annual meeting was held on the first Monday of November, 1856.

That the secretary of the company did not give thirty days notice of a meeting of the company as required by the by-laws, and the trustees pretended to hold over in their offices without any election.

- 12 That at a meeting of the stockholders of said company, held at their office in Chicago, on or about the 15th of June, 1857, Wiggins, Clark, Perry and Wells, were removed from their office, and Page resigned his

office; and at the same time Amos Page, of Wisconsin, and Samuel F. Johnson and William Baker, of Illinois, were elected trustees.

That the said company have not complied with the law of February, 1849, in this, that they have not kept an alphabetical list of their stockholders, showing their residence, number of shares, and amount of stock paid in, in their office.

13 That they never have published in any newspaper a report showing the amount of capital, the proportion paid in, and amount of existing debts; and that one-half of the capital stock was not paid in within one year of its said organization, and has never yet been paid in.

That the said company has never engaged in any manufacturing, agricultural, mining or mechanical business; but have been engaged in cutting and vending ice, and there is no such business known as manufacturing ice.

That said company has never been legally organized as a corporation, and has never existed as a corporation; but that as a matter of fact, the same has been since its organization, a general copartnership, and that the property of said company is now held as general partnership property.

That if it were legally organized, and ever existed as a corporation, it ceased to exist as such on the 15th day of December, 1856, because one-half of the stock of said company had not been paid in on that day.

15 That the property is now held as partnership property, and the members of said company are severally liable for the debts of the company as copartners.

That soon after the formation of said company as aforesaid, it commenced the cutting of ice, and erection of ice houses at Crystal Lake, in the town of Algonquin, McHenry county, Illinois, for the purpose of storing ice, and purchased some small tracts of land of moderate extent for the purpose of erecting ice houses, and also for right of way for a railroad track from their ice house to the Chicago, St. Paul & Fond du Lac Railroad. The title to all of said grounds and tracts of land, so purchased as aforesaid, being taken in the name of said Amos Page, and by him held as trustee for the company; a full description of which is contained in schedule C—and soon after commenced laying and grading a railroad track of about one and seven-eighths mile in length, all of which

were erected and finished at a great and improvident expense, and without regard to the true interests of the stockholders of said company.

That the company did business during the year 1856, at a loss of more than \$6,000.

- 16 That during the winter last past, the company cut and stored ice at a great expense; and in the last spring, (1857,) purchased horses, wagons, harnesses, and other articles, to deliver ice within Chicago; proceeded to the erection of houses and fences, which were nearly completed, for the stabling of horses and the storing of wagons.

That said company is now continuing in its said business, and continuing the same in Chicago, at a monthly loss of five hundred dollars.

- 17 That the company is greatly in debt and embarrassed for want of means—owing \$7,000, and the stockholders refuse to help the company, or advance the means to relieve it of its embarrassments.

That in April, 1857, judgment was obtained by Wilcox, Lyon & Co. against the company, in the Cook County Court of Common Pleas, for \$12.25 and costs, upon which execution has been issued, and is now in hands of sheriff, and the personal property of the company liable to be seized and sold under it.

- 18 That the creditors of the company have long been delayed, and are threatening to commence suits against it. That notes and acceptances of the company are maturing, and no provision made to meet the same.

That the company employs a large number of laborers, whose wages have not been paid, and that some of them were on a strike, and refused to work or permit others to work, for the reason that their wages had not been paid, and the company has no means to pay them with.

- 19 That all the property of said company, excepting its real estate, which is of little value, and of a perishable nature, and cannot be kept except at great expense and deteriorated in value, and that if the property were sold at a forced or sheriff's sale, it would not bring enough to pay demands against the company.

That the business and property of said company is of a peculiar nature, and one which would at the present time, at a fair sale, realize more than sufficient to satisfy all demands against said company; but if held till the season is past, could only be held at an expense to the company, and depreciation upon the amount and value thereof, as it could not be sold for as much as it could now be sold.

20 That a large portion of the property of said company consists of 10,000 tons of ice, which, if it were carried over or into the warm weather, must greatly deteriorate in value, and lessen in amount.

That the wagons of the company are built expressly for its business, and of comparatively little value for other business, and that the company holds a large number of horses, which are a great expense to it.

21 That said company is hopelessly insolvent, and if the property of the company is not sold by a receiver to pay the debts, then the same will be sold at a sheriff's sale to satisfy judgments against it, at a great sacrifice.

That the real estate held by said company, and standing in the name of Amos Page, is of very little value except for said ice business, and from its situation and position, as well as nature, it is greatly for the interest of all the parties concerned that it should be sold with the other property of said company.

22 That of said 485 shares of stock, 312 shares are held by persons residing in Wisconsin, Michigan, Massachusetts and Minnesota; that the remaining 172 are held by twelve persons, except complainant, who reside in the State of Illinois, two of whom, only, live in the county of Cook.

That all of the shareholders of said company have been advised of its condition, urged to assist it, and failed to do so.

23 That the affairs of the company are daily becoming more embarrassed, and it cannot continue in business for the reasons before stated, and it is absolutely necessary, for the protection of the rights and interests of the creditors, as well as of the stockholders of said company, that a receiver should be appointed for said company, who should have power to take into his possession all and singular the property of said company, both real and personal, and should have full power and authority to make a present sale of the effects and property of said company, both real and personal, on the best terms that can be obtained for the same, and that the proceeds of such sale should be applied first towards the payment of the debts of said company.

That owing to the great number of shareholders in said company, and so many of them residing out of this State, it is impossible to close the said company without the interposition and aid of this court.

That at a meeting of the stockholders of said company, held at their

24 office in the city of Chicago, on the 15th of June, 1857, the holders of 314 shares being present or represented, the following resolution was unanimously passed: "That the trustees, or a majority of them, have full power and authority, if in their discretion it is advisable so to do, to sell all the lands, houses, horses, wagons, harnesses, tools, ice fixtures, and all other the property of this company, on such terms and conditions as may to them seem best for the interest of the company, provided such sale shall be for a sum not less than ten thousand dollars."

25 That subsequently, on that day, the trustees levied an assessment upon the stock of said company, payable in ten days, and the secretary was directed forthwith to notify each shareholder of said company of said resolution passed at said shareholders' meeting, and to notify them at the same time of the resolution assessing said ten per cent. on the stock of said company, and to further inform them at same time that if said assessment was not properly responded to within said ten days, by the holders of two-thirds of the stock of said company, that the same and all its property, both real and personal, would be sold by said trustees under the power conferred by said resolution. That the secretary did forthwith notify the shareholders or partners in said company, as he was directed to do, and that the said call has not been responded to by any of the said shareholders.

That a majority of the trustees of said company are now absent from the city of Chicago, and from the State of Illinois; and he has no means of knowing when a majority of them will return to said city.

26 That the said company cannot well and safely be closed up by said trustees, and the property of said company safely sold, under and by virtue of said resolutions hereinbefore referred to.

That he, the complainant, is a person of small means, and is daily in danger of being compelled to meet, and satisfy the demands existing against said company, by reason of his being a general partner in the same, and because the holders of stock in said company residing in the county of Cook, are also persons of small means, and not able to meet and satisfy the demands existing against said company.

27 That this bill is filed as well to protect the complainants' interest, as the interest of all the creditors of said company, and the several members of the same.

Prayer, for answer of defendants under oath ; that said Crystal Lake Ice Company may be declared by decree of this court to be a general copartnership. That a receiver might be forthwith appointed by the court, who shall be empowered forthwith to take and receive all and singular, the property of said company, both real and personal, into his possession, and forthwith to proceed to dispose of the same, at such times and on such terms as may be most advantageous for the interest of the creditors and stockholders, if they should be declared to be stockholders, or partners, if they should be declared to be partners, of said company ; and that Amos Page be directed and compelled to convey to such purchaser or purchasers at such sale, so made by such receiver, all and singular the real estate of said company held by him, or standing in his name, which of right belongs to said company. That if said Crystal Lake Ice Company should be declared to be a corporation, to direct and order the same to be closed up and dissolved according to law and the practice of this court. That the receiver be at liberty to apply to the court for further directions ; to proceed to pay and satisfy all just demands against said company, out of the proceeds of such sale, first applying the same to the costs and expenses of this proceeding, and his charges, and that the surplus, if any, be brought into court ; and that the defendants, either as shareholders or as trustees of said company, be enjoined from proceeding any further with said Crystal Lake Ice Company, or with interfering with said company or its property, and from disposing of the property, goods or effects of said Crystal Lake Ice Company, and for further or other relief. Process of injunction and summons prayed for against William Baker, George T. Clark, P. J. Cuyler, Amos Page, Jacob P. Eastman, A. A. Hobert, Benjamin W. Hobert, Jr., Samuel F. Johnson, Joel H. Johnson, Clark Lisse, Charles E. Thompson, John S. Wheat, John H. Wiggins, Daniel L. Wells, William B. Benson, Lewis J. Mulford, Abel W. Fuller, J. H. Edwards, Isaac G. Wilson, Jesse M. Stone, George Tyler, Caleb Rich, James T. Pierson, Alvin W. Judd, and Emons Taylor, who are named in schedule as the holders of the stock of the company that had been issued.

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29

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32 The bill is sworn to on the 30th day of June, 1857, by the complainant. An order, without date, is indorsed for the issuing of a writ of injunction according to the prayer thereof.

35 Attached to the bill is a "Schedule D," referred to in within bill.

	Number of Shares.	Amount Due.	Amount Paid.
William Baker, of Chicago,	5	\$150.00	\$150.00
George T. Clark, of Michigan,	34	1,062.62	977.38
E. J. Cuyler, of Wisconsin,	5	50.00	250.00
Jacob H. Eastman, in partnership with Amos Page, of Wisconsin, }	132	1,320.00	6,600.00
A. A. Hobert,	5	50.00	250.00
Benjamin W. Hobert, Jr., of Boston,	5	50.00	250.00
Samuel F. Johnson, of Chicago,	50	500.00	2,500.00
Joel H. Johnson, of Woodstock,	15	150.00	750.00
Clark Lisse, of Chicago,	10	110.00	440.00
Samuel W. Perry, of Wisconsin,	60	250.00	3,350.00
John S. Wheat, of Woodstock,	10	100.00	500.00
John H. Wiggins, of Wisconsin,	16	520.00	440.00
William B. Benson, of Wisconsin,	50	500.00	2,500.00
Abel W. Fuller, of Woodstock,	10	100.00	500.00
J. H. Edwards, of Massachusetts,	5	50.00	250.00
Isaac G. Wilson, of Kane Co.,	10	300.00	300.00
Jesse M. Stone, of Minn. Territory,	5	50.00	250.00
George Tyler, of Woodstock,	5	50.00	250.00
Alvin W. Judd, of Woodstock,	10	150.00	450.00
Caleb Rich, of Woodstock,	5	75.00	225.00
James F. Pierson, of Crystal Lake,	13	130.00	520.00
William Backus, of Chicago,	25	250.00	1,250.00

35 Præcipe filed for summons to Cook, Kane and McHenry counties. Summons issued to those counties July 1, 1857.

41 Injunction bond filed July 1, 1857, and same day injunction writ issued
43 by which defendants are enjoined from in any manner proceeding with
45 said Crystal Lake Ice Company, and to desist and refrain from interfering
with said Crystal Lake Ice Company, and from disposing of the property,
goods or effects of said Crystal Lake Ice Company until further order of
the court.

47 Affidavit of Alexander C. Coventry filed with the bill, showing that
he is secretary and treasurer of the company, and that the facts charged
in the bill are true. Sworn to on the 30th of June, 1857; filed July 1,
1857.

50 July 1, 1857. Order of the court appointing Alexander C. Coventry receiver of all the property and effects, both real and personal, of the Crystal Lake Ice Company, and that he have full power forthwith to take into his possession the real estate and personal property of the said company, and that he have full power, when he shall have taken possession, to proceed to sell and dispose of the same at either public or private sale, as to him may seem most advantageous for the interests and for the protection of the rights of the creditors and shareholders or partners of and in said Crystal Lake Company; said sale to be made on such terms and conditions as may to him seem best for all parties concerned, and out of
52 the proceeds of such sale to pay the debts of the said company, according to the prayer of the bill, and to report his proceedings to the court; and to proceed to complete the buildings then in course of erection by the said company.

Bond of receiver filed July 3, 1857.

55 July 4, 1857. Injunction served on Alvin W. Judd, William Baker, Amos Page, Samuel F. Johnson, Clark Lisse and Elliott A. Tarbell; the other defendants not found.

Report of receiver, filed July 7, 1857, states that being advised and
56 satisfied that the property could not be sold at public sale, he received offers from various individuals, and offered the same to others, who refused to make any offer. That the highest offer he could get was one of \$10,000 from Hiram Joy and Augustus Frisbie, payable, \$1,000 August 1, 1857; \$1,000, September 1, 1857; \$1,000 October 1, 1857; \$1,000 November 1, 1857; \$1,000 December 1, 1857; \$2,500 July 1, 1858, and \$2,500 January 1, 1859, which he deemed best for the interest of all parties, should be accepted. He therefore prayed for an order confirming the sale; and that in order to make said sale, he promised to
57 complete the barn and fence of the company in process of erection, which could be done for less than \$200, and he prayed for an order directing that to be done.

62 On the 8th July, 1857, on filing the said report, and on motion of complainant's solicitor, and on reading affidavits of Elliott A. Tarbell, Frederick Mehring, and John D. Stone, ordered that said report be confirmed and bill of sale and deed be made to the purchasers, Joy & Frisbie, and that the receiver complete the barn and fence, and pay for the same out of the proceeds of the sale.

- 65 Summons issued to McHenry county. Served on the 15th July, 1857, on J. H. Johnson, Abel W. Fuller, Alvin W. Judd, and Caleb Rich; on the 6th of August, 1857, on James F. Pierson.
- 66 Summons to Kane county, served on Isaac G. Wilson, July 24, 1857.
- 67 Summons to Cook, served on Alvin W. Judd, William Baker, Amos Page, Samuel F. Johnson, Clark Lisse, and Elliott A. Tarbell.
- 69 Notice of pendency of suit by publication in the *Chicago Journal*, published in Cook county, first insertion, August 12, 1857, to *Amos Page*, Jacob P. Eastman, John H. Wiggins, George T. Clark, Benjamin W. Hobert, Jr., E. J. Cuyler, Samuel W. Perry, William B. Benson, J. H. Edwards, Jesse M. Stone, Daniel L. Wells, Emons Taylor, Charles E. Thompson and Lewis J. Mulford. No summons issued accompanying this notice.
- 72 October 15, 1857, default of defendants entered and cause referred to master to take proofs.
- 76 October 29, 1857. Petition of Alexander C. Coventry, states that on the 2nd of July, 1857, he was appointed receiver of the *Crystal Lake Ice Company*. That he was not, and had not been, a shareholder or partner in said company, but at the time of his appointment the company was justly indebted to him \$3,670.59, for moneys lent and services rendered it, and the same was still then due to him; and praying a reference to the master to report the amount due.
- 77
- 79 Order October 29, 1857, referring Coventry's petition to master.
- 81 November 19, 1857, bill dismissed as to Isaac G. Wilson.
- 82 December 17, 1857, final decree entered. Sets out *in extenso* the report of the master taken under the order referring the cause to him to take proofs.

84 The report contains the testimony of A. C. Coventry, in which he says (p. 65) that he had been the legal adviser of the company since its organization. In March, 1857, he was elected temporary treasurer and secretary of the company, and on July 1, 1861, he was appointed receiver of the company. He states (p. 67) that the company was organized under the act of February 10, 1849, by filing a certificate in the Cook county clerk's office, of the election of different persons as trustees and other officers of the company, giving a history of its official doings,

(p. 68); he gives a history of its financial affairs, (p. 71); \$20,797.80 was paid into the company by the shareholders; gives in a schedule (which is not now among the files) a statement of the real estate of the company, the legal title of which, he says, is in Amos Page. (p. 73.)

- 94 This report also contains the testimony of R. N. Hayden, the book-
95 keeper of the company, who states the debt due from the company to
Coventry for money advanced at \$2,670.69, between April 7th and July
2, 1857. "They were also indebted to Mr. Coventry in the sum of one
thousand dollars for services as treasurer, the said sum including interest
on advances and general services. I know the services rendered by Mr.
Coventry, and think the charge a fair and reasonable one."
- 110 The decree orders that the report stand confirmed, and after reciting
that it appears to the court that the defendants and complainant,
although doing business as a corporation, created under and in pursuance
of the act of 10th February, 1849, under the name of the Crystal Lake
Ice Company, were never legally organized as such corporation, in pur-
suance of said act, and never complied with the requirements of said act,
but that they were doing business as a general copartnership under the
name and style of the Crystal Lake Ice Company, orders and decrees
that the said Crystal Lake Ice Company be, and it was thereby decreed
112 to have been a general copartnership, composed of the said defendants
and the said plaintiff. It then recites that the said copartnership, doing
business under the name of the Crystal Lake Ice Company, was insol-
vent, unable to pay its debts, and the managing members thereof
neglected the business of the company; and then orders that the said
113 copartnership be dissolved. That the injunction theretofore issued in the
cause be made perpetual, and that the defendants should forever desist
and refrain from proceeding with or intermeddling with said Crystal
Lake Ice Company, its property, effects, goods, chattels, and accounts,
vouchers, books of account, and all and singular the property, both real and
personal, of said company. That the order theretofore made, appoint-
ing Coventry receiver, be confirmed and made perpetual; that he proceed
115 to continue to pay the debts of the company according to the prayer of
the bill, and report of the master. The decree then recites the sale
made by the receiver, the moneys received and paid out by him, and
orders that his acts therein stand confirmed, and that the company are
indebted to him \$3,670.59; and that he pay himself that amount out of
the funds in or coming to his hands as such receiver. The decree then
116 recites that Amos Page, one of the defendants, holds the legal title of the

- 118 real estate described in it, which of right belonged to said Crystal Lake Ice Company, and the legal title was taken in said Page for greater convenience, and was held by him as trustee for said Crystal Lake Ice Company, which company in fact paid for all of said lands. That since the sale by the receiver to said Joy & Frisbie, of said lands, that said Page hath refused to convey to them; and orders that the sale made by the receiver to said Joy & Frisbie vest in them all the rights, title and interest of said Crystal Lake Ice Company; and that Page convey all his right, title and interest therein, to said Joy & Frisbie, and if he fail so to do, then that the master execute such conveyance for him, and that the costs of the case be paid out of the property of said company.
- 121
- 122 The receiver files the report of the master, that he had made a deed as commissioner for Amos Page, to Joy & Frisbie, of the lands described in the decree, which is confirmed by the court.

- 135 134½ Petition of Fond du Lac Railroad Company, filed June 3, 1858, for allowance of claim against Ice Company, and to be paid out of funds in the hands of the receiver.
- 142 135 July 13, 1858, John S. Wheat, one of the defendants, files his petition, showing that he has not been served with notice of suit, brought in by publication in a newspaper, and prays that the decree be opened and set aside under statute, and to be let in to defend.

- 140 July 14, 1858. The claim of St. Paul and Fond du Lac Railroad Company referred to master, and requiring the receiver to account for all assets received, and all moneys paid out as such, and to pay up, *pro rata*, the claims against the Ice Company, which shall be filed with him, and found due by the master.
- 142 March 21, 1859. The petition of Wheat allowed, and decree vacated as to him, and he files a general demurrer to bill.
- 143 October 19, 1861. Defendants file a petition to set aside the decree of 17th December, 1857, as to all of them, stating that Wheat had filed a petition to vacate the said decree which had been allowed, and that he had filed a demurrer to the bill for want of equity, which was pending; that the decree was a joint one, and that upon the face of the record the court had erred in rendering the decree. They, therefore, prayed the court to review and reverse the decree, and set the same aside.
- 145 January 23, 1862. Death of Backus, complainant, suggested, and James P. Root enters his appearance as administrator.
- 147 February 1, 1862. Demurrer of Wheat sustained to Bill. Complainant moves for leave to make Crystal Lake Ice Company a party defendant to bill. Defendants enter cross-motion to set aside and vacate all subsequent proceedings, and dismiss bill of complaint.
- 148 Bill and proceedings in case of Alexander C. Coventry, complainant, against William Baker, the Crystal Lake Ice Company, and others, consolidated with this suit, and considered as a part thereof, and as a petition filed in this cause.
- 149 The bill in that matter, filed the 14th day of June, 1859, states the filing of the original bill of complaint, by William Backus. The order appointing him receiver in that cause, of the property of the Crystal Lake Ice Company. That he entered upon the duties of his receivership, and in pursuance of his appointment took possession of the property, books, papers, etc., of the said company, and held the same until he disposed of the same as such receiver under the order of the court.
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- 154 That the defendants in that suit claiming that said order was not binding on them, on the day of August, 1858, commenced an action of trespass against him, impleaded with Hiram Joy, Stanley H. Fleetwood, Erastus S. Williams and William Backus, in the name of the Crystal Lake Ice Company, in the Cook County Court of Common Pleas, in which they charge that he and the other defendants therein named were

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- 155 guilty of a trespass on the premises of the Crystal Lake Ice Company, on the 1st day of July, 1858, and files a copy of the declaration with his bill. That he has been served with summons and filed a plea in the cause; that the same is now pending in said court. That the trespass for which said suit is brought, was the taking possession of the property of said Crystal Lake Ice Company on the 1st day of July, 1857, under the order of the Circuit Court; that the same was not made forcibly, but peaceably, and without any opposition, and done in pursuance of the order of the Circuit Court, appointing him receiver, and that he has not exceeded the order of the court, or taken any property except such as he was ordered to take, and has but carried out the order of the court as a servant of the court, as compelled to do. That no order has been made in said cause of *Backus v. Baker et al.*, allowing said suit to be commenced against him.
- 160 Prayer for an injunction restraining further prosecution of that suit.
- 163 Injunction allowed and bond filed, but not issued; summons served
176 upon some of the defendants February 1, 1862; order for consolidation of the Coventry bill, with the original suit of Backus, and to be treated as a part of it by consent of parties.
- 177 February 18, 1862, leave given to file supplemental bill, and the motion of defendants to set aside all proceedings of the court in this cause, denied.
- 179 February 15, 1862, defendants move a dissolution of the injunction granted upon the petition of A. C. Coventry, and for leave to sue him.
- 180 February 24, 1862, Francis W. Buckingham, administrator of Backus,
201 files a supplemental bill. Sets out the substance of the original bill, and avers that all and singular the allegations, statements, and charges in said original bill contained are true. That on the day of 1857, the defendants in the original bill having been duly notified to appear, made default which was entered, and bill of complaint taken as confessed against them, and the matter referred to the master to take proofs.
- 202 That on the 23rd of October, 1857, proofs were taken, and master made his report, filed the 17th of December, 1857, stating that all the material allegations in the bill were proved, and on same day final decree entered, confirming master's report; and by way of supplement, states
203 that before final decree entered, Alexander C. Coventry was appointed receiver, and proceeded to perform his duties as such.

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204 That Backus, at the time he filed original bill, was a stockholder in said company. That in March, 1857, the Crystal Lake Ice Company was indebted to Wilcox, Lyon & Co., in about \$400, who in April, 1857, commenced suit against them, and afterwards obtained a judgment in Cook County Court of Common Pleas, against said company, and is the same judgment mentioned in the original bill, and was obtained prior to filing that bill. That execution had then issued thereon, and was a lien on the property of the company, in Cook county.

205 That the Crystal Lake Ice Company was then owing about \$3,000 to its servants and laborers, which had not at the time said bill was filed, been due one year, and was also indebted to other persons in about \$12,000, for debts contracted in course of its business, and was threatened with suit upon a large portion thereof, within one year from the time the same was contracted.

207 That the property of said company was a trust fund for the payment of its debts, and it was then and there the duty of the company and its trustees to appropriate the property and effects of the company to the payment of its debts; and to sell and dispose of the same for that purpose; and particularly as said company was insolvent, and notwithstanding its insolvency was then attempting to carry on its business, which was unprofitable and carried on at a loss; and that it was not possible to carry it on without a loss, and thereby the said Backus and the rest of the stockholders were put in great jeopardy of becoming liable for a large amount of the indebtedness of said company, of which there was no prospect of their being reimbursed out of the business or profits of said company.

208 That at time of filing bill, a small portion of the property of the company consisted of real estate and the buildings thereon, worth about \$500, and fit for no other purpose except that of storing ice; of wagons specially constructed to carry ice; of horses and harnesses belonging thereto, necessary for the business of the company, and mainly fit to carry on such a business; and a large amount of ice in ice houses, for the delivery of which the horses, etc., are necessary, and without which the ice would be of little value to any one; and the property could not be sold separately or in parcels to advantage to the company or its stockholders.

That the trustees, and the company itself, failed to act in the premises, or cause any sale of the property of the company to be made to apply in payment of its debts, as they ought to have done as soon as the company

became insolvent. That they pretended and gave out it was not necessary to do so, and it was not their or either of their business to do so. Charges that the company was then insolvent and unable to pay its debts, much of which was due to laborers who were actually necessary to the company in order to carry on its business.

210 That at and before the 1st of July, 1857, said laborers were on a strike, in consequence of non-payment of their wages due them, and refused to serve the company in the delivery of ice, or allow others to do so. That this derangement of its affairs had continued for several weeks prior to filing of said original bill. In the meantime, ice which the company had stored at great expense, was melting away, and would continue to be left to melt away during the summer months, to its entire loss, and no prospect that the company would have the ability to bring ice into market for sale, and thereby the personal liability of Backus as a stockholder was daily becoming greater, and the ability of the company less.

That the railroad company was refusing to transport ice, because the company was not able to pay its transportation bills, and that thereby the company could not get its ice from Crystal Lake to Chicago to supply its customers. That it had large contracts with saloons and hotels, to supply them with ice during the season, which they would not be able to comply with, and so the company and its stockholders be liable for failure to deliver ice on such contracts.

That the good will of the company in supplying its customers with ice was another and large element entering into and constituting its capital in business, which could only be made available by the sale of the whole property of said company, used in its business; that such good will was then in great danger of being lost, owing to the total inefficiency of the company.

212 That the sheriff threatened to sell the property of the company under Wilson, Lyon & Co.'s judgment, unless it was paid, which the company could not do; and that he would have sold the property and realized but a small sum if a receiver had not been appointed.

That the court appointed Coventry temporary receiver of the property of the company, with power to act immediately, who went on under the order of the court and took possession of it.

213 That he sold the property after the bill was filed, and applied the same to the payment of the debts so far as it would go.

214 That all and singular his proceedings prior to the final decree, were necessary to protect the interests of those interested in the affairs of said company as creditors and stockholders, and have all been ratified and approved by the court; that his proceedings in paying out said proceeds, have been in pursuance of the order of the court; that his acts and doings were performed before any application to the court by any of the stockholders, or by Wheat, to alter, disturb or interfere with said final decree, or any of the proceedings under said original bill.

That said Wheat was duly brought into court by publication under the statute; that nearly one year after the final decree had been rendered and substantially carried into effect, said Wheat appeared and offered to file his answer, but none other of the defendants have appeared to defend said suit, or disturb said decree.

215 That said Wheat claims to be entitled, as a stockholder of said company, to question the acts and doings of this court, because brought in by publication, and not by personal service of notice, but denies that he has any right to, and insists that by his negligence he is estopped from questioning the doings of the court and its officers in executing said decree, so far as executed before he appeared.

216 That all of the stockholders of said Crystal Lake Ice Company were made parties by name, but that the Crystal Lake Ice Company was not by its corporate name; that under the circumstances set out in original and supplemental bills, the Crystal Lake Ice Company was merely a nominal party in interest, and in its corporate name and capacity had no actual interests or rights in the subject matter of said suit and the relief therein prayed against its stockholders over and above the rights and interests of the stockholders by said bill, brought into court as aforesaid; and that to the end that said Backus and his personal representatives, and all other persons who have acquired rights under said final decree, or by reason of filing said original bill, may have the full benefit thereof, it is necessary that said Crystal Lake Ice Company, by name, should be brought into court and made a party to the proceedings had under said original bill. To the end, therefore, that the Crystal Lake Ice Company and the other persons who were parties to original bill, may answer the supplemental bill.

217 That the Crystal Lake Ice Company may be held bound by said final decree, as fully and completely as if originally made a party to the said original bill of complaint, and that John S. Wheat may be held

concluded from disturbing the said final decree as to any action had thereunder, prior to the time of his appearance to defend said suit; and a prayer for process.

- 218 February 25, 1862. General demurrer of Crystal Lake Ice Company to the supplemental bill filed.
- 220 February 25, 1862. Answer of defendants Baker, Page, Johnson, Lipe, Wheat, Fuller, Pierson, and Judd to supplemental bill filed. States
- 221 that they and the other defendants were incorporators, and held stock as such in the Crystal Lake Ice Company, a corporation duly created and existing under the laws of this State, and doing business as such when said original bill was filed. Deny that they ever were or considered themselves to be copartners, in any sense whatever, in said business, or that they ever did business under that name in any way or manner whatever, but that all the business transactions alluded to or mentioned in said supplemental bill, were done by said corporation as a corporation, and not otherwise; and they deny that it was insolvent, or its business deranged, as charged in the bill; and even if it were so, the complainant has no standing in a court of equity to correct, remedy or reform the
- 222 same. That by the original bill, the complainant hath not made or stated such a case as doth or ought to entitle him to any relief, and that the decree based thereon is erroneous, and should be reviewed and reversed; and that there is no equity in the supplemental bill; and ask same relief as though they had demurred specially.
- 223 Buckingham substituted in place of Root as administrator.
- February 25, 1862. Cross-bill filed by same defendants who had filed answer to supplemental bill. States the filing of the supplemental bill and their answer thereto. It then states that the decree rendered upon said original bill, and all the proceedings thereon, are erroneous and void.
- 227 That the title to the property thereby sought to be charged, is and was in the Crystal Lake Ice Company, and not in the defendants to said bill, or any or either of them, and therefore that the said decree should be reversed. That the demurrer of Wheat to the original bill has been sustained, and he is entitled to be discharged from the suit, and at the time of allowance of his petition, all of the defendants moved to set aside the
- 228 decree as to them. Prayer, that the said Buckingham as administrator, and the other defendants to said supplemental bill, not complainants herein, might be made parties defendants to the cross-bill under the statute, and they required to answer the same. And that the said decree, for the

reasons and under the circumstances aforesaid, might be reviewed, reversed and set aside, and no further proceedings taken thereon. Amendment states that the process in the original cause had not been served on Page, and that the sheriff's return was untrue in fact.

229 March 26, 1862. Demurrer to supplemental bill filed by Crystal Lake Ice Company, overruled, and it ruled to answer.

230 March 27, 1862. Master's report filed, dated February 28, 1859 States that Coventry had received \$6,030, and paid out \$5,886.07, but from what source he had received it, or for what he had paid it out, nowhere appears, as the vouchers alluded to in the report are not filed with it, except his commission of \$335.55.

235 March 27, 1862. Motion by Coventry to confirm master's report, and another one that on filing books, papers, etc., he be discharged from further action as receiver. Motion to sue receiver is withdrawn, and injunction continued by order of court.
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April 26, 1862. Crystal Lake Ice Company file petition for leave to sue Coventry. States that it is a corporation under the laws of this State; that in July, 1857, Wm. Backus, then in life, filed a bill in that court
239 against William Baker and others, without making it a party to it, or notifying it of its pendency, or of proceedings thereunder; that Coventry was appointed receiver under it; that of that it had no notice; that in July Coventry took and sold all of its property to Joy & Frisbie, without any notice to it, who thereupon converted the same to their own use; that shortly before this, the trustees had held a meeting about the affairs
240 of the corporation, and were then, and always had been, attentive to the affairs of the corporation, either by themselves or agents, whom they supposed trustworthy, and the property of the company was then in the actual charge, custody, and keeping of its agents and servants; that before and after the filing of said bill, Coventry was the secretary, treasurer, and financial agent of the company, and in the absence of the board of directors had charge of its affairs; that Coventry was an attorney at law, and it deemed and considered him as retained and employed in any litigation it might have; that said Coventry, at the instigation of Joy & Frisbie, or of his own head, conceived the idea of selling out the business
241 and property of said company to them (who then were rivals in business) by means of a bill in chancery, and obtaining the appointment of a receiver, and, accordingly, with the intention to wrong, cheat, and defraud

140 the company, and contrary to his duty as its employee, holding office for it, drafted the bill on file in said cause in his own hand-writing, induced Messrs. Williams, Woodbridge and Grant to sign their names as solicitors, though they had nothing to do with drawing said bill, procured the appointment of himself as receiver, and then proceeded, without in any way notifying any of the other officers, or any of the trustees of the company, to sell out said property to Joy & Frisbie; that he having charge of the business affairs of the company, there was no change of the possession of the property made until after the sale was effected to them; that the Crystal Lake Ice Company has sustained damage by the loss and deprivation of its property, and the breaking up of its business, to \$35,000, for which no security is given in the cause, and it has no other
242 remedy save by proceeding at law against said Coventry and those who aided him in unlawfully taking its property as aforesaid; that there is no bond given to it in the cause, and, therefore, prayed that it might be at liberty to sue said Coventry at law.

Petition verified by affidavit of Amos Page, and states that he was present at a meeting of the board a few days before bill was filed, and had no notice or intimation of the filing of the bill or of the proceeding thereunder until after sale to Joy & Frisbie, and believes that none of the other trustees knew of it; that he then resided at Janesville, which was well known to said Coventry.

244 Affidavit of W. T. Burgess, filed May 19, 1862, that Joy & Frisbie are insolvent.

245 Affidavit of Hiram Joy, filed June 18, 1862. States that Joy & Frisbie purchased the property and chattels of the Crystal Lake Ice Company, about 4th of July, 1857, subject to approval of court; denies that he had theretofore any knowledge of condition of the company, except from common rumor, or that application was about to be made for a receiver; that Joy & Frisbie first offered Coventry \$8,000, and they were then induced by the representations of Coventry to offer \$10,000, which was much more than the property was worth. That before confirmation
247 of sale, he authorized Coventry to sell the property to Page, and those associated with him, for \$10,000, but he was informed they could not raise the money. That soon after the 7th of July, 1857, Joy & Frisbie arranged with the St. Paul & Fond du Lac Railroad Company to transport the ice for them, and that the superintendent of that road was Samuel F. Johnson, one of the trustees of the Crystal Lake Ice Company.

- 249 Denies that bill was filed at suggestion of deponent, and says that Joy & Frisbie carried on the business of transporting ice from Crystal Lake at a loss.
- 250 Affidavit of George H. French, filed June 18, 1862. That he knew Amos Page in A. D. 1857; that deponent was one of the keepers of the Briggs House, in Chicago, and that Page stopped there on the 6th and 7th of July, 1857. That it was a matter of public notoriety at that time, that the Crystal Lake Ice Company had passed into the hands of a receiver.
- 251 Affidavit of Frisbie, filed June 18, 1862, substantially the same as that of his partner Joy.
- 256 Answer of A. C. Coventry, filed June 18, 1862, to petition of Crystal Lake Ice Company, for leave to sue. Admits the filing of original bill, and that no process issued or proceedings had against the company by its corporate name until after the commission of the grievances alleged in petition; but denies that it was not notified of the filing the bill and proceedings thereon.
- On the 1st July, 1857, he was appointed receiver, and on the third filed his bond; and denies that the company had no notice of his appointment as receiver.
- 258 That on or about the 4th July, 1857, he sold the property of the company to Joy and Frisbie, subject to the approval of the court, and filed his report of sale July 7, 1857, and on the same day report of master approving said sale, and on the 8th of July sale was confirmed. That thereupon Joy and Frisbie took possession of property and disposed of it. That a majority, if not all, of the trustees had knowledge of the said sale before it was confirmed.
- 259 That the trustees had a meeting on the 15th June, 1857, but none after that until after the bill was filed. Denies that the trustees were themselves, or by their agents, attentive to the business of the company prior to filing said bill; but admits that the personal property of the company was, at the time of filing said bill, in the custody of its agents.
- Admits he was treasurer and secretary of the company, but denies that he was its financial agent, or, in absence of trustees, had general management of its business.

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Admits that he was an attorney at law, but denies that he was considered by the company as retained to act for it as such.

Denies that the bill was filed, or he appointed receiver, at the instigation of Joy and Frisbie, or that they knew of the proceedings until after they had taken place, or that he conceived the idea of selling out the property and business of the company by any means whatever. States that William Backus desired of him particular and detailed information for the purpose of filing the bill of complaint in this cause, and he being a man of limited means, the respondent drafted the original bill of complaint to save him the expense of such draft, it being no more trouble to make draft than to give information he desired.

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Denies that the draft was done to cheat or defraud any one, or contrary to the duty of respondent, or that he induced Williams, Woodbridge and Grant to sign the bill as solicitors, or procured himself to be appointed receiver; but says that the court having decided to appoint a receiver, suggested that he should act in that capacity, because he had an intimate knowledge of the affairs of the company, and could in consequence thereof better discharge the duties of the office than a stranger to its affairs.

That he neither asked or sought for the appointment, but accepted it at the suggestion of the court.

Admits that agents of the company remained in possession of its property until sale made to Joy and Frisbie, when they took possession.

262

Denies that the Crystal Lake Ice Company sustained any damage by sale of its property; that it was sold for all it was worth, and the most of it thereby saved from destruction, which otherwise would have taken place, and the avails applied in payment of its just debts under the order of the court.

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Sets out the meeting of stockholders in June, 1857, and the resolutions passed at it; that notice was duly given to all of the stockholders; that from the 25th June until after the filing of the bill the company was without means and without credit, and a majority of the trustees were absent from the State of Illinois, and giving to the affairs of the company no attention.

States that the summons in the cause was served on Page, Baker and

Johnson, on the 4th July, 1857, and the injunction on Tarbell, the superintendent of the company, July 4, 1857.

266 That Page knew of the sale as early as July 7, 1857, and Joy & Frisbie offered to let him have the property if he would procure the discharge of Joy & Frisbie from the purchase, which he declined to do.

That Baker and Johnson knew of the purchase on the 8th July, 1857, and Tarbell knew of it at the time, and filed his affidavit in support of it.

267 That the trustees, well knowing the facts, allowed the sale to be confirmed, suffered Joy & Frisbie to pay for property, and the avails to be applied on its debts, without interposing any objection to the proceedings, or any of them, and long after it had received the benefit of it, and its members discharged from liability, it, for the first time, asserted its nominal rights, when in equity it was estopped from so doing by acts of its trustees.

That he has done no act but what he was authorized to do by order of court, and the Crystal Lake Ice Company, having received full benefit of sale, ought not now to be allowed to question the same.

268 There is a jurat subscribed to this, but it is not otherwise verified.

269 Answer of Crystal Lake Ice Company to supplemental bill, filed June 28, 1862. States that a bill was filed in this court by Backus against Baker and others, and refers to it for its contents. That at that time its property and business were in the hands, control and management of its officers, servants, and agents, persons whom its board of trustees believed to be competent and *honest*, and that they would be faithful to the duties they assumed. That principally among those having charge of its affairs was Alexander C. Coventry, elected or appointed secretary and treasurer, having the charge and custody of its books, etc., the management of its financial affairs, and as an attorney at law employed by it to attend to its legal business. That Backus had his office in same room with Coventry, and was on intimate terms with him. That Coventry claimed that the company then owed him \$3,600, and that Joy & Frisbie were rivals in the trade. That the bill originated and was filed by said Backus at the instigation of said Coventry and Joy & Frisbie, the one to collect his debt, and the other to drive a rival out of the market, without any notice to any of the trustees of the same until after the property was sold to Joy & Frisbie. That it was a plan fraudulently contrived

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210 among and between the said Backus, Coventry, Joy & Frisbie to deprive this defendant of its property unlawfully, ruin its business, and transfer the same to said Joy & Frisbie. That it was not insolvent at the time of filing the bill; that it then had abundant means and property to pay its debts, had not the same been taken surreptitiously out of the hands of its trustees, without notice to them, upon the motion of said Coventry, and it has sustained great loss and damage thereby. That said Joy & Frisbie made out of the ice they got from defendant, \$30,000.

June 28, 1862, affidavit of Amos Page filed. States that a day or two before the 25th of June, 1857, he had a conversation with Coventry about the financial affairs of Crystal Lake Ice Company, and stated to him that if the assessment levied at the meeting of the 15th June, 1857, was not met, that the largest stockholders would expect to raise the amount to pay off the immediate and pressing claims. At the same time he informed Coventry, that he was then about to leave Janesville, his place of residence, for the north part of Wisconsin, to be absent on business about two weeks.

274 That he returned to Chicago as soon as he could; that he did not know of the sale to Joy & Frisbie until after they had taken actual possession of the property sold; that immediately upon his return to Chicago, he saw said Coventry about said sale, and expressed himself much dissatisfied about it.

275 That Coventry then represented to him that the company was a mere partnership, and had no corporate powers; that all its members were mere copartners, and all individually liable for its debts, and that there would be about \$4,000 to \$5,000 left after paying all debts, and if deponent would keep quiet and not contest the said sale that he would "make it all right" with him; that he understood from the conversation, that he should be paid for the stock; that owing to the statements of Coventry, he believed at the time that said corporation had no corporate powers, and was a mere copartnership, and therefore, did not proceed as a trustee to take legal steps to set aside the sale; that such belief prevailed with him and the other trustees for some time, induced in great part by the statements of said Coventry, until upon taking advice from other persons they learned that it was in fact a corporation.

That about that time, a suit was pending in the Circuit Court for a year's service for the company, brought by E. A. Tarbell, against the deponent and other stockholders, and it was concluded to make that a

test suit as to whether the Crystal Lake Ice Company was a corporation or not; that it was tried, taken to the Supreme Court, and decided that it was a corporation, and that any delay in this matter after the deponent was correctly informed of the rights of the corporation, has been only that attending all contested litigated cases; that the belief that the corporation was a mere copartnership, had a tendency to reduce the value of the franchises of the corporation, the business it was carrying on and its property, and to induce all the small stockholders to give up their interests as not worth looking after.

That the company then owned eight two-horse teams, worth, with wagons and harness, \$500 each; some machinery that cost \$2,500, and worth that; about forty thousand tons of ice stored at Crystal Lake, selling in Chicago for twenty-five cents a hundred weight, and costing \$1.25 a ton to bring in on railroad.

277 That if said sale had not been hurried through in the way it was, and under the circumstances of doubt as to character of corporation, created in great measure by said Coventry, there would have been no difficulty in raising out of said property money enough to have paid off all claims that had matured, and then to have preserved and carried on its business. That no process in the cause was ever served on him, as he recollects distinctly he was in Fond du Lac on the 4th of July, 1857.

284 Replication to answer of defendants to supplementary bill filed July 16, 1862.

286 Answer to cross-bill filed September 15, 1862. Consists of a general denial.

Replication to answer to cross-bill, filed October 30, 1862.

291 Affidavit of Charles M. Edwards, filed July, 1862; stating the character of the business done by the company in the summer of 1857.

294 Affidavit of James P. Smith, filed March 13, 1863. States that there was not altogether at Crystal Lake, to exceed 9,000 tons of the ice purchased by Joy & Frisbie, and it was badly secured, and they never realized much from it; that the machinery was not worth over \$280. That the horses were not worth over \$75 each. That the business of cutting and storing ice at Crystal Lake, and carrying it to Chicago for sale cannot be carried on with success. That Joy and Frisbie paid more for the property than it was worth.

301 March term, 1863. Final decree in which the titles of the original and supplemental bill are given; it states that the original cause came on for hearing as to Wheat; a final decree having been rendered as to the other defendants, also upon the supplemental bill and the cross-bill, and the petition for leave to sue Coventry.

Certificate of evidence.

307 Plaintiff read the articles of association.

The books of the company showing gross amount of stock paid in, 312 \$, and amount subscribed for and not paid, \$, and debts to the amount of \$12,296.33. These books were objected to because the paging of the books showed that either the journal or the ledger was not an original, the pages of the posting not agreeing.

The organization of the company and its by-laws and assessments. The proceedings of the meetings of its trustees from Nov. 14, 1855, till June, 1857.

The meeting of the stockholders on the 15th of June, 1857, (page 327) was an informal one, as the by-laws (p. 316, art. 2) only provide for an annual meeting, on the first Monday of November, and make no provision for called meetings.

332 The complainant also read the reports of the master, filed Dec. 17, 1857, and March 27, 1862.

And the record in case of *Wilcox, Lyon & Co. v. Crystal Lake Ice Company*, from Superior Court, showing summons served on secretary of company by copy, in absence of president, and a judgment for \$412.25. Execution issued and delivered to sheriff May 5, 1857, and returned satisfied Jan. 25, 1858.

350 *Deposition of R. N. Hayden.* Was book-keeper for Crystal Lake Ice Company, in summer of 1857; it was much embarrassed in its business, and unable to meet its current expense at that time. He mailed to each of the stockholders, by direction of Coventry, a copy of the resolutions passed at the meeting of the 15th of June, 1857, and a notification of trustees that they would sell out if assessment of ten per cent. was not paid in ten days. The company was at the time indebted to Coventry in \$2,676.59 for advances, and there was a \$1,000 charge for services.

- 300 Also stipulation that Page and Johnson, the trustees, were absent on a journey from about the 17th of June until 3rd of July, 1857, away from Chicago.
- 356 Defendants then read stipulation. That Coventry drafted the original bill in the cause, and that Backus went, after it was drawn, and procured Williams, of the firm of Williams & Woodbridge, to sign the same as solicitor. That Coventry saw Williams both before and after the bill was drawn, and requested him to sign the same as solicitor for Backus; and that they (Williams & Woodbridge) have never been paid anything for their services in the case; and that the following documents, part of the files in the original cause, are in handwriting of Coventry; that is:
Præcipe (p. 35), bond (p. 41), except signatures to it; writ of injunction (p. 43), except clerk's signature, and is indorsed with names of Williams & Woodbridge, in handwriting of Coventry. The body of the following affidavits: Richard N. Hayden (p. 49), E. Tarbell (p. 59), F. Mehring (p. 60), and of bond (p. 52); and the draft of the following orders: July 1, 1857 (p. 50), July 8, 1857 (p. 62), and April 3, 1858 (p. 22).
- 359 The defendant also read the record of the case in Superior Court of *Crystal Lake Ice Company v. Frisbie, Joy, Coventry et al.*, in trespass, commenced by summons the 14th July, 1858, served the 17th July, 1858. Narr. filed, September 3, 1858, same suit mentioned in Coventry's petition for injunction. The pleas set out as a defense the proceedings in the original bill.
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- 391 The plaintiffs introduce the oral testimony of Charles M. Edwards, who was one of the employees of the company. Shows that the company was embarrassed, and on the 1st July, 1857, the men refused to work.
- 396 Augustus Frisbie states the condition of the property at the time of sale; that he bought it without going out to the lake; somebody was sent out; paid for it all it was worth; did not make any money out of it; and offered to Coventry to give it up if they would release Joy and Frisbie from liability on purchase. Coventry came to him 1st of July; wanted a bid; first he had seen of him; said he had become involved in this matter; had been appointed receiver, and wanted to sell it for the best price he could get for the benefit of creditors; we made him an offer for it same day; was done very quick; closed up before the 4th of July; thinks 2nd or 3rd of July, 1857.
- 397

ASSIGNMENT OF ERRORS.

1. The Circuit Court had no jurisdiction to render decree of December 17, 1857.
2. In allowing supplemental bill to be filed.
3. In overruling demurrer to supplemental bill.
4. In not dismissing the original bill on sustaining demurrer of Wheat thereto.
5. In not dismissing the original bill on the motion of the defendants after opening the case as to Wheat.
6. In allowing injunction upon petition of Coventry.
7. In making that injunction perpetual, and refusing leave to sue Coventry.
8. In refusing upon the cross-bill to review and reverse decree of December 17, 1857.
9. In rendering decree of March term, 1863, upon the evidence legally before it.
10. In each and every part of the decree of March, 1863, and should have dismissed the whole proceeding, and granted leave to sue Coventry.

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Company & others
vs

J. W. Buckingham

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Abstract

John A. H. H.

J. S. H.

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