No. 12670

Supreme Court of Illinois

Taylor

---

vs.

Coffing et al

71641  7

76.

Petition for rehearing

Supreme Court -

April Term - 1859 -

Taylor
vs
Coffing & Coffing } Error to Ludalle

Contents of Record -

Bill -

Bill from page 2 to 14 - pages
Time of filing Apr 3. 1856 - 2
Formation of firm I. D. Hannon & Co. 2 & 14
Dissolution " 3 -
No allowance made to Harmon
Articles of partnership Taylor & Coffing 4
Mortgage of Coffing debt to firm 4
Mortgage by Coffing to Taylor & C 4 & 5 -
Taylor & Coffing - condition Apr. 1852 - 6
Taylor bought Coffings interest in
Assets of firm - (copies 3 contracts) 6. 7. 8. & 9
Receipt on mortgage for $5000 - 9
Price of bank franchises & property 10
Rents of mortgaged property 10
C. Coffing deeds Mortgage property to
John Coffing ——— 11 -
That no settlement had been had - 11
Claims $4000 balance 11
Answer without oath - 12
Prayer for account - 13
& for release of Mortgage - 13

Exhibits filed with bill -

Articles of I. D. Hannon & Co 14
Deed (mortgage) Coffing to T & C - 15 & 16

1 [illegible]

Defeasance (mortgage) by T. & C. & C. 19
Rents - Schedule of 17
Summons in Chancery 21
Demurrer & bill & joinder 22
" Overruled 23
Rule for answer 23
Answer filed June 23. 1856 24
Answer. Formation of firm T. D. H. & Co "
Capital put in " " " " " 24
Continuance of " " " " "
Nature of Coffings debt to firm 25
No allowance & Harmon for profits &
no charge for losses & rents — 25 & 26
Articles of Taylor & Coffing — 26
Deed from Coffing to Taylor & Coffing &
Defeasance (Mortgage) — 27
Settlement of unt Mortgaged debt — "
Condition of Taylor & Coffing Ap. 1852 — 28
Taylor bought upetts &c — 28 & 29
Rents by whom rec'd — 29
Coffing expressly agreed to pay interest 30
Receipt of rents 31
Claim that transactions of Ap 27 } 32
1852. effected a full settlement }
Sets out Taylors views of the
effect of those transactions 33

(12670-2)

Sets up former suit in bar 34

Replication - Filed June 7. 1856 - 35

Proofs

Deposition of I. C. Day - taken
Oct. 1856 — 38 & 39
Dep of William Paul. taken same time 39 & 40
" Edwd. Coates " " " 41 & 42
Order on Taylor to show cause why
Hannons depositions in former cause
should not be read at hearing 42½
Rule made absolute & extended
to Hannon, Day Paul & Coates 42 3/4

Decree - of the Circuit Court - 43 to 46

Proofs

Deposition of Hannon taken by Taylor in
former cause - May 1853 - 47 to 64
Deposition Wm Paul taken March 1854 — 65-
" I. D. Hannon " " 67 to 70
Dep't of Coates, Paul taken June 1853 - put in read by mistake - about 70 to 75-
veracity of Seth Paine —
Affidavits of Coates, Paul given May 1853 - put in by mistake - [illegible] 77 to 81
Covered by Dep't above of Oct 1856

5 12c 72-3

Harmons affidavit about rents	83
Harmons Statement of the Condition of I. D. H & Co	83 & 84
Stipulation that there are part rent	85
Agreement of Errors	86
Copy of Coffings deed of Bank	87
Admission that it was the property of Coffing	88

[12670-H]

Ch. C. 1859.

Taylor vs Coffing

Index or table of Contents of the Record

D. Lyle Dudley

State of Illinois } Pleas before the Honorable
LaSalle County } Madison E. Wallace Circuit
Judge for the Tenth Judicial
District of the State of Illinois and the presiding
Judge of the LaSalle County Circuit Court at a
Court commenced and holden in and for the
County of LaSalle at the Court House in Ottawa
on the second Monday in May, the same
being the Twenty fifth day of May in the year of
our Lord eighteen hundred and fifty six and of
the Independence of the United States of America
the Eighteenth.

Present

The Honorable Madison E. Wallace Presiding Judge
John F. Smith Clerk
William H. L. Wallace States Attorney
Francis Warner Sheriff

On the 3d day of April 1856 a security for costs
in a certain suit was filed in the words and
figures following viz!

" State of Illinois LaSalle County and Circuit
Court thereof to May term 1856
John H. Coffing }
Thankful Coffing } In Chancery
vs
Edmund D. Taylor }

Order bond entered into by
security for costs in the above entitled cause and
acknowledged by said plaintiff or cause to be paid
all costs which may accrue in this action unless
to the opposite party or to any of the officers of this Court

[12670-5] 1.

in pursuance of the laws of this State.
Dated this 3d day of April AD 1856
F. Warner
J. F. Stark"

And afterwards to wit: on the same 3d day of April last aforesaid. said Coffing's filed their Bill in Chancery, in the words and figures following, that is to say:

Bill "To the Hon. judge of the tenth judicial Circuit of the State of Illinois, presiding in the Circuit Court of La Salle County in said State.

Humbly complaining
Sheweth unto your honor, your Orator John H. Coffing of Great Barrington in the County of Berkshire and State of Massachusetts, and Churchill Coffing of Peru in the County of La Salle aforesaid, that heretofore to wit; on or about the month of December A.D. 1847, Edmund D. Taylor, Isaac D. Warner, and your Orator Churchill Coffing entered into copartnership for the purpose of carrying on mercantile and other business at Peru aforesaid, That written articles of copartnership were drawn up and signed by the said Edmund D. Taylor, Isaac D. Warner, and your Orator Churchill Coffing, respectively, and therein it was among other things, stipulated and agreed, that said Edmund D. Taylor had furnished five thousand dollars and your orator Churchill Coffing, six thousand dollars which was the actual amount of capital invested, and furnished for said copartnership, That said copartnership should be conducted under the name of Isaac D. Warner & Co:- that it should commence on the 1st day of January A.D. 1848, and continue for the term of two years, unless dissolved by mutual consent; and that all profits

& losses in said business, should be divided and shared equally between said parties, as by a copy of said articles of agreement hereto attached, will more fully ~~appear~~, and which your Orators pray may be taken as a part hereof.

Your orators further shew unto your honor, that said Edmund D Taylor, and your orator Churchill Coffing, did on or about the 1st day of January A.D. 1848, respectively contribute to the capital of said Copartnership, the sums of money mentioned in said articles of agreement, and that the same were respectively credited to said parties upon the books of account of said firm,

That said Edmund D Taylor, Isaac D Harmon, and your orator, Churchill Coffing, after entering into said copartnership, carried on the Business of the same, until the dissolution thereof, as hereinafter mentioned, during which time the said Isaac D Harmon drew out of said firm, divers sums of money, and divers goods wares and merchandizes, for the purpose of erecting a warehouse for your orator Churchill Coffing, which together with the sums of money drawn from said firm, in goods and otherwise, amounted in the whole to nearly eighteen thousand dollars, - and which sum, and the several items composing the same, were charged upon the books of account of said firm, to your orator Churchill Coffing

Your orators further shew unto your honor, that afterwards on the 30th day of September A.D. 1850, the said Copartnership was dissolved, by consent, and the said Harmon withdrew from the business thereof; - that no allowance was made to him for any profits of said firm, and no charges made against him for any losses thereof; and that the business of said firm was thereafter continued by said Edmund D Taylor, and your orator Churchill Coffing, without any further written agreement, until

3

[12270-L]

the 7th day of March AD 1851, when the following written agreement was made and signed by said Edmund D Taylor, and your orator Churchill Coffing, respectively that is to say,

"The firm of Isaac D Harmon & Co was by consent dissolved on the 30th September" 1850, The undersigned parties in said firm continue the business under the "name of Taylor & Coffing. The capital stock which Taylor & Coffing contributed, shall be "transferred to the new books, and represent the interest each has "in the firm of Taylor & Coffing, viz; E D Taylor "five thousand dollars, Churchill Coffing ten thousand "dollars. The business to be continued for the purpose "of paying off the debts of I D Harmon & Co, and re-imbursing the capital aforesaid, as long as they shall mutually think best, and the profits and losses of the business shared mutually by the undersigned.

Peru Illinois March 7 1851.

"E D Taylor"
"Churchill Coffing"

Your orators further shew unto your honor, that afterwards to wit on the 17th day of May A D 1851 your orator Churchill Coffing, by his deed of that date, executed conjointly with his wife Elsenath Coffing, did grant bargain, sell and convey unto the firm of Taylor & Coffing, the following property situate in Peru aforesaid, to wit; Being the East five feet of lot ten, block one hundred and fifty three; also so much of lot eleven in the same block as was covered and occupied by the Stone Stores then rented by William Paul and said firm of Taylor & Coffing, together with the Stone ware house and lots on which it stands, known as lot No (3) three and a portion of the West half of lot (2) two in the

Subdivision made by the Trustees of the Illinois and Michigan Canal of the North West fraction of Section No Twenty one in Township Thirty Three, North of Range one, East of the Third Principal meridian, the said warehouse being then occupied by John L Evans and Company, and said firm of Taylor & Coffing, as by a copy of said deed hereto attached, will more fully appear, and which your orator make a part hereof.

Your orators further shew unto your honor, that on the same 17th day of May AD 1851, the said Edmund D Taylor, and your orator Churchill Coffing did execute under their respective hands and seals, an instrument in writing, reciting that whereas the said Churchill Coffing of the firm of Taylor & Coffing was indebted to said firm in the sum of eighteen thousand three hundred, and forty dollars; and whereas to secure the said firm, the said Coffing, had that day executed the deed of conveyance to said firm, herein before mentioned and set forth, and declaring that if the said Churchill Coffing, should well and truly pay or cause to be paid the said sum of Eighteen Thousand three hundred and forty dollars, to the said Taylor & Coffing, or their representatives or assigns, within three years from the date of said deed of conveyance, and of said instrument in writing, or if the said Churchill Coffing, should pay any part of said indebtedness within the said term then all of the above described property, if all of said indebtedness should be paid, should be reconveyed to the said Churchill Coffing, or so much of it should be released and reconveyed proportioned to the amount of payment made by him of the said indebtedness; and further if the said Coffing could at any time within the three years aforesaid raise by mortgaging

Started 5.

the said premises, or by selling the same or otherwise, sufficient money to pay said indebtedness, then the said Taylor & Coffing should reded to the said Churchill Coffing, the premises above described for the purpose of enabling the said Coffing to pay the said indebtedness, and that the said deed of conveyance to Taylor & Coffing, should not prevent the said Coffing from selling or mortgaging the said premises, or any portion of them, for the purpose of paying said indebtedness, as by a copy of said instrument in writing hereto attached will more fully appear, and which your orator prays may be taken as a part hereof.

Your orator further shew unto your honor, that said Edmund D Taylor, and your Orator Churchill Coffing, carried on the business of said firm of Taylor & Coffing until the 27th day of April AD 1852, at which time the said firm were possessed of a large amount of goods, chattels and Merchandize, had divers interests in real estate, and had large sums of money due to them, which was evidenced by divers accounts, notes books and papers, and owed, and were liable for divers large debts and liabilities; whereupon the said Edmund D Taylor, and your orator Churchill Coffing on the day and year last aforesaid made, executed and entered in the following agreements, under their respective hands and seals. That is to say

198 *Agreement.— C Coffing and ED Taylor.
Exhibit "D."

Whereas, Col. E D Taylor of Michigan City, in the State of Indiana, one of the partners of the firm of Taylor and Coffing of Peru La Salle county and State of Illinois, has agreed to endorse upon an Indenture given by Churchill Coffing of Peru aforesaid to Taylor &

Coffing for eighteen thousand three hundred and forty dollars. the sum of Five thousand dollars as so much paid upon said indenture by the said Coffing: and whereas the said E D Daylor has also agreed to assume and pay all debts. liabilities notes or drafts outstanding against the firm of Daylor & Coffing. and release the said Coffing entirely therefrom. and whereas the said E D Daylor one of the proprietors of the Illinois River Bank of Daylor & Coffing. has agreed to pay to the said C Coffing for the said Bank and for the Salisbury Plank Road Company. the sum of five hundred dollars per annum to be paid to the said C Coffing quarterly for the space of — years. for his services as President of said Bank, and of the Salisbury Plank Road Company

Now therefore know all men by these (presents) that I Churchill Coffing of Peru La Salle county and State of Illinois, for and in consideration of the sum of five thousand dollars. endorsed upon said indenture as above recited, and also in consideration of the said Daylors assuming and paying the debts and liabilities of the said Daylor & Coffing. and releasing the said Coffing from all liability or responsibility therefor: and also in consideration of the payment of five hundred dollars to the said Coffing. for his services as President of the Salisbury Plank Road Company, and the Illinois River Bank of Daylor & Coffing as aforesaid. has (have) sold transferred. assigned and set over. and by these presents do sell. transfer. assign and set over to the said E D Daylor. his heirs and assigns. all my right title and interest in and to all property debts accounts notes books and papers belonging to the firm of

Taylor & Coffing (excepting the indenture given by the said Coffing to Taylor & Coffing aforesaid, which is to stand and remain as it is undisturbed by this deed of sale) and also all my right, title and interest of every kind and nature in or to the Charter of the Illinois River Bank of Taylor & Coffing, and in or to the Charter of the Salisbury Plank Road Company, and all my interest
200 in the Stock, notes* notes bills, papers, books, money and all other property belonging or appertaining to said Bank, or to said Coffing & Co. or to the said Salisbury Plank Road Company, and I the said Coffing do hereby promise and agree to use all honorable means to advance the interests of said institutions, and faithfully and truly perform such duties as shall devolve upon me by virtue of the office of President &c so long as I shall be required to act in that capacity for the term aforesaid.

In Witness whereof I have hereunto set my hand and seal this 27th day of April 1852

Churchill Coffing [L.S.]

Know all men by these presents that I E.D. Taylor of Michigan City, Indiana, in consideration of the sale this day made by the said Churchill Coffing contained in the foregoing Indenture do hereby covenant and agree with the said Coffing his heirs and assigns, to have endorsed upon Coffing's Indenture for eighteen thousand three hundred and forty dollars, now in the possession of Taylor & Coffing the sum of five thousand dollars as so much paid upon said indenture by the said Coffing, and also that I will assume and pay all debts, liabilities notes or drafts outstanding against the said

firm of Daylor & Coffing, and release the said Coffing entirely therefrom, and further as one of the proprietors of the Illinois River Bank of Daylor & Coffing, and of the Salisbury Plank Road company* the sum of five hundred dollars per Annum shall be paid to the said Coffing quarterly for the space of — years, for his services as President of said Bank, and Plank Road company.

In Witness whereof I have this 27th day of April 1852, hereunto set my hand and seal.

E D Daylor [Seal]

Seald October 15th 1852 at 1½ o'clock PM.

Certificate of Phils Lindley, Clerk of the La Salle Circuit Court, and Ex officio recorder of deeds, under his hand and official seal bearing date the 1st March 1853, certifies that the foregoing is a true and correct copy of the release and contract between Churchill Coffing, and E D Daylor as the same appears of record in his office.

Your orators further shew unto your honor, that afterwards on the 28th day of April 1852 the said Edmund D Daylor, in the name of said Daylor & Coffing, caused the said sum of five thousand dollars mentioned in said agreement to be endorsed on the deed of conveyance from Churchill Coffing & wife to the firm of Daylor & Coffing in the words and figures following viz:

"Received Peru, April 28th 1852 of Churchill Coffing five thousand dollars in part payment by Settlement of Ill River Bank matters with E D Daylor and

201

1

[illegible]

10 said Coffing"

Taylor & Coffing
By. E. L. Taylor

and that said Taylor received from said Coffing the said Banking interests at the said sum of five thousand dollars, which should be charged to said Taylor on account as so much by him withdrawn from said firm

Your orators further shew unto your honor. that said firm of Taylor & Coffing from and after the 17th day of may 1851. received and took to themselves the rents issues and profits of said property described in said deed of conveyance, which amounted in the whole up to the 27th day of April AD 1852 to the sum of twenty four hundred and fifty dollars, and which should have ~~been~~ credited your orator Churchill Coffing on account, and would have thereby so far extinguished the said mortgage, and which ought in justice and equity should be so applied.

Your orators further shew unto your honor, that since the making and entering into said agreement the said Edmund L Taylor, has received and took to himself the rents issues and profits of said property described in said deed of conveyance to said firm of Taylor & Coffing, and under and by virtue of the same, amounting in the whole to the sum of four thousand dollars — more particularly set forth in schedule D hereto attached, which your orators pray may be taken as a part hereof; and which sum last aforesaid with a large arrear of interest of ye the same, ought in justice and equity to be accounted for by the said

E D Taylor with your oratorˢ,

Your oratorˢ further shew unto your honor, that on the 20th day of December A.D. 1852 the said Churchill Coffing by his deed of that date conveyed & confirmed your oratorˢ John H Coffing and his heirs all of the property described in said deed to said firm of Taylor & Coffing, as by the said deed which your oratorˢ bring here into court, will more fully appear. Your oratorˢ further shew unto your honor, that no settlement has ever been had or made between your oratorˢ Churchill Coffing, and said Edmund D Taylor, relative to the capital by them respectively contributed to the said firm, nor of the sums of money drawn out of said firm by said parties respectively, but the same remains unsettled, and to be adjusted between said parties and when so settled, and adjudged your oratorˢ charge that the rents and profits of said premises so taken and received by the said firm of Taylor & Coffing and said Edmund D Taylor, have not only paid all arrearages due upon said mortgage, but leave a large balance to wit, about the sum of Four Thousand Dollars, which ought to be paid by said Taylor to your oratorˢ,

And your oratorˢ well hoped that said Edmund D Taylor, would have come to a fair, just and equitable accounting with your oratorˢ of and concerning the sums of money by said Taylor and said Churchill Coffing respectively contributed to the capital, or funds of said firm, and of and concerning the sums of money by them respectively withdrawn from said firm, together with rents issues and profits of said premises, so taken and received as aforesaid,

11.

[2270-10]

and that said Edmund D Taylor would have released
unto your orators all his right title and interest in
and to said premises and every part thereof, and
would have repaid to your orators the sum of money
then due and owing to your orators as in justice
and equity he ought to have done. but now so it
is may it please your Honor that the said
Edmund D Taylor combining and confederating
with divers other persons at present unknown to your
orators whose names when discovered your orators
pray they may be at liberty to insert herein with
apt and proper words to charge them as parties
defendants hereto. and contriving how to wrong and
injure your orators in the premises. he the said
Edmund D Taylor refuses to comply with such
request. and he at times pretends that the matters
herein charged are not true. whereas your orators
charge that the matters herein charged are true,

All which actings doings and pretences are
contrary to equity and good conscience. and tend
to the manifest wrong and injury of your orators
in the premises,

In consideration whereof. and forasmuch as your orators can only have adequate relief
in a court of Equity where such matters are properly
cognizable and relievable

To the end therefore that the said
Edmund D Taylor and his confederates when dis-
covered may to the best of their respective knowledge
information and belief. full true direct and perfect
answer make not under oath an answer under
oath being hereby expressly waived to all and
singular the matters aforesaid. and that as fully

and particularly, as if the same were here repeated and they thereunto distinctly interrogated, and that an account may be taken of the sums of money and of any property by the said Edmund D Baylor and your orator Churchill Goffrig respectively contributed towards the capital funds or property of said firm, and of the rents issues and profits of said premises received by said firm, and by the said Edmund D Baylor, and of and concerning the sums of money and of any property withdrawn from said firm by said Edmund D Baylor, and your orator Churchill Goffrig respectively, and to them respectively charged in account, and that said Edmund D Baylor may be decreed to pay to your orators the sum of money which may be found due from him upon such accounting, and that said Baylor may release to your orator John H Goffrig, and his heirs, all his, the said Baylor's interest in and to said premises under, and by virtue of said deed of conveyance to said firm of Baylor & Goffrig by such sufficient and proper release or conveyances as your Honor shall seem meet, your orators hereby submitting to such decree as to your Honor shall seem meet, and that your orators may have such other and further relief in the premises as the nature of the case and justice and equity may require.

May it please your Honor to grant unto your orators the peoples writ of summons to be issued out of, and under the seal of this Hon. Court, commanding said Edmund D Baylor on a certain day, personally to be and appear before this Hon Court, and then and there full, true direct and perfect answers make to all and singular the premises, and further to stand by perform and abide such further order direction and decree therein as

(13)

5/2670-117

to your Honor shall seem met

Chicago Apl 1 1856

C Beckwith ~~Atty~~ Solr

P L Dickey of counsel

John H Coffing &

Churchill Coffing

by their ~~Atty~~ Solr

C Beckwith

Articles of ~~Association~~ copartnership between E D Taylor, I D Harmon and Churchill Coffing.

Whereas. E D Taylor of Michigan City, Indiana, and Isaac D Harmon, and Churchill Coffing of Peru, La Salle county, and State of Illinois, have entered into a co-partnership for the purpose of buying, selling and dealing in foreign and domestic Goods, wares and Merchandize, groceries and produce, and for carrying on and doing a forwarding and commission business at Peru aforesaid. These articles signed by the said parties Witnesseth, — First That E D Taylor has furnished five thousand dollars, and Churchill Coffing ten thousand dollars, which is the actual amount of capital invested and furnished for said co-partnership second. That the copartnership shall be conducted in the name of Isaac D Harman & Co. that it shall commence on the ~~first~~ 1st day of January A.D. 1848 - That it shall continue for the space of two years unless dissolved by mutual consent, and may be continued for a longer time at the option of the partners. - Third all profits and losses shall be divided and shared equally by the said copartners between them. Fourth — Isaac D Harmon, is to devote his whole time and attention to the business of the copartnership It is hereby agreed that he shall be entitled to one third of the nett profits of the co-partnership, the said profits (except what he shall need for the support of himself

and family) shall not be drawn from the copartnership until the expiration of the time of the said copartnership Fifth Either or any of the partners shall have access to the books and papers belonging to the copartnership at any time it shall be desired, and they shall be entitled to any and all information in regard to the business prospects and transactions of the copartnership. It shall be the duty of Isaac D Harmon, if required, at the end of each year, to furnish to each partner a written statement of the actual condition of the copartnership, the transactions in which it has been engaged, with a full amount of the receipts and expenditures of the copartnership

E D Taylor, [L.S.]
Isaac D Harmon, [L.S.]
Churchill Coffing, [L.S.]

To all people to whom these presents may come Greeting: Know ye that we Churchill Coffing and Asenath Coffing, wife of the said Churchill Coffing of the city of Peru, La Salle county, and State of Illinois for and in consideration of the sum of twenty four thousand dollars received to our full satisfaction of the firm of Taylor & Coffing of the city of Peru, La Salle county, and State of Illinois aforesaid, Do give grant, bargain, sell, and confirm unto the said firm of Taylor & Coffing, the following city property, situate in the city of Peru, La Salle county and State of Illinois aforesaid, known and described as follows, to-wit: Being the east five feet of lot ten (10), Block one hundred and fifty three (153), also so much of lot eleven (11) in the same block as is covered, and occupied by the stone stores, at present rented by William Paul, and the

15

L12670-12

aforesaid Daylor & Coffing together with the Stone ware-
house and lots on which it stands. Known as Lot No (3)
116 Three, and a portion of the west half of Lot No (2) two in the
Subdivision made by the Trustees of the Illinois and
Michigan Canal of the north-west fraction of section
No (21). Twenty-one, in Township No Thirty three, North
of range one east of the third principal meridian
the said warehouse being at present occupied by
John L Coales and Company, and the firm of Daylor
192 & Coffing: * To have and to hold the above granted and
bargained premises with the appurtenances thereof
unto them, the said Daylor & Coffing, their represen-
tatives and assigns forever to their own proper use
and behoof, and also we the said Churchill and
Asenath, do for our selves, our heirs, executors, and ad-
-ministrators, covenant with the said Daylor & Cof-
-fing, that until the ensealing of these presents we
are well seyed of the premises as a good indefeasible
estate in fee simple and have good right to bargain
and sell the same in manner and form as is above
written, and that the same is free from all encum-
brance whatever, and furthermore we the said
Churchill and Asenath le Coffing, do by these
presents bind ourselves and our heirs forever to
warrant and defend the above granted premises
to them the said Daylor & Coffing, their represen-
tatives and assigns, against all claims and demands
whatsoever. In Testimony whereof we have hereunto
set our hands and seals this seventeenth day of May
one thousand eight hundred and fifty one

Churchill Coffing [L.S.]
Asenath le Coffing [L.S.]

* See Obs. next page. Mss
Words of Testimonium omitted

≠

Schedule "D"

Rents received by the firm of Taylor & Coffing

July 21, 1851.	Rec'd of	John L Coates		$200,	
Oct 21	" Rec'd of	do		200,	
July 21	1852 Rec'd of	do		200,	
Apl 21,	" Rec'd of	do		200,	$800.00
Aug 29,	1851 Rec'd of	Wm Paul		$100	
Nov 17	" Rec'd of	do		100,	
Feb 17	1852 Rec'd of	do		100,	300,00
July 6	1851 Rec'd of	I D Hearmon		355,54	
Nov 6	1851 Rec'd of	do		200,	
Feb 9	1852 Rec'd of	do		200	755.54
					$1855,54

Amount brot over $1855,54

Rent of Store occupied by Taylor & Coffing 600,00

$2455,54

Rents received by Edmund D Taylor since Apl 17 1852

Rec'd of John L Coates	$800,00
Rec'd of Wm Paul	800.00
Rec'd of I D Hearmon	1600,00
Rent of Store	1600,00
	$4000,00

17

(12.670-13)

193 *Acknowledgement of Churchill Coffing, and Asenath L Coffing, before Patrick McKilduff, a Justice of the Peace in and for La Salle county, was made in common form on the 19th day of May AD 1851 and subscribed by the said P McKilduff J.P. with his seal attached,

194 *Defeasance,

Know all men by these presents, that whereas Churchill Coffing, of the firm of Taylor & Coffing of Peru La Salle County, and State of Illinois, is indebted to the said firm in the sum of eighteen thousand three hundred and forty dollars, and whereas to secure the said firm the said Coffing has this day the seventeenth day of May AD 1851, made and executed a certain deed of conveyance to the said firm of Taylor & Coffing of the following described tracts of land, situated in Peru aforesaid and described in said deed as follows to wit, Being the east five feet of lot (10) ten Block (153) one hundred and fifty three, Also so much of Lot (11) eleven in the same Block as is covered and occupied by the stone stores at present rented by Wm Paul, and the aforesaid Taylor & Coffing, together with the stone ware house and lots on which it stands, known as lots (8), three and a portion of the west half of Lot (2) two in the subdivision made by the trustees of the Illinois and Michigan Canal of the north west fraction of section No (21) twenty-one in Township No (33) thirty three, North of Range one East of the third principal meridian, the said ware house, being at present occupied by John L Wades & Co, and the firm of Taylor & Coffing,

Now be it known if the said Churchill Coffing shall well and truly pay or cause to be paid the said sum of eighteen thousand three hundred and forty dollars

19

[illegible]

195 to the said Taylor & Coffing or their representatives or
assigns within three years from the date of said and convey-
ance, and of these presents, or if the said Coffing shall
20 pay any part of said indebtedness within the said term
then all of the above described property if all of the said
indebtedness shall be paid shall be reconveyed to the said
Churchill Coffing, or so much of it shall be released
and reconveyed proportioned to the amount of payments
made by him of the said indebtedness aforesaid, and further
if the said Coffing can at any time within the three years
aforesaid, raise by mortgaging the said premises or by sell-
ing the same or otherwise sufficient money to pay said
indebtedness, then the said Taylor & Coffing shall redeed
to the said Churchill Coffing the premises above described
for the purpose of enabling the said Coffing to pay the said
indebtedness, and the said deed of conveyance to Taylor &
Coffing, shall not prevent the said Coffing from selling
or mortgaging the said premises or any portion of them
for the purpose of paying said indebtedness
In Witness whereof the said parties composing the
firm of Taylor & Coffing have hereunto individually
set their hands and seals this 17th day of May one
thousand eight hundred and fifty one,

E. D. Taylor [Seal]
Churchill Coffing [Seal]

196 *Certificate of P. Lindley, Clerk of La Salle County
Circuit Court under his official seal dated the 20th
day of February 1853. That the foregoing instrument of
writing is a true and correct copy of the same as
the same appears of record in his office,

Filed for record July 16th 1851, at 8 o'clock am

STAE OF ILLINOIS, } ss.
LA SALLE COUNTY,

The People of the State of Illinois:

To the Sheriff of La Salle County, Greeting:

We command you to summon Edmund D. Taylor

if to be found in your county, personally to be and appear before the Circuit Court of said county, on the first day of the next term thereof, to be holden at the Court House in Ottawa, on the 12th day of May next, to answer to a certain bill of complaint filed in our said Circuit Court, on the chancery side thereof, against him by John K. Coffing & Lemuel Hill Coffing; and have you then and there this writ, and make return thereon in what manner you execute the same.

Witness, JOHN F. NASH, Clerk of said Court, and the Seal of said Court, at Ottawa, this 3 day of April A. D. 185 6

J. F. Nash Clerk.

STAE OF ILLINOIS, } ss.
LA SALLE COUNTY,

The People of the State of Illinois:

To the Sheriff, of ~~La Salle~~ Lemuel Hill County, Greeting:

We command you to summon Edmund D. Taylor

if to be found in your county, personally to be and appear before the Circuit Court of said Lasalle county, on the first day of the next term thereof, to be holden at the Court House in Ottawa, on the 12th day of May next, to answer to a certain bill of complaint filed in our said Circuit Court, on the chancery side thereof, against him by John K. Coffing & Lemuel Hill Coffing; and have you then and there this writ, and make return thereon in what manner you execute the same.

Witness, JOHN F. NASH, Clerk of said Court, and the Seal of said Court, at Ottawa, this 15th day of April A. D. 185 6

J. F. Nash Clerk.

21
[12678-13]

which Summons was returned and filed in the
Office of the Clerk of said Court on the 14th day of May
1836 with an endorsement thereon in the words
and figures following viz:

" Served on the within
" named Edmund D. Fagan by delivering a copy thereof
" to him April 21st 1836

" James S. Beach Comm.
" & Ex Officio acting Sheriff
" By F. S. Buckley Dy

The above and foregoing Summons was returned by
the Sheriff of said County on the 9th day of May
AD 1836 with the following endorsement thereon to wit

"Not found in my County April 24th 1836"
"F. Warren Sheriff"

And afterwards to wit on the same third day of April 1856. and after the filing of said bill a Summons in Chancery was issued in the words and figures following viz:

And again, on the 15th day of April 1856 another Summons in Chancery in said cause was issued to both Counties in the words and figures following viz:

22

On the 23d day of May 1856 the same being one of the days of the May term of said Court for the year 1856, the defendants filed their demurrer to complainants bill in the words and figures following viz:

Demurrer

"The demurrer of Edmund D. Taylor to the bill of complaints of John K. Coffing and Ann Sidell Coffing, complainants exhibited against him in the Circuit Court of LaSalle County Illinois on the Chancery side thereof—

The defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainants bill to be true in such manner and form as the same are therein set forth and alledged, doth demur thereto and for cause of such demurrer sheweth the following that is to say.

1 = That the said complainants have not in and by said bill made or stated such a case as doth entitle them to any such discovery or relief as is thereby sought and prayed for against this defendant—

2 = That it appears by the said bill that the said complainants have not joint or common an interest in the several distinct subjects stated in said bill to entitle them to a joint pleas against this defendant.

Wherefore this defendant demands judgement &c.

Purple & Blackstock

Solicitors for defendant

"& Complainants join in demurrer
May 26th 1856 Dickey for Complainant"

And afterwards to wit: On Tuesday May 27th
1856 the same being one of the days of said
May term, an order overruling said demurrer
was entered of record in the words and figures
following, that is to say:

"John H. Coffing &
Thomas Hale Coffing
vs
Edmund D. Taylor
In Chancery

This day the Court after
due deliberation thereon had, overrule the defendants
demurrer to Complainants bill."

On Wednesday May 28th the same being
also one of the days of said May term said Court
a rule upon the defendant to file his answer to
Complainants bill, was entered of record in the
words and figures following, to wit:

"John H. Coffing &
Thomas Hale Coffing
vs
Edmund D. Taylor
In Chancery

On motion of
the Complainants by T. L. Dickey
their Solicitor, the defendant is ruled to file his
answer herein to Complainants bill on or before
Saturday noon of the third rule of the present
term of this Court."

23

12470-11

24

Stated On the 3d day of June 1850. the defendant in compliance with the foregoing rule, filed his answer to complainants bill in the words and figures following viz:

Answer "State of Illinois } The answer of Edmund D. Sedalia County } Taylor to a bill of complaint exhibited against him by John H. Coffing and Chancellor Coffing in the Circuit Court of said County on the Chancery side thereof.

And this respondent having and reserving &c for answer unto the said bill of complaint or so much thereof as he is advised by counsel it is necessary and material for him to make answer unto, answering says that it is true that Isaac D. Harmon the said complainants Chancellor Coffing and this respondent in or about the month of December 1847 entered into a Copartnership in manner and form as stated in said bill and that the capital stock named in said bill was paid in by the complainants and this respondent respectively, as alleged in said bill that the articles of Co Partnership referred to in and a copy of which is annexed to said bill contain the terms of said Copartnership, that the said Copartners carried on the business of said Co partnership during its continuance and that the same was dissolved on the 31st day of September 1850

And this respondent further answering denies the statements of said bill in manner and form as therein alleged that the said Isaac D. Harmon

drew out of the said firm monies and goods or effects of them to any amount whatever for the purpose of erecting a warehouse for the said Complainant Churchill Copping but this respondent further answering in this connection alleges the fact to be that the said Complainant Churchill Copping erected a warehouse upon his own land under the superintendence of one Thomas D. Brewster and without the knowledge or consent of this respondent drew out of the said firm of Isaac D. Hamman & Co. upwards of Forty one thousand dollars in goods and money to prosper the business whereby the resources of the said firm were materially lessened and its business greatly embarrassed

And this respondent further answering admits that upon the withdrawal of the said Isaac D. Hamman upon the dissolution of the said firm of I. D. Hamman & Co no allowance was made to the said Hamman for any profits of said firm because as this respondent alleges no profits have been made by said firm on account of the withdrawal of the entire capital from said firm and upwards of Six thousand dollars in addition by the said Churchill Copping as herein before alleged and for this further reason that the said firm had sustained heavy losses on pork and other articles of produce in which they dealt.

And this respondent in this connection further answering admits that no charge was made against the said Hamman upon the dissolution of said firm for any losses incurred during

25

12673-H

to continue because the said Hamm had contributed to said firm as his part of the capital nothing save his slave and personal services and the whole of the assets of said firm were taken and appropriated by the said Complainants and Chancellor Coffin the successors of the said firm of P. D. Hamm & Co.

And this respondent further answering admits that the said Complainants Chancellor Coffin and this respondent continued in business at the said town of Leon as the successors of the said firm of P. D. Hamm & Co from the said 31st of September AD 1850 until the 27th day of April 1852 as in said bill (and in this answer hereinafter) alleged, and in this connection this respondent further answering admits that said business was continued by the said Chancellor Coffin and this respondent until the 7th day of March 1851 without any written agreement other than the agreement hereinbefore referred to between the said members composing the said firm of P. D. Hamm & Co and that on the said 7th day of March 1851 the written agreement a copy of which is set forth in the said bill was made and signed by the said Complainants Chancellor Coffin & this respondent.

And this respondent further answering admits that on the 17th day of May 1851 the said Complainants Chancellor Coffin and his said wife by deed of that date a copy of which is attached to said bill as an exhibit did grant bargain sell and confirm unto the said firm of Taylor & Coffin the several parcels of land in

said Bill mentioned and described in manner and form as therein alledged together with the buildings and erections thereon standing as alledged in said Bill and that said buildings were occupied at the time of said bargain and sale and conveyance as alledged in the said Bill.

And this respondent further answering admits that the said Ebenezer Coffin and this respondent on the same 17th day of May 1851 under their respective hands & seals executed and delivered to the said Ebenezer Coffin a written defeazance in substance as recited and stated in said Bill a copy of which is annexed to said Bill.

And this respondent further answering in this connection alledges that prior to the execution of the said several instruments bearing date May 17. 1851 the said firm of Taylor and Coffin settled with the said Ebenezer Coffin the accounts between the said firm and the said Ebenezer Coffin growing out of the use of the funds of the said firm by the said Ebenezer Coffin as herein before stated and upon such settlement a balance was found to be due by the said Ebenezer Coffin to the said firm of Eighteen thousand three hundred and forty dollars the same mentioned in the defeazance aforesaid and that the intent of the said parties to the said written instruments of May 17. 1851 was to secure to the said firm the said balance so found to be due owing by the said Ebenezer Coffin to the said firm of Taylor and Coffin and that legal and equitable effect of said instruments was a mortgage

(1270-B)

27

accounts executed by the said Schuchill Coffing in favor of the said Taylor and Coffing upon the parts of said in said written instruments mentioned and described for the said sum of Eighteen thousand three hundred and forty dollars.

And this respondent further answering admits that the said firm of Taylor and Coffing on the said 27th day of April were possessed of a large amount of goods chattels and merchandize said firms interests in real estate and had large sums of money due to them evidenced by claims accounts notes books and papers and that said firm then owed and were liable for divers large debts and liabilities, but this respondent in this connection expressly alledges & charges the fact to be that the assets of the said firm of every kind and character whatsoever were insufficient by prudent management to meet the heavy liabilities of said firm, that the entire capital put into said firm by the said Schuchill Coffing and this respondent was then sunk and entirely lost and that the profits of the said firm during its continuance did not amount to as much as the losses sustained from time to time by said firm during its existence—

And this respondent further answering admits that the said Schuchill Coffing on the said 27th day of April 1832 executed and delivered to this respondent the instrument of that date mentioned and set forth in said bill in manner and form as therein alledged; and that this respondent on that same day executed and delivered to the said Schuchill Coffing the other instrument of that

date mentioned and set forth at large in said bill in manner and form as therein alledged.

And this respondent further answering admits that in pursuance of said written instruments the property assets and franchises of the said Farmers Bank and Gilead Road Company were on said 27th day of April 1852 delivered by the said Coffins to this respondent and that this respondent did on that day cause to be endorsed on said deed of May 17th 1851 a credit of Five thousand dollars in manner and form as alledged in said bill.

And this respondent further answering admits that from the 17th day of May 1851 to the 27th day of April 1852 the said firm of Taylor and Coffins did receive and appropriate to their own use the rents issues and profits of the property described in said instruments bearing date the said 17th day of May but what precise amount they received during that time this respondent is unable to state as it is impossible for him to recollect the different sums so received. But this respondent in this connection most positively claims that the said Churchill Coffins was or is entitled to a credit or indebtedness to said firm of Taylor & Coffins to account as aforesaid of the said rents issues and profits on the contrary this respondent alledges and charges the fact to be that at the time of the execution of the said Instruments of May 17th 1851 the said firm of Taylor and Coffins were indebted in a much larger amount than the said Churchill Coffins then and said firm for money borrowed by said firm to carry on

$12.67-21

24

this business and upon which indebtedness the said firm were bound to pay and were paying interest at and after the rate of five per cent per annum and that in consideration of this fact and inasmuch as the said Churchill C Jeffrys had by withdrawing such large sums of money from said firm and thus driven the said firm to the necessity of borrowing money, it was on the said 17th day of May 1831 agreed and understood between the said Churchill C Jeffrys and the said firm of Taylor and C Jeffrys that the said firm should receive and appropriate the rents issues and profits of said mortgaged premises in lieu of the interest upon the said indebtedness of the said Churchill C Jeffrys to the said firm and to reimburse such sums of money as might be expended by the said firm in the payment of taxes and insurance upon said property and this respondent avers that the said interest taxes and insurance were a fair equivalent for said rents issues and profits. And this respondent further alledges that Respondents of any express agreement to this effect therein upon stated equit implies an obligation on the part of the said Churchill C Jeffrys to pay the same rate of interest upon his indebtedness to said firm that the said firm were thus paying upon the monies so loaned by them as aforesaid and also to reimburse to the said firm the amount paid by said firm for taxes and insurance upon said mortgaged property.

And this respondent further answering saiens that he received rents issues and profits to the amount of Four thousand dollars after the said 27th day of April 1832 but this respondent alledges that

he collected the just quarters rents due after said date and could have collected the other rents from time to time as the same became due but that sometime in the months of November 1832 the said Thornhill Coffing notified the said tenants not to pay any more rent to this respondent; and this respondent further alleges that some time prior to the 8th day of March 1833 the said Complainants John H. Coffing and Grace D. Cannon as the tenants in possession of the said mortgaged premises sued an action of covenant for rent then in arrear and this respondent alleges that in consequence of the actings and doings of the said Complainants as herein before stated he has been unable to collect but one quarters rents since the 27th day of April 1832 and that he is entitled to appropriate the same to his own use by virtue of the express agreement and equitable obligation aforesaid and is not bound in equity to account for the same to the said Thornhill Coffing or any one else.

And this respondent further answering admits that the said Thornhill Coffing by deed bearing date December 20th 1832 conveyed the said parcels of land herein before described to the said John H. Coffing in manner and form as in said bill alleged and that the [illegible] of said deed annexed to said bill as an exhibit is a true copy thereof.

And this respondent denies the allegation in said bill that an settlement has been taken place between the said Thornhill Coffing and this respondent relative to the copartnership transactions respectively

31

[illegible]

contributed to the said firm of Forbes and Coffing
in relation to the sums of money drawn out of said
firm by the said partners respectively, but this
respondent further answers in this connection
states and alledges the fact to be that said capital
has been paid over on the 27th day of April 1832
entirely sunk and lost and no longer remained
a portion of the assets of said firm, that if such
capital did then remain in being or any part
thereof it passed to and vested in this respondent
by virtue of the instrument executed and delivered
by the said Edmund Neill Coffing to this respondent
on the said 27th day of April 1832; that this
respondent has paid as second to be paid all of
the debts due by the said firm of Forbes & Coffing
on the said 27th day of April and that he has
saved and and kept Harmless the said Edmund Neill
Coffing in the premises and that in converting
the assets and effects of said firm into money
and in collecting the debts due to said firm this
respondent necessarily sustained great losses, this
respondent denies that in equity and good conscience
he is bound to account and make any other or
further settlement with the said Edmund Neill
Coffing in the premises but insists that by virtue
of the transactions between him and the said
Edmund Neill Coffing on the said 27th day of April
1832 he acquired the title to all the property assets
and effects of the said firm of Forbes & Coffing
including the stock of the said Coffing; and that
by the assumption of the debts of said firm the
partnership affairs were completely settled between
the said Edmund Neill Coffing and this respondent—

And this respondent most emphatically denies that he is bound to render to the said Schuchill Coffing an account of the rents and profits of said mortgaged property and that the said Schuchill Coffing is entitled to any allowance or credits therefor on his indebtedness to this respondent—

And this respondent expressly denies that the said mortgage is extinguished or satisfied, on the contrary he alleges that said mortgage passed to and vested in him by the instrument executed and delivered to him by the said Schuchill Coffing on the said 27th day of April 1852 and that the only interest which either the said Schuchill or John K. Coffing have in the parcels of land in said mortgage mentioned and described is a right to redeem the same upon the payment to this respondent of the principal and interest due to him upon said mortgage by the said Schuchill Coffing. And this respondent alleges and insists that there is now due and owing to him by the said Schuchill Coffing the sum of thirteen thousand three hundred and forty dollars with interest thereon at the rate per cent per annum from the summer of 1852 and that the said mortgage is a subsisting and valid lien upon the parcels of land therein before mentioned for the security and final payment of said principal & interest.

And this respondent expressly charges that the said John K. Coffing had at the time of his purchase of said mortgage premises from the said Schuchill Coffing notice actual and constructive of all of the equities of this respondent

11/13

[illegible]

in the premises and that he may hold said mortgaged premises subject to this respondents lien for the principal & interest aforesaid.

And this respondent denies all of the equities claimed in said bill by either of the said Complainants

And this respondent further answering says that on the 8th day of March 1853 he exhibited his bill on the equity side of this honorable Court against the said Complainants and Amanda the wife of the said Churchill C Jeffing praying amongst other things for a foreclosure of the mortgage aforesaid and to enjoin the said John R. Coffing from further prosecuting his said action against the said Chas D. Hamm for the money of the rent aforesaid to which bill the said Complainants appeared and filed their answer thereto to which answer this respondent filed a general replication and the cause was put at issue and evidence taken by the said parties respectively - And afterwards to wit on the 4th day of March 1854 such proceedings were had in said cause by this honorable Court that it was ordered adjudged and decreed by the said Court that the said Complainants pay to this respondent nine thousand two hundred ~~and fifty~~ four dollars and fourteen cents within sixty (60) days from the date of said decree and that in default thereof the said Complainants should be foreclosed & forever barred of their and each of their equities of redemption in the premises and that the said mortgaged premises be sold to satisfy the debt &c which said decree remains in full force and effect And thereupon this respondent protesting that said decree was unjust in not allowing him his full debt

and insists thereon he insists that the said deem is an effectual bar at law and in equity to the relief prayed for in the bill of the said Complainants

And this respondent having fully answered all and singular the matters and things in said bill contained & protesting &c prays that he may hence dismissed with his reasonable costs and charges in this behalf most mayfully sustained &c

Blackwell & Forsyth
for Defts"

To said defendants answer the Complainants on the 7th day of June 1836 filed their replication in words and figures following viz:

Replication "The joint and several replication of John W. Coffing and Charlotte Coffing Complainants to the answer of Edmund D. Carter defendant

These Replicants having and reserving unto themselves all manner of advantage of exception to the manifold insufficiences of the said answer for replication thereunto say that they will aver and prove their said bill to be true certain and sufficient in the law to be answered unto and that the said answer of the said defendant is uncertain untrue and insufficient to be replied unto by these replicants. without this that any other matter or thing in the said answer contained materials or effectual in the law to be replied unto confessed and avoided traversed or denied is true all which matters and things these replicants are and will be ready to aver and prove as this Honorable Court shall direct and humbly pray as in and by

35
[12670-23]

from said bills they have already prayed

E. B. Smith

Solicitor for Complainants"

On the 11th day of November AD 1856. the same being one of the days of the November term of said Court for the year 1856 under and by virtue of a general order of the judge of said Circuit Court to open and place upon file all depositions, were found and placed among the files of said cause certain depositions in the words and figures following viz:

State of Illinois
La Salle county & circuit Court thereof

John W. Coffing
& Churchill Coffing
vs
Edmund D Taylor. In Chancery

To the said defendant Edmund D Taylor or to R S Blackwell, or N W Purple his solicitors

Take Notice that on Monday the 27th day of October A D 1856, at the hour of ten o'clock in the forenoon of said day, we shall proceed to take the depositions of John L Coales, William Paul, and Isaac C Day, at the office of Patrick M Kilduff esq. in the city of Ottawa in said county of La Salle, before the said Patrick M Kilduff, as Justice of the peace of said county, or before some other competent officer, and shall continue taking said depositions from day to day if necessary, said depositions when so taken, to be used as evidence on the hearing of the above entitled cause. You may if you see proper, attend at the time and place aforesaid, and cross examine said witnesses

Oct. 13. 1856.

Yours &c
John W Coffing & Churchill Coffing
by W W L Wallace their Solicitor

We acknowledge the service of the above notice this 16th Oct 1856

Blackwell Shinn & Roberts
for Defdts.

37

12670-2M

Deposition of Isaac C. Day, Wm Paul and John L Coales of Perd. La Salle county and State of Illinois. Witnesses Produced sworn and examined before P M Ritchie, Esquire, a Justice of the peace in and for the county and State aforesaid, ~~on the 27th day~~ on the 27th day of October A D 1856 at the office of said Justice in Peru in said county by virtue of a notice hereto annexed, and to the directed for the examination of the above named witnesses, in a suit pending in the La Salle county circuit court thereof in Chancery Wherein John H Coffing and Churchill Coffing are plaintiffs and Edmund D Taylor is defendant, on the part of the complainants. Isaac C Day being first duly sworn, doth depose and say as follows,

Int 1.

What is your name occupation and place of residence,

Ans 1. Isaac C Day, merchant Peru Ills,

Int 2d Are you acquainted with the parties to this suit, - and were you acquainted, with a firm formerly known by the Style of Taylor & Coffing, if so where did they do busines and at what time

Ans 2 I am acquainted with the parties to this suit, and I was acquainted with the firm of Taylor & Coffing who done busines in Peru, Ills the firm of Taylor & Coffing, were doing busines in Peru Illinois in October A D 1850,

Int 3 Were you engaged in busines in the fall of 1850, and if so in what busines & under what name & Style were you so doing busines

State the time – the kind of business you were engaged in & the place where you were so engaged in business

Ans 3d I was doing a general merchandize and produce business with my Brother Fred[k] L. Day in form under the firm name of Day & Brother during the year and until the 18th day of December AD 1850

Quest 4th Did you have any business transaction with the firm of Taylor & Coffing in the fall or winter of 1850 & if so what was the character of it & where was it

Ans 4th I had on the 18th day of December 1850. the firm of Day & Brother sold out to the firm of Taylor & Coffing their entire stock of merchandize, which was taken possession of together with the store formerly and at that time occupied by Day & Brother, and which was situate on lot eleven in block One Hundred and fifty three in the Sunaiva addition to form on said 18th day of December 1850. by the firm of Taylor and Coffing

Quest 5 Under whom had you occupied the said store & to whom & up to what time, did you pay rent,

Ans 5th We occupied under Churchill Coffing one of the compliments, and paid him Rent up to the 18th day of December 1850,

Isaac C. Day

The said William Paul. being first duly sworn doth depose as follows.

Quest 1 Where did you reside, and in what business were you engaged, and at what place, on the 1st day of February 1847, and how long did you continue in

business, & when between that time, and the ~~first~~ 1st day of January 1854

1 Ans I resided in Peru, La Salle County Ills. merchandizing, and occupied a Store situated on lots ten and eleven, in Block one hundred and fifty three in the annawa addition to said Peru, and I continued in Business in the same place until January the 02d 1856,

Int 2. Under whom did you occupy the said Store, and to whom have you paid rent, if you have ever paid rent for said Store to Edmund D Daylor one of the defendants or, his order. State when, and what amount you have, so paid him,

Ans 2d I Originaley rented the Store from Churchill Coffing and paid the rent to him until the 17th day of May A D 1851, about that date Mr. Coffing directed me until further instructed to pay the rent to Daylor & Coffing, I accordingly did pay to Daylor and Coffing on the 29th day of August 1851

$100.00 on the 17th day of November 1851

$100.00 on the 17th day of February 1852

$100.00 on the 20th day of August 1852

$100.00 afterwards on the 19th day of July 1853

I paid as rent for the store above mentioned to E D Daylor $200.00, and on the 6th day of October 1853 $100.00 and on the 5th day of January 1854 $100.00, being one years rent ending November the 17th 1853

Int 3d up to what time did the defendant, E. D Daylor occupy either by himself or his partners or agents the Store on said Lot 11 in Block 153, referred to in the Days deposition as having been occupied by

Taylor & Coffing, & those who succeeded them,
Ans 3d as near as I can recollect, he occupied it until
about the first day of May A D 1854
Wm Paul

Deposition of John L Coates, who being, first duly
sworn, doth depose and say as follows
Int 1st State whether or not you ever occupied as a tenant
and if so under whom the East part of the
buildings in Peru La Salle county Illinois known
as Coffings Store Warehouse and if so from ——
did you rent the same,—for what rent, and how
long did you occupy it,
Ans 1 I did occupy it, I rented it from Churchill Coffing
for five years from January 21st 1850, for the yearly
Rent of Eight Hundred dollars per year, and oc-
cupied it until the 24th day of September 1854
Int 2d State to whom you paid the rents, and the dates and
amounts of such payments,
Ans 2d I paid my rent to C Coffing until after april 1851
from that time until July 1852 I paid to Taylor &
Coffing, on the 22d day of october 1852 I paid my
rents to C Coffing until the 21st of April 1853, the
amounts paid to each of the parties are as follows
paid to

Taylor & Coffing,	21st day of	July	1851	$200.00
" "	21st "	"	October	" $200.00
" "	21st "	"	Jan'y	1852 $200.00
" "	21 "	"	April	" $200.00
" "	21 "	"	July	" " 200.00

on the ~~eighteenth~~ 18th day of February 1854 I paid to
E D Taylor Six Hundred dollars in full for rent to
January 1854,

Int 3 Are you acquainted with the corner Store on Lot 11 in Block 153 in Peru La Salle county Illinois formerly occupied by Taylor & Coffing, and were you acquainted with the value of the rent of said Store in the years 1851, 1852 & 1853, & if you were what was such value

Ans 3 I am acquainted with the Store above described, and was acquainted with the value of the same during the years referred to, and think for the year 1851 it was worth $500.00
for the year 1852 it was worth $600.00
and for the year 1853 it was worth $700.00

John L Coates

State of Illinois } I the Subscriber a Justice of the
La Salle County } peace of said county, do certify that the above deposition was taken by me at the time and place mentioned in the caption thereof; that the said Witness was first duly sworn; and that the same was carefully read to each of said witness and signed by them. Dated Peru October the 27th A.D. 1856

Patrick W Kilduff J.P.

Fee $3.00
Plaintiffs Subp - 25
Boots Coust fee on 85 = $3.60 paid by Churchill Coffing
subp 3.60

Pat W Kilduff J.P.

And afterwards to wit: on Wednesday February 11th 1857 the same being one of the days of the February Special Term of said Court for the year 1857, said Special Term being a Term of the Circuit Court in and for said County, appointed at the November Term of said Court 1856, by Hon Henry Madison E. Bellamy for the purpose of trying all criminal civil and Chancery causes; the following order was entered of record in said cause viz:

John H. Coffing &
Chauncey Coffing
vs
Edmund D. Taylor } In Chancery

On motion of T. L. Dickey Solr. for complainants ordered that the three several depositions of Isaac D. Harmon, taken and filed in the suit of Edmund D. Taylor vs Chauncey Coffing Asenath C. Coffing and John H. Coffing Commenced in this Court on the 8th day of March 1853 be read in evidence in this cause, subject to all just exceptions unless sufficient cause be shown to the contrary & this order discharged by Monday next, and on the like motion, ordered that this cause be set down for a final hearing on Thursday the 19th inst."

And afterwards to wit: on Monday February 16th 1857 the same being one of the days of the said February Special Term of said Court, the following order was entered of record in said cause viz:

424

12670-27

John H. Coffing &
Ann Sibb Coffing
vs
Edmund D. Taylor
In Chancery

On motion of
J. Q. Glass of counsel for the
defendants. It is ordered by the Court that the rule upon the defendants to except to the introduction on the trial of this case of the depositions of Isaac D. Hannon taken in a former case pending in this Court, on or before the coming in of the Court this morning, be & enlarged until Thursday morning next."

And again on Thursday February 19th 1857 the same being one of the days of said February special term of said Court, another order was entered of record in said cause in the words and figures following viz:

"John H. Coffing &
Ann Sibb Coffing
vs
Edmund D. Taylor
In Chancery

On motion of the
Complainants by S. L. Dickey
their Solicitor It is ordered by the Court that they have leave to use on the trial of this cause the depositions of Isaac D. Hannon, Isaac C. Day, William Cook and John L. Coates which are on file in the office of the Clerk of this Court in the case of Edmund D. Taylor vs John H. Coffing, Ann Sibb Coffing and Asenath C. Coffing"

On Tuesday February 24th 1857 the same being one of the days of the February special term aforesaid a final decree was entered of record in said cause in the words and figures following viz:

John C. Coffing +
Chauncild Coffing
vs
Edmund D. Taylor } And now on this day the above
entitled cause coming on to be
heard upon the bill, answer, application and testimony
in pursuance of an order of this Court heretofore entered
herein and this Court having fully heard the said cause
and the allegations of the respective counsel of the parties
and this Court being fully advised in the premises
doth now order adjudge and decree, and it is by the said
Court now ordered adjudged and decreed that the
agreement between the defendants and the said Complainant Chauncild Coffing bearing date the 27th
day of April AD 1852 in the said bill herein set
out did not operate to pass to the said defendants
the indebtedness mentioned in the deed of defeasance
bearing date the 17th day of May AD 1851 in said bill
set out; and it is further ordered adjudged and decreed
that an account be taken of all sums of money and gains
and all profits by the defendants and the said Chauncild
Coffing respectively contributed towards the capital funds
or profits of the firms of Isaac D. Hamner & Co and
Taylor and Coffing, and of all sums of money and
of all profits withdrawn from said firms by the said
Chauncild Coffing and the said defendants and
which should be to them respectively charged in
account; and also that an account be taken of the
rents issues and profits of the mortgaged premises
described in said bill accruing by the said firm of
Taylor & Coffing up to the time of the dissolution of
said firm on the 27th day of April AD 1852 and of the
rents issues and profits of said mortgaged premises

1/12/70-2

received by said defendant after the said 27th day of April AD 1852 up to the 20th day of December AD 1852 and after the said 20th day of December AD 1852 (when said premises were conveyed by said Thurchill Coffing to said John L. Coffing) — And the said account being now taken and stated by the Court here, it appears to the Court that the said Thurchill Coffing contributed to the capital of said firm the sum of $ 10,000,00

That said Thurchill Coffing contributed to the property of said firm in the conveyance of his interest in the Illinois River Bank Charter and banking house and Salisbury Plank road Company which was endorsed on the said defeasance dated May 17th 1851 $ 5,000,00

That said Thurchill Coffing contributed to the funds and property of said firm the rent of the store occupied by said firm from the 20th day of December AD 1851 to the said 27th day of April AD 1852 at $ 500 per annum $ 394,46

That said Thurchill Coffing contributed notes on said mortgaged premises from to the 27th day of April AD 1852 paid by John L. Coffin Williams Peck and Isaac D. Hamm $ 1835,54

making in the whole contributed by Thurchill Coffing the sum of $ 17,430,00

And that the said Thurchill Coffing has withdrawn from said firm which should be charged to him in account and which is the same sum specified in the defeasance dated May 17th 1851 as set in the bill $ 18,344,00

That said defendant has contributed to the capital of said firm the sum of $ 5,000,00

That said defendant has withdrawn from said

firms by taking the said Ehrenfeld Epping interest in the Illinois River Bank Shares and banking house and the Salisbury Plank road Company

That on the 27th day of April AD 1852 there was due and unpaid upon the mortgage mentioned in said bill the sum of $5,111.11

to which sum the said Ehrenfeld Epping and the said defendants were equally entitled and that the said Ehrenfeld Epping was on the said 27th day of April AD 1852 indebted to the said defendants in the sum of four hundred and sixty four dollars ($464.11) upon the account between them as partners.

And that the said defendant has received of the rents issues and profits of said premises accruing since April 27th 1852 and prior to the 20th day of December AD 1852 the sum of $1024.66

And that the said defendant has received of the rents issues and profits of said premises accruing since the 20th day of December AD 1852 the sum of $2953.10

$3987.76

And it appearing to said Court from said account as taken and stated as aforesaid, that said mortgage indebtedness was on the 20th day of December AD 1852 ~~due~~ paid by the sum of five hundred and seventy nine dollars and sixty six cents ($579.66) and that that sum ought to be repaid by the said defendants to the said Ehrenfeld Epping — And it further appearing to the Court that the said defendants has received and had since the 20th day of December AD 1852 the sum of two thousand nine hundred and fifty three dollars and ten cents ($2953.10) from the rents issues and

(Clinton)

45

proofs of said mortgaged premises which ought to be
repaid by said defendants to the said John W. Coffing
and it is ordered adjudged and decreed by the Court that
the said defendant Edmund D. Taylor do release to the
said John W. Coffing all his the said defendants
right title claim or interest in and to the premises
described in said bill of complaints under and by
virtue of said deed dated the 17th day of May A.D. 1851
in said bill set forth within ten days from and
after the date of this decree, and that in default thereof
such release be executed by William W. L. Wallace
who is hereby specially appointed a commissioner for
that purpose, and it is further ordered adjudged and
decreed by the Court that the said defendants pay to
the said Complainants within ten days after the
date of this decree the sum of three thousand five
hundred and thirty two dollars and seventy six cents
($3532.76) and that in default thereof that the said
Complainants have execution therefor. And it is further
ordered adjudged and decreed that the Complainants
have and recover their costs and charges in and
about this suit expended and that they have execution
therefor"

One of the depositions of Isaac D. Harmon referred
to above, as having been taken in the case of Edmund
D. Taylor vs Thornhill Coffing, Meredith C. Coffing &
John W. Coffing a former suit pending in this Court
and filed May 21. 1853. is in the words and
figures following, viz:

Depositions of I. D. Harmon

Depositions to be read in evidence in a suit in Chancery pending in the Circuit Court of the County of La Salle, and State of Illinois wherein Edmund D Taylor is complainant and Churchill Coffing Asenath Coffing, and John H Coffing are defendants, Taken at the office of Aaron B Smith Esq in Ottawa in said County on the 20th day of May AD 1853. Notice being waived.

Present L L Hayes counsel for complainant and G. D Taylor counsel for Defendants

Isaac D Harmon of Peru in said County of La Salle, being first duly sworn deposes, in answer to interrogatories, as follows

Int 1st What is your age and place of residence,

Ans My age is 39 years place of Residence Peru in this County,

Int 2d How long have you resided there

Ans About 9 years,

Int 3 Do you know the parties to this suit, if yea how long, have you known them,

Ans I have known Edmd Taylor over Fifteen years have known Mr Churchill Coffing some 8 or 9 years, have known Asenath Coffing about that length of time John H Coffing about Four years

Int 4 Where has Churchill Coffing Resided during your acquaintance with him & if you know what has been his occupation,

Ans At Peru the first Four years he was engaged in the practice of Law, after which he became a partner with complainants and Myself in

48

Mercantile busines

Int 5 Where has complainant resided, from the 1st of January 1847 – down to the year 1852

An In Michigan City Indiana

Int 6th State whether or not Complainant and your self were engaged in the Mercantile Business in Peru together & if yea during what time,

An we were, something over a year immediately preceding the copartnership formed between complainant, Mr Churchill Coffing & myself,

Int 7 Who had furnished the capital previously and what was the condition of the business at the time of forming the copartnership of I D Pearmon & Co,

An E D Taylor had furnished his credit, something has been made on the business,

Int 8th State whether the business of I D Pearmon & Co was a continuation of the former Business,

An It was, I should so consider it,

Int 9 Pearmon State whether or not in the year AD 1849 an agreement was made between your self in behalf of complainant & yourself and Churchill Coffing, that you as the representative of said firm should build upon Lot 3, and upon a part of Lot 2 in the Canal subdivision, a ware house for Churchill Coffing,

(Objected to by Defts counsel)

Ans to the best of my recollection, I never made any positive agreement to build such ware house, but I did agree or it was understood between Mr Coffing & myself, Complainant assenting that the firm of I D Pearmon & Co. should advance funds for such purpose,

Int 10th Had you any authority in the years AD 1848 & 1849 to make an agreement for the Complainant, or for

Isaac D Pearmon

the complainant and your self with Churchill Coffing for the building a warehouse for Churchill Coffing & Perce

Ans I do not think I had any direct authority, but there was a general understanding between us that there might be a certain amount of funds drawn from the firm for that purpose,

Int 11 Of whom was the money to be withdrawn, and to whom was it to be charged if to any one.

(Objected to)

Ans Churchill Coffing

Int 12 State whether or not you were ever authorized by complainant to make an agreement with Coffing for the dissolution of the firm, and the purchase of said Coffings interest therein,

Ans Not to my recollection

Isaac L. Brennan

Int 13 Who made the contract for building the warehouse if any was made

Ans Churchill Coffing.

Int 14 Who was the builder

Ans A man by the name of Gerraut

Int 15 When was the contract made, when was the building begun & when was it completed,

Ans The contract was made & the building began some time in the spring of 1849 (might of been in June) completed about Dec'by 1850,

Int 16 Who had the supervision & management of the building as it progressed.

Ans The contractor Mr Gerraut had the supervision of it for some time then Dr Brewster & myself together with Mr Riddell, who was employed by Dr Brewster to superintend the Building,

Int 17 Brown whom did you denie your authority to superaintend the building,

An I never considered that I had any authority to ~~superintend the building~~ to do it or any sufficient authority to controll the contractor,

Int 18 wds any change made in the plan of the building during the construction,

An There was, the change was to make it entirely of Stone in place of wooden superstructure,

Int. 19 Who made and directed this change

An I think Theron D Brewster

Int 20, What was and is the relation between Mr Brewster & Mr Coffing

An They were and are brothers in law

Int 21 What part if any did Mr Brewster take in the financial concerns, and busniss of Mr Coffing before at and after that time,

An I do not know that he had any particular connexion with Mr Coffing in Busniss. Mr Brewster had indorsed & accepted a great deal of the paper of Isaac D Clearmon & Co & had drawn some,

Int 22 If you recollect state to what extent complainant agreed that funds should be furnished by the firm towards building the Ware house,

An In the first to the amount of Four thousand dollars

In 23 State whether the funds were to be furnished in cash or goods or in what.

An My understanding was that I were to advance Four Thousand Dollars in goods & out of the Store,

Isaac D Clearmon

Int 24 State whether or not Mr Coffing had free access to the books while the copartnership existed.

An He could of had if he had coson. he never did examine them he had a right to do so

Int 25 State wether or not his account was demanded by him from time to time, & made out for him at his request.

An I think it was

Int 26 Who Kept the books of the concern

An Benjamin Gereaut

Int 27 How were they kept in regard to correctness

An Correctly I suppose

Int 28 Were you acquainted the condition of the affairs of Taylor & Coffing, on the 27 day of Dec^r 1852

An Of my own knowledge I was not

Int 29 If you know any other fact material to the complainant interest in this suit state them

An When I left the concern the 30 th of Sept in A.D. 1850 the accounts with Mr Coffing were correctly kept as far as I knew, extended or controlled it - Mr Coffing always contended that there was a larger amount expended on account of the warehouse than there ought to of been

(Cross Examination)

Int 1 Who conducted the business of the original firm of your self and the complainant.

Ans I conducted it.

Int 2 Was the complainant satisfied with your manner of conducting that Business

An He was I believe.

[1267-82]

Int 3 When Coffrig went into the partnership did he take an interest in the previous business or did the Knew firm start on its own account

An The Knew firm started on its own account but continued the old business, or the same business the same store was taken and the business continued right on.

Int 4 How did the complainant and he Coffrig respectively pay in their capital stock to the firm of J D Harmon Co

An An inventory of the goods and property was taken at the time the debts standing against the old firm was charged over to the Knew firm, and the Ballance which belonged to Col Daylor, was credited to him and it over paid his stock account Dr Coffrig-Capital was put in in money

Int 5 Did the inventory include the debts due the old firm and the goods & property at cost price.

Isaac D Harmon

An The goods were put in at cost prices including a percentage to cover transportation. I think the debts were included but will not be positive,

Int 6 Were the any goods on hand at that time purchased Knew for the business, or were they an old stock removed by Col Daylor from the Southern part of the State

An Some of them were Knew in the fall previous, and some of them had been brought up from Springfield consigned to me by Col Daylor (Objected to by Plffs. counsel)

Int 7 Did Col Daylor draw out in money the ballance over the amount of his capital stock

(Objected to by Plffs counsel)

An He did not immediately, As I recollect right but probably after a while he did,

Int 8 ~~Int~~ Were those goods & debts worth as much to the firm as the same amount in money would ~~be~~ been at that time.

(Objected to by Plff)

An They were, as I considered at the time in connection with the money facilities that Col Daylor had agreed to furnish to the firm

Int 9 Were they worth as much divorced from such money facilities

(Objected to)

An I should think not.

Int 10 Was it not understood, at the time of forming the partnership that the use of Collins greater amount of Capital was to be balanced by moneyed facilities to be furnished by Col Daylor.

(Objected to)

An I dont recollect that any thing was said about it. It would would undoubtedly go towards ballancing it.

Int 11 Was not a considerable portion of the dry Goods put in by the Complainant afterward sold to John Morris at a sacrifice of fifty cents, or more on a dollar

(Objected to)

An My impression is that there was less than two hundred dollars sold to him at a sacrifice of fifty cents on the dollar the ballance of the sale to him was at about My cost. I cannot say but half the bill was sold at that sacrifice, but I do not think it was, my recollection is very unassured about the whole transaction.

[12670-53]

Int 12 did not the project of building a ware house originate in your expressed wish to have a ware house for the use of the firm

(Objected to)

An I cannot say but I think it very likely did. I used my influence to get a ware House built

Int 13 Were there not not negociations or conversations between C Coffing & your self in the Spring 1849 in substance that a ware House should be built to cost seven thousand five hundred dollars of which six thousand should be advanced by the firm & fifteen hundred by Coffing the hole seven thousand five hundred to be paid out by the firm Coffing furnishing the fifteen hundred to the firm and that Coffing should retire from the firm receiving the advancement towards the ware house, and was not the contract with Gereaut made to carry out such understanding

Witness D Cameron

(Objected to)

An. There were frequent conversations between Mr Coffing and myself about building a ware house, about the cost but I never concluded I made any positive bargain to that effect. I may of expressed a willingness on my own part to assent, so far as I was concerned, to some similar proposition, do not know but Mr Coffing might of made a contract with Mr Gereaut, upon that supposition, I do not know whether seven thousand five hundred dollars was the amount of the original contract with Gereaut or not. I do not know that I ever saw the contract

Int 14 was it not the understanding that the payments to Gereaux on his contract should be made by or thru the firm

(Objected to

An It was the understanding with me

Int 15 did not Coffing soon after making the contract with Gereaux, and having ~~understood~~ an understanding with you for payments by the firm, leave for New England, and remain absent during the summer & until late in the fall,

(Objected to)

An He did,

Int 16 About what time in the season was the plan of the Store House changed

(Objected to)

An I am not certain, having been sick and away thru almost the month of July, I am not certain but I think the change was made about the first of August

Int 17 did you communicate to Mr Coffing the fact of changing the plan & did you state what the change was or any thing about increased expense

An I think I Telegraphed to Mr Coffing before the change was made, I think asking whether a change should be made about the Building, I think I wrote after the change was made do not think I advised him of the increased Expense, considering that Mr Brewster's Business, I think I did not advise him what the change was,

[illegible]

55

Int 18 Did you see Mr Loffing at Salsbery Comm in Sept 1849. and then advise him in particular about the building, and the expenditure, and how much had there been expended on the Ware House

(Objected to)

Ans I saw him in september at that place, and advised with him in fineral about the building and the change of plan, and the amount expended but dont now remember, what the amount was

Int 19 Did the complainant assent from time to time to expenditures by the firm for the Ware House until it was completed,

(Objected to,)

Ans Do not know that he assented or assented directly but supposed it was done with his consent

Int 20. Did the complainant know from time to time of the Expenditures, and if so how

(Objected to)

Ans I believe he did, threw me and other persons, my recollection is indistinct about writing to him whether I wrote to him or not on that subject,

Int 21 did you write to complainant frequently on the business of the firm

Ans I did

Sworn & Subscribed

Qst 22 Was not the expenditure for the Ware House more than twice the amount contemplated by Mr Coffing & yourself in the Spring
(Objected to)

An I was

Qst 23 Did you know of the two mortgages & two notes now Exhibited to you at the time of their execution and if yea state, whether the mortgages were executed by Churchill Coffing & Asenath Coffing and the notes by Churchill Coffing and if so when and where for what purpose, and under what circumstances, and when where and to whom were they delivered, and by whom, and at whose request if by the request of any one, and for what purpose and under what circumstances, and for what consideration, State fully and particularly
(Objected to)

An I did they were so executed at Peru with the exception of the Mortgages. name and place of Residence. the time and amounts in the notes which I suppose was done in Michigan City Ind they were taken by myself to Michigan City for the purpose of raising money for the purposes of Isaac D Harmon & Co, with an understanding with Churchill Coffing. that they should be filled out at three years time but not being able to raise the money upon them I consented to their being filled upon his time, supposing, under the circumstances it would be satisfactory. the consideration was Ten Thousand Dollars, and which Mr Coffing, consented to raise for the use the concern in consideration of his large indebtedness to the concern. they were

delivered by me to E.A Taylor at Michigan Capital
Mr Coffings request

Isaac L Bannon

Int 24 State whether you were present or not at the time when the Mortgages name, and the time and the amounts of the notes were inserted in the Mortgages and the times and amounts were inserted in said notes & if who inserted them, and in whose presence and at whos instigation or request

(Objected to)

An I dont think I was present.

Int 25 Had the amounts and times of the notes been inserted in the Mortgages, and had the amounts, and times of the notes ~~subm~~ inserted in the notes at the time when you delivered the notes & mortgages to complainant, as you have stated at Michigan City

Objected to.

Ans No,

Int 26. At the time when you delivered the Mortgages & notes to the complainant, as you have before stated had you advised Churchill Coffing that the amounts, and times of the notes were to be inserted in said Mortgages & notes differantly from what was orginally contemplated, and had you had any & what direction, or consent from him to make that variation from the original understanding which you have stated

(Objected to)

An I believe not. No for the reason that I did not

know the time. was informed it could not be had on the three years time

Cont 27 Did he Coffing take any part in conducting the business of L D Harmon & Co.

Ans He took no active part in it while I was in the concern.

Direct Examination Resumed

Int 1st How much did he Coffing owe the firm of L D Harmon & co. at the time the notes and mortgage above referred to were handed you by him.

Ans I believe nearly Eighteen Thousand Dollars.

Int 2d In what shape was the debt and how secured

Ans It stood in accounts current upon the Books unsecured

Int 3 How long had that ape been standing unsecured

Ans It had been accumulating. and stood for over a year

Int 4 How much of the account accumulated during the four months immediately preceding

Ans I think only a small portion

Int 5 How much was the Bank indebted of Harmon & Co at the time the Mortgages & notes were handed to you

An I think about Forty thousand Dollars

Int 6 What was the longest time that paper had to run

An I believe none of it had over four months to run

Int 7 How much of that paper was then due or to fall due within the next thirty days.

An I should think one third of it

Int 8 Why were the times in the notes and mortgages left blank

An The reason was because it was necessary to raise the Money, and Mr Coffing did not know on what time it could be raised on but conceived it could be should be raised on three years time

Int 9 Did you not think under the circumstances that you would be authorized to borrow the money on a less time if you could not get it on a three years time time

(Objected to Defts counsel)

An I did

Int 10 Did you not expect from your conversation with Mr Coffing & the authority he had committed to you, that he would approve of what you had done

(Objected to)

Isaac S Harmon

Ans I did

Qst 11th What was the amount Mr Coffing authorized you to Borrow on the notes & mortgage

Ans Ten Thousand Dollars

Qst 12. What was the amount actually Borrowed
(Objected to)

Ans I suppose Ten Thousand Dollars

Qst 13 Did you not as the Agent of Mr Coffing Authorize and consent to the insertion of the times and amounts of the notes as they were inserted in the notes and mortgages
(Objected to)

Ans I authorized the insertion of the amounts, and the time without any specified length of time, and think I left the concern before I knew the time,

Qst 14 Were you not informed before you left the notes & Mortgages at Michigan city, that it was probable that the money could not be borrowed, on a longer time than six months,
Objected to.

Ans I probably was,

Qst 15 Was it not perfectly understood that those with whom you left the notes and mortgages should fill the amounts so as to make the aggregate sum Borrowed. Ten Thousand Dollars, and the times the longest that could

L/3270-37

60½ be obtained whether the same might be long or short. (Objected to)

Ans It was with the understanding it should not be less than six months.

Int 16 What become of the money so Borrowed, and to whose credit was it entered on the Books of Harmon & Co

(Objected to)

Ans I suppose the Bank paper was taken up with it do not know how it was entered on the Books

Int 17 While the partnership of Harmon & Co subsisted did you not frequently converse and correspond with Mr Coffing respecting the general condition and out lines of the Firm Business

Ans I believe I did

Int 18 Did the complainant take any part whatever in managing the details of the Firm Business, other than providing money and making arangements for the payment of debts

Ans He did not

Int 19 Did he ever examine on the Books of the concern all the items of any account

Ans Not to my knowledge

Int to 20 Is it not true that the expenditures in the erection of the ware house were made by the agents or friends of Mr Coffing, and that the only part which the firm of I L Harmon & Co took in those expenditures was to pay the bills sent in by those friends or agents and the persons acting under their direction

(Objected to)

Ans I so considered it

Int to 21 Did not Mr Coffing before he entered in to the partnership which became the firm of I L Harmon & Co fully understand the manner in which the Cofpartnership Stock of the complainant was to be furnished and that the goods referred to were to be estimated at their cost the expense of transportation being added, and he did he not consent to the same

Ans I suppose he did he consented to it

Int to 22 In the Statement of the affairs of I L Harmon & Co of July 1850 referred to in one of your affidavits did you not proceed upon supposition and strike the ballance therein struck without any account of Stock without allowing for their diminished value of the articles mentioned— without allowing for bad debts— without allowing for expenses account— without estimating loses on wheat ~~and~~ corn which the firm had bought,

Objected to

(52)

Ans I made the statement about taking inventory, estimating the property and debts at their nominal value as they stood upon the Books. in regard to the expence account. I cannot say whether I estimated it or not, I think the Wheat Account was not considered. the statement was only an approximation

Int 23 What were the losses of I D Hearmon & co upon wheat that year

Ans I am not certain as to the date I think that the loss was about Five Thousand Dollars I think it was bought the winter before

Int 24 Taking the statement referred to as accurate and correct, considering also the heavy debt of the concern, and particularly the Bills payable set down $34,025 the largest one of which to run was to become due on the first of November the next considering that near Nineteen Thousand Dollars of the debts due the concern was entirely unavailable, and already a long time past due considering the small amounts, and low condition of the stock of Goods do you think that any intelligent and prudent business man living away from the place of Business, would have taken the business and assets, and assumed the liabilities and refunded the capital stock without making a deduction of fully 33 & 1/3 per cent upon the estimate value of all the assets.

Objected to

Ans Taking in concern in the situation that that question implies I do not know that they would

Int. 25 If the complainant had died, or suddenly lost his means & his credit, and the creditors of the firm had inforced the collection of their demands as soon thereafter as they fell due, would not all the assets of the Firm have proved insufficient to pay its liabilities and would not Mr Loffing have lost not only his capital stock but a large amount beside

Objected to

Ans I do not know but consider it probable.

(Cross Examination Resumed)

Int 1st State whether or not you informed the complainant before the amounts and times were inserted in the Mortgages and notes, that Mr Loffing had Expected or intended that the times should be not less than three years or any thing to that effect, and if so what,

Ans I presume I did inform him that Mr Loffing expected or desired it, that is my best impression

Int 2d From your own knowledge of the business assets resources & credit of the Firm of J & D Doarner & Co at the time of your report in July 1850, throwing all suppositions and artificial considerings out of the question, do you consider that report substantially correct or incorrect in its conclusion

Ans At the time I made the report I considered it and do now as correct an approximation to a state of the concern as could be made, without taking an inventory, and making a ballance sheet;

Ques 3 Did Mr Coffing before, or at the time he entered the partnership, know that the goods were not worth the price they were invoiced, or was he acquainted with the value of such property

Ans I do not Know

(Direct Resumed)

Ques 1 Did not the complainant express decided reluctance to admit Mr Coffing in to the concern upon the terms upon which he was admitted

(Objected to,)

Ans When I first proposed it to him, he did express a reluctance to admitting Mr Coffing in to the concern, I do not recollect whether the terms were proposed or not,

Isaac D Harmon,

State of Illinois } I, Aaron B Smith, a Justice of the
La Salle County } Peace, within and for said county
do hereby certify, that the foregoing
deposition of Isaac D Harmon, was sworn to and
signed by the said defendant, at my office in the City
of Ottawa in said county, on Friday May the twentieth
AD 1853. between the hours of 10 o'clock Am & 10 o'clock
Pm In Witness whereof I have hereunto set my hand and seal this 20th
day of May AD 1853,

A B Smith
Justice of the Peace,

Fees in this Cause 4.00

On the 3d day of March 1854 the deposition of William Paul and the further deposition of Isaac D. Norman were filed in the office of the Clerk of said Court in the words and figures following, that is to say:

"LaSalle Circuit Court Feby Special Term AD 1854
Edmund D. Taylor
vs
Chas Hill & Jefferson Hall } Testimony taken on hearing in open Court

March 3d 1854

William Paul a witness called by defendants being duly sworn deposes as follows

Deposition of William Paul

1st question -

State whether any rents have been paid by you since giving your former affidavits in this case for the store mentioned in that affidavits as occupied by you, and if any, to whom did you pay them, when and what amount?

Ans - Since the former affidavits I made in this case I paid to E. D. Taylor on the 19th day of July AD 1853 Two hundred dollars on the twenty day of October 1853 I paid said Taylor one hundred dollars on the fifth day of January AD 1854 I paid said Taylor one hundred dollars being one years rent ending September seventeenth AD 1853 -

Cross Examination by Complainants

1st - State if you know what was the value on the 20th day of December 1852 of lots number one two three four, five, six, seven & eight in block fifty five, also lot seven in block thirty five also the East five feet

95

12670-187

of Lot two and Lot eleven in Block one hundred and fifty three, excepting so much of said Lot eleven as was occupied by the office of the Illinois River Bank of Taylor & Epping, all of said Lots being in the Ottawa addition to Peru together with the Stone warehouse & Lots on which it stands known as Lots number three and a portion of the West half of Lot two in the Subdivision made by the Trustees of the Illinois & Michigan Canal of the North West fractional section Number one Township thirty three Range two East bounded together with the West line of said two Lot two and the East fifty acres in said two Lot three in section sixteen in the township aforesaid, also twenty three acres in the East half of the South West quarter of section eight in the same township also one hundred and fifty acres in the South West quarter of section four in the same township formerly owned by Schuchill & Epping

And - The value of the East fifty feet of said two & Lot eleven excepting so much of Lot eleven as was occupied by the office of the Illinois River Bank was one thousand dollars, of that amount I estimate the Stone Store at two thousand dollars. The Stone warehouse & the Lots on which it stands were worth on the 20th day of December AD 1832 fifteen thousand dollars. This is all I can say in respect that I can fix a value upon

Wm. Ford"

Deposition of S. D. Hamm

Isaac D. Hamm being first duly sworn on the part of defendants deposes as follows

1 = State whether any rents have been paid by you since giving Jun former affidavit in this case on the part of the State now have occupied by you and if any to whom did you pay them when and what amount

Ans - I paid to E. D. Taylor or his agents Six hundred dollars I think in August or September 1853. I also paid to Isaac Watkins Two hundred dollars in October or November 1853 and Two hundred dollars in January 1854.

2 = Have you a duplicate of the lease you offering to prove of that part of the mill house occupied by you dated February 1st 1850 on file as an Exhibit in this case and now shown you, and if you have such duplicate will you please present it and give copies of any endorsements upon it that are not upon the one filed as an Exhibit

Objected to as witness presumed to be cognizant of the facts

Ans - I have my duplicate of the original lease and now produce it. There are upon it the following endorsements which are not upon the one filed as an Exhibit — September 30th 1850

I hereby assign all my right title and interest in the within lease to Wm Taylor & Offing they assuming & releasing me from all obligations under it or liabilities attending it from and after that date having received from them in a valuable consideration for so doing to my full satisfaction

Witness Wm Wm Geiger

Isaac D. Hamma Seal

67

5/12670-D

[illegible] agreement of parties hereto the above assignments [illegible] and the parties are placed as they stood previous to the above assignments. This arrangement [illegible] been made by the agreement of the within-
signed

Taylor & Effing
Isaac D. Hannum

3d – State when these endorsements were made by whom they were made, what connection with or knowledge of these transactions the Complainants had at or about the time of them and who occupied the premises from the time you assigned the lease until it was reassigned to you

Ans – The first assignment was made on the thirteenth September 1830, the second one was made in July 1837, the third date I do not recollect. They were made by Allen Effing and myself. They were both made in the presence of the Complainants Obrin. The last one certainly I think both. The premises were occupied by Taylor and Effing from the time I assigned the lease until February following –

4th – Look upon the paper now shown you dated 30th May 1849 purporting to be a contract between Ebenezer Effing & John Gibson marked 2 & filed in this case & state if you know in whose hand writing the instrument and signatures to it are –

Ans – It is the hand writing of Benjamin Gibson the signatures are in the hand writing of said Gibson and Ebenezer Effing

5th = State if you know whether that Instrument is or is not the Contract between Effing & Ginny for building the new house —

Ans = I suppose it to be but do not know

6th = State what business or other connection existed between John & Benjamin Ginny and what was Benjamins employment at that time —

Ans = Benjamin Ginny was the son of John Ginny in the employment of Isaac D. Harmon & Co and acted as his partners agent —

Cross Interrogatories by Complt

1st = Will you answer the first cross interrogatory put to the witness William Faux as to the value of the property on the 20th day of December 1832

Ans = I would value the first eight lots in Block fifty five at three hundred dollars each, $2400.00, lot 7 Block thirty five was worth one hundred and fifty dollars. The East five feet of lot Eleven Block one hundred fifty three & except so much of lot 11 as was occupied by the office of the Illinois River Bank with the Buildings was worth Twelve thousand dollars. The three new brick lots on which it stands were worth Eighteen thousand dollars The West six acres of ten acre lot two and East five acres in ten acre lot three section fifteen were worth thirty three hundred dollars. The Seventy three acres in E½ S.W¼ Sec. 8 was worth twenty five dollars

per acre $1825. The one hundred and 64 acres in the S W 1/4 Sec. 4. more with about ten dollars per acre $1060"

Isaac D. Harmon"

+ the further deposition of William Ewart

The deposition of John L. Coats, was filed in said Clerks office on the 4th day of June 1833 in the words and figures following viz!

Deposition of John L. Coats

" The depositions of Alexander Campbell. John C. Champlin. William Thomas Frederick W. Matthews. Isaac H. Anderson J. Kemp. Beda. Richard A. Wenton. Isaac Hardy. William Wood. John R. Merritt. Herman Baldwin. Seth W. Hardin & John L. Coats

Witness produced sworn & examined before George Leland Clerk of the Supreme Court of the State of Illinois in and for the third Grand Division thereof at my office in Ottawa in said division of State on the first and second days of June AD 1833 to be read in evidence according to the agreement of the parties subject to all objections & exceptions & excepting as to the time form & manner of taking the same in the case of Edmund D. Taylor vs Chauncey Hall Essex and others in Chancery in the Circuit Court in & for the County of LaSalle in said State — notice being waived by agreement

The said John L. Coats being next duly sworn in answer to the following interrogatories deposeth & saith as follows.

Interrogatories by defendants Counsel

1st – What is your name, age, occupation & place of residence & do you know the parties to this suit or either of them & if you have long been you know them or either of them?

Ans – my name is John L. Cook age 33 years – reside at Peru – am a merchant – am acquainted with the parties – have known Taylor 12 years & Churchill Coffing 10 years and John C. Coffing 3 years & Lynch C. Coffing Several years

2d – Are you acquainted with Henry D. Brewster & if you have you long been you known him?

Ans – I am – have known him 14 years

3d – State whether or not you know of any language said Brewster or of any facts, acts or things showing or tending to show the pecuniary relations between him & Churchill Coffing, or showing or tending to show his feelings as being friendly or unfriendly towards said Coffing & if you do state according to your best recollection as fully and particularly as you can any such language facts, acts or things as showing or tending to show

(Objected to by Complainants Counsel)

Ans – I have not heard anything relative to that question from Mr Brewster – I heard Mr Brewster say that Mr Coffing was placing himself in his (Brewsters) way, that he (Brewster) would at some time show him his (Brewsters) advantage – this was 2 years ago this Spring – The conversation grew out of a general conversation relative to the Chicago & Rock Island Rail road – That is all I know personally of

71

3 12670-400

the position of the parties & existing by hearsay—

4th = Are you or are you not acquainted with Seth Paine & if yea state how long you have known him & when & are you or are you not acquainted with his general reputation for truth & veracity & if yea state what that reputation is?

Ans = I am acquainted with him—have known him from 10 or 12 years at Chicago & Paine—I am acquainted with his general reputation for truth & veracity— I have always considered it bad—

5th = From your knowledge of his general reputation for truth & veracity what degree of credence would you be inclined to give to statements made by him under oath (Objected to by Complainants Counsel)

Ans = I would give none—

Interrogations of Complainants Counsel

1st = Have you ever had any misunderstanding or disagreement with Seth Paine & if you have state when?
(Objected to by defendants Counsel)

Ans = I had once—about a year ago—probably longer

2d = Have you ever had a misunderstanding or disagreement with the Complainants in this suit & if yea when?
Ans = None whatever

3d = Have you ever had a disagreement or misunderstanding with Mrs Brewster + if so when?

Ans = I had — several years ago — I have had none subsequently —

John L. Coates"

Depositions of Wm. Paul

"The depositions of William Paul, George W. Gibbs, John Kelly, D. McClintock, John McGowan & Edmund S. Holbrook witnesses produced sworn and examined on behalf of said Complainants — agreed by Counsel of both parties to be entered and read at any stage of the cause upon notice — on the 3d day of June aforesaid subject to all objections except as to the form and manner of taking the same — notice being waived by Counsel and S. S. Hayes Counsel for the Complainants + A. W. Tracy Counsel for the Defendants being present at the taking of the preceding depositions —

The said William Paul being first duly sworn in answer to the following interrogatories deposeth + saith as follows:

Interrogatories by Complainants Counsel

1st = What is your name age occupation + place of residence + do you know the parties to this suit + if you have long have you known them or either of them?

Ans = My name is William Paul my age is 44 years — am a merchant + reside in Penn — have resided there 10 years — I know the parties to this suit — I have known Joseph Coffin about 4 years + Edmund Coffing his wife about 12 years — have never seen John L. Coffing but once

78

2d = Are you acquainted with Seth Paine & if you how long have you known him?

Ans - I am - have known him from about the time he came to Penn some 2 or 3 years ago until he left there -

3d = Are you acquainted with his general character for truth & veracity?

Ans = I have heard a good many folks speak about him & I have heard all kind of characters given to him - I have heard all kinds of reputation for truth & veracity given him - I mean that I have heard many speak in favor of his reputation for truth & veracity & many against it -

4th = Who are the persons, speaking of them as a class that you have heard speak against his character for truth & veracity.

(Objected to by defendants counsel)

Ans = I think it is generally them who applied to him for money & could not get it to their satisfaction

5th = Did or did not the remarks have reference to his keeping promises to let them have money?

(Objected to by defendants counsel)

Ans - Yes. I ~~cannot~~ answer that in the affirmative

6th = Do you know his general character for truth & veracity?

Ans = I cannot answer that by an affirmative or negative answer -

7th = From your knowledge of his character would you or would you not believe his statements under oath?

(Objected to by defendants counsel)

Ans = I think I would—

8th = Have you any doubt about it?

(Objected to by defendants counsel)

Ans - If I can have confidence in a direct oath I would say I would have no doubt of the truth of his statements

Wm. Pond"

State of Illinois } I Lorenzo Leland Clerk of the
LaSalle County } ss Supreme Court of said State in and
for the third grand division thereof
do hereby certify that the foregoing depositions were
severally taken, sworn to and subscribed by the same
& in my presence by said deponents respectively at my
office in Ottawa in said County division & State on
the first and second & third days of June AD 1853
In Witness Whereof I have hereunto set my hand
and the seal of said Supreme Court at my said
office this 4th day of June AD 1853

Lorenzo Leland Clerk
By P. Kimball Leland
Deputy Clerk

75

[illegible]

There was also filed in said Clerks office on the 23d day of May 1853 the several affidavits of William Pratt & John L. Coates, on the back of which is a memorandum in the words & figures following;

" These affidavits to be received as if in due form
" of depositions upon proper notice - saving any exceptions
" as to the competency or relevancy of the evidence"

Said affidavits are in the words and figures following viz

Edmund L Taylor
vs
Churchill Coffing
Asenath C Coffing
John D C Coffing

In La Salle Circuit Court
In Chancery

Affidavits taken by Defendants at the Court House in Ottawa La Salle County Illinois May 17th 1853

Affidavits of John L. Coates

John L Coates of Peru La Salle Co of Lawful age being duly sworn on oath States

I am Tenant of East part of Stone warehouse of Coffing in Peru. I hold a lease from Churchill Coffing dated January 21st 1850. at the rent of Eight Hundred dollars per ann - I always settled my rent with Mr Churchill Coffing until after the quarter rent due in April 1851 When Mr Coffing called upon me, and said that for the present, and until the Coffing should let me know I should pay my rent as it became due to E L Taylor who was acting agent for the Principals from that time I paid no Taylor & Coffing

77
12670-45

Granville, ~~Granville~~, & Daylor or the clerks under his charge. I paid as follows.

rent	due	21st July A.D	1851	200.00
Do	Do	21 " Oct -	1851	200.00
Do	Do	21 " Januar.	1852	200.00
Do	Do	21 " April	1852	200.00
Do	Do	21 " July	1852	200.00

During the following month of September Coffing called upon me. and said that all rents falling due after that date. must be paid to him, Upon the 21st October I paid to Mr Coffing $200. for any rent due upon ~~xxxxx~~ that day

I have. since paid to Mr Coffing in my account with him rents due January 21 1853. also rents due April 21 1853, Two Hundred Dollars each. These last named amounts were placed to his credit upon my books in open account.

During the summer or fall of the year AD 1851. Granville & Daylor. announced himself as successor of Daylor & Coffing. and continued the General Business in the same manner and place as formerly used by Daylor & Coffing in the corner Stone Store of Coffing. until his Death about Dec 1 1852 — After which E. D Daylor took possession of same Stock and Store claiming to be the surviving partner

I would consider the rent of the Store to be worth in AD 1851 ~~Five~~ $500 Hundred Dollars ($500) worth in AD 1852 ~~Six~~ Hundred Dollars ($600) and could be rented this year 1853 for Seven Hundred Dollars.

An Instrument of writing now exhibited to me by defendants Attorney is le Coffings original Copy of Lease as signed January 21 1850 reduced to writing by my self

John L Coates

Subscribed and sworn before me this 17 day of May 1853

A B Smith J.P.

J P Fees $0 25
Court fees 50
0,75

Paid by le Coffing

Affidavit of Wm. Paul

William Paul being sworn on his oath States as follows

That on the first day of February A.D. 1849 he commenced occupying the West half of the Stone Block situated on Lots 10 & 11 in Block one Hundred & Fifty three in the Ottawa Addition to Peru, La Salle County Illinois, having rented the same from Le Ruvenil Coffing. That he paid rent to said Coffing for the next two years, at the rate of Three Hundred & fifty dollars per annum. That on the first day of February 1849 the rate of rent was changed to Four Hundred Dollars per annum and that he continued, and did pay to the said Coffing rents at that rate till the 15th day of May 1851. about that date he directed me to pay the rents to Taylor & Coffing until further instructions

79

Dixon-Will

which I did as follows

on the	29 day of	August	1851	$ 100,00
" "	17 " "	November	"	100,00
" "	17 " "	February	1852	100,00
" "	17 " "	May	"	100,00
" "	20 " "	August	"	100,00

The above rents were paid to Granville L Taylor as the agent of Taylor & Coffing.

A short time previous to the 17th day of November 1852 the said Coffing told me that from that day the rents were due and coming to him, and accordingly on that day I paid him one Hundred Dollars, the amount due then, since the 17th day of November 1852, I have paid no rents to either party, having immediately afterwards learned from Granville L Taylor and subsequently from E L Taylor that they claimed the rent, who said they would collect it of me, if I paid it to said Coffing. I consider the rent of the East alone in said Block occupied by G L Taylor at his death, and E L Taylor his survivor, worth fifty dollars per annum, more than the alone I occupy, in consequence of its being on a corner, and ~~being~~ having a Door on the east side, and also having a double Hoisting apparatus

At the time the rent of the alone I occupy was raised to Four Hundred dollars, an agreement was made between said Coffing, and me, that the lease should extend to ten years at that rate commencing from the date of my first occupying the alone. The Lease was not in writing.

This affidavit reduced to writing by myself.

Wm Paul

Subscribed and sworn
before me this 17 day
of May AD 1853
A B Smith J.P.

J.P. Fees ± 0,25
1 writ " 50
0,75

Paid by A Hoffing

State of Illinois } I John F. Nash Clerk of the
La Salle County } Circuit Court in and for said
County and State do hereby Certify
that the above and foregoing contains a true, full
perfect and complete record of all the papers on file and
of all the orders of the Court including the final decree
in the case of John H. Coffing & Elmira Hill Coffing
vs Edmund D. Taylor as the same appears of
record and on file in my office. And further that
the depositions copied into this record after, and
following the final decree, are all of the depositions
of Isaac D. Harmon, William Pond and John L.
Coates that are on file in my office in the case of
Edmund D. Taylor vs Elmira Hill Coffing, Frances C.
Coffing and John H. Coffing, and further that no
deposition, of Isaac D. Dr
deposition, is on file in my office in the last entitled
cause that I can find on search of —

In Testimony Whereof I have hereunto set my
hand and the Seal of said Court at my office
in Ottawa this 18th day of April A.D. 1857

J. F. Nash Clerk

It is hereby stipulated and agreed that the foregoing deposition of Isaac D Hunnicutt on the two preceding pages be taken and considered as a part of this record, it being one of the depositions ordered to be read in the cause by the order of the court herein contained, ~~but was~~ and which was read pursuant to said order, but by the omission of the clerk was omitted to be copied into this record —

Pr Rec'd Att, defts in error

R W Macdowell

Edmund D Taylor plff in error
vs
Churchill Offing &
John H Offing defts in error

Supreme Court
April Term 1857

And now the said Taylor comes and says that in the record & proceedings aforesaid is manifest error in this

1 That the said Court erred in rendering a decree for the said defendants in error when by the laws of the land said decree should have been in favour of the said plaintiff in error.

2. The said decree is against the law and the evidence.

~~3 The Court erred in overruling the~~ Rob Leake & Macdowell
~~Demurrer of the~~ for plt in error

887

And now the said C. Offing & John H. Offing come and say that in the record and proceedings aforesaid there is no error and pray that the said decree may be affirmed

By their Atty

C. Bierne

Know all men by these presents that we Churchill Coffing of Peru LaSalle County & State of Illinois and Asenath C. Coffing wife of the said Churchill Coffing in Consideration of the Sum of One Thousand Dollars to us in hand paid by E. D. Taylor of Michigan City State of Indianna the receipt where-of we do hereby Acknowledge have bargained sold and quit-claimed and by these presents do bar-gain, sell and quit-claim unto the said E. D. Taylor and to his heirs and assigns forever all our, and each of our right, title, interest, estate claim and demand both at law and in equity and as well in possession as in expectancy of in and to all that certain price or parcel of land situate in the City of Peru LaSalle County & State of Illinois known as that portion of Lot Eleven (11) Block one hundred and fifty three (153) on which the Illinois River bank of Taylor & Coffing now stands the said conveyance being only for so much of said Lot as is occupied by the Illinois River Bank aforesaid, (not including the part occupied at present by the Post-Office or stores) with all and Singular the hereditaments and appurtenants thereunto belonging.

In Witness Whereof we have hereunto set our hands and Seals this 27th day of April A.D. 1852

Churchill Coffing (Seal)
Asenath C. Coffing (Seal)

State of Illinois } On this 29 day of April 1852, Personally
LaSalle County ss } -ally appeared Patrick M. Kilduff an acting Justice of the Peace in and for Said County, Churchill Coffing and Asenath C. Coffing his wife to me personally known to be

87

The persons whose names are subscribed to the above deed as having executed the Same and the said Churchill Coffing acknowledged that he had freely executed the Same for the uses and purposes therein expressed. And Asenath C. Coffing wife of the said Churchill Coffing was by me made acquainted with the Contents of the Same and examined seperate and apart from her said husband, whether She executed the said deed and relinquished her dower to the lands and tenements therein mentioned voluntarily, freely and without compulsion of her said husband and acknowledged that She executed the Same and relinquished her dower in the lands and tenements therein mentioned voluntarily and freely and without compulsion of her said husband

Patrick M. Kilduff J.P. (Seal)

{Filed May 7th 1852 at 4¼ O.C P.M}

27-309 & 310

State of Illinois } I John A Nash Clerk of the Circuit
La Salle County } Court in and for said County and
State aforesaid Ex Officio Register of deeds &c
do hereby certify that the above and foregoing deed from
Churchill Coffing & wife to E. D. Taylor is a true
& perfect copy from the records in my office as the
same appears recorded in Book No. 27 on pages
309 & 310

In Testimony Whereof I have hereunto set
my hand and the Seal of said Court at
Ottawa this 4th day of May 1857

J. A. Nash Clerk

It is stipulated and agreed that the deed of which the foregoing is a copy be ~~omitted~~ considered as a part of the record in this case, and that the deeds of Chancellor Effing to the Illinois River Bank, Banking House, and Salisbury Plank Road Company which were conveyed by said Chancellor Effing to Edmund D Taylor on the 27th day of April 1852, were prior to such conveyance the individual property of Chancellor Effing —

Blackwell & Purple

for plff in error

89

5 12 49 49

25,000 feet

~~A~~ 76

Edmund D. Taylor

to

John R. Coffing &
Churchill Coffing

Record

Filed April 20 1854
L. Leland
Clerk

Fees $25.55

Page 1

STATE OF ILLINOIS, SUPREME COURT,

April Term, A. D. 1857.

Error to La Salle.

Edmund D. Taylor, Plaintiff in Error, *vs.* Churchill Coffing and John H. Coffing, Defendants in Error.

ABSTRACT OF THE RECORD.

RECORD.

Page 1. This was a bill in Chancery, filed by Churchill Coffing and John H. Coffing against Edmund D. Taylor, in the Circuit Court of La Salle County, on the 3d day of April, 1856.

Page 2. The bill sets forth that, on or about the month of December, 1847, Edmund D. Taylor, Isaac D. Harmon, and the orator, Churchill Coffing, entered into co-partnership for the purpose of carrying on mercantile and other business at Peru, Illinois. That written articles of co-partnership were drawn up and signed by Edmund D. Taylor, Isaac D. Harmon, and the orator, Churchill Coffing, respectively—and therein it was, among other things, stipulated and agreed that said Edmund D. Taylor had furnished $5,000, and the orator, Churchill Coffing, $10,000, which was the actual amount of capital invested in and furnished for said co-partnership; that said co-partnership should be conducted under the name of Isaac D. Harmon & Co.; that it should commence on the 1st day of January, 1848, and continue for the term of two years, unless dissolved by mutual

Page 3. consent; and that all profits and losses in said business should be divided and shared equally between said parties, as by a copy of said articles of agreement to said bill attached would more fully appear,—which copy is marked "Exhibit A."

That said Edmund D. Taylor and the orator, Churchill Coffing, did, on or about the 1st day of January, 1848, respectively contribute to the capital of said co-partnership the sums of money mentioned in said articles of agreement, and that the same were respectively credited to said parties upon the books of account of said firm.

That said Edmund D. Taylor and the orator, Churchill Coffing, after entering into said co-partnership, carried on the business of the same until the dissolution thereof as therein-after mentioned, during which time the said Isaac D. Harmon drew out of said firm divers sums of money, and divers goods, wares, and merchandizes for the purpose of erecting a warehouse for the orator, Churchill Coffing, which, together with the sums of money drawn from said firm in goods and otherwise by the orator, Churchill Coffing, amounted in the whole to nearly $18,000, and which sum, and the several items composing the same, were charged upon the books of account of said firm to the orator, Churchill Coffing.

That afterwards, on the 30th day of September, 1850, the said co-partnership was dissolved by consent, and the said Harmon withdrew from the business thereof; that no allowance was made to him for any profits of said firm, and no charges made against him for any losses thereof, and that the business of said firm was thereafter continued by Edmund D. Taylor and Churchill Coffing, without any further written agreement, un-

Page 4. til the 7th day of March, 1851, when a written agreement was made and

2

RECORD.

Page 11. unsettled and to be adjusted between said parties, and, when so settled and adjusted, the orators charge that the rents and profits of said premises so taken and received by the firm of Taylor & Coffing and said Edmund D. Taylor, have not only paid all arrearages due upon said mortgage and leaves a large balance, to wit, about $4000, which ought to be repaid by said Taylor to the orators.

Page 13. The oath of the defendant was waived, and the prayer of the bill is, that an account may be taken of the sums of money and of any property by the said Edmund D. Taylor; and the orator, Churchill Coffing, respectively contributed towards the capital funds or property of said firm; and of the rents, issues, and profits of said premises received by said firm and by the said Edmund D. Taylor and of and concerning the sums of money, and of any property withdrawn from said firm by the said Edmund D. Taylor and the orator, Churchill Coffing, respectively, and to them respectively charged in account; and that said Edmund D. Taylor may be decreed to pay to the orators the sum of money which may be found due from him upon such accounting; and that said Taylor may release to the orator, John H. Coffing, all his, the said Taylor's, interest in and to said premises, under and by virtue of the deed of conveyance to said firm of Taylor & Coffing, by such sufficient and proper release or conveyance as to the court should seem meet; and for other and further relief.

EXHIBIT A.

Articles of Co-partnership between E. D. Taylor, I. D. Harmon, and Churchill Coffing.

Page 14. *Whereas* E. D. Taylor, of Michigan City, Indiana, and Isaac D. Harmon and Churchill Coffing, of Peru, La Salle county, and state of Illinois, have entered into a co-partnership for the purpose of buying, selling, and dealing in foreign and domestic goods, wares, and merchandise, groceries, and produce, and for carrying on and doing a forwarding and commission business at Peru aforesaid, these articles, signed by the said parties, WITNESSETH:

First—That E. D. Taylor has furnished five thousand dollars and Churchill Coffing ten thousand dollars, which is the actual amount of capital invested and furnished for said co-partnership.

Second—That the co-partnership shall be conducted in the name of Isaac D. Harmon; that it shall commence on the 1st day of January, A. D. 1848; that it shall continue for the space of two years unless dissolved by mutual consent, and may be continued for a longer time, at the option of the partners.

Third—All profits and losses shall be divided and shared equally by the said co-partners between them.

Fourth—Isaac D. Harmon is to devote his whole time and attention to the business of the co-partnership. It is hereby agreed that he shall be entitled to one-third of the nett profits of the co-partner-

Page 15. ship. The said profits (except what he shall need for the support of himself and family) shall not be drawn from the co-partnership until the expiration of the time of the said co-partnership.

Fifth—Either or any of the partners shall have access to the books and papers belonging to the co-partnership at any time it shall be desired, and they shall be entitled to any and all information in regard to the business prospects and transactions of the co-partnership. It shall be the duty of Isaac D. Harmon, if required, at the end of each year to furnish to each partner a written statement of the actual condition of the co-partnership, the transactions in which it has been engaged, with a full amount of the receipts and expenditures of the co-partnership.

E. D. TAYLOR, [L. S.]
ISAAC D. HARMON, [L. S.]
CHURCHILL COFFING. [L. S.]

EXHIBIT B.

Page 4. The firm of Isaac D. Harmon & Co. was, by consent, dissolved on the 30th September, 1850. The undersigned, parties in said firm, continue the business under the name of Taylor & Coffing. The capital stock which Taylor & Coffing contributed shall be transferred to the new books, and represent the interest each has in firm of Taylor & Coffing, viz.: E. D. Taylor five thousand dollars, Churchill Coffing ten thousand dollars. The business to be continued for the purpose of paying off the debts of I. D. Harmon & Co., and reimbursing the capital aforesaid as long as they shall mutually think best, and the profits and losses of the business shared mutually by the undersigned.

Peru, Illinois, March 7, 1851.

E. D. TAYLOR,
CHURCHILL COFFING.

5126(10-51)

half of the stone warehouse in Peru, at the yearly rent of eight hundred dollars per annum, payable quarterly; and until the 30th of September 1850 or thereabouts, and I suppose until the 22d day of February 1851, the rents were duly accounted for to said Colling. After that I paid rents to Taylor & Colling as follows, as appears by entries upon my books July 6th 1853:

Rent to that date from February 22d, 1851, - - -	$355.54
Nov. 6th, 1851, rent to October 6th, - - - -	200.00
Feb. 9th, 1852, " " May 6th, 1852, - - - -	200.00
July 31st 1852, " " July 6th, 1852, - - - -	400.00
Nov. 4th 1852, " " Oct. 6th, 1852, - - - -	200.00

The above rents were paid to G. S. Taylor as the agent of Taylor & Colling; I paid the rents to Taylor & Colling from a general understanding that they were to be paid. Sometime in October last Mr. Colling called upon me and notified me that in future the rents were to be paid to him. I have not since paid any rents for the reason that E. D. Taylor demanded them as due to him as the successor of Taylor & Colling, and said Colling demanded them as due to him or his assigns, as the owner of the property and holder of the lease. I am of the opinion that the store occupied by G. S. Taylor at the time of his death, would have brought five hundred dollars per year in 1852, and would probably rent for six hundred dollars this year. I am acquainted with the signature of E. D. Taylor, and have seen him write, and believe the articles of copartnership now shown me between him, Churchill Colling and myself, were signed by him as they purport; and an
90 article of partnership between E. D. Taylor and Churchill Colling, now shown me, I think was also signed by him. The body of said writing and endorsement on back thereof, I should say was in the handwriting of Seth Paine, with whose writing I am familiar. This affidavit written by myself.

ISAAC D. HARMON.

Jurat dated May 17, 1853.

ISAAC D. HARMON & Co., PERU, JULY 1850.

Accounts due Firm.			
James Goddard,	$197 91	Hunt & Butler,	$260 88
C. L. Huntoon,	661 00	S. W. Hardin,	32 50
J. W. Schults,	146 00	James Cahill,	51 63
Holbrook & Underhill,	144 93	E. & A. Bishop,	72 84
I. B. Brooks	132 50	F. Sisson,	76 72
John Kellogg & Co.	125 13	L. Rumrill,	11 80
George Low,	98 13	John Swisher,	23 02
B. Loveland,	154 90	F. Kaiser,	18 50
J. L. McCormick,	172 85	John Licken,	17 23
M. Kline & Co.	74 34	Helm,	29 46
John Aukeney,	92 00	H. G. Loomis,	19 04
H. B. McKinney,	108 26	John Cornell,	59 70
I. W. Davis,	33 83	A. G. Bosley,	38 30
E. F. Emmerson & co.	29 50	M. Longworth,	21 66
Wilcox & Davis,	78 52	S. Fennin,	214 03
Colvin & Adle,	24 89	Jacob Beach,	20 00
King & Brothers,	80 65	I. T. Holbrook,	23 19
100 H. S. Beebe's say	200 00	Gale & Potwine	33 94
C. Caldwell,	366 71	Latshaw & Fowler,	85 26
Samuel Brant,	161 43	James Butark,	37 38
Adams & Pinkney,	92 21	I. P. Hartym,	42 06
B. Giroux,	4 19 49	Elgin Manufacturing co.	41 00
Hubbard & Hoyt,	28 15	S. A. Hubbard,	192 12
		H. Inman,	33 00
	$4647 77		
Brought forward,	$4647 77	John Miller,	$25 15
Wm. Paul,	251 09	Dr. Whitehead's estate,	95 36
F. Webster & co.	862 28	Abel Hoffman,	14 79
B. Birdsell,	51 52	P. K. Behrend,	72 00
Richard Lounsbury,	43 98	E. Winslow,	34 23
John Buchanan,	17 01	R. Mansley,	22 39
E. D. Taylor,	351 39	J. Seybold,	86 73
Wm. Chumasero,	113 61	D. Graham,	77 31
I. R. Merritt,	10 25	W. J. Mix,	81 53
Stewart & co.	110 69	James Campbell,	13 86
		Sundry accounts,	408 91
			$7822 61

The Bills receivable account nineteen thousand five hundred dollars ($19,500) with the exception of my and Brewster's joint notes, and canal boat notes, is much the same as last January. Little has been collected comparatively; some new notes have been taken to balance book accounts. All our property is as good as it was last January, and I think every way in a better condition.

ISAAC D. HARMON & Co. JULY, 1850.

101

Liabilities.		*Resources.*	
Bills payable.		Merchandise estimated	$8,500 00
Bill of Iron Bank due Aug. 9–12	$5000 00	Store Furniture,	625 75
" due in St. Louis. Aug. 18-21	4000 00	Flat Boat $100 Tel,	
" " " New York, Sept. 2–5	5000 00	Stock $150	$250 00
" " " St. Louis, " 4–7	3000 00	Canal Boats	3769 00
" " " " "11–14	3000 00	Manitowoc Store,	2300 00
" " at Iron Bank due "20–23	5000 00	Bills Receivable,	19500 00
" " at Chicago " Oct. 2	1025 00	C Colling's warehouse	
" " at New York " "14–17	5000 00	$15,396 95—less	
" " " " " Nov. 1–4	3000 00	Brewster's Bill	
		$5000,	10396 95
		C. Colling's	
		book account,	3577 61
	$34025 00	I. D. Harmon,	2958 53
Due for Goods in New York in		Real Estate,	4405 55
August and October,	2465 07	Book Accounts	7822 61
Due for groceries on account in		Cash items subject to	
St. Louis,	4000 00	draft in St. Louis	
Due on unsettled account on		and Chicago, Ad-	
pork, say	6000 00	sum &c.,	8898 62
Bills at Chicago and St. Louis,			
on Commissions account in			74604 61
Aug. Sept. and Oct. cash		Total liabilt's	53690 07
and property subject to draft		Deduct for cash items,	
to meet them,	7200 00		8898 62
	$53690 07		$44791 45
C. Colling's Stock,	10000 00	Out for	
E. D. Taylor	5000 00	Grains,	4500 00
Balance,	5914 54		
	$74604 61	About old debt,	$40291 45

Peru, July 1850.

Of the Bill Receivable Account, Day & Brother say	$8100 00
Notes secured by Brewster's endorsements,	6000 00
The others $5400 is about all in notes secured by absolute deeds of property or other security equally as good,	5400 00
	$19,500 00

102 Cash $8898.62; Book accounts $7822.61; Manitowoc store $2,300 00—$19021,23—will square off to within $1000 all our debt except Bank debt, leaving the debt $35,000, to pay which we shall have Day & Brother $8,100, merchandize $8,500, balance of Bills Receivable, $19,400, canal boats, real estate and all our other property, amounting to over $55,000, which seems to me will do it without much impairing capital, if we can only have time to bring it around. The nominal profits has been good on our business this year, but the expenses of business have yet to be deducted, and I presume we have not made much over expenses, interest, &c. The statement herewith is only approximation to the balance sheet, but is as near as can be arrived at without inventories &c., and near enough for all practical purposes.

I. D. H.

Properly Brewster's acceptance $5,000, credited to warehouse, should be added to our liabilities as it is one, but as it does not stand so on the books I deduct it from your warehouse account $5000, and that makes the statement right.

Jurat of I. D. Harmon, dated 17th May 1853, in which witness swears the above report was made to Churchill Colling, of the business and condition of the firm managed by him, and was made to said Colling on or about the 18th day of July 1850, and which statement witness believes to be substantially a correct statement of the affairs of said firm at that date, as therein stated.

ISAAC D. HARMON.

other way which would not tie up his property. I suggested various plans, and corresponded with Col. Taylor with a view to know if any plan could be adopted more satisfactory to Mr. Colling, and equally so to Col. Taylor. I think we received a letter from Col. Taylor, asking Mr. Colling and myself to meet him in Chicago. We did meet him there and this agreement last spoken of was cancelled (no record of the papers having been made) and another arrangement made, which was that Mr. Colling should draw on Theron D. Brewster for the amount of the debt, which had been ascertained to be on final settlement, eighteen thousand three hundred and forty dollars. He did draw on Theron D. Brewster for that amount which I believe Mr. Brewster accepted. [At this stage of the examination one of the counsel for the defendants came into court and desired to hear the interrogatory which had been propounded to the witness read, which was then reduced to writing for the first time by the master exactly as above set forth. The counsel for the defendants then objected to the interrogatory. The other counsel for the defendants were present in court when the question was propounded, made no objection, and the witness had proceeded thus far in his answer. The Court overruled the objection.] The following in-
112 terrogatory was then propounded by complainant's counsel: "State what* alteration if any, you now wish to make in your evidence as given by you?" [Objected to by defendant's counsel, and the objection was overruled by the Court and the defendant excepted.] Answer: Not any.

Interrogatory by complainant: Proceed with your answer if it be not finished. [Objected to by defendant, objection overruled by the Court and defendant excepted.]

Answer: At the time of the settlement and adjustment of the balance of this account, a conversation was had between Mr. Taylor and Colling as to the rate of interest that should be charged upon the account, Mr. Colling claiming that only six per cent. should be charged. It was in my hearing, Mr. Taylor claiming that he should allow ten per cent. on the account, as the money which had been raised to build the warehouse and which constituted the main item of the account, had been paid for by the firm at as high a rate as ten per cent. at least. Mr. Taylor finally consented to have the interest made up according to Mr. Colling's wish. Before the paper—which Mr. Brewster had accepted for Mr. Colling, which had been discounted for the benefit of the firm by the Marine Bank of Chicago or the Chicago Marine and Fire Insurance Company, at the request of Mr. Taylor—became due, Mr. Colling became anxious to make a different arrangement. He now wished to relieve Mr. Brewster from his position, and put his own property in lieu of Mr. Brewster's acceptance as security. This was the expressed wish of Mr. Colling to me personally. I was anxious to have any alteration made which Mr. Colling desired, and used my influence with Col. Taylor to that effect. Col. Taylor yielded to my desire for Mr. Colling's wish in every instance in reference to this debt, so far as the alteration of
113 any agreement* previously made was concerned. Col. Taylor strongly objected to making the last proposed change, alleging that Mr. Brewster was perfectly good, that the paper was in shape to be used in Bank, that the account of Mr. Colling had stood for a long time, that he had always been compelled to raise the money for the firm, and that Mr. Colling might as well do something as for him to do it all. He further urged that he had always opposed the drawing of so large a sum by Mr. Colling, and that it had greatly embarrassed the condition of the firm. He also urged that he did not wish to take a mortgage or security upon Peru property, as he could not raise the money upon it with the same facility that he could upon Mr. Brewster's paper. He also urged that he had changed the agreement so many times to accommodate Mr. Colling's wish, that he had no confidence that a subsequent arrangement would prove any more satisfactory. I urged upon him the difficulty that would devolve upon Mr. Colling in raising money to meet this Brewster's paper. I told him his facilities for raising money were such that he would not be as much embarrassed by raising the money on his own credit as he had all along done, and giving Mr. Colling the time which he required to turn his property and raise the money upon it, without too great a sacrifice as Mr. Colling would and therefore he ought to consent to do. it He finally consented, but stated that he would not take the same property without

examined in open court, reduced to writing by W. H. L. Wallace, Master in Chancery, by and under the direction of the Court.

Interrogatory propounded by complainant's counsel:—

State to the best of your recollection what you know, if anything, in relation to the affairs of Taylor & Colling for a short time previous to the dissolution of the firm, and all the facts connected with the dissolution which are relevant to this case so far as you know them. (Objected to by)

Seth Paine being sworn deposes* :—

Some time in the summer of 1850 I think I received a letter from Col. Taylor, requesting me to come to Michigan City. I went there and the next day Mr. Isaac D. Harmon came from Peru. Mr. Taylor had a statement of the affairs of the business of I. D. Harmon & Co., which I examined and told him I did not believe the assets there set down were worth over fifty cents to the dollar. The statement showed according to my recollection but a small balance of assets over liabilities, among which liabilities were included the capital stock of the two partners Taylor & Colling—and among the assets was a claim against Mr. Colling of some fifteen thousand or twenty thousand dollars. Mr. Harmon brought with him to Michigan City a mortgage or perhaps more than one with notes in blank as to amount, or as to time, which he said were executed by Mr. Colling for the purpose of raising money, to be credited to his account, to aid in discharge of the large liabilities of the firm. I understood these papers to be left with Col. Taylor for negotiation. I was then employed by Col. Taylor to go with Mr. Harmon to Peru to aid in extricating the concern from its embarrassments. Col. Taylor employed me on the part of the firm as a member
108 of the firm. We started to Peru* the next day and I immediately entered upon my duties as book keeper and general adviser with Mr. Harmon. I very soon discovered that my first estimate of the assets was none too low. I very soon discovered that their capital stock was entirely sunk, and that each would have to contribute from their private means to discharge the liabilities of the firm. I so informed them both. I was very intimate with Mr. Colling, and soon went into his family to board. I informed him of the condition of the different items of assets, and the circumstances connected with each. He felt very great embarrassment at the developments which I made to him from time to time; I talked with him repeatedly about his account, which I found from an examination of the books was something over twenty thousand dollars. He told me that he thought that Mr. Harmon had managed the business very badly, and seemed to be greatly rejoiced that I had come to look into the business. He said that he had built a warehouse with the money which he had drawn out. He said that the warehouse he thought could have been built cheaper than it was, and blamed Mr. Harmon in his individual capacity for the expenditure being so great—having left him as I understood him a partial supervision of its construction. He also stated that he considered the warehouse worth more than it cost, as it was rented by him partly to the firm and partly to John L. Coates for ten per cent. or more on its cost, and that he could lease it for more if he had not already leased it for a term of years. He offered to give me a deed of trust of all his property I think to secure the payment of this large indebtedness of himself to the firm, so as to make Col. Taylor
109 satisfied to still go on furnishing the large Bank facilities which he was then doing for the firm, to the amount of nearly $50,000, hoping that in due course of time the real estate belonging to the firm, might so advance in price, and hoping too that my estimate of the value of the other assets might turn out better than my judgment had given him reason to hope. Some time afterwards—I ought to (*state*) though before going on, shortly subsequent to my going there, I received a letter from Mr. Creigh; I will give the contents as near as I can. This is the letter, signed by Col. Taylor but written by Mr. Creigh. It bears date the 2d of September 1850; in that letter was this mortgage or mortgages, executed by Mr. Colling and wife and left by Mr. Harmon with Col. Taylor at Michigan City, asking me to put the mortgage on record. I think Mr. Colling received a letter at the same time also, written by Mr. Creigh and signed by Col. Taylor, stating the facts connected with the negotiation of the mortgage. Mr. Colling and myself had an immediate interview—when he stated that he could not meet the notes within that time six months, that he had not authorized Mr. Harmon to make any negotiations short of two or three years, and that it would be a snap on him to claim any such thing. I told him that he need give himself no uneasiness about it, as I would hold the mortgage deposited in the safe until I could write to Col. Taylor and get his answer; that I knew Col. Taylor too well to believe he would take any advantage of him, and if I thought he would when his answer came, I would not give him even the mortgages to be put on record. This satisfied Mr. Colling; in due time I received a letter from to Col. Taylor in answer to mine on the subject, in which he stated that he had made the negotiation to the best advantage

4

RECORD. three acres in the east half of the south-west quarter of section eight, in the same township; also, one hundred and sixty acres in the south-west quarter of section four, in the same township: said deed containing covenants of seisin and general warranty, and executed by the said Churchill Coffing on the 20th day of December, 1852, and acknowledged in Great Barrington, Berkshire county, Massachusetts, before Charles Emmerson, a notary public, and filed for record in La Salle county, state of Illinois, January 13th, 1853.

Page 24. On the 3d day of June, 1856, the defendant, Edmund D. Taylor, setting forth, that it is true that Isaac D. Harmon, the complainant, and the defendant, on or about the month of December, 1847, entered into a co-partnership in manner and form as stated in the bill; and that the capital stock named in the bill was paid in by the complainant and the defendant respectively as alleged in the bill; that the articles of co-partnership referred to in a copy is annexed to the bill, contains the terms of said co-partnership; that the said co-partners carried on the business of the same during its continuance, and that the same was dissolved on the 30th day of September, 1850. He denies the statements of the bill in manner
Page 25. and form as therein alleged that the said Isaac D. Harmon drew out of said firm moneys and goods, or either of them, to any amount whatever for the purpose of erecting a warehouse for the said complainant, Churchill Coffing; but the defendant alleges the facts to be that the complainant, Churchill Coffing, erected a warehouse upon his own land under the superintendence of one Theron D. Brewster, and without the knowledge or consent of the defendant, drew out the said firm of Isaac D. Harmon & Co. upwards of $21,000 in goods and money to pay for the same, whereby the resources of the said firm were materially lessened and its business greatly embarrassed.

He admits that, upon the withdrawal of the said Isaac D. Harmon upon the dissolution of the said firm of I. D. Harmon & Co., no allowance was made to the said Harmon for any profits of said firm, because, as the defendant alleges, no profits had been made by said firm on account of the withdrawal of the entire capital from said firm, and upwards of $6,000 in addition by Churchill Coffing as therein-before alleged, and for the further reason that the said firm had sustained heavy losses on pork and other articles of produce in which they dealt. He admits that no charge was made against the said Harmon upon the dissolution of said firm for
Page 26. any losses incurred during its continuance, because the said Harmon had contributed to said firm as his part of the capital nothing save his labor and personal services, and the whole of the assets of said firm were taken and appropriated by the defendant and Churchill Coffing, the successors of the firm of I. D. Harmon & Co. The defendant admits that Churchill Coffing and defendant continued in business at Peru as the successors of I. D. Harmon & Co., from the said 30th day of September, 1850, until April 27, 1852. He also admits that said business was continued by Churchill Coffing and the defendant until March 7, 1851, without any written agreement other than the agreement hereinbefore referred to between the said members composing the said firm of I. D. Harmon & Co.; and that, on the 7th day of March, 1851, the written agreement, a copy of which is set forth in the bill, was made and signed by Churchill Coffing and the defendant. The answer admits the execution of the deed
Page 27. from Churchill Coffing and wife to the firm of Taylor & Coffing, dated May 17, 1851, and that the buildings thereon were occupied at that time as is alleged in the bill. The answer also admits that Churchill Coffing and defendant, on the 17th day of May, 1851, executed a written defea-

12670-53

RECORD.

Page 27.

sance, under their respective hands and seals, a copy of which is attached to the bill. The answer alleges that, prior to the execution of the said several instruments, dated May 17, 1851, the firm of Taylor & Coffing settled with Churchill Coffing the accounts between said firm and the said Churchill Coffing, growing out of the use of the funds of the said firm by Churchill Coffing as herein-before stated, and upon such settlement a balance was found to be due by said Churchill Coffing to the said firm, of $18,340, the same mentioned in the defeasance aforesaid, and that the intent of said parties to the said written instruments of May 17, 1856, was to secure to the said firm the said balance so found to be due and owing by Churchill Coffing to the firm of Taylor & Coffing; and

Page 28.

that the legal and equitable effect of said instruments was a mortgage security in favor of Taylor & Coffing, upon the lands therein described, for $18,340.

The answer admits that the firm of Taylor & Coffing, on the 27th day of April, 1852, were possessed of a large amount of goods, chattels, and merchandize, had divers interests in real estate, and had large sums of money due to them, evidenced by claims, accounts, notes, books, and papers, and that said firm then owed and were liable for divers large debts and liabilities, and alleges that the assets of said firm of every kind and character whatsoever were insufficient, by prudent management, to meet the heavy liabilities of said firm; that the entire capital put into said firm by Churchill Coffing and the defendant was then sunk and entirely lost, and that the profits of the said firm during its continuance, and did not amount to as much as the losses sustained from time to time by said firm during its existence.

The answer admits that Churchill Coffing, on the 27th day of April, 1852, executed and delivered to the defendant the instrument of that date set forth in the bill; and that the defendant, on the same day, executed and delivered to Churchill Coffing the other instrument of that date set forth in the bill.

Page 29.

The answer also admits, that in pursuance of said written instruments, the property, assets, and franchises of said firm, Bank, and Plank Road Company were, on the 27th day of April, 1852, delivered by Churchill Coffing to the defendant, and that the defendant did, on that day, cause to be endorsed on said deed of May 17, 1851, a credit of $5,000, in manner and form as alleged in the bill.

The answer also admits, that from the 17th day of May, 1851, to April 27, 1852, the firm of Taylor & Coffing received and appropriated to their own use the rents, issues, and profits of the property described in said instruments, dated May 17, 1851, but the precise amount so received the defendant cannot state, and the defendant *most positively ~~claims~~ that Churchill Coffing was or is entitled to a credit on indebtedness to said firm of Taylor & Coffing, so secured* as aforesaid, of the said rents, issues, and profits. On the contrary thereof, the defendant alleges the fact to be, that, at the time of the execution of the said instruments of May 17, 1851, the said firm of Taylor & Coffing were indebted in a much larger sum than the said Churchill Coffing then owed said firm, for money borrowed by said firm to carry on their business, and upon which indebted-

Page 30.

ness the said firm to pay and were paying interest at and after the rate ten per cent. per annum, and that in consideration of this fact, and inasmuch as the said Churchill Coffing had, by withdrawing such large sums of money from said firm, and thus driven the said firm to the necessity of borrowing money, it was, on the 17th day of May, 1851, expressly

6

RECORD.

Page 30.

agreed and understood between the said Churchill Coffing and the firm of Taylor & Coffing, that the said firm should receive and appropriate the rents, issues, and profits of said mortgaged premises, in lieu of the interest upon the said indebtedness of Churchill Coffing to the said firm, and to reimburse such sums of money as might be expended by the said firm in the payment of taxes and insurance upon said property. And the defendant avers, that the said interest, taxes, and insurance were a fair equivalent for said rents, issues, and profits. The defendant further alleges, that independent of any express agreement to the effect hereinbefore stated, equity will imply an obligation on the part of Churchill Coffing to pay the same rate of interest upon his indebtedness to said firm, that the said firm were then paying upon the moneys so borrowed by them as aforesaid, and also to reimburse to said firm the amount paid by said firm for taxes and insurance upon said mortgaged property.

denies

Page 31.

The answer ~~claims~~ that the defendant received rents, issues, and profits to the amount of $4000, after April 27, 1852, and alleges that he collected the first quarter's rent due after said date, and would have collected the other rent from time to time as the same became due, but sometime in November, 1852, Churchill Coffing notified the tenants not to pay any more rent to the defendant, and that sometime prior to March 8, 1853, the complainant, John H. Coffing, commenced an action against Isaac D. Harmon, one of the tenants in possession of said mortgaged premises, in an action of covenant for rent then in arrear, and that in consequence of the actings and doings of the complainants, the defendant had been unable to collect but one quarter's rent since April 27, 1852, and that he is entitled to appropriate the same to his own use by virtue of the express agreement and equitable obligation aforesaid, and is not bound in equity to account for the same to any one. The answer admits that Churchill Coffing, by deed dated December 20, 1852, conveyed the parcels of land therein described to John H. Coffing, as alleged in the bill, and that the copy of the deed attached to the bill is a true copy.

The answer denies the allegation in the bill, that no settlement has ever taken place between Churchill Coffing and the defendant relative

Page 32.

to the capital by them respectively contributed to the firm of Taylor & Coffing, or relative to the sums of money drawn out of the firm by the said partners respectively, but the defendant states and alleges the facts to be, that said capital has been and was, on the 27th day of April, 1852, entirely sunk and lost and no longer remained a portion of the assets of said firm; that if such capital did then remain in being, or any part thereof, it passed to and vested in the defendant by virtue of the instrument executed and delivered by Churchill Coffing to the defendant, on the 27th day of April, 1852. That the defendant had paid, or secured to be paid, all of the debts due by the firm of Taylor & Coffing, on the 27th day of April, 1852, and that he had saved and kept Churchill Coffing harmless in the premises, and that in converting the assets and effects of the firm, the defendant necessarily sustained great losses. The answer denies that the defendant is bound to account or make any further settlement with Churchill Coffing in the premises, and insists that by virtue of the transactions between defendant and Churchill Coffing, on the 27th day of April, 1852, the defendant acquired the title to all of the property, assets, and effects of the firm of Taylor & Coffing including the stock of Coffing; and that by the assumption of the debts of said firm the partnership affairs were completely settled between Churchill Coffing and the defendant.

Page 33.

The answer denies that defendant is bound to render any account of

513678-54

7

RECORD. Page 33.

the rents and profits of the mortgaged premises, and insists that Churchill Coffing is not entitled to any allowance or credit therefor on his indebtedness.

The answer also denies that the mortgage has been extinguished or satisfied, and alleges that the same passed to the defendant by the instrument dated April 27, 1852, and that the only interest which either of the complainants have in the premises, is the right to redeem the same upon payment to defendant of the principal and interest due thereon, amounting to $13,340, with interest at ten per cent. per annum from the summer of 1852, and that the mortgage is a subsisting and valid lien for the security and payment of said sums.

The answer charges that John H. Coffing had full notice of all the equities of the defendant.

Replication filed June 7, 1856.

The deposition of Isaac C. Day, taken October 27, 1856, and filed November 11, 1856, who testified, that he was a merchant at Peru, Illinois. That he was acquinted with the parties and with the firm of Taylor & Coffing, who were doing business at Peru in October, 1850. The witness was doing a general merchandize and produce business with his brother, Fred'k L. Day, at Peru, under the firm of Day & Brother, during the year and until December 18, 1850. On the 18th day of December, 1851, Day & Brother sold out to Taylor & Coffing their entire stock of merchandize, which was taken possession of, together with the store formerly and at that time occupied by Day & Brother, and was situate on lot 11, in block 153, in Ninawa addition to Peru, on December 18, 1850, by Taylor & Coffing. We occupied under Churchill Coffing, and paid him rent up to December 18, 1850.

The deposition of William Paul, taken October 27, 1856, and filed November 11, 1856, who testified, that he resided in Peru, Ill.; that his business was that of merchandizing, and that he occupied a store situate on lots 10 and 11 in block 153, Ninawa addition to Peru, and continued in business at same place until January 12, 1856. That he originally rented the store from Churchill Coffing and paid the rent to him until May 17, 1851, and about that date Mr. Coffing directed me to pay rent to Taylor & Coffing until further instructed. I accordingly paid to Taylor & Coffing,

August 29, 1851,	$100.
November 17, 1851,	100.
February 17, 1852,	100.
August 20, 1852,	100.
July 19, 1853,	200.

I paid as rent for the store above mentioned to E. D. Taylor, $200, and on Oct. 6, 1853, $100, and on Jan'y 5th, 1854, 100, being one year's rent ending November 17, 1853. Taylor by himself, partners, and agents, occupied the store on lot 11, block 153, until about May 1, 1854.

The deposition of John L. Coates, taken October 27, 1856, and filed November 11, 1856, who testified, that he occupied the east part of the buildings at Peru known as Coffing's warehouse. That he rented it for five years from January 21, 1850, for the yearly rent of $800 per year, and so occupied it until Sept. 24, 1854. He paid his rent to C. Coffing until April, 1851, from that time until July, 1852, I paid to Taylor & Coffing. On the 22nd day of October, 1852, I paid rent to C. Coffing, and until April 21, 1853. The amounts paid to each of the parties are as follows: paid to

Taylor & Coffing,	July 21, 1851,	$200.
do	October 21, 1851,	200.
do	January 21, 1852,	200.
do	April 21, 1852,	200.
do	July 21, 1852,	200.

February 18, 1854, I paid to E. D. Taylor $600, in full for rent to January, 1854. I am acquainted with corner store on lot 11, block 153, formerly occupied by Taylor & Coffing, and was acquainted with the value of the rent of the same during the years 1851, 1852, and 1853. During the year 1851 it was worth $500; for the year 1852 it was worth $600; for the year 1853 it was worth $700.

February 19, 1857, ordered that the complainants have leave to use on the trial of this cause the depositions of Isaac D. Harmon, William Paul, and John L. Coates, which are on file in the office of the clerk of this court, in the case of Edmund D. Taylor *vs.* John H. Coffing, Churchill Coffing, and Asenath C. Coffing.

The deposition of Isaac D. Harmon:

Isaac D. Harmon being sworn, on his oath states, that on or about the first day of February, A. D. 1850, I entered into a written lease with C. Coffing, the same now shown me, for the west half of the stone warehouse in Peru, at the yearly rent of eight hundred dollars per annum, payable quarterly; and until the 30th September, 1850, or thereabouts, and I suppose until the 22d day of February, 1851, the rents were duly accounted for to said Coffing. After that I paid rents to Taylor & Coffing as follows, as appears by entries upon my books, July 6th, 1851:

Rent to that date from February 22d, 1851,	$355 54
Nov. 6th, 1851, rent to October 6th,	200 00
Feb. 9th, 1852, rent to May 6th, 1852,	200 00
July 31st, 1852, rent to July 6th, 1852,	400 00
Nov. 4th, 1852, rent to Oct. 6th, 1852,	200 00

The above rents were paid to G. S. Taylor as the agent of Taylor & Coffing; I paid the rents to Taylor & Coffing from a general understanding that they were to be paid. Some time in October last Mr. Coffing called upon me, and notified me that in future the rents were to be paid to him. I have not since paid any rents, for the reason that E. D. Taylor demanded them as due to him as the successor of Taylor & Coffing, and said Coffing demanded them as due to him or his assigns, as the owner of the property and holder of the lease. I am of the opinion that the store occupied by G. S. Taylor at the time of his death, would have brought five hundred dollars per year in 1852, and would probably rent for six hundred dollars this year. I am acquainted with the signature of E. D. Taylor, and have seen him write, and believe the articles of co-partnership now shown me between him, Churchill Coffing, and myself, were signed by him as they purport; and an article of partnership between E. D. Taylor and Churchill Coffing, now shown me, I think was also signed by him. The body of said writing and endorsement on back thereof, I should say was in the handwriting of Seth Paine, with whose writing I am familiar. This affidavit written by myself.

ISAAC D. HARMON.

Jurat dated May 17, 1853.

9

ISAAC D. HARMON & CO.—PERU, JULY, 1850.

Accounts due Firm.

James Goddard,	$197 91	John Cornell,	59 70
C. L. Huntoon,	661 00	A. G. Bosley,	38 30
I. W. Schults,	146 00	M. Longworth,	21 66
Holbrook & Underhill,	144 93	S. Fennin,	214 03
I. B. Brooks,	132 50	Jacob Beach,	20 00
John Kellogg & Co.,	125 13	I. T. Holbrook,	23 19
George Low,	98 13	Gale and Potwine,	33 94
B. Loveland,	154 90	Latshaw and Fowler,	85 26
J. L. McCormick,	172 85	James Butark,	37 38
M. Kline & Co.,	74 34	I. P. Hartym,	42 06
John Aukeney,	92 00	Elgin Manufacturing Company,	41 09
H. B. McKinney,	108 26	S. A. Hubbard,	192 12
I. W. Davis,	33 83	H. Inman,	33 00
E. F. Emmerson & Co.,	29 50	Wm. Paul,	251 09
Wilcox & Davis,	78 52	F. Webster & Co.,	862 28
Colvin & Adle,	24 89	B. Birdsell,	51 52
King & Brothers,	80 65	Richard Lounsbury,	43 98
H. S. Beebe, say	200 00	John Buchanan,	17 01
C. Caldwell,	366 71	E. D. Taylor,	351 39
Samuel Brant,	161 43	Wm. Chumasero,	113 61
Adams and Pinkney,	92 21	I. R. Merritt,	10 25
B. Giroux,	419 49	John Miller,	25 15
Hubbard und Hoyt,	28 15	Dr. Whitehead's Estate,	95 36
Hunt and Butler,	260 88	Abel Hoffman,	14 79
S. H. Hardin,	32 50	P. K. Behrend,	72 00
James Cahill,	51 63	E. Winslow,	34 23
E. and A. Bishop,	72 84	R. Mansley,	22 39
F. Sisson,	76 72	J. Seybold,	86 73
L. Rumrill,	11 80	D. Graham,	77 31
John Swisher,	23 02	W. J. Mix,	81 53
F. Kaiser,	18 50	Stewart & Co.,	110 69
John Licken,	17 23	James Campbell,	13 80
Helm,	29 46	Sundry Accounts,	408 91
H. G. Loomis,	19 04		$7,822 61

The bills receivable account, nineteen thousand five hundred dollars, ($19,500,) with the exception of my and Brewster's joint notes and canal boat notes, is much the same as last January. Little has been collected comparatively; some new notes have been taken to balance book accounts. All our property is as good as it was last January, and I think every way in a better condition.

ISAAC D. HARMON & CO.—JULY, 1850.

Liabilities.		*Resources.*	
Bills payable:		Merchandise estimated	$8,500 00
Bill of Iron Bank, due Aug. 9–12,	$5,000 00	Store Furniture,	625 00
" due in St. Louis Aug. 18–21,	4,000 00	Flat boat, $100; telegraph stock, $150,	250 00
" " New York Sept. 2–5,	5,000 00	Canal boats,	3,769 00
" " St. Louis Sept. 4–7,	3,000 00	Manitowoc store,	2,300 00
" " St. Louis Sept. 11–14,	3,000 00	Bills receivable,	19,500 00
" " at Iron Bank Sept 20–23,	5,000 00	C. Coffing's warehouse, $15,396.95, less Brewster's bill, $5000,	10,396 95
" " at Chicago Oct. 2,	1,025 00	C. Coffing's book account,	3,577 61
" " at New York Oct. 14–17,	5,000 00	I. D. Harmon,	2,958 53
" " at New York Nov. 1–4,	3,000 00	Real Estate,	4,405 55
	$34,025 00	Proceeds of sales of Peru lots,	1,600 00
Due for goods in New York in August and October,	$2,465 07	Book accounts,	7,822 61
Due for groceries on account in St. Louis,	4,000 00	Cash items subject to draft in St. Louis and Chicago, Adsum, &c.,	8,898 62
Due on unsettled account on pork, say	6,000 00		$74,604 61
Bills at Chicago and St. Louis on commissions account in Aug., Sept., and and Oct., cash and property subject to draft to meet them,	7,200 00		
	$53,690 07		
C. Coffing's stock,	10,000 00		
E. D. Taylor's stock,	5,000 00		
Balance,	5,914 54		
Peru, July, 1850.	$74,604 61		

Total liabilities,		$53,690 07
Deduct for cash items,		8,898 62
		$44,791 45
Out for grains,		4,500 00
About old debt,		$40,291 45

12670-58

10

Of the Bills Receivable Account, Day and Brother, say	$8,100 00
Notes secured by Brewster's endorsements,	6,000 00
The others, $5,400, is about all in notes secured by absolute deeds of property or other security equally as good,	5,400 00
	$19,500 00

Cash $8,898.62, book accounts $7,822.61, Manitowoc store $2,300—$19,021.23, will square off to within $1000 all our debt except bank debt, leaving the debt $35,000, to pay which we shall have Day and Brother $8,100, merchandize $8,500, balance of Bills Receivable $11,400, canal boats, real estate, and all our other property, amounting to over $55,000, which seems to me will do it without much impairing capital, if we can only have time to bring it around. The nominal profits has been good on our business this year, but the expenses of business have yet to be deducted, and I presume we have not made much over expenses, interest, &c. The statement herewith is only approximation to the balance sheet, but is as near as can be arrived at without inventories, &c., and near enough for all practical purposes. I. D. H.

Properly Brewster's acceptance, $5,000, credited to warehouse, should be added to our liabilities, as it is one; but as it does not stand so on the books, I deduct it from your warehouse account, $5000, and that makes the statement right.

Jurat of I. D. Harmon, dated 17th May, 1853, in which witness swears the above report was made to Churchill Coffing, of the business and condition of the firm managed by him, and was made to said Coffing on or about the 18th day of July, 1850, and which statement witness believes to be substantially a correct statement of the affairs of said firm at that date, as therein stated. ISAAC D. HARMON.

The deposition of *Isaac D. Harmon*, who testified,—

I paid to E. D. Taylor, or his agents, six hundred dollars, I think in August or September, 1853, as rent for the stone warehouse occupied by me since giving my former affidavit in this case. I also paid to the same parties $200 in October or November, 1853, and $200 in January, 1854.

2d Interrogatory—Have you a duplicate of the lease from Coffing to yourself of that part of the warehouse occupied by you, dated February 1st, 1850, on file as an exhibit in this cause and now shown you, and if you have such duplicate will you please present it and give copies of any endorsements upon it that are not upon the one filed as an exhibit.

(Objected to and witness permitted to answer subject to objection.)

Ans.—I have my duplicate of the original lease and now produce it; there are upon it the following endorsements, which are not upon the one filed as an exhibit.

PERU, Sept. 30th, 1850.

I hereby assign all my right, title, and interest in the within lease to Messrs. Taylor & Coffing, they assuming and releasing me from all obligations or liabilities attending it from and after this date, having received from them a valuable consideration from them for so doing, to my full satisfaction. ISAAC D. HARMON. [L. S.]

Witness, WILLIAM ANGER.

Cancelled by Agreement,

TAYLOR & COFFING,
ISAAC D. HARMON.

By agreement of parties hereto, the above assignment is cancelled and the parties are placed as they stood prior to the above assignment, this arrangement having been made by agreement of the undersigned.

TAYLOR & COFFING,
ISAAC D. HARMON.

This should have been dated on or about July the 6th, 1851.

I. D. H.

The 1st assignment was made on the 30th September, 1850. The second one was made in July, 1851, the exact date I do not recollect.—

12670-57

They were both made by Mr. Coffing and myself. They were both made in the presence of the complainant, I believe; the last one certainly, I think both. The premises were occupied by Taylor & Coffing from the time I assigned the lease until February following.

The paper now shown me, dated 30th May, 1849, purporting to be a contract between Churchill Coffing and John Giroux marked "Q," and filed in this case, is in the handwriting of Benjamin Giroux, and the signatures in handwriting of said Giroux and Churchill Coffing. I suppose it to be the contract between Coffing and Giroux for building the warehouse, but do not know Benjamin Giroux was the son of John Giroux, in the employment of Isaac D. Harmon & Co., and acted as his father's agent.

Cross-examination by complainant:

I should value the property on the 20th day of December, 1852, as follows: The first 8 lots in block 55 at $300 each—$2,400. Lot 7 in block 35 at $150; the east five feet of lot 10 and lot eleven, block 153, except so much of lot eleven as was occupied by the office of the Illinois River Bank, with the buildings, were worth $12,000. The stone warehouse and lots on which it stands were worth $18,000. The west 6 acres of 10 acre lot 2, and east 5 acres of 10 acre lot 3, section 16, were worth $3,300; the 73 acres in the east half of the south-west quarter section 8, were worth $25 per acre—$1,825; the one hundred and six acres in the south-west quarter of section 4, were worth about ten dollars per acre—$1,060.

The deposition of *Isaac D. Harmon*, who testified,—

Age 39 years; residence Peru, Illinois, has resided there nine years; has known Taylor over 15 years; Churchill Coffing some 8 or 9 years; during my acquaintance with Churchill Coffing he has resided at Peru; the first four years he was engaged in the practice of the law, after which he became a partner with Taylor and myself; complainant resided in Michigan City from January, 1847, to the year 1852. Witness and complainant were engaged in mercantile business in Peru something over a year, immediately preceding co-partnership of Taylor, Coffing & Harmon; up to that time complainant had furished his credit to Taylor & Harmon, and something had been made in the business; witness considered the business of I. D. Harmon & Co. was a continuation of the former business. To the best of witness's recollection he never made any positive agreement to build a warehouse upon lot 3 and a part of lot 2 in canal subdivision for Churchill Coffing—but witness did agree, or it was understood between Coffing and witness, complainant assenting, that the firm of I. D. Harmon & Co. should advance funds for such purpose.—Witness does not think that in the year 1848 and 1849, he had any direct authority to make an agreement for complainant, or for complainant and witness, for building a warehouse for Coffing at Peru; but there was a general understanding that there might be a certain amount of funds drawn from the firm for that purpose, and charged to Churchill Coffing. Witness was not, to his recollection, authorised by complainant to make an agreement with Coffing to dissolve the firm and buy Coffing's interest. If any contract for building a warehouse, Coffing made it. Giroux was the builder; the contract was made and building begun spring of 1849, (perhaps June,) completed about February, 1850. Giroux had the supervision of the building as it progressed for some time, then Brewster and witness, together with Kilduff (employed by Brewster) superin-

They were both made by Mr. Coffing and myself. They were both made in the presence of the complainant, I believe; the last one certainly, I think both. The premises were occupied by Taylor & Coffing from the time I assigned the lease until February following.

The paper now shown me, dated 30th May, 1849, purporting to be a contract between Churchill Coffing and John Giroux marked "Q," and filed in this case, is in the handwriting of Benjamin Giroux, and the signatures in handwriting of said Giroux and Churchill Coffing. I suppose it to be the contract between Coffing and Giroux for building the warehouse, but do not know Benjamin Giroux was the son of John Giroux, in the employment of Isaac D. Harmon & Co., and acted as his father's agent.

Cross-examination by complainant:

I should value the property on the 20th day of December, 1852, as follows: The first 8 lots in block 55 at $300 each—$2,400. Lot 7 in block 35 at $150; the east five feet of lot 10 and lot eleven, block 153, except so much of lot eleven as was occupied by the office of the Illinois River Bank, with the buildings, were worth $12,000. The stone warehouse and lots on which it stands were worth $18,000. The west 6 acres of 10 acre lot 2, and east 5 acres of 10 acre lot 3, section 16, were worth $3,300; the 73 acres in the east half of the south-west quarter section 8, were worth $25 per acre—$1,825; the one hundred and six acres in the south-west quarter of section 4, were worth about ten dollars per acre—$1,060.

The deposition of *Isaac D. Harmon*, who testified,—

Age 39 years; residence Peru, Illinois, has resided there nine years; has known Taylor over 15 years; Churchill Coffing some 8 or 9 years; during my acquaintance with Churchill Coffing he has resided at Peru; the first four years he was engaged in the practice of the law, after which he became a partner with Taylor and myself; complainant resided in Michigan City from January, 1847, to the year 1852. Witness and complainant were engaged in mercantile business in Peru something over a year, immediately preceding co-partnership of Taylor, Coffing & Harmon; up to that time complainant had furished his credit to Taylor & Harmon, and something had been made in the business; witness considered the business of I. D. Harmon & Co. was a continuation of the former business. To the best of witness's recollection he never made any positive agreement to build a warehouse upon lot 3 and a part of lot 2 in canal subdivision for Churchill Coffing—but witness did agree, or it was understood between Coffing and witness, complainant assenting, that the firm of I. D. Harmon & Co. should advance funds for such purpose.—Witness does not think that in the year 1848 and 1849, he had any direct authority to make an agreement for complainant, or for complainant and witness, for building a warehouse for Coffing at Peru; but there was a general understanding that there might be a certain amount of funds drawn from the firm for that purpose, and charged to Churchill Coffing. Witness was not, to his recollection, authorised by complainant to make an agreement with Coffing to dissolve the firm and buy Coffing's interest. If any contract for building a warehouse, Coffing made it. Giroux was the builder; the contract was made and building begun spring of 1849, (perhaps June,) completed about February, 1850. Giroux had the supervision of the building as it progressed for some time, then Brewster and witness, together with Kilduff (employed by Brewster) superin-

tended the building. Witness never considered that he had authority to superintend the building, or sufficient to control the contractor. There was a change made in the plan during the construction, to make the superstructure of stone instead of wood; this change was directed by Brewster, Coffing's brother-in-law; don't know that Brewster had any particular connection with Coffing in business. He had endorsed and accepted a great deal of the paper of I. D. Harmon & Co., and had drawn some. Complainant at first agreed that funds to the amount of $4000 should be furnished by the firm towards building the warehouse. Witness's understanding was that he was to advance $4,000 in goods out of the store. Coffing could have had, if he had chosen, free access to the books while the copartnership existed. He never did examine them.

I think his account was from time to time made out for him, at his request. Benjamin Giroux kept the books—witness supposes correctly.—Witness was not of his own knowledge, acquainted with the affairs of Taylor & Coffing on 27th February, 1852. When witness left concern on 30th September, 1850, the accounts with Coffing were correctly kept so far as witness knew, intended, or controlled it. Coffing always contended a larger amount was expended on account of warehouse than ought to have been.

On cross-examination witness stated:

I conducted the business of the original firm of myself and complainant. Complainant was satisfied with my manner of doing it, I believe.—When Coffing went into the partnership, the new firm started on its own account, but continued the old business. The same store was taken, and the business continued right on. An inventory of the goods and property was taken at the time—the debts standing against the old firm were charged over to the new firm, and the balance was credited to Col. Taylor and overpaid his stock account. Coffing's capital was put in in money. The inventory included the goods (put in at cost price including a percentage covering transportation,) and I think the debts due the old firm, but of this I will not be positive. Some of the goods were new the fall previous, and some of them had been brought up from Springfield, consigned to me by Col. Taylor.

Taylor did not immediately draw out in money the balance of the goods over the amount of his capital stock, but witness thinks that he did after awhile. Witness thinks that the old stock was worth as much to the new firm as the same amount in money would have been, considering in that connection the money facilities that Taylor agreed to furnish the new firm; apart from that consideration it was not worth so much as money. Witness does not recollect that there was anything said about the use of Coffing's greater amount of capital being balanced by moneyed facilities to be furnished by Taylor. It would undoubtedly go towards balancing it.—Witness's impression is that less than $200, (of a lot of said old stock of goods, sold afterwards to John Morris,) was sold to Morris at a sacrifice of fifty cents on the dollar—the balance of that sale to him was about at New York cost. Witness cannot say but half the bill was sold at that sacrifice, does not think it was. His recollection is very indistinct about the whole transaction. Thinks it very likely that the whole project of building a warehouse originated in the express wish of witness to have a warehouse for the use of the firm. Witness used his influence to have one built. There were frequent conversations between Coffing and witness about building a warehouse, estimating cost near $7,500; but witness never considered he made any positive bargain hatt a warehouse of

that cost should be built; the firm advancing $6,000 and Coffing $1,500, and that Coffing should retire from the firm with such advances toward the warehouse. I may have expressed my willingness to assent to some similar proposition, and do not know but Coffing might have made a contract with Giroux upon that supposition. It was the understanding with witness that the payments to Giroux on his contract should be made by or through the firm. Coffing soon after making the contract with Giroux, and having an understanding with witness for payment by the firm, left for New England and remained absent during the summer until late in the fall. Witness is not certain at what time the plan of the warehouse was changed, but thinks it was about the 1st of August. I think I telegraphed to Coffing asking whether a change should be made; think I wrote after the change was made; do not think I advised him of increased expense, (considering that Brewster's business,) think I did not advise him what the change was. I saw Coffing in September, 1849, in Connecticut, and advised him in general about the building and the change of plan, and the amount expended, but do not now remember what the amount then was. Do not know that Taylor from time to time assented or dissented directly to the expenditure by the firm for the warehouse, but supposed it was with his consent. I believe complainant knew from time to time through me and other persons. My recollection is indistinct about writing to him on that subject; I did write to him frequently on the business of the firm; the expenditure for the warehouse was more than twice the amount contemplated by Coffing and myself in the spring. I knew of the two mortgages and of the two notes now exhibited to me, at the time of their execution. The mortgages were executed by Churchill Coffing and Asenath Coffing, and the note by Churchill Coffing, (they were executed at Peru, with the exception of the mortgagee's name and place of residence and the time and amounts in the notes, which I suppose was done in Michigan City.) They were taken by me to Michigan City to raise money for the firm, with the understanding with Coffing that they should be filled out at three years' time; but being unable to raise money on them I consented to their being filled up on less time.—The consideration was $10,000, which Coffing consented to raise for the firm on account of his large indebtedness to the concern. They were delivered by me to Taylor at Michigan City at Coffing's request. I do not think I was present when the mortgagee's name and the time and amount of notes were inserted in the mortgages, and when the times and amounts were inserted in the notes. These insertions had not been made in the notes and mortgages when I delivered them to Taylor in Michigan City. At the time when I delivered the mortgages and notes to Taylor I had not advised Coffing that the amounts and times were to be inserted in said mortgages and notes differently from what was originally contemplated, for the reason that I did not know the time—(I was informed that it could not be had on three year's time,) I had no express direction or consent from Coffing to make that variation from the original understanding.

Coffing took no active part in conducting the business of the firm while I was in it.

Direct examination resumed:—

At the time said notes and mortgages were handed me by Coffing, I believe he owed the firm about $18,000. The debt stood in an account current on the books unsecured. It had been accumulating and had stood for one year. Only a small portion of it had accumulated during the four

months then last past. At this time the Bank indebtedness of the firm was about $40,000. I believe none of its paper had over four months to run. I think that one-third of it was then due or to fall due within thirty days. The reason why the times in the notes and mortgages were left blank was, because it was necessary to raise the money, and Coffing did not know on what time it could be raised, but consented it should be on three years' time. I thought, under the circumstances, that I would be authorized to borrow the money on a less time, if I could not get it on three years' time. The amount he authorized me to borrow on the papers was $10,000. I suppose the amount actually borrowed was ten thousand dollars. I authorized the insertion of the amounts as they were actually inserted—*and authorized the insertion of the time without any specified length of time. I think I left the concern before I knew the time.*

I probably was informed before I left the notes and mortgages at Michigan City, that it was probable the money could not be borrowed on a longer time than six months. It was the understanding that the time should not be less than six months. I suppose the money borrowed on these mortgages was used to take up the bank paper; do not know how it was entered on the books. While the partnership of Harmon & Co. subsisted, I believe I did frequently converse and correspond with Coffing respecting the general condition and outline of the firm business.—The complainant did not take any part whatever in managing the details of the firm business—except in providing money and making arrangements for the payment of debts. He never to my knowledge did examine on the books of the concern, all the items of any account. I considered that the expenditures upon the warehouse were made by the agents or friends of Mr. Coffing—and that the only part which the firm of I. D. Harmon & Co. took in those expenditures, as a firm, was to pay the bills sent on by those friends or agents, and the person acting under their direction. I suppose that Coffing, before the formation of the partnership, fully understood how the capital stock of the complainant was to be furnished; and that the goods referred to were to be estimated at cost and carriage—he consented to it.

I made the statement of I. D. Harmon & Co. of July 1850, referred to in one of my affidavits *without* taking inventory, estimating the property and debts at their nominal value as they stood upon the books. In regard to the expense account, I cannot say whether I estimated it right or not. I think the wheat account was not considered—the statement was only an approximation. I think the loss on wheat that year—I am not certain as to the date—was about $5,000. I think it was bought the winter before.

Interrogatory 24th—by complainant:—

Taking the statement referred to as accurate and correct, considering also the heavy debts of the concern, and particularly the bills payable, set down $34,035 the largest one of which to run, was to become due on the 1st of November—then next, considering that more than $19,000 of the debts due the concern was entirely unavailable, and a long time past due, considering the small amounts and low condition of the stock of goods, *do you think that any intelligent and business man would have taken the business and assets and assumed the liabilities, and refund the capital stock without making a deduction of fully* 33 1-3 *per cent. upon the estimated value of all the assets?*"

Answer—Taking the concern in the situation that question implies—I do not know that they would!

15

I do not know but consider it probable that (if complainant had died—or suddenly lost his means and his credit—and the creditors of the firm had enforced the collection of the demands as soon as due) all the assets of the firm would have proved insufficient to pay its liabilities—and Mr. Coffing would have lost not only his capital stock but a large amount besides.

Cross-examination resumed:—

I presume I did inform Taylor before the amounts and terms were inserted in the mortgage and notes, that Coffing expected or desired that the time should not be less than three years; that is my impression.—From my knowledge of the business, assets, resources and credit, at the time of my report in July, 1850, I considered it (and do now) as correct an approximation to a state of the concern as could be made without taking an inventory and making a balance sheet. I do not know that Coffing knew, at the time he entered the partnership, that the goods were not worth the price at which they were inventoried; or that he was acquainted with the value of such property. Examined by complainant.

When I first proposed to Taylor to admit Coffing into the concern, he expressed a reluctance to do so. I do not know whether the terms were mentioned or not. ISAAC D. HARMON.

Jurat dated 20th of May, 1853.

The deposition of *William Paul*, who testified,—

That on the first day of February, 1847, he commenced occupying the west half of the stone block situate on lots 10 and 11, block 153, Ninawa Addition to Peru, as tenant to Churchill Coffing; that for the next two years he paid rent to Coffing, $350 per annum. That February 1st, 1849, the annual rent was changed to $400; that he paid rent to Coffing at that rate till 17th of May, 1851. About that date he directed me until further instructed, to pay rents to Taylor & Coffing. I accordingly did pay to Taylor & Coffing,—

On 29th Aug., 1851, $100.
On 17th Nov., 1851. 100.
On 17th Feb., 1852, 100.
On 20th Aug., 1852, 100.

Which were received by Granville S. Taylor, as agent for Taylor & Coffing. A short time before the 17th of Nov., 1852, Coffing told me that from that day the rents were due and coming to him. On that day I paid him the amount then due, $100; since then I have paid no rents to either party, having learned that E. D. Taylor claimed the rent. I consider the rent of the east store, occupied by G. S. Taylor at his death, and E. D. Taylor, his survivor, worth $50 per annum more than the store I occupy.

Jurat 17th May, 1853.

Since the previous affidavit I made in the case, I paid to E. D. Taylor, on the 19th day of July, 1853, as rent for the store mentioned in that affidavit, $200. On the 6th day of October, 1853, I paid to said Taylor $100, and on the 5th day of January, 1854, I paid to said Taylor $100, being one year's rent, ending Nov. 17, 1853.

Cross-examination by complainant:—

The value of the east five feet of ten and lot eleven, excepting so much of lot eleven as was occupied by the office of the Illinois River Bank, was worth eleven thousand dollars, if that amount I estimate the

16

stone stores at ten thousand dollars. The stone warehouse and the lots on which it stands were worth, on the 20th day of December, A. D. 1852, sixteen thousand dollars. This is all of said property that I can fix a valuation upon.

The deposition of *John L. Coates*, who testified,—

That he is a tenant in the east part of stone warehouse of Coffing, in Peru. Holds a lease from Coffing, dated January 1st, 1850, at annual rent of $800. Always settled rent with Coffing until after quarter's rent due April, 1851, when Coffing called upon me and said, that for the present, and until he (Coffing) should let me know, I should pay my rent as it accrued to G. S. Taylor, agent for the firm of Taylor & Coffing.

From that time I paid to Granville S. Taylor, or clerks under his charge, as follows:

Quarter's	rent	due	21st	July,	1851,	$200.
"	"	"	"	Oct.,	1851,	200.
"	"	"	"	Jan.,	1852,	200.
"	"	"	"	April,	1852,	200.
"	"	"	"	July,	1852,	200.

During the following month of September Coffing called on me and required all rents falling due thereafter to be paid to him.

Upon 21st October I paid to C. Coffing $200 for my rent due that day. I have since paid Coffing on my account with him rents due January 21st, 1853—also rents due April 21st, 1853, $200 each. During the summer and fall of 1851, Granville S. Taylor announced himself as successor of Taylor & Coffing, and continued the general business in manner and place as formerly by Taylor & Coffing—(in the corner stone store of Coffing,) until his death, Decembar, 1852, when E. D. Taylor took possession of same stock and store as surviving partner of G. S. Taylor. The rent of said store was worth for the year 1851, $500; the year 1852, $600; the year 1853, $700.

Jurat 17, May 1853.

On the 24th day of February, 1857, a decree was entered for the complainants, as follows:

That the agreement between the defendant and the complainant, Churchill Coffing, bearing date the 27th day of April, 1852, in the bill set forth did not operate to pass to the defendant the indebtedness mentioned in the deed of defeasance, bearing date the 17th day of May, 1851, in said bill set out. That an account be taken of all sums of money and of any and all property by the defendant and the said Churchill Coffing, respectively contributed towards the capital funds or property of the firms of Isaac D. Harmon & Co. and Taylor & Coffing, and of all sums of money and of all property withdrawn from said firms by Churchill Coffing and the defendant, and which should be to them respectively charged in account; and also that an account be taken of the rents, issues, and profits of the mortgaged premises described in said bill, received by the said firm of Taylor & Coffing up to the time of the dissolution of said firm on the 27th day of April, 1852; and of the rents, issues, and profits of said mortgaged premises received by the defendant after the said 27th day of April, 1852, up to the 20th day of December, 1852, and after the said 20th day of December, 1852, when the premises were conveyed by Churchill Coffing to John H. Coffing.

17

And the said account being now taken and stated by the Court here, it appears to the Court that Churchill Coffing contributed to the capital of said firms the sum of $10,000.

That said Churchill Coffing contributed to the property of said firm, in the conveyance of his interest in the Illinois River Bank Charter and Banking House, and Salisbury Plank Road Company, which was endorsed on the deed, dated May 17, 1851, $5,000 00

That Churchill Coffing contributed to the funds and property of said firms the rent of the store occupied from Dec. 20, 1850, to April 27, 1852, at $500 per annum, 594 46

That Churchill Coffing contributed rents on said mortgaged premises prior to April 27, 1852, paid by John L. Coates, William Paul, and Isaac D. Harmon, 1,855 54

Making in the whole contributed by Churchill Coffing, $17,450 00

That Churchill Coffing has withdrawn from said firms, which should be charged to him in account, and which is the same specified in the defeasance, dated May 17, 1851, set out in the bill, $18,340 00

That defendant has contributed to the capital of said firms the sum of 5,000 00

That defendant has withdrawn from said firms, by taking Churchill Coffing's interest in the Illinois River Bank Charter and Banking House, and the Salisbury Plank Road Company, 5,000 00

That on the 27th day of April, 1852, there was due and unpaid upon the mortgage mentioned in the bill, $890.00, to which sum the said Churchill Coffing and the said defendant were equally entitled; and that the said Churchill Coffing was, on the 27th day of April, 1852, indebted to the said defendant in the sum of $445.00 upon the account between them as partners.

That the defendant has received of the rents, issues, and profits of said premises accruing since April 27, 1852, and prior to December 20, 1852, $1,024 66

That the defendant has received of the rents, issues, and profits of said premises, accruing since December 20, 1852, 2,953 10

And it appearing to said court from said account so taken and stated as aforesaid, that said mortgage indebtedness was, on the 20th day of December, 1852, overpaid by the sum of $579,66, and that that sum ought to be repaid by the defendant to Churchill Coffing; and it further appearing to the court that the defendant has received and had since the 20th day of December, 1852, the sum of $2,953.10 from the rents, issues, and profits of said mortgaged premises which ought to be repaid by the defendant to John H. Coffing: It is ordered, adjudged and decreed that the defendant do release to the said John H. Coffing all his, the said defendant's, right, title, claim, or interest in and to the premises described in said bill of complaint, under and by virtue of said deed dated May 17, 1851, in said bill set forth, within ten days from and after the date of this decree; and that in default thereof such release be executed by William H. L. Wallace, who is hereby specially appointed a commissioner for that purpose. And it is further ordered, adjudged, and decreed by the court,

18

that the said defendant pay to the said complainants within ten days after the date of this decree the sum of $3532,76, and that in default thereof that the said complainants have execution therefor; and it is further ordered, adjudged, and decreed, that the complainants have and recover their costs and charges in and about this expended, and that they have execution therefor.

The defendant Edmund D. Taylor, brings the case to this court by writ of error, and assigns for error,

1st. That the decree is against the law and the evidence.

2d. The usual general assignment.

N. H. PURPLE,
R. S. BLACKWELL.

~~172~~ 76

Edmund Taylor

vs

John H. Coffing et al.

Filed May 21 1857

Petition for
Injunction

1717

this the said defendant may to the said complainants within ten days after the date of this decree the sum of $2338.75 and that default thereof that the said complainants have execution therefor; and it is further ordered, adjudged, and decreed, that the complainants have and recover their costs and charges in and about this expended, and that they have execution therefor.

The defendant Edmund D. Taylor, having the case to this court by writ of error, and assigns for error,

1st. That the decree is against the law and the evidence.

2d. The usual general assignment.

M. H. TOURTELLOTTE,

U. S. DISTRICT ATT'Y.

Chicago 17 Sept 57

L. Leland Esq

Dr Sir

Enclosed find all the licenses I have. Recollect not to use my name longer than 30th inst – and then proceed with them in the names of Judge Eaton as Ch. Justice

I send Case of Taylor v Hopkins read the record to Judge Eaton to examine the opinion – and he will direct whether you copy on the record – the figuring out can be for results –

Yours truly

W. B. Scates

L. Leland Esq

Ottawa Ill

STATE OF ILLINOIS, SUPREME COURT,

APRIL TERM, A. D. 1857.

EDMUND D. TAYLOR *vs.* CHURCHILL COFFING AND JOHN H. COFFING.

ARGUMENT.

THE abstract in this case contains a full statement of the bill, answers, and evidence.

The points made by the plaintiff are,

1st. That the assignment by Coffing to Taylor passed the entire interest in the firm effects to Taylor.

We insist that this is the only sensible construction the contract, taken as a whole, will bear.

That the debt having so passed by the assignment, the mortgage given to secure the same, and which is only an incident to the debt, passed with it; and that the debt having long since become due, he is entitled to foreclose the mortgage and thereby collect the debt.

The assignment is a deed, and liable, like all other deeds, to the fixed rules of construction applicable to all.

One of these rules is, that in cases of doubt, or of a patent ambiguity upon the face of a deed, and the same cannot, by the rules of law, be explained by parol, the same shall be taken and construed most strongly against the grantor, and in favor of the grantee. *Mills* vs. *County St. Clair*, 2 Gilm. 227, and authorities cited.

The language of the assignment is, "has sold, transferred, assigned, and set over, and by these presents do sell, assign, transfer, and set over all my right, title, and interest in and to all property, debts, accounts, notes, books, and papers belonging to the firm of Taylor & Coffing."

Aside from the saving or exception in the deed of assignment, there can be no question that the language here employed would pass the interest in the debt, for the security of which the mortgage was given, to Taylor, and the same does pass to and become vested in him as a right, and as a portion of the property of the firm, unless it can be shown that by this subsequent clause of the instrument it has been specially reserved and excepted.

Now under this rule of construction it is the business of the defendants to show clearly, not that some senseless and unmeaning paragraph, which nobody can understand now, and which the court in the former case between these parties say, (and which the parties seem to admit,) neither of them understood then, has been introduced as a saving or exception into this deed; but that there is a clear, definite, distinct reservation of this particular debt, and that the same did not pass to Taylor under the assignment.

If the intention of the parties is doubtful, and that doubt by the rule of law is incapable of explanation, the very doubt or ambiguity resolves the question in favor of the assignee and grantee in the deed.

If all is first granted or assigned, and then something is reserv[illegible] and

that something is doubtful, uncertain, or ambiguous, the reservation is a nullity, and the residue of the instrument must remain in full force and effect.

Now what is this reservation. "*Excepting the indenture given by the said Coffing to Taylor & Coffing aforesaid, which is to stand and remain as it is, unaffected by this deed of sale.*"

What does this mean?

The plaintiff's counsel construe it one way, the defendant's counsel another, the court may another, and perhaps it may be admitted that the several constructions sought to be given by the same parties are somewhat inconsistent with each other. And the court say, in substance, in the former case of Coffing vs. Taylor, that if either party had understood it, as it is alleged the other did, the contract probably would not have been made.

Literally, the exception reserved nothing but the indenture, the paper on which the mortgage is written. It either means nothing at all, or else it intended not to prejudice the then existing right of redemption, under the indenture and defeazance, and the right reserved therein to mortgage the property or sell the same, to raise money to pay off the mortgage to Taylor & Coffing. Might it not with reason and propriety be urged, that by this new assignment, without this reservation, the original mortgage would pass to Taylor without the reservation of the right of redemption and the right to sell or pledge the property to pay off the mortgage aforesaid to Taylor & Coffing.

2nd. If this mortgage debt did not pass by the assignment, it is still due and unpaid to the firm of Taylor & Coffing.

Coffing had the money, it has never been paid, and at all events the firm for the benefit of the firm, have a right to foreclose it and collect the money due in the same manner as they would have a right to collect any other debt. At least if it is not paid, Taylor is entitled to one-half the amount due.

If it has been paid when and how has it been done? It can be shown by figures and facts.

It is dated May 17, 1851,	$18.360,00
The assignment by Coffing is dated April 27, 1852.	
On the same day Taylor assumes all the debts of the firm, buys out Coffing's interest in Illinois River Bank, for which he allows him $5000,00, which he endorsed on this mortgage.	
The interest on the mortgage to that date is	1062,31
The payment is	5000,00
Which exceeds the interest	3957,69
Leaving balance due on the mortgage April 27, 1852,	14.382,31
How has this been paid?	
Coffing says by rents collected by Taylor & Coffing between February, 1851, and October, 1852, from Paul, Coates and Harmon, belonging to Coffing,	2.400,00
For arguments sake admit it, and deduct this from the mortgage, this would still leave a balance of	11.932,31
To this add interest from April 27, 1852, 5 years 7 days.	3593,61
Balance now due,	15.425,92

How has this balance been paid?

They say Taylor has received in rents from Paul, Oct. 6, 1853. 200,00

Rents from Paul, Jan'y 6, 1854, 100,00

Rents from Coates, Feb. 18, 1854, 600,00

900,00

If this be true, this money could not be applied on the mortgage to Taylor & Coffing. If Coffing did own these rents, and Taylor received them, this constitutes a private claim of Coffing against Taylor, for which he can only sue at law; it is no portion of the partnership property, and cannot be made to apply in extinguishment of a partnership debt.

They also claim for rent of store occupied by Taylor & Coffing since April 27, 1852, and prior to Dec. 20, 1852.

The evidence is that this was worth from $500 to $600 per year, and it is set down in the account, stated at $1.024.66

To this add the $900 paid by Paul & Coates as above, 900,00

1.924,66

And interest thereon, say 4 years, 461,91

2.385,67

There still remains a balance of 13.040,25

The decree charges Taylor also for the rent, use, and occupation of the store used by Coffing & Taylor after the dissolution of the firm, 2.903,10

Deduct this and there still remains a balance, 10.057,15

There is no pretence that any other payments have been made on this mortgage.

Taylor is in no manner indebted to the firm. He is by contract the undisputed owner of all the assets of the firm, except the amount due by this mortgage. This remains, as it is unaffected by the sale and assignment precisely the same as though the mortgage had been executed by a third person to Taylor & Coffing, and the same reservation had been included in the assignment from Coffing.

The record as before stated shows that Taylor owes nothing to the firm. He owns all the assets, there can be no accounting between the members of the firm.

He owns all the debts and assets of the firm except "*this Indenture*," which remains as it is, the joint property of both. So far as Coffing was concerned, there was to be no adjustment with third persons. Taylor was to pay all the debts and receive and have all the property of the firm. The assignment is of "all his right, title, and interest in and to all property, debts, accounts, notes, books and papers belonging to the firm."

It is manifest the parties did not consider the mortgage paid or satisfied by this arrangement, else, why have the $5,000 endorsed as part payment, and by way of reduction of the sum due.

It is wholly inconsistent with all the evidence and all the conduct of the parties, that Coffing at this time could have understood that the mortgage was to be considered as satisfied in whole and not in part only.

The method of stating the account by the Court below is certainly ingenious. It ought to be patented to the inventor as new, and very useful, at least to one party.

Taylor's account, as stated, is even. He put in, as it is said, $5,000 capital, and withdrew the same by buying Coffing's interest in the Illinois River Bank Charter, Banking House, and Plank Road Company, which it is assumed Coffing contributed to the firm.

This is the first intimation that has ever been made that this Bank Charter, Banking House, and Plank Road Company constituted a portion of the capital stock of Taylor & Coffing in their mercantile firm, at least I have not heard of it before. This was a sale and an assignment of another interest or claim in a separate concern to Taylor alone, not to the firm, and the firm never owned a dollar of any such interest, or property; but if it were so, in stating the account, if I can understand it all, Coffing gets credit for it three times.

1st. As $5,000, contributed to the firm.

2d. As $5,000, drawn out by Taylor.

3d. As $5,000, endorsed by Taylor on the mortgage of Taylor & Coffing, and Taylor is charged for it the same number of times, in the same manner.

And this is the only way which they can show that the mortgage has been paid, and then even they are compelled to add Coffing's capital stock to make up the amount.

I have heard of parties keeping books by double entry—which some unlearned in such matters have supposed means charging the same thing twice—and collecting double pay. But this is a decided improvement upon that system.

3d. Coffing never had any claim on Taylor for his capital stock. It was, if any was left, invested in and constituted a portion of the very goods, notes, accounts, claims, and assets of the firm which Coffing assigned to Taylor.

It never was Coffing's understanding that his capital was to be refunded by Taylor, or deducted from his mortgage. Every feature of the case negatives such an interpretation of the assignment. At the time it was made nothing was left unsettled between them, except the mortgage debt of Coffing to the firm. If he was entitled to his capital stock he was entitled to it then. If it did not pass under the assignment, it was due to him at the very time of the assignment, and when the $5,000 was endorsed upon his mortgage. Why did he not then insist upon his right to a return of his capital, and that the same should be endorsed upon his mortgage?

Is the supposition to be for a moment indulged, that when Taylor had repeatedly offered Coffing $6,000 to take the assets and pay the debts of the firm, that he or Coffing ever intended or designed that Taylor should pay Coffing $15,000 for the same property and assets?

At the time of the assignment the Company had neither capital stock nor money assets in hand, all the assets became Taylor's absolutely; none of them could by the contract be appropriated to the payment of the capital stock of Coffing. Nothing was left but the mortgage out of which to pay it. I ask again, why was it not then claimed at the time of the assignment? The answer is obvious. Both parties knew that there was no capital stock remaining, and neither of them ever dreamed that they were entitled under the contract to a return of the same, if it should be ascertained that the firm was solvent.

12678-69

It is a plain and palpable contradiction in terms to say that all the assets and property of the firm became Taylor's by the assignment, and that those very assets and property so assigned shall be converted into money and paid back in that shape to the assignor.

For example, two men form a partnership, each putting in $5,000 capital stock. This money is vested in goods. The goods are the property of the firm. The capital which was before individual, has by this investment become joint partnership property. One partner assigns all his right and title and interest in the goods belonging to the firm to the other.

Would anybody ever suspect that the assignor was entitled to a return of his capital stock.

There would be no capital remaining. It would be all sunk or merged in the investment, and become property and assets, and not capital stock, and the whole property of the firm, including what was originally capital, would pass to the assignee, precisely in the same manner that it would have passed to a stranger if both parties had united in an assignment to a stranger.

If Taylor & Coffing had assigned to a third person for the same consideration and upon the same terms and conditions that Coffing did to Taylor, what would have become of their capital stock? Where would it have been found? and by what process could it have been collected or realized?

It is wholly beyond my comprehension if there is any difference between the legal effect of an assignment by one partner to another of all *his* interest, and the assignment by both partners to a third person of all *their* interests in the assets and effects of the firm. And how in the one case there can be a mental or legal reservation of the capital stock of the assignor, and not in the *assignors* in the other.

The contracts of one partner dealing with the firm are to be treated and construed in the same manner as contracts with strangers. *Hobert* vs. *Howard*, 9 Mass., 303.

Upon any ground then, and in any light in which it may be viewed, it is clear that Coffing owes this debt, if not to Taylor alone, to Taylor & Coffing, and Taylor has an equitable right to foreclose this mortgage for the purpose of recovering the sum which is due to him as joint partner and owner of the mortgage with Coffing, and that too as fully and effectually as if the same mortgage had been executed to Taylor & Coffing by a stranger.

4th. If for no other reason, the decree must be reversed because there is a joint decree in favor of defendants for the payment of $3532,76, when the record and decree both show that if there is anything due at all, the interests of the defendants are several.

This decree purports to be for rents which Taylor received as is alleged and stated, after the dissolution of the partnership, part of which belonged to Churchill Coffing, and accrued while he owned the mortgaged property, and part to his brother, John H., after the sale to him. Nothing appears in the case indicating that they had any joint interests in these rents.

5th. No suit in chancery could be maintained for the recovery of these rents.

The parties have an adequate remedy at law to recover them if any are due, by separate suits if their interests are several, or by joint suit if their interests are joint. A court of equity has no jurisdiction over that subject matter.

By the showing of the complainant, and by the statement of the account in the decree of the Court, there was a balance due on the mortgage after allowing Coffing his capital stock, Bank charter, and all he pretended to have contributed to the partnership, unless a portion of these rents alleged to have been thus received by Taylor are allowed as payments on the mortgage. The law cannot so apply them. Equity will not so apply them, unless there is proof of some contract to that effect, or the party is insolvent. There is no pretence of either.

The only subject of inquiry over which the Court has jurisdiction, is whether the mortgage has been paid and ought to be cancelled, and whether Taylor ought to convey to John Coffing his title to the mortgaged premises.

N. H. PURPLE.

Edmund D. Taylor

vs.

Churchill Coffing

et al

Argument of

H. H. Purple

Edmund D Taylor
v
Churchill Coffing
Asenath Coffing
John A Coffing

In the Circuit Court of LaSalle Co Ill
May Term 1853.
On the Chancery side thereof
Motion to dissolve injunction

The facts may be thus stated. The Complainant and Isaac D Hamon were partners in trade at Peru under the name of I D Hamon & Co. in the year 1846. Taylor furnishing a capital of $5000, and Hamon his skill &c. Taylor resided in Michigan City Indiana. Hamon at Peru The done business for one year and made a clear profit of $3,500 and established a good business and reputation. Churchill Coffing being desirous of going into the mercantile business, and being a resident of Peru and presumed to be acquainted with the extent and Character of the business of I D Hamon & Co in 1848. Jan'y proposed a partnership with Hamon & Co, which was acceded to Coffing putting in a Capital of $10,000, Taylor 5000$ the goodwill of the business, and agreeing to furnish his credit to the new firm to the amount of $20000, Hamon to attend to the business and furnish his skill and services in lieu of a money Capital. The new business was conducted

under the name of J D Hamon & Co. This partnership
continued until Dec 30 1850. When Hamon
retired from the firm and the remaining
partners carried on business under the
name of Taylor & Coffing. Seth Paine
attending to the business at the request of
Taylor and as the agent of the firm
While the firm of J D Hamon & Co was in
existence Coffing drew out of the concern
$18,340 — which was expended by him
in the building of a stone warehouse upon
real estate belonging to him individually
and in the support of his family. Taylor
had previously given his assent to the
withdrawal by Coffing of a sum not
to exceed $ 4000 — The firm sustained
heavy losses as is manifest from the
Whole testimony. In the language of
Paine the Capital was entirely sunk —
Taylor became desirous of settling &
closing to the firm the account of
Coffing. A settlement was made and
the balance due firm was ascertained
to be $18.340. Negotiations took place
between the parties either in person or
through agents for the securing of
this balance. Coffing first gave
a mortgage which not being satisfactory

to Taylor's agent was refused. Another
Mortgage was made & withdrawn by
mutual consent the Coffing being
dissatisfied. The parties again met in
Treaty and the result was that Coffing
drew drafts in favour of Taylor &
Coffing upon Theron & Brewster for
the amount due payable in 4 5 & 6
months which was duly honored by
Brewster as an accommodation
acceptor, with a view to the negotiation
of the bills to raise money to pay the
debts of the firm. Steps were taken to
negotiate them, but the Coffing preferring
another arrangement gave to Taylor
& Coffing, ~~a mortgage~~ an absolute deed upon Calumet
real estate including the lot upon which
his newly erected new house was situate
conveying the land to them in fee simple.
This was on May 17. 1851. On the same
day Taylor & Coffing executed and
delivered to Coffing ~~an absolute~~ deed
of defeazance reciting that Coffing being
indebted to Taylor & Coffing in the
sum of $18.340. had on that day
executed an absolute deed ~~upon~~ of
the real estate aforesaid to Taylor &
Coffing, and conditioned that if Coffing

12470-B

should within three years pay that sum of money to Taylor & Coffing then the absolute deed was to become void and a reconveyance of the property made. It was further provided in the ~~condition~~ defeazance that Coffing might sell or mortgage the property or any part thereof at any time within the period fixed by the conditions, for the purpose of raising money to buy off the whole or any part of said ~~mortgage~~ debts, and upon such sale or mortgage Taylor and Coffing bound themselves to release or reconvey the whole property or such portion of it as may have then been sold ~~and~~ or mortgaged. The deed and defeazance were duly executed. The business of the firm was still carried on at first by Paine and afterwards by Granville S Taylor as the agents of the firm: Such was the state of facts on and prior to April 27. 1852. Paine and Taylor were then proprietors of a bank called the Illinois River Bank of Taylor & Coffing and the Salisbury Plank road Company, consisting of the franchise, corporate houses, bill plates, assets, goodwill &c. Taylor ~~or that~~ Coffing was President and Paine Treasurer of the Plank road Co. Taylor

on that day agreed to purchase of ~~Pan~~ his interest in Coffing, the franchise and property of Said Corporation & the interest of Coffing in the assets of Taylor & Coffing, ~~and assume the payment of the debts of the Corporation and pain~~, and in Consideration thereof agreed to pay Coffing $200 ℔ to be endorsed on account, on the debt of Coffing to Taylor & Coffing, to give Coffing an annual Salary of ℔ $20, to act as President of Said Plank road Company and to assume the payment of the debts of the firm of Taylor & Coffing and also those existing against the Bank and Plank road companies. The assets of the firm of Taylor & Coffing including the debt of Coffing making due proper allowance for losses occasioned by winding up the affairs of the firm were sufficient to pay all of the firm debts & no more. Without this debt they would fall far short of the immediate liabilities of the firm. Taylor never had withdrawn his Capital of ℔ $200 from the concern. ~~Indeed~~ It is manifest from the treaty and final bargain between the parties, that it was the intention of both that the debt due by Coffing to Taylor & Coffing & secured

L 12670-10

by the deed and defeazance aforesaid should pass to Taylor as a part and parcel of the assets of the firm. In pursuance of this agreement a written instrument was drawn up by Mr Coffing at the request of Taylor embodying as was supposed the agreement of the parties as finally consummated Mr Coffing was a lawyer by profession. He drew up an instrument reciting the sale aforesaid, the assumption of the debts by Taylor, the agreement of Taylor to endorse $100 as a credit on the debt aforesaid, to buy Coffing $100 as President of the Plank road Company, & conveying the franchise & property of the Bank & Plank road Co. as the assets of the firm in these words. Viz:- "Sold, assigned, transferred and set over to the said E D Taylor. his heirs and assigns all my right, title and interest in and to all property, debts, accounts, note books and papers belonging to the firm of Taylor & Coffing". Immediately following this general grant of the entire assets of the firm was an exception inserted by way of parenthesis in these words viz:- "Excepting, the indenture given by the said Coffing to the said Taylor & Coffing aforesaid which is to stand and remain as it is unaffected

by this deed of sale". In the body of the Commencement of the deed and defeazance aforesaid such was denominated an indenture. After the making of the deed & defeazance, the property therein described being in the possession of tenants, the rents by direction of Coffing were paid over to Taylor and Coffing on heir of Taylor assurance and intent as is sworn to by Paine. After the deed of of Sale of April 27. 1852 the tenants continued to pay rents to Taylor or assigns of Taylor & Coffing without objection by Coffing until Nov. 1852 when Coffing forbid the tenants from paying any more rents to Taylor, claiming them himself. At the time of the sale of April 27/52 Coffing declared in substance to Brewster that the debt was now due to Taylor who had assigned all by his purchase to all of the assets of Taylor & Coffing, and they conversed about raising money to discharge the incumbrance upon the property &c. Paine swears that when the deed of sale was read to Taylor some one in the room asked the Coffing. the meaning of the exception & he replied that it was a reservation of his right of redemption — Taylor on the same day

acting under the belief that he was the owner of the debt due by Coffing sold an interest in the entire assets to Granville S Taylor & Seth Paine, who carried on business for a while. probably until G.S Taylor's death in Dec-1852. During all this time there was no pretence made by Coffing that the debt was extinguished by the exception. But on Dec 20. 1852. Coffing pretending that the debt was paid sold out & conveyed by deed of that date to Jno H Coffing his brother the property in mortgage with other property for the sum of $24,000, exhibiting at the time to his brother each of the document dated April 27. 1852. John H Coffing then assumed a right to the rents and requested the tenants from that time to pay over to him. Hamm of the tenants refused, and J H Coffing as assignee of the lease sued Hamm on his Covenant for the arrears of rent. The 24000$ was paid by John H. to C Coffing. This bill was filed on the 8th day of March 1853 to foreclose the mortgage evidenced by the deed & defeasance of May 17. 1851, to restrain Jno H Coffing from collecting the rents &c. and for general relief. The bill makes C & J H Coffins and the wife of C Coffing parties.

The defendance is silent as to intent. A
Motion is now made for admission of the
deposition ~~Mass of testimony has been taken~~
April 27. 1853 just one year after agreement
Churchill Coffings answer denies generally
that there was any fraud a mistake in
drawing the deed of April 27/52 and
insists that the mortgage debt is excluded and
extinguished by it. Alledges that the money
extended in erecting warehouse was without
his consent, and that the settlement was
unfair &c. That Taylor had been guilty of
fraud & forgery in using them blank notes
& mortgages signed by Coffing &c. John
A Coffing admits purchase by him, sets
up the facts, but denies notice &c. A
Mass of Testimony has been taken for the
purpose of this motion, which may be
thus classified. Hamm & Brewster to
prove the warehouse transaction & on costs.
Examination the facts about the blanks was
brought out. Brewster to prove his agency
in the erection of the warehouse. and the
declarations of Coffing at the time as to
the construction of the agreement. Paine
to prove settlement and retention of
parties in the sale of the assets. &c. Chamberlain
& Chapman to prove Coffings construction
of the exception. Witnesses to impeach Paine

S12490-75

& Brewster. Rebutting evidence to sustain Paine and Brewster. Affidavits as to the amounts of rents collected by Taylor & C. Payment of Taxes by John H Coffing & C. This is a general statement of the facts.

Upon this statement of facts the following questions arise and are to be determined by this Court.

I Is the mortgage of May 17 1851 in full force and a subsisting security in the hands of Taylor for the debt due by Coffing to Taylor & Coffing

II Is John H Coffing an innocent purchaser without notice of the fact that the mortgage still subsisted as such security at the time of his purchase.

III If the mortgage is a subsisting security and John H Coffing had notice of it when he purchased is the Complainant entitled to the rents and profits of the mortgaged premises.

IV If the mortgage still subsists & John H Coffing had notice of it, and if Taylor has is entitled to the rents & has he a present right to foreclose the mortgage.

Of these several questions in their orders.

II Is the mortgage a subsisting security?

1. That the deed and defeazance ~~were~~ when made constitute a mortgage, will not be denied.

The deed and defeazance are to be taken and construed together as one instrument or entire transaction, being between the same parties, relating to the same subject matter and executed at the same time.

Their legal effect, was to vest the legal estate in Taylor and Coffing, subject to be defeated by the performance of the condition subsequent embodied in the defeazance.

Now this is effect according to the strict rules of the Common law; ~~Equity~~ in Equity the mortgage is not treated as a conveyance of the ~~to~~ estate, but as a security for the payment of the debt.

Equity permits the mortgagor to redeem on payment of the money at any time before an actual foreclosure.

And to quicken the action of the mortgagor the mortgagee may foreclose the right of redemption by bill in Chancery; at any time after the debt matures.

Equity regards the mortgagor as the owner of the estate.

And if the mortgagee takes possession, and receives the rents and profits, he is regarded as a trustee of the mortgagor in that character required to account for such rents & profits.

12670-71

So dedulous are courts of equity in guarding the rights of the respective parties that they adhere ~~to the~~ rigidly to the well known but expressive maxim.

"Once a mortgage, always a mortgage".

This maxim is not only applied in favour of the mortgagor when he has been overreached, and there has been an attempt by release or otherwise to merge and unite the equitable into the legal estate

But also in favour of the mortgagee & others standing in his stead. Equity will revive the security where by accident, fraud or mistake it has been released, surrendered, released satisfied or extinguished.

Even a cancellation or release of a mortgage on the record is only prima facie evidence of its discharge; and leaves it open to the party making the objection to prove that the cancellation or release was made by fraud, accident ~~and~~ or mistake. On such proof being made the mortgage will be established, even against subsequent mortgagees who became such anterior to the cancellation, having notice of the original mortgage

Robinson v Sampson 23 Maine R 388 mistake

The following Cases are illustrations of the rule

1 Confiscation by Leg. Revives by Treaty

Higginson v Mein 4 Cra R 415 2 Cond R 155

2. No merger by release – where subsequent mortgage would gain priority

Forbes v Moffatt 18 Vesey R 384

Hatch v Kimball 14 Maine R 9.

3. A mortgage – cancelled – new one given – old revived

United States v Crookshanks 1 Ed Ch R 233. 2 Eq Dig 350

Rec 1257

4. Evidence of debt surrendered – new one given – mortgage enforced vs subsequent creditors, mortgagees & purchasers

McDonald v McRae. 16 Verm R 630 family land

Bolles v Chauncey 8 Conn R 389. substituted

Bunkerhoff v Landing 4 J. C R 65. Renewal at bank

Farmers Bk v Mutual assi. society 3 Leigh R 69. do.

5. Indemnifying mortgage – debt indemnified released – mortgage revived in favour of an assignee

Hayden v Smith 12 Metcalf R 511.

6. A & B purchased land – gave mortgage for purchase money A paid it off – took assignment – held a valid security.

Duncan v Drury 9 Barn R 332

7. Mortgage not extinguished by making mortgagor executor of mortgagee. Miller v Donaldson 17 Ohio R 264

8. Cancellation obtained by fraudulent representations – void in equity. M'Lean v Lafayette Bk 3 M'Lean R 587.

12670-102

Lastly. Where by any kind of fraud the mortgagor procures a release of or discharge of the mortgage — it will be reversed in equity

Barnes v Cannock 1 Bark R 392.

In this case there are four grounds upon either of which we have a right to rely as evidence that this mortgage has not been extinguished on a security

Such is the proper and legal construction of the exception 28 Eliz & Jas 58 ambiguous words

Coffins grants all of his interest in all of the assets of the firm
The mortgage was a part & parcel of those assets.
If he has retained his interest — or the entire debt — on his stock and the residuum in the mortgage it is by force of the exception.
The thing excepted must be part of the thing granted
The thing granted was his interest in the partnership assets.
Now can it be pretended, that in granting that interest he intended to except a thing which did not belong to him viz in Taylor's interest
Surely not this would be contrary to the principles of Law & equity applicable to exceptions. 4 Com Dig 288. n.
There can therefore be no pretence of a greater reservation that the interest he had in the indenture.

His interest in that instrument was precisely — He was mortgagor and one of the mortgagees — a debtor

3 Constructions
1. To reserve Equitable estate alone, as right to redeem
2 " " Equity & legal estate & by merger extinguish both
which is not legal — because debt not extinguished
3. To reserve his undivided interest in debt & legal title — retain
equity & right to redeem from the interest which Taylor has
in both.

& one of his own creditors — a trustee, and one of the cestuis que trust.

As mortgagee he owned an undiv 1/2 of the leg. estate.
As creditor he owned an undiv 1/2 of the debt due by himself
As mortgagor he had an equity of redemption.

He therefore had a three fold interest & in a double character

Now which one of these three several & distinct interests did he intend to except.?

The great & primary rule of interpretation is to ascertain the intent of the grantor. This is admitted.

But when he has himself drawn the deed, and couched the exception in language of an uncertain and ambiguous character & his ~~grant~~ exception is susceptible of several constructions, the Court will construe his words most strongly against himself & most favorable for the grantee

The strongest construction against Coffing and the one most favorable for Taylor is to construe the word "all of his interest in the estate" deed as carrying his legal interest as Creditor in the ~~debt~~ estate and debt secured by it — and the exception as reserving his right of redemption or debtor.

Did he except his interest as debtor or creditor as mortgagor or mortgagee.?

Give it the strongest construction.

12670-13

And then is the most natural construction under all the circumstances — His general intent was to vary his interest in all the fundamental effects: His particular intent to reserve his right to redeem the mortgaged property. But owing to the two fold character in which he was placed by the mortgage — that of debtor & creditor — Mortgagor & mortgagee — a confusion of ideas was created, and the language used was naturally ambiguous.

This principle of construction is peculiarly applicable to "exceptions"

Must be Construed Strictly

And most strongly vs grantor. & favorably to grantee

1 John Ch R 357. } 3 John R 378. } 2 Wend R 571
11 John R 191. } 3 Wend R 632
8 Ired 394 } 4 John R 81.

Requisites to a good exception 4 Com Dig 288. Touch 77-8.

And if the exception may enure several ways, the grantee may elect which way he will take it.

Jackson v Hudson 3 John R 375
Jaune v Blodgett 16 John R 172

If an election important in this case it has been made in 2 several ways

1. By sale to G S Taylor & Paine
2 " the filing of this bill.

Where there is doubt & uncertainty the

grantee is always entitled to the benefit of it
8 Johns R. 378
9 Cash R 15. Lease for 7. 14 or 21 Years.

(2) The entention apparent upon the face of the writings themselves — support the legal construction contended for.

1. A payment of 5000 ℔ is made by Taylor which according to the recital in the deed, was to be credited on the debt. 18 Peb Touch 76.

Why this endorsement — if debt extinguished

2. When debt extinguished in whole or in part a release or reconveyance was contemplated by the defeasance.

If debt extinguished by exception Why did according to defeasance
Nick Coffing take a release or reconveyance
The parties dispensed the evidence by which release to be perpetuated.

At all events why not require a surrender Satisfaction of the mortgage to be entered of record.

3. The agreement signed by Col Taylor recites that indenture is in the possession of Taylor & Coffing — Taylor became their successor entitled to the Custody of all papers &c.

If debt extinguished why no surrender of the absolute deed.

4. The mortgage is "to remain & stand and is unaffected by this deed"

Can the mortgage remain unaffected by the deed if its vitality as a security is destroyed.

3 Peters 333. 601

12470-09

5. If the intention had been as they contend to except the debt — the language to be used by a lawyer or other business man. "All the property & debts due to the firm except my interest in the debts due by me to said firm and the estate by which that debt is secured neither of which is intended to be granted to said Taylor".

6 The extinguishment of the debt would have been recited as part of consideration Then upon the face of the deed it was the intention to continue the mortgage as a security & leave the interest of Coffing in the debt to Taylor as a part of the assets of said firm.

(3) The acts and declarations of Coffing Contemporaneous with the execution further evidence the intent

1 He permitted the tenants to pay rent to Taylor after the exception was made.

Why then if debt & mortgage excepted.

2. He declared to Brewster that the debt belonged solely to Taylor by the sale. according to the verbal & final agreement.

These declarations & acts are strong evidence against his construction.

(4) According to the testimony of Paine & Brewster it was intended by the parties that the debt should pass along with the other assets — If omitted in agreement — it was a mistake

& equity is bound to reform the instrument & grant relief upon it as prayed.

(5) There is strong evidence tending to establish the fact that Coffin intended to cheat and defraud Complainants, by the use of language in the deed of sale, susceptible of several different constructions. 4 Munroe 158

Evidences

1 Coffin a lawyer & drew the agreement as the agent & at the request of Taylor. — it was an abuse of confidence & a construction fraud.
2 Schs & Lefr 502–3.

2. Lying by until the death of G S Taylor & insanity of Paine.

3. His visit to Paine to forestall his testimony

4 His declaration that he had been seeking his advantage for 3 years.

5. His explanations sale to his brother.

6. His suggestions to his counsel. — his opinion contrary one week —

7 Expression that it was paid in deed from B to C.

There is a covenant vs incumbrances 1 Smith Lea Ca 2.

(6). Evidence of surrounding circumstances show this to be intention & such evidence legal & pertinent.

French v Carhart 1 Comstock R 102

Doyle v Teas. 4 Scam 251.

The extrinsic evidence is offered to the agreement 1 Sale of Effects 2 assumption of debts — inventory to show the value & amount of each.

13470-81

~~The~~ If you exclude Coffins debt — assets sufficient
to pay firm debts — pass it & they are sufficient

The answer says Taylor a shrewd business man.
Is it to be presumed that he would make such a
bargain

(7). In equity creditors of the firm had the right to
foreclose mortgage & be subrogated in case Taylor
failed to pay

(8) Again debt unascertained — mortgage estate &
indenture incident — no title can pass by a deed
of mortgage without assignment of debt. The
exception must operate as a grant — cannot
here because no debt excepted.

Ellison v Daniels 11 MNR. 214
Jackson v Bronson 19 ~~Johns~~ Johns R 325.

(9) Strictly paper & title only passed — assignment
of patent — Carries no interest in land

(10) Coffin's construction in his answer shows that
a part interest passed notwithstanding exceptions, and
that construction is an unnatural & forced one

See answer page 24 — S.

He admits after deducting his stock of 10000. there will be a
surplus deducting rents of 90 & to be divided equally between
T & C. From this it is apparent he did not intend
to except whole interest — & the question again recurs
what portion of that interest did he intend to reserve.

III Is John D Coffing a bona fide purchaser &c?

He is not. There is sufficient to put him upon inquiry

1 The deed & defeazance were of record.

1 No satisfaction was entered upon the margin of that record.

2. The defeazance contemplated a release or reconveyance

2. The tenants in possession were paying rents to Taylor as successor of Taylor & Coffing

3 He is chargable with all matters appearing on the face of the deeds which related to the property he was purchasing Mere deeds recited in his deed of purchase.

4 He is chargable with notice of the true construction

5 He admits all of these facts & in the teeth of them denies notice — this cannot avail him

III II Is Taylor entitled to the rents and profits?

1. By Com mortgagee entitled to possession & rents when no agreement to contrary.

2 Bl Com 158. 7 Bac Abr 54. 4 Kent 164.

Cholmondeley v Clinton 1 Memorials R 359.

If lease made afterwards — mortgagee may elect to treat lessee as a trespasser, or ratify lease & receive rents.

If before tenants bound to pay on notice of mortgage.

2. Such was the apparent intent of the parties.

The debt had long been due.

The pair were buying interest

No interest reserved by defeazance

Coffing induced tenants to buy.

[12670-82]

These facts constitute an equitable lien upon the rents.

3. Paine swears substantially to such an agreement

1 That agreement is supported by the facts admitted & proved

2. Not within the Statute of Frauds.

3. If it were — execution of it would be out of Statute

IV Has Taylor a present right to foreclose?

In the absence of an agreement mortgagor may convey his equitable ~~title~~ interest in the mortgaged property.

But here there is a partial restraint upon his power to alien by the terms of the defeazance.

1 He is forbidden to sell equity

2 Permitted to mortgage or sell whole or portion for a special purpose.

3 To enable him to do so, Taylor to release or reconvey the whole or part.

This amounted to the reservation of a power by Coffing Coupled with an interest

And the creation of a trust in favor of T & Coffing

"A Trust arises by implication where it would be inequitable to sustain any other character."

Willis 37-8.

No Sale of mortgage could not be made by the Trustee

without the consent of the Cestui que trusts.

Duty of Coffins as Trustees Wilks 124–5.

He committed a breach of Trust Wilks 17.

John & Coffins had notice & took the estate charged with the trust. Hill 507. 510–12.

He was bound to see to the application of the trust monies. Wilks 134. Hill 505–6. consent of Taylor.

He has received the money – Committed a breach of his trust & upon this ground we are entitled to relief now.

The use of Taylor & Coffins's money in erecting warehouse – created a trust in favour of the firm.

S12670-89

Edmund D Taylor

v } Brief 76

Churchill Coffing et al

Sales:

1846. Co-p. of Taylor & Herman formed.

Dec 1847. Coffing's admitted. Jan 1848 & Commenced

March 7 1851. Firm dissolved & T & C.

Continued

May 17 1851. Deed & defeasance executed by Coffing to Taylor & C.

April 27 1852. Sale of assets by C. & Taylor.

1207a-47

Taylor
vs
Coffing

Mr Fuller

1. The Structure of the Bill as to an account.

2. The construction of the agreement.

3. The Stock question.

Mr C. B. Waite.

[illegible]

Taylor

vs

Coffee

1 Dan. Ch. P. 377.
2 Ves. 392 — 31.

457.

16. Jur. Taylor v Coffang
18 Sol. 422.

Taylor
vs
Coffang

C B Pratt

Some questions

1. Whether Coffang's interest passed.
2. Effect of Contracts
3. Int. Trusts & profits
4.

1 L. Dudley. Means the
1. "This Delegation, Endless"
Ans. 1 History of this case
2 Costs the Court are.
3. Made said the Court granted a hearing.

2 Unfortunate Language "Capital Stock"
Ans. The merits.

3. Where even. no necessity of "Stock &c."
Ans. "Stock & Additions &c"

4. No evidence of insolvency.
1. The bill insufficient in allegation.
2 The affairs of J. & Norman & Co. taken as the basis. July 1868. dissolution March 7 1851.
3. Evidence subject to exceptions on hearing.
This madness &c.

12470-B

5. "The effect of sale to one partner or to
the stranger is the same" Admitted
by Judge Dickey.
9 Mass 36 B.

6. Coffins ark.
Stock 10000. Rent 5000.
Bank 5000 $ 15000 $ 20000.
"Who has gained who lost"

Ans: Draw ark 21:360 $.
Stock 10000
Rec $ 31360

Taylor assumes the debts.
Takes the assets.
Taylor makes nothing by the speculation.

7. Taylor says he lost by the trade.
Replication.
No evidence

8. "Out of the record"
Gain by real estate
Seth Paine & spouse.

9. Multifariousness:
Purple will answer this.

S12476-B2

Taylor
vs
Coffin

C Beckwith

1. Concern with Dudley. That this litigation shall have an end.
"Finally settled & adjudicated"

1 Bill 1 Mand 2 & mistake reform
3 Breach of trust
Prayer foreclosure.
Court decide
1 No fraud
2 No mistake
3 - No breach of trust.
Therefore no foreclosure.
2 Fully & amply discussed.

Aud: Read to Opening of decision in
6 Mc-457.

2. Large advances on real estate:
1. Not in the record.
2 Courts did not concede it.

3 Relation of partners. 5000 ℔ & 6000 ℔.
The "perfect of the concern".
"Share equally in profits & losses."

[10-670-68]

Ans:

1 Resolution Vide ordinary reservations of Rule.

2. The Community agreement recorded.

4. "Must to carry out the agreement to account with each other."

Ans

1. No allegations

2 no reservation of right to a/c.

5. "Persistent misunderstanding of our position"

Ans: They have changed their ground.

6. Passed debts vide Exchequer Rules the credit side.

7. Nature of partnership a/c's.

To keep a/c's between partners & third parties.

Ans: Vide Jackson's Jackson's

8. 2 solemn declarations "individual debts"

Ans: Were did they arise.

S13670-69

9. Add Add Same as to the Shares.
So far as Capital Stock is concerned

10. Multifarious.
Sust no fourth column
1. Rents & C & before Sale
2 " " Inc & C. after.

11 "Nothing new Contended for."
Sust
1 New arguments
2 Court wrong.

12 Hardship. "Rents & profits." to be accounted for.

[12670-90]

2 23. m PM. Recess until Continued.

[12670-91]

Supreme Court Illinois.

Edmund D. Taylor
v
Churchill Coffing &
John H Coffing

A recipe having been ordered in this cause, therefore let a supersedias issue restraining the Execution of the judgment herein till the further order of the supreme Court.

Ottawa July 12 1858.

S D Caton
Ch Just Ills.

Send Supersedeas to Seamon & Fuller Chicago

Edmund D. Taylor
vs - 76
John H. Coffing Atty

Ord. for Supersedeas

Filed July 10, 1854
L. Leland
Clk

Chicago Illinois April 2
1858.

Messrs C Beckwith & T L Dickey
Gents.

We You are hereby notified that I shall on the first day of the next term of the Supreme Court of the State of Illinois for the third grand division to be held at Ottawa Illinois on the 20th day of April instant, present to the said Court a petition and apply for a re-hearing of the case of Edmund D. Taylor vs. Churchill Coffing et al. error to the circuit Court of La Salle county Illinois, & which decree rendered by the said circuit Court in said cause was affirmed or rather modified, and a final decree entered by the said Supreme Court at the last term thereof held in the said third grand division; & Where & When you can appear and show cause against said petition if you see proper.

Blackwell Pemple & Fuller
Counsel for the said
Edmund D Taylor.

5126-70-701

County of Cook } ss.
State of Illinois } John M. Arnold being
sworn says he served a copy of the within
Notice on C. Beckwith atty for said
Coffing, that on the 3rd Day of April
1858 by leaving the same at the office
of the said Beckwith about the hour
of 11 o'Clock a m of said Day —
Subscribed & Sworn to
this day of 1858 John M. Arnold

I received a copy of the within notice April 3rd 1858.
C. Beckwith
Atty for Officers

E. D. Logan } Vs.
John M. Coffing
Affidavit of Publication
for Hearing on
&c.

Edmund D Taylor
vs.
Chandler Coffing et al

In the Supreme Court
Third Grand Division
April Term 1858.

Edmund D Taylor the plaintiff in error in this cause respectfully asks this honorable court for a re-hearing herein.

The cause was argued and submitted at the April term 1857, taken under advisement and a decree entered in vacation, notice of this application has been given to the defendants in error and the plaintiff in error is therefore in position to press this motion.

The cause has been before this court twice and two decisions have been made adverse to the rights of the plaintiff in error. The first cause in which the plaintiff in error was actor, was decided against him substantially upon the ground that his bill of foreclosure was prematurely brought, but in the opinion his rights as he conceives were somewhat forestalled by the dicta of the judge who delivered the opinion. This branch of the litigation is reported in 16.

12670-95

Illinois R 457.

In the second cause the defendants in error were actors and a decree was pronounced in their favour for $3.179 $\frac{85}{100}$.

By this decision the plaintiff in error looses and the defendants in error gain a large sum of money.

This will be manifest when the facts are properly presented before this honorable court, and the reason why those facts were not presented on the former hearing in this cause court, is because the counsel of the plaintiff in error were satisfied that the bill filed in this cause, was not so constructed, as to be the foundation of the decree as modified by this honorable court.

We approach the court on this occasion with deep hesitation and embarrassment, when we remember that this is a court of last resort from whose decision no appeal can be taken — and when we are convinced of the rectitude of our judges, and believe that they are willing to forego their inclinations of opinion, when satisfied that they have committed an error in

[12670-96]

judgment. Judicial Tribunals are human institutions. They are fallible and have the capacity to [redacted] err. When satisfied of the commission of an error, they will not hesitate to correct it.

In this spirit and with every confidence in the court, and with all possible respect for the individual judges upon the Supreme bench, we proceed to assign the reasons why this Tribunal should grant us a re-hearing in this cause.

(1.) On March 7. 1851. when the firm of I. D. Harmon & Co was dissolved Taylor and Coffing agreed to continue the business "for the purpose of paying off the debts of I. D. Harmon & Co, and re-imbursing the capital advanced as long as they shall mutually think best, and the profits and losses of the business shall be mutually shared by the undersigned."

The court in their last opinion disregard two clauses in this agreement

1. The partnership was to continue "as long as they (Taylor & Coffing) shall mutually think best". They did mutually

[12670-9]

think best to dissolve the partnership on April 27 1852. before the capital could be re-imbursed to each partner and before the question of profit and loss could be ascertained.

And how did they end this Co. partnership, and what rights were secured to the partners respectively?

The answer is obvious — Coffing sold and delivered to Taylor all of the assets of the firm, and Taylor agreed to assume and pay all of the debts due by the firm.

Had the firm made any profits, so as to enable it to re-imburse each partner?

This is the important question in the cause, and unless the allegations in the bill and the proofs in the cause enable the Supreme court to ascertain to a certainty this fact of profit, they have no basis whatever for the decree pronounced at the last term.

12670-98

Now what are the allegations and proofs upon this point? 3

The bill alledges

That Taylor and Coffing came on the busniss of said firm "until the 27th day of April 1852 at which time the said firm were possessed of a large amount of goods and chattels & Merchandise, had diverse interests in real estate and had large sums of money due to them, which was evidenced by divers accounts, notes, books and papers; and owed and were liable for diveis large debts & liabilities"

It will be perceived that the 1 amount of assetts and 2 the amount of the debts due by the firm are not set forth and alledged in the bill. There is therefore no basis for an accounting between the parties to this bill. It is evidently impossible for the parties to determine the questions of Capital and profit and loss, upon such an allegation.

The contract to reimburse the capital was ended by the agreement of April 27. 1852.

12470-97

The court will not make a new contract for the parties. The ~~agreed~~ agreement to share in the profit and loss of the concern is to be construed in connection with the agreement to reimburse the capital. If the entire capital was sunk, Taylor is not bound to pay Coffing anything.

In the opinion, the court is no manner undertake to prove that the law requires reimbursement of capital when ~~was~~ it had ~~been~~ been sunk and annihilated in the general business transactions of the firm. No reason is assigned for such a position, nor are any authorities cited.

Again the answer alleges that the assets of the firm were insufficient to pay the liabilities & that the capital was sunk.

Now what is the proof? There is none ~~upon~~ whatever upon this point. On July 18 1850 Harmon makes a statement of the condition of the firm. This was prior to the dissolution of the old firm of J & D Harmon & Co, and prior to the time when Taylor

L 12678-1007

and Coffing formed their new partnership. The court has evidently been misled by the accounts which is embodied in the record. In order to sustain the position of the court, in the last decision, they must presume that the accounts of the firm of L. D. Damon & Co, shows the real condition of the new firm of Taylor & Coffing. A principle which is clearly inadmissible.

The same may be said in regard to the question of profit & loss. The court cannot tell whether there was a profit or loss unless an accurate a/c is taken of the affairs of the firm of Taylor & Coffing.

The court will permit us to remark that this has been guessed at. There is no proof whatever.

Thus much for the question as based upon the pleadings & proofs.

2. As to the law. The court have made a mistake, as we contend upon legal principles. The court in substance decide that stock in a firm is such an asset or effect of the concern, and therefore cannot be transferred from one partner to another in the sale of the assets

[12670-101]

of effects of a partnership. No case cited by the defendants in error sanctions such a doctrine, whereas the case cited by us from Massachusetts establishes the contrary doctrine. Because this question is a novel one, and because the court has evidently been misled we respectfully ask the opportunity of re-arguing this question.

3. We respectfully suggest that the court has committed a grave error, in the construction of the exception contained in the deed of April 27. 1852. They have departed from the law of exceptions, by construing the exception contained in that deed most favourably for the grantor instead of for the grantee. Upon this point we desire to be heard again.

We therefore ask the court to read the record carefully. To examine the questions involved. See whether it is not at least doubtful. and give to the plaintiff in error the benefit of a re-hearing

Chicago. April 28 1858.

R. S. Blackwell
for plaintiff in error

[illegible]

As a further reason for granting a re-
hearing of this cause. said Petitioner
respectfully states. that the Court will see
by examining the opinion delivered
in the first case between these parties
especially the evidence of Bennett and
Raine. whose depositions all three re-
ferred to. that Taylor understood at the
time the agreement or assignment dat-
ed April 27. 1852 was made. from
Coffing's own declarations and explan-
ations. that he was to be. still entitled
to collect the balance of $13.340. or
thereabouts due from Coffing upon his
mortgage to Taylor & Coffing. and have
the benefit of it. as one of the assets
of the firm. and that the first cause. as
well as the present one. has been litigated
by him under that belief.

But the Court having decided
that it did not pass. as an "asset"
and thus practically deprived him
of the benefit of that sum. notwith-
standing Coffings interpretation of the
exception contained. in that deed. and
Taylor's understanding founded on
Coffings statements. and construction
of its meaning. Taylor will be. by what
we respectfully suggest is an erroneous

[12470-103]

construction of the legal effect of that exception. deprived of all benefit of that sum of $13.340 which Coffing had actually drawn from the firm.

Now as the case stands. Taylor is believed to be remediless in respect to that matter. unless the Court. looking at the case again. should be of opinion that it ought to be reversed. and give him an opportunity of filing a Cross Bill stating the following facts. that he has paid of the debts of the firm more than $54.000# that out of the assetts. he has only realized the sum of about $20.000. & the large balance. he has paid out of his own private funds. that he has no hope or expectation of ever recovering any thing more from the assetts of the firm. that he ought to be allowed to collect the balance still due from Coffing upon that mortgage. to apply towards paying the debts of the firm. all which are facts. and Petitioner intends to file a proper Bill for that purpose. & this Court will grant him an opportunity of so doing

and this will appears from Coffings own written statement to that effect which written statement first discovered since the last argument of this cause. & was never before any opportunity of pleading it

by reopening the case, and allowing him to present a full statement of the facts, as regards the business affairs of himself, and Coffin.

Petitioner further states, that he has in good faith paid as above stated, all the debts of the firm, as he agreed to, and saved said Coffin harmless from all liabilities, on account of the debts of the firm, although he has had to pay for this purpose, over $34000 out of his own private pocket for that purpose, whereas he ought to have as he expected, the benefit of the $13,000 due from Coffin, but of which he has been deprived by the construction which the Court has unexpectedly given to the contracts and agreements made between Coffin himself, and he desires an opportunity of placing this full statement of his transactions in the premises before the Court, that the errors complained of in his case may be rectified, in the only way that is left open to him.

He further states that he intends not only to file a cross-

12570-1cf

Bill of opportunity is given him. for the purpose first named but also. to file a Bill to rescind the contract dated Apl 27 1852 between him and Coffin. as this Court intended in the first case reported between these parties. he had a right under the proofs to do. the opportunity of doing this. will enable him to place himself and Coffin fairly upon equal grounds before the Court. shewing their respective rights. and upon a proper Bill for that purpose. to compel each one to pay his proportion of the debts of the firm. and bear the burdens. and share the benefits of the partnership. as they had agreed to do. and from the embarrassments and wrongs which may be suffered by giving Coffin the unjust advantages which he has acquired by the contract and construction thereof. thus far insisted on by him and this Court

Petitioner further states. that the entire Capital stock of said firm was Scrub and Cash at the time he

[12670-166]

took the assignment from Coffing that there was at that time no assets except divers demands and claims against debtors of the firm. from all which as before stated he only realized about $20,000 and has had to pay the residue of the debts. without any assistance from Coffing, or any benefit of his indebtedness to the firm which arose from his withdrawal of that sum from the partnership property, and Petitioner respectfully insists that he ought in equity and justice to refund that amount to the partnership funds and thus relieve Petitioner of that much of the burdens of the firm. which he assumed in anticipation of realizing that much from Coffing.

In Conclusion Petitioner respectfully states. that in no way apparent to him, can the plain equities to which he is entitled. be secured him. except by a re hearing of this cause. should this be granted him. he hopes to satisfy the Court by his Counsel. that the case

[12678-10]

should be sent back to the Circuit Court, to enable him to have the whole matter fairly stated on the Record, and place before that Court the true position of the business relations between him & Coffin, and he believes this will render apparent to the Court that the present position of those relations, is one of great hardship, and from which the Court ought to relieve him: if it can be done consistently with the law & practice of the Court.

All which is respectfully submitted.

Blackwell, Pugh & Fuller
Atts & Counsel for Petitioner
By Fuller

May 4th 1885

[AL70-102]

Ed. M. Taylor

vs. } Petition for mandamus

Chancellor Cottingham et al

Filed May 10. 1858

L. Leland

Clerk.

[12670-109]