

13270

No. _____

Supreme Court of Illinois

Cooley et al

vs.

Jones et al

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 243.

Cadley J. R.
7/18
June

1861

State of Illinois. vs the
Supreme Court. Appeal from
the Superior Court of Chicago
Cook County
Francis Woodby John W.
Farwell & Elisha S. Wardwell
appellants vs Bill of Inter-
Ruben O. Jones Albert Jones pleader
Henry C. Jones & Edward H. Sears
appellees - }

And the said appellants by Lewis
M. Woodby their Solicitor come
and make the following assignment
of Errors, ^{made} by the said court below
in rendering a Decree and Judgment
in favour of said appellees and against
the said appellants to wit,

1st The Court erred in overruling
the motion of the said appellants to
suppress the deposition of witness
Barnabas Paulson, in this -

1st R. D. Jones & Sons appellees failed
to show by said witness ^{that said witness had knowledge of} any connection
between the transaction of the
purchase of the goods by Ashord & the
Sale by him of the said Goods to the
said R. D. Jones & Sons as the consi-
deration for the said Drafts -

2^d Said Witness had no personal Knowledge of the matters about which he testified.

3^d His Answer to the Sixth Interrogatory is a mere Supposition.

4. His testimony is therefore irrelevant & immaterial

5 To be relevant & material, they must show, that the Consideration paid for the Drafts was the goods alleged to have been sold to Ashen by Appellees. & that such Transaction was such as to require no enquiry on their part as to the source & foundation of said Drafts, notice having been brought to them, that Ashen was insolvent & had assigned ^{all} his accounts property & choses in action to Cooby Harwell & Co. (the appellants).

6th Notice having been brought to the said R D Jones & Sons, before the purchase of said Drafts of the insolvency of Ashen, & also that Ashen had made an assignment of all his property Books of account & choses in action to Cooby Harwell & Co; Jones & Sons must

Show that they acted in good faith in the purchase of said Drafts & that they as prudent men made ~~such~~ inquiries as to the ownership of the said Drafts & the right of Ashord to dispose of the Same as his property before they could be allowed to ~~prove~~ introduce proof that they paid a consideration for the same

2^d The Court erred in overruling the exceptions filed to the said portions of the Depositions of Witness Cornelius Drake. to wit,

1st The third interrogatory assumes what should have been first proved: viz, that R.D. Jones & Sons made inquiries as to the foundation & ownership of said Drafts & ~~the~~ to know whether or not Ashord had a right to sell the same for his personal use.

2^d The Answers to the 3^d 4th & 5th direct Interrogatories, tho answered as of the personal knowledge of said witness, yet, his answer to the 6th ~~last~~ Interrogatory, he says he did not hear the conversation mentioned by him in his answer to said 3^d 4th & 5th Interrogatories & in

his answers to the 7th & 13th large interrogatories. he says that all he knew about the transaction was from conversation with R D Jones & Sons

3^o His testimony is Contradictory and evidently biased in favor of R D Jones & Sons & shows himself ~~unwilling~~ ^{unwilling} untrue for them & disposed to keep back those facts that militated against them -

4th His testimony is from information derived either from R D Jones & Sons or Ashard whose interests led them to conspire against the rights of Cooley, Farwell & Co.

5th His testimony should have been received with much scrutiny, if not wholly rejected -

As to the Decree & Judgement, the said Appellants say,

3^o Are against the evidence & the law governing the same.

4th The Insolvency of Ashard being known to the said R D Jones & Sons & his assignment of all his property Books of account & choses in action at the

time of the alledged purchase of said Drafts to Leachy Harwell & Co, were facts, which R D Jones & Sons could not pass by with impunity, & were sufficient to put them as business men possessed of ordinary caution upon enquiry as to the ownership of said Drafts, the source from whence they emanated, the account upon which they were drawn & whether or not said Ashard had the right to sell the same for his benefit.

5th said Drafts being made payable to the order of said Ashard, was of itself notice to R D Jones & Sons that they were drawn upon his credits; and they having notice at the time, that he had assigned and transferred all his credits to Leachy Harwell & Co; Such facts were sufficient to put R D Jones & Sons as prudent business men upon enquiry as to all the facts connected with the origin of said Drafts, & who really owned them & whether or not Ashard had the right to sell them for his benefit.

6th said Drafts are without any

any consideration, except the said
account of Bays against said
At Littig, a part of which was
made by said Littig with said
Cooley Harwell & Co, & the other
part was Cooley Harwell & Co by assign-
ment, this ~~con~~ fact should have
caused the Court below to scrutinize
this transaction with more care & to
have required of them better proof-

7th The sole consideration for said
Drofts being Cooley Harwell & Co's, the
said R D Jones & Sons should be held
to the strictest rule of proof of
enquiry concerning them

8th There is not the slightest proof
that R D Jones & Sons made any enquiry
about ^{either} the origin, foundation
ownership of said Drofts, nor of the
right of Ashow to sell the same-

9th The only enquiry made, was,
"are the acceptors good"

10. There is no evidence or even a
pretence that R D Jones & Sons, made

the least enquiry even of Ashord
as to the ownership of said Drafts -
or the account upon which they
were drawn or the right of the
said Ashord to the same, or to sell
the same -

11th R D forest & sons in their answers
deny any knowledge or information
of any sale or assignment of Ashord
to Cooby Harwell & Co until the first
Draft became due (See Record page 27)
which sworn allegation is flatly
contradicted by witnesses Paul Nick
Thompson & Spicer, hence their whole
answer stands impeached & of no weight
It should have been rejected by the Court
below -

12th The parties appellants & appellees
agreed before Justice the Commissioner
that all proffs taken before him
should be considered & taken as objected
to & so noted in the depositions;
yet the Court below refused to allow
or entertain appellants exceptions, tho
they were filed long before the hearing;
& assigned as a reason, that such
objection should have been taken

at the time such stipulation and
agreement was not such as the
court would notice. (See Record page
69)

~~For Hawley, Solicitor for~~
~~appellants,~~

13 The decree should be made, in
rendering a decree for appellants, instead
of a decree for appellees.

~~For Hawley Sol for~~
~~appellants~~

Charles C. Boney
of counsel -

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Hawley & Co. v. Boney
et al
appellants
Boney et al

argument of errors

is April 17. 1861
L. Deland Ch.

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United States of America
State of Illinois Cook County J.

Came before the Honorable the Judges
of the Superior Court of Chicago within
and for the County of Cook and State
of Illinois, at a regular term of ~~the~~ Su-
perior Court of Chicago begun and holden
at the Court House in the City of Chicago
in said County and State on the first Mon-
day being the third day of December
in the year of our Lord eighteen hundred
and sixty and of the Independence of the
United States of America the eighty Fifth.

Present the Honorable John M. Wilson Chief Justice

of the Superior Court of Chicago

Wm. H. Wiggins & Saml. Goodrich Judges

Carlo Weaver Prosecuting Attorney

Anthony C. Keating Sheriff of Cook County

Attest Walter Kimball
Clerk.

Be it remembered that heretofore, to wit on
the 19th day of February in the year of our Lord
One thousand eight hundred and fifty eight.
there was filed in the office of the Clerk of the Cook
County Court of Common Pleas, a certain Bill
of Complaint, in the words of figures following
to wit:

To the Hon John M. Wilson Judge of
the Cook County Court of Common Pleas
in Chancery sitting.

Combsly complaining shew
unto your Honor your Orators Theodore Pette.
John C. Mullen. Alfred A. K. Sawyer and
John C. Mullen. the firm of Sawyer Mullen
& Company Merchants of the City of Chicago
in Cook County Illinois. that on or about the
29th day of October A.D. 1857. eighteen hundred
and fifty seven. your Orators accepted two
certain drafts of that date drawn on them
by one A. S. Little; that the first of said drafts
was for the sum of one hundred dollars and
was payable to the order of one G. W. Ashland
twenty days after date: that the second of
said drafts was for the sum of two hundred
dollars and was payable to the order of said
Ashland ten days after date: that your Orators

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delivered said drafts when accepted to said
J. W. Ashard.

And your Orators further shew that
sometimes afterwards but when & whether before
or after said drafts or either of them became
due your Orators are not advised and therefore
cannot state, the said Ashard endorsed both
of said drafts and under his hand assigned
them to Reuben D. Jones, Albert D. Jones, Henry
O. Jones and Leonard H. Hunt the firm
of R. D. Jones & Sons, but whether said en-
dorsements were for a valuable consideration
or for any consideration your Orators are not
advised.

And your Orators further shew that
either on the day they accepted said drafts
or the day following, the firm of Corley, Sawell
& Company composed of Francis B. Corley, Edwin
J. Macnab, John T. Sawell and Simon
Sawell Merchants of said Chicago informed
your Orators, that said two drafts had been
given to said Ashard by the said Littig in
payment of a certain bill of flour sacks which
said Littig owed to said Corley, Sawell & Company
that a part of said sacks had been sold by said
Ashard to said Littig and that said Ashard
had sold and assigned his account against
said Littig accruing upon said sale for a valua-

the consideration to said Corley. Farwell & Company, and that the remainder of said drafts had been sold directly by said Corley Farwell Company to said Litty; and the said Corley Farwell Company claimed that the said drafts which your Orators had accepted as aforesaid belonged to said Corley Farwell Co. & that said R. D. Jones & Sons knew when they received said drafts from said Arkhau, that the same & the amount for which they were given in payment belonged to said Corley Farwell & Co. And they notified your Orators not to pay the amount of the same either to said Arkhau or to his order or to any person except one of said firm of Corley Farwell & Co. And they apprized your Orators that the said G. W. Arkhau was only an agent or factor and insisted and gave notice to your Orators that they would be held liable if they paid the amount of said drafts to the said Arkhau or his order.

And your Orators further shew that the said Reuben D. Jones Albert S. Jones, Henry O. Jones and Corina H. Sears the said firm of R. D. Jones & Sons have commenced an action at law in the Cook County Court of Common Pleas within and for the County of Cook and State of Illinois against your Orators to recover the money due upon said drafts.

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And your Orators further shew that they have always been willing to pay the amount due upon said drafts to such persons or persons as shall be lawfully entitled to receive the same and to whom they could pay the same with safety: and they hereby offer to pay the same into this Court.

And your Orators further shew that they do not in any respect collude with either the said G. W. Ashard the said R. D. Jones Sons or the said Corley Farrell & Company touching the matters in question in this cause. but that he exhibits this bill of his own free will and to avoid being molested and injured touching the matters herein contained.

Wherefore and as your Orator can only have adequate relief in this Court. to the end that the said defendants may interplead and settle their rights to the sum and sums of money due upon said drafts and that your Orator may be at liberty to pay the same into this Court. and that the said Ruben D. Jones Albert D. Jones, Henry O. Jones and Edward H. Sears the said firm of R. D. Jones & Sons may be enjoined & restrained from further proceeding in the suit at law to or aforesaid commenced by them against your Orators: and that the said Francis B. Corley, Elijah S. Haverworth,

* Remitted to the Court of the County of the City of New York

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John V. Farwell and Simon Farwell the said firm of Corley Farwell & Company may be enjoined and restrained from commencing any suit at law, and that said George W. Richards may be made applicant, defendant, plaintiff & may answer the premises without oath against your Orators touching the premises; and that your Orators upon payment into Court of such amount and procuring the said defendants to interplead according to the course of this Court may be decreed to be discharged from all liability to such defendants in the premises, and may have all his costs therein.

May it please your Honor to grant unto your Orators the proper writ of Injunction issuing out of and under the seal of this Hon Court directed to the said defendants their Cancellors, attorneys, Solicitors and agents commanding the said defendants the said members of the firm of R. D. Jones & Sons and each of them ^{absolutely} to desist and refrain from proceeding further against your Orators in the action hereinbefore mentioned as commenced against them in the said Cook County Court of Common Pleas for the recovery of the money due upon said drafts: and also from instituting or proceeding upon any new or other action at law upon the subject matter of such money or the claims or demands out of which the same is alleged to arise: And the said defendants the said members of the firm of Corley, Farwell & Company and each of them

absolutely to desist⁷ and refrain from commencing
any action at law upon the said drafts or to
recover the money due thereon. And also the
Writ of Summons commanding the said defend-
ants and each of them by a certain day and
under a certain penalty therein to be inserted
to be and appear before your Honor in this
Hon Court and show and shew to answer
the premises and further to stand to and abide
such order and decree therein as shall be
agreeable to equity and good conscience.

And your Orator will ever pray &c.

Thodore Pettit

Or John O'Mullen

John D. Mullen

Or John O'Mullen

A. A. K. Sawyer

Or John O'Mullen

John O. Mullen

Williams Woodbridge & Hunt
Cof^{ts} Sol^s

State of Illinois

Cook County On this 19th day of February
A. D. 1858. before me personally appeared the above
named John O. Mullen and made oath that
he has heard read the above bill subscribed by him
and knows the contents thereof and that the
same is true of his own knowledge except
as to the matters which are therein stated

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to be on his information and belief and as to
those matters he believes it to be true.
Subscribed & sworn to John C. Mellen
before me this 19th day of
February A.D. 1857.

Walter Kimball Clerk

Let the writ of injunction issue in conformity
with the prayer of the foregoing Bill of Com-
plaint, the Complainant depositing with the
Clerk of said Court the amount appearing
due upon the drafts specified in the said
Bill, together with the costs to be taxed in the
suit at law.

To the Clerk of the
Cork Co Court
of Conn River

John M. Wilson Judge
of the Cork Co of Conn River

And afterwards, to wit, on the 8th day of June
in the year aforesaid, the said defendants Benham
D. Jones, Albert D. Jones, Henry D. Jones & Edward
H. Scott, by their Solicitors, filed in the office of
the Clerk of said Court this certain Remar-
in the words & figures following, to wit:

-9-

The State of Illinois
Cook County Court of
Common Pleas.

Theodore Betts et al

vs
Reuben R. Jones
et al

The demurrer of Reuben
R. Jones, Albert R. Jones, Henry C. Jones
+ Edward H. Sears to the bill of Complaint
in this case.

The said above named defendants
by protestation not confessing or acknowledg-
ing all or any of the matters & things in Com-
plainant's Bill said to be true in such sort
or manner and form as the same are therein
set forth & alleged, for answer to the said
Complainant's Bill of Complaint thus de-
fendants do demur in Law for causes of
demurrer say: that it appears of the
Plaintiff's own showing in his said Bill
of Complaint, that he claims or pretends title
to one third of the premises in question in
the Bill mentioned as a person put in remainder
in 'tail' under a devise in a Will in said
Bill mentioned & set forth: which is a matter
merely triable at Law: and touching which
the complainant may sufficiently ascertain

his title by ejectment or ejectments to be brought
at law. Wherefore I pray for as much as the
Complainants said Bill of Complaint doth
not contain as these Defendants are advised
any matter of Equity sufficient to establish
any right or demands against these Defendants
or either of them, not to draw them in suit into
this Honorable Court touching the matters Com-
plained of the Complainants said Bill of
Complaint & also for many other errors &
imperfections in the said Complainants said
Bill of Complaint contained - these defend-
ants do demur in law thereto & thereby
crave the judgment of this Honorable Court
whether they ought to make any answer to
the said Bill of Complaint: and thereby pray
to be hence dismissed with their costs in this
behalf wrongfully sustained.

Shumway Waite & Towne
Defendants attys

And afterwards to wit on the 13th day of January
in the year of our Lord one thousand eight hundred
and sixty, said day being one of the days of
the January Term of ^{the} Superior Court ^{of the County of} the following

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Among the proceedings now had and entered
of record in said Court to wit:

Theodore B. Bates John A. Mellen
Alfred A. K. Sawyer & John C. Mellen

Benjamin D. Jones. Albert D. Jones. Henry D. Jones
& Edward H. Smith.

This day comes said Complainants
by Williams Warobridge & Grant. Their Solicitors
and said Defendants by Shumway, Waite & Stone.
Their Solicitors also come, and this cause com-
ing on to be heard on the demurrer of all
said Defendants to the bill of Complaint in
this cause, and Counsel being heard, and due
deliberation being thereupon had, the Court sus-
tains the said demurrer to the bill, and leave
given to amend the bill by making George
H. Ashland party defendant to the bill.

And afterwards, to wit on the 24th day of
the month & year aforesaid, A. W. Mellen Jr. filed
in the office of the Clerk of said Court, his certain
affidavit, in the words & figures following, to wit:

12th
Superior Court of Chicago
& Chancery

Shauere Betts

John C. Mullen

Alfred A. K. Sawyer

& John C. Mullen

²⁴
Reuben C. Jones Albert C. Jones
Henry C. Jones Edward H. Hunt
Francis B. Cooley Eliza S. Mass-
worth John V. Farwell and
Simon Farwell & George W. Ashland

State of Illinois
Cook County

I, A. W. McClure Jr. of
Chicago in said County testify and say
that I have made due and diligent in-
quiry for the above defendant George
W. Ashland, and that the said Ashland
on such due inquiry cannot be found, so that
process cannot be served upon him and
I am informed and believe that said
Ashland is at present a resident of the
State of Iowa. & further I say not.
Subscribed & sworn to before A. W. McClure Jr.

me this 24th day of January
A. D. 1861. W. Kimball Clerk

And afterwards to wit, on the 2nd day of February in the year aforesaid, the said Defendants Francis B. Cooley, John V. Farrell, E. S. Matheron & Simon Farwell, filed in the office of the Clerk of said Superior Court of Chicago, their certain answer in the words of figures following, to wit:

In the Superior Court
of Chicago - In Chancery

The joint and several answer
of Elisha S. Matheron, Francis
B. Cooley, John V. Farrell &
Simon Farwell, four of the Defen-
dants to the bill of Complaint of
Theodore Butts, John A. Mullen, Alfred
A. K. Sawyer and John O. Mullen
Complainants against said Defen-
dants & Reuben D. Jones Albert D.
Jones, Henry C. Jones, Edward
H. Sims and George W. Ashard
remaining Defendants.

These defendants now and at all times
hereafter saving and reserving to themselves
and each of them all benefit and advantage
of exception which can or may be had or taken

1. The many errors uncertainties and other imperfections in the said Complainants said bill of Complaint, contains, for answer thereto and unto so much and each parts thereof as the Defendants are advised is or are material or necessary for them or any of them to make answer unto they the Defendants jointly and severally answering say.

They admit and each for himself admits that on or about the 29th day of October A. D. 1857. said Complainants accepted said two Drafts of the said Letter of that date. that the first of said Drafts was for the sum of One hundred dollars, and was payable to the order of the said Defendant George W. Ashland twenty days after the date thereof, & that the other draft was for the sum of two hundred dollars, and was payable to the order of the said Ashland ten days after the date thereof, and said Complainants delivered said Drafts when accepted to said Ashland.

And the Defendants further answering say and each of ~~them~~ for himself, say that said Letter had previously bought of said George W. Ashland a certain bill of flour sacks, the particulars of which bill together with the date and amount of said purchase is set forth in the paper hereto attached marked

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"Exhibit A" to which these defendants hereby leave to refer for greater certainty: that said flour sacks were not paid for on delivery but that a credit was extended by the said Ashland to the said Litty; therefore: that afterwards on or about the 10th day of October A. D. 1837 the said George W. Ashland by an instrument in writing of that date for a consideration therein named sold and conveyed to these defendants the aforesaid claim against said Litty together with claims of the said Ashland against other persons which said instrument in writing or a copy thereof is now in the possession of these defendants and is ready to be produced as this Court may direct.

And these defendants further answering say, and each for himself says, that on or about the date last named the said Ashland entered into the employ of these defendants and so continued until after the acceptance and assignment of said two drafts that the agency of the said Ashland was limited and conferred no authority upon him to assign any drafts which he should receive in payment of amounts due by these defendants against said Litty or others, and that these defendants never authorized said Ashland to indorse such drafts or either of them in any manner.

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And these defendants further answering say, and each for himself says, that after the purchase by them of the aforesaid claims against said Litty, they sold said Litty a bill of flow sacks, the date of purchase of which are set forth in "Exhibit D" hereto attached which these defendants jointly and severally pray may be made a part of this their answer. They further say and each for himself says that the two bills of flow sacks above named, to wit: the bill sold by said Ashard to said Litty and the bill sold by these defendants to said Litty on the consideration and the sole consideration for the two drafts above named and that said two drafts were drawn by the said Litty and delivered to the said Ashard in payment of the balance due these defendants upon said two bills for flow sacks. And these defendants jointly and severally do and will insist that said Ashard received said two drafts solely as agent for these defendants and that said Ashard had no right or authority express or implied to negotiate the same or assign the same to any person or persons whomsoever except these defendants.

And these defendants admit and each for himself admits that said Ashard

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assigned said Drafts to the said Defendants Reuben
D. Jones, Albert D. Jones, Henry O. Jones and Edward
H. Sears, as is in said Bill of Complaint alleged:
And these defendants are informed and believe that
part consideration of the said assignment was a
pre-existing debt owed by the said Ashard to the
said Assignees, they agreeing to return to the said
Ashard any balance which should remain in their
hands after paying said pre-existing debt.

They further say, and each for himself says, that
at the time said Ashard assigned said Drafts
as aforesaid and long before the said Reuben
D. Jones, Albert D. Jones, Henry O. Jones and
Edward H. Sears were fully aware that said
Ashard had sold and assigned all his claims
against said Liffy to these defendants. That
the said Drafts and the consideration thereof,
were the property of these defendants: and these
defendants jointly severally do and will insist
that said assignment of said Drafts was in
fraud of the right of these defendants and
conveyed no title to the said Assignees.

And these defendants admit, and each
for himself admits that at the time in that be-
half in said bill of Complaint named, they
informed said Complainants of their claim
to said two Drafts and to the consideration
thereof substantially in the manner in said

bill of Complaint alleged, and likewise of the fraud practiced by said Ashard in making said Assignment of said Drafts and of the cognizance of said Assigns and that the said Complainants would be held liable by these Defendants if they paid the amount of said Drafts to the said Ashard or his order.

And these Defendants admit and each for himself admits on information and belief that the said Ruben O. Jones, Albert O. Jones, Henry O. Jones and Edward W. Sears have commenced a suit for the money of the amount due upon said Drafts against said Complainants.

And these Defendants consent, and each for himself consents, that a decree may be entered by this Honorable Court requiring them and their co-defendants to interplead as is in and by said bill of Complaint prayed, and these Defendants pray that the fund brought into Court by the Complainants may be awarded to these Defendants with their costs or for such other relief as may be agreeable to equity and good conscience.

C. M. Hawley Sol
for said Drafts

Francis B. Cooley
John V. Farwell
E. W. Wadsworth
Simon Farwell

Exhibit "A" 19

Chicago Oct 10th 1857

W. A. C. Little

Bought of
Gottschalk

1000 per Bbl Sacks	11 1/2 ^c	115.00
1000 per " "	8	80.00
	ct 90	<u>.25</u>
		195.25

Exhibit "B"

Chicago Oct 12th 1857.

W. A. C. Little

Bought of
Corley Farwell & Co.

1000 per Bbl Sacks	11 1/2 ^c	\$115.00
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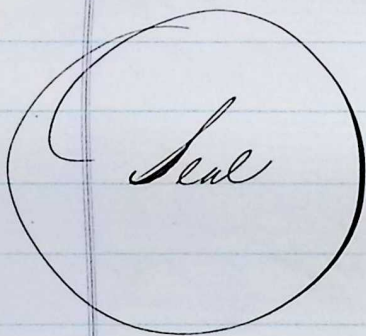
State of Illinois
County of Cook
City of Chicago

Cyrus M. Hawley a Notary
Public in and for the said City of Chicago
do hereby certify, that Francis B. Corley,
John V. Farwell, Eliza S. Wadsworth and
Simon Farwell, whose names appear sub-

scribed to the foregoing answer in Chancery and each of them now duly sworn by me, that the said Answer by them and each of them subscribed was true as therein stated, except such parts as are stated upon information and belief and that as to those they believe them to be true as therein stated.

In Witness whereof I have
on this 1st day of February
A.D. 1860. at my hand and
Notarial Seal.

Cyrus M. Hawley
Notary Public.



And afterwards, to wit, on the 8th day of March in the year last aforesaid, the said Defendants Reuben C. Jones, Albert C. Jones, Henry C. Jones & Edward H. Sears by their solicitors, filed in the office of the Clerk of said Court their certain Amittors in the words of figures following, to wit:

State of Illinois
Cook County. In the Superior Court of
Chicago, in Chancery.

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The demurrer of Benjamin R. Jones. Albert R. Jones. Henry C. Jones, + Edward H. Sears. defendants to the Bill in Chancery filed against them and others. by Theodore Pettis & others, complainants.

These defendants by protestation, not confessing or acknowledging, all or any of the matters or things in the said Bill set forth and complained of to be true, in manner and form as the same are therein set forth and alleged. Say they are advised by their counsel, that there is no matter or thing in the said Bill contained, good and sufficient in law to call these defendants in question in this Honorable Court for the same. But that there is good cause of demurrer thereto. And therefore these defendants say, that the complainants said Bill, in case the allegations therein contained, were true, which these defendants do in no sort admit, contains not any matter of equity, wherein this Court can give a any decree, or give the complainant any relief or assistance, as against them these defendants: Wherefore, and for divers other errors and imperfections in the said Bill appearing, these defendants do demur in Law thereto: And humbly leave and the judgment of this Honorable Court.

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whether they shall be compelled to put in any
further or other answer to the said Bill:
And humbly pray to be hence dismissed
with their reasonable costs, in this behalf most
wrongfully sustained.

Shumway Waite & Downe
Solicitors for
Ruben D. Jones et al

And afterwards, to wit: on the 17th day of May
in the year aforesaid, the said Defendants
Ruben D. Jones, Albert D. Jones, Henry O.
Jones, and Edward H. Sears, filed in the office
of the clerk of said Court, their certain an-
swer in the words & figures following, to wit:

In the Superior Court
of Chicago

In Chancery

The joint and several answer of
Ruben D. Jones, Albert D. Jones,
Henry O. Jones, and Edward H. Sears
one of the Defendants to the Bill
of Complaint of Theodore Bots

John D. Mellen. Alfred A. K. Sanger and John O. Mellen Complainants against said Defendants, and Francis D. Kearley Elihu S. Wassworth John V. Farrell. Simon Farrell and George W. Abner Defendants.

These defendants now and at all times saving and reserving to themselves and each of them all benefit and advantage of exception, which can or may be had or taken, to the many errors, uncertainties and other imperfections in the said complainants said bill of Complaint contained for answer thereto. And unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, they jointly and severally answering say.

That they admit that on or about the 29th day of October A. D. 1857. that the said complainants accepted the two Drafts mentioned & referred to in the said complainants bill of Complaint, but at what precise date the said acceptances were made these defendants cannot state, which Drafts these defendants admit were for the amount

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payable at the time, & now delivered to the
Defendant G. W. Ashard as stated in
said bill of exchange.

And these defendants further
answering say the said Reuben D. Jones
of his own knowledge, and the others of said
defendants upon information derived from
the said Reuben D. Jones, that they admit
the said Defendant Ashard assigned
the said two drafts to the said Defendants
as and in their copartnership capacity of
R. D. Jones & Sons. And the said Defendants
the said Reuben D. Jones of his own know-
ledge & the others of these defendants on
information derived from him say that
the said drafts were assigned and transferred
to these Defendants, at the time, upon the terms
for the following considerations, as follows:
viz: On the 30th day of October A.D. 1857,
the defendant George W. Ashard called at
the store in which the said Defendants were
at that time engaged in business in the city
of Chicago, and desired to purchase a
quantity of sheeting and shirting for the
purpose of manufacturing flour sacks
for one A. N. Kittig, whom he represented
to be a merchant in Iowa: And at the
same time the said Ashard exhibited the

two drafts mentioned and referred to in the said complainant's bill of complaint, with the acceptance of the said complainants thereon and requested the defendants to receive said acceptances in payment for such of said purchases as he might make. Whereupon the defendants Reuben D. Jones informed the said George W. Ashard, that he knew nothing of said drafts, was unacquainted with the pecuniary responsibility of the said complainants, the acceptors of the said drafts, and desired to make inquiries as to the responsibility of said complainants, before consummating the sale, and the said defendant Reuben D. Jones, thereupon did make such inquiries finding that the said complainants were reputed to be responsible made sale to the said Ashard, in the name and on account of said firm of R. D. Jones & Sons of two (2) Bales of brown Shetling measuring fifteen hundred and eighty eight yards at ten cents per yard amounting to the sum of \$158⁸⁰/₁₀₀ and of fifty pieces of Kingstown Shetling (938 yards) at 8¹/₄ cts per yard amounting to the sum of \$159⁹²/₁₀₀ (making) in the aggregate the sum of three hundred eighty six ⁷²/₁₀₀ (\$318⁷²/₁₀₀) Dollars, and which merchandize was then & there delivered to the said Ashard, who at the same time and in payment therefor delivered

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to the said Defendant Reuben R. Jones the two drafts mentioned and referred to in the said Complainants bill of Complaint, and paid to him the sum of Eighteen dollars and seventy two cents (\$18⁷²/₁₀₀) the difference between the two drafts and the amount of said purchase as will fully appear on reference to the bill of said purchase and the said credits attached to this the Answer of said Defendants marked "Exhibit A" and which these Defendants pray may be taken as part of this said Answer.

And these defendants further answering say, the said Reuben R. Jones of his own knowledge, and the other of these defendants from information derived from the said R. R. Jones, that the said sale to the said Ashard of said shavings & other materials was made. And the said drafts with the acceptance of said Complainants indorsed thereon received by these defendants in good faith for the consideration aforesaid and without any knowledge, information or belief that Cooley Farnell & Co. respecting the said drafts or the ownership thereof, or of the assignment of any account in favor of said George W. Ashard against said Litty to them nor of any sale of backs or

other property, by said Cooley. Farwell & Co. to
said Loring, or of any indebtedness of said Loring
to them, and these defendants neither admit nor
deny the same. And these defendants have
no knowledge or information of any such sale
Assignment, or claim on the part of said Cooley.
Farwell & Co. until the first of said drafts became
due & payable & payment thereof had been demand-
ed of the said complainants as the acceptors
thereof, at which time the said complainants
informed these defendants that they had been
instructed by the said Cooley. Farwell & Co.
not to pay the said drafts, and these de-
fendants deny that the said Cooley. Far-
well & Co. or any other person or persons
other than these defendants, have any right
legal or equitable to the money mentioned
and stipulated in the said two drafts
and they claim and insist that the pay-
ment thereof is withheld from these defend-
ants unjustly and without any reasonable
cause therefor. And these defendants state
& charge the fact to be, that the said sale
to said Ashland was made as a cash sale
independent of and without any reference
to any indebtedness of the said George W.
Ashland to these defendants to a large
amount, which he was then owing to these

defendants, and upon the representation of the said Ashard, and belief of these defendants that the materials were sold to the said Ashard were so purchased by him for the purpose of manufacturing sacks for the said Little, the drawer of said drafts by the said George W. Ashard. And these defendants aver and charge the fact to be that the said George W. Ashard was at the time said sale was made engaged in the business of manufacturing flour sacks on his own account, and as these defendants are informed, and believe wholly independent of the said Cooley, Farwell & Co. and these defendants claim and insist that they received the said two drafts as aforesaid before maturity in good faith for the valuable considerations as aforesaid, and that the said Ashard had full power, good right & lawful authority to dispose of the same to these defendants in the manner & form as the same was done.

And these defendants further answering say that they admit that suit was commenced in the Cook County Court of Common Pleas in favor of these defendants & against the said Complainants to recover the money due upon said drafts. But they further state & charge the fact to be upon

P.
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information derived from Shumway Waite
Towns their attorneys in said suit, and as
they severally verily believe that judgment
was obtained in the said suit against the
said complainants before the filing of the said
bill of Complaint in this suit and they claim
and insist and submit to this Honorable
Court, that the said Complainants in equity
& good conscience, ought not to be allowed
to proceed in this suit, after waiting until the
said suit at law had been fully heard and
determined.

And these Defendants deny all, and
all manner of unlawful combination &
confederacy wherewith they are by the said
bill charged, without this, that there is any
other matter, cause, or thing in the said Com-
plainants' said bill of Complaint contained
material or necessary for these Defendants
to make answer unto and not herein and
hereto well and sufficiently answered, con-
fessed, traversed, and avoided or denied
is true to the knowledge or belief of these
Defendants; all which matters and things
these Defendants are ready and willing to
avow, maintain and prove, as this Honor-
able Court shall direct, and humbly pray
to be hence dismissed with their reasonable

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costs and charges in this behalf most wrong-
fully sustained.

Shumway Waite & Town
Solicitors for Reuben R. Jones & Sons

R. O. Jones

A. O. Jones

Henry O. Jones

Edward H. Sears

Superior Court of Chicago
In Chancery
Shumway Waite & Town

Reuben R. Jones et al

State of Illinois
County of Cook
City of Chicago

Reuben R. Jones and Albert R. Jones
being severally duly sworn do depose and say
that they have heard the above Answer sub-
scribed by them read, and know the contents
thereof, and that the matters & things therein
set forth are true of their own ^{several & respective} knowledge
except as to the matters which are therein sta-
ted to be on information and belief and as
to those matters they believe it to be true.

Subscribed & sworn to before
me this 7 day of April
A. O. 1867.

R. O. Jones

A. O. Jones

31 Witness my hand
And official seal the
day & year aforesaid
Walker Kimball clerk of
the Superior Court of Chicago

Seal

Superior Court of Chicago In Chancery
Theodore Pettis et al

vs
Ruben O. Jones et al State of New York
City & County of New York ss.

Henry O. Jones of the City of New York
in the State of New York being duly sworn
doth depose & say that he has read the
above answer in this suit subscribed by him
that he knows the contents thereof and that
the same is true of his own knowledge & apt
as to those matters which are therein stated
to be on his information or belief and as to
those matters he believes it to be true.

Subscribed & sworn to before me this Henry O. Jones

13th day of April A.D. 1860. Witness my
hand & official seal the day & year aforesaid.

Geo. W. Parker. Notary Public

Seal

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Superior Court of Chicago

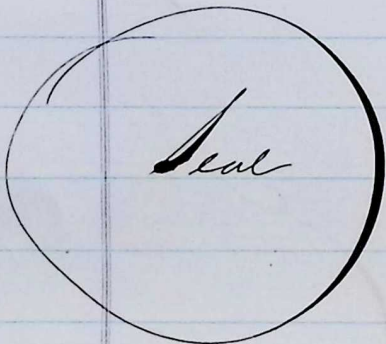
Theodore Betts et al

vs
Reuben A. Jones et al

State of Illinois
County of Whiteside ss.

Edward H. Sears of the Village of
Cairo in said County & State being duly sworn
doth depose & say that he is one of the de-
fendants named in the bill of Complaint
in the above suit. that he has read the
above answer subscribed by him & knows
the contents thereof & that the same is true of
his own knowledge except as to the matters
& things which are therein stated to be on
information or belief and as to those matters
he believes it to be true.

Subscribed & sworn to before Edward H. Sears.
me this 24th day of April
A. D. 1860.



Witness my hand &
official Seal the
day & year aforesaid
Benjamin C. Koblenz
Notary Public

9.

Exhibit 33

Chicago October 30th 1857.

M. G. W. Ashland

Bought of C. D. Jones & Sons
26 Blake Street

Lewis Cash

26 Lake Street

2 Bales Bro Shunting 1588- 10 158.80

50 Re Kingston Shunting 1938² P/4 159.92

8318.72

ls

By Samson Mullen & Co Accepted Nov 8/11 - 57.200.00

" " " " " 2018/21 57. 100.00

11 Cash to bal

18.72/318.72

And afterwards, to wit, on the 11th day of May in the year aforesaid. there was filed in the office of the Clerk of said Court a certain notice of publication, which said notice with the publisher's certificate thereto attached is in the words of figures following, to wit:

Chancery Notice
State of Illinois
County of Cook
Superior Court of Chicago
February Term A.D. 1860

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Theodore B. Batts. John N. Mellen
Alfred H. Sawyer & John O. Mellen
vs

Reuben N. Jones, Albert O. Jones
Henry O. Jones, Edward W. Hunt
Francis B. Cooley, Elisha S. Wadsworth
John W. Farwell, and Simon Farwell
and George W. Ashland. In Chancery

Affidavit of the non-Residence of George
W. Ashland, one of defendants above named
having been filed in the office of the Clerk
of said Superior Court of Chicago. Notice is
hereby given to the said George W. Ashland
that the complainants filed their bill of
Complaint in the Cook County Court of
Common Pleas, now the Superior Court of
Chicago, on the Chancery side thereof, on the
25th day of February 1868. and that a sum-
mons thereupon issued out of said Court
against said defendants, as is by law required.

Now, unless you, the said George W. Ash-
land, shall personally be and appear before
said Superior Court of Chicago, of Cook
County, on the first day of the next term
thereof, to be holden at Chicago, in said County
on the first Monday of February 1869. and
plead, answer or demur to the said Com-

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plaintiffs bill of complaint, the same and
the matters and things therein charged and
stated will be taken as confessed, and a decree
entered against you according to the prayer
of said bill.

W. H. Grant Counselor at Law Walter Kimball Clerk
Chicago January 26, 1860.

This Certifies, that the appended Chancery
Notice Betts et al vs R. D. Jones et al has
been published in the "Chicago Daily Demo-
crat" a newspaper printed and published
in the City of Chicago, County of Cook, and
State of Illinois four consecutively
commencing with the 26th day of January 1860.
and that I have received six Dollars for
publishing the same.

John Wentworth Publisher
By C. L. Rice

And afterwards, to wit: on the 11th day of May in the year aforesaid, said day being one of the days of the May Term of said Court the following among other proceedings were had and entered of record in said Court, to wit:

Theodore Bells. John O. Mullen
 Alfred A. K. Sawyer. ^{vs} John O. Mullen
 vs. Bill
 Reuben C. Jones. Albert D. Jones. Henry C. Jones
 Edward H. Sears ^{vs} George W. Ashland

And now again comes said Complainants by their Solicitors William H. Woodbridge & Grant, who file herein due proof of publication of notice to said Defendant George W. Ashland of the pendency of this Bill of Complaint in this Court against him. On motion it is ordered that he plead answer or demurr to the Bill of Complaint instant. And no plea, answer or demurrer being interposed by said Defendant nor by any one for him And being three times solemnly called in open Court and not appearing it is ordered that his default be and is truly entered of record and that said bill of Complaint be and is truly taken as confessed against said Defendant

Ans George H. Ashland herein for want of
an Answer.

And afterwards, to wit, on the 23rd day of
October in the year aforesaid, the said defend-
ants Coolidge Samwell & Co. by their solicitor filed
in the office of the Clerk of said Court, their certain
motion to suppress depositions in the words of figures
following, to wit:

In the Superior Court of Chicago
In Chancery

Potts Mellow & Co
vs
R. D. Jones & Sons &
Coolidge Samwell & Co

Bill of Interpleader

And the said Defendants Coolidge
Samwell & Co. by C. M. Hawley their solicitor
come and enter their motion to suppress
the said deposition of Barnabas L. Soutland
and to strike the same from the files for the
following reasons
Let the said Defendants R. D. Jones & Sons
have not by said witness' testimony shown

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any connection between the purchase of the goods mentioned by said witness & the drafts in question.

2^d In the his answer to the 5th Interrogatory he states that he has no knowledge of the matter enquired about except from information.

3^d His answer to the 6th Interrogatory is a mere supposition

4th His answer to the 7th Interrogatory is immaterial, having failed to connect the said drafts with the said goods sold.

5th It is of no moment what the value of the goods were, which were sold to Ashland they having failed to connect the consideration therefor with the said drafts.

6th The whole deposition is irrelevant to the issue

7th Before Jones & Sons can be permitted to prove a consideration for the said drafts they must show that they made enquiry in good faith as to the foundation of the said drafts & acquainted themselves as to

Plut. ant

Exhib. sec

the merits of said ³⁹ transaction - they having
been advised of the insolvency of the said
Ashard, & his prior assignment of his
Books of Ac to said Defendants Cooley
Farwell & Co

And the said Defendants Cooley
Farwell & Co. all take the following Excep-
tions to the Deposition of Cornelius B. Drake

1st The Answer to the 3rd Interrogatory
assumes, what should be proved, to wit.
that Jones & Sons made enquiries into the
merits of the transaction & that they took
the said Drafts with clean hands before
they saw he. permitted to prove a con-
sideration paid therefor.

2^d The 4th and 5th Questions and answers
have nothing to do with the matter in
controversy.

3^d The answers to the 3^d 4th and 5th Inter-
rogatories tho' answered by witness as of
his own knowledge: yet in his answer
to the 6th Cross Interrogatory, he says he
did not hear the conversation & in his
answer to the 7th and 13th Cross Interroga-
tories he says that all he knew about

the said transaction was from conversation with R. D. Jones & Son.

17th. The said Deposition of the said Drake is incompetent. for the reason it is based upon information & witness derived from Defendants R. D. Jones & Son.

And the said Defendants Corley, Farrell & Wadsworth enter their motion that the same be suppressed & stricken from the Files.

C. M. Hawley Sol for
Corley Farrell & Wadsworth Agents

And afterwards. to wit, on the 24th day of the month & year last aforesaid. there was opened & filed in the office of the Clerk of said Court certain depositions in the words & figures following. to wit:

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Chicago Oct 29th /57.

100 #

Twenty Days after date pay to the
order of G. W. Ashland One Hundred Dollars
and charge the same to my account

To Sawyer Mullen & Co
358 + 260 So. Water Street Chicago

A. N. Little
By C. Hiramson

Endorsed on back -

R. D. Jones & Sons
G. W. Ashland

Exhibit "A"

State of Illinois
County of Cook, City of Chicago. J. Rich Known
That on the twenty first day of November in the
year of our Lord One thousand eight hundred
and fifty seven, I, Edward J. Towne Notary
Public, duly commissioned and sworn and
residing in the City of Chicago, in said County
and State, at the request of R. D. Jones & Sons
went with the original Bill of Exchange of
which a true copy is above written, to Sawyer
Mullen & Co at 358 + 260 South Water Street
Whereupon I, the said Notary, at the request
aforesaid, did Protest and by these presents
do Solemnly Protest, as well against the maker
of said bill the endorser thereof, as all others

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whom it doth or may concern, for exchange-
re-change, and all costs, charges, damages,
and interest, already incurred, by reason of the
non payment of the said bill of exchange.

And I the said Notary, do hereby certify
that on the same day and year above written
due notice of the foregoing Protest was put in
the Post Office at Chicago, as follows:

Notice for Sanjour Mullen & Co

" for A. S. Littig

" for E. W. Ashard

" for

Each of the above named places being the reputed
place of residence of the persons to whom this notice
was directed.

In Testimony Whereof, I have
hereunto set my hand and affixed
my official seal the day and
year above written

Edward P. Torrey

Notary Public.

State of Illinois 45
 County of Cook
 City of Chicago

The Depositions of Witnesses taken before Philip A. Wayne a Notary Public in and for the City of Chicago in the County of Cook and State of Illinois at the office of said Notary on the 15th day of October A.D. 1860. commencing at 2 o'clock P.M. of said day, said depositions being taken by the agreement of C. M. Hawley Counsel for Corley Sawell & Co. and Shumway, Waite & Town Counsel for R. C. Jones & Sons, and to be read in evidence in a cause pending in the Superior Court of Chicago, wherein Shumway, Waite & Town are Complainants and R. C. Jones & Sons and Corley Sawell & Co. are Defendants, and taken out the part of R. C. Jones & Sons.

Present C. M. Hawley Esq
 " C. J. Town Esq

And now comes as a witness Barnabas L. Gould and of said City of Chicago, and he being of lawful age and having been by me first duly sworn according to law, to testify the truth, the whole truth and nothing but the truth in relation to the matter in controversy

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as far as he should be interrogated concerning the same. Testifies and says as follows:

X Interrogatory 1st

What is your name, age and occupation and where do you reside?

Ans

My name is Barnabas L. Soutard. I am forty two years old I am Salesman for John R. Miles, and I reside in Chicago, Illinois.

2^d Int

Are you acquainted with the parties to this suit, and G. W. Ashard if so how long have you known them?

Ans:

I know R. C. Jones & Sons and Corley Farwell & Co. I know Sawyer Mullen & Co by reputation only. I also know G. W. Ashard. I have known R. C. Jones & Sons, and Corley Farwell & Co. about five or six years. I have known Sawyer Mullen & Co. since 1857. and G. W. Ashard sometime longer.

3^d Int:

In whose employ were you in October 1857?

Ans:

In the employ of R. C. Jones & Sons.

4th Int

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State whether or not the firm of R. C. Jones & Son in the fall of 1857 sold any goods wares and Merchandise to G. W. Ashard, if so when was it, what was the kind of goods sold, who sold them, who was present, and state all you know about the transaction?

Answer.

I know that on the 30th of October 1857 R. C. Jones & Son sold to George W. Ashard two Sales of Atlantic Shirting. 1588 yds at 10 cents per yard amounting to \$158.80. 50 yds of Kings too Shirting 1938 yds at 8 $\frac{1}{4}$ cents amounting to \$159.92 Total amount of Bill \$318 $\frac{72}{100}$. I sold the goods myself. I cannot say positively who was present when I made the sale, but think that R. C. Jones and Mr Drake were present.

5th Int.

State if you know how these goods were paid for?

Answer

I understood they were paid for at the time by drafts received from G. W. Ashard, drawn by some party on Sawyer Mellen & Co. with the exception of a small balance which I understood was paid in money.

6th Int.

For what purpose did G. W. Ashard buy these goods?

Answer.

I suppose for the purpose of making bags
as he was engaged in that business.

7th Int.

State whether or not you sold these cloths
for R. C. Jones & Sons?

Answer

I did.

8th Int.

State the value of the goods sold by you
at that time to E. W. Ashland?

Answer

Three hundred and eighteen Dollars and
seventy two cents \$318⁷²

Cornelius L. Soule.

Subscribed and sworn to before me this 15th day
of October A. D. 1860.

Philip A. Hoyns
Notary Public.

And now comes as a witness Cornelius
G. Drake, who being of lawful age and
having been by me first duly sworn to
testify the truth, the whole truth and nothing
but the truth in relation to the matter
in controversy as far as he should be inter-

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rogated. concerning the same, deposes, testifies and says as follows, to wit:

First Interrogatory.

What is your name, age, occupation and where do you reside?

Answer

My name is Cornelius S. Drake. I am forty three years old. I am Book Keeper for R. C. Jones & Sons and was such book-keeper during the year 1857. and I reside in Chicago, Illinois.

2^d Int

Are you acquainted with the parties to this suit, if yes, how long have you known them respectively?

Answer.

I know all the parties to the suit I have known R. C. Jones & Sons for over ten years.

3^d Int.

State whether or not you know of the transaction taking place between G. W. Ashland and R. C. Jones & Sons in October 1857. if yes, what was that transaction, whom was present. State all you know about it?

Answer

I know that there was a transaction between

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R. C. Jones & Sons and G. W. Ashland October 30th 1857. It was a sale of a bale of Cotton goods and 50 lbs of Cotton goods besides by R. C. Jones & Sons to G. W. Ashland. I don't know positively who was present besides R. C. Jones. The arrangement for the sale of the goods was made between Mr R. C. Jones and Mr Ashland. Mr Ashland came there with certain drafts for which he wished to purchase some cotton goods for bagging at which time the arrangement was made between him and R. C. Jones for the purchase of the goods already spoken of. In accordance with this arrangement Mr Souland sold him Mr Ashland the bill of goods spoken of by him in his testimony - These goods were paid for at that time in part by A. W. Little's drafts on Sawyer Mullen & Co. which said two drafts are hereto attached to this my deposition and respectively marked Exhibits "A" & "B" and the balance on November 9th in cash amounting to \$18.75

4th Int

State whether or not R. C. Jones made any inquiries as to the responsibility of Sawyer Mullen & Co.

Answer

Before consummating the arrangement with Mr Ashland Mr R. C. Jones made inquiries

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in relation to the responsibility of Sawyer & Mellen
& Co. and found them to be reported good.
and on the strength of said report sold the bill
of goods referred to

3rd Int:

State whether or not at that time or previous to
that time. E. W. Ashard had been engaged
in the manufacturing of bags, and whether
he was so at that time?

Answer.

He had been previous to that time (manufac-
turing Bags and represented himself at that
time as being engaged in said manufacturing
of bags.

Cross Examination

1st Cross Int

Was this transaction made on the day of the
date of said drafts?

Answer

This transaction was on the 31st of October
and the drafts were dated a few days before.

2nd Cross Int.

At what time were said drafts made give
the date?

Answer

I have no knowledge of the time they were made.

3rd Cross Int.

Do you know of your own knowledge or from

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information received of either the said Jones
Hunt, when and where said drafts were made
in whose office, and who were present at the
time?

Answer

I do not, I do not remember of hearing a
word said about when and where they were
made.

4th Int.

3
Did you learn from any source on what
account the said drafts were drawn, if you
state the source of your information and the
account they were drawn upon

I think I can do too from Mr Jones, that
these drafts were made to Ashland, as an
advance for him to buy goods to furnish
the party with bags.

5th Cross Int.

Did you not learn that these drafts were
made at the said Ashland's Office by an
arrangement between said Ashland and
Jones & Sons and in the presence of one of the
said Jones and that they were drawn upon
said Liggins' account that had been assigned
to said Corley Farwell & Co.?

Answer

I never did hear anything of the kind.

6th Cross Int.

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Did you hear the conversation between the said R. C. Jones & Sons and the said Ashard at the time of the said transaction, if you state the same fully and particularly as it occurred?

Answer

I don't that I heard the conversation referred to.

7th Cross Int.

Was such information as you had on the subject received from R. C. Jones?

Answer

It was

8th Cross.

Were you or were you not at the time in the employ of R. C. Jones & Sons, and if so in what capacity?

Answer

I was in the employ of R. C. Jones & Sons at the time as their Bookkeeper

9th Int.

Did you know whether or not at that time said Ashard was engaged in the manufacture of bags and if so where? And in what building, and on what street?

Answer

I only knew that he was reported to be making bags on Newborn Street at his former place of business.

10th Int.

Was he not up to that time or about that time
been employed or engaged in manufacturing Bags
over the Store of Corley Sawell & Co on Habash
Avenue?

Answer

I understood he had previous to that time or near
to that time.

11th Int.

From whom did you understand that?

Answer

I don't know - I think from in there one time
about the time he was removing there or a
few days afterwards.

12th Int.

When was that time, what year and what time
of the year, state as near as you can?

Answer.

I cannot state what time exactly I think
it was in the Summer of 1857.

13th Int.

How do you know that R. J. Jones made en-
quiries about the responsibility of said Surgeon
Mullen & Co?

Answer

He told me so. He went out for that purpose
and told me so when he came back.

14th Int.

Did not Mr Ashard say that he was about

to recommence the manufacture of Bags at his
old place instead of saying he was then en-
gaged in the manufacture of Bags?

Answer

I cannot say. I do not recollect.

15th Cross Ex

Was not said drafts drawn upon a then exist-
ing account of said Little?

Answer

I have no actual knowledge of what account
said drafts were drawn on. The only know-
ledge I had is what I have already stated in
my testimony.

16th Cross Ex

Did you not understand that the said account
of Little against which said drafts were
drawn was an account previously made (obj. to)

Answer

Sustained.

I did not understand that he had had a
previous account

17th Cross Ex

Have you not talked with Mr Jones or one
of them about it, and did they not so inform
you?

Answer

I cannot say that I ever heard them say
they had a previous account.

18th Cross Ex

Have you not talked with them or one of them about it?

Answer

I am not positive whether I have or not.

19th Cross Int

Who came into the store of R. D. Jones & Son with Ashard at the time?

Answer

I don't know that any body did.

20th Cross Int

Had there been any conversation at that time or just previous thereto about the financial condition of the said Ashard?

Answer

I don't that there had been just at that time, Ashard's indebtedness among others had been the subject of conversation previously.

21st Cross Int

Had not said Ashard just previous thereto called a meeting of his creditors at his own house, which one of the firm of R. D. Jones & Son attended

Answer

How long previous I do not know I did understand that there had been a meeting of the creditors

22nd Cross Int

About how long previous thereto was it?

Answer

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I cannot tell it might have been out inside
and might have been more.

23rd Prop Int

Has not said meeting in there a very few days
before?

Answer

It may have been I have no recollection in
relation to it.

24th Prop Int

What did you understand the object of said
meeting of creditors to be?

Answer

As far as I heard anything said about
Mr. Dehard was in a tight spot, and the meeting
was called to see what could be done about it.

25th Prop Int

Did you understand that either of the said
Jones attended said meeting, and if so which
one so attended?

Answer

My impression is that I understood Mr. H.
C. Jones to have attended some meeting
of his creditors somewhere.

26th Prop Int

Did you understand that he attended more
than one such meeting?

Answer

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I don't know that I heard that he had attended more than one.

27th Cross Int

Was it from said H. O. Jones that you learned that said Ashard was in a tight place and that said meeting of his creditors was held to see what could be done?

Answer

I could not say. I do not recollect.

28th Cross Int

Did you receive such information while you were so employed by said R. O. Jones & Sons?

Answer

I did.

29th Cross Int.

Was his circumstances at that time or about the time the said H. O. Jones attended said creditors' meeting talked about, in the office where you was so employed by the said R. O. Jones & Sons.

Answer

I cannot say that they were talked about in my presence.

30th Cross Int

From what source did you learn of the embarrassed condition of the said Ashard at the time spoken of by you?

Answer

I cannot tell from what source. Mr. Ashard

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had paper past due, and I was trying to
collect money from him. and frequently
called upon him for that purpose

3rd Crop Int.

Was there not some conversation between
said R. P. Jones & sons and some one of them
and said Ashaid about assisting said
Ashaid in the recommencement of said
Bag Business, at about the time of the said
directors meeting?

Answer

I cannot say, there might have been but
I cannot say, whether there was or not?

32nd Crop Int.

Did you ever hear any thing about it?

Answer

I don't know that I have

33rd Crop Int.

Will you swear that you have not?

Answer

I cannot say that I have not, I may have
heard some matters at that time but I
do not now recollect.

34th Crop Int.

Have you no recollection of hearing something
of the kind?

Answer

I cannot swear positively that I had or not.

69.

The time for adjournment having arrived by consent of the parties the further taking of testimony in this cause is postponed until to-morrow morning at 9 o'clock A. M. at the same time and place.

Tuesday October 16. 1860
9 o'clock A. M.

Parties present as on yesterday.

It is hereby agreed by the counsel for the respective parties that all the foregoing questions and answers, as well as those that follow are subject to all legal objections.

Examination of the Witness Cornelius G. Drake resumed.

35th Crisp Int

How long had Ashanti in bar of court been a matter of conversation at or before the time of said President meeting?

Answer

I cannot give any idea. It might have been a long time, and might have been a short time.

36th Cross Int

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When was it that you first presented to said Ash and Son's paper for payment, as mentioned by you?

Ans:

It would have been at the maturity of the paper, but I have not looked at it for two years, and cannot tell.

37th Cross Int

Was it before the said creditors meeting?

Answer

I should think it was.

38th Cross Int

About how long before?

Ans

I don't recollect.

39th Cross Int

Was it within a month or less of that meeting?

Ans:

My impression would be, that I had presented said paper within a month of that time.

40th Cross Int

Whose paper was this that you so presented?

Ans

R. Q. Jones & Sons

41st Cross Int

Did he pay it?

Ans: He did not.

42^d Cross Int

How large was the indebtedness?

Ans:

I cannot tell now. I think there was more than one note, and amounted to over a hundred dollars.

43^d Int

Did said R. C. Jones & Sons or either of them endeavor to collect this indebtedness or secure the same against Ashard at the time it became due and afterwards.

Ans

I don't know, nor do I recollect now that there was any steps taken except presenting the notes.

44th Int

Kroyan know of their having a conversation with him on the subject?

Ans:

My impression would be that I heard them say they had talked to him about it.

45th Int

What reason if any did Ashard give for not paying this paper?

Ans:

Sofar as I recollect it was want of funds at the time.

46th Int.

Did you not understand from Ashard or said R. C. Jones & Sons, or one of them, that Ashard had put all of his effects into the hands of said Cooley, Farwell & Co.?

Ans.

I did not so understand it so at that time. I went to Ashard about the time he was moving in there over Cooley Farwell & Co. and presented him with a note, and he promised to pay something in a few days.

47th Int

Was not that in the Summer previous to said Creditors' meeting?

Ans.

I have no distinct recollection what time it was, if it was in the Summer that he moved in there, that was the time, for it was about the time he moved in there.

48th Int

Did you present his paper to him for payment after this time and up to the time of the Creditors' meeting?

Ans.

My impression is that I did present it to him after that time, and had presented it before.

49th Int

Was said H. O. Jones a member of said firm of R. C. Jones & Sons?

Ans:

Noe was.

50th Int

Have you not learned from the said Jones or one of them that they had made efforts to collect or secure their said indebtedness against said Ashard, and had conferred with him upon his business circumstances?

Answer

I cannot state positively whether I did or did not hear them say anything about it.

51st Int

Will you swear that you have not?

Ans:

I cannot swear that I have not, if I could. I would have sworn positively in the first place.

52nd Int

What did said W. C. Jones say about the said meeting of creditors on his return?

Answer

I cannot swear that I heard him say anything. I don't know that there was any conversation in my presence.

53rd Int

How long after said creditors meeting was it, that said W. C. Jones & Sons took from Ashard the said drafts.

Answer

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I cannot tell for I have no knowledge of the time the creditors meeting was.

54th Int

When did said Ashard leave the building of Cooley Sawmill & Co.?

Ans:

I cannot tell positively. I think it was a short time before the goods were sold I don't know whether I knew at the time.

55th Int

When did he recommence business on Dearborn Street?

Ans:

I cannot tell I only know he was said to being do business there at the time of this transaction.

56th Int

Did you see said goods delivered to said Ashard?

Ans:

I knew of said goods being shipped to said Ashard and afterwards settled the bill with him. I am quite confident that the goods at his place of business on Dearborn St.

57th Cross Int

Did you see said goods delivered to said Ashard?

Ans:

I cannot answer the question any better than I did before. I saw the goods bill and shipped, and afterwards saw them at his place of business on Dearborn Street.

58th Int

Did you see said goods delivered to said Ashard?

Ans

I can only answer it as I did before.

59th Int

Will you swear positively that you saw said goods delivered to Ashard?

Ans

My answer to the other question is as positive as I can make it.

60th Int

Did you not understand that Ashard gave as a reason at the time of the said Creditors Meeting and before that time when he called said meeting why he could not pay his paper or debts, that said (Collyer) Jewell & Co had in their possession all his property and effects?

Ans:

I don't know that I heard any thing of that kind. I have no distinct recollection of a conversation in relation to that meeting.

61st Int

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Did you understand that he gave such
reason for not paying at any time?

Answer

I don't know that I did.

62nd Int

Will you swear that ~~you~~ did not?

Ans

No.

The counsel for one of the defendants Cooley
Farwell & Co. objects to the counsel for R. D.
Jones & Sons conversing with the witness.

Re Direct Examination
1st Re Direct Int

In answer to the 4th Cross Int you say that
I understood from Mr Jones that these drafts
were made to Ashard as an advance for
him to buy goods to furnish this party with
bags "What do you mean by this party?"

Ans:

I suppose it had reference to the party making
the drafts to Ashard.

Subscribed & sworn to before me

This 16th day of October A. D. 1860

J. A. Hogue Notary Public

Cornelius S. Drake

And comes as a witness John Woodbridge Jr who being of lawful age and having been by me put under oath according to law, to testify the truth, the whole truth and nothing but the truth in relation to the matter in controversy in this cause as far as he should be interrogated concerning the same, deposes testifies and says as follows to wit:

I am acquainted with R. Q. Jones I don't know whether I know the other members of the firm or not. I have a business acquaintance with Sawyer Mellen & Co in connection with this suit. I recollect defending a suit for Sawyer Mellen & Co. brought by R. Q. Jones & Sons against them. I have been told that it was in the year 1857 and I think it is correct.

We commenced to try the suit: this was within a few days of filing the Bill in this cause. I think some drafts were introduced by Mr. Jones as Attorney for R. Q. Jones & Sons, the same that are in controversy in this suit. I then offered to show that the drafts were the property of Cooley Sawell & Co. and not the property of Jones & Sons. I do not remember whether I introduced any testimony or not, but the Court held

that any testimony on that subject inadmissible
 under that issue at law. It was then proposed
 either by the Court or myself, that I should
 file a bill of interpleader to raise this question.
 If I proposed it the Court assented to it in
 any event I got leave of the Court to file it.
 In agreeing to hold the judgment in suspense
 provided I did it in a certain time. I
 think at first he proposed to enter a judg-
 ment, but I objected on the ground that
 it might prejudice the rights of my clients
 and it was finally understood between the
 Court and myself, that no judgment should
 be entered. I was to file a Bill of Inter-
 pleader and bring the money into Court
 which I did. I may have brought a
 check into Court for the money instead
 of the money itself or some one else may
 have brought it for me.

Subscribed and sworn to

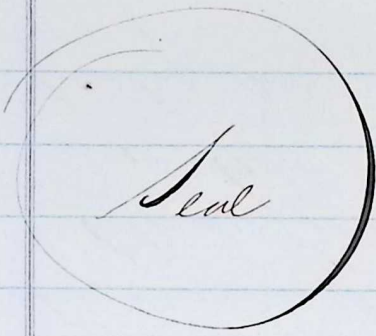
J. Woodbridge Jr.

before me this 16 day
 of October A.D. 1860.

Philip A. Moyné

Notary Public

State of Illinois
 County of Cook
 City of Chicago
 I Philip A. Hoyme
 a Notary Public in and for said City
 in the County and State aforesaid. do
 hereby certify that previous to the commence-
 ment of the examination of the said Bar-
 nabas L. Souland, Cornelius G. Drake and
 John Woodbridge Jr as witnesses in the said
 suit between the said parties they were by
 me respectively sworn to testify the truth
 in relation to the matters in controversy be-
 tween the said parties in the suit in the Cap-
 tion to this deposition named, as far as they
 should be respectively interrogated concerning
 the same. that the said depositions were taken
 at my office in the City of Chicago in said
 State and County, commencing on the 15th
 and ending on the 16th day of October A.D.
 1860. that after said depositions were severally
 taken by me as aforesaid the interrogatories
 and answers thereto, as written down were
 read over to the said witnesses, and
 thereupon the same were respectively signed
 and sworn to by said deponents, Barna-
 bas L. Souland, Cornelius G. Drake and
 John Woodbridge Jr before me and at the
 place and on the days and years last aforesaid



G. 80
Given under my hand
and Notarial Seal this
16th day of October 1860
Philip A. Hoyme
Notary Public

Whereas George W. Ashard is indebted
unto Francis B. Cooley, Elisha S. Wad-
sworth, John V. Farwell and Simon Far-
well who are copartners in business under
the firm name of Cooley Farwell & Co. upon
a certain promissory note executed by
the said Ashard in the sum of Eight thou-
sand Dollars made payable to the order
of the said Cooley Farwell & Co. and
whereas the payment of the said note
is secured by a certain "Chattel Mortgage"
upon the Machinery, power press, Stock in
trade and stock for the manufacturing
of bags and other personal property, and
whereas the said securities are insufficient
in their value, and also insufficient in
their amount to secure the indebtedness

"Exhibit A"
P. A. Hoyme

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now existing from the said Ashard to the
said Cooley Farwell & Co. And whereas
also the said Cooley Farwell & Co. have
agreed to make further advances of ma-
terials for the manufacture of Bays to
the said Ashard from time to time hereafter.

Now therefore in consideration of
the premises aforesaid and of the sum of
one dollar to me the said George W.
Ashard in hand paid by the said Cooley
Farwell & Co. for other valuable consid-
eration, the receipt whereof is hereby ac-
knowledgeed, I do hereby Grant, bargain,
sell, assign, transfer, convey and set over
unto the said Francis W. Cooley, John
V. Farwell, Elisha S. Wadsworth and
Simon Farwell their heirs and assigns
forever, all my books of account, claims,
demands, choses in action and evidences
of debt of every name and nature what-
soever, to me now due and owing or to
become due and payable, to have and
to hold the same and every part thereof
to the said Cooley, Farwell & Co. their
heirs, executors, administrators and assigns.

And for the better execution of these pres-
ents, the said George W. Ashard, does
hereby nominate and appoint the said

Francis G. Cooley, John V. Farwell, Elisha S. Hadsworth & Simon Farwell his true and lawful attorneys inrevocable, with full power & authority to do, transact & perform all acts, deeds, matters & things which can or may be necessary in the premises as fully & completely as the said Ashard could do were these presents not executed, hereby ratifying and confirming all and every thing whatever that my said attorneys or either of them shall or may do or cause to be done in the premises.

And it is further agreed, between the said parties, that all Wares or other articles of Merchandise hereafter sold by the said Ashard to any & all persons, shall be shipped in the name of the said Cooley, Farwell & Co., and the debts & claims arising from such sale or sales shall at once invest in and become the property of the said Cooley, Farwell & Co. and all collections made by any person or persons or by any body corporate shall be made in the name and for the benefit, and on the account of the said Cooley, Farwell & Co.

And the said Cooley, Farwell & Co. shall from time to time supply the said Ashard with such materials as may be necessary to

Continue the manufacture of Bags, but in no case shall they be bound to supply an amount of material that shall exceed in its value the sum of Eight thousand dollars. And in case the said Ashard shall in any manner violate any of the provisions herein contained, at any time, or shall in any wise fail to act in good faith in all business acts & relations to & with the said Croley Farwell & Co. then & in that case all obligation on the part of the said Croley Farwell & Co. herein specified shall cease.

In Witness whereof the said parties have hereunto set their respective hands and seals this 10th day of October A.D. 1857.

In presence of
C. M. Hawley

G. W. Ashard
John V. Farwell
Croley Farwell & Co

State of Illinois
Cook County

I, Cyrus M. Hawley
a Notary Public in & for said County do hereby
certify, that George W. Ashard personally
known to me as the same person whose name
is subscribed to the foregoing instrument of

Fall of 1857. George W. Ashard called a meeting of his Ashard's creditors at his house.

His purpose was to inform his creditors of his condition. There were some six or eight firms represented at this meeting of creditors.

R. C. Jones and sons was represented by Henry C. Jones, there were others there but I cannot now recollect. George W. Ashard pretended to make a statement to his creditors in regard to the condition of his affairs. The amount of it was that Cooley, Farwell & Co. had possession of all his effects. Cooley, Farwell & Co. had some kind of a claim on the Machinery used by Ashard in Cooley, Farwell & Co.'s building in the making of bags. And the notes, books and accounts as I understood it were in the possession of Cooley, Farwell & Co. and I made up my mind that I had no chance.

Question. Please state what Mr Ashard said at the time referred to, as to his object in calling his said creditors together?
(objects to)
over ruled

Answer.

The object was to let his creditors know how his matter stood, and to get their opinion.

Fall of 1857. George W. Ashard called a meeting of his Ashard's creditors at his house. His purpose was to inform his creditors of his condition. There were some six or eight firms represented at this meeting of creditors. R. C. Jones and sons was represented by Henry C. Jones, then were others there but I cannot now recollect. George W. Ashard pretended to make a statement to his creditors in regard to the condition of his affairs. The amount of it was that Corley Farwell & Co. had possession of all his effects. Corley Farwell & Co. had some kind of a claim on the Machinery used by Ashard in Corley Farwell & Co's building in the making of bags. And the notes, books and accounts as I understood it were in the possession of Corley Farwell & Co. and I made up my mind that I had no chance.

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 (objection)
 over ruled

Answer.

The object was to let his creditors know how his matter stood, and to get their opinion.

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whether any thing could be done.

Question. What if any thing did he want
shewn to us? (objected to) sustained

Answer. I cannot say that he wanted
any thing to be done by them particularly.
He represented that his effects were worth
something more than he was indebted
to Cooly Farwell & Co. How much more
I cannot say.

Question. Did he or not say anything
in regard to relieving his said effects from
the encumbrance of, or claims of Cooly
Farwell & Co. upon them?

Answer. I think something was said
in regard to it, perhaps by him perhaps by
others.

Question. What if any thing was said
at the time as to the amount of the said
indebtedness from the said Ashland
to the said Cooly Farwell & Co.?

Answer. It was represented to be some-
where from \$11000- to 13000 - I believe.

Question. From the statements made
at the time by the said Ashland was it
or was it not understood by those present

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that said Corley Farwell & Co. had a claim on all his effects and Books of account and notes at that time?
(obj'to) sustained.

Answer

That was my understanding of the matter.

Question. Did you have any conversation with the said Henry O. Jones the same evening that the said meeting was held, after the same was held, in relation to the conviction of the said Ashanti business as made known in said meeting, if yes, state the substance of the conversation as near as you can, and where the said conversation took place?
(obj'to) over-ruled

Answer.

Mr Jones and myself left Mr Ashanti's house together in company and walked down as far as our store. The substance of the conversation was that we concluded that Corley Farwell & Co. had got the best of the bargain, and that we had not much chance for our claims, but the next day might develop something more.

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Question. What do you mean by Carley
Farwell & Co. getting the best of the bargain.

Answer. I mean that they were likely
to get some if not the whole of their claims
in preference to the rest of the creditors.

Question. In using the words "best of
the bargain" do you mean to be repeating
the words that passed between you and
Henry C. Jones at the time, or your idea
of the substance of the conversation?

(Obj't) demanded
Answer. I mean my idea of the substance
of the conversation.

Question. What is your best opinion of
the time, that this meeting of creditors was
held?

Answer. I should think it was about
the middle of October, or between the latter
part of September and the first of November.

Subscribed and sworn to
before me this 24th day
of July A.D. 1860

Wm. G. Thompson

Philip A. Noyes Not Pub.

Continued by consent of parties to be read at the 28th
day of Nov. at the same time and place.

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Sunday July 28. 1860
Court's Present

And now comes as a witness Francis J. Van Wyck of lawful age and he being by me first duly sworn He testifies the truth the whole truth, and nothing but the truth in answer to the Interrogatories propounded to him Upon and testifies as follows to wit:

My name is Francis J. Van Wyck, I am thirty six years old, I am a Merchant and reside in Chicago in the State of Illinois. I do not know the Complainants, and I do know George W. Ashland, R. D. Jones & Sons and Coca. Sawell & Co. I met them prior to 1857.

Question. Did you attend a meeting of the Creditors of Geo. W. Ashland at said Richard's house in the Fall of 1857, if yes, state when that meeting was held, and what was said by the said Ashland to the said Creditors at that time. If you cannot state the language, state the substance of it, and what occurred at the meeting who were at said meeting and what firms were represented at said meeting of the creditors of said George W. Ashland. (Obj'd) and asked

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Answer. I am in the fall of 1857 attend
what purported to be a meeting of George
Ashard's Creditors. at his Ashard House
It was held somewhere about the middle
of October. He Ashard said he had
endeavored to get all his creditors to-
gether to explain to them how he stood
and what he had done, in order that
some plan might be devised to extricate
him from his difficulties. He said that
he had given a Chattel Mortgage on his
Machinery to Corley Farwell & Co. and
also that he had passed his notes and
accounts into their hands for collection
agreeing with them that he Ashard, should
have charge of the Bag Business over
their store; and that Corley Farwell &
Co. were to collect his old notes and accounts
and credit them to his account of indebted-
ness to them. And that they Corley Farwell
& Co. were to furnish all the materials for
making these Bags, and a certain share
of the profits arising from the sales of these
Bags were to go to his credit, and he calcu-
lated that from the profits on the Bags
and the amount collected from his ac-
counts to liquidate his indebtedness to
Corley Farwell & Co. He represented that

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The cost value of the machinery, and the
amount of the accounts and notes, was
enough to overbalance the amount due
Coolidge Sawwell Co. The creditors con-
cluded from what he said, that he
had assigned these effects to Coolidge. Saw-
well Co. as collateral, in connection with
an agreement he made with them in regard
to carrying out the machinery in the manu-
facture of the bags as partners in the profits
as before stated. He Ashard had agreed
with them, that they Coolidge Sawwell Co.
should furnish all the material for making
Bags as fast as orders were received for
that purpose, and the machinery was to
be kept running constantly, if the orders
for Bags would justify it. then after his
part of the profits in the manufacture of
the Bags and the collection of notes and
accounts, would reduce the indebtedness,
somewhere about 50 per cent. or to, in the
neighborhood of \$6000. then Ashard was
to control matters himself, subject to the
Chattel Mortgage on his Machinery.

There was present that evening at the meet-
ing of the creditors by representatives the
Squire of Higgins Mowbray & Co. S. P. Rowland &
S. B. Carter & Co. R. A. Jones and sons, Adams

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and Van Hook. Thompson Wetmore & Co. and
Bellows Gemish & Co. Ashard said to his
creditors at that meeting, that he had
concluded to leave Cooley Jarrell & Co.
because they had not fulfilled their a-
greement with him.

Question - State if you remember by whom
the said firm of R. C. Jones & Sons was repre-
sented on that occasion and whether it was
by one of the firms?

Answer. It was one of the sons
that was present, and he was one of the
firm. I think his name is N. C. Jones.

Question - Has there any transaction between
you and the said George H. Ashard which
enables you to fix the time of the meeting of
the said creditors. if so, state what it was
and then fix the date of said meeting as
near as you can?

Answer There was a transaction between
us, which was the closing of our account
by note, which was the 24th of October 1837.
This note was given a very few days after
the meeting of the creditors referred to
not to exceed ten days. possibly within 7
or 8 or 3 days.

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Cross Examination

Question.

Did H. O. Jones hear all the conversation at that meeting?

Ans. I think he did - he understood the substance of all that transpired, and was one of the principal spokesmen.

Question

In that conversation did not Ashard say that Corley, Sawell & Co. had broken their contract with him, and he was going to quit?

Answer

He said they had broken their contract and that was one of the reasons why the creditors were called together.

Question

Since that time have not Corley, Sawell & Co. converted all the machinery to their own use, and is it not now run or Bags manufactured by one of the firms, or a person connected with the firm of Corley, Sawell & Co.?

(Objected to) Sustained

Answer

I don't know that they have converted nor do I know that they are making bags with the same machinery.

Question

Was R. O. Jones present at this meeting?

Answer No.

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Re Direct Exⁿ

Question Somewhat did said Ashland refer. when he said Corley, Farwell & Co. had broken their contract, was it in reference to the carrying on of said Factory?

Answer It was in reference to furnishing materials for making bags when required.

Question What object, did he state, if any he had in calling these creditors together, at that time, what did he want said creditors to do if anything in his behalf? (Obj to)

Answer His purpose was to carry out the Bag Business himself as an agent for some other party, he having the whole transaction of the business, and wanted his creditors to furnish the material and machinery, and by so doing he thought he could pay his creditors out of the profits.

Re Cross Exⁿ

Question In that conversation did he not state that Corley, Farwell & Co. had deceived him? (Obj to)

Answered ⁹⁶ He wished to impress his creditors with
the idea that they had succeeded in getting
charge of all his effects and then had not
fulfilled their agreement with him.

Francis P. Van Wyck.
Subscribed and sworn to
at Chicago before me this
28th day of July A.D. 1866

Forrest D. Spicer

And now comes as a witness Forrest D.
Spicer of lawful age, and he being by
me first duly sworn to testify the truth, the
whole truth, and nothing but the truth in
answer to the interrogatories propounded
to him deposed, testified and said as follows
to wit:

My name is Forrest D. Spicer I am twenty
six years old. I am Book Keeper for A.C.
Holt & Co. and I reside in Chicago Illinois.
I know the complainants by reputation
only. I know all the defendants and have

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known then for about five years past. I know one A. W. Littig who resided in 1837. in Camanche Iowa. He came acquainted with him about three years ago.

Question 1. Do you or do you not know of any transaction between the said George W. Ash and the said A. W. Littig at any time during the Fall of 1857. on which occasion there were two certain drafts drawn. or made by the said Littig payable to the order of the said Ash and if yes. State when and where it was. what was said and done at the time by whom the said drafts were made out by whom signed, in what amount they were severally drawn giving as full a description of the said drafts as you are able?

Answer I know of a transaction in the Fall of 1857. between George W. Ash and A. W. Littig, at which time two certain drafts were drawn, one or between the 20th and the 30th of October at 116 Dearborn Street at Ash's place of business. the drafts were made out by one and they were signed by A. W. Littig payable to George W. Ash, and accepted by one of the firm of Sawyer Mullen & Co. one of said drafts was for \$400 drawn at 20 days sight and the other for \$400 drawn at 10 days sight.

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Question 2. Will you state upon what account or ⁹⁸ accounts the said drafts were drawn?

Answer It was on account of ^{(Obj't to) over-ruled} Bagg purchased of Geo. W. Ashard.

Question 3. State when said account was made and whom it was against? ^(Obj't to)

Answer As near as I can recollect it was made about the 1st of October, and it was against A. W. Little. ^(over-ruled)

Question 4. Was the whole of said account contracted at the same time?

Answer. It was. I think the whole of said indebtedness was contracted at the same time.

Question 5. Did you keep the Books of the said Ashard prior to, and up to the 10th of October 1837?

Answer I did.

Question 6. Was or was not said account embraced in the said Ashard's Books of account which you kept for him? ^(Obj't to)

Answer It was. ^{Sustained}

Question 7. Did the said Ashard have any other account to your knowledge prior to the making

of the said drafts against the said Little, those that mentioned in said Books of account, or contained therein?

Answer He did not.

Question 8 Upon what did said account against said Little arise

Answer For bags purchased or ordered by Little

Question 9 Do you know who received said drafts at the time they were made, if you state?

Answer I did.

Question 10 For whom did you receive them? (Aff'd to)

Answer G. W. Ashland. Sustained

Question 11 Do you know what said Ashland done with said drafts if you state?

Answer He delivered them to R. C. Jones & Sons for goods purchased of them.

Question 12 Do you know how long it was, after the said drafts were drawn that they were accepted by Sargent Mellen & Co. if you state.

Answer They were accepted the same day that they were drawn.

Question 13 Do you know how long it was after said

accepted that ¹⁰¹ Geo. H. Ashard passed them
to R. D. Jones & Sons.

Answer It was the next day

By Consent the further examination
of this witness, and other witnesses is
adjourned until Monday morning July 30.
1860. at 8 o'clock at the same time and
place.

J. A. Wayne
Notary Public.

Monday July 30th 1860.
Parties Present
Witness also Present
And Examination Continued

Question 14. Will you please look on the Book of
accounts now shown to you, and state if
you have ever seen the same before, and
if so how the same belonged, by whom it
was originally opened and used giving the
time when it was opened and so used.

Answer ^(104 to) I have seen said Book before, it
belonged to Geo. H. Ashard, and was used

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by him in the Summer and Fall of 1857.
I don't know the exact date it was opened
but it was some time in the early part of 1857.

Ques 15 Will you look upon page 262 of
said Book of accounts, and then state whether
or not that the said account or accounts a-
gainst which the said two drafts are drawn.
are upon said page, ^{and if so} will you please describe
said account or accounts, and the date
and the true entry therein made, and state
whether the said entries are correctly made therein

Answer The accounts against which said ^(Obj's) drafts
are drawn are on page 262 of said Book
The first entry is October 10th 1857. 1000 half
Bbl Sacks at 11 1/2¢ - \$115
1000 quarters Bbl Sacks @ 8¢ 80
Cartage 25
\$195. 25

The other entry was October 12th 1857 as follows.
1000 Hf Bbl Sacks 11 1/2 \$115

The entries are correct and were made against
the said A. W. Little upon said Book.

Ques 16. Have you any explanation to make
to your answer to the 4th Interrogatory hav-
ing examined said original entries in said

Book of Accounts contained. if you please make said explanation?

Answer In reply to said Answer I want to say that the orders were received the same day, though not filled on the same day, they in this case were filled on two different days as stated in said Book of account.

Ques 17. Were you present at a meeting of the creditors or any part of them at the said Geo. W. Ashcroft's House in the Fall of 1857. if you will you state when that meeting was held, what month, the day of the month as near as you can, and who were present at said meeting of Creditors? (Obj't)

Answer I was present at such meeting. It was about the 15th or 20th of October 1857. The following houses were represented, R. A. Jones & Sons, J. B. Carter & Co. Bellows, Gerrish & Co. Thompson, Wetmore & Co. Rogers & Van Wyck and others whom I do not now recollect.

Ques 18th

Did the said George W. Ashcroft make any statement to said Creditors at said meeting in relation to the disposition of his said Book of Account to the said Corley, Farwell & Co. if you will say, as to said disposition

and for what purpose and in what manner
have he disposed of them, to them?

Answer. He did make a statement to that effect.
He said his Books were in the possession
of Corley Sawwell & Co. as collateral for
indebtedness due by him to them.

Dec 19

Have said Books of account to which you
have referred, and have seen and examined
(in which said Little's account is contained)
the same spoken of by said Ashard at the
time as being in the possession of Corley
Sawwell & Co. as spoken of by you.

Answer

That is one of said Books.

Dec 20

Do you know whether R. C. Jones and Sons
or either of said firm, being at the place
of business of the said George W. Ashard
in the month of October 1837. and about
the time of the said meeting of Creditors
if yes. which of the said firm, and do you
know, what, if anything was said between
the said Ashard and the said R. C. Jones &
Sons or one of them in regard to the business
transactions of the said Ashard. if yes, state
what was said between them?

Answer

Mr R. C. Jones son of the firm of R. C. Jones

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Sous, was at Ashard's place of business several times about the time of the meeting of the creditors. I never heard any conversation between them at Ashard's place of business.

Quest 21

Have you ever heard any conversation between said parties at any place, if yes, state when it was, where it was and the substance of said conversation?

Answer

I heard Mr H. O. Jones tell Mr Ashard at the house of Mr Ashard what the meeting of the creditors took place, and at the same time of said meeting, that he would give him S. W. Ashard credit for \$500 worth of goods, to go on with his business, if other creditors would help him in the same proportion, that is all the conversation I heard between them.

Cross Examination

Quest 1 In whose employ are you.

Ans

In A. E. Kent's employ

2

With whom did A. W. Libbig settle when these drafts were drawn?

Ans

With me.

3

Who was present?

Ans

Mr A. W. Lottig and one of the firm of Sauger
Mullen & Co.

4

For whom were you acting at that time?

Ans

E. W. Ashland.

5

Did you have E. W. Ashland's Books to settle
by?

Answer

I did not.

6

Did you make out any Bill or Receipt
to A. W. Lottig?

Answer

I think I gave him a receipt, but am not
positive.

7

Were you present when these drafts were
delivered to R. C. Jones & Sons?

Answer

No not.

8

How do you know then, that they were de-
livered to R. C. Jones & Sons?

Answer

Mr Ashland told me so, and the Bill of the

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Goods received by the two drafts

9 What was done with the goods received from R. C. Jones & Sons, and what kind of goods were they?

Answer

They were manufactured into Bags they was part brown and part bleached Cotton.

10

What was done with the bags manufactured from that material?

Answer

They were sold for some for cash but am not positive

11

Who received the Cash taken for Sales at that time?

Answer

Took charge of the Cash received.

12

Was any account of the Cash received rendered to Corlay Farwell & Co.?

Answer

Not to my knowledge.

13

How long after the 10th of October 1857 did George W. Ashard continue to run the Bag Manufacturing, and manage the same at 416

Dearborn Street

Answer I think until some time in December I was not positive I left Minn about the 23^d of November and went East.

14

How long after the 10th of October 1857 did he continue to manage the Bag Manufacturing of Cooley Sawwell & Co.

Answer

Not any time. not over a day or two.

15

In that conversation at the meeting of the creditors, what was said by Geo. W. Ashland in relation to his contract with Cooley Sawwell & Co.

(Obj'to) over ruled

Answer He said they had broken their contract with Minn. And he was going to leave them.

16

Did he state at such meeting, the terms and conditions upon which he had assigned said effects if so State (Obj'to)

Answer

over ruled

I did not hear him say any thing in regard to the terms and conditions

17

Now know whether these drafts were given to H. C. Jones & sons in payment of goods purchased at that time, or in payment

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of prior indebtedness due from J. W. Alward
to said R. P. Jones & Sons? (obj't)

Answer

They were given in payment of goods purchased at that time

J. D. Spicer

Subscribed and sworn to before me
this 30th day of July A.D. 1860.

P. A. Hoynes

Notary Public

And now comes as a witness George A. Forsyth a witness of lawful age who being by me first duly sworn to testify the truth the whole truth and nothing but the truth in answer to the several interrogatories propounded to him - deposed as follows:

My name is George A. Forsyth I am 22 years old. I am accountant at Corley, Sawell & Co's and reside in Chicago in the State of Illinois.

I know all the parties to this suit

Complainants and Defendants. I have known the several parties except Corley Farwell Co about three years and have known Corley Farwell Co. a little longer.

Ques 1.

Do you know or do you not know any business transaction between the said Defendants Francis B. Corley, Elisha S. Wassworth and John V. Farwell and Simon Farwell under the firm name of Corley Farwell Co. of the one part and the said George W. Ashard of the other part. by which an assignment in writing was made by the said George W. Ashard to the said Corley Farwell Co. of certain Books of account belonging to the said George W. Ashard in October 1837?

Answered

I do know of such transaction and of such an assignment having been made.

Ques 2.

Will you please look upon the paper now shown you, and then state if you know if the same is the said assignment in writing, and if yes. please attach the same to your deposition and mark the same Exhibit A.

(obj to)

Sustained

Answer

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The paper shown me, is the original assignment in writing referred to. I hereby attach the same to my deposition as "Exhibit A."

Ques 3.

Have you seen the Books of Account mentioned in said assignment marked "Exhibit A" if yes, when, and where? (Obj't)

Answer

Sustained

I have seen said Books of Account. I first saw the Ledger of George W. Ashard in the office of Corley Sawell Co. a day or two before the assignment was consummated. I saw the remainder of the Books mentioned in said assignment, a day or two afterwards as near as I can now recollect in the office formerly occupied by George W. Ashard.

Ques 4th.

Do you know whether or not, the said Corley Sawell Co. took possession of said books of account mentioned in said assignment, if yes, when did they take possession and have they continued in possession thereof since? (Obj't)

Answer

Sustained

I know that they did take possession of said Books. It was either upon the same day the assignment was made, or the day after.

Ques 5th Do you know under what agreement they took possession of the Book, of account of said Ashard? (Obj'ts)

Answer

Sustained

They took possession of them under the assignment attached to my deposition as Exhibit "A."

Ques 6th

Look upon the Book of Accounts now shown to you, and state whether the same is one of the Books so assigned by said Ashard?

(Obj'ts) Sustained

Answer

The Book shown me, is one of the Books mentioned in said assignment.

Ques 7th

Look upon page 262. of said Book of accounts shown to you, and state what if any account, there is entered there against one A. N. Little, giving a full description of said accounts and the date & dates of the same?

(Obj'ts) Sustained

Answer.

On page 262 of said Book under date of October 10-1857. I find an account against A. N. Little in the hand writing of Forrest D. Spicer, who at that time kept said Book for George W. Ashard as follows. "A. N. Little Camanche Iowa."

1000 $\frac{1}{2}$ Bbl Sacks	113	11 $\frac{1}{2}$	\$115
1000 $\frac{1}{4}$ " "		8	80
Contagd			25
			<u>\$195.25</u>

Also on the same page under date of October 12th 1857. Found in the hand writing of Edward J. Brown Bookkeeper for Cooley, Farwell & Co the following entry

" A. M. Lillie Camanche Iowa

1000 $\frac{1}{2}$ Bbl Sacks	11 $\frac{1}{2}$	115.00
------------------------------	------------------	--------

Ques 8th

Do you know by whom the said last account of 1000 $\frac{1}{2}$ Bbl Sacks at 11 $\frac{1}{2}$ of the date of 12th October 1857. they were delivered upon whose account and who gave such credit (obj to) Sustained

Answer They were delivered by E. J. Brown acting as agent for Cooley, Farwell & Co the account was made against said A. M. Lillie and the credit was given by Cooley, Farwell & Co.

Ques 9th

Do you or do you not know, whether any sum was paid by the said Lillie upon said accounts or either of them, to the said Cooley, Farwell & Co if yes, how much was so paid and when was it paid. (obj to) Sustained

Answer

I do know that there was a sum of money

paid to Cooley Sawell & Co upon said account amounting to \$10. And the Books of Cooley Sawell & Co show it was paid Dec^r 30. 1857. It might have been paid before, but that was the date the Credit was given.

Ques 10th

Do you or do you not know whether the balance of said account or any part thereof has been paid to the said Cooley Sawell & Co if yes how much? (Obj't)

Answer

I don't know of any thing else being paid except the \$10 before spoken of.

Ques 11th

Do you know whether or not, the said George H. Ashard, was on the 10th of October 1857, to do any work for the said Cooley Sawell & Co if yes, what work was he so employed to do (Obj't)

Answer

He was employed to superintend the Bag Manufactory

Ques 12th

State if you know, whether or not the said Cooley Sawell & Co took the possession of the said Bag Manufactory owned by the said Ashard, and all the property pertaining thereto, including Books of account, and all other evidences of indebtedness or credit.

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due to the said Richard. if yes, when did they
take such possession? (Colly's)

Answer

Testimony

They did take possession through their
agent Edward J. Brown, the day, or the day
after the said Assignment was made.

Ques 13th

Did they continue in possession

Answer

They continued in possession of the Books
till sold out the Bay Manufacturing

Cross Examination

1st Cross Int

Are you in the employ of Cooley Sawwell
& Co. And how long have you been so employed?

Answer

I am now. And have been in their employ
for about three and a half years

2nd Cross Int

Was you present when the assignment was
executed.

Answer

I was

3rd Cross Int

Did you see George W. Richard sign the
said Assignment.

Answer I did not

4th Cross Int

Was the Manufactory of G. W. Achard in the same building with Cooly Sawell & Co.

Answer

It was. it was immediately over our store.

5th Cross Int

Did you see Cooly Sawell & Co. take possession of said Books of accounts and Manufactory, if so, how did they take possession and have they been in possession of ever since?

Answer

I did not see them take possession, but I know that they did take possession by sending Edward J. Brown one of their accountants up stairs in the office of G. W. Achard, and have seen them in possession of the Manufactory until they sold it out, and they are now in possession of the Books and accounts.

6th Cross Int

I want to know did you learn they took possession under the agreement referred to?

Answer

There was no other agreement with George W. Achard except the one set forth in the Assignment that I know about or have heard mentioned, that being the only a-

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 agreement. I concluded they took possession under that, and did not learn it from anyone.
 7th Cross Int

Shew your testimony in regard to their taking possession under the assignment is a mere supposition of yours?

Answer

I don't think it is, the assignment is a fact I know of no other agreement, or have heard none mentioned.

8th Cross Int

How do you know that the book mentioned by you in your testimony is the one mentioned in the assignment

Answer

From the fact that it formed part of the list of Books.

9th Cross Int

Do you know of your own knowledge whether the assignment was executed on the day it bears date or was it ante-dated

Answer

I do know, that it was executed on the day it bears date.

10th Cross Int

Were you present when these Bags were delivered by C. J. Brown.

Answer

I was not.

11th Crop Int

How do you know he delivered them?

Answer

Mr Little acknowledges the receipt of them and they were charged out the Books as shipped on such a day

12th Crop Int

How do you know they were delivered personally by E. J. Brown to A. W. Little?

Answer

I do not know.

13th Crop Int

Did you see this \$10 paid to Corley Sawmill Co?

It was sent to the office by Express or Mail & duly credited

14th Crop Int

Did you see the \$10. at the time, or see the Little?

Answer

I did not, all remittances passed through the hands of our Cashier Mr Little who makes the receipt and entries on the Cash book

15th Crop Int

All you know about it there, is from seeing entries on the Books of Corley Sawmill Co?

Answer

I also know from Statements of the Cashier.

16th Cross Int

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When did Corley, Sawell & Co sell out the
Bag Factory?

Answer

I don't remember the date

17th Cross Int

About what time?

Answer

It was the fall or winter of 1837.

18th Cross Int

For whom did they sell?

Answer

To Simon Sawell.

19th Cross Int

Was he a member of the Firm of Corley Sawell
& Co or a relative of any member of the firm?

Answer

He was not a member of the firm at the time.
He is a brother of one of the firm John V. Sawell.

20th Cross Int

What was the consideration paid.

Answer

I don't know.

21st Cross Int

Under what authority did Corley Sawell & Co
make the sale to Simon Sawell?

Answer

I do not know.

Re Direct Ex

1st Re Direct

Were you one of the Book Keepers at the time of the transactions?

Answer

Was

2nd Direct

Do you know whether the books of said Colley Sawell & Co at that time, since then and during your acquaintance with the same were kept accurately and justly

Answer

I think they were and know they were kept honestly and correctly

3rd Re Direct Direct

Do you know the hand writing of George W. Akland, and have you seen him write.

Answer

Yes. And have seen him write several times.

4th Re Direct Direct

Look at his signature, as attached to the assignment mentioned in your deposition as "Exhibit A" and say whether the same is or is not in his handwriting.

Answer

It is in his handwriting

Subscribed and sworn to

George A. Foreyth

before me this 30th day of July A. D. 1860.

Philip A. Rogers Notary Public

Levi J. ¹²¹Leiter

And now comes as a witness Levi J. Leiter of lawful age, who being duly and justly sworn to testify the truth, the whole truth and nothing but the truth in the matter in controversy as far as he should be interrogated concerning the same testifies and deposes as follows.

My name Levi J. Leiter. I am twenty five years old. I am Book Keeper for Cooley, Sawell & Co. and reside in the City of Chicago in the State of Illinois.

I know all the parties to this said Complaints, Defendants and all.

Ques 1.

Do you know of an assignment having been made by the said George W. Ashland to the said Defendants Cooley, Sawell & Co. of certain Books of account chosen in action and other demands in the month of October 1857. if you please look upon the paper now shown to you, attached to the deposition of George A. Forsyth marked "Exhibit A" and then state whether or not said paper or instrument is such

assignment, or the assignment?

Answer

I know of an assignment having been made by said Ashard to Corley, Farwell & Co. at the time above referred to, the paper shown to me marked Exhibit "A" is the original assignment.

Ques 2^d

Do you or do you not know when and where the said instrument or assignment was executed, and did you witness the execution of the same, if yes, state when and where the same was executed, and whether or not you witnessed the execution of the same?

Answer

I do know when the said assignment was executed. It was executed at the office of Corley, Farwell & Co. on the 10th day of October 1857. I witnessed the execution of the same.

Ques 3^d

Do you know in what amount or about what amount if anything the said George W. Ashard was indebted to said Corley, Farwell & Co. at the time of the execution of said assignment, if you cannot state the exact amount state as near as you are able?

(Obj to) Sustained.

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Answer I could not state definitely, but it was between \$14000 and \$18000.

Ques 4th Who had the Charge and kept the Books of the said Firm of Corley Jarwell & Co. at the time and for a year prior to the time of the execution of the said Assignment?

Answer I did or had

Ques 5 Do you know in what business the said Ashland was engaged at the time of the making of said Assignment, if so where?

Ans Yes. He was engaged in the making of Bags in Chicago at 2. 44 & 46 Wabash Avenue over Corley Jarwell & Co's Store.

Ques 6 Do you or do you not know what if any thing transpired between the said George Washland as Debtor and the said Corley Jarwell & Co as Creditors immediately after the execution of said instrument in regard to the business and property of the said George Washland connected with said Bag Factory? And what if any changes were made in said business, if you state the same fully and as particularly as you are able.

Obj to Sustained

Answer The Property was delivered by said Nathan into the hands of Cooley Farwell & Co. immediately after said assignment, and the business transacted in their name

Ques 7 Do you know or do you not know for what purpose the property was so delivered by said Nathan to the said Cooley Farwell & Co. and whether or not there was an actual sale or how otherwise that the said Cooley Farwell & Co. took the same in their possession and for what consideration? (Obj to)

Sustained

Answer They took it to apply on indebtedness due to Cooley Farwell & Co. for as much as they should be able to sell said property for, and the consideration was the indebtedness.

Ques 8 Please state what property so passed in the possession of Cooley Farwell & Co. besides that embraced in the said written assignment?

Answer All his property connected with the Bag Factory including Books and accounts.

Ques 9 When was such possession assumed

Answer On the 10th day of October 1857.

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Ques 10 ¹²⁵ Who carried on and conducted said business thereafter?

Answer Cooley, Farwell & Co.

Ques 11 In whose or what name was said Bag Factory conducted after Cooley, Farwell & Co took possession of the same as stated by you?

Answer In the name of Cooley, Farwell & Co.

Ques 12 Do you know of any account against the said Brooks of the said Ashard, assigned by him to the said Cooley, Farwell & Co. against one A. W. Little of Camanche Iowa, if yes state what was the amount of the account so assigned.

Answer There was an account owing there assigned by Ashard to Cooley Farwell & Co. I don't remember the amount against one A. W. Little.

Ques 13 Do you know of a credit given to the said Little by Cooley Farwell & Co. for bags after they took possession of said Factory, if yes, state when it was made and how much it was?

Ans I know of a credit given to Littig by Cooley Jarrell & Co. after they took possession of ~~the~~ ^{the} ~~factory~~ ^{factory}. My impression is that the credit was given on the 12th of October 1837. I do not remember the amount near enough to state.

Law B. Did you as the Book Keeper and Cashier of the firm of Cooley Jarrell & Co. receive any money to the credit of the said Littig to apply on said accounts, if yes. State how much was so received and the time you received it, and whether the same was credited upon said accounts.

Answer He received Ten Dollars (\$10) the exact date I do not ^{now} remember, but it was after October 10 1837. and before October 29 1837. which was duly credited by me to Littig.

Cross Examination

Law 1. Are you positive that the assignment referred to, was dated on the 10th day of October 1837. or was it ante dated?

Answer I remember that it was executed on the 10th day of October 1837. the day it bears date.

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Ques 2 Who was present beside you when it was executed?

Answer The parties whose names are attached to it.

Continued to July 31st 1860.
By Consent

July 31st 1860.
Parties Present. Examination resumed

Ques 3. What are the names of the parties attached to it.

Answer George W. Ashard, Corley Sawell & Co.
I don't remember whether the firm signed it individually or as a firm.

Ques 4 Give me the names of the persons who were present when it was signed?

Answer George W. Ashard. John V. Sawell, C.
W. Mayley was there. that is all I remember.

Ques 5 Who took possession of this property for Corley Sawell & Co.

Answer Edward J. Brown

Ques 6 Did you see him take possession of it?

Answer I did

Ques 7 Where was it?

Answer On the premises

Ques 8 Did you go up stairs with him?

Answer I did not go up stairs with them, but I saw him immediately on possession within the day or day after his going up.

Ques 9 Was Ashard still there after the 10th of October after the possession of the same by Brown?

Answer He was around the premises, that he is he would come in and go out, but had no authority.

Ques 10 Did Corley Farwell & Co. permit Ashard to operate the Machinery after the 10th day of October on his own account.

Answer No Sir.

Ques 11 Was it not expressly agreed to in the agreement referred to, by Corley Farwell & Co. that the said

Ashard should operate the machinery in the name of said Corley Farwell & Co. and the profits to go in liquidation of the indebtedness due to Corley Farwell & Co. (obj. to)

Answer It has been so long since I read the assignment I do not recollect the exact wording of it.

Ques. 12 Was there any other agreement between the said Ashard and Corley Farwell & Co. besides that referred to as "Exhibit A"?

Answer It was also agreed that Corley Farwell & Co. should take the machinery and apply the proceeds on his ~~indebtedness~~ indebtedness.

Ques. 13 Was there any other agreement in writing other than the one referred to.

Answer No. except a Chattel Mortgage given prior to the assignment.

Ques. 14 How do you know there was an acct. in against A. W. Little in favor of G. W. Ashard?

Answer I know it from the Books.

Ques 15 Is the entry of that account in your handwriting in these books.

Answer It is not.

Ques 16 Have you any knowledge from the Books of Corley Farwell & Co. and the Books of G. W. Ashard of any transactions with A. W. Little, if so of what does your knowledge consist.

Answer I know from the Books that the account existed, and I gave it to an agent, who collected from Mr Little \$10. on the account.

Ques 17 How do you know the agent collected \$10 from Mr Little?

Answer From the agent himself. He handed us \$10 on his return.

Ques 18 Have you any other knowledge of the account against A. W. Little and the payment of the \$10. that you got from the Books of Corley Farwell & Co. and G. W. Ashard, and from the agent of Corley Farwell & Co. and from Corley Farwell & Co.?

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Answer Have not now that I now remember.

Re Direct Examination

Question 1. Do you not remember of the said Lottig's agent from Cambridge ~~Mass~~ calling at Woolly Sawell & Co during the fall of 1857. and after said accounts were assigned as hereinbefore spoken of and also that of Sawyer Mullen & Co. who were also acting as sub agents in Chicago selling flour and having something to do with the settlement of the said accounts so assigned. And if yes, do you now on reflection recall to your memory any other persons or persons than above referred to in the last Cross Interrogatory in regard to the payment of the said \$10 by the said Lottig, if yes, please state what further knowledge you have than that you have referred to regarding the same, and the source of the same.

Answer I remember of Lottig's agent calling and also Sawyer Mullen & Co. calling in the fall of 1857. And talking of the account and the \$10 was spoken of in settlement.

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Re Cross Exⁿ

Ques 1 How do you know that Sawyer Mellowes
and this man who said he was the agent
of Mr Littig being the agents of Mr Littig

Answer I know from their stating to us themselves
that they had produced a mortgage to Mr Littig
and from Mr Ashard also.

Ques 2 When was this conversation

Answer In the month of October 1857 the latter
part. I could not state whether it was
after the 20th definitely.

L. J. Luter

Subscribed and sworn to before me
this 31st day of July 1860.

J. V. Hoyme

Notary Public

State of Illinois
County of Cook

City of Chicago I, Philip H. Hoyme a
Notary Public in and for the City of Chicago
in the County of Cook and State of Illinois
do hereby certify that previous to the commence

ment of the examination of Wetmore & Thompson. Francis B. Van Wyck, Joseph D. Spicer, George A. Forey, and Levi Z. Leiter as witnesses in the above entitled case they were duly and respectively sworn by me to testify the truth in relation to the matters in controversy between the said Plaintiffs and Defendants so far as they should severally be interrogated concerning the same, that the said several depositions were commenced at my office in the City of Chicago in the County and State aforesaid on the 29th day of July 1861 and continued from day to day until completed, that after said depositions were taken by me as aforesaid the interrogatories and answers thereto as written down, were read over to the said several witnesses, and thereupon they respectively signed and made oath to the same before me at the place and on the days and years last mentioned aforesaid.

In Witness Whereof I have hereunto set my hand and affixed my official seal at Chicago this first day of September A.D. 1861.
Philip A. Noyes
Notary Public

Seal

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And afterwards, to wit, on the day and year
aforesaid, the said Defendants Corley, Samuel
of by their ~~Solicitor~~ ^{Solicitor} filed in the office of the
Clerk of said Court, their certain Exceptions
in the words & figures following, to wit:

In the Superior Court of Chicago
In Chancery

Betts Mellow & Co. *Plaintiffs*
vs.
R. R. Jones & Sons *Defendants*

Bill of Interpleader

And the said Defendants Corley
Samuel of by C. M. Hawley their Solicitor
Come and make exception to the D. G-10-
11-12-13-14 & 17 Cross Interrogatories and
the answers thereto, in the Reposition of the
said Witness Spicer - And for Cause, they
say that each of the same relate to the
subject matter of the alleged considera-
tion, paid by the said R. R. Jones & Sons
to the said Cleland for the said two drafts
without obtaining the ground work for such
testimony, by proving that they acted with
that requisite caution in the taking
of said drafts, which all prudent
honest business men are required

to act.

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C. M. Hawley
Sol for Corley Farm W Co.

And afterwards to wit, on the 13th day of
December in the year aforesaid. Said day
being one of the days of the December Term
of said Court, the following among other
proceedings were had and entered of record in
said Court to wit:

Theodore Betts et al
vs
Ruben L. Jones et al Bill of Interpleader

This cause came on for hearing
upon bill, answers and testimony & exhibits.
and was argued by counsel, and the Court
being fully advised in the premises do
find that the equity of said case is in
the said Ruben L. Jones, Albert C. Jones
Henry C. Jones & Edward L. Sears com-
prising the firm of R. C. Jones & Sons, and
that they are entitled to the sum of \$

remaining in the custody of this Court deposited by said Theodore Bell et al: there upon it was ordered adjudged and decreed that said sum of money be deposited in the hands of R. C. Jones, Clerk of the Court, and that the said Francis B. Cooley, Elisha M. Mearns, John V. Farwell, Simon Farwell pay the costs of this proceeding -

Thereupon the said Francis B. Cooley, Elisha S. Mearns, John V. Farwell & Simon Farwell prayed an appeal therefrom, which is allowed upon John V. Farwell giving bail in ten days in the sum of five hundred dollars with Cyrus W. Hawley as surety.

And afterwards to wit, on the 15th day of the month and year last aforesaid, there was filed in the office of the said Clerk of said Court, a certain appeal Bond, in the words & figures following, to wit:

Know all Men by these presents
that we John V. Farwell and Cyrus W.
Cawley of the County of Cook and State
of Illinois. are here and firmly bound
unto Theodore Betts, John D. Mullen
Alfred A. K. Sawyer and John C. Mullen
who lately constituted the firm of Sawyer
Mullen Company; and Ruben A. Jones, Al-
bert A. Jones, Henry C. Jones & Edward
H. Jones who lately constituted the firm
of R. C. Jones & Sons, and George W. Astor
and to each of them respectively in the sum
of Five Hundred Dollars to be paid to them
their executors, administrators or assigns
to which payment well and truly to be made
we bind ourselves our heirs, executors and ad-
ministrators firmly by these presents.

Signed and sealed this 13th day of December
A. D. 1860.

The condition of the above obligation
is such that whereas on the 19th day of Febru-
ary A. D. 1858. the said Theodore Betts, John
D. Mullen, Alfred A. K. Sawyer and John
C. Mullen constituting as aforesaid the firm
of Sawyer Mullen Company filed their
certain bill of interpleader in the (then
Cook County Court of Common Pleas)

now the Superior Court of Chicago, against
 the said Ruben O. Jones. Albert H. Jones
 Henry O. Jones and Edward H. Sears.
 Constituting the firm of R. O. Jones & Sons.
 and Francis B. Cooley. John W. Farrell.
 Charles S. Warrorth and Simon Farrell.
 Constituting the firm of Cooley, Farrell & Co.
 And afterwards by amendment of said bill
 of interpleader making George H. Ashland
 a defendant therein, in a certain cause
 then depending in said Court wherein the
 said firm of R. O. Jones & Sons were plaintiff
 and the said firm of Sawyer Mullen
 & Company were defendants. And whereas
 afterwards, to wit on the 13th day of Decem-
 ber A.D. 1860. the said cause came on to
 be heard upon the said bill and the answers
 and the proofs therein, and whereas on the
 day and year last mentioned a decree
 was made by the said Court in said
 cause by which decree the equity of
 said cause was found with the said
 Ruben O. Jones Albert H. Jones, Henry
 O. Jones & Edward H. Sears composing
 the said firm of R. O. Jones & Sons, and
 that they are entitled to the sum of Three
 Thousand Dollars remaining in the cus-
 tody of this Court deposited by the said

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Shedden Betts and comprising the said
firm of Sargent Mellen & Company; and
thereupon it being ordered, adjudged and
decreed by the said Court that the said
sum of Three Hundred Dollars money
so deposited be paid to the said firm
of R. C. Jones and the Clerk of
the said Court, and that the said Francis
B. Cooley, Elisha S. Wadsworth, John V.
Farwell and Simon Farwell pay the
costs of such proceeding in that behalf.
And whereas afterwards to wit. on the same
day and before the adjournment of
the said Court, to wit on the said 13th day
of December A. D. 1860. the said Francis
B. Cooley, John V. Farwell, Elisha S. Wad-
sworth and Simon Farwell prayed an ap-
peal from such decree to the Supreme
Court of the State of Illinois, which
prayer was then and there allowed upon
John V. Farwell filing his bond in the
sum of Two Hundred Dollars in two
days from the rendition of said decree,
with Cyrus W. Hawley as security.

Now therefore if the said Francis B.
Cooley, John V. Farwell, Elisha S. Wad-
sworth and Simon Farwell shall prosecute
their said appeal with effect, or in case

of failure, they shall pay or cause to be paid into the said Theodore Pette, John Q. Mullen, Alfred H. K. Sawyer, John Q. Mullen, comprising said firm of Sawyer Mullen & Company, and Ruben C. Jones Albert C. Jones, Henry C. Jones and Edward W. Sears comprising the said firm of R. C. Jones & Sons, and the said George W. Ashard and each of them, all such damages and costs that may be ascertained and decreed in their favor and against them then and in that case this obligation to be void, otherwise of full effect and virtue.

John V. Farrell *Per*
C. W. Hawley *Per*

State of Illinois
Cook County ss.

I Walter Kimball Clerk
of the Superior Court of Chicago, within and for
the County of Cook & State of Illinois, do hereby
certify the foregoing to be a full true and
complete transcript of all the pleadings &
proofs on file in my office & all orders & proceed-
ings entered of record in said Court, together with
the Appeal Bond, in a certain Cause wherein
Sheldon Betts et al. were Complainants and
Reuben D. Jones et al. Defendants.



Witness my hand & the seal
of said Court at the City of
Chicago, in said County this
20th day of February A.D. 1861.
Walter Kimball Clerk

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Plow file

Filed Apr 20. 1861.
L. Deland
Clerk

Hawley

W. C. H.

Supreme Court
Reuben D. Jones et al
vs
Frances B. Corley et al

And now comes the said defendants
in answer there is no error in
said record or proceedings. And
they pray that said judgment
may be affirmed to the costs
10. I want
Atty for defendants
no error

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Thos. Pettibone

¹¹
R. L. Jones chas
transcript

Filed April 17. 1861

Leland
Clerk

\$30

\$5. pd. Ck

Hawley

Chicago 30 July 1861
Hon J. D. Eaton

Chief Justice Supreme Ct Ill.
Dr Sir agreeable to promise herewith
transmit additional authorities in
the case of
Cooley Hamwell & Co
vs

W D Jones & Sons

In which the opinion is yet
to be written. The points in the case
are of great moment to the Commercial
interests of our state. Many of the Vbar
have taken the trouble to examine
it and so far as I can learn fully
concur in the view I have taken
in my Brief. Having known you
more intimately than the Associate
Judges, it is especially desired
that you write the opinion in this
case and examine with critical
care the authorities cited.

Having confidence that your High
Court will sustain the rule we
have set forth as the law.

With sentiments of high esteem
I am Respectfully Yours friend -

Wm Newby

Sol for Cooley Hamwell & Co

SUPREME COURT.

R. D. JONES & SONS, }
 } ATS.
F. B. COOLEY, ET AL. }

BRIEF FOR THE DEFENDANTS.

This was a bill of Interpleader. Preliminary to the merits of the case, the bill of Interpleader was filed to late. An action was brought by R. D. Jones & Sons on the Drafts in question. Sawyer, Mellen & Co. tried to defend on the ground, that the Drafts belonged to Cooley, Farwell & Co. The defence was held inadmissible. They then filed the bill of Interpleader.

3 Daniels Ch. Pr. 1755. 1 Young and Jer. R. 333. 3 S. and Mar. 291. 2 Story's Eq. P. 809.

The abstract is so unfair or imperfect, that the Court will have to refer to the record to determine the case on its merits.

1. The answer of R. D. Jones & Sons is called for, and is under oath.

2. The case now sought to be made by Cooley, Farwell & Co., is not the case made by the pleadings. They allege in their pleadings, "the consideration of the assignment was a pre-existing debt, owed by Ashard to R. D. Jones & Sons, they agreeing to return to said Ashard, any balance which might remain in their hands after paying said debt;" and that R. D. Jones & Sons were aware that said drafts, "and the consideration thereof, were the property of Cooley, Farwell & Co." They do not pretend or claim that they have proved either of said allegations. They now claim that although the proof shows R. D. Jones & Sons did pay goods for said Drafts, and although they had no actual notice, yet they acquired the Drafts under such circumstances as should put them on enquiry. The case made by the pleadings, and that made in the argument, are not the same. 11 Ill. R. 194, 366; 5 Gilm. R. 499. In this last case, the allegation was of actual notice, and the complainant failed to prove actual notice, but proved that the defendant paid nothing, and consequently could not recover, as there was a variance.

There is another fatal variance between the allegation and proof stated below. The point, we understand, to be taken by the appellant is, that the facts are such as to put the defendants on enquiry, and that amounts to notice.

We say, first, the facts do not warrant any such conclusion. We have stated above, that the answer is called for under oath, and the case made by the pleadings. Barnabas L. Soulard testifies, that on the 30th day of Oct., 1857, R. D. Jones & Sons sold to Geo. W. Ashard a bill of Sheeting, amounting to \$318 72; that he understood them to be paid for by Drafts drawn on Sawyer, Mellen & Co., except a small balance which was paid in money; that he sold the cloths, and R. D. Jones and Mr. Drake were present.

Cornelius G. Drake testifies, that R. D. Jones & Sons sold G. W. Ashard, Oct. 30th, 1857, a bill of Cotton Goods, which were in part paid for by the Drafts in question, namely, two Drafts drawn by A. N. Littig, on Sawyer Mellen & Co., dated Oct. 29th, 1857—one for \$100, due in twenty days, the other for \$200, due in ten days, and payable to the order of G. W. Ashard. Before closing the trade, R. D. Jones made enquiry in regard to the responsibility of Sawyer, Mellen & Co., and on the strength of the report took the Drafts—being the ones in question.

The transaction was on the 30th of October. In the 4th Cross-

Interrogatory, the witness is asked—"Did you learn from any source on what account the Drafts were drawn? If yea, state the source of your information, and the account they were drawn upon." "I think I understood from Mr. Jones, that these Drafts were made to Ashard, as an advance for him to buy goods to furnish the party with bags."

This being called for by them, becomes competent evidence. This testimony clearly establishes, that R. D. Jones & Sons *received the Drafts in question in good faith, in the usual course of business, and for a valid consideration*, one day after their date. What have Cooley, Farwell & Co. to urge against this? If they claim, as they do by the pleadings, that Ashard was their Agent to receive the Drafts, but had no right to negotiate the same, there is a variance between the proof and their allegations, and their case must fall to the ground, for there is no proof of his being their Agent.

But they do not place the case upon that ground, but abandon the allegation in the bill that Ashard had authority to receive the Drafts, unless they seek to adopt parts of acts, and ignore the balance. If they adopt his act of receiving the Drafts, they must adopt his act of negotiating it. They must take the whole or none.

This brings us to the present theory of their case. It seems that Ashard had been engaged in a bag factory, and became indebted to Cooley, Farwell & Co. October 10th, he assigned to them his property and books of accounts, and they took possession of the books, and employed him to manufacture bags. Among the accounts was one against Ashard, the drawer of the Drafts in question. The Clerk of Ashard, Mr. Spicer—whose testimony is not abstracted—about the 30th of October, collected for Ashard the bill, by taking the Drafts in question. They do not pretend that they ever gave notice to Littig, that the account was assigned, and consequently they were guilty of gross negligence; and if any one is in fault, they are, and they cannot seek to retrieve their negligence at the expense of R. D. Jones & Sons. Nor do they pretend to ever have had any claim against or dealing with Sawyer, Mellen & Co., the filers of the bill of Interpleader. If Cooley, Farwell & Co. had protected the assignment of the book accounts by notifying Littig, they would still have their claim against him; but having failed to do so, and Ashard having taken the Drafts in question, they now seek to adopt his acts up to the receiving the Drafts, and thus create a claim against Saw-

yer, Mellen & Co, and to repudiate the balance of his acts, in selling the Drafts. They do not pretend that R. D. Jones & Sons knew the true consideration of the Drafts; on the contrary, the proof shows that Jones, when he bought the Drafts in question, was informed it was to enable Ashard to make bags for the parties to the Drafts. But the whole argument is based upon the position, that facts existed, which were notice.

This we deny. The first *fact* is the insolvency of Ashard; second, that there had been a meeting of the creditors of Ashard, early in October, at which was H. O. Jones, one of the firm of R. D. Jones & Sons, and that the Drafts in question were payable to Ashard. These are the only facts or circumstances from which the inference is drawn. There is no proof that R. D. Jones, the one who bought the Drafts, ever heard of either facts. If he did, they are not notice. Is the fact that a man is insolvent, to place the party dealing with him on enquiry, where he got a negotiable piece of paper? Is the fact that his assets had gone into the hands of his creditor, ground to infer notice that he had mis-appropriated some of the assets? That a Draft one day old cannot be taken without enquiry, when it is stated the consideration of it is to enable him to buy materials to manufacture bags for the parties thereto. If this case is to be decided in favor of Cooley, Farwell & Co., then there is no safety in buying negotiable paper. We know the judgment will be affirmed.

WAITE & TOWNE,

Attorneys for Defendant in error.

STATE OF ILLINOIS, SUPREME COURT.

TO APRIL TERM, A. D. 1861.

APPEAL FROM SUPERIOR COURT OF CHICAGO, COOK
COUNTY, ILLINOIS.

been notified by Cooley, Farewell & Co., that those drafts were theirs, and that they must pay the moneys due thereon to them ; complainants, therefore, prayed that said R. D. Jones & Sons, and Cooley, Farwell & Co., who respectively claimed such moneys, might interplead and settle their rights to the same.

Pleadings.

Record page
2

The Bill sets forth that on or about the 29th of October, 1857, Sawyer, Mellen & Co. accepted two Drafts of that date, drawn on them by A. N. Littig : one payable to Geo. W. Ashard, 10 days from date in the sum of \$200, and the other payable to said Geo. W. Ashard, in 20 days after date, in the sum of \$100, and that when they were so accepted, they delivered them to said Ashard.

Record page
3.

That afterwards, Ashard endorsed both Drafts to R. D. Jones & Sons, but for what or any considerations complainants could not say.

Pages 3 & 4.

That either on the day they accepted the Drafts or the day following, Cooley, Farwell & Co. informed complainants, that said Drafts had been given to Ashard by Littig, in payment for flour sacks, which Littig was then owing Cooley, Farwell & Co.; that a part of said sacks had been sold to said Littig by Ashard, and that Ashard had sold and assigned such account to Cooley, Farwell & Co., and that the remainder of said sacks had been sold directly by said Cooley, Farwell & Co. to said Littig, and that Cooley, Farwell & Co. claimed the Drafts which complainants had so accepted, and that said R. D. Jones & Sons knew at the time they received said Drafts from Ashard, that they and the amount for which they were given in payment, belonged to Cooley, Farwell & Co. ; that Ashard was only their agent or factor, and insisted and gave notice to complainants that complainants would be held liable to them, if they paid the said Drafts to Ashard's order.

Page 4.

That R. D. Jones & Sons had commenced an action at law against complainants in the Cook County Court of Common Pleas, to recover the money due on said Drafts.

Page 5.

That complainants are willing to pay to any person or persons who are lawfully entitled to receive the amount due on said Drafts, and offer to pay the same into Court.

Pages 5 & 6.

To the end that said defendants may interplead and settle their rights to the money due on said Drafts, and that complainants may pay the same into Court, and that R. D. Jones & Sons may be enjoined from proceeding in their said suit at law against complainants, and that Cooley, Farwell & Co. may be restrained from commencing any suit against them touching the premises, and that Geo. W. Ashard may be made a party to the bill and answer the

same without oath, and that complainants, upon payment of such amount into Court and procuring such interpleading, may be discharged from all liabilities to such defendants in the premises.

Subscribed by the complainants and sworn to in their behalf, by the said John O. Mellen.

Pages 9, 10
and 11.

On 8th June, 1858, R. D. Jones & Sons filed a demurrer to said bill, and on the 13th January, 1860, said demurrer was sustained, and leave taken to amend bill, which was done by making said Ashard a party thereto.

COOLEY, FARWELL & CO.'S ANSWER.

Pages 13 to 20

On 2d February, 1860, Cooley, Farwell & Co. filed their joint and several answers, which was duly subscribed and sworn to by each of them, in which they say :

They admit that on or about the 29th of October, 1857, complainants accepted said drafts of said Littig of that date—that one was for \$100, and was payable to the order of Geo. W. Ashard, 20 days after date—that the other for \$200, payable to the order of said Ashard 10 days after date, and that said complainants after accepting them, delivered them to said Ashard.

Page 14.

Cooley, Farwell & Co. further say, that Littig had previously bought of Ashard, a certain bill of flour sacks, the particulars of which are marked, Exhibit A—that they were bought on credit—that afterwards, on 10th October, 1857, Ashard, by an instrument in writing of that date for a consideration therein named, sold and conveyed to Cooley, Farwell & Co. the said claim against Littig, with other claims against other persons, which they have to produce.

Page 15.

Page 16.

That after the said purchase of Ashard by Cooley, Farwell & Co., of the aforesaid claim against Littig, marked "Exhibit A," Cooley, Farwell & Co. sold to Littig a bill of flour sacks, the date and particulars of which, are set forth in "Exhibit B," which said two bills of sacks were the sole consideration for said two drafts, and that they were drawn by Littig and delivered to Ashard in payment of the balance due Cooley, Farwell & Co. upon said sacks, and that Ashard received them solely as agent of Cooley, Farwell & Co., and that Ashard had no right or authority to negotiate the same, or assign them to any one except Cooley, Farwell & Co.

The first bill of sacks, marked "Exhibit A," is as follows :

"EXHIBIT A."

Chicago, Oct. 10, 1857.

Page 19.

Mr. A. N. Littig,

Bo't of Geo. W. Ashard,

1000 $\frac{1}{2}$ bbl. Sacks, 11 $\frac{1}{2}$ c.	-	-	\$115.00
1000 $\frac{1}{4}$ " 8	-	-	80.00
Ctge,	-	-	.25
			\$195.25

Second bill of sacks, sold by Cooley, Farwell & Co. to Littig, is as follows :

"EXHIBIT B."

Chicago, Oct. 12th, 1857.

Page 19.

Mr. A. N. Littig,

Bo't of Cooley, Farwell & Co.,

1000 $\frac{1}{2}$ bbl. Sacks, 11 $\frac{1}{2}$ c.	-	-	\$115 00
--	---	---	----------

Page 15.

That on or about 10th October, 1857, Ashard entered into the employ of Cooley, Farwell & Co., and so continued until after the acceptance of said Drafts ; that the Agency of Ashard was limited and conferred no authority upon him to assign any Draft which he should receive in payment of amounts held by Cooley, Farwell & Co. against Littig or others, and that they never authorized Ashard to endorse said Drafts, or either of them, in any manner.

Page 17.

They admit that Ashard assigned said Drafts to R. D. Jones & Sons, and are informed and believe that part consideration therefor was a pre-existing debt due from Ashard to Jones & Sons—they agreeing to return the balance to Ashard after paying their debt.

Page 17.

They say at the time of such assignment of said Drafts and long before that time, Jones & Sons were fully aware that Ashard had sold and assigned all his claims against Littig to Cooley, Farwell & Co., and that Jones & Sons knew that said Drafts and the considerations thereof, were the property of Cooley, Farwell & Co., and they aver that the assignment of said Drafts were in fraud of the rights of Cooley, Farwell & Co., and conveyed no title to R. D. Jones & Sons.

Page 17.

Admit that they informed complainants of their claim to the said two Drafts, and to the consideration thereof, and likewise of the fraud of Ashard in assigning them, and that complainants would be held liable to them (C., F. & Co.) for the amount of the Drafts.

Page 18.

Admit, on information and belief, that R. D. Jones & Sons had commenced a suit for the money upon said Drafts, and pray that the fund brought into Court by complainants may be awarded to them, (Cooley, Farwell & Co.

R. D. JONES & SONS' ANSWER.

Pages 23 & 24 They admit that on or about 29th October, 1857, complainants accepted the said two Drafts, and that *they were payable* to said Geo. W. Ashard, as stated in bill, and that Ashard assigned them to R. D. Jones & Sons. That such assignment was on the 30th October, 1857. That Ashard called at their store to purchase sheetings and shirtings to make into flour sacks for A. N. Littig, whom he represented to be a merchant in Iowa, and then exhibited the said Drafts, accepted by complainants, and requested R. D. Jones & Sons to receive them in payment for purchases he might make. Whereupon R. D. Jones informed Ashard, that he knew nothing of said Drafts and was unacquainted with the responsibility of the acceptors. Before consummating any sale, R. D. Jones made such enquiries, and finding the complainants responsible, made sale to Ashard of two bales of sheeting, amounting in the aggregate to the sum of \$318.72, and delivered the same to him, who at the time in payment therefor, delivered to R. D. Jones the said Drafts and paid the balance of \$18.72, as per

Page 25.

Page 26.

"EXHIBIT A."

Chicago, October 30th, 1857.

Mr. G. W. Ashard,

Bought of R. D. Jones & Sons,

2 Bales Bro. Sheeting, 1588, 10c. - \$158.80

50 ps. Kingston Sheeting, 1938³, 8½c. - 159 72

\$318.52

By Sawyer, Mellen & Co, acpt., \$200.00

" " " " 100.00

By Cash to bal. - - 18.72

————\$318.72

Page 26. R. D. Jones & Sons say that said Drafts were received in good faith for such consideration and without knowledge that Cooley, Farwell & Co. were the owners thereof, or of the assignment of any account by Ashard to Cooley, Farwell & Co. against said Littig, nor of any sale of stock or property by Cooley, Farwell & Co. to said Littig, or of any indebtedness of Littig to Cooley, Farwell & Co., and therefore neither admit or deny the same.

Page 27. And they have no knowledge or information of any sale, assignment or claim, from Ashard to Cooley, Farwell & Co., until the first Draft

became due, at which time complainants said they had been instructed by C. F. & Co. not to pay the Drafts.

Page 28.

That Ashard was indebted to them at the time, that the sale of goods to Ashard was a cash sale, without reference to his indebtedness to them to a large amount, and say that Ashard was then manufacturing flour sacks on his own account; and they insist that they received said Drafts before maturity, in good faith and for a valuable consideration, and that Ashard had a right to dispose of the same.

Page 28.

Admit they commenced suit against complainants for the money on said Drafts, and state from information, that they recovered judgment upon the Drafts before the filing of the said bill.

SERVICE UPON ASHARD.

Pages 34, 35
and 36.

By publication, &c.

Page 37.

Bill taken *pro confesso*, as to Ashard, for want of answer.

Testimony in favor of R. D. Jones & Sons.

Interrogat'y
4.

BARNABAS L. SOULAND testifies, that in October, 1857, he was in the employ of R. D. Jones & Sons, and knows that on 30th October, 1857, they sold to Ashard, two bales of sheeting and 50 pieces of Kingston Sheeting, amounting to \$318.72. He sold the goods.

Int'y 5.

I understood they were paid for by Drafts received of Ashard, drawn by some party on Sawyer, Mellen & Co., with the exception of a small balance which *I understood* was paid in money.

Int'y 6.

I supposed Ashard purchased the goods for making bags.

Int'y 1.

Int'y 2.

Page 59.

CORNELIUS E. DRAKE testifies, that he was book-keeper for R. D. Jones & Sons during 1857. On the 30th October, 1857, there was a sale of two bales of cotton goods and 50 pieces besides, by R. D. Jones & Sons to Ashard. The arrangement for the sale was made between R. D. Jones and Ashard. Ashard came there with two Drafts, with which to purchase goods. In accordance with the arrangement, Mr. Souland sold Ashard the goods. They were paid

for by A. N. Littig's Drafts on Sawyer, Mellen & Co., which are attached, marked "*Exhibit A & B*," and are as follows:

"EXHIBIT A."

\$100.

Chicago, Oct. 29th, 1857.

Twenty days after date pay to the order of G. W. Ashard, one hundred dollars, and charge the same to my account.

To SAWYER, MELLE & Co.,

258 & 260 So. Water Street, Chicago.

A. N. LITTIG,

By D. HINMAN.

Endorsed on back,

G. W. ASHARD,

R. D. JONES & SONS.

"EXHIBIT B."

\$200.

Chicago, Oct. 29th, 1857.

Ten days after date pay to the order of G. W. Ashard, two hundred dollars, and charge the same to my account.

To SAWYER, MELLE & Co.,

258 & 260 So. Water Street, Chicago.

A. N. LITTIG,

By D. HINMAN.

Endorsed on back,

G. W. ASHARD,

R. D. JONES & SONS.

Int'y 4.

Before consummating the arrangement with Ashard, R. D. Jones made enquiries in relation to the responsibility of Sawyer, Mellen & Co., and found them good. (5.) Previous to this time, Ashard had been engaged in manufacturing bags, and represented that he was then so engaged.

Page 62.

CROSS-EXAMINATION OF DRAKE.

Int'y 6.

I don't think I heard the conversation between R. D. Jones & Sons and Ashard at the time of the transaction referred to. 7 X. My information upon the subject was received from R. D. Jones. 9 X. I only

Page 63.

know from report that Ashard was engaged at that time in manufacturing bags. 10 X. Previous to or near that time I understood he had been manufacturing bags over the store of Cooley, Farwell & Co. 11 X. It was about the time he removed from there. 13 X. I know R. D. Jones made enquiries about the responsibility of Sawyer, Mel-

Page 64.

len & Co. by his (Jones) telling me so. 14 X. I don't recollect whether Ashard said he was about to re-commence business or was then in business. 15 X. I have no knowledge of what account the Drafts were drawn upon. All the knowledge I have, I have already stated. 16 and 17 X. I cannot say I ever heard either of the Jones say that Littig had a previous account. 18 X. I am not positive whether I ever talked with one of them about such account or not. 20 X. Ashard's indebtedness had been the subject of conversation previous to said transaction. 21 X. I understood there had been a meeting of Ashard's creditors, but I don't know how long previous thereto. 22 X. It might have been a month or more before. 23 X.

Page 65.

It may have been a very few days before. I have no recollection about it. 24 X. (As to the effect of the meeting of Ashard's creditors) I heard Ashard *was in a tight spot* and the meeting was called to see what could be done about it. 25 X. My impression is I understood that H. O. Jones attended some meeting of creditors somewhere. 26 X. I don't know of his attending but one meeting. 28 X. I received the information that Ashard was in a tight place while in the employ of R. D. Jones & Sons. 30 X. I can't say from what source I learned the embarrassed condition of Ashard. He had paper past due and I was trying to collect the money on it, and frequently called upon him for that purpose. 31 X. (As to whether there was conversation between R. D. Jones & Sons and Ashard about assisting Ashard in re-commencing business at the time of creditors' meeting,) he says I cannot say, there might have been, I cannot say whether there was or not. 33 X. I may have heard some matters but I can't now recollect. 34 X. I cannot swear positively that I have or not.

Page 68.



Page 69.

[Stipulation by parties, that all the foregoing questions and answers and those that follow, are subject to all legal objections.]

Page 70.

35 X. I can't say how long Ashard's embarrassment had been a matter of conversation, at and before the creditors' meeting. It might have been a long time, and it might have been a short time. 36 X. I cannot tell when I presented Ashard his paper for payment. 37 X. Should think it was before the creditors' meeting. 38 X. Don't recollect how long before. 39 X. My impression is, it was within a

month. 40 ✕. It was R. D Jones & Sons' paper. 41 ✕. He did not pay it.

Page 74. 56 ✕. Did you see the goods delivered to Ashard? *Ans.* I know the goods were shipped, and afterwards settled the bill with him.
57 ✕. (Same question.) I cannot answer the question any better.
Page 75. 58 ✕. (Same question.) I can only answer as I did before. 59 ✕. My answer is as positive as I can make it.

DIRECT EXAMINATION RESUMED.

Page 76. 1st. I suppose the party referred to in my answer to 4 ✕, was the party who made the Drafts.

Page 77. JOHN WOODBRIDGE testifies, that he defended a suit for Sawyer, Mellen & Co., brought by R. D. Jones & Sons. It was in 1857 we commenced to try the suit. The Drafts in controversy were introduced by R. D. Jones & Sons. I then offered to show, that they were the property of Cooley, Farwell & Co., and not of R. D. Jones & Sons, but it was held inadmissable. It was then proposed that I should file a bill of interpleader to raise this question. I obtained
Page 78. leave so to do, and the case at law to be suspended until a certain time for that purpose. It was understood that no judgment should be entered. I filed the bill of interpleader, and brought the money into court.

Page 37. EXCEPTIONS TO THE TESTIMONY OF SOULAND, BY
COOLEY, FARWELL & CO.

On 22d Oct., 1860, C. M. Hawley, Solicitor for C., F. & Co., entered a motion to suppress the Depositions of Souland, and strike it from the files, because :

1st. R. D. Jones & Sons have not, by said witness, shown any connection between the purchase and the Drafts. 2d. He has no knowledge of matters enquired about, except from information, (ruled out by the Court.) 3d. His answer to the 6th Interrogatory is a mere supposition, (this was excluded by the Court.) 4th. Having failed to connect the Drafts with the goods it is immaterial. 5th. Before Jones & Sons can be permitted to prove a consideration paid for the Drafts, they must show they made enquiry in good faith as to the foundation of said Drafts, and acquainted themselves with the merits of the transaction, they having knowledge of Ashard's insolvency and of his assignment of his Books of account to Cooley, Farwell & Co.

TESTIMONY OF FORREST D. SPICER.

Page 97. I know of the making of the said Drafts, and the said acceptance of the same. These Drafts were made against an account for bags sold to A. N. Littig. I was clerk for Ashard, and received the Drafts for Ashard, and he delivered them to R. D. Jones & Sons for goods. They were accepted the same day they were drawn and the next day he passed them to R. D. Jones & Sons.

Page 102. This book is Ashard's book of accounts, and the following is the account against which the Drafts were drawn :

Oct. 10th, 1857.			
1000 half Bbl. Sacks, at 11½c.	-	-	\$115.00
1000 quarter " 8c.	-	-	80.00
Cartage, - - - - -	-	-	.25
			\$195.25

Oct. 12th, 1857.			
1000 hlf Bbl. Sacks, 11½c.	-	-	\$115.00

Entries are correct and against A. N. Littig.

Page 103. I was present at a meeting of the creditors of Ashard, held at his house. It was about the 15th or 20th of October, 1857. R. D. Jones & Sons were there represented. At which meeting Ashard made a statement that his books of accounts were in the possession of Cooley, Farwell & Co., as collateral for an indebtedness due them from him. Page 105. H. O. Jones, one of the firm of R. D. Jones & Sons, was at the place of Ashard's business several times about the time of the said meeting of creditors, but did not hear their conversation.

CROSS-EXAMINATION.

Page 106. 5 ¶. We did not have the books of accounts of Ashard at the time the Drafts were drawn. 12 ¶. None of the money for bags were rendered to Cooley, Farwell & Co. to my knowledge. 14 ¶. Ashard did not continue with Cooley, Farwell & Co. after the 10th of October, 1857, or more than a day or two.

GEO. A. FORSYTH'S TESTIMONY.

Page 110. I know of the assignment by Ashard of his accounts, &c., to Cooley, Farwell & Co. "Exhibit A" to my deposition, is the assignment in writing. It conveys for the consideration of \$8,000, all his (Ashard's) books of accounts, claims, demands choses in action and evidence of debt of every name and nature whatsoever, to him due and owing, and to become due and payable to Cooley, Farwell & Co., to have and to hold the same forever, &c., and appoints them his irrevocable attorneys to collect the same, and to do all other things needful in

Assignment
and Exhibit
A on page 80

the premises, &c. The business formerly done by Ashard to be done in the name of Cooley, Farwell & Co., and all sales to become the property of C. F. & Co., and all collections made from such business should be C. F. & Co.'s. Dated, 10th of October, 1857, and signed and acknowledged by Ashard and Cooley, Farwell & Co.

Page 111. I have seen the books of accounts mentioned in said assignment. They were in the office of Cooley, Farwell & Co. a day or two before the assignment. Cooley, Farwell & Co. took possession of said books of accounts under said agreement, on the same day the assignment was made or the day after. The book shown to me, is one of said books, and on page 262 is the said account against A. N. Littig, which is as follows :

		Oct. 10th, 1857.	
	1000 $\frac{1}{2}$ Bbl. Sacks, 11 $\frac{1}{2}$ c. -	- - -	\$115.00
	1000 $\frac{1}{4}$ " 8c. -	- - -	80.00
Page 113.	Cartage, - - -	- - -	.25
			\$195.25

Also on the same page :

	12th Oct., 1857.
1000 $\frac{1}{2}$ Bbl. Sacks, 11 $\frac{1}{2}$ c. -	- - - \$115.00

This last account was delivered by Cooley, Farwell & Co. through their agent, E. J. Brown, and the credit of the same was given by them to A. N. Littig. The sum of \$10 upon said account was paid by Littig to Cooley, Farwell & Co.

Page 114. On the 10th of October, 1857, Ashard was employed by Cooley, Farwell & Co. in the bag factory. Cooley, Farwell & Co. took possession of the bag factory and books of accounts, formerly owned by Ashard, on the said 10th of October, and continued in possession of the factory until they sold it out.

CROSS-EXAMINED.

Page 115. 1st. I was in the employ of Cooley, Farwell & Co.; was present when the assignment was executed. I did not see Ashard sign it. I saw the entry of the \$10 paid. I am one of the book-keepers and know the books are kept correctly.

DIRECT EXAMINATION RESUMED.

Page 120. I know the signature of Ashard ; have seen him write, and his name signed to said assignment is his signature.

LEVI Z. LEITER'S TESTIMONY.

Page 121. I know of an assignment made by Ashard to Cooley, Farwell & Co. in the month of Oct., 1857. "*Exhibit A*," attached to Forsyth's testimony, is such assignment. It was executed at the office of Cooley, Farwell & Co., on the 10th Oct., 1857. I witnessed its execution. Ashard was indebted to C., F. & Co., at that time, from fourteen to eighteen thousand dollars. Can't state definitely without reference to books. I had the charge and kept the books of Cooley, Farwell & Co. At the time of this assignment Ashard was manufacturing bags over Cooley, Farwell & Co.'s store. Immediately after the assignment, the property was delivered by Ashard to Cooley, Farwell & Co., and the business transacted in their name. All his property, including the books of account, passed to Cooley, Farwell & Co. The possession was taken on the 10th Oct., 1857. After this Cooley, Farwell & Co. carried on and conducted the business in their name.

Page 123.

Page 124.

Page 125.

Page 126.

Among the accounts assigned by Ashard to Cooley, Farwell & Co. there was one against A. N. Littig. After the assignment there was a credit given on said account by Cooley, Farwell & Co., on or about the 12th Oct., 1857, of ten dollars.

CROSS-EXAMINATION.

Page 127. Edward J. Brown took possession of the property for Cooley, Farwell & Co. After the 10th Oct., 1857, Ashard was out and in but had no authority over the business. 12~~th~~. It was also agreed that Cooley, Farwell & Co., should take the machinery and apply the proceeds on his indebtedness.

Page 128.

On the 22d Oct., 1860, exceptions were taken by defendants, Cooley, Farwell & Co., to the 8, 9, 10, 11, 12, 13, 14 and 17th Cross-Interrogatories, and each of the answers thereto of the said witness Spicer, as follows :

Because they relate to the consideration alledged to have been paid by R. D. Jones & Sons for the Drafts, without proving. 1st. That they acted with ordinary caution in taking the same.

C. M. HAWLEY,
Solicitor for Appellants.

243 96

Cooley Harwell & Co

vs

R D Jones & Sons

Abstract

Filed April 22, 1881
L. Leland
Clerk

STATE OF ILLINOIS, SUPREME COURT.

TO APRIL TERM, A. D. 1861.

APPEAL FROM SUPERIOR COURT OF CHICAGO, COOK
COUNTY, ILLINOIS.

FRANCIS B. COOLEY, JOHN V. FARWELL, ELISHA S.
WADSWORTH AND SIMEON FARWELL, Constituting
the Firm of COOLEY, FARWELL & CO., APPELLANTS,

AND

REUBEN D. JONES, ALBERT D. JONES, HENRY O. JONES
AND EDWARD H. SEARS, Constituting the Firm of R. D.
JONES & SONS, APPELLEES.

ABSTRACT OF THE RECORD.

This was a suit in Chancery, commenced by Theodore Betts, John D. Mellen, Alfred A. K. Sawyer and John O. Mellen, composing the firm of Sawyer, Mellen & Co., filed in the Cook County Court of Common Pleas, on the Chancery side thereof, against Cooley, Farwell & Co., and the said R. D. Jones & Sons and Geo. W. Ashard, for leave to pay into Court a Sum of Money due upon two Drafts, made by A. N. Littig, payable to the order of Geo. W. Ashard, and accepted by Complainants, (Sawyer, Mellen & Co.,) and then by them delivered to Ashard, and then by him assigned to R. D. Jones & Sons, which Drafts were drawn against a debt then due and payable by said Littig to Cooley, Farwell & Co. And said complainants having

been notified by Cooley, Farewell & Co., that those drafts were theirs, and that they must pay the moneys due thereon to them ; complainants, therefore, prayed that said R. D. Jones & Sons, and Cooley, Farwell & Co., who respectively claimed such moneys, might interplead and settle their rights to the same.

Pleadings.

Record page
2

The Bill sets forth that on or about the 29th of October, 1857, Sawyer, Mellen & Co. accepted two Drafts of that date, drawn on them by A. N. Littig : one payable to Geo. W. Ashard, 10 days from date in the sum of \$200, and the other payable to said Geo. W. Ashard, in 20 days after date, in the sum of \$100, and that when they were so accepted, they delivered them to said Ashard.

Record page
3.

That afterwards, Ashard endorsed both Drafts to R. D. Jones & Sons, but for what or any considerations complainants could not say.

Pages 3 & 4.

That either on the day they accepted the Drafts or the day following, Cooley, Farwell & Co. informed complainants, that said Drafts had been given to Ashard by Littig, in payment for flour sacks, which Littig was then owing Cooley, Farwell & Co.; that a part of said sacks had been sold to said Littig by Ashard, and that Ashard had sold and assigned such account to Cooley, Farwell & Co., and that the remainder of said sacks had been sold directly by said Cooley, Farwell & Co. to said Littig, and that Cooley, Farwell & Co. claimed the Drafts which complainants had so accepted, and that said R. D. Jones & Sons knew at the time they received said Drafts from Ashard, that they and the amount for which they were given in payment, belonged to Cooley, Farwell & Co. ; that Ashard was only their agent or factor, and insisted and gave notice to complainants that complainants would be held liable to them, if they paid the said Drafts to Ashard's order.

Page 4.

That R. D. Jones & Sons had commenced an action at law against complainants in the Cook County Court of Common Pleas, to recover the money due on said Drafts.

Page 5.

That complainants are willing to pay to any person or persons who are lawfully entitled to receive the amount due on said Drafts, and offer to pay the same into Court.

Pages 5 & 6.

To the end that said defendants may interplead and settle their rights to the money due on said Drafts, and that complainants may pay the same into Court, and that R. D. Jones & Sons may be enjoined from proceeding in their said suit at law against complainants, and that Cooley, Farwell & Co. may be restrained from commencing any suit against them touching the premises, and that Geo. W. Ashard may be made a party to the bill and answer the

same without oath, and that complainants, upon payment of such amount into Court and procuring such interpleading, may be discharged from all liabilities to such defendants in the premises.

Subscribed by the complainants and sworn to in their behalf, by the said John O. Mellen.

Pages 9, 10
and 11.

On 8th June, 1858, R. D. Jones & Sons filed a demurrer to said bill, and on the 13th January, 1860, said demurrer was sustained, and leave taken to amend bill, which was done by making said Ashard a party thereto.

COOLEY, FARWELL & CO.'S ANSWER.

Pages 13 to 20

On 2d February, 1860, Cooley, Farwell & Co. filed their joint and several answers, which was duly subscribed and sworn to by each of them, in which they say :

They admit that on or about the 29th of October, 1857, complainants accepted said drafts of said Littig of that date—that one was for \$100, and was payable to the order of Geo. W. Ashard, 20 days after date—that the other for \$200, payable to the order of said Ashard 10 days after date, and that said complainants after accepting them, delivered them to said Ashard.

Page 14.

Cooley, Farwell & Co. further say, that Littig had previously bought of Ashard, a certain bill of flour sacks, the particulars of which are marked, Exhibit A—that they were bought on credit—that afterwards, on 10th October, 1857, Ashard, by an instrument in writing of that date for a consideration therein named, sold and conveyed to Cooley, Farwell & Co. the said claim against Littig, with other claims against other persons, which they have to produce.

Page 15.

Page 16.

That after the said purchase of Ashard by Cooley, Farwell & Co., of the aforesaid claim against Littig, marked "Exhibit A," Cooley, Farwell & Co. sold to Littig a bill of flour sacks, the date and particulars of which, are set forth in "Exhibit B," which said two bills of sacks were the sole consideration for said two drafts, and that they were drawn by Littig and delivered to Ashard in payment of the balance due Cooley, Farwell & Co. upon said sacks, and that Ashard received them solely as agent of Cooley, Farwell & Co., and that Ashard had no right or authority to negotiate the same, or assign them to any one except Cooley, Farwell & Co.

The first bill of sacks, marked "Exhibit A," is as follows :

"EXHIBIT A."

Chicago, Oct. 10, 1857.

Page 19.

Mr. A. N. Littig,

Bo't of Geo. W. Ashard,

1000 $\frac{1}{2}$ bbl. Sacks, 11 $\frac{1}{2}$ c. - - \$115.00

1000 $\frac{1}{4}$ " 8 - - - 80.00

Ctge, - - .25

\$195.25

Second bill of sacks, sold by Cooley, Farwell & Co. to Littig, is as follows :

"EXHIBIT B."

Page 19.

Chicago, Oct. 12th, 1857.

Mr. A. N. Littig,

Bo't of Cooley, Farwell & Co.,

1000 $\frac{1}{2}$ bbl. Sacks, 11 $\frac{1}{2}$ c. - - \$115 00

Page 15.

That on or about 10th October, 1857, Ashard entered into the employ of Cooley, Farwell & Co., and so continued until after the acceptance of said Drafts ; that the Agency of Ashard was limited and conferred no authority upon him to assign any Draft which he should receive in payment of amounts held by Cooley, Farwell & Co. against Littig or others, and that they never authorized Ashard to endorse said Drafts, or either of them, in any manner.

Page 17.

They admit that Ashard assigned said Drafts to R. D. Jones & Sons, and are informed and believe that part consideration therefor was a pre-existing debt due from Ashard to Jones & Sons—they agreeing to return the balance to Ashard after paying their debt.

Page 17.

They say at the time of such assignment of said Drafts and long before that time, Jones & Sons were fully aware that Ashard had sold and assigned all his claims against Littig to Cooley, Farwell & Co., and that Jones & Sons knew that said Drafts and the considerations thereof, were the property of Cooley, Farwell & Co., and they aver that the assignment of said Drafts were in fraud of the rights of Cooley, Farwell & Co., and conveyed no title to R. D. Jones & Sons.

Page 17.

Admit that they informed complainants of their claim to the said two Drafts, and to the consideration thereof, and likewise of the fraud of Ashard in assigning them, and that complainants would be held liable to them (C., F. & Co.) for the amount of the Drafts.

Page 18.

Admit, on information and belief, that R. D. Jones & Sons had commenced a suit for the money upon said Drafts, and pray that the fund brought into Court by complainants may be awarded to them, (Cooley, Farwell & Co.

R. D. JONES & SONS' ANSWER.

Pages 23 & 24 They admit that on or about 29th October, 1857, complainants accepted the said two Drafts, and that *they were payable* to said Geo. W. Ashard, as stated in bill, and that Ashard assigned them to R. D. Jones & Sons. That such assignment was on the 30th October, 1857. That Ashard called at their store to purchase sheetings and shirtings to make into flour sacks for A. N. Littig, whom he represented to be a merchant in Iowa, and then exhibited the said Drafts, accepted by complainants, and requested R. D. Jones & Sons to receive them in payment for purchases he might make. Whereupon R. D. Jones informed Ashard, that he knew nothing of said Drafts and was unacquainted with the responsibility of the acceptors. Before consummating any sale, R. D. Jones made such enquiries, and finding the complainants responsible, made sale to Ashard of two bales of sheeting, amounting in the aggregate to the sum of \$318.72, and delivered the same to him, who at the time in payment therefor, delivered to R. D. Jones the said Drafts and paid the balance of \$18.72, as per

Page 25.

Page 26.

"EXHIBIT A."

Page 33. Chicago, October 30th, 1857.

Mr. G. W. Ashard,
Bought of R. D. Jones & Sons,
2 Bales Bro. Sheeting, 1588, 10c. - \$158.80
50 ps. Kingston Sheeting, 1938³, 8½c. - 159 72
\$318.52

By Sawyer, Mellen & Co, acpt., \$200 00
" " " " 100.00
By Cash to bal. - - 18.72
—————\$318.72

Page 26. R. D. Jones & Sons say that said Drafts were received in good faith for such consideration and without knowledge that Cooley, Farwell & Co. were the owners thereof, or of the assignment of any account by Ashard to Cooley, Farwell & Co. against said Littig, nor of any sale of stock or property by Cooley, Farwell & Co. to said Littig, or of any indebtedness of Littig to Cooley, Farwell & Co., and therefore neither admit or deny the same.

Page 27. And they have no knowledge or information of any sale, assignment or claim, from Ashard to Cooley, Farwell & Co., until the first Draft

became due, at which time complainants said they had been instructed by C. F. & Co. not to pay the Drafts.

Page 28.

That Ashard was indebted to them at the time, that the sale of goods to Ashard was a cash sale, without reference to his indebtedness to them to a large amount, and say that Ashard was then manufacturing flour sacks on his own account; and they insist that they received said Drafts before maturity, in good faith and for a valuable consideration, and that Ashard had a right to dispose of the same.

Page 28.

Admit they commenced suit against complainants for the money on said Drafts, and state from information, that they recovered judgment upon the Drafts before the filing of the said bill.

SERVICE UPON ASHARD.

Pages 34, 35
and 36.

By publication, &c.

Page 37.

Bill taken *pro confesso*, as to Ashard, for want of answer.

Testimony in favor of R. D. Jones & Sons.

Interrogat'y
4.

BARNABAS L. SOULAND testifies, that in October, 1857, he was in the employ of R. D. Jones & Sons, and knows that on 30th October, 1857, they sold to Ashard, two bales of sheeting and 50 pieces of Kingston Sheeting, amounting to \$318.72. He sold the goods.

Int'y 5.

I understood they were paid for by Drafts received of Ashard, drawn by some party on Sawyer, Mellen & Co., with the exception of a small balance which *I understood* was paid in money.

Int'y 6.

I supposed Ashard purchased the goods for making bags.

Int'y 1.

Int'y 2.

Page 50.

CORNELIUS E. DRAKE testifies, that he was book-keeper for R. D. Jones & Sons during 1857. On the 30th October, 1857, there was a sale of two bales of cotton goods and 50 pieces besides, by R. D. Jones & Sons to Ashard. The arrangement for the sale was made between R. D. Jones and Ashard. Ashard came there with two Drafts, with which to purchase goods. In accordance with the arrangement, Mr. Souland sold Ashard the goods. They were paid

for by A. N. Littig's Drafts on Sawyer, Mellen & Co., which are attached, marked "*Exhibit A & B,*" and are as follows :

"EXHIBIT A."

\$100.

Chicago, Oct. 29th, 1857.

Twenty days after date pay to the order of G. W. Ashard, one hundred dollars, and charge the same to my account.

To SAWYER, MELLEN & Co.,

258 & 260 So. Water Street, Chicago.

A. N. LITTIG,

By D. HINMAN.

Endorsed on back,

G. W. ASHARD,

R. D. JONES & SONS.

"EXHIBIT B."

\$200.

Chicago, Oct. 29th, 1857.

Ten days after date pay to the order of G. W. Ashard, two hundred dollars, and charge the same to my account.

To SAWYER, MELLEN & Co.,

258 & 260 So. Water Street, Chicago.

A. N. LITTIG,

By D. HINMAN.

Endorsed on back,

G. W. ASHARD,

R. D. JONES & SONS.

Int'y 4.

Before consummating the arrangement with Ashard, R. D. Jones made enquiries in relation to the responsibility of Sawyer, Mellen & Co., and found them good. (5.) Previous to this time, Ashard had been engaged in manufacturing bags, and represented that he was then so engaged.

Page 62.

CROSS-EXAMINATION OF DRAKE.

Int'y 6.

I don't think I heard the conversation between R. D. Jones & Sons and Ashard at the time of the transaction referred to. 7 ¶. My information upon the subject was received from R. D. Jones. 9 ¶. I only

Page 63.

know from report that Ashard was engaged at that time in manufacturing bags. 10 X. Previous to or near that time I understood he had been manufacturing bags over the store of Cooley, Farwell & Co. 11 X. It was about the time he removed from there. 13 X. I know R. D. Jones made enquiries about the responsibility of Sawyer, Mellen & Co. by his (Jones) telling me so. 14 X. I don't recollect

Page 64.

whether Ashard said he was about to re-commence business or was then in business. 15 X. I have no knowledge of what account the Drafts were drawn upon. All the knowledge I have, I have already stated. 16 and 17 X. I cannot say I ever heard either of the Jones say that Littig had a previous account. 18 X. I am not positive whether I ever talked with one of them about such account or not. 20 X. Ashard's indebtedness had been the subject of conversation previous to said transaction. 21 X. I understood there had been a meeting of Ashard's creditors, but I don't know how long previous thereto. 22 X. It might have been a month or more before. 23 X.

Page 65.

It may have been a very few days before. I have no recollection about it. 24 X. (As to the effect of the meeting of Ashard's creditors) I heard Ashard *was in a tight spot* and the meeting was called to see what could be done about it. 25 X. My impression is I understood that H. O. Jones attended some meeting of creditors somewhere. 26 X. I don't know of his attending but one meeting. 28 X. I received the information that Ashard was in a tight place while in the employ of R. D. Jones & Sons. 30 X. I can't say from what source I learned the embarrassed condition of Ashard. He had paper past due and I was trying to collect the money on it, and frequently called upon him for that purpose. 31 X. (As to whether there was conversation between R. D. Jones & Sons and Ashard about assisting Ashard in re-commencing business at the time of creditors' meeting,) he says I cannot say, there might have been, I cannot say whether there was or not. 33 X. I may have heard some matters but I can't now recollect. 34 X. I cannot swear positively that I have or not.

Page 66.

Page 69.

[Stipulation by parties, that all the foregoing questions and answers and those that follow, are subject to all legal objections.]

Page 70.

35 X. I can't say how long Ashard's embarrassment had been a matter of conversation, at and before the creditors' meeting. It might have been a long time, and it might have been a short time. 36 X. I cannot tell when I presented Ashard his paper for payment. 37 X. Should think it was before the creditors' meeting. 38 X. Don't recollect how long before. 39 X. My impression is, it was within a

month. 40 X. It was R. D. Jones & Sons' paper. 41 X. He did not pay it.

Page 74. 56 X. Did you see the goods delivered to Ashard? *Ans.* I know the goods were shipped, and afterwards settled the bill with him. 57 X. (Same question.) I cannot answer the question any better. 58 X. (Same question.) I can only answer as I did before. 59 X. Page 75. My answer is as positive as I can make it.

DIRECT EXAMINATION RESUMED.

Page 76. 1st. I suppose the party referred to in my answer to 4 X, was the party who made the Drafts.

Page 77. JOHN WOODBRIDGE testifies, that he defended a suit for Sawyer, Mellen & Co., brought by R. D. Jones & Sons. It was in 1857 we commenced to try the suit. The Drafts in controversy were introduced by R. D. Jones & Sons. I then offered to show, that they were the property of Cooley, Farwell & Co., and not of R. D. Jones & Sons, but it was held inadmissible. It was then proposed that I should file a bill of interpleader to raise this question. I obtained leave so to do, and the case at law to be suspended until a certain time for that purpose. It was understood that no judgment should be entered. I filed the bill of interpleader, and brought the money into court. Page 78.

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COOLEY, FARWELL & CO.

On 22d Oct., 1860, C. M. Hawley, Solicitor for C., F. & Co., entered a motion to suppress the Depositions of Souland, and strike it from the files, because :

1st. R. D. Jones & Sons have not, by said witness, shown any connection between the purchase and the Drafts. 2d. He has no knowledge of matters enquired about, except from information, (ruled out by the Court.) 3d. His answer to the 6th Interrogatory is a mere supposition, (this was excluded by the Court.) 4th. Having failed to connect the Drafts with the goods it is immaterial. 5th. Before Jones & Sons can be permitted to prove a consideration paid for the Drafts, they must show they made enquiry in good faith as to the foundation of said Drafts, and acquainted themselves with the merits of the transaction, they having knowledge of Ashard's insolvency and of his assignment of his Books of account to Cooley, Farwell & Co.

EXCEPTIONS TO DRAKE'S TESTIMONY.

Page 39.

On 22d Oct., 1860, entered the following Exceptions:

1st. 3rd Interrogatory assumes what should be proved, to wit: That they made enquiry as to the merits and foundation of the Drafts

3d. The answer to 3d, 4th and 5th Interrogatories, though answered as of his own knowledge, yet in his answer to the 6th Cross-interrogatory, he says he did not hear the conversation—and in his answer to the 7th and 13th Cross-Interrogatories, he says that all he knew about the transaction, was from conversation with R. D. Jones & Sons.

Page 40.

4th. The deposition of Drake, is based upon information derived either from the Joneses or Ashard.

TESTIMONY IN BEHALF OF COOLEY, FARWELL & CO.

Pages 85—86
1 answer.

WETMORE G. THOMPSON testifies, Geo. W. Ashard was indebted to Thompson, Wetmore & Co. in the fall of 1857, and he called a meeting of his creditors at his house, to inform them of his condition. There were six or eight firms represented at this meeting. R. D. Jones & Sons were represented by Henry O. Jones. Ashard pretended to make a statement of his affairs—the amount of it was—that Cooley, Farwell & Co. had a claim upon his machinery and the notes and books of accounts. I understood it was in the possession of Cooley, Farwell & Co. 2d. His object was to let his creditors know how his matters stood, and to get their opinion whether anything could be done. It was represented he owed Cooley, Farwell & Co. from eleven to thirteen thousand dollars.

Page 87.

Page 88.

On return from this meeting, I had conversation with H. O. Jones, and we concluded that there was not much chance for any other creditors.

Page 89.

This meeting was about the middle of October.

TESTIMONY OF FRANCIS VAN WICK.

Page 91.

I attended a meeting of Ashard's creditors, held at his house in the fall of 1857, about the middle of October. He stated that he had passed his notes and accounts to Cooley, Farwell & Co., and had executed a mortgage to them upon his machinery. R. D. Jones & Sons were represented at this meeting by one of the firm, Henry O. Jones. This meeting was a few days before the 24th of October, 1857. Henry O. Jones paid attention to all that transpired, and was one of the principal spokesmen.

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TESTIMONY OF FORREST D. SPICER.

Page 97. I know of the making of the said Drafts, and the said acceptance of the same. These Drafts were made against an account for bags sold to A. N. Littig. I was clerk for Ashard, and received the Drafts for Ashard, and he delivered them to R. D. Jones & Sons for goods. They were accepted the same day they were drawn and the next day he passed them to R. D. Jones & Sons.

Page 102. This book is Ashard's book of accounts, and the following is the account against which the Drafts were drawn :

Oct. 10th, 1857.			
1000 half Bbl. Sacks, at 11½c.	-	-	\$115.00
1000 quarter " 8c.	-		80.00
Cartage, - - - - -			.25
			\$195.25

Oct. 12th, 1857.			
1000 hlf Bbl. Sacks, 11½c.	-	-	\$115.00

Entries are correct and against A. N. Littig.

Page 103. I was present at a meeting of the creditors of Ashard, held at his house. It was about the 15th or 20th of October, 1857. R. D. Jones & Sons were there represented. At which meeting Ashard made a statement that his books of accounts were in the possession of Cooley, Farwell & Co., as collateral for an indebtedness due them from him. Page 105. H. O. Jones, one of the firm of R. D. Jones & Sons, was at the place of Ashard's business several times about the time of the said meeting of creditors, but did not hear their conversation.

CROSS-EXAMINATION.

Page 106. 5. We did not have the books of accounts of Ashard at the time the Drafts were drawn. 12. None of the money for bags were rendered to Cooley, Farwell & Co. to my knowledge. 14. Ashard did not continue with Cooley, Farwell & Co. after the 10th of October, 1857, or more than a day or two.

GEO. A. FORSYTH'S TESTIMONY.

Page 110. I know of the assignment by Ashard of his accounts, &c., to Cooley, Farwell & Co. "Exhibit A" to my deposition, is the assignment in writing. It conveys for the consideration of \$8,000, all his (Ashard's) books of accounts, claims, demands choses in action and evidence of debt of every name and nature whatsoever, to him due and owing, and to become due and payable to Cooley, Farwell & Co., to have and to hold the same forever, &c., and appoints them his irrevocable attorneys to collect the same, and to do all other things needful in

Assignment
and Exhibit
A on page 80

the premises, &c. The business formerly done by Ashard to be done in the name of Cooley, Farwell & Co., and all sales to become the property of C. F. & Co., and all collections made from such business should be C. F. & Co.'s. Dated, 10th of October, 1857, and signed and acknowledged by Ashard and Cooley, Farwell & Co.

Page 111. I have seen the books of accounts mentioned in said assignment. They were in the office of Cooley, Farwell & Co. a day or two before the assignment. Cooley, Farwell & Co. took possession of said books of accounts under said agreement, on the same day the assignment
Page 112. was made or the day after. The book shown to me, is one of said books, and on page 262 is the said account against A. N. Littig, which is as follows :

	Oct. 10th, 1857.	
1000 $\frac{1}{2}$ Bbl. Sacks, 11 $\frac{1}{2}$ c. -	- - -	\$115.00
1000 $\frac{1}{4}$ " " Sc. -	- - -	80.00
Page 113. Cartage, - - -	- - -	.25
		\$195.25

Also on the same page :

	12th Oct., 1857.	
1000 $\frac{1}{2}$ Bbl. Sacks, 11 $\frac{1}{2}$ c. -	- - -	\$115.00

This last account was delivered by Cooley, Farwell & Co. through their agent, E. J. Brown, and the credit of the same was given by them to A. N. Littig. The sum of \$10 upon said account was paid by Littig to Cooley, Farwell & Co.

Page 114. On the 10th of October, 1857, Ashard was employed by Cooley, Farwell & Co. in the bag factory. Cooley, Farwell & Co. took possession of the bag factory and books of accounts, formerly owned by Ashard, on the said 10th of October, and continued in possession of the factory until they sold it out.

CROSS-EXAMINED.

Page 115. 1st. I was in the employ of Cooley, Farwell & Co.; was present when the assignment was executed. I did not see Ashard sign it. I saw the entry of the \$10 paid. I am one of the book-keepers and know the books are kept correctly.

DIRECT EXAMINATION RESUMED.

Page 120. I know the signature of Ashard ; have seen him write, and his name signed to said assignment is his signature.

LEVI Z. LEITER'S TESTIMONY.

Page 121.

I know of an assignment made by Ashard to Cooley, Farwell & Co. in the month of Oct., 1857. "*Exhibit A*," attached to Forsyth's testimony, is such assignment. It was executed at the office of Cooley, Farwell & Co., on the 10th Oct., 1857. I witnessed its execution. Ashard was indebted to C., F. & Co., at that time, from fourteen to eighteen thousand dollars. Can't state definitely without reference to books. I had the charge and kept the books of Cooley, Farwell & Co. At the time of this assignment Ashard was manufacturing bags over Cooley, Farwell & Co.'s store. Immediately after the assignment, the property was delivered by Ashard to Cooley, Farwell & Co., and the business transacted in their name. All his property, including the books of account, passed to Cooley, Farwell & Co. The possession was taken on the 10th Oct., 1857. After this Cooley, Farwell & Co. carried on and conducted the business in their name.

Page 123.

Page 124.

Page 125.

Page 126.

Among the accounts assigned by Ashard to Cooley, Farwell & Co. there was one against A. N. Littig. After the assignment there was a credit given on said account by Cooley, Farwell & Co., on or about the 12th Oct., 1857, of ten dollars.

CROSS-EXAMINATION.

Page 127.

Page 128.

Edward J. Brown took possession of the property for Cooley, Farwell & Co. After the 10th Oct., 1857, Ashard was out and in but had no authority over the business. 12~~th~~. It was also agreed that Cooley, Farwell & Co., should take the machinery and apply the proceeds on his indebtedness.

On the 22d Oct., 1860, exceptions were taken by defendants, Cooley, Farwell & Co., to the 8, 9, 10, 11, 12, 13, 14 and 17th Cross-Interrogatories, and each of the answers thereto of the said witness Spicer, as follows :

Because they relate to the consideration alledged to have been paid by R. D. Jones & Sons for the Drafts, without proving. 1st. That they acted with ordinary caution in taking the same.

C. M. HAWLEY,
Solicitor for Appellants.

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Francis B. Landley

R. D. Smith

Abstract

Filed April 22. 1881.
L. Leland
Clerk