

14610

No. _____

Supreme Court of Illinois

Dole et al

vs.

Olmstead

71641  7

STATE OF ILLINOIS,
1864
SUPREME COURT,
THIRD GRAND DIVISION.

No. 113

J. W. Middleton & Co., Stationers, 196 Lake St.

Deale
W
James
1864
R

113 87

Supreme Court of Illinois.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

CHARLES S. DOLE, JAMES
H. DOLE, impleaded, &c.,

vs.

JOHN D. OLMSTEAD, AND
THOMAS HERFORD.

BRIEF FOR APPELLANTS,

BY

LELAND & BLANBHARD.

STATEMENT OF THE CASE.

Micaiah F. Fairfield and John D. G. Weld, two of the debts below, were partners, by the firm name of Fairfield & Weld. engaged in the business of warehousemen, buying, selling and storing grain, at Ottawa, Illinois. While engaged in such business, they became indebted to appellants, (who were partners in business at Chicago under the firm name of C. S. Dole & Co.,) in about \$9,000, for which they held the judgment notes of Fairfield & Weld, and assigned same to one William Martin, December 21st, 1859. Martin caused judgment to be entered upon said judgment notes, in the Circuit Court of Cook county, and on same day Martin assigned said judgments to appellants. Appellants caused execution to be issued upon said judgment, directed to the Sheriff of La Salle county, who received the same December 22, 1859.

Filed May 6, 1864
L Leland *OR*

That on the 21st day of December, A. D. 1859, Fairfield & Weld, to secure the payment of said indebtedness to C. S. Dole & Co., assigned, transferred and delivered possession thereof to Dole & Co. the corn then in the warehouse and corn cribs of Fairfield & Weld; also certain corn contracts, which had been entered into by Fairfield & Weld, with divers parties, for the purchase of corn, upon some of which contracts Fairfield & Weld had advanced money and received a portion of the corn.

That said corn had been purchased by Fairfield & Weld, and received in store from divers parties, and all mixed, mingled and confused together, as is usual in the ordinary course of business among warehousemen.

The following is a statement of the whole amount of corn Fairfield & Weld had on hand and in store when the assignment was made to C. S. Dole & Co., according to their book "a." Amount owned by Fairfield & Weld, \$4,381 30 80

Amount of corn received by Fairfield & Weld on contracts partially performed, on which contract Fairfield & Weld had advanced money :

	Am't of corn received.	Am't advanced.
b R. P. Harden,	119 20-80	\$122.36
b R. Wilkinson,	83 40-80	37.81
b S. Chandler,	75 50-80	54.80
b Charles Grube,	85 70-80	
b Allen Griffin,	126 45-80	84.00
b Samuel Miller,	20	
b Fritz Torrom,	17 15-80	2.85
b Charles Wilson,	25 50-80	26.90
b A. S. Calkins,	23 60-80	90.72
b Franklin Reed,	287 50-80	41.49
b John Titus,	400 45-80	102.40
b Fred Glim,	219 35-80	167.59
b E. Wyman,	300 35-80	64.50
b E. C. Gould,	320 20-80	91.98
b John Bragg,	91 10-80	30.00
b William Bennett,	100 40-80	140.69
b Marcus Jey,	138 5-80	63.02
b W. F. Dunavan,	103 50-80	35.00

Total am't bo't on contract, 6,923 30-80

Amount of corn received on storage :

c Thomas Herford,	2,527 10-80
c J. D. Olmstead,	3,148 50-80
c J. R. Weltner,	439 50-80
c L. Umlauf,	1,231 30-80
c Henry Cavarly,	22 50-80
Total amt received in store,	7,369 10-80
Total,	14,292 10-80 bus.

(A form of the contracts referred to above and the assignment thereof to Dole & Co., may be found on page 32 of the Abstract.)

At that time, Cushman, True & Co. held Fairfield & Well's receipt for about 7,000 bushels of corn.

Appellants delivered the corn actually in store when they took possession, to the various parties holding receipts of Fairfield & Weld, for corn stored with them, as per the following statement, (Abstract, page 27) :

Delivered to I. V. Waterman, on receipt of Fritz Town,	17 15-58 bushels.
Delivered to John Olmstead	1,750 40-58 "
" Weltner,	250 "
" Umlauf,	685 "
" Herford,	1,398 "
" Weltner on rec't of Griffin,	126 45-58 "
" " " E. C. Gould,	320 20-58 "
Total,	4,547 20-58

On the 17 day of March A. D. 1860, Cushman, True & Co. replevied from the possession of Sheriff Warner, (who had on the 9 day of March 1860 levied on said corn, by virtue of the execution aforesaid,) 7,000 bushels.

Appellants also delivered corn to other parties holding the receipts of Fairfield & Weld, or which is the same thing, paid

holders of receipts the money for the corn therein mentioned, and took the corn themselves, instead of delivering the corn to the holders of the receipts. The following is a statement of the names of holders of such receipts, and the respective amounts thereof:

T. Reed,	287 50	bought by contract and cash.
N. S. Deyo,	138 05	" " " " "
Chas. Grobe,	85 70	" " " " "
A. T. Dunnavan,	103 50	" " " " "
B. Spencer,	20	" " " " "
R. Williamson,	83 40	" " " " "

Total of the amounts, 718 55

Rec't to John Titus,	400 45	bought by cash and contract.
W. Bennett,	100 40	" " " " "
Charles Wilson,	28 50	" " " " "
A. L. Caukiess,	23 60	" " contract.
Fred. Gliem,	219 35	" " " " "
John Bragg,	91 10	" " " " "
R. P. Hardin,	119 20	" " " and cash.
E. Heyman,	300 35	" " " " "
S. Chandler,	75 50	" " " " "

Total of above am'ts, 2,080 50

Sum total delivered and replevied, 15,127 bushels.

There was but 13,576 bushels of corn in weight out, and about 500 bushels of rotten corn, making 14,076 bushels of corn actually received by appellants from Fairfield & Wells, at the time of assignment.

June 9th, 1860, the complainants and defendants, Umlauf and Weltner, made a demand of Doles & Co. for the balance of their corn stored with Fairfield & Weld, and tendered them the storage due thereon. The demand was not complied with.

Therefore Olmstead and Herford instituted this chancery proceeding for the purpose of adjusting their rights in the premises. In the meantime, the replevin suit of Cushman, True

& Co. vs. Warner, was brought to trial, and resulted in favor of plaintiff, and judgment affirmed in Supreme Court.

Defendant, Umlauf, filed his cross bill, making all the parties to the original bill defendants, and asking relief.

The case came on for hearing at the June Term, 1863, upon the original bill. Sworn answers of appellants and other defendant's replications to answer Umlauf's cross bill, and answers thereto, and proof produced by the parties, and the cause presented to the Court, in accordance with the foregoing statement.

And a decree was rendered, that Olmstead recover of appellants \$599.31, and have execution.

Also, that Herford recover of appellants \$486.91, and have execution therefor.

Also, that Umlauf, recover of appellants \$235.27, and have execution therefor.

ARGUMENT.

Appellants in their answers, submit the following proposition, (Abstract, 11):

Are advised and believe that complainants have ample remedy at law for all their alleged grievances, and that the same are not cognizable in a court of equity. Pray the same advantage as though they had demurred to said bill.

¶ If the proposition be true, that complainants have ample remedy at law for all of their alleged grievances, then their present standing in a court of equity is an intrusion, and they should be transferred to a court of law where their grievances can be legitimately ~~adjusted~~ *adjudicated*.

The first question we present to the Court is: have the complainants ample remedy at law? The determination of this question involves the understanding of the real basis of this controversy. The contracts between complainant and Fairfield & Weld, were separate and independent contracts, but substantially the same. The Herford contract was as follows:

OTTAWA, November 30, 1859.

Received in store of Thos. Herford, twenty-five hundred twenty-seven 10-80 bushels of ear corn for account of himself, at owner's risk, 2527 10-80 bush., ——— cents, stg, three cents to June 15, 1860, if sold to us as ear corn, two cents added, if sold to other parties, charges five cents and deliver fifty-eight pounds shell corn.

upon Complainants agreed to pay storage upon the corn stored, and Fairfield & Weld agreed to deliver the corn upon the payment of storage, or purchase the same at the option of complainants. Now, if Fairfield & Weld refused or neglected to deliver the corn ~~before~~ demand and tender of storage, what is their liability? They must respond in damages. In what Court must the question of damages be adjudicated? A Court of law, of course. Had Fairfield & Weld remained in *statu quo*, from the execution of the contract, no lawyer would have thought of knocking at the door of the chancellor for relief, for the reason that there was ample remedy at law by suit upon the contract.

Have Fairfield & Weld, by their own actions, changed or modified their legal liability? Not at all. The complainants, at the commencement of this cause, had, and still have, ample remedy at law by a suit for damages upon their contracts. The measure of damages being the market value of the corn at the time the same ought to have been delivered, less the price of storage.

There is no allegation in the bill of the insolvency of Fairfield & Weld, nor any reason assigned why a judgment at law could not be made available:

But it is contended on the other side, that inasmuch as Fairfield & Weld, subsequent to the execution of complainant's contracts, transferred their business, together with the corn they had purchased for themselves and stored for other parties, including complainants, being all mixed and confused together by consent of all parties, to appellants: that their remedies have thereby been enlarged, and they are now enabled to lay aside their remedies, however ample they may be, and seek a redress for their grievances in a court of equity.

Upon what principle of equity jurisprudence complainants arrive at this conclusion, we are unable to conceive. It is no more nor less than a bill filed against the assignees of Fairfield & Weld, to recover from them the damages sustained by complainants in consequence of a non-performance by Fairfield & Weld of their contract with complainants, individually, and not for the specific performance of said contract.

A Court of Chancery does not, unless in a very special case, sustain a bill merely for the assessment of damages for the breach of an agreement.

Kempshall v. Stone, 5 Johnson Ch. R., 193.

Hatch v. Cobb, 4 Johnson Ch. R., 559.

It is hardly necessary to add, that if by agreement between Fairfield & Weld and Dole & Co., and the holders of the grain receipts issued by Fairfield & Weld, Dole & Co. were substituted for Fairfield & Weld, to deliver grain, the remedy by action at law against Dole & Co. would be completed and adequate as it would have been against Fairfield & Weld, if there had been no such agreement.

But if it be held that Fairfield & Weld, by their transfer to appellants, created a legal liability against appellants, and in favor of complainants, of which equity has jurisdiction, what is the extent of that liability? Are they bound to deliver to complainants the full amount of corn stored, without reference to

the amount of corn received from Fairfield & Weld, or are they bound to deliver to each storer his proper proportion of the amount actually received from Fairfield and Weld? If appellant's possession of the corn was in the capacity of trustees, then the complainants and others were the *cestui que trust*, and the purposes of the trust were accomplished when appellants delivered to the *cesti que trust* the corn. In other words, appellants were only bound (if at all) to account to complainants and other parties in interest, to the extent of the amount of corn actually received by them of Fairfield & Weld. If Fairfield & Weld; at the time of the transfer to appellants, were unable to specifically perform all their contracts for the delivery of corn, they were liable in a court of law only to respond in damages. Now, if the transfer to appellants imposed upon them any legal liability to complainants, it was only to account for the corn actually received, and in no event could they be made liable for the deficiency. Equity, if she entertained jurisdiction of the subject matter at all, would not do the inequitable thing of compelling appellants to pay the debts of Fairfield & Weld any further than they had been furnished with the means to pay such debts.

Now, if our statement of the case be correct, appellants actually delivered before the commencement of this suit, to complainants and others upon receipts of Fairfield & Weld, all the corn actually received by them from Fairfield & Weld. The amount of corn received by appellants from Fairfield & Weld was about 14,000 bushels.

This appears first from the sworn answer of appellants, (oath not waived,) (Abstract, page 10,) which is not disproved.

2d. It appears from the testimony of Samuel A. Judson, who received the corn for appellants, and measured and delivered the same, [Abstract, 27, 28, 31.]

He says that there was weighed out of the three cribs (which was all the corn there was,) (Abstract, 30,) 13,576 bushels, and

there was about 500 bushels of rotten corn, making in all, 14,076 bushels.

3d. It appears from the sworn answer of the defendant, Weld, (Abstract, 13,) which is not disproved.

4th. It appears from Exhibit "A," (Abstract, 14, 15.)

5th. It appears from the testimony of defendant, Fairfield, (Abstract, 32.)

6th. It appears from the special master's report, to whom the cause was referred, (Abstract, 37.)

In fact it is not a disputed point.

The corn so received was all delivered upon the receipt of Fairfield & Weld. This appears first from the sworn answer of appellants, (Abstract, 10.)

2d. From the testimony of Judson, Abstract, 27, 28.

3d. From the master's report, Abstract, 38.

Yet in a court of equity, appellants, have been mulcted in damages in the sum of \$1,321.49, and the same apportioned among the creditors of Fairfield & Weld.

The Court credited appellants with the amount of corn delivered to each of complainants, and Umlauf on Fairfield & Weld's contracts, and charged them with the balance, assessed the value thereof, and decreed that appellants should pay the same.

Now, what was the basis of this decree against appellants, after they had actually delivered the corn received by them, in manner aforesaid? Why, appellants, when certain receipts, substantially like complainant's, were presented instead of delivering corn on the receipts, paid the money due thereon and took the corn, amounting in all to 2,080 bushels, (Abstract, 27, 28.) It is contended that appellants had no right to use the

corn, but should have retained it and delivered to complainants on their receipts. The foundation for this proposition is, that money had been advanced on the receipts by Fairfield & Weld, at the time they were assigned to appellants, and that complainants had an equity in the money so advanced. Suppose the proposition to be true, still appellants had an equitable interest in the corn for the money they advanced thereon, and these equities certainly were not adjusted in the decree, but the proposition is too weak for argument. 2,080 bushels of corn were not worth \$1,321.49, at that time.

It is alleged in the bill, that appellants took it upon themselves to deliver corn upon Fairfield & Weld's receipts, (Abstract, 3.)

The answer of appellants, upon oath, contains a denial of this allegation, in the following words :

Deny that they ever agreed with Fairfield & Weld to deliver to the complainants any corn, or agreed in any respect to perform that part of complainant's corn contract, which was to be performed by Fairfield & Weld, and deny that they were to deliver corn, or take care of all grain receipts then issued by Fairfield & Weld.

Complainants having called for the answer of appellants, under oath, this denial must be disproved by the testimony of two witnesses, or its equivalent. The testimony utterly fails in this particular. The only testimony that negatives the denial is the testimony of Fairfield, of the firm of Fairfield & Weld, one of the defendants, who was directly interested in having their contracts filled by appellants. *He swears that the assignment to appellants was to secure the payment of their indebtedness to them*, and says, my idea at the time was, that they would deliver corn on all our receipts. * * * * *

(Abstract, page 25.)

The fair construction of this language is, that Dole & Co.

should deliver the corn on their receipts, if there was corn enough to fill the receipts.

This was all the direct evidence that tends to disprove said allegations in the answer. There are no corroborating circumstances, except that appellants did apportion and deliver to those holding Fairfield & Weld's receipts, all the corn received from them. If this fact is deemed corroborating circumstances, we insist that it is not equivalent to the testimony of a witness, swearing directly upon the point, and only tends to show that they agreed to deliver the corn actually received, which they ~~ask~~ did. We a reversal of this decree and dismissal of the bill.

LELAND & BLANCHARD,

For Appellants.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1864.

CHARLES H. DOLE,
JOHN H. DOLE *et al.*,
vs.
JOHN D. OLMSTEAD &
THOMAS HERFORD.

APPELLEE'S BRIEF.

I. Court of Chancery has jurisdiction in this case, and if not the sole, at least concurrent jurisdiction.

1. All the parties were owners as tenants in common.

Low vs. Martin, 18 Ill. 286.
5 Blackstone's Com. 405.
Story on Bailments, Sec. 40.
1 Story's Eq. Juris. Sec. 462-466.

2. This is a bill of discovery, and *all* the defendants were required to answer under oath.

1st Story's Eq. Juris, Sec. 455, 456, 457.

Record, pages 12, 15, 16, 17, and Abstract pages 5 and 6.

3. General average is prayed for. Record, page 18; Abstract, 6.

1st Story's Eq. Juris. Sec. 469, 491.

<i>Bona fide</i> receipts of above parties,	7,369 30.80
Collateral security receipts of C., T. & Co. for money lent, the amount of which was replevied,	7,250
	14,619 34.80

Amount of *bona fide* receipts and amount replevied, over amount in possession, 21 Dec., '59, 326 bush.

This shows that there was almost corn enough actually in the cribs to fill every receipt outstanding, and if the balance of the claim of Weltner is not taken into account, enough to fill every receipt *bona fide* and collateral, in full.

But this is not all. Dole & Co. received a large amount of corn on the executory contracts, which had already been paid for by Fairfield and Weld.

Jone's report shows Dole & Co. received (bought with contract as their witness Judson ingeniously calls it) on the contracts already paid by F. & W.	549 Bushels.
Add amount in store,	14292 "
	14841 "

Also shows that \$388.02 had been paid, advanced on contract, by Fairfield & Weld for the 549 bushels.

Corn, in June 1860, at time of the demand, was only worth 45 cents. This was bought in Nov. and Dec. 1859, at perhaps, 25 or 30 cts.—showing that Dole Co., on these contracts, must have received about 1000 bushels that had been paid for by Fairfield & Weld.

Jones' report shows that a large amount of the corn bought by *contract and cash* (!) was paid for by Fairfield & Weld.

Bushels,	1227
Money paid,	\$524

At the usual prices of corn at the time this was bought by Fairfield & Weld, in Nov. and Dec. 1859, the money largely overpaid the corn, and at 30 cts. a bushel, Dole & Co. would

have received in addition to the 1227 bushels, some 500 bushels more which they never paid a cent for.

Add	500 bushels
To the other,	549
	1049

Shows ten hundred and forty nine bushels, (1049) which Dole & Co. got over and above the 14,292, and never paid a cent for.

This was the corn received after Dole & Co. took possession, and was bought, as Judson says, by *cash and contract*.

How much Dole & Co. got over and above the 1049 bushels cannot be ascertained; because they have failed and refused to produce their executory contracts and their accounts thereon, as they might have done by Judson, their agent and witness.

The contracts of Harden & Wyman are the only ones spoken of in the evidence with any degree of certainty. Fairfield and Weld had received only 119 20-80 bushels and had paid \$122.

Dole & Co. got three hundred (300) more bushels and paid \$140.00.

On the Wyman contract Fairfield & Weld had received 300 bushels, and had paid \$64.50.

These are the only contracts Dole & Co. saw fit to prove and specify in their evidence, and it appears, on these, that the corn delivered was nearly, if not quite, paid for.

What was done with the corn?

Dole & Co. delivered to

J. D. Olmstead,	bush.	1750 40.50
Thomas Herford,	"	1398
L. Umlauf,	"	685
J. R. Weltner,	"	250
		4093 40-50

J. D. G. Weld (on Griffin's rec'pt),	126 45-72
E. C. Gould,	320 2-72
Cushman, True & Co. replevied	7250
	11790

I. V. Waterman, shelled corn,	{ 229
I. V. Waterman,	{ 17 15
	12036 15-100

This makes a few bushels more delivered than Jones' report, but the figures are on his report, pages 3 and 4.

To Dole & Co.	2080 52-100
	14,116 67-100

Bear in mind that this 2080 bushels is a part of the 4381 bushels owned and paid for by Fairfield & Weld, and perhaps for which Cushman had receipts, and a part of the 2542 bushels which F. & W. had received and overpaid for on the executory contracts,

Amount delivered as above 14116; but mind, that Dole & Co. had no right to give Gould the 320 bushels, because Fairfield & Weld had advanced him \$91.98 more than enough to pay for the corn,

There is some trick of Dole & Co. in this. It is not and cannot be explained.

Deduct then Gould's amount,	320
	13,796

The amount delivered to I. V. Waterman is of the same class with Gould's,	229
	13.567

It is not honestly explained and cannot be.

Deduct this from the 14292 bushels and it would leave 725 bushels unaccounted for.

Dole & Co. insist that the complainants shall lose the damaged corn, 500 bushels.

Page 30 of *Abstract* evidence shows that when Herford, Olmstead, and Umlauf and Weltner got the 55 per cent., they were compelled to take good and bad, while it is not disputed that Dole & Co. took the good corn only.

We think there ought to be a general average on poor or worthless corn, where the parties are equally interested.

This statement shows that even allowing Dole & Co. every kernel of corn they ever paid a cent for and deducting the bad corn, there was enough to have filled Herford, Olmstead's and Umlauf's and Weltner's receipts in full.

The amounts outstanding are

Herford,	bush	1129
Olmstead,	"	1390
Umlauf,	"	546
		3065

Abstract, page 24, (John Armour's testimony) shows the price of corn at the time the demand was made to be 45 or 46 cents per bushel.

The whole evidence as to amount, &c., is well digested in Jones' report. Abstract, page 37.

There can be no question about the understanding of Fairfield & Weld with Dole & Co., that Dole & Co. only took the interest of Fairfield & Weld, and that Dole & Co., as appears from the evidence of Fairfield, and by the whole conduct of Dole & Co., were to deliver the corn on all outstanding receipts of F. & W. See Fairfield's evidence, pages 24 and 25 of abstract.

Fairfield & Weld, at the time of the assignment, never dreamed that Dole & Co., or Cushman, True & Co. were going

to appropriate the corn by any means in their power to their own use. Nor had they the least thought of robbing, or in the least manner aiding in cheating the *bona fide* depositors out of their just rights.

We also think the evidence shows that Dole & Co., in the first instance, and for a long time after the assignment, intended to faithfully carry out the contract between them and Fairfield & Weld, and deliver Olmstead *et al.* their corn.

It is a fact that the complainants had not the slightest suspicion that they would not get their corn, until a few days before this suit was commenced.

The complainants and Fairfield & Weld had acted in perfect good faith, and if there is any trick in the business, it is in Dole & Co.'s not carrying out the arrangement in full with Fairfield & Weld to deliver the corn on all *bona fide* receipts.

We think, also, that Cushman & Co. had no right to replevy the corn.

Dole & Co. were allowed their storage and a general average struck as to damaged corn in fixing the amount of money due complainants and Umlauf.

If the decree is confirmed as to Olmstead and Herford, we suppose it will be as to Umlauf also.

GRAY, AVERY & BUSHNELL.

113
Chas Dole et al
vs

Thomas Heyford
Et al.

appellees
Brief

Filed May 10. 1864
L Helms ckr

113

Supreme Court of Illinois.

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" " " E. C. Gould,	320 20-58 "
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Appellants also delivered corn to other parties holding the receipts of Fairfield & Weld, or which is the same thing, paid

holders of receipts the money for the corn therein mentioned, and took the corn themselves, instead of delivering the corn to the holders of the receipts. The following is a statement of the names of holders of such receipts, and the respective amounts thereof:

T. Reed,	287 50	bought by contract and cash.
N. S. Deyo,	138 05	" " " " "
Chas. Grobe,	85 70	" " " " "
A. T. Dunnavan,	103 50	" " " " "
B. Spencer,	20	" " " " "
R. Williamson,	83 40	" " " " "

Total of the amounts, 718 55

Rec't to John Titus,	400 45	bought by cash and contract.
W. Bennett,	100 40	" " " " "
Charles Wilson,	28 50	" " " " "
A. L. Cankiess,	23 60	" " contract.
Fred. Gliem,	219 35	" " " " "
John Bragg,	91 10	" " " " "
R. P. Hardin,	119 20	" " " and cash.
E. Heyman,	300 35	" " " " "
S. Chandler,	75 50	" " " " "

Total of above am'ts, 2,080 50

Sum total delivered and replevied, 15,127 bushels.

There was but 13,576 bushels of corn in weight out, and about 500 bushels of rotten corn, making 14,076 bushels of corn actually received by appellants from Fairfield & Wells, at the time of assignment.

June 9th, 1860, the complainants and defendants, Umlauf and Weltner, made a demand of Doles & Co. for the balance of their corn stored with Fairfield & Weld, and tendered them the storage due thereon. The demand was not complied with.

Therefore Olmstead and Herford instituted this chancery proceeding for the purpose of adjusting their rights in the premises. In the meantime, the replivin suit of Cushman, True

& Co. vs. Warner, was brought to trial, and resulted in favor of plaintiff, and judgment affirmed in Supreme Court.

Defendant, Umlauf, filed his cross bill, making all the parties to the original bill defendants, and asking relief.

The case came on for hearing at the June Term, 1863, upon the original bill. Sworn answers of appellants and other defendant's replications to answer Umlauf's cross bill, and answers thereto, and proof produced by the parties, and the cause presented to the Court, in accordance with the foregoing statement.

And a decree was rendered, that Olmstead recover of appellants \$599.31, and have execution.

Also, that Herford recover of appellants \$486.91, and have execution therefor.

Also, that Umlauf recover of appellants \$235.27, and have execution therefor.

ARGUMENT.

Appellants in their answers, submit the following proposition, (Abstract, 11):

Are advised and believe that complainants have ample remedy at law for all their alleged grievances, and that the same are not cognizable in a court of equity. Pray the same advantage as though they had demurred to said bill.

If the proposition be true, that complainants have ample remedy at law for all of their alleged grievances, then their present standing in a court of equity is an intrusion, and they should be transferred to a court of law where their grievances can be legitimately adjusted. *adjusted*

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adjudicated

The first question we present to the Court is: have the complainants ample remedy at law? The determination of this question involves the understanding of the real basis of this controversy. The contracts between complainant and Fairfield & Weld, were separate and independent contracts, but substantially the same. The Herford contract was as follows:

OTTAWA, November 30, 1859.

Received in store of Thos. Herford, twenty-five hundred twenty-seven 10-80 bushels of ear corn for account of himself, at owner's risk, 2527 10-80 bush., ——— cents, stg, three cents to June 15, 1860, if sold to us as ear corn, two cents added, if sold to other parties, charges five cents and deliver fifty-eight pounds shell corn.

Complainants agreed to pay storage upon the corn stored, and Fairfield & Weld agreed to deliver the corn upon the payment of storage, or purchase the same at the option of complainants. Now, if Fairfield & Weld refused or neglected to deliver the corn ~~before~~ demand and tender of storage, what is their liability? They must respond in damages. In what Court must the question of damages be adjudicated? A Court of law, of course. Had Fairfield & Weld remained in *statu quo*, from the execution of the contract, no lawyer would have thought of knocking at the door of the chancellor for relief, for the reason that there was ample remedy at law by suit upon the contract.

Have Fairfield & Weld, by their own actions, changed or modified their legal liability? Not at all. The complainants, at the commencement of this cause, had, and still have, ample remedy at law by a suit for damages upon their contracts. The measure of damages being the market value of the corn at the time the same ought to have been delivered, less the price of storage.

There is no allegation in the bill of the insolvency of Fairfield & Weld, nor any reason assigned why a judgment at law could not be made available.

But it is contended on the other side, that inasmuch as Fairfield & Weld, subsequent to the execution of complainant's contracts, transferred their business, together with the corn they had purchased for themselves and stored for other parties, including complainants, being all mixed and confused together by consent of all parties, to appellants: that their remedies have thereby been enlarged, and they are now enabled to lay aside their remedies, however ample they may be, and seek a redress for their grievances in a court of equity.

Upon what principle of equity jurisprudence complainants arrive at this conclusion, we are unable to conceive. It is no more nor less than a bill filed against the assignees of Fairfield & Weld, to recover from them the damages sustained by complainants in consequence of a non-performance by Fairfield & Weld of their contract with complainants, individually, and not for the specific performance of said contract.

A Court of Chancery does not, unless in a very special case, sustain a bill merely for the assessment of damages for the breach of an agreement.

Kempshall v. Stone, 5 Johnson Ch. R., 193.

Hatch v. Cobb, 4 Johnson Ch. R., 559.

It is hardly necessary to add, that if by agreement between Fairfield & Weld and Dole & Co., and the holders of the grain receipts issued by Fairfield & Weld, Dole & Co. were substituted for Fairfield & Weld, to deliver grain, the remedy by action at law against Dole & Co. would be completed and adequate as it would have been against Fairfield & Weld, if there had been no such agreement.

But if it be held that Fairfield & Weld, by their transfer to appellants, created a legal liability against appellants, and in favor of complainants, of which equity has jurisdiction, what is the extent of that liability? Are they bound to deliver to complainants the full amount of corn stored, without reference to

the amount of corn received from Fairfield & Weld, or are they bound to deliver to each storer his proper proportion of the amount actually received from Fairfield and Weld? If appellant's possession of the corn was in the capacity of trustees, then the complainants and others were the *cestui que trust*, and the purposes of the trust were accomplished when appellants delivered to the *cesti que trust* the corn. In other words, appellants were only bound (if at all) to account to complainants and other parties in interest, to the extent of the amount of corn actually received by them of Fairfield & Weld. If Fairfield & Weld; at the time of the transfer to appellants, were unable to specifically perform all their contracts for the delivery of corn, they were liable in a court of law only to respond in damages. Now, if the transfer to appellants imposed upon them any legal liability to complainants, it was only to account for the corn actually received, and in no event could they be made liable for the deficiency. Equity, if she entertained jurisdiction of the subject matter at all, would not do the inequitable thing of compelling appellants to pay the debts of Fairfield & Weld any further than they had been furnished with the means to pay such debts.

Now, if our statement of the case be correct, appellants actually delivered before the commencement of this suit, to complainants and others upon receipts of Fairfield & Weld, all the corn actually received by them from Fairfield & Weld. The amount of corn received by appellants from Fairfield & Weld was about 14,000 bushels.

This appears first from the sworn answer of appellants, (oath not waived,) (Abstract, page 10,) which is not disproved.

2d. It appears from the testimony of Samuel A. Judson, who received the corn for appellants, and measured and delivered the same, [Abstract, 27, 28, 31.]

He says that there was weighed out of the three cribs (which was all the corn there was,) (Abstract, 30,) 13,576 bushels, and

there was about 500 bushels of rotten corn, making in all, 14,076 bushels.

3d. It appears from the sworn answer of the defendant, Weld, (Abstract, 13,) which is not disproved.

4th. It appears from Exhibit "A," (Abstract, 14, 15.)

5th. It appears from the testimony of defendant, Fairfield, (Abstract, 32.)

6th. It appears from the special master's report, to whom the cause was referred, (Abstract, 37.)

In fact it is not a disputed point.

The corn so received was all delivered upon the receipt of Fairfield & Weld. This appears first from the sworn answer of appellants, (Abstract, 10.)

2d. From the testimony of Judson, Abstract, 27, 28.

3d. From the master's report, Abstract, 38.

Yet in a court of equity, appellants, have been mulcted in damages in the sum of \$1,321.49, and the same apportioned among the creditors of Fairfield & Weld.

The Court credited appellants with the amount of corn delivered to each of complainants, and Umlauf on Fairfield & Weld's contracts, and charged them with the balance, assessed the value thereof, and decreed that appellants should pay the same.

Now, what was the basis of this decree against appellants, after they had actually delivered the corn received by them, in manner aforesaid? Why, appellants, when certain receipts, substantially like complainant's, were presented instead of delivering corn on the receipts, paid the money due thereon and took the corn, amounting in all to 2,080 bushels, (Abstract, 27, 28.) It is contended that appellants had no right to use the

corn, but should have retained it and delivered to complainants on their receipts. The foundation for this proposition is, that money had been advanced on the receipts by Fairfield & Weld, at the time they were assigned to appellants, and that complainants had an equity in the money so advanced. Suppose the proposition to be true, still appellants had an equitable interest in the corn for the money they advanced thereon, and these equities certainly were not adjusted in the decree, but the proposition is too weak for argument. 2,080 bushels of corn were not worth \$1,321.49, at that time.

It is alleged in the bill, that appellants took it upon themselves to deliver corn upon Fairfield & Weld's receipts, (Abstract, 3.)

The answer of appellants, upon oath, contains a denial of this allegation, in the following words:

Deny that they ever agreed with Fairfield & Weld to deliver to the complainants any corn, or agreed in any respect to perform that part of complainant's corn contract, which was to be performed by Fairfield & Weld, and deny that they were to deliver corn, or take care of all grain receipts then issued by Fairfield & Weld.

Complainants having called for the answer of appellants, under oath, this denial must be disproved by the testimony of two witnesses, or its equivalent. The testimony utterly fails in this particular. The only testimony that negatives the denial is the testimony of Fairfield, of the firm of Fairfield & Weld, one of the defendants, who was directly interested in having their contracts filled by appellants. *He swears that the assignment to appellants was to secure the payment of their indebtedness to them*, and says, my idea at the time was, that they would deliver corn on all our receipts. * * * * *

(Abstract, page 25.)

The fair construction of this language is, that Dole & Co.

should deliver the corn on their receipts, if there was corn enough to fill the receipts.

This was all the direct evidence that tends to disprove said allegations in the answer. There are no corroborating circumstances, except that appellants did apportion and deliver to those holding Fairfield & Weld's receipts, all the corn received from them. If this fact is deemed corroborating circumstances, we insist that it is not equivalent to the testimony of a witness, swearing directly upon the point, and only tends to show that they agreed to deliver the corn actually received, which they ask did. We ask a reversal of this decree and dismissal of the bill.

LELAND & BLANCHARD,
For Appellants.

Supreme Court of Illinois.

THIRD GRAND DIVISION.

APRIL TERM, 1864.

CHARLES S. DOLE,
~~JOHN H. DOLE~~ *et al.*,

vs.

JOHN D. OLMSTEAD, and
THOMAS HERFORD.

} Appeal from La Salle.

RECORD
PAGE

ABSTRACT OF RECORD.

- 3 Bill filed June 28, 1860, by which appellees represented,
- 4 That on Nov. 13, 1859, at Ottawa, Micaiah F. Fairfield, and John D. G. Weld were partners, by name of Fairfield & Weld, in the business of warehousemen and dealing in grain.
- 5 Olmstead agreed with Fairfield & Weld to store corn with them, as the same should be delivered from day to day in their warehouse and cribs, and return the same to Olmstead on or before the 15th day of June, A. D. 1860, at the rate of fifty-eight pounds per bushel of shelled corn, a good merchantable article, Fairfield & Weld reserving the privilege of rejecting any corn that was not of such quality as they wished to store.

Olmstead to pay five cents per bushel for storage for shelled corn, and three cents for ear corn.

That about said time, said Thomas Herford made substantially the same contract with Fairfield & Weld.

That said Olmstead signed a contract in the books of said Fairfield & Weld.

Olmstead, in pursuance of said agreement, delivered to Fairfield & Weld 3,083 $\frac{4}{5}$ bushels of ear corn, between the making of said contract January 1, 1860.

6 Herford, between the same times, delivered to said Fairfield & Weld 2,527 $\frac{1}{8}$ bushels of ear corn, and received a warehouse receipt, in the following form :

19

Ottawa, November 30, 1859.

Received in store of Thos. Herford, twenty-five hundred twenty-seven $\frac{1}{8}$ bushels of ear corn for account of himself, at owner's risk, 2527 $\frac{1}{8}$ bush., ——— cents, stg, three cents to June 15, 1860, if sold to us as ear corn, two cents added, if sold to other parties, charges five cents and deliver fifty-eight pounds shell corn.

FAIRFIELD & WELD.

Olmstead bought corn in streets, which was taken directly to Fairfield & Weld's warehouse. They issued receipts for such corn as received of the person who delivered the same for account of said Olmstead, except one receipt, still held by Olmstead, which reads, received of said Olmstead, for account of himself. Said receipts are signed by Fairfield & Weld, by their agent, one Haight, name unknown.

Herford has received on his said receipt, 1,398 bushels of corn, at fifty-eight pounds per bushel, and is entitled to receive thereon, 1,129 bushels, at fifty-eight pounds per bushel.

Olmstead holds receipts for about 1,390 bushels, balance of what he stored.

The corn received by complainants was badly damaged, not merchantable, received under protest, June 15, 1860.

7 June 15, 1860, tendered to Fairfield & Weld all charges for storage—demanded—corn refused.

About March 1, 1860, Charles S. Dole and John H. Dole, partners, of the name of C. S. Dole & Co., claimed to be creditors of Fairfield & Weld, who made a pretended assignment to C. S. Dole & Co., of all their goods and chattels and real estate, (to secure them). Complainants unacquainted with particular nature of transaction between them.

That the time aforesaid, Fairchild & Weld delivered possession of their warehouse, corn-cribs and appurtenances, to said C. S. Dole & Co., among which was the corn of complainants aforesaid.

8 That complainants are informed and believe, that when C. S. Dole & Co. received said property, they agreed with Fairfield & Weld to deliver to complainants their corn, and in every respect to perform that part of said corn contract to be performed by Fairchild & Weld, so far as the same was not then performed, and that Dole & Co. was to deliver corn on, and take care of all grain receipts then issued by Fairchild & Weld.

Are informed and believe that Dole & Co. received the books of said Fairfield & Weld, in which all their grain transactions were kept. Dole & Co. then knew that complainants had above amounts of corn in store, and well knew from representations of Fairfield & Weld and said books, all about what amount of corn was held in store by Fairfield & Weld, and for what persons the same was held.

That when Dole & Co. took possession, there was delivered to them corn enough to take up all *bona fide* grain receipts then issued by Fairfield & Weld.

That Dole & Co. too it upon themselves to deliver such corn held in store by Fairfield & Weld, and the amounts above mentioned was delivered to complainants by Dole & Co., and complainants paid storage thereon. About June 15, 1860, demanded balance due, and tendered Dole & Co. the storage due on such balance, as per said contract and receipts, and Dole & Co. refused to deliver the same.

9 That during the time complainants were storing corn with Fairfield & Weld, that many persons, including Fairfield & Weld, were buying corn upon the streets. That by common consent and understanding between all persons dealing with Fairfield & Weld, and storing corn with them, the corn of complainants, said Fairfield & Weld, and others, was mixed, mingled and confused together in the same cribs, so it was impossible to distinguish one person's corn from another. Dole & Co. well knew the fact when they took possession.

That they are informed and believe, John Weltner, Lewis Umlauf, Fairfield & Weld, C. S. Dole & Co., and William H. W. Cushman, William M. True, Isaac V. Waterman, partners in name of Cushman, True & Co., who have, or pretend to have, an interest in the corn so stored and mixed, as aforesaid.

10 That they are informed and believe, that said Weltner now holds Fairfield & Weld's receipt for about one hundred and fifty bushels of corn. Umlauf holds like receipts for about four hundred bushels, all stored as aforesaid, and received by Dole & Co., as aforesaid. Don't know what amount Fairfield & Weld, Dole & Co., and Cushman, True & Co., have stored and mixed as aforesaid.

That Cushman, True & Co. are not, nor were they previous to the delivery of said property to Dole & Co., dealers in grain. Allege upon information and belief, that if Fairfield & Weld ever issued any grain or warehouse receipts to them, it was done as security, or collateral security for a loan of money. That when any such receipts were issued, Fairfield & Weld did not have in store of their own corn, the amount of corn for which said Cushman, True & Co. pretend to have the receipts of Fairfield & Weld; that such receipts were illegally and fraudulently issued, and said Cushman, True & Co. knew the fact so to be.

- 11 That Cushman, True & Co. have replevied about 7,000 bushels of corn out of one of said cribs, from the pretended possession of one Francis Warner, sheriff of said county, claiming to hold the same by virtue of an execution in favor of Dole & Co. *vs.* Fairfield & Weld, which replevin suit is undetermined. Cushman, True & Co. have sold the corn, so replevied, for about \$3,500.

Corn was replevied from cribs, in which a large part of complainants' corn was stored and mixed, as aforesaid, which fact Cushman, True & Co. well knew.

- 12 Cushman, True & Co. pretend to own some 7,000 bushels of corn, by virtue of a warehouse receipt, issued by Fairfield & Weld, but if they have such receipt, it is the one issued under the circumstances, and for the purpose hereinbefore mentioned, and Fairfield & Weld could not thereby confer any rights upon Cushman, True & Co, as to the corn stored by complainants.

Impossible to state the exact relations between C. S. Dole & Co. and Fairfield & Weld, and between Fairfield & Weld and Cushman, True & Co.

- 12 At the time Fairfield & Weld gave Dole & Co. possession, as aforesaid, complainants and said John Weltner, Lewis Umlauf, Fairfield & Weld, Cushman, True & Co., (if they had *bona fide* warehouse receipt), were the owners of all the corn stored in the warehouse and cribs of Fairfield & Weld, as tenants in common, in proportion to the amount each had stored therein; that no other persons have any interest in such property, as tenants in common.

- 13 C. S. Dole & Co. were trustees for the several true owners of said corn.

There is attached to said warehouse three corn cribs, containing a large amount of corn. Dole & Co. claim to own all of two cribs, and said True & Waterman claim to own all the balance.

Dole & Co. now pretend there is a shortage of corn received from Fairfield & Weld, of about 3,000 bushels, and that there are warehouse

receipts owned by the parties before set forth, issued by Fairfield & Weld, between about the first of November, 1859, and January, 1860, for about 3,000 bushels more than there is in store.

That if there is such shortage, Dole & Co., or Cushman, True & Co., have used that much more than they were entitled to.

That the corn received by complainant, as aforesaid, was not good merchantable corn, but was very much injured.

- 14 That the corn taken by Cushman, True & Co., was a good merchantable article; that the same was damaged through the negligence and carelessness of Dole & Co., or Fairfield & Weld.

The value of Olmstead's corn, not delivered, was about \$700, on the 15th of June, 1860, and Herford's, not delivered, about \$550.

Complainants believe that Dole & Co. have shelled about 1,500 bushels of corn in the third crib from Madison street on said premises, and have stored the same in the south-east corner bin in John Armour's warehouse, near said premises; that the corn in said bin is composed of corn in common, as aforesaid.

John Weltner, Lewis Umlauf, Micaiah F. Fairfield, John D. G. Weld, Charles S. Dole, John H. Dole, William H. W. Cushman, William M. True, and Isaac V. Waterman, to answer under oath.

- 15 That said Fairfield & Weld jointly or severally discover what amount of corn they had in store in said warehouse and cribs at the time Dole & Co. took possession, and the owners thereof; how much they owned themselves; what manner of assignment they made to said C. S. Dole & Co.; and whether or not said Dole & Co. were to deliver corn on their warehouse receipts, and take care of the same.

Whether there was not, at the time Dole & Co. took possession, sufficient corn in their warehouse and cribs to satisfy all their *bona fide* warehouse receipts for corn.

Whether they issued any receipts to Cushman, True & Co., between the time complainants began storing and the time they delivered possession to Dole & Co., and if at the time they issued the same they had corn to fill the receipts.

- 16 That said Cushman, True & Co. may discover if their warehouse receipts were not given as security for a loan of money, and if they did not know when they took such receipt, that Fairfield & Weld had not corn to fill the same, and never had; and what interest they, or either of them, now have in the corn in said warehouse and cribs.

What amount of money they have realized from the corn replevied by them, as aforesaid; and what amount of money they loaned Fairfield & Weld on such receipts.

That said C. S. Dole & Co. may jointly and severally produce their books in which are kept the accounts concerning the corn of Fairfield & Weld;—what amount of corn they received from Fairfield & Weld is still in their possession.

- 17 Prays for an account of the corn by all the parties aforesaid.

That if any of said parties have wrongfully appropriated more than they were legally entitled to, and converted the same into money, that they be compelled to pay the surplus in money, for the benefit of those who have not received their share.

- 18 That a general average may be taken and made of all shrinkage, and for damaged corn; that a receiver be appointed.

Prayer for general relief.

Bill verified by the affidavit of said Olmstead.

- 28 Answer of Charles S. and James H. Dole, filed November 24, 1860.

- 29 They are informed and believe, that about November 13, 1859, Fairfield & Weld were partners at Ottawa, carrying on the business of warehousemen and dealers in grain; had been for a long time previous, and continued thereafter.

Admit that said Olmstead made an agreement with Fairfield & Weld in relation to the storage of corn, a memorandum of which was made in the books of Fairfield & Weld, but defendants have not seen the same, and are unacquainted with the details thereof.

Deny that by said agreement it was provided that Fairfield & Weld should deliver back to said Olmstead the same corn received from Olmstead, nor a good merchantable article of corn.

- 30 Admit that said Thomas Herford made an agreement with Fairfield & Weld in relation to the storage of corn, but do not know the terms of said agreement.

Admit that Olmstead delivered, from the time of making such agreement, to January 1, 1860, about 3,148 $\frac{3}{8}$ bushels of corn. And that said Herford, during the same time delivered about 2,527 $\frac{1}{8}$ bushels of ear corn; that Fairfield & Weld received such corn as warehousemen, and gave Herford a receipt for his, of which Exhibit "A," on page 19 of Record, is a copy.

Admit that Olmstead bought his corn in the manner alleged in the bill, and Fairfield & Weld issued receipts therefor, in substance as alleged in said bill.

- 31 Admit that Herford received on his receipt 1,398 bushels of corn, at fifty-eight pounds per bushel ; that he is further entitled to receive thereon, 1,129 bushels, at fifty-eight pounds per bushel, and Olmstead has received about 1,750, and is entitled to receive about 1,390 bushels.

Admit that the corn received by said Olmstead and Herford was somewhat damaged, and would not be called a merchantable article, but it was of the same quality of that replevied by Cushman, True & Co. Deny that said corn was delivered to Olmstead and Herford upon any conditions whatever, though they protested against its inferior quality. Deny that Olmstead and Herford offered and tendered to Fairfield & Weld all charges for storage on said corn, as alleged in said bill.

- 32 Admit upon information and belief, that they demanded said corn of said Fairfield & Weld, who replied to the demand that said corn had been taken from them, as they supposed, legally, and that therefore they could not deliver it.

Admit that about March 1, 1860, defendants were, and had been for a long time partners, under the name of C. S. Dole & Co., and had been for a long time creditors of Fairfield & Weld to a large amount ; that to secure the same, Fairfield & Weld made a transfer and assignment to defendants of divers goods and chattels and other interests, but deny that Fairfield & Weld pretended that they assigned to defendants all their goods, chattels and real estate.

Admit that Fairfield & Weld delivered to them possession of their warehouse and corn cribs. Are informed and believe, that among the property so delivered to defendants was some corn which the complainants had previously delivered to Fairfield & Weld, viz., about December 21, 1859.

- 33 Deny that they ever agreed with Fairfield & Weld to deliver to the complainants any corn, or agreed in any respect to perform that part of complainant's corn contract, which was to be performed by Fairfield & Weld, and deny that they were to deliver corn, or take care of all grain receipts then issued by Fairfield & Weld.

Did not receive the books of Fairfield & Weld, except in so far as they received possession of the office in which the books of accounts were kept.

Did not know what, if any, amount of corn complainants had in store when they took possession, or that they then knew from the representa-

tions of said Fairfield & Weld, and from said books, all about what, if any, amount of corn was held in store by said Fairfield & Weld, and for what purpose the same was held. Admit that they had access to the books of Fairfield & Weld, and inspected the accounts of their grain transaction with the complainants and others, and became acquainted with the amounts of corn shown by said books to have been received by Fairfield & Weld from complainants and others.

- 34 Admit upon information and belief, that when they took possession of the property transferred to them, as aforesaid, they received an amount of corn which was probably nearly equal to the amount called for by all the *bona fide* corn receipts then outstanding against Fairfield & Weld, this belief being based upon the opinion and condition that the receipts held by Cushman, True & Co. were not all *bona fide*.

Deny that agreed to deliver any of the corn so received by them, but admit that they did voluntarily deliver to complainants, the several amounts received by complainants, as alleged in the bill, and received from complainants the charges and storage thereon. And admit that, about June 15, 1860, complainants demanded of defendants certain amounts of corn, and offered defendants certain sums of money, equal to the amount of charges and storage thereon, according to their said contracts and receipts from Fairfield & Weld, defendants declined to deliver any more than they did deliver.

Admit that when complainants were buying corn and storing, as aforesaid, divers and many persons, and also Fairfield & Weld, were buying corn in the streets, and that by common consent and understanding between all persons dealing with said Fairfield & Weld, the corn delivered by complainants and others, and the corn of Fairfield & Weld, was mixed, mingled and confused together in the same cribs, so that it was impossible to distinguish between them, and defendants believed such to be the fact when they took possession.

Admit on information and belief, that no persons pretend to have any interest in the corn, except John Weltner, Lewis Umlauf, Fairfield & Weld, these defendants, and Cushman, True & Co.

- 36 Admit that John Weltner holds receipt for 189 bushels and 50 pounds, and that Lewis Umlauf holds receipt for 546 bushels and 30 pounds.

Admit that Cushman, True & Co. have never been dealers in grain. If Fairfield & Weld issued grain receipt to them after November 1, 1859, it was either security or collateral security for a loan of money. When such receipts were issued, Fairfield & Weld did not claim to have in store corn of their own for the amount which said Cushman, True & Co. now pretend to have the receipts of said Fairfield & Weld, and such

receipts were illegally issued, in so far as they call for more corn than Fairfield & Weld actually owned.

Admit that Cushman, True & Co. replevied about 7,000 bushels of corn out of one of said cribs, from the possession of Francis Warner, then sheriff of said county, claiming to hold the same by virtue of an execution in favor of these defendants against Fairfield & Weld. That Cushman, True & Co. have sold the corn so replevied, for about \$3,500; that said replevin suit is now pending in this court, and that said corn was replevied from the same cribs in which a portion of the corn delivered by complainants had been placed and mixed, as aforesaid.

Admit upon information and belief, that said Cushman, True & Co. pretend to own said 7,000 bushels of corn, by virtue of a warehouse receipt, issued by said Fairfield & Weld, which pretended receipts were issued under the circumstances and for the purpose in said bill mentioned.

38 Deny that said Fairfield & Weld, these defendants, Cushman, True & Co., Weltner, Umlauf, the complainants and others, were the owners of all the corn stored in the warehouse and cribs, as tenants in common, in proportion to the amount that each had delivered.

39 Deny upon information, belief and advice, that when they took possession of said corn, they incurred a liability as trustees thereof, for any one.

Admit that at the time of filing complainants' bill, there were attached to, or near said warehouse, three corn cribs, containing a large amount of corn that these defendants claimed to own, and now claim that they owned all the corn in two of them; that said Isaac V. Waterman and some other person claimed to own the balance, as alleged in said bill.

Admit that the corn which came into their possession from Fairfield & Weld, was less than the amount named in the warehouse receipts issued by Fairfield & Weld, between November 1, 1859, and January 1, 1860, including Cushman, True & Co., as aforesaid, by about 3,000 bushels, but deny that they have used or appropriated any more of said corn than they were entitled to, while they admit that Cushman, True & Co. were not entitled to the corn which they replevied.

39 Deny, on information and belief, that any of the corn was injured by their negligence or carelessness.

Admit and allege that on June 15, 1860, the amount of corn claimed by Olmstead from Fairfield & Weld was worth about \$630, and the amount so claimed by said Herford was worth about \$508 and no more.

Admit that when bill was filed they had shelled about 1,500 bushels of corn in the third crib, from Madison street, and had stored the same as alleged in bill, but deny that the corn in said crib was composed of corn held in common with any person or persons.

That upon information and belief, the amount of corn that came into their possession from Fairfield & Weld was about 13,256 bushels, and that they have delivered and disposed of the same as follows, viz.:

Upon divers corn receipts issued by Fairfield & Weld to farmers and others, 2,172 bushels and twenty-nine pounds.

To Thomas Herford, 1,398 bushels.

To Lewis Umlauf, 685 bushels.

To John Weltner, 250 bushels.

40 To John D. Olmstead, 1,750 bushels forty pounds.

Amount brought over, 6,256.11

Cushman, True & Co. replevied from sheriff, 7,000.00

13,256.11

The corn delivered Herford, Umlauf and Weltner, was upon the presentation of receipts which had been issued to them by Fairfield & Weld.

That they have in their possession, ready to be produced when the court shall direct, their books, in which are kept the accounts concerning the corn received by them from Fairfield & Weld.

That upon information and belief, that when complainants delivered corn to Fairfield & Weld as aforesaid, and permitted the same to be mixed, mingled and confused together with the other corn as aforesaid, so that it could not be distinguished or separated therefrom, the corn so delivered by complainants ceased to be the property of the complainants, and they parted with and lost all their right and title to the same, and the same became the property of Fairfield & Weld.

41 That when defendants received possession of said property from Fairfield & Weld, which was about December 21, 1859, Fairfield & Weld were indebted to defendants in about the sum of \$10,000, and said Fairfield & Weld transferred and assigned to defendants divers of their book accounts, contracts for grain, with divers goods and chattels and other interest in real and personal estate, as collateral security upon said indebtedness.

That about December 21, 1859, they held judgment notes of said Fairfield & Weld for the sum of about \$9,000; that on said day defendants indorsed said notes to one William Martin, who caused a judgment to be entered in his favor against Fairfield & Weld upon said notes in the Circuit Court of Cook county, for about \$9,000; that

Martin on the same day assigned said judgments to these defendants That execution, bearing date on said day, was duly issued upon said judgment, directed to the sheriff of La Salle county, who received the same December 22, 1859.

42 On March 9, 1860, by direction of defendants, said sheriff levied said execution upon all the corn then in the warehouse and cribs aforesaid, and all the interest of said Fairfield & Weld therein, and took said corn into his, the said sheriff's, possession. That on March 17, 1860, Cushman, True & Co. replevied 7,000 bushels of said corn from the possession of the sheriff.

April 9, 1860, said sheriff sold all of said corn not replevied as aforesaid, at public sale, upon due notice given, to these defendants, they being the highest bidders therefor, by means whereof the title to all the property so sold, became vested in these defendants.

Are advised and believe that complainants have ample remedy at law for all their alleged greivances, and that the same are not cognizable in a court of equity. Pray the same advantage as though they had demurred to said bill.

Deny all combining and confederating together.

43 Answer verified by affidavit of both defendants.

44 John D. Weld filed his answer November 24, 1860.

45 Admits that he and Fairfield were partners on the 13th day of November, 1859, and doing business as alleged in said bill.

Admits that said Olmstead made an agreement with Fairfield & Weld to store corn for said Olmstead, as the same should be delivered from day to day, in their warehouse and cribs. Denies that they were to deliver back the same corn stored. That the corn stored by said Olmstead was mixed with the corn of other persons stored with Fairfield & Weld.

Olmstead, at the time of making such agreement, knew it to be the custom of Fairfield & Weld and warehousemen generally, to mix the corn of different persons storing with them.

Avers the agreement to be that Fairfield & Weld were to deliver to Olmstead on or before June 15, 1860, out of the corn so stored and mixed, fifty-eight pounds of shelled corn for each and every eighty pounds of ear corn stored by them for said Olmstead.

Denies that it was a part of said agreement that they were to deliver

- 46 a good merchantable article, but is informed and believes that the corn was to be stored at said Olmstead's risk.

Denies that it was a part of said agreement that Fairfield & Weld were to have the privilege of rejecting if it was not of such quality as they wished to store, but is informed and believes that Fairfield & Weld were bound to store such corn as said Olmstead's buyers should send to them. It appears from the contract signed by Olmstead in the books of Fairfield & Weld, that Olmstead was to pay three cents per bushel for storing said corn, if sold to Fairfield & Weld in the ear, and five cents for storage and shelling if delivered to Olmstead.

Admits that Thomas Herford agreed with Fairfield & Weld to store corn with them; but denies making such agreement as set forth in the bill.

- 47 Is informed and believes that the agreement with Herford was the same in substance as with Olmstead.

It appears from the books of Fairfield & Weld that Olmstead delivered under his agreement 3,148 $\frac{5}{8}$ bushels, up to about January 1, 1860.

And that Herford delivered in pursuance of his agreement 2,527 $\frac{1}{8}$ bushels of ear corn.

Neither admits nor denies that Olmstead & Herford received receipts for their corn as stated in bill.

It appears from the book of Fairfield & Weld—delivered to C. S. Dole & Co.—that Dole & Co., about June 16, 1860, delivered to Olmstead, from the cribs of Fairfield & Weld, 1,750 $\frac{3}{8}$ bushels of corn on said contract; and to Herford about 1,398 bushels of shelled corn, at fifty-eight pounds per bushel.

- 48 Denies that Olmstead or Herford ever made to Fairfield & Weld a legal tender of all charges for storage, but is informed and believes that in June, 1860, Olmstead & Herford tendered to Fairfield currency to pay said storage, which Fairfield declined to receive, and referred said Olmstead & Herford to the agent of Dole & Co., who then held possession of the corn.

Is informed and believes that during the last of November and 1st of December, 1859, Fairfield did, in the name of Fairfield & Weld, issue grain or warehouse receipts for some 7,000 bushels of corn to Cushman, True & Co., as collateral security for a loan of money from Cushman, True & Co. Denies that said grain receipts were fraudulently issued for grain which Fairfield & Weld were not the owners; is informed and

- 49 believes that said receipts were issued for corn then owned by Fairfield

& Weld, to wit: 4,381 $\frac{3}{8}$ bushels then owned by said Fairfield & Weld in store at their warehouse and cribs, (see items marked "a" in exhibit "A" attached to this answer and made part thereof,) (page of record 54), and 2,542 bushels of corn which Fairfield & Weld had bought on divers contracts made by Fairfield & Weld with different persons, on which contracts Fairfield & Weld had advanced money, and which contracts but part of the corn due had been delivered, (which more fully appears by reference to the items marked "b" in said exhibit) (vide record 54), and about 1,500 or 2,000 bushels of corn which Fairfield & Weld had bought and paid for and not then delivered, but a part was afterwards received on said contracts by said Dole & Co.

Is informed and believes that Cushman, True & Co. gave to Fairfield & Weld receipts showing that said grain receipts were received by said Cushman, True & Co. as a collateral security for a loan of money to
50 Fairfield & Weld, and that said Fairfield delivered said receipts to Dole & Co.

Is informed and believes that about December 23, 1859, Fairfield & Weld being indebted to Dole & Co. in a large amount, to secure the payment thereof, Fairfield assigned and delivered to Dole & Co. all their notes and accounts and contracts for grain then belonging to Fairfield & Weld, with all the interest Fairfield & Weld had in and to the corn and other grain then being in the warehouse and cribs of Fairfield & Weld, and delivered the warehouse, cribs, accounts and grain books of Fairfield & Weld to Dole & Co.

Is informed and believes that Dole and Co. took said corn and grain receipts with notice of and subject to all rights of other persons therein, and subject to said receipts issued to Cushman, True and Co.; says upon information and belief, that when said assignment was made to Dole & Co., they, Dole & Co., agreed with Fairfield to perform all the contracts so assigned to them by Fairfield & Weld, in the same manner and to the same extent that said Fairfield & Weld would have had to perform them if said assignment had not been made.

Further informed and believes that Dole & Co. were to take care of all grain which had been stored with Fairfield & Weld, and deliver corn back to the persons storing such corn, according to the terms of the contract which said persons had made with said Fairfield & Weld.

Informed and believes that there was in store in the warehouse cribs of Fairfield & Weld, on December 23, 1859, when the same was assigned and delivered to Dole & Co., 14,292 $\frac{3}{8}$ bushels of corn, as will appear by said exhibit A, (vide record 54) and of this amount 6,923 $\frac{3}{8}$ bushels belonged to Fairfield & Weld, in the manner stated by the items marked "a" and "b" in said exhibit "A," subject to grain receipts issued to

- 52 Cushman, True & Co. aforesaid, and that 7,369 $\frac{1}{8}$ bushels of said 14,292 $\frac{4}{5}$ bushels, was corn which had been stored with Fairfield & Weld by the persons named in and in the manner stated by the items marked "c" in said exhibit "A."

Does not know whether the corn delivered by Dole & Co. to Olmstead & Herford was demanded or not. Informed and believes that the corn delivered to Dole & Co., December 23, 1859, was not damaged, but was in as good condition as when received for storage. That the corn delivered to Fairfield & Weld by Olmstead & Herford for storage, was not, when delivered, a No. one merchantable article.

- 53 Denies the value of Olmstead's corn not delivered June 15, 1860, was \$700—and the value of Herford's corn not delivered at that time was not \$500, but is informed and believes that the market value of corn at that time was about thirty cents per bushel.

Defendant was absent from Ottawa from the 1st to the 26th of December, 1859.

Supposes a levy was made by Dole & Co. on said corn, as stated in bill; also, that a replevin suit was commenced by Cushman, True & Co. vs. Dole & Co.

That Fairfield & Weld are not liable to Olmstead & Herford on their contracts, but C. S. Dole & Co. have assumed all liability thereon.

- 54 Verified by affidavit.

EXHIBIT A.

Statement of whole amount of corn Fairfield & Weld had on hand and in store on the 23rd day of December, 1859.

"a" Amount owned by Fairfield & Weld, 4,381 30 80

Amount of corn received by Fairfield & Weld on contracts partially performed, on which contract Fairfield & Weld had advanced money:

	Am't of corn received.	Am't advanced.
b R. P. Harden,	119 20-80	\$122.36
b R. Wilkinson,	83 40-80	37.81
b S. Chandler,	75 50-80	54.80
b Charles Grube,	85 70-80	
b Allen Griffin,	126 45-80	84.00
b Samuel Miller,	20	
b Fritz Torrom,	17 15-80	2.85
b Charles Wilson,	25 50-80	26.90

b	A. S. Calkins,	23 60-80	90.72
b	Franklin Reed,	287 50-80	41.49
b	John Titus,	400 45-80	102.40
b	Fred Glim,	219 35-80	167.59
b	E. Wyman,	300 35-80	64.50
b	E. C. Gould,	320 20-80	91.98
b	John Bragg,	91 10-80	30.00
b	William Bennett,	100 40-80	140.69
b	Marcus Jey,	138 5-80	63.02
b	W. F. Dunavan,	103 50-80	35.00

Total am't bought on contract, 6,923 30-80

Amount of corn received in storage :

c	Thomas Herford,	2,527 10-80
c	J. D. Olmstead,	3,148 50-80
c	J. R. Weltner,	439 50-80
c	L. Umlauf,	1,231 30-80
c	Henry Cavarly,	22 50-80

Total am't received in store, 7,369 10-80

Total, 14,292 10-80 bush.

57 Answer of Cushman, True & Co.

Fairfield & Weld were partners, etc.

58 Have no knowledge of the contract between Fairfield & Weld and Olmstead & Herford.

59 Have no information or knowledge about the corn transaction between Fairfield & Weld and Olmstead & Herford.

Are informed that about March 1, 1860, Dole & Co. claimed to be creditors of Fairfield & Weld to a large amount; that Fairfield & Weld pretended to secure the same by making an assignment to them of their goods and chattels and estate.

60 Admit that if complainants had corn stored with Fairfield & Weld, they delivered it to Dole & Co.; do not know what Dole & Co. agreed to do with the same, or whether they received the books of Fairfield & Weld, or whether Dole & Co. knew the amount of corn held by Fairfield & Weld for complainants or other persons.

61 About the 20th of November, 1859, these defendants made an agreement with Fairfield & Weld, to advance them money from time to time to purchase corn for these defendants, which corn, when purchased, was

to be the corn of these defendants, subject to their order, and to be shipped and sold by the defendants, and was to be stored for these defendants until they should ship the same. These defendants did furnish to the said Fairfield & Weld \$5,384.50, with which Fairfield & Weld did purchase corn in pursuance of said agreement to the amount of 11,550 bushels, and received the same in store for these defendants. Said corn was purchased on the street day by day between November 20, 1859, and January 1, 1860, and received in store from wagons as purchased, 1,550 bushels in Morris, 2,000 bushels in Utica, and 8,000 bushels in Ottawa.

62 On November 23, 1859, and divers other days thereafter, prior to January 1, 1860, Fairfield & Weld delivered to these defendants, warehouse receipts for 10,000 bushels of corn stored in Utica and Ottawa, which had been purchased by Fairfield & Weld for these defendants, under the agreement aforesaid, and was then actually held in store for these defendants, as they are advised and believe.

That it was understood between these defendants and Fairfield & Weld, that the corn so purchased for these defendants should not be mixed with the corn of any other person, and it never was so mixed, with the assent or knowledge of these defendants.

That March 1, 1860, upon demand of these defendants, Fairfield & Weld delivered to them at Utica and Ottawa, about 10,000 bushels of corn, purchased by Fairfield & Weld for these defendants, as aforesaid; and that said corn was never delivered to Dole & Co. by Fairfield & Weld.

63 Do not know whether complainants and other persons had corn in store with Fairfield & Weld, that was mixed and delivered to Dole & Co.

That the corn so delivered to these defendants was levied upon by Warner, as sheriff, as the property of Fairfield & Weld, to satisfy an execution in favor of Dole & Co., and thereupon the defendants replevied about 7,244 bushels at Ottawa, and 1,250 bushels at Utica, and sold the same for the gross sum of \$4,415.90.

Deny that the receipts were illegally and fraudulently issued to them by Fairfield & Weld.

64 Had no notice that the corn so replevied by them was taken from the crib in which complainants' corn was stored.

That the corn purchased by Fairfield & Weld, for these defendants, was upon the following agreement: First, that the money to purchase the same was to be furnished by said defendants, and the corn, as fast as purchased, should become the property of these respondents, and be held

- by them until they should see fit to ship the same, and that said corn should be sold by these respondents, upon such terms as they should deem proper, and that when the same should be sold and converted into money, these respondents should retain from the proceeds thereof, 1st, the full amount of money advanced by these respondents for the purchase of the corn, and the commission thereon, for the advance of said money which was then and there agreed between the parties, should be one and one-half per cent. ($1\frac{1}{2}$) per month, and all the costs, expenses, commissions, freights and other expenses incurred in and about said corn, and that the balance of the proceeds of said corn should be paid over to Fairfield & Weld, but that in order to fully secure these respondents in making all the advances for said purchase, it was then and there agreed between these respondents and Fairfield & Weld, that the said corn should be purchased on account of respondents, and when purchased should be the property of these respondents and subject to their sole control and disposition. That said contract was made on the part of respondents, by Cushman. At the time the receipts were given by Fairfield & Weld to Cushman, True & Co., Cushman was absent from the State, and a receipt was given to them, Fairfield & Weld, by respondent True, who was not at that time familiar with the terms of the contract so made, as aforesaid, and said receipts may not have fully or fairly expressed the terms of the contract between said parties.
- 65
- 66 Said replevin suit not yet determined.
Answer verified by affidavit.
- 68, 69 Replications to all answers.
January 15, 1861, answer of Lewis Umlauf filed.
Admits Fairfield & Weld were partners.
Admits contract of Olmstead & Herford with Fairfield & Weld; that Olmstead & Herford delivered corn to Fairfield & Weld, as alleged in the bill.
- 72, 73 Admits substantially all the allegations in bill relative to business transactions between Olmstead & Herford, C. S. Dole & Co., and Fairfield & Weld, about corn in dispute.
- 74 Admits allegations relative to storing and mixing of corn, and Dole & Co. had notice of the facts.
No other person interested in said corn, except those named in the bill.
- 75 That this defendant now holds Fairfield & Weld for 536 $\frac{3}{4}$ bushels and more, all stored and received by Dole & Co., as alleged in bill.

Admits that Dole & Co. claims there was a shortage in the corn received of Fairfield & Weld, of about 3,000 bushels.

76 Answer verified by affidavit.

77 January 15, 1861, said Lewis Umlauf filed cross-bill.

85 Wherein is recited the material allegations in complainants' bill, and alleges that Fairfield & Weld were partners at Ottawa, December 1, 1859.

86 That on the 1st day of December, 1859, complainant entered into a contract with Fairfield & Weld, for them to receive and store corn as the same should be delivered to them by the wagon load from day to day. By said agreement Fairfield & Weld were to store corn for complainant until June 15, 1860, unless sooner demanded; and that about the 15th day of June, Fairfield & Weld were to redeliver said corn to complainant, at the rate of fifty-eight pounds for each and every bushel of corn stored by complainants. Said corn was to be shelled, and a good merchantable article. Fairfield & Weld were to receive for storing, shelling and delivering, five cents for each bushel, and if delivered in the ear, three cents per bushel; that by the terms of said contract, Fairfield & Weld retained the privilege of rejecting all such corn as they did not wish to store, on account of quality.

88 That during the month of December, 1859, complainant delivered to Fairfield & Weld 1,231 $\frac{3}{4}$ bushels to be stored; that Fairfield & Weld did reject some of the corn offered by complainant for storage, on account of its quality.

89 That about June 15, 1860, complainant received from Fairfield & Weld, 685 bushels of shelled corn, badly damaged; received the same under protest, and did not receive the market value of good, within five cents per bushel.

That about June 15, 1860, he tendered to Fairfield & Weld all charges for storage on all corn so stored, which Fairfield & Weld refused to receive.

About March 1, 1860, claimed to be creditors of Fairfield & Weld to a large amount, and Fairfield & Weld pretended, in order to secure the same, to make an assignment of all their goods, chattels and real estate; that about said time, Dole & Co. took possession of the same, among which was the corn of complainants.

Is informed and believes, that Dole & Co. agreed with Fairfield & Weld to deliver to complainant his said corn, and perform in every respect Fairfield & Weld's part of said contract.

- 90 Dole & Co. received books of Fairfield & Weld, and well knew that complainant had said amount of corn in store.

That the corn delivered to Fairfield & Weld was sufficient to take up all *bona fide* receipts of Fairfield & Weld; that said 685 bushels of corn was delivered by Dole & Co. to complainant, and Dole & Co. received the storage therefor. On June 15, 1860, demanded of Dole & Co. 556 $\frac{2}{3}$ bushels of corn, being the balance due him from Fairfield & Weld, and tendered them the storage due thereon, which they refused.

- 91 Still holds Fairfield & Weld's receipts for 546 $\frac{2}{3}$ bushels of corn; that Fairfield & Weld received the said corn as common warehousemen. Various other persons stored with Fairfield & Weld, and by common consent, all was mixed together, so that it could not be distinguished, and Dole & Co. well knew the fact so to be when they took possession.

- 92 That about June 15, 1860, Cushman, True & Co. pretended to hold receipts of Fairfield & Weld for 7,000 bushels of corn; that if said Cushman, True & Co. held such receipts, it was as security for a loan of money; that when said receipts were issued, did not have the amount of corn of their own, and this fact Cushman, True & Co. well knew when they took said receipt.

- 93 Cushman, True & Co. replevied about 7,000 bushels of corn out of one crib from the pretended possession of Francis Warner, sheriff, who claimed to hold said corn by virtue of an execution in favor of Dole & Co. *vs.* Fairfield & Weld. Cushman, True & Co. sold the corn so replevied, for about \$3,500. That the corn so replevied was taken from the crib, in which a large amount of complainants' corn was stored, and of this Cushman, True & Co. had notice.

Cushman, True & Co. pretended to own said 7,000 bushels so replevied, by virtue of warehouse receipts issued to them by Fairfield & Weld.

All persons so storing corn, held the same as tenants in common, according to their respective amounts; that Dole & Co. became trustees for the true owners thereof.

When Dole & Co. refused to deliver complainants' corn, they claimed there was a shortage of about 3,000 bushels; that Fairfield & Weld had receipts out for about 3,000 bushels more than there was corn in store. Avers that if there was any such shortage, either Dole & Co., or Cushman, True & Co., had used and appropriated the same to their own use.

The value of complainants' corn, not delivered in June 15, 1860, was \$275.

- 94 Fairfield & Weld, Dole & Co., Cushman, True & Co., Olmstead & Herford, made defendants.

Fairfield & Weld required to answer whether at the time Dole & Co. took possession, they had not sufficient corn to take up all outstanding receipts issued by them, and whether Dole & Co. were not to deliver the corn due on such outstanding receipts, and whether they did not notify Dole & Co. at the time of the assignment that a large amount of the corn in store was owned by those holding *bona fide* receipts of Fairfield & Weld.

Did they deliver to Dole & Co. their books containing an account of their grain transaction?

95 Did they issue receipts to Cushman, True & Co., about the time complainant was storing with Fairfield & Weld, and the time they delivered possession to Dole & Co.? At the time such warehouse receipts were issued to Cushman, True & Co., they had sufficient corn in store in the city of Ottawa to fill the same; were not such receipts issued as security for the payment of money?

That Cushman, True & Co. may answer whether the receipts they hold from Fairfield & Weld were not issued to them by Fairfield & Weld for a loan of money at the time such loan were made; how many such receipts they held; that they produce such receipts. Did they employ any agents during the time complainant stored corn as afore-said, to purchase corn for them by the wagon-load or what other quantity, and whether Fairfield & Weld issued corn receipts to them at the time said corn bought for Cushman, True & Co. was delivered to said Fairfield & Weld.

That Dole & Co. may produce their books in which are kept the accounts concerning the corn of said Fairfield & Weld.

Prays that an account may be taken of said corn. Cushman, True & Co. account for the corn replevied by them.

That a general average be taken of all shrinkage (if any) and for damaged corn.

97 Agreed between Dole & Co. and Umlauf, that their answer to the original bill shall be considered an answer to the original bill.

February 11, 1861, agreed that the answer of Cushman, True & Co. to original bill be considered the answer to cross-bill of Umlauf.

98 Replications filed to answer to cross-bill of Umlauf.

99 Ordered that cross-bill and original bill be heard at same time.

101 Proof of publication made as to John Weltner, and bill taken for

102 confessed as to him. Cyrus E. Dicky appointed special master to take proofs.

Master's report filed April 20, 1861.

103 Books of account of Fairfield & Weld and Dole & Co. admitted in evidence.

Complainants introduce warehouse receipts, numbered from one to thirty-seven inclusive.

No. 1 is as follows :

104

OTTAWA, December 21, 1859.

Received in store of J. D. Olmstead seven hundred twenty-three ⁷⁰ bushels of E corn for account of himself at owner's risk.

FAIRFIELD & WELD.
HAIGHT.

No. 2.

OTTAWA, November 30, 1859.

Received in store of Thos. Herford, twenty-five hundred twenty-seven $\frac{1}{8}$ bushels of E corn for account of himself at owner's risk. 2,527 $\frac{1}{8}$ bushels stg. three cents to June 15, 1860, if sold to us as ear corn, if shelled, two cents added, if sold to other parties charges five cents and deliver 58 lb. shell corn.

FAIRFIELD & WELD.

Delivered on this receipt 1,398 bushels at 58 pounds shelled.

147

All the balance of said receipts are for corn, delivered on account of Olmstead. Nos. 3 and 4 are dated November 28, 1859, Nos. 5, 6, 7, 8 and 9, are dated November 29, 1859, all the balance are dated November 30, 1859, and are respectively for the number of bushels stated below :

No. 3	16	¹⁵	bushels.
" 4	12	¹⁰	"
" 5	14	²⁵	"
" 6	21		"
" 7	16	¹⁰	"
" 8	7	¹⁰	"
" 9	24	⁵⁰	"
" 10	12	⁷⁵	"
" 11	13	⁴⁰	"
" 12	14	⁴⁵	"
" 13	17	⁷⁰	"
" 14	11	⁴⁵	"
" 15	19	⁴⁵	"
" 16	12	³⁰	"
" 17	10		"
" 18	14	⁰⁵	"

	No. 19	11	¹⁰	bushels.
	" 20	17	¹⁵	"
	" 21	16	⁴⁰	"
	" 22	19	⁵⁰	"
151	" 23	4	²⁰	"
	" 24	12	⁴⁵	"
	" 25	22	⁴⁰	"
	" 26	32	⁷⁵	"
	" 27	18	⁴⁰	"
152	" 28	20	⁵⁰	"
	" 29	22	⁴⁵	"
	" 30	16	²⁰	"
	" 31	13	⁴⁰	"
	" 32	3	²⁵	"
153	" 33	28		"
	" 34	12	⁶⁰	"
	" 35	31	²⁵	"
	" 36	17	⁷⁵	"
	" 37	24	⁰⁵	"

103 *Wagner*, introduced by complainants, testified that

He bought grain for Fairfield & Weld on the streets in the fall of 1859-60.

Ira C. Haight was in employ of Fairfield & Weld; part of his business to issue warehouse receipts for grain.

104 That all of said receipts from 1 to 37 inclusive, were in the handwriting of Haight or Fairfield; supposed everybody's corn was mixed.

Don't know how much corn was delivered on any one day. Olmstead was buying at that time and storing with Fairfield & Weld. Don't know of any agreement about rejecting unmerchantable corn.

Don't know of any arrangement to store corn separately for any one. Know that Umlauf was buying and storing corn with Fairfield & Weld. Fairfield & Weld rejected some corn that was unsound. Does not know whether Umlauf's corn was mixed or not. Suppose it was customary to mix it. Don't know of one crib being filled chiefly with Olmstead's corn.

105 Cross-examination. Have heard Fairfield say he would send away corn if not good.

Cornelius W. Reynolds, witness for complainants. June 9, 1860, heard Lewis Umlauf demand of Fairfield to deliver to him 1,231 bushels and odd pounds of corn which he claimed he had stored there, and heard Fairfield reply, in substance, that he could not deliver him the corn, as he had sold it to Dole & Co. That 7,000 bushels had been

replevied by Cushman, True & Co., and that he (Fairfield) had no corn to deliver. Umlauf then tendered Fairfield \$65 in paper currency for storage, and said he would get the specie. Fairfield said he would not take it anyway for he could not deliver the corn; Dole & Co. had possession of it, and Umlauf must look to them for the corn. That said
106 Olmstead, Herford & Weltner were present at the same time and each of them made a tender to Fairfield, and demanded a specific amount of corn which they each claimed to have in store. Don't know the amount each tendered, but understood it to be the amount due Fairfield & Weld for storage on their respective amounts of corn. Fairfield made substantially the same reply to Herford, Olmstead & Weltner, that he did to Umlauf, and made no objection to any of the tenders, on account of their being in paper money.

Immediately after this, Olmstead, Herford, Umlauf and Weltner made a similar demand of one Judson, agent of Dole & Co.

Umlauf demanded 1,231 bushels and some odd pounds, and tendered \$65; don't recollect how much each, Olmstead, Herford and Weltner, demanded—they each made a tender. Judson said, they could not receive the tender; that Dole & Co. did not have the corn to fill the demand. He said, when Dole & Co. took possession December 21, 1859, Fairfield & Weld had of their own 3,100 bushels, and that they had never had more than 4,000 bushels there since that time.

107 Cross-examination. Tender to Judson was in paper money; think Judson said Cushman, True & Co. furnished money to Fairfield & Weld to buy 7,000 bushels of corn, at 30 cents per bushel; that Cushman, True & Co. had replevied that amount, and shelled and taken it away; counted Umlauf's money, but no other; but each stated the amount to be all that was due on their amount of corn, respectively.

George B. May, for complainants, testified that about the 10th or 15th of June, 1860, Olmstead, Herford, Umlauf and Weltner made tender and demanded corn, as stated by witness Reynolds. Olmstead demanded of Fairfield & Weld 3,185 bushels and odd pounds, and tendered $1,590 \frac{1}{100}$ or $\frac{2}{100}$. No dispute as to the amounts of their claim; Fairfield said would like to have the money, but could not deliver the corn, as it had been taken out of their hands; that it was in Dole & Co.'s hands; that Judson was in charge of it, as agent for Dole & Co.; Olmstead, Herford, Umlauf and Weltner then made same demand of
108 tender to Judson; Judson said corn there would not hold out to cover their demands, and offered to deliver them fifty-five bushels on the hundred. Each agreed, under protest, to take that proposition if Judson would give them credit on their receipts, and charge storage only on the amount of corn delivered. Judson refused to deliver, unless

the full amount for storage was paid and receipts surrendered. Judson said kind of money tendered made no difference, for he could not deliver the corn anyway. Saw two cribs of corn at time tender was made. Smaller one was full, the other half full. Should think there was 4,000 bushels in smaller one, and 6,000 in larger one.

109 *John Armour*, witness for complainants, testified, that on the 9th day of June, 1860, he paid on the street for corn, 46 and $46\frac{1}{4}$ cents, and for a few loads, 47 cents; average price was $46\frac{1}{2}$ cents per bushel. Am a dealer in grain at Ottawa; on the 15th and 16th of June, 1860, average price of corn was 45 to 46 cents per bushel in Ottawa; ranged at that the whole at 60 pounds per bushel.

No No. 1 corn, in 1859, in this market, more liable to injure when stored in large quantities, than usual; corn stored that winter was not as good in following summer, as that bought in summer in the streets, but when warehousemen receipt for a given quantity of corn, they hold themselves bound to deliver a like quantity and quality, that is, corn in the ear. When we give receipts for taken on store, and it heats in the warehouse, we don't hold ourselves responsible to deliver good corn, unless they take it without qualification. It is the custom of warehousemen in Ottawa, to take care of shelled corn, shift it when necessary for preservation, and charge for extra trouble. Have never known good ear corn to heat in the cribs, when in good condition and properly housed; part of the cribs of Fairfield & Weld were well roofed; did not notice whether all in good order or not; custom in Ottawa to reject corn for storage when not good.

110 *Micaiah F. Fairfield*, witness for complainants, testified, that the receipts from 1 to 37, inclusive, (heretofore described), were the receipts of Fairfield & Weld.

Witness was shown warehouse receipts in favor of Lewis Umlauf, numbered from to , inclusive, that they were the receipts of Fairfield & Weld; that some of said receipts have been taken up to knowledge by the firm of W.; might have been taken up without his knowledge.

That the cancelling mark on said receipts are made by the Bank, which pays the farmer for his grain; the receipts are made to serve as both receipts for the corn and checks for the money to the farmer, and that said cancelling marks are indications that the corn has been delivered by the warehousemen on the receipts.

Olmstead, Herford and Umlauf were storing with Fairfield & Weld in the latter part of November, and fore part of December, 1859; Dole &

Co. went into possession at that time ; they took possession of the premises, lumber, corn cribs, corn, warehouse, office, and the whole premises, including the corn we had in store. Our corn account books remained in the office ; Dole & Co. had access to the books ; the books were in the possession of our clerk, but we instructed him to let Dole & Co. have access to the books, whenever they wished. Never supposed the books were in the possession of Dole & Co., so we could not take them away if we wished ; Dole & Co. opened new books and continued the business. As to corn stored by other persons, our arrangement with Dole & Co. was, that they were to receive the storage and deliver corn on the receipts we had issued to farmers. My idea at the time was, that they were to deliver corn on all our receipts, except Cushman, True & Co., and that they would deliver, if they had enough, other collaterals to pay our indebtedness to them, without touching the corn ; got this idea from conversation between C. S. Dole and myself. I think Dole used the word farmers to designate the receipts which were issued to other persons than Cushman, True & Co. We left our clerk, Ira C. Haight, in charge of our books when Dole & Co. took possession ; we left him there to facilitate business which Dole & Co. were to transact with the customers of Fairfield & Weld ; the stubs of receipts issued, were also left in the office ; the amount of corn we had in store for other people, was talked over at the time Dole & Co. took possession ; they were to receive storage on it ; do not recollect what the amount was ; it was something over 7,000 bushels.

Cross-examination. We made an assignment to C. S. Dole & Co., December 21, 1859 ; it was verbal in its terms ; made the assignment to secure our indebtedness to them ; assigned to them our lumber, interest in notes, and accounts and contracts for grain, and our interest in grain on hand, and gave them possession ; we then had in possession and in store 14,292 bushels of corn, at 80 pounds per bushel, at Ottawa, and actually delivered to Dole & Co.

Witness "Exhibit A," attached to answer of Weld, (Record page 54,) and said that the same is a true statement of the accounts there set forth, (vide Abstract for copy of "Exhibit A.") At the same time assigned to Dole & Co., 12,000 bushels of corn at Utica. Some receipt out not mentioned in Exhibit "A."

The receipts held by Cushman, True & Co. were given for corn that was received and in store, belonging to Fairfield & Weld, and for corn, contracted for with farmers, and not all then delivered. The Ottawa receipts, held by Cushman, True & Co., were for 4,381 $\frac{3}{4}$ bushels of corn, marked "a," on said "Exhibit A," and for those items of corn delivered and to be delivered on contracts, which are marked "b," on said "Exhibit A." The amount owned by Fairfield & Weld, and in

store at Ottawa, covered by Cushman, True & Co. receipts, was about 7,000 bushels at time of assignment. We had then paid for more corn, marked "b," on said "Exhibit A," than had been delivered, and some so paid for was afterwards delivered to Dole & Co. Don't know how much was delivered to Dole & Co. on contract, (marked "b," on Exhibit "A;" may be 2,000 or 3,000 bushels. Dole & Co. built some new cribs, carried on business of their own, and the corn they received on said contracts, marked b, they mixed with their own. Dole & Co. knew of the receipts held by Cushman, True & Co. at time of assignment; we only assigned our interest to Dole & Co. As to corn in store not owned by us, the terms of assignment were, that Dole & Co. should deliver the corn on our receipts, and receive the charges for storage, in the same way that Fairfield & Weld would have had to do, if no assignment had been made.

- 115 Nothing said about storage in connection with Cushman, True & Co.'s receipts. Dole said he would deliver the farmers corn, and there was not enough property left to satisfy them. Dole & Co. would contest the receipts of Cushman, True & Co., as theirs was a money matter. Dole & Co. afterwards shipped corn which had been delivered on contract, (marked "b" in exhibit "A") and belonging to Fairfield & Weld on their own account; could not tell how much shipping said corn which should have been used to take up Cushman, True & Co. receipts caused a shortage in the corn. I think at the time of the assignment there was money enough advanced on said contract "b" by us to buy corn enough, (when added to what we had on hand) to fill all the receipts which we had outstanding. Olmstead said they would tender me the gold if I preferred it. I answered, if it was coming to me I would prefer the gold. Did not count the money. Warehouse and cribs of Fairfield & Weld were in good condition. Corn was in good condition at time of assignment. None of the corn that season was No. 1. If corn becomes injured when warehouse and cribs in good condition, custom of warehousemen to deliver the corn that is in the cribs on the receipts.

Grain receipts were issued to those persons who delivered grain on contracts "b" for account of their contractor; they were simply memorandums of the amounts delivered on the contracts; these contracts were assigned to Dole & Co., by indorsement in writing on the back of the contract, mostly Dec. 21. All of our interest in these contracts was to be taken by Dole & Co., and they were to credit us for the profit on them; the corn which Fairfield & Weld received up to Dec. 21, 1859, was kept separate from that which Dole & Co. bought and received on contract.

I have seen a charge on books of Dole & Co., against Fairfield & Weld for the services of Judson while doing the business connected with

the assignment, but I object to it; when tender made to me, I told them corn was taken out of my hands and that I could not deliver it.

- 117 Most of Olmstead's, Herford's and Umlauf's corn was stored in the double crib, out of which Cushman, True & Co., replevied about 5,000 bushels and balance out of timber crib; all the corn was mixed together in warehouse and cribs; it is a general custom among warehousemen to mix ear corn unless there is a special bargain to keep it separate; we made no bargain to keep any separate.

Samuel A. Judson, for defendants, testified. From Dec. 22, 1859, until latter part of July, 1860, was acting as agent of Dole & Co., in settling up their business with Fairfield & Weld. When Dole & Co., took possession, there were three cribs of corn, Dec. 22, 1859. Fairfield, C. S. Dole and witness went over the whole premises of Fairfield & Weld. Fairfield pointed out the above mentioned cribs, and various piles of lumber, timber, etc., and declared he turned them over to Dole & Co.—in other words, he gave full possession.

- 118 In delivering the corn from these three cribs there was about 14,076 bushels. Cushman, True & Co. replevied out 7,000 bushels at 58 ¢s.

I delivered to I. V. Waterman on receipt of Fritz Town,		
	17 15-58 bushels.	
Delivered to John Olmstead,	1,750 40-58	"
" Weltner,	250	"
" Umlauf,	685	"
" Herford,	1,398	"
" Weltner on receipt of Griffin,	126 45-58	"
" " " E. C. Gould,	320 20-58	"
Total,	4,547 20-58	

Dole & Co. received from all Fairfield & Weld cribs, 2,028²⁷ bushels; total of the above accounted for, which I took from the cribs, is 6,576 bushels. Considerable rotten corn in three cribs, about 5,000 bushels. Sum total of corn accounted for, 14,076 bushels. Dole & Co. took from the cribs 2,028²⁷ bushels, because they held Fairfield & Weld receipts for more than that amount; that they bought up by using their own funds for some of the receipts and contracts that had been assigned over to them by Fairfield & Weld with cash for some, and using contracts above in buying up others. Dole & Co. held the following receipts issued by Fairfield & Weld, to the following persons, being the receipts spoken of above as being bought up:

119	T. Reed,	287 ⁵⁰	bought by contract and cash.
	N. S. Deyo,	138 ⁰⁵	" " " " "
	Chas. Grobe,	85 ⁷⁰	" " " " "
	A. T. Dunnavan,	103 ⁵⁰	" " " " "
	B. Spencer,	20	" " " " "
	R. Williamson,	83 ⁴⁰	" " " " "
	Total of the amounts,	718 ⁵⁵	

	Rec't to John Titus,	400 ⁴⁵	bought by cash and contract.
	W. Bennett,	100 ⁴⁰	" " " " "
	Charles Wilson,	28 ⁵⁰	" " " " "
	A. L. Caukiess,	23 ⁶⁰	" " contract.
	Fred. Gliem,	219 ³⁵	" " " "
	John Bragg,	91 ¹⁰	" " " "
	R. P. Hardin,	119 ²⁰	" " " and cash.
	E. Heyman,	300 ³⁵	" " " " "
	S. Chandler,	75 ⁵⁰	" " " " "
	Total of above am'ts,	2,080 ⁵⁰	

Which to my knowledge were bought up by Dole & Co. Believe I held more receipts of Fairfield & Weld than those above accounted for, understanding that there was not enough corn in the cribs to fill all the receipts, issued as I supposed, and I figured the amounts as near as possible, that would be short when we came to deliver and found the shortage 3,338 $\frac{7}{8}$ bushels caused by Cushman, True & Co. replevying from the sheriff 7,000 of the corn, that causing a shortage from the following figures, there being weighed out from those three cribs but 13,576 bushels, and there being about 500 bushels of rotten corn, making as near as I can get at it, 14,076 in the three cribs—Cushman, True & Co. replevied 7,000 bushels, leaving 7,076, to deliver on the receipts held by Olmstead, Weltner and Umlauf, Herford and the following receipts, (objected to stating contents of receipts not in evidence):

Griffin,	126 ⁴⁵
Fritz Town,	17 ¹⁵
E. C. Gould,	320 ²⁰
Sundry receipts held by Dole & Co.,	2,080 ⁵⁰ before enumerated.

About June 9, 1860, Olmstead, Umlauf, Weltner, and perhaps Herford, came to office of Fairfield & Weld; Olmstead came behind desk and demanded his corn of Fairfield, tendering at same time paper-money; Fairfield said, he could not deliver the corn, because it was taken away from him by Dole & Co., and referred Olmstead to me, as Dole & Co.'s agent; tender not made in specie. Umlauf & Weltner went through same form with Fairfield; Fairfield replying the same in sub-

- 121 stance as to Olmstead; Olmstead then tendered to me, as Dole & Co.'s agent, a bundle of paper money, as the charges on his corn for storage and shelling, and demanded the face of the receipts from me. I told him, could not deliver face of receipts, that Dole & Co. would deliver him every pound of corn we had belonging to them, which was about 55 per cent.; at this time Olmstead said to Fairfield, if he object to the money he would get the gold. Fairfield said he would rather have the gold. I said nothing about tender to Olmstead; don't remember that any others went through the form of tendering me the charges on their corn; explained to them generally, why I could not deliver but 55 per cent. I never used the expression, that Cushman, True & Co. had furnished Fairfield & Weld money, to buy corn for them, but I think I did use the expression, that Cushman, True & Co. have advanced money to Fairfield & Weld on corn. Don't remember of any regular, formal demand, being made on me by Olmstead, Herford, Weltner and Umlauf until about the 9th of June; remember a conversation with Olmstead, about the last of May or first of June, in which he stated, that he would market his corn about the first of June. Did not say I would deliver it on the 15th. Mr. Dole instructed me to divide the corn of theirs, and deliver each man his percentage. After explaining to him, that there would not be over 55 per cent., he told me to deliver that. Don't think I made out a statement of the amount of corn to Olmstead and others before the 9th.
- 122

Explained somewhat how matters stood, to Umlauf. It is true, that I would not have delivered all the corn if they had tendered me gold for the storage—or any more than I did deliver.

Some of Fairfield & Weld's receipts for the 2,028 $\frac{23}{100}$ bushels, that Dole & Co. took from the cribs, were paid for in cash, C. S. Dole's money, some partly in cash and partly by contracts that money had been advanced to the parties holding the receipt to Fairfield & Weld, and others, by contract alone, money enough having been advanced to the holders on the contracts to pay for the corn in full. By payment by contract I mean, that these contracts had a value attached to them, to the amount of the money advanced on the corn that was bought; said money, I suppose, was advanced by Fairfield & Weld before they assigned the contracts to Dole & Co.

Believes that the items in Exhibit "A," mentioned in Fairfield's deposition and Weld's answer, and marked "b," are a correct statement of the amounts of corn then delivered on said contracts.

- 123 Amounts marked in bushels opposite each name show the number of bushels delivered to Fairfield & Weld at the time of assignment, and the sum opposite each name in figures shows the amount of money

which had been advanced to him by Fairfield & Weld, on his contract up to time of assignment.

Receipts were substantially in this form :

Received in store of A. B. bushels of corn for account of
contract at owner's risk. FAIRFIELD & WELD.

and meant that that amount of corn therein mentioned, was to be applied on the contracts of the man to whose account the receipts were issued; some rotten corn in each crib; most in the double crib, which was the best crib at time of the assignment, was in good condition; other cribs were in reasonably good condition; think in average good condition; quality of corn all about the same.

Dole & Co.'s corn inspected rejected in Chicago. Most damaged corn was in double crib. Corn delivered to Olmstead, Umlauf, Weltner and Herford, was from crib south of double crib; there was about 1,200 or 1,500 taken from the double crib, (south side) and thrown into crib south of it previous to delivery; when so thrown in, damaged corn picked out.

Damaged corn sold from 10 to 15, and some for 20 cents per bushel. Olmstead, Herford, Umlauf and Weltner took the damaged corn that they picked out when their corn was being delivered to them; think about 35 bushels to the four parties; they took the corn as it ran, and paid me storage on the corn delivered; the 1,200 or 1,500 bushels was thrown out of double crib into one south of it in May, 1860, after Cushman, True & Co. had replevied theirs; it was done to allow Waterman to use double crib.

125 Cross-examination by Cushman, True & Co.

Explains situation of premises by plat.

Estimates crib b 2,000 bushels.
" " e 7,000 or 8,000 bushels.
" " f 4,000 or 4,500 "

126 All the corn received by Dole & Co. was in these three cribs; crib b was about one-third full of ear corn; crib e was full except the middle, which was built more especially for shelled corn, and had in it about 200 bushels shelled corn; crib f was three-fourths full. Dole & Co. put no corn into these cribs except 500 or 600 bushels of shelled corn; this was not Fairfield & Weld's corn; first was delivered to Waterman from middle of crib e on Dole & Co.'s receipts, but by Waterman. There was 827 bushels which was all the shelled corn in the crib; of that 229 bushels was received from Fairfield & Weld, and the balance was put in by Dole & Co.; this corn was delivered March 27, 1860.

The next that went out was the 7,000 bushels replevied by Cushman, True & Co., March 17, 1860; it included all in crib b, and all in north part of e, and about half from south part of e. The dotted lines in plat indicate the apartments in e.

Next was delivered to Waterman on the balance of receipts he held against Dole & Co., one small receipt against Fairfield & Weld, 17¹⁵ bushels, in all 465⁵⁰ bushels; this was April 25, 1860; taken from south of crib e.

About middle of June, 1860, I delivered all corn in crib f as follows:

To Olmstead,	1,785 ⁵⁵ bushels.
Weltner,	250 "
Umlauf,	685 "
Herford,	1,398 "
Weldon Griffin's receipts,	126 ⁴⁵ "
E. C. Gould,	320 ³⁰ "
C. S. Dole & Co. took	1,315 "

35¹⁵/₈ of the above 1,785⁵⁵/₈ bushels, was one of Dole & Co.'s receipts for 35¹⁵/₈ bushels, which was signed "Fairfield & Weld, by Haight," by mistake. At the time Cushman, True & Co., replevied as aforesaid, the sheriff held possession of all the corn in cribs b, c and f, as the property of Fairfield & Weld, excepting the shelled corn of Dole & Co., in the middle apartment of crib c. All the corn Dole & Co. had in store was put in crib "y," except that in the middle apartment of said crib c. The sheriff was in possession of the corn replevied by Cushman, True & Co., from the 9th to the 17th of March, 1860.

123 Dole & Co. did close up and settle some of the contracts in exhibit of Weld's answer, and marked "b." R. P. Hardin was settled by Dole & Co. They received from Fairfield & Weld 119²⁰/₈, the amount Harden had delivered, and which was in the crib when Dole & Co. took possession, and afterwards received from Harden and put in their own cribs of 380⁰⁰/₈ bushels, which was paid for at 36 cents for the face of the receipts, which is equal to about 42¹/₂ cents per bushel for the corn. On the 119²⁰/₈ bushels he was paid 30 cents for the face of the receipts, which is equal to about 36 cents. In settling with him the contract, there was due him on the whole contract 172³⁷/₈ (E. in F. E.) of which he had been paid 162. \$140 was paid in cash by Dole & Co., and the balance, \$22.30, by Fairfield & Weld on accounts which were assigned to Dole & Co.

Dole & Co. received enough corn of the following persons, mentioned in "Exhibit A:" Wilkinson, Chandler, Harden, Grobe, Griffin, Calkins, Reed, Titus, Gould, Dego and Donnavan, to cover the amounts of money allowed to them by Fairfield & Weld; and the following persons

129 did not deliver enough corn to cover the advances made by Fairfield & Weld on their contracts: Wilson, Gleim, Bragg and Bennett. I gave the contracts up to the parties, and took up the receipts issued on the contracts. Fritz Town's receipt was delivered out to I. V. Waterman, he paying his account, being paid in cash, \$2.65, December 31, 1859, to Dole & Co. E. Weyman's receipt was bought for cash by Dole & Co., and the \$64.50 was paid by Dole & Co. to Cushman, True & Co., they having the contract that was made between Weyman and Fairfield & Weld. Waterman acknowledged to me, April 25, 1860, that 1,280 $\frac{2}{3}$ bushels was the amount he had taken from Fairfield & Weld, at Utica, on his writ of replevin. Rejected corn in Chicago was from one to four or five cents less below corn graded No. 2. In summer of 1860, corn was graded No. "1," "2," and "rejected."

I have one of the contracts, marked "b," in Exhibit "A," of Weld's answer, which is the following form:

\$65.58.

Ottawa, November 28, 1859.

On or before the fifteenth day of June, after date, for value received, I promise to pay Fairfield & Weld, or order, sixty-five $\frac{5}{16}$ dollars, with interest, at per cent. per annum, being money advanced by them to me, on three hundred (300) bushels of good merchantable ear corn, at average price, on or before the 10th day of June, after date, per bushel of 80 pounds, which I agree to deliver to them at their warehouse in Ottawa, on or before the first day of January, 1859, and if not delivered within said time, I promise to pay said Fairfield & Weld, 40 cents per bushel, on said quantity as stipulated, damages for the non-delivery of the same, stg. and shelling 5c, deliv 58 pounds per bushel shelled corn.

WILLIAM BENNETT.

Written on the back:

"For value received, we hereby assign the within contract, Chas. S. Dole & Co., and authorize them to collect the same.

FAIRFIELD & WELD.

Ottawa, December 21, 1859.

130 *Micaiah F. Fairfield*, recalled. In exhibit "A," the item marked "a," amount owned by Fairfield & Weld, and the items marked "b," amount of corn received by Fairfield & Weld, on contracts partially performed, and on which Fairfield & Weld had advanced money, and wherever else in my testimony I have used the word our corn, or Fairfield & Weld's corn, I used those expressions to designate it from the corn in store for other parties than Cushman, True & Co. Our interest in that corn was, whatever amount it brought, over and above what it cost; by cost I mean the purchase money, interest, freight to charge, and commissions.

- 131 Cushman, True & Co. gave us money to purchase corn with; said corn was to be theirs, shipped by them at such times as they saw fit, to whom they pleased, but if we done business with C. S. Dole & Co., we would like to have it shipped to them, if they thought it safe.

Said corn was to be stored by Fairfield & Weld in their cribs. Fairfield & Weld were to shell the corn, load it on the boats; the selling was to be done in Chicago by C. S. Dole & Co., or such persons as Cushman & Co. should appoint. For buying, storing and shipping said corn, Fairfield & Weld were to receive the profits, if any, after Cushman, True & Co. advances. The larger part of the 4,381⁰⁰ bushels mentioned in Exhibit "A," was bought with money furnished by Cushman, True & Co. The advances upon corn set out in Exhibit "A," a portion of which had been received, was made with money, the larger portion of which was furnished by Cushman, True & Co. I think the corn covered by Cushman, True & Co.'s receipts cost more money than they advanced; the bargain was made by Fairfield and Cushman, for their respective firms.

- 132 Cushman proposed that the corn bought with their money should be kept by itself. I did not agree to do it; he threwed out that remark as I was leaving; Cushman went East soon, and True did the balance of the business.

We were owing Dole & Co. a large amount of money, which they wanted; we had not the money, and made the assignment to secure them. I explained to Dole & Co. at the time the arrangement with Cushman, True & Co. They agreed to deliver all the corn, except Cushman, True & Co., and that they would deliver, if they got their money out of the securities which we assigned to them; if not, they should contest Cushman, True & Co.'s claim.

- 133 I contended that they should deliver Cushman, True & Co. corn, as a refusal would lead to a litigation which would nearly eat up the whole amount of corn, hurt our credit, and be of no advantage to them. He said he should do that which was for his own interest. We had a good talk about the matter, and I urged him not to levy upon the corn.

- 134 Cross-examination. Cushman, True & Co. first advanced us to buy corn about November 20, 1859, and continued to advance from time to time until December 21, 1859—about \$3,800 in all,—there were some seven or eight installments; my impression is, that we gave notes when advances made; we gave either notes or receipts; said notes, if given, were for the principal sum advanced; we agreed to pay on the money advanced, one and one half per cent. per month, which was payable when they sold the corn. We gave Cushman, True & Co. also corn

receipts to secure the payment of said installments. There were eight Ottawa receipts given between the 20th of November and 21st of December, 1859.

Cushman, True & Co., gave me the following receipt:

November 23,	receipt for 3,000 bushels corn at Ottawa.
" 28,	" " 2,000 " " " "
December 5,	" " 2,000 " " " Utica.
" " "	" " 2,000 " " " Ottawa.
" 14,	" " 1,000 " " " "
" 19,	" " 1,000 " " " Morris.

December 12, notes of sundry persons to the amount of \$882⁵⁰/₁₀₀.
Ottawa, Dec. 22, 1859.

CUSHMAN, TRUE & CO.

135 It is in True's handwriting.

Said receipts were given at the time they respectively bear date. I have no memorandum of the receipts I had left with Cushman, True & Co.; called for one, and they gave me that.

At the time receipts were given, the value of the corn was \$300 or \$400 more than the money they had advanced.

They advanced no money after December 21, 1859. Cushman, True & Co. were bankers. We did not consider the money advanced a loan; the facts were as I have stated.

136 Before November 23, 1859, we applied to Cushman, True & Co. for a loan of money; Cushman said, would not loan us money on notes, but would furnish us money to buy corn, and they hold and control the corn.

James E. Rathburn, witness, introduced by defendant Umlauf.

137 Corn bought by Olmstead & Umlauf was average good corn as came in.

Knew Fairfield & Weld's warehouse and two cribs; on or about June 12, 1860, examined crib f; the roof was in bad condition in one place; water appeared to have run down into the corn, and the corn in that place was badly damaged; at that time Charles Porter was shelling corn between cribs c and f; was hole cut in north side of crib f; the condition of the corn was very bad, a good deal was rotten and damaged.

Should think that corn in its condition at that time was worth about 20 cents per bushel; the average merchantable corn in Ottawa market

at that time was worth about 45 to 47 cents per bushel of 80 pounds of ear corn.

- 138 That Chicago was at that time before spoken of by him, the market for Ottawa corn; that rejected corn in Chicago would be worth 40 cents in Ottawa.

Special Master reports, that upon page 313 of the book, admitted in evidence of the firm of Fairfield & Weld, it appears, that Fairfield & Weld received in store from Thomas Herford, between November 14 and 30, 1859, 2,527 bushels and 10 pounds of ear corn.

June 16, 1860, S. A. Judson, agent, delivered to said Herford on board canalboat Lockport, 1,390 bushels shell corn at 58 pounds to the bushel, and eight bushels of ear corn at 75 pounds to the bushel, 1,398 bushels in all, and that \$69 $\frac{7}{8}$ storage was paid on it; and page 314, 315 and 316 of said book it appears, that said Fairfield & Weld received in store for J. D. Olmstead, between the 28th of November, and the 23rd of December, 1859, 3,165 bushels at 75 pounds of ear corn, and 17 bushels of shelled corn; that June 16, 1860, said Judson delivered to Olmstead on board canalboat Lockport, 1,750 $\frac{3}{8}$ bushels from the crib just as it ran, and \$87 $\frac{3}{8}$ storage was paid thereon.

- 139 On page 317 it appears, that Fairfield & Weld received in store from Weltner in December, 1859, 439 bushels and 50 pounds ear corn. Judson delivered to Weltner, June 16, 1860, on board canalboat Lockport, 332 bushels shelled corn at 58 pounds, and 8 bushels ear corn, and that \$9 $\frac{3}{8}$ was paid for storage on the same. On page 319 it appears, that L. Umlauf stored with Fairfield & Weld in December, 1859, 1,231 bushels, 30 pounds ear corn, and on June 16, 1860, said Judson delivered to Umlauf on board canalboat Lockport, 677 bushels shelled corn, at 58 pounds, and 8 bushels ear corn at 75 pounds, and paid said Judson \$34 $\frac{1}{8}$ storage on the same.

Receipts of Fairfield & Weld of corn on account of L. Umlauf, referred as exhibits:

	No.	28 Dec. 16, 1859	12 $\frac{7}{8}$ bushels E. corn.				
140	"	29 " " "	" 15 $\frac{65}{100}$	"	"	"	"
	"	30 " " "	" 13 $\frac{10}{100}$	"	"	"	"
	"	31 " 17, "	" 16 $\frac{30}{100}$	"	"	"	"
	"	32 " " "	" 22 $\frac{75}{100}$	"	"	"	"
	"	33 " 15, "	" 11 $\frac{60}{100}$	"	"	"	"
141	"	34 " 14, "	" 19 $\frac{70}{100}$	"	"	"	"
	"	35 " 15, "	" 14 $\frac{60}{100}$	"	"	"	"
	"	36 " 17, "	" 18 $\frac{75}{100}$	"	"	"	"
	"	37 " 16, "	" 16 $\frac{42}{100}$	"	"	"	"

	No.	28	Dec.	16,	1859,	22	³⁰	bushels E. corn.
142	"	39	"	17,	"	20	"	"
	"	60	"	13,	"	31	"	"
	"	61	"	15,	"	20	³⁵	"
	"	40	"	17,	"	7	²⁵	"
	"	41	"	"	"	20	²⁰	"
143	"	42	"	16,	"	8	"	"
	"	43	"	"	"	10	²⁵	"
	"	44	"	17,	"	10	⁶⁵	"
	"	45	"	12,	"	18	³⁵	"
	"	46	"	17,	"	7	⁶⁵	"
144	"	47	"	"	"	24	"	"
	"	48	"	"	"	16	⁰⁵	"
	"	49	"	16,	"	17	⁷⁰	"
	"	50	"	"	"	18	²⁰	"
	"	51	"	17,	"	15	⁴⁵	"
145	"	52	"	"	"	13	⁷⁵	"
	"	53	"	"	"	36	²⁰	"
	"	54	"	"	"	3	⁰⁵	"
	"	55	"	"	"	9	³⁰	"
	"	56	"	16,	"	15	³⁹	"
146	"	57	"	"	"	13	⁷⁰	"
	"	58	"	16,	"	18	⁷⁰	"
	"	59	"	"	"	14	⁴⁵	"

- 154 On motion made March 4, 1861, ordered that Fairfield & Weld and Charles S. Dole & Co. produce before the master the books and papers prayed for in said bill of complainant, that they might be used as evidence in the case.

Bill taken for confessed as to Micaiah F. Fairfield.

- 155 May 26, 1862, cause referred to David P. Jones, as a special master to examine the testimony, and render an account on the following items:

1st. State the amount of corn in store with Fairfield & Weld at the time of the assignment, and on whose account.

2nd. The amount of corn received by Dole & Co. on Fairfield & Weld's contract, and the date, and from whom.

3rd. The amount of money paid by Dole & Co. on those contracts after the assignment, and the dates, and to whom paid.

4th. The amount of corn delivered by Dole & Co. after the assignment, and the time, and to whom delivered, and on what account.

5th. The amount of corn received by Cushman, True & Co. out of the

whole amount in store at the time of the assignment, and the time, and on what account.

153 6th. The date and time of the assignment by Fairfield & Weld to Dole & Co.

7th. The amount, if any, of worthless or unsound corn.

8th. State the amount of corn in store received on executory contracts at the time of the assignment, from whom received, and the amount advanced on the same, and to whom.

9th. The executory contracts, with whom paid, the amount of money advanced on the same, and the amount of corn to be delivered on them, and by whom.

And the said Special Master, on the 5th day of November, 1862, filed his report, as follows :

157 *First.* That the amount of corn in store with Fairfield & Weld at the time of their assignment, was 14,292 $\frac{40}{100}$ bushels, as follows, viz. :

Amount received on contract made by Fairfield & Weld with divers persons for delivery corn,			2,542	bushels corn.
Amount stored by Thomas Herford,			2,527 10-80	" "
" " " J. D. Olmstead,			3,148 50-80	" "
" " " J. R. Weltner,			439 50-80	" "
" " " L. Umlauf,			1,231 30-80	" "
" " " H. Cavarly,			22 30-80	" "
Amount bought with money in whole or in part, belonging to Cushman, True & Co., and marked a in exhibit A to Weld's answer,			4,381 30-80	" "
Total,			14,292 40-80	

Second. That C. S. Dole & Co. received from R. P. Hardin, after the assignment on contract made by him with Fairfield & Weld for delivery of corn, 380 60-80 bushels of corn.

It also appears, that C. S. Dole & Co. received other corn after the assignment on contract, made by divers persons with Fairfield & Weld, but the exact or approximate thereof cannot be ascertained from the evidence.

Third. That said C. S. Dole & Co. paid to R. P. Hardin, after the assignment on his contract with Fairfield & Weld, for delivery of corn, \$140.00.

To Cushman, True & Co., of E. Weyman's contract with Fairfield & Weld for delivery of corn, \$64.50. Total, \$204.50.

158 Fairfield & Weld had paid \$122.56, and $119\frac{5}{8}$ bushels had been delivered to them on Hardin's contract, and they had paid \$64.56, and received $300\frac{3}{8}$ bushels on Weyman's contract.

Fourth. That the following are the amounts of corn delivered by said C. S. Dole & Co., after the assignment, and the persons to whom delivered :

March 27, 1860, To I. V. Waterman,	229 bush.
April 25, 1860, " " on F. & W. receipts,	17 "
To John D. Olmstead, F. & W. receipts,	$1,750\frac{4}{9}$ "
" J. R. Weltner, " "	250 "
" Lewis Umlauf, " "	685 "
" Thomas Herford, " "	1,398 "
" J. D. G. Weld, " Griffin,	$126\frac{4}{5}$ "
" E. C. Gould, " "	$320\frac{2}{3}$ "
April 5, 1860, Cushman, True & Co., on writ of replevin,	5,004 "
" 28, " " "	2,204 "
Total,	11,943 "

Fifth. That Cushman, True & Co. replevied out of the amount in store with Fairfield & Weld, at the time of the assignment, and for which they held Fairfield & Weld's receipts, viz. :

April 5, 1860,	5,004 bush.
" 28, " "	2,246 "
Total,	7,250 "

Sixth. That C. S. Dole & Co., after the assignments, purchased warehouse receipts issued by Fairfield & Weld for corn. Said receipts were purchased and paid for, partly with money which was advanced by C. S. Dole & Co., and partly by contracts for the delivery of corn to Fairfield & Weld, which had been assigned by them to C. S. Dole & Co., and upon which Fairfield & Weld had paid previous the assignment of portion of the money therein stipulated to be paid by them.

The following were the persons to whom said receipts were issued, the amount of said receipts, and the amount of money paid upon them by Fairfield & Weld, previous to the assignment :

Receipts by contracts and cash :

F. Reed,	$287\frac{5}{8}$ bushels.	\$41.49
N. S. Deyo,	$138\frac{5}{8}$ "	63.02
Charles Grob,	$85\frac{7}{8}$ "	

John Titus,	400 ⁴⁵ bushels.	102.40
Wm. Bennett,	100 ⁴⁰ "	140.69
R. P. Harden,	119 ²⁰ "	122.36
S. Chandler,	75 ⁵⁰ "	54.80
B. Spencer,	20	
Total,	1,227 ²⁸ "	\$524.76
Receipts bought with contracts alone :		
A. F. Dunnavan,	165 ⁵⁰ bushels.	\$35.10
R. Wilkinson,	83 ⁴⁰ "	37.81
Charles Wilson,	28 ⁵⁰ "	26.90
A. S. Calkins,	23 ⁶⁰ "	90.72
Fred Gleim,	219 ³⁵ "	167.59
John Bragg,	91 ¹⁰ "	30.00
Total,	349 "	\$388.02
Receipts bought with cash alone :		
E. Wayman,	300 ³⁵ bushels.	\$64.50
Total amount of receipts purchased by C. S. Dole & Co.,		
		2,080 ⁵⁷ bush.
Total amount paid by Fairfield & Weld on same,		
		\$977.28

C. S. Dole & Co. retained upon said receipts out of the corn assigned to them by Fairfield & Weld, 2,028²⁷ bushels corn. The amount of money paid by C. S. Dole & Co., for said receipts, cannot be ascertained from the evidence.

Seventh. That the assignment by Fairfield & Weld, to C. S. Dole & Co., was made on the 21st day of December, A. D. 1859, to secure an indebtedness (the amount of which does not appear) from Fairfield & Weld to C. S. Dole & Co., and that it was verbal and embraced the lumber notice accounts and contracts for grain, and the interest of Fairfield & Weld in the grain then in their possession.

160 *Eighth.* That the amount of worthless or unsound corn, is five hundred bushels.

Ninth. That the following are the executory contracts made by Fairfield & Weld, and the parties *with* whom they were made, and the money paid, and the amount of corn in store received upon them at the time of the assignment, viz. :

	Bush. corn received.	Amount paid on contracts.
R. P. Marden,	119 20-80 bush.	\$122.36
R. Wilkinson,	83 40-80 "	37.81
S. Chandler,	75 50-80 "	54.80

Charles Grobe,	85 70-80 bush.	
Allen Griffin,	126 45-80 "	84.00
Samuel Miller,	20	
Fritz Town,	17 15-80 "	2.85
Charles Wilson,	25 50-80 "	26.90
A. S. Calkins,	23 60-80 "	90.72
Franklin Reed,	287 50-80 "	41.49
John Titus,	400 45-80 "	102.40
Fred Gleim,	219 35-80 "	167.59
E. Weyman,	300 35-80 "	64.50
E. C. Gould,	320 20-80 "	91.98
John Bragg,	91 10-80 "	30.00
Wm. Bennett,	100 40-80 "	140.69
Marion Deyo,	138 05-80 "	63.02
Wm. F. Dunnavan,	103 50-80 "	35.00
Total,	2,542 bush.	\$1,156.11

The amount of corn to be delivered on this contract cannot be ascertained from the evidence.

Respectfully submitted,
D. P. JONES, *Special Master.*

161 November 10, 1862, Cushman, True & Co., filed exception to report.

In answer to the first interrogatory there is an item of 2,542 bushels, being the amount of corn, received by Olmstead in store with Fairfield & Weld on contracts with divers persons, and an item of 4,381 30-80 bushels said to have been bought with (in whole or part) the money of Cushman, True & Co. If this is to be taken as conclusive, that only the 4,381 30-80 bushels were bought by Cushman, True & Co.'s money, we say it is not in accordance with the evidence, which shows, that all the advances on the 2,542 bushels of contract corn in store, were made by Cushman, True & Co.'s money, making 6,923 30-80 bushels. Add what Jones says was delivered on executory contracts—549 bushels—making 7,472 bushels, bought with Cushman's money.

162 In answer to 2nd interrogatory, the Master says Dole & Co. received from R. P. Hardin on his contract, 380 60-80 bushels.

Page 49 of evidence shows, that this corn, together with 119 20-80 previously delivered to Fairfield & Weld on same contract, cost 36 cents per bushel. Fairfield & Weld had advanced on this corn \$122.36, leaving for Dole to pay 57⁶⁴, and the proportion, belonging to Fairfield & Weld, would be 340 bushels, to Dole & Co. 160, so that Dole & Co. received and put into their crib on this one contract of (Fairfield & Weld's) corn, paid for with Cushman's money, 121 60-100.

Page 50 of evidence shows, the following persons, who had made contract to deliver corn to Fairfield & Weld, and had already delivered some to Fairfield & Weld, and received an advance from Fairfield & Weld on their contracts, did after the assignment deliver to Dole & Co. sufficient corn to cover the advance. I give below the names, amount advanced by Fairfield & Weld, and amount delivered to them before assignment:

	Amount received by F. & W.	Amount advanced by F. & W.
R. P. Hardin,	119 $\frac{2}{3}$ $\frac{0}{10}$	\$122.36
R. Wilkinson,	83 ⁴⁰	37.81
S. Chandler,	75 ⁵⁰	54.80
C. Grube,	85 ⁷⁰	
A. Griffin,	126 ⁴⁵	84.00
A. S. Calkins,	23 ⁴⁰	90.72
John Titus,	400 ⁴⁵	102.40
E. C. Gould,	320 ²⁰	91.98
M. Deyo,	138 ⁰⁵	63.02
W. T. Donnavan,	103 ⁵⁰	35.00
	\$1,477 $\frac{5}{10}$ $\frac{5}{10}$	\$672.09

163 Judson, page 50, says, that Hardin was allowed 30 cents for the 119 $\frac{2}{3}$ $\frac{0}{10}$ bushels, delivered by him to Fairfield & Weld before the assignment, and as there is no other evidence upon that question, it is fair to presume, that the rest were allowed the same price, and the 1,477 $\frac{5}{10}$ $\frac{5}{10}$ bushels at 30 cents, is \$443. $\frac{3}{10}$ $\frac{0}{10}$, leaving balance of \$228. $\frac{7}{10}$ $\frac{0}{10}$. Judson, page 49, also says, they paid Hardin on that receipt by them, at the rate of 36 cents per bushel, and the 228⁷⁹ would at this rate pay for six hundred and thirty-five $\frac{5}{10}$ $\frac{2}{10}$ bushels (632 $\frac{5}{10}$ $\frac{2}{10}$).

The answer to the third interrogatory states, that Dole & Co. paid \$140 to R. Hardin on his contract with Fairfield & Weld. This cannot be true, or if it is, they received more than 380 $\frac{3}{10}$ $\frac{0}{10}$ bushels of him. The advance of Fairfield & Weld to Hardin, was \$122.36; he had delivered 119 $\frac{2}{3}$ $\frac{0}{10}$ bushels; this, at 30 cents, would be \$35.77, leaving balance of \$86.59, which at 36 cents would buy 251 $\frac{3}{10}$ $\frac{3}{10}$ bushels. The \$140 at 36 cents would buy 388 $\frac{3}{10}$ $\frac{3}{10}$ "

Making in all 640 $\frac{3}{10}$ $\frac{3}{10}$ bushels. Which must have been received by Dole & Co., if they paid \$140. Their agent Judson says, they only received 380 $\frac{3}{10}$ $\frac{0}{10}$ bushels, and paid at the rate of 36 cents for it. That would be \$137.01 Deduct overpayment of Fairfield & Weld 86.59

and we have 50.42 paid by Dole & Co. and for which they get the corn and put it in their own crib. See Judson's testimony, page 48.

Dole & Co. paid Cushman & Co. \$64.50 on the Weyman receipt. Judson, page 51, states, that Fairfield & Weld had advanced to Weyman \$64.50, and that Weyman had delivered 300²⁵ bushels of corn; that Fairfield & Weld assigned their contract with the indorsement of \$64.50 to Cushman, True & Co.

That Dole & Co. bought of Weyman the receipt for 300²⁵ bushels, and paid back to Cushman, True & Co., the advance of \$64.59, and then I took from Fairfield & Weld's cribs all the corn on the receipts, so they got corn for all of the money paid out on this receipt.

164 4th. Master says, the following amounts of corn were delivered to different persons out of the Fairfield & Weld corn, May 17, 1860:

To I. V. Waterman,	229	bushels.
April 25, " " on F. & W.'s receipts,	17 ¹⁵	"
John Olmstead,	1,750 ^{3 9} _{8 0}	"
J. R. Weltner,	250	"
L. Umlauf,	685	"
Thomas Herford,	1,398	"
J. D. G. Weld, Griffin,	126 ^{3 5} _{7 2}	"
E. C. Gould,	320 ^{2 0} _{7 2}	"
April 5, 1860, Cushman, True & Co. replevied	5,004	"
" 28, " " " " " "	2,204	"
Total,	11,943	"

The answer does not present the facts as the evidence shows it. By the evidence of Judson, page 40, it appears that the corn delivered to Waterman, March 27, 1860, was from one of the Fairfield & Weld's cribs, but upon a receipt, given by Dole & Co., this was 229 bushels; the 17¹⁵ bushels, delivered to Waterman, April 25, 1860, was on the receipt to Fritz Town, contained in Fairfield & Weld's schedule, page 21, on this \$2.85 had been advanced by Fairfield & Weld, and if Dole & Co. delivered to Waterman, the whole 17¹⁵ bushels, Waterman must have paid them back the advance \$2.85.

The 126^{3 5}_{7 2} bushels delivered to J. G. D. Weld, was on the Griffin receipt, and by Weld's schedule, page 21, Fairfield & Weld had advanced \$84 on this receipt which must have been paid back to Dole & Co., if they delivered the whole 126^{3 5}_{7 2} bushels of corn.

The 320^{2 0}_{7 2} bushels said to be delivered to E. C. Gould, was on Fairfield & Weld's receipt to Gould for that amount, and on which (as per Weld's schedule, page 21,) Fairfield & Weld had advanced \$91.98, and this must have been paid back to Dole & Co., if they did deliver the whole of the corn.

The two amounts last spoken of were delivered about middle of the June, 1860, two months after the replevin by Cushman, and should not be credited to Dole & Co.

As a *bona fide* delivery of Fairfield & Weld's corn on their receipts,

These amounts to Waterman,	229
“ “	17 ¹⁵
Weld,	126 ⁴⁵
Gould,	320 ²⁰
Total,	693 ⁸ / ₂

bushels should be deducted from the total amount, 11,943 bushels which the Master reports as having been delivered by Dole & Co., leaving only 11,249 ⁸/₂ bushels. The 5th and 6th pages of the report are not in reply to any question asked in the submission to the Master, and is wholly irrelevant, and not in accordance with our understanding of the evidence, and for errors and insufficiencies.

GLOVER, COOK & CAMPBELL,
For CUSHMAN, TRUE & Co.

Exceptions to Master's report overruled.

June 25, 1863, Dole & Co. file a supplemental answer in substance, that:

As to said 7,000 bushels replevied by Cushman, True & Co., that said replevin suit was tried in the Circuit Court of La Salle county, at February term, 1862, and the right of property found to be in Cushman, True & Co.; and that Dole & Co. appealed to Supreme Court, and judgment affirmed. *Complainant admitted the facts stated in this answer*

Decree made July 1, 1863, whereby it was adjudged, that Charles S. Dole and James H. Dole should pay unto John D. Olmstead, \$599.31 and have execution therefor.

To Thomas Herford, 486.91
and have execution therefor.

And all costs except the serving of writs on the other defendants, and costs of filing their answers and entering of their motions and orders upon record. Further ordered, that they pay unto Lewis Umlauf, \$235.27, and have execution therefor.

Appeal allowed, and bond filed.

LELAND & BLANCHARD,
Solicitors for DOLE & Co.

No 113 84

Charles S. Doh et al

vs

John D. Christad et al

Abstract

Typical of the, and some other.

IRLAND & BLANCHARD

Solicitors for Debt & Co.

and have execution thereon.

resend. Further, ordered, that this be, into Court, in the sum of \$200.00,

costs of filing this return, and entering of this judgment and orders upon

and all costs except the saving of writs on the other defendants and

and have execution thereon.

To Thomas H. Doh,

and have execution thereon.

Doh, and Thomas H. Doh, should pay into John D. Christad, et al

Debt, in the sum of \$100.00, and in the sum of \$100.00, and in the sum of \$100.00,

judgment entered.

That the said John D. Christad, et al, should pay into the said John D. Christad, et al,

and in the sum of \$100.00, and in the sum of \$100.00, and in the sum of \$100.00,

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Filed April 6th 1864.

L. Ireland

Clack

For GEORGE LEWIS & CO.

and COOK & CAMPBELL.