Croughton, Robert et al vs. Forrest, George et al 1852 Lewis Co. 307/5

558/116 Ryland; R&R

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the 4th Judicial circuit court in said State, GREETING:

Whereas, In the record and proceedings in a certain cause lately pending in the circuit court in and for the county of Lewis in said circuit wherein Robert Croughton & others are plaintiffs and John R. Coryell, George Forseel and Amy Coryell are defendants

in ~~an action of~~ a civil action ——— manifest error hath intervened, to the great damage of the said plaintiffs as by their complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held at the City of ~~Jefferson~~ St. Louis, in the county of ~~Cole~~ St. Louis, in said State, on the Third Monday in October next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.

Witness, ~~HAMPTON L. BOON~~ William J. Glanville, Clerk of our said Supreme Court, at office, in the City of ~~Jefferson~~ St. Louis, the Twenty Fourth day of July, in the year of our Lord one thousand eight hundred and ~~forty~~ fifty two.

Wm J. Glanville

clerk

State of Missouri }
County of Lewis } ss. I James G. Blair Clerk of the Circuit Court in and for said County of Lewis do hereby certify that in obedience to the command of the within writ of Error I have made out (and certified under the seal of our said Circuit Court) a full true and perfect transcript of the Record and Proceedings of the said Circuit Court in the cause within named and the same is hereunto annexed and returned to the Supreme Court of the State of Missouri at St Louis.- In testimony whereof I have hereunto set my hand and affixed the seal of our said Circuit Court.- Done at office in Monticello, this 12th day of August 1852.-

J G Blair Clerk
Lewis Cir Court Mo

OWEN & FRELEY
SOLER
MASS

Page 1 State of Missouri } In the Lewis Circuit
County of Lewis ss } Court Mo

Be it remembered that hereto fore to wit, on the 10th day of February AD 1850. Robert Croughton and Edmund Harper filed in the office of the Clerk of the Circuit Court within and for said County a Petition against John R Coryell George Forrest and Amy Coryell, in the words and figures following. to wit

Robert Croughton and Edmund Harper against John R Coryell George Forrest and Amy Coryell } Plaintiffs } Defendants } In the Circuit Court of Lewis County

Plaintiffs state that they and the defendant John R Coryell about the Month of September 1849 entered into a Copartnership agreement with each other for the purchase and sale of Merchandize by the terms of the agreement the profits if any after restoring to all the partners the capital by them respectively paid in were to be equally divided between the partners and the losses if any were to be equally borne by the several partners - that in pursuance to said agreement and in furtherance of the objects of the same said Croughton paid in 2800 Dollars Capital - said Harper paid in 2200 dollars and said John R Coryell 260 dollars - all in cash - making the total

2 Sum of 5260 Dollars cash capital paid in with this capital plff Harper with the concurrence of the copartners proceeded to the city of Philadelphia Pennsylvania where he purchased for the concern a stock of goods amounting at prime cost to about the sum of 16,000 Dollars - about 12,000 Dollars of which was purchased on credit and which is yet unpaid and the balance about 4,000 Dollars plaintiff Harper paid in cash out of the capital stock - about all of the residue of the capital stock paid in in cash was exhausted in payment of freights insurance and other expenses in the purchase and transportation of the goods from Philadelphia to Missouri - Plffs say they cannot state the precise amount amount of the purchases or expenses because the said John R Coryell refuses plffs access to the invoice of the same & the books of the concern. Plaintiffs state that all of the goods so bought in Philada were in the fall of 1849 and as soon as practicable after their purchase brought on to Missouri about 4000 Dollars of which were sent to plaintiff Croughton to be opened & sold at Alexandria clark county Mo. and the residue about 12,000 Dollars worth were opened to be sold at Tully Missouri. from the time the stock in Tully was opened until the 8th day of January 1850 a large amount were sold on credit and for cash - so that on the last named days there were accounts on the books

6.

of the firm against customers of the concern for goods sold them on credit amounting as plaintiffs are informed and beleive is true and so charge to about the sum of 2000 Dollars, besides a large account on said books against defendant John R Coryell for cash and merchandize by him used and withdrawn for his private purposes amounting as pltffs are informed and beleive is true and they so charge to the sum of about 2000 Dollars Plaintiffs are unable to state any of the accounts on the books because they say the defendant John R Coryell combining and confederating with said George Forrest withhold from plaintiffs said books - Plaintiffs also state that on the 8th day of January 1850 said John R Coryell in the absence of the plaintiffs and without their knowledge or consent and against their wishes and approbation, forgetting the confidential relation he bore to pltffs for the base and corrupt purpose of cheating and defrauding pltffs his copartners as well as the creditors of the firm from whom the goods were bought - sold and delivered the remnant of the stock worth about 8000 Dollars to one Ben Harper for the sum of about 7363 Dollars and 68 cents and received satisfaction for the purchase price of the same from said Ben Harper as follows, to wit, a conveyance from Ben Harper to himself Coryell individually for lot No 8 in Block No 1 in Sully Missouri together with Ben Harper assignment to him Coryell individually of three several notes for seventy five dollars

3 each on Land A B-owen for rents to become
due on said lot- at the sum of 4000 Dollars-
He also received in cash from Ben Harper
in further payment of said purchase price
the sum of 1430 Dollars- He also then & there
took from Ben Harper as and for a part
of the purchase price of said lots the three
several promissory notes of said Ben Harper
all payable to said John R Coryell individ-
dually and all dated the 8th day of January
1850 one for the sum of 550 Dollars pay-
able either at one day after date or on demand
on which Harper pd him 200 Dolls in a few
days after giving the note- another for the
sum of 500 Dollars payable twelve months after
date and the other for the sum of 128 pay-
able twelve months after its date- which last
note defendant John R Coryell immediately
assigned to one J M Sutton in satisfaction
of an individual transaction with Sutton
and which last note said Ben Harper has
since paid to said Sutton- John R Cor-
yell was indebted individually to Ben
Harper in the sum of 309 on the aboves
in one transaction and in the further
sum of about of about 56 dollars and 46
cents in another transaction- and said
Amy Coryell was indebted to Ben Harper
in about the sum of 72 Dollars- and the
firm of Creighton Coryell & Co. was in-
debted to Ben Harper in the sum of about
102 Dollars all which sums were taken and
treated as payments to Coryell by Ben Harper

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of so much of said purchase of said goods
In a few days after the sale as and for the
remainder of the purchase price said Harper
(Ben) Executed another promissory note
payable to said John R Boyett at 12 Months
for the further sum of 180 Dollars Shortly
after giving this last note Boyett had some
transaction with Ben Harper by which about
30 or 35 Dollars of said note was discharged
by Ben Harper and thereupon Ben gave
to said John R individually a new note
for the residue at twelve Months for about
125 dollars - which is - yet outstanding
Thus it is seen a Stock of goods worth about
8000 Dollars belonging to a firm in one
short day is disposed of and the proceeds
thereof with the exception of 102 Dollars are
appropriated to the exclusive benefit and
in the exclusive name of John R Boyett
one of the partners. Plaintiffs also allege that
in a few days after this fraudulent sale to
Ben Harper, the defendant John R Boyett
to place the assets of said Concern entirely
beyond the reach as well of the plaintiffs
as of the creditors of the firm fraudulently
assigned to the defendant George W Forrest
all of the accounts, on the books of said firm
and also placed said books in the possession
of said W Forrest, he also assigned and delivered to
said W Forrest several if not all of the said notes
on Bowers and said notes on Ben Harper
except the one assigned to Sullivan and also
conveyed by deed to said W Forrest Lot No 8
in Block No 1 in Tully for the pretended sum

4 of 2000 Dollars the same lot which he had
a few days before taken from Ben Harper
at the sum of of about $175 Dollars
Plaintiffs charge that said several assign-
ments and said conveyances to Forest
were made by the said John R Coryell and accepted
by the said Forest in order and with the intent to
cheat & defraud plffs & to hinder delay and defraud
the creditors of said Coryell. Plffs also say that said
John R Coryell held a title bond on one John
Thompson of St Louis for title to Lot No 3 in
Block No 1 in Sully Sho. which directly after
said fraudulent sale of goods and as a part
of his scheme to cover up his property and
cheat & defraud plffs and his creditors he
assigned to his Mother Amy Coryell with
full notice on her part of his fraudulent
designs. That at the time of said sale to
Ben Harper. said Ben had a deed from
John R Coryell which was in the nature of
a mortgage for lots 12 & 13 in Block No 1
and Lot No 3 in Block No 2 in Sully afore-
said. to secure him said Ben in the payme-
ent of the said debt of 309 Dollars due him
from John R Coryell. upon satisfaction of said
debt out of the partnership funds as aforesaid
said Ben at the instance and request of said
John R Coryell and for no other consideration
conveyed the said last mentioned lots of gro-
und to the said Amy Coryell in order to
cover the same up from the creditors of said
John R.. and this it was said Coryell
had disposed of all property which the proces

of the law could reach - plaintiffs say that said John R. is utterly insolvent Plaintiffs afterwards called upon said John R Coryell for a settlement and adjustment of their partnership concerns and requested him to place in the hands of some competent disinterested and faithful receiver or trustee. the books accounts notes and other assets of said firm in order that the same might be fairly and honestly disposed of for the payment of the debts of the firm and if anything was left thereafter that the same might be divided between the partners according to their just rights therein - all which he at first utterly refused to do and refused pffs all satisfaction in the premises - He however on the 30th of January or thereabouts went to his very accommodating friend George A Hosea and procured from him a reconveyance of said Lot 8 in Block 1 in Tully and about the same time obtained from his affectionate Mother a reassignment of the said title bond and he said John R. did on the 1st day of February 1850. convey to one John D S Dyden as trustee for the creditors of the firm said lot 8 in Block N° 1 and Lot 8 in Block 1 in Tully not however without first extorting from plaintiffs the concession that said lots should be taken and considered as between the partners as worth 6500 dollars - the first (lot 8) at 4000 dollars and the other (lot 8) at 2500 dollars - which it is well known is 2000 dollars more than they are worth - But the Books of the

5 concern and accounts and the said several notes and the money and other effects of the concern he the said John R Coryell utterly refuses to deliver up or in any seeme and plaintiffs further say that the said George Forest also refuses to deliver up or in any way to seeme the said Books and accounts and notes which he fraudulently as aforesaid got into his possession but insists fraudulently upon appropriating them to his own uses. Plaintiffs say that from the relations existing between the said John R and the said Amy and from their ~~previous~~ conduct already stated in this petition they are apprehensibe she the said Amy will sell or encumber the said lots of ground so conveyed to her by Ben Harper. Plaintiffs pray judgment that the copartnership between them and deft John R be dissolved that an account of the partnership debts and effects and an account between the partners be taken that until this can be done the said John R Coryell and George Forest be enjoined and restrained from collecting transferring or in any way disposing of the said books. book account and notes-that he the said George be required to account for and pay all sums of money which he may have heretofore collected on said accounts or notes that she the said Amy be restrained and enjoined from selling incumbering or in any way disposing of the said lots 12 & 13 in Block 1 and lot 8 in

Block 2 in Tully - that a receiver be appointed to take charge of the assets of said firm and that said John R Conyell & George Forrest be required to place in the hands of such receiver the said books accounts & notes and that he the said John R. be require in like manner to place in the hands of said receiver all moneys in his hands or power belonging to said firm and expecially the sum of 1650 dollars received by him from Ben Harper on the sale of said goods and finally that all such other ~~and finally that all such other~~ orders and judgments may be made and rendered in the premises as will effectually secure the rights of all the parties

John D S Dryden
Atty for the plffs

Edmund Harper one of the plaintiffs makes oath and says that he beleives the above petition and the matters therein as stated are true

E Harper

Sworn to and subscribed before the undersigned Judge of the 4th Jud circuit Court this 2d day of February 1850

A Reese Judge
4th Jud. Cir. Mo

Accompanying which said Petition was a Notice, and service thereon and an order in the words & figures following, to wit:

6 "To George Forrest. John R Coryell and Mrs Amy Coryell - You and each of you are hereby notified that we will present a petition to the Hon: Addison Reese Judge of the circuit court of the 4th Judicial circuit of Mo. at his chambers in the Town of Canton in the County of Lewis in the State of Missouri on to-morrow the 2nd day of February 1850 at ten oclock in the forenoon or as soon thereafter as we can be heard among other things praying that you and each of you be enjoined and restrained from the collection and transfer of any and all debts due or to become due to the late firm of Croughton Coryell & Co and from the collection and transfer of two certain notes executed by Ben Harper to John R Coryell - one for the sum of about five hundred Dollars payable twelve months after its date - the other for the sum of about five hundred dollars payable one day after date or on demand and praying also that you the said Amy be enjoined and restrained from in any way selling conveying or incumbering Lots 12 & 13 in Block No 1 and lot No 7 in Block No 16 - all in the Town of Gully in said County of Lewis - when and where you can attend if you think proper

February 1st 1850 } Robert Croughton
Edmund Harper
[illegible]

by their atty John D Snyder

upon the back of which said Notice is the following Service to Wit.

State of Missouri }
County of Lewis } I Joseph Little being first duly sworn on my oath say that I delivered to John R Coryell, Amy Coryell & George Forrest each a copy of the within Notice on the 1st day of February 1850. Done in Lewis County Mo

Joseph Little

Subscribed and Sworn to before the undersigned this 2nd day of Feby 1850

A Reese Judge
4th Judicial Dist Mo

Which said order above refered to is in the words and figures following to wit

Robert Croughton & Edmund Harper } Plffs } Cir. Court Lewis Co Mo
vs
John R Coryell } Vacation
George Forrest & } Dfts } Pet. for Injunction
Amy Coryell }

Ordered, that the defendants John R Coryell & George Forrest, be enjoined & restrained from collecting, transfering or in any way disposing of the notes named & specified in the said petition of the plffs. and that the said

7 Defts. Amy Boryell, be enjoined & restrained from selling, incumbering, or in any disposing of Lots 12 & 13 in Block one & Lot 3 in Block two in Lully, named & described in said petition. It is further ordered, that A. M. Woodyard be appointed Receiver, whose duty it shall be to take charge of the assets of the said firm of Broughton, Boryell & Co, & hold the same subject to the order of this court and the said Defts, John R Boryell and George A Bozeat, are hereby ordered to place into the hands & possession of said receiver the said notes & all moneys belonging to said firm, and the said John R Boryell is hereby ordered & required to deposit with said reciever any & all moneys received by him from Ben Harper on the sale of said goods

It is further ordered that said receiver, before entering on the duties of his office, shall be sworn to a faithful discharge of his duties as such, & shall moreover, give bond with good & sufficient security, to be approved by this court or the Judge thereof in vacation

Given under my hand this 2nd day of February 1856

A Reese Judge
4th Jud. Cir. Tex

Upon the filing of which said Petition Notice and Order a writ of Injunction

Issued with a clause of summons, in the words and figures following. to wit.

State of Missouri }
County of Lewis } ss The State of Missouri

To the Sheriff of Lewis County Greeting

We command you that you restrain enjoin and inhibit John R Coryell and George Forrest from collecting transfering or in any way disposing of the notes and Book accounts and all other debts of the firm of Broughton, Coryell & Co mentioned and specified in the Petition hereto annexed, and that you restrain enjoin and inhibit Amy Coryell from selling incumbing or in any wise disposing of Lots Nos 12 & 13 in Block No one and Lots No 3 in Block No 2 in the Town of Lully Lewis county Missouri mentioned and described in said petition hereto annexed, and you are further commanded to require and cause the said John R Coryell and George Forrest to place into the hands of H. M. Woodyard the Receiver of said firm of Broughton Coryell, & Co, said notes & accounts & all Monies belonging to said firm and the said John R Coryell is required to place into the hands of said Receiver any & all Moneys received by him from Ben Harper on the sale of the goods mentioned in said Petition hereto annexed. said Receiver having first

8 given Bond and made oath according to the order hereto annexed. And Befurther command you to Summon said John R Coryell and George Forest and Amy Coryell that they be and appear in our circuit Court at the Court House in the Town of Monticello within & for said County of Lewis on the third Monday in May next then & there to answer the Petition of Robert Broughton and Edmund Harper of which the annexed foregoing writing is the original & this you shall in no wise omit & have you then & there this writ

Witness J G Blair Clerk of our said Court & the Seal thereof done at office in Monticello at the County aforesaid. on this the 12th day of February AD 1850

J G Blair Clerk

Seal

Upon the back of which said Summons the Sheriff of Lewis County made the following return, to wit.

I executed the within writ and Summons by reading the same to John R Coryell. Amy Coryell & George Forrest on this the 19th day of February. 1850

J A Richardson Shff L C

And afterwards, to wit at a circuit Court Continued and held at the Court house in the town of Monticello within and for said County of Lewis. on the 22nd day of May A.D 1850. the following proceedings were had. to wit:

Edmund Harper & Robert Croughton Plff
vs
John R Coryell, George W Forest. and Amy Coryell Defts
} Injunction

The defendants by their attorneys come and file their answers to said plaintiffs Petition herein

The answer of John R Coryell one of the defendants is in the words and figures following to wit.

Robert Croughton and Edmund Harper Plaintiffs
against
John R Coryell George Forest & Amy Coryell Defendants
} In the Circuit Court Lewis County

Defendant John R Coryell answering says, it is true that plaintiffs and this deft agreed upon and formed a co-partnership in September 1849, and that said Harper was to go to Philadelphia and purchase goods- that the profits if any, after restoring to each partner the capital by him paid in, were to be equally divided, and if a loss was sustained it

7 was to be equally borne by each and in addition to the agreement as stated in said petition was the following "that the sum of $5000,00 in cash should be paid on the goods purchased and the residue whatever that might be should be bought on 12 months time. It is also true that Broughton in pursuance of this agreement paid in to said Harper $2800,00. but it is not true as stated in the petition that Harper paid in 2200 dollars and that this defendant paid in 260 but on the contrary this defendant states that he paid $800,00 and afterwards 260 $ making altogether the sum $1060,00 paid in by him - at the time Harper started to Philadelphia he wrote back to this defendant from St Louis that he then had $6,000. of which it appeared by the bills of purchase he only paid out $2618,37 leaving in his hand yet unaccounted for the sum of $3381,00 It is true that said Harper with the concurrence of the Co-partners proceeded to Philadelphia and there purchased a stock of goods not amounting to 16,000 dollars as stated in said petition, but to the sum of $15599.17 as will appear by a Synopsis of the bills herewith filed (the originals being too cumbrous to be filed, but which are ready to be shown at any time) but it is not true that said Harper paid about 4000 dollars in cash on said purchase and that there was left unpaid about 12000 dollars but on the

contrary this defendant says that the whole sum paid by said Harper upon the purchase aforesaid out of the three thousand eight hundred & sixty dollars received by him from Dr Broughton & this defendant he, Harper only paid out the sum of $3.618.57 leaving a balance unpaid and charged against the firm of $12.980.60 all of which will fully appear by the bills before refered to & which are ready to be shown to the Court here and thus it is shown that instead of the said Harper having paid into the partnership fund 2200 dollars of his money for the purchase of goods, he paid in nothing at all and retained $1.231.43 of the money paid in by his partners. what portion, if any of the last mentioned sum was expended in paying freight and insurance this defendant does not know but he this defendant knows and so states that a portion of the money paid for freight was taken by said Harper from the drawer that contained the partneiship funds and that he this defendant paid the insurance himself to A L Richard upon the order of Myers Liter Price & Co which is herewith filed Marked (B) This defendant in answer to the charge in said plaintiffs petition that this defendant refused to let plaintiffs have accep to the invoices of the same and the books of the concern, says it is not true as stated but on the contrary the said Harper kept the bills of goods himself and had free accep to every thing about the store up till the time of his departure

10 for St Louis and after his return and on the day before the filing of the petition the bills were all publickly exhibited to said plaintiffs in the presence of several gentlemen among whom were two attorneys of said Harper and he said Harper examined them without restraint or hindrance and assisted in making out a list of balances due upon them. It is true as stated that the goods were brought on in the fall of 1849 and that $4037.23 worth of them were sent to Alexandria and the residue being $11,561.94 were opened to be sold at Tully. The precise amount sold by retail this defendant does not now recollect as he has not seen the books since nor would he know if he had but he knows that less were sold & charged on book than $2000. the amount charged in the plaintiffs petition of the goods left at Tully for sale there. he said Harper sold a bill to Mr Cummings and received from him in cash $1,000. another bill was sold to Mr N Vanvoart Iowa for which he Harper took his note for about $500. and another bill was sold to Mr C H Leaman for about $200. in all about $1700.00 worth of goods which he Harper appropiated to his own use he Harper also borrowed of his Brother Mr Benjn Harper $170,00 which was paid out of the goods left at Tully aforesaid and his own account amounted to $165.65. He also borr- on the credit of the firm and without the know-

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ledge of his partners $400. from one Samuel Dick making an aggregate sum of $2455.00 which he Harper had appropriated to his individual purposes after the goods were opened at Lake. This defendant further answering says that Robert Crompton one of said plaintiffs through the agency of one Merriman Reveley paid to said Harper $2800,00 as before stated and received goods purchased of our creditors the amount of $4137.23 of which no part has yet been accounted for although the amount is $1.237.23 more than his entire interest in the concern

This defendant further says it is true that on the 8th January 1850 he sold and delivered the stock of goods then on hand to Benjamin Harper a Brother of said plaintiff for about $7363.68 and without the knowledge of the plaintiffs but not for the purpose or with the intent as so vindictively charged in Plaintiffs petition but for an entirely different purpose and with another intent. The sale was made to Benja Harper for the purpose of securing our creditors from entire loss on account of their just claims against us, and the mode of payment was accepted for two reasons first because in that way a larger price was obtained than I could have got in cash and by taking the title in my own name I intended to prevent the petitioner Harper from appropriating it as he already had other

11 sales of goods to his own use and to avoid the danger of liens of his individual creditors attaching to property which should be applied to others as before stated he had sold goods for & received the proceeds of the sales of about $1700,00 which just at the commencement of our business, and when all & more than all the means available were needed for the produce business of that season of the year in a retailing business such as ours was. he abstracted from the partnership and appropriated in another concern and for his own use. He also borrowed of Benjn Harper on the credit of our House $170.00 and of one Saml Dick $400. making altogether the sum $2270 besides his bill of goods for his family of about 170$ I received a written dun from B Harper for the $170,00 borrowed by plaintiff but which was unknown to me until the night he left for St Louis. I went down to see Ben and paid him a part of the money and told him in substance what is before stated with regard to plaintiff Harper's conduct towards us his partners. I also told him (and I now refer to his letters here to the court shown) to prove the facts that notwithstanding Edmund (one of the plaintiffs) had violated his agreement with us in the purchase of the goods by failing to pay over upon the purchase even the sum which had been paid in by Croughton alone but that

he had abstracted from the business at that season when money was so much needed, the several amounts as before stated which aught in good faith to have been used in the payment of the notes which in violation of his promise to draw payable in 12 months, he had made due and payable in 40 and 60 days. That the protests upon those notes and letters from our creditors were occasionally received complaining that the claims against us were not promptly met. and notwithstanding all this he Ed. (one of plaintiffs) was continually writing for more money under various & singular pretences for its use. To which Ben replied that he knew from the time Edmund left to go to St Louis that he no longer felt any interest in the prosperity of our concern, and that he (Ben) had noticed before Ed left that he did not manifest the same degree of interest he evinced before, had shown in his business. and that he (Ben) believed that he (Ed) only wished to draw all the money out of the concern he could and then let it sink - as Bayn Harper had always professed to be friendly to me and as he was a man of much experience and a brother to the plaintiff Harper I asked him what I should do under these circumstances to save myself and creditors. He advised me to sell out. I told him (Mr Tate had said he would like to give me a trade for our stock to which he replied If I should come to the conclusion to sell to get Tates best bid and then see him

12 and possibly he would do better - before the sale aforesaid to Ben Harper. I was informed that Mr M P Reveley. whose money I understood Dr Croughton was using in the partnership. passed through the Town of Canton and stated that Edmund Harper had only paid about $2600 on the first purchase of the goods, that he was too smart for his other partners Dr Croughton and this defendant and that he Reveley was then on his way up to Alexandria to secure himself. I had on previous occasions conversed freely with Benjamin Harper upon the subject of the business and business qualities of Edmund and now to sorrow and great loss I found that his (Bens) predictions were being verified and that he knew Edmund better than I did. I therefore took his advice and sold the stock of goods for the best price I could get and in the manner as I then believed & still believe most conducive to the interest of our creditors. This defendant further answering says the purchase price of the stock of goods was paid by said Benjn Harper by a conveyance of Lot 8 in Block 1 in Tully and an assignment of three notes on S A Bowen for $75. each to be due for unit of said Lot at a valuation of $4000. $1450 cash and four promissory notes one for $550 upon which was paid to me $200, another for $500, due twelve months after date, and another $123 due twelve months

after date which was soon afterwards by me transfered to James M Sutton and one other for Seventy nine dollars due in twelve months. It is also true that a part of the purchasemoney was paid by cancelling an indebtedness of this defendant to Ben Harper for about $365 and this defendant also received in payment of the purchasemoney a claim against his mother Amy Boyell for about 92 dollars and $102 of the indebtedness of Boughton Boyell &Co but this defendant knows nothing of the note of $125 mentioned in said petition nor of the note for $180,00 nor were they ever given to me. It is true that a stock of goods worth about Seven thousand three hundred and sixty three dollars were disposed of, but it is not true that the proceeds were with the exception of 102 dollars appropriated to the exclusive benefit of of this defendant but on the contrary the greater part thereof was appropriated to the payment of the honest debts of the Co-partnership.

This defendant further says it is true that after the sale of the goods to Ben Harper he this defendant sold to said George Honest all the accounts on the books and delivered the Books to said Honest he also sold and transfered the said notes on Bowen and on Ben Harper ~~except~~ that sold to Sutton and except that of $125 mentioned in the petition which this deft

#3 knows nothing of He also conveyed to Forrest Lot 8 in Block 1 for the sum (though not pretended) of $2000. But not as stated in said bill for a pretended sum, and with the intent to cheat and defraud plaintiffs and to hinder and delay and defraud the creditors of said Coryell. The individual creditors of Coryell have not nor will not call on plaintiffs to interpose between them and this defendant. His creditors have ever been easy satisfied as they were few and, until he was connected with one of said plaintiffs his debts were very small indeed. Neither was the sale made to hinder, delay or defraud the creditors of the firm or any body else but in good faith for the purpose and with intent as before stated.

This defendant further states it is true he held a bond on Thompson for a deed to Lot 8 in Block 1, in Lully which he sold to Amy Coryell & bought it back again. Three other Lots to wit No 11812 in Block one and Lot 8 in Block two. This defendant sold to Amy Coryell, for which, and the $70 which he paid Benhayner he took her note for $400 The sale was bona fide on my part and as I believe on her part without any design or intention other than to obtain property fairly which she expected to increase in value. as to the charge that this defendant is insolvent he cannot dispute

it but by way of excuse he would urge that until he was enlightened by the plausable but fallacious arguments and ruined by the reckless and faithless dealings of the plaintiff Harper he was entirely solvent and contented with the business of his profession

This defendant further answering says it is true that said Plaintiff Harper called on him and requested or rather required him but in a manner so unbecoming and harsh as to forbid any friendly intercourse to have a trustee appointed to take posession of all the means of the firm and this defendant at first refused so to do hoping that by such refusal I could induce the others, Plaintiffs, to meet their portion what we would be in arrears with our creditors well knowing that said Edmund had the means to do so if he would. but on finding that I could not do so I determined to do all I could on my part towards seeing our creditors, and therefore without suit or compulsion of any kind voluntarily placed all the property the property and means I could procure in the hands of a trustee in order that the same might be distributed proportionately to our creditors for this purpose I purchased from George Forest the house and lot aforesaid at an advance of ten per cent. that being the price he informed me he had offered to sell the same to the said Edmund. I also bought of him the books and accounts

14 and upon representing to my Mother the said Amy Coryell that I could dispose of the Lot 3 in Block 1 more advantagously to myself & creditors she relinquishes title to me and I cancelled her obligations for the same, as to the several allegation in said plaintiffs petition of fraud between the said Amy Coryell and this defendant and between the said George Forrest and this defendant he answering says they are without even a vestige of truth. They did not nor could not know aught of my intention beyond what was expressed and from the attending circumstances, none of which, to those who really knew them, would indicate fraud, but a laudible desire on my part to do what I then said I was trying to do, that is to save such portion of the property as then could be saved from him who, as before stated, in violation of our agreement, and positive instructions had purchased the property a stock of goods upon terms with which we could not fully comply even with his assistance, and which became utterly impossible after he had withdrawn from the business all the means, amounting to near $3000,00 which could be raised, by forcing sales at wholesale prices and by borrowing secretly on the credit of the firm a large sum of money which we were called upon to meet at the very time when our eastern debts were pressing upon us and our credit, if not hopelessly ruined

at least greatly impaired

This defendant in conclusion would say in order that the condition in which the Plaintiffs and this defendant stand to each other with regard to the pecuniary affairs of the concern, and in answer to the general charges of fraud upon them that the whole amount of Money in the hands of said Edmund for the purpose of purchasing goods for the copartnership was $6,000.00
The whole amount of goods purchased was 15.577.00
Difference, would show what our debt should be. 9,577,00
Take this sum from our real indebtedness of 12,980,00
shows a balance in hands of Harper of 3,381,00
To this balance add the amount he Harper received from Cummings & Kept to himself 1,000
The amount received from Vanvoast of ,500
the amount received from Seaman 2 00
that borrowed of Ben Harper 1 70
the amount of his Edmunds account 1 65
and the sum borrowed of Slick 4 00
and it makes an aggregate sum of $5,816
received by him and appropriated to his own individual purposes. To the whole sum received and appropriated by Harper add the amount which the other partner the said Broughton received and appropriated to his own use 4037,23
and we have the sum of 9,853,23
of an aggregate received by plaintiffs of which they have neither paid nor seemed nor even professed a willingness either to pay or to secure a dollar. Now from the whole amount of goods purchased $15,577

15 Take the amount received & kept by plaintiffs 9858
and you have the whole amount left in the
hands of this defend & which is 5.746

of this sum he has paid B Harper 170.00
and on another account as before stated 102.00
To A L Richard for insurance 71.00
about twenty dollars to S Stuart 20.00
To Sheriff for Liscence about 60.00
and for clerks hire and fuel about 150.00
add also several small firm debts about 40.00
and loss sustained by damages as
injury to Cummins on sale to him 475.00
avoided by arbitration 475.00
add 1088.00
add to this the houses conveyed to trustee 4500
and the amount supposed to be on book 1000
6588

John R Coryell a defendant makes oath
& says he believes the forgoing answer and
the matters therein as stated are true
Subscribed & sworn to } John R Coryell
before May 22d 1850
J G Blair Clerk

Riplication
Dryden & Redd
for Coryell

The answer of George Forrest one of
the denfendants is in the words and
figures following to wit:

Robert Croughton & Edmund Harper } Plffs
vs
John R Coryell, George Forrest & Amy Coryell } Defts

In the Circuit Court of Lewis County State of Missouri May Term AD 1850 Petition

The seperate answer of George Forrest to the Petition of Edmund Harper and Robert Croughton above named or to so much thereof as this Defendant is advised is necessary for him to answer unto answering says - that as to the formation of the Partnership aforesaid as set forth in the Petition of the Plffs - the mode and manner in which its business was conducted the terms of the association &c &c this Deft of his own knowledge knows nothing - Nor has this defendant within himself any knowledge respecting the manner in which the several Partners as between themselves transacted the business of the Firm - but this Deft is informed and believes that the Deft John R Coryell in his various transactions respecting said firm by him performed was done with the fair and honest purpose - so to use and employ the goods & effects of said Firm as to pay the greatest amount of the indebtness of said Firm and release his personal liability in the greatest degree brot on him by the Plff Harper by the purchase of the said goods - It is true that this Deft Purchased from said John R Coryell three certain promissory notes which were executed by

16 one Ben Harper to said Boyell as this Deft is informed and believes in part consideration for the purchase of a portion of the goods of said firm, One Note for the Sum of 550 Dollars bearing date on the 14th day of January 1850 payable one day after date on which then was paid previous to the purchase 200 00/100 Dollars – One dated on the same day for the Sum of 300 55/100 Dollars payable one year after date and one other note bearing date on the 8th day of January 1850 for the Sum of 79 12/100 Dollars

This Deft also admits that he purchased from said John R Boyell the Lot No 8 in Block numbered one in the Town of Tully No together with the three other notes described in said Petition as having been executed by Samuel A Bowen at the price of 200 00/100 Dollars – He also purchased the Books of accounts belonging to said firm. that the above named notes were all ever purchased by this Deft from Dft John R Boyell and as to the note in petition for 125 Dollars Knows nothing. These several purchases were made by this Deft from said John R Boyell but not as charged in Plff Petition fraudulently, by combining & confederating with said Deft Jno R Boyell to defraud &c but on the Contrary honestly fairly and in good faith without any knowledge then or now. said Boyell either in the Sale of said goods to Ben Harper or the Sale of the notes and

property aforesaid to this deft intended any
fraud upon his creditors Partners or
any other person and without any
combination confederation or purpose on the part
of this deft to defraud cheat wrong or injure
any one especially the Pltffs. and further
without any knowledge of any intention
or wish on the part of said John R to
defraud his creditors or partners and with-
out any wish or purpose on part of this
deft to aid him in in so doing if he had
so intended. And this deft answering
further saith that the purchase by him
of said Notes and the other property was
made in good faith and for a good and
valid consideration and hopes and beli-
eves that by the aid of this honorable
court acting under the laws of the
land he will be protected in the peace-
able possession and undisturbed en-
oyment of it against the illegal claims
of all especially of those who seek by a
lavish charge of fraud against others to
divert the attention of the court and others
from their own glaring departures from
the paths of equity justice & fair dealing

On the evening of the day on which the
sale of the goods of said Simm by said
John R was made to said Ben Harper
A friend and neighbor of this deft (Mr
Leo Patten) sent for this deft and proposed
to him deft to unite with him in pur-
chasing from said John R the certain
notes of which the above described were

17 part each providing and furnishing
one half the money to which this Deft
assented— Said Pattee being at the time
about to leave home for a week on
indispensible business as he informed
Deft he Deft was to remain and effect
the purchase above mentioned— Therefore
it was that this Deft purchased said notes
on the return of Pattee this Deft informed
him what he had done in his absence that he had purchased the notes
&c and offered to share the purchase with
him agreeably to the above arrangement
but in the mean time Pliff Edmund
had returned to Tully and by loud and
repeated threats against Deft Boyell had
succeeded in arousing suspicions & excitement as to the sale of said goods in
so far that said Pattee refused to comply
with the terms agreed upon as above
stated— Such were the circumstances
tending to induce the said purchase &
such the manner and intention of it
Shortly after the purchase of said Lot
No 8 this Deft met with Pliff Edmund
in the Town of Tully and had a conversation with him respecting the purchase
of the Lot No 8 wherein said Pliff Edmund
reflected upon Deft Boyell charging & complaining that said Lot 8 had been
sold to this Deft at a ruinous sacrifice
&c and this Deft did then and there tender
to him the said Lot No 8 at the same

price with ten per cent advance added at which Defts had obtained it from said John R and through said Edmund as Defts is informed & believes, had with him a large sum of money he refused to purchase- said Lot No 8 at said price Soon after this conversation with Pltff Edmund the Deft John R came to this Deft and informed him that it was and always had been his desire to secure the creditors of the firm in the payment of their dues and that he wished to purchase back the said Lot No 8 and transfer it to some one in trust for that object that the other Partners said Pltffs desired him to do so and it met his own wishes This Deft therefore sold & conveyed the said Lot No 8 as requested for the consideration paid to him of 2200 00 Dollars about this time this Deft finding that many of the Debtors on the books of said firm were preparing to leave for California and fearing a protracted litigation respecting the books and accounts above mentioned and consequent trouble & loss and fearing that Pltffs were dissatisfied with both Deft John R and himself on account of their purchase he agreed with said John R to sell them back at the price paid for them and did so- This Deft admits that this was done in a great degree through the promptings of a disposition to accommodate (as well as the reasons above stated) a disposition at which

18 Plffs are fond to swear though perhaps very little understood by either of them This Deft denies all fraud collusion combination and confederation with which he stands charged in Plffs said Petition - and now having fully answered he prays that he be hence dismissed without prejudice and with his reasonable costs herein and hereby so unreasonbly & unjustly incurred

G W Forrest

State of Missouri }
Lewis County Set } On this 22nd day of May 1850 before me James G Blair clerk of the circuit court of said county of Lewis personally came George Forrest and being first duly sworn on his oath states that the facts as set forth in the foregoing answer are true

G W Forrest

subscribed & sworn to before me clerk as aforesaid on the day above written

J G Blair Clerk

Harper & Croughton }
vs }
Coryell, Forrest & Coryell }

Replication

Dryden & Redd
for Compt

The answer of Amy Coryell one of the defendants is in the words and figures following to wit

Edmund Harper &
Robert Croughton Plff
Against
John R Coryell,
George N Forrest,
& Amy Coryell Defts

In the Circuit
Court of Lewis
County

The answer of Amy Coryell one of said defendants to the petition of said plaintiffs filed in the Lewis Circuit Court. This defendant for answer to the petition of said plaintiffs says that she knows nothing of the arrangements made between Croughton Harper and Coryell for the purchase of the goods, and that she knew nothing of the motives which caused him (Coryell) to sell and that he had never stated to her his reasons for so doing, and that she had never believed that he had done so with any fraudulent intent towards his partners or his creditors, and that there never was and never had been any combination between herself and Coryell for the purpose of defrauding any person and that she never purchased any property of John R Coryell with fraudulent intent or purpose on her part or the knowledge or belief of any such intent or purpose on the part of J R Coryell. That she purchased the Thompson property in good faith and because she believed it would be, to her personal interest to do so thinking the property itself by its rents and the effects of a farm which she expected

19 to sell in a short time would enable her
to meet her obligations, but at the solici-
tation of John R Boyell and thinking
him in pecuniary trouble with his
partners she relinquished her title and
he cancelled her obligation for the purchase
money, as to three lots bought of John R
Boyell which he was to release and did
redeem from Ben Harper for them and
for her account in Store of Ben Harper
which Boyell settled she paid him
four hundred dollars, this property
she had wished to buy of him previous
to and ever after her coming to Tully
for a residence, she owning none
in the town and expecting to live
there but up to the time of the purch-
ase Boyell had refused to sell it at
which time she bought it in good
faith without any fraudulent intent
of her own as charged by plaintiffs
or the belief of any such intent on
the part of John R Boyell farther
than this Amy Boyell knows nothing
of the matter set forth by plaintiffs
of the injunctions, the above answer
being a full statement of her whole
relation with it, any other charges
contained in it are without truth

Personally appeared before the unde-
signed an acting Justice of the peace
within and for Lewis County and State

28 2

of Missouri Amy Coryell and says upon oath that the above instrument of writing set forth is just and true and further sayth not

Amy Coryell

Sworn to and subscribed before me this the 20th day of May AD 1830

Wesley West
Justice of the Peace

Replication
Dryden & Redd
for Coryell

And afterwards, to wit at the place aforesaid and on the day and year aforesaid the following proceedings were had to wit

Robert Croughton &
Edmund Harper Plffs
vs
John R Coryell George
W Forest & Amy
Coryell Defts

Injunction

Now at this day comes said said plaintiffs by their attorneys and file their Replication to said defendants answers herein, and thereupon said defendant George W Forest by his attorney files his Motion to dissolve the Injunction herein against him

Which said Motion is in the words and figures following to wit

20 Edmund Harper & Robert Croughton plffs } Motion to dissolve Injunction
vs
John R Coryell George Forest & Amy Coryell Defts } May Term 1858

And the said deft George Forest comes & moves the Court to dissolve the injunction issued herein against the said deft. Forest and release his effects tied up by said injunction - and the said deft assigns the following reasons why said injunction should be dissolved viz-
1st Because the obligations in the petition upon which said injunction was granted so far as this deft is concerned are false
2d - Because from the answer of said deft said injunction ought to be dissolved
3d Because it is unjust unequitable and illegal longer to continue said injunction

Ellison, Carnegy & Anderson
for deft

And afterwards to wit on the 24th day of May aforesaid at the term and place aforesaid the following proceedings were had to wit:

Edmund Harper & Robert Croughton Plffs } Injunction
vs
John R Coryell [redacted] and George W Forest Defts

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This day comes said parties by their respective attornies and submit the motions to dissolve the Injunction against said defendants to the Court, and evidence & arguument of Counsel being heard said motions are by the Court Sustained It is therefore Considered by the court that said Injunction against said defendants be and the same is dissolved. to the Judgment of the court in dissolving said Injunction said plaintiffs by their attorney excepts & files his Bill of Exceptions herein signed by the Judge hereof. thereupon this cause is Continued until next court

Which said Bill of exception is in the words and figures following to wit:

Harper & Broughton
vs
Coryell, Forest
and Mrs Coryell

Be it remembered that on this day the above cause came on to be heard on the Motion of the defendant Forest to dissolve the Injunction on the Bill answer and Evidence and thereupon said Forest in support of his Motion introduced Geo W Tallee who testified that witness was in the Town of Tully that the defendant Dr Coryell told witness that he had sold his Stock of Goods to Ben Harper and that he expected to

21 Get Harper's note for $3000,00 secured by
Mortgage on the Pork House and asked
witness if he witness would not share the
note witness replied that he would at a
discount of 20 per cent Boyell wanted
to know if witness would not purchase
at a less discount witness and Boyell
agreed to see each other again upon the
subject witness same evening sent for Mr
Honest to come to his house, told him
all that Passed between witness and Boy-
ell and proposed to Honest to join witness
in making the purchase, witness was com-
pelled to be absent on Business and it
was agreed that Honest should make the
Purchase on joint account, witness requ-
sted Honest to consult A. M. Woodyard a
lawyer of Sully before he made any offer
as to the title to the Pork House and the
notes* and witness further directed Honest
to make the purchase but not to close the
trade until I returned as I was advised
of a difficulty* when witness returned he
found that Honest had purchased the
notes & accounts - alluded to in the answer
of said Honest. witness on going to Sully
he found that Edmund Harper was
complaining & makeing threats and
concluding that there would be a difficulty
he declined joining Honest in the pur-
chase - Honest had bought them about
a week before this. the above being all
the evidence in the cause the court rendered

Judgment sustaining the defendants Motion & dissolving said Injunction, to which opinion of the court pllffs Excepts — and ask that this their Bill of Exceptions may be seen Signed Sealed and made a part of the record which is Done accordingly

A Reese Judge Pro
4th Jud. cit Mo

As there is a dispute as to whether Pattee used the words enclosed in Brackets on the margin of the 1st page it is agreed that Judge Reese shall at any time convenient to him Examine Mr Pattee the witness and and Make such change in the words or strike out that part of the Bill as he may consider right

Note — The words referred to are enclosed in brackets above and noted with asterisk at beginning and closing

Dryden & Reed for Compt

And afterwards to wit at a Circuit Court held at the place aforesaid on the 25th day of October AD 1850 (it being the October Term of Said Court) the following proceedings were had to wit

Robert Croughton & Edmund Harper Pllff } Injunction
vs
John R Coryell & Others Deft }

Now at this day comes said plaintiffs by their attorney and file their motion for leave to introduce new parties to this suit, which is by

22 the court sustained, thereupon said plaintiffs file their amended Petition herein & on motion It is ordered that the clerk hereof Issue an alias writ against the defendants therein returnable to next court & this cause is continued

Which said amended Petition is in the words & figures following to wit

Robert Cronghton Humphrey M Woodyard admr: of the Estate of Edmund Harper deed - Daniel Haddock Jr. Ward B Hazeltine, Charles D Reed, Stephen Kimball, and Harzen Haddock merchants and copartners in trade in the name of "Haddock, Haseltine and Reed." - William H Bacon and Charles Hallowell, merchants and copartners in trade in the name and firm of "Bacon & Hallowell." John Liter, Richard Price and Joseph Price merchants and copartners in trade in the name and firm of "Ster Price & Co" - John H Collins, George P Russell and William Schott, merchants and copartners in trade doing business in the name and firm of "Collins, Russell, & Schott" Thomas C Rockhill and Henry F Goin, merchants and copartners in trade in the name and firm of "Rockhill & Co" - John M Atwood, John P White and John Sparhawk merchants and copartners in trade

Plaintiffs

Circuit Court 1850

in the name and firm of "Atwood & Co" Richard B Brinton and Robert F Sapsley merchants & copartners in trade in the name and firm of "Richard B Brinton & Co" - George H Martin and Newberry A Smith merchants and copartners in trade in the name and firm of "Martin & Smith" - Edward T Mott, Samuel Schober, Charles Haverstick & William Ryan merchants and copartners in trade in the name and firm of "Mott Schober & Co" - "J & B Orne & Co" - "Knorr & Fuller" - E & J Tams" Edwin M Sellers and T D Tillinghast.

Civil action. In the Swiss October Term

against

John R Coryell, George Forrest, Amy Coryell and Ben Harper } Defts

Plaintiffs by way of amendment and supplement to the original petition filed in this case by Robert Croughton & Edmund Harper, state that the merchandize charged in the original petition to have been purchased by the late firm of "Croughton, Coryell & Co" in Philadelphia in the fall of the year 1847 were purchased from plaintiffs "Haddock Haseltine & Reed" - "Bacon & Hallowell" - "Siter Price & Co" - "Collins, Russell & Schott" - Rockhill & Co" - "Atwood & Co" - "Richard B Brinton & Co" - "Martin & Smith" "Mott, Schober & Co" "J & B Orne & Co" - Knorr & Fuller" "E & J Tams" - Edwin M Sellers and T D Tillinghast who are yet the creditors of the said late firm of "Croughton Coryell & Co" on

23 account of said purchases- to about the sum of twelve thousand Dollars, independant of interest that all of the Merchandize charged in said original petition to have been purchased by said firm in Philadelphia were purchased from the plaintiffs who are named above as creditors- that said creditors have a preference over the individual creditors if any of the members of the late firm, in the payment of their debts out of the assets of said late firm. Plaintiffs also state that the defendant Ben Harper at the time of the transfer of the Stock of goods by the defendant John R Conyell to him as charged in the original petition was fully Cognizant of the existence of the firm of Croughton Conyell & Co. and of the intent and purpose of the said Conyell in making said transfer- and of the fact that said goods had been purchased on credit and were not paid for at the time of said transfer-

Plaintiffs therefore pray as they prayed in the original petition herein and also pray that said Ben Harper be adjudged to account to plaintiffs and pay for the said goods so by him received from the said John R Conyell or that he deliver up to such receiver as may be appointed by the court the goods themselves in Specie- and that the assets of the firm be applied to the payment first of the creditors aforesaid of said firm and

if anything remains thereafter that the same be divided among the partners according to their ~~first~~ rights

Snyder & Redd
attorneys for Plffs

I John D S Snyder attorney for the plaintiffs make oath and say that I believe the above amended and supplemental petition and the matters as stated are true

John D. S. Snyder

Sworn to & Subscribed before me the undersigned clerk of the Lewis Circuit Court this 25th day of Oct. 1850

J. G. Blair Clerk

Amy Coryell denies the allegations made in the foregoing amended petition

Anderson
for deft

And afterwards to wit on the 28th day of October aforesaid a writ Issued in the words and figures following to wit

State of Missouri }
County of Lewis ss } The State of Missouri

To the Sheriff of Lewis County Greeting
We command you to Summon
John R Coryell, George W Forest,
Amy Coryell and Ben Harper that
they be and appear in our Circuit Court

24 at the Court House in the Town of Monticello within & for said County of Lewis on the third Monday in May next, then & there before the Judge of our said Court to answer the Original and Supplemental petition of Robert Croughton & others filed in said Court against them of which the annexed foregoing writing are true Copies & this you shall in no wise omit & have you then & there this writ

Witness J. G. Blair Clerk of our said Court & the Seal thereof Done at office in Monticello October 28th 1850

J. G. Blair Clerk

On which said writ the Sheriff of Lewis County aforesaid made the following return, to wit

I executed the within writ & declaration by reading the same to Benj Harper and by delivering a copy of both writ & declaration to said Harper on the 5th day of March 1851 and by reading the same to Amy Coyell & George Forrest on the 16th day of April 1851

J. A. Richardson Sheriff
By W. L. Richardson

I executed the within writ & declaration by reading the same to John R Coyell

on the 10th day of November 1850
J A Richardson Clk

And afterwards. To wit at a Circuit Court continued and held at the place aforesaid on the 22d day of October 1851 the following proceedings were had to wit:

Robert Croughton Plff
vs
John R Coyell & others Defts } Injunction

Now comes Ben Harper & files his answer herein

Which said answer of Harper was afterwards withdrawn by agreement see page 24 of this Transcript (below)

And afterwards to wit. at a circuit court continued and held at the place aforesaid on the 20th day of May AD 1852 the following proceedings were had to wit

Robert Croughton & others
vs
John R Coyell & others } Injunction

The parties appear by their attorneys & on motion of defendant Ben Harper & consent of plaintiffs leave is given him to withdraw his answer herein and on Motion of plaintiffs this cause is discontinued as to said Ben Harper, It is therefore considered

28 by the court that said Harper recover against said plaintiffs his costs & charges herein expended & that he have his execution therefor. Thereupon this cause is heard by the court upon the Petition answers, exhibits & evidence herein, whereupon the court doth take the same under advisement until Morning

And afterwards to wit: on the 21st day of May aforesaid at the place aforesaid the following proceedings were had to wit

Robert Croughton & others Plffs
vs
John R. Coyell & others Defts } Injunction &c.

Now comes Plaintiffs by their attorney who suggests the decease of Edmund Harper one of Plaintiffs herein, thereupon comes A M Woody said the administrator of said deceased and moves the court to revive this cause in his name. It is therefore considered by the court that this cause be revived in the name of said Administrator, whereupon said administrator enters his appearance to this suit all of which is done by consent of parties, and the court having had this cause under advisement since yesterday, doth find for the said defendants. It is therefore considered by the court that the said plaintiffs cause of action be dismissed and that they have and take nothing of said defendants by their writ aforesaid, and that said defendants go

hence without day and recover against said plaintiffs their costs and charges herein expended & have their execution therefor.
Thereupon said plaintiff files and submits to the court their Motion for a new trial which is by the court overruled-to all of which said plaintiffs except: and file their Bill of exceptions herein.
(See answer of Forest to amended petition Page 30)
Which said Bill of exceptions is in the words and figures following to wit:

Robert Croughton and others ——— Plaintiffs
against
John R Coryell
Amy Coryell and
George W Forest ——— Defts

In the Circuit Court of Lewis County. May Term 1852

Be it remembered that at this May Term 1852 of the Lewis Circuit Court this cause came on to be tried before the Court without a Jury, on the petitions of Plffs and and answers of the said defendants- when the plaintiffs introduced George Pattee a Witness who testified that he knew Dr Coryell (deft) in January 1850- that said Coryell was selling goods in the Town of Tully in connexion with "Croughton Coryell & Co" the firm by common reputation consisted of Robert Croughton, defendant Dr Coryell and Edmund Harper, I know that Ben Harper purchased the stock of goods from Coryell early in January 1850- I was in the store of Croughton Coryell & Co when Coryell offered to sell me a

26 (note on Ben Harper for 2000 dolls payable in 12 months secured by mortgage on the pork house which as I understood he then had or was to get for the goods. He asked me what I would give for the note on Harper- also for a note on Bayne & Boulware for 1000 dolls and a note which he expected to get on Daniel Liggon for 500 dolls- I told him I would take them for 20 per cent discount off the face of the note- He said he thought he could do better with Mr Tate, but requested me to call the next day- the goods were then in the House- He either said he had sold or was about to sell them- I had previously on the same day been applied to by Ben Harper to lend him (Harper) 800 dolls to be used as I understood in the purchase of the goods- He said he had bought or was about to buy Coryells goods- I told him he could have the money if he would take a note (as cash) of 100 dollars which I held on Coryell- when I went home in the evening I sent for Mr Forrest the dept: told him of the affair and asked him if he would join me and go halves in the purchase- I think I told him all that occured between myself and Coryell in regard to the purchase- he agreed to join me I told him I was going away from home the next morning to be gone several days and that he (Mr Forrest) must attend to it- that he must not discount it at less than 20 per cent- Forrest said "no" We'll skin them if we can and make

26

something - I did not leave next morning as I expected but went to Lully to see Ben Harper and was in Lully till 4 or 5 oclock in the afternoon - the goods changed hands or were removed from the store of Broughton Coryell & Co to that of Harper while I was there - Broughton was not there at the time the goods were removed He had left that morning in company with Mr Hurer -

In the conversation the evening before with Mr Forest, I told him to make the trade but not to close it until my return I told him I was fearful there was something wrong - I told him to see Mr Woodyard (a lawyer) and see if the mortgage on the pork House was right - I cautioned him a good deal to see if everything was right - I am rather leary anyhow - I did not see Mr Forest again before I left - The firm of B. C. & Co had commenced business tolerably late the preceding fall - they were selling at wholesale and retail and I thought doing a good business - Forest and Coryell were intimate friends - Forest lived some 4 or 5 miles from Lully, and was there frequently from one to 3 times a week - and Coryell frequently at Forest - Forest was intimate with other men - and I have seen others there as well as Coryell

Cross examination by the defendants

I dont know of my own knowledge whether

27 Forrest bought the notes or not — the reason why I charged him not to close the contract until my return was that I thought there might be some swindling in regard to the goods - but I do not recollect that I told Forrest this was my reason. I did not become a part to the purchase of the notes - after my return I had an interview with Mr Forrest in regard to the purchase of the notes - Counsel for the defendants then asked the witness to state what was said between him and Mr Forrest in regard to the purchase to which question and to the answering of which the plaintiffs by their counsel objected - but which objection was overruled by the court and the witness allowed to answer said question - to the decision of the court in overruling said objection and in permitting said question to be answered the plaintiffs Excepted - the witness then said when I came home Forrest told me ~~what~~ he had done, and offered to let me into a share of the bargain - I refused because he said he had taken the notes at 10 per cent and I was unwilling to have them at that rate - they were not shaved deep enough

The defendants then introduced Dedrick Hunter a witness who testified I was clerk in the store Croughton, Coryell & Co up to the day the goods were sold and delivered to Ben Harper. C P Tate consulted me

and told me he intended to make Coryell an offer for the goods - Coryell also conversed with me and told me that Tate had made him an offer for the goods - the amt: of which (offer) I do not recollect but think it was 4500 dollars a part of which was in cash notes on persons whose names I do not recollect and the amt: of which notes I do not recollect - and that said cash notes were on persons who would pay on demand & were considered as good as cash. Coryell also told me at same time that Harper had made an offer - but I dont now recollect what Harpers offer was and he (Coryell) asked my advice which offer he had better accept. I advised him to accept Tates offer I said to him if he wished to protect the money Tates offer was the best, if not Harpers offer was best for by that he would get more for the goods. to the introduction of all which evidence touching the propositions of Tate and Harper and the conversations & consultations between witness and Tate and witness and Coryell. the plffs by their counsell objected - but their objection was by the court overruled and the testimony introduced to which decision and opinion of the court in overruling said objection and in admitting said testimony the plffs by their counsel except - witness then stated that Coryell had been talking to Tate and Harper on the subject of a sale of the goods for ten days before the sale to Harper - Dont know that any one except Tate, Ben Harper. Coryell and myself knew that

28 Coryell contemplated a sale of the goods. Edmund Harper had gone to St Louis as he said to purchase groceries to add to the stock - but the river had closed after he left. on the morning of the day the goods were transfered to Ben Harper. I left Lilly in company with Broughton for Monticello distant about 12 Miles - His business was to collect a debt at the latter place. due to the firm - I said nothing to Broughton about the contemplated sale of the goods - on getting to Monticello Broughton received a note from James A Richardson the Sheriff and friend of Broughton who happened to be at Lilly informing him of the sale to Harper and of the fact that he Broughton had hardly left the town before commencement was made in removing the goods - we went back and the goods were then nearly all in the store of Ben Harper. The Invoice was made out at the store of Ben Harper after the removal of the goods - the sale produced a considerable sensation in the community - I have been engaged a number of years in the business of Merchandizing - do not recollect an instance in which goods were invoiced after they went into possession of the vendee - It is usual to invoice them before they are delivered.

Defendants then introduced evidence to prove that Edmund Harper one of Pltfs purchased all the goods in the city of Pltfs That he had particular funds for that

47

purpose amounting to $6000.00 and of that sum he only paid out $2.618.57 That he afterwards took of the means of the firm in goods and money $2435.00 for none of which any account ever was rendered either to the firm or to the creditors

That Croughton the other partner had at Alexandria and had there $4.037.20 worth of goods, no part of which has ever been accounted for either to the firm or any of its creditors. That Coyell the other partner accounted for in paying debts and expenses and losses of the firm $1.088.00 and voluntarily conveyed to a trustee for the use of the creditors of the firm property at a nominal value of $45 00.00 together with the books of the firm supposed to be worth $1000.00

The foregoing being all the evidence introduced in the cause on the part of both plff and defendants. thereupon the plaintiffs asked the court to decide the Law to be as follows:
1st If it appear from the evidence that the notes admitted by Forest in his answer to have been received from John R Coyell were a part of the assets of the firm of Croughton Coyell & Co. and that the same were transfered by Coyell to Forest with intent on the part of Coyell to defraud his co-partners or creditors said transfer is void and vests no title in Forest in said effects provided it shall shall further appear from the evidence that at the time of said transfer said Forest had notice of the fraudulent

29 design of Coryell - or had such information of the same as would have put a man of ordinary prudence on enquiry -
2nd If it appear from the evidence that the said notes were transfered by Coryell to Forest with intent to hinder delay or defraud the creditors of said Coryell and that Forest accepted the transfer with notice of that intent - no title vested in Forest by reason of the transfer as against the plaintiffs - and the court should find a verdict for the plaintiffs
3d If it appear from the evidence that the lots 12 & 13 in Block 1 and Lot 3 in Block 2 in Tully were conveyed by Ben Harper to Amy Coryell and that the consideration of said conveyance was paid out of the effects of the firm of Croughton Coryell & co in that case the said Amy is but the trustee of the said firm and of the creditors of the firm - and said property ought to be decreed to the pffs - which 3d instruction above the court refused - to the opinion of the court in refusing to give said instruction - plaintiff Excepts. thereupon defendant prayed the court to give the following instruction.

That if the Lots 12 & 13 in Block 1 & Lot 3 in Block 2 in Tully were conveyed by Ben Harper to Amy Coryell in consideration of an indebtedness on the part of John Coryell to Amy Coryell & without any knowledge or information on the part of said

Amy Coryell how said Lots were paid for by John Coryell & without any knowledge or information of any fraud in said transaction and without any knowledge or information when the consideration paid by John Coryell to Harper came from or what the consideration was the said Amy Coryell is entitled to hold said lots against said plffs: which was given by the court the court rendered a verdict for defendants: thereupon plaintiffs filed their motion in the words & figures following. Plaintiffs by their Council appear and move the court to set aside verdict in the above entitled cause and grant a new trial of the issues thereon for the following reasons

1st the verdict is against the evidence
2nd the court erred in refusing to instruct as prayed for by plffs in their 3rd instruction
4th the court ought to have found a verdict for plffs against defts Forrest for the notes mentioned in Petition as having been sold to him by defts Coryell
5th the court erred in refusing to decree Amy Coryell to hold Lots 12 & 13 in Block K
and Lots 8 in Block K (conveyed to her by Ben Harper) in Lust for plffs
6th the court erred in admitting irrelevant & incompetent evidence offered by the defendants

which said motion was by the court overruled to which opinion of the court in overruling said motion the

30 plaintiffs by their council except and pray that this their Bill of exceptions may be seen signed sealed and made a part of the record which is done accordingly

A Reese Judge Seal
4th Jud^l Cir^t Mo

The amended and supplemental was filed and to which George W Forrest files his answer as follows to wit

Robert Croughton & others } In the Circuit Court
vs } of Lewis County
George Forrest & others } Missouri
May Term 1851

George Forrest for answer to the amendment & supplemented Petition filed herein says that he has no knowledge of the allegations or avenments made in said amended petition and calls for proof if said amended petition is designed to effect him in any way

George Forrest makes oath & says that he believes the foregoing answer is true

Subscribed & sworn to before me this 20 day of May 1851 } G W Forrest
J G Blair clerk

State of Missouri }
County of Lewis } I J G Blair
Clerk of the circuit court for said

County of [illegible] certify that the foregoing [illegible] of writing are correctly copied [illegible] the Records and files in my [illegible] as remains of record and file in the case therein set forth

Given under my [illegible] of said Court [illegible] office in Monticello August 12th AD 1852

J. G. Blair Clerk

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(16) 27

October Term 1852

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Robt. Croughton et al.
Plffs. in Err.
vs.

George Forrest et. al.
Depts. in Err.

Error to Lewis Cir. Ct.

Filed 4th October 1852
Wm. S. Glanville
Clerk.

Robert Crompton and others } Plffs. } Civil action in the Circuit Court in & for Lewis County Missouri

vs

John R. Coryell Anny Coryell & George W. Forrest } dfts

To Thomas L. Anderson, James Ellison and S. M. Blarney Esqrs. attorneys of Record for the above named defendants

Gentlemen

You will please take notice that the plaintiffs in the above cause have sued out of the office of the Clerk of the Supreme Court of the State of Missouri at St Louis, a writ of Error for the record in the above cause, returnable to the next October term of said Supreme Court, commencing on the 3rd Monday in October 1852 at the said City of St Louis, when and where you may attend if you think proper —

Dryden, Pratt & Reed
attorneys for Plffs

We accept service of the within notice
Sept. 25 1852

Thos L Anderson
S H B Carnegie
Jas Ellison

27

Croughton & others
No 3
Conyell & others

Notice

Filed 19 Oct. 1852

P Ellison $30
Commy to Bakin
& Conly $188 20
Note 16-20
Indicated

Robert Coughlon and others — } Plff
vs
John R Conyell and others — } dfts

In the Supreme Court Act: Term 1852.

The Plaintiffs by their attorneys come and say that in the Record and proceedings in this cause the Circuit Court committed manifest Error and the said Plff set down and assign the following Errors to wit,

1st The Court Erred in admitting all that part of the Evidence of George Patten and D Hanor to which the Plffs objected.

2nd The Court Erred in refusing to give the 3rd instruction asked by the Plffs.

3rd The Court Erred in not decreeing to the Plffs lots 12 & 13 in Block 1 and Lot 3 in B 2 in Fully to Plff

4th The Court Erred in not finding for the plffs the assets charged to be in the hands of defendant Forrest-

5th The Court Erred in not granting plffs a new trial on their motion therefor-

all which plffs are ready to verify wherefore they pray Judgt &c-

John D.S. Dryden
& Pratt & Redd-
attys for plff

27

Croughton & others
vs }
Coryell & others

assignment
of Errors. —

Filed 19 Oct. 1852
Wm L Glanville
Clerk

Robert Croughton and others pltffs

vs

John R. Coryell, Amy Coryell and George W. Forrest } defts

Statement of the case.—

This is a suit under the new practice commenced in the Lewis Circuit Court in February 1850 by Robert Croughton and Edmund Harper against the defendants, for the settlement of the accounts of the partnership of the firm of "Croughton Coryell & Co" composed of said Robert Croughton, Edmund Harper and John R. Coryell, and for a decree for certain partnership effects of said firm in the hands of the defendants Amy Coryell and George W. Forrest.—

The petition charges that the co partnership was formed in Sept: 1849.

That Croughton furnished 2800$ cash capital. Edmund Harper 2200$ and the defendant John R. Coryell 2600$.

That Harper at the instance of his copartners proceeded to the City of Philadelphia where he purchased for the firm a stock of goods the prime cost of which was about 16,000$. about 4000 Dollars of which was paid in Cash and the residue was on credit.

The goods on being brought to Missouri were divided into two Stocks- one Stock worth about 4000 Dollars was delivered to Robert Croughton to be opened and sold at Alexandria in Clark County Mo:- the remainder of the Stock worth about 12000 Dollars was delivered to the defendant Wm. R. Coryell to be opened and sold at Tully, Lewis County Missouri-

That after the opening of the Stock at Tully and prior to the 8th of January 1850 Coryell sold a large amount for cash and on credit, and that on the last named day there were accounts on the books of the firm against Customers amounting to about 2000 dollars. besides an account against Coryell for cash and merchandize withdrawn and used by him for his private purposes amounting to about 2000 Dollars.-

That Coryell on the 8th of January 1850 in the absence of his Partners and without their knowledge or Consent with intent to defraud as well his Partners as the Creditors of the firm sold and delivered the whole remnant of the Stock worth about 8000 Dollars to one Ben Harper for the sum of 7363 dollars and 68 cents and in payment for the same received

1st a Conveyance to him (Coryell) in his own name, from Ben Harper for Lot 8 in Block 1 in Tully Mo

at the sum of ——— $3775.00

2nd The assignment to him in his own name of 3 notes for 75$ each on S. A. Bowen at $225.00

3rd Cash ——— $1450.00

4th 1 note from Ben Harper payable to Coryell in his own name at one day after date for $550.00

5th 1 note from Ben to Coryell (in C.s own name likewise) payable 12 months after date for — $500.00

6th 1 note from Ben: to Coryell (in C.s own name likewise) payable one day after date for $123.00

7th The discharge of an individual debt due from Coryell to Ben Harper amounting to $309.00

8th The discharge of another individual debt of Coryell to Ben amounting to —— $56.46

9th The discharge of a debt from Mrs. Amy Coryell to Ben amounting to ——— $92.00

10th The discharge of a debt due to Ben from the firm amounting to $102.00

11th 1 other note from Ben to Coryell (in C.s own name) for $180.00

$1362.46

That Ben Harper immediately paid Coryell 200 dolls on the note for 550$ which was credited thereon. and that some payments were made on the 180 dollars note by which it was reduced to $125 for which Ben gave a new note and took in the original

and that Coryell immediately afsigned the note for 123 Dollars to one Sutton in satisfaction of a personal debt due from Coryell to Sutton-

That in a few days after the sale of the goods to Ben Harper, Coryell in order to place the afsets of the firm beyond the reach of his Copartners and the Creditors of the firm and with intent to defraud the Partners and Creditors, afsigned transferred and delivered to the defendant Forrest the books of the firm and the accounts thereon, all of the said notes given by Ben Harper (Except the one afsigned to Sutton)- the three notes on Bowan and also conveyed by deed to said Forrest the said lot 8 in Block 1 in Fully for the pretended price of 2000 dollars- the same lot which said Coryell had a few days before taken from Ben Harper at the sum of $3775.- that said Forrest accepted said Conveyance and said afsignment to afsist Coryell in his said fraud-

That at the time of the sale of the goods from Coryell to Ben Harper, Ben held a deed from John R. which was in the nature of a mortgage, for lots 12 and 13 in Block 1 and Lot 3 in Block 2 in Fully, to secure him said Ben in the payment of said debt of 309 Dolls due from said John R.- that upon satisfaction of

said debt out of the price of the goods as above states, Ben at the instance of John R. and for no other consideration conveyed said lots to Amy Coryell in order to cover the same up from the creditors of said John R.—

That said John R. held the bond of one Thompson for title to Lot 3 in B. 1 in Tully which immediately upon the sale of the goods he fraudulently assigned and transferred to his mother the said Amy— and that thus the whole of his Estate which could be reached by the process of the law was transferred—

That the other partners urged the defendant Coryell to place in the hands of a faithful receiver or trustee the assets of the firm in order that the debts might be paid and that the residue if any might be divided among the partners all which he at first refused

But

It is admitted he afterwards procured a reconveyance of Lot 8 in B. 1. from Forrest and a reassignment of the title bond for lot 3 in B. 1. from his mother, and conveyed the same to a trustee with power to sell for the benefit of the creditors— not however without first Extorting from Messrs Croughton & Harper the agreement that as among

the partners said lots should be considered as worth 6500 Dollars when it was well known they were not worth so much by 2000 Dollars

It is also charged that the deft. Forrest refused to deliver up or in any way secure to the plaintiffs, the books accounts and notes so assigned and transferred to him [not to be copied - within [ ] (see the petition from page 1 to 6 inclusive of the Record.-)]

On the 22nd of May 1850 the defendants answered the petition severally-

John R. Coryell

By his answer admits the main facts charged in the petition admits he sold the goods to Ben Harper on the terms charged in the petition without the knowledge or consent of his partners- but denies the fraudulent motive charged- offers as an excuse for his conduct that Edmund Harper had appropriated to himself a large amount of the capital stock and was endeavoring to get possession of still more of the assets of the firm intending fraudulently to convert the same to his use-

~~He also admits the transfer of all of the assets, and of his private estate to his co-defendants Amy Coryell and~~

He says [(lower half page 10 of Record)] "the
"sale was made to Ben Harper for the
"purpose of <u>securing our creditors</u>
"<u>from Entire loss</u> on account of their just
"Claims against us. and the mode of
"payment was adopted for two reasons.
"first because in that way a larger
"price was obtained that I could have
"got in cash, and by taking the title in
"my own name I intended to prevent
"the petitioner Harper from appropria-
"ting it as he already had other sales of
"goods to his own use and to avoid the
"danger of liens of his individual
"Creditors attaching.-

After detailing a long interview be-
tween Coryell & Ben purporting to have
occurred before the sale of the goods, in
the Course of which Ben is made to ex-
press the opinion that Edmund his
brother is a great knave, Coryell [(at
top half page 12 of Record)] says "I found
"that his (Bens) predictions were being
"verified and that he knew Edmund
"better than I did - I therefore took his
"advice and sold the Stock of goods for
"the best price I could get, and in the
"manner as <u>I then believed and still</u>
"<u>believe most conducive to the interest</u>
"<u>of our Creditors</u>".-

He also admits the transfer of all of
the assets and of his private Estate
Charged, to his Co defendants Anny Coryell
and George W. Forrest, but denies the motive-

imputes to him.— [See his answer from page 8 to 15 of the Record inclusive]

George W. Forrest

Expressly admits the transfer to him of the assets charged in the petition to have been transferred to him by Coryell except the note of 125 dollars. but admits he received a note for 79 dollars corresponding in date, time of payment and parties with the 125 Dollar note. denies that his motive was fraudulent. and gives it as his opinion "that "the defendant John R. Coryell in his "various transactions respecting said "firm by him performed was done "with the fair and honest purpose "so to use and employ the goods and "effects of said firm as to pay the "greatest amount of the indebtedness "of said firm and release his personal "liability in the greatest degree, "brought on him by the plaintiff "Harper by the purchase of said goods." [(See lower part page 15 of record)—]

He insists he purchased the notes and accounts for a valid consideration but does not state what the consideration was.—

Denies any knowledge of the fraudulent motives of Coryell, but does not deny his information, nor does he deny the facts from which the fraudulent motive is inferred.-

He attempts to justify Coryells conduct on the ground of the alledged bad faith of Edmund Harper.-

The material allegations in the petition not expressly admitted by the answer are admitted by omitting to deny them.-
[(See his ans: from p: 15 to 18 of the Record.)]

Amy Coryell.

Does not deny the allegation that Ben Harper held a deed from John R. Coryell in the nature of a mortgage on lots 12 and 13 in B. 1 and Lot 3 in B. 2 in Sully to secure a debt of $309.. owing by John R. and that said debt was paid out of the partnership effects and that Ben for that and no other consideration at the instance of John R. conveyed said lots to her the said Amy; but says
"as to three lots bought of John R.
"Coryell which he was to release and
"did ~~redeem~~ redeem from Ben Harper
"for their and for her account in store

"of Ben Harper which Coryell settled
"She paid him 400 dollars." says She
bought in good faith - [See her ans: on
last of page 18 & first of 19 of Record. -]

At the October term 1850 the Plffs
by leave of the Court filed an amend
ed and supplemental petition, by
which Humphrey M. Woody and
admr: of said Edmund Harper (who in
the meantime had died) as well as the
creditors of the firm of Croughton
Coryell & Co: are made plaintiffs.
[See the amended pet: from last half p: 21. to
first half 23 of Record.) -]

The defendants were summoned to
answer the amended petition) [(see page
24 of Record)] Anny Coryell & George W.
Forrest answered but John R. Coryell
did not - [See Anny's ans: p: 23. and
Forrests p: 30 of Record. -]

On the trial of the cause at the May
Term 1852 before the Judge sitting as a
Jury the Plffs introduced George Pattee
a witness who testified
"That he knew Dr: Coryell (defl) in
January 1850 - that Coryell was then
selling goods in the Town of Tully in
connexion with "Croughton Coryell & Co:
the firm by common reputation

consisted of Robert Croughton, John R. Coryell and Edmund Harper - I know that Ben Harper purchased the stock of goods early in January 1850 - I was in the store of Croughton, Coryell & Co when Coryell offered to sell me a note on Ben Harper for 2000 Dolls. payable in 12 months secured by mortgage on the Pork House, which as I understood he then had or was to get for the goods - He asked me what I would give for the note on Harper - also for a note on Bayne and Boulware for 1000$ and one he expected to get on Daniel Liggon for 500$ - I told him I would take them for 20 pr. ct. discount off the face of them - he said he thought he could do better with Mr. Tate but requested me to call the next day - the goods were then in the House - He either said he had sold or was about to sell them - I had previously on the same day been applied to by Ben Harper to lend him (Ben) $800 to be used as I understood in the purchase of the goods - He said he had bought or was about to buy Coryells goods - I told him he could have the money if he would take a note as cash of 1000$ which I held on Coryell - When I went home in the evening I sent for Mr. Forrest the defendant - told him of the offer and asked him if he

would join me and go halvers in the purchase- I think I told him all that occurred between myself and Coryell in regard to the purchase- he agreed to join me- I told him I was going away from home the next morning to be gone several days and that he (Forrest) must attend to it- that he must not discount it at less than 20 per cent.- Forrest said "no, we'll skin them if we can and make something". I did not leave next morning as I expected but went to Fully to see Ben Harper and was in Fully till 4 or 5 o'clock in the afternoon.- the goods changed hands or were removed from the store of Croughton, Coryell & Co. to that of Harper while I was there- Croughton was not there at the time the goods were removed- He had left that morning in company with Mr. Huner.

In the conversation the evening before with Mr. Forrest I told him to make the trade but not to close it until my return- I told him I was fearful there was something wrong- I told him to see Mr. Woodyard (a lawyer) and see if the mortgage on the Pork House was right- I cautioned him a good deal to see if every thing was right.- I am rather scary anyhow- I did not see Mr. Forrest again before I left-

The firm of C. C. & Co. had commenced

business tolerably late the preceding fall - they were selling at whole sale and retail and I thought doing a good business.-

Forrest and Coryell were intimate friends.- Forrest lived some 4 or 5 miles from Lully and was there frequently - from 1 to 3 times a week and Coryell frequently at Forrests - Forrest was intimate with other men and I have seen others there as well as Coryell.-

On Cross Examination Witness said - I dont know of my own knowledge whether Forrest bought the notes or not - the reason why I charged him not to close the contract until my return was that I thought there might be some swindling in regard to the goods - but I do not recollect that I told Forrest this was my reason - I did not become a partner to the purchase of the notes - after my return I had an interview with Mr. Forrest in regard to the purchase of the notes."-

The Counsel for the defendants then asked the witness to state what was said between him and Mr. Forrest in regard to the purchase - to which question and to the answering of the same the Plffs objected - their objection was overruled by the Court and the Plffs excepted - the witness then said - "When I came home Forrest

told me what he had done and offered to let me into a share of the bargain - I refused because he said he had taken the notes at 10 per cent and I was unwilling to have them at that rate. they were not shaved deep enough" -

The defendants then introduced Dedrick Hunsor who testified - "I was a clerk in the store of C. C. & Co up to the day the goods were sold and delivered to Ben Harper - C. B. Tate consulted me and told me he intended to make Coryell an offer for the goods - Coryell also consulted me and told me that Tate had made him an offer for the goods - the amt: of which offer I dont recollect but think it was $5000 a part of which was in cash notes on persons whose names I do not recollect and the amount of which notes I do not recollect - And that said cash notes were on persons who would pay on demand and were considered good as cash - Coryell also told me at same time that Harper had made an offer, but I dont recollect what Harpers offer was - and he (Coryell) asked my advice which offer he had better accept - I advised him to accept Tates offer - I said to him if he wished to pocket the money Tates offer was the best - if not Harpers offer was best for by that he would get more for the goods" - to the introduction

1 3

of all which evidence touching the propositions of Tate and Harper and the conversations and consultations between witness and Tate and witness and Coryell, the plffs by their Counsel objected and their objection was overruled by the Court and the evidence given and the plffs Excepted-

Witness then states that Coryell had been talking to Tate and Harper on the subject of a sale of the goods for ten days before the sale to Harper- Dont know that any one except Tate, Ben Harper, Coryell and myself knew that Coryell contemplated a sale of the goods- Edmund Harper had gone to St Louis as he said to purchase groceries to add to the stock- but the river had closed after he left-

On the morning of the day the goods were transferred to Ben Harper, I left Tully in company with Dr: Croughton for Monticello distant about 12 miles- His business was to collect a debt at the latter place due to the firm- I said nothing to Croughton about the contemplated sale of the goods- On getting to Monticello Croughton received a note from James A. Richardson the Sheriff and friend of Croughton informing him of the sale to Harper and of the fact that he (Croughton)

had hardly left the Town before Commencement was made in removing the goods - we went back and the goods were then nearly all in the store of Ben Harper - The invoice was made out at the store of Ben Harper after the removal of the goods - The Sale produced a Considerable sensation in the community - I have been engaged a number of years in the business of merchandizing - do not recollect an instance in which goods were invoiced after they went into the possession of the vendee - it is unusual to invoice them before they are delivered."

Defendants then introduced Evidence to prove that Ben: Harper one of the partners purchased all the goods in Philad.a - that he had partnership funds for that purpose amounting to 6000$ and of that sum he only paid out $2618.50 - that he afterwards took of the means of the firm in goods and money 2435$ for none of which any account ever was rendered either to the firm or the creditors -

That Croughton the other partner had at Alexandria $4037 worth of the goods no part of which has ever been accounted for either to the firm or any of its creditors -

That Coryell the other partner

accounted for in paying debts and expenses and losses of the firm $1088 and voluntarily conveyed to a trustee for the use of the creditors of the firm property at a nominal value of 4500 Dolls together with the book of the firm supposed to be worth $1000- this was all the Evidence-
[See Ev: from p 20: to 28 of record]

The Plffs then asked the Court to give the three following instructions, to wit,

1st If it appear from the Evidence that the notes admitted by Forrest in his answer to have been received from John R. Coryell were a part of the asets of the firm of Croughton Coryell & Co and that the same were transferred by Coryell to Forrest with intent on the part of Coryell to defraud his partners or creditors, said transfer is void and vests no title in Forrest in said asets provided it shall further appear from the Evidence that at the time of said transfer said Forrest had notice of the fraudulent design of Coryell or had such information of the same as would, (page) put a man of ordinary prudence on Enquiry-

2d If it appear from the evidence that the said notes were transferred by Coryell to Forrest with intent to hinder delay or defraud the creditors of said Coryell

and that Forrest accepted the transfer with notice of that intent no title vested in Forrest by reason of the transfer as against the Plaintiffs and the Court should find a verdict for the Plffs.

3rd If it appear from the evidence that the Lots 12 & 13 in B 1. and Lot 3 in B. 2. in Tully were conveyed by Ben Harper to Amy Coryell and that the consideration for said conveyance was paid out of the asets of the firm of C.C. & Co., in that case the said Amy is but the trustee of the said firm and of the creditors of the firm, and said property ought to be decreed to the Plaintiffs. — the first two of which instructions were given but the 3rd was was refused and the Plffs excepted. —

The Court then found a verdict for the defendants and dismissed Plffs action. —

The Plffs then filed a motion for a new trial assigning the following causes - to wit,

1st The verdict is against the Evidence
2nd The Court Erred in refusing to instruct as prayed for in Plffs 3rd instruction.
3rd The Court ought to have found a verdict for Plffs against Forrest for the notes mentioned in the petition

as having been transferred to him by dft: Coryell.—

4th The Court Erred in refusing to decree Amy Coryell to hold the Lots 12 & 13 in B 1. and 3 in 2 in trust for Plffs.

5th The Court erred in admitting irrelevant and incompetent evidence offered by dfts.—

which motion was overruled by the Court and the Plaintiffs Excepted and bring the case to this Court by writ of Error.

(Down to the Ryland)

The Counsel for the Plaintiffs rely upon the following points and authorities to reverse the Judgment of the Circuit Court.—

I That John R. Coryells design in the sale of the goods to Ben Harper and in the transfer of the proceeds to his codefendants Forrest and Amy Coryell, was fraudulent is apparent from the consideration

1st That the facts from which the inference of fraud must arise are not denied by the answer, but, are admitted as matter thereby.—

2nd If his purpose had been as he states in his answer, to secure the creditors of the firm from entire loss, his conduct

would have been consistant with that purpose- He would have paid to the creditors the $1650 cash he received from Ben Harper- in likemanner he would have paid the proceeds of the property assigned to Forrest and Amy Corzell (if in fact he ever received anything from either)- none of which however is it pretended he ever paid.- He would not have employed the partnership effects in payment of his individual debts as it is not denied he did- to wit, the debt of 123$ to Sutton- the debt of $309 and that of 56$ to Ben Harper- and the debt of his mother of 92$ to Ben Harper- Nor was it necessary to the accomplishment of his pretended object either that he should have taken the securities and conveyance in his own name or that after he had so taken the same he should have transferred the same to Forrest- the first impulse of a man actuated by fair motives would have been after the sale to place the securities and property in the hands of the creditors or in the hands of some one avowedly for their use- The excuse he offers for his conduct is a shallow pretence to cover up a transaction most glaringly fraudulent.—

II. If Coryells apignment of the notes, firm accounts and real Estate to Forrest was made with intent to defraud his creditors or partners. Forrest must have been cognizant of that intent or had such information as would have put a man of ordinary prudence on Enquiry as is apparent from what follows- and the Court should have found for the plaintiffs.

1st- He admits he knew the property apigned to him was the proceeds of the firm goods.-

2nd- If he knew this, then he was obliged to enquire why it was the title to the property was vested in Coryell alone and not in the firm- a circumstance too suspicious to escape the observation of the most heedless.-

3rd- The Evening before the delivery of the goods to Ben Harper, Patten informed him of the contemplated sale of the goods- and of the interview which he had had with Coryell- talked with him about the purchase of the notes which Coryell was to get for the goods- agreed to purchase them in Conjunction- and told him not

to close the purchase of the notes until he (Pattee) should return and as a reason for the delay, told him that he (Pattee) was fearful there was something wrong. and cautioned him a good deal to see that everything was right.—

4th. The sale of the goods produced considerable "sensation" in the community (See Hunor's Ev.) Forrest resided near Fully - was there every few days and could not help witnessing the sensation. He and Coryell were intimate friends in the constant habit of exchanging visits. —

II

III. The Circuit Court Erred in permitting Pattee to detail the Conversation between him and Forrest touching the terms upon which Forrest had purchased the notes. And in permitting Humor to give Evidence of the various Consultations and Conversations between him and Tate and him and Coryell - all said Evidence falling within the description res inter alios acta. 1st Stakie Ev: p 59-60-61.

IV. In support of his title to the notes Forrest relies upon the defence that he is an innocent purchaser for a valuable consideration paid. To sustain this defence the ~~must~~ burden of proving the payment of the consideration rests upon him. Excluding his own statement detailed by Pattee there is no Evidence on this point and his defence therefore fails.

V. The Circuit Court Erred in refusing to decree lots 12 & 13 in Block 1. and Lot 3 in B: 2 in Tully to Plaintiffs. and in refusing to instruct that

if said lots were paid for out of the assets of the firm and Ben Harper for that consideration conveyed the same to Amy Cor: zell, said Amy was but a trustee for the pleffs-

Lewin on Trusts & Trustees p: 168-9
2nd Story's Eq: Jurisp: Sections 1201-1207.-
4th Kent's Com: p 305 to 307. side-
Dyer vs Dyer 2 Cox R. 93.-
Oliver vs Platt 3 Howard U.S. Rep: 333-401

John D.S. Dryden
& Pratt & Redd attys
for pleffs in Error

Note- In case of reversal of the Judgment of the circuit Court the pleffs pray that the supreme Court may render such Judgment as the circuit Court ought to have rendered.
Dryden, Pratt & Redd

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Croughton & others
vs
Coryell & others

Pltffs Brief -

authorities referred to
1st Stenkie's Ev: -
Lewin on Trusts -
2nd Story's Eq: Juris:
4th Kents Com:
2 Cox Reps:
3 Howard U.S. Reps:

Statement filed 20 Oct. 1852
Wm. L. Glanville,
Clerk

Croughton Adm. vs Coryell & others

Copy Statement of the Case as made by Mr. Dryden - Make it part of my opinion thus "This is a statement made by -)

From this statement of the case it is clear, that the Court below committed error in finding for the defendants, and in dismissing the Action -

The answer of Coryell admits enough to authorise the Court to decree against him - He admits the facts charged in the petition, but then denies the fraudulent motives giving rise to the transactions - This is too flimsy an excuse to impose upon a Court -

Here is the fact of a member of the firm, formed in the fall of 1849 - Goods purchased and brought to this State, divided out among the partners, and Sales made; so as to create the belief, that the firm was doing a good business - All at once, in January 1850 the partners sells out the entire stock in his possession, without letting his after partner or partners know any thing about it; although one of them is on the morning of the day the sale is made in the Village in which the business was carried on - So sudden was this sale, that it created a considerable sensation in the Community - The partner thus selling, takes the notes payable to himself - receives the

money; then sells the notes and accounts to the defendant Forest and has conveyances of real Estate made to his mother the defendant, in part of the consideration of these goods, thus sold:— These goods were hurried with an unprecedented haste into the store or possession of the purchaser; and then afterwards an invoice is made of them—

The facts also justify the belief, that the defendant Forest knew of this design of Coryell, before he purchased the notes and accounts—

The mother of defendant Amy Coryell should also be considered as standing in the attitude of a trustee so far as regards the real Estate conveyed to her by Harper in payment of the purchase made by him of Coryell for the Goods—

Why so suddenly cease to carry on this business, just begun a few months before?— In mean time too doing what was said to be a fair business—

In looking into the Answers, it seems that the defendant thought his partners were about to cheat and wrong their creditors in Philadelphia; and he would sell out and save them as far as he could— The plaintiffs think that the defendant Coryell was determined to cheat their creditors at Philadelphia and so they commenced this suit to prevent it— At all events the Creditors who had for

nished these men with the goods, were in a fair way to be defrauded out of their just debts.—

This whole transaction is full of fraud if we are to believe the parties to this action— The Courts should at once when such a case presents itself not hesitate to [illegible] it fraudulent and by their action remedy the evil as far as they have the power—

The judgment in this case of the Court below, finding for the defendants and dismissing the plaintiff's action is erroneous: and must be reversed— and such being the opinion of the other judges the same is reversed and remanded for further proceedings

John F Ryland

Robt. Croughton et als.

vs

George Forrest et als.

Opinion

Ryland

Filed 18th December 1852
Wm. S. Glanville, Clerk.

R. Broughton & others
vs
Corryell, Forrest & others

In Sup. Court
Oct T. 1852

Defendants submit the following points in affirmance of the Judgment of the Circuit Court -

1st - The Judgment rendered in this cause is founded upon the evidence submitted, rather than upon any doubtful legal questions; and it is respectfully submitted that the Circuit Court, from better opportunity, is better prepared to determine all questions of fact, and the weight and sufficiency of the evidence, than this Court can possibly be; and the Circuit Court having found no fraud or notice of fraud to Defendants Forrest and Amy Corryell, the Judgment is properly rendered in their favor, and should not be disturbed.

2- The Supreme Court will consider only such alleged errors of the Circuit Court, in finding upon a submission to the Court - as that Court might have corrected on motion for review, and no such motion having been made in the Court below, the Judgment should be affirmed -

3rd.- The testimony of G. W. Pattee, as to Forrests acts and conversation was properly received, in as much as plaintiffs had attempted to excite suspicions, against Forrest by proving part of his acts and conversation; and it was certainly proper, to prove the whole relating to the same transaction.-

4th The proof of Tate's offer, and its publicity, rebuts the suspicion of fraud between Corryell and B. Harper, who is a Co-Defendant but in no event could it prejudice the plaintiffs.-

5th The Instructions given, sufficiently declare the Law of the Case, without any thing farther; and from those instructions it is manifest that the Circuit Court, did not find fraud on the part of Forrest, or Amy Corryell; or notice of fraud to either of them, and consequently standing in the position of innocent purchasers without notice, they should be protected.-

6th — From a full examination of all the facts in the case, it appears that John R. Cornell, is the only one of the three partners, who has shown any wish to secure the creditors of the firm — Edmund Draper had taken of the funds some $6.000.00, and R. Croughton some $4.000.00 (see answers & Evidence) — but John R. Cornell appropriates to the creditors about 5/6ths of what came to his hands, and while thus managing the effects to the best advantage, for the benefit of the creditors he sells and assigns to Forrest certain notes for a fair consideration — and also conveys to Amy Cornell the Lots for valuable consideration — paid — She having no notice of fraud, or even of the facts that the Lots were bought with the funds of the firm — And Forrest also not only without notice of fraud, but with every appearance of good faith — The plaintiffs failed to establish either

1. Fraud or.
2. Notice of fraud to Forrest & Amy Cornell, and the Judgment was therefore properly for Defts

Green, Glover & Campbell
for Defts in Error

R. Croughton & others
vs
Forrest & Conyell

Point