

1901 - 007
Nansemond Co (Suffolk) Chancery Causes: W. B. Ferguson & Co vs Elwood Manufacturing Co et al

E. E. Titus, Joyner, Gurn, Norfleet, McLenore, Beale, Ward,
Bradshaw, Ferguson, Read

Folder 1 of 3

W B Ferguson & Co
vs In Chancery
Elwood Manufacturing Co.

1900 March 14th Process issued returnable to march
rules third Monday

" " 19. Process returned executed on all
defendants. Bill filed and
decree nisi against said depts

" Apl 2, Decree nisi confirmed and
Cause set for hearing.

" " 1815 Amended Bill filed striking out
the parties defendant; John A Gum
Pres. & D K Fayner Secy and making
a new party Mrs Mallie E Gum.

" June 8th. Defts allowed 60 days to file answer
Answer of defendants Elwood
Manufacturing Co. John A Gum and
Jas L McLenore. Trustees.

" " 1915. Mrs Mallie E Gum failing to answer
the bill as to her is taken for confessed.
Defendants filed plea of Statute
limitations

" " 1915. Complainants file general
replication to answer of depts.
and demurs ^{to} and joins issue
on the special plea of depts.

W B Ferguson & Co
vs Chancery Notes
Elwood Mfg Co.

"A"

Whereas, Elwood Manufacturing Company in the conduct and management of its business, found it necessary and expedient to negotiate a loan, and Whereas, the same was negotiated with one, John A. Gumm, of the County of Nansemond, and the Note of the said Company executed therefor, and Whereas, in addition to the said sum of \$700. in cash loaned to the Company as aforesaid, the said Gumm has also furnished said Company with supplies and other moneys to the amount of \$202.⁷⁶ all of which the said Company is now anxious to secure the payment of to the said John A. Gumm; And Whereas, at a regularly constituted and legally conducted meeting of the stockholders of the said Elwood Manufacturing Company, a Corporation existing under the laws of the State of Virginia, with its chief Office at Elwood, in the County of Nansemond, held on the 1st. day of March, 1897, the following preamble

and resolutions were unanimously passed; Whereas, Elwood Manufacturing Company, in order to carry on its business in the past found itself under the necessity of having to borrow money and ask for credit for supplies and other things, and Whereas the said money and supplies to the extent of \$902. were furnished by its president John A. Gumm, and the said Company is now desirous of securing him the said John A. Gumm against loss by reason of the said advances: And Whereas, the said Company has at this time no other creditors, and is therefore vested with power and authority to make such conveyance as may seem to it expedient for the purpose of securing the debt aforesaid. Now Therefore be it Resolved: That the said Elwood Manufacturing Company, through its legally constituted Officer, be empowered and directed to cause

to made and duly signed and executed under the common seal of the said Corporation, a deed of Trust to J. L. McLenore, Trustee, conveying the entire property of the said Corporation, to secure the payment of the debt aforesaid due to John A. Gunn, with such conditions and stipulations as to him may seem just and reasonable, and to this end, D. K. Joyner, Secretary of the said Company is specially authorized and empowered to sign the corporate name to said deed and affix the seal of the said Corporation thereto, make due acknowledgment thereof.

Now Therefore This Deed made this 15th day of March 1897, by and between Elwood Manufacturing Company, a Corporation, as aforesaid, grantor and party of the first part, and J. L. McLenore, Trustee, of the town of Suffolk, Va. of the second part, Witnesseth; That for and in

consideration of the premises,
and in pursuance of the res-
olutions and preamble as a-
foresaid, the said party of the
first part does hereby grant
and convey with general war-
ranty, unto the said Trustee,
the following property, situated
at Elwood, Va., to-wit: The
entire plant of the said Cor-
poration, consisting of ma-
chinery of every description,
engines and boilers, belting,
piping, shafting, and all of
the property connected with
the said Plant and owned by
the said Corporation, also about
seven acres of land upon which
the buildings and other struc-
tures of the Company are
located, same being on the
South Side of the Atlantic &
Danville Ry. at said Elwood
Station.

In Trust, to secure the
payment of one Bond executed
by the said Elwood Manufac-
turing Co., payable to John A.

Gum, or order, twelve months after date for the principal sum of Seven Hundred Dollars, bearing date August 1st, 1895, and carrying interest from date, also to secure the payment of one other Bond executed by, and payable to, the identical party as the \$700. Note, which last note is dated Dec. first 1896, and payable on demand, and is for the principal sum of Two Hundred and Two & $\frac{76}{100}$ Dollars (\$202.76).

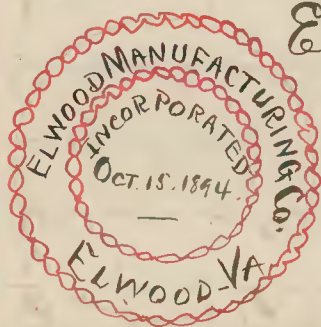
It is understood and agreed that should a sale be had by virtue of this deed, that it shall be after duly advertising same for 15 days by posters, in at least three public places in the County of Nansemond, and if it should be deemed expedient by the Trustee he may also publish the time, terms and place in a News Paper in the town of Suffolk, and for cash sufficient to defray the expenses of the Trust and to pay the debt

secured hereby, and the remainder upon such credit installments as to the said grantor shall seem best, and in the event of grantor failing to specify the terms, then as the Trustee shall think best, and should a sale be had the Trustee is to receive the usual commissions of 5% on sales.

In witness whereof the said Corporation has caused this deed to be signed by its Secretary, affixing the name of the said Corporation thereto, and to affix the seal of the said Corporation to the same this 15th day of March 1897.

Elwood Manufacturing Company

By D. K. Forner
Secretary



State of Virginia,
County of Nansemond, to-wit:-

I, Lee Britt, a Commissioner
in Chancery of the Circuit Court

for the County of Nansemond, in the State of Virginia, do certify that W. K. Joyner Secretary of the Elwood Manufacturing Company, whose name is signed to the writing within, bearing date March 15th. 1897, has acknowledged the same before me in my County aforesaid, and I the said Lee Britt Commissioner in Chancery as aforesaid, do hereby further certify that the said W. K. Joyner Secretary of the Elwood Manufacturing Company, of the County of Nansemond, aforesaid, has this day acknowledged before me in my County aforesaid, that the name affixed to the said deed, is the true name of the said Corporation, that the seal attached to the said writing is the corporate seal of the said Corporation, and that the said writing is the act and deed of the said corporation.

Given under my hand

this 30th. day of March 1897.

Lee Britt

Commissioner in Chancery

In the Clerk's Office of Nansemond
County Court the 28th day of
October 1897 :

This Deed was presented with
the certificate annexed and
admitted to record.

Teste:

A. P. Homer Deputy
for R. R. Smith Clerk.

A Copy, Teste: R R Smith Clerk.

A Copy of
Deed of Trust
Edwood Mfg. Co.
To James R.

McLemore Trustee
for John A. Gunn

D. 13. 39. Pg. 691.

"B"

Whereas, at a regularly constituted meeting of the stockholders of Elwood Manufacturing Company, a Corporation existing under the laws of the State of Virginia, it was among other things: Resolved: That the said Corporation through and by the aid of its proper officers appointed for the purpose, proceed to sell to John A. Gumm of the County of Nansemond, for the sum of \$2000.00 the entire plant, real estate and assets of every nature and description, owned by the said Company, and to this end, Elisha Joyner is hereby appointed to execute the deed for same, and D. K. Joyner is directed and authorized to attest the said deed and affix the Corporate seal of the said corporation to the said deed, and the two to acknowledge and deliver the same to said John A. Gumm upon receipt of the purchase price or se-

curity therefor. And Whereas, in pursuance of said resolution of the Company which was passed by it on the 15th day of March 1898, at the meeting aforesaid held at Elwood Va, the said Company is ready, upon receipt of the purchase money as aforesaid, to make to said John A. Gum a deed for the said property and effects of every kind and description; And Whereas the said John A. Gum has this day paid to said Company the said sum of Two Thousand Dollars, receipt of which is hereby acknowledged, Now Therefore This Deed made this 30th day of March 1898, by and between Elwood Manufacturing Company a Corporation of the first part, grantor, and John A. Gum of the second part, grantee, Witnesseth; That for and in consideration of the premises, and the sum of \$2000.00, paid

as aforesaid, said party of the first part does hereby grant, bargain sell and convey unto said party of the second part with special warranty, the following property, to-wit:

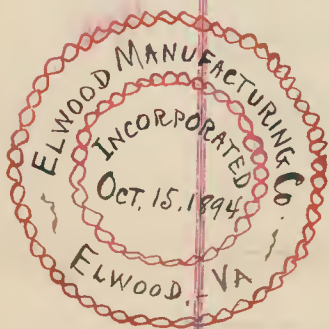
All of that certain tract or parcel of land lying at Elwood station on the A. & D. Ry. in Nansemond County, supposed to contain about seven acres, bounded by the lands of Atlantic & Danville Ry. East by the County road, West by the lands of W. F. Bradshaw, John A. Gunn and V. C. Vaughan, it being the same land upon which the said plant of grantor now is situated; also all machinery, buildings appurtenances and attachments constituting the plant of said company, or in any way belonging to same, also all the other effects or assets of the said Corporation wheresoever found, which property together with all the privileges, easements and other rights attaching

to same are hereby conveyed
to said John A. Lynn with
general warranty.

In Witness whereof the said
Corporation has caused this deed
to be signed by its duly accred-
ited officer, and the seal of the
same to be attached this 30th.
day of March 1898.

Elwood Mfg. Co.
by E. Joyner - Agent.

D.K. Joyner Secretary



State of Virginia,
County of Nansemond, to-wit:-

I, R.C. Daughtrey a justice of
the peace in and for the County
and state aforesaid, do certify
that Elihu Joyner Agent of the
Elwood Manufacturing Company
and D.K. Joyner Secretary there-
of, whose names as such are
signed to the writing above
bearing date 30th. day of March
1898, have acknowledged the same
before me in my County afore-

said, and I further certify that the said Elisha Joyner and D. K. Joyner also acknowledged before me in my county aforesaid, that the seal attached to said deed is the true seal of the said Corporation, and that the same is the act and deed of the said Corporation.

Given under my hand this 30th day of March 1898.

R. C. Daughtrey
J.P.

In the Clerk's Office of Nansemond County Court the 5th day of April, 1898. This Deed was presented and with the certificate annexed and admitted to record.

Teste:

R. R. Smith Clerk.

A Copy,

Teste: R. R. Smith Clerk

A Copy of
Deed from
Elwood Mfg. Co.
to John A. Gunn.

DB. 40. Page 387.

Robt. W. Withers, p.p.

H. B. Ferguson & Co.

vs. } In Chancery

Elwood Manufacturing
Company, et. al.

- Bill -

2^d March 1890

IN THE CIRCUIT COURT OF NANSEMOND COUNTY.

W. B. Ferguson & Co.

vs.

Elwood Manufacturing Co. et als.

The answer of James L. McLemore, Trustee, and one of the defendants, to the bill of complain exhibited against them and others in the Circuit Court of Nansemond County by Walter B. Ferguson and Edward A. Norfleet, partners trading as W. B. Ferguson & Co.

(2nd) This defendant, now and at all times hereafter, saving and reserving to himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and insufficiencies in the said bill contained, for answer thereto, or to so much thereof as he is advised it is material or necessary for him to answer, this defendant answering saith,

(3rd) That he knows nothing of the facts as charges or alleged in complainant's bill concerning the contract between the Elwood Manufacturing Company and complainants, now does he know what relation the said complainants occupied to the said Elwood Manufacturing Company. This respondent knows that complainants were sued in the Circuit Court of Nansemond County by Frank B. Ried, and that a judgment was entered against them for a considerable sum of money, to-wit, \$1200.00, which judgment this respondent knows has been paid by W. B. Ferguson & Co. This reapondent admits that sometime in the year 1897 the Elwood Manufacturing Company executed a deed of trust to him as Trustee to secure certain debts mentioned and described in the deed, amounting in the aggregate, to \$902.76, but the allegations in complainant's bill that this deed of trust was made with intent to delay, hinder and defraud the creditors of the said Elwood Manufacturing Company, and that the fraudulent intent on the part of the said Elwood Manufacturing Company was known to your respondent, is without

4

foundation in fact, and is absolutely and unqualifiedly untrue. On the contrary your respondent had at the time every reason to believe and does now believe that the debts secured in said deed of trust to John A. Gum ~~was~~ every cent honestly due and payable to him.

And now, having fully answered the complainant's bill in so far as his knowledge goes with relation to the allegations contained therein, this respondent prays hence to be dismissed with his reasonable costs in this behalf expended, and he will ever pray, &c.

*Jas. L. Moore
Trustee.*

Elwood mfg Co &
John A. Gunn,
ad. 3 answers
3 off L. M. S. more
notes
W. B. Ferguson Rec

June 8. 1900

SECOND MARCH RULES 1900.

Walter B. Ferguson and
Edward A. Norfleet, part-
ners trading as W.B.
Ferguson & Co.-----

Complainants.

vs.

IN CHANCERY.

Elwood Manufacturing Co.,
John A. Gum, President,
D.K. Joyner, Secretary,
John A. Gum in his own
right and Jas. L. McLeMore, Trustee

and Mallie E. Gum,
wife of J. A. Gum,-----Defendants.

To the Honorable Robert R. Prentiss, Judge:-

Humbly complaining, sheweth unto your Honor, your orators, Walter B. Ferguson and Edward A. Norfleet, of Suffolk, Nansemond County Virginia the following case:

1. Your orators are partners under the firm name of W.B. Ferguson & Company, doing a general wholesale grocery, brokerage and commission business in the Town of Suffolk, Virginia.

2. The Elwood Manufacturing Company is a corporation under the laws of Virginia, with its principal office at Elwood Station, Nansemond County, Virginia, and has been such corporation since the 27th. day of October, 1894; that John A. Gum is President and Treasurer and D.K. Joyner is Secretary of said corporation and as such have been since the 27th. day of October, 1894; that by the charter of said corporation it is empowered, among other things, to make, create and manufacture butter-dishes or-trays made in whole or in part of wood and to sell the same, to employ agents and servants and to make contracts in the furtherance of its business.

3. That the said Elwood Manufacturing Co. through its president, John A. Gum, did, on or about the 13th. day of November, 1894 offer to make by contract your orators its sole and exclusive agents and factors for the sale of its entire out-put, product and manufacture of long tin-end butter-dishes or-trays for the year 1895, A.D., allowing your orators for making said sale or sales a commission of Five per centum (5%) of the amount of said sales; that some time between the said 13th. day of November, 1894 and the 31st. day of January, 1895, your orators accepted the said offer of the said Elwood Manufacturing Co. and began and continued (until the time as hereinafter set forth) as the sole and exclusive sales agents and factors of said butter-dishes or-trays, manufactured or to be manufactured by said Corporation; and that by said contract of agency your orators were empowered by their principal, the said Elwood Manufacturing Co., to enter into contracts with third persons for the sale of said butter-dishes or-trays, manufactured or to be manufactured by the said Corporation, upon such terms as were stated in said contract of agency or would be thereafter furnished and authorized by said Elwood Manufacturing Co., or its regularly constituted officers and agents.

4. That on or about the 28th. day of September, 1895 and while your orators were still the agents and factors of the said Elwood Manufacturing Co., your orators, as factors, in their own name, entered into contract with one Frank B. Read, a resident of the state of New York, to ship, sell and supply him with the entire out-put, product and manufacture of long tin-end butter-dishes or-trays manufactured or to be manufactured by your orators' principal, the said Elwood Manufacturing Co., between that date, the said 28th. day of September, 1895 and the 1st. day of January, 1896, at which last mentioned date your orators agency and factorship for said Elwood Manufacturing Co., would terminate and expire; your orators allege that the prices and terms upon which said contract with said Frank B. Read was entered into were furnished and authorized by and known to said Elwood Manufacturing Co., and that it made no objection to said sale to Frank B. Read.

5. Your orators allege that said butter-dishes contemplated in said contract with Frank B. Read were the same butter-dishes contemplated in the contract of agency between your orators and said Elwood Manufacturing Co. and it was so understood and known by your orators, Frank B. Read and the Elwood Manufacturing Company.

6. After your orators, as agents and factors, had entered into the contract with Frank B. Read as aforesaid, and reported the same to the Elwood Manufacturing Company to be by it executed and performed as principal, the said Elwood Manufacturing Company utterly failed, refused and neglected to execute, perform or comply with the said contract entered into in its behalf by your orators with the said Frank B. Read, and although often requested so to do by your orators, it hath not as yet performed or complied with said contract or any part thereof.

7. That after the 1st. day of October, and before the expiration of your orators contract of agency with said Corporation the said Elwood Manufacturing Company, in total disregard of its contract with your orators, sold or contracted to sell the entire out-put of butter-dishes manufactured or to be manufactured by it to one J.J. McCleskey, or other persons to your orators unknown, and the said Elwood Manufacturing Co. thenceforth and continuously refused, neglected and failed to allow your orators to remain and continue its sole sales agents and factors for the sale of the entire out-put of butter-dishes manufactured or to be manufactured by the said Elwood Manufacturing Company as it should have done under its contract with your orators; that between the said 1st. day of October, 1895 and the 1st. day of January, 1896, the Elwood Manufacturing Company, ^{would} reasonably have made and your orators would reasonably have sold, and would have sold had they been allowed, \$3450.60 worth of butter-dishes, made by said Company, and that their commission on the same would have been \$172.53, that by reason of the revocation of your orators authority as agents of said Elwood Manufacturing Company, that they were injured and damaged to a great extent, to-wit: to the extent of \$172.53.

8. That by reason of the failure of the said Elwood Manufacturing Company to execute, perform and comply with the contract made and entered into in its behalf by your orators, its agents and factors, with the said Frank B. Read as aforesaid, your orators became and were personally responsible and liable on said contract to said Frank B. Read, and the said Frank B. Read so considered your orators, and because of such liability the said Frank B. Read, on the 13th. day of March, 1897, in the Supreme Court of the City and County of New York, in the State of New York, sitting in and for said County, City and State aforesaid, brought an action and obtained a judgment against your orators, on their contract as factors as aforesaid, for \$932.86 as damages and \$383.69 as costs in said Court, making a total recovery against your orators of \$1316.55; that in the said action by Frank B. Read against your orators they filed a counter claim or set-off against Frank B. Read for \$309.79, which debt had accrued to your orators by reason of their having sold and delivered, as agents and factors of the Elwood Manufacturing Company, one car-load butter-dishes made and owned by said Elwood Manufacturing Company, which set-off and counter claim was allowed to your orators by the Supreme Court of New York; that said \$309.79 less 5% commissions had, previously to this time, been paid by your orators to the said Elwood Manufacturing Company. At the October Term of the Circuit Court of Nansemond County Virginia, in the year 1897, Frank B. Read brought an action and obtained a judgment against your orators, alleging and declaring upon, as the basis of his action, the aforesaid Judgment obtained against your orators in the Supreme Court of the City and County of New York, State of New York; that the Circuit Court of Nansemond County entered judgment against your orators for \$1200.00 with interest thereon till paid and \$9.30 costs. Shortly after the entering of the last mentioned judgment, your orators compromised with the said Frank B. Read the last mentioned judgment and agreed to pay and did pay out of their own funds \$1217.68 in full satisfaction thereof, which was accepted as such by the said Frank B. Read. In the prosecution of their defense in the said actions by Frank B. Read against your orators as aforesaid, your orators were put to great expense and charges, to-wit to the amount of \$300.00, which amount your orators were compelled to pay and did pay out of their own funds and moneys; all of which judgments, costs, set-offs, charges and expenses your orators are advised should have been paid at the time by the Elwood Manufacturing Company, their Principals, and should now be repaid, refunded and indemnified to your orators, by the said Elwood Manufacturing Company.

9. Your orators allege that they were made and compelled to defend the actions aforesaid instituted against them by the said Frank B. Read, and afterwards, to satisfy the judgments obtained against them and pay the costs, charges and expenses incident to said actions, because of and as a direct and necessary result and consequence of the failure and refusal of the Elwood Manufacturing Company to perform, comply with and execute the contract made and into on or about the 28th. day of September, 1895, in its behalf by your orators as its agents and factors, with the said Frank B. Read.

10. Your orators called ^{upon} and requested their principals, the Elwood Manufacturing Company, to come and defend them against the actions aforesaid brought against them by the said Frank B. Read; but the said Elwood Manufacturing Company wholly ~~refused~~ failed, neglected and refused to defend your orators as requested as aforesaid.

11. Your orators are advised that because they have been compelled to pay and satisfy, out of their own funds and moneys, the judgments obtained against them by the said Frank B. Read as aforesaid, together with the costs, expenses and charges growing out of, occasioned and caused by the failure aforesaid of the Elwood Manufacturing Company to perform, execute and comply with the contract made and entered into in its behalf by your orators, as its agents and factors, with Frank B. Read as aforesaid, that they, the said W. B. Ferguson & Company, became creditors of the said Elwood Manufacturing Company to the extent of their, your orators' losses, costs, expenses and damages, by them paid out, suffered and incurred as aforesaid; and that your orators became such creditors of the Elwood Manufacturing Company as of the date they, your orators, became liable to the said Frank B. Read on the contract entered into with him by your orators as aforesaid: to-wit, as of the 13th. day of March, 1897.

12. Your orators are further advised that by reason of the Elwood Manufacturing Company having wholly repudiated its contract of Agency with your orators and having wholly refused, neglected and failed to allow your orators to remain and continue, until the 1st. day of January, 1896, its sole sales agents and factors for the sale of its entire output of butter-dishes manufactured or to be manufactured by it, as it had contracted to do with your orators, that an action hath accrued to your orators to have and recover of and from the Elwood Manufacturing Company, damages to the amount suffered by your orators by reason of said revocation and breach of contract, to-wit damages to the amount of \$172.53.

13. Your orators allege that on and for some time after the 13th. day of March, 1897, their debtor, the said Elwood Manufacturing Company, was seized and possessed of the following property, to-wit:

* All that certain tract, piece or parcel of land, containing about Seven acres, lying, being and situate near Elwood Station, on the Atlantic and Danville Railroad Company's line, in Nansemond County, Virginia, bounded by the lands of Atlantic and Danville Railway, East by the County Road, West by lands of W. T. Bradshaw, J. A. Gum and V. C. Vaughan, together with all houses and out buildings and sheds thereon situated, and ^{also} 40 Horse-Power Boiler, One 35 Horse-Power Engine, and other machinery, appurtenances and attachments constituting the plant of said Company, together with other property, privileges, easements and rights attached to same. Your orators allege and charge that on the 15th. day of March, 1897, the Elwood Manufacturing Company, made, executed and delivered to James L. McLemore, Trustee, a certain Deed of Trust pretending to convey to said Jas. L. McLemore, Trustee, in trust to secure Jno. A. Gum the payment of certain pretended bonds and notes, therein specified, amounting in the aggregate to \$902.76, with interest at 6% on \$700 thereof ^{and on \$202.76 interest from December 1st 1896 till paid} from August 1st., 1895, till paid; said pretended Deed of Trust is recorded on Page 691, of Deed Book 39, in the Clerk's Office of Nansemond County Court; that said pretended Deed of Trust from the Elwood Manufacturing Company to Jas. L. McLemore, Trustee, was made with intent to delay, hinder and defraud the creditors of said Elwood Manufacturing Company, or other persons of and from what they were or may have been lawfully entitled to, and especially your orators, W. B. Ferguson & Co., of and from that to which they, (Your orators) were and are lawfully entitled to receive and recover from it, the said Elwood Manufacturing Company; that said Deed of Trust was not made bona fide, and upon consideration deemed valuable in law; that it was made in anticipation of a state of insolvency which at the date of said Deed was about to come upon said Elwood Manufacturing Company, and

which soon afterwards overtook it, leaving it, as it is now, utterly insolvent and unable to discharge its indebtedness to your orators ~~of~~ ^{and} other creditors; and that at the time the said Deed of Trust was made and executed to him, the said Jas. L. McLemore, he the said McLemore as well as the said Jno. A. Gum had notice of the fraudulent intent of the said Elwood Manufacturing Company in the execution thereof. A copy of said pretended Deed of Trust is herewith filed marked "A" and prayed to be made a part of this bill. Your orators further allege that on the 30th. day of March, 1898, the Elwood Manufacturing Company, by a pretended Deed of Bargain & Sale, attempted to convey to its President, John A. Gum, all of its property and estate, real and personal, all of its effects and assets wheresoever found, and all of its plant, privileges, easements, and other rights attaching to the same, for a more particular description of the same reference is hereby made to said Deed, a copy of which is herewith filed, marked "B" and prayed to be read as a part of this bill; that said pretended Deed of Bargain & Sale, from the Elwood Manufacturing Company, to its President, Jno. A. Gum, was made with intent to delay, hinder or defraud the creditors of the said Elwood Manufacturing Company, or other persons of or from what they were or may have been lawfully entitled to; and especially your orators of and from that to which they were and are lawfully entitled to receive and recover from it, the said Elwood Manufacturing Company; that said Deed of Bargain & Sale was not made upon consideration deemed valuable in law; that said Deed was made in anticipation of a state of insolvency which at the date of said Deed was about to come upon said Elwood Manufacturing Company, and which soon afterwards overtook it, leaving it, as it now is, utterly insolvent and unable to discharge its indebtedness to your orators or other creditors; and that at the time the said Deed of Bargain & Sale was made and executed to him, the said Jno. A. Gum, he, the said Gum, had notice of the fraudulent intent of the said Elwood Manufacturing Company, in the execution thereof. Your orators further allege and charge that the said pretended and fictitious consideration of Two Thousand Dollars, mentioned in said ^{said} ~~deed~~ ^{for} lands, goods and chattels of the Elwood Manufacturing Company, was not paid by Jno. A. Gum or any other person to the said Elwood Manufacturing Company, at the time said pretended and fraudulent Deed of Bargain & Sale was made to him, nor has it since been paid, nor was it the intention or purpose of the parties that it should ever be paid. Your orators further allege and charge that before either of the two Deeds herein before mentioned were made and executed, that the Elwood Manufacturing Company, Jno. A. Gum and Jas. L. McLemore, Trustee, of Jno. A. Gum, all, each and every one of them knew of and had notice that your orators had been and were being sued by Frank B. Read on, upon and by reason of the contract entered into by your orators with said Read, for the sale and delivery to said Read of all the butter-dishes manufactured, or to be manufactured by said Elwood Manufacturing Company, their principal, between the 28th. day of September, 1895, and the 1st. day of January, 1896, and that in the event said actions or any others by said Read should be found against your orators, and they were compelled to pay any judgments or costs resulting therefrom, or incurred any expenses, damages or charges, which they would be compelled to pay and satisfy, that they, the said W. B. Ferguson & Co., would look to and call upon the said Elwood Manufacturing Company, for indemnity, exoneration and relief therefrom; and that by reason of said knowledge and notice and in anticipation of said loss to your orators, the said Elwood Manufacturing Company, with the fraudulent intent and purpose aforesaid, made and entered into, on the 15th. day of March, 1897 and on the 30th. day of March, 1898, the two Deeds herein before mentioned and described. Your orators further allege that said Elwood Manufacturing Company, is not now seized and possessed of any real estate or personal property, so far as they are informed, except the said land, goods and chattels mentioned in said fraudulent Deeds, which in fact belong to said Elwood Manufacturing Company. In tender consideration whereof, and for as much as your orators are remediless in the premise save by the aid of a Court of Equity, where all such matters are properly cognizable, your orators pray that your Honor may issue his writ of subpoena against the Elwood Manufacturing Company, Jno. A. Gum, President D. K. Joyner, Secretary, and John A. Gum ^{and his wife} in his own right and Jas. L. McLemore, Trustee and that they be made parties defendant to this bill

and required to answer the same, but an answer under oath is hereby expressly waived; that a decree be entered in favor of your orators against the Elwood Manufacturing Company, requiring it to re-pay, refund, reimburse, indemnify and exonerate your orators the amount paid by your orators to the said F. B. Read in satisfaction of the judgments and costs recovered as aforesaid by the said Read against your orators, to-wit, \$1217.68; that a decree be entered against the said Elwood Manufacturing Company, requiring it to pay to your orators, the sum of \$300.00, being the amount paid out by your orators as aforesaid in their proper defence and expense in the actions brought against them by the said F. B. Read; that a decree be entered against the said Elwood Manufacturing Company, requiring it to pay to your orators the sum of \$309.79, being the amount paid by your orators to the said Elwood Manufacturing Company, as will more fully appear in the allegations of this bill; that a decree be entered requiring the said Elwood Manufacturing Company, to pay to your orators the sum of \$172.53, as damages for breach of the contract of agency between your orators and the Elwood Manufacturing Company, and for revocation of your orators authority as such agents; making in all a total of \$2000.00; that your Honor will enter a decree declaring illegal, void and of no effect, the Deed of Trust, dated March 15th. 1897, to Jas. L. McLemore, Trustee, and also, the Deed of conveyance dated the 30th. day of March, 1898, from the said Elwood Manufacturing Company, to the said John A. Gum, its president, so that a decree and execution had and issued against the said Elwood Manufacturing Company, will be a lien on said property conveyed or attempted to be conveyed in said Deed; that the said parcel of land and goods and chattels fraudulently conveyed and encumbered as aforesaid, may be declared subject to a lien in favor of your complainants for the claims aforesaid in preference to the claims of any other persons or creditors of said Elwood Manufacturing Company; that said Deeds to Jas. L. McLemore, Trustee, and said Jno. A. Gum may be cancelled, annulled and set aside as to your orators; that said parcel of land, and goods and chattels be sold and the proceeds of the sale applied to the discharge, payment and settlement of the indebtedness aforesaid of said Elwood Manufacturing Company, to your orators; that all proper and necessary accounts be taken and all necessary inquiries directed; that a reasonable fee or compensation may be allowed to your orators counsel for his services in this suit, to be paid out of such money or property as may come under control of the Court in this suit, and for such other and further relief, general and special, as your Honor may think your orators entitled to in the premise, or to equity seems meet. And your orators will ever pray, etc.

Robt. W. Wilkes, p.g.

W. B. Ferguson

Virginia, Nausmond County to-wit }
This day personally appeared before me, A. P. Gomer, Clerk of our Circuit Court of said County, W. B. Ferguson, one of the complainants in this bill and being sworn, made oath that the matters and things stated in this bill as true of his own knowledge, are true; and that the ~~things~~ matters stated to be true to the best of his belief, ~~and~~ he believes to be true. Given under my hand this 21st day of March, 1900.

A. P. Gomer Clerk

IN THE CIRCUIT COURT OF THE COUNTY OF NANSEMOND.

W. B. Ferguson & Company
vs.
Elwood Manufacturing Company.

The joint answer of John A. Gum and Elwood Manufacturing Company defendants to the bill of complaint exhibited against them in the Circuit Court of Nansemond County by Walter B. Ferguson and Edward A. Norfleet, partners trading as W. B. Ferguson & Co.

~~1st. Respondents admit the allegation in clause 1.~~

~~2nd.~~ These defendants now and at all times hereafter, saving and reserving to themselves all benefit and advantage of exceptions which can or may be had or taken to the many errors, uncertainties and insufficiencies in the said bill contained, for answer thereto, or to so much thereof as they ^{are} advised it is material or necessary for them to answer, these defendants answering saith,

^{1st.} That item 1 in the bill they presume is true; ^{2nd} that item 2 is true so far as they know with the exception that said Company sold all of its assets and closed up its business and ceased to operate under its charter sometime during the year 1898; that it has not since held a meeting of its stockholders or directors, and has no assets whatever; ^{3rd} that it is true the Elwood Manufacturing Company, through its President, entered into an agreement with complainants sometime in the year 1894 for the sale of the out-put of its plant for the year 1895, but your orators deny that the said Company contracted with complainants, making them its agents, or that the said complainants were authorized at any time to make contracts for and binding upon the said corporation with third persons for the sale of butter-dishes, trays, etc., but on the contrary the said Company did agree with the said complainants to sell them the out-put of its plant upon a schedule of prices then and there agreed upon; that the said complainants so treated the contract; that complainants made all contracts for sales of the product

(2)

in their own names; that they made settlements according to their own will and pleasure and without consulting the said corporation and made settlements with said corporation by giving their own individual paper.

4th. Your respondents being without knowledge in the premises cannot speak with reference to the alleged contract of complainants with F.B.Reid, and demand proof of same; and if any such contract was made they are unaware of its ^{nature} ~~note~~ or purport as they have never seen same or been informed of its contents. They also deny that said complainants, in making the alleged contract, had any authority to act as factors, agents, or brokers of the Elwood Manufacturing Company.

5th. Your respondents know nothing about the contract with F. B. Reid referred to in clause 5th. and deny any knowledge or understanding on the part of the respondents either with complainants or with F. B. Reid with respect thereto.

6th. Your respondents deny having broken any contract had with complainants, but allege and state that with the full knowledge, consent, and approval of complainants, sometime in the year 1895, to-wit, on or about the first of August, the respondent company, through its proper officer, leased to D. K. & Moses Joyner, trading and doing the plant of the said corporation; at the same time said D.K.Joyner & Bro. business as D. K. Joyner & Bro., undertook to carry out the contract had with complainants, and the corporation aforesaid; that the respondent Company, through its proper officer. saw complainants in person, and said complainants then and there agreed to accept the said D. K. Joyner & Bro. in the place and stead of the said Elwood Manufacturing Company; that said agreement was well known to complainants and to D. K. Joyner & Bro. as well; that from the time of this agreement all communications, correspondence, and business dealings had with reference to the butter-dish contract, or the out-put of the Elwood Manufacturing Company's plant, were had direct with the said D. K. Joyner & Bro. and without notice or consultation with the said corporation; that the substitu-

tion of the said D. K. Joyner & Bro. in the place and stead of the said Elwood Manufacturing Company, was agreed to on the part of the complainants for good and valuable consideration; that the Elwood Manufacturing Company, therefore, was relieved by mutual consent of all parties from any further connection with the contract for the sale of the out-put of the plant, and for breach of said contract happening after the assignment, the said Company is in no sense liable. Your respondents deny that the Elwood Manufacturing Company, in any sense whatsoever, broke its contract with complainants, or failed refused or neglected to perform same, but that complainants ^{auto} did frequently violate the contract on their part both as to the manner of making settlements and as to the price to be paid for the product.

7th. These respondents deny that the Elwood Manufacturing Company sold or contracted to sell the out-put of butter-dishes to one J. J. McCloskey, as charged in item 7th. of complainants' bill, but on the contrary saith that the Elwood Manufacturing Company was not operating its plant but had leased the same to D. K. Joyner & Bro. some time prior to October 1st., 1895, and the said D. K. Joyner & Bro., with the full knowledge and consent of complainants, had undertaken to furnish the out-put of their plant, as your respondents are advised, upon terms mutually agreed upon by and between the said D. K. Joyner & Bro. and complainants, as to the details of which your respondents are not informed.

8th. These respondents know nothing of the charge made in the 8th. clause of complainants' bill further than this: that whatever contract complainants made with F. B. Reid, was made upon their own responsibility; that these respondents were not consulted about same and had nothing to do with the terms therein; that complainants were not authorized to make any contract binding the Elwood Manufacturing

Company; that they were not and never have been agents or factors of the said Elwood Manufacturing Company, and that your respondents, while regretting the loss sustained by complainants in their litigation with Frank B. Reid, emphatically deny that same was due to any action or default on the part of the Elwood Manufacturing Company or your respondent, John A. Gum; that the entire out-put of the plant of the Elwood Manufacturing Company, while same was operated by it, was delivered to complainants, and that after their contract had been assumed by D. K. Joyner & Bro. by and with the consent of complainants, your respondents are advised that the out-put of the plant was still delivered to complainants with the exception of 5 cars which D. K. Joyner & Bro. decline to ship complainants because of the failure of complainants to comply with their contract had with D. K. Joyner & Bro. with reference to said out-put, and with which respondents had nothing to do.

9th. These respondents deny that complainants were subject to any cost or expense in defending the action brought by Frank B. Reid as a result of the failure of the Elwood Manufacturing Company to perform its contract aforesaid.

10th. It is true that the Elwood Manufacturing Company refused to defend or protect complainants against the action brought by Frank B. Reid.

11th. These respondents deny that complainants became or are the creditors of the Elwood Manufacturing Company, as charged in item 11 of the bill of complaint, or that the Elwood Manufacturing Company is in any sense responsible for the action brought by Frank B. Reid or the consequence of same.

12th. These respondents deny that subsequent to August 1st. any contract of agency existed between the Elwood Manufacturing Company and your complainants, as charged in item 12 on the bill of complaint, or that it has ever violated or broken any contract had with com-

plainants, or that it has by any default on its part caused damage to complainants, as charged.

13th. It is true the Elwood Manufacturing Company was possessed of the property set forth in item 13 on the bill of complaint, and that it made and executed a deed of trust to James L. McLeMore, Trustee, on the date and to secure the amount as therein named, but the charge that same was made "with intent to delay, hinder and defraud the creditors of the said Elwood Manufacturing Company or other persons of and from what they were or may have been lawfully entitled to, and especially your orators &c." is absolutely false and without the slightest foundation in fact. These respondents stand ready to demonstrate the bona fides of said deed of trust in every particular; that the said corporation is not now nor ever has been insolvent, but was able to and did pay every debt it owed. It is further true that on the 30th day of March, 1898, the said Elwood Manufacturing Company made a deed of bargain and sale conveying to your respondent, John A. Gum, all of its property as charged in said bill, but it is untrue that same was made with intent to delay, hinder and defraud the creditors of the said grantor, but on the contrary was made for valuable consideration with a view to closing up the business of the corporation and discharging the indebtedness due to this respondent, and all charges of fraud or fraudulent intent on the part of these respondents are absolutely without foundation in fact and are false.

These respondents do not deny that they had been informed of a suit pending in the City of New York against complainants in favor of Frank B. Reid, *but* deny that this fact influenced them in making the conveyances aforesaid; *and* your respondents do not admit that they had notice that they would be called upon to satisfy any judgments obtained against complainants in said City of New York, concerning which they had no interest, nor did they have any suspicion that they would be so called on.

And now having fully answered these respondents pray hence to be dismissed with their reasonable costs in this behalf expended.

Elwood Manufacturing Co
By John A. Gum, Pres.
John A. Gum

State of Virginia,

County of Nansemond, to-wit:-

This day John A. Gum President of Elwood Manufacturing Co. and the same John A. Gum in his own right personally appeared before me in my county afor said, and made oath that the statements contained in the foregoing annexed answer are true to the best of his knowledge and belief.

Given under my hand this 7th. day of June 1900.

S. E. Everett
U. P.

Elwood Mfg Co vds.

3 Answer of
3 Jno A Gunn
Elwood Mfg Co.

W. B. Ferguson & Co

McLamore & Corbett
fa.

IN THE CIRCUIT COURT OF NANSEMOND COUNTY.

The demurrer of Elwood Manufacturing Co., John A. Gum, President, D. K. Joyner, Secretary, John A. Gum in his own right and James L. McLemore, Trustee, to the bill of complaint exhibited against them in this court by Walter B. Ferguson and Edward A. Norfleet, partners trading as W. B. Ferguson & Co.

These defendants by protestation, not confessing any or all of the matters and things in the said bill of complaint contained to be true, in manner and form as the same are therein set forth, doth demur thereto, and for cause of demurrer say, that the allegations contained in said bill are not sufficient in equity to entitle the complainant to the relief he seeks. Wherefore, and for divers other errors and imperfections, these defendants demand the judgment of this court whether they shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained; and pray hence to be dismissed with their reasonable costs in this behalf sustained.

W.B. Fitzgerald

ad Amman

Elwood N.Y. C.

In the Circuit Court of Nansemond County, Virginia.

The separate and joint plea of Elwood Manufacturing Company, and John A. Gum to a bill of complaint exhibited against them and others in the Circuit Court of Nansemond County, by W.B. Ferguson & Co.

These defendants, by protestation, not confessing, or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in manner and form as the same are therein set forth, for plea nevertheless to the said bill, doth plead and aver ~~that~~ or suit

That if the said complainant ever had any cause of action against the defendants, for or concerning the matters or any of them in the said bill mentioned, which these defendants doth in no wise admit, such cause of action or suit did not accrue within three years before the filing of the said bill, or before the suing out of the process or service thereof against these defendants to appear to and answer the said bill; nor did these defendants at any time within three years next before the institution of this suit aforesaid, promise or agree to come to any account for, or to make satisfaction, or to pay any sum or sums of money, for or by reason of the said matters charged in said bill.

Wherefore the said defendants pray judgment of this court whether they shall be compelled to make any other or further answer to the said bill, and prays hence to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

Elwood Manufacturing Co.
by John A. Gum President,
John A. Gum
by McElmore & Corby.
Counsel.

Edward Clipp Esq. & al.
ads. } Plia opatulate

W. B. Ferguson & Co.

1900. June 19th



Received of
W. B. Ferguson & Co.
the sum of \$100.00
for the above account

IN THE CIRCUIT COURT OF NANSEMOND COUNTY.

— 0 —
0 —

Elwood Manufacturing Company et als)

ads.)

W. B. Ferguson & Company.)

IN CHANCERY.

The separate plea of the Elwood Manufacturing Company to a bill of complaint exhibited against it, and others, in the Circuit Court of Nansemond, ^{County} by W. B. Ferguson & Company.

The said defendant by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in manner and form as the same are therein set forth, for plea, nevertheless, to said bill, doth plead and aver—

That neither this defendant, nor any one by it authorized, did ever sign any contract or agreement in writing, wherein or whereby it agreed with the said plaintiffs to ^{make them its sole exclusive agents & footers} ~~sell~~ the entire out-put, product and manufacture of long tin-end butter dishes or trays for the year 1895, as is alleged in complainant's bill, nor was any agreement in writing signed by parties to be charged, entered into between the plaintiff and defendants, or either or any of them, whereby any obligation, contract or agreement was entered into or perfected covering the out-put of the plant of the Elwood Manufacturing Company aforesaid for the year 1895, or any memorandum or note in writing of any such agreement.

Wherefore the said defendant prays judgment, whether it shall be compelled to make any other or further answer to said bill, and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

W. L. Moore & Leachitt
per

Elwood Mfg Co.
by John A. Gunn

Virginia

In Vacation, in the Circuit Court of Chaseman
County, November 5th 1901-

W. B. Ferguson & Company,

v.

Elwood Manufacturing Company et als.

in vacation, in accordance with a prior decree entered ^{entered} ~~herein~~ ^{October 17th 1900,}

This day this cause came on again to be heard upon the papers formerly read, upon the answers of the Elwood Manufacturing Company, John A. Gum and James L. McLemore, Trustee, with general replication thereto, and upon the depositions of witnesses taken on behalf of both complainants and defendants, and was argued by counsel.

On consideration whereof, the court doth adjudge, order and decree that the complainant's bill be dismissed, and that the defendants recover of the complainants their cost by them about their suit in this behalf expended, ~~and~~ ^{At} the instance of the complainants who have expressed a desire to present a petition to the Court of Appeals of Virginia for an appeal from this decree it is ordered that the execution of this decree be suspended for the period of ninety days from the date hereof ^{when} ~~pre-~~ ~~vided~~ such complainants shall give bond before the Clerk of this court in the penalty of \$200-, with the condition reciting this decree and the intention of said complainants to present such petition, and providing for the payment of all such damages as may accrue to any person by reason of the said suspension in case a supersedeas to such decree should not be allowed and be effectual within the time so specified.

In the Court of the Circuit
Court of Chaseman County

Robert H. Paulis

W. B. Ferguson & Co.

v.

DECREE

Elwood Mfg. Co. et als.

Enter 5 day of Nov 1901

Robert R. Reukis

Entered in
Chancery Order
Book No 3 Page 392

S U P R E M E C O U R T
CITY and COUNTY of NEW YORK.

FRANK B. READ,
Plaintiff,

-against-

WALTER B. FERGUSON, et al.,
Defendants.

COPY

MEMORANDUM OF REFEREE

S U P R E M E C O U R T
CITY and COUNTY of NEW YORK.

: FRANK B. READ, :
: Plaintiff, :
: :
: -against- :
: :
: WALTER E. FERGUSON, et al., :
: Defendants. :
: -----

Memorandum of Referee.

The complaint in this action alleges three causes of action, all being for damages for non-delivery of certain carloads of butter dishes claimed to have been ordered by the plaintiff, and agreed to be manufactured and delivered by the defendants. The answer of the defendants contains a general denial, and also a counter-claim for the purchase price of a certain other car load of dishes previously sold and delivered by them to the plaintiff.

The first cause of action is for non-delivery of a carload of dishes alleged to have been ordered on the 4th day of September, 1895.

The evidence with respect to this order is of the most general character. The plaintiff testifies that he ordered such load by a letter of the date mentioned, and the defendants by a letter of September 6, 1895, admit the receipt of the order and promise to fill the same.

The plaintiff's letter is not produced, and there is nothing whatever to indicate the sizes of the dishes desired or the number of each size. The plaintiff on his

cross-examination is not even positive that some portion of the articles included in the order may not have been actually delivered. There is clearly nothing proven from which damages can be estimated or established.

The second cause of action is for failure to deliver five carloads alleged to have been ordered by the plaintiff by a letter of September 24, 1895, which contained full details of the dishes required. There was then a general understanding in regard to prices, and the defendants by a letter of September 25, 1895, simply acknowledged receipt of the order. From the previous course of business between the parties it might be reasonably held that these letters created a contract in respect to the goods, were it not for the action of the plaintiff himself in connection with a prior transaction of like character.

In matters of this kind, where there is an absence of definite and positive language, the acts of the parties should be construed in the light of their previous dealings, and of their probable intentions and the understanding that, presumably, existed between them.

An examination of the evidence shows that by a letter of July 25th, 1895, the plaintiff sent an order for a load of dishes, which was accepted by the defendants and the goods shipped. There had been a previous general understanding in respect to prices, as in the present instance, but nevertheless, upon the arrival of the goods, the plaintiff repudiated the idea of any contract, and insisted upon and obtained a reduction of price as a condition for receiving the shipment.

See letters of August 17th, August 27th, August

29th and August 30th, 1895.

In view of these facts, it must be concluded that the intention and understanding of the parties in their negotiations were quite at variance with the plaintiff's present contention, and that no contract arose out of the correspondence in question.

The third cause of action is for failure to deliver the thirteen carloads mentioned in the following writing executed by the defendants on the 28th day of September, 1895:

"Sept. 28, 1895.

"Mr. F. B. Read,

"New York,

"Dear Sir:-

"In conformity with our conversation of to-day, we
"agree to ship you our entire product of butter dishes,
"at 50, 5/10 and 5 delivered New York, usual terms and
"list so long as you will absorb our entire out-put.
"We are arranging to increase our facilities and as soon
"as we are ready to make larger shipments, we will advise
"you; we will also endeavor to give you these goods de-
"livered in New York in perfect condition and will give
"special attention to the crating of same. Any imperfec-
"tion along this line, please advise us.

"The above will apply for the sale of one car per
"week from now to Jan'y 1st, 1896.

"Yours truly,

"W. B. Ferguson & Co."

This writing was immediately delivered to the plaintiff, who on the 30th day of September wrote as follows to the defendants:

"Sept. 30, 1895.

"W. B. Ferguson & Co.,

"Suffolk, Va.

"Gentlemen:

"I have sent you by mail to-day to Elwood a stencil
"which you will be kind enough to put on all the crates
"of dishes you ship me in future.

"I have changed the name for the simple reason that
"it would not do for us to use the word 'Smallwood' on
"account of two cars of mouldy dishes which came in here
"a few months ago.

"Of course, you understand the circumstances as I
"explained to you , when I was with you on Saturday.

"Please ship those dishes as fast as possible;
"you have the specifications for five cars besides the
"car which you said you thought would be loaded and ready
"to leave the factory by Friday.

"After these five cars have been shipped, I will
"send you specifications for the balance of the cars,
"which is one car a week until January 1st.

"Please instruct your factory to be sure and use
"this stencil on all the crates.

"Yours truly;

By this letter we see that the plaintiff definitely accepted the proposition of the defendants, and the contract between them became complete, except that a duty rested upon the plaintiff of giving proper notice of the composition of the loads in respect to sizes of dishes and number of each size desired.

No such notice was given until the 24th day of October, when the plaintiff wrote to the defendants enclosing specifications of thirteen loads. This letter

was as follows:

"October 24, 1895.

"W. B. Ferguson & Co.,

"Suffolk, Va.

"Dear Sirs:-

"Enclosed I send you specifications for carloads
"to be delivered one each week, under our agreement,
"during October, November and December, 1895.

"There are now overdue five (5) cars, ordered under
"date September 24th, 1895, and one car ordered under date
"Aug. 12th, 1895, of both of which you already have spe-
"cifications.

"Please send the six cars immediately and also
"the cars for the weeks ending Oct. 5th, Oct. 12th and
"Oct. 19th, and I shall expect to receive the future cars
"in accordance with our agreement, one per week promptly.

"Yours truly ,

"Frank B. Read."

Because of the neglect of the plaintiff to give
earlier notice, the defendants were unable to make deliv-
ery of the goods between the 1st and the 24th days of
October, even had they intended to do so, and, as a con-
sequence, the claim of the plaintiff is valid only to the
extent of ten out of the thirteen loads in question.

It has developed in the course of the trial of
this action, that the defendants were not the actual own-
ers of the goods sold, and that they were acting merely as
brokers in the matter, and it is now urged that because of
such facts the counterclaim is invalid.

It appears, however, that in all their dealings
with the plaintiff the defendants acted in their own name

solely, and, also, that they made advances to their principal upon the goods in question. They were, therefore, trustees of an express trust within the meaning of section 4449 of the Code of Civil Procedure, and entitled to make the counterclaim.

Runsey Pr. Vol. 1, 119-120.

Ladd v. Arkell, 37 N. Y. Super. 35

White v. Chouteau, 10 Barb. 292.

Bogart v. O'Regan, 1 E. D. Smith 590.

Minturn v. Main, 7 N. Y. 220.

Morgan v. Reid 7 Abb. 215.

Arosemena v. Hinckley, 43 N. Y. Super. 47

Ludwig v. Gilleppie, 51 N. Y. Super. 310.

Furthermore, as the claim of the plaintiff, as well as defendants' counterclaim, is based upon a direct allegation that the defendants acted as principals in the sales claimed to have been made, both parties are now estopped to deny the fact.

Dated, New York, :
:
February, 1, 1897.:

WILLIAM H. WILLIS,
Referee.

S U P R E M E C O U R T
CITY and COUNTY of NEW YORK.

FRANK B. READ,
Plaintiff,

-against-

WALTER B. FERGUSON and
EDWARD A. NORFLEIT,
Defendants.

Copy
REFEREE'S REPORT.

CITY and COUNTY of NEW YORK.

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

That, the taking of the oath of Referee having been waived by the parties, I have proceeded with a hearing herein, and have been attended thereon by George W. Weiffenbach, Esq., attorney for the plaintiff, and by Messrs. Baggott & Ryall, attorneys for the defendants.

MATTERS OF FACT.

FIRST. That at the times hereinafter mentioned the plaintiff was engaged in business in the City of New

York as a dealer in paper-bags, twines, butter-dishes, &c.

SECOND: That at the times hereinafter mentioned the defendants were co-partners doing business in the City of Suffolk, Virginia, under the firm name of W. B. Ferguson & Co.

THIRD: That in respect to the first cause of action alleged in the complaint herein, the defendants, as such co-partners, on or about the 4th day of September, 1895, agreed with the plaintiff to manufacture and deliver to said plaintiff in the City of New York, at certain prices, a carload of butter-dishes, such carload, in respect to sizes of dishes and number of each size, to be made up in accordance with directions to be thereafter given to the defendants by the plaintiff.

FOURTH: That the plaintiff has wholly failed to prove the number and sizes of the dishes to be contained in such carload or what part of such carload has not been actually delivered to him, and that, as a consequence, he has not shown any damages arising from failure to deliver such carload.

FIFTH: That in respect to the second cause of action alleged in the said complaint, to wit, a failure to deliver five carloads of butter-dishes claimed to have been contracted for on the 24th day of September, 1895, the plaintiff has not proved that any contract was made in regard to the carloads in question, or that the defendants ever were under any obligations to manufacture or deliver such carloads or any part thereof.

SIXTH: That in regard to the third cause of

action alleged in the complaint, the defendants, as such co-partners, on or about the 28th day of September, 1896, agreed with the plaintiff to manufacture and deliver to said plaintiff in the City of New York, at certain prices, thirteen carloads of butter-dishes, each carload, in respect to the sizes of dishes and number of each size to be made up in accordance with directions to be thereafter given to the defendants by the plaintiff. That by the terms of such agreement such carloads were to be delivered one load per week from the date of the agreement down to the first day of January, 1896. That the plaintiff failed to give directions to the defendants in regard to either the sizes of the dishes or the number of any size desired by him until the 24th day of October, 1895, when he sent to the defendants specifications of the entire thirteen carloads.

SEVENTH. That by reason of the failure of the plaintiff to give such directions at earlier dates, the defendants were wholly unable to comply with the terms of the agreement, and are consequently not liable for any failure to deliver the carloads for such weeks.

EIGHTH. That the defendants wholly failed to deliver any of said thirteen carloads. That the damages for such failure are limited to the ten weekly carloads for the ten weeks following the giving of the specifications. That such ten carloads were those directed by the plaintiff to be first delivered by the directions so sent by him on the 24th day of October, 1895. That by the failure of the defendants to deliver such ten loads the plaintiff sustained damages in the aggregate amount of

\$1,242.65.

NINTH. That in respect to the counterclaim set up in the answer herein, the defendants, as such co-partners, on or about the 20th day of September, 1895, sold and delivered to the plaintiff one carload of butter-dishes at the agreed price of \$346.23. That the plaintiff is entitled to certain credits and to certain deductions from such price, amounting in the aggregate to the sum of \$36.44, leaving a balance of \$309.79, now due and owing from the plaintiff to the defendants.

I further find as

CONCLUSIONS OF LAW.

FIRST. That the claim of the plaintiff under the first cause of action alleged in the complaint is wholly invalid, and that he is not entitled to recover thereunder.

SECOND. That the claim of the plaintiff under the second cause of action alleged in the complaint is wholly invalid, and that he is not entitled to recover thereunder.

THIRD. That the plaintiff is entitled to recover from the defendants under the third cause of action alleged in the complaint, the damages sustained by him for the failure of the defendants to deliver the first ten of the thirteen carloads of butter-dishes so agreed to be by the defendants by the agreement of September 28th, 1895, and of which specifications were so sent by the plaintiff

on the 24th day of October, 1895. That such damages amount to the sum of \$1,242.65

FOURTH. That the defendants are entitled to recover from the plaintiff under their counterclaim the sum of \$309.79.

FIFTH. That the plaintiff is accordingly entitled to judgment herein against the defendants for the sum of \$932.86, being the amount which he is so entitled to recover under his said third cause of action, to wit, the sum of \$1,242.65 less the sum which the defendants are so entitled to recover under their said counterclaim, to wit, the sum of \$309.79, together with the costs of this action.

Judgment is directed accordingly.

Dated, New York)
February 1, 1897)

WILLIAM H. WILLIS,
Referee.

Damages.

"If a party to a contract (Elwood Mfg. Co.) before the time for performance or in the course of performance ^{make} ~~make~~ further performance, by him impossible, the other party is discharged, and may sue at once for a breach of contract". Clark on Cont. 649; U. S. v. Behan, 110 U. S. 338; Lovell v. Ins. Co. 111 U. S. 264, Barnes v. Morrison 97, Va. 372.

"Where the principal revokes the agency in breach of the contract the agent is entitled to compensation already earned, and to damages for the breach. The agent in such case may sue at once and recover the compensation earned and unpaid plus the probable damages, or he may wait until the expiration of the term of service and recover the compensation plus the actual damages." Huff on Agency, 79 and cases cited. The same author says Sec. 78. "The compensation may be made to depend upon the performance of certain conditions, if so, the performance of the condition is necessary to establish the claim to compensation. If, however, the condition be performed, the agent is entitled to his compensation even though the principal refuse to avail himself ~~of~~ the results of the service. This proposition is illustrated by the cases where commissions are promised, the agent on the sale of the principal's property, or for securing a loan. If the agent finds a purchaser ready, willing, and able to purchase on the terms fixed by the principal, he is entitled to his commission, although the principal refuse to carry out the sale on those terms." Citing Jones v. Adler, 34 Md. 440; Moses v. Bierling 31 Ny, 462; Love v. Miller, 53 Ind. 294; Vinton v. Baldwin, 88, Ind 104.

That the Elwood company, through D. K. Joyner & Bro. its agents, failed and refused to ship its butter dishes upon the orders of W. B. Ferguson & Co. is abundantly proved. (Joyner E. 18.)

What, then, are the complainants entitled to receive of the defendants? What is the measure of damages for the breach of contract of service?

1st. Exoneration or reimbursement.

"An agent is entitled to be reimbursed for all sums which he has paid out, or become individually and solely liable for, in the due

course of the agency and for the principals benefit. Thus an attorney who, under implied authority, has indemnified an officer for making a levy may recover from the client the loss suffered in consequence of such indemnity." Huff on Agency, L. 84, Citing Clark v. Randall

"If an agent has, without his own fault, incurred losses or damages in the course of transacting the business of the agency, or in following the instructions of his principal, he will be entitled to full compensation." Ruffner et al v. Hewitt et al. 7 W. Va 586.

"The agent is entitled to indemnity against the consequences of acts performed in the execution of his authority which are not illegal." *Law. Sec. 85.* And see to the same effect Green v. Goddard (9 Mete. 212) Id. bottom; D'Arcy v. Allen, 149 U. S. 498, S. C. 37 U. S. Bd. 819 p. 827; Brown v. Speyers, 20 Gratt 295 at p. 309. This principle of law is applied in courts of equity through the doctrines of contribution and exoneration. Bisph Eq. sec. 331; 7 A. & E. E. of L. (2 Ed.) 350.

The doctrines of contribution and exoneration do not rest upon an express contract, but upon an implied contract arising from any state of facts which make it the equitable duty, as between themselves, of one to bear the obligation which has been cast upon another/ 7 A. & E. Eucy. of Law (2Ed.) 330; Bibb v. Allen (U. S.) 37 R. Ed. 819, Hansberger v. Yancy, 33 Gratt, 327; Burton v. Mills, 78 Va. 468.

The complainants claim for exoneration is based upon the judgment of Frank B2 Reid procured against them at the Oct/ Term of the Circuit court of Nansemond, 1897, for a breach of contract to deliver butter dishes a copy of which contract is filed in evidence as "EX. L". This judgment is for \$1316.25 but was compromised for \$1217.68. This \$1217.68 and interest thereon from Oct. 1897 should be paid complainant by defendants.

2nd. Expenses as damages.

By reason of having to defend the suits of Reid in New York and Virginia the complainants were put to great expense which should have been borne by the defendant company as it was by reason of its default and refusal to perform the contracts made for its benefit by its agents that such expense was made necessary. These various items of expense are as follows:

Fee to New York lawyer

\$150.42

Traveling expenses for Ferguson and bookkeeper, witness

\$74.25

Fee to Prince and McLemore in defending Virginia suit.

58.00

\$ 288.67

Complainants may recover costs incurred in defence of Read's suit and interest on Read's judgment from date of payment. 7 A. & E. Ency. of Law (2 Ed.) 344; Bosley v. Taylor, 5 Dana, (Ky) 159, 40 Am. Dec. 677; including reasonable counsel fee Gross v. Davis, 87 Tenn. 226, 10, An. St. Rep. 635; Van Winkle v. Johnson, 11 Oreg. 449, 50 Am. St. Rep. 405; Bisph Eq. p. 441. *Ruffner et al. v. Hewitt et al. 7 W. Va. 586*

3rd. Money had and received. Set off. The next item of damage in the complainants account is for \$309.79. This item arose in this manner: The Elwood Co. on Aug. 27th. shipped through Ferguson a car of butter dishes to F. B. Read. This car of dishes ^{was} ~~were~~ worth the above amount. Read declined to pay for them. Ferguson in the meantime, according to their custom and contract between them paid the Elwood Co. for the car. On Dec. 26th '95 Ferguson goes to New York to collect this bill from F. B. Read ~~and process is served~~ on him to answer the suit of F. B. Read for breach of contract in failing to ship the butter dishes as per contract. Read recovers judgment, but the amount of Read's judgment is lessened by a set-off on the part of Ferguson, for the \$309.79 due by Read for the car of dishes already sold and delivered. If the complainants are entitled to ~~allowance from the judgment of Read they may recover~~ recover for this item as it is for the same thing and based upon the same reasoning/ No more need be said of it.

4th. Loss of profit.

As we have already seen, supra, the agent who is wrongfully discharged may recover from the principal not only the amount of his expenses actually incurred by the discharge, but also for compensation for his lost profits, as if ^{the principal} ~~he~~ had fully performed his contract.

This rule of law is obviously ^{fair and is} applied by the courts. See cases cited supra.

The proper measure of damages in such cases (wrongfully discharge of agent who has incurred expense by reason of the agency) is the amount, the party not in fault, has already expended toward the performance of the contract (less the value of material on hand) and the profits he would realize by performing the whole contract if not

U.S. v. Behan, ^{110 U.S. 338.}
~~supra~~

remote and speculative," ~~Id.~~ and also Speeds case 8 Wall 37; 100 U. S. 500, Note to Cutler v. Powell 2 S. M. Ldg. Cas. (9 Ed.) 1212.

"One who voluntarily and wrongfully puts an end to a contract and prevents the other party from performing it, is estopped from denying that ~~that~~ ^{the} injured party has been damaged to the extent of his actual loss and outlay fairly incurred," U. S. v. Behan, 110 U. S. 338. Where the principal wrongfully and prematurely terminates the agency, the agent's right of compensation, for what he would have done had he been allowed, is not lost, and, as to the amount, is to be measured by the terms of the contract, when the same is fixed thereby. Strong v. West 35 S. E. (Ga.) 693.

It is useless to multiply cases on the point that lost profits may be recovered in an action or suit for a breach of contract. The books are full of such cases and the principal is too well established to require the citation of authorities. The only question involved in this point is on the facts, not the law. It is claimed that even if complainants have ^{the} right to demand damages of the defendants, they can not recover lost profits for more goods than were actually shipped by complainants between the breach of the contract (Oct. 3) and the first of Jan., the time at which complainants' contract ended. The complainants claim the measure of damage, for lost profits must be based upon the representation, made by defendants to complainants, as to the amount of goods the mill would turn out from the time of such representation till Jan. 1st.

Joyner (p. 18) testifies that between the breach of contract and Jan. 1st he shipped only six cars of dishes. These cars are worth on an average, about \$300.00 each, as will be seen by the exhibits (1-2-3-4-5-6-7-8-9 etc.) Taking this as a basis of calculation, at 5% the complainant would have received in commission \$90.00. Ferguson testifies (p. 10) that, with the aid of the new machinery which Gum told him he would put in the mill, upon which representation he based his contract with Read, the defendants said they would produce about one car per week. On this basis the defendants would have produced 13 cars ~~per week~~, which calculated at \$300 per car makes \$3900.00, 5% on which is \$195., the commission which F. & Co. would have received had the defendant company lived up to its contract and fulfilled *their representations* - 9

What are their actual damages?

1 Indemnity-	\$1217.68 and interest from Oct. 197.
2 Expenses incurred	^{288.67} 308.67 " " " "
3 Set off allowed	309.79 " " " <i>Oct. 11, 1897</i>
4 Lost profits (<i>Sept figures</i>)	90.00 " " " <i>July 1st 1896</i>
	\$1895.54
	\$1917.47 and interest as above.

Collection of Judgment .

Are the complainants to be given a bare judgment or decree for damages and no more?

Having shown their right of recovery, the complainants ask the chancellor to give them complete relief and set aside the fraudulent deeds from the defendant company to its Pres., John A. Gum, in order that the judgment or decree may be enforced against the true assets of the defendant company. Equity having jurisdiction of the case, should furnish an adequate and complete remedy to the complainants. Bisph. Eq. p. 58; Walters v. Farmers Bank, 76 Va. 12

In complainants bill it is alleged that on March 15th 1897, after the New York judgment and before the Virginia judgment of Read v. Ferguson & Co., the Elwood Co. voluntarily and fraudulently transferred all of its property to Jas. L. McLeMore, trustee for John A. Gum.

Two questions naturally arise from this allegation. (1) Was the deed voluntary? (2) If for value, then, was it made fraudulently?

The answer of defendants denies that the deed was voluntary and fraudulent, but the defendant's evidence does not bear out this general denial.

1. Was the deed voluntary-evidence?

It is to be remembered that the complainants are attacking a deed from a corporation to its president, general manager, treasurer, largest stock-holder, director and moving spirit in the corporation. Under such circumstances the general rule, as to the burden of proving fraud being on the attacking party, is reversed, and it is incumbent upon the officer and director of the corporation to show the bona fides of the transaction. Clark on Con't. p. 512 Thomas v. Ry. Co. 109 U. S. 522; Twin Lick Oil Co. v. Marburg, 91 U. S. 587; Richardson v. Green, 133 U. S. 43 Addison v. Lewis, 75 Va. 720, Sutton M'f'g. Co. v. Hutchinson, 11 C. C. A. 320, Shep. Cas.

Corp. 229. American Net Co. v. Mayo, 97 Va. p. 184.

Have the defendants, the Elwood Co. shown the deed to have been made for value? The defendant's evidence on this point is as follows: Soon after the Elwood Co. began business about Dec. '94, it was found in debt to various parties for material used in construction of the plant to the amount of about \$900.00 (G. Q. 44) Seven months later, to-wit: Aug. 1, 1895, the Elwood Co. by its Pres., and Secreatary executed its two notes to John A. Gum, its president, one for \$700.00 and the other for \$202.76. Nineteen months after the notes are said to have been executed, to-wit: March, 15, 1897, the company through its president and Sec. executed a deed of trust to Jas. L. McLemore, trustee, securing the payment of these notes to John A. Gum. Let us look at the surrounding circumstances of this transaction, only in the light of which the court can probably weigh this evidence. And first of negative evidence. As the burden of proof is upon the defendants to show the legality and bona fides of this deed, and that it was not voluntary, it is proper to recall the facts which they have failed to show.

In the deed of trust itself the evidences of debt secured are described both as bonds and as notes. (See deed exhibited with bill)

James L. McLemore the trustee in⁺ the scrivener of the deed of trust, and a party defendant in this suit does not remember having seen but one of the notes secured, which one does not appear, and of that his recollection is imperfect (McL. p. 1)

John A. Gum, (Q 141) offered to file these notes in evidence, they have not been filed though he has had ample opportunity to do so, if he had them. D. K. Joyner, (Q 131) said he would file as exhibits the bills paid by Mr. Gum for the company if he could find them. He has not done so. Nothing, however, could be easier than to get copies of these bills from the various creditors of the company, which have been paid by John A. Gum.

It is suggested though not plainly testified, by Gum (Q 44) that at a director's or stock-holders meeting in August 1895 a resolution was passed directing the execution of the notes to Gum. yet not one of the minute books of the corporation has been exhibited

in this case. In short, the defendants have not exhibited one iota of evidence to corroborate the testimony of Gum and Joyner. But on the contrary all the circumstances surrounding the transaction tend to contradict their testimony and lend confusion to their statements. It is not shown that Gum ever paid a bill. If, so, it is not shown, the amount thereof or to whom paid; it is not shown who authorized the president and secretary to execute the notes of the company payable to the president; it is not shown that any such notes were ever given; it is not shown whether notes or bonds were executed; it is not shown by what authority the president and secretary of the corporation encumbered the entire property of the corporation to secure its president. *See Moore v. Uelman 80 Va 307.*

2. Was the deed of trust made to defraud the creditors of the Elwood Co. of what they were or might have been entitled to?

Gum claims to have paid the debts of the Elwood Co. in Dec 94, the notes evidencing this debt ^{and claimed to have been} were executed in Aug. 1895; the deed of trust securing the notes was given March 15, 1897.

Take the surrounding facts from Aug. '95 to the execution of the deed of trust and what do we find: In Sept. or Oct. 1895, Joyner, who was operating the mill for the company, and who was its agent, broke the defendant's contract with complainants' and sold the product of the mill to one J. J. McCloskey. Here the trouble began. Complainants wrote to both Joyner and the company informing them they would hold the company liable for any and all damage they might suffer by reason of the breach of contract (Letter of Oct. 24) In Dec. complainants are sued by Read and they again call on the Elwood Co. to relieve them from the expense of the suit. Defendants contribute \$25.00 for these expenses. In 1896 about August, D. K. Joyner & Bro. make an assignment for the benefit of the creditors and go out of business. In Feb. 1897 Read recovers judgment against Ferguson & Co. in New York. Gum knows this and also knows Ferguson & Co. will hold the company responsible for any damage they may suffer thereby. On March 15th, 1897 the Elwood Co. makes a deed of trust to McLemore, trustee, conveying every cent's worth of its property, to secure Jno.

A. Gum its president.

Now if the Elwood Co. owed Gum a debt which had been standing ever since Dec. 1894, ^{what} fact made it necessary that this debt should be secured to Gum in March 1897 by a deed of trust on all the company's property? Why should Gum and the company have waited for over two years and two months before making this deed, and then, just as the damage inflicted on Ferguson & Co. by their acts was making itself felt, transfer all of the company's property out of reach of Ferguson; and why give a deed of trust on property costing nearly \$5000.00 and which was not losing but making money, to secure a debt of \$900.00?

In answer to these questions on his examination My. Joyner says (Q 118-125) he don't know why the parties waited so long before executing the deed of trust; not why the deed of trust was given at all. "I don't know, I suppose the party to whom the money was due (Gum) would rather have a deed of trust and he asked for it, and he got it. This is the only reason I can give."

"Thus while a debtor may secure the debt of his creditor, though other creditors are postponed thereby, he cannot cover a much larger amount of property than will satisfy such debt and postpone for an unreasonable time its appropriation. Other creditors have a right to the appropriation to the payment of their debts of all the property which may be included in such deed over and above that which may be necessary to satisfy the debt secured by the deed, and if in the deed it be stipulated that the sale of the property shall be postponed for several years, all other creditors are of necessity delayed until the expiration of that time should the deed be permitted to stand. " 14 A & E. Eucy of L. (2 Ed.) 245 and cases cited.

Here we have a deed of trust given on \$5000.00 worth of property to secure the payment of \$902.00 and while it is not so stipulated in the deed, yet the sale of the property under the deed was postponed, by consent, perhaps, a most unreasonable time. In fact it has never been sold under the deed. Gum knowing that if this was done the complainants would come in for the surplus, preferred to bury

the assets of the company much deeper under legal forms and clothe this fraudulent transaction in more regular and pleasing habiliments; hence the deed of bargain and sale.

But whom did Gum ask for the deed: It does not clearly appear except that in McLemore's testimony it is said Gum and Joyner's (D. K. Joyner & Bro.) told McLemore the scrivener and trustee, to write a deed, and either Gum alone or Gum and the Joyners furnished the necessary data with which to write the deed. "Gum and the Joyners" one the beneficiary of the trust, the others the parties who had precipitated the loss on Ferguson & Co. and who were stock holders in the corporation which was about to be compelled to respond to the just demand of Ferguson & Co. In short D. K. Joyner & Bro who had inflicted the loss on Ferguson & Co., and John A. Gum the father of the fraudulent scheme and ^{the} beneficiary under the trust deed, got together and sought to cover up the assets of the corporation- to hide the assets from its just creditors and gain them for themselves.

The motive, the power, and the opportunity for a fraudulent transfer are clearly shown. And the effect of all three is the deed of trust of March 15th, 1897.

Was the deed of Bargain and Sale of March 30, 1898 for a valuable consideration and bona fides? In discussing this question it is necessary first to determine whether there has really ever been a transfer of the company's property or whether the transaction between Gum and the stock holders was a transfer of stock. If the transaction between the stockholders and Gum was simply a transfer of stock, then the Elwood Co. is still the owner of the mill property and there is no necessity for setting aside the deed of bargain and sale of March 30, 1898. Clark on Com'rs. 18, 40 - 4420.

Mr. Gum (Q 45) says, "I simply bought it like I would any other property; we placed a valuation on it at about \$4000.00 the amount we had put in which was the original cost outside of this deed of trust that was on it. Then I bought the stock out at 50 cts. on the dollar and paid them for it. Part of it I gave my notes for; my own individual notes."

Q. 46- How much did you pay at the time you made this purchase?"

Ans. I paid the whole of it. I gave them my notes for a part of it, I paid in cash, and a part by transferring real estate."

Q. 47- Have you paid the notes you gave for it?"

A. I paid every one with the exception of one. I owe Joe Johnson \$75.00?

It is true that in answer to a leading question of his counsel Mr. Gum (Q. 50) states that he acquired this property by a conveyance from the corporation and that the stock was simply given him by the stockholders.

But all through his testimony Mr. Gum speaks of buying the property on a basis of 50% of its face value; and that this amounted to \$2000.00

There was \$4000.00 of stock, 50% of which would be \$2000.00. But the book value or cost of the plant, according to the evidence of the defendants, was nearly \$5000.00 - \$4000.00 original cost and about \$1000.00 borrowed from Gum (Gum Q. 54; 44, 156) 50% of this amount would be \$2500.00.

It appears further that the consideration claimed to have been paid by Gum was paid to each individual stockholder in proportion to his stock and not to the corporation. (Gum Q. 45, 47, 151, 152; Joyner 28, 32, 124, 125, 126, 133, 134, 135.)

My Joyner says, (Q. 28) "The stockholders were called together and it (was) agreed between all of the stock holders and John A. Gum that he purchase the entire stock of the company and at one half the face of the stock certificates. This he did and settled for as per requirements of each individual stock-holder. As for my stocks I traded with him and got from him in consideration a farm. On these grounds a deed was given John A. Gum for the entire plant"

Here is a plain statement and one which is more consistent than John A. Gum's. The truth is, there was a called meeting of the stockholders after it was learned that Read had procured a Virginia judgment against Ferguson & Co. (Oct. '97) and that Ferguson and Co. had paid it, for no other purpose in the world ^{than} ~~for~~ that the Elwood CO.

should dispose of its assets and defeat Ferguson & Co. from recouping their loss from this property. The stock holders met, and the stock holders simply means D. K. Joyner & Bro., John A. Gum and Jos. Johnson. and being ignorant of the legal affect of their acts, sold out their individual stocks to John A. Gum. Gum then came to Suffolk and gets Jas. L. McLemore to draw up a deed from the corporation to himself, as if the transfer had been from the corporation to himself, carries it back, it is signed by some of the stock holders as officers. When this suit is instituted he learns a little corporation law and tries to make it appear that he bought the property from the corporation for 50% of the par value of the stock.

Not one dollar of the consideration if any there has been, for this deed was ever paid to the proper officers of the corporation. It was paid, if at all, directly to each individual stock-holder. If it be asserted in answer that it was not necessary to pay it into the treasury of the corporation, because it would be a useless thing, for John A. Gum as a purchaser, to pay money to John A. Gum as treasurer. We rejoin, ~~as~~ not only it is not useless, but, the law of Virginia makes it essential before the distribution of a corporation's capital to advertise the intention to do so. Now this mill property was the capital of the corporation and while it is true, if fairly done, the form of the capital may, by proper authority, be converted from really to personally, i. e. from mill property to money, yet the capital fund must remain with the corporation and not be distributed pro rata among the stock holders until the requirements of the statute have been performed. (C. V. §. II39)

If the contention of Gum that he holds the property by virtue of the conveyance from the corporation and not by virtue of having come into possession of all the stock be true, we are compelled to ask: Why was the purchase price based upon the value of the stock? Why was the consideration paid directly to each individual stockholder?

do
Why, both Gum and Joyner admit the purchase was of stock and not property of the Elwood Company in their depositions?

It is clear from the defendant's own evidence that Jno A. Gum bought the stock and not the property of the Elwood Manufacturing Company, and no amount of argument by counsel can change this fact. It is well settled that a conveyance by a corporation of all its property must be sanctioned by all the stockholders; in this case one of the stockholders, E. Joyner, was not present at the alleged stockholders meeting. (Joyner 133-135).

The effect is that there could have been no valid resolution by the corporation to dispose of all its property. But even should the court hold that the transaction was a purchase of property and not stock, the deed of Mch. 30, 1898, would be set aside as fraudulent and voluntary.

That the deed was voluntary is abundantly shown by the defendant's own testimony. Both Gum and Joyner testify that the consideration for the deed was paid to the individual stockholders in proportion to their stock. Not one cent was ever paid to the corporation. Was the deed of bargain and sale also fraudulent? Badges of fraud.

Viewing the case as ^{a whole} ~~is shown~~ the following badges of a fraudulent intent appear.

- 1-The relation of the parties. A corporation as the grantor, its president and treasurer as the grantee. Burt. 2 Timmons, 29 W. Va. 441, 6 A.S.R. 664. Click v. Green, 77 Va. 827, 96 Va. 238
- 2- Conducting sale out of the usual course of business. It is certainly unusual for a corporation to sell all of its property and retire from business, especially so, when the corporation is not losing money by operating.
- 3- Unusual degree of secrecy of sale. Here no advertisement for bidders was published, no one was asked to bid for the property, no one knew a sale was going on except the officers of the company who held their meeting and made the sale behind closed doors.
- 4-Appearance of excessive efforts at regularity. In both the deed of trust and the deed of bargain and sale there are lengthy recitals

of resolutions and preambles as having been passed at a stockholders meeting. The evidence shows that these deeds were written by Mr. McLemore in his office at Suffolk at the dictation of Gum and Joyner. It does not appear that the books of the corporations were brought to McLemore or that the books contain any such resolutions, if they do, why were they not produced in evidence? It is clear to see that these resolutions, preambles, etc., appear for the first time in the deeds, and if they were spread upon the books of the corporation at all it was done after the deeds had been drawn up, if not after they were signed. *Heart v. Sandy*, 39 W.Va. 644.

5-Circumstances of looseness in determining the value of the property conveyed, as where a purchaser buys a stock of merchandise without taking an inventory of its value, 'tho it does not render the sale void per se, is a badge of fraud.' 14 Am. & Eng. Ency. of L. (2ed) p 516. The grantee simply guessed at the value of the property and paid for it, he says, more than it was worth. (G.R. 45; 143-157) no inventory was taken and the basis of calculation for the purchase price was the stock of the corporation and not the actual value of the corporations property. (Joyner, Q. 28; Gum Q., 45)

6- Inadequacy of consideration. The property is said to have cost \$5,000.00. It owed no debts; was losing no money; had more business than the company could do; situated close to the raw material; and was equipped with new and improved machinery, yet it was sold for 3/5 of its cost value.

7-Inability to prove payment of consideration. Where the burden of proving the bona fides of the transaction is cast upon the grantee, and he is unable to show when and where and to whom he paid, and how much, it is a strong badge of fraud. 14 A&E.E. of L. p 519. Here the grantee not only fails to show how he paid, but testifies direct, that he never paid the corporation a cent. "It is a badge of fraud if the maker of a conveyance reciting the payment of a consideration,

which he testifies consisted of antecedent debts due the grantee, is unable to produce any memorandum^{or} other record of these debts." 14 A & E.R. of L. p 519, W.C. the alleged notes ^{recited in} received by the deed of trust. Moore v. Ullman 80 Va. 307.

9-The ^{mis}reinstatement of the consideration for the conveyance is a badge of fraud. The deed of bargain and sale declares that the consideration for the deed-\$2,000.00 had been paid in full. Mr. ^{Gum}Green testifies that he never paid the corporation a cent, and that he still ^{owes} the stockholders money for something. Whether stock or property does not clearly appear. The same observation may be made of the deed of trust, where the evidences of ^{the} debt secured are described sometimes as notes and sometimes as bonds. Heagy v. Trout, 85 Va. 390.

10- Long and unusual credit. A sale upon long and unusual credit is a badge of fraud. Ferguson v. Daughtrey, 93 Va.

In this case it appears that the grantee gave his notes to the individual stockholders for a conveyance of all its property from the corporation. And while it is recited in the deed that the consideration had been received in full by the corporation, yet the defendants evidence shows that such was not the fact. The deed does not reserve a vendor's lien for the unpaid purchase money; no contemporaneous deed of trust was made to secure these payments; no judgment was confessed; in short, absolutely no security was or has been taken either by the corporation or the stockholders for the unpaid purchase price. The consideration was not paid in cash, Mr. Gum says he paid some in cash, some by conveyance of land (tho no such conveyance can be found on the records in the Clerk's office) and some by giving them his notes. (Gum Q. 45, 46)

11-Failure to take up evidence of debt. Hickox v. Elliot, 27 Fed Rep. 830 W.C. the notes secured by the deed of trust.

12- Conveying entire estate. A conveyance by an embarrassed or insolvent debtor of his entire estate, real and personal, is a badge of fraud. 14 A & E.R. of L. (2 ed.) 522 and cases cited 1 Sun. Idg.

^{Cas.}
~~Law.~~ at p. 52 n. 7.

13- Time of conveyance. The fact that a sale is made by the debtor of all of his property pending ^{the} in suit of a particular creditor is a badge of fraud. Pezk v. Land 2 Ga. 1, 46 Am. Dec. 368. Click v. Green et als, 77 Va. 836/ Twynes Case 1 Sm. Ldg. Cas. (9 ed.) 1.

14- "In determining the validity of a mortgage or deed of trust the time which it has to run is an element to be weighed." 1 Sm. Ldg. Cas. p 58, n. 3., Lewis v. Caperton, 8 Gratt. 148. Here one note secured by the deed of trust is dated Aug. 1, 1895, payable one year after date for \$700., the other payable on demand for \$202.76, dated Dec. 1st, 1896. The first note became due Aug. 1, 1896, yet the property was not sold under this deed of trust at all although both notes were long past due at the time the deed of conveyance was made. the first note was a year and seven months past due, and the second, a year and three months- and ^{um}Green says the interest on the notes had not even been paid. (Gum Q. 48) If these debts were honest, why was not the property put up and sold at public auction under the deed of trust, so that the world might see the whole transaction and the corporation receive into its treasury for the benefit of its creditors the proceeds of its property? If ^{um}Green had desired to buy the property bona fide he could have bought at a trustee's sale, certainly with more show of fairness than from the stockholders at a secret meeting. "Delay in the enforcement by a creditor of a lien held by him on the debtor's property is a circumstance to be considered in determining the validity of the lien as to other creditors." 1 Sm. Ldg. Cas. (9 ed.) p 59 n. 1.

15- But above and beyond the circumstantial proof adduced to show a fraudulent intent, the complainants show by the testimony of C.H. Ward a direct admission of Jno A. Gum, made contemporaneously with the execution of the deed of Mch. 30, 1898, that he contemplated putting the defendants property beyond the reach of the complainant.

Gum said he would "fix things so that Ferguson could not get hold of it". The testimony of McLemore shows tht Gum ,or Gum and the Joyners, had him write these deeds. Ferguson states that he was after no property in which Gum was interested except that of the Elwood M'f g Co. Mr. Gum in his testimony no where denies that he made this statement to Mr. Ward, it must therefore be taken as true, and if it is true that Gum made this statement to Ward, the fraudulent intent is proved beyond a reasonable doubt. It is unnecessary to touch upon the question as to whether the grantee had notice of the grantor's fraudulent intent. The grantor and grantee are, practically, one and the same person, Jno A. Gum .

laid
"No rule can be ~~laid~~ down as to the extent of evidence required to set aside a conveyance as fraudulent, it must satisfy the chancellor's conscience, ^{and generally must be} and it may be ^{and generally must be} circumstantial." Witz. v. Osburn, 83 Va. 227 Moore v. Ullman 80 Va. 307; Armstrong, Cator & Co. v. Lackman, 84 Va. 726. It is confidentially submitted that these deeds are fraudulent and voluntary and should be set aside as to the creditors of the corporation.

To The Elwood Manufacturing Co., John A. Gum and James L. McLemore,
Trustees.

Take notice, that on the 29th. day of June, 1900, at the office of Bartlett Roper, Jr., in the city of Petersburg, Virginia, between the hours of ~~11~~ 10 o'clock A.M., and 6 o'clock P.M., of that day, I shall proceed to take the deposition of E.E. Titus, to be read in evidence in our behalf in the suit in equity depending in the Circuit Court of Nansemond County, in which we are complainants and you are defendants and if from any cause the taking of the said deposition be not commenced on that day, or if commenced, if they be not completed on that day, the taking of the said deposition will be adjourned and continued from time to time at the same place and between the same hours until it is completed.

Respectfully,

W.B. Ferguson

E.A. Norfleet,

Partners as W.B. Ferguson & Co.

by

Robt. H. Mithers,

Counsel.

June 20th / 1900.

We, and each of us, hereby accept due,
legal, and sufficient service of this notice
to take the within deposition at Petersburg,
Va, on or after June 28th 1900.

Edward Miff Co. *J. L. Wilkerson & Co.*
Jno. D. L. Wilkerson
J. L. Wilkerson trustee *Arbitt.*

M

42

E & A

Petersburg, Virginia,

189

"ENTIRE PLANT DRIVEN BY AN ELECTRIC MOTOR"

BOUGHT OF:



E. E. TITUS.

MANUFACTURER OF LATEST IMPROVED

VENEER
BASKET
BUTTER DISH
AND

TRUCK BARREL MACHINERY

FOUNDER & MACHINIST

TELEPHONE 83.

JONES, COMMERCE & SOUTH STS.

Terms

NOV 9	1-36	1892 4. 7. 1892	688.00		
		1-36	85.00		
		1-36	12.50		
		1-36	40.00		
		1-36	132.00		
		1-36	45.00		
		1-36	1.00		
		1-36	15.89.70		
444 <i>Aschelt</i>					

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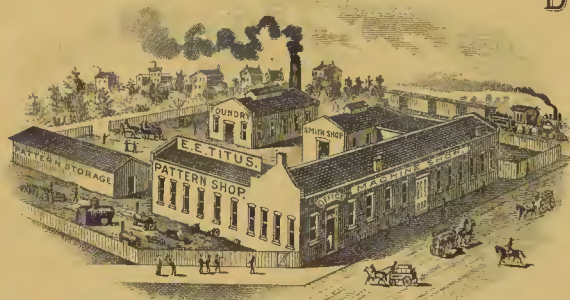
B

Petersburg, Virginia,

189

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Terms

Esculet "B"

6

Esculet "C"

M

E

Petersburg, Virginia,

189

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BOUGHT OF:



JONES, COMMERCE & SOUTH STS.

E.E. TITUS,

MANUFACTURER OF LATEST IMPROVED

**VENEER
BASKET.
BUTTER DISH
AND**

FOUNDER & MACHINIST

TRUCK BARREL MACHINERY.

TELEPHONE 88.

Terms

E. Helst

*When I bought the
Petersburg Foundry Nov 12/90
for \$160,000*

The depositions of E. E. Titus duly taken before me, David A. Lyon
a Notary public in and for the City of Petersburg, pursuant
to notice hereto acknowledged, at the office of Bartlett Roper Jr #67
Sycamore St. in the City of Petersburg, Va on the 29th day of June
1900 between the hours of 11 o'clock A.M. & 6 o'clock P.M.,
to be read in evidence in behalf of the plaintiffs in a certain
chancery suit depending in the Circuit Court of Hanover
County wherein W.B. Ferguson & Est. Norfolk Posters Trading
as W.B. Ferguson & Co are plaintiffs vs The Elwood
Manufacturing Company John A. Guin & James L
McLennan Trustees and defendants

Present Bartlett Roper Jr Counsel for Plaintiffs
J. L. McLennan Counsel for Defendants

E. E. Titus being duly sworn deposes & says as follows:

1st I say Bartlett Roper Jr Counsel for Plaintiffs

State your Age, residence, & occupation

Ans. I am 36 years of age. Petersburg Va. I am
the proprietor of firm of E. E. Titus. Machine
& Manufacture of Machinery

2nd Did the Elwood Manufacturing Co or J. A. Guin order
any goods of you after March 30 - 1898?

Ans. According to my books the first order I received
for purchases was Nov 9 - 1894 in the name of
the Elwood Manufacturing Co per J. A. Guin President
for \$539. here with filed marked Exhibit "A"; The next
one is the Elwood Manufacturing Co per J. A. Guin President
dated Jan 22nd and April 13 - 1895 amounting
in the aggregate to \$127.00 here with filed marked
Exhibit "B". That ends the Elwood Manufacturing Co with J. A. Guin
President. After April 13 - 1895 it was J. A. Guin & Co.

until the middle of 1896 or about. Then Jno A Green
came over, as appears by paper herewith filed
marked Exhibit "C"; There was no further transac-
tion with me until Feb 6-1899 when Jno A Green bought
a bill amounting to 125⁰⁰, as appears by bill herewith
filed marked Exhibit "D". I also herewith file a bill
for repairs against Jno A Green, running from
Nov 17-1899 to June 21-1900, as appears from
paper herewith filed marked Exhibit "E"

3 Q

Were the orders received by you after March 30-1898
signed in the same manner as those received by you
before that date?

Ans

They were not, I only received one thereafter,
dated Feb 6-1899 and that one was signed by Jno
A Green & all orders since that date received were
signed by Jno A Green.

4 Q Do any of the parties mentioned in answer to
question 2nd at present owe you anything ^{if not} ~~about~~
when were you paid?

Ans. The Clevered Manuf^g at present does not owe
me anything. The two notes given me, one for 340⁰⁰
dated Nov 16-1894 due payable 2 months after date and
the other for 340⁰⁰ ~~and~~ dated Nov 16-1894, payable 4 months
after date, were duly paid at maturity. The above two
notes were signed by Clevered Manufacturing Co
Jno A Green Pres^t & endorsed by John A Green.
The Clevered Manuf^g had an account also

with me which they paid about the middle
of the year 1895

Dr. J. J. & Co. do owe me between ^{to} 25 and ^{to} 50
when they failed in 1896 but I can't tell whether
the same has ever been paid

Jno. A. Green still owes me a bill for repairs
work covering the period between Nov 10th 1899
to June 31-1900 amounting to 166⁸³. This is the
only bill Jno. A. Green owe me the rest having been
paid

5Q

Have you any of the orders received from the
Elewood Manf Co or Jno. A. Green before ^{the} March
3rd 1898?

ans.

I have received the orders but am unable
to face them. The bills herewith filed marked exhibit
"A", "B", "C", "D" & "E" & ~~are~~ are in keeping with the orders received
by me from the different parties

6Q Did you ever receive any notification that the
Elewood Manf Co had ceased to do business
about March 30-1898, and if so when?

ans.

I could not tell to save my life.

Examination

1Q By J. M. Leonard Counsel for Defendants.

I understand from your examination in chief that your
first dealings, beginning in 1894, were had with the

Elewood Manufacturing Co., that these dealings continued in regular course of trade until about the middle of 1895, that you then had an account with D. K. Japer & Co. extending over the period from the middle of 1895 to about the middle of 1896, at which time D. K. Japer & Co. failed, that from this last mentioned date until Feb. 1899 you had no transactions with the Elewood Manf. Co. with Jno. A. Green or with D. K. Japer & Co. and that the next transaction had with either of the parties mentioned was with Jno. A. Green on or about Feb. 1899 and that the dealings since that time have been with Jno. A. Green; Is this true?

Ans

yes

And further this deponent saith not

E. E. Sides

(Counsel Robert J. Attorney for Plaintiff
James L. Moore, Atty for Defendant.)

State of Virginia }
City of Petersburg } Sheriff

I David A. Lyons a notary public in and for the city of Petersburg in the State of Virginia do certify that the foregoing depositions of E. E. Sides were duly taken, sworn to and subscribed before me at the place and time mentioned therein and in the Caption thereto, pursuant to the annexed notice.

In witness whereof, I have hereto set my hand and official seal this 9th day of June 1900 at the City of Petersburg aforesaid.

David A. Lyons
Notary Public

Notary Fee \$2 50

Notary
Fee

Q.1. What is your name, age residence and occupation, and do you know the parties to this suit?

A. Carr Beale, 60, Franklin, Va., None now, speculating, know Mr. Gum and Mr. Ferguson.

Q.2. Did you ever have a conversation with John A. Gum, in 1895, relative to the sale of butter trays of the Elwood Manufacturing Co., if so please state the substance of the conversation.

A. I had a conversation with Mr. Gum, I don't know whether it was in 1894, 1895 or 1896, it was while he was manufacturing butter-dishes. Mr. Gum told me that Ferguson was his agent for the sale of the butter dishes, in other words he said he handled them for him.

How came you to testify in this case?

A. I happened to be talking with Mr. Ferguson one day about the butter-dish dishes, he seemed to think my testimony would be worth something and had me summoned.

Cross Examination.

Q1. Mr. Beale did Mr. Gum tell you that Mr. Ferguson was his agent or simply that Gum's butter dishes passed through Fergusons hands?

I

A. Mr. Gum said Ferguson handled his butter dishes, I don't remember whether he said "agent" or how he handled them, because it was none of my business.

Re-direct.

Q1. Did Mr. Gum say that Ferguson bought his dishes?

A. I don't know, I can't say whether he did or not.

Q.2. Did not you believe Mr. Ferguson was Gum's agent?

A. I don't know, Mr. Withers, what I did believe, it has been a long time ago.

Carr Beale

A. Yes that was my understanding.

(Question and answer excepted to, because it is leading)

Cross-examination.

By H. McLemore.

Q. Would you undertake to say, with any degree of certainty, when it was that this conversation took place, and if so, how do you locate the time?

A. I think it was in the early spring, of course the time positively I do not know--that's the truth. It was in the spring or early summer--I know that because we were sitting on the out-side of the Hotel.

Q. You have stated in your examination in chief that you had a conversation with Mr. Gum relative to the business of the Elwood Mfg. Co. Whereas I understand from your testimony in general that you did not have the conversation about the Elwood Mfg. Co. and that nothing was said about the Elwood Mfg. Co. and that as a matter of fact the Elwood Mfg. Co. appears in the testimony by reason of the form of the question of complainant's counsel and that in fact you did not have any intimation from Mr. Gum relative to the Elwood Mfg. Co. nor did you have it in mind during this conversation, is this true?

A. It is a fact; I did not know that the Elwood Mfg. Co. was in the deal; I thought it was a matter between Ferguson and Gum.

Further this deponent saith not.

Sx

C. H. Ward

Taken on June 20th., 1900

Virginia; } S.S.
Nassau County }

I, Robt. W. Wickers, a notary Public for the County and State aforesaid, do hereby certify that the foregoing deposition of Chas. H. Ward was duly taken, sworn to and subscribed before me at Suffolk, Va., on the 20th day of June, 1900, pursuant to the consent and agreement of all parties thereto. In witness whereof I have hereunto set my hand this 20 day of June, 1900, at the Town of Suffolk, aforesaid.

Robt. W. Wickers,
Notary Public.

W.B. Ferguson & Co.
vs. 3 Deposition of
3 C.H. Wood
Edward imp Co.

Taken June 20. 1900

The deposition of W. J. Bradshaw
taken at the office of Robt. W.
Withers, in Suffolk, Nausemond
County Virginia, by and with the
consent of all parties concerned.
Notice of time and place of taking
said deposition being expressly
waived. To be read in evidence
in behalf of complainants in
the suit in equity in which
W. B. Ferguson and E. A. Norfleet partners
trading as W B Ferguson & Co are complainants
and the Elwood Manufacturing Company (a corpor-
ation), Jas. A. Gunn and others are defendants.
Taken on Mch. 16-1901.

Present:

Robt. W. Withers, for complainants
McLemore & Corbett, for defendants.

W. J. Bradshaw, being sworn deposes and
says: —

Q. 1. What is your name, age, residence
and occupation and do you know
the parties to this suit?

A. W. J. Bradshaw, 38, Nausemond
County, lumberman. yes, I know the
parties to this suit.

Q. 2. Please state where you resided
in the year 1895.

A. Elwood, Va.

Q. 3. Please state what you may
know about the location and
operation of the plant of the
Elwood Manufacturing Co?

A. I don't know who the company
was, it was run by the company
a short time at first.

Q. 4

Who erected the buildings of this company?

A. I helped to do it. In fact I was supposed to be foreman there to direct it.

Q. 5. Please state who ran the mill after Jan'y 1st 1895.

A. I don't know. But sometime after the first of the year it was run ^{I suppose} by Demorest and Cannon. It might have been that they were hired.

Q. 6 Did they appear to be managing the mill.

(Question excepted to because asking for an opinion)

A Well I thought so. I didn't know.

Q. 7. Did the public generally look upon them as operating the mill at this time?

(Excepted to because question is immaterial, necessarily calls for an opinion based on an opinion)

A. Don't know anything about that.

I was away from there ^{pretty} ~~a~~ ^{great} ~~part~~ ^{part} of the time after the mill was put in operation. I left in the morning before day and got back any time from dark till nine o'clock. Don't think I went in the mill over once a month. And haven't up to this time

th.

Q. 8 Who next ran the mill after Demorest and Cannon?

A. I don't know the next one. It might have been run by the Company. But soon after that time it was run by Joyner and McPhail.

Q. 9. Who ran the mill after Joyner and McPhail?

A. D. K. Joyner & Brother, I think.

Q. 10. Where did D. K. Joyner & Bro first begin to operate the mill.

A. I can't tell exactly. It might have been a year from the start, a little over or a little less.

Cross examination.

Q. 1 I understand your evidence in chief to be that you assisted or was boss foreman in constructing the plant of Elwood Manufacturing Company, that after it was constructed and put in operation your business called you away from Elwood and that you did not, in all probability, visit this plant once a month; that it is your impression the company ran it a portion of the time Demorest and Cannon a portion of that time, Joyner and

McPhail a portion of the
time and lastly D. H. Joyner
and Brother. That you do not
know whether these various
parties just mentioned were
running the mill as agents,
servants, ^{or} employees or as independ-
ent contractors. That you do
not know who composed
this company nor do you
know how long it was
after it began operation
before D. H. Joyner & Bros began
operating same. Do I under-
stand you aright?

A. Yes, sir that's the way I
understood it.

I further this deponent
says the not.

W. J. Brabshaw

Mr. J. L. Mc Lemore being duly sworn testifies and says as follows:

Q. I see by the exhibits filed in this suit, that you are the Trustee in the Trust Deed from Elwood M'f'g. Co. to secure certain bonds or notes payable to John A. Gam. Please state whether or not, at the time this deed was made to you you had notice of Ferguson & Co's. claim against, and intention to sue the Elwood Co. for any loss which they may have suffered by reason of their alleged contract with the Elwood Co.?

A. I represented Mess. Ferguson & Co. in their suit, in the Virginia Court, in which they were sued by Frank B. Read, of New York, and had reason to believe after judgment had gone against Ferguson & Co. that they would endeavor to hold Elwood M'f'g. Co. responsible; after this the Deed of Trust was made to me as Trustee by Elwood M'f'g. Co., the date of which I do not now recollect, securing John A. Gam certain debts therein named.

Q. Were you not the scrivener who drafted this Deed of Trust?

A. I am quite sure I wrote the Deed of Trust.

Q. Does not the same statement embodied in the two preceding questions apply equally to the Deed of Bargain and Sale from Elwood M'f'g. Co. to John A. Gam which was made a year and about fifteen days after the above Deed of Trust?

A. Of course I had the same knowledge of Messrs Ferguson & Co's. intentions, and drew this deed also. I am also thoroughly persuaded that there was a valuable consideration for this and the previous conveyance.

Q. Did you ever see the evidences of debt secured by the Deed of Trust?

A. I am not certain that I saw one of the notes, but my recollection is now, that I saw them both, I am sure I saw one of the notes. I only know that they acknowledged the debt to be due the one from the other.

Q. Did you know of your own knowledge of the consideration mentioned in the Deed of Bargain and Sale having actually passed between the parties?

A. I know that the debt due and secured in the Deed of Trust

was calculated as a part of the consideration after the Deed of Bargain and Sale, and my recollection is now, that the difference between the sum total of the notes secured to John A. Gum, and the purchase price of the property was arranged by transferring securities, kind and nature of which I do not clearly recollect.

Q. Did you ever see these securities you mention above, or were you simply informed of the fact by one or more of the parties interested?

A. I do not recollect that I ever saw them, would not like to state this fact positively. I know the matter was talked over between Mr. Gum and the Joyner's.

Q. In drawing up the Deed of Trust to yourself as Trustee for John A. Gum, is it not a fact that John A. Gum furnished you all of the data necessary to draw this deed, and that he was the only party with whom you transacted this business?

A. I remember that Mr. Gum saw me about this matter, I think himself once, and with the Joyner's once, or more times; I do not remember who it was that gave me the description of the property, and dates of the notes. I am unable to say whether it was Mr. Gum alone or Mr. Joyner and Mr. Gum together.

Q. Please state who retained you as Counsel to defend or resist any action brought by W. B. Ferguson & Co.?

A. Mr. John A. Gum. *Further the deponent says not.*
Mr. B. Ferguson re-called.

Q. Mr. Ferguson I here hand you three exhibits in four sheets all marked "V". In two sheets is a statement of an account, please state what this is.

A. These two sheets represent the face of our ledger in our transactions with D. K. Joyner & Bro., for the account of the trays shipped on contract of the Elwood M'f'g. Co.

Q. I here hand you note signed by W. B. Ferguson & Co. dated October 2nd, 1895 payable to D. K. Joyner & Bro., sixty days after date, for \$119.31. Please state what that note was given for, and if it was paid.

A. The note referred to was in payment in part for the last shipment of Trays made by the Elwood M'f'g. Co. through D. K. Joyner & Bro., and the note was paid by us through the Farmers Bank December 4th, 1895, as our check #2227 filed herewith marked "V" will show.

Q. At the time this note was paid, in whose favor was the balance of accounts between Ferguson & Co. and D. K. Joyner as Agent for the Elwood Co.?

A. The balance was in our favor.

Q. How was this balance covered?

A. As a special accommodation, at request of D. K. Joyner & Bro. we accepted their note, as at that time they were in need of cash.

Q. Why did you take Joyner's note for this balance?

A. As a matter of accommodation to Joyner, as he needed the cash at that time, and he did not want us to deduct the full amount due before giving our acceptance.

Q. You have testified that the Elwood Co. ordered you to deduct the full amount of Joyner's Grocery account from the Butter Dish credits, why was this not done?

The above question is excepted to by Defendant's Counsel because witness has not so testified, and the question is leading and suggestive.

A. It was done except in this one instance, and at Joyner's special request. We took his note for the balance, in order that he might have the use of a little ready cash, which he stated he was in need of at that time.

Q. When did Mr. Joyner pay that note?

A. He paid a curtail on it, and renewed it, and we finally collected the note through Prince & Mc Lennore by Garnishee proceedings, while Joyner was Agent for the Atlantic & Danville Railway Co. at Courtland, Va. sometime in October 1897.

Q. You have testified that D. K. Joyner and John A. Gun contributed \$25.00 each to help defend the suit of Frank B. Read against W. B. Ferguson & Co. in New York; both Joyner and Gun testify that they gave only \$12.50 each. Can you recall when these contributions were made?

A. They were made sometime during the latter part of 1896; whether \$12.50 or \$25.00 was paid, I am unable to state positively. There is no question about each of the parties having contributed, for the purpose of protecting their interest and ours against Frank B. Read.

Q. As I understand you then you made your last settlement through D. K. Joyner with the Elwood Co. on October 2nd, 1895, and at that time you overpaid Joyner by the sum of \$61.47, for which amount you accepted their note on December 21st, 1895, and that note of Joyner's was not paid until October 1897, so that in October 1896 when Gam and Joyner contributed money in defense of the Read suit, instead of your owing Joyner, Joyner in fact owed you. Is this correct?

A. That is correct.

Q. I here hand you a draft drawn by W. B. Ferguson on W. B. Ferguson & Co. to the order of Baggett & Ryals for \$100.00. Please state for what this draft was given. Same is filed marked "Q".

A. This draft was given for fees of Baggett & Ryal for defense in the Read suit in New York City.

Q. I here hand you bill of Shriver, Bartlett & Co. against W. B. Ferguson & Co. dated July 1st, 1896 for \$1.42. Same is marked "Q" and herewith filed. Please state what this amount is for and if it was paid?

A. The amount was paid for telegrams to and from New York and Baltimore in the suit of ourselves against Read.

Q. I here hand you statement between the same parties, please explain it. Herewith filed marked "Q".

A. Shriver, Bartlett & Co. of Baltimore, Md. were collecting several claims for us, and in transmitting a settlement which they secured from Joyner & Britton at Coleraine, N. C. they deducted the sum of \$25.00 on account of fees and retainer in the F. B. Read suit.

Q. I herewith hand you statement from Prince & Mc Lemore to W. B. Ferguson & Co. dated July 1898; among the items therein, I find two dated September 21st, and October 1897 for \$30.00 and \$28.00 respectively. Please explain for what these items were paid.

A. They were paid to Prince & Mc Lemore for services in defense and expense to New York in the suit of F. B. Read against W. B. Ferguson & Co.

Q. I here hand you memoranda marked "Q", please explain it?

A. Shriver, Bartlett & Co. of Baltimore, Md. who originally had charge of the F. B. Read matter demanded \$30.00 additional for fees and retainer, same was deducted by them in a settlement subsequent to that charged March 13th, 1896.

Q. I here hand you memoranda on bill head of Ferguson & Co. dated 17th of April 1901 marked "Q", please explain this giving the source of these items.

A. The figures shown on the statement were taken from our books, and the amounts expended were for expense of W. B. Ferguson and E. C. Broomer (our former book-keeper) to New York and return in the F. B. Read suit. The amount of the statement is \$74.25.

Q. What did you do with the money given you by Gum and Joyner?

A. My impression regarding the amounts contributed by Gum and Joyner is, that the amounts were contributed about the time the trip of November 23rd, or December 11th, 1896 was made, and that the amount was expended for Hotel and other expenses than railroad fare, as our expense account and books do not show that I was credited with amounts for these items on the dates above mentioned.

Q. I here hand you press copy of letter from Ferguson & Co. to Elwood Co. marked "W", please give the date of this letter, and explain its contents.

A. The date is February 26th, 1897. The contents of the letter was to draw from the Elwood H'f'g. Co. their wishes as to defense in the suit of F. B. Read, and to transmit to them the letters from our Attorney's as to the progress the case made.

Q. I here hand you press copy of letter from Ferguson & Co. to John A. Gum dated March 13th, 1897, please state if this letter was mailed, and explain first, to what note the first part of the letter relates to, and second, as to what report, and upon what matter the postscript refers to. Same filed marked "WW".

A. The letter was mailed. The first part of the letter relates to a note in renewal of one that had been given, or possibly as an acceptance for shipments made by the Elwood H'f'g. Co., or it might have been in renewal for some accommodation to the Elwood H'f'g. Co, but it was not for shipments made by them at any time after August 1st, 1895. The postscript refers to an interview that Mr. Gum had with me **at my residence sometime in February or the early part of**

March 1897, in which he came to see me, upon my request, relative to the Read suit, and he was to take the matter up with his associates and let us know what he desired us to do.

Q. What was John A. Gun to determine, as a result of your conversation with him?

A. He was to determine whether we should fight the case further in New York or take chances after the decision.

Q. I here hand you letter from D. K. Joyner & Bro. to W. B. Ferguson & Co. dated August 26th, 1895, and marked #10, please state if this letter was received by you.

A. The letter was received by us, and taken from our files to be used in this suit.

Q. I here hand you letter from D. K. Joyner & Bro. to W. B. Ferguson & Co. dated September 11th, 1895 marked #11, please state if this was received by you.

A. The letter was received by us, and taken from our files to be used in this suit.

Q. I here hand you four letters and three telegrams from Frank B. Read to W. B. Ferguson & Co. dated respectively; September 9th, 18th, 24th, and 30th, 1895; telegrams September 24th, 25th, and 27th, 1895, all marked #11. Please state if these were received.

A. These letters and telegrams were received and taken from our files to be used in this suit.

CROSS EXAMINATION BY DEFENDANT'S COUNSEL.

Q. Witness is here shown letter of October 16th, 1894 from his firm to Frank B. Read of New York, which is marked exhibit 15, and asked if he wrote same?

A. I think that letter was written by my firm, and with the knowledge of John A. Gun, so far as that part of it pertains to the Butter Dish business, and in response to that letter Mr. Read sent us a list of the Butter Trays, and from that list Mr. Gun and ourselves figured at what the price would be, and subsequently the price-list which has been filed in the depositions was printed and a copy submitted to the Elwood M'f'g. Co. for their approval.

Q. Why is it necessary to submit a list price, which you say is a

standard list to anybody for approval; can you have but one standard list price?

A. The standard list, so called, is not arbitrary, it is used for convenience. Anyone could make a list without violating the laws of commerce, but for convenience the long list is used. The result that brings trade is that which is given by the Manufacturers in the nature of discounts. About the time this list was obtained, neither the Elwood Mfg. Co. nor ourselves had any idea, with accuracy, just what the list was, and it was by the special request of Mr. Gam that I wrote for this list.

Q. Then I understand that when you wrote for the Standard list, that does not mean standard list, but may be an average price-list of the goods mentioned therein. Am I correct?

A. As to Butter Trays such might be the case, "In the trade" lists are made up for the different sections of the country very often which applies to the Southern territory. We now apply to southern Mississippi territory, the local position makes the difference in trade and lists.

Q. Was the standard list which you wrote for, and which was sent you by Mr. Read "the standard list" for east of Mississippi, or what section did it refer to?

A. My knowledge would not be sufficient to answer your question, and if I am to suppose, I would be under the impression that the list applied to sales made on the New York city market.

Q. Did you receive a letter from Frank B. Read dated September 1st, 1894 and marked #16?

A. I am under the impression that we received the letter.

Q. Witness is here shown letter dated July 23rd, 1895 to Frank B. Read, and asked if he wrote same.

A. I think we wrote the letter.

Q. Witness is here shown letter of August 17th, 1895 written by Frank B. Read to Plaintiffs and asked if he received same.

A. I think we received the letter with the erasure as shown in original which has already been filed marked R., which matter was referred to the mill.

Q. Witness is here shown letters of August 27th, 29th, and 30th 1895 marked respectively; 19, 20 and 21, and asked if they are genuine.

A. I think they are copies of original letters, the contents of which were transmitted to the mill.

Q. Witness is here shown letter of October 12th, 1895 marked #22 to Frank B. Read, New York, and asked if his firm wrote same.

A. I think that is a copy of the original.

Q. Witness is here shown letter marked #23 of October 28th, 1895, and asked if his firm wrote same.

A. I think that is a copy of the original.

Counsel for Complainant objects to introduction in evidence of all of the preceding exhibits introduced by the Defendant, for the reason, first: The exhibits herewith filed have not been authenticated, are not press copies, and are not originals, and because it is not the best evidence. Second: Complainant objects to this testimony for the reason that the Defendants have possession of the full correspondence between Frank B. Read, and the Complainant, and has introduced only parts of this correspondence which are entirely disconnected, and Complainants insist that if any of this testimony comes in, all of it must come in.

Q. Have you not in your possession letters written to you by Frank B. Read concerning this subject, and press copied of the letters written by your firm to him, or such as you may have already filed in this case?

A. We have not, we are sorry to say, the correspondence is broken, and was filed in New York in our effort to protect the interest involved in this suit, and it has been impossible to get the originals, although we have made an effort to do so.

Q. Is it not a fact that you employed Counsel in New York City to inspect the original letters and other evidence filed there in the suit of Frank B. Read against your firm, and take such steps as were necessary to obtain from the records in that city copies of any letters desirable in your defense here?

A. We have not employed Counsel in New York City since we employed Baggatt & Fyval to defend this suit originally, it is barely possible that our local Attorney has taken such steps.

Q. Did you not state in your examination in New York in the case of Frank B. Read against your firm the following in substance with reference to Frank B. Read's trip to Suffolk, Va., and the conversa-

tion had with him in your office on or about September 28th, 1895. "He called on me, and the first thing I told him, was I was surprised to find it was another person, that I thought Frank B. Read had been there before, and he was a different man. He laughed and stated that was his brother, and that he has sent him down at that time, that he could not come. "He said; Ferguson these shipments that have been made are very ⁱⁿ satisfactory, I know that the mill is laboring under disadvantages, and I want to make some arrangements by which you will ship us all the Trays they make". I told him we had shipped him all the Trays for the mill that they had made, and that as long as we could get along, and he would pay us as much as we could obtain for them, we thought the mill would be perfectly willing to make the shipments, that his recent complaints and arbitrary actions on discounts had made the mill very much dissatisfied, and that they were looking for another outlet; but if he would agree to the old discount of 50-10-10-10-10-10- 5 and 5 I would see what the mill would do, that the memoranda for five cars had been sent to the mill, and at that time they had made no response, and I was afraid they were making other arrangements. "Then he said, suppose we start fresh, and let me make a contract for the output of the mill". I told him very well, we would be willing to start anew, but we positively would not make a contract of any kind under any conditions; he asked me why; I told him contingencies were constantly arising over which the mill had no control, and that I knew what a contract meant, and that I could not bind myself or the mill for the delivery of the trays under the conditions that had existed up to that time. I related to him an experience that they had passed through, a few minutes previous (I think it was in the winter previous) of frozen pipes, and I called his attention to the fact that those delays could not be overcome, but if he was satisfied, we would agree to ship him all the Trays as long as we could get along in a satisfactory manner. He asked if we would write a letter stating all the Trays the mill made would be shipped to him; I told him I had no objection, but I would have to consult with the mill after writing the letter. He stated that would be all right, whereupon I wrote the letter of September 28th, The body of that letter was written first.

He asked if we could give him some idea of about how many the mill would make; I stated if they did not have any interruption and had the hands they stated they expected to put to work, possibly one car load per week would be shipped. I told him, Mr. Gam, the manager of the mill, was about to put in a machine to make the larger sizes which he desired, and as soon as that was done he would possibly move along easier. He said he simply wanted a letter, in order to show the boys at home that we would ship them all the trays the mill made. I tried to impress upon him, and I told him he must understand he must not sell in anticipation of shipments of anything, and that I had no desire to cause any loss or inconvenience, and if the trays were not shipped as wanted, he could write us, and we would simply make other arrangements, that we were perfectly willing to ship him trays as long as we could get along without so much complaint from this end. After the letter was written he said he hoped we could get along all right, and I told him I hoped so too. With the exception of some talk passing the time and so forth, I think that was all."

Question and any answer that may be made thereto excepted to by Counsel for Complainant. First: That if it is intended to impeach the witness by his answer, it is upon a collateral matter which can not be done. Second: If it is introduced with the intention of controverting exhibit L., which is the letter of September 28th to Read, herein spoken of, it is seeking to vary a written instrument by parol testimony, and inadmissible. Third: If it is sought to show that the Complainants ~~as shown~~ exceeded their authority it can not be so introduced as to controvert a judgment and a matter of record which can not be so impeached.

A. My impression is that such testimony was given.

Q. Mr. Ferguson I here hand you letter from Elwood M'f'g. Co. dated December 15th, 1894, and a press copy of letter from your firm to the Elwood M'f'g. Co. dated December 13th, 1894, both marked Exhibit #1, please state if the one was received by, and the other mailed by you?

A. They were.

Q. I here hand you a statement from the Elwood M'f'g. Co. to W. B. Ferguson & Co. dated May 1st, 1895 marked Exhibit #2. Please state if this statement was received by your Company, and if settlement for the dishes therein mentioned was based on this statement?

A. The bill was received, and settlement was made accordingly.

Q. I here hand you same kind of statement dated July 24th, 1895 marked Exhibit #3, please state if your firm received that, and if settlement was made on that basis?

A. We received the bill, and settlement was made on this basis.

Q. You will please state with whom a settlement was had of that bill if you can remember?

A. I think settlement of this bill was made with Elwood M'f'g. Co.

Q. I here hand you invoice from D. K. Joyner & Bro. to W. B. Ferguson & Co. dated August 8th (year obliterated) marked #4, please state if this invoice was received by you, and if settlement was had on the basis thereof?

A. The bill was received, and the settlement was made in accordance with bill.

Q. I here hand you an invoice dated August 26th, (with year torn off) from D. K. Joyner & Bro. to W. B. Ferguson & Co. for car of Trays marked #5, and also a letter from Joyner & Bro. to Ferguson & Co. dated August 31st, 1895. Please state if these two papers were received by you, and if you had settlement on the basis of the first?

A. The bill was received, and settlement was made accordingly. Letter was also received.

Q. I here hand you letter dated September 3rd, 1895 from D. K. Joyner & Bro. to W. B. Ferguson & Co. marked #6, please state if this was received by your Company?

A. This letter was received by my firm.

Q. I here hand you invoice from Joyner & Bro. to W. B. Ferguson & Co. dated September 18th, 1895 for car of Dishes marked #7, please state if this invoice was received by your Company, and if settlement for car was had on the basis indicated by the discount appearing on the face of the bill?

A. This invoice was received, and the settlement was made according to the discounts shown.

Q. I here hand you letter from D. K. Joyner & Bro. to Ferguson & Co. dated September 16th, 1895 marked #8. Please state if this letter was received by your firm?

A. This letter was received by my firm.

Q. Mr. Ferguson please state whether or not you ever had a contract with D. K. Joyner or D. K. Joyner & Bro. for the shipment of any Butter Dishes during the year 1895?

Excepted to by Defendants Counsel, because same is leading, and because it is introducing a matter that has been gone over by examination in chief of a prior date.

Question withdrawn by Mr. Withers, Counsel for plaintiff.

Q. Mr. D. K. Joyner in his testimony states that on or about the first day of August 1895, he came to your place of business, and that you agreed with him to accept him as a substitute for the Elwood H'f'g. Co. in the contract which existed between you. Please state in detail your recollection of the conversation between you at that time?

A. My recollection of Mr. Joyner's visit at this time, was to the effect that he came in to know if it would be satisfactory for him to open an account for Groceries, in as much as he expected to be shipping trays for the Elwood M'f'g. Co. I agreed that such would be agreeable, and told him that we had a conversation with Mr. Gam, in which Mr. Gam stated that Mr. Joyner would be down in a few days to make arrangements for purchasing Groceries. After going over this part of the business, my recollection is, that I talked to him about the conditions which had been carried on at the mill in the shipments, and that I hoped that he would make an effort to get the trays out in better shape. Perhaps other similar items might have been mentioned, but absolutely no reference was made to his being substituted for the Elwood M'f'g. Co. in the contract, it was never referred to in any conversation that we ever held with Mr. Joyner, except in a general way, as had been our custom with Mr. Gam.

Q. Had your firm prior to this time extended credit for Groceries to such an amount as Mr. Joyner at this time asked, if so, please state the amount of your general monthly credits, if not, please state why you did not credit?

A. I am under the impression we had not been extending a line of credit to D. K. Joyner & Bro. prior to their visit on this occasion, for the reason that their financial condition, according to our best information, did not justify it.

Q. Are D. K. Joyner & Bro. doing business at Elwood, Va. now, and if not, why not?

A. To the best of my knowledge and belief, they have been out of business for sometime, as they made an assignment, and I believe have never resumed.

Q. Do you know the date of this assignment or approximately?

A. I think in the year of 1896, perhaps in the summer.

Mr. Ferguson's testimony to be continued at some future date.

D. K. Joyner being duly sworn deposes and says:

Q.1. State your name, age, residence, occupation, and if you know the parties to this suit.

A. D. K. Joyner, 29, Nansemond County, and know the parties to this suit.

Q.2. What connection, if any, have you had with the Elwood Manufacturing Company?

A. Secretary of the corporation and director.

Q.3. Witness is here shown paper dated August 1st., 1895, signed by Elwood Mfg. Co. and D. K. Joyner & Bro. and filed in the papers of the cause among the depositions of John A. Gum, and asked to explain same and say how it came about?

A. The paper in question being a contract or lease by D. K. Joyner & Bro. of the Elwood Mfg. Company's property came about by D.K. Joyner & Brother's proposing to lease the said property for a certain length of time; the rent in consideration to be a royalty on articles manufactured as per contract which has been heretofore filed.

Q.4. What time did you take charge of this plant under this lease?

A. On the date of contract.

Q.5. At the time you took the property in charge to whom was the product of the plant being sold?

A. To W. B. Ferguson & Co. of Suffolk.

(Question and answer excepted to because it pertains to matters outside of the knowledge of the witness.)

Q.6. What arrangement, if any, did you have with the Elwood Mfg. Co. or with W. B. Ferguson & Co. with reference to the contract which you have spoken of for the out-put of the plant?

A. I had conversation with W. B. Ferguson & Co. asking Mr. Ferguson of the Company, if they would handle my goods, since I had leased this concern, at the same price and same discount that they had been getting them from the Elwood Mfg. Co. for, Ferguson & Company replied to me that they would and be glad to do so, and at the same time solicited my grocery account which I promised to give him in the future for so long as he was handling my trays provided no misunderstanding should arise that would justify my quitting him.

Q.7. How was Mr. Ferguson taking the goods or the out-put of your plant?

A. He was buying these goods direct. The Elwood Mfg. Co. looked to Ferguson & Co. for all moneys due for these goods and did collect same from them.

Q.8. Do I understand from your answer that you mean that D.K. Joyner & Bro. sold the goods direct or that the Elwood Mfg. Co. sold them direct to Ferguson & Co?

A. I mean to say that both the Elwood Mfg. Co. and D.K. Joyner & Bro.

sold the out-put of this plant to Ferguson & Co. direct and collected the money direct from him.

Q.9. Please state what connection John A. Gum, President, or as an individual, had with the plant and its operations after July 18th., 1895?

A. He had no connection whatever so far as the labor of the factory was concerned, and none whatever so far as running it. He had nothing to do with the purchase or payments of any raw material not did he have anything at all to do with the collection of any money due D. K. Joyner & Bro. and knew nothing of the receipts and disbursements of the concern, but he was still President and Treasurer of the Elwood Mfg. Co. and received the money for the royalty on the goods manufactured by the said D. K. Joyner & Bro.

Q.10. Did he spend much of his time around the plant after August 1st. 1895?

A. He did not spend any time at all there. Possibly he would come up there once or twice in a week or two about something, but not regarding the business of D. K. Joyner & Bro. He had no interest in it. There was no reason why he should inquire into the business of D. K. Joyner & Bro. He was not endorser for them in any shape and had loaned them no money and they owed him none.

Q.11. He did endorse the notes or acceptance by W. B. Ferguson & Co. given them for the product of the mill, did he not?

A. He positively did not. The books of the Farmers Bank might be looked up and I am sure they will show that he did not endorse these papers.

Q.12. How many butter-dishes, or trays, did you agree to sell Ferguson & Co. when you had your talk just about the time you leased the property?

A. I did not agree to sell him any stated amount. I simply asked him if he would handle our product at the same price and discount as he had been handling them from the Elwood Mfg. Co. for, and I told him I would be glad for him to handle for me, and that was the end of mine and Ferguson's talk. He agreed to do it.

Q.13. After this conversation with whom did Ferguson correspond and deal with reference to the out-put of the plant?

A. With D. K. Joyner & Bro.

Q.14. Who was D. K. Joyner & Bro?

A. D. K. Joyner and Moses Joyner.

Q.15. Did Mr. Ferguson either by letter or verbally ever indicate to you any purpose of holding the Elwood Mfg. Co. responsible on this contract prior to the time that he claims a breach of same occurred?

A. No, he never said anything to me regarding the contract or holding the Elwood Mfg. Co. responsible for it up to that time, the time I took hold of the concern, nor did he question the contract then regarding holding the Elwood Mfg. Co. responsible for it, and I am positive he could not understand other than (from our talk) that the contract was transferred to D.K. Joyner & Bro.

- Q.16. Upon what date was it understood that the contract would be transferred to D. K. Joyner & Bro?
- A. I disremember the date. But I think the next day after the date of the contract between D.K.Joyner & Bro. and the Elwood Mfg. Co., or, I am sure not to exceed three days. Sometime between the 1st and 5th of August, 1895. I am not positive as to the date.
- Q.17 Mr. Ferguson testified in his examination that the account with D. K. Joyner & Bro. in his store covering supplies furnished them was transferred at the solicitation of Mr. Gum, and that he considered the Elwood Mfg. Co. as responsible for the account. Please state what conversation Mr. Ferguson had with you along this line, if any.
- A. Mr. Ferguson had no conversation at all with me regarding the Elwood Mfg. Co. or John A. Gum as being responsible for my bills. He sent the bills direct to D. K. Joyner & Bro and shipped the goods direct to them and collected his money direct from D.K. Joyner & Bro., and no question as to anyone being responsible was ever spoken of by Ferguson & Co. to me or I to him.
- Q.18. Please state where you shipped the out-put of your plant after August 1st., 1895, or to whom you shipped it and why?
- A. I shipped to Frank B. Read of New York through instructions of W. B. Ferguson & Co., as per his orders, sent my invoices to Ferguson for payment, and he paid me for them up until, I think, about September 25th. or 26th., I don't remember exactly; then Ferguson deducted from my invoices an extra percentage that was not given in this contract and without authority from me, and upon this I refused to ship to his orders any longer. After this time I shipped five cars to J. J. McClosky, of New York City, and one car load I shipped to Frank B. Read of New York by direct order from Frank B. Read to D. K. Joyner & Bro. I shipped the out-put of my plant from August 1st to September 18th as follows: On August 8th one car to F.B.Read, on August 27th, one car to F.B.Read, on September 18th, one car to F.B. Read. All these were shipped in accordance with instructions from W. B. Ferguson & Co., by their order. The following cars were shipped to J. J. McClosky, of New York: October 3rd, one car, Octo.18th. 1 car, Nov.13th., 1 car, Nov.26th. 1 car, Dec.17th. 1 car. I shipped Frank B. Read 1 car but don't know when I shipped it.
- Q.19. Do you know, or were you ever informed how much W. B. Ferguson & Co. was getting for the cars which he sold to Frank B. Read?
- A. No sir, I never knew. I think I received a letter or two from Mr. Ferguson stating that Mr. Read claimed that the trays were off in price and asking for an extra 5% discount on the trays, and in one car that I had shipped that was intransit, this extra 5% was asked for by Ferguson & Co. asking us to allow him that, and we did it in this one instance, and stated to him that we could not sell our trays for this money and that if competition was so great that we would have to make them for these prices that we would have to stop, that we could not manufacture them for these prices. In the mean time, he sent an order for the second car but never asked for this extra 5% on this car, and when he got my invoice he returned it and asked for a correction, and asked then not for this extra 5% that had been allowed before, but without authority deducted from the price list 5% and 6/10 before freight was deducted and then deducted an extra 5% and settled for the car with a sixty-day paper and deducted 3% for

this paper before giving us this paper, which was not in accordance with our contract in any respect.

(Witness here files two invoices from Ferguson & Co. marked "D.K.J.")

Q.20 Did Ferguson & Co. have any conversation with you, after you had leased the property, relative to an increase in the out-put of your plant, and if so please state the conversation?

A. I don't remember whether they ever did or not, I could not tell, I don't know. I know I intended to increase it but never could get it up much. I bought one extra machine.

Q.21: Did Ferguson give you any information after or before September 28th. of the contract with F. B. Read for one car of dishes per week for the remainder of the year 1895?

A. No sir, he did not.

(Question and answer expected to be by plaintiff's counsel as being leading, and counsel for plaintiff earnestly protests against the manner and form of the questions propounded by defendant's counsel to witness heretofore or hereafter asked.)

Q22. When did you first know of the letter from W. B. Ferguson & Co. to Frank B. Read dated September 28th., 1895, which has been filed, relative to the future put-put of dishes or trays, said letter marked Exhibit "L"? See 90

A. On September 1st., 1900.

Q.23. At what discounts from the list price did you contract to sell your dishes to W. B. Ferguson & Co?

A. The discounts were 50 5/10 and 5 before freight was deducted, and then 5% off the net sales. I mean by net sales after freight was deducted.

Q.24. How was he to settle with you?

A. He settled with me on the 10th of each month, for all goods delivered in the preceeding month, by notes.

Q.25. You have stated that on a certain occasion W. B. Ferguson & Co. gave you a sixty day paper and deducted 3%. Was that deduction in accordance with your contract?

A. It was not.

Q.26. Mr. Ferguson in his depositions has stated that both you and Mr. Gum aided him to the extent of \$25.00 apiece for defraying the expenses of fighting the suit against Frank B. Read, in New York. Please state what you know about this?

A. I never gave Mr. Ferguson any \$25.00 to defray his expenses on any occasion whatever. I did give Mr. Ferguson a check for \$12.50 to defray his expenses to New York once to look into the matter of a car of trays that was in New York. I don't remember what was the trouble with them, so far as that is concerned, but this I do know, it was long before I ever heard of any papers being issued in the Frank B. Read suit, and long before I ever received any letters from Mr. Ferguson in regards to this last car of trays that went up there, and before he wrote this letter to me threatening to sue me, which is herewith filed marked "E.E.H."

Q.27. It is charged in plaintiff's bill that the deed of trust made by the Elwood Mfg. Co. to secure certain notes, one for \$700.00 and one for \$202.76, was made with intent to hinder, delay and defraud the creditors; that the said debt was never in fact due but was created for the purpose of placing the property beyond the reach of the creditors. Please state what you know about this transaction.

A. Well sir, these papers,--these notes that were due were for money and supplies advanced by John A. Gum and were justly due to be paid to him. He bought for the Elwood Mfg. Co. several small pieces of machinery in his own name, sold them to the Elwood Mfg. Co. and paid small bills that the Elwood Mfg. Co. owed to different whole-sale merchants. The Elwood Mfg. Co. at that time, or at the time this deed was made, had no creditors except Mr. Gum, and a meeting of the directors, after being asked by Mr. Gum for this deed of trust, it was decided that he should not have to lie out of his money, and that he would give him the deed of trust to ~~xx~~ back up the notes he had against the Elwood Mfg. Co. so as to enable him to borrow money on said notes and use it in his business if he liked..

Q.28. By a subsequent writing the said company conveyed to John A. Gum the entire property and holdings of the Company at Elwood for a consideration therein named. It is also charged in the bill of complaint that this consideration never passed to the company but was made to hide the property from the creditors, and therefore, was fraudulent and void. Will you please state what you know about this transaction?

A. It was not the intention, according to my knowledge and belief, of any member of the firm, or at least any stock-holder or director of the Elwood Mfg. Co. to defraud, or cause any person to defraud whatsoever. The stock holders were called together and it agreed between all of the stock holders and John A. Gum that he purchase the entire stock of the company at one half the face of the stock certificates. This he did and settled for as per requirements of each individual stock holder. As for my stocks I traded with him and got from him in consideration a farm that I considered then, and do yet consider, a great deal more valuable than the stock of the Elwood Mfg. Co. were such a Company today in existence. On these grounds a deed was given John A. Gum for the entire plant.

Q.29. Do you remember what was the actual consideration for the conveyance of the property?

A. I don't remember.

Q.30. About how much did a car load of trays amount to, net?

A. Usually from \$280.00 to \$325.00.

Q.31. You spoke, in your examination a little earlier in the day, of Mr. Gum's paying 50% on the value of the stock of the Company. Please state what became of the stock certificates and to whom they were assigned.

A. The stock certificates were annulled and not assigned to any person.

Q.32. What did you mean by saying that Mr. Gum gave 50% for the stock?

A. I mean to say that the stock holders sold the property of the Elwood Mfg. Co. to him at 50% of the face value of the stock certificates and that the property was transferred to him and the stock certificates were made void.

Q.33. What did you consider the property worth at that time?

A. 25% of the face value of the certificates. I thought I made a big deal when I got rid of mine at 50% of the face of the certificates.

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CROSS EXAMINATION .

Q.34. How much stock of the Elwood Mfg. Co. did you own?

A. \$1430.00 or 143 shares at \$10.00 each.

Q.35. According to your last statement in your direct examination I understand that in March, 1898, you valued this stock at about \$350.00. Is this correct?

A. That is correct.

Q.36. What do you know regarding the contract entered into on or about November 13th., 1894, between W. B. Ferguson & Co. and the Elwood Mfg. Co? I mean, of your own knowledge.

A. As Secretary of the Elwood Mfg. Co. I did the corresponding, or at least saw every letter that was passed between Ferguson & Co. and the Elwood Mfg. Co. with reference to this contract.

Q.37. Then this contract was by letter, was it not?

A. It was. What I know of it.

Q.38. The the contract under which Ferguson dealt with the Elwood Mfg. Co. was set forth in letters to and from the Elwood Mfg. Co?

A. Yes.

Q.39. Do you know when this contract was entered into?

A. I don't remember the date. A reply to the letter written November 13th. 1894, from W. B. Ferguson & Co. to the Elwood Mfg. Co. filed and marked "A.A.", Exhibit "A" and Exhibit "A.A." is all that I know of the contract between Ferguson & Co. and the Elwood Mfg. Co.

Q.40. Is this the contract as set forth in these two Exhibits which were afterwards completed with and lived up to until August 1st., 1895, between Ferguson & Co. and the Elwood Mfg. Co?

A. It is.

Q.41. You say in your direct examination that you took the place of the Elwood Mfg. Co. in this contract after August 1st., 1895, Is this true?

A. It is.

Q.42. Then as I understand you all of the terms in this contract between the Elwood Mfg. Co. and W. B. Ferguson & Co. regarding the time of payment, mode of payment, price list, discounts, etc., were to be carried out by you after August 1st., 1895.

A. They were.

Q.43. When did you begin to operate or manage this plant of the Elwood Mfg. Co.?

A. I began managing the plant of the Elwood Mfg. Co. for D. K. Joyner & Bro. as lessee, on August 1st., 1895.

Q.44. Is it not a fact that before August 1st., 1895, you had practically assumed control?

A. It is not.

Q.45. It is not a fact that before August 1st., 1895 other parties than yourself, for example, Mr. McPhail or others, had the management of this plant for the Elwood Mfg. Co.

A. It is not.

Q.46. Who managed this plant before August 1st., 1895?

A. The direct management of it was under the supervision of Mr. John A. Gum.

Q.47. Who had the indirect management of it?

A. He employed from time to time such men as he saw fit. One was the machinist, one was time keeper.

Q.48. Who attended to the ~~corresponding~~ department?

A. Mr. Gum and myself. Mr. Gum principally, I at times did assist him in keeping the books.

Q.49. Did you not receive communications from W. B. Ferguson & Co. relative to business of the Elwood Mfg. Co. principally in reference to the shipment of a car of trays to Frank B. Read which had previously been ordered before August 1st., 1895?

(Witness is here shown Exhibit "J")

A. I am inclined to believe, in fact I do believe, that a copy of this was never received by me. In fact I believe it is bogus.

Q.50. If this letter had been written and mailed by Ferguson & Co. and received by you on or about the date indicated on same, which date was after the conversation on the A. & D. Train between Mr. Gum & Mr. Ferguson, whereby Mr. Ferguson testifies that he (Ferguson) according to their understanding was from ~~xxxxxxx~~ ~~xxxx~~ that time to look upon D. K. Joyner & Bro. as being the manufacturing agent for the Elwood Mfg. Co. would you not say that this letter would indicate just such an understanding on Mr. Ferguson's part?

A. If I had ever told Mr. Ferguson that I was manufacturing agent for the Elwood Mfg. Co. then I would not have been surprised to have received such a letter as Exhibit "J", but I had not at that time made any contract with the Elwood Mfg. Co. to lease their property as per contract filed. and never acted as manufacturing agent for the Elwood Mfg. Co.

- Q.51. Mr. Gum has testified that at this meeting on the A. & D. train he told Mr. Ferguson that you would or had leased the property and would take charge on August 1st. If this had been Ferguson's understanding that you were not to assume control until August 1st., how can you account for his addressing this letter Exhibit "J" to you?
- A. I don't know any reason why he should have addressed this letter to me, and I know nothing of the conversation between Mr. Ferguson and Mr. Gum on the train on July Court day, and don't know what he would have done under an understanding that I should take charge of it on August 1st.
- Q.52. Were you present with Mr. Hum on the A. & D. train at the time of this conversation?
- A. I was not.
- Q.53. Do you know what statements were made to Mr. Ferguson by Mr. Gum at this time.
- A. I do not.
- Q.54. Mr. Hum has testified that after he had seen Ferguson on this train on Southampton County Court day in July 1895, that about two or three days afterwards he saw you, told you of the arrangements between Ferguson & himself, that you were to take the place of the Elwood Mfg. Co. in their contract with Ferguson, and that you then agreed to lease the mill, and a few days after that time somewhere about August 1st. you came to Suffolk to see Mr. Ferguson. Is this true?
- A. It is correct.
- Q.55. Were you agent for the Elwood Mfg. Co?
- A. No sir, I never was, am not now, and never will be.
- Q.56. Was Mr. John A. Gum agent for D. K. Joyner or ~~xxxxxxxxxxxxxxxx~~ D. K. Joyner & Bro.?
- A. He was not.
- Q.57. Please state the substance of the conversation between yourself and Mr. John A. Gum relative to this Ferguson contract on or about August 1st., 1895?
- A. The substance of our conversation amounted to this: Mr. Gum told me after I had already been speaking to him about leasing the Elwood Mfg. Company's plant that if I did lease it he would like for me to take the contract that had been with Ferguson, let it be turned over to D. K. Joyner & Bro. and carried out by them as he would not like to lease the factory out, or would not do it, without this being first mutually agreed to between W. B. Ferguson & Co. and the Elwood Mfg. Co that the lessee would assume this contract.
- Q.58. Did you then agree with Mr. Gum to assume the place of the Elwood Mfg. Co. in this contract?
- A. I did.
- Q.59. This agreement on your part was communicated to Mr. Gum was it not?
- A. Certainly. I told him so in conversation.

Q.60. Where was this conversation?

A. At the office of the Elwood Mfg. Co. at Elwood.

Q.61. Was Mr. Ferguson present?

A. He was not, but I came to see Ferguson myself about this matter, and talked it over with him and he agreed to it the same as Mr. Gum did. I, myself was a connecting link between these conversations.

Q.62. Did Mr. Gum or the Elwood Mfg. Co. ever assigned their contract with Ferguson & Co. to you?

A. They did not.

Q.63. Then, as I understand you, you came to see Mr. Ferguson. Please state if you told Mr. Ferguson of the conversation between you and Mr. Gum?

A. I did.

Q.64. Did not Ferguson say that he did not care who ship the dishes just so he got them?

A. He never said that to me. He said my taking the contract was perfectly satisfactory to him.

Q.65. Was all of your conversation at this time on the street?

A. No, not exactly all of it, I talked with him in his office but on matters entirely different from this contract. As we walked down the street we began talking about this contract as we started out of his place of business, and he said "I will walk down the street with you." He did walk with me as far as the A. & D. depot, and his acceptance of me in the place of the Elwood Mfg. Co. was the out come of our conversation.

Q.66. After you had told Mr. Ferguson the substance of your conversation with Mr. Gum what did Mr. Ferguson reply?

A. He said it was satisfactory to him for me to take the place of the Elwood Mfg. Co. in the contract.

Q.67. Is that all that was said?

A. *See 9/2* I think that was pretty well all that was said in regard to that contract. The next thing he said was "I want to sell you groceries."

Q.68. Witness is here shown Exhibits "R" "S" and "T" and ask if he has not seen them before and if they were not mailed to him?

A. I think I received these, I am sure I did.

Q.69. Exhibit "R" was received at the same time as Exhibit "T" was it not?

A. I don't remember, I don't know.

Q.70. You stated in your examination in chief that you did not know the price Read was paying Ferguson for these dishes. How can you make this statement when you admitted that you received Exhibit "R"?

A. I don't know so far as than is concerned, whether we were paying him that price or more. This Exhibit "R" simply asked for a discount but it does not say whether or not it was granted, consequently I could not tell you what he was getting for them.

Q.71. You stated in your examination in chief that Mr. Ferguson made ~~and~~ an unauthorized deduction from a car of trays shipped by you on his order to F. B. Read about August 27th. Please state in what manner this was unauthorized?

A. I ~~did~~-remember, so far as that particular car is concerned, or as being the second car I shipped him. but I know that he did deduct unauthorized discounts. As to this being the 1st, 2nd, 3rd, or 4th car that was shipped, I don't remember which car it was.

(I here file with my depositions letters dated October 2nd. and October 7th., 1895 and marked "C.C.")

Q.72. Will you please file a copy of your answer to Exhibit "T" if you have it?

A. I don't think I made any letter of reply to them, I came down here to see Mr. Ferguson. I have no copy or anything in reply to it. I did it in person. However, I know I never agreed to those prices until Mr. Ferguson and I had conversation about the price, and I told him I could never stand them; but I told him I would let the one car we had up in question at that time go, which I think I allowed an extra 5% on, but I told him I could not make trays at those prices; that if I could not get better prices for them that I would have to stop.

Q.73. Do I understand you to say this was in conversation and not by letter?

A. I think this was in conversation. I might have replied by letter but I don't think I did.

Q.74. In your direct examination you stated that these statements were made by you to Ferguson by letter. Is it true?

A. I don't believe I said it. I said I might have written a letter but I didn't know positively whether I did or not.

Q.75. Could you state positively on your oath that you did not write to Mr. Ferguson in reply to Exhibit "T" that you did not think you could do business at this price; that the prices were too low, but that you would have to accept this extra discount until you could do better?

A. I don't remember whether I ever wrote a letter of that kind or not. If I did I would have considered those prices a breach of his contract, and under such circumstances I should have looked for other people to sell to.

Q.76. If you considered this discount as being a breach of Ferguson's contract why did you make him the other shipments of September 18th?

A. On the ground that the discount asked for in Read's letter and referred to in Ferguson's letter of August 19th., and Ferguson's ~~xxxxxxx~~ discounts taken shown in his invoice of August 30th. does not corroborate

Q.77. I do not think your answer is responsive to the question. I will ask again if you considered the discount of 50 5/10 5 and 5 or 5 and 6/10 either as being a breach of the Ferguson Contract why did you make the shipment of September 18th. after knowledge of this so-called breach had come to you?

A. I say, even admitting that I did agree to let him handle trays at 50 5/10 5 and 5, which I don't remember, and don't think I ever made it, but it is possible I did, then that being at that time a ~~part~~ of the contract, the 50 and 6/10 deducted would be a second breach of the contract.

Q.78. Mr. Gum testifies that the original contract which both you and Mr. Gum say was to be carried out by you was based on a discount of 50 5/10 5 and 5; how then can you claim that the same discount was any breach of the contract?

A. Mr. Gum's statement to the court in this respect, as regards the first statement as regards those discounts is erroneous, and the Elwood Mfg. Co. and W. B? Ferguson & Co.'s papers of contract which are filed will show for themselves by the Exhibit "A" and "A.A.".

Q.79. You have just stated in a question or two back that the extra 5% was allowed on the sale of these dishes to Read. After this concession please state how the discount should read?

A. The discount should read 50 5/10 5 and 5, then take off the freight and then take off 5% for his commissions. That would leave the net amount. But he did not allow 50 and 6/10 then deduct freight and then 5% commissions as Ferguson did do.

Q.80. If, as you say, this discount of 50 and 6/10, freight and 5% was deducted from the face of your bills on the shipment of the 26th of August, why did you not confront Ferguson & Co. with this fact and decline to make the shipment of September 18th?

A. I am not positive that I ~~made~~ made him shipment of the 18th but I am positive that I made Ferguson & Co. one shipment on Frank B. Read's order, and I think it possible in getting up this statement that this car must have gone to Frank B. Read direct from us. I am not positive as to that, however; there was a correspondence about this matter between Ferguson & Co. and myself regarding this matter.

Q.81. In Exhibit "R" Read asks that the discount read as follows: 50 5/10 5 and 5. This is to represent the discount allowed Read which is an extra 5% discount over what you had been receiving before. Mr. Ferguson stated that this extra 5% was allowed by you. You are not positive whether it was or not. Now if Read was to receive the above discount of 50 5/10 5 and 5 and it had been allowed should statements of same read from Ferguson to Joyner? ^{Now}

A. I had nothing at all to do with the discounts so far as Read and Ferguson were concerned. The discount there that Read asked was asked for from Ferguson to me. Ferguson asked that discount of me, and I remember I allowed it on one shipment 5% 5/10 5 and 5 as the shipment was already in New York, but I do not remember even allowing then on any further shipments. I say it is possible I might have done it, but it has been so long I don't remember. I am absolutely positive I did not write to him ~~or~~ or agree in any way in a conversation to allow him 6/10 and ~~then deduct~~ then deduct the freight and his commissions, which he did in one instance.

Q.82. How did the statement read on the one car upon which you are certain this extra 5% was allowed?

A: It read, a discount of 50 5/10 5 and 5, freight deducted and 5% commissions deducted.

Q.83. Have you your invoice of August 26th?

No sir, I hav'nt got it.

Q.84. Can you not find this invoice? ~~Q.84~~ If so please file copy of same.

A. I will look for it and if I can find it I will file it.

Q.85. You stated that the discount allowed should be 50 5/10 5 and 5 freight and 5% as commissions. Please explain to whom this 5% commission went and for what purpose?

A. I don't know where it went. All I know is I sold on the same terms and conditions that others sold on. It is the price gotten up by the Butter Tray Association. No local concern can make a standard price list of their own..

Q.86. Was the Elwood Mfg. Co. or D. K. Joyner members of the Butter Tray Association at this time?

A. No sir, but they were governed by their prices; they had to be or get out of the business or sell in job lots.

Q.87. Explain why they had to?

A. Because the Association had the power to make any price they saw fit and if we did not sell by the Association's prices we could not sell at all. I will state further that this discount asked for was not an Association discount and that I did sell for better prices after Ferguson broke his contract by deducting 50 and 6/10.

Q.88. Could you not have sold for a lower price than those of the Association? If not, why not?

A. I did not because I could not.

Q.89. You stated in your direct examination that upon the settlement for the car shipped on ~~September~~ August 26th, Ferguson deducted 3% when he gave you his acceptance. Was this 3% deducted from the acceptance given you by Ferguson?

A. I think not.

Q.90. Did you receive the original of this letter?

(Witness is here handed Exhibit "O")

A. Yes, I got this letter all right.

Q.91. How then can you state as you did in your direct examination that you did not know that Ferguson had sold the out-put of the mill until January 1st., 1896 until September 1st., 1900?

A. I just simply don't remember ever receiving this letter, so far as that is concerned. As regards Mr. Gum, he had nothing to do with my business, neither did I have anything to do with the selling of the butter trays so far as Ferguson was concerned, and Mr. Gum had nothing to do with this contract after it was turned over to D. K. Joyner & Bro.

Q.92. You have stated repeatedly that you assumed the position of the Elwood Mfg. Co. in its contract as embodied in Exhibit "A" and Exhibit "A.A." with Ferguson & Co. which clearly shows that Ferguson was to have the sale of the entire out-put of the plant for the year 1895. How do you reconcile this statement with the one which you have just made in which you say that you did not agree to allow Ferguson the sale of any particular number of dishes or for any particular time.

A. I did consider I was under obligations to ship to him until the 1st of January 1896 under a discount of 50 5/10 and 5, freight and 5% commissions and under no other circumstances. These discounts Ferguson did not live up to.

Q.93. Then you did have notice of the sale of the out-put of the plant by Ferguson up to January 1st., 1896 as early as October 5th., 1895. Is this not true?

A. I must have done it if I received that letter which I reckon I did. but this was not done until after the breach of the contract had already been made by Ferguson & Co.

Q.94. You state in your direct examination that you intended to increase the out-put of the plant and bought an extra machine. Please state when this increase was made?

A. I don't think that was done until the latter part of September or the first of October. I don't remember exactly.

Q.95. Did Mr. Gum know of your proposed increase?

A. I never told him anything about it that I know of, I might have done it. It would have been very natural for him to have known it as he was around Elwood and very likely saw us when we were moving the engine to the factory.

Q.96. Was it not your intention to add 5 and 10 pound frames to your machinery?

A. I don't think I ever had any intention of adding 10. We once expected to add 5 but I never got it. The new machinery I put in was 3 pound.

Q.97. As I understand you you were the Secretary of the Elwood Mfg. Co. and received and answered some of its letters in conjunction with Mr. John A. Gum?

Witness is here shown Exhibit "B")

A. I don't remember of ever seeing Exhibit "B". I don't think I ever saw it.

Q.98. Could you state positively on oath that the original of this Exhibit was not received in the office of the Elwood Mfg. Co.

A. I cannot state whether it was or not.

Q.99. Did your company ever received the original of this letter?
(Witness shown Exhibit "D")

A. I don't remember sir, it might have been sent but I don't think those goods were ever shipped. They were not shipped for one reason we had'n't any, and the second and most important reason that we would not have shipped to these people through Ferguson. We sold the trays to Ferguson and shipped on his order and under

no other circumstances according to our contract.

Q.100. Wherein would this order have been ^{delivered} delivered from others received by your company through Ferguson?

A. That order is as taken through a broker, if we had accepted it or if we had shipped the goods, and other orders received from Ferguson were direct orders from me to ship to particular parties.

Q.101. Point out the words in this letter which indicate the difference you have mentioned.

A. One reason by his giving us the rating of these people and expecting a discount.

Q.102. If you had left these words out in this particular letter would you not have considered that order the same as orders afterwards received by your company through Ferguson for Read?

A. I would not have considered it a direct order from Ferguson & Co. if he had left out the rating of the parties etc..

Q.103. Was the press copy of this received by the Elwood Mfg. Co. at the same time Exhibit "B" was received?
(Witness is here shown Exhibit "C")

A. I could not tell you to save my life. I think possibly the list of figures was received. I told you that I do know that Ferguson sent us a list of figures to know whether we would approve them or not. I don't know what it was. That, I think, is what is referred to as a press copy in the question above.

Q.104. Can you testify on oath that the press copy of Exhibit "C" was not received by your company with Exhibit "B"?

A. I can testify that I never saw it myself, I don't know whether it was received or not.

Q.105. You stated in your direct examination that you contributed \$12.50 to Ferguson for some purpose unknown to yourself, and that you gave this money by check. Please state upon what bank this check was drawn?

A. Farmers Bank of Nansemond.

Q.105. Can you produce this check.

A. I don't think I can.

Q.106. When was this ckeck given?

A. I don't know.

Q.107. Mr. Ferguson states that this check was not given until after he had been to New York, which was on the 31st. of December 1895. Is he correct?

A. He is not, I am pretty certain.

Q.108. Upon what do you base your first statement?

A. Because I had quit dealing with Ferguson, or nearly so, before this time. In fact I think I had entire quit having any dealings whatever with Ferguson & Co.

Q. 109. For what purpose was this money contributed?

A. I don't remember. It was about a car of butter trays, but I don't remember the circumstances.

Q.110. If Ferguson & Co. had been the purchasers of these trays from you and they were only to collect the bill due them for the sale of the trays, why should you contribute \$12.50 of your money to enable them to collect one of their own bills?

A. There was complaint about some trays and I think this is the car in question that was mouldy or something on that order, and to get the matter straight, considering the circumstances I did not think it was any more than right that I should assist them in the trip to New York to look after the condition of them, because I sold them supposing them to be first rate goods.

Q.111. If, as a fact, this money had been contributed by you and Mr. Gum until after Mr. Ferguson had been to New York and returned and after the suit by F. B. Read against him had been begun, what reason can you then assign for this money?

A. I would not have given it to him. I never had to furnish money to Ferguson & Co. for their law suits.

(Question and answer excepted to by defendants' counsel on the ground that it is asking for an expression of an opinion.)

Q.112. ~~XXXX~~ You stated in your direct examination that this check was given "long before" November 14th., 1895. By the Exhibits filed by Ferguson we see that he was not aware of the breach of your contract in failing to ship the dishes until October 24th.,

1895. I conclude according to these statements that this check must have been given before November 14th. and after October 2nd. Is this a fact?

A. No sir I don't think it is. I think it was given before October 2nd.

Q.113. You stated in your direct examination that at the time the deed of trust was made by the corporation to Mr. McLemore, Trustee, to secure Gum, and also at the time the bargain and sale deed of March 98 was made from the Elwood Mfg. Co. to Gum, that the Company had no other creditors. Is this a fact?

A. It had none of any consequence

Q.114. What do you mean by "of any consequence"?

A. I mean that it might possibly have owed some little bills, but no large ones..

Q.115. Had the Company paid its running expenses?

AL Yes.

Q.116. Had the Company paid for materials used?

A. Yes, paid for all they had used. They had not used any material or paid for any running expenses from August 1895, until September 1895. It had not bought anything. D. K. Joyner & Bro. had leased it, bought the material, and paid for the running expenses and labor.

Q.117. Who operated this mill between September ~~XXXX~~ 1896, and March 1898, after you gave up your lease before Mr. Gum bought it?

- A. Nobody; for a great portion of the time it was idle. I think then it was leased to two men by the name of Webster and Bradshaw. They run it a little while.
- Q.118. From Mr. Gum's testimony I gather that these advances were made by him at the time or soon after the Company began to do business in January 1st., 1895. After the notes and bonds evidencing these debts were executed about August 1st., 1895, why did the Company permit this account to stay open for seven months?
- A. I don't know.
- Q.119. Mr. Gum states that the deed of trust to secure these evidences of debt of August 1st., 1895, was dated March 13th., 1897. Why did the Company permit these debts to remain unsecured so long?
- A. I don't know.
- Q.120. Why did they give this deed of trust at this time?
- A. To secure the notes.
- Q.121. If the notes for the debt could remain unsecured for over two years, what fact made it necessary in March, 1897, to secure this debt?
- A. Notes go out of date and deeds of trust don't.
- Q.122. Was it because you were afraid the statute of limitations would intervene?
- A. I suppose it was. I was not caring much about that firm then and was not getting any money out of it. It was not paying me anything and whatever price a man might have offered me for it I would have taken it.
- Q.123. What prevented a renewal of the notes or bonds?
- A. I don't know, I suppose it was asked for. I suppose the party to whom the money was due would rather have had a deed of trust and he asked for it and got it. That is the only reason I can give.
- Q.124. If, as you say, this corporation owed no debts, please state why in March 1896, soon after it had received notice from Ferguson that it would be sued for breach of contract, it voluntarily sold all of its property to its President for 50% of the value of the stock?
- A. I don't know, so far as the other stock holders were concerned, but Mr. Gum offered me 50% of the face of my certificate. I thought it a big deal and double the value of it, and sold it to him. As to the others, I suppose they considered it as I did and sold too.
- Q. 125. What did you get for the \$1400.00 worth of stock?
- A. I got \$715.00.
- Q.126. In cash?
- A. Part of it in cash, part of it in a deed of trust transferred from John A. Gum.
- Q.127. How much cash did you get?

(38.)

A. I got a paper that I owed Mr. Gum myself of one hundred and some dollars and Mr. Gum and I had some accounts that were settled up in the deal outside of the note that I owed him.

Q.128. What became of this transferred deed of trust?

A. It was then transferred to E. Joyner & Co., or E. Joyner, at my request, because I owed them some money, and it stands in the Clerk's Office today to them..

Q.129. Upon whose property is this deed of trust?

A. H. A. Howell. (A. H. Howell, 1837/1840, 1850)

Q.130. Do you remember the trustee?

A. I do not.

Q.131. You stated in your direct examination that the consideration for these notes or bonds of John A. Gum given by the Elwood Mfg. Co. was the payment by Gum of certain outstanding bills owed by the Company at other places. Can you file copies of these bills?

A. I think it possible to file copies of some of them. I don't know that I can.

Q.132. If so will you file them?

A. If I can find them I will.

Q.133. Were the shares of the Company, or the property of the Company sold by mutual consent at the stock holders' meeting, or were these transfers in the nature of private contracts between Gum and each individual stock holder.

A. We all met, and Mr. Gum offered to either buy or sell at 50% of the face of the stock certificates and I at once agreed to sell to him, and the other stock holders sold him our right in the property and the property was transferred by deed and the certificates made void.

Q.134. Then the ~~sold~~ ^{of} all this property ^{was not} upon the resolution of the stock holders at a duly called meeting but a private sale by each individual of his in-terest to Mr. Gum?

A. It was at a meeting of the stockholders, and was recorded.

Q.135. What stock holders were absent from this meeting?

A. I don't think any but E. Joyner.

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REDIRECT EXAMINATION.

Q.137. When you spoke in your cross examination of the contract had between the Elwood Mfg. Co. and W. B. Ferguson & Co. do you mean to say that you adopted the proposition made in the first letter written by the Elwood Mfg. Co. marked Exhibit "A"?

A. That is all the contract I know anything about between the Elwood Mfg. Co. and W. B. Ferguson.

Q.138. In that letter it is stated in substance that for selling our out-put for the year 1895 we will allow you 5% commission on net sales. What agreement did you have with regard to allowing W. B. Ferguson & Co. permission to sell your goods.

A. None whatever. I simply agreed with Mr. Ferguson that I would assume the contract made between the Elwood Mfg. Co. and W. B. Ferguson & Co.

Q.139. What is your understanding of the contract with the Elwood Mfg. Co. and Ferguson as ~~xxxx~~ relates to commission?

(Question and any answer excepted to, first for the reason that it is a mere repetition, second, for the reason that it is not new matter brought out in cross examination.)

A. The contract I accepted as to prices of course, and Mr. Ferguson received 5% commissions outside of the 50 5/10 5 after deducting freight of course.

Q.140. Did you look upon Mr. Ferguson as agent?

A. I did not.

(Question and answer excepted to as being leading.)

A. Why did you pay him commissions if you did not look upon him as agent?

A. It is simply an extra 5% discount that we gave him in order to get one person to handle the entire out-put of the plant. To sell to one man, you understand. I make it a rule when I sell big lot of stuff to one man to sell at a little discount.

Further this deponent saith not.

N.B. Ferguson & Co

vs } Deposition
of
Dr Joyner
for Sept.

Elwood Mfg Co et al

PRESENT: R. W. Withers for plaintiff,
McLemore & Corbitt for defendants.

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John A. Gum being first duly sworn deposes and says:

- Q.1. State your name, age, residence, occupation, and connection with this suit?
- A. John A. Gum, Elwood, Va., am one of the defendants in this suit
- Q.2. Please state the nature of the contract, if any you had, with W. B. Ferguson & Co. with reference to the out-put of the plant of the Elwood Manufacturing Co. covering a period of one year from the first of January, 1895 to the first of January 1896?
- A. The Elwood Manufacturing Co. wrote W. B. Ferguson & Co. a letter about the sale of these goods for the year 1895. Ferguson & Co. did not reply to this letter but I saw him in person and sold him the goods for 1895 at 50 5/10 5 and 5: this was only a verbal contract and they were sold direct to W. B. Ferguson & Co.. The Elwood Mfg. Co. lived up to this contract until the 1st. day of August, then by consent twice, in conversation, from W. B. Ferguson & Co. the mill was leased out at a stipulated price to D. K. Joyner & Bro. They took the verbal contract existing between Ferguson & Co. and the Elwood Mfg. Co. After the 1st. day of August of that year I knew nothing of the business whatever. This price agreed upon between the Elwood Mfg. Co. and Ferguson & Co. was lived up to by both of the parties. The goods were bought, sold and paid for.
- Q.3. I notice in a letter written by the Elwood Mfg. Co. to Ferguson & Co. on November 13th., 1894 and filed as Exhibit "A" in the depositions of W. B. Ferguson, that you made a proposition for the out-put for the year 1895 at 50 5/10 and 5. How do you reconcile this proposition with your contract verbally with Ferguson, in which you sold for a different amount?
- A. That letter is exactly the same so far as the price is concerned. The proposition that the Company made to him in that letter was 50 5/10 and 5 and allow him 5% commissions. It is exactly the same.
- Q.4. You say that the two propositions as to the price are exactly the same. What about the extra 5% commissions which you mention above?
- A. That was the first letter, the only letter we wrote Mr. Ferguson in regard to the sale. There was no extra 5%, it is just the same, but when Ferguson replied to this letter he said that "every tub should stand on its own bottom", and I do not understand what he meant. Then he agreed to sell the goods and buy from us. That was when I came to Suffolk to see him. There was

no contract and nothing existed between them except these two letters that passed. This one is his reply.

- Q.5. In your letter of the 13th of November, you spoke of allowing a commission of 5% on net sales. Did the last 5% come off the net sales, or off the price list?
- A. I don't know exactly what you mean by that; but the freight was taken out and the 5% came off the net sales, which, of course, both of them are just the same.
- Q.6. At the time you saw Ferguson & Co. and made the agreement referred to was anything said by either party about Ferguson's acting as agent, broker or commission-man in the sale of your out-put?
- A. No sir, they were sold direct.
- Q. 7. How were settlements to be made?
- A. They were to settle with us, I think, to the best of my recollection, on or before the 10th or 15th. of the next month. Goods shipped this month were to be paid for the 10th or 15th of the next month.
- Q.8. In your contract of sale please state what your agreement was as to the amount of the out-put of the plant for the year in question?
- A. No sir, we only sold the out-put, that is all.
- Q.9. Had the plant been operated in the same business prior to this time, and if so, what had been its out-put per month?
- A. We had never made any before.
- Q.10. About how long did you ship to W. B. Ferguson, or his order, after this contract was had with him?
- A. Just as long as the Elwood Mfg. Co. had a contract with W. B. Ferguson & Co.; that was to the first day of August 1895.
- Q.11. Do you remember about how many cars were sold to Ferguson & Co. during this period?
- A. I don't think we made but seven cars.
- Q.12. Do you know how many cars were made between August 1st. and December 1st. at this plant?
- A. I do not only from the statement that Mr. Joyner has.
- Q.13. Please state what settlements were to be had for these cars of goods sold by the Elwood Mfg. Co.?
- A. We took a note from W. B. Ferguson & Co., that was at his option; sometimes he would give 30 days, sometimes 60 and sometimes 90 days for settlement. That was only a matter of courtesy.
- Q.14. Were you or the Elwood Mfg. Co. consulted as to whom the goods were sold by Ferguson & Co., or the price to be asked for same, and did you know anything about what they were being sold for by Ferguson?

- A. I was not consulted and I never knew what he got for them. I had no reason to know because he had paid us for the goods. We only shipped the goods according to his instructions every time.
- Q. 15. Mr. Ferguson, in his examination in chief, has filed as an Exhibit in this cause, markes "C", a price list which he testifies was submitted first to you or to the Elwood Mfg. Co. and approved by you before he issued same. Please state what you know about this matter?
- A. I did not know anything at all about it. It was sometime before I saw it, but every butter-dish man in New York City and in Norfolk has a list similar to that. He never consulted us about being sole agent. This list was not made by Mr. Ferguson or by us. This Butter-tray Association makes out those lists every year as the prices change.
- Q. 16. Up to August 1st. who had the management and control of this plan and attended to all of the business of same?
- A. I did, for the Company.
- Q. 17. After August 1st. did Ferguson & Co. consult with you or the Elwood Mfg. Co. with regard to the contract in question, and if so how and when?
- A. They did not, not at all after August 1st.
- Q. 18. What was the conversation had with Ferguson in which you say he agreed to accept D. K. Joyner & Bro. on this contract?
- A. It was about the 25th. of July. The first conversation I had with him was on the train I recall very distinctly. I had started to Suffolk to see him, I told him that D. K. Joyner & Bro. wanted to lease the factory and they wanted the same contract with W. B. Ferguson & Co. that the Elwood Mfg. Co. had, and asked if he would be willing to release the Elwood Mfg. Co. and take D. K. Joyner & Bro. at the same price, and he said he would. I stated to him the reason why I wanted to do it; that they were about as much interest as I was in the factory, and they would pay the factory a certain rent for one year beginning August 1st. a stipulated price; that I was away from there and could not give it the attention it required; they were there running a store. Mr. Ferguson remarked to me that he would be glad to do it for one reason if nothing else; that he was then not selling goods to Joyner & Bro. and if he was taking the out-put of the mill he would have the sale of the goods; and I told him I thought so too, because it would be a matter of courtesy.
- I came back home and told Mr. Joyner. I had talked over the details of leasing the factory to him, what he was to pay and how the rent was to be paid, all those things; I came back then and we made a memorandum of the lease or contract for the mill, Mr. Joyner and I getting the price of each article. I mean by each article, he was to pay us 10 cts. for every thousand butter-dishes that went through the mill. I then told Mr. Joyner he had better have a talk with Mr. Ferguson; that if we had sold the out-put for 1895 to Ferguson & Co. that he had better go and see him himself. Mr. Ferguson told me he was willing to take D. K. Joyner & Bro. and release the Elwood Mfg. Co.. I told him he had better come to see Mr. Ferguson before we signed the contract. Afterwards he came to Suffolk and saw Mr. Ferguson the next morning. Joyner told me he saw Mr. Ferguson and satisfactory arrangements had been made. We were to go right on and take inventory of the supplies the Elwood Mfg. Co. had in the mill; i.e., planks, lumber, logs etc.. It took us some time to go through with it. The next day I told Joyner that I would come to

Suffolk and we would then sign up the contract. I came to Suffolk expressly to see Mr. Ferguson about this contract, and asked him if he had seen Joyner, and he said yes, he had been there the night before, or the night before that, I won't say which. Mr. Ferguson replied to me that they had been all over the whole ground, and that it was satisfactory for the Elwood Mfg. Co. to make a contract with D. K. Joyner & Bro. and that the same deal would still continue right on. I told him then that I would go on back home and sign the contract for the Company and that Joyner would sign it and that they would commence business at once, that was on the first day of August; I think this was on the 26 day of July. The reason I set that date was, I asked Mr. Ferguson, ^{that the Company} was done doing business with W. B. Ferguson & Co. and they wanted settlement, which we made the next day with Mr. Norfleet, we did not have time that night, we had to make the train and it too late. I told him I wanted a settlement so that the Company would be done with it; and I came the next day which was, I think the 27th day of July (the books will show), and to the best of my recollection he gave us a note for \$86.00 to close the account; he made out a statement and receipted it. I have it now. That was the last transaction of business that the Elwood Manufacturing Co. had with W. B. Ferguson & Co.

Q.19 . After this conversation, and after D. K. Joyner & Bro. had taken charge of the plant at Elwood, please state whether or not you had anything to do with the operation of the plant, or exercised any act of control or ownership over same, and what relation you bore to the plant from that time?

A. Not one particle of control after the first day of August, only that D. K. Joyner paid the Company rent and I received it.

Q.20 Please state whether or not you spent much of your time around the plant after August 1st?

A. I did not. I was away from there nearly all the time, I had mills in Southampton County. Of course I came home for a few days, that is all.

Q.21. Did you have any interest in the profits made by D. K. Joyner & Bro. or any losses sustained by them while operating under the lease aforesaid?

---Complainant's counsel excepts to both question and answer as being irrelevant, because this has nothing to do with the relation between the Elwood Mfg. Co. and D. K. Joyner & Bro.---

A. I did not. I had no interest whatever, of any kind.

Q.22. Did W. B. Ferguson & Co. after August 1st. correspond with the Elwood Mfg. Co., or in any way advise them of the progress of the contract with D. K. Joyner & Bro., or of the manner in which same was being filled, or of any complaints of the goods being manufactured by them? If so, what?

A. They wrote to the Elwood Mfg. Co. I think, somewhere about October 1st. that the goods were not delivered the way they bought them. Mr Ferguson—I saw him—I considered—I went there on two occasions after that—. He came to see if I could get D. K. Joyner & Bro. to deliver these goods he claimed he had bought from them. I replied to Mr. Ferguson every time that I had nothing at all to do with it, nor would not, most emphatically, in every instance and in every case, and I don't think I ever wrote but

but one letter to W. B. Ferguson & Co. and that was probably twelve or fifteen months after 1895. Mr. Ferguson had talked to me once or twice about it. The last occasion and the last time that Mr. Ferguson ever spoke to me in person he called me in his office and asked me to help him out, and I told him NO.

Q. 23. (Witness is here shown letter marked "P" in depositions of Mr. Ferguson already filed, and asked what reply, if any, was made to the same.)

A. I never replied to that letter; I mean in writing; W. B. Ferguson asked me in Suffolk about it; I told him neither did I or the Elwood Mfg. Co. have anything to do with it.

Q. 24. Is the the same letter that you just referred to in your answer next preceeding as having been received about October 1st?

A. This is the letter.

Q. 25. Did you state to Mr. Ferguson at any time during the year 1895, that you expected to largely increas the capacity of your plant and would be glad to furnish him about one car of trays per week? Mr. Ferguson has made a statement similar to this in his examination in chief.

A. We did not. Mr. Joyner put in one machine of his own accord after he leased it, at his own expense. He made a few more dishes than we made in the same length of time.

Q. 26. Did you have any knowledge from Mr. Ferguson, or from any other person, of the contract entered into between F. B. Reed and W. B. Ferguson & Co. on or about September 28th., 1895, wherein W. B. Ferguson & Co. agreed to sell to Reed one car of trays per week during the remainder of that year, which, he stated, was the out-put of the plant?

A. I did not know anything about it. It was perfectly new to me, and I never heard any tell of it until Mr. Reed told me of the contract he made with Ferguson, about two years after the suit of Reed vs. Ferguson, and I never saw the letter until I saw it in Mr. Ferguson's testimony the other day. That was the first of my knowledge of it. I had no interest whatever in it and knew nothing about it. I was utterly surprised that a business man should make such a contract.

Q. 27. Has there ever been a time in the history of the Elwood Mfg. Co. that it had the capacity of one car a week of trays?

A. No sir, the mill had never made it before nor since. We only made sever car-loads from the 1st of January to the 1st of August

Q. 28. Mr. Ferguson in his deposition states that when complaints were made about the butter-dishes by Frank B. Reed that we, in every instance referred to the Elwood Mfg. Co. for adjustment. Please state whether this is true or not?

A/ It is not., only while the Elwood Mfg. Co. was selling Ferguson & Co. dishes. As long as the Elwood Mfg. Co. made the dishes they did whatever was right about it with Ferguson. After that time, the Company ~~knew~~ nothing about it, and I don't know today whether after that time D. K. Joyner & Bro. made bad goods or not if so neither the Elwood Mfg. Co. knew it nor I did not.

Q. 29. It has been stated by Mr. Ferguson in his depositions that after he had the suit with Frank B. Reed of New York, that you and D. K. Joyner & Bro. each contributed to the defense of same to the extent of \$25.00 a piece. What have you to say about this?

A. I did not do it. That was before this suit was entered at all. From what Mr. Ferguson tells and what Mr. Joyner tells me, the last car of dishes that D. K. Joyner & Bro. shipped to Ferguson, he refused to pay for, so I understand; and Ferguson had spoken to me about getting this money. Mr. Joyner and I had some account between us individually. He wanted money to run his business and pay his bills, and Ferguson said he had had so much trouble about and was at so much expense going to New York that he thought Joyner ought to pay one fare; and I came and told Mr. Joyner that I would help him chip up his \$25.00, and after he paid his bills I believed he would pay me whatever he owed me individually. I gave him \$12.50 to pay his expense to New York to collect this money. I simply did that as a matter of business transaction and as much to help D. K. Joyner & Bro to get the money.

Q.30. Had you at this time had any intimation of Ferguson's being sued by Reed?

A. Not at the time this money was passed.

Q.31. Do you know why it was that D. K. Joyner & Bro refused to ship Ferguson & Company the out-put of their plant for 1895?

A. Of course I don't, of my own knowledge, I did not know anything about their business.

Q.32. Mr. Ferguson has stated in his deposition that after August 1st. his firm looked upon Mr. Joyner as representative acting under instructions of the Elwood Mfg. Co. Will you please state whether or not in your conversation with Ferguson you gave him any reasons to think that Joyner & Bro. would continue to act under your instructions or under the instructions of the Elwood Mfg. Co? If so in what way did you do so?

--Question and answer excepted to by complainants counsel for the reasons, first, that the question is leading, and second, it asks opinion evidence.---

(Question withdrawn.)

Q.33. Mr. Ferguson has stated in answer to question by plaintiff's counsel, that "we looked upon Mr. Joyner as a representative acting under instructions of the Elwood Mfg. Co. to carry out a contract made with my firm." What statement did you make to Mr. Ferguson with reference to this matter?

A. None whatever. After the deal was made and D. K. Joyner & Bro. was to lease the mill and sell the out-put to Ferguson the Elwood Mfg. Co. had nothing to do with it.

Q.34. Mr. Ferguson also states that it was directed by you to forward orders and correspondence that might arise relative to the butter dish business to D. K. Joyner & Bro. Please state what authority or what direction you gave Mr. Ferguson in this matter?

A. I never gave him any. Not one word did I ever tell him about it.

- Q.35. Did you ever make any statement to Ferguson to the effect that you would be responsible for accounts made by D. K. Joyner & Bro. or would see that he was paid for same?
- A. I never did. Joyner & Bro. didn't need any recommendation, they could buy goods anywhere.
- Q.36. Mr. Ferguson, in his examination in chief, has stated that after August 1st. settlements were made with D. K. Joyner & Bro., but the bank refused to handle the papers unless endorsed by John A. Gum, and they were so endorsed. Please state whether or not this is true?
- A. It is not. I never endorsed a note for D. K. Joyner & Bro., to the best of my recollection, at any time. Ferguson's name was good enough to make it go without going outside on the street to ask endorsement.
- Q.37. It has been stated by Mr. Ferguson that you were frequently in his office relative to the contract in question and continued to visit same throughout the year 1895. Please state whether this is true or not, and for what purpose you visited his office?
- A. I bought some goods of W. B. Ferguson & Co. for supplies of the mill for a Company in Southampton county. Outside of this business I had no use to go into his office whatever.
- Q.38. Mr. Ferguson in his deposition states, with reference to the agreement had with Mr. Reed, as of September 28th., 1895, that "it was reported directly to Mr. Gum in person, and gone over with him thoroughly and I tried to impress upon him the importance of maintaining the quality in order that there should be no further complaint." Please state your recollection of this conversation, if such you had?
- A. We never had any conversation and I never knew of that sale until Mr. Reed told me, as before stated, after the trial was over.
- Q.39. About what is the average net amount received from a car load of trays during this period.
- A. I suppose about \$330.00. If necessary I can get the books and tell the exact amount.
- Q.40. After W. B. Ferguson & Co. had been sued in New York did they advise you of this fact and call upon you to defend suit? If so what action did you take?
- A. They advised the company sometime afterwards but the only reply I made was, I think, was ~~xx~~ only one letter and that had nothing at all to do with it.
- Q.41. Mr. Ferguson states in his depositions that as soon as D. K. Joyner & Bro. refused to ship trays "we immediately notified the Elwood Mfg. Co. and continued to insist upon their carrying out the sales made by us, and notified them time and again that we would certainly hold them responsible for damages." Please state whether you received these notifications, and if so what replies you made to same?
- A. I simply stated to Mr. Ferguson in a verbal conversation that we had nothing at all to do with it and should not have at any time.

Q.42. You have stated that you sold these trays to Ferguson at List Price, less didcount, for 50 5/10 5. and 5. on the net sales. Did the Elwood Mfg. Co. ever sell these goods to him at a less figure?

AL No sir.

Q.43. Did you or the Elwood Mfg. Co. ever re-emburse Mr. Ferguson in any way?

A. Only in this way: beginners in making these goods, and some were properly made and some were not. In one or two cases the goods were not properly shipped, they were not dry enough and they got mouldy. When they were re-inspected in New York City if there were any cull goods found ~~xxx~~ in the car they were simply deducted from the bill. The company did not propose at this price to sell cull goods for No.1 goods.

Q.44. It is charged in the complainant's bill that the Elwood Mfg. Co. on or about the 15th day of March, 1897, executed a deed of trust to J. L. McLeomore, trustee, conveying the property of said corporation to secure a pretended debt due to you aggregating \$902.76, and that same was made in consideration that the debts were, in fact, not due to you, and that same was made with intent to hinder, delay and defraud the creditors. Will you please state why this deed of trust was made, and what was the consideration which made up the two noted mentioned in same, one for \$700.00 and one for \$202.76?

A. We thought we could fill it for \$3500.00 or \$4000.00. We, the stock-holders raised \$4000.00 and then found that we needed more machinery for the business and it costs us more money than we intended; the Elwood Mfg. Co. owed money and in one instance there was a claim in Mr. Britt's hands for \$101.00, I think from the Porter-McNeal Co. of Norfolk, and there were three or four other claims, E. L. Folk & Co. had a claim and I think Baker had one, I have forgotten but they are on the books. We figured up to see how much we were in debt. It amounted to \$700.00, and the company did not have money enough. I told them I would make arrangements to pay these debts off. I paid all of these debts off and the Elwood Mfg. Co. did not owe anybody anything, and then the Elwood Mfg. Co. gave me their note with consent and approval of every body interested; the note was drawn up and signed by the President of the Company and the Secretary. I held this note before the deed of trust was recorded, and I can show from the books to whom this money was paid. I can produce one evidence right here in town. Now after we had got to going we required more machinery for some time; we concluded to go in the barrel-stave business and we had, of course, some money, but not enough to fit it up, and this was for money to pay for the betterments of the factory, which the bills and statements will show for themselves, in other words, for betterments of the factory.

Q.45. On or about the 30th day of March, 1898, the Elwood Mfg. Co., by its proper officers executed a deed of bargain and sale to you wherein they conveyed their entire plant consisting of real estate and personal property of every description for the sum of \$2000.00. It is charged in complainant's bill that this sale and transfer was a mere sham, made without valuable consideration and with intent to hinder, delay and defraud the creditors. Will you please state the circumstances leading up to and surrounding this transfer?

- A. I simply bought it like I would any other property; we placed a valuation on it at about \$4000.00, the amount we had put in, which was the original cost outside of this deed of trust that was on it. Then I bought the stock out at 50 cts. on the dollar and paid them for it. Part of it I gave notes for; my own individual notes.
- Q.46. How much did you pay at the time you made this purchase?
- A. I paid the whole of it, I gave them my notes for a part of it, and part of it I paid in cash, and a part by transferring real estate.
- Q.47. Have you paid the notes that you gave for it?
- A. I have paid every one with the exception of one. I owe Joe Johnson \$75.00.
- Q.48. Did you buy the property subject to the deed of trust, or was the deed of trust to be paid out of the \$2000.00?
- A. No sir. It was bought subject to the deed of trust and I hold it that made the property \$3000.00. There was nearly two years interest on it and that made the property \$3000.00.
- Q.49. Say, Mr. Gum, if this property cost originally \$4000.00, how was it you were able to buy it at a less figure?
- A. We needed and required so much stuff to make it go, being perfectly green at the business; it required some more than was already put in it to get anything out of it at all and the stockholders did not want to put any more money in it and they preferred to sell. I would have preferred to sell. I would not have given, if I had had no interest in it, the amount I did give for it.
- Q.50. Did you acquire the property of the Elwood Mfg. Co. by virtue of coming into possession of all the stock or by conveyance of the property by the corporation?
- A. It was from the corporation. Of course after the corporation had sold me the property they simply handed over the stock and the corporation went out of existence.

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CROSS EXAMINATION BY PLAINTIFF'S COUNSEL.

- Q51. What is or was the Elwood Mfg. Co.?
- A. It was a corporation.
- Q.52. What was its business?
- A. Making butter-dishes, barrel-staves, boxes, etc.
- Q.53. Who were the stock-holders of this Company?
- A. J. H. Johnson, D. K. Joyner, D. H. McPhail, Elihu Joyner, Moses Joyner and John A. Gum.
- Q.54. Can you state the amount of stock held by each of these stock-holders?
- A. There was \$4000.00 worth of stock. Johnson and myself owned \$1275.00 each. The balance was owned by Elihu, David and Moses Joyner and D. H. McPhail.

- Q.55. Did Johnson own his stock up to March, 1898?
- A. He did. He owned it as long as anybody.
- Q.56. Did the other stock-holders own theirs the same length of time?
- A. Yes sir.
- Q.57. How did you pay for your \$1275.00 worth of this stock?
- A. I paid it in money.
- Q.58. Did you not sell to this corporation in 1894 about seven acres of land, upon which it afterwards established its factory?
- A. Yes.
- Q.59. What was the consideration for this property and how was it paid?
- A. I do not remember.
- Q.60. Who were the officers of the Elwood Mfg. Co.?
- A. I was President and Treasurer, D. K. Joyner was Secretary, Moses Joyner and Elihu Joyner and D. H. McPhail were directors, together with the President and Secretary.
- Q.61. I believe you stated in your direct examination that you ran the mill up to August 1st., 1895?
- A. I did, as manager of the Company.
- Q.62. Please state when you first mentioned to W. B. Ferguson & Co. anything regarding the out-put of the Elwood Mfg. Co.
- A. I suppose a week or so before the letter of November 13th was received. Our conversation was this: That whatever we wanted to do we were to write him in a letter.
- Q.63. Is this the letter you wrote relative to that conversation?
(Witness is here shown letter marked Exhibit "A" )
- A. Yes sir.
- Q.64. Then this was what you wanted in regard to Ferguson?
- A. That is what we offered.
- Q.65. Did you receive this letter in reply?
(Witness is here shown "AA")
- A. Yes sir, but I would not consider it as any answer.
- Q.66. What did you then do after receiving this letter marked "AA"
- A. In a conversation with Ferguson about a week afterwards, that was sometime about the latter part of November I believe, probably in December, and sold him the goods at this price stipulated in here. He was to pay us for the goods from the 10th to the 15th. day of the month following, which he did.
- Q.67. The offer of the Elwood Mfg. Co. as embodied in Exhibit "A" is that that the Company was to receive a given price for the different sizes of dishes per thousand subject to a discount of

50 5/10 and 5 and that they were to pay Ferguson & Co. a commission of 5% on net sales, payments to be made by W. B. Ferguson & Co. for the dishes shipped the preceeding month, on the 10th of the following month by an acceptance of ninety days. Is this not substantially the same price and mode of payment which was agreed upon and carried out between the Elwood Mfg. Co. and W. B. Ferguson & Co?

A. No.

Q.68. Please^{show} clearly the difference.

A. There was no 5% commissions. There was no difference.

Q.69. Suppose the Elwood Mfg. Co. had shipped 1000 1/2 lb. butter-tray to F. B. Reed of New York upon an order sent them by W. B. Ferguson & Co. Please show what amount the Elwood Mfg. Co. would have received for these dishes, when the payment for them would have been made, how, and by whom, supposing the freight to be 13 cts. per thousand?

A. The list price on the small size was \$5.00, 50% off leaves \$2.50, 10% off 5 times, I then take off 10% leaving \$2.25, 10% (22cts) leaves \$2.03, 10% (20cts.) leaves \$1.83, 10% (18 cts.) leaves \$1.65, 10% (16 cts.) leaves \$1.49, 5% (7 cts.) leaves 1.42; basing freight at 13 cts., which I now take off, leaves \$1.29, then 5% off leaves \$1.24 that the Elwood Mfg. Co. received. This was paid by W. B. Ferguson & Co.

Q. 70 Is this demonstration that you have just made based upon your offer as shown in Exhibit "A", or is it based upon the actual contract which you say your comp ny made with Ferguson & Co.?

A. This is the way we settle in the contract we were acting under.

Q.71. Did I not understand you to say in your direct testimony that the contract which was entered into by the Elwood Mfg. Co. with W. B. Ferguson & Co. was subject to a discount of 50 5/10 5 and 5.

A. That is what we settled by.

Q.72. What does that last 5 % in your testimony represent?

A. It represents just that much less on the goods/ It was all we could get for them.

Q.73. Why did you not take off this last 5% before the deduction of freight charges was taken off, as you say the goods were sold to Ferguson at a discount of 50 5/10 5 and 5. Why did not the last 5% deduction follow immediately the other 5% deduction?

A. I could not answer that, but I am selling the goods today exactly the same way, but I could not tell you why, I don't know.

Q.74. If these goods had been shipped by the Elwood Mfg. Co. upon the orders of W. B. Ferguson & Co. in accordance with our proposition embodied in Exhibit "A", would not the price received by the Elwood Mfg. Co. have been just as you have indicated in your testimony?

A. Yes, with the exception of the payments.

Q.75. What is the difference in payments?

A. We sold the goods direct and not knowing anything about who Ferguson was selling to.

Q.76. What do you mean by difference in payment? Your offer in Exhibit "A" says that Ferguson & Co. are to give their acceptance at 90 days for all goods shipped by orders of the Elwood Mfg. Co. on the 10th of the following month after shipment. Is this not what was done under your contract?

A. Yes, that is right.

Q.77. Then where is the difference in payment?

A. The difference was just this: that all these goods shipped according to Ferguson's order Ferguson was to pay us for them; we were not to look to anybody in Atlanta or any other ~~point~~ point where the goods were sold.

Q.78. That is just exactly what your proposition in Exhibit "A" contemplates, is it not?

A. I don't know exactly what you mean. I can't get it straight so as to give an intelligent answer.

Q.79. Will you please file as an exhibit, any letters or other written evidence which will bear you out in the statement that Ferguson & Co. bought the out-put of the Elwood Mfg. Co. for the year 1895?

A. I have nothing only the settlements he made every month. That is all I have. There was no written agreement.

Q.80. Did your company receive the original of this copy?
(Witness is here shown Exhibit "B".)

A. Probably I received that letter but I don't recollect it if I did. I won't say positively, but if I did I could not have changed the price list for every man in New York City knows the price list and I could not change it.

Q.81. If you had received this letter with the enclosure which it says it contains why could you not have changed the form of the price list, or at least have directed it to be changed?

A. I could not do that. He never sent that Marked Exhibit "C" at the time that letter was written. I don't recollect of ever returning that price list, I don't recollect of ever seeing it at all.

Q.82. Did your Company receive this letter?
(Witness is here shown copy of letter, said copy being marked Exhibit "D".)

A. I think we did. I think that was an order that went to New Jersey. We never took that order. We received the letter but never paid any account of it. We were not making butter-dishes at that time. That was before that order was made. When that order was mailed to us we were not making butter-dishes, we had not started our plant at all. That letter applies to November 13th., 1894, and had nothing to do with the business of 1895.

Q.83. (Witness is here shown Exhibit "C".)
Mr. Gum, can you testify on your oath that a copy of this Exhibit was not mailed to you by Ferguson & Co. with letter of December 10th., 1894 with the request that you correct or revise it if you thought fit, and return to them?

- A. I have no recollection of receiving anything of that kind. It might have been mailed there but I don't know what good it would to mail it there. What is the good of sending that price list up there with the one stipulated in that letter there. There was no use sending it to me. I never made any such contract. Of course if we received it he mail it to us. I would not have made Ferguson sole agent.
- Q.84.Q Are not the list prices the same in both Exhibit "A" and Exhibit "C"?
- A. They are just the same exactly; that is what I say, what did he want to mail that thing to me for.
- Q.85. As I understand your testimony on this point, it is that you simply do not remember whether a copy of this price list was mailed to you or not, and that you cannot testify positively either that ~~xxx~~ it was or was not. Am I correct?
- A. Well, if I ever saw it I have forgotten it; I don't recollect of it.
- Q.86. (Witness is here shown Exhibit "H" and asked if he received the original of these copies.)
- A. Of course, that is what I told you/ Yes, I received them.
- Q.87. In what manner was this kick by Frank B. Reed adjusted?
- A. I don't know.
- Q.88. How did the Elwood Mfg. Co. settle it?
- A/ We took out all the dishes he claimed that were culls but allowed them on Ferguson's bill and gave him credit for them.
- Q.89. Did I understand you to say in your direct testimony that you did not know to whom Ferguson & Co. were shipping these dishes or at what price?
- A. No sir, I did not.
- Q.90. Then you did know that Ferguson & Co. were taking orders from Frank B. Reed of New York for these dishes?
- A. Not til after the dishes were gone and Ferguson made his claim did I know that he was shipping to Frank B. Reed.
- Q.91. Well, Do I understand you to say that it was not till June 4th., 1895, that you knew that these dishes were being sold or shipped to Frank B. Reed in New York?
- A. He was sending an order to manifest a car to a certain party and we would manifest accordingly.
- Q.92. Can you explain why Mr. Ferguson should ask you for instructions along the line of settlements of the complaints of F. B. Reed if he was the purchaser of the dishes?
- A. If I understood just exactly what you mean I might answer it. No, he never did.
- Q.93. Did not Mr. Ferguson frequently enclose you letters from Reed and also a copy of his reply to same, and ask you if this was satisfactory?
- A
- A "No sir, I have no recollection of it."

- Q.94. (Witness is here shown Exhibit "I" and if his Company received ~~te~~ these ~~xxxxxx~~ letters?
- A. I don't recollect of it. I don't know what they have reference to.
- Q.95. When did you lease your mill to Joyner & Bro?
- A. August 1st., 1895.
- Q.96. Have you a copy of the lease? If so please file it?
- A. Yes. (Same is herewith filed marked "J J")
- Q.97. Did not Ferguson & Co. correspond with Joyner & Bro. relative to butter-trays manufactured by the Elwood Mfg. Co. prior to August 1st., 1895?
- A. Not that I know anything about. I never heard of it.
- Q.98. Did you ever tell Ferguson that Joyner & Bro. had leased the mill, and if so from ~~what~~ date the lease began?
- A. I told him so twice. I told him so once on the train and once in his office. The lease was to begin the 1st of August.
- Q.99. If Ferguson knew Joyner & Bro's lease would not begin until August 1st., 1895, and had agreed to buy their product after that date would you not think it strange if Ferguson & Co. had ~~haken~~ taken up the butter-dish business with Joyner & Bro. before August 1st., 1895?
- (Excepted to on the ground that it is asking for an expression of opinion.)
- A. I don't know what answer to make to that question. I could not tell what Mr. Ferguson would do.
- Q.100. As a business man, and an expert witness, would you have done as indicated above?
- A. I must profoundly say I don't know what you mean.
- Q.101. When you determined to quit operating the Elwood Mfg. Co. and go into other lumber business whom did you approach first as to the contract with Ferguson; Ferguson & Co. or Joyner?
- A. I think I talked with Joyner about it first.
- Q.102. Are you agent for D. K. Joyner & Bro?
- A. No sir.
- Q.103. When you saw Ferguson on the train on Southampton County Court day in July 1895, was D. K. Joyner or Moses Joyner present?
- A. No sir.
- Q.104. Was it your intention to have the old contract with Ferguson continue after August 1st., 1895 with the exception that Joyner & Bro. was to take the place of Elwood Mfg. Co.?
- A. We were simply to be relieved from the contract or agreement and Ferguson was to pay D. K. Joyner & Bro. the same money for the

goods that he had previously paid to the Elwood Mfg. Co. for the balance of the year 1895, That was the same in substance of the contract from beginning to end.

Q.105. Then I understand that the old contract was to continue with Joyner in place of the Elwood Mfg. Co.?

A. Yes, we were just relieved. What business was transacted after that we knew nothing about it at all.

Q.106. Did not Mr. Ferguson say "I do not care who ships the dishes just so I get them" or words to that effect.

A. I don't recollect of it at all.

Q.107. Was it in your agreement with Ferguson that Ferguson was still to get these dishes?

A. We had no agreement to make after that.

Q.108. I mean during this conversation on the train. How about that?

A. It was my understanding with Ferguson that Joyner was going to keep on with the contract and furnish the dishes just as Elwood Mfg. Co. had done.

Q.109. Did not Mr. Ferguson say at this time that he would receive the dishes from Joyner provided the contract was kept up?

A. No sir, not that I know of or have any recollection of.

Q.110. Why did Ferguson, according to your statement, accept Joyner in place of the Elwood Mfg. Co?

A. He told me that he wanted to sell D. K. Joyner & Bro. goods, that he was not selling them good but that they were buying else where. And Ferguson told me he thought D. K. Joyner & Bro would make ~~make expenses~~ more goods than the Company did. I did not have the time to look after the mill and never did.

Q.111. After this conversation on the train, as I understand you, you saw Joyner and told him of your arrangements with Ferguson. Is this a fact.

A. Yes.

Q.112. Do you know what Joyner then did?

A. He went to see Ferguson.

Q.113. Did you go with him?

A. No sir.

Q.114. Were you present at any subsequent conversation between Joyner & Ferguson?

A. I was not.

Q.115. Is either David Joyner or Moses Joyner agent for the Elwood Mfg. Co., or John A. Gum?

A. No sir.

Q.116. Did you have the power to bind D. K. Joyner & Bro. to buy their groceries from W. B. Ferguson & Co?

A. I did not.

Q.117. Did Joyner & Bro. have the power to terminate your contract with Ferguson & Co?

They did not.

Q.118. Do you know why Joyner & Bro. failed to ship the dishes ordered by Ferguson & Co. in September 1895?

I do not.

Q.119. According to your examination in chief would Ferguson have departed from his contract if he had paid Joyner & Bro. the list price less discount of 50 5/10 5 and 5?
know

A. I don't what he would have done with Joyner, I could not tell.

Q.120. Joyner & Bro. were to carry on the old contract made with the Elwood Mfg. Company, were they not?

A. They were to pay him for the goods on some terms.

Q.121. If Ferguson had paid the Elwood Mfg. Co. before August 1st., 1895, a sum equal to the list price of the dishes minus a discount of 50 5/10 5 and 5 would he have departed from this contract according to your statement?

A. I could not say what he would have done. I know he paid us up to the 1st day of August.

Q.122. I see in some of the Exhibits filed in this case that you have just been in the office of Ferguson & Co. discussing with them the business of the Elwood Mfg. Co. or the butter-tray business, in others that your presence is requested at their office, and in others still that certain matters relative to the butter-tray business had been referred to. Please state if you were not in the habit when in Suffolk of calling at the office of Ferguson & Co. and discussing these matters with them?

A. Of course I would drop in the office; I was buying goods for my mill in Southampton County. I occasionally dropped in there and bought goods of them.

Q.123. In these visits were not matters pertaining to the Elwood Mfg. Co.'s business discussed?

A. I don't think they were after August 1st. until later in the fall. I was not there but two or three times in the fall.

Q.124. About the first part of September 1895 did you not visit Ferguson & Company's office?

A. Not that I have any recollection of.

Q.125. Can you state positively that you were not there?

A. I cannot.

- Q.126. Did not Ferguson about this time in a conversation with you tell you of the complaints of Frank B. Reed relative to the mouldy condition of the trays?
- A. He did not. He did speak to me about it in May, June or July. In September I knew nothing at all about it.
- Q.127. Did he not mention something about the bad coating of the trays in September or October?
- A. Not to me.
- Q.128. Did you not, on or about October 5th. 1895, have a conversation with Ferguson & Co. in their office relative to the butter trays shipped to New York, and did Ferguson not tell you that he had succeeded in restoring the old discount from Reed?
- A. No sir.
- Q.129. Did I understand you in your direct testimony to state positively that you did not endorse the notes or acceptances given by Ferguson & Co. to Joyner & Bro.?
- A. No sir, I did not. I have no recollection of endorsing them, I am satisfied I did not.
- Q.130. Were you not advised by Ferguson & Co. sometime in October 1895 that the Elwood Mfg. Co. would be held responsible by Ferguson & Co. for all damages which might result to them from the breach of contract by Joyner & Bro.?
- A. Yes sir, and I told him right in the office that the Elwood Mfg. Co. had nothing nothing to do with it and would never pay him a cent.
- Q.131. When did Frank B. Reed sue Ferguson?
- A. I don't know.
- Q.132. Why, if Ferguson was liable to the Elwood Mfg. Co. for the trays shipped by them, did you contribute \$25.00 in order that he might collect his bills?
- A. I never done it.
- Q.133. Why did you contribute \$12.50 under the same circumstances?
- A. Mr. Ferguson owed D. K. Joyner & Bro. and the Company in order to get the money that D. K. Joyner & Bro. owed it (The Company) individually I did give the money to D. K. Joyner to help him collect his money out of Ferguson so that D. K. Joyner could pay me what he owed the Company. Ferguson said he thought if he went to New York he could collect the bill from Reed for this car and pay D. K. Joyner & Bro.
- Q.134. About what time of the year was this?
- A. I think it was in October to the best of my recollection, 1895.
- Q.135. When were you notified that Ferguson & Co. were going to take action against the Elwood Mfg. Co.?
- A. I could not say about that, it has been a long time ago, it was before 1897 that I knew it.

136 Q. What action did you take in your own defense at this time?

A. I don't know what you mean by that.

Q.137. What steps did you take to defend yourself?

A. I told Mr. McLemore that if Ferguson sued me I wanted to employ him. That was all.

Q.138. Please state about when this was?

A. I could not say.

Q.139. Was it not in the Winter of 1896-97?

A. I don't recollect.

Q.130. Was it before February 5th., 1896?

A. I don't know. I don't recollect.

Q.131. Can you give any indication of the time of this bond?

A. No sir. Only when I had a summons served on me a few months ago..

Q.132. You had this conversation with Mr. McLemore a long time before this summons was served on you did you not.

A. Yes, sometime before.

Q.133. When you sold the seven acres of land to the Elwood Mfg. Co. please state what was there besides the land and the trees on it?

A. Buildings, engine shafting, pulleys, belts, lumber, dry-kilns. and a lot of stuff, that is, material that would naturally accumulate around a saw-mill.

Q.134. It was a saw-mill then?

A. Yes sir.

Q.135. Did I not understand you to say in your direct examination that the Elwood Mfg. Co. put over \$4,000.00 worth of improvements on this place?

A. I mean including this land, improvements, buildings, etc.

Q.136. In what form were the evidences of debt secured by deed of trust to McLemore, trustee, in?

A. Two notes.

Q.137. In the deed of trust itself it describes them in one place as bonds and in another as notes, which is correct?

A. I don't know the difference between a bond and note.

Q.138. Were these notes given you?

A. I don't know. The first note of \$700.00 was given a year before the second note of \$200.00.

Q.139. As I understand your direct testimony you stated that the consideration for ~~this~~ this \$700.00 note was paid by you soon after the Company began business. Is this a fact?

A. Yes sir.

- Q.140. In the deed of trust this note is described as being dated August 1st., 1895. Is that when it was given?
- A. The date I know is the day the note was given.
- Q.141. Will you please file this note?
- A. (Witness here files two notes marked Exhibit "XX".)
- Q.142. Why did you not take security for the payment of these notes in shorter time than a year or six months?
- A. I looked upon the Company as being perfectly good. I knew all the parties and the Company owed nobody nothing.
- Q.143. Then on August 1st., 1895 the Company was solid and by no means a failure. Is this true?
- A. Yes sir.
- Q.144. Why, if you held this deed of trust, did you buy the property of the Company? Why did you not foreclose on the deed of trust?
- A. That I would not do.
- Q.145. When you bought this property was it by public or private sale?
- A. Private sale of the Company.
- Q.146. Was the Company insolvent at this time?
- A. No, it never was insolvent, it was all right.
- Q.147. Was it on a paying basis?
- A. The factory did not loose any money in operating it, but it required more money to put in the factory to make more money out of it, and the stockholders did not care to put any more money in the business. I then bought the factory and have spent a good amount to fix it up.
- Q.148. Then it was a freeze-out game as to the other stockholders was it not?
- A. No sir.
- Q.149. Was there a call on the directors or stockholders made for an addition to the capital of the corporation?
- A. We talked the matter over and decided not to put any more money in it, therefore there was no call.
- Q.150. Why were not the other stock holders satisfied to let the property remain as it was if the Company was solvent and was not ~~xxx~~ losing money as you say?
- A. I could not tell why they sold out unless they wanted money to use in some other investment.
- Q.151. What did you pay for this property?
- A. \$2,000.00 and cancelled the notes, making about \$3 ,000.00
- Q.152. About what percentage of the real value did you pay?
- A. We based it at 50%

Q.153. Who was present at the stockholders meeting, or directors, which ever is true, when you bought this property.

A. All of the stockholders.

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REDIRECT EXAMINATION.

Q.154. Do you think you are treating the stockholders right by buying the property back at 50% of its value?

A. Yes sir. I tried in every way to make them take it back. I did not want it.

Q.155. Did you try to sell your interest in the plant to the other stockholders at 50% of its value?

A. Yes.

Q.156. When you speak of 50% of its value do you mean one half of what it would have sold for on the market that day, or one half of what it originally cost you?

A. I mean one half of what the plant stood us.

Q.157. What in your judgment would the property have brought at public auction after being well advertised on the day that you bought it?

A. One at the same time was sold under a deed of trust in November ~~xxxxxx~~ bought for \$14,000.00 was sold for \$2600.00. I don't believe this plant that day ~~xxxxxx~~ would have brought more than I paid for it.

Q.158. Did the Elwood Mfg. Co. guarantee to ~~the~~ W. B. Ferguson & Co that D. K. Joyner & Bro. would continue to furnish them dishes after August 1st., 1895?

A. They did not.

(Question and answer excepted to as being leading and it introduces new matter.)

Q.159. In the cross examination it was asked whether or not after August 1st., 1895 the Elwood Mfg. Co. guaranteed that D. K. Joyner & Bro would continue to ship them dishes. What have you to say about this?

A. They never guaranteed any such thing.

Q.160. Now Mr. Gum, if W. B. Ferguson & Co. had settled with you on a basis of the list price less 50 5/10 5 and 5, the last 5 being taken off before the freight was deducted, would you have considered that it had broken its contract?

A. Certainly I would.

Q.161. Mr. Gum, any order for dishes given you in the year 1894 by Ferguson & Co., how would you have treated it? As being under contract for 1895?

A. We never treated it at all because we could not have filled it.

Q.162. How did you sell these goods to Mr. Ferguson?

A. Straight out like we did to anybody else.

(Objected to by complainants' counsel as being old matter.)

Q.163a Then counsel in his cross examination has asked you to state the difference between your offer made to W. B. Ferguson & Co. in a letter of November 13th., 1894 and the contract actually entered into between you as to price and manner of payments.

A. I have answered that question before. The price is just the same so far as that goes, but Ferguson never accepted that letter. The Company wrote him and as I said before he wanted to sell these goods to somebody and we collect the money; that, we utterly refused to do and then he agreed to buy these goods direct.

Q.164. Did you in any sense deal with Mr. Ferguson as your agent in handling these goods, or dishes?

A. No sir, I never did.

(Counsel for complainant excepts to both question and answer, first, as being leading, second, as being opinion evidence and third, as being a matter of law upon which the witness is not competent to testify.

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(Counsel for complainants except to and move to strike out all of the testimony of this witness, John A. Gum, showing, or tending to show, that W. B. Ferguson & Co. were not agents of the Elwood Mfg. Co. during the year 1895 for the out-put of their mill, upon the ground that the Elwood Mfg. Co., and particularly John A. Gum, its President, are estopped to deny this fact by matters in pais.

Second, Counsel for complainant except to, and move to strike out all of the testimony of this witness, John A. Gum, showing, or tending to show that D. K. Joyner & Bro. were, after August 1st., 1895, substituted in the place of the Elwood Mfg. Co. in its relation to W. B. Ferguson & Co. upon their contract, for the reason that no foundation was made for the introduction of this testimony, and in law such testimony does not show conclusions which defendants draw or wish to draw therefrom.

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Defendants, by counsel, say in answer to the exceptions of plaintiff's counsel, first, that they take issue upon all of the causes for exceptions set forth therein, and second that such exceptions if they have any virtue or validity have been taken too late, as they should have come immediately after each question and answer.

H. B. Ferguson & Co
vs } Disposition of
 } Geo. A. Gunn
 } for defendants
Elwood Mfg. Co. et al.

Copy

The depositions of W. B. Ferguson taken before me, R. W. Withers, Notary Public of the County of Nansemond, State of Virginia pursuant to notice hereto annexed at the office of R. W. Withers in the Town of Suffolk, Va. the first day of September 1900 between the hours of 9 A. M. and 6 P. M. to be read in evidence in behalf of the Plaintiffs certain suit depending in the Circuit Court of Nansemond County, wherein W. B. Ferguson & Co. are Plaintiffs, and Elwood M'f'g. Co. and others are defendants.

Present R. W. Withers, Counsel for Plaintiffs
 J. L. Mc Lemore, Counsel for Defendants.

Q. 1 What is your age, name and residence?

A. Walter B. Ferguson, thirty-nine years, Suffolk, Va.

Q. 2 Do you know the parties to this suit?

A. I know Mr. John A. Gam, I know Mr. D. K. Joyner, and I am one of the complainants in this case.

Q. 3 What is your occupation?

A. Wholesale Grocer and Commission Merchant.

Q. 4 Were you in business in 1894?

A. As W. B. Ferguson & Co., I was.

Q. 5 Please state if you ever received this letter herewith filed, and marked exhibit "A". (Letter hereshown to witness and marked exhibit "A")

A. We did.

Q. 6 This letter as I understand it is an offer to make you sole sales Agent of the Defendant Company for the year 1895. Please state what you did with this offer.

Defendants by Counsel excepts to the question or any answer that may be given thereto because same is leading and expresses an opinion for the witness.

A. The offer was accepted and sales were made in accordance with the instructions contained therein.

Q. 7 The Defendant Company in its answer states that you purchased their product, please state if this is so.

A. No purchases were made of Butter Trays from the Company referred to

by my firm.

Q. q How did you handle their product?

A. As their Agent for a commission of 5% as set forth in their letter marked exhibit "A".

Q. r How were payments made for these Trays?

A. Mr. Gum and myself had an arrangement after an interview had been had with W. H. Jones, Jr., Cashier of the Farmers Bank of Nansemond, that for the Company's accomodation we were to accept for the amount of each shipment in order that the Company might have the use of the funds, and in the event any trouble should occur by reason of the Company's failure to comply with their contract shown in exhibit "A", we were to be protected by the said Company. Settlements were, therefore, made by acceptances. The Company ran a store account, and the store account at times was deducted before full settlements were made.

Q. 10 In exhibit "A" it is stated settlements to be made on or before the 15th of each month for all goods shipped the month previous by an acceptance of ninety days. Please state who was to make these acceptances.

A. The drafts were to be drawn by the Elwood M'f'g. Co. and to be accepted by W. B. Ferguson & Co.

Q. 11 About how long did you operate under this arrangement with the Elwood M'f'g. Co.?

A. All sales, all correspondence, and everything pertaining to the sale of Butter Dishes manufactured and sold by us as the Agents of the Elwood M'f'g. Co. was conducted by authority from them, during the period set forth in exhibit "A", which I think was the year 1895

Q. 12 I here hand you a letter from W. B. Ferguson & Co. to the Elwood M'f'g. Co. dated December 10th, 1894, and marked "B". Please state if that letter was written by your firm.

A. It was.

Q. 13 It there refers to a price-list to be issued by you, please state if this is the list there referred to. (Witness here handed price-list marked exhibit "C").

A. This is a copy.

2 Q. 14 Did the Elwood M'f'g. Co. make any alteration in the forms sent by

you?

A. The price-list as exhibited was by their authority after having been submitted to them before same was issued.

Q. Please state if your firm wrote this letter to the Elwood M'f'g. Co. (Witness here handed letter dated December 12th, 1894 addressed to the Elwood M'f'g. Co. marked exhibit "D").

A. We did.

Q. Did your firm write these letters to the Elwood M'f'g. Co.? (Witness here handed copies of three letters all marked "E")

A. We did.

Q. Please state if your firm wrote the original of this letter addressed to the Elwood M'f'g. Co. dated December 28th, 1894 and marked "F"?

A. We did.

Q. I notice in this letter that you ask Mr. Gun to call on you for consultation about rates and so forth, please state if such consultations were usual between you.

A. Our consultations were very frequent in matters pertaining to the sale of Butter Dishes manufactured by the Elwood M'f'g. Co.

Q. To whom did you sell most of the product of the Elwood M'f'g. Co.?

A. Frank B. Read of New York, N. Y.

Q. Did the Elwood M'f'g. Co. fill orders sold by you to F. B. Read before October 1895?

A. No they did not.

Q. Did the Elwood M'f'g. Co. ever question your authority to sell Butter Dishes of theirs to F. B. Read before the breach of contract complained of in your bill?

A. They never did.

Q. Please state whether or not you ever sold any Butter Dishes to be sold in the future without reference to the order of F. B. Read, taken on September 28th, 1895, for the breach of which you make complaint in your bill.

A. No sales were made for future except such as might be taken to-day to be shipped promptly; that is, future sales as known by the term future, was made only to F. B. Read.

3 Q. Please state what you did with complaints which were lodged with you by the purchaser of these Dishes.

A. In each and every instance they were referred to the Elwood M'f'g. Co.

Q. Who adjusted such complaints?

A. The Elwood M'f'g. Co. by their President, Mr. John A. Gum.

Q. I here hand you copies of seven letters signed by your firm and addressed to the Elwood M'f'g. Co., all marked "G" dated December 29th, and 31st, 1894, January 10th, February 20th, February 28th (blurred), March 22nd, and one undated 1895. Please state if these letters were written by your firm.

A. They were.

Q. I here hand you copies of seven letters signed by your firm and addressed to the Elwood M'f'g. Co. all marked "H" and dated June 4th, 17th, 13th, 19th, 21st, and 28th, and July 2nd, 1895.

Please state if these letters were mailed by your Company to the Elwood M'f'g. Co.

A. They were.

Q. In your letter of June 4th, 1895 you report to the Elwood M'f'g. Co. that a complaint of the Trays has been made on account of being mouldy, and in your letter of June 19th, 1895 you state that in a letter from Mr. F. B. Read he states that \$20.00 would be a fair claim on a car load of Trays that were shipped in a mouldy condition, and that you think this claim could be reduced to \$15.00 and ask for advice along this line. Please state who settled this difference between Read and the Elwood M'f'g. Co.

A. The claim was adjusted by Mr. John A. Gum through us, and the amount allowed charged back by us to the Elwood M'f'g. Co.

Q. In your letter of June 28th, 1895 you state that Mr. Read complained of the condition of another car of Dishes. Please state how this complaint was adjusted.

A. It was handled in the same manner as the one above referred to.

Q. As a merchant if you had been the purchaser of goods and persons to whom you had sold them made complaint, who would have adjusted that complaint?

A. W. B. Ferguson & Co.

4 Question and answer excepted to because same is hypothetical and irrelevant.

Q. I here hand you copies of three letters from W. B. Ferguson & Co. to Elwood M'f'g. Co. marked "I" dated July 9th, 11th, and 15th, 1895. Please state if they were mailed by your firm to the Elwood M'f'g. Co.

A. They were.

Q. I here hand you a letter dated July 23rd, 1895 marked exhibit "J" signed by W. B. Ferguson & Co. and addressed to D. K. Joyner which reads " Dear Sir:- Send at once bill for car of Trays shipped the 23rd. Very truly, W. B. Ferguson & Co., "

Please state what trays are here referred to and why this letter was addressed to D. K. Joyner?

A. The Trays referred to was an order that had been sent to the Elwood M'f'g. Co., and the letter was addressed to D. K. Joyner, because the Elwood M'f'g. Co. by its President, Mr. John A. Gum asked us if we would be willing to receive the trays from D. K. Joyner.

Q. Please state where and when this conversation with Mr. Gum referred to in your last answer took place.

A. The conversation referred to was held while travelling over the Atlantic & Danville Railroad, I think June or July Southampton Court day 1895.

Q. Can you repeat as near as may be conversation on this point between you at that time?

A. The conversation as near as I can recall at this time followed after a general exchange on current topics, finally drifting to the interests of the Elwood M'f'g. Co. Mr. Gum stated to me that he had decided to allow D. K. to run the Butter Dish end, that he intended to pay attention to Yellow Pine Lumber, but that he would look after the Butter Dish mill in a general way, and asked if it would be satisfactory to receive the trays from D. K. Joyner. I replied that I had no objection, and it made no difference who shipped the trays so long as the contracts were carried out.

Q. Who is the D. K. here referred to by Mr. Gum?

A. D. K. is D. K. Joyner.

Q. Who has been operating or superintending the manufacturing of these dishes at the mill prior to the conversation?

A. Prior to the time of this conversation I had never paid a visit to

the mill, in fact have never paid the mill a visit. Everything pertaining to the business aside from the manufacturing of the Butter Dishes at the Elwood M'f'g. Co. was in a general way conducted and directed by its President, Mr. John A. Gum.

Q. Was Mr. D. K. Joyner present at this conversation between you and Mr. Gum?

A. He was not.

Q. Please state if Mr. D. K. Joyner ever made a contract with you for the handling of any Butter Dishes?

A. We have never had a contract with D. K. Joyner for Butter Dishes.

Q. In what capacity did you look upon Mr. D. K. Joyner after this conversation with Mr. John A. Gum?

A. We looked upon Mr. Joyner as the representative acting under the instructions of the Elwood M'f'g. Co. to carry out the contract made with my firm.

Q. Why did you address letters to D. K. Joyner or D. K. Joyner & Bro. instead of to the Elwood M'f'g. Co.

A. In the same conversation held with Mr. Gum on the Atlantic & Danville train above referred to, he stated that Mr. Joyner would be down in a few days, and that he would want to make arrangements for supplies in the commissary, and I was directed to conduct such an account against them by Mr. Gum, and to forward orders and correspondence that might arise relative to the Butter Dish business to D. K. Joyner. Mr. Gum stated that it was possible for him to be absent sometimes, and it would be best to have the correspondence promptly attended to.

Q. Did Mr. Joyner come down to your place of business?

A. Mr. Joyner did pay us a visit, and the arrangements above stated were made and carried out so far as we are concerned.

Q. What supplies are here referred to?

A. Such goods as are usually sold from a commissary, and occasionally we made purchases for the Elwood M'f'g. Co's. Dishes, such as paper, and occasionally paste, sometimes nails, but I can not state if all of these items were sold during the time D. K. Joyner had charge of the commissary.

... I mention the general line to show

about what we were shipping. The bulk of the goods shipped were Groceries, such as would be consumed by the mill hands.

Q. How did your firm receive payment for goods shipped by you to D. K. Joyner for his commissary?

A. Mr. Gum directed that we should deduct whatever might be owing, as he felt satisfied we would not be willing to assume the risk against D. K. Joyner. As a rule we tried to deduct the amount owing for one month's purchases when a settlement was made for Butter Dishes the subsequent month, which settlements however, were not carried out entirely along this line, for the reason that the mill at times wanted the use of the entire shipment, and we would try to meet their demands for accommodation.

Q. State whether or not your firm had previously extended D. K. Joyner & Co. so long a line of credit.

A. We had not.

Q. After August 1895 when D. K. Joyner managed the mill, please state with whom if anybody you held consultations regarding this business.

A. Mr. John A. Gum, President of the Elwood M'f'g. Co. was frequently in our office pertaining to the matter relative to the contract between the Elwood M'f'g. Co. and ourselves, and continued actively engaged throughout the year 1895, especially so after the suit was brought by F. B. Read for breach of his contract.

Q. To whom were the acceptances accepted by your Company made payable, and in what manner were they handled in the bank?

A. By directions of Mr. Gum settlements were made with D. K. Joyner & Bro., but the bank refused to handle the paper unless endorsed by Mr. John A. Gum, and they were so endorsed.

Q. I here hand you a letter addressed to D. K. Joyner & Bro. signed by your firm marked "K". Please state the date upon which this letter was written, and if it was mailed by your Company to the addressee.

A. September 25th, 1895, and it was mailed. I arrive at the date by its position in the letter book.

W. Were the orders contained in this letter ever filled?

A. They were not.

Q. I here hand you letter dated September 28th, 1895 addressed to F. B. Read, New York, N. Y. signed by your firm and marked "L", please state if that letter was written by your firm, and explain its contents.

A. The letter was written by my firm and mailed to F. B. Read. Up to this time or a very short time before complaints had been made about the quality of the Dishes, and the manner in which they were being crated and received in New York, N. Y. On this occasion Mr. Read came down in person to go over the shipping and putting in condition of the trays, and after some consultation and advice, we agreed to ship the entire product of the Elwood M'f'g. Co. upon the terms and conditions set forth. This letter followed a general interview from time to time with Mr. Gum, President of the Elwood M'f'g. Co. who had for sometime previous been short on larger sizes due to the delay in shipment of machinery for the production of these sizes and other delays connected with the mill which he had from time to time been making an effort to adjust and bring to perfection. This is what is meant by increased facilities.

Q. Was this contract reported to the Elwood M'f'g. Co. or its representative?

A. To the best of my knowledge and belief the kicks and complaints made by Mr. Read were prior to the date of September 28th, 1895, and in conversation held with Mr. Gum which was subsequent to a reduction of prices that had been forced by Mr. Read, and accepted by the mill, I told Mr. Gum that I had had a visit from Mr. Read and had arranged to have the old rate of discount applied, which was the original price and discount agreed upon, and that I desired him to see if he could not have the Dishes go out more promptly and in better shape.

Q. You did not answer my question fully, I ask it again. Was this agreement which you had with Read reported to the Elwood M'f'g. Co. or its Agents?

A. It was reported directly to Mr. Gum in person and gone over with him thoroughly, and I tried to impress upon him the importance of maintaining the quality in order that there should be no further complaint.

- Q. What action did Mr. Gum take as to this contract at that time?
- A. The conversation above referred to was held in my office. Mr. Gum stated that they had a great many things to contend with up to that time but he had every reason to believe that matters would move along smoothly, and he would do his best to look after the matter and try to have Mr. Joyner ship out the Trays in good condition.
- Q. Did this conversation occur before or after September 28th, 1895?
- A. It was a few days after.
- Q. Had you been notified at any time prior to September 28th, 1895 either by Mr. Gum, Elwood M'f'g. Co., D. K. Joyner, or D. K. Joyner & Bro. as to any change in your relations with them or that your powers as Agent had ceased?
- A. No conversation or written instructions abridging our authority as set forth in exhibit "A" has ever been received.
- Q. Please state whether or not the price at which these Dishes were sold to Read was in keeping with the instructions given you by the Elwood M'f'g. Co.
- A. They were.
- Q. Please state whether or not the orders from F. B. Read as embodied in your letter of acceptance of September 28th, 1895 were filled by the defendants.
- A. They were not.
- Q. Do you know why they were not filled.
- A. The Trays that should have been shipped upon our orders according to our best information were diverted to other houses.
- Q. I here hand you two letters marked "M" addressed to D. K. Joyner & Bro. signed by your firm, both dated October 1st, 1895. Please state if they were mailed.
- A. They were mailed.
- Q. I here hand you letter marked "N" dated October 3rd, 1895 addressed to D. K. Joyner & Bro. signed W. B. Ferguson & Co., please state if that was mailed by your Company and explain its contents.
- A. This letter was written and mailed by our firm and was subsequent to the conversation held with Mr. Gum, and its contents was to urge upon him the necessity of carrying out the contract made with the Elwood M'f'g. Co. and particularly the condition in which the goods

were being shipped.

Q. I here hand you letter marked "O" dated October 5th, 1895 addressed to D. K. Joyner & Bro. signed by your firm. Please state if this letter was mailed by your firm, and explain its contents.

A. It was written and mailed by our firm. The letter is self-explanatory, wherein we have endeavored to urge upon D. K. Joyner & Bro. the necessity of carrying out the contract with the Elwood M'f'g. Co., and also to notify them that we had already gone over the matter with Mr. Gam, and had further gotten the discount which had been lowered raised to the original price, whereby they would be benefitted from a point of profit. We also desired to convey the importance of supporting us in our efforts on behalf of the Elwood M'f'g. Co.

Q. I here hand you copy of a letter dated October 24th, 1895 addressed to the Elwood M'f'g. Co. signed by your firm. Please state if this was written and mailed and explain its contents. *E.V.P.*

A. The letter was written and mailed by our firm and the express purpose of this letter was to notify the Elwood M'f'g. Co. that the breach had been made in their contract.

Q. For how long prior to the date of that letter were you aware that your orders would not be filled?

A. The information given by D. K. Joyner & Bro. which is acknowledged by this letter was the first information we ever received that our orders would not be filled. The time I can not state exactly, it was transmitted by letter, and I am sure was but a few days prior to the date of October 24th, 1895, it was to the best of my knowledge in response to our demand for the shipment of the Trays ordered, and after the last shipment prior to this date, October 24th, 1895, had been settled for.

Q. You state in this letter of October 24th, 1895 that D. K. Joyner had leased the mills of the Elwood M'f'g. Co., please state when you became aware of this fact, and how so.

A. In a general conversation with Mr. Joyner from time to time in his visits to our store.

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- Q. About how many Dishes would the Elwood M'f'g. Co. reasonably have made between September 28th, 1895 and December 31st, 1895, and state the basis of your answer?
- A. According to statement made by Mr. Gam in a conversation held in our office, I think sometime in August or September 1895, he stated that he expected in a few days to be able to ship as much as one car per week.
- Q. Was this conversation held before your contract with Read of September 28th, 1895?
- A. It was.
- Q. State whether or not your contract with Read in any manner was based upon the statement of Mr. Gam as to output.
- A. It was based entirely upon that conversation and previous instructions, and the agreement with Mr. Read states plainly that the agreement should apply to shipment of about one car per week.
- Q. In whose name usually were your contracts of sale made?
- A. W. B. Ferguson & Co.
- Q. Were the contracts which were filled by the Elwood M'f'g. Co. in the first part of the year 1895 made in like manner?
- A. They were.
- Q. How was the contract of September 28th, 1895 with F. B. Read entered into?
- Q. In the same manner as others. All of the contracts made by W. B. Ferguson & Co. were by authority of Elwood M'f'g. Co. shown by the exhibit "A", and further endorsed by subsequent issue of a price-list setting forth the fact that we were their sole agents.
- Q. You have stated in your examination that the Elwood M'f'g. Co. refused to execute the orders made by you in their behalf as Agents from the orders sent September 25th, 1895. About how many cars would this be under your agreement of Agency expiring December 31st, 1895?
- A. About October 24th, 1895 as near as we can arrive at, which is the time that we first became aware that the shipments would not be made, but from the time we agreed with Read for the last orders taken to January 1st, 1896 there would have been about thirteen

cars shipped according to the estimate of output made by Mr. John A. Gum in his conversation with me

Q. About what is the average price per car load?

A. From the best of my recollection between \$350.00 and \$425.00, on this point I am not positive, my books will show.

Q. Based on a calculation of \$350.00 per car, please figure what your commissions would have been under your contract on the thirteen cars?

A. \$227.50.

Q. State fully and in detail what action Mr. Read took in regards to your contract.

A. After making a shipment sometime in the fall of 1895, and failing to get the further orders filled given by Mr. Read, he declined to settle for the last car shipped, and that bill remained unpaid up to about December 31st. I went to New York to get a settlement after having made every effort possible, I found Mr. Read out upon my first visit, but was persuaded by his brother to wait, when he arrived he proposed that we should talk the matter over before he made a settlement. He stated personally he was willing to settle, but his brother, Monroe, who had built up a trade was inclined to resist the payment, and he desired to talk with him looking to a settlement. He requested me to call the next morning, I told him that my only business in New York was to settle the bill, that we had done everything in our power to have the shipments made but without success. He remarked that he thought we had treated him a little badly, but to call the next morning. With the promise of a settlement I paid his office a visit the next morning, and before he put in appearance a summons was served in a suit for damages because of the non-shipment of the Butter Dishes which we had sold him for the Elwood M'f'g. Co. He came in about thirty minutes after the summons was served, and I remarked that I thought the treatment was rather unbusinesslike, but I should pay no attention to the summons, because I was under the impression that the action should be brought in Virginia, at which point the agreement was entered into. He asked for an adjournment until evening, I told him I would call, but must positively leave for home that night

that night. In our evening consultation his lawyer was present, who advised us to make an appearance in answer to the summons, to which I flatly refused. Finding that a settlement could not be effected, I left for Suffolk, Va. and paid little or no attention to the service that had been gotten, until possibly sometime in January, possibly later when in correspondence with Shriver, Bartlett & Co. who were Attorney's for us in other matters, I recited as near as possible the treatment received at New York. They wrote they would look into the matter, and advise if the courts had jurisdiction. A short time there after we received a telegram stating that their Attorney's in New York advised that the New York courts had jurisdiction, and that the answer should be made in a very short time. Knowing these facts I communicated to the best of my knowledge and belief with Mr. Gum and shown from the correspondence, and urged upon him to come down and advise what steps I must take. The letters that were written relative to this matter, in part, were written at my home, during a spell of sickness. Mr. Gum responded to my invitation and paid me a visit at my home. After going over the matter fully, he stated that he did not believe Read could recover one cent, but to do everything possible to protect this end, this was followed up vigorously. I gave my time without stint, carried my book-keeper to New York who was a witness to the transaction between Read and myself, and used every honorable means to prevent this suit. The hearing was before a Referee and his finding was against us for the sum of \$932.86 as damages, a and \$383.69 as costs, making a total recovery against us of \$1316.55. In this action brought by Read against us, we filed a counterclaim or setoff against the Plaintiffs for the amount owing us on the last shipment of Butter Trays, for the settlement of which we had gone to New York. The Referee allowed this claim of \$309.79. In my relation as to the conversation between Read and myself a while ago I failed to state that Read consented to receive the number of Butter Dishes which had been ordered and not shipped if we could get the parties to ship them after a sale had been completed which had been entered into by D. K. Joyner & Bro. with one Mc Cluskey of

New York. We made this effort, and every move was reported, and several conversations were held between Mr. Gum, Mr. Joyner and myself. The action of Read against W. B. Ferguson & Co. was resisted by the assistance of these parties, D. K. Joyner & Bro., and John A. Gum, as President of the Elwood M'f'g. Co. who contributed their money, each of them paying \$25.00 to me on different occasions, which was used for the purpose of defraying expenses in this suit. I argued in every way possible to reach a settlement time after time I impressed upon Mr. Gum the importance of taking care of us as agreed. Finally when the judgment was entered, I advised Mr. Gum as I had previously done, that we would look to the Elwood M'f'g. Co. for every dollar of loss that we would sustain. In our further effort to avoid this loss, we consulted local Attorney's, among them Mr. J. L. Mc Lemore, and paid his fees and expenses to New York, and at that time he was doing everything that could be done to break up the judgment, and was retained by us with the express understanding that he could do nothing for us in the event that a judgment should be enforced except to prevent its collection, and if we should bring action against Elwood M'f'g. Co. he should be unable to serve us because he had already been retained by them. In general every effort possible was put forth to avoid any loss to the Elwood M'f'g. Co. or ourselves, but the courts decided otherwise.

So much of the above answer as proposes to get a settlement of F. B. Read, or in their presence made to witness, is excepted, because same is hearsay.

Q. You state in your bill that this New York judgment recovered against W. B. Ferguson & Co. by F. B. Read was sued upon in the Circuit Courts of Nansemond County, Virginia. Please state the result of that action

A. The judgment of the New York court was confirmed, and we paid to the Attorney's of F. B. Read through our representative, Mr. J. L. Mc Lenore, \$1200.00 and interest thereon until paid, and to which I hereby make reference to the records of the Circuit Court of Nansemond County.

Q. Please state whether or not the setoff which the New York courts allowed you against F. B. Read's action, of \$369.79, had previous to that time been paid by you, to the Elwood M'f'g. Co.

A. A settlement for the shipment referred to was made by us at the time of the shipment or very shortly thereafter.

Q. Can you state the amount of expenses to which you were put in defending the action brought against you by F. B. Read, both in New York and Virginia courts?

A. The exact sum I can not state, it is all charged to the Elwood M'f'g. Co. on my books, reference to which is hereby made, and herewith file a copy of same as exhibit marked "Q".

Q. What action did you take after October 24th, 1895 as to the breach of your contract of Agency with the Elwood M'f'g. Co. as to recovering damages for that breach?

A. We notified them that we should take steps to protect ourselves for any and all loss by reason of failure to fill the orders sent in, and as soon as the suit brought by Read was settled, I gave such papers as I had retained from the files after making up my case in New York to Mr. J. L. Mc Lenore, Attorney, and made an effort to obtain a settlement between the Elwood M'f'g. Co. and ourselves by arbitration. Failing in that, as soon as I could give the matter proper attention, I went to see Mr. Thom, an Attorney in Norfolk, Va. with the intention of bringing suit. The case was taken by him and would have been taken up promptly, but he was a very

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busy man at the time, and the case required some little attention. After waiting several months he wrote that the large amount of business then on hand would prevent his going into the case for us, and advised us to take it up with another Attorney as it was important.

Q. Can you recall when you first reported or held conversation with Mr. Mc Lemore regarding your difference with the Elwood M'f'g. Co.?

A. I think it was in the early part of 1897, the exact month I can not state.

Q. When did you take the matter up for breach of contract with the Elwood M'f'g. Co. looking to a settlement of your differences?

A. As soon as we found by notice from D. K. Joyner & Bro. that no more Trays were to be shipped, we immediately notified the Elwood M'f'g. Co., and continued to insist upon their carrying out the sales made by us, and notified them time and again that we should certainly hold them responsible for damages. As to the exact dates of the various conversations held with Mr. Gam about the suit, I am unable to state, except to say during the period of the suit brought by F. B. Read in the year 1896.

Q. When were you first advised that Read was going to sue you?

A. The day that I was in New York, on or about December 26th and 31st, 1895.

Q. Did you procure the services of a Suffolk Attorney to defend you in this action, if so whom?

A. On the appeal we employed Prince & Mc Lemore; when the case was before a Referee we did not have the services of other than a New York Attorney.

Q. You state in a letter to D. K. Joyner & Bro. that you had put your case in the hands of an Attorney, did you do so, if so in whose hands was this case put?

A. It was originally placed with Mr. A. P. Thom of Norfolk, Va., subsequently he was prevented from giving it attention and nothing was done in the matter for lack of the exhibit "A", which had been turned over to Mr. Mc Lemore during his effort in our behalf, and was not located until the Spring of 1900, at which time we began this suit, upon the promise that the copy of exhibit "A" would be

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would be furnished, but upon investigation the original was found with Mr. Mc Lomere with whom I had placed it, and was quite sure it had not been returned. As soon as this was put in my possession through request of my Attorney, Mr. E. W. Withers, no time was lost in making up the case.

Q. Please state if you ever claimed during the years 1897 or 1898 a cause of action against John A. Gun personally?

A. Our claim for refund or reimbursement was made upon the Elwood M'f'g. Co. and D. K. Joyner & Bro. in our letter October 24th, 1895.

Q. Were you ever after any property in which Mr. John A. Gun was interested, if so please state what property this was, and the grounds of your claim.

A. Our efforts to recover from the Elwood M'f'g. Co. were being made, and Mr. Gun having obtained possession of property by transfer from the Elwood M'f'g. Co. made a deed, of which I am not fully advised, but Mr. Gun made a remark at the time to Mr. Charles H. Ward, that he had fixed matters so that Ferguson & Co. would not be able to obtain anything by their suit. In making the remark that he made a deed, I do not wish to be understood as saying that the deed was made by any particular party than to say it put beyond our reach in the event of our success in this suit, the property which was in possession of the Elwood M'f'g. Co. during the time of our being their sales Agents.

I except to the question and answer, or so much thereof as states what is said by Charles H. Ward, and in his presence as same is hearsay, and Mr. Ward has already testified in this case.

Q. As I understand your answers to the last two preceding questions, you state that you were not after any property personally owned by Mr. John A. Gun during the years 1897 and 1898, but were seeking to recover damages against Elwood M'f'g. Co. in which Company, and in whose property Mr. John A. Gun was interested during these two years. Please state whether or not my impression is correct.

A. In our suit it was our desire and intention to sue the Elwood M'f'g. Co. and whatever interest the various members might have in our judgment must respond, and if Mr. Gun had property which was a part

of the Elwood M'f'g. Co.'s. assets, then we would be after that property in so far as he is responsible at law.

Q. Can you state whether or not about March 30th, 1898 Mr. John A. Cum was in Suffolk?

A. I can not say positively as to date.

Q. Is Mr. Cum in the habit of coming to Suffolk, Va. frequently?

A. In my judgment very frequently.

CROSS-EXAMINATION,

BY

DEFENDANT'S COUNSEL.

Q. Did you accept your original contract with the Elwood M'f'g. Co. by a letter or orally; I refer to contract embodied in exhibit "A"?

A. In so far as the authority to sell, there was no change in the original offer contained in exhibit "A", there may have been some variation in settlements to meet ~~emergencies~~ emergencies as they arose. We operated at all times under authority of November 13th, 1894.

Q. Please state when and how you accepted the terms as laid down in letter of November 13th, 1894.

A. In a letter dated November 13th, 1894 we acknowledged receipt of the letter of the Elwood M'f'g. Co. dated November 13th, 1894, and in our letter we suggested settlements slightly different from those that were originally set forth. The original proposition as to settlements prevails. A copy of our reply to exhibit "A" is herewith filed marked "AA".

Q. Then do I understand that your reply of the 13th is what you have acted under as the confirmation of the proposition contained in exhibit "A"?

A. That connected with exhibit "A" is what we have acted under.

Q. Will you kindly point out that part of your reply which agrees to take the output or any part thereof of the plant of the Elwood M'f'g. Co. as offered by them in their letter of same date?

17 A. There was no such acceptance on our part, we simply agreed to sell

the output as instructed by them in theirs of the 13th for a commission of 5%.

Q. Please state when, where, and how you agreed to do this.

A. In our efforts to sell, and the final selling to various parties according to their instructions laid down in their letter of November 13th, 1894.

Q. Has the Elwood M'f'g. Co. ever had any letter from you agreeing to act in the capacity you have mentioned in the sale of their goods, upon the terms laid down in their letter of the 13th; if so, please state when and how they received same?

A. To the best of my recollection, exhibit "AA" had the acknowledgment of an appointment as their Agents, subsequent conversations may have been had on the point, but certainly there was no change in the offer of November 13th, 1894, except to meet the kicks that were brought about by Mr. Read.

Q. Please explain what kicks you refer to.

A. After we had made some sales, and some shipments had been made, Mr. Read objected to receiving the Butter Dishes unless a change was made in the price; this was submitted to the mill-Elwood M'f'g. Co.- either direct, through D. K. Joyner, or D. K. Joyner & Bro., to which they consented, and one if not two shipments were made on that price.

Q. How did they consent, by letter or verbally to you?

A. We wrote them referring to them Read's kick, and they finally wrote that "we will hold to what we have until we can do better."

Q. Have you that letter?

A. I am inclined to think that it is filed with papers in our defense to the suit in New York, I have made diligent search, but have been unable to find it in our possession, but I am positive that the letter was received.

Q. When was it that Read objected to taking the Dishes at the old price?

A. Before this kick above referred to, I think one or two allowances had been made previously, and the fact that he agreed to restore the original prices led me to believe from a conversation held that the condition in which the goods were received in New York and the

quality was the reason, although at that time the market had been somewhat depressed, and I wrote the mill that his kick was not unexpected. Read, however, proved to my mind that he was willing to do what we were originally authorized to carry out, namely; to sell the output for 1895 at 50-10-10-10-10-10 and 5 if the Butter Dishes were shipped in proper condition, meaning similar to those that were being shipped by other Manufacturers.

Q. Then did he make the kick as you understand it because the Dishes were not properly manufactured?

A. In his visit he dwelt upon that point, particularly his previous ideas expressed the willingness to co-operate with this end, and suggested the quality of paste that should be used that would thus prevent the moulding of the dishes, which he subsequently shipped to the Elwood M'f'g. Co., and if I am not very much mistaken the proposition was named in a letter which we had from him previous to that time on this same subject.

Q. Did not Mr. Read very soon after D. K. Joyner & Bro. took charge of the plant, either in conversation or by letter to you, demand a reduction in price without any reference to the quality of the goods which had been shipped?

A. This I can not state positively, for the reason that a large portion of the correspondence between Read and ourselves was filed in the New York suit, and the papers are in New York at this time as far as I know, although I have made an effort to get them but have been unable to do so except at a price that I have not felt justified in paying. In connection with this I can state, that all demands from Mr. Read for change in price, whether on account of conditions or otherwise were submitted to the Elwood M'f'g. Co., before any reply was given from our office. I am inclined to think from my recollection, that his kicks were based almost entirely upon the quality or conditions in which the goods were being received in New York.

Q. Witness is here shown letter dated August 17th, 1895 from F. B. Read to Plaintiff, which letter was by Plaintiff forwarded to D. K. Joyner & Bro., and asked if this does not show a demand for reduction without regard to quality? This letter being filed as exhibit "R"

- A. In transmitting the letter of F. B. Read to the Defendants, I feel quite sure that a letter was written stating that we were not surprised, and asked for instructions. In the first part of his letter he makes request for a further discount, and my recollection is that the last clause in his letter refers to a shipment of goods that had been ordered and on the way, or were in New York in dispute on account of quality.
- Q. Did you not in rendering bill for car of Trays charge D. K. Joyner & Bro. with this difference which was demanded by Mr. Read in the letter just mentioned, on or about the 30th of August, and did not Mr. Joyner at that time, and at all times object to this charge?
- A. Our books would show if the charge was made, and if it was we had authority from them to do so, as to his objecting, my recollection is that they objected seriously to any change in the discount, and in a conversation held with Mr. Gam on the subject he stated that he did not see how they could sell at this price, but they would have to continue until some other arrangements could be made.
- Q. When was this conversation with Mr. Gam, and where?
- A. In our office, and during the period-the exact date I am unable to give-after Mr. Read began to make his requests for lower prices.
- Q. Was it after August 1st, 1895 or before?
- A. I can not give the exact date.
- Q. Could you say whether it was after Joyner began making the trays or before?
- A. I could not without referring to the correspondence.
- Q. Did not D. K. Joyner & Bro. continuously object to this deduction of 50-10-10-10-10-10-10 and following up that objection refuse to ship any more Trays to your order?
- A. Not until after the orders had been taken under our authority of November 13th, 1894.
- Q. Did D. K. Joyner & Bro., or Elwood M'f'g. Co. ever agree to ship the order taken by you from F. B. Read on or about September 23th, 1895, or did they or either of them authorize you to take such an order, or afterwards confirm your action in so doing?
- A. The authority given in exhibit "A" to sell the output was sufficient and at no time was our authority questioned. Our efforts at all

times were made purely in behalf of the Elwood H'f'g. Co.

Q. Then why did you address all communications after August 1st to D. K. Joyner & Bro.?

A. I have already stated that it was by instructions from Mr. John A. Gam.

Q. You opened up independent accounts on your books with Joyner & Bro. did you not?

A. My recollection of the matter without reference to my books at this time leads me to state that in the beginning, D. K. Joyner operated under the instructions of the Elwood H'f'g. Co., and afterwards was succeeded by D. K. Joyner & Bro.

Q. Did you have upon John A. Gam or Elwood H'f'g. Co. any claim or right to demand of them payment of any account or claim made by D. K. Joyner & Bro., and charged on your books to D. K. Joyner & Bro. after August 1st, 1895?

A. I have already stated that the account was opened by instructions of Mr. Gam in our conversation on the Atlantic & Danville train, and that the account, while conducted in the name of D. K. Joyner & Bro. was at his request, and as we were all at that time the best of friends, the question never entered my mind that a legal proposition would ever be presented. I was guided solely upon the idea of being beneficial to Mr. Gam, and the Elwood H'f'g. Co. in consideration of dollars, and ~~along~~ continued pleasant business relations. I have always considered legally and morally that the Elwood H'f'g. Co. were the parties to whom we should look for our redress, and that any claim that might arise by reason of their failure to carry out their agreement contained in exhibit "A" would be paid by them, in fact I never supposed that the conditions would ever come to what they are at present.

Q. Then I understand from your reply that although D. K. Joyner & Bro. bought the goods from your store, and you sent them bills for same that had they not paid for them, you would have thought Gam or the Elwood H'f'g. Co. legally and morally bound to pay them. Is this correct?

A. It is correct.

2/ Q. Did you send duplicate accounts to Gam or the Elwood H'f'g. Co., or

give them any information of the standing of D. K. Joyner & Bro.?

A. No duplicate bills were sent to the Elwood M'f'g. Co. for merchandise shipped to D. K. Joyner & Bro., it was not expected or requested by the Elwood M'f'g. Co., and I had no doubt that they were fully advised as to the amount of shipments by us themselves, and the general exchange of accounts.

Q. Do you know whether this is so or not?

A. The only evidence that would present itself to my mind is the fact that Mr. Cui was constantly in attendance at the mill, and that he endorsed the acceptances when the accounts were closed.

Q. How do you know John A. Cui was constantly at the mill?

A. Of my own knowledge I do not know it.

Q. Will you please produce some of the acceptances given to D. K. Joyner & Bro. after August 1st, 1895 which were endorsed by John A. Cui?

A. I will make an effort to obtain them.

Q. Did you communicate with Elwood M'f'g. Co. the facts that Read had cut the price on Trays as indicated in his letter of August 17th, and if so what was its reply?

A. Any change that was offered or suggested by F. B. Read was referred to them, and we did not consent to anything except by their authority.

Q. Do you mean that up to August 1st, 1895 all complaints were referred to the Elwood M'f'g. Co., and if after August 1st, all complaints were referred to D. K. Joyner & Bro.?

A. As to the exact dates I am not prepared to say. I would state that the complaints were referred to the Defendants either as the Elwood M'f'g. Co. or through D. K. Joyner & Bro.

Plaintiff's counsel by consent of Defendant's counsel introduce here letter marked "S".

Q. Is this the letter which was written by your firm to D. K. Joyner & Bro. on August 17th, 1895 marked "S" accompanying the letter of F. B. Read of August 17th, addressed to you?

A. It is. I think that the reply of D. K. Joyner to that letter marked "S" is the one above referred to in my testimony, wherein I state, that I was authorized to accept this additional discount, and that we will have to hold to this until we can do better, but

this letter from Joyner & Bro. I am unable to produce, and I believe it is now in New York filed with the papers in the F. B. Read suit. In support of my statement, subsequent shipments were billed to us at the change in price.

BY DEFENDANT'S COUNSEL.

Q. If I understand your statement with reference to the letter filed "S" you say that upon receipt of the letter marked "R" from F. B. Read, you enclosed that with letter marked "S", and that it was to these two communications that D. K. Joyner & Bro. wrote you a letter, which at this time you can not produce, saying they would hold on until they could do better, and shipped you about two cars more of Trays, and billed them to you at the reduced price. Am I correct in this statement?

A. Not entirely. My recollection of the matter was that they stated we must or will hold to what we have until we can do better, and as to their letter being a reply to these two communications, I can not state. Complaints were made several times, but in each and every instance changes were made by Defendants, and we in turn made the changes with the buyer.

Q. Witness is here handed the letter marked "S" and asked if the date on same has not been changed from its original writing?

A. Not to my knowledge, letters in the letter book surrounding it show the same date.

Q. Is it not a fact that the date has been amended by a pencil mark?

A. Complainants Counsel states, that he traced his lead pencil at the place indicated by a comma, and that he, Complainants Counsel, cut this exhibit from the press letter book of W. B. Ferguson & Co., and that it was surrounded by other letters written by W. B. Ferguson & Co. bearing date the 19th of August 1895 in such a manner, as to make it conclusive to his mind that the letter was written August 19th.

Q. Witness is here handed a letter marked "T" bearing date August 9th, 1895, and asked if that is not the same letter originally referred to as bearing date 19th, and if so which is correct, the original or copy?

23
A. The original shows date of the 9th the copy shows a had

copy. I am inclined to the belief that the original as well as the copy should read the 19th because of its position in the letter book, and the error is in my judgment, due to the mistake in striking the wrong key.

Q. You stated in your examination ^{in chief} that on or about October 1st, F. B. Read made you a personal visit, at which time you took an order from him for about thirteen cars to be shipped between that time and the end of the year. Will you please state how many cars have been shipped to your order by the Elwood M'f'g. Co. and D. K. Joyner jointly during the part of the year which had passed?

A. I will file an exhibit with your permission from our books, which will show the information desired, I can not statement from my recollection. Said exhibit being filed, marked "U".

Q. I understand you to say that from the time of the F. B. Read letter in testimony of August 17th, 1895, up to the first of October 1895, D. K. Joyner & Bro. were persistently kicking, and refusing to come to the terms indicated therein. Is that correct?

A. It is not. You do not understand my answer.

Q. What are the facts?

A. My recollection of the charge is as follows: Whether by correspondence I am not prepared to say, or whether by an interview with Mr. Can or Mr. Joyner, but I recollect that they both stated that there was little or no profit in the goods at the prices at which Read desired to purchase, but I acted altogether after consultation with these gentlemen.

Q. You state in examination in chief that as soon as you had information from D. K. Joyner & Bro. that they were going to discontinue shipments to you that you immediately informed the Elwood M'f'g. Co. Do you know about when this was?

A. To the best of my knowledge and belief, it was between the first of October and the first of December.

Q. Did not D. K. Joyner & Bro. before acknowledging receipt of your last order of October 1st from F. B. Read decline to ship you any more Dishes?

24 A. The exact date I can not give, but the notice that they would not

ship further was almost immediately following the last acceptance given by us, the date of which will be shown by our books, or a certified copy thereof if you desire.

Q. As I understand you there was for some weeks prior to making the last bill with Read, covered by your letter to him of September 28th 1895, a feeling of dissatisfaction on the part of D. K. Joyner & Bro to continue shipping goods to F. R. Read accruing out of the letter of Mr. Read of August 17th, 1895, and that this disposition was existing at the time Mr. Read came to Suffolk, at which time Mr. Joyner was not present, is this correct?

A. There was a feeling of reluctance on the part of the Defendants to accept a longer discount which would lower the net price of the Trays for a short time prior to Mr. Read's visit, and as we had previously advised the Defendants that we would make every effort to restore the old rate, and save Defendants any loss, we did in our communication or interview with Mr. Read succeed in getting him back to the original discount as authorized in exhibit "A". We so advised the Defendants, and further advised Mr. Gun personally, going over the matter in detail in our office, as is shown by one of the exhibits.

Q. Have you not undertaken to make D. K. Joyner & Bro. remunerate you for the loss sustained in your dealings with F. R. Read, and did you not employ Counsel to that end?

A. In the present suit, we are acting under the advice of our Attorney in bringing this suit.

Q. Your statement in your examination in chief about Mr. Gun's stating to you that the capacity of the plant at Elwood would be enlarged or be expected to enlarge it; do you know when this was that he made the statement mentioned?

A/ It was during the year 1895, at what period I am unable to state. Mr. Gun had been bothered very much in getting machinery, which made him short in some sizes that were sought after.

Q. Do you know whether or not it was after D. K. Joyner & Bro. began operating or before?

A. That I can not state. During the year 1895 Mr. Gun came to see us very often, and we were both earnestly striving to make the Elwood

W'f'g. Co. a success.

Q. You speak of Gum and Joyner paying \$25.00 each towards fighting the suit in New York City, is it not a fact that the amount contributed by them was only \$25.00 total, and that same was paid to you, or agreed to be paid to you before you took your trip to see Frank Read with reference to getting settlement of the car of Trays, and was for that purpose?

A. My recollection of the time of payment leads me to state that it was after I had made a trip to New York, and I related to these gentlemen that I was unwilling to continue the expense of going to New York, and that they must respond to the expenses, to which they agreed, paying to us \$25.00 each.

Q. Would not your books show this transaction?

A. I think they would.

Q. Will you please consult your books, and state when this amount was paid?

A. I will do so with pleasure and make a report.

Q. When did you find out for the first time that D. K. Joyner & Bro. had leased the mill owned by Elwood W'f'g. Co.?

A. Notice was never served, I believe that after the suit by Read had been instituted, in a conversation with Mr. Gum in our office one night, he stated that he had a written agreement with Joyner & Bro. but as to the exact nature of that agreement, the details were not entered into. This conversation was upon the subject of reimbursing us for any loss that we might sustain.

Q. You knew that the mill had been leased prior to October 24th, when you wrote Elwood W'f'g. Co. did you not?

A. In writing that letter we were not positive as to a lease or its terms. We stated that they must fill the contracts that had been entered into by the Elwood W'f'g. Co. and ourselves. As near as I can recollect, our object was to bring to their notice the fact that the Elwood W'f'g. Co. were under contract to ship their product upon our orders, and in order to have the shipments made, we were to use every effort possible to bring about such shipments.

26. Q. You knew did you not that every particle of the business being done

by the factory after August 1895 was being done in the name of D. K. Joyner & Bro, or D. K. Joyner & Bro., and that goods were being sold to you by them, and paid for by them, that they changed their grocery account from H. L. Saunders & Co. to you, and all letters relating to the matter of Trays, both from the Factory and from you to it were had exclusively with D. K. Joyner, or D. K. Joyner & Bro. up to October 24th, 1895, were they not?

A. Business pertaining to the Commissary as we stated before, as well as that pertaining to the shipment of Butter Trays was conducted between D. K. Joyner, and D. K. Joyner & Bro. by instructions of the Elwood M'f'g. Co., the changed were made by their direction, and the contract and authority set forth in exhibit "A" was continued under their direction.

Q. Did not Joyner & Bro. assume the contract set forth in exhibit "A"?

A. They assumed to ship the Trays, and to do what had been previously done, for account of the Elwood M'f'g. Co.

Q. Do you know how many cars of Trays manufactured by the plant during the year 1895 were shipped to other than to your order?

A. In conversation with Mr. Mc Cluskey while in New York he gave me this information, but I did not take a memorandum. If necessary we will be willing to produce Mr. Mc Cluskey as a witness if such is possible.

I, R. W. Withers, Notary Public for the County of Henric in the State of Virginia do hereby certify the foregoing depositions of W. B. Ferguson, was duly taken and sworn to and subscribed before me at the time and place mentioned therein, and in caption thereto pursuant to the enclosed notice, in witness whereof, I have hereto given under my hand September 2, 1900.

R. W. Withers, N.P.

W. B. Ferguson & Co

vs { Deposition of
W. B. Ferguson for
Complainants.

Edward M. Co et al.

Circuit Court.

Tuesday after the Second Monday in
April and October.

HON. ROBERT R. PRENTIS, Judge.
AZRA P. GOMER, Clerk.

County Court.

Second Monday in each month.

HON. WILBUR J. KILBY, Judge.
ROBERT R. SMITH, Clerk.
E. E. HOLLAND, Commonwealth's Attorney.
ALEX. H. BAKER, Sheriff.
SYDNEY T. ELLIS, County Treasurer.
JOHN B. PINNER, Commissioner of Accounts.

Nansemond County Clerks' Office.

Suffolk, Va., 190.....

W B Ferguson Rec
JL
Elwood Mfg Co.
Costs
Clerk \$6.82 Defts - 375 =
Shff
Unit Tax
Atty Defts \$15.20
Clerk Co Ch

10.60
25-0
15-0
15-00
25-0

D. K. JOYNER,
M. JOYNER, Jr.

Elwood, Va., SEP 18 1895

Miss W. B. Ferguson Co

To D. K. JOYNER & BRO., Dr.
Manufacturers of Long, Tin-End Butter Dishes
AND DEALERS IN GENERAL MERCHANDISE.

— VENEER-CUTTING A SPECIALTY —

Sept 18	100,000- 1/2 #	Butter dishes	@ \$5.00	77	500 00	
"	100,000-1 #	"	@ \$5.00	24	550 00	
"	18,000-4 #	"	@ \$6.50	71	117 00	
"	17,000-3 #	"	@ \$8.00	24	136 00	
					1303 00	
					950 84	
					302 16	346 23
					32 64	32 64
					31 90	313 59
					15 97	173 11
					30 35	296 28
						9 97
						286 31

Less Desct 50 $\frac{6}{10}$

" freight

Less 5% Commission F. O. Co on 346.23

less 3% 30 days

on 346.23

even 17.31

328 92

No 7

Elwood, Va., Aug 26th 1895

Miss W. B. Ferguson, V. C.

Bought of ^{*D}JOYNER & McPHAIL,
Dealers in General Merchandise

1895-

Aug 26	100	000 - 1/2 #	Butter trays	@ 5.00 M	500 00
" "	100	000 - 1 #	" "	@ 5.50 M	550 00
" "	75	000 - 2 #	" "	@ 6.50 M	162 50
					1212 50
Less Disct 50 - 5/10 & 5					872 39
					340 11
freight					30 60
					309 51
Less 5% F O B's Commission					17 00
					292 51
Less 3%					9 69
					\$282.82

W.B. Ferguson, V.C.

To A.H. Jayner & Bros

\$294.00

11-5-11

56
* D. K. JOYNER & McPhail
Successors
Dealers in General Merchandise.

Elwood, Va., AUG 31 1895 189

Miss W.B. Ferguson, E.C.

Dear Sirs:

I have
Yours today & the bill of difference
of 50/5/10 & of 50/6/5 - also have
a bill of D.R. Fleming, E.C.
which I return. I am in fresh
financials just now & send quick
Memorandum for another Co of
fishes - ~~Send us 1 foil~~ ~~new~~

Send us 1 foil New York mixture Candy

50 # Bologna sausage

1 DK Cheap fine salt

25 # plain Candy

1 Box Cor fish -

Yours Very Truly

D.K. Joyner & Bros

We will get another Co off quick to pay all our bills

one Aug 31/95

No 5

LOW FREIGHTS. QUICK TRANSITS.

W. B. FERGUSON,
ED. A. NORFLEET.

THE PURCHASER OF THIS BILL ASSUMES
ALL RISK OF LOSS AFTER WE OBTAIN BILL
OF LADING FOR THEM IN GOOD ORDER,
UNLESS OTHERWISE CONTRACTED
FOR IN WRITING.

TOBACCO AND CIGARS
A SPECIALTY.

ALL GOODS GUARANTEED
OF QUALITY REPRESENTED.

TERMS - THIRTY DAYS.

MEATS, FLOUR, FISH, BUTTER, CHEESE, SUGAR, COFFEE, SYRUPS, &c.

Suffolk, Va., Aug 26 1895.
Mr. Frank J. Read, New York, N. Y.
To **W. B. FERGUSON & CO.** Dr.

WHOLESALE GROCERS.

MERCHANDISE BROKERS.

HAY. GRAIN.

100 000 - 1/2 # Butter Trays
100 000 - 1# " "
250 000 - 2# " "

500

500 00

550

550 00

650

162 50

1212 50

50 + 6/10^s

Less freight

322 18

30 60

291 58

Sept: 28 By check per.
28 " discount (30 days)

281 91

9 67

291 58

D.K. Joyner & Bro.

Elwood, Va.

Aug, 1888.

116

Dear Sirs:-

We enclose you for your personal letter from Mr Read, this is no surprise to us, Butter Dishes of all kind have had the bottom knocked out, and we have been looking for the reduction some time, we hope to be able to work the last shipment and the one you now have at the 11% discount, but, we will have to make the concession on the shipments of Butter Dishes. As you will in turn have to do the same, we hope however that you will not be called upon to make the concession, as we will do all we can to save it for you, if you cannot agree to the extra discount let us know by first mail,

Very truly,
W.E. Ferguson & Co.

AND GIVING
A SPECIALTY.

ALL GOODS GUARANTEED
OF QUALITY REPRESENTED.

CORRESPONDENCE SOLICITED.
USE ROBINSON'S CYPHER.

WHOLESALE GROCERS.

AND
MERCHANDISE BROKERS
IN

HAY, GRAIN,

MEATS, FLOUR, FISH, BUTTER, CHEESE, SUGAR, COFFEE, SYRUPS &c.

Suffolk, Va. Aug 29th 95.

D.K. Joyner & Bro,
Elwood, Va.

Dear Sirs;-

We enclose you for your perusal letter from Mr Read, this is no surprise to us, Butter Dishes of all kind have had the bottom knocked out, and we have been looking for the reduction some time, we hope to be able to work the last shipment and the one you now have at the old discount, but, we will have to make the concession on the shipments after the Car you now have order for, if Read kicks out on the last two shipments we will have to allow it and you will in turn have to do the same, we hope however that you will not be called upon to make the allowance, and we will do all we can to save it for you, if you cannot agree to the extra discount let us know by first mail,

Very truly,
W.B. Ferguson & Co.

"J"

* D - K - JOYNE & RO*
Successors
To

Elwood, Va., Aug 8th

Miss W. B. Ferguson & Co

Bought of ^{Dr}JOYNER & ^{Bo}~~MCPHAIL~~,

— Dealers in General Merchandise —

Aug 8 To 100,000 1/2 # B. Trops @ 5⁰⁰ 77 5'0000

" " 100,000 1 # " " " 5⁵⁰ 77 5'5000

" " 25,000 3 # " " " 6⁵⁰ 77 16250

171250

" Less Disc't 30% 51545

87239

34011

3060

" freight

30950

1709

No 4

Less 30% Cash

~~29404~~

29251

878

28373

281.91 - 9.67

291.58

Walter B. Ferguson,
Edward A. Norfleet.

SUFFOLK, VA.,

190

M

11/11

To W. B. FERGUSON & CO., Dr.
WHOLESALE GROCERS & MERCHANDISE BROKERS.

Hay, Grain, Meats, Flour, Fish Butter, Cheese, Sugar, Coffee, Syrups, &c.

We prefer Each bill paid as it falls due. It will prevent the confusion
produced by part payment on account.

*List of cars of Butter Trays
shipped account of contract Elwood
Meat Co.*

<i>Jan</i>	<i>31</i>	<i>1</i>	<i>Car Trays</i>	<i>376 20</i>
<i>April</i>	<i>11</i>	<i>1</i>	<i>" "</i>	<i>250 83</i>
<i>May</i>	<i>18</i>	<i>1</i>	<i>" "</i>	<i>254 89</i>
<i>June</i>	<i>11</i>	<i>1</i>	<i>" "</i>	<i>280 62</i>
	<i>11</i>	<i>1</i>	<i>" "</i>	<i>269 47</i>
	<i>20</i>	<i>1</i>	<i>" "</i>	<i>303 65</i>
<i>July</i>	<i>30</i>	<i>1</i>	<i>" "</i>	<i>264 49</i>
<i>Aug</i>	<i>28</i>	<i>1</i>	<i>" "</i>	<i>282 82</i>
	<i>28</i>	<i>1</i>	<i>" "</i>	<i>283 73</i>
<i>Oct</i>	<i>5</i>	<i>1</i>	<i>" "</i>	<i>286 31</i>

This Statement is a requisite for bills due on a basis of thirty days.
Errors cheerfully adjusted.

LOW FREIGHTS. QUICK TRANSITS.

Walter B. Ferguson,
Edward A. Norfleet.

SUFFOLK, VA.,

4/17

1901

M

To W. B. FERGUSON & CO., Dr.
WHOLESALE GROCERS & MERCHANDISE BROKERS.

Hay, Grain, Meats, Flour, Fish Butter, Cheese, Sugar, Coffee, Syrups, &c.

We prefer Each bill paid as it falls due. It will prevent the confusion produced by part payment on account.

Travelling Expenses in defending J.B. Read suit.			
1895-			
Dec 1896	31	W.B. Ferguson's Ticket and Expenses to New York & return	23 85
Oct.	24	W.B. Ferguson's ticket to New York	9 50
Nov.	23	" " " " "	9 50
	23	" " Expenses in New York	11 90
Dec	11	" " E.C. Brown's tickets to New York	19 50
			74 25

This Statement is a requisite for bills due on a basis of thirty days.
Errors cheerfully adjusted.

Walter B. Ferguson,
Edward A. Norfleet.

SUFFOLK, VA.,

190

M

To W. B. FERGUSON & CO., Dr.
WHOLESALE GROCERS & MERCHANDISE BROKERS.

Hay, Grain, Meals, Flour, Fish Butter, Cheese, Sugar, Coffee, Syrups, &c.

We prefer Each bill paid as it falls due. It will prevent the confusion produced by part payment on account.

*For amount paid Shriver. Bartlett & Co
for court and retainer fee 30 00*

*The above amount paid Shriver Bartlett
& Co. and retained by them from a
collection. This is separate, and not the
same item deducted by them March 13"
1896*

This Statement is a requisite for bills due on a basis of thirty days.
Errors cheerfully adjusted.

\$100⁰⁰/₁₀₀.

Suffolk, Va., May 2d 1897

Pay to the order of J. J. G. & Co. B. & Co.
One Hundred Dollars,

Value received, and charge same to account of yours truly.

We, the drawer, endorsers and acceptor, hereby waive our Homestead Exemption
as to this debt.

To B. Ferguson & Co.
Suffolk Va.

B. Ferguson

PAY TO THE
Importers & Traders National Bank,
OF NEW YORK, OR ORDER,
BAGGOTT & RYALL,
Per.....*Baggett*.....

J. B. Biscoe
CASHIER OR ORDER
THE IMPORTERS & TRADERS
NATIONAL BANK OF NEW YORK
EDWARD TOWNSEND, Cashier.

Pay to ANY BANK OR BANKER,
—OR ORDER—

Previous Endorsements Guaranteed;

Bank of Portsmouth, Va.

J. L. BISCOE, Cashier.

Ledger Folio 1008

BALTIMORE, JUL 1 1896 189

Messrs. W.B. Ferguson & Co.,

Richmond, Va

TO SHRIVER, BARTLETT & CO., DR.,
Law and Mercantile Collections,

TELEPHONE 1940. . . .

. . . P. O. Box 848.

COMMISSIONER OF DEEDS

FOR ALL STATES.

NOTARY PUBLIC.

Rooms 21, 22, 23, 24, 25, 26 and 27 Bank of Baltimore Building

6004- 26 *In Journal re. Recd :*
To telegrams to & from New York

"Q"

2 7
3 1
5 5
2 9

142
=

LAW AND COLLECTION
OFFICES OF
SHRIVER, BARTLETT & CO.
BANK OF BALTIMORE BUILDING.

TELEPHONE CALL 1940.

P. O. Box 848.

Baltimore, *Mo* *13* 189*6*

N. B. Ferguson Sec
Suffolk Va

Below find Statement of Collection of your Claim

against

Joyce Minton of Coleraine N. C.

Amount of Claim, \$ *85.91*

Protest,

Interest, *1.75*

\$

Amount Collected,

\$

Deduct,

Commission,

\$ *8.77*

Chk P. B. Rud *25.00*

Exchange,

Balance due you per Check enclosed,

\$

Claim No

Respectfully yours,

Shriver Bartlett & Co
[Signature]

	Mess. W. D. Ferguson & Co.	
	To Prince & L. Moore, N.	
1894.	To bringing Chauncy suit vs.	
Jan.	J. W. Cobb.	\$ 30.00
	" paid writ tax in above case.	4.00
	" " " suit, v. M. J. Vaughan & Co	1.00
	Fee for judgment	5.00
June	" " " Griffin & Blythe	5.00
Apr.	pd. writ tax Felton case	1.50
Aug.	To fee in case vs. D. K. Joyner & Bros.	10.00
	Exp. of trip to Suffolk in said case.	2.00
	To fee in case of Parker & Burlington	5.00
	" " " judgment vs. Ballard (Jr.)	2.50
Sep. 21.	" pd. Whitfield at Courtland, Living-	1.00
	" Services in case Reed of Ct. Y.	30.
Octo	" pd. Exp. to Richmond \$6. ⁰⁰ to New York.	28. ²²
Nov. 19.	" fee judgment vs. Mrs. Murray, J. J.	2.50
	" " " vs. Handlin, ^{2.50} pd. Justice cost ^{1.52}	4.00
	" Writing release, O. Dominion B & L Assn.	2.50
1898-	To preparing forms of Capias	5.00
July 28.	" Services in re, A. Michelson,	10.
Aug 14	" " " Chas. Cross.	5.
	Or.	\$ 154.00
1897.	Octo. By check to go to Ct. Y.	25.
	" Cash from D. K. Joyner (Co.)	43.42
		68.42
	Bal. due -	6.8.42
		\$ 85.58

Book over.

Am. bal due P. & M. -

\$85.58

To fee in re, R.E. Whitehead claim,
ct.

20.00

\$105.58

By Cash from R.E.W.

\$125.⁰⁰

Due W.B. F. & Co.

19.42

Exhibit D.

58

25

142

100

194.42

93.75

258.17

56b

D. K. JOYNER, JR.

M. JOYNER, JR.

D. K. JOYNER & BRO.

Manufacturers of Long Tin-End Butter Dishes

DEALERS IN GENERAL MERCHANDISE.

VENEER-CUTTING A SPECIALTY.

Elwood, Va., SEP 16 1895

189

Mrs W D Ferguson Esq

Per

Shore Ship
 us at once 1 Bbl sugar
 1 Bbl starch 2 Bbls beauty flour
 1 Cheese

Yours Very Truly

F. K. Joyner & Co
 Jr

Mr Reed & Co will go
 forward tomorrow

$$\begin{array}{r}
 141 \\
 6655 \\
 \hline
 19461
 \end{array}$$

"No 8"

Faint handwritten notes

D. K. JOYNER.

JOYNER, Jr.

D. K. JOYNER & BRO.
Manufacturers of Long Tin-End Butter Dishes
—AND—
DEALERS IN GENERAL MERCHANDISE.

VENEER-CUTTING A SPECIALTY.

Elwood, Va., Sept 3rd 1895

Mess W 13 Ferguson & Co
Suffolk &

Gentlemen:-

Please ship following
order by earliest freight.

1 Brl K. Oil

2 Brls Beauty flour.

You will also please
hurry Mr Read for settlement
on last ear dishes and
also send memo. for another
Carguick.

Yours Very Truly

D. K. Joyner & Bro
"M"

"No 6"

Dec. 13, 1894

✓
Elwood Manf'g Co.,

Elwood, Va.

Gentlemen:-

Ship to F. B. Read, New York., 5,000 each halves, one's, two's, three's and ten's tin end butter trays. This is the order that has been in hand for some time. The enclosed telegram would indicate that it is urgent.

Yours truly,

45000 50

Eu M. I.

Fruit
East Patent Truck Barrels.

Elwood, Va., Dec 15th 1894

Mr W.B. Ferguson Geo.

Dear Sirs.

Your order for F.B. Reed New York
will go off Monday. but from
the present rate of the A & D RR we
cannot ship less than car loads
until some arrangement can be
done with the RR Co.

Will stop in your office to-night
or Early Monday.

Yours truly
Elwood Mfg Co.
John A. Gunn Pres.

"Ex
No. I"

INSITS.

Read Mr Read's letter and you will understand, we have written him
re will meet competition, return his letter.

L.K.J.

WALTER B. FERGUSON.
EDWARD A. NORFLEET.

Suffolk, Va., 8/20

189
1895

Wm. W. Joyner

To W. B. FERGUSON & CO., Dr.
Wholesale Grocers and Merchandise Brokers.

Hay, Grain, Meats, Flour, Fish,
Butter, Cheese, Sugar, Coffee, Syrups, &c.

SHORT PAYMENTS MAKE LONG FRIENDS.

July	17	Wm	34 94	
	19	"	19 73	
	23	"	410 45	
	31	"	13 53	
		Our acc ^{ts} of acceptance		108 65
		Cont Invoice	292 51	175 08
		less 3% -	8 78	283 73
			283 73	

 This Statement is a request for bills due on a basis of thirty days.
Errors cheerfully adjusted.

"L. H. F."

R. W. Wither's Atty. W. B. Ferguson & Co.

To R. R. SMITH, Clerk of Nansemond County Court, Dr.

1900

Mar. 21.

~~Tax and Recording Fee~~

for Copying one deed \$ 2.50
and one deed of trust from Elwood Mfg. Co.

In Sent of W. B. Ferguson & Co. as Elwood Mfg. Co.,

_____, Clerk.

252

March 13th, 97

John A. Gum Esqr,
Elwood,, Va.

Dear Sirs;-

Please endorse the enclosed note Elwood Mfg Co,
and John A. Gum President, return to us by first mail as it
is due on the 13th,

Very truly,

W.B. Ferguson & Co.,

We have no report in the decision you made in the F.B. Road matter
as promised by you, what shall we do,?

"W.B. Ferguson"

Elwood M'f'g Co.
Elwood, Va.

62

Dear Sirs:-

We hand you the recent letters of our Att'ys,
please let us know what you decide to do as we must take steps
at once to take care of our end, and in N.Y. they do not wait,

Very truly,
W.B. Ferguson & Co.,

"W"

Please return all papers,

\$ 61,47
1/100

33759

Suffolk, Va.,

Dec 7/15

Jan 22

1889

Sixty days after date *We* promise to pay unto
J. B. Ferguson & Co., or order, negotiable and payable,
without offset, at the **FARMERS BANK OF NANSEMOND** Suffolk, Virginia;

Sixty one 47/100 Dollars,

for value received; and it is agreed upon by the parties that the interest on this Note shall
be payable in advance; and we, principal and endorsers, hereby waive the benefit of our
Homestead Exemption as to this debt

Credit the Maker:

"7" 1/100

8-16-95-1011

P. H. Jefferies, & Co
Jo

Protest signed
W. B. Ferguson Sec

W. B. Ferguson & Co,

\$119³¹/₁₀₀

311/5

Suffolk, Va.,

Oct 2^{Dec 4}, 1895

190
W. M. Joyner *Sixty* days after date we promise to pay unto
or order, negotiable and payable,
without effect, at the **FARMERS BANK OF NANSEMOND** Suffolk, Virginia,

One hundred Ninety ³¹/₁₀₀ Dollars,
for value received; and it is agreed upon by the parties that the interest on this Note shall
be payable in advance; and we, principal and endorsers, hereby waive the benefit of our
Homestead Exemption as to this debt

Credit the Maker:

"J"

H. P. Ferguson

D. W. Kearney & Co
"Go"

11/21

The Farmers Bank of Nansemond

\$ 832 \$

No. 2227

"175"

Pay to the order of
W. H. Jones & Cash.

\$ 832.57

Eight hundred thirty-two

⁵⁷/₁₀₀

Dollars

Suffolk, Va., Dec 4th 1895

W. D. Ferguson & Co.

W. W. Lecky's note book 100.00.

Mapes formula. 500.00

D. H. Jaynes & Bro. 119.31 date Sept 30.

Edwin L. Klopfer. 59.66

Central Land Co. 53.60

\$832.57

†508†

"N"

1900.

Elwood, Va.

☛ We prefer each bill paid as it falls due. It will prevent the confusion produced by part payment on account.

1895

[illegible]

 This Statement is a request for bills due on a basis of thirty days.
Errors cheerfully adjusted.

WALTER B. FERGUSON,
EDWARD A. NORFLEET.

SUFFOLK, VA.,

190

M

To W. B. FERGUSON & CO., Dr.
WHOLESALE GROCERS and MERCHANDISE BROKERS.

Hay, Grain, Meats, Flour, Fish, Butter, Cheese, Sugar, Coffee, Syrups, &c.

 We prefer each bill paid as it falls due. It will prevent the confusion produced by part payment on account.

4		11 95
5		15 57
12	Acceptance	264 89x
12	Mdce	863
17		28 08
20		9 58
30	Acceptance	119 319 98.38
	By	
Aug 28	Mdce	282.82x
		283.73x
566 55		
Sept 30	(Bobryna)	3 00
Oct 5	"	286 31
Dec. 28	"	1 05
28	By note	61 479 18 38

 This Statement is a request for bills due on a basis of thirty days.
Errors cheerfully adjusted.

Memorandum

M. B. Ferguson and E. A. Norfleet
partners trading as W. B. Ferguson & Co

vs } In Chy-

Elwood Manufacturing Company,
Jno. A. Gunn, Presdt, R. K. Joyner,
Secy and Jno. A. Gunn in his
own right -

Returnable 2^d Mch Rules 1900

Relief sought: exhonoration,
indemnity and to set aside
a fraudulent conveyance of
Real estate. Damages \$2000⁰⁰

Robt. W. Wither, p. q.

Tax \$1.50

Ferguson Leo
W. J. Memorandum
Elwood Mfg Co

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON *Elwood Manufacturing Company Inc A Gum Preset Dr Joyner Decy and Inc A Gum in his own right and James L M Lemou Trustee*

to appear at the Clerk's Office of the Circuit Court of Nansemond County, at the Rules to be held for the said Court, on the *Third* Monday in *March 1900*, to answer

a Bill in Chancery, exhibited against *them* in the said Court by *W B Ferguson and E A Norfleet partners trading as W B Ferguson & Co*

and have then and there this summons.

Witness, A. P. GOMER, Clerk of our said Court, at his office, this *20th* day of *March*, 1900, in the 12th year of the Commonwealth.

A copy—Teste:

Teste:

, CLERK. }

A. P. Gomer, CLERK.

Acknowledg due legal service of this
Summons -
March 20. 1900
Geo. S. Melrose Clerk.

R. W. Wether p. q.

W. B. Ferguson & Co.

vs. } In Chancery.

Elwood Mfg Co

1900

March Rules.

Third Monday.

Nansemond Circuit Court.

Process Book No.

Page

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON *Elwood Manufacturing*
Company Inc A Gum Presdt D K Joyner
Secy and Inc A Gum in his own right
~~and~~ *James L M Lemon trustee and Mallie*
E Gum

to appear at the Clerk's Office of the Circuit Court of Nansemond County, at the Rules to be held
for the said Court, on the *First* Monday in *May 1900*, to answer

a Bill in Chancery, exhibited against *them*
in the said Court by *W B Ferguson and E A Norfleet*
partners trading as W B Ferguson & Co.

and have then and there this summons.

Witness, A. P. GOMER, Clerk of our said Court, at his office, this *18th* day of
April, *1900*, in the 12^{*4*}th year of the Commonwealth.

A copy—Teste:

Teste:

CLERK.

CLERK.

Executed this 27 day April 1900
by Attorney a Direct Copy of
The Within Process for
Makie & Gun in person
A. McCall
J. H. H.

R. W. Withers p. q.

W. B. Ferguson & Co

vs. } In Chancery.

Elwood Manufacturing
Company

1900

May Rules.

First Monday.

Nansemond Circuit Court.

Process Book No. -----

Page -----

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON

Elwood Manufacturing Company Inc A Gum Resdt J F Gayner Decy and Jno A Gum in his own right and James L Mc Lennan trustee

to appear at the Clerk's Office of the Circuit Court of Nansemond County, at the Rules to be held for the said Court, on the *Third* Monday in *March 1900*, to answer

A Bill in Chancery, exhibited against *them* in the said Court by *W B Ferguson & E A Norfleeth* ~~and~~ *partners trading as W B Ferguson & Co*

and have then and there this summons.

Witness A. P. GOMER, Clerk of our said Court, at his office, this *17th* day of *March 1900*, 1-----, in the 12^{*4*}th year of the Commonwealth.

A copy—Teste:

Teste:

-----, CLERK. }

A P Gomer, CLERK.

Exceeded this the 19th day of March 1900 by delivering a true
copy of the within process to Geo A Burn President of the Elwood
Manufacturing Company to E K Fayrer Secy and Geo A Burn in
his own right and for the Elwood Manufacturing to Geo A Burn in
presence.

W W Withers
Shuff

R W Withers p. q.

W B Ferguson & Co

vs.

In Chancery.

Elwood Manufac-
turing Company

1900

March

Rules.

Third

Monday.

Nansemond Circuit Court.

Process Book No. 21

Page 193

W. B. Ferguson & Co.

vs.

Elwood Mfg Co. & others,

This day this cause came
on to be heard, and without passing
upon any of the questions involved
and by consent of parties in open Court entered of record.
doth the Court doth adjudge order
and decree that this cause be
submitted to the judge of the Court
for such decision & decree therein
in vacation, as might be made in term.

W.D. Ferguson & Co
v. Deere
Elwood Mfg Co et al

Enter. Oct. 17, 1900.

W.D. Ferguson

We consent to be
within decree -
Robt. H. Wickers
Atty for complainants;

W. L. Muen & Co
Atty for defendants.
Entered in Chancery
Order Book No 3 Page 324

IN THE CIRCUIT COURT OF NANSEMOND, NANSEMOND COUNTY TO-WIT:-
APRIL TERM, 1900.

W.R.Ferguson and E.A.
Marfleet, partners as
W.R.Ferguson & Co.-----Complainants.

VS. IN CHANCERY.

The Elwood Manufactur-
ing Company, John A.Gum, Presd't.,
D.K.Joyner, Sec'y., John
A.Gum in his own right and
James L.McLanore, Trustee-----Defendants.

This cause came on this day to be heard on the bill and the exhib-
its therewith filed, thereupon, on motion of the complainants, it app-
earing that John A.Gum, President, and D.K.Joyner, Secretary, have
been improperly joined as defendants to this suit, it is ordered
that this suit abate as to them, and proceed against the other defen-
dants as if such misjoinder had not been made. Thereupon the defen-
dants, The Elwood Manufacturing Company, John A.Gum and James L.McL
anore filed their general demurrer to the bill, in which demurrer
the complainants joined, and the same, being argued by counsel, is
over-ruled by the court. On motion of the said defendants leave is
given them to file their answers within Sixty days. On the motion
of the complainants leave is given them to amend their bill by
making Mrs.Nallie E.Gum a party defendant to this suit, and it is
ordered that the proper process issue against her. And this cause
is continued.

April 1900.

Judge.

To the Clerk of the Circuit Court of Nansemond County.

Enter April 20, 1900
Robert R. Huntis

Entered in Chancery
Order Book No 3 Page
290

D. K. JOYNER.

M. JOYNER, Jr.

D. K. JOYNER & BRO
Manufacturers of Long, Tip-End Butter Dishes
—AND—
DEALERS IN GENERAL MERCHANDISE.

717 No 12
VENEER-CUTTING A SPECIALTY.

Elwood, Va., SEP 11 1895 189

Mrs. W. B. Ferguson, E. C.

Dear Sir:

Please rush
settlement for last car of dishes
& send memo for another car.
We are badly in need of this
money & are compelled to have
some before we can move many
more. We are compelled to have money
to buy tin with. Can you send
us acceptance for \$150⁰⁰ by tomorrow
mail regardless of Mr. Reed's report
But we wish full settlement as
quick as possible. There already
got more than one car order
on hand. Please ship us 3 Bys
Med 1 Bt G Snaps 1 Bt Linen Crisp.
500 each 1/2th 1st 47th paper bag.
Yours very truly
D. K. Joyner

560

Joyner & McPhail,
Dealers in General Merchandise.

Clarendon, Va., Aug 26th 1895

Mrs W B Ferguson & Co
Dr Sir

From
Ship us 1500 lbs sugar
X 1 Can Soda Compound
Will see you tomorrow
Yours very truly

J K Joyner & McPhail
Dr

Can dishes gone forward please
write for next order at once
& say can more all the
he wants now -

Yours truly
J K Joyner & McPhail

"No 10"

Aug 26 1895
6637

FLORIDA ORANGE PAPER.

MESSINA PAPER.

MANUFACTURER OF
THE EXTRA HEAVY, DOUBLE BOTTOM

BANANA BAGS.

FRANK B. READ,

266 WASHINGTON STREET,

MANUFACTURER, WHOLESALE AND RETAIL DEALER IN

PAPER AND PAPER BAGS,

Parchment Paper, Butter Dishes, Pie Plates, Egg Boxes,
Banana Rope, Wire Nails, Tin Foil, Package Handles,
Peach Baskets, Grape Baskets, Strawberry Baskets, Hand-made Bags,
Straw Paper, Flour Sacks, Poultry Sacks, (ALL SIZES.)
Box Paper, Twine, Etc., Etc.

New York, 9/9/1895.

W. B. Ferguson & Co.,

Suffolk, Va.

Gentlemen:

I notice on your last shipment of Butter dishes to me, that the crates on the 1's and 2's are entirely too large for the dishes which you put in them.

In future, please make each crate smaller, so that 500 dishes will fit exactly in the crates .

That is one reason why the crates arrive in this city in bad condition.

Be kind enough to give this your attention.

Yours truly,

Frank B. Read

SOLE AGENT
"SMALLWOOD" BUTTER DISH.



FLORIDA ORANGE PAPER.

MESSINA PAPER.

MANUFACTURER OF
THE EXTRA HEAVY, DOUBLE BOTTOM

BANANA BAGS.

FRANK B. READ,

266 WASHINGTON STREET,

MANUFACTURER, WHOLESALE AND RETAIL DEALER IN

PAPER AND PAPER BAGS,



Parchment Paper, Butter Dishes, Pic Plates, Egg Boxes,
Banana Rope, Wire Nails, Tin Foil, Package Handles,
Peach Baskets, Grape Baskets, Strawberry Baskets, Hand-made Bags,
Straw Paper, Flour Sacks, Poultry Sacks, (ALL SIZES.)
Box Paper, Twine, Etc., Etc.

New York,

9/ 18/ 1895.

W. B. Ferguson & Co.,

Suffolk, Va.,

Gentlemen:

Increase my order which you now hold, for
first car of Butter dishes, to 50000 , 2 lb., instead of 25000
as ordered.

Yours truly,

*also let me know when you
are going to ship, as I need
them.*

FBR

SOLE AGENT
"SMALLWOOD" BUTTER DISH.

FLORIDA ORANGE PAPER.

MESSINA PAPER.

MANUFACTURER OF

THE EXTRA HEAVY, DOUBLE BOTTOM

BANANA BAGS.

FRANK B. READ,

266 WASHINGTON STREET,

MANUFACTURER, WHOLESALE AND RETAIL DEALER IN

PAPER AND PAPER BAGS.



Parchment Paper, Butter Dishes, Pie Plates, Egg Boxes,
Banana Rope, Wire Nails, Tin Foil, Package Handles,
Peach Baskets, Grape Baskets, Strawberry Baskets, Hand-made Bags,
Straw Paper, Flour Sacks, Poultry Sacks, (ALL SIZES.)
Box Paper, Twine, Etc., Etc.

New York, 9/24/1895.

W. R. Ferguson & Co.,

Suffolk, Va.,

Gentlemen:

I telegraphed you today to know when you would ship another car of butter dishes, as I am all out, and must have some not later than next week.

Enclosed find order for Five (5) cars to be delivered as I want them. Please acknowledge receipt of same, and say when you will ship the next car.

Am I getting all the dishes you manufacture, as it seems to take you an awful long time to turn out a car.

As I have proven to you that I am able to handle your entire out-put, of course you would have no objection to giving me a contract to the effect that I am to have the exclusive sale of all dishes you manufacture.

Let me hear from you.

Yours truly,

Frank B. Read

SOLE AGENT
"SMALLWOOD" BUTTER DISH.

THE WESTERN UNION TELEGRAPH COMPANY.

INCORPORATED
21,000 OFFICES IN AMERICA. CABLE SERVICE TO ALL THE WORLD.

This Company TRANSMITS and DELIVERS messages only on conditions limiting its liability, which have been assented to by the sender of the following message. Errors can be guarded against only by repeating a message back to the sending station for comparison, and the Company will not hold itself liable for errors or delays in transmission or delivery of Unrepeated Messages, beyond the amount of tolls paid thereon, nor in any case where the claim is not presented in writing within sixty days after the message is filed with the Company for transmission.

This is an UNREPEATED MESSAGE, and is delivered by request of the sender, under the conditions named above.

THOS. T. ECKERT, President and General Manager.

RECEIVED at

13 N W VO 10 Paid 4.15 pm

1895-

Dated

New York 24 Sep

To

W B Ferguson & Co.,

When will you ship another car dishes? All out. Answer.

Frank B. Read.

THE WESTERN UNION TELEGRAPH COMPANY.

INCORPORATED

21,000 OFFICES IN AMERICA. CABLE SERVICE TO ALL THE WORLD.

This Company TRANSMITS and DELIVERS messages only on conditions limiting its liability, which have been assented to by the sender of the following message. Errors can be guarded against only by repeating a message back to the sending station for comparison, and the Company will not hold itself liable for errors or delays in transmission or delivery of Unrepeated Messages, beyond the amount of tolls paid thereon, nor in any case where the claim is not presented in writing within sixty days after the message is filed with the Company for transmission.

This is an UNREPEATED MESSAGE, and is delivered by request of the sender, under the conditions named above.

THOS. T. ECKERT, President and General Manager.

RECEIVED at 3 N H V0 8 Paid 8 26 Am

189

Dated Gx- New York 25 Sep

To W B Ferguson & Co.,

Wire answer my expense to telegram sent yesterday.

Frank B. Read.

THE WESTERN UNION TELEGRAPH COMPANY.

INCORPORATED
21,000 OFFICES IN AMERICA. CABLE SERVICE TO ALL THE WORLD.

This Company TRANSMITS and DELIVERS messages only on conditions limiting its liability, which have been assented to by the sender of the following message. Errors can be guarded against only by repeating a message back to the sending station for comparison, and the Company will not hold itself liable for errors or delays in transmission or delivery of **Unrepeated Messages**, beyond the amount of tolls paid thereon, nor in any case where the claim is not presented in writing within sixty days after the message is filed with the Company for transmission.

This is an **UNREPEATED MESSAGE**, and is delivered by request of the sender, under the conditions named above.

THOS. T. ECKERT, President and General Manager.

RECEIVED at

5 N C V0 6 Paid 3 Pm,

Gx- New York 27 Sept, 95.

W. B. Ferguson ,

Will be in Suffolk tomorrow morning.

Frank B. Read.

FLORIDA ORANGE PAPER.

MESSINA PAPER.

MANUFACTURER

THE EXTRA HEAVY, DOUBLE BOTTOM

BANANA BAGS.

FRANK B. READ,

266 WASHINGTON STREET,

MANUFACTURER, WHOLESALE AND RETAIL DEALER IN

PAPER AND PAPER BAGS,



Parchment Paper,	Butter Dishes,	Pie Plates,	Egg Boxes,
Banana Rope,	Wire Nails,	Tin Foil,	Package Handles,
Peach Baskets,	Grape Baskets,	Strawberry Baskets,	Hand-made Bags,
Straw Paper,	Flour Sacks,	Poultry Sacks,	(ALL SIZES.)
	Box Paper,	Twine,	Etc., Etc.

New York, 9/30/1895.

W. B. Ferguson & Co.,

Suffolk, Va.,

Gentlemen;

I have sent you by mail today to Elwood, a stencil which you will be kind enough to put on all the crates of dishes you ship me in future.

I have changed the name for the simple reason that it would not do to use the word "Smallwood", on account of the two cars of mouldy dishes which came in here a few months ago.

Of course you understand the circumstances as I explained to you when I was with you on Saturday.

Please ship these dishes as fast as possible; You have the specifications for five cars, besides the car which you said you thought would be loaded and ready to leave the factory by Friday.

After these five cars have been shipped, I will send you specifications for the balance of the cars, which is one car a week until January 1st.

Please instruct your factory to be sure and use this

SOLE AGENT
"SMALLWOOD" BUTTER DISH.

FLORIDA ORANGE PAPER.

MESSINA PAPER.

MANUFACTURER

THE EXTRA HEAVY, DOUBLE BOTTOM

BANANA BAGS.

FRANK B. READ,

266 WASHINGTON STREET,

MANUFACTURER, WHOLESALE AND RETAIL DEALER IN

PAPER AND PAPER BAGS,



Parchment Paper,	Butter Dishes,	Pie Plates,	Egg Boxes,
Banana Rope,	Wire Nails,	Tin Foil,	Package Handles,
Peach Baskets,	Grape Baskets,	Strawberry Baskets,	Hand-made Bags,
Straw Paper,	Flour Sacks,	Poultry Sacks,	(ALL SIZES.)
	Box Paper,	Twine,	Etc., Etc.

New York,

stencil on all the crates.

Yours truly,

Frank B. Read

SOLE AGENT
"SMALLWOOD" BUTTER DISH.

~~12~~

12

FRANK R. BEAD

THE EXTRA HEAVY, DOUBLE BOTTOM

BANANA BAGS.

FRANK B. READ,

266 WASHINGTON STREET,

MANUFACTURER, WHOLESALE AND RETAIL DEALER IN

PAPER AND PAPER BAGS.

Parchment Paper, Butter Dishes, Pie Plates, Egg Boxes,
Banana Rope, Wire Nails, Tin Foil, Package Handles,
Peach Baskets, Grape Baskets, Strawberry Baskets, Hand-made Bags,
Straw Paper, Flour Sacks, Poultry Sacks, (ALL SIZES.)
Box Paper, Twine, Etc., Etc.

New York, 8/ 17/ 1895.

W. B. Ferguson & Co.,

Suffolk, Va.

Gentlemen:

Owing to the reduction in the market on the price of dishes, I am compelled to ask you for a further discount of 5%.

Dishes have taken a big drop in this market, and it is almost impossible to push them at any price.

They can be purchased here from other manufacturers, for 50, 10/ 10/ 10/ 10/ 10/ 5 & 5.

You must allow me this discount ~~on~~ on these goods.

Yours truly,

"R"

Frank B. Read

"SMALLWOOD" BUTTER DISH.



"CCC"

Oct 7 1895

Wm W.D. Ferguson & Co

Dear Sirs;

We are in receipt of yours of Oct. 5th. But it is entirely out of reason for you to deduct the 5% Commission that was allowed you ^{on the cargo} before freight charges were deducted & this is our big reason for discontinuing the shipments. We are at a loss to know why you did this before consulting us anything about it. We then looked for other parties to handle our business & found them without any trouble and under the circumstances we have gotten other parties to handle them -

Yours Very Truly
D. H. Jager & Co

CC
Oct 2nd 5

Mess W.B. Ferguson & Co

Dear Sirs:

We are
very sorry indeed that we cannot
fill the orders we now have from you. But
on account of the price & the lashing
on the Crates. & also that your claim
of 5% Commission on them before the
freight is deducted. makes our profit
nothing & we cannot afford to work like
this, we just cannot stand it & as
have to sell else-where. We cannot
dress our lumber for crates & we have been
making them just as substantial as we
knew how & don't see where we could
better them. Taking all these things in consideration
we have decided it the better plan not ship
to these orders - Yours Very Truly, W.B. Ferguson & Co

"15"

October 16th 1894,

Frank B. Read, Esq.,
New York.

Dear Sir:-

Send us a sample of the Banana Bags for 2nds, & 1st, and quote lowest figures in lots of 1,000 of a size. We will soon have the control of a butter Dish Factory that we are interested in; they will make the tin end. Are you in a position to work the N. England Trade, and what commission would you charge to handle the trade? all orders to be shipped by us direct and to be billed from us ~~of~~ the factory; we would give you the entire N.E. trade if we can come to terms. What prices are being made there now on this class of Dish Del'd? Send us a few of the Standard list if you have them; we want them to have some printed by. Can you give us the address of an envelope maker and printer? one that will give good work for reasonable figures in lots of 10,000 to 20,000.

Respy.
W. B. Ferguson & Co.

December 1st. 1894.

Messrs. W. B. Ferguson & Co.,
Suffolk, Va.

Gentlemen:-

I have your postal of November 28th. The following is a copy of the Standard list for long tin butter dished.

1/2	\$5.00	per	1,000
1	5.50	"	"
2	6.50	"	"
3	8.00	"	"
5	9.50	"	"
10	24.00	"	"

I hope you will make my shipment of butter dishes at once, as I am figuring with another party, and will not be able to handle your dishes at all unless I hear from you very shortly.

Yours &c.

July 23rd. 1895.

Mr. Frank B. Read,
New York.

Dear Sir:-

Replying further to your recent favors we beg to advise you of the shipment of your last memorandum of trays.

"17"

They go forward today in good order. Under the new management we are satisfied there will be no cause for complaint in the shipments for the future.

Kindly send us memorandum for the car that we have now on the way. We will be ready for 3's in about three weeks.

Yours truly,
W. B. Ferguson & Co.

August 17th. 1895.

W. B. Ferguson & Co.,
Suffolk, Va.

Gentlemen:-

Owing to the reduction in the market on the price of dishes, I am compelled to ask you for a further discount of 5%.

Dishes have taken a big drop in the market, and it is almost impossible to push them at any price.

They can be purchased here from other manufacturers for 50, 10/10/10/10/10/ 5 & 5.

You must allow me this discount in future on these goods.

Yours truly,

August 27th 1895.

Frank B. Read, Esq.,
N. Y.

Dear Sir:-

We have considered the matter of discounts and with your next order we will begin to bill you at an extra 5% off, we will do this until there is a more settled condition of things in the tray trade. We are now ready for Memo for next car and will ship you 3's, so let us have the Memo at once.

Yours truly,
W. B. Ferguson & Co.

August 29th 1895.

W. B. Ferguson & Co.,
Suffolk, Va.

Gentlemen:-

I am in receipt of your favor of August 27th.

I cannot accept the dishes at the price you have billed as I can buy all the dishes that I can use in this market at 50, 10/10/10/10/10/10.

You will have to make that price on the bill, and all future shipments, if you wish to continue shipping me these goods.

Telegraph me on receipt of this letter what to do with this car. You know what the Old Dominion people are about moving freight that comes in on that line, so you must let me hear from you at once.

Will send you memorandum for another car in a few days.

Yours truly,

August 30th. 1895.

F. B. Read, Esq.,
N.Y.

Dear Sir:-

We have your letter of the 29th; we will make the discount as you request, but one thing is certain; the price has surely to be improved or there is no money in them at the present price. They are below the price of common wire end trays when compared with the cost of making them; we hope to go to the East before long and will then look into the matter and see why such prices prevail.

Yours truly,
W. B. Ferguson & Co.

October 12, 1895.

Mr. Frank B. Read,
New York.

Dear Sir:-

In reply to your letter of the 10th inst. would say the factory is very ^{much} disappointed with the discounts, and we have been trying to get them in line again at former discounts, and will we think come to terms by next week, and we may be able to have discounts adjusted properly; during this time they have sent, we understand, a few cars to your city which we could not help. Will let you hear from us more fully next week.

Yours truly,

Oct. 28. 1895.

Mr. Frank B. Read,
New York.

Dear Sir:-

Replying to yours of the 24th. as previously advised, until we can have the mill consent to make you further shipments, your ordered will have to be cancelled. You will understand, the trouble is due to the various complaint that you made from time to time, and upon the discount that you desire to buy these dishes on; since you have consented to the old discount the mill has been unable to make shipments except to purchasers that they have already sold.

Pending a final agreement with you on the old discount we shall use every effort to have them again make you shipments, and in the mean time, we will thank you to remit us check for the last shipment.

Yours truly,
W. B. Ferguson & Co.

D.K.Joyner & Bro,

Suffolk, Va. Nov, 14th, 95.

Elwood, Va.

Dear Sirs;-

As Att'y for W.B.Ferguson & Co, I write to ask if it your intention to fill the orders you have from them under an agreement with them for your output for the Year 1895, you are fully aware of the facts in the case, There is now being held by F.B.Read of N.Y. funds that we should have but for your faliure to fill the orders as sent you, I must have your immediate reply in the matter as I am instructed to take such action as will protect the interest of W.B. Ferguson & Co, I hope some arrangement can be effected by which the matter can be adjusted without further cost.

Resp'y

N.E. Holland Att'y.

"E.E.H"

Title of Ch. & Rules -

W B & Co }
v
Elwood Co }

And the said
complainant says that
by reason of accepting in
the said plea alleged to
that one of the ^{grounds of} ~~causes~~ of his said cause
of action in the said
bill mentioned, to-wit
the right to recover of its debts
indemnity and exoneration for
the money & damages paid out
by the complainant for the
use and benefit of the defendant,
did arise and accrue within
~~three years~~ ^{from} before the
commencement of this suit;
that another ground for his

Said ~~cause~~ ^{of} action, to-wit
in the said bill mentioned, to-wit,
the right to recover damages
from the defendants by reason
of a breach of ^a contract between
them, ~~cause~~ is founded upon
a contract by writing, signed
by the party to be charged thereby,
or by his agent, but not under
seal; that, further, the whole
of the said cause of action or
suit in the said bill mentioned
is upon accounts concerning the
trade of merchandize between
merchant and merchant, their
factors or agents, where the
action of account would lie,
and that the defendants, from the
day of October, 1897 to the day
of March 1900, did by indirect
ways or means obstruct the
plaintiffs in the prosecution
of ~~their~~ ^{the} their suit, which
time being not computed, accord-
ing to the statute in such case
made & provided, the whole of

the complainants' cause of action or suit as in the bill mentioned did accrue within three years before the commencement of this suit. And of this they put themselves upon their country.

Ferguson v. Elwood Co.
Statute of Limitations
Exonerated - 5 yrs -
Action by
"account" between
merchant & merchant, their
factors or agents, in which
an action of account
would lie -

Action of account would
lie here. 3 Bl. Com (164);
4 Min. Inst. (1216 et seq);
Thornton v. Thornton 31 Gratt
212; Simons v. Simons, 33
Gratt 451; Huff v. Thrash
75 Va 546-48;

— So court ruled in
~~Butt~~
27 W. Va — Root v. —

Surety's claim
vs. principal arise
on actual payment
of the joint obliga-
tion Harper, V.
McTeigh 82 Va 751

Stone v. Hammill, 83 Cal.
547; 17 ACR 272.

Nelson v. Fry, 16 Ohio St., 157;
91 AD 110.

Hooper v. Id., 81 Md. 48 ACR 496.

— 2v AD 714 (N.C.) — 5 AR 664

24 AD 320 — 5 AR 114 ACR 859

Leak v. Covington, 99 NC, 559

Martin v. Frantz
127 Pa St., 389

Extended note on

Co-sureties Gross v. Davis

87 Minn 226; 10 ACR 635
639-47

Right to exoneration does
not arise until payment
by party secondarily liable.

7 AR 8 Bucy 17 L (2d) — & above
Chen

Statute of Limitations in Equity - Contracts - Indemnity - Pleading

1. The Statute of Limitations cannot be relied upon unless pleaded - Hickman v. Stout 7 Hyl 6;
Colbert v. Middleton 5 Leigh, 88;

2. In Equity, the statute may be pleaded by special plea or by answer.
4 Min Inst, 1247
Bartchy Pz (260)

3. A Plea should precede the answer. Cf C.V. § 3273.

Reason - after replication plff. may not point out that the case comes under any exception - e.g. C.V. § 2929 - "3 yrs. excepted"

4. The statute does not ~~apply~~ begin to run until the ~~cause~~ "right to bring the action accrued" - C.V. § 2929 - "or from a ^{contingency} of the dealing in which they are interested together".

The causes of action here are
2. (1) Breach of Cont. of (2) agency

Exonerators. The (1) of these arose on Oct 1 1895. but it was on a "written contract" & hence, 5 years. i.e. until Oct 1, 1900 between principal & agent. 96 Va 584.

1 The relation of P & A, once established, is presumed to continue. 12th ed. 841. n

The burden of proof rests on 10th. to show that the relation ceased by agreement. 3d + 4th ed. 615

3. A contract may be discharged by the introduction ^{new parties} of ^{it takes the place of the old} into the original agreement. This is a "novation". 4th ed. 612.

4. No one can assign the obligation of a contract, except by the possible exception, of a novation. CC 16 § 527
Huff on Agency § 94 - e.g. 300. Inf. Pontius, 2d ed.

5. A Principal cannot assign the benefits of a contract of agency. a fortiori, the obligation, Huff on Agency § 86.

6. Conversely, an agent cannot appoint, without ^{out} authority from his P., a sub-agent, and thus escape liability on his contract, Huff. Agency § 95. (collection, money, e.g.) -

The second of these causes of action
is for exoneration. And as
the amount of ~~the~~ liability on
complainants was not ascertained
until Oct. 197. The right to
bring the same first accrued then.
Besides - written cont.

5. Merchant & merchant, their
factors or agents. 5 yrs -

6. C. v. § 2929 - Voluntary
Deeds - 5 yrs -

7. No. limitations in cases of
actual fraud.

See Tate v.

Winfour - 3 Sup Ct.
Reptr. 165 -

Statute of
Limitations

Ferguson v. Edward Co.
Statute of Limitation

No Statute of Limitation applicable
to a case of actual fraud
in suit to set aside deed.

1 Bart Chy Pr p 100; Sweldy v.
Haskins, 12 Gratt. 363; Wilson v.
Buchanan, 7 Gratt. 334; Himan v.
Thom 32 N. Va 507.

Five years allowed after ~~discovery~~ ^{it is made}
to set aside voluntary deed.

1 Bart Chy Pr 101, Cr. 2929

Burden of proof
on deft.

Gaddell v. Gibbons

9 Va 608; 43 Va 439

Serv. Maon 84 Va 731; 27 SER
122, 593

$$\begin{array}{r}
 38.03 \\
 6.97 \\
 41. \\
 \hline
 86.00
 \end{array}$$

~~100.00~~
100.00

~~2 Muff 316~~

~~4 Rind 600~~

~~1 Leigh 163~~

~~3 129~~

~~4 476~~

~~9 Grate 385~~

~~31 Grate 219~~

~~76 Va 678, 687-8~~

~~Ragland & Owen 770-78~~

~~84 Va 227, 331~~

~~82 Va 359~~

~~87 621~~

~~131 H.S. 336~~

~~97 Va 461~~

~~98 Va 610 - deep red col 3 yrs~~

97 Va 460 - unconscious
obstruction.

"indirect
ways"

Means

obstruction

Code 1819

0441 414 -

CV. 7935

ELWOOD CASE

STATUTE OF LIMITATIONS.

The Statute of Limitations of Virginia, applicable to contracts, does not, in terms, apply to Courts of Equity, but such Courts usually follow the law courts by analogy.

1 Bart.Chy.Pr. p.
Fore v. Foster, 86 Va., 104.

The burden of Proof is on the defendants to show that the case comes within the statute.

Lewis v. Mason, 84 Va. 731;
Gordell v. Gibbons, 91 Va. 608;
Noell v. Noell, 93 Va. at p. 439;
See also 27 S.E. Rep. 122, 593.

FRAUDULENT CONVEYANCES.

No time will bar the right to set aside a deed for actual fraud, unless it amounts to laches.

1 Bart.Chy.Pr. p. 100;
Snoddy v. Haskins, 12 Gratt. 363;
Wilson v. Buchanan, 7 Gratt. 334;
Hinman v. Thom, 32 W. Va. 507.

Voluntary Conveyances.

Five years is allowed the complainant after a deed is made to set it aside as voluntary.

1 Bart.Chy.Pr. p. 101.
C.V. 2929.

Whole Cause of Action.

Broadly speaking, this suit of complainants is for an accounting between a principal and his agent--between a merchant and his factor--on which an action of account would lie.

The Statute (2920) reads: "--and if it be upon any other contract, within 3 years, unless it be--upon accounts concerning the trade of merchandize between merchant and merchant, their factors or servants, where the action of account would lie, in either of which cases the action may be brought until the expiration of 5 years from the cessation of the dealings ~~XXXXXXXXXXXX~~ in which they are interested together, but not after."

In this case the dealings in which the complainants and defendants were interested together certainly never terminated earlier than October 2, 1895, the suit was brought Mch. 17, 1900--a period of 4 years, 5 Mos. and 15 days.

That an action of account would lie between the complainants and defendants is well settled, even at common law and in the law courts, and a fortiori in equity, where it is the proper remedy.

See also, 21 Gratt. 264;
30 Gratt. 220.
79 Va. 444.

3 Blk. Com. (164)
4 Min. Inst. (1216) et seq.;
Thornton v. Thornton, 31 Gratt. 212;
Simons v. Simons, 33 Gratt. 451;
Huff v. Thrash, 75 Va., 546-48.

This clause applies between a merchant and his agent,

Roots v. Mason City etc. Co., 27 W. Va. 482

Hawley v. Hawley 76 Va. 544-559.

EXONERATION.

The same principle of equity gives rise to the rights of contribution and exoneration.

Bisph.EQ.sec.331;
7 A&E E.of L.(2 Ed.) 219.

"The doctrine of contribution and exoneration does not rest upon an express contract, but upon an implied contract arising from any state of facts which makes it the equitable duty, as between themselves, of one to bear the obligation which has been cast upon another." 7 A&E.of L.(2 Ed).330.

And see also,

Ribb v.Allen, (U.S.)37 L.Ed.819;
Taxter v.Moore, 5 Leigh, 219;
Wayland v.Tucker, 4 Gratt.262, 50 A.D.76;
Hansbrough v.Yancy, 33 Gratt.527;
Burton v.Mill, 78 va., 469;
Tate v.Winfree, 5 Sup.Ct.Rep.--, 6 V.L.R.837, note.

The Statute of Limitation, in such cases, is 3 years from the time the cause of action arose; and the cause of action arises only when the debt is paid by the party seeking exoneration or contribution.

Tate v.Winfree, 5 Sup.Ct.Rep.--, 6 V.L.R.837 & n.
Faires v.Cockrill, (Tex.) 28 L.R.A. 528.
Riverview Land Co.v.Dance, 6 V.L.R., 35, 35 S.E.720
Harper v.McVeigh, 82 Va.751;
7 A.& E.E.of L.(2Ed)340, 347;
Stone v.Hammell, 83 Cal, 547, 17 A.S.R.272;
Hooper v.Hooper, 81 Md.--, 48 A.S.R.496;
Martin v.Frantz, 127 Pa.St.389, 14 A.S.R.859;
Gross v.Davis, 87 Ten.262, 10 A.S.R.635 and extended note by Freeman, pp.639-647.

The following quotations are from Judge Joynes' valuable little book on the Virginia Statute, in which the learned author approves the view here taken.

"In the case of co-sureties, the statute does not begin to run against a claim for contribution, until one of them makes a payment beyond his own proportion of the debt, for until that time the claim for contribution does not arise. Davis v.Humphreys, 6 Mees.& Welsh 153

"Where it was ascertained by the judgment in an action by an assignee on a bond assigned, that the bond had been discharged, before notice of the assignment, by payments to, and set-offs against the assignor, it was held, in an action by the assignee against the assignor, that the statute began to run at the rendition of the judgment in the action on the bond (not at the time of the assignment)--since the set-offs might never have been claimed by the obligor, and it was only the judgment that fixed them as payments. Scates v. Wilson, et al. 9 Leigh, 473.

"Collinge v.Heywood, 9 Ad.& El.633 (36 E.C.L.Rep.223), was an action of assumpsit upon a contract to indemnify the plaintiff against the costs of an action of replevin. The costs were incurred, and the plaintiff's attorney had delivered his bill more than six years before this action, but the costs were not actually paid until within six years.

The court of K.B.(overruling a Nisi Prius judgment of Abbott, C.J., in Bullock v.Lloyd, 2 C.& P.119), held, that as no damage arose until the plaintiff was called on to pay, the statute commenced to run only from the time of payment. See Platt v.Smith, 14 John.Rep.368.

"Reynolds v. Doyle, 1 Man. & Gr. 753, (39 E.C.L.Rep. 638), was an action by an accommodation acceptor upon a promise of indemnity, implied in the defendant's request to the plaintiff to lend him his acceptance. The bill became due more than six years before the action, but was actually paid by the plaintiff within that time. The court of C.B. held, that the cause of action did not arise until the plaintiff was damnified by payment of the bill."

If then, the statute does not begin to run until the party seeking contribution or exoneration has paid the debt, the statute has no application to this case, for it is admitted that the complainants never paid the debt until Jan'y. 1898-less than 3 years before this suit was brought. (Ex.Q.)

Breach of Contract. indirect

Code 2933. "or by any other ways or means obstructs the prosecution of such right ect."

Bowles v. Elmore, 7 Gratt, 385.

Rankin v. Bradford, 1 Leigh, 163.

Unconscious obstruction, 97 Va. 460.

Higdon v
Elwood

if not delivered within ten days return to
ROBT. W. WITHERS,
ATTORNEY AT LAW,
SUFFOLK, VA.

Stake B
Limitations

~~James~~
~~by J. M. W.~~
~~James~~
~~James~~

JOHN A. GUM,
YELLOW PINE LUMBER.
Orders Solicited.

Elwood, Nansemond County, Va.

July 1st 1895

Mr W B Fergusson Sec
Dear Sir

Your letter and telegraphers received. in
reply will say. Please have Mr Read to send
enough of paper to wrap up about 150.000 Ft. B.T.
and we will stop until we can make
trays more satisfactory both to him and
ourselves. In the meantime the writer will
call on you.

Yours very truly
Elwood July 1st
John A. Gum Rice,

#29

JOHN A. GUM,
YELLOW PINE LUMBER.
Orders Solicited.

Elwood, Nansemond County, Va.

July 6th 1895

Mr W.B. Ferguson Esq
Dear Sir.

Enclosed find letter from Mr F.B. Read
also have booked the orders for next shipment
and will send out soon as the baster arrive
and see if there cant go forward in satisfactory
manner both to ourselves and Mr Read.

Yours truly
Elwood W. Gyle.

John A. Gum Esq.

#29

JOHN A. GUM,
YELLOW PINE LUMBER.
Orders Solicited.

Elwood, Nansemond County, Va.

July 11th 1895

Mr W.B. F Leo
Dear Sir.

Your letter from Mr Reed of taking care
of 50 cts per 1000. for Trus. Will say
we are well under the circumstances
accept an offer of 75 cts per 1000. W.
and you can telegraph to that effect.

Yours very truly.

Elwood W. F. Leo
John A. Gum Bros.

#29

JOHN A. GUM,
YELLOW PINE LUMBER.
Orders Solicited.

Elwood, Nansemond County, Va.

July 15th 1895

Mrs W.B. Ferguson Deco.

Dear Sir.

Yours of the 11th received. Will call to see
Mr Ferguson accept thanks. The Butter Boys
in New York you can make the most satisfactory
settlement to all concerned and close the matter
up at once. How about the last order we
are ready this week for shipment. Please give
me instructions Yours very truly

#29

Elwood Mfg Deco.

John A. Gum

Nov. 2, 1894.

✓
Dear Sir,
I have the better form our New York party, in which he states
that 50 and 4/10 with a semi-annual rebate for
has no attraction whatever for him, as he can
value for several years in N. Y. City. I have writ-
ten to him from the price that will be acceptable, and I trust will
be mutually profitable. The first time you hear from Carroll please call
that we may discuss this matter fully, as we are to get on a good
basis at the early date.
Yours truly,
2

P. S. We have just received a letter from our N. Y. party ordering 25000
of each size, halves to fives, at 50 8/10 and =, delivered in N. Y.
days or 2 off 30 days. Please let us hear from you in the matter

#97

Joyner & McPhail,
Dealers in General Merchandise.

38

Elwood, Va., Augth 1895

Mrs W B Ferguson, Esq

Dear Sir -

Enclosed please

find Bk & regular revenue
bill for Car AOW 1061 Containing
275⁰⁰ Butter dishes, which went
forward to-day. And get order
for another Car right away - I am
going ahead on 1/2⁵ 1852 & Car
Ship another Car nothing fronting
by 17th or 18th. Please deduct my
bills of July 17th & 19th amounting
to \$467 & send me acceptance
for Balance which is \$239³⁷.

Mr Titus of Petersburg is now
moving our 3rd Machine & will
be in, in time I expect to get
3rd dishes in the 2nd Car from this one.

Joyner & McPhail
D-K JOYNER & BRO
Dealers in General Merchandise.
SUCCESSORS
To

Shwood, Va., 189

Our 3rd Machine will not
reach here until Saturday.
So we will ship the #182nd
exactly with your order & will
have some thing handy to
go right ahead in the next
Car. Advise Mr Reed of this fact -
Yours Truly,
D.K. Joyner, & Bro
"Jo"

WE RECOMMEND

SIX
CORD



200
YDS.

STRONG-SMOOTH

Manufactured by
The William Clark Co.

OFFICE OF

JOYNER & McPHAIL,
GENERAL MERCHANDISE,
ELWOOD, VA.

Aug 13 1895

Messrs. W.B. Ferguson & Co

At Sirs:

*Please let us
know as early as possible what
Mr. Ford wants in next car - we
have nearly a ckt of 12 1/2 1/2 1/2 on
hand.*

*Yours very truly
W. H. Joyner, Jr.*

#30

Operators are required to write all Telegrams in INK.

SENT TO	SENT BY	REC'D BY	TIME
			M.

Check

WRITTEN _____ M.

ATLANTIC & DANVILLE R'Y CO.
TELEGRAM.

REC'D FROM No.	SENT BY	REC'D BY	TIME
			M.

Check

The writer of a telegram should always place the "time" at which the message was written in the blank space provided hereon. Operators are required to place the "time filed in the office" in the blank space provided therefor. The filed time must be transmitted with every message in accordance with instructions issued. After transmitting telegrams that in their judgment would have served the Company's interest if sent by train mail, operators are required to make a copy of them and forward the same to the Chief Operator.

Dated

189

Filed

M.

To

Station.

Dear Sir:-

Enclosed please

find B/S for Car Butter Dish forwarded today
Containing 100,000^{1/2} 100,000⁵ & 5000⁵ - You see
my letter today - please give us quick order as wanted.
in next Car, & notice we can furnish 3# Dish now -
Very truly yours L. B. Jaynes, Jr.

*D-K

-JOYNER

Successors

To Merchandise.

Joyner & McPhail, &
Dealers in General Merchandise.

#30

Elwood, Va., March 1895

Mrs W. B. Ferguson, Esq.
Gentlemen

Please rush
Mr Reed on the inspection of
this Car. as we are confident the
ciskes are 1st class & send memo
for ~~another~~ another Car as quick
as possible. You will also notice
that we have no bills due with
so do not deduct any of them & we
will have another Car in before any
more bills are due with you. & we
need this amt badly to meet our
points which we will have to
meet on the 3rd of Sept. So please
do all you can to let us have this
by that time & greatly oblige
Yours very truly
F. K. Joyner

D. K. JOYNER

M. JOYNER, Jr.

D. K. JOYNER & BRO.
Manufacturers of Long, Tin-End Butter Dishes
—AND—
DEALERS IN GENERAL MERCHANDISE.

#30
VENEER-CUTTING A SPECIALTY.

Elwood, Va., Oct 2nd 1895

Miss W. B. Ferguson & Co

Dear Sirs:

We are
very sorry indeed that we cannot
fill the orders we now have from you. But
on account of the price & the kicking
on the Crates. & also that you claim
your 5% Commission on them before the
freight is deducted. makes our profit
nothing & we cannot afford to work like
this, we just cannot stand it & will
have to sell else-where. We cannot
dress our lumber for crates & we have been
making them just as substantial as we
knew how & don't see where we could
better them. Taking all these things in consideration
we have decided it the better plan not ship
to these orders - Yours very truly, D. K. Joyner & Bro

D. K. JOYNER

M. JOYNER, Jr.

D. K. JOYNER & BROS.

Manufacturers of Long, Tin-End Butter Dishes

—AND—

DEALERS IN GENERAL MERCHANDISE.

VENEER-CUTTING A SPECIALTY.

Elwood, Va.,

OCT 25 1895

189

Mess. W. B. Ferguson, & Co

Dear Sirs:

We are in receipt of yours of Octo 2nd & in reply will say we cannot ship you any more of our Dishes.

Very Truly

D. K. Joyner, Jr.
"Jo"

Be

ELWOOD MANUFACTURING CO.

Long Tin-End Butter Dishes,
Fruit Packages,
East Patent Truck Barrels.

#28
828
Elwood, Va., Dec 17th 1894

Mr W.B. Ferguson Pres.

Dear Sir,

Please do not take any more
orders for Butter Trays until some
arrangement can be made with
the A & D R R about the freight.

The price for Humana also is
beyond all competition, and
something must be done with
those people before we can do
anything more.

Yours truly

Elwood Mfg Co.

John A. Gunn, Pres.

ELWOOD MANUFACTURING CO.

Long Tin-End Butter Dishes,
Fruit Packages,
East Patent Truck Barrels.

Elwood, Va., Dec 24 1894

Mr W. B. Ferguson & Co.

Dear Sir,

Enclosed find correction for shipment
of butter trays to F. B. Read, N.Y.

As Mr Taylor has changed the rate
to 32 cts per Hundred lbs instead of
47 cts.

You can forward
bill direct from your Office

Yours Truly

Elwood Mfg Co.

S.

28

ELWOOD MANUFACTURING CO.

Long Tin-End Butter Cans,
Fruit Packages,
East Patent Truck Barrels.

Elwood, Va., Dec 19th 1894

Mr W.B. Ferguson Esq

Dear Sir.

We have tried Mr Gayler to reduce the rate of 47 cts to New York but have failed as yet to do anything with those people on less than our load shipments. We have the order for New York at the depot, if we do not hear anything to-day will have to let them go on the present rate.

The writer will be in Suffolk to-morrow night and stop in to see you.

Yours truly
Elwood Mfg Co.
G.

28

Elewood Va 3/27/95

Mrs H.B. Ferguson & Co

Dr Sirs:

Loading
Car today for F.B. Read
New York. It will
go for wood tomorrow.
Will send you B/L
tomorrow mail & will
try to get the new
order off by 20th
of April not later
if I can possibly help
it. Yours very truly

Elewood Mfg Co

R. W. Ferguson

#28

ELWOOD MANUFACTURING CO.

Long Tin-Enamel Dishes,

Fruit Packages,

East Patent Truck Barrels.

Elwood, Va., May 18th 1895

Mrs W.B. Ferguson Leo.

Dear Sirs..

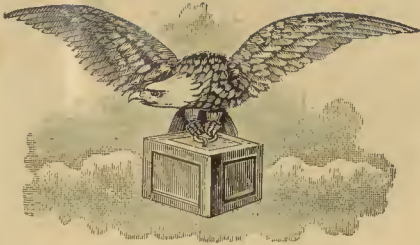
Yours of the 15th to hand. in
reply will say. We have been
some what disappointed in
making the shipment to New York
as promised but if nothing
interfers will do so in the next
few days. The order for 1st & 2nd
of 5000 each will go forward
Hoping this to be satisfactory

We remain Yours truly

Elwood Mfg Co.

Yours

#128



Form

Southern Express Company

EXPRESS FORWARDERS.

Alwood 7th 3/28 189Mrs W.B. Ferguson & Co
At St. LouisEnclosed please find
B.F. for Car A.R. 1012 containing 402
Crates of Butter dishes for F.B. Reed
New York N.Y. divided as follows

89000	7 ⁵
83500	1 ⁵
280100	2 ⁵
201.000	

Yours Very Truly

Edwood M. Co

Per A.H. Jayner

Have we a bill
for this

X 28

Twoor Pa
May 4th 95

Messrs. W. B. Ferguson & Co
Dear Sirs:

Enclosed you
find the paper requested.
But, am sure we do not
need more paper at present.
If you have not seen
Mr. Lane in regard to
shipping more paper - you
better see him before you
ship any more.

Yours Very Truly

Edward M. Co

J. D. K. Joyner

\$28.

OPEN ME FIRST.

W. B. FERGUSON & CO.,

Brokers and Wholesale Grocers,

SUFFOLK, VA.

RETURN IN TEN DAYS IF UNDELIVERED.

Mr. C. W. Vathens, Atty.,

Suffolk, Va.

83.20

5.00 16
8

53.00 08
1.00

91.00

53.00

1.25

21.25 77

6.00

accomplish

NOTES.

1. "An agent is entitled to indemnity against the consequences of all acts performed in the execution of his authority which are not illegal. Huff. on Agency, p 30; 1 A. & E. of L. (2 Ed.) 1117; Green v. Goddard, (9 Met. 212) Id. bottom; D'Arcy v. Lyle, (5 Bin. 141) Id. 1113; Saveland v. Green, (36 Wis.) Id. Bibb v. Allen, 149 U.S. 493, S.C. 37 L.R.A. 819; Brown v. Speyers, 20 Gratt. 296 at p. 309;

2. The same principle of law is applied in the doctrines of contribution and exoneration, Risp. Eq. Sec. 331; 7 A&E Ency of L. 350.

Subrogation is the means by which these ^{equities} means are enforced. Risp. Eq. Sec. 335.

3. The Doctrine of exoneration and contribution does not rest upon an express contract, but upon an implied contract arising from any state of facts which makes it the equitable duty, as between themselves, of one to bear the obligation which has been cast upon another. 7 A&E E of L. 330; Bibb v. Allen, (U.S.) 37 LRA 819; Hansberger v. Yancy, 33 Gratt. 527; Burton v. Mill, 78 Va. 468

4. Equity has concurrent jurisdiction with law in such cases, 7 A&E E of L. 323; Risp. Eq. page 441 top; Wayland v. Tucker, 4 Gratt 268, 50 Am. Dec. 76; Baxter v. Moore 5 Leigh 219.

5. Plaintiff may recover costs incurred in defence and interest on money from date of payment. 7 A&E E of L. 344; Boslev v. Taylor, 5 Dana, Ky, 159, 40 Am. Dec. 677; including reasonable counsel fees, Gross v. Davis, 37 Tenn. 226, 10 A. St. Rep. 635; Van Winkle v. Johnson, 11 Oreg. 469, 50 Am. Rep. 405; Risp. Eq. page 441.

6. The Statute of Frauds does not apply to an executed Contract, Bibb v. Allen (U.S.) 37 LRA 819.

7.

7. It amounts to a breach of contract for which damages may be recovered, for a principal to dispose of the subject matter of the agency Huff. on Agency, Secs. 65, 67; Clark on Contrs. v. 649, Or where he makes it impossible for the agent to complete the contract, Lovell v. Ins. Co., 111 U.S. 264, L.C.P., 28-423; U.S. v. Behan, 110 U.S. 338, 28 L.C.P. 163; U.S. v. Peck, (U.S.) 26 L.C.P. 46 and note. 35 S.E. 602, 71

The proper measure of damages in such cases is the amount, the party not in fault, has already expended towards the performance of the contract (less the value of materials on hand) and the profits he would realize by performing the whole contract, if not remote and speculative, U.S. v. Behan, 110 U.S. 338, L.C.P. Vol. 28, p. 169; Speeds Cas., 8 Wall. 77, L.C.P. vol. 19 p 449; 19 Wall, 37; 100 U.S. 500; Notes to Cutter v. Powell, 2 Sm. Ld. cas. (9 Ed.). 1212. *Strong v. Wood 20-82-30-693*

Notes for
Dinner
Ferguson
S.
Edward W. Co.

1.

STATUTE OF FRAUDS.

Our next proposition is that the contract of agency is within the Statute of Frauds, as a contract which is not to be performed within a year and that such contracts cannot be modified by

parol.

A contract for a year's service to commence on a day subsequent to the making hereof, is within the statutes of frauds, and must be evidenced by writing. *Bracegirdle, v. Head*, 1 B. & A., 722; *Snelling v. Lord Huntingfield*, 1 C. M. & R. 20; *Poydell v. Drummond*, 11 East. 142; 1 Sm. Ldg. Cas. (9Ed) 537; 1d. 528; *Rahn v. Klerner*, 37 S. E. (Va.) 292; *Lee's Admr. v. Hill*, 37 Va. 497.

On Nov. 13, 1894, the defendant company, through its president Jno. A. Gum, wrote the following letter to the Complainants, which letter is filed as "Ex. A". Mess. W. P. Ferguson & Co.

Dear Sirs:

We will offer to you the following prices to sell our entire out-put for the year 1895, of long tin-end butter dishes, to your customers at discount of 50% 5/10 & .5, from the price list of 5.00/1/2#, 5.50/1#, 6.50/2#, 8.00/3#, F. O. B. Cars Jersey City. And allow you commission of 5% on net sales-settlement to be made on or before the 10- each month previous, by an acceptance of ninety days. Your early reply will oblige,

Yours truly, Elwood Mfg. Co.

John A. Gum, Pres.

To this letter the complainants replied the same day as follows ("Ex. AA.")

Nov. 13, 1894.

Elwood Mfg. Co.,
Elwood, Va.
Gentlemen:-

Replying to yours of the 13th., contents of which have been carefully noted. Please advise us about what output would be for the year 1895, and should it become necessary in order to place your goods on the market to lower your values by reason of competition we would do so, and do we understand that the 50, 5/10, and 5s will apply to all points that take Jersey City rates. We note that you would want settlements on or before the 10th., of each month for all goods, we would suggest that for every shipment an invoice be sent direct to the purchaser accompanied by a ninety day acceptance, which could be accepted by them and return to them at once, it strikes us that this would be better and avoid accumulating large bills for the 10th. or any given date in the month, in other words every tub would then stand on its own bottom. About what time will you be ready to fill orders? We suppose that your discount ~~will apply to~~ will apply to car load lots and less.

Yours truly, W. P. Ferguson & Co.

Pleading Statute of Frauds.

Quere, must it be specially
pleaded 2 P&H. 547

The defence of the Statute of Frauds
must be specially insisted on
in the pleadings or it will be
deemed waived, and a genl
replication waives the benefit of the
statute as a defence against an
agreement set up in the answer.

Tarleton v. Viettes, 1 Gilman 470; 41
Am. Dec. 193 -

- The statute of frauds does not
have to be specially pleaded, but
if relied on in the trial, is
sufficient.

1 H&M 92

Measure of
damages to
wrecked
the barge -

- actual dam-
ages - W. Houghby
v. Thomas 248, 521
- Sec 95-160

Burden of
proof - Termination
or modification of
written contract
- proof must be
clear - Kent v Kent
34 S.E. 2d (Va)

Master of Servant -
Wrongful discharge -
Burden of proof -
Court established -
Burden of proof on
def. to show termination
of cont for legal
cause

W. T. v. Cashie
& Chowan RR & Lumber
Co. (N.C.) 37 S.E. 2d 64 -

The mutual assent
of the parties is
indispensable to
morality or annul
a contract.

Wiley v. Donaldson

94 U.S. 29 : 24, 52

Wheeler v. New Brunswick

TC. Ry Co., 115 U.S. 29, 29; 34

A written contract
within the Statute
of Frauds cannot
be varied by any
subsequent agreement
of the parties, unless
such new agreement
is also in writing.

Emerson v. Slater

22 How. 78 & See

19 Wall. 252 also

Suffolk, Va 4/16/1901.

N. B. Ferguson Co:-

Sirs:- Please furnish me with the following exhibits for the suit of N. B. F. & Co. v. Elwood Mfg. Co. These papers are all mentioned in Mr. Fergusons deposition and one to be filed.

We wish to finish taking testimony for both sides on Wednesday Night Apr. 17th. Shall expect Mr. Ferguson at my office at 8 o'clock. Have written for Mr. Carr Beale at Franklin and hope to have him here also.

1. Expense of defending N. Y. & Va suit of Read v. Ferguson, showing, (a) fee to N. Y. Lawyer, (b) traveling expenses of self and bookkeeper, (including, hotel bill etc, (c) fee to Prince & McDemore for defending Va suit, and their expenses to N. Y. (mark, Ex "Q")

2. Statement showing number of cars shipped by Elwood Co, in its own name or through J. B. & Bro, showing date and value.

(mark, Ex "U")

3. Statement showing last acceptance given J. B. & Bro, show, date, time of acceptance, amount, and to cover what car trays. (mark Ex. "V")

4 Did Joyner and Gurn contribute
\$2500 each or 2500 jointly to
defend the N. Y. suit of Read.
Consent books; file statement marked
Ex. "74" -

Judgment

12.17.68.

~~Costs of suit law~~

att'y's fees paid by
7 & 8 to defend

150.

Traveling expenses
to & from N. Y.

125

Commissions
already earned &
not paid

Prospective
Commissions (?)

Total

My report
to
Rochester, N.Y. 10/17/77
Cross v. Davis 10 ASL 62-4 note
The "Will" is a man really & a

whole law of contribution
between co-sureties

Ag't. may recover loss sustained
by him, caused by his principal's
default, where he acts within the
scope of his authority. App 309

Brown v. Spyer 20. Gratt 296,

Bibb v. Allen, 149 U.S. 480 (22a 819)

1 Am. Eng. Ency. of Law (2 Ed) 1117

Huffcut on Agency -

16 Wall 500 (21: 480)

D'Arcy v. Doyle, 5 Binn. 1 (P)

Javeland v. Green, 36 Wils. 612

Green v. Goddard 9 Met. (Mass) 212

57 A.R. 105 - 4

55 A.R. 83

8 A.R. 376

40 A.R. 421

51 A.R. 422

30 A.R. 360

Stimpan not home - 10/10/11
summit ordered by me - 10/10/11
+ 10/11/11 - 10/11/11
received 2 sets of 100
- but did not know - not signed
- 10/11/11 - 10/11/11
- 10/11/11 - 10/11/11

Green v. Jones 10/11/11

A novation will not extinguish a contract if the arrangements
are co

A novation will not extinguish a contract if the arrangement
is conditional and the conditions are not fully complied with.

Hyde v. Moore, 16 Pet. 169, 10: 925.

W. C. "If I get the dishes".

The mutual consent of the parties is indispensable to modify or
annul a contract. 94 U. S., 29; 115 U.S., 29.

Where the contract is complete nothing done subsequently by one can
affect the right of the other. 1 Wall. 359, 17; 642.

To constitute a new contract the first must be rescinded and set
aside by the parties to it, and the second adopted as a substitute
for the first, with the intention to be governed thereafter by its
terms.

Wraeme v. Adams, 23 Gratt. 225.

Dear Sir: Your note of the first instant just received and I
am unable at present to state

Indemnity

The right of indemnity
by a surety from the
principal exists even
tho' the principal's name
is not on the instrument
Sued on — (by subrogation to Creditor)
and this rule is broad
enough to include
every instance where
one pays a debt for
which another is primarily
bound to answer, and that
should in eq & good cons
have been discharged by
him 33 Gratt 527

Harnsberger & Jancy
doctrine rests not on contract
but on natural justice, Id &
also Beaton v. Littlepage Mill
78 17 468 -

ROBERT W. WITHERS,
ATTORNEY AT LAW.
PRACTICES IN STATE AND FEDERAL COURTS.

Authority to sell
implied everything
necessary to complete
sale - 87 Va 657

Badges of fraud
what are 82 Va 291
what are not 85 Va 755

Purchaser for
value etc - essentials
to this defence - burden
of proof - notice
Lamar v. State, 79 Va 47

SUFFOLK, VA.,

Factor or vendee?
Antinoble Co v. 95 Va

Injunction - implied
authority to deposit in
P & C - 35-52 (Va) 720-

Fraud - Burden of
proof - American
Nat Co v Mayo, 97 Va 43
Todd v Sykes, 97 Va 143

advanced by him, —

— Of course, in cases of that kind, a Court of equity will closely scrutinize the transaction, and, in a contest between general creditors and a director or managing officer who takes a mortgage upon its property, will hold the latter to clear proof that the mortgage was executed in good faith, and was not a device to enable him to obtain an advantage over those interested in the distribution of the mortgagor's property." *giving authority*
Pickens v. Brown, 132 N. H. 50. — 51 N. H. 508.

Burdens of Proof

A Corp., where it acts in
good faith, may, for the
purpose of preserving its
actual interests, borrow
money from its officers
or directors and execute
a valid mortgage or gift
to them, though it be
incumbent at the time, in
speaking of this Judge Harlan,
in *Sutton v. A. Co.*, 120 U.S. 320,
11 CCA 320, 61 Fed. 426, said:

"In such a case in its
affairs, and to those ends,
it (Corp.) may accept financial
assistance from one of
its directors, and by a
mortgage upon its property
secure the payment of
money then loaned or

Corporation

A corp^y, since insolvent
and with no purpose of
continuing its business,
cannot mortgage all of
its property to secure its
debts, being a creditor,
to the exclusion of the
rights of other creditors.
Such a transaction is void
at CPJ because inconsistent
with the fiduciary relations
held by the director to the
property or the creditors; and
is also a circumstance
from which the jury may
infer an fraudulent intent to
hinder delay and defraud the
general creditors -

Sutton v. Hutchinson

11 CCA - 320, 63 Fed 496

Per Justice Harlan / Sup. Ct.

Corps

1. Asset a trust fund for Creditors -
2. Officer cannot buy property from Corp at expense of Crs -
3. A Corp^r can transfer property in fraud of Crs -
4. If Grantor contemplates fraud on Crs of Corp^r & Corp^r so intend fraud, then deed void altho for valuable consideration.

Corporation

Paying or receiving
Director - 14 ATE E 240
7 ATE 743

Fact, figure & dates
wanted from Ferguson

In re Elwood Mfg. Co.

1. What is the date of contract of agency between FFC & Elwood Mfg. Co.
Nov. 14 - 95 - 1 yr. Shpt. Jan 31/95
2. For how long was this cont. to continue? 3 years 1895 -
3. What is the date of contract to ship all butter disks made by E Mfg Co, between FFC & Reid?
Sept. 28 - 1895 -
4. What is the date when the Elwood Mfg. Co. sold its product to some one else, after ~~Sept 28~~
Sept 30, 95
5. And to whom? J. J. McClellan
6. ~~It~~ When was ³⁰ cont. with Reid to expire? Jan 1 '96
7. What is Reid's firm name?
Frank B. Reid -

Ferguson

Edwood
Mfg Co

2 110 U.S. 499,570!
28. LREEL 225,230

Story Agency, 49330, 344

2 Wall 9:17 SA. 764

82 Va 712

In faint
novation

"Parties who have made written contracts may vary them afterwards as much as they please ~~afterwards~~ by parol, if the nature of the agreement is not such that the law requires them to be in writing; but the subsequent oral agreement must be a valid & binding agreement between the parties. The new agreement must be valid in itself, and such as may be the basis of an action. It must be based upon a sufficient consideration and must not itself be void under the statute of frauds. If it lacks the elements of a valid contract, it is *nudum pactum*, and not binding on either party, in which case the original contract must, of course, remain intact. It is obvious that a written contract, whether within the statute or not, may be changed by a new and distinct agreement; but when the writing is required to be in writing, in order to satisfy the statute, then the change must be in writing." Note p 671 56 A.S.R., citing *Barton v. Gray*, 57 Mich. 622, 635; *Adler v. Friedman*, 16 Cal. 139; *Wharton v. Missouri Car etc Co.*, 1 Mo. App. 577, 582 (1).

See full discussion in 100 A.S. 169-172 - to which the following authorities may be added: *Northrup v. Jackson*, 3 Mich. 85; *Tanner v. McMillty*, 39 Penn. St. 473; *Walker v. Evans* 1 Del. Chy. 156; *Hasbrouk v. Tappan* 15 Johns. 200; *Martin v. Clark*, 8 R.I. 389, 395.

J. P. LEE,
ATTORNEY AT LAW.

OFFICE IN THE BOOTHE BUILDING.

Suffolk, Va.,

190

Delivered within ten days return to
ROBT. W. WITHERS,
ATTORNEY AT LAW,
SUFFOLK, VA.

Elwood Manf'g Co.,

Elwood, Va.

Dear Sir:-

We send you to day one stencil for use on F. B. Read's shipments who does not want the Stencil Elwood applied. Please be careful of this as he will certainly be entitled to a reduction if he is forced

March 22, 1937

218

General Motors Co.,
Detroit, Mich.
Dear Sir:-

In addition to the order that you have made for 100,000 cars, we have also received an order for 100,000 cars. This is a very large order, and we are very anxious to get it filled. We are very sorry that we cannot give you the cars you need immediately, but we have managed to satisfy Mr. Reed's order. If you can give us papers covering a car loan, we will be glad to order for not later than to tomorrow, and you will get the cars we now send you within the next 15 days, we think everything will move on smoothly. The success of the enterprise depends very much upon the prompt execution of orders, and we hope that you will leave nothing undone to bring about this promptness.

Very truly,
John D. Ford

Suffolk, Va Feb'y 20th 95-

Elwood M'f'g Co,

Dear Sirs:-

Please ship as follows at the earliest possible moment, he is out and must have them quick,

F.B.Read N.Y.

150,000 1s, 150,000 1-2, 100,000 3s, 5,000 5s,

Resp'y

W.B. Ferguson & Co.

Please acknowledge.

W.B.

Suffolk, Va

Elwood M'F's Co.

Dear Sir:-

We have now 1000
Ship the 7,000 lb and 3
per Co Atlantic Co. tags
they were shipped for 2.00
and then under 1.00.

Yours

34 ✓
Sufflk. Va. Jan. 10, 1895

Elwood Manf'g Co.,
Elwood, Va.

Gentlemen:

We are in receipt of letters from
parties asking the shipment of Butter Trays,
please forward both lots at the earliest pos-
sible moment.

Yours truly,

Dec. 29, 1894

✓
Elwood Manf'g Co.,

Elwood, Va.

Gentlemen:-

In making up a shipment for Newark we think it advisable to increase the shipments to a car load, the smallest that you can get at car load rates, putting in 1's and 2's to make up same, over and above orders you now have. Winans & Co. write to day a very urgent letter asking for an immediate shipment. Wells writes or else that he is really out of the sizes that he ordered and must have shipment at once. write them to day that we expect to ship a car next week.

Yours truly,

Wm. J. Smith

290

Dec. 31, 1894

✓ 181
Elwood Manf'g Co.,
Elwood, Va.

Gentlemen:-

We have had a visit from Mr. Read of New York and it has resulted in a sale to him of one car load of Trays to be delivered by the 15th or 20th. divided as follows: 85,000 halves, 100,000 one's, 100,000 two's and 10,000 three's, should a car hold more than the above list, complete the car with halves. He states that the Trays he received last week were satisfactory with two exceptions, not uniform in thickness and of them very damp, we stated to him this was due to a very crude sort of affairs at the mill, but as he told him that we felt satisfied this car would go to him in an entirely satisfactory condition. He seemed anxious to have this shipment in New York by the above date and we have promised it, this order cancels former orders that you have filled for him. Please let both of the cars that you now have orders for namely One for Newark mentioned to your Mr. Gam when here last and this one promptly as possible.

Yours truly,

✓
Suffolk, Va. Oct 1st 1895.
D.K. Joyner & Co.,
Elwood, Va.

Dear Sirs:-

We have no tidings of the order for
Richmond sent you on the 20th please hurry this
off at once, the people are waiting, you should get
behind your help and push them up, please let us be
have billing for above also for 1 Car for Road,
Very truly,

"M"
W.S. Ferguson & Co.

Oct, 24th 1895.

✓ "P"
Elwood Mfg Co,
Elwood, Va.

Dear Sirs;-

We are just informed by D.K. Joyner Bro, wh have leased yo
your Mill, that they will not ship us your Dishes, Please take notice
thatv this is in violation of your agreement with us, and we enter
protest now and repeat what we told your Mr Gum in person, we expect to
have a full accounting, and reimbursement of the loss occasioned by
the failure and refusal of D.K. Joyner & Bro to fill our orders as placed
by us and at the request of said Joyner & Bro, and in keeping with
our agreement with you, through J.A. Gum,

Very truly,
W.B. Ferguson & Co.

Oct. 1, 1905



Dear Mr. [illegible]

I have just received your letter of the 28th inst. and am glad to hear that you are giving the fish business in detail. We desire that you give us one day at least. When your personal attention is given to the fish business, we have specifications for the fish in addition to the fish business. We have also a very detailed list of the fish business. We have also a very detailed list of the fish business. We have also a very detailed list of the fish business.

Trout - We have a very detailed list of the fish business. We have also a very detailed list of the fish business. We have also a very detailed list of the fish business. We have also a very detailed list of the fish business. We have also a very detailed list of the fish business.

m

Sept. 28, 1896

Mr. F. B. Road,
New York.

Dear Sir:-

In conformity with our conversation of to day we agree to ship you our entire product of Potter Dishes at 50, 5/10's and 5 delivered New York, usual terms and list so long as you will absorb our entire output. We are arranging to increase our facilities and as soon as we are ready to make larger shipments we will advise you, we will also endeavor to give you these goods delivered in New York in perfect condition and will give special attention to the crating of same. Any imperfection along this line please advise us.

The above will apply for the sale of one car per week from now to Jan'y. 1st. 1896.

Yours truly,

"L"

Oct. 5, 1895

✓
Messrs. E. K. Joyner & Bro.,
Elwood, Va.

Gentlemen:-

We have just had a talk with Mr. Ino. [unclear] who represents the Elwood Manfg. Co., we have explained to him the situation about the shipment of Butter Dishes to New York. We wrote you some days since to come down we thought we could arrange matters to your entire satisfaction as to discount, and also stated we had gone over the matter in detail with Mr. Read, to this letter we have had no reply. We have succeeded in getting Mr. Read to get back to the discount of 50, 5/10's and 5, and all shipments will be settled for on this basis from now until Jan. 1st. 1896, up to which time we have sold the output of the mill, please let us have billing at once for the car ordered previous to the five car order sent you as Mr. Read is in need of the goods, and writes us to day to wire him when he may expect a car load of Dishes. You wrote us that the second car ordered previous to the above 5 cars referred to would follow the last one you shipped in about 10 days, it has been now going on three weeks, please advise what has become of your output since that time, and why you do not make the shipments. This matter is important and demands your immediate attention, we shall expect a full reply from you by Monday, with date upon which you will make shipment of the car of Dishes.

Yours truly,

Suffolk, Va. Jan 1, 1888

Elwood Mott's Co.
Elwood, Va.

Dear Sirs:-

We are in receipt of your letter from
New York with complaint of "Tear" in your
Please look after this matter and avoid
a recurrence.

AL

Yours truly,

Saufolk, Va. June 16, 1897

Elwood Manf'g Co.,
Elwood, Va.

Gentlemen:-

Read desires the following memorandum filled for the next car, and he says it must be complied with. The excess must not be made up in 2 lb. Trays, if you are unable to furnish the 3's, as he has plenty of 2's in stock. He writes as follows:

"I have your valued favor of the 11th. and contents noted. I regret very much to say that we have, since last writing you, had a great many complaints, also a number of crates of your Butted dishes returned, on account of the same being soiled. It will be impossible for me to stand the loss on your goods and under the circumstances, as it is your fault, I will expect you to stand the loss. The Dishes are of no use to any one, and I will take the amount of these damaged goods from the face of the bill."

100,000	1/2,
15,000	1
25,000	2
15,000	3

be making 5's and 10's.

Yours truly,

Suffolk, Va. June 17, 1895

Elwood Manf'g. Co.,
Elwood, Va.

Gentlemen:-

In an order from Frank B. Read he advises us that he is receiving too many 2 lb. Butter Trays. We write you thus that you may give attention to the smaller sizes, and hurry for the completion of the # and 5 lb. frames.

Yours truly,

W. B. H. [unclear]

Suffolk, Va. June 19, 1895

Elwood Manf'g. Co.,
Elwood, Va.

Gentlemen:-

In a letter from F. B. Read under date of the 17th. he states that \$20.00 would be a fair claim on the car load of Trays that were shipped in a mouldy condition, we are under the impression that we can reduce this amount to \$15.00 then with an offer of a compromise, please advise if we shall do so.

Yours truly,

Suffolk, Va. June 21, 1895

Elwood Manf'g. Co.,

Elwood, Va.

Gentlemen:-

Please note the enclosed letter from Mr. Frank B. Read and return with your reply, and advise us if it will be satisfactory to name the discount that he asks, also note his remarks about the claim which changes the idea expressed by us in our letter of yesterday.

Yours truly,

Suffolk Va. June 28, 1895

Elwood manf'g. Co.,

Elwood, Va

Gentlemen:-

Please note complaint of Mr. Read of the condition of your Dishes, we have written him to day to know what allowance would be satisfactory. This is indeed a serious matter, two car loads complained of something must be done to stop these complaints and it will be well for you to give the matter prompt and close attention.

Please advise if we shall order a supply of the Paste as suggested by Mr. Read.

Yours truly,

Suffolk, Va. July 2, 1880

Elwood Manf'g. Co.,
Elwood, va.

Dear Sirs:-

Yours of the 1st. received and we herewith enclose a letter
from Mr. Read and also copy of our reply to same.

Yours truly,

Elwood
Co.
Va.

Wass' D. M. Loyner & Co.,
Elwood, Va.

Gentlemen:-

Please note the enclosed letter from F. M. Read and give same your careful attention otherwise, there is going to be trouble, he has written a number of times about the crating of these goods and you pay no attention whatever. Return the letter herewith enclosed promptly with your reply.

Please fill the following orders promptly.

First car; to follow the one you now hold order for.

100,000 1's,
100,000 1 1/2's,
50,000 2's,
25,000 3's.

Second Car;

100,000 1 1/2's,
100,000 1's,
25,000 2's,
10,000 3's,
10,000 5's.

Third Car;

100,000 1 1/2's,
100,000 1's,
25,000 2's,
10,000 3's,
5,000 5's.

Fourth Car;

100,000 1 1/2's,
100,000 1's,
25,000 2's,
10,000 3's,
10,000 5's.

Fifth Car;

100,000 1 1/2's,
100,000 1's,
25,000 2's,
10,000 3's,
10,000 5's.

Yours truly,

348

119 11
2

Suffolk, Va. July 23d 95.

H. E. Boyner Esqr,

Elwood, Va.

Dear Sir;-

Send us at once Bil 1 for Car Trap
shipped 23d,

Very truly,

W. E. Ferguson & Co.

✓

Suffolk, Va. Dec. 28, 1904

Elwood Manf's Co.
Elwood Va.

Gentlemen:-

117
7
Your letter of the 24th. with enclosure
of corrected BaL. for Frank E. Read duly received.
The first time your Mr. Gurn is in town ask
him to call at our office, we wish to talk with
him about the rates.

Yours truly,

Wm. H. ...

✓
SULLY, Va. Dec. 28, 1934

Elwood Ward's Co.
Elwood Va.

Gentlemen:-

Your issue of the 24th. with enclosure
of contract, at Ball's for Frank D. Reed duly received.
The first time you Mr. Reed is in town call
him a call at our office, we will talk with
him about the matter.
Yours truly,
R.D. Sully

11-7-34

✓
Suffolk, V. Dec. 15, 1894

Elwood Manf'g Co.
Elwood, Va.

Gentlemen:-

Ship to Winans & Co., Newark, N. J.
40,000 one lb. T. E. Butter Trays. 5,000 2's.
5,000 3's, 50 5/10s and 5, 00 days net 2% off
days.

Yours truly,

Add to F. B. Roads order 20,000 1 lb. T. E. Dis

M. L.

6
✓
Safford, Va. Dec. 19, 1894

Elwood Man'g Co.,
Elwood, Va.

Gentlemen:-

We have an inquiry for 100,000 Dishes
to go to Providence, please advise us what to
do they want 1 lb.

Yours truly,
Wm. Safford

✓
Suffolk, Va. Dec. 22, 189

Woodward & Co.,
Richmond, Va.

S

Gentlemen:-

We have received memorandum of ship
ment to F. W. Head and have charged your account
with 9% commission on same. We presume that
you have forwarded him an invoice, if not
please do so at once.

Yours truly,

W. B. F. [Signature]

Oct, 24th 95.

D.K. Joyner & Bro,
Elwood, Va.

Dear Sirs;-

We hold contract from Elwood Mfg Co as Agents to sell the
thier entire output for the Year 1895, when you took hold of the Mil
it was with the express understanding that we were to handle the goods
just the same, and not until we agreed to this with J.A.Gum of the
Elwood, Mfg Co, would he agree to let you take the Mill, we have given
you orders for the goods and requested you to ship them tie and again
but not until this evening have we been informed that you would not ship,
we now notify you not to ship another dish except upon our orders now
in your hands, and when they are filled, we will give you others suf-
ficient to absorb the output of the Mill as per our contract with Elwood
Mfg Co, any violation in the past present or future we will look to both
parties for a reimbursement of all loss caused by such violation, we
protest against your shipping Dishes except through us,
We have placed the matter in hands of our Att'y and you will be called
upon for a settlemnt by him,

Very truly,

Dec. 12, 1894

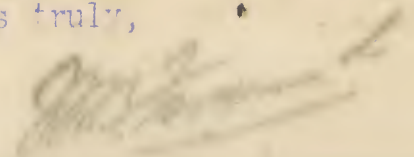
✓
"D"
Elwood Manf'g Co.,
Elwood, Va.

Gentlemen:-

Please ship W. E. Wells, Newark, N. J. the following bill of Butter Trays at once, these parties are rated 20,000 to 30,000 with good credit, 15,000 halves, 15,000 ones, and 20,000 two's, 50, 5/10's and 5 delivered, 30 days net or 2 off if paid in 10 days. We think these people will discount. We expect to send you an order for a car load for N. Y. the last of this week or the first of next.

Please let us have the proof that we sent you a few days ago of the price list as the printers has forms waiting to run them off.

Wells is particularly urgent for his shipment and hope that you will be able to have them there in 10 days. Please acknowledge receipt of the order, and oblige,

Yours truly,


Suffolk, Va. July 9, 1895

Elwood Manf'g. Co.,

Elwood, Va.

Gentlemen:-

Please note the enclosed letter of Mr. Read's and advise
that you desire us to do in your behalf.

Yours truly,

Suffolk, Va, July 11th 1895.

Elwood Mfg Co, Elwood, Va.

Dear Sirs;

We have your letter of the 11th, we wire as per your instructions F.B. Read offering to accept 75 cts per 1,000, and now await his reply,

Very truly, W.B. Ferguson & Co.

Please note enclosed, return as soon as you have digested same,

Suffolk, V July 15th95.

Elwood Mfg Co,
Dear Sirs:-

Ship the last order sent you to go to
N.Y. the party has written for them twice,

Very truly,

W.B. Ferguson & Co.

Dec. 3, 1934

✓
Elwood Manf'g Co.,
Elwood, Va.

Gentlemen:-

We are in receipt of a letter from our N. Y. Man, who desires that the shipment of Butter Bishes be made as promptly as possible, to use his language he says, I am figuring with another party, and if you do not hurry up he will not be able to handle the goods that you offer. We have some quotations of paper for trapping the Trays and if you desire us to send you some with samples, advise us and we will do so by first mail.

Yours truly,

Nov. 13, 1894.

✓
Elwood Manufacturing Co.,
Elwood, Va.

Gentlemen:-

Replying to yours of the 13th., contents of which have been carefully noted. Please advise us about what output would be for the year 1895, and should it become necessary in order to place your goods on the market to lower your values by reason of competition we would do so, and do we understand that the 50, 5/10, and 5s will apply to all points that take Jersey City rates. We note that you would want settlements on or before the 10th. of each month for all goods, we would suggest that for every shipment an invoice be sent direct to the purchaser accompanied by a ninety day acceptance, which could be accepted by them and return to you at once, it strikes us that this would be better and avoid accumulating large bills for the 10th. or any given date in the month. In other words every tub would then stand on its own bottom. About time will you be ready to fill orders? We suppose that your discount will apply to car load lots and less.

Yours truly,

JOHN A. GUM,
YELLOW PINE LUMBER.
Orders Solicited.

"A"

Elwood, Nansemond County, Va.,

Nov 13th 1894

Mess W B Ferguson & Co

Dear Sirs-

We will offer to you the following prices to sell our entire stock for the year of 1895 of long tin-ens butter dishes. to your customers at discounts of 50% 5/10 & 5. from the price list of 500/1st, 520/1st, 620/2nd, 800/3rd F.O.B. Co Jersey City, and allow you Commission of 5% on net sales. Settlement to be made on or before the 10th each month for all goods shipped month previous, by an acceptance of ninety days. Your early reply will oblige.

Yours truly, Elwood Mfg Co
John A. Gum, Pres

187

Dec. 10, 1894

✓
Wood Manf'g Co.,
Wood, Va.

Gentlemen:-

We enclose you a copy of a price list which we are about to have issued, if there are any corrections that you would suggest please make them and return proof to us at once.

We are now on the deal with several parties for a load lots, all hope to hear from them this week or at least them sometime a few days since.

Yours truly,

STATEMENT OF ACCOUNT.

Elwood, Va., May 1st 1895

Messrs W.B. Ferguson & Co

To ELWOOD MANUFACTURING CO., Dr.

Long Tin-End Butter Dishes,

FRUIT PACKAGES,

East Patent Truck Barrels.

264000 #2 B.T.	650	\$446.00 ✓
79000 #1 " "	550	434.50 ✓
40000 #1/2 " "	500	200.00 ✓
50-5/10-5		\$1050.50 ✓

Freight

✓ 755.84

✓ 294.66

✓ 26.36

\$268.30

Less four 5% commission

✓ 1341

✓ 2524.89

Shipped F.B. Reed

Car A + DTR #201

W.B.

2"

11 No

Elwood, Va., July 24th 1895

Messrs W.B. Ferguson Rec.

To ELWOOD MANUFACTURING CO.; Dr.
 Long Tin-End Butter Dishes,
 FRUIT PACKAGES,
 East Patent Truck Barrels.

July 24	To 132,000 # $\frac{1}{2}$ B.T. $\frac{1}{2}$ 5 ⁰⁰	660.00 ✓
"	68,500 #1 " 5 ⁰⁰	376.75 ✓
"	13,500 #2 " 6 ⁰⁰	87.75 ✓
		<u>1124.50 ✓</u>
	50 7/1005	<u>809.08 ✓</u>
	By freight	315.42 ✓
		<u>28.40 ✓</u>
	5% commission	\$ 287.02 ✓
		<u>14.35 ✓</u>
	3% Dis	\$ 272.67 ✓
		<u>8.15 ✓</u>
	Shipped W.B. Reed yesterday	264.49
	Via A & D # 403.	

No 3

81801

114 May 1877
Collected of Thapeto.

not delivered within 30 days to

ROBT. W. WITHERS,
ATTORNEY AT LAW,
SUFFOLK, VA.

SUFFOLK, VA.

We hand you our PRICE
LIST of the **Elwood Long,**
Tin-End Butter Dishes,
made of the best quality of
White Wood, guaranteed full
count and perfect finish.

You should get our best
discounts before you buy.

Write us your wants.

Respectfully,

W. B. FERGUSON & CO.

SOLE AGENTS.

List of Sizes and Prices.

SIZE	PRICE PER 1,000	QUANTITY IN BDL.
1/2-pound ----	\$5.00	500
1 pound ----	\$5.50	500
2 " ----	\$6.50	500
3 " ----	\$8.00	500
5 " ----	\$9.50	250
10 " ----	\$24.00	250

Discounts.

For car-load, one size or assort-
ed, delivered -----

For 100,000, one size or assort-
ed, delivered -----

For 50,000 or less, one size or
assorted, delivered -----

— BUY ONLY THE —

ELWOOD { LONG, TIN-END
BUTTER DISHES

FULL COUNT. — FIRST QUALITY. — FINE FINISH.

W. B. FERGUSON & CO., SUFFOLK, VA.

— SOLE AGENTS —

Price List

OF

ELWOOD

MANUFACTURING CO.'S

Long,

Tin-End

Butter Dishes.

W. B. FERGUSON & CO.

SUFFOLK, VA.

— SOLE AGENTS.

NEW LIST MAY 15, 1899.

Price List Long Tin Dishes

$\frac{1}{2}$ -lb.,	Crates of 500,	. . .	\$6.50
1	" " " "	. . .	7.25
2	" " " "	. . .	8.50
3	" " " "	. . .	10.50
5	" " " 250,	. . .	12.50
10	" " " 100,	. . .	30.00

JOHN A. GUM,

ELWOOD, VA.