

ants met this by showing that what they did in this respect was done with the approval of the plaintiffs. This met the plaintiffs' claim. They could not justly find fault with what was done with their own knowledge and approval. The defendants' evidence would also show that the plaintiffs relied upon the assumption of authority by Thompson Bros., and not upon the representation of the defendants implied in the presentation of the paper. This evidence of the defendants did not contradict the terms of the instrument, but met that of the plaintiffs which contradicted it. The rule invoked by the plaintiffs does not appear to have been violated.

The plaintiffs do not claim that the question of fact arising upon the evidence was not fairly laid before the jury, but insist that in their finding upon it the jury went contrary to the evidence. The transaction in respect to the delivery of the sold note to the plaintiffs was had between one of the plaintiffs and one of the defendants. This defendant testified that he fully informed that plaintiff how the business had been done, and that he approved of the method of it, and accepted the note. That plaintiff denies this. Another defendant testified that this plaintiff said shortly after, when he knew that Sherman & Taylor repudiated the sale, that the defendants had acted properly, and he did not blame them. That the plaintiffs pursued Sherman & Taylor tended strongly to show that they supposed that the sold note was executed upon due authority from them. This consideration was forcibly presented to the jury in argument in behalf of the plaintiffs. But the defendants might inform the plaintiffs of their reliance upon Thompson Bros. having authority from Sherman & Taylor, and the plaintiffs might approve of their acting on that reliance, and adopt what they had done, and proceed against Sherman & Taylor on that supposition. If the jury took that view, they would not proceed without evidence, nor so contrary to the weight of the evidence as to show that they had not fairly considered it. The weighing of the evidence is for the jury, and when they have had it to weigh, and appear to have weighed it fairly, the result reached by them should not be disturbed, although on another trial before another jury a different result might be, or probably would be, reached.

Motion for a new trial denied, and stay of proceedings vacated.

---

GUYOT, as Liquidator, etc., v. HILTON and another.

(Circuit Court, S. D. New York. November 29, 1887.)

**TRIAL—PRODUCTION OF PAPERS—DISCOVERY.**

A motion, made under Rev. St. § 724, relating to the production of books and writings, to require plaintiffs, the official liquidators of a firm, to produce for defendants' inspection, to enable them to prepare for trial, all the business books of the firm between certain dates, cannot be allowed. The proper practice in the case was by a bill of discovery.

*Shipman, Barlow, and Larocque & Choate*, for plaintiff.  
*Horace Russell*, for defendant.

LACOMBE, J. This is an application under the United States Revised Statutes, § 724,<sup>1</sup> to require the plaintiff, the official liquidator of Charles Fortin & Co., of Paris, France, to produce for inspection of the defendants, in order to enable them to prepare for trial, all the business books of that firm from the years 1872 to 1878, inclusive. A similar application made in the case of *Colgate v. Compagnie Francaise*, was denied by Judge WALLACE, (January, 1884,) on the ground that the proper practice to obtain such relief in this circuit is by bill of discovery. A statement of the considerations which have induced the adoption of such practice will be found in the report of the same case, upon demurrer to bill of discovery, in 23 Blatchf. 86, 23 Fed. Rep. 82.

The motion is therefore denied.

---

TOPLITZ and others v. MILLER and others, and Thirty Other Cases.

(Circuit Court, S. D. New York. November 1, 1887.)

COURTS—FEDERAL CIRCUIT COURTS—PRACTICE—CALENDAR.

The rule of October 1, 1887, for the government of the calendar of the circuit court for the Southern district of New York, provides that cases must be tried when reached in their regular order according to date of issue and place on the calendar. *Held*, on motion to stay the trial of certain cases for the term, on the ground that a case pending in the supreme court involved the same issues, that the rule would not be departed from where the affidavit for the purposes of the motion filed by the defense denied the identity of the issues.

Actions to Recover Excess of Duties Paid under Protest. On motions to stay trials for the term.

*Stanley, Clark & Smith* and *Hugh J. Begly*, for complainants.

*Stephen A. Walker*, U. S. Atty., and *Wm. Wickham Smith*, Asst. U. S. Atty., for defendants.

LACOMBE, J. Motions are made by the plaintiffs in these several cases for orders staying the trial of these cases for the present term. The single ground upon which these motions are made is that "plaintiffs' counsel, from an examination of the papers, and from statements made by plaintiffs' attorneys and others, including some of the plaintiffs, is satis-

<sup>1</sup> Rev. St. U. S. § 724: "In the trial of actions at law, the courts of the United States may, on motion and due notice thereof, require the parties to produce books or writings in their possession or power, which contain evidence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery. If a plaintiff fails to comply with such order, the court may, on motion, give the like judgment for the defendant as in cases of nonsuit; and if a defendant fails to comply with such order, the court may, on motion, give judgment against him by default."