

bank had reasonable cause to believe this, the transaction is avoided by the statute. The other officers of the bank did not know of it at the time. When they did know of it, the state of insolvency had so far progressed and made itself apparent that all were affected with knowledge of it. Perhaps they thus had left to the bank the right to repudiate the transaction, and to stand upon the obligations of the paper taken up. If so, and they availed themselves of that right, the stock could be left to go to the defendants; if not, and they stood upon the transaction as made by Sowles, acting for the bank, as well as for himself, they must take his act for the bank as he could perform it, and as if it had been done by any one else affected as he was. This would include his knowledge of his insolvent condition, and the purpose of the transfer. The bank must be affected by the knowledge which the only one acting for it about this transaction had. The transfer of this stock is avoided by the statute. *A fortiori* the transfer of the Wright contract is avoided. The defendants the assignees appear to be entitled to have this stock, and the Wright contract, or the avails of these, decreed to them.

Let there be a decree for the orator confirming his title and right to the notes and evidences of debt, and the avails of them, according to the prayer of the bill; and for the defendants' assignees, that they are entitled to the stock of the Union National Bank of Swanton, and the Wright contract, and the avails of them, and for delivery of the stock and contract if now in the orator's hands, and for an account of the avails if converted, according to the prayer of the cross-bill; without costs to either party.

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WITTERS, Receiver, v. SOWLES and others, Assignees.

(Circuit Court, D. Vermont. November 11, 1887.)

1. LIMITATION OF ACTIONS—COMMENCEMENT OF SUIT—PAROL EVIDENCE.

The time of commencement of judicial proceedings to avoid a statute bar may be shown by parol.

2. PRACTICE IN CIVIL CASES—REOPENING OF CASE—CUMULATIVE EVIDENCE.

A case will not be reopened for the introduction of newly-discovered evidence, where such evidence is merely cumulative, and its sources were well known to the parties at the first hearing.

3. JUDGMENT—STAY OF—NEWLY-DISCOVERED EVIDENCE.

Proceedings upon a decree will be stayed for the purpose of allowing parties to take and file testimony newly discovered, when such testimony appears to be material, and its materiality was not so direct and apparent that the failure to discover and produce it on the first hearing amounted to laches.

In Equity.

For statement of facts of this case, see *Witters v. Sowles*, ante, 758.

Chester W. Witters, for plaintiff.

Willard Farrington and Henry A. Burt, for defendants, assignees.

WHEELER, J. This cause has now been heard on a motion by the defendants for leave to take new testimony as to the reasonable cause

of the officers of the bank to believe that the defendant Sowles was insolvent, and that the mortgages were made with a view to give a preference to the bank, and as to whether the petition in insolvency was filed to be proceeded with when it was lodged with the judge of the court of insolvency.

The evidence claimed to be newly discovered as to the first point appears to be so far merely cumulative, and its sources were so well known to the defendants or their solicitors, that there is no ground apparent for opening the case on that subject.

At first it seemed that the second point would be governed by the record, and that parol evidence would not be admissible to affect it in any way. But the period of four months next before the filing of a petition within which conveyances may be avoided is a sort of limitation, and it appears to be well settled that the time of commencement of judicial proceedings to avoid a statute bar may be shown by parol. *Day v. Lamb*, 7 Vt. 426; *Gardner v. Webber*, 17 Pick. 407; 2 Greenl. Ev. § 431. Therefore, this evidence may be admissible, and quite material. It appears to be in fact newly discovered. Its materiality was not so direct and apparent that the failure to discover and produce it appears to amount to such laches that the defendants ought to be deprived of the opportunity to produce it now, upon some terms. The question of terms is reserved.

Proceedings upon the decree entered are stayed, and leave is granted to the defendants to take and file testimony as to the transaction of filing the petition of insolvency, at any time before December 1st, and the plaintiff has leave to file testimony in answer thereto at any time before December 17th, on such terms as may be hereafter fixed.

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WITTERS, Receiver, *v.* SOWLES and others, Assignees.

(Circuit Court, D. Vermont. November 11, 1887.)

JUDGMENT—STAY OF—NEWLY-DISCOVERED EVIDENCE.

A decree will be stayed for the taking and filing of newly-discovered testimony which is material, and which could not have been produced on the first hearing.

In Equity.

For statement of facts of this case, see *Witters v. Sowles*, *ante*, 758.

*Chester W. Witters*, for plaintiff.

*Willard Farrington* and *Henry A. Burt*, for defendants, Assignees.

WHEELER, J. This cause has now been heard on a motion by the defendants to take new testimony with respect to the reasonable cause of the officers of the bank to believe the defendant Sowles to be insolvent, and that the transfer of the notes and securities in question was made