

be upheld, and that both the nature and amount of the proof required must depend in a measure upon the age of the transaction. Upon a careful consideration of the whole proof, I am constrained to conclude that the deed from James Dunn, Sr., to John Dunn for the land in controversy was made for the purpose of enabling said John Dunn to sell said land for James Dunn, Sr., and that the legal title thereby held by said John Dunn was and is for the use and benefit of said James Dunn, Sr., whose right complainant now holds; and that a decree should be passed herein granting complainant the relief prayed for in his bill; and it will be so ordered.

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HEYMAN *v.* UHLMAN.

(Circuit Court, S. D. New York. April 16, 1888.)

**EQUITY—PRACTICE—APPEARANCE—FILING PLEADINGS.**

When a defendant served with subpoena entered his appearance, and filed his answer before the rule-day at which the writ was returnable, *held*, that under United States equity rules such practice was proper, and that replication should be filed on or before the rule-day succeeding that on which the writ was returnable.

In Equity. Motion to set aside an order dismissing a bill of complaint.

*Witter & Kenyon*, for complainant.

*Witmore & Jenner*, for defendant.

LACOMBE, J. The bill of complaint was filed, and subpoena served, January 14, 1888. The next succeeding rule-day was February 6th, and the rule-day thereafter, March 5th. Defendant entered his appearance February 2d, and filed his answer February 3d. No replication was filed on the March rule-day, and order was entered dismissing the bill. Complainant moves to set aside the order.

The question raised upon the motion is as to the interpretation of the rules in equity. Their language seems too plain to call for any elaborate discussion in view of the fact that they were presumably framed to promote the speedy administration of justice, and were not designed to delay suitors, except so far as might be necessary to insure a proper and orderly presentation of both sides of each case. A defendant served with subpoena must enter his appearance on or before the day at which the writ is returnable. His plea, demurrer, or answer must be filed on the rule-day next succeeding the day of entering his appearance, whether such rule-day is one day or thirty days after the entering of the appearance. The complainant has until the next succeeding rule-day after filing the answer in which to file general replication. There is no warrant in reason or authority for the proposition advanced by the complainant that an appearance can only be filed on a rule-day, and that therefore in

the case at bar defendant could not file his appearance before the February rule-day, nor his answer before March 5th. The default should be opened, and complainant allowed to file replication *nunc pro tunc*, upon proper stipulations as to expediting the trial, the details of which may be arranged upon settlement of the order.

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COFFIN *et al.* v. DAY *et al.*

(District Court, N. D. Illinois. April 18, 1888.)

1. PARTNERSHIP—FIRM AND PRIVATE CREDITORS—FRAUDULENT PREFERENCES.

A transfer by an insolvent firm of its property to one who had indorsed the paper of the firm and of its individual members to a large amount, and who, in consideration of the transfer, agreed to pay the obligations of the firm and of its individual members to a specified amount, including the paper on which he was indorser,—being made in good faith, and for an adequate price, is not fraudulent as to firm creditors.<sup>1</sup>

2. SAME.

Creditors of an insolvent firm have no legal claim on firm assets until they have acquired a vested lien by judgment or otherwise, and by consent of all its members such assets may be applied to the payment of individual creditors of the partners.<sup>1</sup>

In Equity. Bill to set aside alleged fraudulent preferences.

*Irwin, Flower, Remy & Gregory*, for complainants.

*Puterbaugh & Son, Hopkins & Hammond, and McCulloch & Son*, for defendants.

BLODGETT, J. This case now embodies five creditors' bills, or bills in the nature of creditors' bills, filed by creditors of Day Bros. & Co., to set aside certain alleged unlawful preferential payments made by said firm. The first case was brought by *Coffin et al. v. Day et al.*, by a bill filed in the circuit court of Peoria county, in June, 1885, and removed to this court, and was for the collection of judgments at law recovered by the complainants against Day Bros. & Co., between February 13, 1885, and June 2, 1885. The second case was brought by *Dorman et al. v. Day et al.*, in January, 1886, for the collection of two judgments at law rendered in January, 1885, against Day Bros. & Co. The third case was brought by *Parker et al. v. Day et al.*, in January, 1886, for the collection of a judgment at law rendered in July, 1885. The fourth case was brought by *Simpson et al. v. Day et al.*, in March, 1885, for the collection of a judgment rendered in December, 1884. And the fifth case was brought by *Richard et al. v. Day et al.*, in May, 1886, for the collection of a judgment rendered in May, 1886. On May 24, 1886, all these cases were, by an order of court, consolidated, with the provision "that said suits should henceforth proceed as one cause, without prejudice to

<sup>1</sup>See note at end of case.