

oblige himself to indemnify the said Marcus Heyland from and against all claims and demands, that may be rightfully made against him for, or on account of the said acceptances, either by the said William & John Bell & Co., or by the respective holders of the said acceptances, to an amount equal to the sum which may be paid over to the said Hugh Thompson in virtue of this arrangement. In testimony whereof the said Marcus Heyland and Hugh Thompson have hereunto subscribed their names and affixed their seals, on the eighth day of January, in the year of our Lord one thousand eight hundred and eleven.”

It further appears, that, subsequent to these agreements, Heyland did, at various times, between the 5th of March and the 13th of September, 1811, pay to Thompson, the sum of £8,889 5s. 4d. sterling; that the bills, drawn by Heyland, had been protested for non-payment, and then remained unpaid. And it further appears, that, some short time before April, 1812, Heyland failed, and obtained the benefit of the insolvent laws of this State; and that John McKim, Jun'r, and Thomas L. Emory, Jun'r, were appointed \* trustees for the benefit of his creditors, to whom he conveyed all his property accordingly. **153**

Upon these circumstances, the trustees, McKim and Emory, together with The British Copper Company, and others, holders of the bills drawn by Heyland, on the 22d of September, 1812, instituted this suit against Hugh Thompson and John Bell, the surviving partner in this country of William & John Bell & Co. They alleged, that the sums of money received by Thompson from Heyland, as shewn by their exhibit E, amounted to the sum of £8,889 5s. 4d. sterling; and prayed, that Thompson might be decreed to pay over to the trustees, McKim and Emory, for the benefit of the bill holders, and others, the creditors of Heyland, the amount received by him: and for general relief, &c.

On the 27th February, 1813, the defendant, Hugh Thompson, filed his answer, in which he admits, that the bills drawn by Heyland, were accepted as stated; that the agreement of the 20th November, 1810, and that of the 8th January, 1811, were made and executed as stated. And he then answers in these words:—“ This defendant avers, that the said agreement, bearing date the 8th January, 1811, was executed at the instance of Heyland; but this defendant denies that it was the intention of the said agreement, or the understanding of the parties, or of the counsel employed by them to reduce it into form, that Heyland should be entitled to indemnity, unless his payments to defendant should exceed the debt which should be actually due from Heyland to the house of Bell & Co. The true purpose of the agreement being, that as Heyland did not exactly know the amount which Bell & Co. had paid, or might pay for him, he should be secure of a restoration from this defendant of the surplus of his payments, if