

The question in such a case, would not be, whether a deed shown to be fraudulent and void, by disproving the consideration expressed, could be set up by evidence of a different consideration ; but whether a party asking the assistance of the court to enforce the payment of the purchase money, had *in fact been paid*. And whether paid in money, or in something which he agreed to receive as money, cannot be material.

I am, therefore, of opinion, that the evidence is admissible.

It is said, however, that though the evidence may be admissible, there is no sufficient proof to establish either the agreement set up in the answer, or a valid subscription binding the complainant, the Elysville Manufacturing Company, to the stock of the defendant.

With regard to the agreement, that the complainant would convey to the defendant the property in the deed mentioned, in consideration of receiving twenty-five thousand dollars of the capital stock of the defendant, I am persuaded, that a reasonable doubt cannot be entertained.

There is, in the record, a mass of evidence upon the point, both oral and written, which, in my judgment, irresistibly conducts the mind to the conclusion ; and many of the well authenticated and admitted acts, and declarations of the parties can be accounted for upon no other hypothesis. It would be tedious and useless, to recapitulate the evidence upon which this conviction rests ; and I content myself with saying, that after listening with much attention to the comments of counsel and carefully reading the proof, I am unable to see how it is possible to arrive at a different result.

The only remaining question relates to the validity of the subscription, by the complainant, to the capital stock of the defendant. The subscription, *in point of fact*, by the president of the former company, is not denied ; nor is it denied, that at or about the time the deed was delivered to the defendant, the attorney, in fact of the complainant, by whom the delivery was made, received from the defendant a certificate for the stock, and that this certificate has never been returned to the defendant since.