

fendant Riely contracted for building the house. It is not deemed necessary to examine very minutely the testimony of this witness for the purpose of ascertaining, whether it is sufficiently clear and explicit, to fix upon the defendant Riely the consequence of notice of the alleged assignment. Because, assuming that it sustains the plaintiff's view of it, it is not only destitute of any corroborating circumstances, but there are circumstances of the most pregnant character opposed to it.

According to the testimony of this witness, the defendant, in the spring of 1845, about the time the house was commenced, was informed that Hess had purchased the brick from the complainant, on the security of the three notes, which the defendant was to deliver to Hess, on the completing of the houses, and that subsequently in July of the same year, in another conversation between the witness and the defendant, upon the subject, and when the witness had called upon the defendant, for the purpose of getting some money, the defendant told him, the complainant had been to see him upon the subject, and that he, the defendant told the complainant, "it was all right, and that the notes were still in his hands, and that he intended to secure them for Rider," "and that he could not let the witness have money on that account."

Now, if this is true, it is difficult to assign a reason for the large subsequent advances made by the defendant to the witness. Why should he, in July, 1842, refuse to pay him money because of the obligation to secure the notes for the complainant, and yet, after that period, make him large advances in cash, to an extent, when added to the payments previously made, exceeding the whole sum to be paid for the house! The endorsement upon the contract of the 20th of December, 1844, which appears to be ante-dated, furnishes, in my opinion, no sufficient explanation of a course of conduct, so much at variance with that which a prudent man would have pursued, in similar circumstances. That endorsement, which, according to the evidence of Hess, was made in July or August, 1845, affords, I think, very strong evidence that Hess, by whom it was signed, at that time, did not think that the notes were to be reserved for the complainant.

On the contrary, it is manifest, he supposed the money