in the instrument, strictly speaking, a bill accepted by Hancock and Mann could not be passed to Dawson and Norwood—that could only be done by the payee or indorsee of the bill, and yet I presume it would not be contended, if these bills had been accepted by Hancock and Mann, before they were indorsed by Dawson and Norwood, that they would not come within the provisions of the deed. The acceptance by Hancock and Mann, is certainly *prima facie* evidence, that they were indebted to the drawer of the bills, in their amount, and such acceptance is an engagement to pay that amount to the payees, Dawson and Norwood, to whom they became indebted as acceptors, which brings them within the tenor of the deeds of mortgage. It is true, Hancock and Mann, the acceptors, did not pass these bills to Dawson and Norwood; nor could they so pass any bills accepted by them, as that could only be done by the payees, or indorsees; and, therefore, if it is indispensable to bring notes, and bills within the provisions of the deeds, that they should be passed by Hancock and Mann to Dawson and Norwood, it is obvious that the term "acceptance" had as well be struck out of the deeds.

My opinion, therefore, is that this objection cannot be maintained.

The defendant Robert B. Hancock has been examined under the usual order of the court, passed in such cases; but his competency is excepted to by the defendants, Winn and Ross, upon the ground that he is materially interested in the event of the suit, and in maintaining the plaintiffs' claim.

This witness is of the firm of Hancock and Mann, the acceptors of the bills held by the plaintiffs, and the makers and acceptors of the notes and bills held by Winn and Ross, as trustees of Samuel Jones; and as the question in this case is, whether the property in controversy shall be applied to the satisfaction of the one or the other of these creditors, the witness being liable to both, would seem to be in equilibrium; except as to the costs of this case, from which confessedly he has been released, and if so, he would clearly be a competent witness. *Greenleaf on Evidence, sections* 399, 420.