

No. 12424

Supreme Court of Illinois

Curtis.

vs.

Martin.

71641  7

1
It is remembered that heretofore to wit: on the
fifteenth (15th) day of October in the year of our Lord one thousand
and eight hundred and fifty three there was filed in the
office of the clerk of the Circuit Court of Peoria County in the State of Illi-
nois a Precept & Bond for costs which are in the words
and figures following, to wit:

Precept

"State of Illinois, } ss. In the Circuit Court
Peoria County, } To the November Term A.D. 1853

Wm. Martin	}	In debt	
Fredrick Kahl			
use of Melshire Scott Contray	}	Debt	\$ 9,000
& Springer Herbaugh			
vs	}	Damages	4,000
Marshall P. Curtis			

The Clerk of said court will
issue summons for debt in this cause returnable as
the law directs

Cooper & Reynolds
for plaintiffs
Peoria October 15th 1853

Bond for costs

We do hereby enter ourselves security for costs in the
above entitled cause and acknowledge ourselves bound
to pay or cause to be paid all costs which may accrue in
this action either to the opposite party or to any of the
officers of the court, in pursuance of the laws of this State
Dated this 15th day of October A.D. 1853 Cooper & Reynolds

And afterwards on the Seventh day of November in the year
of our Lord one thousand eight hundred and fifty three there
was ^{filed} in the office of the clerk of said Circuit Court in said
Cause a declaration ^{& copy of instruments sued on} in the words & figures following to wit:

Declaration

State of Illinois } In the Circuit Court
Peoria County } November Term 1853
1st

Wmick Martin and Frederick Stahl late partners
under the firm of Wmick & Martin & Co who sue for the use
of Springer Harbaugh and Melvin's Scott Country, the
plaintiffs in this suit Complain of Nathaniel D.
Castles of a plea that he render to the said plain-
tiffs the sum of nine thousand dollars lawful
money of the United States which he owes to and
unjustly detains from them, for that whereas the said
defendant on the first day of September in the year
of our Lord one thousand eight hundred and forty
seven at Columbus, that it to say at the county
aforesaid according to the usage and custom of
merchants made his certain bill of exchange in
writing bearing date the day and year aforesaid and thereby
then and there requested one E. Platt Esq Cashier of
the Leichter Manufacturing Bank New York as such
Cashier four months after the date thereof to pay to
the said plaintiffs or order the sum of four thousand
dollars value received and then and there delivered
the said bill of exchange to the said plaintiffs,
which said bill of exchange the said E. Platt Esq

3. as Cashier as aforesaid afterwards to wit on the day
and Year aforesaid at the County aforesaid upon sight
thereof, accepted according to the said usage and cus-
tom of Merchants and the said plaintiffs Avcs, that
afterwards when the said bill of exchange became due
and payable according to the tenor and effect thereof,
to wit; on the fourth day of January A.D. 1848 at the
County aforesaid the said bill of exchange so accepted
as aforesaid was duly presented and shown to the
said E. Platt Esq^r as Cashier as aforesaid for payment
thereof according to the said usage and custom of Mer-
chants and the said E. Platt Esq^r as such Cashier,
was then and there requested to pay the said sum of
Money in the said bill of exchange specified according
to the tenor and effect thereof, but that the said E.
Platt Esq^r as Cashier as aforesaid did not nor
would, when the said bill of exchange was so presented
and shown to him for payment thereof as aforesaid
or at any time afterwards pay the said sum of money
therein specified or any part thereof, but then and there
wholly neglected and refused so to do; of all which
said several premises the said defendant afterwards
to wit; on the day and Year last aforesaid at the County
aforesaid, had notice; by means whereof and according
to the said usage and custom of Merchants he the
said defendant then and there became liable to pay
to the said plaintiffs the sum of Money in the said bill
of exchange specified, when he the said defendant

Should be thereunto afterwards requested; and being
 so liable to the said defendant in consideration
 thereof afterwards, to wit: on the day and year last
 aforesaid at the County aforesaid agreed to pay to the
 said plaintiffs the said sum of money in the said
 bill of exchange specified, when to the said defendant
 should be thereunto afterwards requested; whereby and
 by reason of ~~the~~ the said sum of money in the said
 bill of exchange specified ~~when to the said defendant~~
 & being and remaining wholly unpaid, an action
 hath accrued to the said plaintiffs to demand and
 have of and from the said defendant, the said sum
 of money in the said bill of exchange specified,
 parcel of the said sum above demanded.

2nd And whereas also the said defendant on the
 tenth day of September in the year of our Lord one
 thousand eight hundred and forty seven at Columbus,
 that it is to say at the County aforesaid according
 to the usage and custom of merchants, made his certain
 other bill of exchange in writing, bearing date the day
 and year last aforesaid and thereby then and there
 requested one E Platt Esq^r Cashier of the Leather
 Manufacturers Bank, New York as such Cashier
 four months after the date thereof to pay to the said
 plaintiffs or order, the sum of five thousand dollars,
 value received, and then and there delivered the said
 bill of exchange to the said plaintiffs which said bill
 of exchange the said E Platt Esq^r as Cashier as aforesaid,

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afterwards, to wit: on the day and Year last aforesaid,
 at the County aforesaid upon sight thereof accepted,
 according to the said usage and custom of merchants
 and the said plaintiffs over that afterwards, when
 the said bill of exchange became due and payable,
 according to the tenor and effect thereof, to wit: on
 the 13th day of January A.D. 1878 at the county aforesaid,
 the said bill of exchange so accepted as aforesaid,
 was duly presented and shown to the said E Platt
 Esq as Cashier, as aforesaid for payment thereof according
 to the said usage and custom of merchants and
 the said E Platt Esq as Cashier as aforesaid,
 was then and there requested to pay the said sum of
 money, in the said bill of exchange specified according
 to the tenor and effect thereof, but that the said E Platt
 Esq as Cashier as aforesaid did not nor would, when
 the said bill of exchange was so presented and shown
 to him for payment thereof as aforesaid or any time
 afterwards, pay the said sum of money therein specified,
 or any part thereof, but then and there wholly
 neglected and refused so to do; of all which said several
 premises the said defendant afterwards, to wit:
 on the day and Year last aforesaid at the county aforesaid
 had notice; by means whereof and according to
 the said usage and custom of merchants, he the said
 defendant then and there became liable to pay the said
 plaintiffs the sum of money in the said bill of exchange
 specified, when he the said defendant should be thereunto

afterwards requested; and being so liable to the said defendant, in consideration thereof, afterwards, to wit: on the day and year last aforesaid, at the county aforesaid, agreed to pay to the said plaintiff the said sum of money in the said bill of exchange specified, when the said defendant should be thereunto afterwards requested; (whereby and by reason of the said sum of money in the said bill of exchange specified being and remaining wholly unpaid, an action hath accrued to the said plaintiff to demand and have, of and from the said defendant, the said sum of money in the said bill of exchange specified, parcel of the said sum above demanded).—

3rd And whereas also the said defendant Heretofore to wit: on the said first day of September in the year of our Lord one thousand eight hundred and forty seven, at Columbus, that is to say at the said county of Seneca, according to the usage and custom of merchants made his certain other bill of exchange in writing, bearing date the day and year aforesaid and then and there requested one E. Platt Esq. Cashier of the Leather Manufacturers Bank, New York as such Cashier four months aft. the date thereof to pay to the said plaintiff or order the sum of four thousand dollars (value received), and then and there delivered the said bill of exchange to the said plaintiff which said bill of exchange said E. Platt Esq. as Cashier as aforesaid, afterwards, to wit: on the day and year aforesaid, at the County

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aforesaid, upon sight thereof accepted according to the
 said usage and custom of merchants; and the said
 plaintiffs aver that afterwards when the said bill of
 exchange became due and payable, according to the
 tenor and effect thereof, to wit: on the fourth day of
 January A.D. 1878 at the County aforesaid the said bill
 of exchange so accepted as aforesaid was duly presented
 and shown to the said E. Platt Esq. as Cashier as
 aforesaid, for payment thereof, according to the said usage
 and custom of merchants and the said E. Platt Esq.
 as Cashier as aforesaid was then and there requested
 to pay the said sum of money in the said bill of exchange
 specified, according to the tenor and effect thereof, but the
 said E. Platt Esq. as Cashier as aforesaid, did not
 nor would when the said bill of exchange was so presented
 and shown to him for payment thereof as aforesaid,
 or at any time afterwards pay the said sum of money
 therein specified, or any part thereof, but then and there
 wholly neglected and refused so to do and the said
 plaintiffs aver, that at the time of the making of the
 said last mentioned bill of exchange and from thence
 until ~~at~~ and at the time when the same was so
 presented, and shown to the said E. Platt Esq. as Cashier
 as aforesaid for payment thereof as aforesaid, the said
 E. Platt Esq. as Cashier as aforesaid had not in his
 hands any effects of the said defendant, nor had he
 received any consideration from the said defendant
 for the acceptance or payment by him the said E.

E. Hall, Esq. as cashier as aforesaid, of the said
 last mentioned bill of exchange and the said defendant
 hath not sustained any damage by reason of his not
 having notice of the nonpayment by the said E. Hall
 Esq. Cashier as aforesaid of the said sum of money
 in the said last mentioned bill of exchange specified;
 of all which said several premises the said defendant
 afterwards, to wit: on the day and year last aforesaid,
 at the County aforesaid had notice; by means whereof
 and according to the said usage and custom of merchants,
 he the said defendant then and there became liable
 to pay to the said plaintiffs the said sum of money
 in the said bill of exchange specified, when he
 the said defendant should be thereunto afterwards
 requested, and being so liable he the said defendant,
 in consideration thereof, afterwards, to wit: on the day
 and year last aforesaid at the county aforesaid,
 Agreed to pay to the said plaintiffs the said sum of
 money in the said bill of exchange specified, when he
 the said defendant should be thereunto afterwards
 requested; whereby and by reason of the said sum
 of money in the said bill of exchange specified,
 being and remaining wholly unpaid, an action hath
 accrued to the said plaintiffs to demand and have of
 and from the said defendant, the said sum of
 money in the said bill of exchange specified, parcel
 of the said sum above demanded.

4th And whereas also the said defendant heretofore
 to wit: on the said tenth day of September in the
 Year of our Lord one thousand eight hundred and
 forty seven at Columbus, that is to say, at the
 said County of Iowa according to the usage and
 custom of merchants made his certain other bill
 of exchange in writing bearing date the day and year
 aforesaid and then and there requested one E.
 Platt Esqr Cashier of the Leather Manufacturers
 Bank, New York as such Cashier four months after
 the date thereof, to pay to the said plaintiffs or order
 the sum of five thousand dollars, (value received)
 and then and there delivered the said bill of ex-
 change to the said plaintiffs which said bill of
 exchange said E. Platt Esqr as Cashier as aforesaid
 said afterwards, to wit: on the day and year last
 aforesaid at the County aforesaid upon sight
 thereof accepted according to the said usage and
 custom of merchants and the said plaintiffs aver
 that afterwards when the said bill of exchange
 became due and payable, according to the tenor and
 effect thereof, to wit: on the 13th day of January A.D.
 1848 at the County aforesaid, the said bill of exchange
 accepted as aforesaid was duly presented and shown to
 the said E. Platt Esqr as Cashier as aforesaid for payment
 thereof according to the said usage and custom of mer-
 chants and the said E. Platt Esqr as Cashier as aforesaid,

10. Was then and there requested to pay the said sum of money in the said bill of exchange specified according to the tenor and effect thereof, but the said but the said E. Platt Esq. as Cashier as aforesaid did not move when the said bill of exchange was presented and shown to him for payment thereof as aforesaid or at any time afterwards, pay the said sum of money therein specified, or any part thereof; but then and there wholly neglected and refused so to do, and the said plaintiffs aver that at the time of the making of the said last-mentioned bill of exchange, and from thence until, and at the time when the same was presented and shown to the said E. Platt Esq. as Cashier as aforesaid for payment thereof as aforesaid to the said E. Platt Esq. as Cashier as aforesaid, had not in his hands any effects of the said defendant, nor had he received any consideration from the said defendant for the acceptance or payment by him the said E. Platt Esq. as Cashier as aforesaid of the said last-mentioned bill of exchange and the said defendant hath not sustained any damage by reason of his not having notice of the non payment by the said E. Platt Esq. as Cashier as aforesaid of the said sum of money in the said last-mentioned bill of exchange specified of all which said several premises he the said defendant afterwards, to wit in the day and Year last aforesaid, at the County aforesaid, had notice, by means whereof

11 And according to the said usage and custom of Merchants the said defendant then and there became liable to pay to the said plaintiffs the said sum of money in the said bill of exchange specified, when the said defendant should be thereunto afterwards requested, and being so liable the said defendant in consideration thereof, afterwards to wit, on the day and year last aforesaid at the County aforesaid, agreed to pay to the said plaintiffs the said sum of money in the said bill of exchange specified, when the said defendant should be thereunto afterwards requested; Whereby and by reason of the said sum of money, in the said bill of exchange specified, being and remaining wholly unpaid, an action hath accrued to the said plaintiffs to demand and have of and from the said defendant the said sum of money in the said bill of exchange specified, parcel of the said sum above demanded.

5th And whereas also the said defendant, on the said first day of September in the year of our Lord one thousand eight hundred and ~~fifty seven~~ forty seven, at Columbus, that is to say, at the County aforesaid, according to the usage and custom of Merchants made his certain other bill of exchange in writing bearing date the day and year aforesaid and thereby then and there requested one C. Platt Esq: Cashier of the Leather Manufacturers Bank New York as such Cashier four months after the date thereof to pay

to the said plaintiff, or order, the sum of four thousand dollars, (value received), and then and there delivered the said bill of exchange to the said plaintiff, and the said plaintiff further say, that afterwards when the said bill of exchange was so delivered to the said plaintiff, and when the same became due and payable according to the tenor and effect thereof, to wit: on the fourth day of January A. D. 1848 they the said plaintiff were ready and willing in due manner to present and show the said bill of exchange to the said E. Platt Esq. as Cashier as aforesaid, for acceptance and payment thereof and to demand of the said E. Platt Esq. as Cashier as aforesaid, acceptance of the said bill of exchange, and payment of the said sum of money therein specified according to the tenor and effect thereof and would accordingly ^{have presented} have presented the same to the said E. Platt Esq. as Cashier as aforesaid and have demanded, acceptance and payment thereof to wit: at the county aforesaid whereof the said defendant then and there had notice, but the said defendant then and there requested the said plaintiff not to present the bill of exchange to the said E. Platt Esq. as Cashier as aforesaid for acceptance and payment thereof, and then and there wholly dispensed with and discharged the said plaintiff from the presentment of the said last mentioned bill of exchange to the said E. Platt Esq. as Cashier as aforesaid for acceptance and

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Payment thereof; by means whereof, after the said bill of exchange became due and payable according to the tenor and effect thereof, to wit; on the day and Year last aforesaid, to wit; at the County aforesaid, the said defendant became liable to pay to the said Plaintiffs the sum of money in the said bill of exchange specified, wherein he the said defendant, should be thenceforth afterwards requested, and being so liable he the said defendant, in Consideration thereof, afterwards, to wit; on the day and Year last aforesaid at the County aforesaid agreed to pay the said Plaintiffs the said sum of money in the said bill of exchange specified, when he the said defendant should be thenceforth afterwards requested, whereby and by reason of the said sum of money in the said bill of exchange specified being and remaining wholly unpaid in action hath accrued to the said Plaintiffs to demand and have of and from the said defendant, the said sum of money in the said bill of exchange specified, parcel of the said sum aforesaid demanded.

6th And whereas also the said defendant, on the said tenth day of September in the Year of our Lord one thousand eight hundred and forty seven at Columbus that is to say at the County aforesaid according to the usage and custom of Merchants made his certain bill of exchange in writing bearing date the day and Year aforesaid, and thereby then and there

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requested one E. Platt Esq^r, Cashier ^{as such Cashier} of the Leather Manufacturers Bank New York, four months after the date thereof to pay to the said plaintiffs or order the sum of five thousand dollars, value received, and then and there delivered the said bill of exchange to the said plaintiffs, and the said plaintiffs further say, that afterwards when the said bill of exchange was so delivered to the said plaintiffs and when the same became due and payable, according to the tenor and effect thereof, to wit: on the 13th day of January A.D. 1848 they the said plaintiffs were ready and willing in due manner, to present and show the said bill of exchange to the said E. Platt Esq^r as Cashier as aforesaid for acceptance and payment thereof and to demand of the said E. Platt Esq^r Cashier as aforesaid, acceptance of the said bill of exchange and payment of the said sum of money therein specified according to the tenor and effect thereof, and would accordingly have presented the same to the said E. Platt Esq^r as Cashier as aforesaid and have demanded acceptance and payment thereof, to wit: at the County aforesaid, whereof the said defendant then and there had notice; but the said defendant then and there requested the said plaintiffs not to present the bill of exchange to the said E. Platt Esq^r as Cashier as aforesaid for acceptance and payment thereof, and then and there wholly dispensed with, and discharged the said plaintiffs from the presentment of the said last-

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mentioned bill of exchange to the said E. Platt Esq. as
 Cashier as aforesaid, for acceptance and payment thereof,
 by means whereof, after the said bill of exchange became
 due and payable, according to the tenor and effect thereof,
 to wit: on the day and year last aforesaid, to wit: at the
 County aforesaid, the said defendant became liable to pay
 to the said Plaintiffs the said sum of money in the said
 bill of exchange specified, when he the said defendant
 should be thereunto afterwards requested, and being so
 liable he the said defendant, in consideration thereof,
 afterwards to wit: on the day and year last aforesaid, at
 the County aforesaid agreed to pay to the said Plaintiffs
 the said sum of money in the said bill of exchange
 specified, when he the said defendant should be there-
 unto afterwards requested; Whereby and by reason of
 the said sum of money in the said bill of exchange
 specified being and remaining wholly unpaid an
 action hath accrued to the said Plaintiffs, to demand
 and have of and from the said defendant the said
 sum of money in the said bill of exchange specified,
 parcel of the said sum above demanded,

It em Whereas also the said defendant
 afterwards, to wit: on the tenth day of October in the
 year of our Lord one thousand eight hundred and
 fifty three at the County aforesaid was indebted to
 the said Plaintiffs in the further sum of seven thous-
 and dollars of like lawful money, for money by the said
 Plaintiffs before that time lent and advanced to, and paid,

laid out and expended for the said defendant, and at his like special instance and request, and also in the further sum of seven thousand dollars of like lawful money, for other money by the said defendant, before that time had and received to and for the use of the said plaintiffs, and to be paid by the said defendant to the said plaintiffs when he the said defendant should be thereunto afterwards requested; whereby and by reason of the said last mentioned sums of money being and remaining wholly unpaid, an action hath been accued to the said plaintiffs to demand and have of and from the said defendant the said several sums of money in this count mentioned, parcel of the said sum above demanded.

8th And whereas also the said defendant afterwards, to wit: on the tenth day of October, in the year of our Lord one thousand eight hundred and fifty three, at the County aforesaid, accounted with the said plaintiffs of and concerning divers other sums of money, before that time and then due and owing, and in arrear and unpaid, from the said defendant to the said plaintiffs, and upon that accounting the said defendant was then and there found to be in arrear and indebted to the said plaintiffs in the further sum of seven thousand dollars of like lawful money, to be paid by the said defendant to the said plaintiffs, when he the said defendant should be thereunto afterwards requested; and that the said defendant also afterwards

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to wit: on the day and year last aforesaid was indebted to the said plaintiffs in the further sum of three thousand dollars for so much money before that time and then due and payable from the said defendant to the said plaintiffs, for interest upon and for the forbearance of divers large sums of money before then due and owing from the said defendant to the said plaintiffs, and by the said plaintiffs forbore to the said defendant, for divers long spaces of time, before then elapsed, at the like special instances and request of the said defendant, whereby and by reason of the said last mentioned sums of money being and remaining wholly unpaid, an action hath accrued to the said plaintiffs to demand and have of and from the said defendant the said several sums of money in this count mentioned residue of the said sum above demanded. (Yet the said defendant (although often requested so to do) hath not as yet paid the said sum of nine thousand dollars above demanded or any part thereof, to the said plaintiffs. But he to do this hath wholly refused and still doth refuse to the damage of the said plaintiffs of four thousand dollars and therefore they bring this suit

Cooper & Reynolds
Attorney for Plaintiffs

Copy of Instruments sued on

\$4000⁰⁰

No 1275

Columbus Ohio

Sept 1st 1847

Four months after date pay to the order of Messrs
 Warrick Martin & Co Four thousand dollars ⁺/₁₀₀

Value received and charge the same to account
 of your

To E Platt Esqr Cash

Leather Manfst. Bk

New York,

obt Servt

N. B. Curtiss

\$5000⁰⁰

No 1276

Columbus Ohio

Sept 10th 1847

Four months after date Pay to the order of Messrs War-
 rick Martin & Co Five thousand dollars ⁺/₁₀₀ Value re-

ceived and charge the same to account of your

To E Platt Esqr Cash

Leather Manfst Bk

New York

obt Servt

N. B. Curtiss

Nathaniel D. Curtiss

To Warrick Martin & Co D

To Money paid and expended 7000.

" Money due on account stated 7000.

" Money due as interest 3000.

" Money loaned 7000 — "

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And afterwards on the thirtieth day of January A.D. 1854
there was filed in the office of the clerk of said court a demurrer of the de-
fendant to the declaration of the plaintiffs in said cause in the
words & figures following to wit:

Demurrer

to Declaration

"Warwick Martin

Fredenick Kahl for

the use of Wellshire

Scott Courtney & Springer

Wenbaugh

vs

Nathaniel B. Curtiss

In the Bond

Circuit Court

November Term 1853

"And the said defendant by
Purple & Sanger his attorneys comes and defends the
wrong & injury where &c & says that the 1st, 2nd, 3rd, 4th,
5th & 6th 7th & 8th counts of the said plaintiffs dec-
laration & the matters and things contained stated
and set forth are insufficient in law to have & main-
tain their aforesaid action thereof against him & that
he is not bound by law to answer the same & this
he is ready to verify.

Wherefore he prays Judgment &c.

And said defendant makes this his demurrer a
separate Demurrer to each count of said declaration.

Purple & Sanger

Attys for Deft

"And Jeffs join in demurrer"

Cooper & Reynolds

for Jeffs."

And afterwards on the sixth (6th) day of March A.D. 1854 there was filed in the office of the clerk of said Court in said cause the demurrer of the defendant to the 1st, 2nd, 3rd & 4th counts of the Plaintiff's declaration in the words & figures following to wit:

Demurrer to

1st, 2nd, 3rd & 4th Counts
of Declaration

Marwick Martin

Frederick Kahl for the
use of Melshire & Co Courtney
& Springer Harbrough

vs

Nathaniel B. Curtiss

In the Pond
Circuit Court,

And the said defendant by
Purple & Sanger his attorneys comes & defends the coming & injury
whereof and says that the said declaration and the matters & things
therein stated & set forth as to the first & second count thereof are in-
sufficient in law to have & maintain their aforesaid action thereof
against him and that he is not bound by law to answer the same,
And that he is ready to verify, (wherefore he prays judgment &c
on said Counts.

And the said defendant shows the following reasons for demurrer, to wit:

- 1st Because it is not averred in said counts that the bills of exchange described therein were Protested for non payment
2. Because it is not averred in said counts that the defendant was notified, that said bills had been protested for non payment.
3. Because it is not averred in said counts at what time the defendant was notified of the non payment of said bills of exchange,

Purple & Sanger for Deft.

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And the said defendant comes and defends the wrong & injury where & says that the said declaration & the matters and things therein stated as to the 3rd & 4th counts are insufficient in law for the said plaintiffs to have & maintain their aforesaid action thereof against him & that he is not bound by law to answer the same wherefore he prays judgment &c as to said counts

And the said defendant shows the following causes of demurrer to wit

1st Because it is not averred in said counts that said bills of exchange were protested for non payment,

2nd Because there is no averment in said counts that due notice of the non payment of said Bills was given to said defendant, and no legal excuse given, for not giving such notice

The plaintiffs join in demurrer

Cooper & Reynolds
for Petffs,

And on the same day to wit, the 6th day of March A.D. 1854 there was filed in the office of the clerk of said court in said Cause the Plea of the defendant to the 5th, 6th, 7th & 8th counts of the declaration of plaintiffs in the words & figures following to wit:

Plea to the 5th, 6th, 7th & 8th Counts of Declaration for use of Harbaugh & Courtenay
 Warick Martin & Frederick Kuhl vs
 In Peoria Circuit Court
 November Term A.D. 1853

Nathaniel J. Curtis

And the said defendant by Purple & Sanger his attorneys comes and defends the wrong and injury when &c, and as to the 5th, 6th, 7th & 8th Counts of said declaration, says, that he does not owe the said sums of money above demanded or any part thereof in manner and form as the said plaintiffs have above thereof complained against him and of this the said defendant puts himself upon the country &c.
 Purple & Sanger
 for Deft

And the plaintiffs do the like
 Cooper & Reynolds
 for Plffs. "

~~Read in the Circuit Court begun and held at the Court House in the City of Peoria in and for the County of Peoria in the State of Illinois on the second Monday of May in the Year of our Lord one thousand eight hundred and fifty four it being the eighth day of~~

And afterwards, to wit: on the 16th day of June A.D. 1854 there was filed in the office of the clerk of said Court in said cause the amended declaration of the plaintiffs therein in the words and figures following to wit:

Warwick Martin	}	In the Circuit Court
Fredrick Stahl vice &c		Peoria County Ill -
vs		May Term A.D. 1854.
Nathaniel B. Curtis		

And now come said plaintiffs and by way of Amendment to the first & second counts of their said declaration herein, and by leave of court first had & obtained, add to the said first count of said declaration, the following, to wit: "And thereupon afterwards, to wit, on the said fourth day of January A.D. 1848, to wit, at Peoria County aforesaid, the said bill of exchange was duly protested for non payment thereof, according to the usage & custom of merchants" the same to be inserted in said first count on the second page thereof & ninth line from the top, between the words "to do" & "of all" in said line - And in said second count on the 3^d page of said declaration, between the words "to do" & "of all" in the 6th line from the bottom of said page, insert - and thereupon afterwards, to wit, on said 13th day of January 1848, to wit, at the County aforesaid, the said Bill of exchange in said second count mentioned was duly protested for non payment thereof, according to the custom & usage of merchants" Cooper & Reynolds att for plffs

9th And for further Amendment of said declaration by leave of court - said plaintiffs complain For that

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Said defendant on the 1st day of September 1877 at Columbus, to wit: at said Peoria County, made his certain other bill of exchange, in writing, of ~~the~~ that date and then & there directed said bill to one E. Platt Esq^r, Cashier of the Leather Manufacturers Bank, New York, & therein & thereby requested the said E. Platt Esq^r, as such Cashier, four months after the date thereof, to pay to the said plaintiffs by the name & style of Harrick, Martin & Co. or order the further sum of 4000 dollars, for value received - and then & there delivered the said bill to the plaintiffs - And plaintiffs say that at the time of making said bill, it was understood, arranged & agreed by & between said plaintiffs & said defendant, that said bill should not be presented to said E. Platt Esq^r, Cashier, as aforesaid for acceptance or payment - but that the said defendant should at or before the falling due thereof, pay the same to the said plaintiffs. Yet plaintiffs say that said defendant has not paid the same or any part thereof to said plaintiffs - By means whereof after said bill became payable according to the tenor thereof - viz: on the 4th day of January A.D. 1878, to wit: at Peoria County aforesaid, said defendant became liable & in consideration thereof then & there agreed to pay to the plaintiffs the said sum of money in said bill specified, when thereunto afterwards requested - whereby & by reason of the said sum of money in said bill mentioned being & remaining wholly unpaid an action hath accrued to said plaintiffs to demand & have of said

defendant the said sum of money in said bill specified, parcel of the sum in said declaration above demanded.

Cooper & Reynolds
for plaintiffs.

10. And for that whereas the said defendant, afterwards, to wit: on the 10th day of September A.D. 1847, at Columbus, to wit: at said Peoria County, made his certain other bill of exchange in writing, of the date last named and then & there directed said Bill to one E. Platt Esq., Cashier of the Leather Manufacturers Bank, New York, and therein then & thereby requested the said E. Platt, Esq., as such Cashier, four months after the date thereof, to pay to the said plaintiffs, by the name & style of Martin H. Martin & Co. or order, the further sum of seven thousand dollars, for value received - and then & there delivered the said bill to said plaintiffs - and plaintiffs aver that at the time of making said bill, it was understood, arranged & agreed between said plaintiffs & said defendant that said bill should not be presented to the said E. Platt Esq., Cashier as aforesaid for acceptance or payment - but that defendant, before said bill should fall due, should & would furnish & place in the hands & at the disposal of said plaintiffs, funds out of which the same might be met & paid at maturity. Yet plaintiffs say that said defendant did not provide means out of which said bill could be paid,

although said bill is long since due & payable & that the same still remains wholly unpaid - By means whereof, after said bill became payable, according to the tenor thereof, to wit: on the 13th day of of January A.D., 1854, to wit: at the County aforesaid, said defendant became liable & in consideration thereof agreed to pay to said plaintiffs the sum of money in said bill specified, upon request -

Whereby & by reason of the said sum of money in the said bill of exchange specified, being & remaining wholly unpaid an action hath accrued to said plaintiffs to have & demand of said defendant the said sum of money in said bill specified, part of the sum in said declaration above demanded.

Cooper & Reynolds
for plffs

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And afterwards, to wit: on the 18th day of September A.D. 1853 there was filed in the office of the clerk of said court, ^{in said cause} the Pleas of the defendant to the Plaintiffs Amended declaration in the words & figures following to wit:

Warwick Martin	}	In the Peoria Circuit Court
Fredrick Kahl for	}	
the use of Wellshire	}	
Scott Courtney and	}	
Springer Warbaugh	}	November Term A.D.
vs	}	1853,
Nathaniel B. Curtis	}	

1 And the said defendant by Purple & Stanger his attorneys comes and defends the wrong & injury when &c and says that he does not owe the said several sums of money above demanded or any part thereof in manner and form as the said Plaintiffs have above thereof complained against him, and of this the said defendant puts himself upon the Country &c

And pleads to the like	Purple & Stanger
Coopers & Reynolds	for debt
for pleads =	

2 And for further plea in this behalf said defendant says actio non, because he says, that the said plaintiffs, before and at the time of the commencement of this suit, to wit, at the County of Peoria aforesaid, were and from thence hitherto have been and still are

indebted to the said defendant in the sum of fifteen thousand dollars of lawful money of the United States for divers Goods, Wares and Merchandize before that time sold and delivered by the said defendant to the said plaintiffs at their special instance and request. And also for money by the said defendant before that time lent and advanced to, and paid laid out and expended for the said plaintiffs and at their like request. And also for money by the said plaintiffs before that time had and received to and for the use of the said defendant. And also for money due and owing from the said plaintiffs to the said defendant for interest upon and for the forbearance of divers large sums of money due and owing from the said plaintiffs to said defendant & by the said defendant forbore to the said plaintiffs for divers long spaces of time before then elapsed. And also for money due and owing from the said plaintiffs to the said defendant upon an account stated between them - which said sum of money so due and owing from the said plaintiffs to the said defendant exceeds the supposed debt due and owing from the said defendant to the said plaintiffs and the damages sustained by the said plaintiffs by reason of the detention of the said supposed debt, is alleged to be due and owing to the said plaintiffs as in the said declaration mentioned and out of which said sum of money so due and owing from the said plaintiffs

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to the said defendant & the said defendant is ready and willing and hereby offers to set off and allow to the said plaintiffs the full amount of the said supposed debt and damages according to the form of the statute in such case made and provided, and the said defendant is ready to verify &c

Purple & Sanger
attys for deft.

3

And for further plea in the behalf by leave of Court &c said defendant says action non because he says that after the said sums of money in the said plaintiffs declaration became due and before the commencement of this suit to wit: on the first day of October A.D. 1853 at the County of Pima aforesaid he paid to the said plaintiffs the full amount of the said sums of money in said declaration mentioned together with all interest then then due thereon and this he is ready to verify (Wherefore &c)

Purple & Sanger
attys for deft.

4

And for further plea in the behalf by leave of the Court &c said defendant says action non because he says that the said several supposed causes of action in the said declaration mentioned did not, nor did any or either of them accrue to the said plaintiffs at any time within five years next before the commencement

of this suit in manner and form as the said plaintiffs
have above thereof complained against him said
defendant And this he is ready to verify &c
And said defendant makes the above plea separ-
ate to each count of said plaintiffs declaration
as amended & prays the same may be so con-
sidered & taken in the consideration of this cause,

Purple & Slinger

Attys for deft

And afterwards on the 20th day of September A.D. 1834 there was filed in the of-
fice of the clerk of said court in said cause the replication of the plaintiffs to the 2nd & 3rd
pleas of the defendant & the demurrer of the plaintiffs in the words & figures following to wit:

Replication &c

Demurrer of
the plaintiffs

Wamek O'Kenton

Frederick Stahl

vs Courtney & Harbaugh

Nathaniel B. Cortis

} Peoria Circuit Court

} Sept. Term T. D. 1834.

And said plaintiffs for repli-
cation to the plea of the said defendants to amended decla-
ration by him secondly above pleaded, say precludi-
non, because they say - That, before & at the time of
commencing said suit and from thence hitherto said
plaintiffs have not been nor are they now indebted to
the said defendant in the sum of fifteen thousand
dollars, nor in any sum whatever in manner & form as
in the said plea is pleaded and set forth and the said
plaintiffs pray may be enquired of by the country. Wherefore they
pray judgment &c,

Cooper & Reynolds
for plffs

And for replication to said 3^d plea of said defendant
 Plaintiffs say, that after the said sums of money in said
 declaration mentioned became due & payable before
 the commencement of this suit, said defendant did not
 pay to said plaintiffs the full amount of said sums
 of money in said declaration mentioned, with interest,
 in manner & form as alleged in said plea. And this
 Plaintiffs pray may be enquired of by the country, &c.
 Cooper & Reynolds
 For plaintiffs

And as to the plea of said defendant by him & his
 above pleaded, plaintiffs say, That the said plea
 and the matters & things therein pleaded & set forth
 are insufficient in law to bar the said action of said
 plaintiffs and to maintain said plea - and that
 said plaintiffs are not bound in law to answer
 the same - and this they are ready to verify -
 wherefore they pray judgment &c.
 Cooper & Reynolds
 For plaintiffs

And defendant comes
 & joins in said demurrer,

Purple & Singer attys for deft. "

And afterwards, to wit; on the 5th day of December A.D. 1854 there was filed in the
 office of the clerk of said Court in said cause the Pleas of the defendant in the words and
 figures following to wit;

Warwick Martin	}	In the Peoria Circuit Court November Term A.D., 1853
Frederick Hale for		
the use of Wellshire		
Scott Courteny and		
Springer Warlaugh		
N	}	
Nathaniel B. Curtiss		

6

And for further plea in this behalf said
 defendant says action on because he says that the
 said plaintiffs several supposed causes of action as
 stated and set forth in his ^{said} declaration are all upon
 other accounts, or promises not in writing, and that
 said several supposed causes of action in the said
 declaration mentioned, did not nor did any or either
 of them accrue to the said plaintiffs at any time
 within five years next before the commencement of
 of this suit, in manner and form as the said plain-
 tiffs have above thereof complained against him
 said defendant, And this he is ready to verify &c.

And said defendant makes the above plea,
 separate to each count of said plaintiffs declaration
 as amended & prays the same may be so considered &
 taken in the consideration of this cause.

Purple & Sanger
 attys for Deft.

7th

33

Mittedrawers

O And for further plea in this behalf by leave of the court
 first had and obtained said defendant says actio non as to
 the first and second & third & fourth counts in said plain-
 tiffs declaration, because he says that the bills of exchange
 mentioned in said counts were not presented to E. Platt
 Esq. Cashier &c. (the drawer) (the drawee) (the drawee
 in said bills) (mentioned for acceptance and that the
 same ~~will~~ were not accepted by said drawee ~~according~~
 according to the custom of merchants or otherwise, and
 that defendant had no notice of said non acceptance,
 and this he is ready to verify, Wherefore &c.

Purple & Sanger

attys for Deft.

8th

Mittedrawers

O And for further plea in this behalf by leave of the court
 as to the said first & second & third & fourth counts in
 said Plaintiffs declaration said defendant says actio
 non because he says that said bills of exchange in
 said counts mentioned, were not duly presented &
 shown to the said E. Platt Esq. Cashier (the drawee of
 said bills, for payment thereof on the 4th day of Janu-
 ary A.D. 1848 and the 13th day of January A.D. 1848,
 the time said bills became due respectively according
 to the usage & custom of merchants and that said E.
 Platt Esq. did not refuse to accept and pay said bills
 of exchange as in said counts stated & this he is ready to verify.
 Wherefore &c.

Purple & Sanger

Attys for Deft.

34th 9th

Withdrawn

And for further plea in this behalf by leave of the Court first had as to said first and second counts in said declaration mentioned said defendant says actis non, because he says that the said bills of exchange in said counts mentioned were not duly protested for non payment according to the usage and custom of Merchants on the 4th & 13th days of January 1848 respectively the times when said bills respectively became due as is stated in said counts & of this he puts himself upon the County &c

Purple & Sanger
attys for Deft.

10th

Withdrawn

And for further plea in this behalf by leave of the Court first had as to the third & fourth counts in said plaintiffs declaration, said defendant says actis non because he says that after the making of said bills of exchange and before and at the time the same became due and payable, the said defendant had funds and effects in the hands of E Platt Esq, Cashier, therein stated and that the said E Platt Esq, Cashier as aforesaid had received a consideration from said defendant for accepting and paying said bills of exchange in said counts mentioned, and this he is ready to verify, Wherefore &c,

Purple & Sanger
attys for Deft.

11th

And for further plea in this behalf by leave of the Court Juris has and obtained as to the fifth and sixth Counts of said Plaintiffs declaration said defendant says actio non because he says that after the making of said bills of exchange in said Count (mentioned), and before or at the time when the same became due and payable as in said Count stated, he did not request the said Plaintiffs not to present the said bills of exchange to the said C. Platt Esq. Cashier, Chañier & Co for the acceptance and payment thereof nor did he at any time after the making of said bills of exchange and before or at the time the same became due and payable dispense with and discharge the said plaintiffs from the presentment of said bills of exchange to said C. Platt Esq as Cashier as aforesaid for acceptance and payment of the same, and this he is ready to verify, &c.

Purples & Singer
Attys for Deft.

Warrick Martin &	3	In the Texas Circuit Court At November Term A.D. 1853.
Frederick Kahl use & d	3	
vs	3	
Nathaniel B. Curtis	3	

12

And for further plea in this behalf as to the ninth & tenth counts in said declaration being the counts in amended declaration says defendant says actio non because he says that there has been no arrangement

Agreement or understanding, between the defendant and said plaintiffs, that the bills of exchange mentioned in said counts should not be presented to the said E. Platt Esq. Cashier &c for acceptance or payment at any time within five years next before the commencement of this suit nor has said defendant in any way promised or agreed to pay said bills of exchange at any time within five years next before the commencement of this suit, in manner & form as the said plaintiffs have above complained against him & this he is ready to verify, (Wherefore &c,

Purple & Sanger
attys for Deft.

And for further plea in this behalf said defendant says Actio non as to the 9th & 10th counts of said plaintiffs declaration because he says that the understanding, arrangement and agreement mentioned in said cause counts as having been made between said plaintiffs & defendant by which it was agreed that plaintiffs need not present said bills of exchange in said counts mentioned to the said E. Platt Esq. Cashier for acceptance or payment & that defendant would pay the same at or before the maturity of the said bills of exchange, was a verbal understanding, arrangement & agreement & was made & entered into, at the same time that said bills

35 1/2

of exchange were made & executed and not afterwards or at any other time and this he is ready to verify, Wherefore &c

Purple & Singer
attys for Deft.

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And for further plea in this behalf as to said 9th & 10th Counts in said Plaintiffs declaration say said defendant says actio because he says that the understanding, arrangement and agreement mentioned in said counts by which defendant agreed that said bills of exchange need not be presented to said E. Platt Esq, Cashier &c for acceptance and payment & that he defendant would pay said bills of exchange on or before the maturity of the same was a verbal understanding, arrangement and agreement and was made and entered into at the same time said bills of exchange were made and executed and at no other time and that there was no consideration whatever for the making of said understanding, arrangement or agreement, except that stated and set forth in said bills of exchange and this he is ready to verify, Wherefore &c

Purple & Singer
Attys for deft,

[2424-22]

And on the same day to wit: the 8th day of December A.D. 1854 there was filed in the office of the clerk of the said court in said cause the demurrer of the plaintiffs to the pleas of the defense in the words & figures following to wit:

Demurrer

of plaintiff

in Pleas of

defendant

Warwick Martin

Frederick Stahl

vs Country

+ Harbaugh

vs

Nathaniel B. Curtis

In the Circuit Court

November Term A.D. 1854.

And the said plaintiff as to the 6th 7th 8th 9th 10th 11th 12th 13th & 14th pleas of the said defendant by him above pleaded says, that the same & the several matters and things ^{therein} alleged in manner & form as the same are therein pleaded & set forth are not sufficient in law to bar the plaintiff from having & maintaining their said action and that the plaintiff are not bound in law to answer the same - and thus the plaintiff are ready to verify - wherefore - and plaintiff make this demurrer several to each of said pleas and pray that the same may be so taken & considered -

And by way of assigning special causes of demurrer plaintiff say

1. said 6th plea is not responsive to the case made in the declaration - presents no defence to the action and at best amounts to no more than the general issue -

2. said 7th 8th & 9th pleas amount severally to the general issue - and said 7th & 8th pleas are also bad for duplicity

3. said 10th plea is not responsive to the material part of the counts to which it is pleaded, It does not

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sufficiently show that the drawee of said bills had funds applicable thereto - that defendant sustained any damage - and said plea amounts, at most, only to the general issue =

4. said 11th plea is not properly responsive to the counts to which it is pleaded, said plea amounts only to the general issue & is otherwise defective =

5. said 12th plea is no answer to the counts to which it is pleaded and is no defence to the action =

6. the matter of said 13th & 14th plea is not a defence to the action =

7. Said pleas are otherwise informal, defective, uncertain & insufficient = They also present immaterial & false issues

Cooper & Reynolds,

And on the same day to wit: the 8th day of December A.D. 1854 there was filed in the office of the clerk of said court in said cause the defendants exceptions to the deposition of J. G. Coffin in the words figured following, to wit:

Exceptions to
deposition of
J. G. Coffin.

Namrick Norton &
Frederick Tahl
vs
Nathaniel D. Curtis

In Circuit Court
Peoria County,

The defendant excepts to the deposition of J. G. Coffin taken in this case for the following reasons

1. Because the Commission is directed to Jasper E. Brady and is not executed by him but by one J. E. Brady
2. Because the notice and interrogatories are to take the deposition of E. Cardus Coffin, but the deposition returned is that of J. B. Coffin
3. The Commission's Certificate is informal and insufficient
4. Defendant objects to the witness answer to the 3rd interrogatory, Because he attempts to explain the meaning of a written instrument
- 5th Defendant objects to said witnesses answer to the 6th Interrogatory, Because he gives a conclusion for conversations, without stating the conversations.
6. The answer to the 7th Interrogatory is irrelevant, not responsive to the interrogatory, nor pertinent to the issues

Left excepts also to the deposition of Wm B. May.

Because the Commission is issued to Jasper E. Brady & is executed by one J. E. Brady

Purple & Singer
for Deft.

To Both

That said depositions are incompetent evidence and relate to matters which cannot legally be given in evidence)

Dec. 13. 1854.

Purple & Singer for deft."

And afterwards to wit: on the 11th day of December A.D. 1854 there was filed in the office of the clerk of said Court in said the Pleas of the defendant in the words & figures following, to wit:

Pleas to 9th & 10th counts New Pleas	Nathaniel Martin	}	In Circuit Court Pena County
	Frederick Kahl	}	
	or	}	
	Nathaniel B. Curtis	}	

1

And for further plea to the said Ninth & Tenth Counts defendant says action non because he says that he does not owe the said debt in the said Counts mentioned nor any part thereof and of this he puts himself upon the country &c

Purple & Singer
for Deft.

40
2 And for further plea to said 9th & 10th Counts said defendant says, that at the time of the maturity of the said Bills of Exchange in said declaration mentioned, he the said defendant had funds in the hands of the said E Platt Esq Cashier sufficient fully to pay & satisfy the same, of which the said Plaintiffs then and there had notice (Yet the said Plaintiffs neglected and refused to present the said Bill of exchange to the said E Platt Esq, for payment & this the said defendant is ready to verify, Wherefore he prays Judgment &c

Purple & Sanger
For Deft.

3 And for further plea to the said 9th & 10th Counts said defendant says actio non because he says that at the time of the maturity of the said Bills of Exchange, he the said Plaintiff, has funds in the hands of the said E Platt Esq Cashier sufficient fully to pay and satisfy the amount due ^{upon} ~~amount~~ the said Bill of exchange and this he is ready to verify
Wherefore he prays Judgt &c

Purple & Sanger
Deft's Attys

4 And for further plea in this behalf the said defendant says actio non because he says that the causes of action in the several Counts of said

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Plaintiffs declaration mentioned are one & the same and not other or different, and that at the time of the maturity of the said bills of exchange he the said defendant had funds in the hands of the said E Platt Esq. Cashier & sufficient fully to pay and satisfy the amount due upon the said Bills of Exchange of which the said plaintiffs had notice, Yet the said Plaintiffs wholly neglected and refused to present the said bill of Exchange to the said E Platt Esq. Cashier for payment thereof & this the said defendant is ready to verify, Wherefore he prays judgment &c

Purple & Sanger for Deft.

5

And for further plea in this behalf the said defendant says & avers now because he says, that the causes of action in the several counts of the said Plaintiffs declaration mentioned are one and the same and not other or different, and that at the time of the maturity of said Bills of Exchange in said several counts mentioned he the said defendant had funds in the hands of the said E Platt Esq. Cashier sufficient to pay the full amount due on the said bills of exchange & this he is ready to verify. Wherefore he prays judgment &c

Purple & Sanger for
deft.

Warwick Martin }
 Frederick Stahl } In Allegiance
 vs }
 Nathaniel J. Curtis }

And for further plea in this behalf the said defendant says acts now because he says that the causes of action in the several counts in the said Plaintiffs declaration mentioned one and the same and not other or different; and that the said several Bills of Exchange in said several counts in said declaration mentioned were made and executed in the State of Ohio, and that the money due thereon was by the terms and conditions of the said contracts and Bills of Exchange to be paid in the State of New York - and that by the laws, usages and customs of the said States of Ohio & New York where said bills were made and drawn & payable, the said several contracts in said several counts, in said plaintiffs declaration mentioned to dispense with presentment and demand for payment of said bills of exchange were wholly void, as being inconsistent with the terms & conditions & legal import of the said Bills of Exchange & this he is ready to verify

Wherefore he prays Judgment
 Purple & Sanger
 for Defendant

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That for further plea in this behalf said defendant by ~~to~~ leave of the Court first had says acts now because he says that previous to the time at which the Bills of exchange mentioned in said plaintiffs declaration became due and payable he paid to said plaintiffs the sum of nine thousand dollars in said Bank Notes issued by the New Hope & Delaware Bridge Company, which was the full amount of the said Bills of exchange.

And the said defendant avers that at the time said Bank notes were so paid to said plaintiffs the same were received by said plaintiffs for the sum of nine thousand dollars, being the same nine thousand due upon said two bills of exchange mentioned in said Pffs declaration and that amount, to wit, the said nine thousand dollars was at the time said money was so received by said plaintiffs, credited upon the books of said Pffs to the said defendant.

And defendant further states that at the time said bills were paid to said plaintiffs by the defendant, the said notes, passed as current amongst business men and were in good repute and current in the community, where they circulated and freely circulated as currency at par and that the company which issued said notes was good & solvent and redeemed its notes in specie, until after said notes were paid to, and received by said

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Plaintiffs & by them passed to the credit of said defendant upon their books - and defendant states that said Plaintiffs might at the time said notes were so received by them, have passed the same and paid the same out as good currency at par, but that they neglected and failed so to do and that after said notes had been retained by said plaintiffs for a considerable length of time the said New Hope & Delaware Bridge Company failed and said notes became of less value than par and that said plaintiffs then charged the amount of said notes then on hand by them to this defendant & seek to recover the amount of the same in this suit & this he is ready to verify, Wherefore &c

Purple & Sanger
attys for Deft.

8 And for further plea in this behalf by leave of the Court first had and obtained said defendant says acts now because he says that after the making of the bills of exchange in said plaintiffs declaration mentioned and before the same became due and payable he said defendant paid to said plaintiff the sum of nine thousand dollars which was the amount due upon said bills of exchange in the notes of the New Hope and Delaware Bridge Company, a company duly

45. authorized to issue Bank notes, that at the time said notes were paid to said plaintiffs, the sum of nine thousand dollars, the amount of said notes, was credited by said plaintiffs on their books to defendant, that at the time said money or notes were received by said plaintiffs, the said Company was in good repute & redeemed its bills in specie and said notes were at that time good & passed at par as a circulating medium or currency - that some time after said notes were paid as aforesaid, to wit: about the space of two weeks, said Bank ceased to redeem its notes in specie and the same became worth less than par and did not pass as currency, that said notes were paid to said plaintiffs in December 1847 - and the same or that portion of the same not paid out & used by said plaintiffs were retained by said plaintiffs until June AD, 1848 at which time the plaintiffs sold said notes to this defendant for the sum of fourteen hundred and seventy dollars, which ^{said} sum was then paid to said plaintiffs by said defendant and said notes were then delivered to said defendant by said plaintiffs, in consideration of their having received the said sum of \$1470 as aforesaid - which was to be a full satisfaction for said notes or bills and this he is ready to verify.

Wherefore he prays Judge &c
Purle & Singer attys for deft.

Demurrer

of the plaintiffs
1. Pleas of the
defendant,

And afterwards, to wit; on the 6th day of March A.D.
1855 there was filed in the office of the clerk of said court
in said cause the demurrer of the plaintiffs to the Pleas of the
defendant in the words and figures following, to wit;

Warick Martin & al

vs

Nathaniel B. Curtis

Circuit Court Sevier County

And plaintiffs as to the 1st, 2nd, 3rd, 4th,
5th, 6th, 7th & 8th new pleas filed herein on the 11th of December 1855
say, that the same & the matters & things therein contained in
manner form as the same are therein pleaded & set forth are in-
sufficient in law to bar the plaintiffs from having & maintaining
their said suit and they are not bound in law to answer the
same - And this said plaintiffs are ready to verify
Wherefore &c.

And plaintiffs make this demurrer
several to each of said pleas and ask that the same be
so considered and for assigning special causes of demurrer,
plaintiffs say -

- 1 Each of said pleas amounts only to the general issue
- 2 Neither of said pleas presents any sufficient defect to the same
- 3 - said 6th plea is defective in this, that it sets up that by the
laws of New York, where said bills were payable, the contract
referred to in said plea is void, whereas the laws of New York are
in no wise concerned in the construction or government of said contract.
said plea is also double, said pleas are otherwise defective, in
formal & insufficient Cooper & Reynolds for plffs

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And afterwards, to wit: on the 14th day of March A.D. 1855 there was filed in the office of the clerk of said court in said cause Pleas to 5th & 6th Counts of declaration in the words & figures following, to wit:

Pleas

to 5th & 6th

Counts of Declaration

Warwick Martin &

Frederick Stahl vs &c

vs

Nathaniel B. Curtiss

2

2

2

2

In the Second Circuit Court

November Term A.D. 1853

1

And for further Plea in this behalf by leave of the Court first had & obtained as to the fifth and sixth Counts of said Plaintiffs declaration defendant says act's now because he says that the request made by the defendant to the Plaintiffs as stated in said Counts not to present the said bills of exchange to the said E. Platt Esq. as Cashier (the drawee) for acceptance & payment thereof and the dispensing with & discharge of the said plaintiffs from the presentment of the said bills of exchange to the said E. Platt Esq. Cashier for the acceptance and

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Payment thereof was a verbal request, a verbal dispensing with & discharge of said plaintiffs as aforesaid, and was and were made and entered into at the same time, that the said bills of exchange were made & executed and at no other or different time, and this the said defendant is ready to verify. Wherefore He prays judgment &c

Purple & Singer
attys for Deft.

3

And for further plea in this behalf by leave of the Court first had & obtained as to the fifth & sixth counts of said plaintiffs declaration, defendant says actis non because He says, that at no time subsequent to the making and executing of the said Bills of exchange in said counts mentioned & before the same became due and payable as stated in said counts did He request the said plaintiffs, not to present the said Bills of exchange or either of them to the said E. Platt Esq. Cashier &c for the acceptance and payment of the same as stated in said counts, Nor did He at any time after the making & executing of said bills of exchange and before, or at the time the same became due and payable, dispense with and discharge the said plaintiffs from the presentment of said bills of exchange to said E. Platt Esq. as Cashier as aforesaid for acceptance and payment of the same & this He is ready to verify &c

Purple & Singer
attys for Deft

3) 49

And for further plea in this behalf by leave of the Court first had & obtained said defendant says Actio non as to the fifth & sixth Counts of said declaration because he says, that the said Bills of Exchange in said Counts mentioned were made and executed in the State of Ohio, and that by the laws, usages & customs of the said State of Ohio where said bills were made and drawn, the several Contracts in said Counts mentioned in said plaintiff's declaration to dispense with the presentation of said Bills of Exchange for acceptance and payment or for payment, were wholly void as being inconsistent with the terms & conditions & legal import of the said Bills of Exchange & this he is ready to conffy.

Wherefore he prays Judgment &c
 Purple & Stanger
 for de ft

4

And for further plea in this behalf said defendant as to said fifth & sixth Counts says actio non because he says that the said Bills of Exchange in said Counts mentioned were made payable in the State of New York & that by the terms & conditions of said Bills of exchange the money secured to be paid thereby was to be paid in the State of New York - And defend-
 And defendant avers that by the laws, usages and customs of the said State of New York, where said Bills of exchange were made payable, the said

50.

Several Contracts & requests mentioned in said counts to dispense with the presentment of said Bills of Exchange for acceptance and payment or for payment were wholly void, as being inconsistent with the terms, conditions & legal import of the said bills of exchange & this he is ready to verify

Wherefore he prays Judgment &c

Purple & Stinger

Attys for Deft.

And on the same, to wit: March 14th A.D. 1855 there was filed in the office of the clerk of said Court in said cause the Replications, Motion & Demurrer of Plaintiffs in the words & figures following, to wit:

Replications
Motion &
Demurrer

"Harrick Martin & Co. 3^d Circuit Court
as 3^d March Term 1855
Nathaniel B. Curtis 3^d
1st

And said plaintiffs for replication to the plea of the said defendant 1st above pleaded as of the date of March 14th 1855 to the 5th & 6th Counts of said declaration say, Precludi non, because they say that the request of said defendant to said Plaintiffs not to present said bills of exchange for acceptance & payment & dispensing with such presentment was not a verbal request & discharge in manner & form as in said plea is alleged - and this plaintiffs pray may be inquired of by the country, Wherefore &c Deft doth the like

Purple & Stinger
for Deft

Cooper & Reynolds
for plffs

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And as to the 2nd plea of said defendant of said date plaintiffs move to strike the same from the files for the reason that said plea is the same heretofore pleaded, in terms & in substance, by said defendant, to said 5th & 6th Counts, and overruled by this Court on demurrer thereto by said plaintiffs

Cooper & Reynolds

for plaintiffs

2nd And for replication to the 3rd plea of said defendant of said date, plaintiffs say preclusion because they say, that by the laws of the State of Ohio where said Bills of Exchange purport to have been made & drawn, said several contracts in said 5th & 6th Counts of said declaration, disposing with the presentation of said Bills of Exchange for acceptance & payment were not wholly void as in said plea is alleged - And this

plaintiffs pray may be inquired of by the Court - Wherefore they pray judgment &c.

Deft doth the like

Cooper & Reynolds

Purcell & Sanger

for plaintiffs

for deft

And as to the 4th plea of said defendant of said date - plaintiffs say, the same & the matters & things therein contained are insufficient in law in manner & form as the same are therein pleaded to bar said

52.

Plaintiffs from having & maintaining their said suit, and that plaintiffs are not bound in the law to answer the same - and this plaintiffs are ready to verify - Wherefore they pray judgment &c.

Cooper & Reynolds
for Plffs.

And for further replication to said 3^d plea by leave of the Court first had and obtained, plaintiffs say, that said Bills of exchange were not made & drawn in said State of Ohio as in said plea is alleged - and this plaintiffs pray may be enquired of by the country - Wherefore &c.

Deft doth the like
Purple & Sanger
for deft. "

Cooper & Reynolds
for plffs

Demurder to	And on the same day, to wit: on the 14th day of March A.D. 1855 there was filed
plaintiffs	in the office of the clerk of said court in said cause the Demurder of defendant
Replications	to Plaintiffs replications in the words & figures following, to wit:
Demurder to	"Marwick Martin & Co
plaintiffs	vs
Replications	Nathaniel B. Curtis
	3 Circuit Court of Peoria
	3 Co. Ill

And the said defendant comes and says that the replications of the said Plaintiffs to the 7th plea of said defendant are insufficient in law, in manner & form as the same

are above pleaded & set forth for the said
 Plaintiffs to have or maintain their aforesaid
 action against said defendant & that said de-
 fendant is not bound by law to answer the
 same & this said defendant is ready to verify,

Wherefore he prays judgment &c.

Purple & Sanger

Attys for Deft.

And Jeffs do the like

Cooper & Reynolds"

And afterwards, to wit: on the 19th day of March A.D. 1855 there was
 filed in the office of the clerk of said court in said cause the
 defendants Bill of Exceptions in the words & figures following to wit:

Thursday March 15th A.D. 1855

Bill of Exceptions

filed

19th March A.D. 1855

Warwick Martin & Co

vs

Nathaniel B. Curtis

In the Circuit Court
 of Peoria County,

Be it remembered that on this
 day this cause came on to be heard upon the
 Plaintiffs motion to strike from the files the 2nd
 plea filed on the 14th March 1855 which was argued
 by Counsel and the said plea was by the court ordered
 to be stricken from the files whereupon the said
 defendants by their attorneys then and there excepted

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to the opinion & Judgment of the Court in that respect and requested the Court to seal this bill of exceptions which is done
March 19, 1855

Amos Peters, Seal

And afterwards to wit: on the 20th day of March A.D. 1855 then
was filed in the office of the clerk of said Court in said cause
the Rejoinders of the defendant therein to second replication of
plaintiffs to 7th plea of the defendant in the words & figures following, to wit:

Rejoinders

Warwick Martin et al } In the Circuit Court
vs } of Penna County
Nathaniel B. Curtiss } March Term 1855,

That the said defendant as to the second
replication of the said plaintiffs to the 7th plea of
defendant of the date of December 11th says that
the said plaintiffs by reason of any thing by them
in said replication alleged ought not to have and
maintain their aforesaid action because he says that
said notes of the New Hope & Delaware Bridge
Company Bank were not left with said plaintiffs
by said defendant & received by said plaintiffs
as collateral security for the payment of said
bills in said declaration mentioned & for the pur-
pose of giving being put in circulation by said plain-
tiffs in the ordinary course of their business, and of this he
puts himself upon the country. Perple & Sanger
John Jeffers do the like For Deft.
Cooper & Reynolds =

58
And for a further rejoinder to said replication
by leave of the court first had & obtained said de-
fendant says that the said plaintiffs by reason
of anything in said replication alleged ought not
to have or maintain their aforesaid action because
he says, that the sum of \$5880 in New Hope &
Delaware Bridge Company Bank paper alleged
to be in the hands of said plaintiffs at the time
of the failure of said Bank, were not on the 20th
day of June 1858 or at any other time returned
to him by plaintiffs & by defendant received as &
for part & parcel of the same sum of \$9000.
deposited with plaintiffs by defendant, but that
said sum of \$5880 was sold by Peffs to de-
fendant for the sum of \$1470, which would
be in full satisfaction of said bank notes, and
also of all matters connected with said bills
of Exchange & this he is ready to verify
Wherefore &c.

Purple & Sanger
attys for Deft.

And, on the same ^{day} to wit: on the 20th day of March
A D 1858 there was filed in said the office of the clerk of
said court in said cause a Surrejoinder of the plaintiffs
to the Rejoinder number 2 to the 2nd replication of plaintiffs
to the 7th plea of defendant of the date of March 14th 1858 in the words
& figures following, to wit:

56 =

Warwick Martin & al
vs
Nathaniel B. Cortiss

Circuit Court
March Term A.D. 1855.

And for surrejoinder to the rejoinder
number 2 to the 2nd replication of plaintiffs to the 7th
plea of defendant of the date of March 14th 1855 plain-
tiffs say Precludi non, because they say that said 5880
dollars in the notes of said New Hope & Delaware
Bridge Company Bank were not sold by said plaintiffs
to defendant for the sum of 1470 dollars in discharge &
satisfaction of said bills of exchange in manner & form
as in said rejoinder is alleged - and this plaintiffs pray
may be enquired of by the country - Wherefore &c
Cooper & Reynolds

"Left debt the like
Purple & Orange
for debt" "for plaintiffs = "

And afterwards to wit: on the 22nd day of March A.D. 1855 there was filed in the office
of the clerk of said court in said the demand of the defendant to plaintiffs & plain-
tiffs defendant's 1st plea filed March 14th 1855 in the words & figures following to wit:

Warwick Martin &
Frederick Stahl who sue for
the use of Spriggs Harbaugh
& Melshire Scott Courteny
vs
Nathaniel B. Cortiss

In the Circuit Court
of Pond County,
November Term A.D. 1853

And the said defendant to the

Plaintiff's replication to defendant's 1st plea filed March 14th 1855 says that the matters and things in said replication contained, are not sufficient for said plaintiff to have and maintain his action aforesaid against the said defendant and that he is not bound in law to answer the same and this he is ready to verify, wherefore he prays judgment &c.

And said defendant for special cause of demurrer to said Rep. says

- 1st That the same is not entitled as of the proper suit.
- 2nd That it is not entitled of the proper term.
- 3rd Because it does not set forth and show the request and discharge in said Replication mentioned, so that the Court or the party can see whether it is a legal and valid request or discharge.

And for rejoinder to the Plaintiff's Replications to the Defendant to Defendant's 3rd Pleas Defendant says actis non because he says that said replications and the matters and things therein contained are not sufficient in law for said Plaintiff to have & maintain his action aforesaid against the said Defendant & that he is not bound in law to answer the same & this he is ready to verify, (Wherefore he prays Judgment &c.

And said Defendant for special Cause of demur-
rer says

1st That neither of said Replications are entitled in
the proper case, nor of the proper term

2 Because said Replications are in other
respects informal and insufficient

Purple & Longer
for Defts "

And on the same day to wit: on the 22nd day of March A.D. 1855 there was filed in the office
of the clerk of said court in said cause the exceptions of the defendant therein to
the depositions of J. G. Coffin & J. B. McVay in the underfigure following to wit:

Warwick Martin and	} In Circuit Court of Peoria County,
Frederick Kahl who sue for	
the use of Springer Karbaugh	
& Melshire Scott Courteney	
vs.	
Nathaniel B. Curtiss	}

Exceptions to the depositions of J. G. Coffin
& J. B. McVay taken and filed in this cause

To J. G. Coffin's Deposition

1st Because the notice is to take the deposition of
J. Gardner Coffin & the deposition taken purports to be

the deposition of J. P. Coffey there being nothing to establish the identity of the parties.

2. Because the Commission is directed to Jasper E. Brady and executed by J. E. Brady without any evidence of the identity of the parties

3. Defendant excepts to the answer of witness to the second interrogatory so far as the same relates to the business of defendant or his contemplated business, because he says he learned it from conversation with him, without stating what the conversation was,

4th Defendant excepts to the answer of said witness to the 5th interrogatory - Because said witness attempts to explain the meaning of a written contract - and that the drafts were made at a place different from what they purport to have been made & Because he states "that it was ^{well} understood at the time that Mr. Leinties no funds in the bank to draw upon,"

5th To the answer of said witness to the 6th interrogatory - Because the answer is illegal & incompetent evidence - relates to conversations had at the time the drafts were drawn - contradicting the legal effect of the written instrument - & without any statement or detail of the conversations

6th To the answer to the 7th interrogatory Because said answer sets up a parol contract, contrary to the terms. Conditions & legal effect of the written contract declared on

Because said answer is irrelevant and incompetent evidence,

7. To the answer to the 8th Interrogatory, Because the same is irrelevant & incompetent evidence & Because his statement of the return of the notes is uncertain and indefinite

To the deposition of J. B. McVay

1st Because the commission is directed to Casper C. Brady and is executed by J. E. Brady without any evidence of the identity of the parties

2 To Answer to 1st interrogatory Because he says that said drafts were given in some way in connexion of the New Hope & Delaware Bridge Co. &c., - said answer being wholly irrelevant.

Purple & Sanger
for deft. "

And afterwards to wit^m the 24th day of March 1855 then was filed in the office of the clerk of said court in said cause the Bill of Exceptions of defendant on defendant's Motion to suppress & read the depositions of J. E. Coffin & J. B. McVay in the words in figures following, to wit:

"Warwick Martin &
 Frederick Stahl who sue
 for the use of Springer Harbaugh
 Melshire Scott Cloutney

vs
 Nathaniel B. Curtis

Alsumpsit

Be it remembered that on
 this day this cause comes on to be heard, upon the
 defendants motion to suppress, and exceptions to the
 depositions of J. G. Coffin and J. B. McVay taken
 and filed in this cause - which motion was made
 and filed on the 22nd March A.D. 1855 and is as
 follows

"Warwick Martin and
 Frederick Stahl who sue
 for the use of Springer
 Harbaugh Melshire Scott
 Cloutney

In Circuit Court
 of Pona County

vs
 Nathaniel B. Curtis

Exceptions to the depositions
 of J. G. Coffin & J. B. McVay taken and filed in this
 case

vs J. G. Coffin's deposition

1st I give the notice is to take the deposition of
J. Gardner Coffin & the deposition taken purports to be
 the deposition of J. G. Coffin there being nothing to

establish the identity of the parties

2 Because the commission is directed to Jasper E Brady and executed by J E Brady without any evidence of the identity of the parties.

3 Defendant excepts to the answer of witness to the second interrogatory so far as the same relates to the business of defendant or his contemplated business because he says he learned it from conversation with him without stating what the conversation was

4 Defendant excepts to the answer of said witness to the 5th Interrogatory - Because said witness attempts to explain the meaning of a written contract - and that the draft was made at a place different from what they purport to have been made & Because he states "that it was well understood at the time that Mr Canty has funds in the bank to draw upon"

5 To the answer of said witness to the 6th interrogatory - Because the answer is illegal & incompetent evidence - relates to conversations had at the time the drafts were drawn - contradicting the legal effect of the written instrument & without any statement or detail of the conversations.

6th To the answer to the 7th interrogatory
Because said answer sets up a "parol" contract
Contrary to the terms conditions & legal effect of the
written contract declared on

Because said answer is irrelevant
and incompetent evidence

7. To the answer to the 8th Interrogatory Because
the same is irrelevant & incompetent evidence & be-
cause his statement of the return of the notes is
uncertain and indefinite

To the deposition of J. B. McVay

1st Because the Commission is directed to Jas-
es E. Brady and is executed by J. E. Brady
without any evidence of the identity of the parties

2. To answer to 1st Interrogatory because he says
that said drafts were given in some way in connec-
tion of the New Hope & Delaware Bridge Co. —
said answer being wholly irrelevant

Purple String
for deft."

Upon hearing, the Court sustained the exceptions to
the following portions of the said depositions

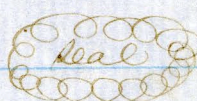
Part of J. S. Coffin's answer to 5th Interrogatory
as follows

"the words 'naiving acceptance' was put on the face of these draft, for the purpose of obviating the necessity of the Banks accepting them or having them protested for non acceptance, as it was well understood at the time that Mr Curtis had no funds in the Bank to draw upon,"

also Part of said witness, answer to the 6th Interrogatory as follows

"From the conversations which I had with the defendant at the time the drafts were drawn or negotiated, it was not intended that he should have funds in the Bank to meet them at their maturity the arrangement contemplated a different mode of payment,"

And the said court then and there overruled the said plaintiff's motion and exceptions to said depositions except as to the portions of said J. S. Coffin's deposition before copied, to which ruling and decision of the court the defendant then and there at the time of said ruling and decision excepted, and requested the court to seal this bill of exceptions which is done

Onslow Peters 

And afterwards to wit the 19th day of May A.D. 1856 then made filed in the office of the clerk of said court in said cause the defendants ~~not~~ Bill of Exceptions on the motion to suppress depositions in the words & figures following, to wit

Bill of Exceptions

"Warick Martin &

Frederick Stahl &

vs

Debt

Nathaniel B. Curtis

Do it remembered that on this

day this cause came on to be heard on the motion herein before entered at this term to suppress depositions which said motion is as follows, "Circuit Court, Tazewell County, Warick Martin and Frederick Stahl for the use of William Scott Courtney & Youngs & Co. vs Nathaniel B. Curtis - debt - Nathaniel B. Curtis vs Frederick Stahl - In Chancery

Exceptions to the depositions of Doctor William Heneberg - 1st Because said depositions are taken in suit suits, under only one commission - 2. Because the same is not duly certified 3 Because the statements contained in said deposition are irrelevant and of a hearsay character, containing extracts from letters which are not produced and proved and which would be incompetent and irrelevant testimony if produced. 4 Because said deposition is otherwise informal and irrelevant & incompetent testimony. N. B. Purple, for N. B. Curtis.

Also to the depositions of F. H. Frethy and Michael W. Connor for the same reasons last herein before stated as objections to the deposition of William Heneberg. N. B. Purple, for N. B. Curtis."

whereupon the Court overruled the said motion so far as the same relates to the depositions of F. H. Frethy and Michael W. Connor, and sustained said motion as to the residue of the said depositions - and the defendant then and there excepted to the opinion of the Court and requested the Court to leave this bill of exceptions which is done. May 19th 1856. Jacob Gale Seal & Co."

And afterwards to wit: on the 17th day of November A.D. 1856 there was filed in the office of the clerk of said court in said cause the Motion of the defendant for a change of venue therein in the words and figures following, to wit:

Motion for change
of venue

Warwick Martin
Frederick Kahl
vs Springer Worbaugh
Willehine Scott Courtnay

In the Circuit Court
of the County of Peoria

Nathaniel B. Cortiss

The defendant in this suit
enters a motion for a change of venue in this cause,
for the reason that the Judge of said Court is of
Counsel for the said defendant.

N. H. Purple Defts atty.

State of Illinois ss.
Peoria County,

N. H. Purple being sworn
says that he is advised & believes that E. N. Powell
the Judge of the Circuit Court of Peoria County is of
Counsel for the defendant in the above entitled
cause and further saith not.

N. H. Purple

Sworn to before me
this 17th Nov, 1856

Enoch P. Sloan clerk

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Hear before the Circuit Court begun and held at the Court House in Peoria within and for the County of Peoria and State of Illinois, on the third Monday in the Month of November in the year of our Lord one thousand eight hundred and fifty three, it being the twenty first day of said Month. The Honorable Andrew Peters Judge of the Sixteenth Judicial Circuit, presiding.

Be it remembered that on the twenty second day of November at the term aforesaid, the following Record was made in a certain Cause pending in said Court, between Wamick Martin, Frederick Kahl for the use of Wellshin's Lott Country on a Springer Harbaugh vs Nathaniel B. Curtis, to wit:

"Wamick Martin & others

vs

debt

Nathaniel B. Curtis

On motion of the plaintiffs by their attorneys, it is ordered that alias summons to defendant issue in this Cause returnable to next term and that this Cause be continued."

Hear before the Circuit Court in and for the County of Peoria, in the State of Illinois, at a special term begun and held at the Court House in the City of Peoria in said County on the fourth Monday in the Month of January in the year of our Lord one thousand eight hundred and fifty four, it being the twenty third day of said Month. Honorable Andrew Peters presiding.

"Tuesday January 24th A.D. 1854.
 "Warwick Martin v others

vs

debt

Nathaniel B. Curtis

The Plaintiffs by Cooper & Reynolds their attorneys
 enter a motion for a rule on the defendant to plead
 to this action by Thursday Morning next."

Wednesday January 25th A.D. 1854.
 Warwick Martin v others

vs

debt

Nathaniel B. Curtis

This day Came on to be heard the
 Motion of the Plaintiffs for a rule on the defendant to
 plead herein, whereupon it is ordered that the defen-
 dant plead to this action by Monday Morning next,

Friday February 3^d A.D. 1854.
 Warwick Martin v others

vs

debt

Nathaniel B. Curtis

Ordered that the defendant plead to this action
 by the first day of next term of Court.

Plea in the Circuit Court begun and held at the
 Court House in the City of Peoria, in and for the
 County of Peoria in the State of Illinois on the second
 Monday of May in the year of our Lord one thousand eight
 hundred and fifty four, it being the eighth day of said
 month. Honorable Anselm Peters presiding

Monday May 24th A.D. 1854 -
 Wmth Martin &
 Frederick Fahl for the
 use of Wells & Co^{rs} Courtney
 and Springer Harbaugh
 vs
 debt

Nathaniel B. Leaviss,

This day this Cause came on to be heard on the
 demurrer of the defendant to the plaintiffs decla-
 ration and the Court being fully advised in the prem-
 ises is of opinion that the first and second counts
 of the said declaration are insufficient in law
 for the plaintiffs to maintain this action - and that
 the third and fourth counts of said declaration
 are sufficient in law for the plaintiffs to maintain
 their action herein against the defendant -

On motion of the plaintiffs by Jonathan W.
 Cooper their attorney, leave is given them to
 amend their declaration in this cause, and
 thereupon on motion of the defendant by
 Ezra G. Fanger his attorney this cause is
 continued to next term of Court at the costs
 of the plaintiffs.

Ordered that the plaintiffs pay the costs
 occasioned by said amendments and con-
 tinuance.

Pleas in the Circuit Court in and for the county of Peoria in the State of Illinois before the Honorable Andrew Peters Judge of the Sixteenth Judicial Circuit in the State of Illinois, at the Court house, in the City of Peoria on the rule days of said Court, Commencing on Monday the third day of July in the Year of our Lord one thousand eight hundred and fifty four, to wit:

Monday July 3rd A.D. 1854.

Warrick Martin &
 Frederick Stahl for the use
 of Millshire Scott Courtney
 & Springer Harbaugh

vs

debt.

Nathaniel J. Curtis

This day came the plaintiffs by Cooper & Reynolds their attorneys and on their Motion it is ordered that the Defendant Plead to the Amended declaration in this cause by the first day of August next.

Pleas in the Circuit Court began and held at the Court House in the City of Peoria, in and for the County of Peoria in the State of Illinois on the second Monday of September in the year of our Lord one thousand eight hundred and fifty four, it being the eleventh day of said Month, Honorable Andrew Peters Presiding:

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Monday September 11th A.D. 1854

Warwick Martin
Frederick Kahl for the use
of Wellshire Scott Courtney
& Springer Warbaugh

vs

debt

Nathaniel B. Curtiss

The Plaintiffs by Cooper & Reynolds their attorneys
enter a motion for a rule on the defendant to
plead in this cause to the amended declaration
by Wednesday morning next.

Tuesday September 12th A.D. 1854

Warwick Martin
Frederick Kahl for the
use of Wellshire Scott Courtney
& Springer Warbaugh

vs

debt

Nathaniel B. Curtiss

On hearing of the motion of the plaintiffs for a rule on the
defendant to plead herein, it is ordered that the defendant
plead to the amended declaration filed in this cause by
Monday morning next.

Placed the Circuit Court in and for the County of Peoria in the
State of Illinois before the Honorable Andrew Peters, Judge of the six-
teenth Judicial Circuit in said State, at the Court House in the City of
Peoria on the rule days of said Court commencing on Monday the first day of
January in the year of our Lord one thousand eight hundred and fifty-five

Tuesday January 2^d A.D. 1855

Warrick Martin

Frederick Stahl for the use
of Melshire Scott Courtney
& Frederick Harbaugh

vs

debt

Nathaniel B. Curtiss

This day the Court being sufficiently advised in regard to the exceptions of the defendant to the deposition taken by the plaintiffs do order the same to be overruled with leave to the defendant to object to the competency of any of the evidence on the trial

Hear in the Circuit Court began and held at the court house in the City of Peoria in and for the County of Peoria in the State of Illinois, on the first Monday of March in the year of our Lord one thousand eight hundred and fifty five, it being the fifth day of said month, Honorable Andrew Peters presiding

Tuesday March 6th A.D. 1855

Warrick Martin

Frederick Stahl for the use
of Springer Harbaugh
Melshire Scott Courtney

vs

debt

Nathaniel B. Curtiss

This day this cause came on to be heard on the demurrer of the plaintiffs to the 6th 7th 8th 9th

10th 11th 12th 13th & 14th Pleas of the defendant, and also on the demurrer of the plaintiffs to the 1st 2nd 3rd 4th 5th 6th 7th & 8th pleas filed herein on the 11th day of December A.D. 1854 whereupon the defendant withdrew his said 7th 8th 9th and 10th pleas first filed in this cause.

The Court being fully advised in the premises is of opinion that the said 9th and 10th counts of the amended declaration of the plaintiffs to which said 12th 13th & 14th pleas and said 1st 2nd and 3rd pleas of defendant filed December 11th 1854 are plead are insufficient in law to maintain this action on behalf of the plaintiffs; therefore it is considered that as to the said 9th and 10th counts of the amended declaration the said defendant go hence without day and recover of the plaintiffs his costs about his defense in that behalf expended.

The Court is further of opinion that the said 6th and 11th pleas of the defendant first filed and the 4th 5th 6th and 8th pleas of the defendant filed December 11th 1854 are each insufficient in law to bar the plaintiffs from maintaining this action. And the Court is further of opinion that the said 7th plea of the defendant filed on the 11th day of December 1854 is sufficient in law to bar the plaintiffs from maintaining this action. Whereupon order of the plaintiffs leave is given them to reply to said 7th plea.

Monday March 12th A.D. 1855

Namick Martin &
 Frederick Kahl for the use of
 Springer Harbaugh
 & Wellshire Scott Courtney

vs

debt

Nathaniel J. Curtis

This day came the defendant by Norman H. Purple his attorney and on his motion leave is given him to amend his plea in this cause. On motion of the plaintiffs by Jonathan R. Cooper their attorney leave is given them to reply double to the defendant's 7th new plea, whereupon on motion of the defendant leave is given him to rejoin double to each of said replications.

Tuesday March 13th A.D. 1855

Namick Martin
 Frederick Kahl for the use
 of Springer Harbaugh &
 Wellshire Scott Courtney

vs

debt

Nathaniel J. Curtis

The plaintiffs by Cooper & Reynolds their attorneys enter a motion to strike from the files the plea numbered 2 filed by defendant of the date of March 14th 1855 for the reason that said plea is the same in form and substance with plea numbered 11 filed by said defendant on the 8th of December A.D. 1854, which said last named plea was demurred to and demurrer sustained by this court.

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Monday March 19th A.D. 1855.
 Wmth Martin &
 Fredericks Stahl for the use
 of Springer Harbaugh &
 Wellshire Scott Courtney

vs

debt

Nathaniel B. Curtis

This day this cause came on to be heard on the demurrer of the plaintiffs to the 4th plea of said defendant of the date of March 14th A.D. 1855, and the Court being fully advised in the premises is of opinion that said 4th plea and the matters therein contained are ~~sufficient~~ insufficient in law to bar this action, and it is considered that the plaintiffs be not barred from maintaining this action against the defendant from anything in his said 4th plea of date of March 14th 1855 set forth. This day also came on to be heard the Motion of the plaintiffs to strike from the files the plea numbered 2 filed by the defendant of the date of March 14th 1855, on consideration whereof the Court sustained said Motion and ordered said plea numbered 2 to be stricken from the files in this cause.

Wednesday March 21st A.D. 1855

Wmth Martin &
 Fredericks Stahl for the use of Springer
 Harbaugh & Wellshire Scott Courtney
 Nathaniel B. Curtis

debt.

This day came the defendant by Peuple & Sanger his attorneys

and entered a motion to suppress the depositions of J. G. Coffin and J. B. McVay taken in this cause for reasons on file.

Saturday March 24th A. D. 1855.

Namick Martin &

Fredrick Stahl for the
use of Springer Warbaugh
& Wellshire Scott Courtney

vs del't,
Nathaniel B. Curtis

This day came on to be heard the demurrer of the defendants to the replications of the plaintiffs to the 1st & 3rd pleas of the defendant filed March 14th 1855 and the Court being fully advised in the premises was of opinion that said replications are sufficient in law and overruled said demurrer.

The exceptions of the defendant filed March 22d 1855 to the depositions of J. G. Coffin and J. B. McVay filed in this cause coming on to be heard, the Court overruled the exceptions to said McVays deposition, and also the first, second, third, sixth and seventh exceptions to said Coffin's deposition.

The Court sustained the said fourth and fifth exceptions to said Coffin's deposition so far as relates to the following part of his answer to the fifth interrogatory viz: the words "making acceptance" was put on the face of these drafts for the purpose of obviating the necessity of the Bank's accepting them or having

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therein protested for non acceptance as it was well understood at the time that Mr Curtis had no funds in the Bank to draw upon."

Also to the following part of his answer to the sixth interrogatory, viz: "From the conversation which I had with the defendant at the time the drafts were drawn or negotiated, it was not intended that he should have funds in the Bank to meet them at their maturity. The arrangement contemplated a different mode of payment." And ordered that said parts of said answers should be suppressed, and overruled said 4th & 5th exceptions as to the remainder of said Coffin's ~~declaration~~ deposition.

Monday March 26th A.D. 1855

Nathaniel Martin &

Fredrick Kahl for the
use of Springer Harbaugh
& Melshire Scott Eastney

vs

debt

Nathaniel B. Curtis

This day came the defendant by Norman H. Piple his attorney and entered a motion for continuance of this cause and filed his affidavit in support of the motion, whereupon it is ordered by the court that this cause be continued to next term of this court, but at the defendant's costs; therefore it is considered that the plaintiffs have and recover of the defendant this cost occasioned by this continuance and that they have execution therefor.

Was before the Circuit Court begun and held at
the Court House in the City of Peoria in and for the
County of Peoria in the State of Illinois on the second
Monday of May in the year of our Lord one thousand
eight hundred and fifty five, it being the fourteenth
day of said Month. Honorable Onslow Peters presiding

Tuesday May 22^d A.D. 1855

Wmck Martin

Fredenck Kahl for the
use of Springer Karbaugh
& Wellstone Scott Courtney

vs

debt

Nathaniel B. Curtiss

On Motion of the defendant supported by his affidavit on
file, it is ordered that the Plaintiff's produce in court for
the inspection of the defendant the account books referred
to in said affidavit

Was before the Circuit Court at a term thereof begun
and held at the Court House at the City of Peoria in and for
the County of Peoria in the State of Illinois on the third
Monday of November in the year of our Lord one thousand
eight hundred and fifty five, it being the nineteenth
day of said Month. Honorable Onslow Peters presiding.

Monday November 19th 1855

Wmck Martin & Fredenck Kahl
for the use of Springer Karbaugh
& Wellstone Scott Courtney

Nathaniel B. Curtiss

debt.

This day came Jonathon R. Cooper of counsel
for the plaintiff and suggested to the court that the said Fredenck
Kahl has since the commencement of this suit departed this life

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Was before the Circuit Court at a term thereof begun
and held at the Court House at the City of Peoria in
and for the County of Peoria in the State of Illinois, on
the Second Monday of May in the year of our Lord
one thousand eight hundred and fifty six, it being
the twelfth day of said month, Honorable Jacob Sale
presiding

Monday May 12th A.D. 1856

Warwick Martin
Frederick Stahl
for use of Stringer Harbaugh
& Wellshire Scott Courtney

vs

deb't

Nathaniel B. Curtis

This day came the Plaintiff by Cooper Reynolds their
attorneys and enter their motion to dissolve the injunction
upon this suit at law.

Wednesday May 14th A.D. 1856

Warwick Martin
Frederick Stahl
for use of Stringer Harbaugh
Wellshire Scott Courtney

vs

deb't.

Nathaniel B. Curtis

This day came the defendant by Norman H. Peple his
attorney and enter his motion to suppress depositions
taken in this cause, reasons on file

Monday May 19th A.D. 1856
 Mamie Martin
 Frederick Kahl for the
 Spruiger Harbaugh &
 Wellshire Scott Country

vs

debt

Nathaniel B. Curtis

This day came on to be heard the de-
 fendants exceptions to the depositions taken on behalf
 of the plaintiffs herein and the Court being fully advised
 in the premises overruled said exceptions as to the dep-
 ositions of F. A. Frethy and Michael O'Connor and
 sustained said exceptions as to the deposition of Julia
 Levita and William Werneberg and ordered the said
 depositions of Levita & Werneberg to be suppressed.

Held before the Circuit Court at a term thereof, begun
 and held at the Court House in the City of Peoria in
 and for the County of Peoria in the State of Illinois
 on the third Monday of November in the year of our
 Lord one thousand eight hundred and fifty six,
 it being the fifteenth day of said month. Honorable
 Elihu N. Powell Judge of the Sixteenth Judicial Circuit pro-
 viding to wit:

Monday November 17th A.D. 1856
 Mamie Martin & Frederick Kahl
 for the use of Spruiger Harbaugh &
 Wellshire Scott Country
 vs
 Nathaniel B. Curtis debt

This day came the defendant by Norman H. Purple
 his attorney, and entered a motion for a change of venue in this case cause
 for reasons filed:

Wednesday November 17th AD, 1856
 Warrick Martin &
 Frederick Stahl for the
 use of Springer Warbaugh
 & Welsh's Scott Country

as
 Nathanial B. Curtiss. debt.

This day came on to be heard
 the Motion of the defendant for a change of venue
 in this cause and the judge of this court having been of
 counsel for the said defendant does award and order
 a change of venue herein to the County of Marshall
 in this State and does further order that the clerk of this
 Court forthwith transmit the papers and a transcript of the
 Record of the proceedings in this cause duly certified, to
 the Clerk of the Circuit Court of said Marshall County
 according to law.

State of Illinois, 3d.
 County of Peoria B. J. Enoch P. Sloan clerk of
 the Circuit Court in and for the County of Peoria in said
 State do hereby certify that the foregoing is a correct transcript
 from the Records of the proceedings in a certain cause
 wherein Warrick Martin & Frederick Stahl for the use of
 Springer Warbaugh & Welsh's Scott Country are plaintiffs and
 Nathanial B. Curtiss is defendant as the same remains of record
 in my office. And the papers filed in said cause, marked
 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28

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29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 & 41 and sent herewith
are all the papers referred to in the foregoing proceedings
of this Court. In witness whereof I have set my hand



and affix the seal of said Court at my office
at Peoria, this 31st day of December A.D. 1856.

Enoch P. Howland

Next

Marshall Sup.

Proceedings

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Narrick Martin & al } Circuit Court Peoria Co
vs } Ills March Term A.D. 1855
Nathaniel B. Curtiss }

1 And said plaintiffs for replication to the 7th plea of said defendant by him above pleaded as of the date of December 11th 1854 says precludi non. because they say that said supposed payment of nine thousand dollars in said notes of said New Hope & Delaware Bridge Company Bank in said plea alleged to have been made by said defendant to said plaintiffs was not accepted by said plaintiffs in payment or discharge of said Bills of Exchange in manner & form as is alleged in said plea and this plaintiffs pray may be required of by the country wherefore
Cooper & Reynolds
for plffs.

2 And for a further replication to said 7th plea by leave of Court first had & obtained, plaintiffs say - that said notes of said New Hope & Delaware Bridge Company Bank were left with said plaintiffs by said defendant & received by said plaintiffs as collateral security for the payment of said Bills in said declaration mentioned and for the purpose of being put in circulation by said plaintiffs in the ordinary course

512424-45

of their business, and to be allowed in payment of said bills of Exchange only in so far as said plaintiffs might be able to give the same circulation and receive value therefor - and plaintiffs aver that before said notes could be so put in circulation by said plaintiffs in the course of their said business, said New Hope & Delaware Bridge Company Bank failed leaving a large amount of said notes, to wit, to the amount of 5.880 dollars of said notes on the hands of said plaintiffs uncirculated - Which said 5.880 dollars in the notes of said New Hope & Delaware Bridge Company Bank, so remaining in the hands of said plaintiffs undisposed of at the time of the failure of said Bank, were afterwards, to wit on the 20th day of June A.D. 1848 by said plaintiffs, returned to said defendant, and by said defendant accepted & received as & for part & parcel of the same sum of 9.000 dollars so deposited by defendant with said plaintiffs as aforesaid - all which plaintiffs are ready to verify wherefore they pray judgment &c

Cooper & Reynolds
for plffs

State of Illinois {
 Marshall County } ss I James Mescott clerk
 of the Circuit Court in

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and for said County do hereby certify
that the foregoing is a correct copy of
the Original on file in said Court in
the case of Warrick Martin vs Nathaniel
B Curtis.

In witness whereof I have hereunto
set my hand & Seal of said Court
at Lacon this 18th day of March
AD 1858. James Mescott
clerk

Now before the Circuit Court of the County of Marshall
in the State of Illinois begun and holden at the Court
house in the City of Lacon in said county on the first Monday
being the fifth day of October in the year of our Lord one
thousand eight hundred and fifty seven. Present the
Hon Mc Ballou Judge of the twenty third Judicial circuit
in said State, George W. Stipp States Attorney for said
circuit, James Wescott clerk of said circuit court and
Henry L. Brane Sheriff of said county.

Tuesday October 6th A.D. 1857

Warwick Martin
Frederick Stahl use of
Wellsboro Scott Courtney
Springer Warbaugh

vs

debt.

Nathaniel B. Curtis

Venus from Peoria

Be it remembered that on this
day come the parties the plaintiffs by Jonathan H. Cooper
their counsel and the defendant by Lorin C. Pratt his
counsel and the plaintiff by their counsel enter a motion
herein that a certiorari issue of out of this court to the clerk
of the circuit court of Peoria County to certify to this court
the Record, Proceedings and Papers yet remaining in said
Peoria Circuit Court and particularly that portion of said records,
proceedings and papers pertaining to a bill for discovery filed in
said Peoria Circuit Court by the defendant herein against Frederick
Stahl a co-plaintiff herein -

Wednesday October 7th A.D. 1857

Narrick Martin &
Frederick Kahl

vs of Wellekin Scott Courtney
& Springer Warbaugh

Nathaniel J. Curtis

Deb
Venus from Leon

This day this cause came on to
be heard upon the demurer of the defendant to the first
replication to the seventh plea of the defendant filed
December 11th 1854 and after argument of counsel
the court being fully advised in the premises is of opinion
that said demurer should be overruled - whereupon
comes the defendant by his counsel and enters a motion
that this cause be continued which motion is sustained by
the court and this cause continued at defendant's costs
Therefore it is considered by the court that the plain-
tiffs have and recover of the defendant their costs and
charges in and about their suit at this term expended and
that they have execution therefor.

And afterwards to wit; ^{on} the 21st day of October A.D. 1857 there was filed in the
office of the clerk of said court in said cause the Bill of Exceptions of
defendant in the words & figures following to wit:

Bill of Exceptions

"Narrick Martin

Frederick Kahl

vs of Wellekin

Scott Courtney

In the Circuit

Court of Monroe

County

+ Springer Mcnabugh

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Nathaniel B. Curtis

October Term A.D. 1857

Debt

And now on this day (came on to be heard the demurrer of the defendant to the first replication to the seventh plea of the defendant filed December 11th 1857 - and the court being fully advised in the premises overruled the said demurrer to which ruling of the court in overruling said demurrer the defendant then and there objected and excepted and prays that this his bill of exceptions may be signed and sealed which is done

W. Ballou

Judge 23rd Judicial Circuit Ills.

Heas before the Circuit Court of Marshall County in the State of Illinois at a term thereof begun and held at the Court House in the City of Lacon in said County on the fourth Monday the same being the twenty fifth day of January in the year of our Lord one thousand eight hundred and fifty eight, Present Hon. W. Ballou Judge of 23rd Judicial Circuit of the State of Illinois Presiding George W. Stepp State Attorney of said Judicial Circuit, H. L. Crane Sheriff of said Marshall County + James Prescott Clerk of said Circuit Court.

Monday February 2nd 1858
 Warrick Martin & Charles Stahl
 use of Wellshin Scott Courtney
 & Springer Harbaugh

Nathaniel B. Curtiss

Debt

Venue from Iowa

This day came the defendant by Purple his counsel and moved the court for leave to file an additional plea which motion is sustained by the court and have granted to file an additional plea whereupon came the plaintiffs by J. K. Cooper their counsel and entered a motion for leave to reply double which motion is sustained by the court and have granted to said plaintiffs to reply double

And on the same day to wit: on the 2nd day of February A.D. 1858 there was filed in the office of the clerk of said court in said cause the plea of the defendant in the words & figures following to wit:

Plea

"Warrick Martin

use &c

vs

Nathaniel B. Curtiss

In the Circuit Court
 of Marshall County,

And the said defendant for further plea in this behalf says action because he says that on the first day of January A.D. 1850 and before the commencement of this suit at the County aforesaid he settled and accounted with

90= the Plaintiff of and concerning the said Bills
of Exchange in said Plaintiff's declaration
mentioned and settled and fully paid the same
and all the interest and damages there due thereon
and this the said defendant is ready to
verify &c.

A. H. Purple
Defts Atty"

And on the same day to wit: on the 2nd day of October A.D. 1858 there was filed
in the office of the clerk of said cause court in said cause the replica-
tion of the Plaintiff in the words & figures following to wit:

Replication

Warwick Martin }
For the use &c } In the Circuit Court
as } of Marshall County,
Nathaniel P. Curtis }

And for replication to the
plea of the defendant filed Jan'y 2nd 1858 Plain-
tiff says precludi non &c because they say that
the said defendant did not settle and account
with the plaintiff of and concerning the bills of
exchange in the plaintiff declaration mentioned in
manner & form as stated in said plea and of this they
put themselves upon the country

Replication

And for another replication to
said plea said plaintiff say that said defendant
never did fully pay the bills of exchange in plaintiff's

91=

destruction mentioned and all the interest and
damages then due thereon & of this they put them-
selves upon the country

Cooper & Reynolds
for plaintiff

Deft doth the like

People for Deft. "

Came before the Circuit Court of Marshall
County in the State of Illinois at a term thereof
begun and held at the Court House in the City of
Lacon in said County on the fourth Monday the
same being the twenty fifth day of January in the
Year of our Lord one thousand eight hundred and
fifty eight, Present Hon. W. Ballou Judge of
the 3rd Judicial Circuit of the State of Illinois
Presiding, George W. Stipp, States attorney of said
Judicial Circuit, H. L. Crane Sheriff of said Mar-
shall County & James Wescott clerk of said Circuit
Court

Thursday February 4th 1858

Warwick Martin & Frederick Wahl
vs of Illinois Scott Courtney
Jr. for Harbaugh

Nathaniel B. Curtis

Debt
Venue from Iowa
This day came the parties

the Plaintiffs by J. N. Cooper & B. C. Cook their
 Counsel and the defendant by N. W. Purple his counsel
 and issue being joined herein a jury was called to
 try the ~~issue~~ ^{same}, to wit: E. A. Whipple, Robert Weaver,
 E. M. Sell, L. B. Deal, Friend Richardson, D. M.
 Robertson, James D. Barnes, A. S. McKinney, El-
 nathan Platter, Enos Odell, Joseph M. Rodgett &
 Livingston Roberts twelve good and lawful men
 who were duly empanelled and sworn a true verdict to
 render according to the evidence and after hearing the
 evidence adduced the arguments of counsel and the
 instructions of the court retire to consider of their verdict
 and after due deliberation the jury returned into court and
 say we the jury find the issues joined in favor of
 the Plaintiffs and that the said defendant doth owe
 the said Plaintiffs the sum of ^{four hundred} four thousand and
 ten dollars debt and assess the plaintiffs damages
 by reason of the detention thereof to the sum of two
 thousand five hundred and fifty two dollars and twenty
 eight cents, Whereupon came the defendant by
 his counsel and entered a motion for a new trial herein

Friday February 5th A.D. 1858.

Nathaniel B. Curtis & Frederick Wahl

vs of Melshire Scott Country & Springer Harbaugh

Nathaniel B. Curtis

Debt
 Venue from Penna
 This day this cause

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Cause came on to be heard upon the Motion of the defendant for a new trial herein, and the Court being fully advised in the Premises doth order that said Motion be and the same is hereby overruled.

Therefore it is considered that the said plaintiffs recover of the said Nathaniel B. Curtis the said sum of four thousand four hundred and ten dollars their debt as aforesaid and the said sum of two thousand five hundred and fifty two dollars ^{and twenty eight cents} their damages aforesaid together with their costs in and about their suit in this behalf expended, and it is ordered that they have execution therefor, Whereupon came the defendant and prayed an appeal to the Supreme Court of this State which appeal is allowed upon the defendant's filing a Bond in the sum of ten thousand dollars with Abiel Harburt as security in thirty days conditioned according to law.

Next

Bill of Exceptions

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And on ~~the~~ the 5th day of February
A.D. 1858, there was filed in the office of the clerk of the
Circuit Court of Marshall County in said State of Missouri
in said cause the following Bill of exceptions in the undersigned
"Warwick Martin

For the use of
Wilshire Scott Courteney
& Springer Harbaugh

Nathaniel J. Curtiss

In the Circuit Court
of Marshall County

Be it remembered that
upon the trial of this cause, the plaintiff to maintain
the issue on his part read in evidence two bills of exchange
one dated Sept 1st and the other Sept. 10. 1847 which said
bills of exchange are as follows

Bills of Exchange

"\$4000 -

N^o 1275

Columbus Ohio

Sept 1st 1847

Four Months after date pay to the order of Messrs Warwick Martin &
four thousand dollars for value received and charge the same to account of
your

J. C. Platt Esq Cash

Leather Manfct Bk

New York

Obt Cert

NB Curtiss

\$5000 -

Columbus Ohio

N^o 1276
Sept 10th 1847

Five Months after date pay to the order of Messrs Warwick Martin & Co five thousand
and dollars for value received and charge the same to account of your

J. C. Platt Esq Cash

Leather Manfct Bk

New York

Obt Cert
NB Curtiss

The next read in evidence the deposition of J. L. Coffin except those parts of it which are surrounded by black lines and which portions had been suppressed by the Circuit Court of Peoria County which said deposition is as follows

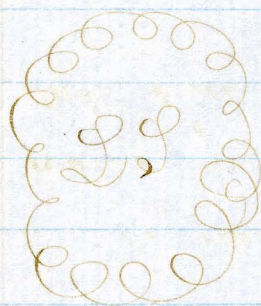
Deposition of
J. L. Coffin

"State of Illinois, Peoria County, ss.

The People of the State of Illinois
To Jasper C. Brady of the City of Pittsburgh in
the State of Pennsylvania as Commissioner to take
depositions, Greeting:

We having confidence in your skill and fidelity, have appointed you, and by these presents do authorize and require you at a certain time and place, to be by you appointed for that purpose, to cause the witnesses whose names are mentioned in the caption of the annexed interrogatories, to come before you, and then and there diligently and faithfully to examine them on oath upon the said interrogatories in the order in which they shall be proposed and answered; and you will then cause the witnesses to sign their names to the same in your presence. You will also annex a certificate, subscribed by yourself at the foot of the depositions stating that they were sworn to and signed by the deponents and the time and place when and where the same were taken. The depositions thus taken and subscribed, and all exhibits produced, or referred to by the witnesses together with this commission and the annexed interrogatories, you will inclose, seal up and direct to the clerk of the Circuit Court of the County of

Peoria, in the State of Illinois, with the names of the parties litigant endorsed thereon.



Witness Jacob Gale, clerk of the circuit court of the County of Peoria, and the seal of said court, this twenty sixth day of June in the year of our Lord one thousand eight hundred and fifty four.

Jacob Gale, clerk.

Interrogatories to be propounded to J Gardner Coffin residing in the City of Pittsburgh in the State of Pennsylvania, a witness to be produced, sworn and examined in a certain cause at law now pending and undetermined in the Circuit Court in and for the County of Peoria in the State of Illinois, wherein Warrick Martin & Ferdinand Fahl who sue for the use of Springer Harbaugh and Melshire Scott Country are plaintiffs and Nathaniel B. Curtiss is defendant,

On the part and behalf of the plaintiffs
As follows, to wit:

- 1 Do you know Warrick Martin & Ferdinand Fahl Plaintiffs above named - and said Nathaniel B. Curtiss? How long have you known them or either of them, and where does said Curtiss now reside?



In what business were said plaintiffs engaged in the fall of 1857, under what name & style did they then conduct their said business & where?
What was the business of said Curtis at that time.

3 Do you know the handwriting of said Curtis & how do you know it.

4 Look at the papers now shown you purporting to be drafts or Bills of Exchange drawn by said Curtis in favor of said Warrick & Martin & Co. — describe them by numbers, dates — respective amounts for which drawn — on whom drawn & on what time? state in whose handwriting they are filled up & signed, if you know — Mark & attach the same to your deposition & designate the marks so placed by you thereon, in your answer to this question

5 What words if any do you find written across the face of said drafts? By whom & when were they written, if you know? Were you or not present at the time or when said drafts or either of them were or was made? and do you or not know the reason for placing said words thereon? If you, state why it was done and how you know it.

6 Had or had not said defendant at the time of making said drafts or when they or either of them fell

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due any funds in said Leather Manufacturers Bank or in the hands of said drawee, to meet said drafts? What have you understood from said defendant, if anything on that subject.

7 Do you or not know the reasons why said drafts were given? What understanding or arrangement, if any was made in regard to them or existed at the time? What consideration was paid to said Kurtis therefor? and how was it expected said drafts would be paid? Please state fully all you know touching the several branches of this question.

8 If funds or securities of any kind were deposited with said Warrick Martin & Co to apply in any way on said drafts, state what they were, by whom, the amount & nature thereof - on what terms & how left the connection of defendant with, or his interest in said securities - whether any & what part of them was used or disposed of by said Warrick Martin & Co. and how - If any of said funds or securities were not used by said firm or applied on said drafts - how much of them - why were they not all used and what became of those not used; and what proportion of said drafts remained unpaid, if any? Please state to whole fully - what, if anything, passed between said parties, to your knowledge, in relation thereto - your situation at the time & means of knowledge in the premises -

99 (10)

If you know anything further of benefit to said plaintiffs in this suit, please state the same fully.

Interrogatories to be propounded to Ira B. McCray, residing in the City of Pittsburgh in the State of Pennsylvania, a witness to be produced, sworn and examined in a certain Cause at Law now pending and undetermined in the Circuit Court in and for the County of Peoria, in the State of Illinois wherein Warrick Martin and Frederick Fahl who sue for the use of Springer Carbaugh and Wellshire Scott Courtney are plaintiffs and Nathaniel B. Curtis is defendant.

On the part and behalf of the said plaintiffs as follows, to wit:

1 Examine the papers attached to the deposition of J. Gardner Coffin, herein - purporting to be drafts drawn by W. B. Curtis in favor of Warrick Martin Dec. upon C. Platt Esqr, Cashier of the Leather Manufacturers Bank - dated September 1st and September 10th 1847 and numbered 1275 & 1276 respectively, and state what you know, if any thing relative to the making of said drafts by said Curtis - the occasion of giving the same - what was the understanding & arrangement between the parties in relation thereto, and how you derive your knowledge on the subject.

(2)

What, if any thing have you heard said Curtis say about these drafts, or either of them remaining in whole or in part unpaid - why they were not fully paid, how much was still due & how, where, to whom & under what circumstances were these statements made?

3 Did you or not ever hear said Curtis make any promise to pay or settle said drafts? If yes, state when, where & to whom such promise was made, and as nearly as you can just what was said by him on the subject.

4 Do you know any other matter or thing of benefit to the plaintiffs in this suit? If yes, please state the same fully.

In the Circuit Court of Poria County, State of Illinois.

Harriet Martin and
Frederick Kahl who sue for the
use of Springer Harbaugh, Wells
and Scott Courtney

Nathanial B. Curtis

Deposition taken by

J. E. Brady as Commissioner at his office in the City of
Pittsburgh on the twenty ninth day of November A.D. 1854,

at which time J. J. Coffin of full age and produced by the plaintiffs to the several interrogatories on part of said plaintiffs answered as follows viz:

To the first interrogatory he answers and says: I know Namick Martin & Frederick Stahl the plaintiffs in this case and also Nathaniel B. Curtis the defendant - I have known Martin for at least twenty years and Curtis & Stahl for, I suppose twelve years at least.

To the second interrogatory he answers & says: In the fall of 1847 the plaintiffs were engaged in the business of Exchange Brokers in the name & style of Namick Martin & Co. in the City of Pittsburgh Pennsylvania - At that time Curtis was not engaged in any business, he was making arrangements to go into a sort of brokerage business in Philadelphia or New York and was to act as an agent for the New Hope & Delaware Bridge Company Bank - That is my recollection of what he was about engaging in from what I learned in conversation with him.

To the third interrogatory he answers and says: I know the hand writing of Curtis - I have seen him write frequently.

To the fourth interrogatory he answers and says: (Papers shown to witness by Commissioner and marked

J. G. C. No 1 & J. G. C. No 2 by witness in the presence of the Commissioner)

Witness. One of the drafts is numbered 1275 dated September 1st 1847 for four thousand dollars, drawn on E. Platt Esquire Cashier of Leather Manufacturers Bank New York at four months after date; the other is numbered 1276 dated September 10th 1847 for five thousand dollars, drawn on E. Platt Esquire Cashier of the Leather Manufacturers Bank New York. They are both filled up and signed in the handwriting of N. B. Curtis the defendant. I have marked these drafts J. G. C. No 1 & J. G. C. No 2 on the back of each draft.

To the fifth interrogatory he answers & says: The words "awaiting acceptance" are written across the face of these drafts in the handwriting of Curtis - My recollection is that the drafts were made by Curtis in Warren's Martin Esq's office in Pittsburgh in the fore part of December 1847 - I was present when the arrangement was made for giving the drafts, but I do not recollect whether I saw the drafts filled up or not, but I presume I did.

The words "awaiting acceptance" was put on the face of these drafts for the purpose of obviating the necessity of the Banks accepting them or having them protested for non acceptance, as it was well understood at the time that McClellan had no funds in the Bank to draw upon.

To the sixth interrogatory he answers & says; (From the Conversations which I had with the defendant at the time the drafts were drawn or negotiated, it was not intended that he should have funds in the Bank to meet them at their maturity - The arrangement contemplated a different mode of payment) I cannot say whether the defendant had any funds in the Bank at the time they matured.

To the seventh interrogatory he answers & says; Warwick Martin & Co. gave Curtis their draft on New York for ten thousand dollars, and received these drafts and one thousand dollars in money from Mr. Curtis in payment - The drafts which Warwick Martin & Co. gave for ten thousand dollars were paid by the person upon whom they were drawn.

At the time Warwick Martin & Co. received the drafts from Curtis it was agreed between the parties that the plaintiffs should receive nine thousand dollars of the notes of the New Hope and Delaware Bridge Co. Bank & if they paid them out it was to be with the thousand dollars in cash a payment of the drafts but if they did not, then whatever amount they did pay out was to be credited upon the said drafts and a guarantee was to pay the balance. They did receive nine thousand dollars of the notes of the said Bank, at different times and paid a part of them out, when the Bank failed leaving in their hands five thousand

eight hundred and eighty dollars. At the several times at which the said notes of said Bank were received by Plaintiffs the amount was placed to the credit of the defendant on their books.

About, I suppose, the time that these drafts matured they were charged together with the amount of the Bank notes unused to the defendant on the same books — These facts I state without a reference to the books. From recollection of what occurred at the time and from a reference to the books this morning I find my recollection to be correct —

By those facts, I mean the charges and credits to the defendant.

To the eighth interrogatory he answers & says: The notes of the New Hope & Delaware Bridge Company Bank which were deposited with plaintiffs by defendant and which were not used were returned to the defendant according to my recollection in June 1848 at which time there appears a credit on the Books of Warrick Martin & Co. to the defendant of one thousand four hundred and seventy dollars leaving a balance due on the drafts of four thousand four hundred ten dollars against the defendant as appears from the books.

I was at the time of the transactions which I have related book keeper & clerk of Warrick Martin & Co.

I have fully answered all the rest of this interrogatory in my answer to the seventh interrogatory.

In the tenth interrogatory he answers & says: That
I have already stated all I can recollect
in relation to the matter.

Sworn & subscribed

J. G. Coffin

before me

J. E. Brady

Commissioner

I certify that I diligently and
carefully examined J. G. Coffin on oath upon the
interrogatories accompanying the annexed commission,
in the order in which they are propounded, and re-
duced his answers thereto to writing as he gave
them and in his own language, and that he signed
his name to said answers in my presence.

Pittsburgh

J. E. Brady

November 29th 1854

Commissioner

[Copy]

\$1000⁰⁰

N^o 1275

Copy of

Columbus, Ohio

Sept 1st 1847

draft as the four months

after date

same is attached
for evidence in the
to depositions

Pay to the order of Messrs Warrick Martin & Co
Four thousand dollars for

Value received & charge the same to account of your

To E Platt Esq Cash

obt sent

Each Manufacturer 100

NB Curtis

New York

[Copy]

106 =

"\$5000"

O P 1276

Sept. 10th 1847

Columbus Ohio

after date

[Copy of draft Four Months

as the same is pay to the order of Messrs. Harwick Martin & Co.
Attached or five thousand dollars (value received) and charge
enclosed in the same to account of your ob't Sent
depositions]

J. E. Matt Esq Cash

N. B. Curtis

Leather Mfg Co

New York "

He next read the deposition of Ira B. McVay which is as
follows

Deposition of
I B McVay

Ira B. McVay a witness of full age appeared at the
same time and to the several interrogatories answers
as follows, viz:

To the first interrogatory he answers answers & says I have
examined the drafts mentioned in this interrogatory and
attached to J. Gardiner Coffin's deposition. I know
that these drafts were drawn and signed by N. B.
Curtis. They were given in some way in connection
with some notes of the New Hope and Delaware Bridge
Company Bank which notes were left with and forwarded
to Harwick Martin & Co. for circulation. There were a
considerable amount of those notes in the hands of
Harwick Martin & Co. uncirculated at the time the
Bank failed but I cannot say what the amount
was - I know nothing about the understanding &
arrangement between the parties in relation to the

matter, All the knowledge I have of the drafts results from the fact that I was teller in the office of William Martin Esq. except that I know the handwriting in the body of the drafts and the signatures there to be in the handwriting of Curtis - I have frequently seen him write.

To the second interrogatory he answers & says: I have no distinct recollection of the purport of any conversations of Mr Curtis about those drafts. I have heard him talk about them but not feeling any interest in the matter I do not recollect the purport of his conversations.

To the third interrogatory he answers & says: I never heard him make any promise to pay these drafts.

To the fourth interrogatory he answers & says: I know nothing more that would be of benefit to the plaintiffs in this case.

Affirmed & subscribed
before me

J. B. McVay

J. E. Brady

Commissioner

I certify that I diligently and ^{care} fully examined
Jas B. McVay on affirmation upon the interrogatories ac-
companied the Annexed Commission in the order in which

they are propounded and reduced his answers thereto to writing as he gave them and in his own language and that he signed his name to said answers in my presence

Pittsburgh

November 29th 1854

J. E. Brady

Commissioner

Comms fee \$5.00

J. G. Coffin .50

J. B. McRay .50

\$6.00 paid by McCartney

I further certify that the foregoing depositions were taken at my office in the city of Pittsburgh on the 29th day of November A.D. 1854.

J. E. Brady Com^r

The defendant objected to the said depositions upon the ground of the incompetency and in relevancy of the testimony, the Court overruled the objection and the defendant then and there accepted to the opinion of the Court

Plaintiff next read in evidence a letter from the defendant to Mamick Martin vles, dated January 8th 1847 together with the Post Office mark or stamp thereon which said letter and post office mark or stamp are as follows.

"New York Jan. 8th 1847. Messrs. Mamick Martin vles. Gent Your favor of the 4th inst was duly received and contents noted. No one can regret

109= the course things have taken more than the writer of this, and I deem it unnecessary to multiply words with you, but when the proper time comes I will make square work. At present ~~we~~ we are completely tied up and cannot even pay the Bank what we ^{own} ~~are~~ here in her own notes as an attachment has been issued against the Bk as a Foreign Corporation. It will depend what course the Bk pursues towards us, what time I shall get in proper position, but rest assured the time will come. And now take notice, I wish you to write me immediately upon the receipt of this stating the exact amount of N. H. notes you have on hand (received from me which you have never circulated), state also that you must hold them as collateral until some arrangement is made about that bill (without going into particulars) also at what price the whole or any part of them can be sold in Pittsburgh, and in that letter state nothing else.

I wish to show that letter to Mitchell who knows nothing of any arrangement with you, and it is best as things are now that he should not. The 9000 N. H. was charged to me and I wish to make a return of what was not used and although I cannot command the same notes I can obtain them from other sources.

100=

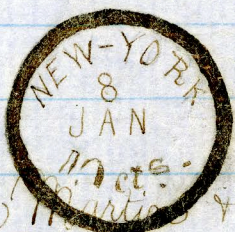
Be discreet and keep your own councils and by so doing I trust you will promote your own interest as well as mine. I think you had better not correspond with St John on the subject. I shall come to Pitts as soon as I can leave N York. Please let me hear from you soon

Respectfully

N. D. Curtis

Superscription and

Post Mark



Mepr. Warrick Martin & Co
Bankers
Pittsburgh

The introduction of this evidence the defendant then and there excepted objected and excepted to the opinion of the court in allowing the same to be read in evidence

Here the plaintiff rested

The Defendant then read to the Jury the bill of discovery filed in this cause against Warrick Martin filed May 13th 1857 stating that he did not read the same as evidence but only for the purpose of showing the application and relevancy of the answer of said Martin to the same

Bill of
Discovery
against
Harrick Martin

" In the Circuit Court of Marshall
County at May Term A.D. 1857

To the Hon. Judge of the said Court in Chancery
Sitting

Humly Complaining Sheweth unto your Hon.
Your orator Nathaniel G. Curtis of the county of Peoria
aforesaid, That on the 15th day of October A.D. 1853,
Harrick Martin & Frederick Stahl for the use of Will-
shire Scott Courtney & Springer Harbaugh commenced
in the Circuit Court of Peoria County aforesaid a certain
action of debt against your orator upon two certain
Bills of Exchange in substance as follows.

" \$400. Columbus Ohio Sept. 1st 1847 N^o 1275

Four months after date pay to the order of Messrs
Harrick Martin & Co four thousand dollars too value
received and charge the same to account of your
obt. Serot

N. G. Curtis

To E. Platt Esq Cash^r
Leather Manuf^r Bk
N.Y.

N^o 1276

" \$5000

Columbus Ohio, Sept. 10. 1847

Four Months after date pay to the order of Messrs

112

Wornick & Martin Co. five thousand dollars ^x/₁₀₀
 value received and charge the same to account
 of your Oct Serot

W. J. Curtis

To E. Platt Esq Cash
 Leather Man's Bk
 N.Y.

And such proceedings were afterwards
 had in said Court in said Cause that the said plain-
 tiffs filed their declaration therein and the defendant
 filed his pleas to the said declaration, upon which
 issues were made and joined and the said Cause
 upon the said issues and pleadings is still pending
 and undetermined in said Court, as by the declaration
 pleadings papers and record in said Cause now to the
 Court here shown and made part of this bill
 will fully appear

And your orator further charges that
 the said Plaintiffs threaten and are attempting
 and endeavouring to prosecute their said suit to
 judgment against your Orator in this Court and to
 collect the money apparently due on the said bill
 of exchange

And your orator Charges that he supposes the
 Plaintiffs in said suit will attempt to prove upon
 the trial of said Cause that about six thousand
 dollars of notes of the New Hope and Delaware
 Bridge Company which were credited to your Orator

on the books of said Plaintiff in November or December A.D. 1847 and prior to the 15th day of said last mentioned month were returned to your orator, and charged to him under a pretended Contract that said notes were to be so returned in case said Plaintiff did not dispose of them in the usual course of business —

And your orator Charges that he is advised by counsel and believes that it will become a material question upon the trial of said Cause whether said notes were so returned — or whether he purchased the same from the Plaintiff and paid for said notes, and whether upon the purchase of said notes by your Orator, there was a final settlement of all accounts and demands between the parties

And your orator Charges that some time in May or June 1848 he purchased from the said Plaintiff about \$5800.00 of the notes of said Bank before mentioned and which they the said Plaintiff alleged were the same notes which had previously been credited to him on their books and part of the same \$9000.00 credited to him on said Plaintiff's books for the sum or price of twenty five cents on the dollar, at which price your orator paid for said notes for the amount received by him on their draft which accompanied the notes at the time they were forwarded to your orator and that he received said notes under

No other Contract or consideration and that the said purchase was agreed and understood as between the parties to be a final settlement and adjustment of all claims and demand between the parties.

And your Orator Charges that he knows of no person by whom he can prove the fact that he purchased said notes of the said plaintiffs except the said Plaintiff Morick Martin or by his own oath and that he took such notes as a ~~purchaser~~ purchaser for such consideration and not under any other consideration or contract made with the said plaintiffs and that it was the understanding & agreement of the parties that such purchase by him of the said plaintiffs was a full and final settlement and adjustment of all claims and demands between the parties and your orator charges that until ^{about} three months last past your orator did not know & could not ascertain the residence of the said Morick Martin but he has ~~not learned~~ now learned that he lives in ^{the State of} Mississippi.

For as much then as your orator is powerless in the premises at law and can get only have relief in that behalf in Chancery where such matters are properly relievable and cognizable, He prays that the said Morick Martin may be made defendant to this bill, and that he may answer the same under oath and

Make true discovery as to the matters & things
contained in the following interrogatories only

1st Did not you or the said plaintiff or one of
them in said suit at law sometime in May A.D.
1868 or about that time transmit from Pittsburgh
Pa to the Complainant at New York City
about \$500, in notes of the New Hope Delaware
Bridge Company assuming that they were a
portion of the same notes which in November &
December previous had been credited to Complainant
on the books of the said plaintiff in the suit aforesaid

2nd Did not the Complainant purchase said notes of the
said plaintiff for the sum or price of twenty five cents, on
the dollar, and pay for the same at that price and
were not said notes sent to the plaintiff upon such
and no other consideration, and as a final settle-
ment of the claim in the suit at law aforesaid
and of all claims and accounts between the parties,

3rd Did not the Complainant purchase and
receive said notes as a purchaser of the same, and
not under or in pursuance of any other contract or
for any other consideration

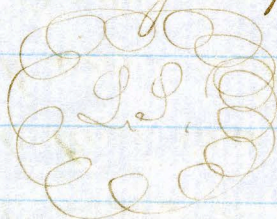
And Your orator
further prays that a writ of injunction may issue
in this suit enjoining and restraining the plaintiff

in said action at law from proceeding with the same until the said Warrick Martin defendant in this suit shall have filed his answer herein & that he may have such other & further relief in the premises as equity & good conscience demand and he will pray &c.

Nathaniel B. Curtis

State of Illinois, 3d.
Pena County, 3d.

N. B. Curtis being sworn says that the above bill of Complaint & for discovery and the statements therein made are true in substance and in fact, to the best of his knowledge & belief & further saith not. Sworn to before me this 12th May 1857.



N. H. Phelps
Notary Public
Pena City

Ills. "

He then offered to read the answer of the said Warrick Martin to said bill of discovery which said answer is as follows

Answer of
Warrick Martin

"Nathaniel B. Curtis 3 Circuit Court of Illinois
vs 3 County, Illinois October
Warrick Martin 3 Term A.D. 1857 In
Chancery, for discovery

The answer of said defendant Warrick Martin to Complainant's bill, or so much thereof as he is advised it is at all necessary or proper to answer unto, answering says as follows

That in the month of May 1848 he met said Frank Stahl a member of the firm of Warrick Martin & Co. in the City of New York, and then and there learned from said Stahl, that said Complainant was indebted to said firm of Warrick Martin & Co. to the amount of near six thousand dollars, arising out of some operations between said firm and said Complainant, in relation to some notes of said New Hope and Delaware Bridge Company, said Complainant living at that time in the City of New York and boarding at the same Hotel with this respondent, this respondent conversed fully and freely with said Complainant about his said indebtedness to said firm of Warrick Martin & Co. and said Complainant, then and there, promised this respondent that, so soon as his circumstances would admit of his doing so, he would make to this respondent and to said Stahl a proposition for the final settlement of said indebtedness. This respondent and said Stahl about that time left the City of New York, and went to the City of Philadelphia, and while in said last named City, said Complainant made according to promise, to this respondent and to said Stahl the following

proposition for the settlement of said claim of said
 Warrick Martin & Co, against said Complainant -

First, said Complainant proposed to give his
 own individual notes without interest and without
 security, and at long time, for the full amount of said
 indebtedness of said Complainant to said Warrick
 Martin & Co. Conditioned that said firm of Warrick
 Martin & Co. should surrender to said Complainant
 said New Hope and Delaware Bridge Company notes,
 and take instead thereof, the notes of said Complainant
 as above herein named and release said Complainant
 from all claims upon him and from all indebtedness
 arising out of said notes of said New Hope and
 Delaware Bridge Company; Second, said
 Complainant proposed that if said first proposition
 should not be accepted, that then and in that case,
 said Complainant would pay to said Warrick
 Martin, in cash, twenty five cents on the dollar, on
 said New Hope and Delaware Bridge Company notes,
 or on said indebtedness, stipulating, as in the first
 proposition, that said twenty five cents on the dollar,
 should be in full for said New Hope and Delaware
 Bridge Company notes, and for said claim of Warrick
 Martin & Co, arising out of said notes, and that said
 Warrick Martin & Co. should surrender said New
 Hope and Delaware Bridge Company notes to said
 Complainant, upon the payment by said Complainant
 of said twenty five cents on the dollar, that said

Kahl and the respondent while in the City of Phila,
 as before stated, duly considered said two propositions
 of said Complainant relating to said settlement,
 and said Kahl and this respondent then and
 there determined not to accept said first named
 proposition, which was to give the notes of said
 Complainant at long time for said indebtedness;
 but considering the ~~long~~ ^{then} ~~condition~~ Condition of said
 Complainant and the condition of the firm of Hemick
 Martin & Co, and the uncertainty of life and of
 business affairs, said Kahl and this respondent
 considered the last of the two propositions the better
 and the more advantageous to said firm, and
 believing that said Complainant had made to said
 Kahl and to this respondent the best proposition
 that he could be induced to make, if not the best
 that his circumstances would admit of his making
determined to accept said second proposition of said
 Complainant, which was to pay twenty five cents on
 the dollar, as before herein fully stated and said
 Kahl and this respondent notified said Complainant
 of the acceptance by them of said last named proposition,
 and said Kahl left this respondent in the City of
 Phila and went to the City of Pittsburgh with the
 understanding between said Kahl and this respon-
 dent, and with the intention as expressed by him
 to this respondent of remitting said New Hope
 and Delaware Bridge Company notes to said Complainant,

According to said Proposition of said Complainant according to said acceptance of said Proposition by said Kahl and this respondent and according to the ~~according~~ Agreement of said Kahl and of this respondent between themselves, that such remittances should be made: This respondent was in the City of New Orleans at the time said indebtedness is said to have been created on the part of said Complainant with said Francis Martin Co, and though he was informed by said Kahl and ~~then~~ ^{there} learned and now believes that said indebtedness was created at or about the time named in the bill of Complaint, and though he was then informed by said Kahl and believed and now believes that said indebtedness arose out of said notes of the New Hope and Delaware Bridge Company, yet this respondent having been absent from Pittsburgh at the time, can not answer upon this point from his own knowledge, and he therefore answers from information and belief.

In reply to the second interrogatory of said Complainant in said Bill, this respondent for answer says, that he did not himself remit to said Complainant said New Hope and Delaware Bridge Company notes at the time named in said bill or at any other time. This respondent was not in the City of Pittsburgh at the time said New Hope and Delaware Bridge Company notes are said

to have been remitted to said Complainant, but this respondent was in the City of Pittsburgh in the latter part of the month of June 1848, and when this respondent was in said City of Pittsburgh in said month of June 1848, this respondent was informed by said Fahl that soon after he said Fahl had left the City of Phila as before herein stated, he said Fahl had remitted said New Hope and Delaware Bridge Company notes to said Complainant, according to the understanding between said Fahl and this respondent and according to the agreement with said Complainant, which understanding between said Fahl and this respondent, and which agreement with said Complainant, are before herein fully set forth, and this respondent then believed from said information, and now believes that such was the fact, said Complainant is, as this respondent has been credited on the Books of said Merrick Martin & Co. with some \$1450, being, as this respondent believes, said twenty five cents on said notes agreed upon to be paid by said Complainant for said notes. This respondent is not able to state from his own knowledge that said New Hope and Delaware Bridge Company notes, agreed to be remitted, and said by said Fahl to have been remitted to said Complainant, are the notes that were credited to said Complainant at the time named in said bill; but he was informed by said Fahl and he then believed, and now believes from

said information, that said New Hope and Delaware Bridge Company notes, constituted the only claim which the said firm of Warrick & Martin & Co. at that time had against said Complainant, and that said claim arose from said notes, and from nothing else.

In reply to the third interrogatory in said bill this respondent for answer says, that twenty five cents on the dollar was the amount which said Complainant proposed to pay for said notes, and that twenty five cents on the dollar was the amount which said Stahl and this respondent agreed with said Complainant to receive for said notes and this respondent is informed and believed that said sum of twenty five cents on the dollar was paid by said Complainant for said notes, and that said payment of said twenty five cents was considered by said Stahl and by this respondent in full for said notes, and that neither said Stahl nor this respondent at that time expected to realize any thing beyond said twenty five cents on the dollar for said notes or for said claim against said Complainant. This respondent has no knowledge of any claim or claims of said Warrick & Martin & Co. against said Complainant, excepting that arising out of said New Hope and Delaware Bridge Company notes before herein fully referred to, and he does not believe they had any other claim or claims. This respondent for further answer says, that he

has no knowledge of any understanding between the firm of Warnick Martin & Co and said Complainant respecting said notes or said indebtedness, excepting the one herein set forth, and he does not believe that any other existed. This respondent would further state that he had no knowledge of said suit at law against said Complainant until in the month of February or March 1857, when he learned of said suit in the City of Peoria.

And this respondent having duly answered the several interrogatories in Complainant's Bill, prays to be ~~hence~~ released from further answering and as in duty bound will ever pray

Warnick Martin

Sworn to before me this
28th day of September
A.D. 1857.

James Prescott clerk

Before said answer was read the plaintiff read the affidavit of Jonathan K. Cooper filed February 2, 1858 which is as follows

Affidavit of
J. K. Cooper

" Warnick Martin, use } In the Circuit Court =
Courtney & Harbaugh } Marshall County, Ill.
vs }
Nathaniel B. Curtis }

Jonathan K. Cooper being duly sworn says that he is & has been of counsel for said

124=

Courtney & Harbaugh, the partners in interest, in this suit ever since the same was instituted - that the firm of Cooper & Reynolds, of which affiant is a member, received from said Courtney & Harbaugh, the Bills of Exchange declared on & on which said suit is founded, some four or five years since, and were then & still are retained by them, as the holders & equitable owners & holders of said bills, to institute & prosecute said suit and look to them ~~alone~~ alone as the parties to whom alone they are responsible for its management & the ^{disposal} ~~disposition~~ of whatever may come to their hands in the prosecution of said claim - said suit was originally brought in the name of said Martin & Frederick Stahl, since deceased, for the use of said Courtney & Harbaugh, but neither said affiant nor said Reynolds as affiant is informed & believes ever knew or had any intercourse with said Stahl, nor with said Martin, till about a year since, when said Martin came to Peoria - affiant states that he has knowledge derived, as well from said Curtis, as from said Courtney & Harbaugh, that said Courtney & Harbaugh are the real parties in interest in said suit =

Said Curtis has uniformly, since affiant's connection with the subject, recognized said Courtney & Harbaugh, as the actual parties in interest, and entitled to control & manage the same, and has on more than one occasion proposed to treat with them for the

Settlement of said claim and as confirmatory in part hereof, affiant refers to the affidavit of said Curtis filed in said cause, under date of March 26th 1855, for which purpose only affiant asks to have the same taken & treated as part hereof - Affiant has heard said Curtis say in connection with propositions of settlement, that if the money was coming to said Martin or his family, the said Curtis, might be induced to make more liberal offers; but ^{that} as not a dollar of any thing he might pay would come to them he was not disposed to do any better than he had offered.

Jonathan A. Cooper

Sworn to before me this
second day of February
A.D. 1858

James Hecott, clerk. " "

The defendant objected to the reading of said affidavit because said Cooper was interested in the suit (he being security for costs and on account of its incompetency and in relevancy), the affidavit was read to the court only with a view and for the purpose of laying a foundation for an objection to the answer of said Martin.

And thereupon the plaintiffs counsel objected to the reading of the answer of said Martin in evidence the court overruled the objection and the plaintiffs then and there excepted to the opinion of the court, and

Said answer was read in evidence as before stated.

Here the defendant rested.

The Plaintiff then read in evidence the Bill of Discovery filed by the Defendant against Frederick Fahl on the 16th May 1855 which is as follows

Bill of Discovery
against
Frederick Fahl

" In the Circuit Court of Peoria
County May Term St. D. 1855

To the Hon. Nelson Peters Judge of the said court
in Chancery sitting

Humly complaining sheweth unto your
Honor your Orator Nathaniel B. Curtiss of the county
of Peoria aforesaid that on the 15th day of October
A.D. 1853 Warwick Martin and Frederick Fahl for
the use of Melshire Scott Courteny & Springer Harbaugh
commenced in the circuit court of Peoria County aforesaid
a certain action of debt against your Orator
upon two certain bills of exchange in substance
as follows

a \$1000.

Columbus Ohio Sept. 1st 1857

Four months after date pay to the order of Messrs
Warwick Martin & Co. four thousand dollars two value
received and charged the same to account of your obligant
To E. Platt Esq. Cashier
Leather Manft Boston

N. B. Curtiss

N. B. Curtiss

127- " \$5000

CP 1276

Columbus Ohio

Sept 10th 1847

Four Months after date pay to the order of Messrs
Warwick Martin & Co. five thousand dollars too value
received and Charge the same to account of your
Oblt Acct N. B. Curtis

To E Platt Esq Cashr

Leather Mergts Bk

New York "

and such proceedings were afterwards had in said
Cause in said Court that the said Plaintiffs filed
their declaration therein and the defendant filed his
pleas to the said declaration upon which issues were
made and joined, and the said Cause upon the said
issues and pleadings is still pending and undetermined
in said Court; as by the declaration pleadings papers
and Record in the said Cause now to the Court here
shown and made part of this bill more fully and at
large appear

And your Orator further Charges that the
said Plaintiffs threaten and are attempting and
endeavouring to prosecute the said suit to judgment against
your Orator and to collect from him the money appa-
rently due on the said bill of exchange.

And your orator Charges that he supposed the

Plaintiffs & in said suit will attempt to prove on the trial of said Cause that about six thousand dollars of notes of the New Hope and Delaware Bridge Company which were credited to your Orator on the Books of the Plaintiffs in November & December A.D. 1847 and prior to the 15th day of said last mentioned Month were returned to your orator and charged to him under a pretended contract that said notes were to be so returned in case said Plaintiffs did not dispose of them in the usual course of business.

And your Orator Charges that he is advised by Counsel and believes, that it will become a matter material question upon the trial of said Cause whether said notes were so returned - or whether he purchased the same from the Plaintiffs and paid for said notes.

And Your Orator Charges that some time in May or June A.D. 1848 he purchased from the said Plaintiffs about \$5800.00 of the notes of said Bank before mentioned and which they said Plaintiffs alleged were the same notes which had previously been credited to him on their Books and part of the same \$9000.00 so credited to him on said Plaintiffs books, for the sum or price of twenty five cents on the dollar, at which price your Orator paid for said notes the amount received by him on their draft which accompanied the notes at the time they were forwarded to your Orator and that he received said notes under no other contract or consideration.

Your Orator further Charges that he knows of no person by whom he can prove the fact that he purchased said notes of the said Plaintiffs except the said Plaintiff Frederick Kahl or by his own oath - and that he took such notes as a purchaser for such consideration and not under any other Contract made with the said Plaintiffs

It is as much then as your Orator is remediless in the Premises at law and can only have relief in that behalf in Chancery where such matters are properly relievable and cognizable he prays that the said Frederick Kahl may be made defendant to this bill and that he may answer under oath and make true discovery as to the matters & things contained in the following interrogatories only.

1st Did not you or the said Plaintiffs in said suit at law sometime in May A.D. 1848 or about that time transmit from Pittsburg Pa to the Complainant at New York City about \$5800.00 in Notes of the War Hope & Delaware Bridge Company, assuming that they were a portion of the same notes which in November & December previous had been credited to Complainant on the Books of the said Plaintiffs in the suit aforesaid

Second

Did not the Complainant purchase said notes of the said Plaintiffs for the sum or price of twenty five cents on the dollar and pay for the same at that price; and were not said notes sent to the Plaintiff upon such & no other consideration

Third

Did not the said Plaintiffs or did not you in the Name of said Plaintiffs at the time you forwarded said notes to the Complainant draw a draft on him for the sum of \$1500.00 and did he not pay the same, or so much thereof as said notes at twenty five cents on the dollar amounted to.

Fourth, Did not the complainant receive said notes as a purchaser of the same, and not under or in pursuance of any other contract or for any other consideration

And your Orator further prays that the writ of injunction may issue in this suit enjoining and restraining the Plaintiffs in said action at law from proceeding with the same, until the said Frederick Kahl defendant in this suit shall have filed his answer herein & that he may have such other & further relief in the premises as equity & good conscience demand & he will pray &c.

Nathaniel B. Curtiss

State of Illinois, D. W.
 Peoria County,) N. J. Curtis Complainant above
 Named being duly sworn says that the statements made
 by him in the foregoing bill, by him subscribed are
 substantially true - to the best of his knowledge, infor-
 mation & belief & further saith not before me this 15th
 May A.D. 1855, N. H. Purplo

Notary Public
 Peoria City
 Ill^o

Stating that one object of the evidence was to contra-
 dict the answer of said Martin - The defendant
 objected to the same as evidence for such purpose -
 But the Court overruled the objection and the defendant
 then and there excepted to the opinion of the court,

The defendant admitted that an injunction was
 issued upon the filing of the Bill of discovery against
 Frederick Kahl pursuant to the prayer of the said
 bill.

This was all the evidence.)

The Plaintiffs Counsel then requested the Court
 to instruct the Jury as follows

1822
Plaintiffs
instructions

Martin vs &c

Nathaniel D. Curtiss vs
Instructions asked for
Plff—

1 That if the jury believe from the evidence that at the time the Bills of Exchange sued on were made, Curtiss agreed to make or disburse with the presentment of said Bills for acceptance & payment, the liability of said Curtiss on said Bills was complete at their maturity, without presentment for acceptance or payment, or protest for non-acceptance or non payment, or notice thereof to said Curtiss—

Given

2 If the jury believe from the evidence that when said notes were made Curtiss deposited with Hornick Martin & Co. Notes of the New Hope & Delaware Bridge Co. equal in amount to said bills and from the proceeds of which it was agreed by said parties said bills would be paid, said Hornick Martin & Co. were not bound to call on the drawer of said bills for acceptance or payment, but might at once sue Curtiss on said Bills when they fell due if not then paid conformably to the agreement or understanding of the parties, out of the fund so provided—

Given

3 That the payment by Curtiss, if proven, of any part of said bills, after they fell due, is in law a waiver of presentment to the drawer for acceptance & payment, and of protest &

Given
[1822-76]

Notice. For non acceptance & non payment =

4. That the Aunts in Plaintiffs declaration alleging due diligence in presenting said Bills to the drawee for acceptance & payment, and protest thereof for non-acceptance & non payment, are sustained by proof of anything showing a sufficient excuse for the want of such diligence
5. An acceptance by a creditor from his debtor of a less sum than is admitted by the debtor to be due, is not a satisfaction of the whole debt, and will not bar a suit by the creditor to recover the balance of the debt =
6. If Curtis was indebted to Martin & Kahl in a sum exceeding five thousand dollars, and if Martin & Kahl agreed to take 25 cts on the dollar of their debt in full satisfaction of the whole debt, and in pursuance of such agreement Curtis paid 25 cts on the dollar of his debt to Martin & Kahl these facts would not be a bar to a recovery by Martin & Kahl of the remainder of said debt =
7. A bill of exchange payable on a specified day need not be presented for acceptance till it is presented for payment and if in such case acceptance is waived it dispenses with presentment for payment

also, and the drawee is at once liable upon it, if not paid at maturity

- 8 If the Jury believe from the evidence that Warrick Martin & Co received from said Curtiss & held, the notes of the New Hope & Delaware Bridge Company, as collateral to the payment of the Bills of Exchange sued on, the sale of said notes or any part of them to said Curtiss, by said Warrick Martin & Co. for 25 cents on the dollar, or any other ~~fixed~~ price, would not discharge said bills of exchange, only to the amount actually paid by said Curtiss for said notes upon such purchase =

Pleffs instructions

- 9 The possession by Courtney & Harbaugh of the Bills of Exchange sued on is evidence of ownership of said in said Courtney & Harbaugh

- 10 The fact ~~this suit~~ that this suit is brought & prosecuted upon this record in the name of Martin for the use of Courtney & Harbaugh is evidence from which the jury may presume that said Courtney & Harbaugh are the real parties in interest =

Pleffs instruction

- 11 If the Jury shall be of opinion that the pleffs are entitled to recover, they should find for said Plaintiffs the amount of said Bills of Exchange still unpaid as debt - and interest on that amount from the time it fell due as damages =

For the plaintiffs the court is requested to instruct the jury -

12 If the defendant Curtis did give to the plaintiffs the bills of exchange sued on in this case, and did deposit with the plaintiff \$9000. of notes of the New Hope and Delaware bridge Co. with the agreement that plaintiffs should put said notes in circulation so far as they could, and so far as said notes were put in circulation the same were to be credited upon the bills of exchange, and that Curtis should pay the balance of said bills of exchange, and plaintiffs did circulate the New Hope & Delaware bridge Co. notes until said Co. failed, and had \$5,880 of said notes on hand at that time and Curtis purchased the said notes of plaintiffs for 25^{cts} on the dollar said notes being then held as collateral security for the payment of said bills of exchange. Then the sale of said New Hope & Delaware notes to Curtis would not discharge the liability of Curtis on said bills of exchange except as to the amount which plaintiffs actually received from said New Hope and Delaware bridge Co. notes

13 This suit being brought for the use of Springer Harbaugh and Wellshire A. Courtney, the presumption of the law is that they are the real parties in interest in this suit.

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14

Given

Although the answer of Warrick Martin has been admitted in evidence. Yet the Jury are not bound to take it as absolutely true they are to give it just such weight as they believe it is entitled as a means of arriving at the truth "

Which instructions were given, To the giving of which said instructions the defendant then and there excepted and objected "

The defendants Counsel then requested the Court to instruct the Jury as follows

Defendants
instructions

" Warrick Martin
vs
McCourtney & Harbaugh

Nathaniel B. Curtis

Defendant asks the following instructions

- 1st That the answer of the Plaintiff Warrick Martin filed and read in this suit is evidence against the Plaintiff of the facts therein stated, and if the Jury believe that said defendant and the Plaintiff set a with each other as stated in said answer, and that the drafts sued on in this cause were included in or constituted a portion of said settlement, they will find for the defendant.

Refused

Refused
2 That under the issues in this case as formed, and the evidence before the jury, this verdict must be for the defendant.

Refused
3 That the ^{Instructions for defendant,} Answer of Mearton in this case is proper evidence for the consideration of the jury. And if the jury shall believe from the evidence that the defendant paid to Warrick Mearton & Co the sum of 25 cents on the dollar for the bills on the New Hope and Delaware Bridge Company and said that said Warrick Mearton & Co received said sum in full satisfaction of the Bills of Exchange sued on the jury will find a verdict for the defendant.

Refused
4 That although a mere agreement of a creditor with his debtor to take a less sum than is due upon a note or Bill of Exchange (may not be) binding for want of Consideration, But if the Creditor accepts a less sum than is due to him and agrees to receive the less sum in full satisfaction of a large demand it is a full satisfaction and is binding "

The Court refused to give any of said instructions and the defendant to them and there again excepted to the decision & opinion of the Court in refusing said instructions "

138=

The Jury found a verdict for the Plaintiff for debt \$4410.00 and damages \$2552.28

The defendant entered a motion for a new trial for the reasons following

Motion for
(new trial)

" Wainick Martin

for the use of

Welsh and Scott Country &

Springer Harbaugh

vs

Nathaniel B. Curtis

In Circuit Court
of Marshall
County,

The defendant in this case enters a motion to set aside the verdict and for a new trial for the following reasons

1st The verdict is against law & evidence

2 The Court misdirected the Jury in giving instructions asked by the Plaintiff

3 Because the Court refused to give the instructions asked by the defendant

4 Because the Court admitted improper evidence offered by the Plaintiff

5 Because the damages are excessive

139- (6) Because the judgment should have
been given for the defendant
N. H. Purple
Defts Atty."

The Court overruled said Motion and entered a
judgment upon the verdict and the defendant
then and there excepted to the opinion of the court
in overruling said Motion and entering said
judgment and requested the Court to seal this
bill of exceptions which is done.

M. B. Fallow Judge Pres.
of 23^d Judicial Circuit Ill.

And on the 11th day of February A. D. 1858 there was filed in
the office of the clerk of said court in said cause an appeal bond
in the words and figures following to wit:

Know all Men by these presents that we Nathaniel B. Curtis
and Ashbel Hulbert are held and firmly bound unto Horner Martin
for the use of Chisholm Scott Country and H. Sprague Harbaugh in the sum
of ten thousand dollars lawful money of the United States to which payment
well and truly to be made and done we bind ourselves our heirs, executors
and administrators jointly and severally by these presents Witness our hands
and seals this 8th day of February A. D. 1858.

The condition of this obligation is this, whereas on the 4th day of February
A. D. 1858 in the Circuit Court of Marshall County, the above named Horner Martin
for the use of the said Country Harbaugh recovered a judgment in said court
against the said Nathaniel B. Curtis for the sum of nine thousand nine hundred
and sixty two dollars and twenty eight cents \$962.28 debt and charges,

From which said judgment the said Nathaniel B. Curtis has
 prayed an appeal to the Supreme Court of the Stt. of Illinois. Now if
 the said Nathaniel B. Curtis shall duly prosecute his said appeal in said Su-
 preme Court and shall pay the said judgment, interest, costs and damages in case
 the said judgment shall be affirmed in said Supreme Court, then this bond shall be
 void otherwise in force.

Nathaniel B. Curtis Esq.

Ashebil Kurlburt Esq.

State of Illinois
 County of Marshall

I James Mescott clerk of the cir-
 cuit Court in and for the County of Marshall in the
 State of Illinois do hereby certify that the foregoing is a correct
 and true transcript from the files and Record of my official
 certain Cause wherein Hamick Martin et al. are defendants for the use of

Wesley Scott Courtney & Emma Kurlburt were plaintiffs and Nathaniel B. Curtis
 is defendant. Witness my hand & the seal of said Court this 10th tenth day of

March A.D. 1888.

James Mescott

clerk

\$31.00 Paid by N. B. Curtis

141 = (Monick R. Mortier for }
 the use of }
 my }
 Nathaniel B. Cutler }

And now comes the defendant
 appellant and says that in the re-
 cords and proceedings, and in the
 rendition of the Judgment aforesaid
 there is manifest error in this to wit.

1. In the Circuit Court Error in Sustaining
 the demurr of the Plaintiff, to the 4th
 6th & 11th pleas of the Defendant, filed
 Sept. 18. 1854.
- 2 In Sustaining Plaintiff's demurr to
 Pleas No 4. 5. 6. 8. filed Dec. 11. 1854.
3. In rendering Judgment for Plaintiff upon
 the verdict ~~and the reasons thereon~~
~~and the reasons thereon~~ 1854
- 4 Overruling demurr to 1st Replication
 to 7th Plea filed Dec. 11. 1854.
5. Striking from filed Defendants 2nd Plea
 filed March 14. 1855.

142- C. in Sustaining demurrer to 4th Plea
filed March 14. 1855.

7. In refusing to Suppress the depositions
of J. G. Coffin and Mrs. B. McNay
8. In admitting said deposition in
evidence
9. In admitting improper Evidence of-
fends by Plaintiff
10. In giving the instructions asked
by Plaintiff
11. In refusing the instructions asked
by defendant
12. In overruling defendants Motion
for a new trial
13. In Entering Judgment on the
verdict for the Plaintiff

For these and other manifest errors
he prays that the said Judgment
may be reversed set aside and
wholly for nothing esteemed

J. M. Chapple
Attor. for Appellant

143) And now comes the said appellee by Cooper
& Cook his attys and they say that in
the record & proceedings aforesaid there
is no error wherefore he prays that Daniel
Lynch be affirmed.

Cooper & Cook

attys for appellee

1828

1828

107
Nathaniel B. Curtis
vs
Wm. H. Martin for us

Transcript & Errors

Filed March 22, 1858

L. Leland

1858

12424

1858

Curtis vs Martin Appeal from Marshall

This suit was brought by Courtney & Harbough
in the name of Martin to their use
I shall discuss the errors in the order in which
they are assigned.

1 Error. Sustaining plaintiffs demurrer & pleas
No 4. & 6. & 7. filed Sept 15th 1854

Plea No 4. is Statute of limitations of five
Years. The action is debt and was commenced
Oct 15th 1853 and consequently is not barred
unless than 16 Years, or at least under act of
10th Feb 1849. plaintiffs have five Years from that
date to bring the action, this is settled in
Trustee v Chauldurn 14 Ills. 495.

The act of Nov 5/49 does not touch the case as the
cause of action accrued before its passage
Laws 1849. 44-5.

The act of Feb 17th 1851 gives 6 Years from
& after the 13th April 1849, on all causes of action
existing before the passage of that act. Laws of
1851 p. 152

This suit was commenced Oct 13th 1853
on one bill dated Sept 1st 47 at 4 mas. The
other Sept 10th 47 at 4 mas. I don't think that

it will be insisted that this plea is good

6th plea
Re p 32. This plea is clearly bad prior to the act of
Act 10/44 there was no Statute of limitations for
actions of debt on causes of action arising
on simple contract not in writing

4 Geo 193

A reference to the acts of Nov 5th 44 and Act 17.
.54. the only other limitation laws after Rev
Stat of 1845, compared with the time of commen-
cing suit will show that if the matter of the
plea were true it would be no bar

14 Geo 445

The plea is also bad because it was not
responsive to the case made in the declaration.
3^d The plea amounts to the genl issue the
plaintiff must recover if at all upon the
case he has made. The demurrer was spe-
cial

11th plea Record pay 34%

This plea was the general issue in
fact although special in form. To test this
it is only necessary to say that the plaintiff
would have to prove precisely the same facts
if the plea was only the general issue as he
would if this plea was false
The demurrer was special and was properly sus-

tance, This dispenses of the first error assigned
and I think effectually

2 Error Sustaining petts answer to pleas no 4,
5, 6, & 8 filed Dec 11, 1854

Plea No 4,

Re pp 40, 41. Plea to all the counts, That depts had at maturity
of bills funds in hands of a receiver sufficient to
pay the same, but plaintiffs neglected to present
the same for payment.

This plea is bad for two reasons
1st It is not an answer to some of the counts
in the declaration although it purports to
answer ~~that~~ the counts because some of
the counts aver that presentment for payment
was waived, and that it was agreed that
the bills need not be presented for non pay-
ment. What answer to this is it to say
that the bills were not presented. This plea
does not answer the common counts
although it purports to answer all the counts

2 The plea as to the counts to which it is
responsive is bad as amounting to the
general issue, this seems to me so plain
as not to require illustration

The demurrer was special and was properly sustained

5th Plea
Leop 41

This plea was leave for the same reasons which have been urged against the 4th plea last mentioned

6th Plea
Re p 42.

See abstract page 5. This plea is bad because it does not answer those counts which allege presentment for payment & non payment

Some of the counts at least over an argument & waive notice ^{which was} in writing This plea was no answer to those counts,

The laws of New York have nothing to do with the construction of the contract

as to the law of Ohio they have had the benefit of the plea so far as that is concerned see 3rd plea filed March 14th 1835. abstract page 6th The same as to laws of New York see 4th plea same page

3rd Error

Rendering Judgment for plaintiffs upon the verdict
The verdict was in proper form in debt & damages and responsive to the issue

4th Error Overruling demurrer to plaintiff's 1st replication to the 1st plea filed Dec 11, 1854

Said 1st plea is found on pp 43, 44 & is that before the bills of exchange full due debt paid plaintiff \$9000, New Hope & Delaware Bridge Co Notes, the full amount of said bills that said notes were red by plaintiff for \$9000. Giving the same \$9000 due on the bills sent on & credited said notes to defendant on his books at par

Replication see Record p 83. that the N. H. & D. notes were not received in payment or discharge of said bills. This was the gist of the plea, it is not a plea of set off but the gist of the plea is that the notes were received for the same \$9000, for which the bills were given, this was directly traversed by the replication

5th Error Striking from files 2^d plea filed March 14, 1855. This plea is on page 48. This plea was the same as plea to 11, filed Dec 8, 1854 see Record page 84½ to the same 5th & 6th counts, that plea was demurred to and demurrer sustained and the party has all the advantage of it

I wish to say two things in relation to this, & 1st The court must have some power to prevent the record being incumbered by a multiplicity of pleas just alike, and 2^d striking this plea from the files could in no way prejudice the defendant as he has the same plea in the record 3^d I don't think that the record shows any leave to file this plea

6th Error Sustaining demurrer to 4th plea filed March 14th 1853

This plea presents ^{one of the} ~~the~~ same question as 6th plea filed Dec 11th 1854 we think that this plea presents no defence to the action

7th Error Refusing to suppress the depositions of Coffin & May see Record pp 61, 62, 63, & 64 as to what portion of the deposition was suppressed & how far the motion was overruled

The first objection is that the commission

was addressed to Jasper E. Brady and is executed by J. E. Brady. That the witness named in the notice & commission is J. Gardner Coffin and the witness signs his name J. G. Coffin. The residence of the person named in the commission and the person officiating being the same, and no discrepancy between the initials of the name signed and the whole name as written out in the commission it would seem that there should be no trouble in determining that the parties are identical. This is in accordance with the practice long settled in this State. These remarks apply to the same extent in regard to the witness Coffin. The notice is J. Gardner Coffin. The witness signs his name J. G. Coffin this is sufficient.

The second objection is to the competency and relevancy of the testimony of both the witnesses Coffin and McKay and 1st objection is taken to the answer to 2^d interrogatory by Coffin because he said he learned it from the conversation with Curtis without stating what that conversation was. No exception is taken to any of the questions put by plaintiff below to either of the witnesses. I remark just as to this and other similar objections that if the manner in which the

derived his information is not quite so plain it is no fault of the plaintiff below who did all that was proper to draw out a full answer and if the defendant by failing to cross examine has been in any way prejudiced he can not now complain of his own neglect The question was a proper one the answer was proper if not full, in *Colo vs Chouteau et al*, 15th Ills. 1159

the court say, "a party can not have depositions of his opponent suppressed for want of full answers to his interrogatories, but the answer does not in fact seem open to the objection made as it is quite clear from the answer itself, what the conversation was, no one can mistake it"

The objection to the ^{answer to the} 5th Interrogatory is, that the witness attempts to explain the meaning of a written contract; The thing explained is a technical phrase, which we contend the witness had a right to explain, but it is unnecessary to discuss the point, as the ground of objection has been wholly removed, the court having suppressed that part of the answer -

The answer to the 6th Interrogatory is objected to; all the material portion of this answer and the portion to which exception was taken was suppressed by the Court below, we think the Court most unquestionably erred against us in his decision.

The objection to the answer to the 7th Interrogatory demands a more particular answer: It is insisted that the answer "fits up a parol contract contrary to the terms, condition & legal effect of the written instrument declared on". The only part of the answer which it can be contended is open to this exception is that which refers to the agreement to deposit the notes of the New Hope & Delaware Bridge Company and to have them credited as fast as paid out on the Bills sued on. This answer is material to the issue made by the plaintiff below was entitled to it because:

1st Being directly coupled with the acts of the parties, as will appear from the entire answer, it is part of the "res gesta" and is admissible on that

ground.

2. The object of the variance was to dispense with the proof of presentment, protest notice, all mere incidents of foreign bills of exchange, and arising not by contract the terms of the writing, but by implication of law, and necessary, by such implication of law, to be made & given or in some legal way to have been dispensed with. This presentment of notice might be proved by parole, thus the contract implied in law, be sustained; or the agreement to dispense with presentment notice might be proved by parole thus the contract be sustained, not contradicted in

At all events it is not a contradiction or variance of the terms of the written contract, but only of an incident or implication of law arising out of it, this view of the law is clearly sustained by a case reported

in 7th Harris Penn. Stat. R. page 400-
to which case the attention of the Court
is especially ~~directed~~ asked -

In *Hunter v The Bank of Columbia*
9. Wheaton 581. Parol evidence of a local
custom to demand payment on the
4th instead of the 3rd day after the
time limited for payment was ad-
mitted to show the understanding of
the parties when they made the note -

When by prior arrangement between
the parties to a bill, notice is expressly
or impliedly dispensed with, the want
of it is excused.

Story on Bill Sec 317.

It may be asked how this prior ar-
rangement is to be proved:

Suppose the case of an accommodation
holder, or the want of funds in the hands
of the drawer, or of depositing collateral
to meet the Bill, or where for any rea-
son it was not expected that the drawer
of the Bill should be called upon to
pay. In all these cases parol evidence

is admissible

7. Penn State R 400—

The reason which forbid the admission of parol evidence to alter or explain written agreements do not apply to those contracts which are implied by operation of law; such as the law implies respecting the endorser of a promissory note

1 Wharton's Digest 610. sec 763.

4 Washington Cir. Court R. 480.

The answer to the 8th interrogatory is objected to for irrelevancy, incompetency & uncertainty.

That it is neither irrelevant nor incompetent appears sufficiently from the questions at issue in the case, nor is it fairly open to the charge of ~~uncer-~~ tainty.

The amount of the New Hope & Delaware notes returned, it is true is not ~~here~~ stated, but it is said that all not used were returned, and the amount not used, is distinctly stated in the answer to the 7th Interrogatory.

The Objection to the Deposition of McVay, is sufficiently met by what has already been said, so far as this Deposition proves anything it is both relevant & material.

I submit that under the errors assigned, upon this record, no objections can be taken to either of these Depositions other than those which go to suppress them altogether.

The 8th Error is the same as the 7th

9th Error Admitting improper evidence offered by the Plaintiff

This must refer either to the depositions, the letter of Curtiss or the Bill of Curtiss vs Kahl -

The objections to the Depositions have already been discussed -

As to the letter of Curtiss; it was admitted that this letter was written by Curtiss, and the matter of it was certainly material and relevant if the jury could see that it related to the transactions in question - The contents of the letter certainly indicate that they refer to the transaction in litigation and although the letter bears date in January 1847 - ~~yet~~ instead of 1848. yet the post mark upon the letter was January 1848 -

The Plaintiff below had a right to contend as he did that there was a mistake in the date of the letter and that 1847. was written instead of 1848.

and to have the question left to the jury whether this was not so, as unless the jury should find this to be so, what the letter related to this transaction, the letter could not influence their decision either way -

To say nothing of the post mark which it seems the clerk has not fully copied into the record, it is quite clear from internal evidence that the letter does refer to the matters before the jury and that there is a mistake in the date, which is no uncommon thing with the dating of letters at the commencement of a new year, this was then properly left to the jury for what it was worth -

3. The Rule of Discovery -

The object of reading this Rule was to show that the answer of Martin could not be true, which we believe it pretty effectually does.

It would protract this argument to an unreasonable length for us to point out all the points in which

the sworn statement of Curtis and the sworn answer of Martin conflict -

This sworn statement of Curtis is clearly evidence against him, unless it be true, that the answer of a nominal party to a Bill of Discovery is evidence, and that it is conclusive upon the rights of the real parties in interest notwithstanding they may be able to prove that the whole scheme was concocted in villainy by the nominal plaintiff and the defendant, this Court will hardly go that length -

Was this answer of Martin properly received in evidence?

The answer in Chancery of a party can only be received in cases where the admissions or statements of the party making it would be competent evidence -

1. Starkie on evidence 284. margin, 252 top
Van Rensselaer v Kane 1. Gallison 635 -
Kitty v DeButz 1. Maynt. 421 -

It is ~~ad~~mitted that the answer of Martin could only be evidence in case his confession made at the same time would be evidence. An answer in chancery is no more than an admission though in solemn form.

The possession of the Bibles by Harbaugh & Courtney is prima facie evidence of the legal title to the Bibles and of a right to use the name of Martin in the collection thereof. *Ransom v Jones* 1. Scam. 291.

The confessions of Martin made at the time when this answer was made would clearly not be admissible evidence against Harbaugh & Courtney; This is well settled law. *Van Rans Dyke v Kane* 1 Gallison 635.

1 Greenleaf on Evidence, Secs 172 & 173. pp 228. 229. and the cases cited in the notes.

This precise question has been putted
in Alabama as follows:

"The answer of a nominal plain-
tiff to a Bill of Discovery is not admis-
sible evidence against a party by
whom the suit is brought"

Vickers v Mooney 6 Ala. 97-

Thus the declaration of a Bankrupt
made after his bankruptcy is not good
evidence to charge his estate.

1 Greenleaf on Ev. sec 180 p 238. & cases cited
in notes -

If the answer of Martin could be re-
ceived to affect the rights of Kearbaugh
& Courtney then it is clear, that their
rights are to be determined by evi-
dence which is called out precisely
as far as is necessary to meet the
views of the adverse party and no
farther, and they have no opportu-
nity of cross examination, the rights
of the ~~real~~ parties in interest are guar-

did by none of the usual tests of truth - The answer may be made in a foreign jurisdiction beyond the reach of our law -

Part of the truth may be stated and the remainder suppressed and the mouth of the real party in interest must be closed, he can neither require the whole truth to be stated nor can he cross examine in relation to the evidence which is given against him -

It may be said, that there is no other way of getting Martins testimony to this answer, if it be so, the case is not singular -

Will a Bill of Discovery lie against a wife because her evidence will not be competent against her husband? Would a Bill of Discovery lie against a person who has given currency & circulation to a negotiable instrument, because the policy of the law would forbid his becoming a witness to impeach the instrument to which he has given currency?

Or to state the case in another way A Bill of Discovery properly lies against

a party to discover matters which the party declines to admit, because it is absurd to say that a Bill of discovery will lie to discover matters which are admitted of course, then either Martin could make evidence against us by his admissions, (which the law says he could not do) or he could by making these admissions openly & publicly deprive the plaintiff of evidence which he might otherwise have drawn out by a Bill of Discovery.

An answer in Chancery by one party cannot be read in evidence against another party on the same side except in cases where the admissions of the party making the ^{answer} admission would be evidence, and the reason assigned is that as is there is no issue between them there can have been no opportunity for cross examination.

1 Greenleaf on Evidence sec 178. p 235 -
and cases cited in the notes -

Again if Martin's statement be true, he has given currency to these Bills

after having received payment of them
and the policy of the law will not
allow him to be received as a wit-
ness to alledge his own turpitude

The 10th & 11th Errors are upon
Instructions given and refused.
I presume that no question will be
made upon the first four instruc-
tions given for the plaintiff, or upon
the 7th 8th 9th 10th 11th 12th or 13th Instruc-
tions. The questions arising upon the
14th instructions have already been
sufficiently discussed, as also the
questions involved in the 1st & 2^d
Instructions asked for the Def^t
and refused, neither of these
instructions were law unless it be
true that Martin's answer was evi-
dence, absolute & conclusive, which
the plaintiffs in interest were estopped
from contradicting or explaining

The other questions given for the
plaintiff and refused for the Def^t
present but a single question which
is: Whether the acceptance by a

creditor from his debtor of a less sum than is admitted by the debtor to be due is a satisfaction by the debtor of the whole debt and will bar the creditor from recovering the balance.

I admit that where a new security is given by the debtor or the time of payment is anticipated or any new consideration of benefit to the creditor or harm to the debtor passes, that the debt may be discharged, or where a debtor in failing circumstances compounds with more than one ~~debtor~~ creditor, that equity of fair dealing between the different creditors requires that the whole debt should be discharged, but the principle that the payment by a debtor of a less sum than is admitted to be due will not discharge the whole debt even if the creditor agrees to receive it in satisfaction, is too well settled to be shaken.

Common Law Authorities

Fitch vs Sutton 5 East 230.

11 East 391.

Walters vs Smith 2 B & Ad 889.

Dickson vs Reacher 5 A & E 121.

Whitty on Leas 640.

New York, Seymour v. Mintum 17 Johns R 169.
 Johnson v. Brennan 5. Do 271.
 Didrich Lehman 9. " 333.
 Harrison Wilcox 2. " 448.
 Boyd v. Kitchcock 20. " 75.

24 Wendell 294.

Vt. v. Wheeler v. Wheeler

11 Vt 60.

18 Vt 337.

Ky. Jones v. Bine

2 Sitter 49.

Seviss v. Roakes

3 ff. Marshall 494.

Have v. Fletcher

4 Sitter 242.

Mass. Smith v. Bartholomew

4 Met 236-

Conn. 20 Conn 559.

Md. 4 Hill v. Johns 335-

5 Hill 189-

Maine 26 Maine 88-

27 Maine 370.

Penn. 2 Watts 424-

S. Car. 2 Strobbart 203-

U. S. 2. Washington Cir. Court R. 180. 184.

I have not seen Judge Purples argument
 but desire to do so if it is filed in
 time -

R. B. Booby

of counsel for appellee

This last question becomes immaterial
 if the court are of the opinion that the

answer of Martin was not evidence
for in such case ~~there~~ was no legal
evidence tending to show any payment
whatever by Curtis and he could not
be prejudiced by the ruling of the
court upon this point

R. B. Leach

Curtis
vs
Martin
107-147

Argument

for

appellant

Filed May 25th 1888
J. Leland
clerk

Leach