

No. 13745

# Supreme Court of Illinois

Board of Trustees

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vs.

Kirwin, Executrix

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STATE OF ILLINOIS---THIRD GRAND DIVISION.

Supreme Court thereof, April term, 1860.

BOARD OF TRUSTEES OF TOWNSHIP 40,  
RANGE 8 EAST OF THE THIRD PRIN-  
CIPAL MERIDIAN,

vs.

MARY ANN KIRWIN, Executrix of the  
last Will and Testament of Francis  
M. Kirwin, deceased;  
HENRY STEVENS, Administrator of the  
Estate of Francis M. Kirwin, de-  
ceased;  
AUGUSTUS M. HERRINGTON, Adminis-  
trator of the Estate of Rolla French,  
deceased.

POINTS AND AUTHORITIES FOR THE DEFENDANTS IN  
ERROR.

Upon similar principles when the property of a party has been wrong-  
fully misapplied, or a trust fund has been wrongfully converted into an-  
other species of property, if its identity can be traced it will be held, in  
its new form, liable to the rights of the original owner.

It matters not in the slightest degree in what other form from the  
original the change may have been made—whether it is that of promis-  
sory note or of goods or stock—for the product of a substitute for the  
original thing still follows the nature of the thing itself so long as it can  
be ascertained to be such. *The right ceases only when the means of  
ascertainment fails, which, of course, is the case when the subject mat-  
ter is turned into money, and mixed and counfounded in a general mass  
of property of the same description.*

Story's Equity Jurisprudence, vol. 2, pages 693, '94 and '95, sections  
1258 and 1259, and the authorities there referred to.

The Court will see by the record in this case, that both Kirwin and  
French have departed this life, and that this suit is against the represen-  
tatives of Kirwin, and I cannot see that the school trustees have any  
equities over any other creditors. Upon this point I would call the at-  
tention of the Court to section 115, on page 1216 of vol. 2 Purple's Stat-  
ute.

This section clearly defines the rights of creditors, and points out  
what class of creditors shall have a preference, and declares that no other  
creditors shall have any preference. This claim is not one of the pre-  
ferred claims.

W. D. BARRY, Att'y for Def'ts.

Trustees &c

vs

Kirwin

Defendants Bonds

RECEIVED  
 OF THE  
 CLERK OF THE  
 DISTRICT COURT  
 IN AND FOR THE  
 COUNTY OF  
 DISTRICT OF  
 COLUMBIA  
 MAY 2 1860  
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 BY  
 A. L. ...  
 CLERK

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RECEIVED BY THE CLERK OF THE DISTRICT COURT IN AND FOR THE COUNTY OF DISTRICT OF COLUMBIA

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Upon similar principles when the property of a party has been wrongfully misapplied, or a trust fund has been wrongfully converted into another species of property, if its identity can be traced it will be held, in its new form, liable to the rights of the original owner.

It matters not in the slightest degree in what other form from the original the change may have been made—whether it is that of promissory note or of goods or stock—for the product of a substitute for the original thing still follows the nature of the thing itself so long as it can be ascertained to be such. *The right ceases only when the means of ascertainment fails, which, of course, is the case when the subject matter is turned into money, and mixed and counfounded in a general mass of property of the same description.*

Story's Equity Jurisprudence, vol. 2, pages 693, '94 and '95, sections 1258 and 1259, and the authorities there referred to.

The Court will see by the record in this case, that both Kirwin and French have departed this life, and that this suit is against the representatives of Kirwin, and I cannot see that the school trustees have any equities over any other creditors. Upon this point I would call the attention of the Court to section 115, on page 1216 of vol. 2 Purple's Statute.

This section clearly defines the rights of creditors, and points out what class of creditors shall have a preference, and declares that no other creditors shall have any preference. This claim is not one of the preferred claims.

W. D. BARRY, *Att'y for Def'ts.*

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Trustees &c

vs

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Filed May 21 1860

L. Leonard

clerk

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RECEIVED BY THE CLERK OF THE COURT

# SUPREME COURT

OF THE

## STATE OF ILLINOIS.

STATE OF ILLINOIS, }  
KANE COUNTY. } ss.

KANE COUNTY CIRCUIT COURT,  
February Term, A. D. 1860.

Board of Trustees of Township Forty, Range Eight,  
East of the Third Principal Meridian

vs

Maryann Kirwin, Executrix of the last Will and  
and Testament of Francis M. Kirwin, deceased.  
Henry Stevens, Administrator of the Estate of Fran-  
cis M. Kerwin, deceased. Augustus M. Herring-  
ton, Administrator of the Estate of Rolla French  
deceased.

PAGE OF RECORD.

1 On the 30th day of April, A. D. 1858, the complainants filed in the office of the Clerk of the Kane County Circuit Court, their Bill of Complaint against Maryann Kirwin, Executrix &c., of Francis M. Kirwin.

2 Bill alleges, that John Randall, Henry Minim and Leonard Howard were duly elected Trustees of Schools for said township, &c., and at the time of filing this Bill were a body corporate and politic by the name and style of "Trustees of Schools of Township number forty, North of Range number eight, East of the third principal meridian," &c.

3 That at a regular meeting of said Board &c., Rolla French was appointed township Treasurer; that he held that office until his death; all of which appears from the Records of said Board, &c. That said township treasurer had received from time to time the funds belonging to the Corporation from the proper authorities and sources provided by law, and that at the time of his death, April 17th, 1858, there was in his custody a large sum of money, to wit, \$3,000, or thereabouts, of said School funds, as appears from the books and vouchers of said Corporation, &c. That at the time the said French was appointed township Treasurer, he was in the employ of one Francis M. Kerwin, a Broker and dealer in exchange and deposits in said town, to wit, St. Charles, as principal Clerk and book-keeper. That said Kirwin at the time of such appointment or soon after, was fully cognizant thereof, and fully aware of the funds received by said French as such Treasurer, and of the amount thereof. That said Kirwin about the 16th day of January 1858, it being the same day the said French was appointed township treasurer as aforesaid, or but a short time thereafter, became and was surety, upon the Bonds of said French to said Corporation for the security of said School Funds, which appears from said bonds which is here referred to &c.

*(was appointed)* That at the time said French, treasurer as aforesaid, he had <sup>personal</sup> no such funds, as complainants are informed and believe, and did not have thereafter until his death, save and except his salary at the rate of some \$600 per year, which sum was scarcely sufficient for the support of his family, and that Kirwin well knew the same. That the said French held the said school funds aforesaid, for the use of said Corporation to the amount of \$3000, or thereabouts, in Cash, as complainants are informed and believe; which funds French deposited in the

office of said Kirwin, and with the knowledge and approbation of said Kirwin on or about the ..... day of March 1858, nominally in his own name, but really for the benefit and in trust for said Corporation. That said funds or a large portion thereof (of the precise amount complainants are not informed) are still held by said Kirwin or his legal representatives in trust and of a right belonging to said Corporation. That said French died intestate. That said Kirwin died April 15th, 1858, leaving a Will, and in compliance therewith Maryann Kirwin, his wife, has taken out letters as Executrix, but has filed no bonds as required by law,<sup>2</sup> as such executrix in said estate &c. That said executrix has entered upon her duties, as executrix in the estate of her late husband, and seeks to convert said Trust fund above described and referred to, as assets belonging to the estate of said F. M. Kirwin deceased, and neglects and refuses to set apart the same for the use and benefit of said Corporation &c. That there are large amounts due from the said Estate of Kirwin to depositors, and other demands as complainants are credibly informed and believe. That said executrix has no property in her own right, sufficient to protect the bonafide creditors of said Kirwin's Estate, from the wrongful acts of omission or commission of said executrix in relation thereto. That the bulk of the assets of his said estate is in personal property, consisting of money and securities. That there is danger that said Trust fund will be wholly lost unless the said executrix be enjoined from in any manner converting the same as the assets of her husband's estate, and that she be decreed to set apart and pay over the said fund for the use and benefit of said corporation &c. That said French died insolvent, and that said Trust Fund will be in danger of being lost unless the relief above sought be granted &c.

That said executrix combining &c., (here follows the usual charge of confederacy with unknown persons) refuses to set aside the said Trust Funds rightfully belonging to said Corporation or to secure the same to and for the use of the same, or to pay the same over to your Complainants, pretending that the funds so received as aforesaid, is a sum deposited in the common way of ordinary depositors, therefore the assets of the estate of F. M. Kirwin. Said confederates refuse to discover what such funds were, or the particulars whereof the same consisted; or the amount or value thereof; when or in what manner they were received; or to whom or how paid; and what has become thereof particularly. Complainants expressly charge that said Kirwin died seized and possessed of said funds in Trust only, and that said executrix has, or is about to convert them as assets of such Estate, without making any satisfaction to complainants for the control or use of said Trust Fund &c.

Here follows the usual prayer for discovery as to said executrix and confederates, (without oath) as to all charges and matters in said bill, and especially whether the said Trust Fund was received by said F. M. Kirwin, in trust for the use of said Corporation; at what date said fund was received, and the full amount of the same, and whether or not after the time said French was appointed Township Treasurer, as aforesaid, he deposited any other and different moneys, except said Trust Funds herein referred to with the said F. M. Kirwin? and whether or not said F. M. Kirwin, when such deposits were made, was not fully cognizant that such funds were the School funds of said Corporation, if not, what funds they were, and from whom received, that said executrix may specifically answer whether the said F. M. Kirwin died possessed of said School fund in trust or otherwise, and if not, where the same now is, and what has become of the same; that she may set forth a true account of all such debts as were due and owing from said Testator at the time of his death, to whom, by whom, and on what securities, and how or in what manner, and on what account said debts were contracted respectively, and that said Trust Fund be set apart and paid over to complainants and not to be converted as the assets of said Estate. (Here follows usual prayer for general relief, &c.) Also usual prayer for

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injunction to accord with charges in the bill, and also for usual writ of summons; all in the usual form.

Signed by JOHN RANDALL, President  
of the said Board of Trustees.

(Here follows the usual affidavit as to the charges in said bill, by said John J. Randall, made the 30th day of April 1858.)

- 12 Injunction issued out of the proper office April 30, 1858, in accordance with said bill. Said writ of injunction was returned served by the proper officer April 30, 1858.
- 13 Summons in Chancery issued out of the proper office, April 30, 1858, in the usual form, and on the same day was returned served by the proper officer. On the 10th day of May 1858, it being one of the days of the May term of said Court, the defendants were ruled to answer by Monday next, May 17th.
- 14 Time extended for answer until Wednesday next, May 18th, 1858. Answer was filed in this cause by Maryann Kirwin.
- 15 Answer neither admits or denies that said French was ever appointed Township Treasurer, as charged, &c. Denies that said French, as Treasurer of said Township, ever received any money or funds belonging to said Corporation, or from the proper authorities provided by law. Admits that French died the 17th day of April 1858. Denies that there was in his custody at that time \$3,000, or any other amount or sum belonging to said School Fund. Admits that French was in the employ of said Kirwin, but does not know in what capacity. That said Kirwin kept a banking and exchange and deposit office in said St. Charles. Denies that her late husband had cognizance or knowledge that French ever received any funds as Treasurer of said Corporation. Denies that French ever received any School Funds, while in her said husband's employment. Denies that her said husband ever had any knowledge that said French ever received any School funds belonging to said Corporation; does not know whether her husband was surety on said French's Bond; does not know whether said French had any Cash or funds of his own; on information and belief he had a large amount; also large sums of money in his hands of different persons and societies; the exact amount of said sums she does not know; does not know the exact amount of salary said French received for his services as Clerk or book-keeper. Denies that French ever placed any funds belonging to said Corporation, or any School Funds or any Trust Funds in the hands or under the custody and control of said F. M. Kirwin. Denies also that said Kirwin ever knew or had any reason to know that said French deposited any funds in his said Kirwin's office, belonging to the School Fund. Denies all such allegations of said bill. Denies that any money or bank-bills remained in the hands of said Kirwin at the time of his death, which had been deposited by said French as said Treasurer. Denies that any funds or money of any kind was left by said Kirwin at his death which had been deposited by said French belonging to said Corporation. Denies that any such came into her hands as the legal representative of the estate of said Kirwin. Admits that French died April 17th, 1858, intestate. That Kirwin died April 15th, 1858, leaving a Will as charged. That she has taken out letters as executrix of said Kirwin's estate. That she gave no bonds as executrix; denies that she has entered upon her duties as executrix, or done anything as to said estate except to remain in the house and take care of the same and the household furniture, since the death of her husband. Denies that she has attempted or designed to convert any Trust funds with assets of said estate. Admits that she has refused to set apart any of the funds belonging to said estate, for the use and benefit of said Trustees, for the reason that she had no funds in her hands belonging to them. That she has no knowledge as to the amount due from the estate of said Kirwin, as deposits and other demands. That Rolla French in his life time was in the habit of having, holding and handling large sums of money; that said French has been
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in the habit of depositing the same in the office of said Kirwin, in his (said French's name and right, in the ordinary manner of doing business of that character, and drawing the same from said office whenever he wished to use it. Avers that if French had any money deposited with said Kirwin at the time of said French's death, she believes was deposited in his own name and right, and in the usual manner of making deposits. Denies all combination &c.

19 Signed MARY ANN KIRWIN,

May 24, 1858, it being one of the days of said Court. On motion of complainants leave is given to file a supplemental bill making one Henry Stevens party defendant to this bill.

On the same day supplemental bill was filed.

20 Complainants set forth that heretofore a bill of relief, discovery and for injunction was preferred to said Court, &c., which is now pending in said Court in the words and figures following. (Here follows a copy of the first bill hereinafter set forth.

29 Complainants represent that since filing the original bill in this case, on information and belief that said letters of executorship granted to said Maryann Kirwin have been revoked, and that one Henry Stephens has taken out letters of administration in the said estate of F. M. Kirwin; that he has entered upon his duties and seeks to convert said Trust Fund (referred to, and in the possession of the said representative of said F. M. Kirwin, deceased, as stated in the said original bill, which is here referred to for a full statement of said Trust Fund,) as assets of said estate to the injury of said complainants. Complainants pray that said Stevens may be made a party to said bill &c., and that he may answer respectively the same charges and questions heretofore in the original bill charged and propounded to said executrix. Oath being waived &c.

30 That unless the said administrator be restrained by this Hon. Court, there is great danger that said Trust Funds will be wholly converted as assets of the estate of said F. M. Kirwin, and lost to the "cestui qui trust" as they are informed and believe the estate of said F. M. Kirwin is not sufficient to pay the liabilities against it; that it is insolvent. Pray for full benefit of original bill in all its equitable intendments.

That said Stevens may answer whether the said F. M. Kirwin died possessed of said School Fund, in trust or otherwise, if not where the same now is or what has become of it? that he may set forth a true account of all such debts as were due to and owing from said F. M. Kirwin at the time of his death, to whom and by whom and on what securities, and how and in what manner, and on what accounts said debts were contracted respectively, and that said Trust Fund may be set apart and paid over to complainants &c., and for general relief &c.

31 Here follows the prayer for injunction, &c., in the usual form in pursuance of the bill &c., and also the writ of summons, &c.

33 On the said 24th day of May 1858, injunction writ issued out of the proper Clerk's office, in the usual form &c.

34 On the 26th day of May 1858, writ was returned served by the proper officer on defendant Stevens. Writ of summons issued May 24th, 1858, in due form from proper office, &c.

Returned by proper officer, endorsed, served May 25th, 1858, in usual manner.

On the 27th day of May 1858, it being one of the days of the May term of said Court; on motion of defendant Stephens, injunction is so modified as to allow him to collect debts due said estate &c., but not to pay over any of the assets or money belonging to said estate to any of the creditors of said estate or any other person &c.

Nov. 13th 1858, it being one of the days of the November term of said Court, said Stevens files his answer &c.

Which answer is almost a literal copy of the answer of said Mary Ann Kirwin, which is a substantial denial of every allegation in the bill with the following exceptions: Admits that Kirwin kept an exchange and deposit office, and that French was in his employ. Don't know in what capacity. That French died April 17th, 1858, intestate. That Kirwin died April 15th, 1858, leaving a will as charged. That he has been appointed administrator of said estate and given bonds as such, &c. Admits that he has refused to set apart any of the funds of said estate for the use and benefit of complainants &c. Makes no discovery of assets or debts of said estate, as he has but little knowledge thereof. Says he has been informed and believes that said French was constantly receiving, having and holding large sums of money, and was in the habit of depositing the same in the office of said Kirwin in his own name and right, and the usual manner, &c., and of drawing out the same from said office in the same manner of other depositors, &c. Avers that if French had any money deposited in the office and with said Kirwin at the time of French's death. He believes the same had been and was deposited in his own name and right, and for his own benefit and in the usual manner &c. Denies all unlawful combination, &c.

Signed HENRY STEVENS,

March 12, 1859, on motion of defendant, cause set down for a hearing at the next term of said Court, and that testimony be closed by 10th of May next. May 30, 1859, on motion of plaintiff, time extended for closing proof to 15th October 1859.

December 12th, 1859, general replications were filed as to said original and supplemental bills, in the common form by complainants.

March 6th, 1860, it being one of the days of the February term of said Court for 1860. On motion of complainants, leave was given to make Augustus M. Herrington administrator of Rolla French, party defendant &c. On the 8th day of March, 1860, a supplemental bill was filed for that purpose, and sets up, that on the 30th day of April, 1859, complainants filed their original bill of complaint (before stated) (respecting concisely the allegations of said original bill), (and also the supplemental bill hereinbefore set out, making Henry Stevens as administrator of said F. M. Kirwin's estate.)

Said last bill further sets up that on the 1st day of May 1858, Augustus M. Herrington took out letters of administration from the proper office upon the estate of said Rolla French, deceased, said French having died intestate, and that the said Herrington has become the legal representative of said French, for the due settlement of the estate of said French and that complainants ought to have the same relief against said administrator &c., as they might have had against said French were he now living and appeared to this bill.

Bill requires said administrator to answer (without oath) according to his best knowledge, information and belief, to all and singular the matters and charges aforesaid, set forth in said original bill &c., and true and perfect answer make to this supplemental bill, and all charges therein set forth, &c., and especially may he discover according to the best of his knowledge, information and belief, whether said French died intestate, if so, whether the said Herrington has taken out letters of administration &c., upon the estate of said French, deceased, and whether he has not entered upon his duties as such administrator, and if so, whether he has marshalled the assets of said estate; whether there were funds belonging to said estate which appertained to the School Fund of complainants, if so, how much and whether said estate was solvent; and that it may be declared by this Court that complainants are entitled to some relief against said defendant as such representative of said French, and the same benefit of said original suit, and all proceedings therein, as they might have had against the said Rolla French, if he had been made a party and appeared to complainants' original bill, and was now leaving &c.

On the 8th day of March 1860, defendant Herrington files his answer to said supplemental bill.

That of his own knowledge he does not know that said French was appointed Township Treasurer as charged, yet from his information and belief he does not know of his own knowledge that as such Treasurer he received School moneys as charged &c., but on information and belief he did. Does not know that French, at the time of his death had \$3,000, or any other sum of money belonging to said School Fund. That on information and belief the said French at the time of his death had deposited to his credit in the bank of F. M. Kirwin about \$2,000, but whether such deposits belonged to said School Fund or the funds of said French, respondent is entirely ignorant. As to whether that said French had no considerable Cash funds of his own, this respondent is ignorant, has no knowledge as to French's money, except from his salary, or as to the charge that French with the knowledge and approbation of Kirwin deposited  
 112 said funds in the office of said Kirwin. Admits that French died intestate &c. April 17th, 1858; that he died insolvent and without means to pay his debts. As to manner and time of the deposits being made, or as to what particular fund such deposits belonged &c., respondent has no knowledge or information except from the books of said Kirwin, which show such deposits to have been made in the name of French, and appears to his personal credit. Admits that he took out letters of administration upon the estate of said French as charged, and filed bonds &c. That respondent has entered upon his duties and attempted to marshal the estate of said French, but has been wholly unable to find assets except as above stated; a small amount of household furniture and goods and a few articles of jewelry; in all far less than the widow and family of said  
 113 French are entitled to by law. That he left a child about five years old and a widow. That no money or evidence of money of any kind belonging to the School Fund above mentioned; except as above stated from the books of said Kirwin, have ever come to the hands or possession, or knowledge of respondent &c., and he has no information or belief that at the time of his death said French had in his personal possession any moneys or funds of the complainants, and that no such fund has ever come to the hand or control of respondent as such administrator or otherwise &c.

EVIDENCE.

45 Deposition of Ira Minard filed December 14, 1859. (Caption in usual form) (for brevity in this abstract the interrogatory is carried into the answer.)

My name is Ira Minard, age is 47, occupation, Banker, residence St. Charles. I knew Rolla French; first became acquainted with him in 1847 or 1848, and it ceased in April 1858, at his death. French was in the employ of Francis M. Kirwin from December 1857, until the time of his death. French did extra work for me evenings for which I paid him \$100. Francis M. Kirwin was engaged in the Exchange or Brokerage business from December 1857, until April 1858. The business was carried on at my Banking house in St. Charles. French was Kirwin's book-keeper, and a part of the time acted as cashier. Kirwin had no other person in his employ from December 1857 to April 1858, in  
 47 his banking business, perhaps one half the time in banking hours, from 9 to 12, from 1 till 4. Kirwin's Banking office was in the same building with my business office, consulting room between. I done my depositing with Kirwin, and was familiar with the business transactions of both Kirwin and French and was acquainted with the business transactions of the Bank. I know nothing of the "bonafide" value of the assets of the banking-house of F. M. Kirwin at the time he opened in December 1857. (9th Qut & Ans. suppressed.)

I think I was familiar with the pecuniary condition of Rolla French during the period of his employment by F. M. Kirwin. I think he had no personal money belonging to himself, of any considerable amount; he was embarrassed in his liabilities. I think he had no ready money, as I had frequently to loan him

money to defray his family expenses. Mr. Kirwin and French both told me that French was employed by Kirwin upon a salary; for the first year it was \$600, after that it was to be \$800. I paid him for extra services for me, his note for \$100, and interest. Mr. French had no other means of income or revenue to my knowledge, except his salary from Kirwin, the \$100 I paid him as stated, but the emoluments of his office as Notary Public. Mr. French had a family consisting of a wife, one child, and a hired girl; and from my knowledge of his manner of living I think his expenses would be \$75 per month or more.

50 I know of French acting as Township Treasurer for Town 40, N. R. 8, East 3d P. M.; known at St. Charles during 1857 & 1858 until his death. I knew of his receiving moneys as such Treasurer, during the time he was employed by Kirwin as above stated. I saw him receive it some two or three times or more, of Mr. Marks, Collector. I could not exactly say what the amounts were, but I think as high as \$2000, at one time, and probably less at the others. I know

51 from Mr. French's statement, that he was going to get other moneys as such Treasurer. He got my horse and buggy to go down to Geneva, and the reason he gave for wanting it was, he said he was going to get the money that belonged to the School Fund. Said it was deposited with Wm. B. West, and he was going to get it in silver and he could not bring it up by hand; he said the amount was \$800 or over. He got the buggy; came back; told me he had got his money. I saw him take some specie bags and go into the bank. I think it was the last of March or first of April 1858. There was more than one bag that French carried into the bank. The bags would hold from \$200 to \$350, each, of silver coin, and I should judge that there was from \$200 to \$350, in each bag. I noticed no particular mark on them at the time, except the bag that I saw afterwards in the Bank, marked I think "\$275, from William B. West," which I should think was one of the same bags. The mark I should judge, without doubt, was in Wm. B. West's hand writing. I opened the bag and helped to count the money out, after the death of both French and Kirwin. I think there was \$275, it was all in silver, I think mostly quarters. It was in April 1858 that I assisted in counting this money. It was in the vault in my Banking House. It was passed over to Mr. Stevens by request of Mrs. Kirwin, R. K. Swift and King, after his appointment as administrator of the

52 estate of F. M. Kirwin. This money was passed over to Henry Stevens as near as I could state within ten days after his appointment as administrator. I learned from F. M. Kirwin, at the time I advised him not to go bail, that French deposited with him or in his Banking House the School Funds which came to the hands of said French as Township Treasurer of St. Charles for the current year of 1857 or 8. Kirwin stated as his reason for going bail that the money would be left in his Banking office, and it would be under his control, and he should know what depositions would be made of it.

QUT. 23.—State whether or not you learned from F. M. Kirwin or otherwise, that Rolla French deposited with said Kirwin, or in his Banking House, the money he received as said Township Treasurer as School Fund from the first of February 1858 to the first of April following, or any part thereof. If you state from whom, and how you learned such facts about the amount or

54 amounts of money thus deposited with said Kirwin, state fully and definitely all you know upon such subject.

ANS. SUPPRESSED.—I learned such to be the fact from both French and Kirwin. I supposed it to be the School Fund. I saw Mark pay him quite a large amount of money. I think it was \$2000, just, took his receipt for it.

I did know but have forgotten about the amount of the funds in the Banking House of F. M. Kirwin at the time of his death. It was \$600 to \$800, I think, less than \$200 in currency, less than \$100 in gold, the balance in silver, more silver than gold and bills, the largest amount in quarters, some halves and small change, mostly American. One bag I think had \$275, mostly all in

American quarters. The last I saw of these funds they were in the vault and passed over to Henry Stevens, who received them as administrator of the estate of Kirwin; they were passed over to Stevens probably within ten days after his appointment as administrator.

## CROSS EXAMINATION.

56 French had my horse and buggy to go to Geneva to get money from West, I think the last of March or first of April 1858. I do not recollect positively where I was when he returned, but I must have been about the bank premises or office. I did not examine the bags or their contents when French returned from Geneva, I saw them taken out of the buggy, but did not see them opened. I must have been quite near the bags, possibly might have assisted about taking them out, I am not positive that I had either of them in my hands before they were carried into the bank. I did not examine the bags before they were carried into the bank. Only from their general size and appearance. I do not recollect whether I saw any hand writing upon the bags, of either one of the bags  
57 before the same were carried into the bank. I might and might not, but don't recollect. I saw no paper or papers attached to either one of the bags, before the same were carried into the bank except the tags or cards. I have a distinct recollection of seeing tags upon the bags, but am not positive whether they were on the whole or not. I am not positive who carried the bags into the bank. I think French carried some, have an impression that Gale was there. I do not recollect whether I saw the bags after they were carried into the bank, the day French got them or not, but I think I did not. I think I saw one of these bags afterwards, am not positive. I think I saw one of them within ten days or two  
58 weeks after. I saw at that time one of the bags, perhaps more. There was one with a tag on it that apparently had not been opened, it was in the safe in the vault. I could identify that as being one of the bags that French brought home with him at the time he had my horse and buggy, only by the tag and size of the bag. It is not necessarily the custom for Bankers when they send away bags of specie to put cards or tags on them to show the amount of specie in the bags; that would depend whether it belonged to parties receiving the money, or whether it was sent in a package; the only thing on the tag or cards  
59 by which I could identify this bag as one of the bags that French brought home with him at the time he had my horse and buggy, was the size of the card and the impression that I got from William B. West's hand-writing on the card. I could not say that I saw William B. West's hand writing upon the card at the time French brought home the bags; this was the same bag I saw in the vault after the death of Kirwin. At the time I advised Kirwin not to go bail for French he had received the School Fund for 1857, but not for 1858.

## DIRECT RESUMED.

60 I was in the vault of the Banking House of F. M. Kirwin, generally every day when at home, to get my private papers. I did not notice any bags or bag of specie there after French's trip to Geneva, that I had not noticed before, and I might go into the vault every day for a month and not see any money, as the money was kept in a safe, in the vault. I only learned from what French told me, as to where he got the bags of specie, when he got the horse and buggy. He said at that time he was going after the School Fund at Geneva. French said he wanted my horse and buggy to go to Geneva to get the School money. I am not positive when he returned he said he got it or not. The reason why I think that the bag of specie containing \$275, found in the banking office of F. M. Kirwin after his death, and which was passed over to Henry Stevens, was the same fund which French received as part of the School Fund obtained at Geneva, is that Mr. French told me that it was mostly in silver and the tag on the bag marked in William B. West's own hand writing.

## CROSS-EXAMINATION CONTINUED.

I know French had my horse and buggy to go to Geneva to get School

PAGE OF RECORD.

Fund from what he told me, and he generally told me the truth, and he was gone about long enough to go there and back. All I know about it is what French told me and the reasons given above.

IRA MINARD.

(Here follows certificate of magistrate, &c.)

DEPOSITION OF REED FERSON.

64       Caption in usual form. My name is Reed Ferson, occupation farmer, age  
65       50, live in St. Charles, was a little acquainted with Rolla French's pecuniary  
circumstances in 1857-8, he used to frequently want to hire money. He had no  
monied means to my knowledge; don't know as I would have been likely to know  
if he had any means. His business habits were good. He was in F. M. Kirwin's  
employ from December 1857 to April 1858, bookkeeper and tending Bank. He has  
been in the employ of Ira Minard directly or indirectly five or six years. I was  
his bail as Township Treasurer for 1856 & 7. I was not acquainted with his  
pecuniary condition during that time. I do not know of his having any property  
liable to execution while he was employed by Kirwin.

Cross Ex.

He might have had property unknown to me.

REED FERSON.

(Here follows usual certificate of magistrate, &c.)

DEPOSITION OF JOHN MARK.

68       (Caption.) My name is John Mark, reside in St. Charles. I have known  
Rolla French and Francis M. Kirwin 4 or 5 years. I was the Collector for the  
town of St. Charles for the current year of 1857. Rolla French was the Township  
Treasurer for the town of St. Charles for the current year 1857, until April  
1858. I paid funds to said Township Treasurer as Collector for said township.  
69       They belonged to the School Fund. I paid them to Rolla French. The first  
was \$500, sometime in December 1857. The next I have any account of, was  
on the 27th day of January, 1858, \$200. In the month of February 1858, I  
paid him \$3,853 02. The 8th of March 1858, I paid him \$1160 96. The 29th  
day of March 1858, I paid him \$79 50, amounting in all to \$5793 48. At the  
times I paid him the said several sums mentioned, Mr. French was in the  
Bank with F. M. Kirwin. I don't know in whose employ he was, he was in  
the Bank there and paid off checks whenever I called upon him for any. I  
supposed from appearance that Mr. French was bookkeeper in the banking house  
of F. M. Kirwin, from 1st of December 1857 to April 1858. Kirwin was  
generally present when I paid French the funds as above stated. Could not say  
he was there every time I paid him.

Cross Rx.

I paid French paper money with the exception when I had checks on that  
bank from individuals. He gave me receipts for them the same as money. I  
might have paid \$1000 in checks; not able to state how much; kept no account  
of it.

JOHN MARK.

(Here follows certificate of magistrate, &c.)

DEPOSITION OF HENRY B. PEIRCE.

72       (Caption.) Name is Henry B. Peirce, age 26 years, occupation, book-  
keeper in Bank, residence Geneva. From 1st of January to 1st of May 1858,  
I was in the employ of West & Moore, Bankers at Geneva. I was bookkeeper  
and teller. I do not know whether there was on deposit with West & Moore  
money belonging to the School Fund of the town of St. Charles or not. There  
was money deposited by Mr. Higgins, the School Commissioner, and he gave  
checks for it. Rolla French drew out of said Bank moneys so deposited by  
Higgins, sometime in March 1858. I have no way of knowing how much ex-

cept by recollection. My impression is about \$1000, might have been more or less; was some silver paid him, some gold. I delivered it to him. There were two bags certain, I think three, two of silver and one containing gold. The bags were common shot bags. The silver was principally American half and quarter dollars, could not say of which there was the most, there were cards or tags marked with the amount. The bags were not sealed. Could not say the exact amount in each, probably about \$250. My manner of putting up specie into bags when it consisted of halves and quarters, usually was to count the halves and quarters separate. If there were enough of either kind to fill a bag, I filled it with one kind, if not, I filled with one kind and finished with another. I have no definite recollection as to this more than my usual way of doing business. These bags would contain from \$200, to \$300 each. About \$250. I paid this money to Mr. French on his presenting the check of David Higgins, School Commissioner. I do not know where that check is. It has been given up by West & Moore to Mr. Higgins, as is the custom on settlement. W. J. Gale was with Mr. French when the money was paid him. I do not recollect during the year 1858, of Mr. French's drawing any considerable sum of money from said bank. I have no recollection of F. M. Kirwin from December 1st 1857, until his death, drawing any considerable sum of money or bags or bag of specie from said bank. I have no way of knowing to what fund the moneys belonged which French drew out, except from the books. The money was deposited by David Higgins, School Commissioner of Kane County, and I understood that Mr. French drew it as Town Treasurer of St. Charles. The names of the firm of West & Moore are, Alexander B. Moore and William B. West.

## CROSS EX. BY DEFT.

I came to the conclusion that it was the School Fund, as Mr. Higgins told me that the money he deposited was School money, and that he gave checks to the Township Treasurer for the portion of School money belonging to the several towns. All I know about it is, what Mr. Higgins told me. I knew that Mr. French was elected Township Treasurer for the town of St. Charles, by common report, I paid the money to French on Mr. Higgins' personal check. Higgins deposited small amounts with West & Moore, previous to about the middle of March, 1858, about that time he deposited this School money, about \$12,000.

## DIRECT RESUMED.

The identical coin paid French came from the County Treasurer, the money was paid to Mr. French the last days of March. After the 20th this money came from Wm. P. West, County Treasurer, in this way: Mr. West gave Higgins a check which was placed to Higgins credit. West had previously deposited funds belonging to the County of Kane with West & Moore, and this check was charged to West's account.

HENRY B. PEIRCE.

78 (Here follows usual Magistrate's Certificate.)

Dec. 14th, 1859, deposition of Wm. J. Gale was filed in the proper office on part of the complainants. (Usual Caption.)

Name is William J. Gale, age 35 years, occupation, dentist, residence St. Charles. I was acquainted with Rolla French and Francis M. Kirwin. First acquaintance with Mr. French in 1851; continued until his death. First became acquainted with Mr. Kerwin in 1854, and the acquaintance continued until his death. Mr. French acted as Township Treasurer for the town of St. Charles for the years 1857 & 8. I went to Geneva with Mr. French the last of March 1858, at the Bank of Geneva, he received some money, about \$1100 or \$1200. I saw the money counted and put up for French, Henry Peirce counted the money and put it up into bags. I think there was no one present but Mr. Peirce, French and myself; my impression there was about \$500 in

82 gold, the balance in silver, mostly American quarters, my impression is it was American gold. These funds were put up in shot bags; the gold by itself; the silver by itself. I think the gold was put into one bag. I do not remember how many bags in silver there were, but there were more than one. These bags were common shot bags, tied up with strings with tags tied to them, with the amount marked upon them to each bag. French brought these bags and contents to St. Charles and carried them into F. M. Kirwin's bank. I don't know that I ever saw them afterwards to recognize them as the same bags. Mr. 83 French told me at the time he got this money, that he got an order from Mr. Higgins, the School Commissioner to go to the Bank to get the money, he said it was the School Fund. It came into his possession as School Treasurer, heard him say he was School treasurer. This money was in shot bags, it was turned out on the counter and counted and put back into the bags. French took them and brought them to St. Charles. I cannot say whether the money was put back into the same bags or not. I have no interest now in the estate of F. M. Kirwin, at the time of his death I had then on deposit about \$290, I do not know that any part of such deposit has been canceled or paid by the representatives of said Kirwin. I sold a hundred and four dollars of said deposit to C. G. Scott, took his note for it, the balance to E. Chapin for land in Minnesota.

## CROSS EX. BY DEFT.

I only know from common report and the declarations of French that he was Township Treasurer of the town of St. Charles. I do not know except from French's declarations that he ever received any money as such Township Treasurer. At the time the money was counted in the bank at Geneva there was present Henry Peirce and myself. I took no part in counting the money. I have not the amount got from there. I do not know, except from French's declaration, that he had any order from Higgins for School money. At the time French got the money there was more than two bags; don't know how many more. I carried one of the bags from the bank to the carriage; there were tags attached to the bags and figures upon the tags; impression is they 89 were paper, about an inch and a half long. I think they were attached to the bags by strings. I have no recollection of seeing anything but figures on the tags; have no recollection of seeing any words or names upon the tags. I handed the bags from the carriage to French at St. Charles, at the time he carried them into the banking house of F. M. Kirwin. I think I would have been likely to recollect it, had I seen any words or names written on the tags of the 90 bags. I know from no other source except the declarations of French, as to the capacity in which he received this money.

## DIRECT RESUMED.

At the time French went to Geneva for this money, he was employed in Kirwin's bank as bookkeeper or Clerk. Kirwin had no other bookkeeper or 91 clerk from December 1857, until his death. Of the money put up by Peirce for French there was I should judge about \$500 in gold, and \$500 or \$600 in silver. There was nothing that called my attention to tags or marks upon them 92 affixed to these bags. I don't recollect what the object of the figures were on these tags. I cannot state the numbers corresponding with such figures. The name of William B. West might have been written on one of the tags, but I have no recollection of it. I went down to Geneva with Mr. French as a friend, 93 he asked me to ride down with him. I had no interest in the matter whatever.

## CROSS EX. RESUMED.

Mr. Kirwin went Chicago about the first of April 1858. Mr. French had charge of the bank until about three days before his death. Ire Minard then 94 took charge of it until Mr. Kirwin's death. Mr. Kirwin had no charge of the bank after he went to Chicago. Mr. French had charge of the bank after

Kirwin went to Chicago I think about two weeks. After French left Minard had charge of it about three days. Mr. Kirwin was unable to do business of his bank some five or six weeks before his death. I know of no one having access to the books, papers and money of Kirwin's bank, except Kirwin, French and Minard; nor of any one acting as cashier except them.

95 If there had been any names or words on the tags of the bags that French got at Geneva, I should have been likely to have remembered it. I remember the figures. I have no recollection of seeing William B. West's name on either of the tags.

DIRECT RESUMED.

M. Kirwin was in the habit of coming to his bank every day until about the first of March 1858, and at short intervals during the month of March and until he went to Chicago. At the time he left for Chicago his intellect was clear and he seemed to understand clearly his business matters.

W. J. GALE.

(Here follows certificate of Magistrate.)

100 December 16, 1859, by agreement this cause is set for a hearing before the Judge of this Court at Chambers, on 4th Monday of January next at 10 A. M. Testimony of Ira Minard taken on the hearing.

Francis M. Kirwin commenced banking on his own account in St. Charles in January 1857, and continued until April 1858. Mr. French was the only bookkeeper and teller I know of. I think French began in January 1857, am not positive, continued till April 1858. I was as familiar with Kirwin's Banking business, as I should be with any man's business that I was not doing myself. All the means I had of acquaintance with Kirwin's banking business from December 1857 to April 1858, was my own business with him; was frequently there. I had frequent interviews with Kirwin from December 1857 to April 1858. He used to call upon me for advice about doing certain things, he frequently, several times showed to me his balance sheets as banker. From that I only infer what his condition was. I presume that in the Summer and Fall of 1857 he detailed to me his financial condition. He made frequent statements by showing me his balance book. I became familiar with his banking business only from his balance book and his statements. His balance book purported to be full and complete I should think. He made statements to me several times in 1857 & 1858, once in the month of August or September 1857. I spoke to Kirwin about School Fund of 1858. He said that Mr. French said that the School Fund for 1858 was to be deposited with Mr. Kirwin. Mr. French at that time was acting as Township Treasurer for the town of St. Charles. He had thus acted for 1857 & 1858. I think I could not be positive whether Kirwin afterwards said where the money had been deposited, he might or might not.

QUT. 20.—If you know, state where the School Fund of the town of St. Charles was deposited for the year 1858.

ANS.—I have drawn money on Mr. French's check there.

QUT. 21.—If you have any facts to give as to where the School Fund of St. Charles was deposited for the year 1858, state them fully and at large.

ANS.—I have none only that I have drawn money there and have seen Mr. French give other checks to teachers on different districts on Mr. Kirwin's bank.

The money which I drew belonged to District No. 7, of the town of St. Charles. Mr. Kirwin stated to me that the School Fund for the town of St. Charles for 1858, was to be deposited there. I do not recollect of hearing French and Kirwin talk the matter over together. I saw Mr. Marks, Collector, paying over money to Mr. French, what I supposed to be the Township School Fund, either in February or March 1858. Mr. French told me so in presence

PAGE OF RECORD.

120 of Mr. Kirwin. I do not know what was done with the same. Mr. French was counting the money on the desk when I saw him. Mr. French at that time was acting as bookkeeper and cashier for Kirwin. There was about \$2,000, I think. I do not know what French done with the money. Mr. French and Kirwin were counting it at the desk. I left before they got through. I have received money from Kirwin's bank in checks for District No. 7. I have drawn money in 1858 from Mr. Kirwin for indebtedness due, several times. Some of the times Mr. Kirwin paid it, and sometimes Mr. French paid it in checks. I think I drew it in February or March 1858, cannot be positive. I probably drew out in all between \$100 and \$200, could not state positively. This fund of District No. 7, was drawn for indebtedness I had against them by the orders of the Directors. I could not say that I know of any of the School fund for 1857 being drawn from Kirwin's bank. I could not say but a part I drew was of the fund of that year.

*(\$1000 and \$2000)*

CROSS EXAMINED BY DEFT.

I drew from Kirwin's bank in February or March 1858, between one and two thousand dollars.

JOHN P. LEWIS SWORN FOR PLTF.

123 I was in the banking business with Mr. Kirwin prior to the year 1857. I think I was familiar with Kirwin's pecuniary condition about January 1857. He had of monied means at that time invested in the bank about \$700. He had no other monied means or capital to my knowledge. My means of knowledge as to his capital at that time was, that I had been connected in business with him, and it was all he had invested in business.

CROSS EXAMINATION.

124 I was one of the partners of the firm of Kirwin. I don't recollect the amount I put in when the firm started. Somewhere about \$2,000. My brother put in near \$1,200 or \$1,500, at the time we commenced. I kept the money in the concern, that I put in until we dissolved. I do not recollect the exact amount. I did not know what Kirwin was worth at the time he went into the bank. I know very near what Kirwin's property was worth that he had invested in business at the time Kirwin & Lewis dissolved. He had no other property that I knew (nothing) about, that was afterwards brought into his business, for the reason that he agreed to invest more means than he had invested, and if he had had, he would likely have invested it. I had been very intimate with him and I think he would have told me if he had any more property, every man that goes into partnership with me tells me what his property is worth or pretends to.

*(anything)*

126 QUT. 12.—Did ever Mr. Kirwin tell you or pretend to tell you exactly what his property was worth or what property he had.

ANS.—He told me he had that Stock of Goods, and his House & Lot, and said that he could command other means.

QUT. 13.—That is all you know in relation to his property is it?

ANS.—I think that is all the property he had.

127 I know this is all the property he had, because I think if he had had other property he would have been likely to have told me he had. The reason why I think he had no other property was because he did not tell me of it, and because I did not know of it, and I think I should have known it, under the circumstances, if he had had it. The particular circumstances that rendered it necessary for me to know exactly what Kirwin's property was worth were, that we were forming a copartnership, and I think it was necessary to know what every man is worth that I form a copartnership with. I intend to. At the time we formed this copartnership he told me he had that stock of goods; that house and lot, and could command other means, but failed to command them. Our

partnership continued four months. I do not recollect how much money I drew out on my own account of the firm at the time we dissolved.

128 I drew out what means I had in the partnership of Kerwin, Lewis & Lewis, I left some on deposit. I drew out in cash and obligations \$4,000, it was my own money which I had put into the firm; my brother drew out about the same amount. The amount I put into the copartnership in cash was about 129 \$2,000, I put in some notes and some time drafts. Some of the notes were against Zeney Barry of New York. I had two or three notes against Barry, I do not recollect the amounts; the notes were each for more than \$100. I do not recollect the exact amount, they might amount to \$800. They were paya- 130 ble to me. I think these notes were not paid while in the bank, but I am not positive. I had a note against Kirwin, I do not know whether I put that in the bank or not. I know it was not paid after we dissolved. I think it was for between \$400 & \$500. I am not positive whether I put other notes in or not. I do not recollect how much money I left on deposit when I went out of the bank, I think it was more than \$1000. I do not recollect the amount. I do not recollect how long the money remained there. I drew it out at different times, part of it might have remained three months, I do not think it all did. 132 F. M. Kirwin carried on the banking after I left. He gave a bond to me and my brother in the sum of \$10,000, to close up the business. (It was here admitted that the books presented are the books of Kerwin, Lewis & Lewis and also of Kirwin). I think there was no School Fund account at the time of the dissolution of Kerwin, Lewis & Lewis. I think French had in the bank at the time of the dissolution \$156 01.

#### DIRECT RESUMED.

(not) I learned after we commenced business together from Kirwin that he owed for a portion of the goods I have referred to. He did raise the other available means I have referred to while I was connected with him.

#### CROSS EXAMINATION RESUMED.

I stated that I did not recollect the amount on deposit at the time of the dissolution, but I thought it was in the neighborhood of \$12,000. All of the deposits of the old firm were passed over to Kirwin. The old firm received from Kirwin at the time of dissolution as indemnity for liability to depositors an indemnifying bond, signed by C. K. Parks, and I think by Kirwin for \$10,000.

#### EVIDENCE OF DAVID HIGGINS.

My name is David Higgins, age 39, my occupation, Clergyman & School Commissioner. By the bonds I hold, Rolla French was the acting township Treasurer for the current years of 1856 & 1857, and to April 1858; first bond was signed 28th January 1856; second bond 16th January 1858. I have seen Rolla French write often; I think his signature is to the bond dated January 1856, from the similarity of his hand writing, I think the signature to the bond dated January 16th, 1858, is his.

135 Q<sup>U</sup>T. 6.—State whether you have paid to Rolla French as Township Treasurer of the township of St. Charles for the year, from the 1st of January 1857, to 13th of April 1858, as School Commissioner of Kane Co., Ills., any money belonging to the School Fund of said Township. If yea; state the dates and the amounts of such payments as near as you can.

ANS.—I paid Rolla French 20th of March 1858, by check on West and Moore's bank to be paid in coin, \$1192 37, also same date in currency \$100.

#### JAMES T. WHEELER SWORN COMPLTS.

Am Township Treasurer of St. Charles. Rolla French was my predecessor. I have the care and the custody of the books. These are the books [pre-

PAGE OF RECORD.

sented] (Page "A") this page is in the hand-writing of Mr. French, (Page "A" put in evidence) know the hand of F. M. Kirwin, also that of C. A. Brooks, papers presented (Bond "B") know the hand writing of Reed Ferson. Bond of the year preceding ("C") put in evidence.

136

H. STEVENS EVIDENCE COMPLTS.

I am administrator of the estate of F. M. Kirwin; been acting since the 20th of May 1858. The assets consisted of money, accounts, notes, personal property and real estate. (Deft objected to Stevens as a witness.) Consisted of from \$5,000 to \$7,000. Cash \$715 45, besides a little uncurrent of \$38, real estate to the amount of \$1500, notes not to exceed \$200, balance was in accounts and personal property; personal property was from \$800, to \$1000, consisting of household furniture, buggy and harness, Bank furniture, cow, &c. Accounts about \$2,000, was an old judgment on record of about \$500. Ira Minard passed the money into my hands, it was in gold, silver and bank notes. I think there was one bag of silver about full; shot bag containing from \$250 to \$300, mostly in American quarters; was another shot bag containing gold and silver, silver mostly of small denominations from 3 to 10 cents; gold mostly foreign. Gold \$155 66; change I do not remember. I have the custody of the books of the Banking House of F. M. Kirwin. The account of Rolla French presented from 1st day January 1858, to the close, (Ledger "A") page 231, also 292, of which the following is a true copy;

		PAGE	\$	cts.		PAGE	\$	cts.
167	1858, Jan. 6, To Am't Cash	215	10	81	1858, Jan 19, By Cash Acct.	219	16	00
	" " 9 " " " "	216	3	00	" " " " " "	222	50	00
	" " 19 " " " "	219	8	30	" Feb. 1, " " " "	266	159	30
	" " 28 " " " "	222	10	00	" " 8 " " " "	268	200	00
	" Feb. 18, " " " "	273	25	00	" March 4, " " " "	276	11	55
	[ " March 1, " " " "	277	17	75	" " 8, " " " "	278	1164	96
	" " 3, " " " "	"	38	00	" " 16 " " " "	280	9	00
	" " 6 " " " "	279	3	00	" " 20 " " " "	282	2000	00
	" " 10 " " " "	"	176	00	" " 23 " " " "	"	44	00
	" " 8 " " " "	"	32	90	" " 25 " " " "	284	1192	00
	" " 11 " " " "	281	21	00	" " 26 " " " "	"	7	06
	" " 12 " " " "	"	15	05	" " 29 " " " "	"	1186	93
	" " 17 " " " "	"	3	00	" " 3 " " " "	286	19	25
	" " 18 " " " "	283	20	56	" April 1 " " " "	"	5	00
	" " 19 " " " "	"	3	00	" " 2 " " " "	"	18	08
	" " 22 " " " "	"	4	00	" " 3 " " " "	"	195	00
	" " 23 " " " "	"	3	00	" " " " " " " "	"	17	50
	" " 25 " " " "	285	38	00	" " " " " " " "	"	8	00
138	" " 26 " " " "	"	28	00	" " 5 " " " "	288	6	25
	" " 27 " " " "	"	168	00	" " 6 " " " "	"	22	95
	" " 29 " " " "	"	5	00	" " 7 " " " "	"	9	17
	" " 30 " " " "	278	1776	30				
	" April 1 " " " "	"	12	50	{ Amt deposited from Jan. 6, 1858			
	" " " " " "	"	780	53	{ to April 7,	\$6,341	20	
	" " 2 " " " "	"	34	10	Amount drawn out for same period	4,345	17	
	" " 3 " " " "	"	565	7	{ Balance to French's credit March			
	" " 6 " " " "	289	373	23	{ up to 11, 1858	1,996	03	
	" " 7 " " " "	"	92	00				
	" " 8 " " " "	"	3	00				
	" " 10 " " " "	291	75	47				

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Ledger "A" page 240 (Kirwin's bank book) (was put in evidence) account with I. M. Adsit, shows balance in favor of Kirwin \$991 44  
 Account with George Smith in Ledger "A" Page 288 (put in evidence) shows balance in favor of Kirwin of \$1,038 50  
 James T. Wheeler recalled.—I am acquainted with French's hand writing

PAGE OF RECORD.

(paper here shown witness report of French showing statement of tax received by him for 1857, marked Exhibit "D".) This is French's hand writing; admitted in evidence. Township Treasurer's book offered in evidence from March 23d 1858, to April 5, 1858. District No. 1, Page 62. Dist. No. 2, 58 & 59; all entries after Jan. 1st 1858. Dist. No. 3, Page 63, all entries after Jan. 1st 1858. Dist. No. 4, Page 67, all entries after January 1st 1858.

Dist. No. 6, " 94 " " " " " "  
 Dist. No. 7, " 68 & 75 " " " " "  
 Dist. No. 8, " 71 " " " " " "  
 Dist. No. 9, " 72 " " " " " "

All of said acct (entries) are in the hand writing of Mr. French. Copy of above acct. is marked (Exhibit "E.")

(Exhibit "E") referred to by J. T. Wheeler.

1858.		DISTRICT No. 1.	
March 23,	To Cash received W. P. West	By Treas. coms.	\$0 89
	Treasurer, R. R. Tax	" " "	1 64
March 29,	To Cash received by	" amt paid C. B. Tucker for	
	collector of Taxes for 1857	Teaching	13 96
April 5,	To amt. distributed by		
	Trustees		<u>\$16 49</u>
			\$159 52

1858		DISTRICT No. 2.	
March 29,	To amt. received from Collector	Feb. 27, By paid your order M. Swit-	
	of Taxes for 1857	zer,	\$17 75
April 5,	To amt. distributed by	March 29, by cash E. M. Sperry	
	Trustees	Teacher	70 00
		Treasurer's Commission	1 75
			<u>\$89 50</u>
			\$110 04

1855		DISTRICT No. 3.	
March 29,	To amt received from collector	March 29, By Treasurer's coms'n	\$2 10
	of Taxes for 1857	" 11, " Cash paid E. W. Ben-	
April 5,	To amt distributed by	edict	100 00
	Trustees		<u>\$102 10</u>
			\$190 89

1858		DISTRICT No. 4.	
March 29,	To amt received from Collector	By Treasurer's commission	\$2 76
	of Taxes for 1857		
			\$138 17

145	1858	DISTRICT No. 6.	
	March 29,	To amt received from Collector	By Treasrner's commission
		of Taxes for 1857	\$3 75
	April 5,	To amount distributed by	By Cash pd your order I. D. Sperry
		Trustees	" " " " " T. A. Rawson
			132 00
			<u>\$187 65</u>
			\$1 85

1858		DISTRICT No. 7.	
March 29,	To amt received from Collector	Jan. 27, By Cash paid Eliza Par-	
	of Taxes, for 1857,	malee	\$12 00
	Whole amt Collected	March 25, Morion Ellis	38 00
	Amt Teachers prop'n	" 27, Lucy M. Johnson	136 00
	Due for Gen'l District	" 29, Treasurer's commission	
	proportion	on \$4,040 92	80 82
	Amt rec'd from Directors	" " Paid your order H. Minim	487 82
	Proceeds of Bond sold	" " By order pd Ira Minard	97 24
		" " " " " " "	293 30
		" " " " " " "	48 15
	Amount distributed by Trustees	April 1st Susan Adams, Teacher	120 00
		" " P. W. Warren	142 50
		" " Morion Ellis	48 83
			<u>\$5780 14</u>

PAGE OF RECORD.

(paper here shown witness report of French showing statement of tax received by him for 1857, marked Exhibit "D".) This is French's hand writing; admitted in evidence. Township Treasurer's book offered in evidence from March 23d 1858, to April 5, 1858. District No. 1, Page 62. Dist. No. 2, 58 & 59; all entries after Jan. 1st 1858. Dist. No. 3, Page 63, all entries after Jan. 1st 1858. Dist. No. 4, Page 67, all entries after January 1st 1858.

Dist. No. 6, " 94 " " " " " "  
 Dist. No. 7, " 68 & 75 " " " " "  
 Dist. No. 8, " 71 " " " " " "  
 Dist. No. 9, " 72 " " " " " "

All of said acct (entries) are in the hand writing of Mr. French. Copy of above acct. is marked (Exhibit "E.")

(Exhibit "E") referred to by J. T. Wheeler.

1858.		DISTRICT No. 1.	
March 23,	To Cash received W. P. West	By Treas. coms.	\$0 89
	Treasurer, R. R. Tax	" " "	1 64
March 29,	To Cash received by	" amt paid C. B. Tucker for	
	collector of Taxes for 1857	Teaching	13 96
April 5,	To amt. distributed by		
	Trustees		<u>\$16 49</u>
			\$159 52

1858		DISTRICT No. 2.	
March 29,	To amt. received from Collector	Feb. 27, By paid your order M. Swit-	
	of Taxes for 1857	zer,	\$17 75
April 5,	To amt. distributed by	March 29, by cash E. M. Sperry	
	Trustees	Teacher	70 00
		Treasurer's Commission	1 75
			<u>\$89 50</u>
			\$110 04

1855		DISTRICT No. 3.	
March 29,	To amt received from collector	March 29, By Treasurer's coms'n	\$2 10
	of Taxes for 1857	" 11, " Cash paid E. W. Ben-	
April 5,	To amt distributed by	edict	100 00
	Trustees		<u>\$102 10</u>
			\$190 89

1858		DISTRICT No. 4.	
March 29,	To amt received from Collector	By Treasurer's commission	\$2 76
	of Taxes for 1857		
			\$138 17

145	1858	DISTRICT No. 6.	
	March 29,	To amt received from Collector	By Treasrner's commission
		of Taxes for 1857	\$3 75
	April 5,	To amount distributed by	By Cash pd your order I. D. Sperry
		Trustees	" " " " " T. A. Rawson
			132 00
			\$187 65
			81 85

1858		DISTRICT No. 7.	
March 29,	To amt received from Collector	Jan. 27, By Cash paid Eliza Par-	
	of Taxes, for 1857,	malee	\$12 00
	Whole amt Collected	March 25, Morion Ellis	38 00
	\$4,040 92	" 27, Lucy M. Johnson	136 00
Amt Teachers prop'n	\$577 27	" 29, Treasurer's commission	
Due for Gen'l District		on \$4,040 92	80 82
proportion	\$3463 65	" " Paid your order H. Minim	487 82
Amt rec'd from Directors		" " By order pd Ira Minard	97 24
Proceeds of Bond sold	\$190 00	" " " " " " "	293 30
	\$4,040 92	" " " " " " "	48 15
	190 00	April 1st Susan Adams, Teacher	120 00
Amount distributed by Trustees	549 22	" " P. W. Warren	142 50
		" " Morion Ellis	48 83
			\$5780 14

PAGE OF RECORD.

1858  
146

DISTRICT No. 7. CONTINUED.

April 1st,	By order	Morion Ellis	\$20 00
" "	" "	John G. Adams	450 00
" "	" "	Morion Ellis	18 17
" "	" "	" "	16 13
" "	" "	J. J. Randall	1 50
" 3	" "	Loomis & Tyler	37 50
" "	" "	Butler & Weed	41 25
" "	" "	S. B. Flint	36 32
" 10	" "	J. G. Nind	68 47
" "	" "	Bowman & Loyd	5 41
" "	" "	Butler & Ferson	70
" "	" "	George Ferson	1 00
			\$3,395 71

1858

DISTRICT No. 8.

March 29,	To amt received from Collector of Taxes for 1857,	\$1020 00	March 29,	By Treasurer's commission on \$1020 29	\$20 40
April 5,	Distributed by Trustees	551 66	" "	" cash paid your order	
		\$1,571 95	" "	" " to John Oliver	21 00
			" "	" " J. S. Van Patten	7 00
			" "	" " Bowman & Lloyd	39 88
			" "	" " Stephen March	87 52
			March 30,	" " G. S. F. Savage	84
			" "	" " "	100 17
			" "	" " O. M. Butler	8 71
			" "	" " Butler, Ferson & Co.	1 50
			" "	" " Lewis & Hallock	5 50
			" 31	" " S. B. Patrick	12 50
			April 3	" " Miss Woodward	150 00
			" "	" " Hellen M. Bell	200 00
			" "	" " E. J. Pickett	350 00
			" "	" " Ellen McWayne	92 00
			\$1097 02		

1858

DISTRICT No. 9.

March 29,	To Cash received of Collector of Taxes for 1857,	\$131 31	March 29,	By Treasurer's Commission on \$131 34	\$2 62
April 5,	Distributed by Trustees	23 42	" "	By cash paid your order	
		\$154 73	" "	" S. L. Burley	62 20
			" "	" cash paid Reed Ferson	50 00
			" "	" " John Mark	4 50
			" "	" " A. Kinnear	15 00
			" "	" " Butler & Hunt	13 79
			\$148 11		

(Exhibit "I" on page 150 of the record shows a synopsis of the various orders drawn by the various School Districts on Rolla French as Township Treasurer for St. Charles, as reported by said French as paid in Exhibit "E" on pages from 154 to 175 of Record, said orders are set out in full, all of which were in the possession of the Township Treasurer, (aggregate amount) \$4,210 81.

The following checks of Rolla French on F. M. Kirwin are introduced in evidence.

141	District No. 6,	Check dated	March 3d,	1858,	amount	\$38 00
"	"	2	"	"	9	17 75
"	"	6	"	"	27	24 00
"	"	7	"	"	"	136 00
"	"	8	"	"	"	21 00
"	"	7	"	"	29	743 89
"	"	"	"	"	"	694 80
"	"	"	"	"	"	70 00
"	"	"	"	"	30	132 00
						\$1,877 44

		Brought over						\$1,877 44
	District No. 8,	Check dated	March 30,	1858,	amount		\$101 01	
	"	"	"	"	"	"	22 50	
	"	"	"	"	"	"	5 50	
	"	"	"	"	"	"	1 50	
	"	"	31	"	"	"	12 50	
	"	"	7	"	April 1	"	776 33	
	"	"	"	"	2	"	3 4 00	
	"	"	7	"	3	"	115 07	
	"	"	8	"	"	"	350 00	
	"	"	3	"	"	"	100 00	
142	"	"	7	"	6	"	7 11	
	"	"	"	"	"	"	2 15	
	"	"	"	"	"	"	13 97	
	"	"	8	"	7	"	350 00	
	"	"	8	"	"	"	92 00	
	"	"	"	"	"	"	70 47	
							\$3931 85	

It is admitted that the above Checks were in the possession of F. M. Kirwin at the time of his decease.

## STEPHEN MARCH SWORN.

Paper Exhibit "G", order of District No. 8, to Stephen March dated Feb. 19th, 1858, for \$87 52, (shown witness), I paid my taxes to Mr. Mark, Collector, (with this) I think I presented it as soon as I got it.)

## F. H. BOWMAN SWORN.

Order presented drawn by School Directors of District No. 8, for \$39 88, to Bowman & Lloyd. I let Mr. Marks have it in payment of our Taxes for 1858, I paid it to Collector about March 1st 1858. Order marked Exhibit "H".

149

## JOHN MARK SWORN.

Order of District No. 9, for \$62 20 to L. L. Burley on Township Treasurer of St. Charles presented. I took this order from Burley and paid it to Mr. French as Cash. Another order same district of \$15. If March and Bowman paid me Orders of District No. 8, I let Mr. French have them as money. I was in the habit of receiving Checks on Kirwin's Bank for Taxes. [Complainant proposed to show that the statement in the deposition of Mark's as to the payment to and receipt of money by French are not in accordance with the fact in the case, to wit: In cases when the money was collected through several days, it would be footed up and a receipt given as though it was all paid at once,] (overruled and exception taken by complainant.) Kirwin was present at different times when I paid over moneys to French.

## CROSS EX.

150

I remember I paid moneys to French previous to 1st of January. I paid French at several times before the 8th of March 1858, and on that day I reckoned it up. It amounted to \$1160 96. I might have done so in other cases.

Page "A" of records of School Trustees put in evidence referred to in the evidence of J. T. Wheeler.

148

"Organization of Board of Trustees January 16, 1858." Present John J. Randall, Henry Minim, L. Howard. On motion of Henry Minim, John J. Randall was appointed President for the ensuing term. On motion of Leonard Howard Rolla French was appointed Township Treasurer for ensuing two years. On motion of Leonard Howard, the bond of said Rolla French as Township Treasurer for the sum of \$10,000, signed by Rolla French, Francis M. Kirwin and Charles A. Brooks, was accepted and ordered to be placed in the hands of

the President to be forwarded to the County School Commissioner as provided by law. On motion adjourned until the first Monday in April next.

JOHN J. RANDALL,

Attest, ROLLA FRENCH, Clerk.

President.

179 (Exhibit "B") is the copy of the bond of said Rolla French, Francis M. Kirwin & Charles A. Brooks, dated the 16th day of January 1858, (drawn from the form in the School Act.)

A. M. HERRINGTON SWORN.

It is agreed that A. M. Herrington was appointed Administrator of Rolla French's Estate in May 1858, and that he has marshalled the assets and found none, and that he has not received any assets of any description belonging to the Estate of French.

180 Exhibit "C" is the bond of Rolla French, Reed Ferson and A. B. DeWolf, dated January 28, 1856, (drawn from the form in the School Law.)

181 (Exhibit "D") shows statement made by Rolla French to Board of Trustees  
182 of Division of School District money for Tax of 1857 by Districts paid by Col-  
183 lector.

184

SYNOPSIS OF SAME.

Amount collected for District No. 1.	\$83 49 }	
Collector's per centage out	1 67 }	\$81 82
Amount collected for District No. 2.	89 65 }	
Collector's per centage out	1 79 }	87 86
Amount collected for District No. 3.	107 62 }	
Collector's per centage out	2 15 }	105 47
Amount collected for District No. 4.	140 99 }	
Collector's per centage out.	2 88 }	138 17
Amount collected for District No. 6.	191 48 }	
Collector's per centage out.	3 83 }	187 65
Amount collected for District No. 7.	4,123 33 }	
Collector's per centage out.	82 46 }	4,040 92
Amount collected for District No. 8.	1,041 11 }	
Collector's per centage out.	20 82 }	1,020 29
Amount collected for District No. 9.	133 99 }	
Collector's per centage out.	2 68 }	131 31
		\$5,793 49

DEFENCE.

143 Henry Stevens sworn.—The account of French commenced with Kirwin January 5, 1857, closed in April 1858. Kirwin had in vault 6th January \$6,714 98.

The following is a list of Depositors as shown by the books of F. M. Kirwin from January 1858 to the close. W. D. Barry, B. B. Payne, Rolla French and thirty-one others.

152 On the 6th of January 1858, there was a balance on the banking books as appears from the daily bank balance book of \$25 61, against Rolla French. On the 7th of January balance against French of \$36 42. On the 9th of \$39 42. On the 12th of \$39 42. On the 23d of January 1858, a balance against French of \$31 72. F. M. Kirwin had of money in vault on 6th of January 1858 \$6714 98

On the 7th of January 1858,	\$7,515 89
" 8 " " "	7,663 11
" 11 " " "	9,805 80

There was due from Kirwin to depositors on the 14th day of April 1858, \$4,500, except French's account including his \$6,500, about. There is no account on the bank book of F. M. Kirwin, of Rolla French as Treasurer, having an account with the bank.

153 Rolla French's account at Bank stood on February 3d 1858, \$342 58 in  
143 his favor. On March 11th, 1858, \$1226 44. On March 30th, 1858, \$3620 89.  
It is admitted that F. M. Kirwin had on hand January 1st, 1858, \$6,714 98,  
and from that to time of his death it was drawn to \$715 45 (cash in vault.)

There is appended to the foregoing evidence not embraced in the depositions a certificate of Charles B. Wells, Master in Chancery, that the same was taken by him under the order of the Court upon the hearing of this case.

173 On the 8th day of March 1860, it being one of the days of the February Term of said Court, the following decree was entered in the case.

The Board of Trustees of Town forty, Range eight, East of the third principal meridian,

vs

Mary Ann Kirwin, Executrix of the last will of Francis M. Kirwin, deceased, Henry Stevens, administrator of the Estate of Francis M. Kirwin, deceased, & Augustus M. Herrington, administrator of the Estate of Rolla French, deceased.

176 This case having been brought on for a final hearing upon the original and supplemental Bills, the answers, replications and proofs filed and taken in the the case, and after full argument by D. L. Eastman, counsel for complainants, and W. D. Barry Esq., counsel for defendants, and the Court having fully considered the pleadings, proofs and arguments in the case. And it appearing to the satisfaction of the Court, among other things, that at the time of Francis M. Kirwin's death, as set forth in the pleadings in the case, to wit, the 15th day of April 1858, there was in his vault in specie, a bag of or containing specie or silver, amounting in the aggregate to two hundred and seventy-five dollars, which bag of money was there deposited by Rolla French, as township Treasurer of town forty, range eight, east of the third principal meridian, and was a part of the School Funds belonging to the various School Districts of said township, and that said bag of money was taken charge of by said defendant, Henry Stevens, as administrator of the Estate of Francis M. Kirwin, deceased, on or about the 16th day of May, 1858. It is therefore ordered, adjudged and decreed by this Court, that Henry Stevens, administrator of the Estate of Francis M. Kirwin, deceased, pay and deliver over to the said complainants or to their solicitor, the said bag so by him received, as aforesaid, containing the said sum of two hundred and seventy-five dollars in silver, or its full equivalent, to wit, a sum in value equal to the sum of two hundred and seventy-five dollars  
177 in silver, within ten days from the date hereof, and to take the receipt of said complainants or their solicitor, therefor, which said receipt shall be a voucher to said Estate for the payment of said sum, not only as against the complainants and their successors, but also as against the Estate and legal representatives of the said Rolla French deceased, and upon the same being filed and spread upon the records of this Court, the said complainants and the legal representatives of the said Rolla French, and each of them shall be for ever barred from in any manner recovering said specific sum of two hundred and seventy-five dollars from the Estate of the said F. M. Kirwin, deceased, and the said complainants shall also be barred from ever having and maintaining any action against the Estate of said French and his sureties for said specific sum of two hundred and seventy-five dollars so found in the vault of said Kirwin, as aforesaid, from and after the filing and recording of said receipt, as aforesaid. And it is also further  
178 ordered and decreed by this Court, that nothing in this decree or the proceedings herein, shall in any wise effect, invalidate or bar any proceedings, actions or causes of action, either in law or equity which the said complainants may have against the Estate of the said F. M. Kirwin, or as against the Estate of the said Rolla French, save and except as to said specific sum of two hundred and seventy-five dollars as above specifically decreed to be paid by said Henry Stevens, to said complainants or their Solicitor in money, as aforesaid. It is

also further adjudged and decreed by this Court, that the Master's fees in this case be paid by the said defendant, Henry Stevens, administrator of said Kirwin, deceased, in the course of administration upon said Kirwin's Estate. It is further ordered, adjudged and decreed by this Court that no costs are to be taxed against the administrator of the Estate of said Rolla French, nor as against said complainants, they being School Trustees, and by law exempt from all costs in the prosecution of suits, in their official capacity as in this case.

ISAAC G. WILSON.

187 Here follows the Clerk's certificate of Record, &c., under his hand and seal.

ABSTRACT BY EASTMAN & BOTSFORD, )  
Atty's for Complainants. }

129 82

Trustee of J40. R84

vs

Newy Ann Kemmer  
Ex H

Abstracts

Filed Apr 24, 1850

A. Adams

Clerk

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**SUPREME COURT**  
OF THE  
**STATE OF ILLINOIS.**

STATE OF ILLINOIS, }  
KANE COUNTY. } ss.

KANE COUNTY CIRCUIT COURT,  
February Term, A. D. 1860.

Board of Trustees of Township Forty, Range Eight,  
East of the Third Principal Meridian

vs

Maryann Kirwin, Executrix of the last Will and  
and Testament of Francis M. Kirwin, deceased.  
Henry Stevens, Administrator of the Estate of Fran-  
cis M. Kerwin, deceased. Augustus M. Herring-  
ton, Administrator of the Estate of Rolla French  
deceased.

PAGE OF RECORD.

1 On the 30th day of April, A. D. 1858, the complainants filed in the office of the Clerk of the Kane County Circuit Court, their Bill of Complaint against Maryann Kirwin, Executrix &c., of Francis M. Kirwin.

2 Bill alleges, that John Randall, Henry Minim and Leonard Howard were duly elected Trustees of Schools for said township, &c., and at the time of filing this Bill were a body corporate and politic by the name and style of "Trustees of Schools of Township number forty, North of Range number eight, East of the third principal meridian," &c.

3 That at a regular meeting of said Board &c., Rolla French was appointed township Treasurer; that he held that office until his death; all of which appears from the Records of said Board, &c. That said township treasurer had received from time to time the funds belonging to the Corporation from the proper authorities and sources provided by law, and that at the time of his death, April 17th, 1858, there was in his custody a large sum of money, to wit, \$3,000, or thereabouts, of said School funds, as appears from the books and vouchers of said Corporation, &c. That at the time the said French was appointed township Treasurer, he was in the employ of one Francis M. Kerwin, a Broker and dealer in exchange and deposits in said town, to wit, St. Charles, as principal Clerk and book-keeper. That said Kirwin at the time of such appointment or soon after, was fully cognizant thereof, and fully aware of the funds received by said French as such Treasurer, and of the amount thereof. That said Kirwin about the 16th day of January 1858, it being the same day the said French was appointed township treasurer as aforesaid, or but a short time thereafter, became and was surety, upon the Bonds of said French to said Corporation for the security of said School Funds, which appears from said bonds which is here referred to &c.

*(was appointed)*  
That at the time said French, treasurer as aforesaid, he had no such funds, as complainants are informed and believe, and did not have thereafter until his death, save and except his salary at the rate of some \$600 per year, which sum was scarcely sufficient for the support of his family, and that Kirwin well knew the same. That the said French held the said school funds aforesaid, for the use of said Corporation to the amount of \$3000, or thereabouts, in Cash, as complainants are informed and believe; which funds French deposited in the

PAGE OF RECORD.

office of said Kirwin, and with the knowledge and approbation of said Kirwin on or about the .....day of March 1858, nominally in his own name, but really for the benefit and in trust for said Corporation. That said funds or a large portion thereof (of the precise amount complainants are not informed) are still held by said Kirwin or his legal representatives in trust and of a right belonging to said Corporation. That said French died intestate. That said Kirwin died April 15th, 1858, leaving a Will, and in compliance therewith Maryann Kirwin, his wife, has taken out letters as Executrix, but has filed no bonds as required by law,<sup>7</sup> as such executrix in said estate &c. That said executrix has entered upon her duties, as executrix in the estate of her late husband, and seeks to convert  
5 said Trust fund above described and referred to, as assets belonging to the estate of said F. M. Kirwin deceased, and neglects and refuses to set apart the same for the use and benefit of said Corporation &c. That there are large amounts due from the said Estate of Kerwin to depositors, and other demands as complainants are credibly informed and believe. That said executrix has no property in her own right, sufficient to protect the bonafide creditors of said Kirwin's Estate, from the wrongful acts of omission or commission of said executrix in relation thereto. That the bulk of the assets of his said estate is in personal property, consisting of money and securities. That there is danger that said Trust fund will be wholly lost unless the said executrix be enjoined from in any manner converting the same as the assets of her husband's estate, and that she be decreed to set apart and pay over the said fund for the use and benefit of said corporation &c. That said French died insolvent, and that said Trust Fund will be in danger of being lost unless the relief above sought be granted &c.

6 That said executrix combining &c., (here follows the usual charge of confederacy with unknown persons) refuses to set aside the said Trust Funds rightfully belonging to said Corporation or to secure the same to and for the use of the same, or to pay the same over to your Complainants, pretending that the funds so received as aforesaid, is a sum deposited in the common way of ordinary depositors, therefore the assets of the estate of F. M. Kerwin. Said confederates refuse to discover what such funds were, or the particulars whereof the same consisted; or the amount or value thereof; when or in what manner they were received; or to whom or how paid; and what has become thereof particularly. Complainants expressly charge that said Kirwin died seized and possessed of said funds in Trust only, and that said executrix has, or is about to convert them as assets of such Estate, without making any satisfaction to complainants for the control or use of said Trust Fund &c.

7 Here follows the usual prayer for discovery as to said executrix and confederates, (without oath) as to all charges and matters in said bill, and especially whether the said Trust Fund was received by said F. M. Kirwin, in trust for the use of said Corporation; at what date said fund was received, and the full amount of the same, and whether or not after the time said French was appointed Township Treasurer, as aforesaid, he deposited any other and different moneys, except said Trust Funds herein referred to with the said F. M. Kirwin' and whether or not said F. M. Kirwin, when such deposits were made, was not fully cognizant that such funds were the School funds of said Corporation, if  
8 not, what funds they were, and from whom received, that said executrix may specifically answer whether the said F. M. Kirwin died possessed of said School fund in trust or otherwise, and if not, where the same now is, and what has become of the same; that she may set forth a true account of all such debts as were due and owing from said Testator at the time of his death, to whom, by whom, and on what securities, and how or in what manner, and on what account said debts were contracted respectively, and that said Trust Fund be set apart and paid over to complainants and not to be converted as the assets of said Estate.  
9 tate. (Here follows usual prayer for general relief, &c.) Also usual prayer for

PAGE OF RECORD.

injunction to accord with charges in the bill, and also for usual writ of summons; all in the usual form.

Signed by JOHN RANDALL, President  
of the said Board of Trustees.

(Here follows the usual affidavit as to the charges in said bill, by said John J. Randall, made the 30th day of April 1858.)

12 Injunction issued out of the proper office April 30, 1858, in accordance with said bill. Said writ of injunction was returned served by the proper officer April 30, 1858.

13 Summons in Chancery issued out of the proper office, April 30, 1858, in the usual form, and on the same day was returned served by the proper officer.

14 On the 10th day of May 1858, it being one of the days of the May term of said Court, the defendants were ruled to answer by Monday next, May 17th. Time extended for answer until Wednesday next, May 18th, 1858. Answer was filed in this cause by Maryann Kirwin.

15 Answer neither admits or denies that said French was ever appointed Township Treasurer, as charged, &c. Denies that said French, as Treasurer of said Township, ever received any money or funds belonging to said Corporation, or from the proper authorities provided by law. Admits that French died the 17th day of April 1858. Denies that there was in his custody at that time \$3,000, or any other amount or sum belonging to said School Fund. Admits that French was in the employ of said Kirwin, but does not know in what capacity. That said Kirwin kept a banking and exchange and deposit office in said St. Charles. Denies that her late husband had cognizance or knowledge that French ever received any funds as Treasurer of said Corporation. Denies that French ever received any School Funds, while in her said husband's employment. Denies that her said husband ever had any knowledge that said French ever received any School funds belonging to said Corporation; does not know whether her husband was surety on said French's Bond; does not know whether said French had any Cash or funds of his own; on information and belief he had a large amount; also large sums of money in his hands of different persons and societies; the exact amount of said sums she does not know; does not know the exact amount of salary said French received for his services as Clerk or book-keeper. Denies that French ever placed any funds belonging to said Corporation, or any School Funds or any Trust Funds in the hands or under the custody and control of said F. M. Kirwin. Denies also that said Kirwin ever knew or had any reason to know that said French deposited any funds in his said Kirwin's office, belonging to the School Fund. Denies all such allegations of said bill. Denies that any money or bank-bills remained in the hands of said Kirwin at the time of his death, which had been deposited by said French as said Treasurer. Denies that any funds or money of any kind was left by said Kirwin at his death which had been deposited by said French belonging to said Corporation. Denies that any such came into her hands as the legal representative of the estate of said Kirwin. Admits that French died April 17th, 1858, intestate. That Kirwin died April 15th, 1858, leaving a Will as charged. That she has taken out letters as executrix of said Kirwin's estate. That she gave no bonds as executrix; denies that she has entered upon her duties as executrix, or done anything as to said estate except to remain in the house and take care of the same and the household furniture, since the death of her husband. Denies that she has attempted or designed to convert any Trust funds with assets of said estate. Admits that she has refused to set apart any of the funds belonging to said estate, for the use and benefit of said Trustees, for the reason that she had no funds in her hands belonging to them. That she has no knowledge as to the amount due from the estate of said Kirwin, as deposits and other demands. That Rolla French in his life time was in the habit of having, holding and handling large sums of money; that said French has been

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in the habit of depositing the same in the office of said Kirwin, in his (said French's name and right, in the ordinary manner of doing business of that character, and drawing the same from said office whenever he wished to use it. Avers that if French had any money deposited with said Kirwin at the time of said French's death, she believes was deposited in his own name and right, and in the usual manner of making deposits. Denies all combination &c.

19 Signed MARY ANN KIRWIN,

May 24, 1858, it being one of the days of said Court. On motion of complainants leave is given to file a supplemental bill making one Henry Stevens party defendant to this bill.

On the same day supplemental bill was filed.

20 Complainants set forth that heretofore a bill of relief, discovery and for injunction was preferred to said Court, &c., which is now pending in said Court in the words and figures following. (Here follows a copy of the first bill heretofore set forth.

29 Complainants represent that since filing the original bill in this case, on information and belief that said letters of executorship granted to said Maryann Kirwin have been revoked, and that one Henry Stephens has taken out letters of administration in the said estate of F. M. Kirwin; that he has entered upon his duties and seeks to convert said Trust Fund (referred to, and in the possession of the said representative of said F. M. Kirwin, deceased, as stated in the said original bill, which is here referred to for a full statement of said Trust Fund,) as assets of said estate to the injury of said complainants. Complainants pray that said Stevens may be made a party to said bill &c., and that he may answer respectively the same charges and questions heretofore in the original bill charged and propounded to said executrix. Oath being waived &c.

30 That unless the said administrator be restrained by this Hon. Court, there is great danger that said Trust Funds will be wholly converted as assets of the estate of said F. M. Kirwin, and lost to the "cestui qui trust" as they are informed and believe the estate of said F. M. Kirwin is not sufficient to pay the liabilities against it; that it is insolvent. Pray for full benefit of original bill in all its equitable intendments.

That said Stevens may answer whether the said F. M. Kirwin died possessed of said School Fund, in trust or otherwise, if not where the same now is or what has become of it? that he may set forth a true account of all such debts as were due to and owing from said F. M. Kirwin at the time of his death, to whom and by whom and on what securities, and how and in what manner, and on what accounts said debts were contracted respectively, and that said Trust Fund may be set apart and paid over to complainants &c., and for general relief &c.

31 Here follows the prayer for injunction, &c., in the usual form in pursuance of the bill &c., and also the writ of summons, &c.

33 On the said 24th day of May 1858, injunction writ issued out of the proper Clerk's office, in the usual form &c.

34 On the 26th day of May 1858, writ was returned served by the proper officer on defendant Stevens. Writ of summons issued May 24th, 1858, in due form from proper office, &c.

Returned by proper officer, endorsed, served May 25th, 1858, in usual manner.

On the 27th day of May 1858, it being one of the days of the May term of said Court; on motion of defendant Stephens, injunction is so modified as to allow him to collect debts due said estate &c., but not to pay over any of the assets or money belonging to said estate to any of the creditors of said estate or any other person &c.

Nov. 13th 1858, it being one of the days of the November term of said Court, said Stevens files his answer &c.

Which answer is almost a literal copy of the answer of said Mary Ann Kirwin, which is a substantial denial of every allegation in the bill with the following exceptions: Admits that Kirwin kept an exchange and deposit office, and that French was in his employ. Don't know in what capacity. That French died April 17th, 1858, intestate. That Kirwin died April 15th, 1858, leaving a will as charged. That he has been appointed administrator of said estate and given bonds as such, &c. Admits that he has refused to set apart any of the funds of said estate for the use and benefit of complainants &c. Makes no discovery of assets or debts of said estate, as he has but little knowledge thereof. Says he has been informed and believes that said French was constantly receiving, having and holding large sums of money, and was in the habit of depositing the same in the office of said Kirwin in his own name and right, and the usual manner, &c., and of drawing out the same from said office in the same manner of other depositors, &c. Avers that if French had any money deposited in the office and with said Kirwin at the time of French's death. He believes the same had been and was deposited in his own name and right, and for his own benefit and in the usual manner &c. Denies all unlawful combination, &c.

Signed HENRY STEVENS,

March 12, 1859, on motion of defendant, cause set down for a hearing at the next term of said Court, and that testimony be closed by 10th of May next. May 30, 1859, on motion of plaintiff, time extended for closing proof to 15th October 1859.

December 12th, 1859, general replications were filed as to said original and supplemental bills, in the common form by complainants.

March 6th, 1860, it being one of the days of the February term of said Court for 1860. On motion of complainants, leave was given to make Augustus M. Herrington administrator of Rolla French, party defendant &c. On the 8th day of March, 1860, a supplemental bill was filed for that purpose, and sets up, that on the 30th day of April, 1859, complainants filed their original bill of complaint (before stated) (respecting concisely the allegations of said original bill), (and also the supplemental bill hereinbefore set out, making Henry Stevens as administrator of said F. M. Kirwin's estate.)

Said last bill further sets up that on the 1st day of May 1858, Augustus M. Herrington took out letters of administration from the proper office upon the estate of said Rolla French, deceased, said French having died intestate, and that the said Herrington has become the legal representative of said French, for the due settlement of the estate of said French and that complainants ought to have the same relief against said administrator &c., as they might have had against said French were he now living and appeared to this bill.

Bill requires said administrator to answer (without oath) according to his best knowledge, information and belief, to all and singular the matters and charges aforesaid, set forth in said original bill &c., and true and perfect answer make to this supplemental bill, and all charges therein set forth, &c., and especially may he discover according to the best of his knowledge, information and belief, whether said French died intestate, if so, whether the said Herrington has taken out letters of administration &c., upon the estate of said French, deceased, and whether he has not entered upon his duties as such administrator, and if so, whether he has marshalled the assets of said estate; whether there were funds belonging to said estate which appertained to the School Fund of complainants, if so, how much and whether said estate was solvent; and that it may be declared by this Court that complainants are entitled to some relief against said defendant as such representative of said French, and the same benefit of said original suit, and all proceedings therein, as they might have had against the said Rolla French, if he had been made a party and appeared to complainants' original bill, and was now leaving &c.

On the 8th day of March 1860, defendant Herrington files his answer to said supplemental bill.

That of his own knowledge he does not know that said French was appointed Township Treasurer as charged, yet from his information and belief he does not know of his own knowledge that as such Treasurer he received School moneys as charged &c., but on information and belief he did. Does not know that French, at the time of his death had \$3,000, or any other sum of money belonging to said School Fund. That on information and belief the said French at the time of his death had deposited to his credit in the bank of F. M. Kirwin about \$2,000, but whether such deposits belonged to said School Fund or the funds of said French, respondent is entirely ignorant. As to whether that said French had no considerable Cash funds of his own, this respondent is ignorant, has no knowledge as to French's money, except from his salary, or as to the charge that French with the knowledge and approbation of Kirwin deposited said funds in the office of said Kirwin. Admits that French died intestate &c. April 17th, 1858; that he died insolvent and without means to pay his debts. As to manner and time of the deposits being made, or as to what particular fund such deposits belonged &c., respondent has no knowledge or information except from the books of said Kirwin, which show such deposits to have been made in the name of French, and appears to his personal credit. Admits that he took out letters of administration upon the estate of said French as charged, and filed bonds &c. That respondent has entered upon his duties and attempted to marshal the estate of said French, but has been wholly unable to find assets except as above stated; a small amount of household furniture and goods and a few articles of jewelry; in all far less than the widow and family of said French are entitled to by law. That he left a child about five years old and a widow. That no money or evidence of money of any kind belonging to the School Fund above mentioned; except as above stated from the books of said Kirwin, have ever come to the hands or possession, or knowledge of respondent &c., and he has no information or belief that at the time of his death said French had in his personal possession any moneys or funds of the complainants, and that no such fund has ever come to the hand or control of respondent as such administrator or otherwise &c.

## EVIDENCE.

45 Deposition of Ira Minard filed December 14, 1859. (Caption in usual form) (for brevity in this abstract the interrogatory is carried into the answer.)

My name is Ira Minard, age is 47, occupation, Banker, residence St. Charles. I knew Rolla French; first became acquainted with him in 1847 or 1848, and it ceased in April 1858, at his death. French was in the employ of Francis M. Kirwin from December 1857, until the time of his death. French did extra work for me evenings for which I paid him \$100. Francis M. Kirwin was engaged in the Exchange or Brokerage business from December 1857, until April 1858. The business was carried on at my Banking house in St. Charles. French was Kirwin's book-keeper, and a part of the time acted as cashier. Kirwin had no other person in his employ from December 1857 to April 1858, in his banking business, perhaps one half the time in banking hours, from 9 to 12, from 1 till 4. Kirwin's Banking office was in the same building with my business office, consulting room between. I done my depositing with Kirwin, and was familiar with the business transactions of both Kirwin and French and was acquainted with the business transactions of the Bank. I know nothing of the "bonafide" value of the assets of the banking-house of F. M. Kirwin at the time he opened in December 1857. (9th Qut & Ans. suppressed.)

47 I think I was familiar with the pecuniary condition of Rolla French during the period of his employment by F. M. Kirwin. I think he had no personal money belonging to himself, of any considerable amount; he was embarrassed in his liabilities. I think he had no ready money, as I had frequently to loan him

money to defray his family expenses. Mr. Kirwin and French both told me that French was employed by Kirwin upon a salary; for the first year it was \$600, after that it was to be \$800. I paid him for extra services for me, his note for \$100, and interest. Mr. French had no other means of income or revenue to my knowledge, except his salary from Kirwin, the \$100 I paid him as stated, but the emoluments of his office as Notary Public. Mr. French had a family consisting of a wife, one child, and a hired girl; and from my knowledge of his manner of living I think his expenses would be \$75 per month or more.

50 I know of French acting as Township Treasurer for Town 40, N. R. 8, East 3d P. M.; known at St. Charles during 1857 & 1858 until his death. I knew of his receiving moneys as such Treasurer, during the time he was employed by Kirwin as above stated. I saw him receive it some two or three times or more, of Mr. Marks, Collector. I could not exactly say what the amounts were, but I think as high as \$2000, at one time, and probably less at the others. I know

51 from Mr. French's statement, that he was going to get other moneys as such Treasurer. He got my horse and buggy to go down to Geneva, and the reason he gave for wanting it was, he said he was going to get the money that belonged to the School Fund. Said it was deposited with Wm. B. West, and he was going to get it in silver and he could not bring it up by hand; he said the amount was \$800 or over. He got the buggy; came back; told me he had got his money. I saw him take some specie bags and go into the bank. I think it was the last of March or first of April 1858. There was more than one bag that French carried into the bank. The bags would hold from \$200 to \$350, each, of silver coin, and I should judge that there was from \$200 to \$350, in each bag. I noticed no particular mark on them at the time, except the bag that I saw afterwards in the Bank, marked I think "\$275, from William B. West," which I should think was one of the same bags. The mark I should judge, without doubt, was in Wm. B. West's hand writing. I opened the bag and helped to count the money out, after the death of both French and Kirwin. I think there was \$275, it was all in silver, I think mostly quarters. It was in April 1858 that I assisted in counting this money. It was in the vault in my Banking House. It was passed over to Mr. Stevens by request of Mrs. Kirwin, R. K. Swift and King, after his appointment as administrator of the

52 estate of F. M. Kirwin. This money was passed over to Henry Stevens as near as I could state within ten days after his appointment as administrator. I learned from F. M. Kirwin, at the time I advised him not to go bail, that French deposited with him or in his Banking House the School Funds which came to the hands of said French as Township Treasurer of St. Charles for the current year of 1857 or 8. Kirwin stated as his reason for going bail that the money would be left in his Banking office, and it would be under his control, and he should know what depositions would be made of it.

QUR. 23.—State whether or not you learned from F. M. Kirwin or otherwise, that Rolla French deposited with said Kirwin, or in his Banking House, the money he received as said Township Treasurer as School Fund from the first of February 1858 to the first of April following, or any part thereof. If you state from whom, and how you learned such facts about the amount or

54 amounts of money thus deposited with said Kirwin, state fully and definitely all you know upon such subject.

ANS. SUPPRESSED.—I learned such to be the fact from both French and Kirwin. I supposed it to be the School Fund. I saw Mark pay him quite a large amount of money. I think it was \$2000, just, took his receipt for it.

I did know but have forgotten about the amount of the funds in the Banking House of F. M. Kirwin at the time of his death. It was \$600 to \$800, I think, less than \$200 in currency, less than \$100 in gold, the balance in silver, more silver than gold and bills, the largest amount in quarters, some halves and small change, mostly American. One bag I think had \$275, mostly all in

American quarters. The last I saw of these funds they were in the vault and passed over to Henry Stevens, who received them as administrator of the estate of Kirwin; they were passed over to Stevens probably within ten days after his appointment as administrator.

## CROSS EXAMINATION.

56 French had my horse and buggy to go to Geneva to get money from West, I think the last of March or first of April 1858. I do not recollect positively where I was when he returned, but I must have been about the bank premises or office. I did not examine the bags or their contents when French returned from Geneva, I saw them taken out of the buggy, but did not see them opened. I must have been quite near the bags, possibly might have assisted about taking them out, I am not positive that I had either of them in my hands before they were carried into the bank. I did not examine the bags before they were carried into the bank. Only from their general size and appearance. I do not recollect whether I saw any hand writing upon the bags, of either one of the bags  
57 before the same were carried into the bank. I might and might not, but don't recollect. I saw no paper or papers attached to either one of the bags, before the same were carried into the bank except the tags or cards. I have a distinct recollection of seeing tags upon the bags, but am not positive whether they were on the whole or not. I am not positive who carried the bags into the bank. I think French carried some, have an impression that Gale was there. I do not recollect whether I saw the bags after they were carried into the bank, the day French got them or not, but I think I did not. I think I saw one of these bags afterwards, am not positive. I think I saw one of them within ten days or two  
58 weeks after. I saw at that time one of the bags, perhaps more. There was one with a tag on it that apparently had not been opened, it was in the safe in the vault. I could identify that as being one of the bags that French brought home with him at the time he had my horse and buggy, only by the tag and size of the bag. It is not necessarily the custom for Bankers when they send away bags of specie to put cards or tags on them to show the amount of specie in the bags; that would depend whether it belonged to parties receiving the money, or whether it was sent in a package; the only thing on the tag or cards  
59 by which I could identify this bag as one of the bags that French brought home with him at the time he had my horse and buggy, was the size of the card and the impression that I got from William B. West's hand-writing on the card. I could not say that I saw William B. West's hand writing upon the card at the time French brought home the bags; this was the same bag I saw in the vault after the death of Kirwin. At the time I advised Kirwin not to go bail for French he had received the School Fund for 1857, but not for 1858.

## DIRECT RESUMED.

60 I was in the vault of the Banking House of F. M. Kirwin, generally every day when at home, to get my private papers. I did not notice any bags or bag of specie there after French's trip to Geneva, that I had not noticed before, and I might go into the vault every day for a month and not see any money, as the money was kept in a safe, in the vault. I only learned from what French told me, as to where he got the bags of specie, when he got the horse and buggy. He said at that time he was going after the School Fund at Geneva. French said he wanted my horse and buggy to go to Geneva to get the School money. I am not positive when he returned he said he got it or not. The reason why I think that the bag of specie containing \$275, found in the banking office of F. M. Kirwin after his death, and which was passed over to Henry Stevens, was the same fund which French received as part of the School Fund obtained at Geneva, is that Mr. French told me that it was mostly in silver and the tag on the bag marked in William B. West's own hand writing.

## CROSS-EXAMINATION CONTINUED.

I know French had my horse and buggy to go to Geneva to get School

PAGE OF RECORD.

Fund from what he told me, and he generally told me the truth, and he was gone about long enough to go there and back. All I know about it is what French told me and the reasons given above.

IRA MINARD.

(Here follows certificate of magistrate, &c.)

DEPOSITION OF REED FERSON.

64      Caption in usual form. My name is Reed Ferson, occupation farmer, age  
65      50, live in St. Charles, was a little acquainted with Rolla French's pecuniary  
circumstances in 1857-8, he used to frequently want to hire money. He had no monied means to my knowledge; don't know as I would have been likely to know if he had any means. His business habits were good. He was in F. M. Kirwin's employ from December 1857 to April 1858, bookkeeper and tending Bank. He has been in the employ of Ira Minard directly or indirectly five or six years. I was his bail as Township Treasurer for 1856 & 7. I was not acquainted with his pecuniary condition during that time. I do not know of his having any property liable to execution while he was employed by Kirwin.

Cross Ex.

He might have had property unknown to me.

REED FERSON.

(Here follows usual certificate of magistrate, &c.)

DEPOSITION OF JOHN MARK.

68      (Caption.) My name is John Mark, reside in St. Charles. I have known  
Rolla French and Francis M. Kirwin 4 or 5 years. I was the Collector for the town of St. Charles for the current year of 1857. Rolla French was the Township Treasurer for the town of St. Charles for the current year 1857, until April 1858. I paid funds to said Township Treasurer as Collector for said township. They belonged to the School Fund. I paid them to Rolla French. The first  
69      was \$500, sometime in December 1857. The next I have any account of, was on the 27th day of January, 1858, \$200. In the month of February 1858, I paid him \$3,853 02. The 8th of March 1858, I paid him \$1160 96. The 29th day of March 1858, I paid him \$79 50, amounting in all to \$5793 48. At the times I paid him the said several sums mentioned, Mr. French was in the Bank with F. M. Kirwin. I don't know in whose employ he was, he was in the Bank there and paid off checks whenever I called upon him for any. I supposed from appearance that Mr. French was bookkeeper in the banking house of F. M. Kirwin, from 1st of December 1857 to April 1858. Kirwin was generally present when I paid French the funds as above stated. Could not say he was there every time I paid him.

Cross Rx.

I paid French paper money with the exception when I had checks on that bank from individuals. He gave me receipts for them the same as money. I might have paid \$1000 in checks; not able to state how much; kept no account of it.

JOHN MARK.

Here follows certificate of magistrate, &c.

DEPOSITION OF HENRY B. PEIRCE.

72      (Caption.) Name is Henry B. Peirce, age 26 years, occupation, bookkeeper in Bank, residence Geneva. From 1st of January to 1st of May 1858, I was in the employ of West & Moore, Bankers at Geneva. I was bookkeeper and teller. I do not know whether there was on deposit with West & Moore money belonging to the School Fund of the town of St. Charles or not. There was money deposited by Mr. Higgins, the School Commissioner, and he gave checks for it. Rolla French drew out of said Bank moneys so deposited by Higgins, sometime in March 1858. I have no way of knowing how much ex-

cept by recollection. My impression is about \$1000, might have been more or less; was some silver paid him, some gold. I delivered it to him. There were two bags certain, I think three, two of silver and one containing gold. The bags were common shot bags. The silver was principally American half and quarter dollars, could not say of which there was the most, there were cards or tags marked with the amount. The bags were not sealed. Could not say the exact amount in each, probably about \$250. My manner of putting up specie into bags when it consisted of halves and quarters, usually was to count the halves and quarters separate. If there were enough of either kind to fill a bag, I filled it with one kind, if not, I filled with one kind and finished with another. I have no definite recollection as to this more than my usual way of doing business. These bags would contain from \$200, to \$300 each. About \$250. I paid this money to Mr. French on his presenting the check of David Higgins, School Commissioner. I do not know where that check is. It has been given up by West & Moore to Mr. Higgins, as is the custom on settlement. W. J. Gale was with Mr. French when the money was paid him. I do not recollect during the year 1858, of Mr. French's drawing any considerable sum of money from said bank. I have no recollection of F. M. Kirwin from December 1st 1857, until his death, drawing any considerable sum of money or bags or bag of specie from said bank. I have no way of knowing to what fund the moneys belonged which French drew out, except from the books. The money was deposited by David Higgins, School Commissioner of Kane County, and I understood that Mr. French drew it as Town Treasurer of St. Charles. The names of the firm of West & Moore are, Alexander B. Moore and William B. West.

CROSS EX. BY DEFT.

I came to the conclusion that it was the School Fund, as Mr. Higgins told me that the money he deposited was School money, and that he gave checks to the Township Treasurer for the portion of School money belonging to the several towns. All I know about it is, what Mr. Higgins told me. I knew that Mr. French was elected Township Treasurer for the town of St. Charles, by common report, I paid the money to French on Mr. Higgins' personal check. Higgins deposited small amounts with West & Moore, previous to about the middle of March, 1858, about that time he deposited this School money, about \$12,000.

DIRECT RESUMED.

The identical coin paid French came from the County Treasurer, the money was paid to Mr. French the last days of March. After the 20th this money came from Wm. P. West, County Treasurer, in this way: Mr. West gave Higgins a check which was placed to Higgins credit. West had previously deposited funds belonging to the County of Kane with West & Moore, and this check was charged to West's account.

HENRY B. PEIRCE.

(Here follows usual Magistrate's Certificate.)

Dec. 14th, 1859, deposition of Wm. J. Gale was filed in the proper office on part of the complainants. (Usual Caption.)

Name is William J. Gale, age 35 years, occupation, dentist, residence St. Charles. I was acquainted with Rolla French and Francis M. Kirwin. First acquaintance with Mr. French in 1851; continued until his death. First became acquainted with Mr. Kerwin in 1854, and the acquaintance continued until his death. Mr. French acted as Township Treasurer for the town of St. Charles for the years 1857 & 8. I went to Geneva with Mr. French the last of March 1858, at the Bank of Geneva, he received some money, about \$1100 or \$1200. I saw the money counted and put up for French, Henry Peirce counted the money and put it up into bags. I think there was no one present but Mr. Peirce, French and myself; my impression there was about \$500 in

82 gold, the balance in silver, mostly American quarters, my impression is it was American gold. These funds were put up in shot bags; the gold by itself; the silver by itself. I think the gold was put into one bag. I do not remember how many bags in silver there were, but there were more than one. These bags were common shot bags, tied up with strings with tags tied to them, with the amount marked upon them to each bag. French brought these bags and contents to St. Charles and carried them into F. M. Kirwin's bank. I don't  
83 know that I ever saw them afterwards to recognize them as the same bags. Mr. French told me at the time he got this money, that he got an order from Mr. Higgins, the School Commissioner to go to the Bank to get the money, he said it was the School Fund. It came into his possession as School Treasurer, heard him say he was School treasurer. This money was in shot bags, it was turned out on the counter and counted and put back into the bags. French took them and brought them to St. Charles. I cannot say whether the money was put back into the same bags or not. I have no interest now in the estate of F. M. Kirwin, at the time of his death I had then on deposit about \$290, I do not know that any part of such deposit has been canceled or paid by the representatives of said Kirwin. I sold a hundred and four dollars of said deposit to C. G. Scott, took his note for it, the balance to E. Chapin for land in Minnesota.

## CROSS EX. BY DEFT.

I only know from common report and the declarations of French that he was Township Treasurer of the town of St. Charles. I do not know except from French's declarations that he ever received any money as such Township Treasurer. At the time the money was counted in the bank at Geneva there was present Henry Peirce and myself. I took no part in counting the money. I have not the amount got from there. I do not know, except from French's declaration, that he had any order from Higgins for School money. At the time French got the money there was more than two bags; don't know how many more. I carried one of the bags from the bank to the carriage; there  
89 were tags attached to the bags and figures upon the tags; impression is they were paper, about an inch and a half long. I think they were attached to the bags by strings. I have no recollection of seeing anything but figures on the tags; have no recollection of seeing any words or names upon the tags. I handed the bags from the carriage to French at St. Charles, at the time he carried them into the banking house of F. M. Kirwin. I think I would have been  
90 likely to recollect it, had I seen any words or names written on the tags of the bags. I know from no other source except the declarations of French, as to the capacity in which he received this money.

## DIRECT RESUMED.

At the time French went to Geneva for this money, he was employed in Kirwin's bank as bookkeeper or Clerk. Kirwin had no other bookkeeper or  
91 clerk from December 1857, until his death. Of the money put up by Peirce for French there was I should judge about \$500 in gold, and \$500 or \$600 in silver. There was nothing that called my attention to tags or marks upon them  
92 affixed to these bags. I don't recollect what the object of the figures were on these tags. I cannot state the numbers corresponding with such figures. The name of William B. West might have been written on one of the tags, but I  
93 have no recollection of it. I went down to Geneva with Mr. French as a friend, he asked me to ride down with him. I had no interest in the matter whatever.

## CROSS EX. RESUMED.

Mr. Kirwin went Chicago about the first of April 1858. Mr. French had charge of the bank until about three days before his death. Ire Minard then  
94 took charge of it until Mr. Kirwin's death. Mr. Kirwin had no charge of the bank after he went to Chicago. Mr. French had charge of the bank after

Kirwin went to Chicago I think about two weeks. After French left Minard had charge of it about three days. Mr. Kirwin was unable to do business of his bank some five or six weeks before his death. I know of no one having access to the books, papers and money of Kirwin's bank, except Kirwin, French and Minard; nor of any one acting as cashier except them.

95 If there had been any names or words on the tags of the bags that French got at Geneva, I should have been likely to have remembered it. I remember the figures. I have no recollection of seeing William B. West's name on either of the tags.

## DIRECT RESUMED.

M. Kirwin was in the habit of coming to his bank every day until about the first of March 1858, and at short intervals during the month of March and until he went to Chicago. At the time he left for Chicago his intellect was clear and he seemed to understand clearly his business matters.

W. J. GALE.

(Here follows certificate of Magistrate.)

100 December 16, 1859, by agreement this cause is set for a hearing before the Judge of this Court at Chambers, on 4th Monday of January next at 10 A. M. Testimony of Ira Minard taken on the hearing.

Francis M. Kirwin commenced banking on his own account in St. Charles in January 1857, and continued until April 1858. Mr. French was the only bookkeeper and teller I know of. I think French began in January 1857, am not positive, continued till April 1858. I was as familiar with Kirwin's Banking business, as I should be with any man's business that I was not doing myself. All the means I had of acquaintance with Kirwin's banking business from December 1857 to April 1858, was my own business with him; was frequently there. I had frequent interviews with Kirwin from December 1857 to April 1858. He used to call upon me for advice about doing certain things, he frequently, several times showed to me his balance sheets as banker. From that I only infer what his condition was. I presume that in the Summer and Fall of 1857 he detailed to me his financial condition. He made frequent statements by showing me his balance book. I became familiar with his banking business only from his balance book and his statements. His balance book purported to be full and complete I should think. He made statements to me several times in 1857 & 1858, once in the month of August or September 1857. I spoke to Kirwin about School Fund of 1858. He said that Mr. French said that the School Fund for 1858 was to be deposited with Mr. Kirwin. Mr. French at that time was acting as Township Treasurer for the town of St. Charles. He had thus acted for 1857 & 1858. I think I could not be positive whether Kirwin afterwards said where the money had been deposited, he might or might not.

QUR. 20.—If you know, state where the School Fund of the town of St. Charles was deposited for the year 1858.

ANS.—I have drawn money on Mr. French's check there.

QUR. 21.—If you have any facts to give as to where the School Fund of St. Charles was deposited for the year 1858, state them fully and at large.

ANS.—I have none only that I have drawn money there and have seen Mr. French give other checks to teachers on different districts on Mr. Kirwin's bank.

The money which I drew belonged to District No. 7, of the town of St. Charles. Mr. Kirwin stated to me that the School Fund for the town of St. Charles for 1858, was to be deposited there. I do not recollect of hearing French and Kirwin talk the matter over together. I saw Mr. Marks, Collector, paying over money to Mr. French, what I supposed to be the Township School Fund, either in February or March 1858. Mr. French told me so in presence

120 of Mr. Kirwin. I do not know what was done with the same. Mr. French was counting the money on the desk when I saw him. Mr. French at that time was acting as bookkeeper and cashier for Kirwin. There was about \$2,000, I think. I do not know what French done with the money. Mr. French and Kirwin were counting it at the desk. I left before they got through. I have received money from Kirwin's bank in checks for District No. 7. I have drawn money in 1858 from Mr. Kirwin for indebtedness due, several times. Some of the times Mr. Kirwin paid it, and sometimes Mr. French paid it in checks. I think I drew it in February or March 1858, cannot be positive. I probably drew out in all between \$100 and \$200, could not state positively. This fund of District No. 7, was drawn for indebtedness I had against them by the orders of the Directors. I could not say that I know of any of the School fund for 1857 being drawn from Kirwin's bank. I could not say but a part I drew was of the fund of that year.

CROSS EXAMINED BY DEFT.

I drew from Kirwin's bank in February or March 1858, between one and two thousand dollars.

JOHN P. LEWIS SWORN FOR PLTF.

123 I was in the banking business with Mr. Kirwin prior to the year 1857. I think I was familiar with Kirwin's pecuniary condition about January 1857. He had of monied means at that time invested in the bank about \$700. He had no other monied means or capital to my knowledge. My means of knowledge as to his capital at that time was, that I had been connected in business with him, and it was all he had invested in business.

CROSS EXAMINATION.

124 I was one of the partners of the firm of Kirwin. I don't recollect the amount I put in when the firm started. Somewhere about \$2,000. My brother put in near \$1,200 or \$1,500, at the time we commenced. I kept the money in the concern, that I put in until we dissolved. I do not recollect the exact amount. I did not know what Kirwin was worth at the time he went into the bank. I know very near what Kirwin's property was worth that he had invested in business at the time Kirwin & Lewis dissolved. He had no other property that I knew nothing about, that was afterwards brought into his business, for the reason that he agreed to invest more means than he had invested, and if he had had, he would likely have invested it. I had been very intimate with him and I think he would have told me if he had any more property, every man that goes into partnership with me tells me what his property is worth or pretends to.

126 QUT. 12.—Did ever Mr. Kirwin tell you or pretend to tell you exactly what his property was worth or what property he had.

ANS.—He told me he had that Stock of Goods, and his House & Lot, and said that he could command other means.

QUT. 13.—That is all you know in relation to his property is it?

ANS.—I think that is all the property he had.

127 I know this is all the property he had, because I think if he had had other property he would have been likely to have told me he had. The reason why I think he had no other property was because he did not tell me of it, and because I did not know of it, and I think I should have known it, under the circumstances, if he had had it. The particular circumstances that rendered it necessary for me to know exactly what Kirwin's property was worth were, that we were forming a copartnership, and I think it was necessary to know what every man is worth that I form a copartnership with. I intend to. At the time we formed this copartnership he told me he had that stock of goods; that house and lot, and could command other means, but failed to command them. Our

*(\$1000 and \$2000)*

*(anything)*

partnership continued four months. I do not recollect how much money I drew out on my own account of the firm at the time we dissolved.

I drew out what means I had in the partnership of Kerwin, Lewis & Lewis, I left some on deposit. I drew out in cash and obligations \$4,000, it was  
 128 my own money which I had put into the firm; my brother drew out about the same amount. The amount I put into the copartnership in cash was about  
 129 \$2,000, I put in some notes and some time drafts. Some of the notes were against Zeney Barry of New York. I had two or three notes against Barry, I do not recollect the amounts; the notes were each for more than \$100. I do not recollect the exact amount, they might amount to \$800. They were payable to me. I think these notes were not paid while in the bank, but I am not positive. I had a note against Kirwin, I do not know whether I put that in the bank or not. I know it was not paid after we dissolved. I think it was for between \$400 & \$500. I am not positive whether I put other notes in or not. I do not recollect how much money I left on deposit when I went out of the bank, I think it was more than \$1000. I do not recollect the amount. I do not recollect how long the money remained there. I drew it out at different times, part of it might have remained three months, I do not think it all did.  
 130 F. M. Kirwin carried on the banking after I left. He gave a bond to me and my brother in the sum of \$10,000, to close up the business. (It was here admitted that the books presented are the books of Kerwin, Lewis & Lewis and also of Kirwin). I think there was no School Fund account at the time of the dissolution of Kerwin, Lewis & Lewis. I think French had in the bank at the time of the dissolution \$156 01.  
 132

## DIRECT RESUMED.

(not)  
 I learned after we commenced business together from Kirwin that he owed for a portion of the goods I have referred to. He did raise the other available means I have referred to while I was connected with him.

## CROSS EXAMINATION RESUMED.

I stated that I did not recollect the amount on deposit at the time of the dissolution, but I thought it was in the neighborhood of \$12,000. All of the deposits of the old firm were passed over to Kirwin. The old firm received from Kirwin at the time of dissolution as indemnity for liability to depositors an indemnifying bond, signed by C. K. Parks, and I think by Kirwin for \$10,000.

## EVIDENCE OF DAVID HIGGINS.

My name is David Higgins, age 39, my occupation, Clergyman & School Commissioner. By the bonds I hold, Rolla French was the acting township Treasurer for the current years of 1856 & 1857, and to April 1858; first bond was signed 28th January 1856; second bond 16th January 1858. I have seen Rolla French write often; I think his signature is to the bond dated January 1856, from the similarity of his hand writing, I think the signature to the bond dated January 16th, 1858, is his.

135 QUT. 6.—State whether you have paid to Rolla French as Township Treasurer of the township of St. Charles for the year, from the 1st of January 1857, to 13th of April 1858, as School Commissioner of Kane Co., Ills., any money belonging to the School Fund of said Township. If yea; state the dates and the amounts of such payments as near as you can.

ANS.—I paid Rolla French 20th of March 1858, by check on West and Moore's bank to be paid in coin, \$1192 37, also same date in currency \$100.

## JAMES T. WHEELER SWORN COMPLTS.

I am Township Treasurer of St. Charles. Rolla French was my predecessor. I have the care and the custody of the books. These are the books [pre-

PAGE OF RECORD.

sented] (Page "A") this page is in the hand-writing of Mr. French, (Page "A" put in evidence) know the hand of F. M. Kirwin, also that of C. A. Brooks, papers presented (Bond "B") know the hand writing of Reed Ferson. Bond of the year preceding ("C") put in evidence.

136

H. STEVENS EVIDENCE COMPLTS.

I am administrator of the estate of F. M. Kirwin; been acting since the 20th of May 1858. The assets consisted of money, accounts, notes, personal property and real estate. (Deft objected to Stevens as a witness.) Consisted of from \$5,000 to \$7,000. Cash \$715 45, besides a little uncurrent of \$38, real estate to the amount of \$1500, notes not to exceed \$200, balance was in accounts and personal property; personal property was from \$800, to \$1000, consisting of household furniture, buggy and harness, Bank furniture, cow, &c. Accounts about \$2,000, was an old judgment on record of about \$500. Ira Minard passed the money into my hands, it was in gold, silver and bank notes. I think there was one bag of silver about full; shot bag containing from \$250 to \$300, mostly in American quarters; was another shot bag containing gold and silver, silver mostly of small denominations from 3 to 10 cents; gold mostly foreign. Gold \$155 66; change I do not remember. I have the custody of the books of the Banking House of F. M. Kirwin. The account of Rolla French presented from 1st day January 1858, to the close, (Ledger "A") page 231, also 292, of which the following is a true copy:

		PAGE	\$	cts.		PAGE	\$	cts.
167	1858, Jan. 6, To Am't Cash	215	10	81	1858, Jan 19, By Cash Acct.	219	16	00
	" " 9 " " "	216	3	00	" " " " "	222	50	00
	" " 19 " " "	219	8	30	" Feb. 1, " " "	266	159	30
	" " 28 " " "	222	10	00	" " 8 " " "	268	200	00
	" Feb. 18, " " "	273	25	00	" March 4, " " "	276	11	55
	" March 1, " " "	277	17	75	" " 8, " " "	278	1164	96
	" " 3, " " "	"	38	00	" " 16 " " "	280	9	00
	" " 6 " " "	279	3	00	" " 20 " " "	282	2000	00
	" " 10 " " "	"	176	00	" " 23 " " "	"	44	00
	" " 8 " " "	"	32	90	" " 25 " " "	284	1192	00
	" " 11 " " "	281	21	00	" " 26 " " "	"	7	06
	" " 12 " " "	"	15	05	" " 29 " " "	"	1186	93
	" " 17 " " "	"	3	00	" " 3 " " "	286	19	25
	" " 18 " " "	283	20	56	" April 1 " " "	"	5	00
	" " 19 " " "	"	3	00	" " 2 " " "	"	18	08
	" " 22 " " "	"	4	00	" " 3 " " "	"	195	00
	" " 23 " " "	"	3	00	" " " " " "	"	17	50
	" " 25 " " "	285	38	00	" " " " " "	"	8	00
138	" " 26 " " "	"	28	00	" " 5 " " "	288	6	25
	" " 27 " " "	"	168	00	" " 6 " " "	"	22	95
	" " 29 " " "	"	5	00	" " 7 " " "	"	9	17
	" " 30 " " "	278	1776	30				
	" April 1 " " "	"	12	50	} Amt deposited from Jan. 6, 1858			
	" " " " "	"	780	53	} to April 7,		\$6,341	20
	" " 2 " " "	"	34	10	} Amount drawn out for same period		4,345	17
	" " 3 " " "	"	565	7	} Balance to French's credit March			
	" " 6 " " "	289	373	23	} 1858		1,996	03
	" " 7 " " "	"	92	00				
	" " 8 " " "	"	3	00				
	" " 10 " " "	291	75	47				

139

Ledger "A" page 240 (Kirwin's bank book) (was put in evidence) account with I. M. Adsit, shows balance in favor of Kirwin \$991 44  
 Account with George Smith in Ledger "A" Page 288 (put in evidence) shows balance in favor of Kirwin of \$1,038 50  
 James T. Wheeler recalled.—I am acquainted with French's hand writing



PAGE OF RECORD.

146

1858

DISTRICT No. 7. CONTINUED.

April 1st,	By order	Morion Ellis	\$20 00
" "	" "	John G. Adams	450 00
" "	" "	Morion Ellis	18 17
" "	" "	" "	16 13
" "	" "	J. J. Randall	1 50
" 3	" "	Loomis & Tyler	37 50
" "	" "	Butler & Weed	41 25
" "	" "	S. B. Flint	36 32
" 10	" "	J. G. Nind	68 47
" "	" "	Bowman & Loyd	5 41
" "	" "	Butler & Ferson	70
" "	" "	George Ferson	1 00

\$3,395 71

1858

DISTRICT No. 8.

March 29,	To amt received from Collector of Taxes for 1857,	\$1020 00	March 29,	By Treasurer's commission on \$1020 29	\$20 40
April 5,	Distributed by Trustees	551 66	" "	" cash paid your order	
			" "	" " to John Oliver	21 00
		\$1,571 95	" "	" " J. S. Van Patten	7 00
			" "	" " Bowman & Lloyd	39 88
			" "	" " Stephen March	87 52
			March 30,	" " G. S. F. Savage	84
			" "	" " "	100 17
			" "	" " O. M. Butler	8 71
			" "	" " Butler, Ferson & Co.	1 50
			" "	" " Lewis & Hallock	5 50
			" 31	" " S. B. Patrick	12 50
			April 3	" " Miss Woodward	150 00
			" "	" " Hellen M. Bell	200 00
			" "	" " E. J. Pickett	350 00
			" "	" " Ellen McWayne	92 00

\$1097 02

1858

DISTRICT No. 9.

March 29,	To Cash received of Collector of Taxes for 1857,	\$131 31	March 29,	By Treasurer's Commission on \$131 34	\$2 62
April 5,	Distributed by Trustees	23 42	" "	By cash paid your order	
		\$154 73	" "	" " S. L. Burley	62 20
			" "	" " cash paid Reed Ferson	50 00
			" "	" " John Mark	4 50
			" "	" " A. Kinnear	15 00
			" "	" " Butler & Hunt	13 79

\$148 11

(Exhibit "I" on page 150 of the record shows a synopsis of the various orders drawn by the various School Districts on Rolla French as Township Treasurer for St. Charles, as reported by said French as paid in Exhibit "E" on pages from 154 to 175 of Record, said orders are set out in full, all of which were in the possession of the Township Treasurer, (aggregate amount) \$4,210 81.

The following checks of Rolla French on F. M. Kirwin are introduced in evidence.

141

District No. 6,	Check dated	March 3d,	1858,	amount	\$38 00
" "	2	" "	9	" "	17 75
" "	6	" "	27	" "	24 00
" "	7	" "	"	" "	136 00
" "	8	" "	"	" "	21 00
" "	7	" "	29	" "	743 89
" "	"	" "	"	" "	694 80
" "	"	" "	"	" "	70 00
" "	"	" "	30	" "	132 00

\$1,877 44

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					Brought over		\$1,877 44
	District No. 8,	Check dated	March 30,	1858,	amount		\$101 01
	"	"	"	"	"	"	22 50
	"	"	"	"	"	"	5 50
	"	"	"	"	"	"	1 50
	"	"	"	31	"	"	12 50
	"	"	7	"	April 1	"	776 33
	"	"	"	"	"	2	3 4 00
	"	"	7	"	"	3	115 07
	"	"	8	"	"	"	350 00
	"	"	3	"	"	"	100 00
142	"	"	7	"	"	6	7 11
	"	"	"	"	"	"	2 15
	"	"	"	"	"	"	13 97
	"	"	8	"	"	7	350 00
	"	"	8	"	"	"	92 00
	"	"	"	"	"	"	70 47
							<u>\$3931 85</u>

It is admitted that the above Checks were in the possession of F. M. Kirwin at the time of his decease.

STEPHEN MARCH SWORN.

Paper Exhibit "G", order of District No. 8, to Stephen March dated Feb. 19th, 1858, for \$87 52, (shown witness), I paid my taxes to Mr. Mark, Collector, (with this) I think I presented it as soon as I got it.)

F. H. BOWMAN SWORN.

Order presented drawn by School Directors of District No. 8, for \$39 88, to Bowman & Lloyd. I let Mr. Marks have it in payment of our Taxes for 1858, I paid it to Collector about March 1st 1858. Order marked Exhibit "H".

149

JOHN MARK SWORN.

Order of District No. 9, for \$62 20 to L. L. Burley on Township Treasurer of St. Charles presented. I took this order from Burley and paid it to Mr. French as Cash. Another order same district of \$15. If March and Bowman paid me Orders of District No. 8, I let Mr. French have them as money. I was in the habit of receiving Checks on Kirwin's Bank for Taxes. [Complainant proposed to show that the statement in the deposition of Mark's as to the payment to and receipt of money by French are not in accordance with the fact in the case, to wit: In cases when the money was collected through several days, it would be footed up and a receipt given as though it was all paid at once,] (overruled and exception taken by complainant.) Kirwin was present at different times when I paid over moneys to French.

CROSS EX.

150

I remember I paid moneys to French previous to 1st of January. I paid French at several times before the 8th of March 1858, and on that day I reckoned it up. It amounted to \$1160 96. I might have done so in other cases.

Page "A" of records of School Trustees put in evidence referred to in the evidence of J. T. Wheeler.

148

"Organization of Board of Trustees January 16, 1858." Present John J. Randall, Henry Minim, L. Howard. On motion of Henry Minim, John J. Randall was appointed President for the ensuing term. On motion of Leonard Howard Rolla French was appointed Township Treasurer for ensuing two years. On motion of Leonard Howard, the bond of said Rolla French as Township Treasurer for the sum of \$10,000, signed by Rolla French, Francis M. Kirwin and Charles A. Brooks, was accepted and ordered to be placed in the hands of

PAGE OF RECORD.

the President to be forwarded to the County School Commissioner as provided by law. On motion adjourned until the first Monday in April next.

JOHN J. RANDALL,  
President.

Attest, ROLLA FRENCH, Clerk.

179 (Exhibit "B") is the copy of the bond of said Rolla French, Francis M. Kirwin & Charles A. Brooks, dated the 16th day of January 1858, (drawn from the form in the School Act.)

A. M. HERRINGTON SWORN.

It is agreed that A. M. Herrington was appointed Administrator of Rolla French's Estate in May 1858, and that he has marshalled the assets and found none, and that he has not received any assets of any description belonging to the Estate of French.

180 Exhibit "C" is the bond of Rolla French, Reed Ferson and A. B. DeWolf, dated January 28, 1856, (drawn from the form in the School Law.)

181 (Exhibit "D") shows statement made by Rolla French to Board of Trustees  
182 of Division of School District money for Tax of 1857 by Districts paid by Col-  
183 lector,

SYNOPSIS OF SAME.

184	Amount collected for District No. 1.	\$83 49 }	
	Collector's per centage out	1 67 }	\$81 82
	Amount collected for District No. 2.	89 65 }	
	Collector's per centage out	1 79 }	87 86
	Amount collected for District No. 3.	107 62 }	
	Collector's per centage out	2 15 }	105 47
	Amount collected for District No. 4.	140 99 }	
	Collector's per centage out.	2 88 }	138 17
	Amount collected for District No. 6.	191 48 }	
	Collector's per centage out.	3 83 }	187 65
	Amount collected for District No. 7.	4,123 38 }	
	Collector's per centage out.	82 46 }	4,040 92
	Amount collected for District No. 8.	1,041 11 }	
	Collector's per centage out.	20 82 }	1,020 29
	Amount collected for District No. 9.	133 99 }	
	Collector's per centage out.	2 68 }	131 31
			\$5,793 49

DEFENCE.

143 Henry Stevens sworn.—The account of French commenced with Kirwin January 5, 1857, closed in April 1858. Kirwin had in vault 6th January \$6,714 98.

The following is a list of Depositors as shown by the books of F. M. Kirwin from January 1858 to the close. W. D. Barry, B. B. Payne, Rolla French and thirty-one others.

152 On the 6th of January 1858, there was a balance on the banking books as appears from the daily bank balance book of \$25 61, against Rolla French. On the 7th of January balance against French of \$36 42. On the 9th of \$39 42. On the 12th of \$39 42. On the 23d of January 1858, a balance against French of \$31 72. F. M. Kirwin had of money in vault on 6th of January 1858 \$6714 98

On the 7th of January 1858,	\$7,515 89
" 8 " " "	7,663 11
" 11 " " "	9,805 80

There was due from Kirwin to depositors on the 14th day of April 1858, \$1,500, except French's account including his \$6,500, about. There is no account on the bank book of F. M. Kirwin, of Rolla French as Treasurer, having an account with the bank.

PAGE OF RECORD.

153 Rolla French's account at Bank stood on February 3d 1858, \$342 58 in  
143 his favor. On March 11th, 1858, \$1226 44. On March 30th, 1858, \$3620 89.  
It is admitted that F. M. Kirwin had on hand January 1st, 1858, \$6,714 98,  
and from that to time of his death it was drawn to \$715 45 (cash in vault.)

There is appended to the foregoing evidence not embraced in the depositions a certificate of Charles B. Wells, Master in Chancery, that the same was taken by him under the order of the Court upon the hearing of this case.

173 On the 8th day of March 1860, it being one of the days of the February Term of said Court, the following decree was entered in the case.

The Board of Trustees of Town forty, Range eight, East of the third principal meridian,

vs

Mary Ann Kirwin, Executrix of the last will of Francis M. Kirwin, deceased, Henry Stevens, administrator of the Estate of Francis M. Kirwin, deceased, & Augustus M. Herrington, administrator of the Estate of Rolla French, deceased.

176 This case having been brought on for a final hearing upon the original and supplemental Bills, the answers, replications and proofs filed and taken in the the case, and after full argument by D. L. Eastman, counsel for complainants, and W. D. Barry Esq., counsel for defendants, and the Court having fully considered the pleadings, proofs and arguments in the case. And it appearing to the satisfaction of the Court, among other things, that at the time of Francis M. Kirwin's death, as set forth in the pleadings in the case, to wit, the 15th day of April 1858, there was in his vault in specie, a bag of or containing specie or silver, amounting in the aggregate to two hundred and seventy-five dollars, which bag of money was there deposited by Rolla French, as township Treasurer of town forty, range eight, east of the third principal meridian, and was a part of the School Funds belonging to the various School Districts of said township, and that said bag of money was taken charge of by said defendant, Henry Stevens, as administrator of the Estate of Francis M. Kirwin, deceased, on or about the 16th day of May, 1858. It is therefore ordered, adjudged and decreed by this Court, that Henry Stevens, administrator of the Estate of Francis M. Kirwin, deceased, pay and deliver over to the said complainants or to their solicitor, the said bag so by him received, as aforesaid, containing the said sum of two hundred and seventy-five dollars in silver, or its full equivalent, to wit, a sum in value equal to the sum of two hundred and seventy-five dollars  
177 in silver, within ten days from the date hereof, and to take the receipt of said complainants or their solicitor, therefor, which said receipt shall be a voucher to said Estate for the payment of said sum, not only as against the complainants and their successors, but also as against the Estate and legal representatives of the said Rolla French deceased, and upon the same being filed and spread upon the records of this Court, the said complainants and the legal representatives of the said Rolla French, and each of them shall be for ever barred from in any manner recovering said specific sum of two hundred and seventy-five dollars from the Estate of the said F. M. Kirwin, deceased, and the said complainants shall also be barred from ever having and maintaining any action against the Estate of said French and his sureties for said specific sum of two hundred and seventy-five dollars so found in the vault of said Kirwin, as aforesaid, from and after the filing and recording of said receipt, as aforesaid. And it is also further  
178 ordered and decreed by this Court, that nothing in this decree or the proceedings herein, shall in any wise effect, invalidate or bar any proceedings, actions or causes of action, either in law or equity which the said complainants may have against the Estate of the said F. M. Kirwin, or as against the Estate of the said Rolla French, save and except as to said specific sum of two hundred and seventy-five dollars as above specifically decreed to be paid by said Henry Stevens, to said complainants or their Solicitor in money, as aforesaid. It is

PAGE OF RECORD.

also further adjudged and decreed by this Court, that the Master's fees in this case be paid by the said defendant, Henry Stevens, administrator of said Kirwin, deceased, in the course of administration upon said Kirwin's Estate. It is further ordered, adjudged and decreed by this Court that no costs are to be taxed against the administrator of the Estate of said Rolla French, nor as against said complainants, they being School Trustees, and by law exempt from all costs in the prosecution of suits, in their official capacity as in this case.

ISAAC G. WILSON.

187 Here follows the Clerk's certificate of Record, &c., under his hand and seal.

ABSTRACT BY EASTMAN & BOTSFORD, )  
Atty's for Complainants. }

129  
Trustees of Y. H. R. & H.  
vs  
Mary Ann Remond  
et al

Abstract

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