No. 14703

Supreme Court of Illinois

Strong et al

vs.

King,

71641

STATE OF ILLINOIS

SUPREME COURT,

THIRD GRAND DIVISION.

No. 200

J. W. Middleton & Co., Stationers, 196 Lake St.

14703

No. 1: If the jury believe from the evidence in this cause, that on the 22d day of August, A. D. 1857, and for several years previous thereto, it was the general, ordinary and established usage and custom of the Ohio Life Insurance and Trust Co. not to pay money on drafts drawn on them, but to give their checks on their bank for the same, and that it was the ordinary, general and established usage and custom of the bankers of New York city to deposit the same with their bank when drawn upon banks belonging to the Clearing House, and had the same go through the Clearing House on the next business day, and to be presented to the bank on which it was drawn on the next business day, if good, to be payment of drafts on them; if otherwise, to be no payment, and that the draft in question was sent by Swift, Ransom & Co. to the office of the Ohio Life Insurance and Trust Company, on the Saturday, the 22d day of August, A. D. 1857, for the purpose of getting a check for the same according to such usage, and not to demand payment thereon; and a check was received for the same on the American Exchange Bank, and that said American Exchange Bank belonged to the Clearing House, and the said check was passed through the Clearing House on Monday, the 24th day of August, the same being the next business day, in accordance with such usage and custom, and was thrown out and was not paid by the American Exchange Bank; and said Swift, Ransom & Co., on the 24th day of August, A. D. 1857, caused the draft in suit to be presented to the Ohio Life Insurance and Trust Company, and payment of the same demanded of them, and on the same day caused said draft to be protested and notice to be mailed the same day, with postage prepaid, addressed

Supreme Court

David A. Strong et al } No 200 on the docket
vs } No 60 on the second
John B. King } call.

A rehearing has been granted in this case and it stands for argument upon the second call of the docket. Now are Sealy notified that said case will be argued when reached upon the second call of the docket.

5/1

Wait & Town &
Sidney Smith
Attys for King

Sealy & Sealy
by
W. Arrington
Plaintiffs Attys

Hoag
vs
King

Notice

Service accepted
May 6. 1864
H. W. Herrington
Pr. H. St. Dent.

Filed May 9. 1864
S. Glenn Clk

Service accepted
May 6. 1864
Baker & Tilley

Supreme Court
Northern District of Illinois
David A. Strong, etal
vs
John B. King } Appeal from the Superior Court of Chicago

The plaintiffs in error will take notice that the defendant in error John B King will on the first day of the next term of the Supreme Court to be holden at Ottawa in said Northern District of Illinois or as soon thereafter as counsel can be heard move for a dismissing in the above entitled case.

Wm B Towne
Attys for Defendant
John B King

Chicago March 5th 1864

We hereby accept service of the above notice this 19th day of March
Barker & Bailey
for Kenly

200

Supreme Court

John R. Idus
Plaintiff in Error
vs
David O. Stroud et al
Defendants in Error

Notice of Motion for Rehearing and admission of Service thereof

Filed April 20, 1864.
L. Leland Clk.

[1] # UNITED STATES OF AMERICA.

STATE OF ILLINOIS, COUNTY OF COOK, SS.

PLEAS, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Sixth day of October, in the year of our Lord One Thousand Eight Hundred and Sixty-Two, and of the Independence of the United States of America the Eighty-Seventh.

Present, The Honorable JOHN M. WILSON, *Chief Justice of the Superior Court of Chicago.*

VAN H. HIGGINS, *and* GRANT GOODRICH, *Judges.*

JOSEPH KNOX, *Prosecuting Attorney.*

ANTHONY C. HESING, *Sheriff of Cook County.*

Attest, THOMAS B. CARTER, *Clerk.*

Be it remembered that heretofore, to wit: on the Twenty-third day of March, in the Year of our Lord One Thousand Eight Hundred and Sixty, the Plaintiff herein, by Waite & Towne, *his Attorneys, filed in the office of the Clerk of the Superior Court of Chicago, his certain declaration in words and figures following, to wit:*

SUPERIOR COURT OF CHICAGO,
of the April Term, A. D., 1860.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

John B. King, Plaintiff in this suit, by Shumway, Waite & Towne, Attorneys, complains of David D. Strong, Christopher V. Wiley, and Benjamin B. Wiley, partners in trade, under the name and style of Strong & Wiley Brothers, defendants, who have been summoned, etc., of a plea of trespass on the case, on promises. For, that whereas, the said defendants, then being partners in trade, by the firm name and style of Strong & Wiley Brothers, heretofore, to wit: on the nineteenth day of August, in the year of our Lord one thousand eight hundred and fifty-seven, at Chicago, Illinois, to wit: at said County of Cook, made their bill of exchange in writing, and directed the same to the Ohio Life Insurance and Trust Company, by the name and style of the Ohio Life Ins. and Trust Co., New York, and thereby required the said Ohio Life Insurance and Trust Company to pay to Messrs. Williams & Bro., or order, one thousand dollars on demand, value received, and the said Williams & Bro., by the name and style of Williams & Brother, then and there endorsed the said bill in writing, to R. K. Swift, Brother &
3 Johnston, who then and there endorsed the same to the plaintiff, by the name and style of John B. King, and the said Ohio Life Insurance and Trust Company, did not pay the same, although the same was then and there presented for payment to said Ohio Life Insurance and Trust Company, on the day the same became due and payable, of all which the defendants had then and there due notice, to wit: at Cook County, aforesaid.

And also, for that whereas, the defendants, by their firm name and style of Strong & Wiley Bros., (the said defendants then and there being partners in trade, under the name and style of Strong & Wiley Brothers,) heretofore, to wit: on the nineteenth day of August, in the year of our Lord one thousand eight hundred and fifty-seven, at Chicago, Illinois, to wit: at Cook County, aforesaid, made their certain draft in writing, commonly called a bill of exchange, and directed the same to the Ohio Life Insurance and Trust Company, New York, by the name and style of the Ohio Life Ins. and Trust Co., New York, and required the said Ohio Life Insurance and Trust Company, to pay to the order of Messrs. Williams & Bro., one thousand dollars, after the sight thereof, for value received, and the said Williams & Bro., by the name and style of Williams & Brother, then and there endorsed said bill of exchange in writing, to the order of R. K. Swift, Brother & Johnston, and the said R. K. Swift, Brother & Johnston, under the name and style of R.
4 K. Swift, Bro. & Johnston, then and there endorsed the same in writing, to the order of the plaintiff, by the name and style of John B. King, and said draft was then and there presented to the Ohio Life Insurance and Trust Company for payment, and the said Ohio Life Insurance and Trust Company then and there refused to pay the same, of all which the said defendants had then and there due notice.

And also, for that whereas, the defendants, by their firm name and style of Strong & Wiley Bros., (the said defendants then and there being partners in trade, under the name and style of Strong & Wiley Brothers,) heretofore, to wit: on the nineteenth day of August, in the year of our Lord eighteen hundred and fifty-seven, at Chicago, Illinois, to wit: at Cook County, aforesaid, made their certain draft in writing, commonly called a bill of exchange, and directed the same to the Ohio Life Insurance and Trust Company, New York, by the name and style of the Ohio Life Insurance and Trust Company, New York, thereby required the said Ohio Life Insurance and Trust Company to pay to the order of Messrs. Williams & Bro. one thousand dollars, after the sight thereof, for value received, and the said Williams & Bro., by the name and style of Williams & Brother, then and there endorsed said bill of exchange in writing, to the order of R. K. Swift, Brother & Johnston,
5 and the said R. K. Swift, Brother & Johnston, under the name and style of R. K. Swift, Brother & Johnston, then and there endorsed the same in writing,

to the order of the plaintiff, by the name and style of John B. King, and said draft was then and there presented to the Ohio Life Insurance and Trust Company for payment, and the said Ohio Life Insurance and Trust Company then and there refused to pay the same; and the defendants afterwards, to wit: on the first day of September, in the year of our Lord eighteen hundred and fifty-seven, to wit: at Chicago, Cook County, aforesaid, in consideration of the premises, promised to pay said sum of money in said bill of exchange mentioned, yet, although often requested so to do, have not paid the same or any part of the same, to wit: at Cook County, aforesaid.

And also, for that whereas, the defendants, by their firm name and style of Strong & Wiley Bros., (the said defendants then and there being partners in trade, under the name and style of Strong & Wiley Brothers,) heretofore, to wit: on the nineteenth day of August, in the year of our Lord eighteen hundred and fifty-seven, at Chicago, Illinois, to wit: at Cook County, aforesaid, made their certain draft in writing, commonly called a bill of exchange, and directed the same to the Ohio Life Insurance and Trust Company, New York, by the name and style of the Ohio Life Ins. and Trust Co.,
6 New York, and required the said Ohio Life Insurance and Trust Company, to pay to the order of Messrs. Williams & Bro., one thousand dollars, after the sight thereof, for value received, and the said Williams & Bro., by the name and style of Williams & Brother, then and there endorsed said bill of exchange in writing, to the order of R. K. Swift, Brother & Johnston, and the said R. K. Swift, Brother & Johnston, under the name and style of R. K. Swift, Bro. & Johnston, then and there endorsed the same in writing, to the plaintiff, by the name and style of John B. King, and said draft was then and there presented to the Ohio Life Insurance and Trust Company for payment; Ohio Life Insurance and Trust Company then and there refused to pay the same, and the plaintiff avers and says, that afterwards, to wit: on the first day of September, in the year of our Lord one thousand eight hundred and fifty-seven, the said defendants waived demand for payment of said draft and notice of its non-payment, to wit: at Cook county aforesaid.

And also, for that whereas, the defendants by their firm name and style of Strong & Wiley Bros. [the said defendants then and there being partners in trade under the name and style of Strong & Wiley Brothers,] heretofore, to wit: On the nineteenth day of August, in the year of our Lord eighteen hundred and fifty-seven, at Chicago, Ill., to wit: at Cook county
7 aforesaid, made their certain draft in writing, commonly called a bill of exchange, and directed the same to the Ohio Life Insurance and Trust Company, New York, by the name and style of Ohio Life Ins. and Trust Co., New York, and required the said Ohio Life Insurance and Trust Company to pay to the order of Messrs. Williams & Bro., one thousand dollars upon the sight thereof for value received, and the said Williams & Bro., by the name and style of Williams & Brother, then and there endorsed said bill of exchange in writing to the order of R. K. Swift, Brother & Johnston, and the said R. K. Swift, Brother & Johnston, under the name and style of R. K. Swift, Bro. & Johnston, then and there endorsed the same in writing to the order of the plaintiff by the name and style of John B. King, and the defendants afterwards to wit: on the first day of September, in the year of our Lord eighteen hundred and fifty-seven, to wit: at Chicago, Ill., to wit: at Cook county aforesaid, in consideration of the premises promised to pay said sum of money in said bill of exchange mentioned, yet, although often requested so to do, has not paid the same or any part of the same, to wit: at Cook county aforesaid.

And also, for that whereas, the defendants, by their firm name and style of Strong & Wiley Bros., (the said defendants then and there being partners
8 in trade, under the name and style of Strong & Wiley Brothers,) heretofore, to wit: on the nineteenth day of August, in the year of our Lord eighteen hundred and fifty-seven, at Chicago, Ill., to wit: at Cook County, aforesaid, made their certain draft in writing, commonly called a bill of exchange, and directed the same to the Ohio Life Insurance and Trust Company, New York, by the name and style of Ohio Life Ins. and Trust Co., New York, and required the said Ohio Life Insurance and Trust Company to pay to the order of Messrs. Williams & Bro. one thousand dollars, after the sight thereof, for value received, and the said Williams & Bro., by the name and style of Williams & Brother, then and there endorsed said

bill of exchange in writing, to the order of R. K. Swift, Brother & Johnston, and the said R. K. Swift, Bro. & Johnston, under the name and style of R. K. Swift, Brother & Johnston, then and there endorsed the same in writing, to the plaintiff, by the name and style of John B. King, and the plaintiff avers and says, that afterwards, to wit: on the first day of September, in the year of our Lord eighteen hundred and fifty-seven, the said defendants waived demand for payment of said draft and notice of its non-payment, to wit: at Cook county aforesaid.

And also, for that whereas, the defendants by their firm name and style
9 of Strong & Wiley Bros., the said defendants then and there being partners in trade under the name and style of Strong & Wiley Brothers, heretofore, to wit: on the nineteenth day of August, in the year of our Lord eighteen hundred and fifty-seven, at Chicago, Ill., to wit: at Cook county aforesaid, made their certain draft in writing, commonly called a bill of exchange, and directed the same to the Ohio Life Insurance and Trust Company, New York, by the name and style of the Ohio Life Ins. and Trust Co., New York, and requires the said Ohio Life Insurance and Trust Company to pay to the order of Messrs. Williams & Bro. one thousand dollars after the sight thereof, for value received, the said Williams & Bro., by the name and style of Williams & Brother, then and there endorsed said bill of exchange in writing to the order of R. K. Swift, Brother & Johnston, and the said R. K. Swift, Brother & Johnston, under the name and style of R. K. Swift, Bro. & Johnston, then and there endorsed the same in writing to the order of the plaintiff by the name and style of John B. King, and said draft was then and there presented to the Ohio Life Insurance and Trust Company for payment, and the said Ohio Life Insurance and Trust Company, then and there refused to pay the same; of all which the said defendants had then
10 and there due notice, and the plaintiff further avers and says, that the said bill of exchange was drawn by the defendants, who then and there were persons residing in the State of Illinois, and was drawn at Chicago, in said State of Illinois, upon the Ohio Life Insurance and Trust Company, a body corporate out of the State of Illinois, and doing business in the state of New York, and within the United States, and was for the payment of money and expressed to be for value received, and was duly presented for payment and duly protested for non-payment, and the defendants being drawers as aforesaid, had due notice of such non-payment, and by means whereof, and according to the statute of the State of Illinois in such cases made and provided, the plaintiff is entitled to have and claim of the defendants five per centum damages upon said bill of exchange, which amounts to a large sum of money, to wit: fifty dollars, by means whereof and by force of the statute in such case made and provided, the said defendants became liable to pay said plaintiff said sum of money mentioned in said bill of exchange or draft, together with said damages as aforesaid, and being so liable, in consideration thereof, then and there undertook, and promised to pay the said Plaintiff the same according to the tenor and effect of said bill of exchange or draft, and of the endorsement aforesaid, the statute in such cases made and provided, to wit: at the place aforesaid.

11 And whereas, also the said defendants afterwards, to wit: on the first day of January, in the year of our Lord one thousand eight hundred and sixty, to wit: at said county, became and was indebted unto the plaintiff in a large sum of money, to wit: Two thousand dollars for money before that time lent and advanced to said defendants by said plaintiff at said defendants' request; and also in the like sum for money before that time paid, laid out and expended for said defendants by the said plaintiff, at the like special request of said defendants; and in the like sum for money before that time had and received by said defendants to and for the use of said plaintiff; and also in the like sum for goods, wares and merchandise before that time sold and delivered by said plaintiff to said defendants, at the like special instance and request; and also in the like sum for the labor, care and diligence of said plaintiff before that time done and performed by said plaintiff for said defendants; and at the like special instance and request of said defendants, and also in the like sum, then and there found to be due and owing to said plaintiff on an account stated between them; and being so indebted said defendants in consideration thereof then and there undertook and promised to pay said plaintiff said several sums of money in this declaration mentioned, when thereunto afterwards requested.

12 Yet the said Defendants, not regarding their said promises and undertakings, but contriving, &c., although often requested so to do, have not paid said Plaintiff either of said sums of money in this declaration mentioned, or any part thereof, but so to do have hitherto wholly neglected and refused, and still do neglect and refuse to the damage of said Plaintiff of Two Thousand Dollars, and therefore he brings this suit, &c.

SHUMWAY, WAITE & TOWNE.
Plaintiff's Attorneys.

Copy of Instrument and account sued on $1000. STRONG & WILEY BROTHERS, *Bankers.*

[redacted]

Strong & Wiley Brothers:

13 To JOHN B. KING, Dr.

To money lent and advanced,	$2000
To money paid, laid out and expended,	2000
To money had and received to and for the use of said Plaintiff,	2000
To goods, wares and merchandise sold and delivered,	2000
To labor and services,	2000
To balance due on account stated,	2000

14 And afterwards, to wit: on the fourth day of April, in the year aforesaid, the defendants in this cause, by Barker and Tuley, their Attorneys, filed herein their certain affidavit in words and figures following, to wit:

STATE OF ILLINOIS, }
COUNTY OF COOK. }

SUPERIOR COURT OF CHICAGO,
April Term, A. D., 1860.

JOHN B. KING,
vs.
15 DAVID O. STRONG, CHRISTOPHER V. WILEY and BENJAMIN B. WILEY.

Christopher V. Wiley, being duly sworn upon oath, deposes and says, that he is one of the defendants to the above entitled suit, and that they, the said defendants, have a good defence to the same upon the merits.

C. V. WILEY.

Sworn and subscribed to before me this 4th day of April, A. D. 1860.

JOSEPH N. BARKER,
Notary Public.

And afterwards, to wit: on the fifth day of April, in the year aforesaid, the said defendants, by Barker & Tuley, their Attorneys, filed herein their certain plea and notice in words and figures following, to wit:

15 DAVID O. STRONG, CHRISTOPHER V. WILEY and BENJAMIN B. WILEY,

vs.

JOHN B. KING.

Superior Court of Chicago, April Term, A. D. 1860.

And the said defendants, David O. Strong, Christopher V. Wiley and Benjamin B. Wiley, by Barker & Tuley, their Attorneys, come and defend the wrong and injury, when, &c., and say that they did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against them, of this the said defendants put themselves upon the country, &c.

BARKER & TULEY,
Defendants' Attorneys.

JOHN B. KING,

vs.

DAVID O. STRONG, CHRISTOHHER V. WILEY and BENJAMIN B. WILEY.

Superior Court of Chicago, April Term, A. D. 1860.

[redacted]

Defendants' Attorneys.

16 November 13, A. D. 1863.—Jury trial had.

19 And jury return and say that they cannot agree upon a verdict herein, and by consent of parties the jury was discharged.

20 February 19, A. D., 1861—Jury trial had.

23 And jury return and say that they cannot agree upon a verdict herein, and by consent of parties the jury was discharged.

25 October 10, A. D. 1861—Jury trial had.

28 And jury return and say, we, the jury, find the issues for the defendants, and thereupon the plaintiff submits his motion for a new trial in said cause.

29 Motion by plaintiff for a new trial, sustained on 17th day of March, 1862, upon payment of costs of term at which trial was had.

30 March 25th, A. D. 1862. The following proceedings had, to wit:

JOHN B. KING,

vs.

DAVID O. STRONG, CHRISTOPHER V. WILEY and BENJAMIN B. WILEY.

Assumpsit.

This cause being this day again regularly called for trial, comes said plaintiff by Waite & Towne, his Attorneys, and said defendants by Barker & Tuley, their Attorneys, also come and issues being joined herein, it is ordered that a jury come.

Whereupon come the jury of good and lawful men, to wit: C. R. Ball, William Baudle, William Misrick, H. Ese, Thos. Cook, Joseph Bissell, Jo. Wilder, H. M. Campbell, William Bartlett, Thomas Pringle, Pat. M'Guison
31 and John Miller, who, being duly elected, tried and sworn, to try the issue joined herein as aforesaid, after hearing part of the testimony, and the hour of adjournment having arrived, it is ordered upon agreement of the parties that the jury separate and meet the court to-morrow morning.

After hearing further part of evidence, by agreement of parties, jury separate to meet the court in the morning.

32 After hearing further part of the testimony jury separate by agreement to meet the court in the morning.

33 After hearing testimony, arguments of counsel and instructions of court, jury retire to consider of verdict, and by agreement of parties the jury are to bring in a sealed verdict and meet the court in the morning upon the opening thereof.

34 Jury come and submit their verdict and say: We, the jury, find issues for the plaintiff, and assess his damages herein against all of said defendants to the sum of one thousand and two hundred and seventy-six dollars and fifty cents, and defendants submit their motion for a new trial.

35 Motion for new trial by defendants heard, and court are of opinion that reasons filed by defendants in support of their motion are not sufficient, and motion overruled and a new trial refused.

36 Judgment of court upon verdict, and that plaintiff have execution; defendants pray an appeal to Supreme Court of this State—appeal allowed, and 30 days given to file bond and bill of exceptions.

37 November 24th, 1862—Appeal bond filed.
Appeal bond with John N. Staples and A. J. Galloway as sureties.

39 November 24th, 1862.—By agreement of parties time to file bill of exceptions extended 30 days.

40 By stipulation filed on motion, time to file bill of exceptions extended for 20 days from 22d December, 1862.

41 By stipulation time to file bill of exceptions extended 20 days from 10th January, A. D., 1863.

And afterwards, to wit: on the 15th day of January, A. D. 1863, the defendants herein, by Barker & Tuley, their Attorneys, filed in the office of the Clerk aforesaid, their certain bill of exceptions in words and figures following, to wit:

SUPERIOR COURT OF CHICAGO,

42 JOHN B. KING,
vs.
DAVID O. STRONG, *et. al.* } *Bill of Exceptions.*

Afterwards, to wit: on the day and year and place within mentioned, before the Hon. Grant Goodrich, one of the Judges of the said Court comes the said John B. King, by Waite and Towne and Sidney Smith, his Attorneys, and said defendants, David O. Strong, Christopher V. Wiley and Benjamin F. Wiley, by Barker & Tuley and A. W. Arrington, their Attorneys, and the jurors of the jury, whereof mention is last within made, being called, likewise came, and after being elected to try the several issues within found—the said plaintiff to sustain the issues upon his part, offered in evidence a draft, and the endorsements thereon, of which the following is a true copy:

"EXHIBIT A."

STRONG & WILEY BROTHERS,
BANKERS,

$1000

CHICAGO, ILL., August 19, 1857.

Pay to the order of Mess. Williams & Bro.

One Thousand Dollars.

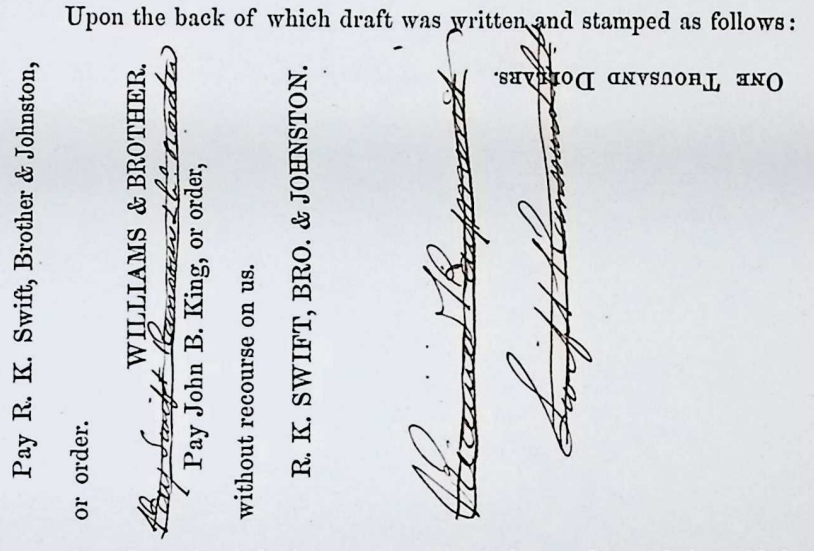
Value received, and charge the same to account of

STRONG & WILEY BRO.

To the
Ohio Life Ins. and Trust Co.,
New York.

No. 1253.

Upon the back of which draft was written and stamped as follows:



Therefore, the defendants objected to the reading of the said draft in evidence, until the words "received payment," which had been erased by drawing lines over them, and the spindle cut or marks, cut through the body of the said draft had been explained. Which objection the Court sustained. And therefore the plaintiff, to sustain the issues upon his part, offered and read in evidence the deposition of Walter Edwards, which deposition is in the words and figures following, to wit:

Interrogatory First: What is your name, age, occupation and place of residence?

Answer: My name is Walter Edwards; my age fifty-eight years; my occupation a lawyer, and my place of residence the city of New York.

Int. Second: Do you know the parties, plaintiff and defendants, in the
44 caption to these interrogatories mentioned, or either, and which of them, and how long have you known them respectively?

Ans.: I do not know the said parties, or either of them.

Int. Third: State whether or not you were a Notary Public at any time; if so, where?

Ans.: I was a Notary Public of the State of New York during the whole of the year 1857.

Int. Fourth: As such Notary Public, did you protest a draft or bill of exchange like the following:

STRONG & WILEY BROTHERS,

$1000 BANKERS,

CHICAGO, ILL., August 19, 1857.

Pay to the order of Messrs. Williams Brothers,

One Thousand Dollars.

Value received, and charge the same to account of

To the STRONG & WILEY BROS.

Ohio Life Ins. and Trust Co.,
New York.

No. 1253. Endorsed.

Pay R. K. Swift, Brother & Johnston, or order.

WILLIAMS & BROTHER.

Pay John B. King or order, without recourse on us.

R. K. SWIFT, BROTHER & JOHNSTON.

If so, when, and at whose request, and did you ever send notice to any one; if so, to whom and when?

Ans.: As such Notary Public I protested a draft or bill of exchange like the one herein described, on the 24th day of August, 1857, at the request of Mess. Swift, Ransom & Co., of New York. The said draft is hereto annexed,
45 marked "Exhibit A." My certificate of said protest, with a copy of the draft as protested, endorsed thereon, is also hereto annexed, marked Exhibit B. On the same 24th day of August, 1857, I sent notice of such protest by mail, addressed to "Strong & Wiley Brothers," "Williams & Brother" and "R. K. Swift, Brother & Johnston," and directed them respectively at Chicago, Illinois. I prepaid the postage on each of said notices.

Int. Fifth: If you say you sent notice by mail, when did you place the same in the Post Office? State whether it was in season for that day's mail for Chicago.

Ans.: Such notices were deposited in the Post Office in New York on the said 24th day of August, 1857, but whether in season for that day's mail for Chicago or not, I am not positive.

Int. Sixth: What day of the week was it when you placed the notice in the Post Office?

Ans.: It was Monday.

Int. Seventh: Do you know of any other matter or thing of importance to the plaintiff? If so, state the same fully and at large.

Ans.: I do not.

Cross interrogatories and answers thereto, by the witness on the part of the defendant.

Cross Int. First: If you answer the fourth direct interrogatory by stat-
46 ing that you did protest the draft described in said interrogatory, please state from whose hands you received said draft?

Ans.—I received it from the hands of the Cashier or a Clerk of the Ohio Life Ins. and Trust Co., or from the hands of one of the firm of Swift, Ransom & Co., in the office of said Company, I am not certain which.

Cross Int. Second: State whether the draft you protested was not made payable to Williams & Bro., and by them endorsed to Swift, Brother & Johnston, and by them endorsed to Swift, Ransom & Co., in N. Y., and whether the words "received payment, Swift, Ransom & Co.," were not on said draft?

Ans.: The draft I protested was made payable to Williams & Bro., and purported to be endorsed by them in blank; and subsequently endorsed by R. K. Swift, Bro. & Johnston, to Swift, Ransom & Co.; The words "Rec'd payment, Swift, Ransom & Co.," were on said draft when I protested it.

Cross Int. Third: State whether you did not find said draft in the hands of some one in charge of the Ohio Life Insurance and Trust Company's affairs and in its office?

Ans.: I did.

Cross Int. Fourth: State what day of the month and of the week you first saw said draft.

Ans.: On Monday, the 24th day of August, 1857.

47 Cross Int. Fifth: State whether the paper you protested was not a copy of said draft, and not the draft itself.

Ans.: The paper I protested was not a copy of said draft; but the draft itself.

Cross Int. Sixth: State to what you appended your certificate the day you protested said draft, whether it was the original or to a copy.

Ans.: I think my certificate was appended to a copy of said draft; I am not positive that it was appended to any paper; the draft was copied on the back of my certificate, as is shown by Exhibit B, hereto annexed.

Cross Int. Seventh: If you state in answer to any of the direct interrogatories that you had the original draft in your hands, please state where you were when you had it, who were present and what became of the original when it passed out of your hands?

Ans.: I was at the office of the Ohio Life Insurance and Trust Company, in New York; one of the firm of Swift, Ransom & Co., and the Cashier or a Clerk of said Company were present; after I had presented said draft for payment it passed out of my hands to the said Cashier or Clerk, according to the best of my recollection.

Cross Int. Eighth: Did not said draft pass from your hands back again

into the hands of some one in charge of the books and papers of the Ohio Life Insurance and Trust Company?

Ans.: It did according to the best of my recollections.

48 Cross Int. Ninth: Did you not, the day of the date of your protest, go away from the office of the Ohio Life Insurance and Trust Company, leaving in said office the said draft?

Ans.: I did.

Cross Int. Tenth: To whom did you deliver your certificate of protest?

Ans.: To one of the firm of Swift, Ransom & Co.

Cross Int. Eleventh: At whose request did you go to make said protest, and who went with you?

Ans.: At the request of Swift, Ransom & Co., and I think one of said firm went with me.

Cross Int. Twelfth: Please annex a copy of the certificate of protest of said draft, together with the endorsements as they appeared upon said draft the day you made your certificate.

Ans.: My said certificate is hereto annexed, marked "Exhibit B," the copy draft endorsed thereon shows the endorsements as they appeared upon said draft at the time of such protest.

Cross Int. Thirteenth: Was there then in said draft any endorsement from any person or firm to John B. King, the plaintiff in this suit.

Ans.: There was. not

WALTER EDWARDS.

49 The plaintiff, further to sustain the issues upon his part offered and read in evidence the deposition of John Horner, which was in the words and figures as follows, to wit:

50 Interrogatory First: What is your name, age, occupation and place of residence?

Answer to First Int.: My name is John Horner; my age thirty-seven years; my occupation, a clerk; and my place of residence the city of New York.

Int. Second: Do you know the parties, plaintiff and defendants, in the caption to these interrogatories mentioned, or either and which of them, and how long have you known them respectively?

Ans. to the Second Int.: I am not personally acquainted with either of the parties named.

Int. Third: What, if anything, had you to do in the summer or fall of 1857, with the Telegraph office in the city of New York, and what have you now to do with the same, and if you say you were in 1857 in the Telegraph office, how long have you been so employed, and what have you to do with the papers in said office, and what Telegraph office was it?

Ans. to the Third Int.: I was an employee in the office, in New York city, of the New York, Albany and Buffalo Telegraph Company, in the year 1857; I accounted to the Treasurer of that Company for all the receipts of the New York office at that time, and still hold the same position; I have been in the same business for thirteen years last past; I had charge of what we call the "Receiving Department," receiving messages from the public,
51 crediting the amounts paid for their transmission to the company, and immediately passing them into the hands of the operators.

Int. Fourth: If a telegraph was sent from New York to Chicago at any time in the year 1857, on what line would it pass, and do you have charge?

Ans. to the Fourth Int.: It would pass over the line of the New York, Albany and Buffalo Telegraph Company, and it would necessarily be received in their office in New York, where I am employed.

Int. Fifth: Please examine for and attach to your answer all telegraph communications sent from Swift, Ransom & Co., of New York, to Swift, Bro. & Johnston, Chicago, Illinois, during the month of August, A. D. 1857. Please attach to your answer all communications left by Swift, Ransom & Co., or any one for them, to be telegraphed through to Swift, Johnston & Co., Chicago, Illinois, during said month.

Ans. to the Fifth Int.: We do not preserve the copies over about one year, but destroy them to make place for others.

Int. Sixth: If you say you cannot produce the same, why not? Will you please make diligent and careful search for the same, and give in the

result of such search if you cannot produce the original, give copies of the same, if you have any copies.

Ans. to the Sixth Int.: Because we don't keep them so long; we cannot give copies when the originals are destroyed; I have no copies.

52 Int. Seventh: Do you know any matter or thing of importance to the plaintiff? If so, state the same fully and at large.

Ans. to the Seventh Int.: Nothing whatever.

JOHN HORNER.

The plaintiff, further to sustain the issues upon his part, offered in evidence the deposition of J. S. Johnston. To the reading of which deposition in evidence, defendants objected upon the ground that the same showed the witness to be interested in the event of the suit, which objection the Court there and then overruled, and defendants excepted, and thereupon the said deposition was read to the jury, and was in the words and figures as follows, to wit:

53 *James S. Johnston.*—A witness of lawful age, being duly sworn, deposes and says:

1st Interrogatory: Please state you name, age and residence?

54 Ans.: My name is James S. Johnston; my age is thirty-three years; my residence is Chicago, Illinois.

2d Int.: Please state whether or not you intend leaving the State of Illinois? If so, when do you intend leaving? Where do you design going, and how long you intend being absent from the State?

Ans.: I do intend leaving the State of Illinois within ten days for California. I cannot say how long I shall remain there.

3d Int.; Please state whether you are acquainted with the parties to this suit.

Ans.: I am.

3½ Int.: Who, in the summer and fall of 1857, and prior thereto, composed the firm of R. K. Swift, Brother & Johnston?

Ans.: Richard K. Swift, Lyman P. Swift and myself.

4th Int.: Who, at the last named date, composed the firm of Strong & Wiley Brothers?

55 Ans.: David O. Strong and C. V. Wiley, and I think B. B. Wiley. Whether there were any other members, I cannot say.

5th Int.: Please examine the draft of Strong & Wiley Brothers, constituting a portion of the deposition of Walter Edwards in this cause, dated Chicago, Illinois, August 19th, 1857, payable to the order of Messrs. Williams & Brothers for one thousand dollars, drawn on the Ohio Life Insurance and Trust Company, New York, number 1253, and state where, if ever you saw said draft, under what circumstances, and what you know in reference to the same, and all the particulars relating to said draft fully, minutely and in detail. [Question objected to.]

Ans: I first saw said draft about the 19th of August, 1857, when our firm remitted it to Swift, Ransom & Co., New York, for our credit, the draft being endorsed to them in my hand writing, on the 24th or 25th of August,

56 1857, being Monday or Tuesday of the week, we received a dispatch from Swift, Ransom & Company, stating that the Ohio Life Insurance and Trust Company had failed, and that the draft in question was unpaid. Immediately on receipt of the dispatch, I went over to Strong & Wiley's office, which was right across the street, with the dispatch in my hand, told them that the Trust Company had failed, that their draft was unpaid, and that on its return we would look to them for payment.

Subsequently we received advice from New York that Swift, Ransom & Company had taken a check from the Trust Company on their bankers for the amount of said draft, which check was thrown out at the Clearing House, whereupon Swift, Ransom & Company went to the Trust Company to get back the draft, but the office of the Trust Company being in charge of the Sheriff, they were unable to do so. Of this fact, Mr. Strong and myself had several conversations subsequently to this date, and prior to the 25th of September. Mr. Strong came over to our office, came up stairs to the

57 room in which I was, and told me that if we would get their draft back from New York, they would pay us the amount. I was busy at the time, and made a memorandum to write to New York for the draft. Before I wrote

for the draft, Swift, Ransom & Co. sent it to us in their letter dated September 22, 1857, which letter is attached to the deposition of Lyman P. Swift in this cause. On receipt of the draft, I went over to the office of Strong & Wiley Brothers, for the payment of it, which payment Mr. Strong there refused. On Mr. Strong refusing to pay the draft, I inquired through our office to find who had written requesting the return of the draft, when Mr. R. K. Swift told me he had done so at the request of Mr. Strong. Mr. Strong having stated to him that if the draft was got back they would pay it.

Defendants' counsel objects to so much of the foregoing answer as relates to the contents of the despatch—as relates to advices from New York, that Swift, Ransom & Co., had taken a check for draft—that the check had been thrown out of the Clearing House, that Swift, Ransom & Co.
58 then went to the Trust Co. to get back the draft, the office of the Trust Co. being in the hands of the Sheriff, and that they were unable to do so—to so much as relates to Mr. Strong and witness having had several conversations as to that fact—to so much as relates to contents of memorandum in regard to writing for the draft, and to so much of said answer as relates to the act of witness in inquiring through their office to find out who had written requesting the return of the draft, and to so much as relates to what R. K. Swift told witness—to so much as relates to statement of R. K. Swift, as to what Mr. Strong had stated to R. K. Swift.

6th Int.: Please state what has become of the telegraphic despatch and memorandum referred to in your last answer.

Ans.: So far as I know, the telegraphic despatch has been lost, and the memorandum has long since been destroyed as waste paper, as there was no more use for it when the draft had been returned.

[Objected to so far as the answer relates to the memorandum.]

59 7th Int.: State whether any examination or search was ever made for the telegraphic despatch. If so, when, by whom, where was the search made, and what was the result of the search?

[Question objected to by defendants' counsel.]

Ans.: Diligent search has been made through all the papers of R. K. Swift, Brother & Johnston by myself, by our clerk, Geo. A. Woolner and by Mr. King, the plaintiff, prior to the first trial of this cause, the despatch could not be found.

8th Int.: State, if you please, what, if anything was said to the defendants, or either of them, when you first notified them of the non-payment of the draft, in reference to who, if any body was to be looked to for the payment of the draft? [Objected to by defendants' counsel.]

Ans.: As I have stated in 5th interrogatory, I stated that we would look to them for payment.

60 9th Int.: What, if any letter or letters were received by R. K. Swift, Brother & Johnston in reference to the draft? Give the date at which the letter was written, and of the receipt thereof, and who from, and produce the same if you can. [Objected to by defendants' counsel.]

Ans.: We received a letter from Swift, Ransom & Co., dated August 24th, 1857, about the 27th of August, 1857, which stated that the Ohio Life and Trust Company had closed, that they, Swift, Ransom & Co., held the Trust Company's check, which letter I now produce attached to my deposition, and marked as "Exhibit A," which letter is in the hand writing of Charles A. Ransom who held a power of Attorney from said Swift, Ransom & Co.

Adjourned by consent to April 15th at 1 o'clock, P. M.

April 15th, examination resumed.

10th Int.: State, if you please, in what capacity, if any, said Charles H. Ransom, referred to in your last answer, acted at the time said letter last referred to by you was written:

61 Ans.: He was chief clerk of the firm of Swift, Ransom & Co., of which firm I was a member.

11th Int.: State whether, as such chief clerk, he conducted the correspondence of said Swift, Ransom & Co., at the time said letter was dated.

Ans.: He did the principal part of the correspondence of the firm.

12th Int.: State whether or not, after the receipt of said letter of Swift, Ransom & Co., last referred to, you exhibited said letter to said defendants, or either of them; if so, what was said by you and them, or either of them,

in regard to said letter, if anything, or if anything was said in regard to said draft or said check referred to in said letter; state fully and particularly.

[Int. objected to by defendants' counsel]. [Also objected to as leading].

Ans.: I think I did not exhibit the letter to them. Mr. Strong and I had conversations in regard to the check having been taken for the draft in question, and he claimed that their firm were released on the draft by Swift, Ransom & Co. taking the check of the Trust Company on their bank.

13th Int.: State what, if any, subsequent conversation you had with said defendants, or either of them, respecting said draft, or the payment of the same.

62 [Question objected to by defendants' counsel as leading].

Ans.: As stated in answer to a former interrogatory, subsequently to the conversations last named, Mr. Strong came into our office, up stairs, and told me that if we would get the draft in question back from New York, they would pay it to us.

[Answer objected to].

14th Int.: State whether or not, after said last conversation the firm of Swift, Brother & Johnston got said draft back from the Trust Company.

[Objected to by defendants' counsel as leading].

Ans.: They did.

15th Int. State what, if anything, was done by Swift, Brother & Johnson, after said last named conversation respecting said draft.

Ans.: After the conversation in which Mr. Strong claimed that they were released on the draft by the taking of the check, and after the subsequent conversation in which Mr. Strong offered to pay the draft if got back; the draft came back from New York, and was by me presented to Mr. Strong for payment, and payment was refused. R. K. Swift wrote to New York for the draft, under date of Sept. 17th, 1857, and received the draft from Swift, Ransom & Co., in their letter of Sept. 22d, 1857, in
63 answer to said letter of R. K. Swift, said letters are marked Exhibits "D" and "C," and attached to the deposition of Lyman P. Swift.

[Ans. objected to—so much of it as is not responsive—and counsel for defendants objects further to the letters mentioned in answer, having been given to the witness to look at while answering the last question.

16th Int.: State what was done by Swift, Ransom & Co., with the Trust Company in order to get up the draft from the Trust Company.

[Question objected to by defendants' counsel].

Ans.: They gave up the check of the Trust Company.

[Ans. objected to].

17th Int.: State, if you please, what conversation or conversations, if any, you at any time during the year 1857, had with said defendants, or either of them, respecting said draft and its non-payment, or respecting any agreement, if any, by said defendants, or either of them, touching or respecting the draft, or its payment. State fully and in detail, if anything, what was said touching those points.

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[Objected to by defendants' counsel as leading and as assuming the existence of an agreement].

Ans.: On Monday or Tuesday, the 24th or 25th of August, 1857, I told
64 Mr. Strong that the Trust Company had failed, that we held their draft, the one in question, that it was unpaid, and that we would look to them for payment on its return from New York. The draft did not come back in the usual course, and subsequently about the latter end of August we received a letter from Swift, Ransom & Co., stating that they had taken the Trust Company's check for the draft, and they couldn't get the draft back; subsequently I had conversations with Mr. Strong, in which he claimed that Swift, Ransom & Co., having taken the Trust Company's check, they, Strong & Wiley Brothers, are exonorated on the draft; subsequently to this date and prior to the 29th of September, Mr. Strong came over to our Banking Office, came up stairs to the room in which I was, and said to me that if we would get back the draft from New York, they would pay it. I made a memorandum to write for the draft, but before writing the draft came back from Swift, Ransom & Co., in their letter, dated Sept. 22, 1857, marked exhibit "C," and attached to the deposition of Lyman P. Swift. On the return of the draft I presented it to Mr. Strong for payment according to his offer and agreement, but he then declined to take it.

65 [Defendants' counsel objects to so much of answer as relates to the letter of Swift, Ransom & Co., first mentioned in answer—to so much as states the contents of said letter—to so much as relates to the conversation with Strong in regard to getting the letter back—to so much as relates to the letter attached to the deposition of Lyman P. Swift.]

18th Int.: State, if you please, what, if any conversation passed between you and the defendants, or either of them, prior to the conversation in which they agreed to pay the draft provided you would get it back from New York, respecting the Life Insurance and Trust Co.'s check, having been taken on presentation of the draft.

[Objected to generally, and especially as leading.]

Ans.: We had more than one conversation, in which Mr. Strong said that Swift, Ransom & Co. having taken the Ohio Life and Trust Co.'s check for the draft, they, Strong & Wiley Brothers, were released on the draft.

19th Int.: State what, if any thing, you know as to whom or what Banking Institution or Company in New York city the defendants kept their deposits with in 1857, and drew upon.

[Question objected to by defendants' counsel.]

66 Ans.: They kept an account and drew drafts on the Ohio Life Insurance and Trust Company, New York, in the months of August and September 1857; and I do not know that they kept an account with any other House in New York city.

20th Int.: State, if you please, what, if any paper either of said defendants had in their hand or exhibited at the time of their promise to pay the draft, in case you would have it returned from New York?

[Question objected to as leading.]

Ans.: Mr. Strong had a paper in his hand, but what it was I cannot say.

21st Int.: What, if any thing, was said by Mr. Strong in regard to having recently heard from the Ohio Life Insurance and Trust Company at the time he said paper.

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[Objected to by defendants' counsel as leading.]

Ans.: I cannot recollect.

22d Int.: State, if you please, what, if any interest you or the firm of Swift, Brother and Johnston have in the event of this suit.

Ans.: Neither the firm of R. K. Swift, Brother & Johnston, or myself, one of the members of the firm, have any interest whatever, either directly or indirectly, in the event of this suit.

Cross examined by defendants' counsel.

67 1st Cross Int.: How long have you known the plaintiff in this suit?

[Objected to]

Ans.: About six years. [Objected to.]

2d Cross Int.: For how long, and up to what date was he in the employ of Swift, Brother & Johnston? [Objected to.]

Ans.: I think he commenced March 18th, 1856, and left on the 18th of December, 1857. [Objected to.]

3d Cross Int.: In what employment or capacity was said King?

[Objected to.]

Ans.: As clerk in our commission department. [Objected to.]

4th Cross Int.: Is the plaintiff any relative of yours by marriage or otherwise? [Objected to.]

Ans.: He is not. [Objected to.]

5th Cross Int.: When did the firm of R. K. Swift, Bro. & Johnston fail in business, and when was that firm dissolved? [Objected to.]

Ans.: The last day we kept open for business was the 29th day of September, 1857. The firm was dissolved about the beginning of the year 1858.

[Objected to.]

6th Cross Int.: By whom was the business of that firm settled?

[Objected to.]

Ans.: By R. K. Swift and myself, but principally by myself.

[Objected to.]

68 7th Cross Int.: In whose possession was the draft in question until the latter end of January 1860? [Objected to.]

Ans.: In the possession of R. K. Swift and myself. [Objected to.]

8th Cross Int.: When was it transferred to the plaintiff, and for what consideration, if any? [Objected to.]

Ans.: It was transferred to John B. King the latter end of January, 1860, we having sold it with several other notes, drafts and judgments, amounting in all to about $6900, in consideration for an account against Samuel H. Turrill and Thomas W. Egan, of about $5500, which account was secured as the pledge of a thousand shares of stock in the Garden City Mining Company.

9th Cross Int.: Why was not the draft in question sued in the name of Swift, Brother & Johnston? [Objected to.]

We haven't sued a single individual since our suspension, and preferred settling or compromise in all instances, to suit; and since January 1860, we haven't owned it, or had any interest in it. [Objected to.]

10th Cross Int.: Did not Swift, Brother & Johnston or some one of them, have the defendants, or some one of them watched, in order to sue the draft in the State of Ohio? [Objected to.]

69 Ans.: No, never there, or any where else. [Objected to.]

11th Cross Int.: Before the transfer of the draft to Mr. King, did he not know that your firm had been apprised that if the draft was sued in this State in your own name, you could not recover, because being plaintiff you could not give testimony in the case? [Objected to.]

Ans.: I believe he did know that while we owned it, if sued in our name, our testimony couldn't be taken. [Objected to.]

12th Cross Int.: Before the draft was transferred, was it not talked over between you and Mr. King, that by transferring the draft to him you and Mr. Swift could be witnesses, and he thus recover? [Objected to.] And state what conversation you and Mr. King had, if any, upon that subject.

[Objected to.]

Ans.: Mr. King and I had a conversation to that effect, that if we made a *bona fide* sale of the draft in question to any party, we having no interest whatever in it, that we could testify in the matter, in case suit was commenced on it. [Objected to.]

13th Cross Int.: Of the claims transferred by Mr. King to you at the time the draft was transferred, was there not a claim upon which it was ne-
70 cessary, or by you and him supposed to be necessary, to have Mr. King as a witness in order to recover upon such claim, and if so, which claim was it?

[Objected to.]

Ans.: The only claim transferred to us by Mr. King was the account before named against Turrill and Eagen, which account, if brought to trial, the testimony of Mr. King would be required in order to recover the entire amount, but I saw Mr. Turrill and settled the claim with him by taking the stock.

[Counsel for deft. desires it to be noted the latter part of answer was volunteered by witness against the wish of counsel.]

[Witness desires to say that the latter part of the answer is necessary to set him right in regard to the former part, the whole together being the answer to the question.] [Objected to.]

14th Cross Int.: Previous to the trade spoken of, had it not been talked over between Mr. King and yourself, that by transferring the Turrill & Eagan claim to you he could become a witness, if necessary. [Objected to.]

Ans.: It had been talked over, that in order to collect the full amount of the claim or account, it would be necessary to have his testimony.

[Objected to.]

15th Cross Int.: Previous to the transfer, had it not been talked over between King and yourself that by transferring the Turrill & Eagan claim to
71 you, that claim could be collected in full by making him a witness?

[Objected to.]

Ans.: It had been talked over between Mr. King and myself, that if he sold and transferred the claim or account named to any party, so that he had no interest whatever in it, he could be a witness and the account could be collected. [Objected to.]

16th Cross Int.: Please answer the last interrogatory yes or no.

[Objected to.]

Ans.: I have answered the question, as near as I can recollect the conversation. [Objected to.]

17th Cross Int.: Will you answer the 15th interrogatory, yes or no?

[Objected to.]

Ans.: I have given the only answer I have to give. [Objected to.]

18th Cross Int.: State what was talked over or said between Mr. King and yourself previous to the transfer or trade in regard to Mr. King being a witness in the Turrill & Eagan claim? [Objected to.]

Ans.: It was talked over between Mr. King and myself, that if he sold *bona fide* his claim against Turrill & Eagan to any party, the whole amount of said claim could be collected on his testimony. [Objected to.]

19th Cross Int.: What, if any thing, was said in the conversation you
72 have last referred to in relation to the collection or transfer of the draft in question? [Objected to.]

Ans.: Nothing [Objected to.]

20th Int.: Did Mr. King at the time of the trade, or previous thereto, know the advice given to you by Mr. Waite, your Attorney, that if another person owned the draft and sued it, you and Mr. Swift could be witnesses? [Objected to.]

Ans.: I believe he did.

21st Cross Int.: Were there not conversations to that effect between you and Mr. King, or between you and other persons in his presence, previous to the trade spoken of? [Objected to.]

Ans.: Yes, there were.

22d Cross Int.: To whom were the assets of Swift, Brother & Johnston assigned, and when did John B. King become the assignee of Swift & Johnston? [Objected to.]

Ans.: The assets of R. K. Swift, Brother & Johnston were assigned to R. K. Swift and myself, and on the 2d day of October, 1860, John B. King became our assignee for the benefit of our creditors.

23d Cross Int.: How much search have you made for the telegraphic despatch referred to.

Ans.: I have searched through all the dispatches that are filed which were received from Swift, Ransom & Co.

24th Cross Int.: Was there any thing more in that despatch than a notification that the draft was unpaid?

73 Ans.: Nothing that I recollect except the fact that Ohio Life Insurance and Trust Company had failed.

25th Cross Int.: Did you have that dispatch in your hands when you went over to Strong & Wiley's Bank to notify them of the non-payment of the draft?

Ans.: I did.

26th Cross Int.: After notifying them of that fact, where did you go after you left defendants' bank?

Ans.: I went to the other banks and bankers to notify them of the failure of the Trust Company.

27th Cross Int.: How many other banks and bankers did you go to to notify them?

Ans.: I believe I went to all the other principal banks and bankers; I cannot particularize.

28th Cross Int.: Did you go to as many as six banks and bankers?

Ans.: I think I did.

29th Cross Int.: Can you recollect the name of any bank or banker, or
74 of any officer of any bank where you at that time notified of the failure of the Ohio Life Insurance and Trust Company?

Ans.: I cannot now particularize any one of them, but intended to, and believe I notified them all.

74 30th Cross Int.: Do you recollect the name of any banker or of any officer of any bank to whom you gave such notice at that time?

Ans.: I notified David O. Strong, as I knew their firm kept an account with the Trust Company, and we held a draft of theirs on the Trust Company, and I did not know of any other house which kept an account with the Trust Company.

31st Cross Int.: Do you recollect the name of any other than Mr. Strong?

Ans.: I have only the same answer that I gave in answer to the 29th Interrogatory to give.

32d Cross Int.: Please answer the last interrogatory yes or no.

Ans.: I have answered in the 29th in the only manner in which I can.

33d Cross Int.: When you went to those other banks and bankers as stated, did you take your dispatch with you?

Ans.: I did; I kept the dispatch until I got back to our own office.

34th Cross Int.: Was not that dispatch in cypher?

Ans.: Partly in cypher and partly in ordinary words.

35th Cross Int.: When you went over with the dispatch to the bank of Strong & Wiley Brothers, who did you notify of the non-payment of the draft, and where did you notify him?

75 Ans.: David O. Strong, in their own banking office.

36th Cross Int.: Have you any more reason now to know that David O. Strong was the one you notified than you had to know that fact on the two previous trials of this cause; if so, what reason?

Ans.: I have no particular reason except my recollection.

37th Cross Int.: Did you not testify in the last trial of this cause in the Superior Court of Chicago that you did not know which one of the defendants you notified at the time that you went over with the dispatch in your hand?

Ans.: I did not charge my mind and do not recollect what my testimony was; I have only tried to recollect the facts of the case as well as I could.

38th Cross Int.: Please answer the last question yes or no.

Ans.: I have answered that in the last answer.

39th Cross Int.: Did you not testify in the first trial of this cause in the Superior Court of Chicago, that you did not know or recollect which one of the defendants it was you notified at the time referred to.

Ans.: I have no recollection of what my answer was at the time referred

76 to, not having charged my mind with the subject.

Adjourned by consent to April 16th, at 2 o'clock, P. M.

April 16th, 2 P. M.—*Examination resumed.*

40th Cross Int., What portion of the dispatch you have referred to was in cypher?

Ans.: The amount of the draft and the statement of the failure of the Trust Company; the name of the Trust Company, and the names of the drawers in words.

41st Cross Int.: What time of day was it you received this dispatch?

Ans.: Either in the afternoon of the Monday or forenoon of Tuesday.

42d Cross Int.: Upon receiving the dispatch did you proceed immediately to notify the defendants?

Ans.: Within a very short time.

43d Cross Int.: What do you mean by a very short time?

Ans.: Within an hour at farthest.

44th Cross Int.: Did you go to notify defendants in bank business hours?

Ans.: I could not now say.

45th Cross Int.: Was the defendants' bank open for business when you notified him?

Ans.: It was open when I went in, whether for business or not, I cannot say.

46th Cross Int.: Were the other banks and banking offices open for

77 business at the time when you went to notify them?

Ans.: I do not now recollect.

47th Cross Int.: State, if you know, how long since the defendant, Strong, retired from the firm of Strong & Wiley Brothers.

Ans.: I do not know.

48th Cross Int.: Do you not know that he retired from the firm before the commencement of this suit?

Ans.: I do not.

49th Cross Int.: How long since you knew of his having retired from the firm?

Ans.: Several months, but I could not come anywhere near the date, because I had no occasion to fix it on my mind.

50th Cross Int.: State, as near as you can, the date of the first conversation you had with Strong in relation to the draft.

Ans.: The first was about the 24th or 25th of August, which was the time when I notified them of the non-payment of the draft.

51st Cross Int.: Was that in the bank of Strong & Wiley Brothers?

Ans.: It was.

52d Cross Int.: Was the door of the bank at which you went in open at the time you entered?

Ans.: I cannot now state whether the door was standing open or whether I opened it.

53d Cross Int.: Was it locked or fastened.

78 Ans.: I do not recollect.

54th Cross Int.: Was Mr. Strong in the inside or outside of the counter at the time you notified him?

Ans.: I cannot recollect positively; my impressions are that he was behind the counter.

55th Cross Int.: Who else was present at that conversation?

Ans.: I cannot now recollect.

56th Cross Int.: Was that conversation in daylight or after dark?

Ans.: During daylight.

57th Cross Int.: Do you swear positively that you used the words "that the Trust Company had failed, that their draft was unpaid, and that on its return we would look to them for payment," at the time you notified Mr. Strong, as testified by you?

Ans.: I will not swear that they were the exact words, but I will swear that they are the substance of what I said.

58th Cross Int.: Did you not swear on the first trial of this case in the Superior Court of Chicago that you said on the occasion referred to "that if the draft came back we will present it to you for payment?"

Ans.: I do not recollect the exact words of my testimony at either of the former trials; I then testified according to my then recollection of the facts, as I do now.

79 59th Cross Int.: Did you, on the occasion referred to, use the words "we will present it to you for payment," or did you use the words "we will look to you for payment?"

Ans.: I do not now recollect, but as a banker I would consider both sentences synonymous.

60th Cross Int.: You may have used the words "We will present it to you for payment," then?

Ans.: I may have done so.

61st Cross Int.: When did you first see the letter marked Exhibit "A," in your deposition dated 24th of August, 1857?

Ans.: About the 27th of the same month.

62d Cross Int.: What makes you recollect the receipt of this letter now?

Ans.: Seeing the letter itself, and the matter it contains.

63d Cross Int.: Did you know of the existence of this letter at either of the other trials of this cause?

Ans.: I had forgotten it and did not recollect it until before the taking of this deposition, when it was shown to me, and recalled itself to my mind.

64th Cross Int.: Who showed the letter, and when and where?

Ans.: It was produced by the plaintiff's counsel in the office of the justice taking the deposition.

65th Cross Int.: Did you not see the letter since the last trial, and before the taking of your deposition in this office?

Ans.: No; I have not seen a single paper connected with this suit from the time when I gave my evidence at the last trial of this suit until I com-

80 menced my deposition at this office.

66th Cross Int.: What is the account attached to the letter marked Exhibit A? Did it come with the letter?

Ans.: It is an account of drafts, and receipts by Swift, Ransom & Co., to our credit, and came at the same time as the letter, but whether in the same envelope as the letter, I cannot now state.

67th Cross Int.: Do you know anything of what Mr. Strong told Mr. Swift, except by hearing the same from Mr. Swift?

Ans.: I do not.

68th Cross Int.: You state in your examination in chief that you had advices from New York in regard to this draft. Were not all such advices and all information as to what had been done with draft in New York, and in relation to the draft, in writing?

Ans.: I had part of it by letter, and part of it personally from Lyman P. Swift.

69th Cross Int.: When and where and who was present at the second conversation which you had with Mr. Strong?

Ans.: It was on or after the 27th of August, 1857, and in our own office. I cannot specify who was present.

70th Cross Int.: How long after the 27th of August, if it was not on the 27th?

81 Ans.: I cannot say positively, but believe within a day or two.

71st Cross Int.: How do you know that R. K. Swift wrote for the draft under date of September 17th, 1857, and did you see him do it?

Ans.: First, by his telling me he did so; second, by receiving Swift, Ransom & Co.'s letter acknowledging it, and third, by seeing the letter itself. I did not see him write it.

72d Cross Int.: Have you any recollection independent of the letters of dates 17th and 22d of Sept., 1857, and independent of what R. K. Swift told you as to the date at which the draft was received back from New York?

Ans.: I have, from the fact that the date of our suspension was September 29th, 1857, and we had received the draft back before that.

73d Cross Int.: Can you state the name of any person who was present who heard any conversation which you had with Mr. Strong in regard to the draft?

Ans.: I cannot now specify.

74th Cross Int.: You state that you had some information personally from Lyman P. Swift. At what time did you have that information?

Ans.: It was in the month of January, 1858, when he was in this city at the time of the dissolution of the firm of R. K. Swift, Brother & Johnston.

75th Cross Int.: Did you have any personal communication with Lyman
82 P. Swift between the 15th of August and the 1st of December, 1857?

Ans.: No.

76th Cross Int.: All that you know then in regard to a check being taken for the draft, previous to your suspension, was by letters from your New York house.

Ans.: It was, except by the conversation with Mr. Strong, when he claimed that his firm were released on the draft by Swift, Ransom & Co. having taken the check, which was previous to the last conversation, in which he agreed to pay the draft in case we would get it back.

77th Cross Int.: How do you know that the defendants at that time kept an account with that Ohio Life Insurance and Trust Company?

Ans.: From their telling me that they did, and both having and having seen their drafts on the Trust Company, and that the name of the Trust Company was printed or engraved on their blank drafts.

78th Cross Int.: When Mr. Strong declined to pay the draft did he not say to you, "you know very well the reason why I won't pay it," or words to that effect?

Ans.: No, he did not.

79th Cross Int.: State who was present at the time when he declined to pay it.

Ans.: I cannot specify; I think one of the Wileys was there, but which I could not positively say.

83 80th Cross Int.: State all that he said at the time he declined to pay it.

Ans.: I cannot state the words, but the substance of what he said was, that he denied ever offering or agreeing to pay it; I asked him, in substance, if he meant to say that he had not offered and agreed to take it up if we got it back, and he said that he meant to say that he never offered or agreed to pay it; I then said that he did. He asked me if I meant to say he lied; I told him that I meant to say that he agreed distinctly, and offered of his own free will and accord, that if we would get back the draft he would pay it; that if he didn't intend to pay it now to say so, and not to deny agreeing to do so; he said whether he had or had not so agreed, he wouldn't pay it.

81st Cross Int.: About what time was the firm of Swift, Ransom & Co. dissolved?

Ans.: The latter part of the year 1860, according to my recollection.

82d Cross Int.: Was there not a contest or dispute between Swift, Brother & Johnston, or Swift & Johnston, who succeeded Swift, Brother & Johnston, and Swift, Ransom & Co., of New York, as to whether the firm of Swift, Brother & Johnston should or should not have credit on the account with Swift, Ransom & Co., for the draft in question?

Ans.: No.

83d Cross Int.: Was it settled between the New York house and the Chicago house previous to the transfer to King whether or not the New York
84 house was not liable to the Chicago house for the draft in question.

Ans.: The question was never debated between us.

84th Cross Int.: Was there not some dispute or question between the two houses in regard to this draft after its return to Chicago; if so, what was it?

Ans.: There was no dispute between us.

85th Cross Int.: Did you not refuse to consent to a dissolution of the firm of Swift, Ransom & Co., until the question of liability upon this draft was determined?

Ans.: The question of their liability on the draft in question was not raised between us.

86th Cross Int.: Did you not refuse to have any settlement of the account of the two firms in New York and Chicago, in regard to this draft, until it was decided whether or not the defendants were liable on it?

Ans.: No, the question of the draft was never up between us.

87th Cross Int.: Please state all that you said a few moments ago in regard to the dissolution of Swift, Ransom & Co., and the draft in question which has not heretofore been committed to writing.

Ans.: I stated in conversation that I personally would not agree to the dissolution of the firm of Swift, Ransom & Co., while we owned or held the draft in question, for if Strong & Wiley Brothers were not liable on the draft to us, that Swift, Ransom & Co. should be. The reason of my objections to
85 the dissolution being that, according to the terms of dissolution of Swift, Ransom & Co., R. K. Swift and myself were to take all the assets of Swift, Ransom & Co., and assume all the liabilities of said firm, and the available assets fell far short of the liabilities. The question of their liability on the draft being personal on my part, and never having been discussed between the members of the two firms.

Re-examination by plaintiff.

23rd Int.: (Direct). The defendants' counsel has finally asked you what you said a few moments ago, while not testifying, and which forms no part of the deposition, in answer to which you have stated in your last answer certain considerations as to what influenced you at some time or times or other about dissolving the firm of Swift, Ransom & Co.,—now please state who owned the draft in question when that firm was dissolved.

Ans.: John B. King owned the draft in question.

24th Int.: State, if you please, who owned the draft about which there has been so much controversy now in suit, prior to February, 1860?

Ans.: Swift & Johnston, as assignees of the assets of R. K. Swift, Brother & Johnston.

25th Int.: Who owned the draft on the 1st day of February, 1860?

Ans.: John B. King.

26th Int.: You have stated that you were at the time of the sale of the draft to King by Swift, Brother & Johnston, a member of the firm of Swift, Ransom & Co.: have you not?

Ans.: I have.

86 27th Int.: State, if you please, whether or not you personally and individually participated in advice, recommended or made the sale of the draft by Swift, Brother & Johnston, to King? [Objected to].

Ans.: I did; it was I, myself, that made the sale.

28th Int.: Defendants' counsel, on the cross examination have asked you as to whether Swift, Brother & Johnston, were advised to transfer the draft in order that a recovery might be had; now please state *all* that Mr. Waite or any other legal adviser at the time advised you in regard to the transfer of said draft in the *same conversation* in reference to such transfer or rights and remedies thereunder or thereby to be required.

[Objected to.]

Ans.: Mr. Waite, and also Judge Higgins, before he was on the bench, advised our firm that if we sold the draft in question to a bona-fide purchaser, so that we had no interest whatever in it, such owner or holder could collect the same by suit in this state, as we could be witnesses under such circumstances; they also advised us that if we should commence suit, either in New

York or Ohio, in our own name, we could recover the amount, as in those states we could be witnesses in our own case.

Answer objected to by defendants' counsel, and examination closed.

J. S. JOHNSTON.

89 The plaintiff thereupon offered and had in evidence the said draft with the endorsement thereon to the jury.

And the plaintiff further to sustain the issue upon his part—witness, R. K. Swift—and defendants objected to said Swift being sworn upon the ground of interest, which objection the Court overruled, and defendants excepted, and said witness being sworn testified as follows: "I was a member of firm of Swift, Brother & Johnston in 1857, and while said firm existed; also of Swift, Ransom & Co., of New York city. I have seen this draft, (the witness being shown the draft sued upon), but cannot say certain. I think I saw it in the office of Swift, Bro. & Johnston. I think our Mr. Johnston handed it to me from a letter. I know the drawers of the draft all by sight. [Witness was here shown a letter attached to Lyman P. Swift's deposition, marked Exhibit 'D,' and dated Chicago, 17 day of September, A. D. 1857.] I have seen this letter before; I wrote it the day it bears date, say at about half-past two o'clock, upon my return to the office from dinner that day. I only refer to the letter to remember the date. On that day just as I started for dinner, I met Strong [defendant] on the sidewalk very near the corner of La Salle and Randolph Street, and within 20 feet of my office. He stopped me and said: If you will get that draft back I will pay it—referring to
90 the draft in question. Don't remember he said the $1000 draft—this was the only draft we had drawn by them. I went to dinner, and upon my return wrote the letter as before stated, and sent it to New York without mentioning to any one that I had so written.

At that time our Mr. Johnston and R. C. Wright opened letters at our office. Some days after writing the letter, our Mr. Johnson come to me and showed me this draft and asked me how it happened to come back, and I told I wrote for it, and told him why—that Strong had agreed to pay it. Johnston at the time had a letter in his hand [a letter was here shown witness]. Can't say if this letter was the one. The letter is in my brother's handwriting.

I think Strong in our conversation said he would write to the Trust Company himself, and tell them to hand over the draft to our house in New York. I wrote in my letter as near as I could what he told me.

I can't say as to time, but about the time I wrote this letter I think I saw Johnston and Strong in conversation at our office. I think, but I don't remember positively who I got it from—one of the parties about the same time, that is one of the defendants told me that a check had been taken, and for that reason the defendants were discharged, and that they were wil-
91 ling to leave it out to let others decide. This was before the new promise. I have a vague recollection of a conversation between our Mr. Johnston and Strong, after defendants refused to pay the draft, I went over to their office and asked Strong what he backed out for, and he said: You know the reason why. I told him I did not know why, and then I left. Don,t remember anything ~~now~~ more said at that time."

And upon cross examination, said witness testified as follows:

I have sworn before in this case. Don't remember the dates—have sworn two or three times. I think it is likely I testified on the first trial that I heard Mr. King read a paper, which from the reading I supposed was the original of Lyman P. Swift's deposition in this case. I don't now remember anything very clear in that deposition. I have not since that time read or heard read any deposition in this case. I have had not much conversation about this case since last trial. I have no recollection of having testified on other trials as to the date I saw Strong & Wiley in their office. I know no reason why I remember a thing now when I did not remember it upon the other trials. My impression is that upon one of the trials I testified that I went into Wiley's bank and saw Mr. Strong in the office. I had a talk with one of the Wileys; I think it was Ben. At that time I saw Strong and he said, I know why he did not pay it. I did not say one of the Wileys was present, but I remember Ben., and think others were there, but Strong and my conversation was alone.

92 As to the conversation between Johnston and Strong, I don't remember anything definite, but think I heard Strong say he would pay. I think I was present when Johnston and the lawyer talked over the collection of this draft and of our rights therein.

When Johnston asked me about the draft coming back he had a letter in his hand. Can't say that this letter now shown me is the same. The letter is in my brother's handwriting.

In the conversation with Strong on the sidewalk, I think he said that he would write to the Trust Company himself, telling them to hand over the draft if they had it. Said he would write to Trust Company about draft. I wrote in that letter just as he told me. I always write the truth.

Can't say when, but near the time I wrote that letter to New York house, I saw Johnston and Strong talking together—they were talking rather confidentially, as it were. I can't say whether I heard Strong say that he would pay it, or whether I got it from Strong and Johnston, or from Johnston afterwards, but my impression is that I overheard Strong say so in the conversation with Johnston.

In Wiley's office I understood from Strong or one of the Wileys that a check had been taken, and that they were willing to leave it out—whether they were liable or not. The Chief Clerk, President and Secretary of Trust
93 Company were spoken of. This was some days before Strong promised to pay it.

After the draft came back I immediately went over and asked Strong what he backed out for; Strong set his foot down and said "you know"—very sharp.

The conversation I had with one of the Wileys was between the 24th day of August, 1857, and the date that Strong met me on the sidewalk.

The only matter talked of between Johnston and myself in regard to the draft was my getting over to see the defendants; this was soon after the letter was written by me, and previous to my writing that letter. I gave the matter very little attention.

I am positive that Strong said, if you will get the draft back I will pay it; I do not recollect the day of the month, hour of the day, or anything about the date, except that it was between August 24th and Sept. 17th, 1857, that I saw Ben. Wiley.

I overheard a conversation between King and Johnston, in regard to this draft, and a claim against a railroad in Iowa, and something about some copper stock, and a claim against one Dickinson; there were several items, making on our part some six or seven thousand dollars, including the draft; we were to get the copper stock and some other things; I don't know all about the trade; Johnston & King had figures made and were trading se-
94 curities; I said to them "If the trade is made, it must be *bona fide*;" I don't know how they were trading; I think this trade, in which King got this draft, took place after February, A. D. 1858; it might have been in 1859.

The firm of Swift, Bro. & Johnston, composed of myself, Lyman P. Swift and J. S. Johnston, dissolved in 1858; we assigned to John B. King, plaintiff, in October, 1860; I think the sale of draft to King might have been in the spring of 1860.

I did not know that we could not collect this draft ourselves; I believed that by the practice in New York, we could collect it; I thought both parties could be sworn here; I think I heard from Johnston that our counsel said we could collect it here; afterwards, one, or both of our counsel, said if we sued in Cincinnati our evidence would be allowed, that both parties could be sworn. I think we had advice that amounted to this: that a third party holding the draft we could testify.

John B. King was in our employ for one and a-half or two year before we failed, and has had a desk in our office a part of the time since.

I do not know whether or not he knew of the advice given us by our counsel; I think King may have heard Johnston and I talk it over.

I gathered the impression that King could be a witness in the copper stock claim that he transferred to us.

95 I gathered the conclusion that the copper stock was worth the money for which it was pledged; but that Egan, who had pledged, might, if it raised in value, come and claim the stock, and that we might have to get the decree of the court, and that in that case King could be sworn.

When the trade was made with King I did not hear a word said about our being witnesses upon the draft; after the trade I heard the Dickinson paper talked of; I was about 12 feet from Johnston and King when the trade was made; I think King supposed that we could be witnesses if a third party owned the draft.

The firm of Swift & Johnston succeeded the firm of Swift, Brother & Johnston, but only to close the business of the old firm; Swift & Johnston bought out the old firm of Swift, Ransom & Co., in the month of December, 1857, I think.

Re-direct. When I said that Johnston and Strong talked confidentially, I meant Johnston and Strong were talking agreeably together; after Strong & Wiley refused to pay the draft they were at swords' point.

The plaintiff, further to sustain the issues on his part, called John C. Ambler, who, being first duly sworn, testified: I know the parties to this suit; I have resided in New York city from 1843 to 1856; in October, 1856,
96 I was clerk with Wadsworth & Sheldon; their business was very large; their western correspondence being about $100,000 a day of receipts and disbursments; we received large remittances from the west, and paid their drafts; I came from New York to Chicago; have been in banking business here; I knew the Life Insurance and Trust Company all the time that I was in New York; they did a banking business such as Wadsworth & Sheldon, receiving and paying drafts.

The plaintiff thereupon asked the witness what was the custom of the said Trust Company in the payment of drafts like the one in suit.

To which question the defendants, by their counsel, objected, upon the ground that the same was irrelevant and not pertinent to the issue, which objection the court overruled, and permitted the question to be asked, and the witness answered.

The Trust Company kept their bank account with the Bank of Commerce and the American Exchange Bank; the Trust Company kept no funds at their office; we, Wadsworth & Sheldon, had checks of the Trust Company upon Bank of Commerce, daily, or nearly so; the Trust Company paid drafts drawn upon them by their checks on the Bank of Commerce whilst I was there.

The counsel for defendant objected to the witness stating how the Trust Company paid drafts drawn upon them, which objection the court overruled, and defendants, by their counsel, excepted.

97 We collected them by depositing them at the bank in which we kept our account, and if the check taken for draft was not returned to us by one o'clock of the next day, we considered the draft paid. The bank in which *we* deposited the check, sent it to the Clearing House next morning. At the Clearing House it went to the bank upon which it was drawn, and if good it was paid and cancelled.

The general and uniform custom of all banks connected with the Clearing House was to make an exchange of all checks through the Clearing House.

The defendants, by their counsel objected to all the evidence concerning the custom of the Clearing House, which objection the Court overruled, and defendants by their counsel, excepted.

The witness further testified: There was an exchange of checks at the Clearing House to save carrying money through the streets. When a check is good, we do not look for it to come back. The Clearing House does not see the checks at all. All that the Clearing House has to do, is to take the aggregate. The whole clearance is made in half an hour. The bank upon which a check is drawn, returns the check if it is not good.

If a check was deposited on Monday, we would get it back on Tuesday. If it was not good it could not come back before the next day. This custom is universal among bankers and merchants so far as I know. If a check
98 was deposited to-day, it could not get back before to-morrow at 11 A. M.

If this draft (draft said upon) was received by mail on Saturday, the 22d day of August, 1857, they, the parties receiving it, would first send it to the Ohio Life Insurance and Trust Company, properly endorsed, and present it for payment—take the Trust Company's check for it—deposit the check where the party receiving draft kept his bank account on the same day, and if nothing more was heard from the check, the draft and check would

be considered paid; it, the check, would pass through the Clearing House to the bank on which it was drawn. It would next be heard of Monday, between eleven A. M. and one P. M. If it was not paid on Monday, I should take the check back to the Trust Company and demand the draft, and hand the draft to a Notary to be protested. This was the uniform custom. I never knew any other way of doing it. I never saw a check of the Trust Company upon any other bank than the Bank of Commerce or American Exchange Bank. Bank of Commerce was a member of the Clearing House. The American Exchange Bank, of New York city, did business through the Clearing House. I think we had one or more drafts on Trust Company daily. I never knew the Trust Company to pay a draft in any other manner than by check. I commenced banking in Chicago in April, 1857. I know defendants. The number on corner of draft shows simply
99 the number of drafts drawn on all banks, and not number drawn on Trust Company.

And upon cross examination, testified:

I could ascertain if check drawn on American Exchange Bank was good by taking it to the bank; but I could not ascertain at the Clearing House. If on the same day we took a check, and had any doubt as to whether it was good or not, we would immediately send it back to bank upon which it was drawn, and have it certified same day. If a person wanted money on a check on the same day check was given, he could get it by presenting it for payment. Usually the custom would be, he would put it in his own bank and draw against it.

If a merchant had no bank account and wanted the money on check he had taken for a draft, he would go to the bank, and draw the money on the check. All the incorporated banks of New York city were members of the Clearing House. Other banks were not. All banks of issue were members. The Trust Company was not a member of the Clearing House. There were about 20 incorporated banks in New York city, and the incorporated banks were members. There may have been 40.

The O. L. and Trust Company was not an incorporated bank in New York. None of the private banks or bankers were members of Clearing House, and there were a large number of each in New York city—at least 200. The Trust Company was a private bank.

100 A person could get money for a draft at the Trust Company by asking for it; but it would create some delay—say from 15 to 30 minutes, as they would have to send to bank where they kept their deposits, and draw it. I do not say that every check drawn by Trust Company went through Clearing House. If John Jones, a private individual, got this draft, the check given for it would not go through the Clearing House.

Upon re-direct examination, testified:

The private banks and bankers, the Trust Company, also, kept their money with banks that were members of the Clearing House. Kept no money themselves. Private bankers kept deposits of city customers.

Upon re-cross examination, testified:

When I say private bankers kept deposits, I wish to say that it was not customary for those to do so. I never knew of any banker getting money in a draft except as a matter of spite, and then upon demand of a Notary.

Plaintiff, further to sustain the issues on his part, offered in evidence the deposition of Lyman P. Swift, and thereupon the defendants, by their counsel objected to the reading of so much of said deposition as related to the custom of New York city, and to so much thereof as related to the Clearing House of said New York city, and also to the reading of the letter and enclosure dated August 19th, 1857, and the letter of date 22d Sept., 1857, and
101 the letter of date Sept. 17th, 1857, attached to said deposition of said Swift, which objections were overruled by the Court, and defendants then and there excepted.

~~The plaintiff, further to sustain the issue upon his part, read the deposition of George O. DePew, which was as follows:~~

~~102 Interrogatory 1st: What is your name, age, occupation and place of residence?~~

~~Answer to Int. 1st: George O. DePew; 36; not in my occupation at present; generally an accountant; at present, North Castle.~~

DEPOSITION OF LYMAN P. SWIFT.

I — Interrogatory First: What is your name, age, occupation and place of residence?

Answer to 1st Int.: My name is Lyman P. Swift, age 36 years, reside at Minneapolis, County of Hampra, and State of Minnesota, and am mostly engaged in farming.

Int. Second: Do you know the parties, plaintiff and defendants, in the caption to these interrogatories mentioned, or either, and which of them, and how long have you known them respectively?

Ans. to 2d Int.: I know them all; have known the defendants ever since they commenced business in Chicago, some five years ago, and the plaintiff I have also known for five years.

Int. Third: Where did you reside in the summer and fall of 1857, and what was your business?

II — Ans. to 3d Int.: I resided in the city, county and State of New York, and was in the banking business, and managing partner of the firm of Swift, Ransom & Co., which was doing business at 31 Pine street in said city of New York.

Int. Fourth: State whether or not you ever saw a draft as follows:

$1000. STRONG & WILEY BROTHERS,

BANKERS,

CHICAGO, ILL., Aug. 19, 1857.

Pay to the order of Messrs. Williams & Bro.,

One Thousand Dollars.

Value received, and charge the same to account of

STRONG & WILEY BROS.

To the Ohio Life Ins. and Trust Co.,
New York.

No. 1253.

[ONE THOUSAND DOLLARS.]

Endorsed as follows:

Pay R. K. Swift, Brother & Johnston, or order.

WILLIAMS & BRO.

Pay John B. King, or order without recourse on us.

R. K. SWIFT, BRO. & JOHNSTON.

If so, who sent it to you; what, if anything, did you do with said draft; state fully and at large all you did. If sent you by letter, produce it; state when it was received.

Ans. to 4th Int.: I have seen the draft mentioned in interrogatory fourth; it was sent to Swift, Ransom & Co., aforesaid, for collection and credit, by R. K. Swift, Brother & Johnston, of Chicago, enclosed in a letter from said Swift, Brother & Johnston, dated at Chicago, Aug. 19, 1857. (Letter was here produced by witness, which he testifies to have received III — said draft in, and is hereunto annexed to his deposition, and marked "Exhibit A;") also a leaf of paper or loose sheet, containing written memorandums, and which is also annexed to this deposition and marked "Exhibit B." The item mentioned on the leaf or sheet attached to the said letter, the third item from the bottom annexed to said letter now is the draft enquired for in 4th interrogatory, and that came and was received together with the said letter and draft, Saturday, August 22d, 1857; as was our usual course with all drafts received, it was first marked with a stamp on the back of it, the words "received payment." Then I wrote "Swift, Ransom & Co." under the words received payment, and sent our porter or messenger out with it to the drawees, the Ohio Life Ins. and Trust Co.; they gave him their check on their bank, which was, I believe, the American Exchange Bank. This was the usual way of bankers and brokers in said New York of meeting drafts

on them, by giving a check on their bank. When I say bank, I mean the large chartered banks. On receiving the check I sent it with others, and that same day, and had it deposited in the bank where we kept our account, the Merchants' Bank, so as to have it go through the usual course of passing through the Clearing House at the earliest possible moment, which would be the next business day, at 10 o'clock, A. M. After the settlement was made, and it is determined whether the checks are good or not, the bankers and brokers, &c. received back from their banks, all the dishonored checks or drafts. This draft was not credited to Swift, Brother & Johnston, as it was our will never to advise any one of the payment of any draft or collection until after the check received for it had passed through the Clearing House, and we had ascertained from our bank that it had been paid. Then we advised the parties by letter, and placed the proceeds as directed, but not until after ascertaining that the check was good at the Clearing House. This is the usual custom among bankers, and is adopted as a rule to prevent confusion. The check given for the draft in controversy, and in said interrogatory fourth enquired for, was not good, which means among bankers, no funds to pay it at the Clearing House. The first time that institution met after the said check was given, was on Monday morning, August 24th, 1857; on that day I advised R. K. Swift, Brother & Johnston, by telegraph, that the draft aforesaid, and in controversy was not paid. After ascertaining that the memorandum check, which the said Life and Trust Company gave was not good at the Clearing House, I procured a Notary Public for the purpose of having the draft in question duly protested and accompanied by a Notary, Walter Edwards; we went to the office of the said Life Ins. and Trust Company, where I saw and heard the said Notary make demand of payment of said draft, which was refused. I accompanied said Notary to get the draft from the said Life Insurance and Trust Co., and personally, ~~so~~ that the said draft in controversy was protested. The said Company gave me the draft, which I gave to the Notary, and he made the usual demand of payment which was refused. The Sheriff was in possession of the office books and papers of the said Life Ins. and Trust Company. The officers of the said Company were willing we should take away the draft, but the Sheriff said he had no authority to allow anything to leave the office, and accordingly we left the said draft in controversy, in the possession of the Sheriff.

Int. Fifth: State what, if anything was done with said draft. If you ay it came into your hands, was it ever returned to said Swift, Bro. & Johnson? If so, when and where? If you say by you, was it by letter? If you say by letter, produce it, or a copy of it. Why did you send the said draft back to said Swift, Bro. & Johnston? If directed by a letter from any one, produce said letter.

Ans. to 5th Int.: The draft in controversy was returned to Swift, Bro. & Johnston by me, enclosed in a letter directed to them, and dated at New York, September 22d, 1857, and the same which I here produce for the inspection of the Commissioner taking the deposition. (Witness at this stage of the examination produced a letter dated at New York, September 22, 1857, which is hereunto annexed, and marked by me "Exhibit C.") I sent the said draft back to said Swift, Bro. & Johnston, in accordance with the instructions in a letter from R. K. Swift, one of the said firm of Swift, Bro. & Johnston, dated at Chicago, September 17, 1857, and received by me on or about September 22, 1857, which said letter I now produce. (Witness at this point in the examination produced a letter dated at Chicago, Sept. 17, 1857, which is hereunto annexed, and marked "Exhibit D.")

Int. Sixth: When you received said draft, for what purpose did you receive it? If to collect and credit, did you ever collect it, or did you ever credit it to said Swift, Bro. & Johnston?

Ans. to 6th Int.: Said draft was received for collection and credit. It was not collected, and of course was not credited. The reason it was not credited, was because it was not paid, as is hereinbefore set forth, and stated in answer to questions from five to six.

Int. Seventh: If you state you received it to collect and credit, did you credit it, or the proceeds? if not, why not?

Ans. to 7th Int.: I have answered the question in full in answer to the sixth interrogatory.

VII

Int. Eighth: State whether or not said draft was ever paid?

Ans. to 8th Int.: The draft was never paid to my knowledge.

Int. Ninth: State when the Ohio Life Insurance and Trust Company office in New York closed, and did you, in any manner, communicate that fact to Swift, Bro. & Johnston? if so, how and when? State if in any manner, you communicated to Swift, Bro. & Johnston, the non-payment of said draft; if so, how and when?

Ans. to 9th Int.: The Ohio Life Insurance and Trust Company closed, or was closed August 24, 1857; I telegraphed that fact to Swift, Bro. & Johnston at Chicago, the same day it closed; I also telegraphed to them the same day the non-payment and dishonor of the said draft in controversy.

Int. Tenth: Are you acquainted with the general custom in New York in regard to presenting drafts? If so, state fully and at large your means of knowledge, and state fully and at large the custom.

Ans. to 10th Int.: As to my means of information of the general custom in regard to presenting drafts, I have been connected and acquainted with all the details of banking for twelve years previous to the year 1857, and was at the time in question the managing partner of the firm of Swift, Ransom & Co., Bankers, in said New York city. The custom in New York, among bankers is to send a porter or messenger to the drawees of drafts or checks in good standing. The porter or messenger receives a check for the draft, which he returns to the office, in order to have it deposited, and passed through the Clearing House on the next business day, (which is daily, Sunday and holiday excepted). The Clearing House is an institution organized for the mutual exchange of checks, and settlement of balances among the large banks in New York city. It is not the custom in New York city for banks and bankers to send checks or drafts around to the different banks for the money, but the checks or drafts are deposited in such of the large chartered banks as are members of the Clearing House; by which means each business day of the week, at 10 o'clock, A. M., two representatives from each of the banks which are members of the Clearing House, meet there, and exchange checks, and a settlement of balances is made; and in case any of the banks hold such a check as was given by the said Trust Company in this instance, it is then thrown out, and the parties resume their original position, as before the check was given, and is considered as no payment.

VIII

Int. Eleventh: State whether you are in any manner interested in the subject matter of this suit?

Ans. to 11th Int.: I am not in any way, either directly or indirectly.

Int. Twelfth: State what has become of the papers of Swift, Ransom & Co.? Have you in your possession a copy of the telegraph dispatch you sent to Chicago? If so, produce it. If you do not produce the same, have you searched for it among your papers?

IX

Ans. to 12th Int.: The books and papers of Swift, Ransom & Co. are not in my possession, nor have they been since 1858; I have no copy of the telegraph dispatch, and cannot produce it; I have searched diligently among my papers for a copy of the said dispatch, but cannot find any.

Int. Thirteenth: State fully and at large the contents of said dispatch, the date thereof, to whom sent and by whom sent?

Ans. to 13th Int.: I cannot give the exact words of the dispatch, but the substance of it was that the draft in controversy had not been paid, and was dishonored, and that the drawees had failed; I sent the dispatch myself, to Swift, Bro. & Johnston, at Chicago.

Int. Fourteenth: Do you know of any matter or thing of importance to the plaintiff in this suit; if so, state the same fully and at large?

Ans. to 14th Int.: I do not, except as hereinbefore stated in answer to the specific interrogatories.

Cross interrogatories and answers thereto by the witness on the part of the defendants.

X

Int. First: State whether you were or were not a partner in the firm of Swift, Bro. & Johnston, late of Chicago, in the summer and fall of 1857; if you answer that you were, state who composed said firm, and what business they were engaged in?

Ans. to 1st Int.: I was a partner in the firm of Swift, Bro. & Johnston in the summer and fall of 1857; their business was banking, and the firm was composed of R. K. Swift, L. P. Swift, (myself) and J. S. Johnston.

Int. Second: State if you know who composed the firm of Swift, Ransom and Co., in the summer and fall of 1857; also state the business of said firm, and the name of each member.

Ans. to Int. 2d: I do know who composed the firm of Swift, Ransom & Co., in the summer and fall of 1857; the names of the individual members were R. K. Swift, H. E. Ransom, J. S. Johnston and L. P. Swift, (myself) their business was banking.

Int. Third: If, in answer to the fourth direct interrogatory, you answer that you did see the draft, set forth in that interrogatory; state whether the endorsements on the same set forth in the interrogatory, as appeared on said draft, when you first saw it; if not, state what endorsements was then on it?

XI Ans. to 3d Int.: When the said draft first came into my hands, it was endorsed by Williams Brother; there was stamped on it "pay Swift, Ransom & Co., or order;" these stamps are used for convenience; the name of R. K. Swift, Bro. & Johnston, was also on the draft, and I put the name of Swift, Ransom & Co. on to it when I gave it to the messenger, as before stated; the endorsement making it payable to the plaintiff has been put on since 1857.

Int. Fourth: Was not the draft you saw endorsed by Swift, Bro. & Johnston, and by them made payable to Swift, Ransom & Co., New York?

Ans. to 4th Int.: It was.

Int. Fifth: State whether Swift, Ransom & Co. ever presented said draft to the Ohio Life Insurance and Trust Company for payment, and state whether at that time said draft passed into the hands of the Ohio Life Insurance and Trust Co.?

Ans. to 5th Int.: Swift, Ransom & Co. did present said draft several times to the Ohio Life Insurance and Trust Co. for payment; said draft was in the first instance presented to said Trust Co. by the porter or messenger, as in the direct examination set forth; the second time by Walter Edwards, a Notary Public, and as such Notary, on the 24th day of August, 1857, and the only other time that I can state with any certainty was on or about the 23d day of November, 1857, it was presented by me to the said Company

XII and I fix the time of such presentation by me by a letter written by me on that day, and which I now produce and exhibit to the commissioner taking my deposition. [Witness at this point in the examination produced a letter for inspection, which is hereunto annexed, and marked by me "Exhibit E."] The boy or messenger gave the draft to the drawee.

Int. Sixth: If you state that the said draft passed into the hands of the said Ohio Life Insurance and Trust Company, please state if you know how long it remained in their hands?

Ans. to 6th Int.: The draft in controversy was in the possession of the said Trust Co., or the sheriff, who had possession of their office and effects, up to about September 22, 1857.

Int. Seventh: If you state that you sent said draft back to said Swift, Bro. and Johnston, state the date you sent it to them, and why it was not sent sooner; and also whether, at the time you sent it back, the following endorsement did not appear on the back of it? "Rec'd payment," "Swift, Ransom & Co?"

Ans. to 7th Int.: (I returned the draft in controversy to Swift, Bro. & Johnston, on the 22d of September, 1857, in answer to a letter that R. K. Swift wrote to me, that is to say to the firm of Swift, Ransom & Co., from

XIII Chicago, ~~stating that the drawers would pay it soon, if it was returned to Chicago, and that Mr. Streng, one of the drawers, had agreed to write to the Trust Co. to give me the draft.)~~ It was not sent sooner on account of the sheriff having possession of the books and papers of the drawees of the said draft, and the general fuss and scare consequent upon the failure of so large a concern. ~~It was handed back to Swift, Ransom & Co., I suppose by order of the drawers, as I presumed at that time, they thought honesty the best policy, as it might get them credit with us, but when our fortunes changed, so did their good promises~~; I am not certain whether the stamp "received payment," and "Swift, Ransom & Co.," were crossed off or not.

Int. Eighth: State whether said draft, at the time it was sent back to Swift, Bro. & Johnston, did not bear the cancellation mark of the spindle or hammer of the "Ohio Life Ins. and Trust Co?"

Ans. to 8th In.: The draft had the mark of being on a spindle, or place to hold checks and drafts; I am unacquainted with the kind of a cancelling hammer the said Company used.

Int. Ninth: State whether the cancellation mark on and through said draft was not made at the time said draft was presented for payment, and was it not made by some clerk or teller in said bank, and is it not the usual mark of cancellation used by the Ohio Life Ins. and Trust Co. upon their paying drafts?

XIV

Ans. to 9th Int.: The spindle or file mark was not made in my presence; what the usual cancellation mark of the said Ohio Life Ins. and Trust Co. is when they pay drafts, I cannot say, for I have never seen their machine and have no knowledge on the subject; different banks have different cancellation spindles or marks; no two calculate to have the same cancellation marks; I have no knowledge whatever of the time, or under what circumstances the said stamp or cancellation mark was put on the said draft.

L. P. SWIFT.

Subscribed and sworn to before me this 14th day of September, 1860.
L. M. STEWART,
Commissioner.

XV

"Exhibit A," referred to in annexed deposition:

G. H. M., 22d Aug., '57.

Swift, Ransom & Co.,
New York.

R. K. SWIFT, BRO. & JOHNSTON,
BANKERS.

CHICAGO, ILL., *19th Aug., 1857.*

Messrs. Swift, Ransom & Co.,
New York:

GENTLEMEN:

We addressed you last night with $6,891 44, and now enclose $10,987 71. We send you per Express, currency $2000 00, for our credit in acc't.

We enclose draft, $49 38.
Exch. 62, $50.

M. H. BOLTON.

Collected.

We remain gentlemen,
Yours truly,
R. K. SWIFT, BRO. & JOHNSTON.
WILSON.

XVI

"Exhibit B," referred to in annexed deposition:

Swift, Ransom & Co.,
New York.

R. K. SWIFT, BRO. & JOHNSON,
BANKERS.

CHICAGO, ILL., 19th Aug., 1857.

Drafts for credit in account Woodruff & Co., $443 25,	$ 443 25
E. W. Clark, Dodge & Co., $233 66, 95 38, 880 61,	1209 65
St. Nicholas Bank, $484 82,	484 82
Ocean Bank, $751 73,	751 73
Park Bank, $171 98, 29 55, 500 00, 246 73,	948 26
Carpenter & Vermilge, $1000,	1000 00
Read & Lathrop, $500 00,	500 00
Bank of Republic, $1200,	1200 00
Bank of the State, $50 00,	50 00
American Exchange Bank, $2000 00, 235 00,	2235 00

Van Vlick, Reed & Drexel, $200 00,	200 00
Ohio Life Ins. and Trust Co., $1000 00,	1000 00
American Exchange Bank. $800 00,	800 00
Bank of Commerce, $165 00,	165 00
	$10,987 71

XVII "Exhibit C," referred to in annexed deposition.

NEW YORK, Sept. 22d, '57.

R. K. Swift, Bro. & Johnston,
Chicago:

DEAR SIRS:

We return herein Strong & Wiley Bros'. draft, $1000, on Ohio Life and Trust Co., as requested in your favor of the 17th instant, as we have not credited you in account with it, we do not now debit you.

Yours truly,

SWIFT, RANSOM & CO.

P. S.—We should like to know if S. & W. Bros. pay you back the $1000, exchange and int.?

"Exhibit D," referred to in annexed deposition:

Swift, Ransom & Co.,
New York.

Ann. Sept. 20.

R. K. SWIFT, BRO. & JOHNSTON,

BANKERS.

CHICAGO, ILL., Sept. 17th, 1857.

Swift, Ransom & Co.,
New York.

GENTS.:

Strong & Wiley say that if you can get their check back of the Ohio Life and Trust Co., which we sent you, they will pay it soon. Mr. Strong is to write a letter to the Trust Co., asking them to give you back the draft, but I guess the Trust Co. bring them in debt, and hence they want the draft, which I fear you can't get.

We have just heard of the probable failure of Myer & Rae of your city.

Yours, &c.,

R. K. SWIFT.

XVIII "Exhibit E," referred to in annexed deposition:

NEW YORK, Nov. 23, 1857.

Messrs. R. K. Swift, Bro. & Johnston,
Chicago:

DEAR SIRS:

Yours of the 19th, with draft of Strong & Wiley Bros. in one of them, on O. L. & T. Co., for $1000, is at hand. As requested, we have presented the draft at the office of the said Co., to be marked good and cancelled in error, which they cannot do, as their books are in the hands of the sheriff. Our attorney says there is nothing on the face of the draft to show that it ever has been paid. The cuts may have been caused by being put upon our own file by mistake, and the protest of the draft itself is the strongest proof that the said draft was not paid. There does not seem to be any doubt as to the liability of the drawers by our attorneys. You wrote us once they had agreed to pay you if the draft was returned to them. Do they decline now to do so? We return the draft herein.

Why not offer to take your indebtednes for it if they are disposed to compromise it?

Yours truly,

SWIFT, RANSOM & CO.

Deposition of George O. De Bow
Read by Plaintiff

102— Int. 2d: Do you know the parties, plaintiff and defendants, in the caption to these interrogatories mentioned, or either, and which of them, and how long have you known them, respectively?

Ans. to Int. 2d: I do not know either plaintiff or defendants, personally; I have never seen either.

Int. 3d: State if you know whether the Ohio Life Insurance and Trust Company had any general rule or custom as to the payment of drafts and putting them in process of payment, of the character of the one, a copy of which is attached, marked Exhibit A, purporting to be drawn by Strong & Wiley Bros., on the Ohio Life Insurance and Trust Company, bearing date August 19th, 1857, and if said Company had any general custom, how long had it existed, and how generally was it known?

Ans. to Int. 3d: The general rule and custom was to pay such drafts as marked Exhibit A, by checks on banks, with whom they had accounts, the general rule was to send out the drafts, such as marked Exhibit A, by runners, to whoever they were drawn on; checks were generally given in pay-
103 ment for them; those checks were deposited in bank for collection without being certified, unless the parties paying the same were of doubtful credit; that custom of payment existed for five years to my knowledge, during which time I was a clerk with the Ohio Life Insurance and Trust Company at New York; I suppose it was known by all bankers and others having business with us.

Int. 4th: If, in answer to the foregoing interrogatory, you state that it was the custom of the Ohio Life Insurance and Trust Company to give checks for such drafts on their bankers, state if that custom was general and universal, or otherwise, and if ever departed from except by especial request?

Ans. to Int. 4th: The custom of payment of drafts by checks was general and universal, and never departed from except by especial request.

Int. 5th: If in answer to the 3d interrogatory you state that it was the custom of the Ohio Life Insurance and Trust Company to give checks for such drafts, what proportion, if any, of such checks passed through the Clearing House in New York?

Ans. to Int. 5th: I have no personal knowledge how many of such checks passed through the Clearing House, but from my knowledge of the general business custom of New York, would say a very large majority of them.

104 Int. 6th: What was the situation of the account between the Ohio Life Insurance and Trust Company and the American Exchange Bank on the 25th of August, 1857, respectively? How much money, if any, had the Ohio Life Insurance Company in said bank subject to draft or check; or how much, if any, was said Ohio Life Insurance and Trust Company overdrawn or indebted to said American Exchange Bank?

Ans. to Int. 6th: The account between the Ohio Life Insurance and Trust Company and the American Exchange Bank on the 25th of August, 1857, was largely overdrawn; the Ohio Life Insurance and T. Co. had no money in said bank, and its account was largely overdrawn.

Int. 7th: Do you know of any other matter or thing of interest to the plaintiff in this suit?

Ans. to Int. 7th: A check on the American Exchange Bank was given by the Ohio Life Ins. and Trust Co. for the draft in question, marked Exhibit A, on Saturday, the 22d of August, 1857, and the said draft was charged to Strong & Wiley Bros., on Monday, August 24th, 1857; the Ohio Life Insurance and Trust Co. failed on the 17th of October, 1857; the said draft was credited back to Strong & Wiley Bros., on the 8th of April, 1858; the amount of the credit balance of Strong & Wiley Bros'. account with the Company at New York was $13,562 20, which included the credit of the draft, marked Exhibit A; this balance was transferred to the books of the Ohio
105 Life Ins. and Trust Co., at Cincinnati, and credited to the account of Strong & Wiley Bros. at that place, on the 26th of April, 1858; a further credit balance of $700 00 was likewise transferred to the credit of Strong & Wiley Bros'. account, to the books of the Ohio Life Ins. and Trust Co., at Cincinnati, Ohio; that closed the account of Strong & Wiley Bros. with the Company at New York.

Cross Interrogatories and answers thereto by the witness on the part of the defendant.

Cross Int. 1st: If, in answer to the third Interrogatory, you state that there was a general custom of the Ohio Life Insurance and Trust Company in regard to the payment of drafts, and that such custom was to give a check for such draft on their bankers, please state whether or not a party would not have been paid by said Company in gold or currency for a draft at any time if the party presenting the draft refused a check, and demanded payment in money, and whether or not the said Ohio Life Insurance and Trust Company ever gave any public notice to the world that they would not pay drafts on it in money, if demanded?

Ans. to Cross Int. 1st: I suppose they would have been paid in gold or currency, though the demand for payment in gold or currency was never made so far as I know; I do not know whether or not the Ohio Life Ins. and Trust Co. gave notice to the world that they would not pay drafts in money, if demanded.

106 Cross Int. 2d: If you state that any proportion of said Company checks passed through the Clearing House, state how you know the proportion that passed through the Clearing House, and whether or not you know it of your own knowledge, or by information of others?

Ans. to Cross Int. 2d: Only from my knowledge of the general business customs in New York; I have no personal knowledge.

Cross Int. 3d: Would or would not the American Exchange Bank have paid any checks of the Ohio Life Ins. and Trust Co., on them presented on the 22d day of August, A. D. 1857, and dated on that day; and when did the Exchange Bank first refuse to pay checks of said Company?

Ans. to Cross Int. 3d: I suppose they would; I cannot answer certainly; on Monday, the 24th of August, 1857, I believe.

Cross Int. 4th: Was or was not the Ohio Life Ins. and Trust Co. frequently overdrawn in their account with said Exchange Bank?

Ans. to Cross Int. 4th: They were.

GEO. O. DEPEW.

The plaintiff, further to sustain the issues upon his part, read the deposition of William A. Booth, which was as fallows:

107 Interrogatory 1st: What is your name, age, occupation and place of residence?

Ans. to Int. 1st: William A. Booth; 56 years; merchant, New York city.

Int. 2d: Do you know the parties, plaintiff and defendants, in the caption to these interrogatories mentioned, or either, and which of them, and how long have you known them, respectively?

Ans. to Int. 2d: I have no recollection of ever knowing either of them.

Int. 6th: What was the situation of the account between the Ohio Life Insurance and Trust Company and the American Exchange Bank, on the 25th of August, 1857, respectively? How much money, if any, had the Ohio Life Insurance Company in said bank subject to draft or check, or how much, if any, was said Ohio Life Insurance and Trust Company overdrawn or indebted to said American Exchange Bank?

Ans. to Int. 6th: Their account was overdrawn; had no money in said bank to their credit on that day; overdrawn over fifty thousand dollars.

Int. 7th: Do you know of any other matter or thing of interest to the plaintiff in this suit?

Ans. to Int. 7th: I do not.

Cross Interrogatories and answers thereto by the witness on the part of the defendant.

Cross Int. 1st: If, in answer to the 3d interrogatory, you state that there
108 was a general custom of the Ohio Life Insurance and Trust Company in regard to the payment of drafts, and that such custom was to give a check for such draft on their bankers, please to state whether or not a party would not have been paid by said Company in gold or currency for a draft at any time if the party presenting the draft refused a check and demanded payment in money, and whether or not the said Ohio Life Insurance and Trust Company ever gave any public notice to the world that they would not pay drafts on it in money, if demanded?

Ans. to Cross Int. 1st: The general custom would be to give a check, if they were paying, and gold had been demanded, they would, I suppose,

pay in gold; I have no knowledge that they ever gave notice to the world that they would not pay drafts in money, if demanded.

Cross Int. 2d: If you state that any proportion of said Company's checks passed through the Clearing House, state how you know the proportion that passed through the Clearing House, and whether or not you know it of your own knowledge, or by information of others?

Ans. to Cross Int. 2d: I do not know anything about it.

Cross Int. 3d: Would or would not the American Exchange Bank have paid any check of the Ohio Life Ins. and Trust Co., on them presented on the 22d day of August, A. D. 1857, and dated on that day? and when did
109 the Exchange Bank first refuse to pay checks of said Company?

Ans. to Cross Int. 3d: They had no money in the American Ex. Bank on that day, and checks would not have been paid on that day excepting for small amounts and under very peculiar circumstances. They first refused to pay the checks of said Company on that day, according to my orders.

Cross Int. 4th: Was or was not the Ohio Life Ins. and Trust Co. frequently overdrawn in their accounts with said Exchange Bank?

Ans. to Cross Int. 4th: They were occasionally overdrawn.

WM. A. BOOTH.

Defendants, by their counsel, admitted that the defendants did business with the O. L. and Trust Company for four or five months before said Company failed.

The plaintiffs thereupon rested their case, and defendants, by their counsel, thereupon moved the court to exclude from the jury, so much of the deposition of William A. Booth as related to the account and statement of account of Ohio Life Insurance and Trust Co., with the American Exchange Bank of New York, which motion was overruled by the court, and defendants excepted.

The defendants, to sustain the issues upon their part, called as a wit-
110 ness, H. H. Edwards, who, being first duly sworn, testified: That he resided in New York city in 1857, and left there the 23d of April, 1861; there was no custom in New York city as to the payment of drafts and checks in 1857, that could be said to be uniform. Some persons receiving checks in payment of drafts required the checks to be certified, others did not. The custom as to obtaining payment of a draft, was to present the draft for payment, and if a check was given for it and there was no doubt of the responsibility of the party drawing the check, to receive the check and deposit it in bank; if party kept a bank account, and if there was any doubt of the responsibility of party drawing the check, then to take the check and get the money, or get the check certified.

The counsel for plaintiffs proposed to witness the following question:

What was the custom, if any, in taking a check as absolute payment?

To which plaintiffs' counsel objected, and the court sustained the objection, whereupon, defendants, by their counsel, excepted to the said decision of the court.

The defendants' counsel proposed the following question to witness:

If the check was taken for a draft uncertified, and the draft delivered up, upon whom did the uniform custom of New York at that time, 1857,
111 cast the risk of payment of the check if the check was held over the day of its date?

To the asking of which the plaintiffs' counsel objected, and the court sustained the objection, and defendants, by their counsel, then and there excepted to the decision of the court.

The defendants' counsel proposed to the witness the following question:

What course did a party pursue taking an uncertified check for a draft if he did not consider the check as taken ~~the~~ absolute payment of the draft, and state the uniform custom on that point, if any there was.

To the asking of which, the plaintiffs' counsel objected, and the court sustained the objection, to which decision by the court, the defendants, by their counsel, excepted.

The witness further testified: A party taking a check for a draft would deposit it if he considered it good, if not he would have it certified.

If an uncertified check taken for a draft was dishonored, the custom was not to return the draft; that witness had collected money of the O. L. and

Trust Company on drafts; I was in the habit of collecting drafts of them about the time of their failure.

What was the custom when the party did not intend to hold the check at his own risk?

112 Ans.: He would get the check certified, and if not paid or certified, he would return the check and demand the draft.

On what day would a party get such a check certified?

Ans.: The party would get the check so taken certified on same day of its date.

And upon cross-examination, testified in answer to what was the custom if the party drawing the check had no money in the bank upon which it was drawn.

Ans.: Such a check would not be received. Also, testified that he was not a banker; was a merchant.

The defendants, further to sustain the issues on their part, called as a witness W. H. Waite, who, being first duly sworn, testified as follows:

That he was a banker; was in the employ of the Metropolitan Bank of New York city, from 1853 until some time in 1856; the bank did a large business—probably the third largest in New York; I have seen the draft; know the Trust Company; was not particularly acquainted with Swift, Ransom and Co. A party presenting a draft for payment would usually receive a check for it; a party could always get the money upon a draft if he asked for it, ~~who~~ could get the check certified. The Trust Company stood well up to the time of its failure.

or he

WM. H. WAITE.

Cross Examined: Plaintiff's counsel here presented and showed the
113 draft in suit to the witness, and then put the following question:

Was it customary to get a check certified if the drawer was considered good?

Ans.: No.

Question: What was the credit of the Trust Company on the 22d of August, 1857?

It stood well.

What would you do with this draft if received August 22, 1857, by a banking house in New York?

The first thing would be to mark it paid, and send a messenger with it to get the money or a check; this check would be deposited in the bank where the party kept his account to go through the Clearing House next day; if not paid, it would be sent back to the party depositing it.

The defendants, further to sustain the issues on their part, called I. Morse as a witness, who, being first duly sworn, testified: That his occupation was that of a banker; that he was in the banking business in New York, in 1857, for some years prior to that year and since that year; I know the Trust Company; I was in the employ of John Thompson, banker, when in New York; he did a large business; the custom as to getting check taken for draft certified was optional, either to get them certified or not; some persons got
114 them certified, others did not; a good many people got all checks over five hundred certified; Reed, Drexel & Co., who did a large business, always did so; there was no uniform custom.

All checks of the Trust Company that were presented on Saturday, the 22d of August, 1857, were either paid or certified. A person presenting draft on 22d August, 1857, to the Trust Company, could have got either check or the money for it.

And upon cross examination, testified:

I saw checks certified and presented on the 22d of August. Don't remember dates or amounts. I did not see the checks dated. I am now in the same business. I am now with E. K. Willard & Co., bankers. Don't remember that I ever presented a check or draft to Trust Company for payment. I had a knowledge of the Trust Company's business. The Trust Company was in the habit of giving checks, but there was no custom. Don't remember that I ever saw a check drawn by Trust Company on American Exchange Bank.

The defendants, further to sustain the issues upon their part, called witness W. S. Morse, who, being first duly sworn, testified: I am a banker by

occupation. I did business in New York city, from 1851 to 1861, say ten years. Was in Metropolitan Bank—John Thompson, Morse & Bros. There was no uniform custom in New York city in 1857, in regard to getting checks taken in payment of drafts certified. Some persons would get all checks,
115 large and small, certified. Some persons would get all checks over $500, uncertified. I have seen checks of the Trust Company upon American Exchange Bank and upon Bank of Commerce certified. A party presenting a draft for payment to Trust Company in 1857, could have obtained the money upon it if he insisted upon it. I have seen Wm. B. Astor's check certified.

Upon cross examination, testified:

I was with John Thompson as his chief clerk. I said that some people would get Wm. B. Astor's check certified. I recollect presenting drafts for a large amount to Trust Company upon one occasion. Thompson possibly might take a check for a draft like this. Suspicion was cast upon the Trust Company previous to the failure of the Company. Checks were passed through the Clearing House sometimes, but not always. People would not always take checks in payment of drafts. There was always more or less suspicion in regard to all banks.

It would be unusual to take a check for a draft, but it was usual to get such checks certified at once. It was usual to take a check for a draft, but was also usual to get it certified. I know of the Butchers' and Drovers' Bank getting all checks certified. I saw one of Trust Co.'s check, in favor of Butchers' and Drovers' Bank, in 1855, that was certified. I have seen a good many checks of Trust Company certified. The Butchers' and Drovers'
116 had the Trust Company's, and all other checks certified; also Reed, Drexel & Co., one of the larger houses, always got checks over five hundred dollars certified.

The defendants' counsel thereupon read to the jury the deposition of John Ackerman, which was in the words and figures following, to wit:

Interrogatory First: What is your name, age, occupation and place of residence?

Int. Second: Do you know the parties, plaintiffs and defendants, in the caption to these interrogatories mentioned, or either and which of them, and how long have you known them respectively?

Int Third: What was your occupation during the month of August, A. D. 1857, and by whom were you employed, and in what capacity were you engaged?

Int. Fourth: State whether Strong & Wiley Brothers, the defendants, kept an account with the Ohio Life Insurance and Trust Company, in New York, during the year of 1857, and if so, state what amount of money they had on deposit in the Ohio Life Insurance and Trust Company in New York, on the 22d day of August, A. D. 1857?

Int. Fifth: State what, if anything, you know of Swift, Ransom and Company presenting a draft of one thousand dollars on the 22d day of Au-
117 gust, A. D. 1857, drawn by Strong & Wiley Brothers, on the Ohio Life Insurance and Trust Company for payment, and state what became of it.

Int. Sixth: State what, if anything, you know of Swift, Ransom & Company presenting any draft drawn by Strong and Wiley & Brothers on the Ohio Life Insurance and Trust Company, New York, for payment on the twenty-second day of August, A. D. 1857, stating the date, amount and number of the same; and what became of the same, and what entries were made that day upon the books of the Ohio Life Insurance and Trust Company, New York, in relation to said drafts, and by whom said entries were made.

Int. Seventh: State whether you ever saw the draft, a copy of which is as follows, to wit:

$1000. CHICAGO, ILL., Aug. 19, 1857.

Pay to the order of Messrs. Williams & Bro., One Thousand Dollars, value received, and charge the same to the account of

STRONG & WILEY BRO.

Ohio Life Ins. and Trust Co.,

No. 1253. New York.

On which was the following endorsement endorsed:

"Williams & Bro.
"Pay Swift, Ransom & Co., or order,
"R. K. Swift, Bro. & Johnston."
"Rec'd payment,
"Swift, Ransom & Co."

118 If ~~you~~ Jean state all you know in relation of said draft, when and where it was presented for payment, and by whom, and what became of the same—whether it was paid; if so, by whom and to whom, and all the entries, if any, made in relation thereto.

Int. Eighth: State whether said draft was charged to Strong & Wiley Brothers; if so, state when it was charged to them, and whether at that time they had money enough on deposit with the Ohio Life Ins. and Trust Co. in New York, and whether, after the payment of said draft, they still had a balance on deposit.

Int. Ninth: State any other matter or thing tending to show a payment of said draft, and the date of payment, and all other matters and things that would be of benefit to the defendants, Strong & Wiley Bro.

Int. Tenth: State what endorsements appeared on the back of said draft, number 1253, on the day it was presented for payment, and from said endorsement, who was the legal holder thereof?

CROSS INTERROGATIONS.

First: If you, in answer to any of the interrogatories in chief, speak of the presentment of said draft to the Ohio Life Insurance Co. for payment, was not such presentation on Saturday?

Second: If you speak of said draft being paid, did the Ohio Life Insurance Co. ever pay one dollar of money on said draft? Was not the pay-
119 ment you speak of by a check of said Ohio Life Insurance and Trust Co., and was said check ever paid? Was not the same returned by Swift, Ransom & Co. to the Ohio Life Insurance and Trust Co.?

Third: Do you know any other matter or thing of importance to the plaintiffs?

To the First Direct Interrogatory, the said witness, John Ackerman, says:

A. My name is John Ackerman; my age, 58 years; occupation, accountant, and my place of residence Harlem, in the city and county of New York.

To the Second D. Int., he saith:

A. I do not know the plaintiff. The defendants I knew in the way of business during the time they kept an account with the Ohio Life Insurance and Trust Co.

To the Third Int. he saith:

A. In the month of August, 1857, I was a book-keeper in the office of the Ohio Life Insurance and Trust Co. in the city of New York, and been employed by said Company in that capacity for some 12 years.

To the Fourth Int. he saith:

The defendants kept an account with the Ohio Life Ins. and Trust Co., from May 1st, 1857, up to the time of the failure of said Company on 24th August, 1857, and on the 22d of August, 1857, at the close of business on that day, the defendants had on deposit to their credit with the said Company, the sum of nine thousand eight hundred and eighty-seven dollars 61–100 dolls. ($9,887.61).

To the Fifth Int. he saith:

120 That on 22d August, 1857, there was presented to and paid by the said Ohio Life Insurance and Trust Co., to the holder thereof, a draft for one thousand dollars, drawn by the defendants and numbered "1253," to the order of Williams & Brother. This draft was paid by the Trust Company's check, on the American Exchange Bank of New York, "numbered 284."

To the Sixth Direct Int., he saith: I do not know who presented the draft for payment. It was paid as I stated in my last answer, and was debited to the defendants by the clerk who kept the debit cash book, and was

posted by me in the Ledger. The draft was presented to and paid by John S. Carr, the paying-teller of the said Trust Company, by check as above stated.

To the Seventh D. Int., he saith: I never saw the said draft.

To the Eighth D. Int., he saith: The draft was charged to the defendants on the 22d day of August, 1857, (on which day it was paid as aforesaid) first in the debit cash book of said Trust Co., and then posted by me in the Ledger of said Company. The defendants had on deposit with said Ohio Life Insurance and Trust Co., to their credit after the said draft for $1000 was debited to their account, the sum of $9887.61.

To the Ninth D. Int., he saith: I cannot state any thing else in regard to the payment of said draft, except this: That if the Trust Co.'s check, No. 284, had been presented to the American Exchange Bank on the day it was drawn, 22d Aug., 1857, it would have been paid. As to what became of the said draft, all I can say is this: That on the 17th day of October, 1857, the
121 same was delivered by the assignees of the Trust Co. to Swift, Ransom & Co., as I am informed and believe, they having returned to the Company the check No. 284, given as aforesaid in payment for said draft. I am informed that this exchange was made because Swift, Ransom & Co. had replevied said draft.

To the Tenth D. Int. he saith: As I never saw said draft, I cannot tell what endorsements were upon the same, nor do I know who was the legal holder or owner thereof.

JOHN ACKERMAN.

Sworn before me this 6th day of June, 1860.

SMITH CLIFT, Commissioner.

To the 1st Cross Interrogatory, the witness, John Ackerman, saith:

The presentation for payment of said draft, spoken of by me, to the Ohio Life Insurance and Trust Co., was on Saturday, 22d Aug., 1857.

To the 2d Cross Int., he saith:

The payment was made by check, as I have stated in my direct examination, which check was deposited on the same day, and went through Clearing House and was not paid by the American Exchange Bank. All checks of he Trust Co. on said bank which were presented on Saturday, the 22d of Augtust, 1857, were paid. The draft was given up, as I have stated in my direct examination, to Swift, Ransom & Co., who returned the check given therefor.

To the 3d Cross Int., he saith:

I do not know of any other matter or thing of importance to the parties.

JOHN ACKERMAN.

Sworn before me this 6th day of June, 1860.

SMITH CLIFT, Commissioner.

122 Interrogatory First: What is your name, age, occupation and place of residence?

Int. Second: Do you know the parties, plaintiff and defendants in the caption to these interrogatories mentioned, or either and which of them, and how long have you known them respectively?

Int. Third: What was your occupation during the mouth of August, A. D. 1857, and by whom were you employed, and in what capacity were you engaged?

Int. Fourth: State whether Strong & Wiley Brothers, the defendants, kept an account with the Ohio Life Insurance and Trust Company, in New York, during the year 1857, and if so, state what amount of money they had on deposit in the Ohio Life Insurance and Trust Company, in New York, on the 22d day of August, A. D. 1857.

Int. Fifth: State what, if any thing, you know of Swift, Ransom and Company presenting a draft of one thousand dollars on the 22d day of August, A. D. 2857, drawn by Strong & Wiley Brothers on the Ohio Life Insurance and Trust Company for payment, and state what became of it.

Int. Sixth: State what, if any thing, you know of Swift, Ransom and Company presenting any draft drawn by Strong & Wiley Brothers on the
123 Ohio Life Insurance and Trust Company, New York, for payment on the twenty-second day of August, A. D. 1857, stating the date, amount and number of the same, and what became of the same, and what entries were

made that day upon the books of the Ohio Life Insurance and Trust Company, New York, in relation to said draft, and by whom said entries were made.

Int. Seventh: State whether you ever saw the draft, a copy of which is as follows, to wit:

$1000. CHICAGO, ILL., Aug. 19, 1857.

Pay to the order of Messrs. Williams & Bro., One Thousand Dollars, value received, and charge the same to the account of

STRONG & WILEY BRO.

Ohio Life Ins. and Trust Co.,
No. 1253. New York.

On which was the following endorsement endorsed:

"Williams & Bro.
"Pay Swift, Ransom & Co., or order,
"R. K. Swift, Bro. & Johnston."
"Rec'd payment,
"Swift, Ransom & Co."

If ~~you~~ You state all you know in relation to said draft, when and where it was presented for payment, and by whom, and what became of the same—
124 whether it was paid; if so, by whom and to whom, and all the entries, if any, made in relation thereto.

Int. Eighth: State whether said draft was charged to Strong & Wiley Brothers; if so, state when it was charged to them, and whether at that time they had money enough on deposit with the Ohio Life Ins. and Trust Co. in New York, and whether, after the payment of said draft, they still had a balance on deposit.

Int. Ninth: State any other matter or thing tending to show a payment of said draft, and the date of payment, and all other matters and things that would be of benefit to the defendants, Strong & Wiley Bros.

Int. Tenth: State what endorsements appeared on the back of said draft, number 1253, on the day it was presented for payment, and from said endorsements, who was the legal holder thereof?

CROSS INTERROGATORIES.

First: If you, in answer to any of the interrogatories in chief, speak of the presentment of said draft to the Ohio Life Insurance Co. for payment, was not such presentation on Saturday?

125 Second: If you speak of said draft being paid, did the Ohio Life Insurance Co. ever pay one dollar of money on said draft? Was not the payment you speak of by a check of said Ohio Life Insurance and Trust Co., and was said check ever paid? Was not the same returned by Swift, Ransom & Co. to the Ohio Life Insurance and Trust Co.?

Third: Do you know any other matter or thing of importance to the plaintiff?

126 To the 1st Direct Interrogatory, he saith: My name is John S. Carr; my age, 31; my occupation, a clerk in the American Exchange Bank of the city of New York, and my place of residence, 88 Clinton Street, in the city of Brooklyn, Kings Co., New York.

To the 2d D. Int., he saith: I do not know the plaintiff. I have seen David O. Strong, one of the defendants. Do not know the other def'ts.

To the 3d D. Int., he saith: I was paying-teller in the office of the Ohio Life Insurance and Trust Co., in the city of New York, on the 22d of August, 1857, and in the employment of said Company.

To the 4th D. Int., he saith: That Strong & Wiley Brothers, the defendants, kept an account with the said Ohio Life Ins. and Trust Co., during the year 1857. I cannot state what amount of money the def'ts. had on deposit with said Co. on 22d Aug., 1857, for the reason I did not keep the books of the Co.

To the 5th D. Int., he saith: I know nothing in regard to the matters

enquired of in this interrogatory, and for this reason, that the draft enquired about must have been paid by the assistant teller, "Arthur Bloodgood," as I have found the "stamp" or memorandum of payment of a draft of the def'ts on said Trust Co. for $1000, in said Bloodgood's handwriting.

127 To the 6th D. Int., he saith: I know nothing in regard to the matters enquired of in this interrogatory, further than stated in my answer to the 5th interrogatory.

To the 7th D. Int., he saith: I do not know that I ever saw the draft enquired of in this interrogatory, and cannot say any thing in relation to the same.

To the 8th D. Int.: I know nothing in regard to the matters enquired of in this interrogatory, further than I have already answered.

To the 9th D. Int., he saith: All I can say in answer to this interrogatory, is that I do not know of any checks given by the said Trust Company on Saturday, the 22d August, 1857, on the American Exchange Bank, and which were presented to the bank on that day, being refused payment. I should have heard of any refusal to pay. I know of no refusals to pay such checks, until Monday, August 24th, 1857, at noon.

To the 10th D. Int., he saith: I know nothing of matters enquired of.

JNO. S. CARR.

Sworn before me this 6th day of June, 1860.

SMITH CLIFT, Commissioner.

Witness being cross examined, says: I know of nothing more to answer in regard to matters enquired of, than I have already answered.

JNO. S. CARR.

Sworn this 6th day of June, 1860, before me.

SMITH CLIFT, Commisssoner.

128 The foregoing was all the testimony offered in evidence on the trial of this cause, and thereupon the defendants' counsel moved the Court to exclude from the jury all testimony of the custom or usage of the Trust Company, upon the ground that the declaration contains no averment of such usage, which motion the Court overruled, to which decision of the Court the defendants' counsel then and there excepted.

The defendants, by their counsel, moved to exclude from the jury all evidence of usage or custom, on the ground that the proof is not of a custom or usage which was uniform, certain or invariable. Which motion the Court overruled, and to which decision the deft's counsel then and there excepted.

The Court, upon motion of plaintiff, gave to the jury the following instructions on the part of the plaintiff:

Plaintiff's Instruction

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[redacted]

130

to the defendants, at Chicago, Illinois, their post office address, such protest demand and notice is sufficient to charge the defendants. This is so, if the jury believe from the evidence, that the defendants had knowledge that such was the ordinary custom and usage of the Trust Company in paying drafts drawn on them, and such knowledge may be, if such usage existed, if the defendants had been in the habit of drawing drafts on said Trust Co. for several months prior to the dates of the draft in question.

No. 2: If the jury find from the evidence that either of the firm of Strong & Wiley Bros., with the knowledge that Swift, Ransom & Co. had taken a check for the draft, as stated by L. P. Swift, and which had not been paid, and that the demand and notice was not sufficient in law to charge, the defendants, Strong, Wiley & Bro. promised to pay the draft, if Swift, Bro. & Johnston would get the draft back from New York, and Swift, Bro. & Johnston did get the draft back from New York; such promise is in law, a waiver of a proper demand and notice, and the law is for the plaintiff.

131 No. 3: If the jury believe from the evidence that the defendants, or either of them, as partners, promised R. K. Swift, Bro. & Johnston to pay the draft after a failure on the part of the holders of the draft to demand payment of the Trust Co., in due time, and after the holders had taken the check of the Trust Co.; and the defendants, or either of them, as partners, made such promise to pay said draft with knowledge that the check had been taken as stated by Lyman P. Swift, from the Trust Co., and that the Exchange Bank had failed to pay the check, and with knowledge of all the facts relating to the presenting and non-payment of the draft, then such promise to pay the draft, if made by the defendants, is binding on the defendants, and the plaintiff is entitled to recover the amount of the draft and interest.

No. 4: If the jury find, from the evidence in the case, that the bill of exchange in question was protested on the 24th of August, and the Notary Public mailed, with postage prepaid, notice to Strong, Wiley & Bros., addressed to Chicago, Illinois, where the defendants did business, the presumptions of law are, that they received such notice by due course of mails.

No. 5: The taking of a check on a draft, marking on the back of the
132 draft, received payment, is not in law payment of the draft unless the check was paid, but is deemed in law but as a means of getting payment for the draft in question.

15 *Barb.*, *R.* 28. 4 *John*, *R.* 340.
20 *Und.*, *R.* 602. 1 *Hall*, *R.* 56.
10 *Faler.*, *R.* 256. 29 *Renn.*, *R.* 448.

No. 6: The taking of a check on a draft and marking on the back of the draft "received payment," is not in law a payment unless the check is paid, or it was expressly agreed that the check should be received in *absolute payment*, whether good or not.

5 *Und.*, *R.* 490.

No. 7: The jury are instructed, that the holder of a draft like the one in suit, is only bound to present the same for payment to the drawee, and to demand the money thereon within a reasonable time, in order to hold the drawer, and what is reasonable time and reasonable diligence in this respect, must depend upon the facts and circumstances of each particular case.

PLAINTIFF'S INSTRUCTIONS.

No. 8: The jury are also instructed, that the holder of a draft like the one in suit, is not bound to present the same to the drawee, and demand the
133 money thereon on the same day it is received, but has until the next business day in which to present and demand payment thereof.

And if the jury believe, from the testimony in this cause, that the draft in suit was received by R. K. Swift, Brother & Johnston, at Chicago, on the 19th day of August, A. D. 1857, and was by them, on the same day,

mailed to Swift, Ransom & Co., at New York city, for collection, and was received by Swift, Ransom & Co. in due course of mail, at New York, on the 22d day of August; then Swift, Ransom & Co. were not bound in law to present the said draft to the Ohio Life Insurance and Trust Co., and demand the money thereon until Monday, the 24th day of August, 1857, that being the next business day after the receipt of said draft by them.

No. 9: If the jury believe, from the testimony in this cause, that it was on the 22d day of August, 1857, and had been for several years previously the general, usual, ordinary and established usage, custom and course of business of the Ohio Life Insurance and Trust Company, to receive drafts drawn on them like the one in suit, at the counter of their office in New York city, and to give in the first instance to the person presenting such draft, a
134 check on some bank in New York city, for the amount of the draft, instead of paying the money thereon from their counter, and that Swift, Ransom & Co. did, on the same day they received the draft in suit, on the 22d day of August, 1857, send the same to the office of the said Ohio Life Insurance and Trust Co., and received a check for the amount of such draft on the American Exchange Bank, of New York, in accordance with such custom, usage and course of business of said Trust Company, then said Swift, Ransom & Co. were justified in receiving said check for the amount of said draft, and were not bound in the first instance on said 22d day of August, to demand the money instead of the check upon said draft; this is so if the defendants had notice of such custom of said Trust Co., and if, from the evidence, the jury believe the defendants had been in the habit of keeping deposits with said Trust Co., and drawing drafts on the same for a long time, the law will charge defendants with knowledge of the ordinary manner of doing business and paying drafts by said Trust Company.

No. 10: If the jury find, from the evidence, that the Ohio Life and Trust Company, by a general and well established usuage, gave checks on some bank for drafts on them, and that such checks, by general and well-established usage, passed through the Clearing House and was to be presented to
135 the bank on which drawn on the next business day, and the giving of the check was but a means of obtaining payment, and that the draft in question was sent to the Ohio Life Insurance and Trust Co. on same day, August 22d, 1857, and a check given for the same as a mode of obtaining payment, and not as absolute payment, and which check was passed through the Clearing House, and was presented to the bank on which it was drawn, the next business day, Aug. 24th, and was not good, and was returned to the Trust Co.

And the payment of the draft was on the 24th day of August demanded of the Ohio Life Insurance and Trust Company, and said draft protested for non-payment, and notice of such demand made and mailed to the defendants, with postage prepaid, addressed to Chicago, Illinois, where defendants did business; such demand and protest and notice is sufficient in law, and if they further find that the defendants had notice of such usage of the Ohio Life and Trust Company, when they drew the draft in question, and if they find, from the evidence, that the defendants had been doing business with the Ohio Life and Trust Company for any considerable length of time, they will be deemed in law to have knowledge of such usage of the Ohio Life and Trust Company; then the law is for the plaintiff.

136 No. 11: If the jury find, from the evidence, that by the established custom and usage of the Ohio Life Insurance and Trust Company, on the 22d day of August, A. D. 1857, and for several years prior thereto, not to pay drafts on them in money, but to give checks on their bank for the same, and that the draft in suit was not sent to Ohio Life Insurance and Trust Company on the 22d of August, to demand payment, but to get a check for the same on their bank, according to such usage and custom, then Swift, Ransom & Co. had a right to hold said check till the next business day before presenting the same for payment, and if said check was not paid on the 24th day of August, the same being the next business day, and Swift, Ransom & Co. demanded payment of the draft in suit on the 24th day of August, A. D.

1867, and caused the same to be protested on the same day for non-payment, and also notice to be mailed to the defendants, with postage prepaid, addressed to them, at Chicago, the demand under protest is sufficient in law to charge the defendants; if the jury also believe, from the evidence, that the defendants had knowledge that such was the customary and usual way in which drafts drawn on said Trust Company were treated and paid by said Company when they drew such draft.

To the giving of each of which, said several instructions by the court, the defendants, by their counsel, then and there excepted. And thereupon the defendants asked the court to give the following nine instructions to the jury:

137 1. If the jury believe, from the evidence, that there is no proof of the endorsement of Williams & Bro., the plaintiff cannot recover in this case.

2. If the jury find, from the evidence, that a check was taken for the draft sued on, on the 22d of August, '57, and that the giving of such check was in accordance with the uniform usage of the Trust Co.

If the jury further find, from the evidence, that the uniform custom of the city of New York, at said day, was to get such checks certified upon the day of the date of such checks.

And that the party so receiving such checks did not get the same certified, or attempt so to do, and did not present the same for payment on said day, and did not present the same for payment at the bank upon which it was drawn before protest.

In such case the protest of such draft on the 24th of Aug., '57, was a nullity.

3. If the jury believe, from the evidence, that the draft in suit was presented for payment and a check taken for the same on the 22d day of Aug., 1857, and was not protested for non-payment until August 24, 1857.

And if the jury further find, from the evidence, that it was the usage of
138 the Ohio Life Insurance and Trust Company to pay drafts on them with checks or with money, as the party presenting drafts desired, and that said Trust Company sometimes paid drafts with money, and at other times with checks, such usage as to payment by check, was not sufficiently certain, uniform and established, to bind the defendants in this case, so far as usage or custom is concerned, and the protest in such case on the 24th of August, 1857, was a nullity.

4. If the jury believe, from the evidence, that the draft sued on was presented for payment on the 22d of Aug., 1857, and was not protested for non-payment until the 24th of the same month, the plaintiff cannot recover; unless the jury also believe, from the evidence, that it was the uniform custom of the Ohio Life Insurance and Trust Company, at the city of New York, to pay drafts, such as this, upon their presentment, in checks, and that it was also the uniform custom, at the city of New York, in the case of the non-payment of such checks by the banks upon which they were drawn, to protest such drafts for non-payment, on the day after such checks were given; or, unless the jury also believe, from the evidence, that the defendants, or some one of them, with the knowledge that said draft had been presented for payment on the said 22d of August, and had not been protested for non-payment until the 24th of the same month, promised to pay said draft.

139 5. If the jury find, from the evidence, that the draft in question was presented to the Ohio Life Iusurance and Trust Company for payment, on Saturday, the 22d day of August, A. D. 1857, by the then holders of said draft, that such holders, at the time of such presentment, received said Trust Company's check on the American Exchange Bank, of N. Y. city, for the amount of said draft, and delivered said draft to said Trust Company.

That such check was not presented for payment on the said Saturday.

That the check would have been paid on said Saturday if so presented, and that the draft was not protested for non-payment until Monday, the 24th day of August, 1857.

And if the jury further find, from the evidence, that the custom of the city of New York, at the dates aforesaid, in regard to the presentment of drafts and receipt of checks therefor, and the holding over of such checks beyond the day of their date, without presenting them for payment, was uncertain, or was not constantly observed in the same manner, or was not well established, the jury will find for the defendants, unless the jury further find, from the evidence, that said defendants, or one of them, with a full knowledge on the part of said defendants, or some of them.

That said draft was presented for payment as aforesaid, on the Saturday,
140 22d day of August, A. D. 1857, and that at the time of such presentment the holders of the draft received said Trust Company's check on the said Exchange Bank, and delivered said draft to said Trust Company.

And that said check was not presented for payment on said Saturday.

And that said draft was not protested, for non-payment, until the 24th of August, A. D. 1857, did promise R. K. Swift, Bro. & Johnston, or some of the firm, to pay the draft.

6. If the jury find, from the evidence, that draft in suit was presented to the payees for payment, and a check taken for the same on the 22d day of August, 1857, that such check was not presented for payment on said 22d day of August, and that said draft was not protested on said 22d day of August.

And if the jury further find, from the evidence, that the party who received said check, put the same in his bank, and that said check was thrown out of the Clearing House on Monday, August 24, 1857, and that the representative at the Clearing House of the bank upon which such check was drawn, was not authorized by the usage of such Clearing House to throw out such check, and if the jury further find, from the evidence, that there is no proof that said check was ever presented to the bank upon which it was drawn, or due diligence used to collect the same before the draft was protested, then the protest of the draft in question was a nullity, and unless the jury
141 further find, from the evidence, that defendants, or some of them, with a full knowledge on the part of the defendants, or some of them, that said draft was presented and said check taken as aforesaid, that said draft was not protested until the 24th day of August, 1857, and that said check had never been presented to the bank upon which it was drawn, before the protest of the draft, did promise to pay said draft; they will find for the defendants.

7. That if the jury find from the evidence that the draft was presented for payment on the 22d day of August, A. D. 1857, and a check taken for the same, and that draft was not protested for payment on that day, but was protested on the 24th of August, 1857, then such protest was a nullity, unless the jury further find from the evidence that at the dates aforesaid there existed in said city of New York a custom in regard to drafts like the one in suit, which was certain, uniform and established, and the receipt of such check and the subsequent protest of said draft was in accordance with such certain, uniform and established custom, and that if the jury find from the evidence that there was such custom, and that receipt of the check and protest of the draft was in accordance with such custom, the protest was a nullity, unless the check was returned, or was offered to be returned, to the Trust Company at or before the time of such protest, and that the burthen
142 of proof of such custom and of compliance with the said custom and of the return, or offer to return, such check as aforesaid, is upon the plaintiff in this case.

8. If the jury find, from the evidence, that the draft in suit was presented to the payees on Saturday, the 22d Aug., 1857, by the then holders of said draft, and that the holders of said draft thereupon delivered such draft to the Trust Co., and received a check of said Trust Company for the amount of said draft on the American Exchange Bank, N. Y. city; that such check was not presented for payment on said Saturday, and that if the check had been presented on said Saturday it would have been paid, and that the draft was not protested until the 24th of Aug., 1857.

And if the jury further find, from the evidence, that the usage of the Trust Co. as to payment of drafts on them in checks was not uniform or was

uncertain, or "was not constantly observed in the same manner," or was not well established, the jury will find for defendants.

Unless the jury further find, from the evidence, that defendants, or one of them, with a full knowledge on the part of said defendants, or some of them, *that the draft was presented and check taken*, as aforesaid, on 22*d Aug.*, 1857, *and* that said *check was not presented* for payment on *said* 22d of Aug., and *that said draft* was not *protested until* the 24th Aug., '57, promised to pay the said draft.

143 9. That if the jury find, from the evidence, that the check or draft sued upon was presented to the payees for payment on the 22d of August, 1857, by the then holders of such draft, and that such holders received a check for the same, and left the draft with the payees.

That at the time of such presentment the defendants had funds to that amount on deposit with said Trust Company.

The jury are instructed that in such case the title of defendants' deposit with the Trust Company to the amount of said draft became thereby changed from defendants to the holders of the draft, who presented it, and the draft became thereby extinguished, and plaintiff cannot recover in this case.

See 25 Ill. Munn *vs.* Burch.

144 And thereupon the said court refused to give the foregoing instructions asked for by defendants, or either of them, and the defendants to the court, said refusal as to each of the last refused instructions, then and there excepted.

And at the same time the defendants, by their counsel, moved the court to give each of the following eight instructions to the jury, to wit:

145 No. 1: If the jury find, from the evidence, that Swift, Ransom & Co. presented the draft in suit on the 22d of August, 1857, to the Trust Company for payment, and thereupon received a check in absolute payment of the same, and held such check as such payment until the 24th day of August, 1857, the draft became thereby extinguished and no longer negotiable as against defendants, and plaintiff cannot recover under the pleadings in this case.

(1)

Which instruction the court refused to give, but amended the same by inserting between the words "*same*" and "*and*," in the line of said instruction the words "*and at their own risk of payment*," making said instruction to read as follows:

"If the jury find, from the evidence, that Swift, Ransom & Co. presented the draft in suit, on the 22d of August, 1857, to the Trust Company for payment, and thereupon received a check in absolute payment of the same *and at their own risk of payment*, and held such check as such payment until the 24th day of August, 1857, the draft became thereby extinguished and no longer negotiable as against defendants, and plaintiff cannot recover under the pleadings in this case." Which instruction, as amended, the court thereupon gave to the jury.

146 And defendants thereupon, as to the refusal of the court to give said instruction as asked, to the amendment of the same by the court, and to the giving of the same as amended, excepted.

No. 2: That if the jury find, from the evidence, that the draft was presented for payment on the 22d of August, 1857, and a check received by party presenting it, and the draft delivered up to payees until the endorsement of payment upon it, and that both the party presenting and the party paying the draft at the time the check was given and received, treated and considered the draft as absolutely paid and satisfied. In such case, the draft became extinguished and no longer negotiable or subject to be protested, and plaintiff cannot recover under the pleadings in this case.

(2)

Which instruction the court refused to give, but amended the same by inserting between the word "*satisfied*" and "*in*" in line of said instruction, the words "*and agreed that the check should be taken at the risk of the holder*," making said instruction to read as follows:

"That if the jury find, from the evidence, that the draft was presented for payment on the 22d August, 1857, and a check received, the presenting it and the draft delivered up to payees with the endorsement of payment upon it, and that both the parties presenting and the party paying the draft at the time the check was given and received, treated and considered the draft as absolutely paid and satisfied, *and agreed that the check should be taken at the risk of the holder.* In such case, the draft became extinguisned and no longer negotiable or subject to be protested, and plaintiff cannot recover under the pleadings in this case." Which instruction, as amended, was thereupon given to the jury, and the defendants to the refusal of the court to give said instruction as asked—to the amendment of the same by the court, and the giving of the same to the jury as amended—thereupon excepted.

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No. 3: The jury are instructed that the law requires a draft of the kind sued upon to be protested upon the same day it is presented for payment, and that if plaintiff relies upon or sets up in evidence any custom to change such rule of law, the burthen of proof is upon the plaintiff to prove such custom, and no usage that is not proven to be certain, uniform and established and known to the parties drawing the draft, can be permitted to change the said rule of law as to protest (unless such usage is ancient, as well as certain, uniform and well established). And that if the jury believe from the evidence that no such certain, uniform and established custom known to defendants when they drew the draft, is proven by the evidence, and that said draft was presented for payment on 22d August, 1857, and a check taken for the same, and that the draft was not protested on said day, the defendants cannot be held in this case upon any new promise or any waiver of the non-protest of the draft on said day, unless the jury believe from the evidence that such new promise or such waiver was made with a full knowledge that the draft was presented on said 22d August; that a check was taken for it on that day, and that it was not protested on said 22d day of August, and that the burthen of proof of such knowledge is upon the plaintiff. But the jury are instructed that no knowledge of defendants of the custom is required to be proven, if the custom is proven to be ancient and uniform.

148

The jury are further instructed, that in order to prove any custom that can affect this case, the custom must be proven by parties who have had personal experience of the custom.

(3)

Which instruction the court refused to give, but amended the same by striking out the words "*unless such usage is ancient as well as certain, uniform and well established,*" which were enclosed in brackets, and inserting the words "*or general*" between the word "*established*" and "*custom,*" in line of said instruction, and also inserting the words "*or knowledge*" between the words "*experience*" and "*of*" in the line of said instruction, and also by striking out the following sentence: "*But the jury are instructed that no knowledge of defendents of the custom is required to be proven, if the custom is proven to be ancient and uniform,*" making said instruction to read as follows:

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"The jury are instructed that the law requires a draft of the kind sued upon to be protested upon the same day it is presented for payment, and that if the plaintiff relies upon or sets up in evidence any custom to change such rule of law, the burthen of proof is upon the plaintiff to prove such custom; and no usage that is not proven to be certain, uniform and established and known to the parties drawing the draft, can be permitted to change the said rule of law as to protest. And that if the jury believe from the evidence that no such certain, uniform and established *or general* custom known to defendants when they drew the draft, is proven by the evidence, and that said draft was presented for payment on 22d August, 1857, and a check taken for the same, and that the draft was not protested on said day, the defendants can not be held in this case upon any new promise or any waiver of the non-protest of the draft on said day, unless the jury believe from the evidence that such new promise or such waiver was made with a full knowledge that the draft was presented on said 22d August; that a

check was taken for it on that day, and that it was not protested on said 22d day of August, and that the burthen of proof of such knowledge is upon
150 the plaintiff. The jury are further instructed that in order to prove any custom that can affect this case, the custom must be proven by parties who have had personal experience *or knowledge* of the custom."

And thereupon the court give said instruction as amended to the jury, and the said defendants to the refusal of the court to give the said instruction as asked, and to the amendment of the same by the court and the giving of the same to the jury as amended, then and there excepted.

No. 4: The jury are instructed that the law requires a draft of the kind sued upon to be protested upon the same day it is presented for payment, and that if the plaintiff relies upon or sets up in evidence any custom to change such rule of law, the burthen of proof is upon the plaintiff to prove such custom, and no usage that is not proven to be certain and uniform and established, can be permitted to change the said rule of law as to protest, (unless such usage is ancient, as well as certain, uniform and well established), and that if the jury believe, from the evidence that no such certain, uniform and established custom is proven by the evidence, and that such draft was presented for payment on the 22d day of August, 1857, and check taken for the same, and that the draft was not protested on said day, the defendants cannot be held in this case upon any new promise or any waiver of the non-
151 protest of the draft on said day, unless the jury believe from the evidence that such new promise or said waiver was made with a full knowledge that the draft was presented on said 22d day of August; that a check was taken for it on that day, and that it was not protested on said 22d day of August, and that the burthen of proof of such knowledge is upon the plaintiff.

The jury are further instructed, that in order to prove any custom that can affect this case, the custom must be proved by parties who have had personal experience of the custom.

(4)

Which instruction the court refused to give, but amended the same by striking out the words "*unless such usage is ancient as well as certain, uniform and well established,*" in brackets in said instruction, and inserting the words or knowledge, between the words "experience" and "of" of the line of said instruction, and by adding the following words: "*This is the general rule, but if the jury believe from the evidence that it was the general course of the said Trust Co. to give checks on a bank for drafts drawn on them, and the defendants had knowledge of such custom of said Trust Co. Then if due diligence was used to collect said check and it was not paid, the taking of said check would not discharge the defendants,*" making the said instruction to read as follows:

"The jury are instructed that the law requires a draft of the kind sued
152 upon to be protested upon the same day it is presented for payment, and that if the plaintiff relies upon or sets up in evidence any custom to change such rule of law, the burthen of proof is upon the plaintiff to prove such custom; and no usage that is not proven to be certain, uniform and established can be permitted to change the said rule of law as to protest. And that if the jury believe from the evidence that no such certain, uniform and established custom is proven by evidence, and that such draft was presented for payment on the 22d day of August, 1857, and check taken for the same, and that the draft was not protested on said day, the defendants can not be held in the case upon any new promise or any waiver of the non-protest of the draft on said day, unless the jury believe from the evidence that such new promise or such waiver was made with a full knowledge that the draft was presented on said 22d day of August; that a check was taken for it on that day, and that it was not protested on said 22d day of August, and that the burthen of proof of such knowledge is upon the plaintiff. The jury are further instructed that in order to prove any custom that can affect this case, the custom must be proven by parties who have had personal experience *or knowledge* of the custom. *This is the general rule; but if the jury believe from evidence that it was the general course of said Trust Co. to give checks*

on a bank for drafts drawn on them, and the defendants had knowledge
153 *of such custom of said Trust Co. Then if due diligence was used to collect said check and it was not paid, the taking of said check would not discharge the defendants.*" Which instruction, as amended, the court thereupon gave to the jury, and the defendants, to the refusal of the court to give said instruction as asked, and to the amendment of the same by the court and to the giving of the same as amended, then and there excepted.

No. 5: That if the jury find, from the evidence, that the draft was presented for payment on the 22d day of August, 1857, and a check taken for the same, and that draft was not protested for non-payment on ~~the 24th of Aug.~~ that day but was protested on the 24th Aug ust, 1857, then such protest was a nullity, unless the jury further find, from the evidence, that at the dates aforesaid, there existed in the Ohio Life Insurance and Trust Co., in said city of New York, a custom in regard to the payment of drafts, like the one in suit, which custom was certain, uniform and established, and the receipt of such check was in accordance with such certain, uniform and established custom, and that if the jury find, from the evidence, that there was such custom, and that the receipt of the check was in accordance with such custom, the protest was a nullity, unless the check was returned or offered to be returned to the Ohio Life Insurance and Trust Company at or before the time of such protest, and that the burthen of proof of such custom and of compliance with such custom, and of the return
154 or offer to return such check as aforesaid, is upon the plaintiff in this case.

(5)

Which instruction the court refused to give, but amended the same by inserting between the words "established" and "custom" the words "*or general*" in the line of said instruction; also, by inserting again the words "*or general*" between the words "established" and "custom" in the line of said instruction; also, by adding the words "*this is so,*" *unless the jury believe, from the evidence, that the Insurance and Trust Co. waived or dispensed with the return of said check.*

Making said instruction to read as follows: That if the jury find, from the evidence, that the draft was presented for payment on the 22d day of August, 1857, and a check taken for the same, and that draft was not protested for non-payment on that day, but was protested on the 24th of August, 1857, then such protest was a nullity; unless the jury further find, from the evidence, that at the dates aforesaid, there existed in the Ohio Life Insurance and Trust Company, in said city of New York, a custom in regard to the payment of drafts, like the one in suit, which custom was certain, uniform and established "*or general*," and the receipt of such check was in accordance with such certain, uniform and established *or general* custom, and that if the jury find, from the evidence, that there was such custom, and that the
155 receipt of the check was in accordance with such custom, the protest was a nullity, unless the check was returned or offered to be returned to the Ohio Life Insurance and Trust Company, at or before the time of such protest, and that the burthen of proof of such custom and of compliance with such custom, and of the return of or offer to return such check as aforesaid, is upon the plaintiff in this case. *This is so, unless the jury believe, from the evidence, that the Insurance and Trust Co. waived or dispensed with the return of said check*; which said instruction, as amended, was thereupon given to the jury; and the defendants, to the refusal of the court to give said instruction as asked for, and to the amendment of the same by the court, and to the giving of the same to the jury, then and there excepted.

No. 6: The jury are instructed, that if they find, from the evidence, that the draft was presented and check taken for the same, by Swift, Ransom & Co., (then the holding of the draft,) in accordance with the usage of the Ohio Life Insurance and Trust Co., and that the draft was protested on the 24th of Aug., '57; that such check was on the American Exchange Bank, and that the check was sent to the Clearing House, and was there thrown out, and that it was no part of the usage or custom of said Clearing House to throw out or dishonor checks at said Clearing House; then Swift, Ransom & Co. were bound to present the said check at said American Exchange
156 Bank before they protested the draft, and that if the evidence fails to show

that Swift, Ransom & Co. did so present the check at the American Exchange Bank before they caused the draft to be protested, the protest of the draft was void in law.

(6)

157 Which instruction the court refused to give, but amended the same by adding the words "*this is so, unless the jury believe, from the evidence, that the Ohio Insurance and Trust Co. waived or dispensed with the production and surrender of said check.* Making the same to read as follows:

The jury are instructed, that if they find, from the evidence, that the draft was presented and check taken for the same, by Swift, Ransom & Co., (then holding the draft,) in accordance with the usage of the Ohio Life Insurance and Trust Co., and that the draft was protested on the 24th of Aug., '57; that such check was on the American Exchange Bank, and that the check was sent to the Clearing House, and was there thrown out, and that it was no part of the usage or custom of said Clearing House to throw out or dishonor checks at said Clearing House; then Swift, Ransom & Co. were bound to present the said check at said American Exchange Bank before they protested the draft, and that if the evidence fails to show that Swift, Ransom & Co. did so present the check at the American Exchange Bank before they caused the draft to be protested, the protest of the draft was void in law. *This is so; unless the jury believe, from the evidence, that the Ohio Ins. and Trust Co. waived or dispensed with the production and surrender of said check.*

And thereupon, the court gave said instruction, as amended, to the jury, and the defendants, to the refusal of the court to give said instruction as
158 asked for, and the amendment of the same by the court, and to the giving of the same, as amended, then and there excepted.

No. 7: If the jury believe, from the evidence, that the draft sued on was presented for payment on the 22d day of Aug., 1857, and was not protested for non-payment until the 24th of the same month, the plaintiff cannot recover; unless the jury also believe, from the evidence, that it was the uniform custom of the Ohio Life Insurance and Trust Company, at the city of New York, to pay such drafts as this, upon their presentment, in checks, and that it was also the uniform custom, or usage, at the same city, of persons taking such checks to pay them through the Clearing House on the day after they were drawn, or to present them for payment the day after; unless the jury believe, from the evidence, that the defendants, or some one of them, with the knowledge that said draft had been so presented for payment on said 22d of August, and had not been protested for non-payment until the 24th of the same month, promised to pay said draft.

(7)

Which instruction the court refused to give, but amended the same by inserting between the "*the*" and "*uniform*" the word "*general*" in line of
159 said instruction, and also, subsequently, in said instruction inserting, between the words "*uniform*" and "*custom*" the words "*or general*" in line of said instruction, and also by inserting between the words "*or*" and "*to*" in the line of said instruction, said words "*that it was due diligence,*" making the instruction to read as follows: "If the jury believe, from the evidence, that draft sued on was presented for payment on the 22d of Aug., 1857, and was not protested for non-payment until the 24th of the same month, the plaintiff cannot recover; unless the jury also believe, from the evidence, that it was the *general or* uniform custom or usage of the Ohio Life Insurance and Trust Company, at the city of New York, to pay such drafts as this, upon their presentment in checks, and that it was also the uniform *or general* custom or usage at the same city, of persons taking such checks to pass them through the Clearing House on the day after they were drawn, or *that it was due diligence* to present them for payment the day after they were drawn; or, unless the jury believe, from the evidence, that the defendants, or some one of them, with the knowledge that the said draft had been so presented for payment, on the said 22d of August, and had not been protested for non-payment until the 24th of the same month, promised to pay said draft." Which instruction, as amended, the court gave to the jury, and the defendants, to the giving of said instruction, as amended, to the refusal to give the same as asked, and to the amendment of the same, then and there excepted.

160 No. 8: If the jury believe, from the evidence, that the draft in question was presented on the 22d day of August, 1857, and paid by the Ohio Life Insurance and Trust Company, by check or otherwise, that then they will find for the defendant.

Which last above instruction, the court gave as asked for by the defendants.

Whereupon the jury retired to consider of their verdict, and returning into court, all of the parties being present, rendered a verdict for the plaintiff, which verdict is as follows:

We, the jury, find a verdict in favor of the plaintiff, and assess the damages at twelve hundred and seventy-six dollars and fifty cents ($1,276 50).

JOS. E. BISSELL, Foreman,	THOS. PRINGLE,
THOS. COOK,	JOHN O. WILDER,
H. M. CAMPBELL,	CHAS. R. BALL,
P. McGINNISS,	H. GRIER,
WILLIAM BARTELL,	WILLIAM BANDLE,
JOHN MILLER,	WM. MYRICK.

And thereupon the said defendants, by their attorneys, moved the court for a new trial for the following reasons:

161 JOHN B. KING,
vs
DAVID O. STRONG,
CHRISTOPHER V. WILEY,
BENJAMIN B. WILEY.

SUPERIOR COURT OF CHICAGO,
MARCH T., A. D. 1862.

Now came the said defendants, by Barker & Tuley, and move the court for a new trial upon the following grounds:

1st. The court erred in its instructions given to the jury upon the part of the plaintiff.

2d. The court erred in refusing the instructions asked by the defendants.

3d. The court admitted improper testimony to go to the jury upon part of the plaintiff.

4th. The court erred in excluding proper testimony offered by the defendants.

5th. The verdiet of the jury is against the law.

6th. The verdict of the jury is against the evidence.

7th. The court erred in admitting evidence of the usage of the Ohio Life Insurance and Trust Company, and other usage and custom to go to the jury, and erred in not excluding the same from the jury, upon defendants' motion.

8th. The verdict should have been for the *defendants* upon the law and the evidence.

9th. For other good and sufficient reasons.

BARKER & TULEY,
Attorneys for Defendants.

162 And afterwards, on the day of October, A. D. 1862, the said court having heard the arguments of counsel upon the said motion for a new trial, did overrule the same, and rendered judgment upon said motion—ver-

dict for the sum of $1.276 70, and the costs of said suit to be taxed, to which decision of the court, in overruling said motion for a new trial, and rendering judgment upon said verdict, the defendants then and there excepted.

And because none of the said exceptions so offered and made to the opinion and decision of the judges of the said Superior Court of Chicago, do appear upon the record of the said trial, therefore, on the prayer of the defendants, by their counsel, the said judge hath to this Bill of Exceptions set seal, in accordance to the statute in such case provided, this, the 15th day of January, A. D. 1863.

GRANT GOODRICH, { L. S. }

Judge of the Superior Court of Chicago.

163 STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

I, THOMAS B. CARTER, Clerk of the Superior Court of Chicago, within and for the County and State aforesaid, do hereby certify that the foregoing is a full, true and complete transcript of all the pleadings on file, all orders of court and judgments entered of record in said court, together with the bond and bill of exceptions on file in my office, in a certain case wherein John B. King is plaintiff, and Daniel O. Strong, Christopher V. Wiley, and Benjamin B. Wiley, are defendants.

{ SEAL }

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Chicago, in said County, this fourteenth day of March, A. D. 1863.

THOMAS B. CARTER, *Clerk.*

David & Mor
et al
Vs
John B King
Abstract

Filed Apl 23. 1803
E Selman
Clk

No. 1

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Fifth day of October in the year of our Lord One Thousand Eight Hundred and Sixty two and of the Independence of the United States of America the Eighty Seventh

Present, The Honorable John M Wilson Chief Justice of the Superior Court of Chicago.

Van H Higgins } Judges.
Grant Goodrich }

Joseph Kirk Prosecuting Attorney.

Anthony Hesing Sheriff of Cook County.

Attest, Thomas D Carter Clerk.

Be it remembered that heretofore to wit on the Twenty third day of March in the Year of our Lord One Thousand Eight Hundred and Sixty two the Plaintiff herein by Waite and Towne his attorneys, filed in the office of the Clerk of the Superior Court of Chicago his certain declaration in words and figures following to wit

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Superior Court of Chicago,
of the April Term A.D. 1860.

State of Illinois }
County of Cook } ss.

John B. King Plaintiff in this suit by Shumway Waite & Towne Attorneys complains of David D. Strong, Christopher P. Wiley and Benjamin B. Wiley partners in trade under the name and style of Strong & Wiley Brothers defendants who have been summoned &c of a plea of Trespass on the case on promises. For that whereas the said defendants then being partners in trade by the firm name and style of Strong & Wiley Brothers heretofore to wit; on the nineteenth day of August, in the year of our Lord One Thousand eight Hundred & fifty seven at Chicago Ill. To wit at said County of Cook made their Bill of Exchange in writing, and directed the same to the Ohio Life Insurance and Trust company by the name and style of the Ohio Life Ins and Trust Co. New York, and thereby required the said Ohio Life Insurance and Trust Company to pay to Messrs Williams & Bro. or order One Thousand Dollars on demand value received and the said Williams & Bro. by the name and style of Williams and Brother, then and there endorsed the said bill in writing to R. K. Swift Brother & Johnston who then and there en-

closed the same to the plaintiff by the name and style of John B. King and the said Ohio Life Insurance and Trust Company did not pay the same although the same was then and there presented for payment to said Ohio Life Insurance and Trust Company on the day the same became due and payable of all which the defendants had then and there due notice, to wit; at Cook County aforesaid.

And also for that whereas the defendants by their firm name and style of Strong & Wiley Bros the said defendants then and there being partners in trade under the name and style of Strong & Wiley Brothers heretofore to wit, on the nineteenth day of August in the year of our Lord One thousand eight hundred & fifty seven at Chicago Ill. to wit at Cook County aforesaid made their certain draft in writing, commonly called a bill of exchange and directed the same to the Ohio Life Insurance and Trust Company New York by the name and style of the Ohio Life Ins and Trust Co. New York and required the said Ohio Life Insurance and Trust Company to pay to the order of Wm Williams & Bro One Thousand Dollars after the sight thereof for value received and the said Williams & Bro. by the name & style of Williams and Brother then and there endorsed said bill of exchange in writing to the order of R. K. Swift Brother & Johnston and the said R. K. Swift Brother & Johnston under the

name and style of R. K. Swift Bro & Johnston then and there endorsed the same in writing to the order of the plaintiff by the name and style of John B. King and said draft was then and there presented to the Ohio Life Insurance and Trust company for payment and the said Ohio Life Insurance and Trust Company then and there refused to pay the same, of all which the said defendants had then and there due notice.

And also for that whereas the defendants by their firm name and style of Strong & Wiley Bros. the said defendants then and there being partners in trade under the name and style of Strong and Wiley Brothers heretofore to wit on the nineteenth day of August in the year of our Lord eighteen hundred & fifty seven at Chicago Ill. to wit. at Cook County aforesaid made their certain draft in writing commonly called a bill of exchange and directed the same to the Ohio Life Insurance & Trust Company New York, by the name and style of Ohio Life Ins and Trust Co. New York, thereby required the said Ohio Life Insurance and Trust company to pay to the order of Thos. Williams & Bro. One thousand dollars after the sight thereof, for value received, and the said Williams & Bro. by the name & style of Williams & Brother, then and there endorsed said Bill of Exchange in writing to the order of R. K. Swift Brother & Johnston. and the said R. K. Swift Brother & John-

stow under the name & style of R. K. Swift Bro & Johnston then & there endorsed the same in writing to the order of the plaintiff, by the name & style of John B. King, and said draft was then and there presented to the Ohio Life Insurance & Trust Company for payment, and the said Ohio Life Insurance & Trust company then & there refused to pay the same and the defendants aforesaids to wit: on the first day of September in the year of our Lord Eighteen Hundred & fifty seven. to wit at Chicago, Cook County aforesaid in consideration of the premises, promised to pay said sum of money in said bill of exchange mentioned, yet although often requested so to do have not paid the same or any part of the same. to wit at Cook County aforesaid.

And also for that whereas the defendants by their firm name and style of Strong & Wiley Bros (the said defendants then and there being partners in trade under the name & style of Strong & Wiley Brothers) heretofore to wit on the nineteenth day of August in the year of our Lord Eighteen hundred & fifty seven at Chicago Ill to wit; at Cook County aforesaid made their certain draft in writing commonly called a bill of exchange and directed the same to the Ohio Life Insurance & Trust Company New York, by the name & style of the Ohio Life Ins & Trust Co. New York. and required the said Ohio Life Insurance and

Trust Company to pay to the order of Mess Williams & Bro. One thousand dollars after the sight thereof for value received and the said Williams & Bro by the name & style of Williams & Brothers then and there endorsed said bill of exchange in writing to the order of R. K. Swift Brother & Johnston and the said R.K. Swift Brother & Johnston under the name & style of R. K. Swift Bro & Johnston then and there endorsed the same in writing to the plaintiff by the name & style of John B. King (and said draft was then and there presented to the Ohio Life Insurance & Trust Company for payment - Ohio Life Insurance & Trust Company then and there refused to pay the same) and the plaintiff avers and says that afterwards to wit on the first day of September in the year of our Lord One Thousand Eight hundred & fifty seven the said defendants waived demand for payment of said draft and notice of its nonpayment, to wit at Cook County aforesaid.

And also for that whereas the defendants, by their firm name & style of Strong & Wiley Bros. (said defendants then and there being partners in trade under the name & style of Strong & Wiley Brothers hereafore to wit, on the nineteenth day of August in the year of our Lord Eighteen hundred & fifty seven at Chicago Ill. to wit at Cook County aforesaid, made their certain draft in writing commonly

called a bill of exchange and directed the same to the Ohio Life Insurance & Trust Company New York by the name and style of Ohio Life Ins & Trust Co New York and required the said Ohio Life Insurance & Trust Company to pay to the order of Messrs Williams & Bro. One thousand dollars, upon the sight thereof for value received and the said Williams & Bro. by the name & style of Williams & Brother then and there endorsed said bill of exchange in writing to the order of R. K. Swift Brother & Johnston and the said R. K. Swift Brother & Johnston under the name and style of R. K. Swift Bro & Johnston then and there endorsed the same in writing to the order of the plaintiff by the name and style of John B. King and the defendants aftorwards to wit on the first day of September in the year of our Lord Eighteen hundred & fifty seven to wit; at Chicago Ill; to wit at Cook County aforesaid in consideration of the premises promised to pay said sum of money in said bill of exchange mentioned yet although often requested so to do has not paid the same or any part of the same, to wit; at Cook County aforesaid.

And also for that whereas the defendants by their firm name and style of Strong & Abbey Bros the said defendants then and there being partners in trade under the name and style of Strong

& Wiley Brothers, heretofore to wit, on the nineteenth day of August in the year of our Lord eighteen hundred and fifty seven at Chicago. Ill to wit at Cook County aforesaid made their certain draft in writing, commonly called a bill of exchange and directed the same to the Ohio Life Insurance & Trust Company New York, by the name and style of Ohio Life Ins & Trust Co. New York and required the said Ohio Life Insurance and Trust company to pay to the order of Messrs Williams & Bro. One thousand dollars after the eight thereof for value received, and the said Williams & Bro, by the name & style of Williams & Brother, there and there endorsed said bill of exchange in writing to the order of R. K. Swift Brother & Johnston and the said R. K. Swift Brother & Johnston under the name & style of R. K. Swift Bro. & Johnston there and there endorsed the same in writing to the plaintiff by the name & style of John B. King and the plaintiff avers and says that afterwards to wit on the first day of September, in the year of our Lord Eighteen hundred & fifty seven the said defendants waived demand for payment of said draft and notice of its non payment, to wit at Cook County aforesaid.

And also for that whereas the defendants by their firm name and style of King & Wiley Bros the said defendants then and there being partners

in trade under the name and style of Strong & Wiley Brothers heretofore to wit on the nineteenth day of August in the year of our Lord Eighteen hundred & fifty seven at Chicago Ill to wit at Cook County aforesaid made their certain draft in writing commonly called a bill of exchange and directed the same to the Ohio Life Insurance and Trust company New York by the name & style of the Ohio Life Ins and Trust Co. New York. and required the said Ohio Life Insurance & Trust Company to pay to the order of Mess. Williams & Bro One Thousand Dollars after the sight thereof for value received. The said Williams & Bro by the name & style of Williams & Brother then and there endorsed said bill of exchange in writing to the order of B K. Swift Britton and Johnston and the said B. K. Swift Britton & Johnston under the name and style of B. K. Swift Bro & Johnston there & there endorsed the same in writing to the order of the plaintiff by the name and style of John B. King and said draft was then and there presented to the Ohio Life Insurance and Trust Company for payment and the said Ohio Life Insurance and Trust Company then and there refused to pay the same of all which the said defendants had then and there due notice and the plaintiff further avers and says that

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the said bill of exchange was drawn by the defendants who then and there were persons residing in the State of Illinois and was drawn at Chicago in said State of Illinois upon the Ohio Life Insurance and Trust Company a body corporate out of the State of Illinois and doing business in the State of New York and within the United States and was for the payment of money and expressed to be for value received; and was duly presented for payment and duly protested for non payment and the defendants being drawers as aforesaid had due notice of such non payment and by means whereof and according to the statute of the State of Illinois in such cases made & provided, the Plaintiff is entitled to have and claim of the defendants five per centum damages upon said bill of exchange which amounts to a large sum of money to wit fifty dollars. By means whereof and by force of the statute in such case made and provided the said defendants became liable to pay said Plaintiff said sum of money mentioned in said Bill of exchange or draft together with said damages as aforesaid and being so liable, in consideration thereof then and there undertook and promised to pay the said Plaintiff the same according to the tenor and effect of said Bill of exchange or draft, and of the endorsement aforesaid the statute in such cases made & provided. To wit at the place aforesaid.

And whereas also the said Defendants afterwards to wit on the first day of January in the year of our Lord one thousand eight hundred and sixty to wit at said County became and was indebted unto the Plaintiff in a large sum of money to wit Two thousand dollars for money before that time lent and advanced to said Defendants by said Plaintiff at said Defendants request; and also in the like sum for money before that time paid, laid out, and expended for said Defendants by the said Plaintiff, at the like special request of said Defendants; and in the like sum for money before that time had and received by said Defendants to and for the use of said Plaintiff; and also in the like sum for goods wares and merchandise, before that time sold and delivered by said Plaintiff to said Defendants, at the like special instance and request; and also in the like sum for the labor care and diligence of said Plaintiff before that time done and performed by said Plaintiff for said Defendants; and at the like special instance and request of said Defendants and also in the like sum, then and there found to be due and owing to said Plaintiff on an account stated between them; and being so indebted said Defendants in consideration thereof then and there undertook, and promised to pay said Plaintiff said several sums of money in this declaration mentioned, when thereunto afterwards requested.

Yet the said Defendants, not regarding their

said promises and undertakings, but, contriving &c. although often requested so to do, have not paid said Plaintiff either of said sums of money in this declaration mentioned, or any part thereof, but so to do have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said Plaintiff of Two Thousand Dollars, and therefore he brings this suit &c

Shumway, Waite & Lowe.

Plaintiffs Attorneys.

Copy of Instrument and account sued on. $1000. Strong and Wiley Brothers.

Bankers.

Chicago Ill. Aug 19. 1857.

Pay to the order of Messrs. Williams & Bro, One Thousand Dollars. Value received and charge the same to No 1253 - account of Strong & Wiley Bros -

To the Ohio Life Ins & Trust Co
New York

(endorsed)

Pay R. K. Swift Brother & Johnston or order
Williams & Brother

Pay John B King or order without recourse on us
R. K. Swift Bro. & Johnston

Strong & Wiley Brothers.

To John B. King Dr.

To money lent and advanced	$2000
To money paid, laid out and expended.	$2000
To money had and received to and for the use of said Plaintiff	$2000
To goods, wares and merchandise sold and delivered.	$2000
To labor and services.	$2000
To balance due our account stated.	$2000

And afterwards to wit on the Fourth day of April in the Year aforesaid the defendants in this Cause by Bartlett & Talcy their Attorneys filed herein their Cetain affidavit in words and figures following to wit

State of Illinois }
County of Cook } ss

In Superior Court of Chicago
April Term A D 1860

John B King
vs
David Strong, Christopher V Wiley & Benjamin B Wiley

Christopher V Wiley being duly Sworn upon oath deposes and says that he is one of the defendants to the above entitled Suit and that they the said defendants have a good defence to the Same upon the merits

C V Wiley

Sworn & Subscribed to before me this 4th day of April A D 1860

Joseph N Bartlett
Notary Public

And afterwards to wit on the fifth day of April in the Year aforesaid the said defendants by Bartlett & Talcy their Attorneys filed their Cetain Plea & Notice in words and figures following to wit:—

David O Strong, Christopher V Wiley, & Benjamin B Wiley
vs
John B King

Superior Court of Chicago
April Term
A D 1860

And the said defendants David O Strong, Christopher V Wiley and Benjamin B Wiley by Parker & Paley their attorneys come and defend the wrong and injury when &c and say that they did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against them, or any of them the said defendants by themselves

Parker & Paley
Defts attys

John B King
vs
David O Strong
Christopher V Wiley
Benjamin B Wiley

Superior Court of Chicago
April Term A D 1860

John B King or his attorney will take notice that we shall on the trial of the above entitled cause prove and insist that the draft said above mentioned by the drawers to Swift Ransom & Co the holders thereof, and that said drawers then and there cancelled the same and changed the amount of said draft to the defendants

Parker & Paley Defts Attys

John B. King

vs Assumpsit-

David A Stacy
Christopher W Wiley
and Benjamin B Wiley

This cause being this day again regularly called for trial comes said Plaintiff by Waite and Towne his Attorneys and said defendants by Banks & Tuley their Attorneys also come and issues being joined herein it is ordered that a jury come

Whereupon come the jury of good and lawful men to wit, C. R. Ball, William Bandle, William Resnick, H. Ewe. Thos. Cook, Joseph Bissell Jr Wilder, A. M. Campbell, William Buttitte, Thomas Pringle Pat. McGuiston and John Miller

31 who being duly elected tried and sworn to try the issue joined herein as aforesaid after hearing part of the testimony and the hour of adjournment having arrived it is ordered upon agreement of the parties that the jury separate and meet the Court to morrow morning.

And afterwards to wit on the Thirteenth day of November in the year aforesaid. Said day being one of the days of the November Term of said Court the following Among other proceedings was had in said Court and entered of record to wit;—

John B. King

vs. Assumpsit.

David O. Strong
Christopher V Wiley
and Benjamin B. Wiley.

This day comes the said plaintiff by Shumway Waite and Towne, his attorneys and the said defendants by Barker and Tuley their attorneys also come, and issues being joined herein it is ordered that a Jury come Whereupon comes the jury of good and lawful men to wit; D. L. Lewis, S. S. Welton, Henry Colp, Geo. H. Germain, Jas Malcolm, Robert Scott, Mathew Reeby, E Alexander, L. Burley G. W. Barnard, W. Veits and George Lawson who being duly elected tried and sworn to try the issues joined as aforesaid and the hour of adjournment having arrived it is ordered upon agreement that the Jury separate and meet Court to morrow morning.

And afterwards to wit on the Fourteenth day of November in the year aforesaid said day being one of the days of the November Term of said Court the following among other proceedings was had in said Court and entered of record to wit; —

John B. King
vs Assumpsit.
David C. Strong
Christopher V. Wiley
and Benjamin B. Wiley

And now again comes the parties to this cause by their Attorneys as aforesaid and the jury empanelled herein on yesterday for the trial of this cause also come and after hearing evidence argurments of Counsel and the instructions of the Court, the cause is submitted and the hour of adjournment having arrived, upon agreement it is — ordered that the Jury separate until tomorrow morning and meet the Court again on coming in and opening thereof,

And afterwards to wit on the Fifteenth day of November in the year aforesaid said day being one of the days of the November Term of said Court the following among

other proceedings was had in said Court and entered of Record to wit;—

John B. King

vs Assumpsit

David O Strong
Christopher V. Wiley
and Benjamin B. Wiley

And now again comes the parties to this cause and the Jury empanelled herein on day before yesterday for the trial of this cause also come and the cause having been submitted the Jury retire to consider of their verdict and the hour of adjournment having arrived it is ordered upon agreement of the parties that when the Jury shall have agreed upon a verdict they shall reduce the same to writing sign and seal the same and afterwards separate and meet the Court again on coming in and opening thereof to morrow morning.

And afterwards to wit on the Sixteenth day of November in the year aforesaid, said day being one of the days of the November Term of said Court the following Among other proceedings was had in said Court and entered of

record to wit;——

John B. King

vs. Assumpsit

David O Strong

Christopher V. Wiley

and Benjamin B. Wiley

And now again comes the parties to this cause and the jury empanelled herein for the trial of this cause as on yesterday also come and say the Jury cannot agree upon a verdict herein. Whereupon by consent of parties it is ordered that the Jury be discharged.

And afterwards to wit on the Nineteenth day of February in the year of our Lord one thousand eight hundred and sixty one Said day being one of the days of the February Term of said Court the — following Among other proceedings was had in said Court and entered of record to wit; —

John B. King

vs Assumpsit

David O. Strong
Christopher V. Wiley
and Benjamin B. Wiley.

This day comes the said plaintiff by Waite and Soone his Attorneys and the said defendants by Barker and Tuley their Attorneys also come and issues being — joined herein it is ordered that a Jury come, Whereupon comes the Jury of good and lawful men to wit, John A Oliver, Jacob Portman, Joseph Holmes, Lewis Weeks C. D. Miller, Jno. Mc Knight, Wm J. Rupell, Wm Arbuckle, Geo F Kidder, S. M Rosetter, A G. Jurey, and Philip Dean, Who being duly elected tried and sworn to try the issues joined as aforesaid after hearing part of the testimony and the hour of

adjournment having arrived it is ordered upon agreement of the parties that the Jury separate and meet the Court tomorrow morning on coming in thereof,

And afterwards to wit on the Twentieth day of February in the year aforesaid said day being one of the days of the February Term of said Court the following among other proceedings was had in said Court and entered of record to wit;—

John B. King
vs
David A. Strong
Christopher V. Wiley
and Benjamin B. Wiley.
Assumpsit

And now again comes the parties to this cause and the Jury empaddled herein on yesterday for the trial of said cause also come and after hearing further testimony and the hour of adjournment having arrived it is ordered upon agreement of the parties that the jury separate and meet the Court tomorrow morning.

And afterwards to wit on the Twenty first day of February in the year aforesaid

said day being one of the days of the February Term of said Court the following among other proceedings was had in said Court and entered of record to wit; —

John B King
vs
David O. Strong
Christopher V^t Wiley
and Benjamin B. Wiley.

Assumpsit

And now again comes the said plaintiff by Waite and Towne his Attorneys and the said defendants by Barker and Tuley their Attorneys also come and the Jury empanelled herein for the trial of this cause and as on yesterday also come and having heard all the testimony arguments of Counsel and instructions of the Court retire to consider of their Verdict and the hour of Adjournment having arrived it is ordered upon agreement of the parties that when the jury shall have agreed upon a verdict they shall reduce the same to writing sign and seal the same and afterwards separate and meet the Court on coming in and opening thereof to morrow morning.

And afterwards to wit on the Twentysecon day of February in the year aforesaid said day being one of the days of the February Term of said Court the following among other proceedings was had in said Court and entered of record to wit; —

John B. King

vs A[ssumpsit]

David O. Strong
Christopher V. Wiley
and Benjamin B. Wiley

And now again comes the said plaintiff by Waite and Towne his Attorneys and the said defendants by Barker and Tuley their Attorneys also come and the Jury empanelled herein for the trial of the said cause also come as on yesterday and say we the Jury do not agree upon a verdict herein and thereupon it is ordered that the jury be discharged.

And afterwards to wit on the Fifth day of July in the year aforesaid Said day being one of the days of the July Term of said Court the following Among other proceedings was had in said Court and entered of record to wit; —

John B. King

vs Assumpsit

David O Strong

Christopher V. Wiley

and Benjamin B Wiley

This day comes the said plaintiff by Waite and Towne his Attorneys and the said defendants by Barker and Tuley their attorneys also come and the said defendants thereupon challenge the array of Jurors sommoned for this week on the ground that the Jury were improperly summoned and moves the Court to quash the Venise because it was improperly ijsued and the Court being fully advised in the premises sustains the defendants said motion to quash the Venise ijsued for Petit Jurors to serve during the present week of this term and it is ordered that the Jury summoned thereon be discharged

And afterwards to wit on the Tenth day of October in the year aforesaid said day being one of the days of the October Term of said Court the following Among other proceedings was had in said Court and entered of record to wit; =

John B. King
vs Assumpsit
David O. Strong
Christopher C. Wiley
and Benjamin B. Wiley

This day again comes the said plaintiff by Waite and Towne his Attorneys and the said defendants by Barker and Tiley and Arrington and Dent their Attorneys also come and issues being joined herein it is ordered that a jury come whereupon come the jury of good and lawful men to wit; Geo: W. Todd, J. C. Riley, E. Nolan, Jas Young, Lemuel Clark, Edwd Vousden, R. D. Chapman, Geo W. Gage, Leonard Lamperts, Christ Shell, Nicholas Burdell, and John Corbridge, who being duly elected tried and sworn to try the issues joined as aforesaid afterwards the hour of adjournment having arrived it is ordered that the jury separate by agreement of the parties and meet the Court tomorrow morning,

And afterwards to wit on the eleventh day of October in the year aforesaid said day being one of the days of the October Term of said Court the following among other proceedings was had in said Court and entered of record to wit;—

John B. King
vs Assumpsit.
David O Strong
Christopher V. Wiley
and Benjamin B. Wiley

This day again comes the said plaintiff by Waite and Towne his attorneys and the said defendants by Barker and Tuley and Arrington and Dent their Attorneys also come and the jury empanelled herein on yesterday for the trial of the said cause also come and after hearing testimony and the hour of adjournment having arrived it is ordered upon agreement of the parties that the jury separate and meet the Court to-morrow morning on coming in and opening thereof.

And afterwards to wit on the Twelfth day of October in the year aforesaid said day being one of the days of the October Term

of said Court the following Among other proceedings was had in said Court and entered of record to wit; ——

John B. King

vs A[ssumpsit].

David A. Strong
Christopher V. Wiley
and Benjamin B. Wiley

This day again comes the said plaintiff by Waite and Towne his Attorneys and the said defendants by Barker and Tuley and Arrington and Dent their Attorneys also come and the jury heretofore empanelled herein, for the trial of said cause also come and as on yesterday and after hearing arguments of Counsel and instructions of the Court retire to consider of their verdict, and the hour of adjournment having arrived it is ordered upon agreement of the parties that when the jury shall have agreed upon a verdict they shall reduce the same to writing sign and seal the same and afterwards separate and be discharged,

And afterwards to wit on the Fourteenth day of October in the year aforesaid said day being one of the days of the October Term of said Court the following among other proceedings was had in said Court and entered of record to wit; —

John B. King

vs Assumpsit

David O Strong
Christopher V Wiley
and Benjamin B Wiley

This day again comes the said plaintiff by Waite and Towne his Attorneys and the said defendants by Barker and Tuley and Arrington and Dent their Attorneys also come and the jury empanelled herein for the trial of said cause having submitted their verdict and say We the jury find issues for the said defendants. And thereupon the said Plaintiff submits his motion herein for a new trial in the said cause.

And afterwards to wit on the Seventeenth day of March in the year of our Lord one thousand eight hundred and sixty two Said day being one of the days of the March Term of said Court the following Among other proceedings was had in said Court and entered of record to wit:-

John B. King

vs Assumpsit

David C Strong
Christopher C Wiley
and Benjamin B. Wiley.

And now at this day, again comes said plaintiff by Waite and Towne his Attorneys and said defendants by Barker and Tuley and Dent their attorneys also come and this cause coming on, now to be heard upon plaintiffs motion heretofore submitted herein at the October Term last past of this Court for a new trial in said cause and Counsel being heard upon said motion and the Court being fully advised in the premises is of the opinion that the motion for a new trial should be sustained and it is ordered that said plaintiff be allowed a new trial in said cause upon payment by him of all the costs made

during the term of the Court, at which said cause was tried and verdict rendered against said plaintiff,

And afterwards to wit, on the Twenty fifth day of March in the year aforesaid said day being one of the days of the March Term of said Court the following among other proceedings was had in said Court and entered of record to wit; =

John B King
vs A pumpsit.
David O Strong
Christopher V. Wiley
and Benjamin B. Wiley.

This cause being this day again regularly called for trial comes said plaintiff by Waite and Towne his attorneys and said defendants by Barker and Tuley their Attorneys also come and issues being joined herein it is ordered that a jury come Whereupon come the jury of good and lawful men to wit; C. R. Ball, William Baudle, William Mesrick, H. Ese, Thos Cook, Joseph Bespell, Jo. Wilder, H. M. Campbell William Burtlett Thomas Pringle, Pat McGuison and John Miller who being

duly elected tried and sworn to try the issue joined herein as aforesaid after hearing part of the testimony and the hour of adjournment having arrived it is ordered upon agreement of the parties that the jury separate and meet the Court tomorrow morning.

And afterwards to wit, on the Twentysixth day of March in the year aforesaid said day being one of the days of the March Term of said Court the following among other proceedings was had in said Court and entered of record to wit; =

John B. King
vs Assumpsit.
David C Strong
Christopher W. Wiley
and Benjamin B. Wiley

And now at this day again comes the parties to this cause by their Attorneys as on yesterday and the jury empanelled herein on yesterday for the trial of said cause also come and after hearing further part of the testimony and the hour of adjournment having arrived it is ordered upon agreement of the parties

that the jury separate and meet the Court tomorrow morning,

And afterwards to wit on the Twenty seventh day of March in the year aforesaid Said day being one of the days of the March Term of said Court the following Among other proceedings was had in said Court and entered of record to wit; ——

John B. King
vs . Assumpsit
David O Strong
Christopher W Wilky
and Benjamin B. Wiley

And now at this day again comes the parties to this cause by their Attorneys as on yesterday and the jury empanelled herein for the trial of said cause as on yesterday also come and after hearing further part of the testimony and the hour of adjournment having arrived it is ordered upon agreement of the parties that the jury separate and meet the Court tomorrow morning.

And afterwards to wit on the Twenty-Eighth day of March in the year

aforesaid Said day being one of the days of the March Term of said Court the following Among other proceedings was had in said Court and entered of record to wit;

John B King

vs Assumpsit

David C Strong
Christopher V Wiley
and Benjamin B. Wiley

This day again comes the parties to the cause by their Attorneys as on yesterday and the jury empanelled herein for the trial of said cause as on yesterday also come and after hearing all the testimony argusments of Counsel and instructions of the Court retire to consider of their verdict and the hours of adjournment having arrived it is ordered upon agreement of the parties that when the jury shall have agreed upon a verdict they shall reduce the same to writing sign and seal the same and afterwards separate and meet the Court to morrow morning on coming in and opening thereof.

And afterwards to wit on the Twenty ninth day of March in the year aforesaid said day being one of the days of the March Term of said Court the following among other proceedings was had in said Court and entered of record to wit;

John B. King
vs
David C Strong
Christopher W Wiley
and Benyamin B. Wiley

Assumpsit

This day again comes the parties to this cause by their Attorneys as aforesaid and the jury empanelled herein for the trial of said cause also come and submit their verdict and say We the jury find issues for the said plaintiff and assess his damages herein against all of said defendants to the sum of one thousand two hundred and seventy six dollars and fifty cents.

And thereupon said defendants submits their motion herein for a new trial in said cause.

And afterwards to wit on the Twentyfifth day of October in the year aforesaid said day being one of the days of the October Term of said Court the following Among other proceedings was had in said Court and entered of record to wit; =

John B King
vs Assumpsit
David C Strong
Christopher W Wiley
and Benyamin B. Wiley

And now at this day again comes said plaintiff by Waite and Towne his Attorneys and said defendants by Barker and Caley their Attorneys also come and this cause coming on now to be heard upon the motion of the said defendants heretofore submitted herein at the March Term A.D. 1862 of this Court for a new trial in said cause and counsel being heard therein and the Court being fully advised in the premises are of the opinion that the reasons filed by said defendants in support of their said motion are not sufficient it is therefore considered by the Court that the motion be and is hereby overruled and a new

trial refused to said defendants to which overruling of the Court said defendants then and there excepted, thereupon enter their exceptions herein to the ruling of the Court in overruling their said motion for a new trial in said cause. Wherefore said plaintiff ought to have judgement entered herein upon the verdict of the Jury for their damages rendered herein aforsaid.

Therefore it is considered that said plaintiff do have and recover of and from said defendants his damages of One thousand two hundred and Seventy Six dollars and fifty cents in form aforesaid by the Jury here found and assessed and also his costs and charges in this behalf expended and have execution therefore, And thereupon said defendants having entered their exceptions pray an appeal herein to the Supreme Court of this State from the judgement of this Court which is allowed to them upon filing bond in the penalty of Eighteen hundred dollars with security to be approved by One of the Judges of this Court bond and bill of exceptions to be filed within thirty days from this day.

And afterwards Dcit at the Tenty fourth day of November in the Year aforesaid. the defendants herein filed in the office of the Clerk of the Superior Court of Chicago their Certain Appeal Bond which is in words and figures following Dcit:

Know all Men by these Presents. That we David C Strong. Christopher V Wiley & Benjamin B Wiley. and John N Staples & Andrew J Galloway of the County of Cook and State of Illinois are held and firmly bound unto John B King also of the same County and State in the penal sum of Eighteen Hundred Dollars lawful money of the United States. for the payment of which. well and truly to be made. we bind ourselves. our heirs executors and administrators. jointly severally and firmly by these presents.

Witness our hands and Seals. this Twentieth day of November A D 1862.

The Condition of the above Obligation is such That whereas. the said John B King did on the Twenty fifth day of October A D 1862 in the Superior Court of Chicago. in and for the County of Cook. and State aforesaid. and of the October Term thereof. A D 1862 recover a judgment against the above bounden David C Strong. Christopher V Wiley and Benjamin B Wiley for the sum of Tenhn. Hundred and Seventy Six dollars and fifty Cents. besides Costs of Suit: from which said judgment

of the Said Superior Court of Chicago. the Said David O Strong. Christopher Wiley & Benjamin B Wiley have prayed for. And obtained an appeal to the Supreme Court of Said State

Now therefore. if the Said David O Strong, Christopher Wiley & Benjamin B Wiley Shall duly prosecute their Said Appeal with effect, And moreover. Pay the Amount of the judgment. Costs. interest And damages rendered And to be rendered. Against them in Case the Said judgment Shall be affirmed in Said Supreme Court. then the above obligations to be void. otherwise to remain in full force and Virtue

David O Strong Seal
by Joseph H Bartlett his atty in fact
Christopher Wiley Seal
B B Wiley Seal
John H Stapleton Seal
A J Galloway Seal

Taken and entered into before me. at my office in Chicago. this day of A D 186

Clerk

And afterwards to wit on the Twenty fourth day of November in the Year aforesaid, Said day being one of the days of the November Term of Said Court the following Among other proceedings was had in Said Court and ordered of record to wit

John B King

vs. Motion in Arrest

David C Strong
Christopher V Riley
and Benjamin D Riley

This day again Come Said Plaintiff by Waite and Tom his Attorneys and Said defendants by Barker and Talby their Attorneys also Come and on motion of Said defendants and by agreement of parties made herein in open Court it is ordered that time for Said defendants to file their bill of exceptions herein be and is hereby extended thirty days further And thereupon Come Said defendants and file their appeal bond herein with John S Staples and A J Galloway as Sureties which bond is approved by the Court

And afterwards to wit on the Twenty second day of December in the Year aforesaid Said day being one of the days of the December Term of Said Court the following Among other proceedings was had in Said Court and ordered of record to wit

John B King
vs
David A Strong, Christopher P Riley
and Benjamin P Riley

Assumpsit

And now again Comes said Plaintiff by Waite & Towne his attorneys, and said Defendants by Barker & Daley their attorneys also Come and by agreement of parties as shown by Stipulation filed and on motion said defendants attorneys it is ordered that time for said defendant to file their Bill of Exceptions herein be: and the Same is hereby extended twenty days from this day

And afterwards to wit on the Tenth day of January in the Year of our Lord one Thousand eight hundred and Sixty three. Said day being one of the days of the January Term of said Court the parties hereto by their attorneys filed in the office of the Clerk of said Court a certain Stipulation in words and figures following to wit

Superior Court of Chicago

John B King
vs
David A Strong
Christopher P Riley
Benjamin P Riley

It is Stipulated that the time to file the Bill of Exceptions in the Cause be

extended Twenty days from this date 16th January
A D 1863

Parker & Farley for Defts
A D Waite for Plaintiffs

And afterwards to wit on the Fifteenth day of January
A D Eighteen Hundred and Fifty three the defendants
herein by Parker & Farley their attorneys filed in the
office of the Clerk aforesaid their Certain Bill of Exceptions
in words and figures following to wit

Bill Exceptions

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Superior Court of Chicago

John B King
vs
David A Strong et al

Bill of Exceptions

Afterwards to wit on the day and year and place within mentioned before the Hon Grant Goodrich one of the Judges of the said Court Comes the said John B King by Waite & Town and Sidney Smith his attorneys and the said defendants David A Strong Christopher V Wiley & Benjamin F Wiley by Parker & Tuley and A D Arrington their attorneys and the jurors of the jury in said cause impanneled & sworn made being called to return came and after being elected & tryed the several issues upon them found — the said plaintiff to sustain the issues upon their part offered in evidence a draft & the endorsement thereon of which the following is a true Copy

Strong and Wiley Brothers
Bankers

$1000 | Chicago Ill Aug 19 185[illegible]

Pay to the order of Mess Williams & Bro
One thousand dollars

Value received and charge the same to account of
To the Ohio Life Ins & Trust Co
New York

Strong & Wiley Bro

No 1253

Upon the back of which draft was written and stamped as follows

Exhibit A

Pay R. H. Swift Bro & Co Same
order William J Burtus

Pay Swift Bro & Co
or order Pay Geo W King
without recourse
R. H. Swift Bro & Co Agent

Received Payment
Swift Bro & Co

Thereupon the defendants objected to the reading of the said draft in evidence until the words "Received payment" which had been erased by drawing lines over them and the Words Cut or marks Cut through the body of the said draft had been explained.
Which objection the Court sustained, And thereupon the plaintiff to sustain the issues upon his part offered & had in evidence the deposition of Walter Edwards which deposition is in the words and figures following to wit

Interrogatory First.
What is your name, age, occupation and place of residence?
Ans My name is Walter Edwards My age fifty eight years my occupation a lawyer and my place of residence the City of New York

Interrogatory Second
Do you know the parties plaintiff and defendants

in the Captions & thro interrogatories mentioned or either and which of them and how long have You known them respectively

Ans I do not Know the said parties or either of them

Interrogatory Third

State whether or not You were a Notary Public at any time. if so where?

And I was a Notary Public of the State of New York during the whole of the Year 1857

Interrogatory Fourth

As such Notary Public did You protest a draft or bill of exchange like the following?

Note

String & Wiley Brothers Bankers

Chicago Ill Augt 19. 1857

Pay to the order of Messrs Williams Brothers

One thousand dollars

To the Sun Life Ins & Trust Co New York

String & Wiley Brothers

No 1253 Endorsed

Pay R K Swift Brothers & Johnston or order

Williams & Brothers

Pay John B King or order without recourse on us

R K Swift Bro & Johnston,

if so where and at whose request, and did You ever send notice to any one. if so to whom and when?

Ans As such Notary Public I protested a draft or Bill of Exchange like the one herein described; on the 24th day of August 1857 at the request of Messrs Swift Ransom & Co of New York, The said draft is hereto annexed marked

Exhibit A. my Certificate of said protest with a Copy of the draft as protested endorsed thereon & also hereto annexed marked Exhibit B. On the same 24th day of August 1857 I sent notice of such protest by mail addressed to "String & Wiley Boston," "Williams & Boston" and "R K Swift Boston & Johnston" and directed them respectively at Chicago Illinois, & prepaid the postage on each of said notices

Interrogatory Fifth

If you say you sent notice by mail, when did you place the same in the Post office; State whether it was in season for that days mail for Chicago

Ans Such notices were deposited in the Post office in New York on the said 24th day of August 1857 but whether in season for that days mail for Chicago or not I am not positive

Interrogatory Sixth

What day of the week was it when you placed the notice in the Post Office

Ans It was Monday

Interrogatory Seventh

Do you know of any other matter or thing of importance to the plaintiffs; if so State the same fully and at large

Ans I do not

Cross interrogatories and Answers thereto by the Witness on the part of the defendant

Cross Interrogatory First

If you Answer the fourth direct interrogatory

by stating that you did protest the draft described in said interrogatory please state to me when and how you received the said draft?

Ans I received it from the hands of the Cashier or a clerk of the Ohio Life Ins & Trust Co. or from the hands of one of the firm of Swift Ransom & Co in the office of said Company I am not certain which

Cross Interrogatory Second

State whether the draft you protested was not made payable to Williams & Bro and by them endorsed to Swift Borthwick & Johnston & by them endorsed to Swift Ransom & Co in N.Y and whether the words "Received payment Swift Ransom & Co" were not on said draft

Ans The draft I protested was made payable to Williams & Bro and purported to be endorsed by them in blank; and subsequently endorsed by R.K Swift Bro & Johnston & Swift Ransom & Co; The words Rec'd payt Swift Ransom & Co" were on said draft when I protested it

Cross Interrogatory Third

State whether you did not find said draft in the hands of some one in charge of the Ohio Life Insurance & Trust Company's affairs and in its office

Ans I did

Cross Interrogatory Fourth:

State what day of the month and of the week you first saw said draft

Ans On Monday the 24th day of August 1857

Cross Interrogatory Fifth

State whether the paper you protested was not a Copy of said draft, and not the draft itself

Ans The paper I protested was not a Copy of said draft, but the draft itself

Cross Interrogatory Sixth

State to what you appended your Certificate to the day you protested said draft whether it was the original or to a Copy

Ans To which my Certificate was appended to a Copy of said draft; I am not positive that it was appended to any paper; the draft was Copied on the back of my Certificate as is shown by Exhibit B hereto annexed.

Cross Interrogatory Seventh

If you State in Answer to any of the direct interrogatories, that you had the original draft in your hands please state where you were when you had it, who was present and what became of the original when it passed out of your hands

Ans I was at the office of the Ohio Life Insurance & Trust in New York; in the time of Short Banen & Co and the Cashier or a Clerk of said Company was present, after I had presented said draft for payment, it passed out of my hands to the said Cashier or Clerk, according to the best of my recollection; —

Cross Interrogatory Eighth

Did not said draft pass from you hands back again into the hands of some one in charge of the books and papers of the Ohio Life Insurance & Trust Company

Ans It did according to the best of my recollections

Cross Interrogatory Sixth

Did you not the day of the date of your protest go away from the office of the Ohio Life Insurance & Trust Company leaving in said office the said draft

Ans I did

Cross Interrogatory Tenth

To whom did you deliver your Certificate of protest

Ans To one of the firm of Swift Ransom & Co

Cross Interrogatory Eleventh

At whose request did you go to make said protest and who went with you?

Ans At the request of Swift Ransom & Co & I think one of said firm went with me

Cross Interrogatory Twelfth

Have annexed a Copy of the Certificate of protest of said draft together with the endorsements as they appeared upon said draft the day you made your Certificate

Ans Any said Certificate is here to annexed marked "Exhibit "B". the Copy draft endorsed thereon shows the endorsements as they appeared upon said draft at the time of such protest

Cross Interrogatory Thirteenth

Was there any on said draft any endorsement from any person or firm to John B King the plaintiff in this suit

Ans There was not

Walter Edwards

Walter Edwards Jr of the City County & State of New York

a Commissioner duly appointed to take the deposition of the said Walter Edwards a witness whose name is subscribed to the foregoing deposition duly Cautioned that previous to the Commencement of the examination of the said Walter Edwards as a witness in the suit between the said John B King plaintiff and the said David A Stong, Benjamin B Wiley & Christopher D Wiley defendants, he was duly sworn by me as such Commissioner to testify the truth in relation to the matters in Controversy between the said John B King plaintiff and the said David A Stong Benjamin B Wiley & Christopher D Wiley defendants so far as he should be interrogated Concerning the same; that the said deposition was taken at my office in the City County & State of New York on the 22d day of October A D 1860 and that after said deposition was taken by me as aforesaid the interrogatories and answers thereto as written down were read over to the said Witness and that thereupon the same was signed and sworn to by the said deponent before me the oath being administered by me as such Commissioner at the place and on the day and time last aforesaid

Walter Edwards Jr

Commissioner

The plaintiff for this Cause then offered in evidence the deposition of John Horner which was in the words and figures as follows to wit

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Interrogatory First. What is your name, age, occupation and place of residence?

Answer to first interrogatory - My name is John Horner; my age thirty seven years; my occupation, a clerk, and my place of residence, the city of New York.

Interrogatory Second - Do you know the parties, plaintiff and defendants, in the caption to these interrogatories mentioned or either and which of them, and how long have you known them respectively?

Answer to the Second Interrogatory - I am not personally acquainted with either of the parties named -

Interrogatory Third - What, if any thing, had you to do in the summer or fall of 1857, with the Telegraph office in the City of New York, and what have you now to do with the same. and if you say you were in 1857, in the Telegraph office, how long have you been so employed - and what have you to do with the papers in said office, and what telegraph office was it?

Answer to the third Interrogatory - I was an employee in the office, in New York City, of the New York, Albany and Buffalo Telegraph Company, in the year 1857. I accounted to the Treasurer of that Company for all the receipts of the New York office at that time and still hold the same position. I have been in the same business for thirteen years last past. I had charge of what are call the "Receiving Department;" receiving messages from the public, crediting the amounts paid for their

transmission to the Company, and immediately passing them into the hands of the operators.

Interrogatory Fourth. If a telegraph was sent from New York to Chicago, at any time in the year 185[illegible], on what line would it pass, and do you have charge -

Answer to the fourth Interrogatory. It would pass over the line of the New York, Albany and Buffalo Telegraph Company and it would necessarily be received in their office in New York, where I am employed.

Interrogatory Fifth. Please examine for and attach to your answer all telegraph communications sent from Swift Ranson & Co of New York to Swift Bro & Johnston, Chicago Illinois, during the month of August A.D. 185[illegible]. Please attach to your answer all communications left by Swift Ranson & Co or any one for them. To be telegraphed through to Swift, Johnston & Co Chicago Illinois, during said month?

Answer to the Fifth Interrogatory. We do not preserve the copies over about one year, but destroy them to make place for others.

Interrogatory Sixth - If you say you cannot produce the same, why not? Will you please make diligent and careful search for the same, and give in the result of such search if you cannot produce the original, give copies of the same, if you have any copies.

Answer to the sixth Interrogatory. Because we dont keep them so long. We cannot give copies, when the originals are destroyed. I have no copies.

Interrogatory Seventh. Do you know any matter or thing of importance to the Plaintiff – if so State the same fully and at large.

Answer. To the Seventh Interrogatory – Nothing whatever.

Jno. Horner.

The Plaintiff further to sustain the issues upon his part offered in evidence the deposition of P. S. Johnston. To the reading of which deposition in evidence defendants objected upon the ground that the same showed the witness to be interested in the event of the Suit which objection the Court then and there overruled and defendants excepted and thereupon the said deposition was read to the jury and was in the words & figures as follows to wit

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Deposition of James S Johnston of the City of Chicago in the County of Cook and State of Illinois a witness produced sworn & examined before Benj F. Millard a Justice of the Peace in and for said County of Cook on the Fourteenth day of April 1861 at the Office of the said Benj F. Millard in the City of Chicago in said County pursuant to the notice hereto annexed in a cause depending in the Superior Court of Chicago wherein John B King is plaintiff and David O Strong Et-al. defendants: That the parties to said suit appeared before said Justice of the Peace april 12th 1861 & that the examination of said witness was postponed by consent of said parties to the 14th day of April at 10 o'clock A.M. when said examination was commenced & continued from day to day until completed.

James S Johnson A witness of lawful age being duly sworn deposes & says

1st Interrogatory Please state your name age and residence?

Answer. My name is James S Johnston

my age is thirty three years, my residence is Chicago Illinois,

2d " Interogatory

Please state whether or not you intend leaving the State of Illinois if so, when you intend leaving, where you design going, and how long you intend being absent from the State?

Answer. I do intend leaving the State of Illinois within ten days for California. I cannot say how long I shall remain there.

3d " Int.

Please state whether you are acquainted with the parties to this suit

Answer — I am.

3 1/2 Interogatory

Who in the summer and fall of 1857 and prior thereto composed the firm of R. K. Swift Brother & Johnston?

Answer — Richard K. Swift Lyman P. Swift & myself

4th " Int.

Who at the last named date composed the firm of Strong & Wiley Brothers?

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Answer. David O Strong & C. V. Riley. & I think B. B. Riley. whether there were any other members I cannot say.

5th " Int.

Please examine the draft of Strong & Riley Brothers constituting a portion of the deposition of Walter Edwards in this cause, dated Chicago Illinois August 19th " 1857 payable to the order of Messrs Williams & Brothers for one thousand dollars drawn on the Ohio Life Insurance & Trust Company New York number 1253. and state when if ever you first saw said draft under what circumstances and what you know in reference to the same and all the particulars relating to said draft fully minutely and in detail (Question objected to) Answer I first saw said draft about the 19th of August 1857 when our firm remitted it to Swift Ransom & Co. New York for our credit the draft being indorsed to them in my hand writing on the 24th or 25th of August 1857 being Monday

on Tuesday of the week we recieved a dispatch from Swift Ransom & Company stating that the Ohio Life Insurance & Trust Company had failed and that the draft in question was unpaid. Immediately on receipt of the dispatch I went over to Strong & Riley's office which was right across the Street with the dispatch in my hand told them that the Trust Company had failed, that their draft was unpaid and that on its return we would look to them for payment. Subsequently we recieved advise from New York that Swift Ransom & Company had taken a check from the Trust Company on their Bankers for the amount of said draft which check was thrown out at the Clearing House; whereupon Swift Ransom & Company went to the Trust Company to get back the draft; but the office of the Trust Company being in charge of the Sheriff they were unable to do so; of this fact Mr Strong & My self had several conversations subsequent to this date and prior to the 25th of September. Mr Strong came over to our office, came up stairs to the room in which I was & told me that if we would get

5th page

their draft back from New York they would pay us the amount. I was busy at the time and made a memorandum to write to New York for the draft. Before I wrote for the draft Swift Ransom & Co sent it to us in their letter dated Sept. 22. 1857. which letter is attached to the deposition of Lyman P Swift in this cause. On receipt of the draft I went over to the Office of Strong & Miles Brothers for the payment of it. which payment Mr Strong then refused. On Mr Strong refusing to pay the draft. I inquired through our office to find who had written requesting the return of the draft. when Mr R. K. Swift told me he had done so at the request of Mr Strong. Mr Strong having stated to him that if the draft was got back they would pay it

Defendants Counsel objects to so much of the foregoing answer as relates to the contents of the despatch- as relates to advices from New York that Swift Ransom & Co had taken a check for draft- that the check had been thrown out of the Clearing House that Swift Ransom & Co. then went to the Trust Co. to get back the draft, the Office

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of the Trust Co. being in the hands of the Sheriff & that they are unable to do so - to so much as relates to Mr Strong Witness having had several conversations as to that fact. - to so much as relates to contents of memorandum in regard to writing for the draft, and to so much of said answer as relates to the act of witness in inquiring through their office to find out who had written requesting the return of the draft and to so much as relates to what R. K. Swift told witness - to so much as relates to statement of R. K. Swift as to what Mrs Strong had stated to R. K. Swift.

6th Int

Please state what has become of the telegraphic despatch & memorandum refered to in your last answer

Answer So far as I know the telegraphic despatch has been lost and the memorandum has long since been destroyed as waste paper as there was no more use for it when the draft had been returned

(Objected to so far as the answer relates to the memorandum)

7th page "

7th " Int,

State whether any examination or search has ever made for the telegraphic despatch: If so when, by whom, when was the search made and what was the result of the search?

(Question objected to by defendants Counsel)

Answer Diligent search has been made through all the papers of R. K. Swift Brother & Johnston, by myself by our Clerk Geo A Vorlner & by Mr King the plaintiff prior to the first trial of this cause, the despatch could not be found.

8th " Int,

State if you please what if any thing was said to the defendants or either of them when you first notified them of the non-payment of the draft in reference to who if any body was to be looked too for the payment of the draft

(Objected to by defendants Counsel)

Answer As I have stated in 5th " interogatory, I stated that we would look to them for payment

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9th Int. What if any letter or letters were recieved by R. K. Swift & Brother & Johnstone in reference to this draft. Give the date at which the letter was written and of the receipt thereof & who pose & produce the same if you can

(Objected to by dependants Counsel)

Answer The recieved a letter from Swift Ransom & Co. dated August 24th 1857. about the 27th of August 1857. which stated that the Ohio Life & Trust Company had closed, that they Swift Ransom & Co held the Trust Companys check, which letter I now produce, attached to my deposition & marked as exhibit A" which letter is in the hand writing of Charles H Ransom who held a power of Attorney from said Swift Ransom & Co.

Adjourned by consent to April 15th at 1 o,clock P M

April 15th examination resumed

10th Int. State if you please in what capacity if any said Charles H Ransom refered to in your last answer acted at the time said letter last refered to by you was written?

Answer He was chief Clerk of the firm

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of Swift Ranson & Co. of which firm I was a member.

11th " Int, State whether as such chief Clerk he conducted the correspondence of said Swift Ranson & Co, at the time said letter was dated.

Answer He did the principal part of the correspondence of the firm

12th " Int, State whether or not after the reciept of said letter of Swift Ranson & Co. last referred to you exhibited said letter to said defendants or either of them, if so what was said by you and them or either of them in regard to said letter if any thing, or if any thing was said in regard to said draft or said check referred to in said letter. State fully and particularly

(Int. objected to by defendants Counsel) (also objected to as leading)

Answer I think I did not exhibit the letter to them. Mr Strong & I had conversations in regard to the check having been drawn for the draft in question & he claimed that their firm was released on the draft by Swift Ranson & Co. taking the check of the Trust company on their Bank

13th " Int, State what if any subsequent conversation you had with said defendants or either of them respecting said draft, or the payment of the same

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(Question objected to by defendants Counsel as leading)

Answer As stated in answer to a former interrogatory subsequently to the conversations last named Mr Strong came into our office up stairs and told me that if we would get the draft in question back from New York they would pay it to us

(Answer objected to)

14th Int, State whether or not after said last conversation the firm of Swift Brothers & Johnston got said draft back from the Trust Company

(Objected to by defendants Counsel as leading)

Answer They did

15th Int, State what if any thing was done by Swift Brothers & Johnston after said last named conversation respecting said draft

Answer After the conversation in which Mr Strong claimed that they were released on the draft by the taking of the check and after the subsequent conversation in which Mr Strong offered to pay the draft if it got back from New York the draft came back & was by me presented to Mr Strong for payment & payment was refused. R. K. Swift wrote to New York for the draft. under date of Sept. 17th 1857 and recieved the draft from Swift Ranson & Co in their letter of Sept. 22d 1857 in answer to said

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letter of R. K. Swift, said letters are marked exhibits "D" & "C" and attached to the deposition of Lyman P Swift

(Answer objected to. so much of it as is not responsive & Counsel for defendant objects further to the letters mentioned in answer having been given to the witness to look at while answering the last question

16th Int, State what was done by Swift Benson & Co. with the Trust Company in order to get the up draft from the Trust Company

(Question objected to by defendants Counsel)

Answer They gave up the Check of the Trust Company

(Answer objected to)

17th Int, State if you please what conversation or conversations, if any, you at any time during the year 1857, had with said defendants or either of them respecting said draft, and its non-payment or respecting any agreement, if any, by said defendant or either of them touching or respecting the draft, or its payment? State fully & in detail if any thing, which was said touching those points.

(Objected to by defendants Counsel as leading & as assuming the existence of an agreement)

Answer On Monday or Tuesday the 2 of the

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or 25th of August 1857 I told Mr Strong that the Trust Company had failed, that we held their draft, the one in question, that it was unpaid and that we would look to them for payment on its return from New York. The draft did not come back in the usual course, and subsequently about the latter end of august we received a letter from Swift Remson & Co. stating that they had taken the Trust Company's check for the draft, and they couldnt get the draft back. Subsequently I had conversations with Mr Strong in which he claimed that Swift Remson & Co. having taken the Trust Companys check, they Strong & Wiley Brothers are exonerated on the draft. Subsequently to this date & prior to the 29th of September Mr Strong came over to our Banking Office, came up stairs to the room in which I was and said to me that if we would get back the draft from New York they would pay it. I made a memorandum to write for the draft, but before writing the draft came back from Swift Remson & Co. in their letter letter dated Sept. 22. 1857 marked exhibit "C" & attached to the deposition of Lyman D Swift. On the return of the draft I presented it to Mr Strong for payment according to his offer & agreement but he then declined to take it

Dependents Counsel objects to so much of the

answer as relates to the letter of Swift Ransom & Co. first mentioned in answer; to so much as states the contents of said letter; to so much as relates to the conversation with Strong in regard to getting the letter back; to so much as relates to the letter attached to the deposition of Lyman P Swift)

18th Int. State if you please what if any conversation passed between you and the dependants or either of them prior to the conversation in which they agreed to pay the draft provided you would get it back from New York respecting the Life Insurance & Trust Co's check having been taken on presentation of the draft.

(Objected to generally; & especially as leading)

Answer We had more than one con= =versation in which Mr Strong said that Swift Ransom & Co. having taken the Ohio Life & Trust Co's check for the draft, they Strong & Riley Brothers, were cleared on the draft.

19th Int. State what if any thing you know as to who or what Banking Institution or Company in New York city the dependants kept their deposits with in 1854 and drew upon.

(Question objected to by dependants Counsel)

Answer They kept an account &

14th page

drew drafts on the Ohio Life Insurance & Trust Company New York. In the months of August & September 1857, And I do not know that they kept an account with any other House in New York city

20th Int. State if you please what if any paper either of said defendants had in their hand or exhibited at the time of their promise to pay the draft in case you would have it returned from New York

(Question objected to as leading)

Answer Mr Strong had a paper in his hand but what it was I cannot say.

21st Int, What if any thing was said by Mr Strong in regard to having recently heard from the Ohio Life Insurance & Trust Company at the time he read said paper

(Objected to by defendants Counsel as leading)

Answer I cannot recollect

22d Int, State if you please what if any interest you or the firm of Swift Brother & Johnston have in the event of this suit

Answer Neither the firm of R. K. Swift Brother & Johnston or myself, one of the members of the firm have any interest whatever, either directly or indirectly in the event of this suit.

Cross Examined by defendants Counsel

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1st Cogs Int. How long have you known the plaintiff in this suit (objected to
Answer about six years.
(Objected to)

2d Cogs Int. For how long & up to what date was he in the employ of Swift Brother & Johnston
(Objected to) Answer I think he commenced March 18th 1856 & left on the 18th of December 1857 (Objected to)

3d Cogs Int. In what employment or capacity was said King (objected to)
Answer As Clerk in our commission department (Objected to)

4th Cogs Int. Is the plaintiff any relative of yours by marriage or otherwise (Objected to)
Answer. He is not (objected to)

5th Cogs Int. When did the firm R. K. Swift Bro. & Johnston fail in business & when was that firm dissolved (Objected to)
Answer The last day we kept open for business was the 29th day of September 1857: the firm was dissolved about the beginning of the year 1858 (Objected to)

6th Cogs Int. By whom was the business of that firm settled (objected to)
Answer By R. K. Swift and myself But principally By myself (Objected to)

7th Cogs Int. In whose possession was the draft

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in question until the latter end of January 1860. (Objected to).

Answer In the possession of R. K. Swift & myself (Objected to)

8th Cross Int. When was it transfered to the plaintiff & for what consideration if any?

(Objected to)

Answer It was transfered to John B. King the latter end of January 1860, he having sold it with several other notes, drafts & judgments amount = ing in all to about $6900,00 in consideration for an account against Samuel H Turrill & Thomas M Eynon, of about $5500.00 which account was secured as the pledge of a thousand shares of stock in the Garden City Mining company. (Objected to)

9th Cross Int. Why was not the draft in question sued in the name of Swift Brother & Johnstone?

(Objected to)

We havent sued a single individual since our suspension and prefered settling or compromise in all instances to suit; and since January 1860. we havent owned it or had any interest it (Objected to)

10th Cross Int. Did not Swift Brothers & Johnstone or some one of them have the dependents or some one of them, watched, in order to sue the draft in the State of Ohio (Objected to)

Answer No. never there or anywhere else.
(Objected to)

11th Cross Int. Before the transfer of the draft to Mr King did he not know that your firm had been appointed that if the draft was sued in this state in your own name, you could not recover because being plaintiff you could not give testimony in the case (Objected to)

Answer I believe he did know that while we owned it if sued in our name our testimony could not be taken (Objected to)

12th Cross Int. Before the draft was transfered was it not talked over between you and Mr King that by transfering the draft to him you and Mr Swift could be witnesses and he thus recover
(Objected to)
and state what conversation you and Mr King had in any upon that subject. (Objected to)

Answer Mr King & I had a conversation to that effect that if we made a bona fide sale of the draft in question to any party he having no interest whatever in it that we could testify in the matter in case suit was commenced on it.
(Objected to)

13th Cross Int. Of the claims transfered by Mr King to you at the time the draft was transfered was there not a claim upon which it was necessary or by you and him supposed to be necessary to have

Mr King as a witneys in order to recover upon such claim & if so which claim was it (Objected to)
Answer The only claim transfered to us by Mr King was the account before named against Tunill & Eagen which account if brought to trial the testimony of Mr King would be required in order to recover the entire amount, but I saw Mr Tunill & settled the claim with him by taking the stock (Counsel for deft. desires it to be noted the latter part of answer was volenteered by witneys against the wish of Counsel) (Witneys desires to say that the latter part of the answer is necessary to set him right in regard to the former part. the whole together being the answer to the question) (Objected to)

14th Cqs Int Previous to the trade spoken of had it not been talked over between Mr King & yourself. that by transfering the Tunill & Eagan claim to you he could become a witneys if necessary (Objected to)
Answer It had been talked over that in order to collect the full amount of the claim or account it would be necessary to have his testimony (Objected to.)

15th Cqs Int. Previous to the transfer had it not been talked over between King & yourself that by transfering the Tunill & Eagan claim to you that claim could be collected in full by

~~Objected~~
19th

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making him a witness (Objected to)
answer It had been talked over between
Mr King & myself that if he sold and trans-
-fered the claim or account named to any party
so that he had no interest whatever in it, he could
be a witness & the account could be collected
(Objected to)

16th Int (Crys) Please answer the last interrogatory
yes or no. (Objected to)
Answer I have answered the question as near
as I can recollect the conversation (Objected to)

17th Crys Int. Will you answer the 15th Interrogatory
yes or no (Objected to)
I have given the only
answer I have to give (Objected to)

18th Crys Int. State what was talked over or said
between Mr King & yourself previous to the
transfer or trade in regard to Mr King being
a witness in the Trunill & Eagan claim
(Objected to)
Answer It was talked over between Mr King
& myself that if he sold to me for, his claim
against Trunill & Eagan to any party the
whole amount of said claim could be collected
on his testimony (Objected to)

19th Crys Int. × What if any thing was said in the
conversation you have last referred to in relation
to the collection & transfer of the draft in

~~25th~~
20th

question (Objected to)
Answer Nothing (Objected to)

20th Cross Int. Did Mr King at the time of the trade or previous thereto know the advice given to you by Mr Merritt your attorney that if another person owned the draft and sued it you & Mr Swift could be witnesses (Objected to)
Answer I believe he did

21st Cross Int. Were there not conversations to that effect between you & Mr King or between you & other persons in his presence previous to the trade spoken of (Objected to).
Answer Yes. there were

22d Cross Int. To whom were the effects of Swift Brother & Johnstone assigned and when did John B King become the assignee of Swift & Johnston (Objected to)
Answer The effects of R. K. Swift Brother & Johnston were assigned to myself. (R. K. Swift &) & on the 2d day of October 1860 John B. King became our assignee for the benefit of our creditors.

23d Cross Int. How much search have you made for the telegraphic despatch referred to.
Answer I have searched through all the dispatches that are filed which were received from Swift Ronson & Co.

24th Cross Int. Was there any thing more in that despatch than a notification that the draft was unpaid.

was unpaid

Answer nothing that I recollect except the fact that Ohio Life & Trust Company had failed

25th Cogs Int. Did you have that despatch in your hand when you went over to Stong & Riley's Bank to notify them of the non-payment of the draft

Answer I did

26th Cogs Int. After notifying them of that fact, where did you go. after you left dependents Bank

Answer I went to the other Banks & Bankers to notify them of the failure of the Trust company

27th Cogs Int. How many other Banks & Bankers did you go to to notify them

Answer I believe I went to all the other principal Banks & Bankers I cannot particularise

28th Cogs Int. Did you go to as many as six Banks & Bankers

Answer I think I did

29th Cogs Int. Can you recollect the name of any Bank or Banker or of any officer of any Bank whom you at that time notified of the failure of the Ohio Life Insurance & Trust Company

Answer I cannot now particularise any one of them but intended to & believe I notified them all

30th Cogs Int. Do you recollect the name of any Banker

or of any officer of any Bank to whom you gave such notice at that time

Answer I notified David A Strong as I knew their firm kept an account with the Trust Company & he held a draft of theirs on the Trust Company & I did not know of any other House which kept an account with the Trust Company

31st Crys Int. Do you recollect the name of any other than Mr Strong

Answer I have only the same answer that I gave in answer to the 29th Interrogatory to give

32d Crys Int. Please answer the last interrogatory yes or no.

Answer I have answered in the 29th in the only manner in which I can

33d Crys Int. When you went to those other Banks & Bankers as stated did you take your despatch with you

Answer I did. I kept the despatch until I got back to our own office

34th Crys Int. Was not that despatch in Cypher

Answer partly in Cypher & partly in ordinary words

35th Crys Int. When you went over with the despatch to the Bank of Strong & Riley Brothers who did you notify of the non-payment of the draft & when did you notify him

Answer David O Strong in their own Banking office

36th Cqs Int. Have you any more reason now to know that David O Strong was the one you notified than you had to know that fact on the two previous trials of this cause — if so what reason

Answer I have no particular reason except my recollection

37th Cqs Int. Did you not testify in the last trial of this cause in the Superior Court of Chicago that you did not know which one of the defendants you notified at the time that you went over with the despatch in your hand

Answer I did not change my mind & do not recollect what my testimony was. I have only tried to recollect the facts of the case as well as I could

38th Cqs Int. Please answer the last question yes or no

Answer I have answered that in the last answer

39th Cqs Int. Did you not testify in the first trial of this cause in the Superior Court of Chicago that you did not know or recollect which one of the defendants it was you notified at the time referred to

Answer I have no recollection of what my answer was at the time referred to, not having

charged my mind with the subject
Adjourned by consent to April 16th at
2 o.c. P.M.

April 16th P.M. Examination resumed

40th Cays Int. What portion of the dispatch you have
referred to was in Cypher?
Answer The amount of the draft and
the statement of the failure of the Trust Com=
=pany. The name of the Trust Company & the
names of the Drawees being in words

41st Cays Int. What time of day was it you received
this despatch
Answer Either in the afternoon of the
Monday or forenoon of Tuesday

42d Cays Int. Upon receiving the despatch did you
proceed immediately to notify the dependants
Answer Within a very short time

43d Cays Int. What do you mean by a very short time
Answer Within an hour at farthest

44th Cays Int. Did you go to notify dependants in
Bank business hours
Answer I could not now say

45th Cays Int. Was the dependents Bank open for
business when you notified him
Answer It was open when I went in whether
=er for business or not I cannot say

46th Cays Int. Were the other Banks & Banking offices
open for Business at the time when you went

to notify them 44

Answer I do not now recollect

47th Cross Int. State if you know how long since the defendant Strong retired from the firm of Strong & Riley Brothers

Answer I do not know

48th Cross Int. Do you not know that he retired from the firm before the commencement of this suit

Answer I do not

49th Cross Int. How long since you knew of his having retired from the firm

Answer Several months, but I could not come any where near the date because I had no occasion to fix it on my mind

50th Cross Int. State as near as you can the date of the first conversation you had with Strong in relation to the draft

Answer The first was about the 24th or 25th of August which was the time when I notified them of the non-payment of the draft

51st Cross Int. Was that in the Bank of Strong & Riley Brothers

Answer It was

52d Cross Int. Was the door of the Bank at which you went in open at the time you entered

Answer I cannot now state whether the door was standing open or whether I opened it

53d Cross Int. Was it locked or fastened

Answer I do not recollect

54th Cross Int. Was Mr Strong in the inside or on the out side of the counter at the time you notified him

Answer I cannot recollect positively; my impressions are that he was behind the counter

55th Cross Int, Who else was present at that conversation

Answer I cannot now recollect

56th Cross Int, Was that conversation in daylight or after dark

Answer During daylight

57th Cross Int, Do you swear positively that you used the words "that the Trust company had failed that their draft was unpaid and that on its return we would look to them for payment" at the time you notified Mr Strong as testified by you

Answer I will not swear that they were the exact words but I will swear that they are the substance of what I said

58th Cross Int, Did you not swear on the first trial of this case in the Superior Court of Chicago that you said on the occasion referred to "that if the draft came back we will present it to you for payment."

Answer I do not recollect the exact words of my testimony at either of the former trials, I then testified according to my then recollection of the facts as I do now

59th Cross Int. Did you on the occasion referred to use the

words "he will present it to you for payment" or did you use the words "he will look to you for payment"

Answer I do not now recollect, but as a Banker I would consider both sentences Synonymous.

60th Cross Int, You may have used the words "he will present it to you for payment" then.

Answer I may have done so

61st Cross Int, When did you first see the letter marked exhibit "A" in your deposition dated 24th of August 1857

Answer About the 27th of the same month

62d Cross Int, What makes you recollect the receipt of this letter now,

Answer Seeing the letter itself and the matter it contains

63d Cross Int, Did you know of the existence of this letter at either of the other trials of this cause

Answer I had forgotten it I did not recollect it until before the taking of this deposition when it was shown to me & recollected itself to my mind

64th Cross Int, Who showed the letter & When & where

Answer It was produced by the plaintiffs Counsel in the office of the Justice taking the deposition

65th Cross Int, Did you not see the letter since the last trial & before the taking of your deposition in this office

Answer No; I haven't seen a single paper connected with this suit from the time when I gave

my evidence at the last trial of this suit until I commenced my deposition at this office

66th Cross Int. What is the account attached to the letter marked Exhibit A.? Did it come with the letter

Answer It is an account of drafts & received by Swift Ransom & Co to our credit & came at the same time as the letter but whether in the same envelope as the letter I cannot now state

67th Cross Int. Do you know any thing of what Mr Strong told Mr Swift except by hearing the same from Mr Swift

Answer I do not

68th Cross Int. You state in your examination in chief that you had advices from New York in reg and to this draft - have not all such advices and all information as to what had been done with draft in New York, & in relation to the draft in writing

Answer I had part of it by letter & part of it personally from Lyman P Swift X

69th Cross Int. When & where & who was present at the second conversation which you had with Mr Strong

Answer It was on or after the 27th of August 1857 & in our own office I cant specify who was present

70th Cross Int. How long after the 27th of August of it was not on the 27th

Answer I cannot say positively but believe within a day or two.

within a day or two

71st Cross Int. How do you know that R. K. Swift wrote for the draft under date of September 17th 1857 and did you see him do it

Answer First by his telling me he did so second by receiving Swift Benson Neo's letter acknowledging it and third by seeing the letter itself. I did not see him write it.

72d Cross Int. Have you any recollection independent of the letters of dates 17th & 22d of Sept 1857 and independent of what R. K Swift told you as to the date at which the draft was received back from New York

Answer I have, from the fact that the date of our suspension was September 29th 1857 and we had received the draft back before that

73d Cross Int. Can you state the name of any person who was present who heard any conversation which you had with Mr Strong in regard to the draft

Answer I cannot now specify

74th Cross Int. You state that you had some information personally from Lyman D. Swift. at what time did you have that information

Answer It was in the month of January 1858 when he was in this City at the time of the dissolution of the firm of R. K. Swift Brothers & Johnson

75th Cross Int. Did you have any personal communication with Lyman D Swift between the 15th of

August & the 1st of December 1859

Answer No.

76th Cwps Int. All that you know then in regard to a check being taken for the draft, previous to your suspension was by letters from New York House

Answer It was except by the conversation with Mr Strong when he claimed that his firm were released on the draft by Swift Benson & Co. having taken the check, which was previous to the last conversation in which he agreed to pay the draft in case he would get it back.

77th Cwps Int. How do you know that the dependants at that time kept an account with that Ohio Life Insurance & Trust Company

Answer From their telling me that they did both having and having seen their drafts on the Trust Company. and that the name of the Trust Company was printed or engraved on their blank drafts.

78th Cwps Int. When Mr Strong declined to pay the draft did he not say to you "you know very well the reason why I wont pay it" or words to that effect

Answer No. he did not

78th Cwps Int. State who was present at the time when he declined to pay it

Answer I cannot specify. I think one of the Wileys was there. but which I could not positively say

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80th Cays Int. State all that he said at the time he declined to pay it

Answer I cannot state the words, but the substance of what he said was that he denied ever offering or agreeing to pay it. I asked him in substance if he meant to say that he had not offered & agreed to take it up if we got it back, He said that he meant to say that he never offered or agreed to pay it, I then said that he did He asked me if I meant to say he lied, I told him that I meant to say that he agreed distinctly & offered of his own free will & accord that if we would get back the draft he would pay it - that if he didnt intend to pay it now to say so & not to deny agreeing to do so He said whether he had or had not so agreed, he wouldnt pay it

81st Cays Int, About what time was the firm of Swift Ransom & Co. dissolved

Answer The latter part of the year 1860 according to my recollection

82d Cays Int, Was there not a contest or dispute between Swift Brother & Johnston or Swift & Johnston who succeeded Swift Brother & Johnston, and Swift Ransom & Co, of New York as to whether the firm of Swift Brother & Johnston should or should not have credit on the account with Swift Ransom & Co for the draft in question

Answer No-

83d Cays Int, was it settled between the New York House & the Chicago House previous to the transfer to King whether or not the New York House was not liable to

the Chicago House for the draft in question

Answer The question was never debated between us

84th Crys Int, Was there not some dispute or question between the two houses in regard to this draft after its return to Chicago If so what was it

Answer There was no dispute between us

85th Crys Int, Did you not refuse to consent to a dissolution of the firm of Swift Ransom & Co. until the question of liability upon this draft was determined

Answer The question of their liability on the draft in question was not raised between us

86th Crys Int, Did you not refuse to have any settlement of the account of the two firms in New York & Chicago in regard to this draft until it was decided whether or not the defendants were liable on it

Answer No, the question of the draft was never up between us

87th Crys Int, Please state all that you said a few moments ago in regard to the dissolution of Swift Ransom & Co & the draft in question which has not heretofore committed to writing

Answer I stated in conversation that I personally would not agree to the dissolution of the firm of Swift Ransom & Co while we owned or held the draft in question, for if Strong & Riley Brothers were not liable on the draft to us that Swift Ransom & Co. should be. The reason of my objections to the dissolution being that according to the terms of the dissolution

of Swift Ranson & Co, R. K. Swift & myself met to take all the assetts of Swift Ranson & Co, & assume all the liabilities of said firm, and the available assetts fell far short of the liabilities. The question of their liability on the draft being personal on my part & never having been discussed between the members of the two firms

Re examination by plaintiff

23d Int. (Direct) The defendants Counsel has finally asked you what you said a few moments ago while testifying and which forms no part of the deposition, in answer to which you have stated in your last answer certain considerations as to what influenced you at one time or times or other about dissolving the firm of Swift Ranson & Co. - now please state who owned the draft in question when that firm was dissolved

Answer John B King owned the draft in question

24th Int. State if you please who owned the draft about which there has been so much controversy now in suit, prior to February 1860

Answer Swift & Johnston as assignees of the assetts of R. K Swift Brother & Johnston

25th Int Who owned the draft on the 1st day of February 1860

Answer John B King

26th Int. You have stated that you were at the time of the sale of the draft to King by Swift Brother & Johnston a member of the firm of Swift Ranson & Co. Have you not

Answer I have

4th

27th Int, State if you please whether or not you personally & individually participated in advice recommended or made the sale of the draft by Swift Brother & Johnston to King (Objected to)

Answer I did - It was I myself that made the Sale

28th Int, Defendants Counsel on the cross examination have asked you as to whether Swift Brother & Johnston were advised to transfer the draft in order that a recovery might be had. Now please state all that Mr Waite or any other legal adviser at the time advised you in regard to the transfer of said draft in the same Connexion in reference to such transfer or rights remedies thereunder or thereby to be acquired (objected to)

Answer Mr Waite and also Judge Higgins before he was on the bench advised our firm that if we sold the draft in question to a bona fide purchaser so that we had no interest whatever in it such owner or holder could collect the same by suit in this State as we could not be witnesses under such circumstances they also advised us that if we should commence suit either in New York or Ohio in our own name we could recover the amount, as in those States we could be witnesses in our own case

Answer objected to by defendants Counsel and Examination closed

D S Johnston

State of Illinois }
Cook County } ss.

I Benj F. Millard a Justice of the Peace in and for said County do hereby certify that the foregoing deposition was taken by me at time & place mentioned in the caption thereof; that said witness was first by me duly sworn and that said deposition was carefully read to said Witness & subscribed by him; that both the parties to said suit appeared by their counsel by whose consent the examination was continued as stated in the caption of said deposition Dated this 16th day of April 1861

Justice fees $ 11.20 Benj F. Millard J P

Witness " 1.50

$ 12.70 Paid by Plaintiff J. P.

State of Illinois }
County of Cook } ss

John B King }
vs } Superior Court of Chicago
Daniel O Strong }

The defendants will take notice that on the 12th & 11th day of April A.D. 1861 between the hours of 8 A.M. & 8 P.M. the plaintiff will take the deposition of James L. Johnson at the office of Waite & Townsend in Chicago Cook County State

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of Illinois, said deposition to be taken before Benj F. Millard a Justice of the Peace within & for said County to be read on the trial of said case

Waite & Towne
Plaintiffs Attys

dated Chicago
March 29. 1861

appeared yesterday, adjd by consent

Service accepted this April 1st AD 1861

Barker & Sulley
Attys for Defts

B. E. after Johnston dep 1 2

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The plaintiff thereupon offered and read in evidence
[illegible] at the [illegible] to the
and protest, which protest reads
as follows.

"Exhibit B"
W E J.

United States of America
State of New York } ss
And County of New York }

On the twenty fourth day of August in the Year of our Lord One Thousand Eight hundred and fifty Seven. at the request of Messrs Swift Ransom & Co. of New York, I. Walter Edwards a Notary Public of the State of New York duly Commissioned and Sworn. did present the original Draft (a Copy or description whereof is on the other side written) at the place of business of the Drawees to their Clerk or Teller there in Charge and demanded payment of said draft, he replied that it could not be paid. and thus payment was refused Whereupon. I. the said Notary. at the request aforesaid. did Protest. and by these presents do Publicly and Solemnly Protest as well against the Drawers and Endorsers of the said draft as against all others. whom it doth or may Concern for exchange. re-exchange. and all Cost. Charges damages. and interest. already incurred. and hereafter to be incurred for want of payment of the said draft

Thus done and Protested at the City of New York aforesaid in the presence of John Doe and Richard Roe Witnesses

In Testimonium Veritatis Walter Edwards
Notary Public
No 61 Broadway

$1000.

Stong & Wiley Brothers.

Bankers Chicago Ill Aug 19 1857

Pay to the order of Chapin Williams & Brothers One Thousand Dollars Value received and Charge the Same to account of

Stong & Wiley Brothers

To
Ohio Life Ins & Trust Co
No 1253 New York

(Endorsed)
Williams & Brothers
Pay Swift Ramsey & Co or order
R R Swift Bro & Johnstone
Rec'd Pay't
Swift Ramsey & Co

Patent 95
Patents 9
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State of Illinois
County of Cook } ss

I Truman B Carter Clerk of the Superior Court of Chicago do hereby Certify that the foregoing is a true & Correct Copy of a Certain Patent marked "Exhibit B" referred to in the deposition of Walter Edwards taken in a Certain Cause wherein John B Ring was Plaintiff and David A Stong, Chauncey Wiley and Benjamin B Wiley were defendants

Certified under my hand and the Seal of said Court this 25th day of April A D 1863

Truman B Carter Clerk

objected to said Swift being sworn as the ground of interest which objection the Court overruled and defendants excepted, and said witness being sworn testified as follows." I was a member of firm of Swift Booth & Johnson in 1857 & while said firm existed also of Swift Rawson & Co of New York City, I have seen this draft (the witness being shown the draft sued upon) but cannot say certain, I think I have it in the office of Swift Bro & Johnston. I think on Mr Johnston handed it to me from a letter, I know the drawers of the draft all by sight, Witness was then shown a letter attached to Lyman B Swift deposition marked Exhibit "D" and dated Chicago 17 day of September A D 1857, I have seen this letter before, I wrote it the day it bears date say at about half past two o'clock upon my return to the office from dinner that day, I only refer to the letter to remember the date, On that day prior as I started for dinner I met Strong (defendant) on the sidewalk very near the corner of LaSalle & Randolph street and within 20 feet of my office, He stopped me and said If you will get that draft back I will

Cross Examined by Walker

I am not certain that I saw the draft before I wrote the letter, I am not certain that I saw it after I wrote the letter, I am not certain that I saw it at all, I am not certain that I saw it

pay it" referring to the draft in question. Dont remember he said the $1000 draft - this was the only draft we had drawn by them. I went to dinner and after my return wrote the letter as before stated and sent it to New York without mentioning to any one that I had so written.

At that time one Mr Johnson and R. C. Wright opened letters at our office. Some days after writing the letter one Mr Johnson came to me and showed me this draft and asked me how it happened to come back, and I told I wrote for it, and told him why - that Strong had agreed to pay it. Johnston at the time had a letter in his hand (a letter was since shown witness) Cant say if this letter was the one. this letter is in my brothers hand writing

I think Strong in our conversation said he would write to the Trust Company himself and tell them to hand over the draft to our house in New York. I wrote in my letter as near as I could what he told me

I Cant say as to time but about the time I wrote this letter I think I saw Johnson and Strong in Conversation at our office. I think but dont remember positively who I got it from - one of the parties about the conversation, that is one of defendants told me that a check had been taken and for that reason the defendants were discharged and that they were willing to leave it out to let them decide. This was before the new promise I

to

have a vague recollection of a Conversation between
me Mr Johnson and Strong, after defendants counsel
& Strong the drafts I went over to their office and asked
Strong what he backed out for and he said You know
the reason why, I told him I did not know why,
and then I left, Don't remember anything more said
at that time"

And upon Cross Examination said Witness testified
as follows

I have known him in this Case, don't remember
the dates - have known two or three times, I think it is
likely I testified on the first trial that I heard Mr
King read a paper which from the reading I supposed
was the original of Lyman & Smith deposition in this
Case, I don't now remember anything more than is
that deposition, I have not since that time read or
heard read any deposition in this Case, I have had
not much Conversation about this Case since last trial
I have no recollection of having testified on other trials
as to the date, I saw Strong & Wiley in their office
I know no reason why I remember a thing now, when
I did not remember it upon the other trials, my impression
is that upon one of the trials I testified that I went into
Wileys Bank, and saw Mr Strong in the office, I had
a letter with me of the Wileys, I think it was Ben, at
that time I saw Strong and he said I know why he did
not pay it, I did not say one of the Wileys was present but
I remember Ben and think the two there but Strong
& my Conversation was alone

As to the Conversation between Johnston and Strong I don't remember any thing definite. but think I heard Strong say he would pay. I think I was present when Johnson and the lawyer talked over the Collection of this draft and of our rights thereto

When Johnston asked me about the draft coming back he had a letter in his hand. Can't say that this letter now shown me is the same. the letter is in my writing handwriting

In the Conversation with Strong on the Sidewalk I think he said that he would write to the Trust Company himself telling them to hand over the draft if they had it. Said he would write to Trust Company about draft. I wrote in that letter just as he told me. I always write the truth

Can't say when but remember being I wrote that letter to New York house I saw Johnston & Strong talking together — they were talking rather Confidentially as it were. I Can't say whether I heard Strong say that he would pay it or whether I got it from Strong & Johnston or from Johnston afterwards. but my impression is that I overheard Strong say so in the Conversation with Johnson

In Wiley's office I understood from Strong, or one of the Wiley that a check had been stolen and that they willing to clear it out — whether they would able or not. The Chief Clerk — President & Secretary of Trust Company been spoken of — this was Saturday

B. E. after Johnson Dep

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Wilson Strong Jerrmiah & Jury &c

After the draft Came back & immediately went over and asked Strong what he backed out for. Strong let his foot down and said You Know — very Thank

The Conversation I had with one of the Wilsons was between the 2d day of August 1857 and the date that Strong met me in the Settlement

The only matter talked of between Johnston & myself in regard to the draft way my getting one & Lee the defendants this was some after the letter was written by me and previous to my writing that letter, I gave the matter very little attention

I am positive that Strong said if You will get the draft back I will pay it, I do not recollect the day of the month Some of the days or anything about the date except that it was between Aug 24th and Sept 1st 1857 that I saw Ben Wiley

I overheard a Conversation between King and Johnston in regard to this draft, and a claim against a Rail Road in Iowa & Something about Iowa Cotton Stock and a Claim against one Dickinson, Dickinson owned Some Mashing on Mississippi or Seven thousand dollars including this draft, Johnston to get the Cotton Stock and Some other things, I don't know all about the trade Johnston & King had figures made and were trading securities I said to them "if this trade is made it

must be bona fide. I don't know how they have trading, I think this trade in which King got this draft took place after February A.D 1858. it might have been in 1859

The firm of Swift Bro & Johnston Compound of myself, Lyman P Swift, and D S Johnston dissolved in 1858. Re assigned to John B King Plaintiff's in October 1860, I think the sale of draft to King might have been in the Spring of 1860

I did not know that we could not collect this draft unless, I believed that by the practice in New York we could collect it I thought both parties could be sworn here. I think I heard from Johnston that our Counsel said we could collect it, then afterwards one or both of our Counsel said if we lived in Cincinnati our evidence could be allowed, that both parties could be sworn, I think we had advice that amounted to this, that a third party holding the draft could testify

John B King was in our employ for one and a half or two years before he failed I have had a desk in our office a part of the time since

I do not know whether or not he knew of the advice given us by our Counsel, I think King may have heard Johnson and I talk it over

I gathered the impression that King could be a witness in the Olmsted Circuit, that he transferred to us

I gathered the Conclusion that the Copper Stock was worth the Money for which it was pledged, but that Egan who had pledged might if it raised in Value might Come and Claim the Stock and that he might have to get the Loan of $^{6}/_{10}$ Cent & that is that Case King Could be sworn

When the trade was made with King I did not hear a word said about subpoening witnesses upon the draft — After the trade & the Dickering was settled — I was about 12 feet from Johnson & King when the trade was made, & think King suspected that he Could be witness if a third party owned the draft

The firm of Swift & Johnson succeeded the firm of Swift Bro'ths & Johnson but only to close the business of the old firm, Swift & Johnston bought out the old firm of Swift Rowson & Co in the month of December 1857 & think

Re direct

When I said that Johnston & Strong talked Confidentially I meant Johnson & Strong Could talk agreeably together. After Strong & King refused to pay the draft they Went at Sam's front

The 4th Question to sustain the issues on his part Called John C Ambler who being first duly sworn testified, I know the parties & the Suit. I have resided in New York City from 1843 & 1856. In Oct 1856 I was Clerk with Underwood & Sheldon — this business

was very large. this Custom Correspondence being about $100,000 a day of Receipts and disbursements, he received large remittances from the West and paid this draft & Commercial New York & Chicago. I am now in Banking business here. I know the Life Insurance and Trust Company all the time that I was in Brooklyn they did a banking business such as Bridgmark & Sheldon receiving and paying drafts.

The Plaintiffs Counsel then asked the Witness what was the Custom of the said Trust Company in the payment of drafts like the one in Suit

To which question the defendants by their Counsel objected upon the ground that the same was immaterial and not pertinent to the issue which objection the Court overruled and permitted the question to be asked & the witness Answered

The Trust Company kept their bank Account with the Bank of Commerce & the American Exchange Bank. the Trust Company kept no funds at their office - Messrs Bridgmark & Sheldon had Checks of the Trust Company upon Bank of Commerce daily or nearly so. The Trust Company paid drafts drawn upon them by their Checks on the Bank of Commerce whilst I was there

The Counsel for deft objected to the witness stating how the Trust Company paid drafts drawn upon them, which objection the Court overruled & deft by their Counsel excepted,

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One Collected them by depositing them at the Bank in which we kept an account, and if the Check Retrn for draft was not returned then by one oclock of the next day we Cancelled the draft paid. The Bank in which we deposited the Check sent it to the Clearing house next morning, at the Clearing house it went to the bank upon which it was drawn and if good it was paid and Cancelled

The Genral and Uniform Custom of all banks Connected with the Clearing house was to make an exchange of all Checks through the Clearing house

The defendant by their Counsel objected to all the evidence Concerning the Custom of the Clearing house, which objection the Court overruled, and defendant by their Counsel excepted

The Cashier further testified, That was an exchange of Checks at the Clearing house & sent Carrying them through the Street, When a Check is good we do not look for it to Come back — the Clearing house does not Return the Checks at all — all that the Clearing house has to do, is to take the aggregate The whole Clearance is made in half an hour, The Bank upon which a Check is drawn returns the Check if it is not good

If a Check was deposited on Monday we could get it back on Tuesday if it was not good, it Could not Come back before the next day, This Custom is universal among Bankers and Merchants so far as I know, If a Check was deposited to day it Could not get back

before Noon at 11 A.M.
Of the draft (draft said upon) was received by
mail on Saturday the 22 day of August 185[illegible] then the
parties receiving it would first send it to the Ohio Life
Insurance & Trust Company properly endorsed and
present it for payment – take the Trust Company's
check for it – deposit the check when the party receiv
-ing draft kept his Bank account at the same
bank and if nothing more was heard from the check
the draft and check would be considered paid,
if the check would pass through the clearing house
to the Bank on which it was drawn – it would not
be heard of Monday between 11 A.M. and 1 P.M. if
it was not paid on Monday, I would take the check
back to the Trust Company and demand the draft
and hand the draft to a Notary to be protested.
This was the uniform custom I ever knew any of the
way of doing it, I never saw a check of the Trust
Company upon any of the banks there the Bank of
Commerce or American Exchange Bank, Bank of
Commerce was a member of the clearing house, The
American Exchange Bank of New York City did business
through the clearing house, I think he had one or more
drafts on Trust Company daily. I never knew the
Trust Company to pay a draft in any of the manner
there by check. I Commenced banking in Chicago
in April 185[illegible], I know defendants Number or
Name of draft there simply the No of draft drawn

on all banks & not no drawn on Trust Company
And upon Cross Examination testified
I Could ascertain if Check drawn on American
Exchange Bank was good by taking it to the Bank
but I Could not ascertain at the Clearing House
If on the same day he took a Check & had any doubt
as to whether it was good or not he would immediately
send it back to Bank upon which it was drawn
and have it Certified same day. If a person wanted
money on a Check on the same day Check was given
he Could get it by presenting it for payment, usually
he the custom would be, he could put it in his own bank
and draw against it
If a merchant had no bank account and wanted
the money on Check he had to go to a draft he
would go to the Bank and draw the money on the
Check — all the incorporated Banks of New York
City were members of the Clearing House, Other banks
were not — all Banks of issue were members. The
Trust Company was not a member of the Clearing
House, There were about 20 incorporated Banks in
New York City and the incorporated Banks were
members — There many have been 40
The N.Y.L. & Trust Company was not an incorporated
Bank in New York, None of the Private Banks
or bankers were members of Clearing House and there
were a large number of each in New York City at
least 200. The Trust Company was a private Bank
A person Could get money for a draft at

the Trust Company by asking for it. but it would
Create time delay say from 15 to 30 minutes as
they would have to send to Bank where they kept
their deposit and draw it, I do not say that every
Check drawn by Trust Company went through
Clearing House — If John Jones a private individual
got the draft the Check given for it would not
go through the Clearing House

XX Upon Re Direct Examination, testified —
The private Banks and Bankers, the Trust Company
also kept their money with Banks that were members
of the Clearing House. Kept no money themselves,
Private Bankers kept deposits of City Customers.

Upon Re Cross Examination testified
When I say Private Bankers kept deposits I wish
to say that it was not Customary for them to do so
I never Knew of any Banker getting money on a
draft except as a matter of favor to and then
upon demand of a notary,

Plaintiff further to Sustain
the issue on his part offered in evidence the deposi-
tion of Seymour R Swift, and thereupon the defendants
by their Counsel objected to the reading of so much
of said deposition as related to the Custom of New
York City, and to so much thereof as related to the
Clearing House of said New York City, and also to
the reading of the letter & Enclosure dated August
19th 1857 and the letter of date 22 Sept 1857

B & afts Smith Dep

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And the letter of date Sept 17th 1854 attached to said
deposition of said Swift which objections were over-
ruled by the Court and defendant then and there
excepted

The Plaintiff's further to sustain the issue
on his part read the deposition of George
DePew which was as follows see p 103

I

Deposition of Lyman P. Swift —

Interrogatory First: What is your name, age, occupation and place of residence

Answer to 1st Interrogatory

My name is Lyman P Swift, age 36 yrs residing at Minneapolis, County of Hennepin and State of Minnesota, and am mainly engaged as farming

Interrogatory Second

Do you know the parties Plaintiff and defendant in the Captions to these interrogatories mentioned & either & which of them, and how long have you known them respectively?

Answer to 2nd Interrogatory

I know them all, I have known the defendants ever since they Commenced business in Chicago some five years ago. and the Plaintiff have also known for five years

(over)

Interrogatory Third.

When did you reside in the Summer of fall of 1857 and what was your business?

Answer to 3rd Interrogatory

I resided in the City, County and State of

New York, and was in the Banking business, and
Managing Partner of the firm of Swift Rawson & Co
which was doing business at 31 Pine Street in
Said City of New York

Interrogatory Fourth

State whether or not You ever saw a draft as
follows

$1000 Stong & Riley Bros Bankers Chicago
Ill Aug 19 185[illegible] Pay to the order of
Chas Williams & Bro One Thousand Dollars & value
received and Charge the Same to Account of
No 1253 To the Stong & Riley Bros
Ohio Life Ins & Trust Co
New York

Endorsed as follows. Pay R K Swift Brothers & Johnston
order Williams & Bro

Pay John R King or order without recourse
on us R K Swift Bro & Johnston

If So who Sent it. to You. what if any thing did You
do with Said draft. State fully and at Large all You did
If Sent You by letter Produce it. State when it was
received

Answer to 4th Interrogatory

I have seen the draft mentioned in interrogatory
fourth. It was Sent to Swift Rawson & Co as mentioned
and Endorsed by R K Swift Brothers & Johnston of Chicago as stated
for Collection, in a letter from Said Swift Brothers &
Johnston dated at Chicago Aug 19 185[illegible]. Letter was
not produced by witness which he Satisfies & have received

One Thousand Dollars

draft

Said draft is and is hereunto annexed by this deponent
III marked "Exhibit A") also a leaf of paper or slip
that containing written memorandums and which is
also annexed to this deponent marked "Exhibit B")
The item mentioned on the leaf or slip attached
to the said letter, the third item from the bottom
annexed to said letter now is the draft enquired for
in 4th interrogatory, and that came and was received
together with the said letter and draft Saturday
August 22nd 1857, As was an usual came with all
drafts received, it was first marked with a Stamp on
the back of it, the words "Received payment", then I
wrote Swift Rankin & Co under the words, Received
payment, and sent our porter or messenger out with
it to the drawers, The Ohio Life Ins & Trust Co. they
gave him the Check on their Bank, which was I
believe the American Exchange Bank - This was the
usual way of Bankers and Brokers in said New
York of sending drafts on them - by giving a Check on
their Bank, Where I say Bank, I mean the large
chartered Banks, On receiving the Check I sent it
with others - and that same day - and had it deposited
in the Bank where we kept our Account - the Merchants
Bank - So as to have it go through the usual Course of
passing through the Clearing House at the earliest
possible moment, which would be the next business
day at 10 o'clock AM, After the Settlement was
made and it is determined whether the Check on

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Good or not. the Bankers and Brokers Record back from the Banks. all the dishonored Checks or Drafts This draft was not Credited to Swift Burton & Johnston as it was our rule never to advise any one of the Payment of any draft or Collection until after the Check Record first had passed through the Clearing House, and we had ascertained from our Bank that it had been paid. Then we advised the parties by letter and placed the proceeds as directed. but not until after ascertaining that the Check was good at the Clearing House, This is the usual Custom among Bankers and is adopted as a rule to prevent Confusion

The Check given for the draft in Controversy and in said interrogatory fourth enquired for was not good which means among Bankers Not funds to pay it at the Clearing House, The first time that institution met after the said Check was given, was on Monday morning August 24th 1857. On that day I advised R K Swift Burton & Johnston by telegraph that the draft aforesaid and in Controversy was not paid, After ascertaining that the Commissioners Check. which the said Life & Trust Company gave was not Good at the Clearing House I procured a Notary Public for the purpose of having the draft in question duly protested and accompanied by a Notary Walter Edwards we went to the office of the said Life Ins & Trust Company when I saw and heard the said Notary make demand of Payment of said draft which was

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refused, I accompanied said Notary to get the draft from the said Life Insurance & Trust Co. and personally see that the said draft in Controversy was protested The said Company gave me the draft, which I gave to the Notary, and he made the usual demand of payment which was refused, The Sheriff was in the possession of the office Books and papers of the said Life Ins & Trust Company, The officers of the said Company were willing he should take away the draft but the Sheriff said he had no Authority to allow anything to leave the office And accordingly he left the said draft in Controversy in the possession of the Sheriff

Interrogatory Fifth; State what if any thing was done with said draft, if you say it came into your hands was it ever returned to said Swift Bro & Johnston, if so when and where, If you say by you was it by letter, if you say by letter produce it, or a Copy of it, Why did you send the said draft back to said Swift Bro & Johnston, If directed by a letter from any one produce said letter,

Answer to 5th Interrogatory

The draft in Controversy was returned to Swift Bro & Johnston by me Enclosed in a letter directed to them and dated at New York September 22nd 1857 And the same which I here produce for the inspection of the Commissioner asking this deposition (Written at this stage of the examination produced a letter dated

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at New York September 22 1857 which is hereto Annexed and marked "Exhibit C") Sent the Said draft back to Said Swift Bro & Johnston in Accordance with the instructions in a letter from R K Swift one of the Said firm of Swift Bro & Johnston, dated at Chicago. September 17 1857 and received by me on or about September 22. 1857. which Said letter I now produce & Witness at this point in the Examination produced a letter dated at Chicago September 17 1857 which is hereto Annexed and marked "Exhibit D")

Interrogatory Sixth

How You received Said draft for what purpose did You receive it, If to Collect and Credit, did You ever Collect it, or did You ever Credit it to Said Swift Bro & Johnston?

Answer to 6th Interrogatory

Said Draft was received for Collection and Credit It was not Collected and of Course was not Credited. The reason it was not Credited was because it was not paid as is hereinbefore Set forth & Stated in Answer to questions four five and Six

Interrogatory Seventh

If You State You received it to Collect & Credit. did You Credit it or the proceeds. if not Why not?

Answer to Interrogatory Seventh

I have Answered this question in full in Answer to the Sixth interrogatory

Interrogatory Eighth State whether or not Said draft was or was

Answer to 5th Interrogatory.

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The Draft was never paid to my knowledge

Interrogatory Sixth

State when the Ohio Life Insurance & Trust Company Office in New York closed, and did you in any manner Communicate that fact to Swift Bro & Johnston; if so how and when; State if in any manner you Communicated to Swift Bro & Johnston the non payment of said Draft if so how and when?

Answer to 9th Interrogatory.

The Ohio Life Insurance & Trust Company closed or was closed August 24th 1857. I telegraphed that fact to Swift Bro & Johnston at Chicago the same day it closed. I also telegraphed to them the same day the non payment and dishonor of the said draft in Controversy

Interrogatory Tenth

Are you acquainted with the General Custom in New York in regard to presenting drafts; if so State fully and at large you means of knowledge and State fully and at large the Custom?

Answer to 10th Interrogatory

As to my means of information of the General Custom in regard to presenting drafts, I have been Connected and Acquainted with all the details of banking for twelve years previous to the year 1857 and was at the time in question the Managing Partner of the firm of Swift Remsen & Co Bankers in said New York City. The Custom in New York among bankers & the Local Shaver or Messenger

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to the drawees of drafts or Checks in good Standing. The Porter or Messenger obtains a Check for the draft, which he returns to the office in order to have it deposited and passed through the Clearing House on the next business day (which is daily Sunday & Holiday excepted) The Clearing House is an institution organized for the mutual exchange of Checks and Settlement of balances among the large Banks in New York City. It is not the Custom in New York City for Banks & Bankers to send Checks or drafts around to the different Banks for the money, but the Checks or drafts are deposited in each of the large Chartered Banks as are members of the Clearing House, by which means each business day of the week at 10 o'clock A.M. two representatives from each of the Banks which are members of the Clearing House, meet there, and exchange Checks and a settlement of balances is made. And in case any of the Banks holds such a Check as was given by the said Mut Company in this instance, it is then thrown out, and the parties resume their original positions as before the Check was given and is considered as no payment

Interrogatory Eleventh

State whether you are in any manner interested in the subject matter of this Suit?

Answer to 11th Interrogatory

I am not in any way either directly or indirectly

Interrogatory Twelfth

State what has become of the Assets of Swift Ramsen & Co.; Have you in your possession a Copy of the telegram

despatch You Sent to Chicago: if So Produce it. If You
IX do not Produce the Same. State You Searched for it Among
Your Papers:

Answer to 12th Interrogatory

The Books & Papers of Swift Rowsent Co are not in
my possession. Nor have they been Since 1858. & have
no Copy of the Telegraph despatch & Cannot Produce
it. & have Searched diligently Among my Papers for a
Copy of the Said despatch but Cannot find any

Interrogatory Thirteenth

State fully and at large the Contents of Said despatch
the date thereof. & whom Sent & by whom Sent:

Answer to 13th Interrogatory

I Cannot Give the exact words of the despatch. but
the Substance of it. was that the draft in Controversy
had not been Paid and was dishonored, and that the
drawees had failed. I Sent the dispatch myself to
Swift Bro & Johnston at Chicago

Interrogatory Fourteenth

Do You Know of any matter or thing of importance
to the Plaintiffs in this Suit: if So State the Same fully
and at large:

Answer to 14th Interrogatory

I do not. except as herein before State in Answer to
the Specific Interrogatories

Cross Interrogatories And Answers thereto by the
Witness on the part of the Defendants

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Interrogatory First. State whether You now or were not a partner in the firm of Swift Bro & Johnson (late of Chicago) in the Summer & Fall of 1857? if you Answer that You was. State who Composed said firm and what business they were engaged in?

Answer to 1st Interrogatory

I was a partner in the firm of Swift Bro & Johnston in the Summer & fall of 1857 — Their business was banking and the firm was Composed of R K Swift L P Swift (myself) and J S Johnston

Interrogatory Second

State if You know who Composed the firm of Swift Ransom & Co in the Summer & Fall of 1857? Also State the business of said firm and the Name of each member

Answer to Interrogatory 2nd I do know who Composed the firm of Swift Ransom & Co in the Summer & Fall of 1857. The Name of the individual members were R K Swift. H. E. Ransom. J S Johnston & L P Swift (myself) Their business was banking

Interrogatory Third

If in Answer to the fourth direct interrogatory You Answer that You did See the draft Set forth in that interrogatory, State whether the endorsements on the Same Set forth in the interrogatory, as appeared on Said draft when You first Saw it. if not State what endorsements were then on it?

Answer to 3d Interrogatory

When the Said draft first Came into my hands, it

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was endorsed by Williams Bro Bro, Then was Stamped on it "Pay Swift Rawson & Co or order. Two Stamps are used for Currency, The name of R K Swift Bro & Johnston was also on the draft and I put the name of Swift Rawson & Co on to it, when I gave it to the Messenger as before Stated, The Endorsment Making it payable to the Plaintiffs has been put on Since 1857

Interrogatory Fourth.

Was not the draft You saw endorsed by Swift Bro & Johnston, and by them made payable to Swift Rawson & Co New York

Answer to 4th Interrogatory — It was

Interrogatory Fifth.

State whether Swift Rawson & Co ever presented said Draft to the Ohio Life Insurance & Trust Company for payment. and State whether at that time said draft passed into the hands of the Ohio Life Insurance & Trust Co

Answer to 5th Interrogatory —

Swift Rawson & Co did present said draft Several times to the Ohio Life Insurance & Trust Co for payment Said draft was in the first instance presented to Said Trust Co by the Porter or Messenger as in the direct Examination Set forth — The Second time by Walter Edwards a Notary Public and as Such Notary on the 24th day of August 1857. and the only time that I Can State with any Certainty was on or about the 23d day of November 1857 it was presented by me to the Said Company

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And I for the time of such presentation by me by a letter written by me on that day and which I now produce & exhibit to the Commissioner taking my deposition (Witness at this point in the examination produced a letter for inspection which is hereto annexed & marked by me "Exhibit E") The buy or messenger gave the draft to the Drawee

Interrogatory 5th. If You state that the said draft passed into the hands of the said Ohio Life Insurance & Trust Company, please state if You know how long it remained in their hands

Answer to 6th Interrogatory

The Draft in Controversy was in the possession of the said Trust Co. or the Sheriff who had possession of their office and effects up to about September 22 1857

Interrogatory Seventh

If You state that You sent said draft back to said Swift Pom & Johnstone. State the date You sent it to them, and why it was not sent sooner, and also whether at the time You sent it back the following indorsement did not appear on the back of it.

"Recd Payment" "Swift Pomeroy & Co"

Answer to 7th Interrogatory

(I returned the draft in Controversy to Swift Pom & Johnstone on the 22nd of September 1857 in answer to a letter that R K Swift wrote to me. that is to say to the firm of Swift Pomeroy & Co from Chicago ~~stating that the Drawee would pay it how if it was returned to~~

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~~Chicago And that the stamp on the Drawers Said agreed to sent to the Trust Co to give me the draft~~ It was not sent Some on account of the Sheriff having possession of the Book and Papers of the Drawers of the Said draft. and the General fuss and Scare Consequent upon the failure of So large a Concern (~~It was forwarded back to Swift Ransom & Co & Stamp by order of the Drawers as I presumed at that time, they thought Simply the last Article, as it might get them Credit with us But when our fortune Changed So did their good promises~~. I am not Certain whether the Stamps "received payment" & "Swift Ransom & Co" were Cancelled off or not

Interrogatory Eighth

State whether Said draft at the time it was sent back to Swift Bro & Johnston did not bear the Cancellation mark of the Spindle or Stamp of the "Ohio Life Ins & Trust Co's

Answer to 8th Interrogatory

The draft had the mark of being on a Spindle or place to hold Checks and drafts, I am unacquainted with the Kind of a Cancelling Stamp the Said Company used

Interrogatory Ninth.

State whether the Cancellation mark on and Stamps to Said draft was not made at the time Said draft was presented for payment, and was it not made by Some Clerk or Teller in Said Bank, and is it not the usual

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Mark of Cancellation used by the Ohio Life Ins & Trust Co when paying drafts

Answer to 9th Interrogatory

The Spindle or file mark was not made in my presence, What the usual Cancellation mark of the said Ohio Life Ins & Trust Co is. when they pay draft I Cannot say. for I have never seen this Machine and have no knowledge as to the Subject. Diffent Banks have diffent Cancellation Spindle or marks, So two Calculate to have the same Cancellation marks I have no Knowledge Whatever of the time. or under what Circumstances the said Stamps or Cancellation mark was put on the said draft

Subscribed & Sworn to before me
this 14th day of September 1860
L M Stewart
Commissioner

L R Swift

No V Exhibit A referred to in annexed deposition

Swift Ransom & Co
New York

R. R. Swift Bro & Johnston
Bankers
Chicago Ill 19 August 185[illegible]

Messrs Swift Ransom & Co
New York

Gentlemen

We addressed You last night with $6891 44/100 And now enclose $10.98 my 71
We send You per Express Company $2000 on
for an Credit in ase
Enclosed draft $49.38
Exch 62 $50. Pm H B Hilton
Collected

We remain Gentlemen
Yours Truly
R R Swift Bro & Johnston
Salem

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Exhibit D. defend Dr in annexed Deposition

Swift Rankin & Co

XVII New York

R R Swift Boston & Johnston

Bankers Chicago Ill 19th Aug 1857

Drafts for Credit in Account

Woodruff & Co	443 25/100	✓ $ 443.25
E W Clark Dodge & Co	233 66/100 + 95 38/100 + 880 61/100	✓ 1209 65
St Nicholas Bank	484 82/100	✓ 484.82
Ocean Bank	757 73/100	✓ 757 73
Park Bank	171 95/100 + 29 57/100 + 500. + 246 73/100	✓ 948.26
Carpenter & Vermilye	1000	✓ 1000.00
Read & Latham	500	✓ 500 00
Bank of Republic	1200	✓ 1200 00
Bank of the State	50	✓ 50 00
American Exchange Bank	2000. + 235	✓ 2235 00
Van Vliet. Read & Druyfel	200	✓ 200 00
Ohio Life Ins & Tmst Co	1000	✓ 1000 00
American Exchange Bank	800	✓ 800 00
Bank of Commerce	165	✓ 165 00
		$ 10.987.71

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Exhibit C, referred to in annexed deposition

New York Sept 22 1857.

R K Swift Bro & Johnston

Chicago

Dear Sirs

We return herein Storey & Riley Bros draft $1000 on Ohio Life & Trust Co as requested in your favor of the 17th instant, as we have not credited you in account & do not now debt you

Yours Truly

Swift Rawson & Co

P S We should like to know if S & R Bros pay you back the $1000 exchange & int

Exhibit D referred to in annexed Deposition

Swift Rawson & Co
New York

R K Swift Bro & Johnston
Bankers Chicago Ill Sept 17 1857

Answered 10

Swift Rawson & Co
New York

Gents

Storey & Riley say that if you can get this check back of the Ohio Life & Trust Co which we sent you they will pay it Soon Mr Storey is down to a letter to the Trust Co asking them to give you back the draft. but I guess the Trust Co owe them a debt & since they want the draft which I fear you cant get it on account of the probable failure of Dwyer

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Rae of Ry City
Yrs &c

R R Swift

Exhibit E referred to in annexed Deposition
New York Nov 23 1857

Messrs R R Swift Bro & Johnston
Chicago Ill

Yours of the 12/19 with draft
of Storey & Riley Bros in favor of the Co L. & S Co
for $1000 is at hand, As requested we have pre-
sented the draft at the office of the said Co to be
marked good & cancelled in error which they cannot
do as this Bank as in the hands of the Sheriff
Our Atty says there is nothing on the face of the draft
to show that it ever has been paid, The Cuts may
have been caused by being put upon our file
by mistake & the protest of the draft itself is the
strongest proof that the said draft was not
paid, There does not seem to be any doubt as to
the liability of the drawers by our Atty's, You
write us once they had agreed to pay You if the
draft was returned to them, Do they decline now
to do so? Or return the draft herein.

Yours Truly
Swift Paulson & Co

Why not offer to take your individual notes for it if they are desirous to
Communicate it

Dep. De Pew

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Interrogatory 1st. What is your name, age, occupation and place of residence?

Ans. to Interrogatory 1st George O. Depew. 36 – not in any occupation at present – generally an accountant – at present North Castle.

Interrogatory 2nd. Do you know the parties plaintiff & defendants in the caption to these interrogatories mentioned, or either, & which of them and how long have you known them, respectively?

Answer to Interrogatory 2nd. I do not know either plaintiff or defendants personally – I have never seen either.

Interrogatory 3rd. State if you know whether the Ohio Life Insurance and Trust Company had any general rule or custom as to the payment of drafts & putting them in process of payment of the character of the one, a copy of which is attached – marked Exhibit A. purporting to be drawn by Strong & Wiley Bros. on the Ohio Life Insurance & Trust Company, bearing date Aug. 19th 1857. and if said Company had any general custom, how long had it existed & how generally was it known?

Answer to Interrogatory 3rd The general rule and custom was to pay such drafts as marked Exhibit A. by checks on banks, with whom they had accounts, the general rule was to send out the Drafts, such as marked Exhibit A, by runners to whoever they were drawn on, checks were generally given in payment for

them, those checks were deposited in banks, for collection without being certified unless the parties, paying the same were of doubtful credit. That custom of payment existed for five years to my knowledge, during which time I was a clerk, with the Ohio Life Insurance & Trust Company at New-York - I suppose it was known by all Bankers & others having business with us.

Interrogatory 4th If in answer to the foregoing interrogatory you state that it was the custom of the Ohio Life Insurance & Trust Company to give checks for such drafts on their Bankers, State if that custom was general and universal or otherwise, and if ever departed from except by especial request.

Answer to Interrogatory 4th The custom of payment of drafts by checks was general and universal & never departed from except by especial request.

Interrogatory 5th. If in answer to the 3rd interrogatory you state that it was the custom of the Ohio Life Insurance & Trust Company to give checks for such Drafts - what proportion, if any, of such checks passed through the Clearing House in New York?

Ans. to Interrogatory 5th I have no personal knowledge how many of such checks passed through the Clearing House but from my knowledge of the general business custom of New York would say a very large majority of them -

Interrogatory 6th. What was the situation of the account between the Ohio Life Insurance and Trust Company and the American Exchange Bank on the 26th of August 1857. respectively — How much money (if any) had the Ohio Life Insurance Company in said Bank subject to draft or check, or how much (if any) was said Ohio Life Insurance & Trust Company overdrawn or indebted to said American Exchange Bank?

And to Interrogatory 6th. The account between the Ohio Life Insurance & Trust Company and the American Exchange Bank on the 25th of August 1857 was largely overdrawn, the Ohio Life Insurance & T. Co. had no money in said Bank, and its account was largely overdrawn.

Interrogatory 7th. Do you know of any other matter or thing of interest to the Plaintiff in this suit?

Answer to Interrogatory 7th. A Check on the American Exchange Bank was given by the Ohio Life Ins. & Trust Co. for the draft in question marked exhibit A. on Saturday the 22nd of August 1857, and the said draft was charged to Strong & Wiley Bros. on Monday Aug 24th 1857. the Ohio Life Insurance & Trust Co. failed on the 19th of October 1857. the said Draft was credited back to Strong & Wiley Bros on the 8th of April 1858. the amount of the Credit balance of Strong & Wiley Bros. account with the Company at New York was $13.562 20 cents which included the credit of the draft marked exhibit A. this balance was transferred to the books of the Ohio Life Ins & Trust Co. at Cincinatti and

credited to the account of Strong & Wiley Bros at that place - on the 26th of April 1858 a further credit balance of $700.00 was likewise transferred to the credit of Strong & Wiley Bros account, to the books of the Ohio Life Ins & Trust Co. at Cincinnati Ohio - That closed the account of Strong & Wiley Bros with the Company at New York.

Cross Interrogatories and answers thereto by the witness on the part of the Defendant.

Cross Interrogatory 1st If in answer to the third Interrogatory you state, that there was a general custom of the Ohio Life Insurance & Trust Company in regard to the payment of drafts and that such custom was to give a check for such draft on their Bankers, please state whether or not a party would not have been paid by said Company in gold or currency for a draft at any time if the party presenting the draft refused a check, and demanded payment in money and whether or not the said Ohio Life Insurance & Trust Company ever gave any public notice to the world that they would not pay drafts on it in money if demanded.

Ans. to Cross Interrogatory 1st. I suppose they would have been paid in gold or currency, though the demand for payment in gold or currency was never made so far as I know I do not know whether or not the Ohio Life Ins & Trust Co gave notice to the world that they would not pay drafts in money, if demanded.

Cross Interrogatory 2nd If you state that any proportion of

12 said Company checks passed through the Clearing House, State how you know the proportion that passed through the Clearing House & whether or not you know it of your own knowledge, or by information of others.

Answer Cross Interrogatory 2nd. only from my knowledge of the general business customs in New York - I have no personal knowledge.

Cross Interrogatory 3rd. Would or would not the American Exchange Bank have paid any checks of the Ohio Life Ins & Trust Co on them presented on the 22nd day of August A.D. 1857. and dated on that day. - and when did the Exchange Bank first refuse to pay checks of said Company?

Answer to Cross Interrogatory - I suppose they would, I cannot answer certainly - on Monday the 24th of Aug. 1857, I believe.

Cross Interrogatory 4th. Was or was not the Ohio Life Ins & Trust Co. frequently overdrawn in their account with said Exchange Bank?

Answer to Cross Interrogatory 4th, They were.

Geo D. Depew

The Plaintiff further to sustain the issue upon his part read the deposition of William A Booth which was as follows.

Interrogatory 1st. What is your name, age, occupation & place of residence

Answer to Interrogatory 1st. William A. Booth, 56 years, Merchant New York City.

Interrogatory 2nd. Do you know the parties plaintiff and Defendants, in the caption to these interrogatories mentioned, or either & which of them, & how long have you known them respectively?

Answer to Interrogatory 2nd. I have no recollection of ever knowing either of them.

Interrogatory 6th. What was the situation of the account between the Ohio Life Insurance and Trust Company & the American Exchange Bank, on the 25th of August 1857 respectively - How much money (if any) had the Ohio Life Insurance Company in said Bank, subject to draft or check, or how much (if any) was said Ohio Life Insurance and Trust Company overdrawn or indebted to said American Exchange Bank?

Answer to Interrogatory 6th. Their account was overdrawn - had no money in said Bank & to their credit on that day overdrawn over fifty thousand dollars.

Interrogatory 7th. Do you know of any other matter or thing of interest to the plaintiff in this suit?

Answer to Interrogatory 7th. I do not.

Cross Interrogatories & Answers thereto by the witness on the part of the Defendant.

Cross Interrogatory 1st. If in answer to the third interrogatory you state that there was a general custom of the

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Ohio Life Insurance & Trust Company in regard to the payment of drafts & that such custom was to give a check for such draft on their bankers, please to state whether or not a party would not have been paid by said company in gold or currency, for a draft at any time if the party presenting the draft refused a check, & demanded payment in money & whether or not the said Ohio Life Insurance & Trust Company ever gave any public notice to the world, that they would not pay drafts on it in money if demanded?

Ans to Cross Interrogatory 1st The general custom would be to give a check, if they were paying, & gold had been demanded they would, I suppose pay in gold. I have no knowledge that they ever gave notice to the world that they would not pay drafts in money if demanded.

Cross Interrogatory 2nd. If you state that any proportion of said company's checks passed through the Clearing House state how you know the proportion that passed through the Clearing House & whether or not you knew it of your own knowledge or by information of others?

Ans. to Cross Interrogatory 2nd I do not know anything about it.

Cross Interrogatory 3rd. Would or would not the American Exchange Bank, have paid any check of the Ohio Life Insurance & Trust Company on them presented on the 22nd day of August A.D. 1857 & dated on that day & when did the Exchange Bank first refuse to pay

checks of said Company?

Ans to Cross Interrogatory 3rd. They had no money in the American Ex. Bank on that day & checks would not have been paid on that day excepting for small amounts & under very peculiar circumstances - they first refused to pay the Checks of said Company, on that day according to my orders.

Cross Interrogatory 4th. Was or was not the Ohio Life Insurance & Trust Company frequently overdrawn in their accounts with said Exchange Bank?

Ans to Cross Interrogatory 4th. They were occasionally overdrawn.

Wm A. Booth.

Defendants by this Counsel admitted that the defendant did business with the O L & Trust Company for 4 or 5 months before said Company failed

The Plaintiff thereupon called this Case and defendants by this Counsel thereupon moved the Court to exclude from the jury so much of the deposition of William A Booth as related to the account and Statement of account of Ohio Life Insurance & Trust Co in the American Exchange Bank of New York which motion was overruled by the Court and the defendant excepted

The defendant to sustain the issue upon his part, Called as a witness D A Edmonds

110 who being first duly sworn testified. That he resided in New York City in 1857 and left there the 23 April 1861. That was no Custom in New York City as to the payment of drafts & Checks in 1857. that Could be paid to be uniform. Some persons receiving Checks in payment of drafts required the Checks to be Certified & the did not. The Custom as to obtaining payment of a draft, was to present the draft for payment and if a Check was given for it and there was no doubt of the responsibility of the party drawing the Check, to receive the Check and deposit it in Bank if party kept a bank account and if there was any doubt of the responsibility of party drawing the Check then to take the Check and get the money or get the Check Certified.

The Counsel for Pltff proposed to witness the following question

What was the Custom if any in taking a Check as absolute payment.

To which Plaintiffs Counsel objected and the Court sustained the objection whereupon defendants by their Counsel excepted to the said decision of the Court

The defts Counsel proposed the following question to witness

If the Check was taken for a draft uncertified and the draft delivered up to one who did the Uniform Custom of New York at that time (1857) Cast the risk of payment of the Check

if the Check was held on the day of its date

To the asking of which the Plff Counsel objected and the Court sustained the objections and defendant by their Counsel then and there excepted to the decision of the Court.

The defts Counsel propounded to the witness the following Question

What Course did a Party pursue desiring a Certified Check for a draft if he did not consider the Check as being the absolute payment of the draft and state the uniform Custom in that point of any there was.

To the asking of which the Plff Counsel objected and the Court sustained the objections to which decision by the Court the defts by their Counsel excepted

The witness further testified a party taking a Check for a draft could depend it if he considered it good if not - he could have it Certified

If an uncertified Check had been given draft was dishonored the Custom was not to return the draft. That witness had Collected money of the O L. & Trust Company on drafts drawn in the habit of Collecting drafts of them about the time of this failure

What was the Custom when the party did not intend to hold the Check at his own risk Answer - He would get the Check Certified and if

not paid or Certified he could return the Check and demand the draft

On what days could a party get such a Check Certified - Answer - The party could get the Check to return Certified in same days of its date

And upon Cross-Examination testified in Answer to what was the Custom of the Party drawing the Check had no money in the Bank upon which it was drawn - Amend - such a Check could not be Issued, Also testified that he was not a Banker. was a Merchant

The defendants further to sustain the issue in this part Called as a witness C V D White who being first duly Sworn testified as follows, That he was a Banker, Was in the employ of the Metropolitan Bank of New York City from 1853 until some time in 1856 - The Bank did a large business - Probably the third largest in New York, I have seen the draft, Know the Trust Company, was not particularly Acquainted with Swift Rawson & Co & Party presenting a draft for payment could usually receive a Check for it, A party could always get the money upon a draft if he asked for it, or he could get the Check Certified, The Trust Company stood well up to the time of it failure

(Wm H Waite)

Cross Examined

Plff Counsel then presented and showed the

draft in suit to the witness and then put the following question, Was it customary to get a check certified if the drawer was considered good
Ans— No.—

Question— What was the credit of the Trust Company on the 22nd of August 1857,
At that time

What would you do with this draft if received August 22 1857 by a Banking house in New York

The first thing would be to mark it paid. And send a messenger with it to get the money or a check, this check would be deposited in the Bank when the party kept his account to go through the clearing house next day, if not paid it would be sent back to the party depositing it

The defts. further to sustain the issues on their part Called J. Morse as a witness who being first duly sworn, testified That his occupation was that of Banker— that he was in the Banking business in New York in 1857 for some years prior to that year, and since that year. I knew the Trust Company, I was in the employ of Johnson Thompson, Bankers when in New York, we did a large business. The Custom as to getting check taken for draft certified was optional, either to get them certified or not. Some parties got them certified— others did not A good many people got all checks over five hundred certified. Reed, Dexel & Co, who did a large business, always did so. There was no uniform custom.

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Certified. Reed Dropel & Co who did a large business always did so. There was no Uniform Custom.

All Checks of the Trust Company that were presented on Saturday the 22nd of August 1857 were either paid or Certified. A person presenting draft on 22 August 1857 to the Trust Company could have got either Check or the money for it

And upon Cross Examination testified I saw Checks Certified and presented on the 22 of August - dont remember date or Amount, I did not see the Checks dated, I am now in the same business. I am now with E K Willard & Co Bankers Dont Remember that I ever presented a Check or draft to Trust Company for payment, I had a knowledge of the Trust Company's business, The Trust Company was in the habit of Giving Checks, but there was no Custom; dont Remember that I ever saw a Check drawn by Trust Company on American Exchange Bank

The defts further to sustain the issue upon their part Called W. S. Myers. Who being first duly Sworn testified I am a Banker by occupation I did business in New York City from 1857 to 1861 say Ten Years. Was in Metropolitan Bank, for Thompsons Myers & Bro. There was no Uniform Custom in New York City in 1857 in regard to Getting Checks certified in payment of drafts Certified. Thompsons could get all Checks large & small Certified. Some

persons could get all checks over $500 on Certified
I saw him check of the Trust Company, upon Amer-
-ican Exchange Bank and upon Bank of Commerce
Certified. A party presenting a draft for payment
to Trust Company in 1857 could have obtained the
money upon it of he insisted upon it. I saw him
Wm B Astors check Certified.

Upon Cross Examination Certified
I was with John Thompson at his Chief Clerk. I
said that two people could get Wm B Astors check
Certified. I recollect presenting drafts for a large
amount to Trust Company upon occasions
Thompson possibly might take a check for a draft
like this. Suspicion was cast upon the Trust Co.
previous to the failure of the Company. Checks
were passed through the Clearing House sometimes
but not always. People could not always take
checks in payment of drafts, I am was always more
or less suspicious in regard to all Banks.

It could be refused to take a check for a
draft, but it was usual to get such checks
Certified at once. It was usual to take a check
for a draft but was also usual to get it Certified
I knew of the Butchers and Drovers Bank getting
all checks Certified. I saw one of Trust Co's
check in favor of Butchers & Drovers Bank in 1857
that was Certified. I have seen a good many checks
of Trust Company's Certified The Butchers & Drovers

Said the Trust Company and all other Checks Certified Also Red Draped Checks. on of the larger Issues always got Checks over five hundred dollars Certified

The defendants Counsel then proceed to the filing the deposition of John A Kennan which was in the words & figures following to wit

Interrogatory First, What is your name age occupation and place of residence?

Interrogatory Second. Do you know the parties plaintiffs and defendant, in the Captions & there interrogatories mentioned, or either and which of them, and how long have you known them respectively?

Interrogatory Third, What was your occupation during the month of August A D 1857, and by whom were you employed and in what Capacity were you engaged?

Interrogatory Fourth. State whether Strong & Riley Bankers the defendants, kept an account with the Ohio Life Insurance and Trust Company in New York during the year 1857 and if so state what amount of money they had on deposit in the Ohio Life Insurance and Trust Company in New York on the 22d day of August A D 1857

Interrogatory Fifth. State what if anything you know of Swift Ransom and Company procuring a draft of one thousand dollars on the 22d day of August A D 1857. drawn by Strong & Riley Bankers on the Ohio

Life Insurance and Trust Company for payment and state what became of it

Interrogatory Sixth. State what if anything you know of Swift Ransom & Company presenting any draft drawn by Storey & Wiley & Bro to the Ohio Life Insurance and Trust Company, New York for payment on the twenty second day of August A D 1857. stating the date Amount and number of the same, and what became of the same and what entries were made that day upon the books of the Ohio Life Insurance and Trust Company New York in relation to said draft and by whom said entries were made

Interrogatory Seventh, State whether you ever saw the draft a Copy of which is as follows to wit

"$1000- Chicago Ill Aug 19." 1857

"Pay to the order of Rufus Williams & Bro. the
"Thousand Dollars Value Recvd and charge the
"same to the account of
"Ohio Life Ins & Trust Co" "Storey & Wiley Bro"
No 1253 New York

On which was the following
Endorsement endorsed

"Williams & Bro

"Pay Swift Ransom & Co or order
R K Swift Bro & Johnston"

"Rec[d] payment
"Swift Ransom & Co"

C
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If you State all you know in relation of said draft when and where it was presented for payment and by whom, and what became of the same, whether it was paid if so, by whom, and to whom, and all the entries if any, made in relation thereto ~~~~~

Interrogatory Eighth. State whether said draft was charged to Strong & Riley Brothers, if so state when it was charged to them and whether at that time they had money enough a deposit with the Ohio Life Ins and Trust Co in New York and whether after payment of said draft they state had a balance on deposit ~~~~~

Interrogatory Ninth. State any other matter & thing tending to show, a payment of said draft and the date of payment and all other matters and things that would be of benifit to the defendants Strong & Riley Bro

Interrogatory Tenth. State what endorsements appeared on the back of said draft number 1253 at the time it was presented for payment and from said endorsement who was the legal holder thereof

Cross Interrogatories

First If you in answer to any of the interrogatories in Chief speak of the presentment of said draft to the Ohio Life Insurance Co. for payment was not such presentation on Saturday

Second If you speak of said draft being paid and the Ohio Life Insurance Co ever pay any or deliver any money on said draft, was not the payment you speak of by a check of said Ohio Life Insurance

& Trust Co. and was said Check & Paid, was
not the same returned by Swift Ransom & Co. to
the Ohio Life Insurance and Trust Co

Third. Do You Know any other matter or thing of
importance to the Plaintiffs

To the 1st Direct Interrogatory the said Witness John
A Ransom says

A My name is John A Ransom. my age 58 Years
occupation Accountant & my place of residence
Harlem in the City & County of New York

To the Second Interrogatory he Saith

A I do not Know the Plaintiffs. The Defendants I
Knew in the way of business during the time they kept
an account with the Ohio Life Insurance & Trust Co

To the Third Interrogatory he Saith

A In the month of August 1857 I was a Book Keeper in the
office of the Ohio Life Insurance & Trust Co in the City of
New York. and been employed by said Company in that
Capacity for some 12 Years

To the 4th Interrogatory he Saith

The defendants kept an account with the Ohio
Life Ins & Trust Co from May 1st 1857 up to the time of the
failure of said Company on 21 August 1857. And on the
22nd of August 1857 at the close of business on that day the
defendants had on deposit to their Credit with the said Com-
= pany the Sum of Nine thousand eight hundred & eighty seven
61/100 Dolls ($9887,61)

To the 5th Interrogatory he Saith

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That on 29th August 1857 there was presented to, and paid by the said Ohio Life Ins & Trust Co to the holder thereof a draft for One thousand dolls drawn by the Defendants and numbered 1253 & in favor of Williams & Burton. This draft was paid by the Trust Companies Check on the American Exchange Bank of New York "numbered 284"

To the 6th direct Interrogatory he saith, I do not know who presented the draft for payt, It was paid as I stated in my last answer and was debited to the defendants by the Clerk who kept the Debit Cash Book & was posted by me in the Ledger. The draft was presented to & paid by John L Carr the paying Teller of the said Trust Company. by Check as above stated

To the 7th & Interrogatory he saith, I never saw the said draft

To the 8th & Interrogatory he saith. The draft was Charged to the defendants on the 29th day of August 1857 (on which day it was paid as aforesaid) first in the Debit Cash Book of said Trust Co & then posted by me in the Ledger of said Company. The Defendants had on deposit with said Ohio Life Ins & Trust Co to their Credit after the said draft for $1000 was debited to their account the Sum of $9887.61

To the 9th & Interrogatory he saith.

I cannot state any thing else in regard to the payment of said draft except this. that if the Trust Co Check No 284 had been presented to the American Exchange Bank on the day it was drawn 29th Aug 1857 it could have been paid. As to what became of the said draft, all I can say is this, That on the 17th day of October 1857 the same was delivered by the assignee of the

Trust Co to Swift Rowland & Co. as I am informed & believe they having returned to the Company the Check No 284 given as aforesaid in payt for said draft. I am informed that this exchange was made because Swift Rowland & Co had replevined said draft

To the 10th D Interrogatory by Smith

As I never saw said draft I cannot tell what endorsements were upon the same. Nor do I know who was the legal holders or owners thereof

Sworn before me this 6th day of June 1860 Smith Clift Comm[r] — John Ackerman

X

To the 1st Corp Interrogatory, the witness John Ackerman Saith

The presentation for payt of said draft & protest of by one of the Ohio Life Ins & Trust Co was on Saturday 22 Aug 185[7]

To the 2nd Corp Interrogatory by Smith

The payment was made by Check as I have stated in my direct examination which Check was deposited, on the same day & went through Clearing House & was not paid by the American Exchange Bank All Checks of the Trust Co on said Bank which were presented on Saturday the 22nd Aug 185[7] were paid The draft was given up as I have stated in my direct examination to Swift Rowland & Co who returned the Check given therefor

To the 3d Corp Interrogt by Smith

I do not know of any other matter or thing of importance to the parties — John Ackerman

Sworn before me this 6th day of June 1860 Smith Clift Comm[r]

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Case

Interrogatory first. What is your name, age, occupation, and place of residence?

Interrogatory Second. Do you know the parties, plaintiff and defendant in the caption to these interrogatories mentioned, or either and which of them, and how long have you known them respectively?

Interrogatory third. What was your occupation during the month of August A.D. 1854, and by whom were you employed and in what capacity were you engaged?

Interrogatory fourth. State whether Strong & Wiley Brothers, the defendants, kept an account with the Ohio Life Insurance and Trust Company in New York during the year 1854, and if so, state what amount of money they had on deposit in the Ohio Life Insurance and Trust company in New York on the 22nd day of August A.D. 1854.

Interrogatory fifth. State what if any thing, you know of Swift Ransom and Company presenting a draft of one thousand dollars on the 22nd day of August A.D. 1854. drawn by Strong & Wiley Brothers on the Ohio Life Insurance and Trust Company for payment, and state what became of it.

Interrogatory sixth. State what, if any thing, you know of Swift. Ransom and Company presenting any draft drawn by Strong & Wiley Brothers on

the Ohio Life Insurance and Trust Company New York, fore payment on the twenty second day of August A.d. 1857. stating the date, amount and number of the same, and what became of the same and what entries were made that day upon the books of the Ohio Life Insurance and Trust Company, New York, in relation to said drafts and by whom said entries were made.

Interrogatory seventh. State whether you ever saw the draft, a copy of which is as follows, to wit.

"$1000 Chicago. Ill. Aug 19. 1857

"Pay to the order of Messrs Williams"
"+ Bro. one thousand dollars, value received and
"charge the same to the account of"
"Ohio Life Ins + Trust Co." "Strong + Wiley Bros"
No 1253. New York.

On which was the following endorsement endorsed.

"Williams + Bro.
"Pay Swift Ransom & Co or order"
"R. K. Swift Bro + Johnston"
"Rec'd. payment."
Swift Ransom + Co"

If yea, state all you know in relation to said draft when and where it was presented for payment, and by whom, and what become of the same

whether it was paid, if so, by whom and to whom, and all the entries if any, made in relation thereto.
Interrogatory eighth. State whether said draft was charged to Strong & Wiley Brothers. if so state when it was charged to them, and whether at that time, they had money enough on deposit, with the Ohio Life Ins. and Trust Co, in New York, and whether after the payment of said draft they still had a balance on deposit.
Interrogatory Ninth. State any other matter or thing tending to show a payment of said draft and the date of payment and all other matters and things that would be of benefit to the defendants. Strong & Wiley Bros.
Interrogatory tenth. State what endorsements appeared on the back of said draft number 1253. on the day it was presented for payment and from said endorsements who was the legal holder thereof

Cross. Interrogatories.
First. If you in answer to any of the Interrogatories in chief speak of the presentment of said draft to the Ohio Life Insurance Co- for payment, was not such presentation on Saturday.
Second. If you speak of said draft being paid

125 did the Ohio Life Insurance Co ever pay one dolla of money on said draft - Was not the payment you speak of by a check of said Ohio Life Insurance & Trust Co - and was said check ever paid - Was not the same returned by Swift Ransom & Co. to the Ohio Life Insurance and Trust Co - Third. Do you know, any other matter or thing of importance to the plaintiff?

Dep Com

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Cont

To the 1st Direct Interrogatory he saith. My name is John S. Carr, my age 21. my occupation a clerk in the American Exchange Bank of the City of New York & my place of Residence, 88 Clinton St in the city of Brooklyn Kings Co New York.

To the 2nd D. Interrogatory he saith - I do not know the Plaintiff - I have seen David A Strong one of the Defts. do not know the other defts.

To the 3rd D. Interrogatory he saith. I was paying Teller in the office of the Ohio Life Insurance & Trust Co. in the City of New. York, on the 22nd August 1854. & in the employment of said Company.

To the 4th D. Interrogatory he saith. That Strong & Wiley Brothers, the Defts, kept an account with the said Ohio Life Ins & Trust Co. during the year 1854. I cannot state what amount of money the Defts had on deposit with said Co on 22d Aug. 1854. for the reason I did not keep the Books of the Co.

To the 5th Direct Interrogatory he saith. I know nothing in regard to the matters enquired of in this Interrogatory & for this reason. that the draft enquired about must have been paid by the assistant Teller. "Arthur Bloodgood" as I have found the "Stamp" or memorandum of payment of a Draft of the Defts. on said Trust Co for $1000 in said Bloodgoods handwriting.

To the 6th D. Interrogatory he saith. I know nothing in regard to the matters enquired of in this interrogatory further

thereto stated in my answer to the 5th Interrogatory.

To the 7th D. Interrogatory he saith - I do not know that I ever saw the Draft enquired of in this Interrogatory & cannot say any thing in relation to the same.

To the 8th D. Interrogatory. I know nothing in regard to the matters enquired of in this Interrogatory, further than I have already answered.

To the 9th D. Interrogatory he saith. All I can say in answer to this Interrogatory is that, I do not know of any checks given by the said Trust Company on Saturday the 22nd August 1857, on the American Exchange Bank, & which were presented to the Bank on that day. being refused payt. I should have heard of any refusal to pay. I know of no refusals to pay such checks, until Monday, Aug. 24th 1857, at noon.

To the 10th D. Interrogatory he saith - I know nothing of matters enquired of.

Sworn before me this 6th day of June. 1860.

Jno. S. Carr

Smith Cliffe.
Commr

Witness being cross examined says, I know nothing more to answers in regard to matters enquired of than I have already answered.

Jno. S. Carr.

Sworn this 6th day of June 1860.
before me.

Smith Cliffe.
Commr.

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The foregoing was all the testimony offered introduced at the trial of the Cause and thereupon the defendants Counsel moved the Court to exclude from the jury all testimony of the Customs or usage of the Trust Company upon the ground that the declaration contains no averment of such usage, Which motion the Court overruled. to which decision of the Court the defendants Counsel then and there excepted

The defendants by their Counsel moved to exclude from the jury all evidence of usage or Customs in the ground that the proof is not of a Custom or usage which was uniform Customs or invariable, Which motion the Court overruled and to which decision the dfts Counsel then and there excepted

The Court upon motion of Plaintiffs Gave to the jury the following instructions upon the part of the Plaintiffs

March 1862.

No 1.

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If the jury believe from the evidence in this cause that on the 22nd day of August A.D. 1857. and for several years previous thereto it was the general ordinary and established usage and custom of the Ohio Life Insurance and Trust Co not to pay money on drafts drawn on them but to give their checks on their bank for the same and that it was the ordinary, general and established usage and custom of the Bankers of New York City to deposit the same with their Bank when drawn upon Banks belonging to the Clearing House and had the same go through the clearing house on the next business day and to be presented to the Bank on which it was drawn on the next business day, if goods to be payment of drafts on them, if otherwise to be no payment and that the draft in question was sent by Swift Ransom & Co to the office of the Ohio Life Insurance & Trust Company on the Saturday the 22nd day of August A.D. 1857. for the purpose of getting a check for the same according to such usage and not to demand payment thereon and a check was received for the same on the American Exchange Bank and that said American Exchange Bank belonged to the clearing house and the said check was passed through the clearing house on Monday the 24th day of August the succeeding the next business day in accordance with such usage and custom, and it was thrown out and was not paid by the American exchange Bank. And said Swift Ransom & Co on the 24th day of August A.D. 1857

caused the draft in suit to be presented to the Ohio Life Insurance & Trust Company and payment of the same demanded of them and on the same day caused said draft to be protested and notice to be mailed the same day with postage prepaid addressed to the defendants at Chicago Illinois their post office address such protest demand and notice is sufficient to charge the defendants. This is so if the jury believe from the evidence that the defendants had knowledge that such was the ordinary custom & usage of the Trust Company in paying drafts drawn on them and such knowledge may be if such usage existed if the defendants had been in the habits of drawing drafts on said Trust Co. for several months prior to the date of the draft in question.

No 2. If the jury find from the evidence that either of the firm of Strong Wiley Bros. with the knowledge that Swift Ransom & Co had taken a check for the draft as stated by L.P. Swift which had not been paid, and that the demand and notice was not sufficient in law to charge the defendants Strong Wiley & Bro; promised to pay the draft if Swift Bro & Johnston would get the draft back from New York and Swift Bro & Johnston did get the draft back from New York, such promise is in law a waiver of a proper demand and notice and the law is for the plaintiff.

March. 1862. 131

No 3. If the Jury believe from the evidence that the defendants or either of them as partners promised R. K. Swift Bro & Johnston to pay the draft after a failure on the part of the holders of the draft to demand payment of the Trust Co in due time and after the holders had taken the check of the Trust Co. And the defendants or either of them as partners made such promise to pay said draft with knowledge that the check had been taken as stated by Seyman P. Swift from the Trust co and that the Exchange Bank had failed to pay the check, and with knowledge of all the facts relating to the presenting and non payment of the draft then such promise to pay the draft if made by the defendants is binding on the defendants and the plaintiff is entitled to recover the amount of the draft and interest.

No 4. If the jury find from the evidence in the case that the bill of Exchange in question was protested on the 21st of August and the Notary Public mailed with postage prepaid Notice to Strong Wiley & Bros. addressed to Chicago Illinois where the defendants did business the presumptions of law, are that they received such notice by due course of mails.

No 5. The taking of a check on a draft marking on the back of the draft received payment is not in law

132 payment of the draft unless the check was paid but is deemed in law but as a means of getting payment for the draft in question.

15 Barb R. 28	4 John R. 384
20 Md R. 602	1 Hall R. 56.
10 Yates R. 256.	29. Penn R. 448.

No 6. The taking of a check on a draft and marking on the back of the draft "received payment" is not in law a payment unless the check is paid or it was expressly agreed that the check should be received in absolute payment whether good or not.

1 Md R. 490

No 7. The Jury are instructed that the holder of a draft like the one in suit is only bound to present the same for payment to the drawee and to demand the money thereon within a reasonable time in order to hold the drawer and what is reasonable time and reasonable diligence in this respect must depend upon the facts and circumstances of each particular case

Plffs Instructions.

No 8. The Jury are also instructed that the holder of a draft like the one in suit is not bound to present the same to the drawee and demand the money

133 thereon on the same day it is received but has until the next business day in which to present and demand payment thereof.

And if the Jury believe from the testimony in this cause that the draft in suit was received by R. H. Swift Brother & Johnston at Chicago on the 19th day of August A.D. 1857. and was by them on the same day mailed to Swift Ransom & Co at New York City, for collection and was received by Swift Ransom & Co in due course of mail at New York on the 22nd day of August, then Swift Ransom & Co were not bound in law to present the said draft to the Ohio Life Insurance and Trust Co and demand the money thereon until Monday the 24th day of August 1857, that being the next business day after the receipt of said draft by them.

No 9 If the Jury believe from the testimony in this cause that it was on the 22nd day of August 1857 and had been for several years previously the general, usual ordinary and established usage custom and course of business of the Ohio Life Insurance & Trust Company, to receive drafts drawn on them like the one in suit at the Counter of their office in New York City, and to give in the first instance to the person presenting such draft as check on some Bank in New York City for the amount of the draft

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instead of paying the money thereon from their counter, and that Swift Ransom & Co did on the same day they received the draft in suit on the 21st day of August 185[illegible], send the same to the office of the said Ohio Life Insurance & Trust Co and received a check for the amount of such draft on the American Exchange Bank of New York in accordance with such custom usage and course of business of said Trust Company then said Swift Ransom & Co were justified in receiving said check for the amount of said draft and were not bound in the first instance on said 22nd day of August to demand the money instead of the check upon said draft. This is so if the defendants had notice of such custom of said Trust Co, and if from the evidence the jury believe the defendants had been in the habit of keeping deposits with said Trust Co & drawing drafts on the same for a long time, the law will charge defendants with knowledge of the ordinary manner of doing business & paying drafts by said Trust Company.

No 10 If the Jury find from the evidences that the Ohio Life & Trust company by a general and well established usage gave checks on some Bank for drafts on them and that such checks by general and well established usage passed through the clearing house and were to be presented to the Bank on which drawn

135 on the next business day and the giving of the Check was but a means of obtaining payment and that the draft in question was sent to the Ohio Life Insurance & Trust Co, on same day August 22nd 1857 and a check given for the same as a mode of obtaining payment and not as absolute payment and which Check was passed through the clearing house and was presented to the Bank on which it was drawn, the next business day Aug 24th and was not good and was returned to the Trust Co.

And the payment of the draft was on the 24th day of August demanded of the Ohio Life Insurance & Trust Company and said draft protested for non payment and notice of such demand made and mailed to the defendants with postage prepaid addressed to Chicago Illinois where defendants did business - such demand and protest & notice is sufficient in law. and if they further find that the defendants had notice of such usage of the Ohio Life and Trust Company, when they drew the draft in question and if they find from the evidence that the defendants had been doing business with the Ohio Life & Trust company for any considerable length of time, they will be deemed in law to have knowledge of such usage of the Ohio Life & Trust company, then the law is for the plaintiff.

No 11. If the Jury find from the evidence that by the established custom and usage of the Ohio Life Insurance & Trust Company on the 22nd day of August, A.D. 1857, and for several years prior thereto not to pay drafts on them in money but to give checks on their Bank for the same and that the draft in suit was not sent to Ohio Life Insurance & Trust Company on the 22nd of August, to demand payment but to get a check for the same on their Bank according to such usage & custom then Swift Ransom & Co had a right to hold said check till the next business day before presenting the same for payment and if said check was not paid on the 24th day of August the same being the next business day, and Swift Ransom & Co demanded payment of the draft in suit on the 24th day of August A.D. 1857 and caused the same to be protested on the same day for non payment and also notice to be mailed to the defendants with postage prepaid addressed to them at Chicago the demand under protest is sufficient in law to charge the defendants If the jury also believe from the evidence that the defendants had knowledge that such was the customary & usual way in which drafts drawn on said Trust Company were treated and paid by said company when they drew such draft.

To the giving of each of which said several instructions by the Court the defendants by their Counsel then and there excepted, to the giving

And thereupon the defendants asked the Court to give the following new instructions

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1. If the jury believe from the evidence that there is no proof of the endorsement of Williams + Bro the plaintiff can not recover in this case.

2. If the jury find from the evidence that a check was taken for the draft sued on, on the 22nd ult. of Aug. 57, and that the giving of such check was in accordance with the uniform usage of the Trust Co -

If the jury further find from the evidence that the uniform customs of the city of New York, at said day was to get such checks certified upon the day of the date of such checks -

And that the party so receiving such check did not get the same certified or attempt so to do - and did not present the same for payment on said day & did not present the same for payment at the Bank upon which it was drawn before protest,

In such case the protest of such draft on the 24 of Aug 57 was a nullity.

3. If the jury believed from the evidence that the draft in suit was presented for payment and a check taken for the same on the 22nd day of Aug 1857 and was not protested for non payment until August 24, 1857

And if the jury further find from the evidence that it was the usage of the Ohio Life Insurance + Trust Company to pay drafts on them

with checks or with money as the party presenting drafts desired, and that said Trust company sometimes paid drafts with money and at other times with checks, such usage as to payment by check, was not sufficiently certain uniform and established to bind the defendants in this case - so far as usage or custom is concerned and the protest in such case on the 24 of August 1857, was a nullity.

4. If the jury believe from the evidence that the draft sued on was presented for payment on the 22nd of Aug. 1857, and was not protested for non-payment until the 24th of the same month, the plaintiff cannot recover; unless the jury also believe from the evidence that it was the uniform custom of the Ohio Life Insurance and Trust Company, at the city of New York to pay drafts such as this upon their presentment, in checks, and that it was also the uniform custom, at the city of New York, in the case of the non-payment of such checks by the banks upon which they were drawn, to protest such drafts for non-payment, on the day after such checks were given; or, unless the jury also believe from the evidence that the defendants, or some one of them, with the knowledge that said draft had been presented for payment on the said 22d of August, and had not been protested for non-payment until the 24th of the same month, promised to pay said draft.

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5. If the jury find from the evidence that the draft in question was presented to the Ohio Life Insurance & Trust company for payment on Saturday, the 22nd day of August A.D. 1857. by the then holders of said draft - that such holders at the time of such presentment, received said Trust Company's check on the American Exchange Bank of N.Y. City for the amount of said draft and delivered said draft to said Trust company.

That such check was not presented for payment on the said Saturday.

That the check would have been paid on said Saturday if so presented - and that the draft was not protested for non payment until Monday the 24 day of August 1857.

And if the jury further find from the evidence that the custom of the city of New York at the dates aforesaid in regard to the presentment of drafts & receipt of checks therefor and the holding over of such checks beyond the day of their date without presenting them for payment was uncertain or was not uniform or was not constantly observed in the same manner or was not well established the jury will find for the defendants, unless

The jury further find from the evidence that said defendants or one of them with a full knowledge on the part of said defendants or some of them

That said draft was presented for payment as aforesaid on the Saturday 22 day of August A.D. 1857. and

that at the time of such presentment the holders of the draft received said Trust company's check on the said Exchange Bank and delivered said draft to said Trust Company -

And that said check was not presented for payment on said Saturday.

And that said draft was not protested for non payment until the 24th of August A.D 1857 - did promise R.L. Swift Bro and Johnson or some of the firm to pay the draft.

6. If the jury find from the evidence that draft in suit was presented to the payee for payment and a check taken for the same on the 22nd day of August 1857, that such check was not presented for payment on said 22nd day of August and that said draft was not protested on said 22nd day of August.

And if the jury further find from the evidence that the party who received said check put the same in his bank and that said check was thrown out of the Clearing house on Monday August 24. 1857 and that the representative at the clearing house of the bank upon which such check was drawn was not authorized by the usage of such clearing House to throw out such check and if the jury further find from the evidence that there is no proof that said check was ever presented to the bank upon which it was drawn or due diligence used to collect the same before the draft was protested then the protest of the draft in question was a nullity & unless the jury further find from the evidence that defendants

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or some of them with a full knowledge on the part of the defendants or some of them that said draft was presented and said check taken as aforesaid that said draft was not protested until the 24 day of Aug 1857 and that said check had never been presented to the bank upon which it was drawn before the protest of the draft did promise to pay said draft. They will find for the defendant.

7. That if the jury find from the evidence that the draft was presented for payment on the 22nd day of August A.D. 1857, and a check taken for the same and that draft was not protested for payment on that day, but was protested on the 24th August 1857, then such protest was a nullity unless the jury further find from the evidence that at the dates aforesaid there existed in said city of New York a custom in regard to drafts like the one in suit which was certain uniform and established, and the receipt of such check and the subsequent protest of said draft was in accordance with such certain uniform and established custom and that if the jury find from the evidence that there was such custom and that receipt of the check & protest of the draft was in accordance with such custom the protest was a nullity unless the check was returned or was offered to be returned to the Trust Company at or before the time of such protest and that the burthen of proof of such custom and of compliance with the said custom and

of the return or offer to return such check as aforesaid is upon the plaintiff in this case

8. If the jury find from the evidence that the draft in suit was presented to the payees on Saturday the 22nd Aug. 1857, by the then holders of said draft and that the holders of said draft thereupon delivered such draft to the Trust Co and received a check of said Trust Compy for the amt of said draft on the American Exchange Bank, N.Y. city. That such check was not presented for payment on said Saturday & that if the check had been presented on said Saturday it would have been paid and that the draft was not protested until the 24 of Aug 1857.

And if the jury further find from the evidence that the usage of the Trust Co. as to payment of drafts on them in checks was not uniform or was uncertain or "was not constantly observed in the same manner" or was not well established the jury will find for defendants.

Unless the jury further find from the evidence that defendants or one of them with a full knowledge on the part of said defendants or some of them

That the draft was presented & check taken as aforesaid on 22nd Augt 1857 and that said check was not presented for payment on said 22 of Aug & that said draft was not protested until the 24 Aug 57 promised to pay the said draft.

9. That if the jury find from the evidence that the check or draft sued upon was presented to the payees for payment on the 22nd of August 1854, by the then holders of such draft and that such holders received a check for the same and left the draft with the payees.

That at the time of such presentment the defendants had funds to that amount on deposit with said Trust Company.

The jury are instructed that in such case the title of defendants deposit with the Trust Company to the amount of said draft became thereby changed from defendants to the holders of the draft who presented it and the draft became thereby extinguished and plaintiff can not recover in this case.

Ins 25 Ill Munn v Peck

And thereupon the said Court refused to give the foregoing instructions asked by defendants or either of them, and the defendants to the Court said refusal as to each of the last refused instructions then and there excepted.

And at the same time the defendants by their Counsel moved the Court to give each of the following eight instructions to the jury, to wit

Inst to Jury

1435

No 1

If the jury find from the evidence that Supt, Ransom & Co, presented the draft in suit on the 22d of August 1857 to the Trust Company for payment and thereupon recieved a check in absolute payment of the same and held such check as such payment until the 24th day of August 1857 the draft became thereby extinguished and no longer negotiable as against defendants and plaintiffs cannot recover under the pleadings in this case

(1)

Which instruction the court refused to give but amended the same by inserting between the words "Same" and "and" in the — line of said instruction the words "and at their own risque of payment" making said instruction to read as follows

"If the jury find from the evidence that Supt Ransom & Co presented the draft in suit on the 22d of August 1857 to the Trust Company for payment and thereupon recieved a Check in absolute payment of the Same and at their own risque of payment and held such check as such payment until the 24th day of August 1857 the draft became thereby extinguished and no longer negotiable as against defendants and plaintiffs cannot recover under the pleadings in this case" Which instruction as amended the court thereupon gave to the Jury

given

And defendants thereupon as to the refusal of the Court to give said instruction as asked - to the amendment of the same by the court and to the giving of the same as amended excepted

No 2. That if the Jury find from the evidence that the draft was presented for payment on 22d of August 1857 and a check received by party presenting it and the draft delivered up to pagaes until the endorsement of payment upon it and that both the party presenting and the party paying the draft at the time the check was given and received treated and considered the draft as absolutely paid and satisfied in such case the draft became extinguished and no longer negotiable or subject to be protested and plaintiff cannot recover under the pleadings in this case

(2)

Which instruction the court refused to give but amended the same by inserting between the words "Satisfied" and "in" in - line of said instruction the words "And agreed that the check should be taken at the risque of the holder" making said instruction to read as follows = That if the Jury find from the evidence that the draft was presented for payment on 22d August 1857 and a check received the presenting it and the draft

delivered up to payee with the endorsement of payment upon it and that both the party presenting and the party paying the draft at the time the check was given and received treated and considered the draft as absolutely paid & satisfied and agreed that the check should be taken at the risque of the holder in such case the draft became extinguished and no longer negotiable or subject to be protested & plff cannot recover under the pleadings in this case" Which instruction as amended was thereupon given to the jury and the defendants to the refusal of the court to give said instruction as asked - to the amendment of the same by the court and the giving of the same to the Jury as amended - thereupon excepted

given

No 3. The Jury are instructed that the law requires a draft of the kind sued upon to be protested upon the same day it is presented for payment and that if Plaintiff relies upon or sets up in evidence any custom to change such rule of law the burthen of proof is upon the Plaintiff to prove such custom and no usage that is not proven to be certain, uniform and established and known to the parties drawing the draft can be permitted to change the said rule of law as to protest (unless such usage is ancient, as well as certain, uniform and well established - And that if the Jury believe from the evidence that no such certain, uniform and established custom known to defendants when they drew the draft is

4th

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proven by the evidence and that said draft was presented for payment on 22d August 1857 and a check taken for the same and that the draft was not protested on said day the defendants cannot be held in this case upon any new promise or any waiver of the non-protest of the draft on said day unless the jury believe from the evidence that such new promise or such waiver was made with a full knowledge that the draft was presented on said 22d August; that a check was taken for it on that day and that it was not protested on said 22d day of August; and that the burthen of proof of such knowledge is upon the Plaintiff: but the jury are instructed that no knowledge of defendants of the custom is required to be proven if the custom is proven to be ancient and uniform

The Jury are further instructed that in order to prove any custom that can affect this case the custom must be proven by parties who have had personal experience of the custom

(3)

Which instruction the court refused to give but amended the same by striking out the words "unless such usage is ancient as well as certain uniform and well established" which were enclosed in brackets and inserting the words "or general" between the and "established" and "custom" in line of said instruction and also inserting the words "or knowledge" between the

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and unless

5th Inst to Jury

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words "experience" and "of" in the line of said instruction and also by striking out the following sentence "but the Jury are instructed that no knowledge of defendants of the custom is required to be proven if the custom is proven to be ancient and uniform" making said instruction to read as follows. "The Jury are instructed that the law requires a draft of the kind sued upon to be protested upon the same day it is presented for payment and that if the Plaintiff relies upon or sets up in evidence any custom to change such rule of law the burthen of proof is upon the plaintiff to prove such custom and no usage that is not proven to be certain uniform and established and known to the parties drawing the draft can be permitted to change the said rule of law as to protest and that if the Jury believe from the evidence that no such certain uniform & established or general custom known to defendants when they drew the draft as proven by the evidence and that said draft was presented for payment on 22d August 1857 and a check taken for the same and that the draft has not protested on said day the defendants can not be held in this case upon any new promise or any waiver of the non protest of the draft on said day unless the Jury believe from the evidence that such new promise or such waiver was made with a full knowledge that the draft was presented on said 22d Augt that check was taken for it on that day & that it was not protested on said 22d day of August and that the burthen of proof of such knowledge is upon the Plaintiff The Jury are further instructed that in order to prove

any custom that can affect this case the custom must be proven by parties who have had personal experience or knowledge of the custom"

And thereupon the Court give said instruction as amended to the Jury and the said defendants to the refusal of the court to give the said instruction as asked and to the amendment of the same by the court and the giving of the same to the Jury as amended then and there excepted —

No 4

The Jury are instructed that the law requires a draft of the kind sued upon to be protested upon the same day it is presented for payment and that if the Plaintiff relies upon or sets up in evidence any custom to change such rule of law the burthen of proof is upon the Plaintiff to prove such custom and no usage that is not proven to be certain & uniform & established can be permitted to change the said rule of law as to protest (unless such usage is ancient as well as certain, uniform and well established) And that if the Jury believe from the evidence that no such certain uniform and established custom is proven by the evidence and that such draft has presented for payment on the 22d day of august 1857 and check taken for the same and that the draft has not protested on said day the defendants cannot be held in this case upon any new promise or any matter of the non-protest of the draft on said day unless the Jury believe from the

evidence that such new promise or said waiver was made with a full knowledge that the draft was presented on said 22d day of August, that a check was taken for it on that day, & that it was not protested on said 22d day of August and that the burthen of proof of such knowledge is upon the Plaintiff

The Jury are further instructed that in order to prove any custom that can effect this case the custom must be proved by parties who have had personal experience of the custom

4

Which instruction the Court refused to give but amended the same by striking the words (unless such usage is ancient as well as certain uniform and well established) as in brackets in said instruction and inserting the words of knowledge between the words "experience" and "of" of the line of said instruction and by adding the following words "This is the general rule but if the Jury believe from the evidence that it was the general course of the said Trust Co. to give checks on a bank for drafts drawn on them and the defendants had knowledge of such custom of said Trust Co. then if due diligence was used to collect said check & it was not paid the taking of said check would not discharge the defendants" making the said instruction to read as follows- The Jury are instructed that the law regulating drafts of the kind used

8 in page 152

upon to be protested upon the same day it is presented for payment and that if Plaintiff relies upon or sets up in evidence any custom to change such rule of law the burthen of proof is upon the Plaintiff to prove such custom and no usage that is not proven to be certain, uniform established can be permitted to change the said rule of law as to protest And that if the Jury believe from the evidence that no such custom uniform and established custom is proven by evidence and that such draft was presented for payment on the 22d day of august 1857 and check taken for the same and that the draft was not protested on said day the defendants cannot be held in the case upon any new promise or any waiver of the non protest of the draft on said day unless the Jury believe from the evidence that such new promise or such waiver was made with a full knowledge that the draft was presented on said 22d day of august - that a check was taken for it on that day - and that it was not protested on said 22d day of august and that the burthen of proof of such knowledge is upon the Plaintiff The Jury are further instructed that in order to prove any custom that can affect this case the custom must be proven by parties who have had personal experience or knowledge of the custom - This is the general rule!

But if the Jury believe from evidence that it was the general course of said Trust Co. to give checks on a Bank for drafts drawn on them and the defendant had knowledge of such custom of said Trust Co, then if the

diligence was used to collect said check and it was not paid the taking of said check would not discharge the defendants" Which instruction as amended the Court thereupon gave to the Jury and the defendants to the refusal of the court to give said instruction as asked and to the amendment of the same by the court and to the giving of the same as amended then and there excepted — —

No. 5.

That if the Jury find from the evidence that the draft was presented for payment on the 22d day of August 1857 and a check taken for the same and that draft was ~~not~~ protested for non-payment on that day but was protested on the 24th Aug. 1857 then such protest was a nullity unless the Jury further find from the evidence that at the dates aforesaid there existed in the Ohio Life Insurance & Trust Co. in said City of New York a custom in regard to the payment of drafts like the one in suit: which custom was certain, uniform & established and the receipt of such check was in accordance with such certain, uniform & established custom and that if the Jury find from the evidence that there was such custom & that the receipt of the check was in accordance with such custom the protest was a nullity: unless the check was returned or agreed to be returned to the Ohio Life Insurance and Trust Company at or before the time of such protest and that the burthen of proof of such custom and of compliance with such custom and of the return or agreement to return

such check as afore said is upon the Plaintiff in this case

(5)

Which instruction the court refused to give but amended the same by inserting between the words "Established" and "custom" the words "or general" in the — line of said instruction also by inserting again the words "or general" between the words "established" and "custom" in the — line of said instruction also by adding the words "This is so"; Unless the jury believe from the evidence that the Insurance & Trust Co. waived or dispensed with the return of said check"

Making said instruction to read as follows. That if the Jury find from the evidence that the draft was presented for payment on the 22d day of August 1857 and a check taken for the same and that draft was not protested for non payment on that day but was protested on the 24th August 1857 then such protest was a nullity. Unless the jury further find from the evidence that at the dates aforesaid there existed in the Ohio Life Insurance and Trust Company in said city of New York a custom in regard to the payment of drafts like the one in suit — which custom was certain, uniform & established "or general" and the receipt of such check was in accordance with such certain, uniform and established general custom — And that if the jury find from the evidence that there was such custom and that the receipt

of the check was in accordance with such custom the protest was a nullity - unless the check was returned or offered to be returned to the Ohio Life Insurance and Trust Company at or before the time of such protest and that the burthen of proof of such custom and of compliance with such custom and of the return of or offer to return such check as aforesaid is upon the plaintiff in this case This is so unless the Jury believe from the evidence that the Insurance & Trust Co. waived or dispensed with the return of said Check"

Which said instruction as amended was thereupon given to the jury - And the defendants to the refusal of the Court to give said instruction as asked for - and to the amendment of the same by the court and to the giving of the same to the jury then and there excepted

No. 6 The Jury are instructed that if they find from the evidence that the draft was presented and check taken to the same by Swift Ransom & Co. (then the holding of the draft) in accordance with the usage of the Ohio Life Insurance & Trust Co. & that the draft was protested on the 24th Aug. 57. That such check was on the American Exchange Bank and that the check was sent to the Clearing House and was there thrown out and that it was no part of the usage or custom of said Clearing House to throw out or dishonor checks at said clearing house, then Swift Ransom & Co. were bound to present the said check at said American Exchange Bank

before they protested the draft and that if the evidence fails to show that Supt Ransom & Co. did so present the check at the American Exchange Bank before they caused the draft to be protested the protest of the draft was void in law

13 viii Inst to Jury

15 by

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Which instruction the court refused to give but amended the same by adding the words "This is so unless the jury believe from the evidence that the Ohio Ins. & Trust Co. waived or dispensed with the production & surrender of said check" making the same to read as follows * The Jury are instructed that if they find from the evidence that the draft was presented & check taken for the same by Swift Ransom & Co (then holding the draft) in accordance with the usage of the Ohio Life Ins. & Trust Co & that the draft was protested on the 24 Aug. 1857 — That such check was in the American Exchange Bank and that the check was sent to the clearing house and was there thrown out — and that it was no part of the usage or custom of said clearing house to throw out or dishonor checks at said clearing house — then Swift Ransom & Co. were bound to present the said check at said American Exchange Bank before they protested the draft and that if the evidence fails to show that Swift Ransom & Co. did so present the check at the American Exchange Bank before they caused the draft to be protested the protest of the draft was void in law This is so: unless the jury believe from the evidence that the Ohio Ins. & Trust Co. waived or dispensed with the production & surrender of said check.

And thereupon the Court gave said instruction as amended to the Jury and the defendants — to the refusal of the Court to give said instruction as asked for and the

amendment of the same by the Court & to the giving of the same as amended then & there excepted

No 7

If the Jury believe from the evidence that the draft sued on was presented for payment on the 22d day of August 1857 and was not protested for non payment until the 24th of same month the plaintiff cannot recover unless the Jury also believe from the evidence that it was the uniform custom or usage of the Ohio Life Insurance & Trust Company at the City of New York to pay such drafts as this upon their presentment in Checks and that it was also the uniform custom or usage of the same City of persons taking such checks to pay them through the Clearing House on the day after they were drawn or to present them for payment the day after they unless the Jury believe from the evidence that the defendants or some one of them with the knowledge that the said draft had been so presented for payment on said 22d of August and had not been protested for non payment until the 24th of the same month promised to pay said draft

(7)

Which instruction the court refused to give but amended the same by inserting between the "the" and "uniform" the word "a general" in lieu of said instruction and also subsequently in said instruction inserting the

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between the words "uniform" and "custom" the words "or general" in line of said instruction and also by inserting between the words "or" and "to" in the line of said instruction said words "that it was due diligence" making the instruction to read as follows "If the jury believe from the evidence that draft sued on was presented for payment on the 22 of Aug. 1857 and was not protested for non-payment until the 24th of the same month the Plaintiff cannot recover unless the jury also believe from the evidence that it was the general or uniform custom or usage of the Ohio Life Insurance and Trust Company at the City of New York to pay such drafts as this upon the presentment in Checks and that it was also the uniform or general custom or usage at the same City of persons taking such checks to pass them through the Clearing house on the day after they are drawn or that it was due diligence to present them for payment the day after they are drawn or unless the jury believe from the evidence that the defendants or some one of them with the knowledge that the said draft had been so presented for payment on the said 22d of August and had not been protested for non payment until the 24th of the same month promised to pay said draft." which instruction as amended the Court gave to the jury And the defendants to the giving of said instruction as amended to the refusal to give the same as asked & to the amendment of the same then & there excepted

given

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If the Jury believe from the evidence that the draft in question was presented on the 22d day of August 1854 and paid by the Ohio Life Insurance & Trust Company by check or otherwise that then they will find for the defendant c

Which last above instruction the Court gave as asked for by the defendant

And thereupon the Jury returned to Consider of their Verdict and returning into Court all of the parties being present rendered a Verdict for the plaintiff which Verdict is as follows

We the Jury find a Verdict in favor of the plaintiff and assess the damages at Twelve hundred and Seventy Six Dollars and fifty Cents ($1276,50 Cts)

Jno E Ponds Foreman.
Thos Cook
H M Campbell
R McGinnis
Wm Benteen
John Medlin
Thos Wright
John C Wilder
Chas R Ball
I S Cone
William Randle
Wm Symmes

And thereupon the said defendant by their Attorney moved the Court for a new trial for the following reasons —

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John B King
vs
David C Strong
Charles Shaw & Riley
Benjamin B Riley

In Sum. Court of Chicago
March T A D 1862

Now Come the Said defendants by Parker & Talcy and move the Court for a new trial upon the following Grounds

1st The Court erred in its instructions given to the jury upon the part of the plaintiffs

2nd The Court erred in refusing the instructions asked by the defendants

3rd The Court admitted improper testimony to go to the jury upon part of the plaintiffs

4th The Court erred in excluding proper testimony offered by defendants

5th The Verdict of the jury is against the Law

6th The Verdict of the jury is against the evidence

7th The Court erred in admitting evidence of the usage of the Ohio Life Insurance and Trust Company and other usage and Customs to go to the jury, and erred in not excluding the same from the jury upon defendants motions

8th The Verdict should have been for the plaintiffs upon the Law & the evidence

9th For other good and Sufficient Reasons

Parker & Talcy
Attys for Defendants

And afterwards on the ___ day of October A D 1862 the said Court having heard the Argument of Counsel upon the said Motion for a new trial did overrule the same and rendered judgment upon said Motion, verdict for the sum of $1276.00/100 and the Costs of said Suit to be taxed to which decision of the Court in overruling said Motion for a new trial and rendering judgment upon said Verdict, the defendant then & there excepted

And because many of the said exceptions so offered and made to the opinion and decision of the Judges of the said Superior Court of Chicago do appear upon the record of the said trial therefore on the prayer of the defendants by their Counsel the said Judge hath to this Bill of Exceptions set seal accordance & the statute in such case provided

This the 15th day of January A D 1863

Grant Goodrich (L S)

Judge of the Superior Court of Chicago

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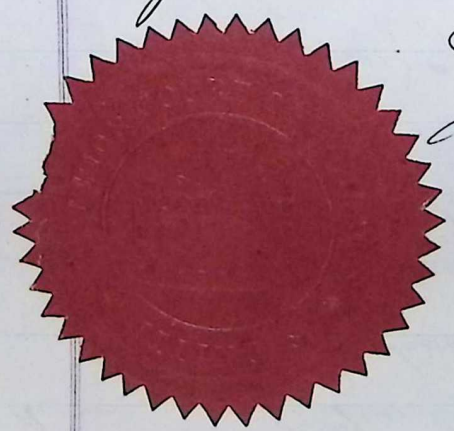
State of Illinois }
County of Cook } ss

I Thomas B Carter Clerk of the Superior Court of Chicago within and for the County and State aforesaid, do hereby Certify that the foregoing is a full true and Complete transcript of all the pleadings on file, all orders of Court and judgments entered of record in said Court, together with the Bond and Bill of Exceptions on file in my office in a Certain Case wherein John B Rung is Plaintiff and Daniel C Strong, Christopher V Riley and Benjamin S Riley are Defendants

In testimony whereof I have hereunto Set my hand and affixed the Seal of said Court at Chicago in said County this Fourteenth day of March A D 1863

Thomas B Carter

Clerk





Errors Assigned

And the said David A. Strong, Christopher V. Wiley and Benjamin B. Wiley by their Attorneys say that in the record and proceedings aforesaid and in the rendition of the Judgment aforesaid there is manifest error in this to wit:-

1st. The Court erred in overruling the several objections of the defendants below to the admission of evidence in relation to the custom of the Ohio Life & Trust Company in the payment of drafts - to the admission of evidence of the custom of New York City as to presentment and payment of drafts - and as to the admission of evidence of the Custom or usage of the Clearing House of New York City and in the admitting of said evidence and each and every part thereof

2nd. The Court erred in overruling objection of defendant below to the reading of the letters and exhibits attached to the deposition of Witness L. P. Swift and in allowing the same and each and every of them to be read to the Jury.

3rd The Court erred in overruling the motion of defendant below to exclude from the Jury so much of the deposition of Witness Booth as related to account and statement of account of the Ohio Life and Trust Company with the American Exchange Bank of New York City

4th The Court erred in sustaining the several objections of the Plaintiff below to the several questions propounded by defendants below to their Witness H. H Edwards as to:

1st The Custom of New York (if any) in taking a Check in absolute payment of a draft

2nd as to. Upon whom the uniform Custom of New York City at that time (1857) cast the risk of payment of an uncertified check taken for a draft, if the check was held over the day of its date

3rd as to The Course a party taking an uncertified Check for a draft would pursue if he did not consider the check so taken in absolute payment of the draft and as to the uniform Custom if any there was —

And in refusing to allow said Testimony so offered and each and every part thereof to go to the Jury

5th. The Court erred in overruling the motions of defendants below to exclude from the Jury all evidence of usage or custom of the Ohio Life and Trust Company and to exclude from the Jury all evidence of usage or custom and in overruling each of said motions ——

6th. That said Court erred in giving each of the instructions given by it on behalf of the Plaintiff in the Court below

7th. That said Court erred in refusing to give each of the instructions asked by the defendants below

8th. That said Court erred in changing or modifying each of the instructions prayed for by the defendants and changed or modified as aforesaid

9th. That said Court erred in overruling the defendants motion for a new Trial

10th. That the Judgment ought to have been for the defendants instead of for the Plaintiff

Wherefore and for all other Errors the said David A. Strong Christopher C. Wiley and Benjamin B. Wiley pray that the Judgment of said Supreme Court may be reversed and that they recover all things which they have lost thereby &c ——

Arrington & Dent
Barker & Tuley Atty's
per Appellants

Hand & Shaughnessy
John B. King } In Error from Cook
And now comes the defendant & joins in error and says there is no error in said record and proceedings as above alleged and they pray that said judgment be affirmed &c.

Yeato Downs
Atty for defendant in Error

$115.00

~~232~~ 200 175

David C. Strong et al.

vs

John B. King

Filed April 23d 1863

L. Leland

Clerk

Fees. $36.50

Cert 50

$37.00 paid

L. Leland

Clerk