

14676

No.

Supreme Court of Illinois

Kupfer

vs.

Bank of Galena.

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 135

J. W. Wadsworth & Co., Stationers, 126 Lake St.

Krupfer

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133
Messrs. Hovey, Cook and Campbell
in reply:

Supreme Court of Illinois.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

HERMAN KUPFER,
vs.
THE BANK OF GALENA,

APPEAL FROM JO DANIEL.

BRIEF STATEMENT OF CASE.

On the 7th of June, 1860, the Bank of Peru gave the following letter to R. G. Parks:

"R. G. Parks is hereby authorized by himself as agent to draw on the bank, at not exceeding one dollar per bushel for wheat, at Dunleith, Galena or Warren, accompanied by Illinois Central Railroad receipts, for the same, at such time as shall arrange, said drafts to be sent direct to the bank for collection.

N. R. HASKELL.

The appellant drew various drafts on the bank of Peru. The first dated 27th of June, 1860. Forty-nine drafts were drawn in all, the last five are the ones in controversy, in this suit, and are dated as follows:

Nov. 6th, 1860,	payable 15 days after sight,	for \$1039.54.
" 8th, "	" " " " " "	545.35.
" 16th, "	" " " " " "	542.91.
" 17th, "	" " " " " "	838.39.
" 17th, "	" " " " " "	272.08.

Given May 10. 1864
J. H. Haskell.

All these drafts were discounted by the Bank of Galena, and all paid except the last five. When sent forward to the Bank of Peru all had receipts of the Illinois Central Railroad pinned to them.

When the first drafts were drawn, the appellant came to the Bank of Galena to get them cashed. Mr. Corwith, the acting manager of the bank, told him that he would take the drafts upon the responsibility of Kupfer. Testimony of Walter Ford, record p. 117.

In October, 1860, which was just before these last five drafts were made, Mr. Corwith was afraid of the bank of Peru, and sent a draft to the Marine Bank of Chicago. Kupfer came in and said that the Bank of Peru had written to him and would not pay any drafts sent that way, and Kupfer agreed to guaranty the drafts. Record, p. 118. Corwith said he would not take any more drafts unless Kupfer guaranteed them; said he had fears of the Bank of Peru; did not think that the institution was sound. p. 119.

A letter of appellant Kupfer of June 6th, 1860, to R. G. Parks was read in evidence, as follows:

"R. G. PARKS, Esq., LaSalle:

Dear Sir.—I understood yesterday you made arrangements with the Bank of Peru to cash my drafts. After presenting your letter to Corwith & Co. I found out that they are going to take the drafts only upon my responsibility.

As it is now against my principles to sell grain on time, I would like you to make such arrangements here as to get the cash for the wheat on delivery.

Expecting an answer from you immediately, I am, very respectfully yours,

H. KUPFER.

judgment should have
been rendered in either one of the following modes:

Take the three drafts unpaid,	\$643.91.
	838.39.
	272.48.

\$1654.78.

Add on 2 years and 7 months interest,	256.48.
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\$1911.26.

Deduct draft of Park's, May, 1861,	500.00.
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\$1411.26.

Allow defendant \$550 American gold, with 40 per cent. premium,	770.00.
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\$641.26.

Allow defendant the difference in value be- tween \$1150 American gold, and the same amount in currency,	460.00.
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Judgment for plaintiff,	\$181.26.
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But if the Bank of Galena must have recourse
to the Bank of Peru, or must account for the grain,
Then Kupfer is entitled to \$550, American gold,
with 40 per cent. premium,

\$770.00

Also to the difference in value between \$1150,
American gold, and same amount in currency,

460.00.

Judgment for Kupfer,	\$1230.00.
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~~L. SHISSLER, M. Y. JOHNSON, AND E. S. LELAND,~~
~~ATTORNEYS FOR APPELLANT.~~

The foundation for parole evidence
 of contents of drafts not laid. The mean-
 ing of value taken up over by Parks
 shows the danger of too much loose
 on this subject

Does the receipt promise of Ruffin
 before Mr. M. the drafts drawn on
 warrant of demand notice

elena

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State of Illinois---Supreme Court,

Third Grand Division,

APRIL TERM, A. D. 1864.

HERMAN KUPFER, Appellant, } Appeal from the Cir-
vs. cuit Court of Jo
BANK OF GALENA, Appellee. } Daviess County.

ABSTRACT OF RECORD.

Record. This was an action of Assumpsit brought by the Bank of
p 3 Galena against Herman Kupfer. Summons served on de-
fendant on the 21st day of February, A. D. 1862.

30 Declaration amended and filed.

31 1st Count sets forth a guaranty on the part of defendant, to
pay certain drafts drawn by him on the Bank of Peru.

35 2d Count declares on guaranty, an alleged liability to pay
certain drafts amounting to \$10,000.

38 3d Count. A special count on bill of exchange, dated Ga-
lena, Nov. 6, 1860, payable 15 days after date, to the order
of the plaintiff, for \$1,039,54, drawn by defendant on the
Bank of Peru.

40 4th Count. A special count on bill of exchange, dated Ga-
lena, Nov. 8th, 1860, payable 15 days after date to the order
of the plaintiff for \$545,35, drawn by the defendant on the
Bank of Peru.

42 5th Count. Special count on bill of exchange, dated Galena,
Nov. 16th, 1860, payable 15 days after date, to the order of
the plaintiff, for \$543,91, and drawn by the defendant on
the Bank of Peru.

44 6th Count sets forth a guaranty of five specific drafts.

47 7th Count. A special count on bill of exchange, dated Ga-
lena, Nov. 17th, 1860, payable 15 days after date to the or-
der of the plaintiff, for \$838,39, drawn by the defendant on
the Bank of Peru.

48 8th Count. A special count on bill of exchange, dated Ga-
lena, Nov. 17th, 1860, payable 15 days after date, to the or-
der of the plaintiff for \$272,48, and drawn by the defend-
ant on the Bank of Peru.

50 9th Count. Common counts for money had and receiv-
ed, &c.

53 Defendant files general and special demurrer sustained as
to 2d count, and overruled as to the other counts of the de-
claration.

61 Amended 2d count filed, setting forth a guaranty of five
drafts therein specified.

66 Defendant files pleas.

67 1st Plea. General issue.

2d Plea. To 1st, 2d and 6th counts on guaranty, setting up the statute of frauds, that if there was any promise, it was a promise to pay the debt of another person, to-wit: the Bank of Peru, and should have been in writing.

69 3d Plea states defendant sold and shipped to the Bank of Peru, large quantities of wheat, under a certain contract, as follows:

BANK OF PERU, Peru, Ill., June 7, 1860.

R G Parks is hereby authorized by himself or agent to draw on the Bank, at not exceeding one dollar per bushel for wheat, at Dunleith, Galena, or Warren, accompanied by Illinois Central Railroad receipts for the same, at such time as he shall arrange, said drafts to be sent direct to the Bank for collection.

N R HASKELL.

That the drafts sued on were drawn under said contract, and were the debts of another person, to-wit: the debt of the Bank of Peru, and any promise or undertaking by the defendant to pay the same, should have been in writing.

71 4th Plea states that the defendant entered into an agreement with, and shipped large quantities of grain to, the said Bank of Peru, of which the plaintiff then and there knew; and that the said plaintiff acting for and on behalf of said Bank of Peru, received the drafts sued on, and paid the money on the same, for and on account of the Bank of Peru.— That said drafts were drawn for the value of certain shipments of grain, and were attached to Illinois Central Railroad receipts of each of said shipments, corresponding in amount, which were delivered with the drafts to plaintiff.

72 5th Plea sets forth that the defendant did sell and ship grain to the Bank of Peru, under an agreement therein stated. That plaintiff knew these facts. That the Illinois Central Railroad receipts for said grain, when the same was ready for shipment, were delivered to the plaintiff, and the plaintiff in consideration, that the Illinois Central Railroad receipts were so delivered, whereby the plaintiff became the owner and was entitled to be paid the value of the same before delivery to the Bank of Peru, agreed to pay and did pay the value of each of said shipments, deducting one per cent., to the said defendant, and the defendant at the time of the transfer of said grain, also transferred the right to collect its value, by directing the Bank of Peru to pay to the order of the plaintiff the amount of the value of each shipment. That plaintiff thus being in possession of said grain, holding title to and owner of the same under said Illinois Central Railroad receipts, transferred said grain to other parties. That the monies sued for are the identical sums paid by the said plaintiff, as the value of the said shipments of grain.

74 6th Plea set-off. Common counts, money had and received, &c. Grain sold and delivered. Money due and owing, &c.

COPY OF ACCOUNTS. ANNEXED
Bank of Galena,

To Herman Kupfer, Dr.

To 73,302 bushels of wheat. \$36,170.27.

77 May 3d, To American gold on special deposit \$1700.00.
Cash deposited, \$30,000.00.

- 79 7th Plea states defendant made an arrangement with plaintiff to draw drafts on the Bank of Peru, and to ship wheat to cover the same, the Illinois Central Railroad receipts of said shipment to be delivered to the plaintiff, and the wheat to be appropriated to the payment of said drafts. That the defendant shipped wheat under said arrangement, and drew drafts for the value of the same, and that said grain drafts and produce bills were delivered to the plaintiff, and the money so paid by the plaintiff, is the money sued for, having been advanced on said shipments of grain; and the drafts so drawn by defendant on the Bank of Peru were accompanied by Illinois Central Railroad receipts, and are the identical causes of action set forth in plaintiff's declaration. That the grain shipped was equivalent in value to the amount of said drafts. That plaintiff has never accounted for said grain, but has detained and appropriated the same to his own use.
- 80 8th plea states that defendant made arrangements with the plaintiff that on shipping grain to the Bank of Peru and drawing drafts against said shipments, then plaintiff would cash said drafts. That defendant thereupon shipped grain to the Bank of Peru, drew drafts for the value thereof, and attached Illinois Central Railroad receipts of said shipments, which were delivered to the plaintiff, and it became the duty of the plaintiff to account for the value of said shipments of grain. That the causes of action sued on are five of said drafts, accompanied by Illinois Central Railroad receipts for shipments of grain, of the value of the sum stated in said drafts. That plaintiff permitted the grain to go from its control and delivered the same to the Bank of Peru. That said Bank of Peru took up and paid said drafts and for said shipments of grain by certain other drafts, drawn on parties in New Orleans.
- 82 9th plea states that defendant shipped grain to the Bank of Peru under an agreement therein set forth. That plaintiff was shown said contracts previous to the making of said drafts sued on. That defendant, under and by virtue of said agreement, did ship wheat to said Bank of Peru, drew drafts for the value thereof, and attached to said drafts the Illinois Central Railroad receipts of said shipments, which drafts with Illinois Central Railroad receipts were delivered to the plaintiff, who, well knowing the credit and responsibility of said Bank of Peru, did discount and pay said drafts. That drafts to the amount of several thousand dollars were so drawn on and paid by the said Bank of Peru. That the five drafts sued on were drawn under said arrangement, and wheat of the value of the sum stated in said drafts was shipped to cover the same, which drafts and railroad receipts were delivered to the plaintiff, by means whereof the drafts sued on were fully paid and satisfied.
- 85 Plaintiff files replications to defendant's pleas, and double replications to defendant's 3d and 5th pleas.
- 85 Replication to second plea states, the said promises and undertakings in the 1st 2d and 6th counts of the plaintiff's declaration, were not special promises to pay the debt of another person, to-wit: the debt of the Bank of Peru.

86 Replication to third plea states that plaintiff did not rely upon the credit and responsibility of the Bank of Peru, and did not pay the indebtedness of the Bank of Peru for said grain sold and shipped by the defendant.

86 2d replication to 3d plea states that the promises and undertakings declared on in the 1st, 2d and 6th counts, were not special promises to pay the debt of another person, to-wit: of said Bank of Peru.

87 Replication to 4th plea states that the plaintiff was not acting for and on behalf of said Bank of Peru, and did not receive and pay said drafts for and on account of the said Bank of Peru.

87 Replication to 5th plea states that the plaintiff did not agree in consideration that Illinois Central Railroad receipts were delivered to it, that plaintiff would pay and did pay the value of said shipments of grain.

87 2d replication to 5th plea states that plaintiff did not transfer said grain to other parties, and the sums of money declared on are not the sums of money paid by plaintiff, as the value of said shipments of grain.

88 Replication to 6th plea, states that the plaintiff was not indebted to said defendant, as averred in said plea of set-off.

88 Replication to 6th plea, states that defendant made no arrangement with plaintiff by which defendant was to draw said drafts, and ship grain to cover the same, taking Illinois Central Railroad receipts for said shipments, which were to be delivered to the plaintiff, and appropriated for the payment of said drafts.

89 Replication to 8th plea, states that no arrangement was made with said plaintiff, by which said defendant on shipping grain to the Bank of Peru, and drawing drafts against said shipments, and attaching Illinois Central Railroad receipts for said shipments to said drafts, the plaintiff would cash said drafts, and the same were not paid and satisfied.

89 Replication to 9th plea states that said drafts have not been fully paid and satisfied, as set forth in said plea.

92 Defendant files special demurrer to plaintiff's replications.

101 Demurrer overruled.

102 Jury empanelled in said cause.

104 Affidavits of N. Corwith as to the loss of two of said drafts filed.

107 Verdict of the Jury :

"We, the Jury, find the issues for the plaintiff, and assess its damages at the sum of \$2700."

Defendant moves for a new trial, and files the following motion and reasons therefor :

108 And now at this day comes the said defendant by Johnson and Shissler, his attorneys, and moves the court to set aside the verdict of the jury, and to grant a new trial in said case, and sets forth the following reasons :

1. Because the verdict of the jury is against the law in said case.

2. Because the verdict is against the evidence in said case.

3. Because the court admitted improper evidence.

4. Because the court refused proper evidence.

5. Because the court gave improper instructions.
 6. Because the court refused to give proper instructions.
 7. Because the jury disregarded the law and the evidence in said case, and for other good and sufficient reasons, &c.
- 110 Motion for new trial overruled, and excepted to. Defendant prays an appeal to the Supreme Court.

BILL OF EXCEPTIONS.

112 Enos Ripley witness for plaintiff testified :
I am a clerk in the Bank of Galena. Nathan Corwith is principal manager of the Bank of Galena. I went with Mr. Corwith to the Bank of Peru. He asked the President of the Bank for the drafts, but did not get them. He made a demand on the Cashier, and on the President, but could not obtain the drafts.

Cross Examined. Mr. Corwith made demands for the drafts, but did not state the number. Stated only the gross amount.

Plaintiff offered two affidavits of Nathan Corwith to the Court, to prove loss of drafts. Objected to by defendant's counsel as insufficient. Objection overruled, and defendant excepted.

113 Corwith's affidavits.

117 Walter Ford. Have been Teller of the Bank of Galena for four years. I know about these drafts. I discounted the five drafts sued on, to-wit :

Draft drawn Nov. 6, 1860, on the Bank of Peru, payable to the order of plaintiff 15 days after sight, for \$1039.54.

Draft drawn Nov. 8, 1860, on the Bank of Peru, payable to order of plaintiff, 15 days after sight, for \$545.35.

Draft drawn Nov. 16, 1860, on the Bank of Peru, payable to the order of plaintiff, 15 days after sight, for \$542.91.

Draft drawn Nov. 17, 1860, on the Bank of Peru, payable to the order of plaintiff, 15 days after sight, for \$338.39.

Draft drawn Nov. 17, 1860, on the Bank of Peru, payable to order of plaintiff, 15 days after sight, for \$272.08.

Defendant had a large number of drafts discounted, as many as fifty in all.

118 Mr. Kupfer came down to the Bank of Galena to get drafts cashed. Mr. Corwith told him he would take them on the responsibility of Kupfer. In October, 1860, Mr. Corwith was afraid of the Bank of Peru, and sent a draft to the Marine Bank of Chicago. Kupfer came in, and said the Bank of Peru had written to him, and would not pay any drafts sent that way.

Kupfer agreed to guaranty the drafts. (Defendant objected, and excepted to all this testimony.)

Mr. Corwith afterwards sent the drafts to the Bank of Peru. These five drafts were not paid, or reported as paid. I saw Mr. Kupfer at the Bank of Galena. My impression is, that Corwith went down to Peru at his request. (All this testimony was excepted to.)

A railroad receipt of wheat was attached to each of said drafts. Wheat was consigned to the Bank of Peru. One of these receipts was attached to each of these five drafts.

I know the defendant's hand writing; have seen him draw checks. This letter (shown to witness) is defendant's hand writing. Witness identifies the draft dated Nov. 6, 1860.

\$1039.54 and the draft dated Nov. 8, 1860 for \$545.35 produced by the defendant, as being two of the drafts sued on in this case.

Cross Examined.

119

The first time, of which I have testified, when the conversation occurred between Mr. Corwith and Mr. Kupfer, was in the early part of June, 1860. Railroad receipts were attached to each draft. Railroad receipts for so much wheat. Evidence of so much stuff or wheat shipped. Don't know that anything was said about railroad receipts at the first time in June. Corwith said he would hold Kupfer for them, take them on his own responsibility.

Conversations occurred three years ago. I could not remember distinctly the words. I cannot tell any more of what occurred there.

In the latter part of October Kupfer came down to the Bank of Galena. Corwith said he had fears of the Bank of Peru, did not think the institution was sound, and said he would not take any more drafts unless Kupfer guaranteed them.

We had taken Kupfer's drafts before, drawn on Chicago.

A draft drawn by R. G. Parks, in April, 1861, on Chicago for \$500, was brought in by Mr. Kupfer, to be applied on the drafts due. The draft on Chicago was paid.

120

C. C. P. Hunt sworn.

I am, and have been Cashier of the Bank of Galena for a number of years. Nathan Corwith has been managing the bank affairs for the past four or five years, and was the President of it. I have known defendant for two or three years. I attend to the correspondence of the Bank, and forward all drafts for collection. The five drafts sued on, were forwarded by me to the Bank of Peru, with the request that the amount should be remitted to us. The 1st draft was sent on Nov. 6, 1860, for \$1039.54, payable to plaintiff 15 days after sight.—2nd draft, Nov. 8th, 1860, for \$545.35, payable to plaintiff, 15 days after sight. Another draft Nov. 16, 1860, for \$542.91, payable to plaintiff 15 days after sight. Another draft Nov. 17, 1860, for \$838.39, payable to plaintiff 15 days after sight. Another draft, Nov. 17, 1860, for \$272.09, payable to order of plaintiff 15 days after sight. N. R. Haskell was the Cashier of the Bank of Peru at that time. Had a large amount of correspondence with him. Commenced in June. The last five drafts, sued on, were not paid. The last two drafts, I was advised by letter, were not accepted. The drafts were generally acknowledged by Bank of Peru, and this was regarded by us as an acceptance.

121

A draft for \$500, drawn by R. G. Parks, on Chicago, was handed in by Kupfer, the money collected, and applied on a balance due on drafts, leaving \$292.14 to be applied on these five drafts.

Cross Examined by defendant's counsel.

The draft was collected, and paid it on Kupfer's account. I made the appropriation without any directions from Kupfer. I heard nothing said by Kupfer in regard to it.

I cannot say that there were more than forty-nine drafts drawn. The Illinois Central Railroad receipts were attached to each of said drafts.

(Bank book of defendant shown to witness.) This book is

an account of deposits made with the Bank of Galena.

Re-examined.

Witness stated letter received by him did not accept the last two drafts. Letter read without objection, and is as follows :

BANK OF PERU, Peru, Ill., Nov. 21, 1860.

122 C. C. P. HUNT, Esq., Galena, Dear Sir—Your favor of the 17th inst. is received with enclosures as stated. These drafts are held without acceptance, and should not have been made.

I send to-day \$2042,73 for balance acct. as advised. I suppose by now the drafts on Corwith are provided for.

Yours truly, N. R. HASKELL.

The balance \$2042,73 was for former drafts, which had then matured, and had nothing to do with the drafts in suit, and was applied on such former drafts.

Re-Cross Examined.

The amount of \$2042,73 was for drafts to that amount, drafts making that specific sum.

These drafts drawn by Kupfer on the Bank of Peru, were sent with instructions to remit, and they were coming and going all the time.

We charged the Bank of Peru on our Bank books, with the drafts when drawn, and sent to them. When the drafts were paid, we credited them with the amount.

I think drafts on New Orleans were sent by the Bank of Peru to N. Corwith & Co., but I think none were sent to the Bank of Galena.

123 The Bank of Peru sent us currency by express, drafts on Chicago, and drafts on N. Corwith & Co. Money sent all the while to the Bank of Galena. We had an account with the Bank of Peru.

Charles Wyeth testified.

I know the defendant by sight for the past three years. I was in the employ of N. Corwith & Co. in 1860 and 1861.

On the 2nd day of May, 1861, I heard a conversation between Mr. Kupfer and Nathan Corwith. Mr. Corwith wanted Kupfer to appoint an early day on which to pay the drafts. (Testimony objected to.) Mr. Kupfer said he would pay them in four months. My desk was near them.

124 Mr. Corwith slipped a piece of paper on my desk with the word "listen" written on it. Corwith and Kupfer had just come into the Bank. I have given the sum and substance of what was said. Some drafts were spoken of, drawn by Kupfer on the Bank of Peru, the number not mentioned. Corwith wanted them paid in 60 or 90 days, and Kupfer wanted six months to pay them in; he agreed to pay them in four months. (All this testimony objected to, and went in under such objection.)

Plaintiff's counsel then offered in evidence a letter of Kupfer, June 6, 1860, having first proved his hand writing.

To the reading of the letter the defendant excepted.

The letter is as follows :

R. G. PARKS, Esq., La Salle. Dear Sir—I understood yesterday you made arrangements with the Bank of Galena to cash my drafts. After presenting your letter to N. Corwith & Co., I found out that they are going to take the drafts only under my own responsibility. As it is against my principles

to sell grain on time, I would like you to make such arrangements here, as to get the cash for the wheat on delivery.

Expecting an answer from you immediately,

I am Very Respectfully Yours, H. KUPFER.

125

The defendant to prove and maintain the issues on his part, then offered the following testimony :

Deposition of Rollin G. Parks offered and read to the jury. (Plaintiff excepted.)

Said deposition having been taken under notice and stipulation, and before Nicholas Duncan, J. P. at La Salle, Ill.

Plaintiff's counsel first asked the witness:

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Question Have you any interest in the event of this suit?

Answer Not any whatever.

Question In case defendant should succeed in this suit, wholly or partially, would you gain anything pecuniarily?

Answer I should not.

DIRECT QUESTIONS BY DEFENDANT'S COUNSEL.

Question 1 What is your name, age and occupation?

Answer Rollin G. Parks. 45 years. Miller.

Question 2 Do you know the parties, plaintiff and defendant to this suit? If so, how long have you known them respectively?

Answer I know Mr. Kupfer not far from June 7, 1860. I met Mr. Corwith the same day. I was introduced to Mr. Corwith in the Bank of Galena, on the same day.

Question 3 Do you know a corporation known as the Bank of Peru, located at Peru in the state of Illinois? How long have you known it?

Answer I have known the institution since its organization under the Banking Law—for several years.

Question 4 Were you at any time at Galena with the view to have grain shipped to La Salle or Peru? And did you then meet the plaintiff and the defendant? State at what time it occurred, if any such visit was made. State all about it.

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Answer I visited Galena about the 7th of June, 1860, for the purpose of securing wheat for shipping to La Salle. At that time I met Mr. Kupfer, and met also Messrs. Cook & Pendleton grain dealers. I went to the Bank of Galena in company with Mr. Cook, or Mr. Pendleton, who gave me an introduction to one of the Messrs. Corwith, for the purpose of making the necessary arrangements for the payment of wheat so purchased.

Question 5 Did the defendant, Kupfer, at any time ship grain to the Bank of Peru? If so, in what way, and on what terms?

Objected to by plaintiff's counsel as leading and irrelevant.

Answer Mr. Kupfer shipped wheat consigned to the Bank of Peru; his draft for the cost of the wheat, drawn at from ten to fifteen days was attached to the Railroad receipts of the Illinois Central Railroad Company, deliverable at La Salle.

Question 6 Was said wheat so shipped to the Bank of Peru under any written authority or guaranty from said Bank of Peru, for the payment of the same? If so, were the plaintiffs aware of such guaranty?

Objected to by plaintiff's counsel as leading and irrelevant.

128

Answer I had written authority from the Cashier of the Bank of Peru to have wheat shipped, consigned to the Bank and drafts made upon the Bank of Peru, which letter of authority was shown to Mr. Corwith in the Bank of Galena.

Question 7 State if you know what became of the letter of authority?

Answer I left the letter of authority with the Bank of Galena, or with some of the parties shipping wheat.

Question 8 State if you know, whether the paper here shown to you, and marked exhibit A,

"BANK OF PERU, Peru, Ill., June 7. 1866.

R. G. PARKS is hereby authorized by himself or his agent to draw on the Bank, at not exceeding one dollar per bushel for wheat, at Dunleith, Galena or Warren, accompanied by Ill. Central Railroad receipts for the same, at such time as he shall arrange—said drafts to be sent direct to this bank for collection,

N. R. HASKELL."

is a correct copy of said letter of credit?

Answer I can't say that it is an exact copy, but it is substantially a copy of the letter of credit.

Plaintiff's counsel objects to the exhibit because it is not shown to be a copy of the original.

Question 9 What persons shipped grain to the Bank of Peru under the letter of credit of which you speak?

Answer Cook, Pendleton & Company, and H. Kupfer.

Question 10 In whose possession was said letter of credit when you last saw it?

Answer I cannot say whether in the possession of Corwith or Cook.

Question 11 Was any wheat shipped by Kupfer to the Bank of Peru at any time? If so, when? And were drafts drawn in favor of the plaintiff, for the amount of such wheat shipped? Answer this question fully and particularly.

Answer Kupfer shipped wheat consigned to the Bank of Peru, and drew drafts on the Bank of Peru for the cost of said wheat, payable to the order of Mr. Corwith & Co., or Bank of Galena, I am not certain which. Drafts were attached to the railroad receipts for all such shipments—railroad receipts of Illinois Central. The first shipment was made on the 28th of June, 1860, and shipments continued to be made until the 17th of November of the same year.

[I suppose that all such wheat was shipped }
under, and subject to the letter of credit and } EXCLUDED.
from the fact that] I received from the Bank }
of Peru a number of drafts with such railroad receipts attached }
[I have every reason to believe it was for the }
payment of the wheat so shipped under said } EXCLUDED.
letter of credit.]

130

Answer objected to by plaintiff's Counsel as not responsive to the question, and being matters of speculation by witness.

Question 12 Do you know that the wheat shipped was of the value of the drafts drawn in favor of the plaintiff against said wheat?

Answer It was, as far as I have any knowledge.

Question 13 Who received the wheat, if you know; ship-

ped by the defendant to the Bank of Peru, against which said drafts were drawn in favor of the plaintiff?

Answer I think that I received it all.

Question 14 State, if you know, how many of said drafts were paid, or who paid for said wheat?

Answer I took up from the Bank of Peru, I think forty-six of such drafts, drawn by Kupfer.

Question 15 Did you take up and pay any of the drafts sued on in plaintiff's declaration?

Objected to by plaintiff's counsel, unless shown that it was paid to the plaintiff.

Answer Draft for \$1,039.54, dated November 6, 1860, at 15 days after sight, and one for \$545.35, dated November 8, 1860, 15 days after sight were taken up and settled by me.— The two drafts spoken of, were payable to the Bank of Galena. I made the settlement with the Cashier of the Bank of Peru.

Question 16 If you know, state whether any shipments of grain were made to the Bank of Peru, equal in value to the five drafts sued on in said plaintiff's declaration? State the question fully.

Objected to by plaintiff's counsel as leading and improper.

Answer I received wheat shipped by Kupfer, to the value of the amount of said five drafts.

Question 17 State, if you know, whether the wheat was shipped by the defendant to the Bank of Peru, to cover the drafts sued on in said plaintiff's declaration, and to what amount?

Objected to as irrelevant to the issue in this case.

Answer It was to the amount of \$3238.27, the value of the wheat.

Nov. 6, 1860, \$1039.54, value of the wheat.

Nov. 8, 1860, \$545.35, " "

Nov. 16, 1860, \$542.91, " "

Nov. 17, 1860, \$838.39, " "

Nov. 17, 1860, \$272.08, " "

Question 18 Have you at any time sent to the plaintiffs any money to be appropriated on payment of said drafts sued on, which were not taken up by you from the Bank of Peru?

Answer I have never sent any to the Bank of Galena.

Question 19 To the best of your recollection, is exhibit "A" attached to this deposition, a correct copy of the letter of credit shown by you to the plaintiffs at the time you were in Galena?

Objected to by plaintiff as leading in form, and because it is improper to introduce a copy without introducing the original, or accounting for it.

Answer It is.

Question 20 Have you the original letter of credit, of which exhibit "A" hereto annexed is a copy, in your possession, or do you know where the original now is?

Answer I have not the original letter of credit, neither do I know where it is.

Question 21 Did you come to the possession of the wheat shipped by the defendant to the Bank of Peru? If so, to

*This was payment -
drafts changed to
M. & Peru & credit
by payment.*

131

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133

what amount, and how came you to obtain possession of it?

Answer The Cashier of the Bank of Peru gave me an order on the agent of the Illinois Central Railroad, at La Salle, to receive all wheat consigned to said Bank, on payment of the freight; and I so received the wheat shipped by Kupfer to the amount of some 73,000 bushels to the best of my recollection.

Question 22 Was the grain alluded to in your last answer shipped to the Bank of Peru, and drafts drawn against the same in favor of the plaintiff under said letter of credit? Who was Cashier of said Bank at the time said letter of credit was executed?

First part of question objected to as leading and improper.

Answer The grain so received by me, and shipped by Kupfer with his drafts attached to the bills of lading drawn on the Bank of Peru for the cost of wheat, were in favor of the plaintiff. The Cashier's name was N. R. Haskell.

Question 23 If you know, state what was the price per bushel of the wheat shipped by the defendant to the Bank of Peru, and against which, drafts were drawn in favor of the plaintiff, including those sued on in plaintiff's declaration, and being the same wheat received by you?

Objected to as leading and including the answer.

Answer the price of said wheat ranged from 60 to 92 cts., to the best of my knowledge.

CROSS EXAMINATION.

C Question 5 Did you ever pay any of the drafts spoken of by you, to the plaintiff?

Answer No Sir.

C Question 6 To whom did you make payment?

Answer To the Bank of Peru.

C Question 8 How many of said drafts have you paid to the Bank of Peru, if any?

Answer To the best of my belief, I have settled with the Bank of Peru to the number of 46 drafts, and taken up such drafts.

C Question 9 Have you taken up all the drafts for the wheat referred to in your direct examination—shipped by Kupfer to the Bank of Peru?

I have taken up forty-six drafts, and there appears to have been forty-nine drawn.

135 C Question 10 Did you pay the amount mentioned in said drafts, and take up the same?

Answer In all cases I gave my check on the Bank of Peru for the amount of said drafts so taken up.

Question 12 Did you pay the checks?

136 Answer The checks were always charged to me.

Question 13 Did you pay them?

Answer Yes, I paid them by settlement.

Question 14 With whom was the settlement made?

Answer With the Cashier and President of the Bank of Peru, for all the drafts taken up by me. T. D. Brewster was President.

Question 19 State the name of the Cashier and President,

with whom you made the settlement spoken of by you.

Answer N. R. Haskell was the Cashier. Theron D. Brewster I suppose to be the President.

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Question 23 Do you swear that the checks which you drew on said Bank of Peru, in payment of said drafts drawn by Kupfer, were all charged to you on the Books of said Bank of Peru, or in your bank account?

Answer To the best of my belief they were all charged to me, and will so appear on the books of said Bank to the best of my recollection. And will so appear, also by my bank book.

Question 24 Do you know anything about the three drafts over the forty-six spoken of by you, as drawn by Kupfer on said Bank of Peru? If so, state what you know.

Answer I know that three such drafts were drawn on shipments of wheat. I do not know where they are. But I have never taken them up. But I have paid on account of said drafts \$500 remitted by me to Kupfer by draft on Chicago, which draft was paid.

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RE-EXAMINATION.

Question 5 Did Kupfer ever send any grain to the Bank of Peru, and draw drafts in favor of plaintiff against the same, before said letter of authority was shown to the Bank of Galena and Kupfer?

Answer Not to my knowledge.

Question 2 What did you do with the large quantity of wheat received by you? Did the proceeds of the flour manufactured from said wheat go into said Bank of Peru by deposit or otherwise?

Answer The wheat was manufactured into flour by me, and the proceeds in the shape of drafts on shipments were given to the Bank of Peru on account, that is on Bank account.

Question You were asked about the payment or settlement of the drafts. Did you settle them singly, and then obtain the Illinois Central Railroad receipts for the wheat against which each particular draft was drawn, or in what manner was it?

Answer The usual custom with me, was to send a clerk each morning to the Bank of Peru, to obtain currency for disbursements during the day for grain, who was authorised to sign checks on the Bank of Peru for said currency for taking up any acceptances or drafts on myself, as well as for the amount of Kupfer's drafts, or other shippers of wheat, from Galena, also from Iowa City, in the possession of the Bank at the time. I had an order from the Cashier of the Bank of Peru on the agent of the Illinois Central Railroad Company, to receive the wheat shipped from Galena, and consigned to the Bank of Peru, on the payment by me of the freight.

ROLLIN G. PARKS.

EXHIBIT A

BANK OF PERU, Peru, Ill., June 7, 1860.

R. G. Parks is hereby authorized by himself or his agent to draw on the Bank, at not exceeding one dollar per bushel for wheat, at Dunleith, Galena or Warren, accompanied by

Ill. Central Railroad receipts for the same, at such time as he shall arrange—said drafts to be sent direct to this bank for collection.

N. R. HASKELL.

141 JOHN T. COOK sworn and testified:

I am a member of the late firm of Cook, Pendleton & Co. I know R. G. Parks. Saw him here. Know of a letter of credit from the Bank of Peru. Cannot swear whether this is a true copy or not. (Copy shown to witness.) It is too long since I saw it. Can't recollect its contents so as to swear to it. I have the books, papers and letters of the late firm of Cook, Pendleton & Co. in my possession. I have searched through them carefully, and several times, and know the letter of credit is not there. I searched, because I was notified in regard to my being a witness. I do not know where the letter of credit is.

142 Defendant then proved to the court that the plaintiff had been notified to produce the letter of credit on the trial of this case.

Defendant's affidavit then offered to the court, for the purpose of laying a foundation for the introduction of secondary evidence of the said letter of credit.

144 Defendant then read to the jury a copy of the letter of credit, as follows:

BANK OF PERU, Peru, Ill., June 7, 1860.

R. G. Parks is hereby authorized by himself or his agent, to draw on the bank at not exceeding one dollar per bushel for wheat, at Dunleith, Galena or Warren, accompanied by Ill. Central Railroad receipts for the same, at such time as he shall arrange—said drafts to be sent direct to this bank for collection.

N. R. HASKELL.

145 Defendant then produced and read the two drafts to the jury \$1039.54.

GALENA, November 6, 1860.

Fifteen days after sight, Pay to the order of Bank of Galena, One Thousand thirty-nine, 54-100 Dollars, value received, and charge the same to account of

To BANK OF PERU, Peru.

H. KUPFER.

Endorsed, Remit as advised.

\$545.35.

CHAS. C. P. HUNT, Cash.

GALENA, November 8, 1860.

Fifteen days sight Pay to the order of Bank of Galena, Five Hundred and forty-five 35-100 Dollars, value received, and charge the same to account of

To BANK OF PERU, Peru.

H. KUPFER.

Endorsed. Remit as advised.

CHAS. C. P. HUNT, Cash.

Both drafts marked "paid" on the face.

J. R. BOOTH sworn and testified:

I am agent of the Illinois Central Company. Was agent in 1860. I knew R. G. Parks. Knew Kupfer shipped wheat to the Bank of Peru. One shipment made by myself.

CROSS EXAMINATION.

My knowledge in regard to shipments of wheat to Bank of Peru is derived from the books of the Railroad Company. Except the one on which I gave the receipt.

WALTER FORD sworn and examined:

The defendant deposited \$1700 in American gold with the

Bank of Galena, on the 3rd day of May, 1861. The money was to be drawn out in gold. When currency was deposited, the depositor could only draw for currency; when gold was deposited, the depositor could draw gold on his checks.

Question What is the difference in value between American gold and Treasury notes? (Objected to by plaintiff's counsel. Objection sustained by the Court, to which ruling the defendant excepted.) The defendant drew out from the bank, on his check, \$400 in gold.

Question What is the difference in value between currency and American gold?

The difference in value between currency and American gold is now 40 per cent. American gold is now 40 per cent. premium. It is selling at 45 per cent., we pay 40 per cent. premium.

147 The balance due to the defendant on his deposit account is \$553.37. The defendant drew out currency on all these checks, and I appropriated his gold to pay these checks. The defendant was entitled to draw out the full \$1700 in gold, but having drawn only \$400 in gold, and having drawn checks for currency, I appropriated gold to pay them.

CROSS EXAMINATION.

Gold was worth 12 per cent. at the time of the deposit by the defendant. On the 21st day of May, 1861, the defendant drew \$300 in gold, on his check. On the 4th day of May, 1861, the defendant drew out \$100 in gold on his check.

A party could draw in gold on his check and they would be paid in gold, but only until he drew to an amount equal to his deposit in gold. If he drew checks in currency, they would be paid until he drew out the amount on deposit.

C. C. P. HUNT testified as follows:

The first draft was drawn on the 27th of June, 1860. Also a draft on the 29th of June, and one on the 30th day of June. Draft drawn on the 2nd of July, and on the 3rd of July.—No more in July.

148 Four drafts were drawn in the month of August. The greatest number were in the months of September and October. Six drafts drawn in November, forty-nine drafts drawn in all.

I have examined the bank books, and can't find any drafts amounting to the \$2,042.73 balance mentioned in Haskell's letter of Nov. 21, 1860. That amount is irrespective of any particular drafts.

THOMAS McDERMOTT sworn and testified:

I am the shipping clerk of the Illinois Central Railroad Company. Have been such for over three years. I know Kupfer shipped wheat to the Bank of Peru, account of R. G. Parks.

On the 6th day of November, 1860, Kupfer shipped in Car No. 2153, 105 bags wheat, 16,240 lbs.

" " 2193, 142 " " 20,008 "

" " 888, 147 " " 20,453, "

" " 288, 147 " " 20,493, "

to the Bank of Peru account of R. G. Parks over the Illinois Central Railroad. The Railroad receipts were given to Kupfer.

77-194

On the 8th day of November, 1860, Kupfer shipped to Bank of Peru, account of R. G. Parks, in Car 2792, 150 bags wheat, 20,314 lbs.

" 733, 144 " " 20,183 "

Kupfer took the Ill. Central Railroad receipts.

On the 15th Nov., 1860, Kupfer shipped to Bank of Peru, account R. G. Parks,

149 Car 1542, 135 bags wheat, 20,219 lbs.

" 2290, 137 " " 20,006 "

On the 16th Nov., Kupfer shipped to Bank of Peru, account of R. G. Parks,

Car 1202, 135 bags wheat, 20,636 lbs.

" 910, 135 " " 20,693 "

" 150, 152 " " 20,928 "

On the 17th Nov., 1860, Kupfer shipped to the Bank of Peru, account of R. G. Parks,

Car 1410, 135 bags wheat, 20,722 lbs.

I shipped all this grain. Know shipments were made of my own knowledge. The wheat in cars went away the following day after receipts signed. I signed all the receipts myself of these five shipments. The receipts were given to Kupfer. I have the stubs of the receipts now in my hand; they were signed at the time of the shipments.

Plaintiff then recalled C. C. P Hunt, who stated that he never saw letter of credit from Bank of Peru. Never saw R. G. Parks to his knowledge.

150 Walter Ford recalled by plaintiff.

I have never seen letter of credit from Bank of Peru.— Never have seen R. G. Parks to my knowledge.

This was all the testimony offered on the trial of said cause, both on the part of the plaintiff, and on the part of the defendant.

153 Defendant's instructions. 1st, 2nd, and 3rd GIVEN. The 4th, 5th, 6th, 7th and 8th REFUSED.

REFUSED INSTRUCTIONS.

155 4th. If the jury believe from the evidence, that the Bank of Peru gave one R. G. Parks a letter of credit authorizing him or his agent to draw on said Bank of Peru for wheat, at Galena, Dunleith or Warren, and that the letter of credit was shown to the plaintiff, and the drafts sued on were afterwards drawn under said letter of credit, and shipments of wheat were made to said Bank of Peru of the value of the amount of said drafts, and that Illinois Central Railroad receipts for said wheat were attached to said drafts and delivered to the plaintiff, and that afterwards the said wheat was delivered to said Parks, and the said drafts or any of them were taken up by said Parks, and settled by him with the said Bank of Peru, and the said Bank of Peru failed to pay the plaintiff, then the plaintiff must pursue its remedy against said Bank of Peru as to any draft so settled, unless the plaintiff proves a WRITTEN guaranty for the payment of said drafts by said Kupfer. And on the failure to prove any such guaranty IN WRITING, the jury must find for the defendant as to such drafts as were settled by said Parks. REFUSED.

77.194
40,50.0
40.225
62.257
20.722
240898

5th. If the jury believe from the evidence, that the defendant Kupfer shipped wheat to the Bank of Peru over the Illinois Central Railroad, and drew drafts for the value of said wheat, and delivered the receipts of the Illinois Central Railroad Company for said wheat to said plaintiff, attached to drafts drawn on said Bank of Peru in favor of said plaintiff, then the possession of the said Illinois Central Railroad receipts by said plaintiff, gave it the control over said wheat, and it became the duty of the plaintiff to obtain payment of said drafts, before allowing the wheat to be delivered to said Bank of Peru, or to other person; and in case the jury believe from the evidence, that the said plaintiff did allow said wheat to pass from its control, and delivered it to other parties, then the plaintiff cannot recover on said drafts without accounting for the value of said wheat. **REFUSED.**

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6th. If the jury believe that by the terms of the contract between the parties in this suit, that the said drafts were to be sent to the Bank of Peru for collection, and that the same were paid to the Bank of Peru, and said Bank of Peru neglected to account for and remit as advised by the Bank of Galena, then the Bank of Peru was the agent of the Bank of Galena in remitting said amount so collected; and in failing so to do, the plaintiff's remedy is against the Bank of Peru, and not against the defendant. **REFUSED.**

7th. If the jury believe from the evidence, that the defendant made a special deposit of American gold with the plaintiff, and the plaintiff appropriated said gold on the currency account of said defendant, then the defendant is entitled to the difference in value between currency and gold.—**REFUSED.**

8th. If the jury believe from the evidence, that the Bank of Peru authorized the drafts sued on to be drawn, and that the said drafts were drawn under such authority, then the Bank of ~~Galena~~ became the principal debtor to the plaintiff, and the said drafts were in the nature of accepted drafts, and any promise on the part of Kupfer is a collateral promise, and the law requires should be a distinct and positive promise in writing by the defendant to the plaintiff. **REFUSED.**

158

To the refusal of the Court to give said instructions, the defendant then excepted.

Verdict of jury, see page 108.

Defendant made a motion for new trial on page 108.

Defendant filed Appeal Bond 22nd June, 1863.

ERRORS ASSIGNED.

1. In overruling the motion for a new trial.
2. In rendering judgment.
3. In admitting improper evidence.
4. In rejecting proper evidence.
5. In giving improper instructions.
6. In refusing to give proper instructions.
7. Because verdict of the jury is against the law in said case.
8. Because the verdict is against the evidence.
9. Because the jury disregarded the law and the evidence in said case.

Peru

135-96

Herman Kupper
vs
Bank of Calona

Abstract

Filed Apr. 7, 1864.

L. Selawick

(1 2 3 4)

State of Illinois - Supreme Court.
Third Grand Division.
April Term AD 1864.

Hermann Kupfer $\frac{3}{3}$ Appeal from
vs Bank of Galena $\frac{3}{3}$ To Davies County.

Argument of Counsel for
Hermann Kupfer Appellant.

The record in this case shows that in 1860, Rollin G. Parks was the proprietor of a large flouring mill at La Salle, in this State, and was desirous of purchasing wheat at Galena. The Appellant Hermann Kupfer, who was defendant in the Court below, is a grain dealer residing at Galena, and has refused to sell grain to Parks, on time, demanding that arrangements should be made at Galena, by which he could obtain cash for the grain. Parks then obtained a letter of credit from the Bank of Peru, authorizing him to purchase wheat, at not exceeding one dollar per bushel. Parks came

to Galena saw Nathan Corwith the President of the Bank of Galena, showed him this letter of credit, & arrangements were then made between Parks and Corwith, under this written obligation of the Bank of Peru, by which, cash was to be paid to Kupfer for the wheat.

The plan adopted by Kupfer was, to place the grain in the cars, draw on the Bank of Peru, for the value of the wheat, take the Illinois Central Railroad receipts for the grain, pin them to the drafts, give them to Corwith, & Corwith would then pay him for his wheat. In this manner, 73,000 bushels of wheat were sold by Kupfer, and the price amounting to \$30,160, was paid to him. Forty nine drafts were drawn, and 46 were taken up by Parks, and paid to the Bank of Peru. The plaintiff now says, that the Bank of Peru has violated its arrangement, has failed to pay five of the drafts, and this suit was brought against Kupfer, to recover on them.

The declaration sets forth an alleged guaranty of Kupper to pay the Drafts, also, contains five special counts on these bills of exchange, against Kupper as the maker, - and also, the common money counts. To these counts on the alleged guaranty, the defendant Kupper pleaded the Statute of Frauds, - that if any promise was proved to have been made, it would ^{be} a special promise to pay the debt of another person, & with; the debt of the Bank of Peru, and should have been made in writing.

I.

The first point we make in this case, is. that.

The drafts having been drawn under this letter of credit, signed by the Bank of Peru, are in law regarded as accepted drafts. The authorities cited in our brief, are clear, conclusive, and uniform on this point. Being accepted drafts, the drafts, become the debt of the Bank of Peru. The law holds the acceptor, as the party primarily liable on the drafts. He is regarded in the same light

as the maker of a promissory note. It is his debt. He is the party looked to, for payment. If the Bank of Peru is primarily liable on these drafts, is the original debtor, then a promise by any other person to pay them, is a collateral promise, and must be proved to have been made in writing.

Who, does the evidence show, was the party looked to for payment, in this case. The Bank of Peru. It had paid 44 out of the 49 drafts drawn, according to the plaintiffs own evidence.

The language used by the plaintiff in the declaration, casts some light upon this subject. The words used are, that the defendant agreed to guaranty, and did guarantee, the payments of these drafts. The meaning of the word guaranty, is to pay the debt of another person. See Webster's Dictionary. The declaration also says, that the defendant agreed to pay the said drafts, in case the Bank of Peru should not pay them. This clearly shows the collateral promise, depending upon whether or not, the Bank of Peru paid the drafts.

X If not K, then as drawer
are failing Bank of P. to pay?

If the drafts were regarded as Kupfers debt, and not that of the Bank of Peru, - if Kupfers liability was original and primary, he would have promised directly to pay them. Parks had been up to see the plaintiff, had shown Corwith his letter of credit from the Bank of Peru, and the drafts were afterwards drawn, under the arrangements made between Parks and Corwith.

We think that it is conclusively shown that these drafts were the debts of the Bank of Peru, and under the defendants' pleas, they must show a written promise on the part of Kupfer, to pay the debt of the Bank of Peru.

Does the Plaintiff prove any such promise, ^{to have been made} by Kupfer.

We assign for error, the ruling of the Court in admitting improper testimony. The Court allowed Walter Ford, one of the plaintiffs witnesses, to give testimony in regard to a verbal guaranty. Ford testified that in October 1860, "Mr Corwith was afraid of the Bank of Peru, and sent a draft to the Marine Bank at Chicago.

"That Kupfer agreed to guaranty the drafts" This testimony was objected to, but the objection was overruled by the Court, and the defendant excepted. This conversation is said to have occurred in October — after between 30 or 40 of these drafts had been drawn and paid. This statement of Fords shows that Kupfer had not guarantied the drafts up to that time, or why would Corwith then ask him to guarantee them. Why ask Kupfer to guarantee these drafts, if they were not the debts of the Bank of Peru.

Is this not conclusive to show, both, that the Bank of Peru was the party Corwith held responsible, and that up to that time, no guaranty had been made by Kupfer. And what sort of a guaranty, does the plaintiff attempt to prove? Not a written guarantee, — but a verbal statement.

This testimony of Fords was clearly inadmissible, to prove a guaranty, and the Court made an egregious and fatal error, in allowing it to go to the jury.

There is not in this entire record, a single particle of proof, showing a written guaranty signed by Kupper, to pay this debt of the Bank of Peru. The plea of the State of fraud, was set up by the defendants, and without any proof of a written guaranty, the jury in wilful disregard of the law, and the evidence, found the issues of "no guaranty in writing," in favor of the plaintiff.

We were entitled to have this testimony rejected. It served to destroy the moral force of the defense. And the Court having ruled the testimony admissible, imparted to it, a weight in the minds of the jury, which was decisive of the entire case against us.

We have thus shown two reasons for a new trial, either of which, is sufficient to reverse the case. To wit; 1. Error of the Court in admitting improper testimony. 2. The jury found the issues of "no guaranty in writing," in favor of the plaintiff, in wilful disregard of the law and the evidence.

II.

Having disposed of this matter of the guarantee, we come to the second point.

That the Bank of Galena cannot recover, on these special counts on the bills of exchange, against Kupfer. Its sole remedy, is against the Bank of Peru.

This case is not like any ordinary ^{suit on} bill of exchange. Here the defendant had no funds with the Bank of Peru, and it was not contemplated by the parties, that he should have any. Kupfer had been asked, to sell grain. He refused to do so, unless arrangements should be made at Galena, by which, he could obtain cash for his grain. The Bank of Peru made the arrangement with the Bank of Galena, and the Bank of Galena paid the money, knowing that it had double security, having the Bank of Peru responsible, and also the grain, which was ^{worth} the money paid out.

The plaintiff introduced in evidence, a letter dated, June. 6-1860, from Kupfer to Parks, in which Kupfer uses this language, - "As it is against my principles to sell grain on time, I would like you to make such arrangements

here, as to get the cash for the wheat on delivery. Expecting an answer from you immediately. I am yours. H. Kupfer.

This letter is dated Galena, June 6th 1860, it would reach La Salle, on the morning of the 7th, and on that day, Parks gets his letter of credit from the Bank of Peru, dated June 7th 1860, and comes to Galena. This letter of Kupfers, put in evidence by the plaintiff, shows that he wanted the money, and would take no responsibility in the matter. Corwith knew this, and was the party with the Bank of Peru to pay the money.

Kupfer was being paid for his grain. If he was drawing for money, he would have done so, irrespective of the grain. But here, he places the grain in cars, goes and gets his money, and under the arrangements between the Bank of Galena, and the Bank of Peru, makes a draft, and attaching the railroad receipt, gives it to Corwith, who then has sole control over the grain. If he was drawing for money, he would draw for sums greater or less than these shipments. But when the Bank of Galena pays him, — after he has declared, he would take no responsibility in the matter, then the sum he

received is regulated by the price of the grain sold.

The mode of transacting business by the Bank of Galena with the Bank of Peru, proves that it was solely a matter of arrangement; between these two Banks. They kept an open account, with each other. The Bank of Galena, charged the Bank of Peru, with the drafts when drawn, and sent to them. When the Bank of Peru paid the drafts, they were credited with the amount. Hence if any of these drafts are unpaid, they stand to day charged against the Bank of Peru, on the bank books of the Bank of Galena.

Take the testimony of the Cashiers of these respective banks, and it shows, that Kupfer was in no sense regarded as liable. Hunt, the Cashier of the Bank of Galena, testified on page 122. "We charged the Bank of Peru on our bank books, with the drafts when drawn, and sent to them". He does not say, the drafts were charged to Kupfer. No, they were charged to the Bank of Peru. By what authority ^{then} did the Bank of Galena charge them to the Bank of Peru, unless there was an arrangement or understanding, between these two banks. Hunt further

testified, "When the drafts were paid, we credited them with the amount. To whom, did they give credit? To Kupper? no, for he had nothing to do with it. They gave credit to the Bank of Peru. Is not this testimony, taken from the witness and cashier of the plaintiffs, fatal and conclusive, in showing that the Bank of Peru, was the party whom the Bank of Galena held liable, gave credit, and contracted with, and that the money was paid by the plaintiff, on the sole responsibility of the Bank of Peru, and not of Hermann Kupper. Hunt, further testified, "The Bank of Peru sent us currency by express, drafts on Chicago, and drafts on N. Corwith & Co". "Money was sent all the while to the Bank of Galena". "We had an account with the Bank of Peru".

The plaintiff also introduced in evidence, a letter written by Haskell the Cashier of the Bank of Peru, in which he says "I send today \$2042.73. for balance as advised". This testimony also shows, that it was a matter of arrangement between these two banks, that they kept an open account with each other, charging drafts, and sending balances of account. When the plaintiff charged these drafts, to the account of the Bank of Peru,

then their sole remedy was against the Bank of Peru on that account. The drafts became merged in the account. They were merely vouchers, showing what amount of money, the Bank of Calcutta had paid out, for the Bank of Peru, under the arrangement between the two banks, and charged on their general account. The plaintiff did not send a draft, and then notify Kupper of its non-payment. No, they charged the draft to the Bank of Peru, received money by express, balances of accounts, traded in drafts on Chicago, and drafts on N. Corwith & Co., - all done under the clear consciousness, that Hermann Kupper was not responsible in any form.

III.

The third point we make in this case, is, that the Court erred in refusing to give the defendants 5th instruction, to the effect, that the plaintiff before he can recover in this suit, if at all, - must account for the value of the wheat.

The evidence shows that the money paid by the plaintiff to Kupper, was for a certain quantity of wheat, and that the Illinois Central Railroad receipts for the

wheat, were delivered to the Bank of Galena. The possession of the railroad receipts by the plaintiff, gave it the control over the wheat, — and it could demand payment from the Bank of Peru, before it permitted the grain to pass from its control. As it could demand payment, before delivery of the grain to the Bank of Peru, it thus had the security in its own hands, and if the benefit of that security, was lost through the laches of the plaintiff, the loss was solely its own. When the Bank of Galena asks Kupper, for the money paid to him, he asks them to return the wheat, or to account for its value. Although Kupper had no funds with the Bank of Peru, yet that which was equivalent to it, was furnished to the Bank of Galena, at the time the drafts were drawn. The grain receipts were furnished to the Bank of Galena, were attached to the drafts, and forwarded with them. The funds therefore out of which the drafts were paid, was furnished to the Bank of Galena to be transmitted by it, to the Bank of Peru, and the Bank of Galena had the control of a fund out of which, the drafts were to be paid as completely, as if it was gold, and not wheat.

The plaintiff could dispose of the grain, ^{give it away} or keep it, and Kupper could have no cause for complaint. If the plaintiff charged the grain to the account of the Bank of Peru, it made the Bank of Peru its debtor. When the plaintiff charged the Bank of Peru with the drafts, or the money paid for the grain which the drafts represented, then the grain passed to the Bank of Peru. The remedy of the plaintiff would thus be solely against the Bank of Peru. All we claim is, that it shall pursue that remedy, and not persecute Kupper. Kupper passed the wheat to the plaintiff for so much money, and before an action could be maintained against Kupper, common justice would require that he should be placed in his former position, with those rights restored, and that property accounted for, which he held at the time the money was paid.

IV.

The Court erred in refusing to give the defendants 4th instruction to the effect that Parks having taken up and paid two of the drafts sued on, no action could be maintained on them against the defendants. It appears from the

evidence that Parks had a private understanding with the Bank of Peru, by which he could obtain the wheat, pay the money and take up the drafts. Parks swears that he paid 46 out of 49 drafts drawn, and took them up. Parks paid two of the drafts sued on, one for \$1039, the other for \$545. and took them up. When these drafts were paid and taken up, they were functus officio. The Bank of Galena had ceased to have any control over them. They were paid instruments, ^{marked paid on their face} and could not be revived. No action could be maintained on them against Kupfer, or any other person. The only remedy, would be on the part of the Bank of Galena against the Bank of Peru on their book account.

The plaintiff declared on these drafts as lost instruments, while they were paid instruments. Suppose Kupfer had gone to Peru, purchased the grain from the Bank of Peru, paid the money and take up these drafts, could Kupfer be sued on the drafts as lost instruments. The Bank of Galena would be required to sue the Bank of Peru for the money, or for the balance of account. Why do they not sue the Bank of Peru, instead of harassing Kupfer.

Is the plaintiff fearful in regard to the result of such a suit? Or has the Bank of Galena conspired with the Bank of Peru to make the loss fall on Kupper, and to rob him of the wheat and swindle him ^{out} of the money.

Parks, in his testimony swears that he gave the Bank of Peru certain drafts on New Orleans, and Hunt testifies that such drafts on New Orleans were given by the Bank of Peru to Corwith and ~~Suppose~~ the benefit of such drafts were lost through the laches of the plaintiff in detaining the drafts too long. The Bank of Peru would be discharged from all liability on those drafts to the plaintiff. It would be the plaintiff's own loss. And if Kupper should bring a suit against the Bank of Peru, it would answer, "we have a good defense to the Bank of Galena, and hence it operates against you". "We have paid the Bank of Galena and have nothing to do with you" - the Bank of Galena cannot produce the drafts and when it does produce them, let it sue us on our open account in which these drafts are charged to us, as we will defeat them.

If the Court should discontinue these drafts, from the facts, that they were drawn under this letter of credit, that the plaintiff

charged them to the Bank of Peru on their open account, giving credit to the Bank of Peru for amounts paid, sending balances of accounts, that two of the drafts were paid by Parks, taken up by him & marked "paid" on their faces, that none of the drafts were produced by the plaintiff on the trial — if it were possible for the Court to obliterate all these strong prominent facts which press down, merge, and obscure ~~from~~ ^{from} sight these drafts, — and should allow the plaintiff to recover against Kupfer — in what position would Kupfer be placed? If he sued the Bank of Peru, that Bank might show on the trial that it did not owe the Bank of Galena, a single cent, and yet the Bank of Galena, knowing that it could not recover against the Bank of Peru, would thus have managed to swindle Kupfer. This shows the necessity of requiring the Bank of Galena to pursue its remedy on its open account ~~against~~ ^{with} the Bank of Peru.

But the great leading facts of this case — the sale of the wheat, — the letter of credit — drafts charged on account to the Bank of Peru, when money ^{was} paid on the drafts it was credited to the Bank of Peru, &c. cannot

be suppressed or separated from the Drafts and hence we maintain that no action lies by the plaintiff against Kupper and its sole remedy is against the Bank of Peru.

V

The 5th point we make in the argument of this case, is that

The Court erred in refusing to give the instruction in regard to the defendant being entitled to the difference in value between American gold and paper currency.

The testimony showed that Kupper had made a special deposit of \$1700 in American Gold with the plaintiff, and was entitled to draw the same out in gold. That gold was worth 40 per cent premium, and \$550 still remained in the Bank of Galena. The jury should have allowed the defendant the sum of \$550, with 40 per cent premium making \$770. The defendant was also entitled to the difference in value between \$1150 in gold, and the same amount in currency - Ford having testified that the defendant drew out that amount in currency when he was entitled to draw it in gold.

Since this deposit was made, Congress has passed a paper tender act, which has created a radical change in the circulating medium of the country, by substituting for gold and silver which have a positive intrinsic value, a paper currency that has none.

We insist that this special deposit, is a special contract for gold, and that the defendant is entitled to the value of the gold in such money as is allowed to be collected on judgments. As a special contract it is subject to the same rules of construction as a contract to pay 550 lbs of Cotton or 550 lbs of lead. In either case the promisor must deliver the articles or their value as proved, in such paper currency as the law declares shall be collected on execution.

This point is fully presented in our printed brief.

Another point we present is that The Court erred in admitting parol proof of the contents of the drafts sued on. The affidavits of Corwith were insufficient, and a proper & legal

foundation for parol proof was not laid.
The production of the only two drafts, at
the trial, was by Kupfer having been
taken up by Parks, & marked "paid"
on their faces, and this shows the
danger of too much looseness on this
subject.

Johnson & Shipley
& Lee and Blanchard
by Shipley

Now this case as in others in which our names appear
in print things are said which we might not
have said. It is often ^{convenient} ~~necessary~~ to mingle
the ideas of different cases in the same case
in one brief &c

S & B

135-96

Acman Rapper

~

Banks of Galena

Written arguments

Filed April 23
1864

J. L. Leland Clerk

State of Illinois
 Jo Daviess County.
 Fourteenth Judicial Circuit Pleas in the Circuit
 Court begun and
 held at Galena, within and for the
 County of Jo Daviess aforesaid in the
 third Monday of the month of May A.D.
 1863. before the Hon Benj A Sheldon
 sole judge of the said fourteenth Judicial
 Circuit of the State of Illinois

J. H. McCallan. Prosecuting Attorney Pro Tem.
 W. A. Cowley Clerk.
 John C Hawkins Sheriff.

The Bank of Galena vs
 Herman Knappier. Trespass on the case
 on promises.

Be it remembered
 that heretofore to wit: on the 21st day of
 February A.D. 1862. the plaintiff above
 named by its attorney, filed in the office
 of the Clerk of the Circuit Court, in
 and for said County, its process for
 summons, which said process, is in
 the words and figures following, to wit:

State of Illinois To March Term 1862
 Jo Daviess County of Circuit Court.

2
Bank of Galena

Hermann Kupper } Clerk issue summons
in this case in action
of trespass on the case on promises
Damages five thousand dollars.
R. H. McClellan
W. H. Wigley Esq. attys.

Endorsed

Filed July 21st 1862.

J. R. Rowley Clerk

by J. D. Newhall. deputy.

Upon the filing of which said process.
there issued out of said Clerk's office a
summons, which is in the words and
figures following to-wit:

State of Illinois }
St. Daviess County } Sct

The People of the
State of Illinois to the Sheriff of
Said County - Greeting:

We Command
you to summon Hermann Kupper
To appear before the Circuit Court of
St. Daviess County, at the next term
to be holden at Galena, on the
second Monday of March next, to
answer, The Bank of Galena in an
action of trespass on the case upon
promises damages, five thousand dollars

3

And have you then then this writ.
 Witness William R. Rowley, Clerk of
 the Circuit Court, of Co. Dauphin County,
 Illinois, and the seal thereof, at
 Galena, this 21st day of February 1862

Seal of
 the
 Court

Attest W^m R. Rowley Clerk
 by F. B. Newhall Deputy

Which said summons was returned
 into Court with the following return
 endorsed thereon to wit

Executed
 the within summons by reading
 the same to the within named
 Hermann Kupper this 21st day of
 Feb A.D. 1862.

S. K. Miner. Sheriff of Co. Dauphin
 by J. E. Hawkins Deputy

And afterwards to wit on the 28th
 day of February, the said plaintiff
 filed in the said Clerk's office its
 declaration in the words & figures
 following to wit.

State of Illinois 2d In Circuit Court
 Co. Dauphin County vs. for Co. Dauphin County
 in the State of Illinois
 To the March term 1862
 thereof

The Bank of Galena, a Corporation duly incorporated under & by the Laws of the State of Illinois, plaintiff in this suit, by McClelland Weigley its attorneys. Complain of Hermann Kupper defendant, of a plea of trespass in the case on promises; for that whereas the said defendant heretofore to wit: on the sixth day of November A.D. 1860 at Galena in the County aforesaid, being desirous of obtaining money from the said plaintiff, from time to time for the purpose of carrying on his, the said defendant's business of buying produce made and entered into an agreement with the said plaintiff: by the terms of which agreement, the said defendant agreed with said plaintiff, that he would from time to time, as he wanted money, draw his drafts in writing upon the Bank of Peru a Corporation duly incorporated under the Laws of this State doing a Banking business at the town of Peru in the State of Illinois: said drafts to be made payable to the order of said plaintiff that if the said plaintiff would cash said drafts for said defendant & pay him the money for the same, less the usual rate of discount:

P
[21]
he the said defendant would hold
5 said plaintiff harmless against all
loss by reason of said drafts: & agreed
to guaranty & did guaranty the
payment of all such drafts as the said
defendant should draw upon said Bank
of Peru which said plaintiff should
discount as aforesaid: and said defendant
then and there further agreed with
said plaintiff, that in case any such
drafts so drawn by him the said
defendant upon said Bank of Peru
& discounted & paid by said plaintiff
as aforesaid, should not be paid by
said Bank of Peru on presentation
of the same, that the said defendant
would himself pay the said drafts
to the said plaintiff ^{and the said plaintiff} over that is, the
said Bank of Galena. did then and
there agree with said defendant to discount
such drafts as the said defendant might
thereafter draw from time to time to its
order upon said Bank of Peru. at the
usual rates of discount, & in further
consideration that said defendant
agreed to guaranty the payment of all
such drafts & agreed to pay the
aforesaid drafts in case the said Bank
of Peru should fail to pay the same
upon presentation and should hold
said plaintiff harmless against all
loss by reason of said drafts, all of
which the said defendant agreed with

6
said plaintiff to do. And said plaintiff
further avers. That in pursuance of said
agreement the said defendant drew from
time to time, as he needed money to carry
on his said business his drafts upon said
Bank of Peru to the order of said plaintiff
to a ^{very large amount} & all of which drafts were discounted
by said plaintiff at the usual rate of
discount according to the agreement
aforesaid ~~very large amount~~; that a large
proportion of said drafts were duly
honored & paid by said Bank of Peru;
but plaintiff avers that the five drafts
so last drawn & discounted as aforesaid.
To wit. The draft drawn by said defendant
on said Bank of Peru to the order of
said plaintiff dated November 6th A.D.
1860. payable fifteen days after sight
for ten hundred & thirty nine & $5\frac{1}{100}$ Dollars
(one draft dated November 8th 1860 drawn
by said defendant on said Bank
of Peru payable fifteen days after sight
to the order of said plaintiff for five
hundred & forty five & $3\frac{5}{100}$ Dollars) (one
other draft drawn by said defendant
on said Bank of Peru payable to the order
of said plaintiff fifteen days after
sight thereof dated the 16th day of
November 1860 for the sum of five hundred
& forty two & $\frac{1}{100}$ Dollars; one draft drawn
by said defendant on the said Bank
of Peru dated the 17th of November 1860

7. payable to the order of the said plaintiff fifteen days after sight for the sum of eight hundred & thirty eight & $3\frac{1}{2}$ Dollars; And one draft drawn by said defendant on said Bank of Peru. dated November 17th 1868 payable to order of said Plaintiff fifteen days after sight for the sum of two hundred & seventy two $\frac{1}{2}$ Dollars; all for value received; all of which were discounted at the usual rate of discount by said plaintiff, & the amounts of said last mentioned five drafts (less the usual discounts) were all paid by said plaintiff to said defendant on the days of the respective dates ~~of~~ of said drafts; and all of which five drafts were duly presented for payment by said plaintiff to the said Bank of Peru; and said Bank of Peru has failed & neglected & refused to pay any one or any portion of said five drafts. And said plaintiff ~~furthermore~~ avers that by virtue of the said agreement between said plaintiff and the said defendant; the said defendant upon the said failure, of said Bank of Peru to pay said five last mentioned drafts as aforesaid; then & there become liable to pay the same to the said plaintiff; and being so liable in consideration thereof the said defendant then & there undertook & promised to pay the several sums of money specified in

said drafts to the said plaintiff according to their tenor & effect: to wit: at the County aforesaid.

And said plaintiff further avers that said Defendant has never paid any portion of said last mentioned five drafts to said plaintiff, although often requested so to do: but to pay the same has ~~therefore~~ wholly neglected & refused.

2nd Count

And also for that whereas, the said Defendant, heretofore to wit: on the sixth day of November A.D. 1868. at Galena in the County aforesaid. being engaged in the business of buying and selling grain & farm produce. and requiring large sums of money from time to time, to carry on his said business. made & entered into a certain other agreement with the said plaintiff: by the terms of which agreement last mentioned: the said Defendant agreed with said plaintiff to draw his drafts in writing on the Bank of Peoria (a Bank duly incorporated under ^{the laws of} the State of Illinois) payable to the order of said plaintiff, for such amounts of money, as the said Defendant should from time to time

9. require in his said business. that said plaintiff should cash said drafts for the said Defendant (at the usual rates of discount) & pay the money thereon to said Defendant; that said Defendant would & did in consideration of the promises aforesaid guarantee the payment of all such drafts, upon due presentation to said Bank of Peru, & agreed then & there with said plaintiff that in case the said Bank of Peru failed to pay any of said drafts upon presentation thereof, he the said Defendant would pay the same to the said plaintiff.

And the said plaintiff being engaged in doing a banking business did then & there, in consideration of the premises above set forth agree with said defendant, that the said plaintiff would discount at the usual rates of discount, such drafts as he, the said Defendant might draw as aforesaid upon said Bank of Peru; he the said Defendant agreeing as aforesaid to guarantee the payment of all such drafts as aforesaid & agreeing to pay the same to said plaintiff in case the said Bank of Peru should fail or neglect to pay the same upon due presentation thereof.

And plaintiff avers that a large number of drafts in writing were

drawn in pursuance of said last mentioned agreement by the defendant on the said Bank of Peru payable to the order of said plaintiff (after the making of said agreement & before the commencement of this suit) all of which drafts were discounted by said plaintiff at the usual rate of discount, & the money (less such discount) was then & there paid over to the said defendant; & all of said drafts were immediately upon their reception from said defendant duly forwarded and presented for payment at the said Bank of Peru, when they become due & payable.

And plaintiff avers, that the whole of said last mentioned drafts, so drawn & discounted & presented for payment as aforesaid, amounted to the sum of ten thousand Dollars; and that the said Bank of Peru failed & neglected & refused upon due presentation of the same as aforesaid; although when so presented they were all due & payable & were so presented before the commencement of this suit to pay any one or any portion of said drafts & have never paid any part or portion thereof of all of which said defendant had notice. And plaintiff further avers, that after the neglect & failure of said Bank of Peru as aforesaid & before the commencement

11. of this suit. the said Defendant agreed & promised the said plaintiff that he the said Defendant would pay to said plaintiff the amount of the said drafts so drawn & discounted as aforesaid, which the said Bank of Peru had failed & neglected to pay to said plaintiff as aforesaid. By means whereof & by force of the Statutes in such case made & provided. the said Defendant become liable to pay to said plaintiff the said sum of money in said last mentioned drafts specified: And being so liable, in consideration thereof. he the said Defendant then & there undertook & promised to pay the same to the said plaintiff according to the tenor & effect of the said drafts, & of his said last mentioned agreement: to wit: at the County aforesaid. —

3rd Count

And also for that Whereas. the said Defendant heretofore. to wit: on the sixth day of November A.D. 1860. at Galena: to wit: at the County aforesaid according to the usage & custom of Merchants. made his certain Bill of Exchange in writing. bearing date. a certain day & year therein mentioned: to wit: the day and year aforesaid: & thereby then & there requested

the Bank of Peru (a corporation duly
 incorporated under the laws of this
 State) fifteen days after sight
 thereof, to pay to the order of said
 plaintiff the sum of ten hundred
 & thirty nine & $\frac{7}{100}$ Dollars for value received
 and then & there delivered the said
 Bill of Exchange to the said plaintiff.
 And the said plaintiff avers, that
 afterward when the said Bill of
 exchange became due and payable
 according to the tenor and effect
 thereof, the said Bill of Exchange was
 presented & shown to the said Bank
 of Peru for payment thereof, & the said
 Bank of Peru was then & there requested
 to pay the said sum of money therein
 specified, according to the tenor & effect
 of the said Bill of Exchange; but that
 the said Bank of Peru did not nor
 would at the said time when the
 said bill of Exchange was ^{so} presented
 & shown for payment thereof as aforesaid,
 or at any time before or afterward,
 pay the said sum of money therein
 specified, or any part thereof, but
 then & there wholly neglected & refused
 so to do, of all of all of which said
 several premises the said defendant
 afterwards: to wit: on the day last
 aforesaid: in the County aforesaid

13. had notice, by means whereof & by force of the Statute in such Case made & provided the said Defendant then & there became liable to pay the said plaintiff the said sum of money in said Bill of Exchange specified according to the tenor & effect thereof. and being so liable, he the said Defendant in Consideration thereof then & there undertook & faithfully promised the said plaintiff to pay the said plaintiff the said sum of money, in said Bill of Exchange specified according to its true tenor & effect. To wit: at the County aforesaid

4th Count

And also for that whereas, the said Defendant heretofore, To wit: on the eight day of November A.D. 1840 at Galena in the County aforesaid, made his certain other Bill of Exchange in writing bearing date a certain day & year therein mentioned: To wit: the day & year aforesaid & thereby then & there requested the Bank of Peru (a corporation duly incorporated under the laws of this state) fifteen days after sight thereof, to pay to the order of the said plaintiff the sum of five hundred & forty five ³/₁₀₀ Dollars, for value received. & then & there delivered the said Bill of Exchange to

the said plaintiff, and said plaintiff
 avers that afterwards, to wit: when
 said Bill of Exchange became due &
 payable according to the tenor & effect
 thereof, the said Bill of Exchange was
 presented & shown to said Bank of
 Peru for payment thereof, & the said
 Bank of Peru was then & there request-
 ed to pay the said sum of money
 therein specified according to the
 tenor & effect of said Bill of Exchange
 but that the said Bank of Peru did
 not nor would at said time when
 said Bill of Exchange was so presented
 & shown for payment thereof as
 aforesaid, or at any time before or
 afterwards pay the said sum of
 money therein specified or any part
 thereof but then & there wholly
 neglected & refused so to do of all which
 said several premises the said
 Defendant afterwards, to wit: on the
 day & year last aforesaid, at the County
 aforesaid had notice, by means whereof
 & by force of the statute in such case
 made & provided the said Defendant
 then & there become liable to pay to
 the said plaintiff the said sum
 of money in said Bill of Exchange
 specified according to the tenor &
 effect thereof. And being so liable,
 he the said Defendant in consideration

15. there, then & there undertook and faithfully promised the said plaintiff to pay to said plaintiff the said sum of money in said Bill of Exchange specified according to its true tenor & effect: To wit: at the County aforesaid.

5th Court.

And also for that whereas the said defendant heretofore to wit: on the 16th day of November A.D. 1860. at Galena in the County aforesaid made his certain other Bill of Exchange in writing bearing date the said 16th day of November 1860. & thereby then & there: requested the Bank of Peru (a corporation duly incorporated under the laws of this State) fifteen days after the sight thereof to pay to the order of said plaintiff the sum of five hundred & forty two & 9/10 Dollars. for value received & then & there delivered the said Bill of Exchange to the said plaintiff. And said plaintiff avers, that afterwards to wit: when said Bill of Exchange became due & payable according to the tenor & effect thereof the said Bill of Exchange was presented & shown to said Bank of Peru for payment thereof & the said Bank of Peru was then & there requested to pay the said sum of

* Said sum of money in said Bill of Exchange specified according to its tenor & effect. To wit: at the County aforesaid plaintiff cannot produce the same to the Court here

money therein specified, according to the tenor & effect of said Bill of Exchange. but that said Bank of Peru did not nor would at said time when said Bill of Exchange was so presented & shown for payment thereof as aforesaid, or at any time before or afterwards pay the said sum of money therein specified, or any part thereof: but then & there wholly neglected & refused so to do: of all which said several premises the said Defendant afterwards, to wit: on the day & year last aforesaid, at the County aforesaid had notice. By means whereof & by force of the Statute in such case made & provided the said Defendant then & there became liable to pay the said plaintiff the said sum of money in said Bill of Exchange specified according to the tenor & effect thereof. And being so liable he the said Defendant in consideration thereof, then & there undertook & faithfully promised the said plaintiff to pay said plaintiff the. *

Additional Count

6th Count. And also for that the said plaintiff, heretofore, to wit: on the sixth day of November A.D. 1840, in the City of Galena, to wit: at the

17.

County aforesaid, was engaged in Banking, selling and buying Exchange, and Discounting notes, and drafts for money; and whereas the said Defendant on the day and year aforesaid at the County aforesaid, was engaged in buying and selling grain, and other produce, and was using in his said business large sums of money; and whereas said Defendant was desirous to obtain ^{divers} other large sums of money to be by him used in his said business of buying grain; he the said Defendant called upon said plaintiff and requested it to discount certain other drafts which he the said Defendant would draw on the Bank of Peru, a corporation doing a similar business with said plaintiff, located in the City of Peru in the County of La Salle in the State of Illinois and then there offered and agreed to and with said plaintiff to draw on said Bank of Peru certain other drafts payable to the order of said plaintiff and furnish them to said plaintiff to be discounted. Whereupon said plaintiff refused to discount said last mentioned drafts unless said Defendant would guarantee their payment if they were not paid upon presentation, by said Bank of Peru; whereupon said Defendant agreed

in consideration that the said plaintiff would discount said last mentioned drafts and send them to the Bank of Peru upon which they were drawn for payment. instead of sending them to the agent of said plaintiff, where said Bank of Peru was located for collection. he said defendant would guarantee the payment of said last mentioned drafts. And said plaintiff avers that under said last mentioned agreement, the said defendant drew upon said Bank of Peru five several drafts payable to the order of said plaintiff, of the several dates, tenor and amounts following, to wit:

1. one draft dated November 8th 1860.
545.35 payable fifteen days after sight for five hundred and forty five dollars and thirty-five cents (\$545.35)
2. one draft dated November 6th 1860 payable
1039.54 fifteen days after sight, for one thousand and thirty-nine and $5\frac{1}{8}$ dollars (\$1039.54)
3. one draft dated November 16th 1860 payable
542.91 fifteen days after sight, for the sum of five hundred and forty two and $\frac{9}{100}$ dollars (\$542.91)
4. one draft dated November 17th 1860
838.39 payable fifteen days after sight, for the sum of eight hundred and thirty eight and $\frac{39}{100}$ dollars (\$838.39)
5. one draft dated November 17th 1860

272.08

3238.27

page 19

payable fifteen days after sight. for
the sum of two hundred and seventy two
and 08/100 Dollars (\$272.08)

And said plaintiff avers that it
discounted each and all of said last
recited drafts. in the usual course
of business, and paid over to said
defendant the money on the same;
and that it duly forwarded said
drafts to the said Bank of Peru
upon which they were drawn; and
that said bank neglected and utterly
refused to pay said drafts or any
one of them. or any part thereof to said
plaintiff, but kept and retained said
drafts, and refused to deliver them to
said plaintiff whereby they became and
are lost to said plaintiff. so that it
cannot now here produce them to the
Court. And the said plaintiff avers
that by reason of the said promise and
agreement of the said defendant. and
by reason of the payment of the money
to him by the said plaintiff as aforesaid
he. the said defendant, became liable
to pay to said plaintiff the amount
of money in said last mentioned
drafts specified. to wit, at the County
aforesaid; And being so liable. he
the said defendant. afterwards. to wit:
on the first day of April A. D. 1861
undertook and faithfully promised

the said plaintiff to pay at the said several sums of money in the said last mentioned drafts specified. when he the said defendant should be thereunto afterwards requested to wit, at the County aforesaid.

7th Count.

And, ^{also} for that whereas the said defendant heretofore to wit, on the 17th day of November A.D. 1860 at Galena in the County aforesaid made his certain other bill of Exchange in writing bearing date on the said 17th day of November A.D. 1860 (which said last mentioned bill of exchange having been lost the said plaintiff cannot produce the same to the court here) and thereby then and there requested the Bank of Peru (a corporation duly incorporated under the laws of this state) fifteen days after sight thereof to pay to the order of said plaintiff the sum of eight hundred and thirty eight and $\frac{3}{4}$ Dollars for value received and then and there delivered with Bill of Exchange to the said plaintiff. And said plaintiff avers that afterwards, to wit, when said bill of exchange became due and payable according to the tenor and effect thereof. The said Bill of Exchange

21. was presented and shown to said Bank of Peru for payment thereof, and the said Bank of Peru was then and then requested to pay the said sum of money therein specified according to the tenor and effect of said Bill of Exchange; but that the said Bank of Peru did not nor would at said time when said Bill of Exchange was so presented as aforesaid or at any time before or afterwards pay the said sum of money therein specified, or any part thereof; but then and there wholly neglected and refused so to do; of all which said several premises the said Defendant afterwards, to wit, on the day and year last aforesaid, had notice at the County aforesaid; By means whereof and by force of the Statute in such case made and provided, the said Defendant then & there became liable to pay to the said plaintiff the said sum of money in said Bill of Exchange specified according to the tenor and effect thereof. And being so liable, he the said Defendant in consideration thereof then and there undertook and faithfully promised to pay the said plaintiff the said sum of money in said Bill of Exchange specified according to its true tenor and effect; To wit: at the County

Aforesaid.
8th Count.

And also for that whereas the said Defendant heretofore to wit: on the 17th day of November A.D. 1860 at Galena aforesaid made his certain other Bill of Exchange in writing bearing date the said 17th day of November A.D. 1860. and thereby then and there, requested the Bank of Peru (a Corporation duly incorporated under the Laws of said State of Illinois) fifteen days after the sight thereof to pay to the order of the said plaintiff* (and which said last mentioned Bill of Exchange having been lost, the said plaintiff cannot produce the same to the Court here) And said plaintiff avers that afterwards, to wit: when said Bill of Exchange became due and payable according to the tenor and effect thereof, the said Bill of Exchange was presented and shown to said Bank of Peru for payment thereof and the said Bank of Peru was then and there requested to pay the said sum of money therein specified according to the tenor and effect of said Bill of Exchange: but that said Bank of Peru did not nor would at said time when said Bill of Exchange was so presented and shown for payment as aforesaid

* The sum of two hundred and seventy two and 00/100 Dollars, for value received and then and there delivered said Bill of Exchange to said plaintiff

23. or at any other time before or since pay the said sum of money therein specified or any part thereof; but then and there wholly neglected and refused so to do. of all which said several premises the said defendant afterwards to wit: on the day and year last aforesaid had notice to wit: at the County aforesaid.

By means whereof and by force of the Statute in such case made and provided. the said defendant then and there became liable to pay to the said plaintiff the said sum of money in said Bill of Exchange specified according to the tenor and effect thereof; And being so liable he the said defendant in consideration thereof then and there undertook and faithfully promised said plaintiff to pay the said plaintiff the said sum of money in said Bill of Exchange specified according to the tenor and effect thereof to wit: at the County aforesaid

9th Court

And Whereas, also; the said Defendant, afterwards, to wit, on the first day of February in the year of our Lord one Thousand Eight Hundred and Sixty Two to wit, at Galena in said County, became and was indebted unto

* At the like instance and request of said Defendant and being so indebted said Defendant = Plaintiff.

the Plaintiff in a large sum of money, to wit, five thousand dollars, for money before that time lent and advanced to, and paid, laid out and expended for said Defendant by said Plaintiff at said Defendants request; and for money before that time had and received by said Defendant to and for the use of said Plaintiff; and also in like sums for goods, wares and merchandise, before that time sold and delivered by said Plaintiff to said Defendant at like special instance and request; and also in like sum for the labor, care, and diligence of said Plaintiff before that time done and performed by said Plaintiff; for said Defendant, * in consideration thereof, then and there undertook and promised to pay said Plaintiff said last mentioned sum of money when thereunto afterwards requested. Yet the said Defendant, not regarding his said promises and undertakings, but contriving, &c., although often requested to do, has not paid said Plaintiff either of said sums of money or any part thereof, but so to do has hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of said Plaintiff of five thousand dollars, and therefore he brings this suit, &c.

R. H. McClellan
W. Weigley
Attys for Plaintiff

25

Herman Kupper
To Bank of Galena DW

To cash advanced — \$5.000
To Money Loaned \$5.000
To balance due on account \$5.000
To balance due on drafts \$5.000
To balance due on agreement
to pay his drafts on Bank of Penn \$5.000
To cash received by him to &
for use of Bank of Galena \$5.000
To balance due on Settlement \$5.000

Endorsed. Filed February 28th 1862.

Wm. D. Romley, Clerk.
By P. H. Newhall, deputy.

And afterwards, to wit: on the 17th day
of March A.D. 1862 as yet of the March
Term A.D. 1862 of said Circuit Court in
the Record of the proceedings thereof in
the above entitled cause, appears the
following entry to wit.

Bank of Galena }
vs } Assumpsit
Herman Kupper } Now at
This day comes the
Defendant by L. Shissler Esq. his
attorney, and demurs to the
Plaintiffs declaration.

The demurrer referred to
in the above recited entry is in the
words and figures following to wit:

State of Illinois }
 Co. of Davis County }

Benn of Galena }
 vs
 Herman Kupper }

In the Circuit Court
 of said Davis County
 March Term A.D. 1867

And the said defendant
 by Johnson & Shissler his attorneys
 comes and defends the wrong and injury
 when &c., and says that the said
 that the said Declaration, and the
 said first, second, third, fourth, fifth,
 sixth, seventh, and eight, ninth Counts of
 the said Declaration, and each of them
 separately, and specially, and the matters
 therein contained in manner and form
 as the same are above stated and set
 forth are not sufficient in the law for
 the said plaintiff to have or maintain
 his aforesaid action thereof against the
 said defendant, and he the said
 defendant is not bound by law to
 answer the same. And this he is
 ready to verify whereon by reason
 of insufficiency of the said declaration,
 & of the said 1st 2nd 3rd 4th 5th 6th 7th 8th
 & 9th Counts of the said declaration &
 each of them separately & specially, the
 said defendant prays judgment &c.,
 And sets out the following causes
 of demurr to the said 1st 2nd 3rd 4th 5th
 6th 7th 8th & 9th Counts of said declaration

27. & To each of them separately & specially.
First.

The guaranty mentioned in the first count in said declaration should be stated to have been in writing. 2nd Because the second Count in said declaration does not state that the Guaranty was in writing. And because said second Count does not enumerate the drafts stated to amount to the sum of \$10,000 or give any description of them in the ^{least} ~~Count~~, either in number, to whom payable &c.

3rd Because said second Count is in other respects vague, uncertain and informal.

4th Because there are no copies of written instrument sued upon in the 3rd 4th 5th 6th 7th Counts, or of either of them attached to said declaration as is required by the Practice Act

5th Because no time stated in the 8th or Common Counts.

Shissler & Johnson
Per Defendant

6th Because said 6th Count states & sets forth a guaranty to pay the debt

of another. & should further state said guaranty was in writing.

7th Because said 1st 2nd & 6th counts or either of them are not sufficient to establish a guaranty. and are simply surplusage as the other counts set forth & declare on certain supposed bills of exchange.

Endorsed.

Filed March 14th 1862.

W. B. Rowley Clerk
per F. R. Bird. deputy.

And afterwards tenuit; on the 19th day of May A.D. 1862 as yet of the May term A.D. 1862 of said Bodaries County Circuit Court, in the Record of the proceedings thereof, in the above entitled cause, appears the following entry tenuit;

Bank of Calena	3	Assumpsit
vs	3	
Hermann Kupper	3	Now this day comes

the defendant by
Johnson & Shissler his attorneys, and files his motion for a rule on the Plaintiff to file copies of the Bills of Exchange, and all instruments sued on, with the declaration therein.

29. The motion referred to in the above recited entry is in the words and figures following to wit:

Bank of Galena } Circuit Court of
 vs } Co. of Danvers County
 Hermann Kupper } May Term 1862

And now at this day comes the defendant and moves the Court for a Rule on the Plaintiff to file copy of the Bills of Exchange and all the instruments sued on in this cause with the Declaration.

Johnson & Shissler
 Defts Attys

Endorsed

Filed May 19th 1862

W. R. Rowley, Clerk

by T. R. Bird, Deputy

And afterwards to wit on the 20th day of May A.D. 1862. as yet of the May term A.D. 1862 of said Circuit Court in the Record of the proceedings thereof in the above entitled cause, appears the following entry to wit:

Bank of Galena }
 vs } Assumpsit
 Hermann Kupper } Now at this day
 came on to be heard the motion

heretofore filed by the Defendant for a rule on the plaintiff to file copies of the Bills of Exchange, and all instruments sued on with the Declaration herein, which motion after argument by the counsel is sustained by the court. And on motion of the plaintiff leave is granted him to amend his declaration and the plaintiff further moves that this cause be continued at his costs. And it is so ordered by the Court.

And afterwards to wit, on the 27th day of February A.D. 1863 the Plaintiff by its attorney filed in the office of the clerk of our said Circuit Court his amended declaration in this cause, which is in the words and figures following. To wit.

State of Illinois In Circuit Court
 Co Daviess County, & in & for Daviess County
 in the State of Illinois
 To the March term 1862

 Thereof
 The Bank of Galena, a corporation duly incorporated under & by the Laws of the State of Illinois, plaintiff in this suit, by McClellan & Weigley its attorneys, complain of Hermann Rupper defendant, of a plea of trespass on the case on promises: for that whereas, the said Defendant, heretofore to wit: on

31.

The sixth day of November A.D. 1860
at Galena in the county aforesaid.
being desirous of obtaining money from
the said plaintiff from time to time
for the purpose of carrying on his, the
said Defendant's business of buying
produce, made & entered into an
agreement with the said plaintiff: by
the terms of which agreement, the said
Defendant agreed with said plaintiff,
that he would from time to time, as
he wanted money, draw his drafts
in writing upon the Bank of Peru
a corporation duly incorporated under
the Laws of this State doing a banking
business at the town of Peru in the
State of Illinois: said drafts to be
made payable to the order of said
plaintiff that if the said plaintiff
would cash said drafts for said
Defendant & pay him the money for
the same, less the usual rate of
discount: & the said Defendant
would hold said plaintiff harmless
against all loss by reason of said
drafts; and agreed to guaranty & did
guaranty the payment of all such
drafts as he the said Defendant should
draw upon said Bank of Peru, which
said plaintiff should discount as
aforesaid; and said Defendant then
& there further agreed with said

plaintiff. that in case any such drafts so drawn by him the said defendant upon said Bank of Peru & discounted & paid by said plaintiff as aforesaid, should not be paid by said Bank of Peru on presentation of the same, that the said defendant would himself pay the said drafts to the said plaintiff. And the said plaintiff avers, that it, the said Bank of Galena, did then & there agree with said defendant to discount such drafts as the said defendant might thereafter draw from time to time to its order upon said Bank of Peru, at the usual rates of discount, & in further consideration that said defendant agreed to guaranty the payment of all such drafts, & agreed to pay the aforesaid drafts, in case the said Bank of Peru should fail to pay the same upon presentation & should hold said plaintiff harmless against all loss by reason of said drafts, all of which the said defendant agreed with said plaintiff to do. And said plaintiff further avers, that in pursuance of said agreement the said defendant drew from time to time, as he needed money to carry on his said business his drafts upon said Bank of Peru to the order of said plaintiff to a very large amount, & all of which drafts were discounted by said

33.

plaintiff at the usual rate of discount according to the agreement aforesaid that a large proportion of said drafts were duly honored & paid by said Bank of Peru: but, plaintiff avers that the five drafts so last drawn & discounted as aforesaid. To wit: (one draft drawn by said defendant on said Bank of Peru to the order of the said plaintiff dated November 6th A.D. 1860. payable fifteen days after sight for ten hundred & thirty nine & $\frac{5}{100}$ Dollars) (one draft dated November 8th 1860. drawn by said defendant on said Bank of Peru payable fifteen days after sight to the order of said plaintiff for five hundred & forty five & $\frac{35}{100}$ Dollars) (one other draft drawn by said defendant on the said Bank of Peru payable to the order of said plaintiff fifteen days after sight thereof dated the 15th day of November 1860 for the sum of five hundred & forty two & $\frac{9}{100}$ Dollars: one draft drawn by said defendant on the said Bank of Peru dated the 17th of November 1860 payable to the order of the said plaintiff fifteen days after sight for the sum of Eight hundred & thirty eight & $\frac{39}{100}$ Dollars: And one draft drawn by said defendant on said Bank of Peru dated November 17th 1860 payable to order of said plaintiff. fifteen days after sight

for the sum of Two Hundred & Seventy two
 & $\frac{08}{100}$ Dollars; and all for value received;
 all of which were discounted at the
 usual rate of discount by said plaintiff
 & the amounts of said last mentioned
 five drafts (less the usual discounts) were
 all paid by said plaintiff to said
 defendant on the days of the respective
 dates of said drafts: And all of which
 five drafts were duly presented for
 payment by said plaintiff to the said
 Bank of Peru: and said Bank of Peru
 has failed and neglected & refused
 to pay any one, or any portion of said
 five drafts. And which said drafts
 have been lost, so that the said plaintiff
 cannot produce them to the said Court
 here.

And said plaintiff further
 avers. that by virtue of the said agreement
 between said plaintiff & the said Defendant;
 the said Defendant upon the said
 failure of said Bank of Peru to pay
 said five last mentioned drafts as
 aforesaid: then & there became liable
 to pay the same to the said plaintiff;
 and being so liable in consideration
 thereof the said Defendant, then &
 there undertook & promised to pay
 the several sums of money specified
 in said drafts to the said plaintiff
 according to their tenor & effect:

35.

Torrit; at the County aforesaid.
 And said plaintiff further avers. that
 said Defendant has never paid any
 portion of said last mentioned five
 Drafts to said plaintiff. although often
 requested so to do; but to pay the same
 has thus far wholly neglected & refused.

I Court

And also for that whereas.
 the said Defendant, heretofore Torrit; on
 the Sixth day of November A.D. 1860. at
 Galena in the County aforesaid. being
 engaged in the business of buying &
 selling grain & farm produce and
 requiring large sums of money from
 time to time. to carry on his said
 business. made & entered into a certain
 other agreement with the said plaintiff;
 by the terms of which agreement
 last mentioned; the said Defendant
 agreed with said plaintiff to draw
 his drafts in writing on the Bank
 of Peru (a Bank duly incorporated
 under the Laws of the State of Illinois)
 payable to the order of said plaintiff
 for such amounts of money, as he
 the said Defendant should from time
 to time require in his said business.
 that said plaintiff should cash
 said Drafts for the said Defendant
 (at the usual rates of discount) &

pay the money thereon to said Defendant; that said Defendant would & did in consideration of the premises aforesaid guarantee the payment of all such Drafts, upon due presentation to said Bank of Peru, & agreed then & there with said plaintiff, that in case the said Bank of Peru failed to pay any of said Drafts upon presentation thereof, he the said Defendant would pay the same to the said plaintiff. And the said plaintiff being engaged in doing a banking business did then & there, in consideration of the premises above set forth agree with said Defendant, that the said plaintiff would discount at the usual rates of discount, such Drafts as he, the said Defendant might draw as aforesaid upon said Bank of Peru: he the said Defendant agreeing as aforesaid to guarantee the payment of all such Drafts, as aforesaid & agreeing to pay the same to said plaintiff in case the said Bank of Peru should fail or neglect to pay the same upon due presentation thereof. And plaintiff avers that a large number of Drafts in writing were drawn in pursuance of said last mentioned agreement by the Defendant on the said Bank of Peru payable to the

37. order of said plaintiff (after making of said agreement & before the commencement of this suit) all of which drafts were discounted by said plaintiff at the usual rate of discount, & the money (less such discount) was then & there paid over to the said defendant, & all of said drafts were immediately upon their reception from said defendant duly forwarded & presented for payment at the said Bank of Peru, when they became due & payable. And plaintiff avers, that the whole of said last mentioned drafts so drawn & discounted & presented for payment as aforesaid, amounted to the sum of ten thousand Dollars, and that the said Bank of Peru failed, neglected & refused upon due presentation of the same as aforesaid although when so presented they ^{were so presented before the commencement of this suit.} were all due & payable & were so ^{one or any} to pay any portion of said drafts & have never paid any part or portion thereof of all of which said defendant had notice. And plaintiff further avers, that after the neglect & failure of said Bank of Peru as aforesaid & before the commencement of this suit, the said defendant agreed & promised the said plaintiff that the said defendant would

pay to said plaintiff the amount of the said drafts so drawn & discounted as aforesaid, which the said Bank of Peru had failed & neglected to pay to said plaintiff as aforesaid. By means whereof & by force of the Statute in such case made & provided, the said Defendant became liable to pay to said plaintiff the said sum of money in said last mentioned drafts specified; and being so liable, in consideration thereof, he the said Defendant, then & there undertook & promised to pay the same to the said plaintiff according to the tenor & effect of the said drafts, & of his said last mentioned agreement. To wit; at the County aforesaid. And the said plaintiff avers, that the said last mentioned drafts having become lost he is unable to present them to the Court here.

3rd Count.

And also for that whereof the said Defendant heretofore. To wit; on the sixth day of November A.D. 1860. at Galena; To wit; at the County aforesaid, according to the usage & custom of Merchants, made his certain Bill of Exchange in writing, bearing date a certain

39.

day & year therein mentioned;
 To wit; the day & year aforesaid;
 & thereby then & there requested the
 Bank of Peru (a corporation duly
 incorporated under the laws of
 this State) fifteen days after sight
 thereof to pay to the order of the said
 plaintiff the sum of ten hundred
 & thirty nine & $\frac{5}{8}$ Dollars for value
 received and then and there delivered
 the said Bill of Exchange to the said
 plaintiff.

And the said plaintiff avers
 that afterwards: when the said Bill of
 exchange become due and payable
 according to the tenor & effect thereof, the said
 Bill of Exchange was presented & shown to
 the said Bank of Peru for payment thereof.
 and the said Bank of Peru was then &
 there requested to pay the said sum of money
 therein specified, according to the tenor &
 effect of the said Bill of Exchange; but that
 the said Bank of Peru did not nor would
 at the said time when the said bill
 of exchange was so presented & shown
 for payment thereof as aforesaid, or at
 any time before or afterwards, pay the
 said sum of money therein specified, or
 any part thereof, but then & there wholly
 neglected & refused so to do, of all which
 said several premises the said defendant
 afterwards; To wit; on the day last

aforsaid; at the County aforsaid had notice, by means whereof & by force of the statute in such case made & provided, the said defendant then & there become liable to pay to the said plaintiff the said sum of money in said Bill of Exchange specified according to the tenor & effect thereof, and being so liable, he the said defendant, in consideration thereof then & there undertook & faithfully promised the said plaintiff to pay to said plaintiff the said sum of money in said Bill of Exchange specified according to its true tenor & effect to wit; at the County aforsaid, and the said plaintiff avers, that the said bill of exchange in this Court mentioned having become lost, said plaintiff is unable to produce the same to the Court here.

4th Count.

And also, for that, whereas, the said defendant heretofore, to wit; on the eighth day of November A.D. 1840, at Galena, in the County aforsaid, made his certain other Bill of Exchange in writing bearing date a certain day & year therein mentioned: To wit; the day and year aforsaid, & thereby then & there requested the Bank of Peru (a corporation duly incorporated under the Laws of this State)

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(12)

fifteen days after sight thereof. to pay to the order of the said plaintiff the sum of five hundred & forty five & $\frac{3}{4}$ Dollars. for value received. and then & there delivered the said Bill of Exchange to the said plaintiff. And said plaintiff avers that afterwards, to wit: when said Bill of Exchange become due & payable according to the term & effect thereof. the said Bill of Exchange was presented & shown to said Bank of Peru for payment thereof. & the said Bank of Peru was then & there requested to pay the said sum of money therein specified according to the term & effect of said Bill of Exchange: but that the said Bank of Peru did not nor would at said time when said Bill of Exchange was so presented & shown for payment thereof as aforesaid. or at any time before or afterwards pay the said sum of money therein specified or any part thereof but then there wholly neglected & refused so to do: of all which said several premises the said Defendant afterwards, to wit: on the day & year last aforesaid: at the County aforesaid had notice. By means whereof & by force of the Statute in such case made & provided the said Defendant then & there become liable to pay to the said plaintiff the said sum of money in said Bill of exchange specified according to the

tenor & effect thereof. And being so liable. he the said Defendant in consideration thereof. then & there undertook & faithfully promised the said plaintiff to pay to said plaintiff the said sum of money in said Bill of Exchange specified according to its true tenor & effect: To wit: at the County aforesaid. And the said plaintiff avers that the bill of exchange in this count mentioned having become lost, he is unable to produce the same to the court here. 5th Count.

And also for that whereas the said Defendant heretofore: to wit: on the 16th day of November A.D. 1860. at Galena in the County aforesaid made his certain other Bill of Exchange in writing bearing date the said 16th day of November 1860. & thereof then & there: against the Bank of Peru (a corporation duly incorporated under the Laws of this State) fifteen days after sight thereof. to pay to the order of said plaintiff the sum of five hundred & forty two & 9/100 Dollars for value received and then & there delivered the said Bill of Exchange to the said plaintiff. And said plaintiff avers that afterwards: to wit: when said Bill of exchange became due & payable according to the tenor & effect thereof. the said Bill of exchange was presented

43. & shown to said Bank of Peru for payment thereof. and the said Bank of Peru was then & there requested to pay the said sum of money therein specified according to the tenor & effect of said Bill of exchange: but that said Bank of Peru did not nor would at said time when said Bill of exchange was so presented & shown for payment thereof as aforesaid. or at any time before or afterwards pay the said sum of money therein specified, or any part thereof: but then & there wholly neglected & refused so to do: of all which said several premises the said defendant afterwards: To wit: on the day & year last aforesaid. at the County aforesaid. had notice. By means whereof & by force of the statute in such case made & provided the said defendant then & there become liable to pay to the said plaintiff the said sum of money in said Bill of exchange specified according to the tenor & effect of thereof. And being so liable. he the said defendant. in consideration thereof. then & there undertook & faithfully promised the said plaintiff the said sum of money in said bill of exchange specified. according to its tenor and effect. To wit: at the County aforesaid. which said last mentioned bill of exchange having been lost. the said plaintiff

cannot produce the same to the Court here.

Additional
Count

6th Count. And also for that the said plaintiff. heretofore Titus. on the sixth day of November A.D. 1860 in the City of Galena. Titus. at the County aforesaid. was engaged in Banking. selling and buying Exchange. and discounting notes and Drafts for money; and whereas the said Defendant in the day and year aforesaid at the County aforesaid. was engaged in buying and selling grain and other produce. and was using in his said business large sums of money; and whereas said Defendant was desirous to obtain divers other large sums of money to be by him used in his said business of buying grain: he the said Defendant called upon said plaintiff and requested it to discount certain other draft which he the said Defendant would draw on the Bank of Peru. a corporation doing a similar business with said plaintiff. located in the City of Peru in the County of LaSalle in the State of Illinois and then and there offered and agreed to and with said plaintiff to draw on said Bank of Peru certain other draft payable to the order of said plaintiff and furnish them to said plaintiff to be discounted. whereupon said plaintiff refused to discount

45. said last mentioned drafts unless said Defendant could guarantee their payment if they were not paid upon presentation by said Bank of Peru; whereupon said Defendant agreed in consideration that the said plaintiff would discount said last mentioned drafts and send them to the Bank of Peru upon which they were drawn for payment, instead of sending them to the agent of said plaintiff, where said Bank of Peru was located for collection. he said Defendant would guarantee the payment of said last mentioned drafts. And said plaintiff avers that under said last mentioned Agreement, the said Defendant drew upon said Bank of Peru five several drafts payable to the order of said plaintiff, of the several dates, tenor and amounts following, to wit:

545.35 i. one draft dated November 8th 1840 payable fifteen days after sight for five hundred and forty five dollars and thirty five cents (\$545.35)

1039.54 ii. one draft dated November 6th 1840 payable fifteen days after sight for one thousand and thirty nine and $\frac{54}{100}$ dollars (\$1039.54)

542.91 iii. one draft dated November 16th 1840 payable fifteen days after sight for the sum of five hundred and forty two and $\frac{91}{100}$ dollars (\$542.91)

\$38.39

one draft dated November 17th 1860.
payable fifteen days after sight for
the sum of eight hundred and thirty eight
and $\frac{3}{10}$ Dollars (\$838.39)

272.08
\$238.27

one draft dated November 17th 1860 payable
fifteen days after sight for the sum
of two hundred and seventy two and $\frac{8}{100}$
Dollars (\$272.08)

And said plaintiff avers that it
discounted each and all of said
last recited drafts, in the usual course
of business, and paid over to said
defendant the money on the same, and
that it duly forwarded said drafts to
the said Bank of New York upon which
they were drawn: and that said bank
neglected and utterly refused to pay said
drafts or any one of them, or any part
thereof to said plaintiff, but kept and
retained said drafts, and refused to
deliver them to said plaintiff whereby
they became and are lost to said
plaintiff, so that it cannot now here
produce them to the Court. And the said
plaintiff avers that by reason of the said
promise and agreement of the said defendant
and by reason of the payment of the
money to him by said plaintiff as
aforesaid, he, the said defendant became
liable to pay to said plaintiff the
amount of money in said last
mentioned drafts specified. To wit:

47. at the County aforesaid; and being so liable. he the said Defendant. Afterwards. to wit. on the first day of April A.D. 1861 undertook and faithfully promised the said plaintiff to pay it the said several sums of money in the said last mentioned drafts specified. when he the said defendant should be thereunto afterwards requested to wit at the County aforesaid.

7th Count.

And also for that whereas the said defendant heretofore to wit; on the 17th day of November A.D. 1860 at Galena in the County aforesaid made his certain other bill of Exchange in writing bearing date on said 17th day of November A.D. 1860. which said last mentioned bill of Exchange having been lost to the said plaintiff cannot produce the same to the Court here) and thereby then and there requested the Bank of Peru (a corporation duly incorporated under the laws of this State) fifteen days after sight thereof to pay to the order of said plaintiff the sum of eight hundred and thirty eight and $\frac{3}{4}$ Dollars for value received and then and there delivered with Bill of Exchange to the said plaintiff. And said plaintiff avers. that afterwards.

Torrit. when said bill of exchange
 became due and payable according to
 the tenor and effect thereof. the said Bill
 of Exchange was presented and
 shown to said Bank of Peru for
 payment thereof. and the said Bank
 of Peru was then and there requested
 to pay the said sum of money
 therein specified according to the tenor
 and effect of said Bill of Exchange; but
 that the said Bank of Peru did not nor
 would at said time when said Bill
 of Exchange was so presented as aforesaid
 or at any time before or afterwards
 pay the said sum of money therein
 specified. or any part thereof; but then
 and there wholly neglected and refused
 so to do; of all which said several
 premises the said defendant after-
 wards. Torrit. in the day and year
 last aforesaid. had notice at the
 County aforesaid. By means whereof
 and by force of the statute in such case
 made and provided. the said defendant
 then and there became liable to pay to
 the said plaintiff the said sum of money
 in said Bill of Exchange specified accord-
 ing to the tenor and effect thereof. And
 being so liable he the said defendant
 in consideration thereof then and there
 understood and faithfully promised
 to pay the said plaintiff the said

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49. sum of money in said Bill of Exchange specified according to its true tenor and effect: to wit: at the County aforesaid.
8th Court.

And also for that whereas the said Defendant heretofore to wit: on the 17th day of November A.D. 1860. at Galena aforesaid made his certain other bill of exchange in writing bearing date the said 17th day of November A.D. 1860. and thereby then and there requested the Bank of Peru (a corporation duly incorporated under the laws of said State of Illinois) fifteen days after sight thereof to pay to the order of the said plaintiff the sum of two hundred and seventy two and $\frac{1}{2}$ Dollars for value received. And then and there delivered said Bill of Exchange to said plaintiff (and which said last mentioned Bill of exchange having been lost. the said plaintiff cannot produce the same to the court here.) And said plaintiff avers that afterwards, to wit: when said Bill of Exchange became due and payable according to the tenor and effect thereof. the said Bill of Exchange was presented and shown to said Bank of Peru for payment thereof. and the said Bank of Peru was then and there requested to pay the said sum of money therein

specified according to the tenor and effect of said Bill of Exchange: but that said Bank of Peru did not nor would at said time when said Bill of Exchange was so presented and shown for payment as aforesaid or at any other time before or since pay the said sum of money therein specified or any part thereof. but then and there wholly neglected and refused so to do. of all which said several premises the said Defendant afterwards. To wit: At the County aforesaid.

By means whereof and by force of the Statute in such case made and provided, the said Defendant then and there became liable to pay to the said plaintiff the said sum of money in said Bill of Exchange specified according to the tenor and effect thereof. And being so liable he the said Defendant in consideration thereof then and there undertook and faithfully promised said plaintiff to pay the said plaintiff the said sum of money in said Bill of Exchange specified according to the tenor and effect thereof: To wit: At the County aforesaid.

9th Count.

And Whereas, also; the said Defendant. Afterwards, to wit, on the first day of February in the year of

51.

our Lord One Thousand Eight Hundred and Sixty two to wit. a Galena in said County. became and was indebted unto the Plaintiff in a large sum of money, to wit, five thousand dollars, for money before that time lent and advanced to. and paid, laid out and expended for said Defendant by said Plaintiff at said Defendants request; and for money before that time had and received by said Defendant to and for the use of said Plaintiff; and also in like sums for goods wares and merchandise before that time sold and delivered by said Plaintiff to said Defendant at like special instance and request; and also in like sum for the labor, care, and diligence of said Plaintiff before that time done and performed by said Plaintiff; for said Defendant,* in consideration thereof, then and there undertook and promised to pay said Plaintiff said last mentioned sum of money, when thereunto afterwards requested. Yet the said Defendant, not regarding his said promises and undertakings, but contriving, &c., although often requested to do, has not paid said Plaintiff either of said sums of money, or any part thereof, but so to do has hitherto

And at the like instance and request of said Defendant and being so indebted said Defendant

*

wholly neglected and refused. and still does neglect and refuse. to the damage of said Plaintiff of five thousand dollars. and therefore he brings this suit &c.

R. H. McCellan &
W. Weigley
Attys for plff

Herrman, Kupper
To Bank of Galena

Dr

To Cash advanced	—	\$5,000
To Money loaned		\$5,000
To Balance due on account		\$5,000
To Balance due on drafts		\$5,000
To balance due on agreement		
to pay his drafts on Bank of Peru		\$5,000
To cash received by him to & for use of Bank of Galena		\$5,000
To balance due on settlement		\$5,000

Endorsed

Filed as amended

February 27th 1863

W R Rowley clk

By T. R. Bird deputy.

And afterwards to wit, on the 9th day of March A.D. 1863. as a pt of the March Term A.D. 1863. of said do Davis County Circuit Court. in the record of the proceeding thereof

53.

in the above entitled cause, appears
the following entry to wit:

Bank of Galena }
vs } Assumpsit
Herman Kupper }
Now at this
day comes the defendant,
by his attorneys and files demurrer
to the Plaintiffs declaration herein
and also files motion for rule on
Plaintiff to file copies of instruments
sued on. And after argument by Counsel
the Plaintiff is ruled to file a more
specific bill of particulars and copies
of drafts sued on, or show cause to the
contrary by Thursday Morning next.
The demurrer referred to in the last above
recited entry, is in the words and figures
following to wit.

State of Illinois }
So Danis County }

In the Circuit Court
of said So Danis County
March Term A.D. 1853

Bank of Galena }
vs }
Hermann Kupper }

And the said defen-
dant by Johnson & Shissler his attorneys
comes and defends the wrong & injury
when &c. and says that said declaration
and the said first second third fourth
fifth sixth and seventh, eighth and ninth
counts of the said declaration and each

of them separately and specially - and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant, and he the said defendant is not bound in law to answer the same. And this he is ready to verify, wherefore by reason of the insufficiency of the said declaration and of the said 1st 2nd 3rd 4th 5th 6th 7th 8th & 9th Counts of the said declaration and each of them separately and specially, the said defendant prays judgment &c.

And sets out the following causes of -
Demurrer to the said 1st 2nd 3rd 4th 5th 6th 7th 8th & 9th Counts of said declaration, and to each of them separately and specially.

1st The first count in said Declaration, sets forth a guarantee, but fails to show that the supposed guarantee was made in writing.

2nd The Guarantee mentioned in the 2nd Count in said declaration is not stated to have been in writing. Said 2nd Count fails to enumerate the drafts therein alluded to - simply states the amount \$10,000, without any description of their number when payable, their respective sums, &c. & said Count is in other respects

55. vague uncertain & informal.

3rd Said 6th Count in said declaration does not state the supposed guaranty therein mentioned, to have been in writing.

4th The said 1st, 2nd & 6th counts in said declaration & each of them, do not set forth forth sufficient to render defendant liable in any supposed guaranty, and are simply surplusage, as the other Counts in said declaration, set forth a pretended liability in certain supposed bills of Exchange & C.

5th Said sixth Count in said declaration does not show any cause of action against said Defendant.

6th Said 3rd, 4th, 5th, 7th, 8th & 9th Counts in said declaration & each of them, are insufficient & informal.

Johnson & Shissler
per Defendant

Endorsed

Filed March 9th 1863

W. R. Rumbley Clk

By T. R. Bird Deputy

The motion referred to in the last above recited entry, is in the words and figures following to wit. —

56. State of Illinois }
So Davis County } In Circuit Court of
Said Davis County }
A.D. 1863

Bank of Galena }
vs }
Hermann Kupper }

And now at this
day comes the said defendant by Johnson
& Shissler his attorneys, and moves the
Court for a rule on said plaintiff
to file copies of the Bills of Exchange sued
on in said plaintiffs declaration.

And also to rule the plaintiff to file
a more specific account to the 9th Court
in said declaration.

Johnson & Shissler
Atty for Def.

Endorsed

Filed March 9th 1863.

W. R. Rowley CLK

By T. R. Bird Deputy

And afterwards to wit, on the 12th day
of March A.D. 1863 as yet of the March Term
A.D. 1863 of said Circuit Court in the record
of the proceedings thereof in the above
entitled cause appears the following
entry to wit,

Bank of Galena }
vs }
Herman Kupper }

Assumpsit

Now at this day

57. comes the plaintiff by its Attorney and files a more specific copy of the account sued on in this cause.

The specific account filed. and referred to in the last above recited entry is in the words and figures following to wit.

More specific account filed by order of Court
Herman Kupper in account with Bank of Galena

Date of Draft	Drawer	Drawee	To whose order	Time of payment	Amount
Nov 6. 1860	Defendant	Bank of Peru	order of Plaintiff	15 days after sight	1039.54
Nov 8. 1860	Defendant	Bank of Peru	order of Plaintiff	15 days after sight	545.35
Nov 16. 1860	Defendant	Bank of Peru	order of Plaintiff	15 days after sight	542.91
Nov 17. 1860	Defendant	Bank of Peru	order of Plaintiff	15 days after sight	838.39
Nov 17. 1860	Defendant	Bank of Peru	order of Plaintiff	15 days after sight	272.08
					\$ 3238.27

Endorsed.

Filed March 12th 1863.

W. R. Rowley, Clerk

By T. R. Bird, Deputy.

And afterwards to wit on the 16th day of March A.D. 1863. as yet of the March Term A.D. 1863. of said Circuit Court in the

Record of the proceedings thereof in the ~~case~~
 above ^{entitled} ~~entitled~~ ~~cause~~, appears the following
 entry to wit.

Bank of Galena }
 vs } Assumpsit
 Herman Kupper }

Now at this day
 came on to be heard
 the demurrer heretofore filed by the
 defendant to the plaintiffs declaration
 in this cause. which demurrer after
 argument by counsel is sustained as to
 the second count. and overruled as to the
 other. counts in said declaration. and
 upon motion of the plaintiff leave is
 granted it to amend its said second
 Count.

And afterwards. to wit on the 17th day of
 March. A.D. 1863. as yet of the March Term
 A.D. 1863 of said Circuit Court. in the
 record of the proceedings thereof in the
 above entitled cause appears the following
 entry to wit.

Bank of Galena }
 vs } Assumpsit
 Herman Kupper }

Now at this
 day comes the plain-
 tiff by its attorneys and files the
 affidavit of Nathan Smith to show
 cause why they should not file copies

59. of the bills of exchange sued on in this cause.

The affidavit referred to in the last above recited entry is in the words and figures following to wit.

State of Illinois }
In Davis County } Nathan Cornith, being
first duly sworn deposes and says, that
he is one of the members of the Corporation
known as the Bank of Galena; that he is
well acquainted with the facts intended
to be proved in the case of the Bank of Galena
vs H Kupper now pending and undetermined
in the Circuit Court of said Davis County.
That the five bills of exchange sued on and
sought to be recovered for in said case,
were duly sent to the Bank of Peru, upon
which they were drawn, by the special
order of said Kupper. That said Bank
retained said drafts; and this affiant
went to Peru where said Bank was located,
and saw the President of said Bank, and
endeavored to get the said drafts; but could
not, the said President alleging that ^{former} the
Cashier of said Bank ^{had} clandestinely left
and taken said drafts with him, or
destroyed them so that they could not
be found. This affiant further says, that
he has made diligent search for said
drafts and cannot find them. That the

60 Bank the Bank of Galena did not preserve
copies of said drafts and that it cannot
furnish copies to be filed with the
declaration in said cause.
Nathan Cruik

Subscribed and sworn to before me this
17th day of March A.D. 1863
W. Ford. Notary Public

Endorsed.

Filed March 17th 1863

W. R. Rowley Clk

By T. R. Bird Deputy.

And afterwards tried on the 18th day of
March A.D. 1863. as yet of the March Term
A.D. 1863 of said Circuit Court in the record
of the proceeding thereof in the above entitled
cause. appears the following entry to wit.

Bank of Galena

vs

Assumpoit

Herman Kupper

The plaintiff

by its attorneys comes
& files amended second count to his
Declaration herein. and upon affidavit
heretofore made and filed in this cause.
it appearing to the Court that the
plaintiff has shown good cause why
it should not file copies of the bills of
exchange declared on in this cause.
It is ordered that the rule heretofore

(171)

61. entered against them to file such copies be discharged. And upon motion of the plaintiff the defendant is ruled to plead within thirty days from this date.

The amended second Count referred to in the last above recited entry is in the words and figures following to wit.

2nd Count Amended.

And also for that whereas the said Defendant, heretofore Plaintiff on the sixth day of November A.D. 1860. at Galena in the County aforesaid. being engaged in the business of buying and selling grain & farm produce &c. requiring large sums of money from time to time. to carry on his said business. was desirous of making an arrangement with the said plaintiff by which the said defendant could procure from said plaintiff what money he should thereafter require to carry on his said business from time to time. as he said defendant should need the same. that for the purpose effecting such an arrangement. he the said Defendant came to the Banking House of said plaintiff heretofore Plaintiff on said sixth of November A.D. 1860. at Galena. in the County aforesaid. and then and there made & entered into a certain other

agreement with the said plaintiff:
 by the terms of which last mentioned
 agreement: the said Defendant agreed
 with the said plaintiff. that in consid-
 eration that said plaintiff would
 furnish said Defendant such sums
 of money as he should thereafter from
 time to time, need in his said business,
 that he the said Defendant would
 draw his drafts in writing, on
 the Bank of Peru (a Bank duly incorporated
 under the Laws of the State of Illinois)
 payable to the order of said plaintiff
 for such sums of money as he the
 said Defendant should from time to time
 require in his said business: that said
 plaintiff should cash said Drafts for
 said Defendant at the usual rate of
 Discount: said rate of Discount being
 the consideration paid by said Defen-
 dant to said plaintiff for cashing such
 drafts: that said plaintiff should send
 said drafts so drawn & discounted as
 aforesaid directly to the Bank of Peru
 aforesaid: that said Defendant then
 and there agreed with the said plain-
 tiff that all such drafts so drawn
 and discounted as aforesaid should
 be paid by the said Bank of Peru
 on presentation to said Bank of Peru:
 that in case any of said Drafts
 so drawn & discounted as aforesaid

63.

should not be paid upon presentation of the same as aforesaid to said Bank of Peru that he the said Defendant in consideration of the said plaintiff having discounted the said drafts would himself pay to said plaintiff all such drafts so drawn & discounted as aforesaid. which said Bank of Peru should fail to pay when presented for payment as aforesaid. And the said plaintiff being then & there engaged in doing a general Banking business did then & there in consideration of the premises above set forth agree with the said Defendant that the said plaintiff would discount at the usual rates of discount such drafts as he the said Defendant might thereafter draw upon said Bank of Peru as aforesaid; he the said Defendant agreeing as aforesaid to pay said plaintiff any such drafts so drawn & discounted as aforesaid. which the said Bank of Peru should fail to pay when the same was presented for payment as aforesaid. And plaintiff avers that in pursuance of said last mentioned agreement the said Defendant drew five drafts in writing upon said Bank of Peru payable to the order of said plaintiff. which said drafts are described as follows: to wit: one draft drawn by said defendant

64. in said Bank of Peru to the order of said plaintiff dated November 6th A.D. 1860. payable fifteen days after sight for ten hundred & thirty nine & $\frac{54}{100}$ Dollars: one draft dated November 8th 1860. drawn by said defendant on said Bank of Peru. payable fifteen days after sight to the order of said plaintiff for five hundred & forty five & $\frac{35}{100}$ Dollars: one other draft drawn by said defendant on said Bank of Peru payable to the order of said plaintiff. fifteen days after sight. dated the 16th day of November 1860 for the sum of five hundred & forty two & $\frac{9}{100}$ Dollars: one draft drawn by said defendant in the said Bank of Peru dated the 17th of November 1860 payable to the order of the said plaintiff fifteen days after sight for the sum of eight hundred & thirty eight & $\frac{39}{100}$ Dollars: And one draft drawn by said defendant in said Bank of Peru. dated the 17th day of November 1860 payable to the order of said plaintiff fifteen days after sight for the sum of two hundred & seventy two & $\frac{8}{100}$ Dollars: & all of said drafts being for value received. And said plaintiff avers that all of said drafts were discounted at the usual rates of discount by said plaintiff & the money being the full

65. amount of the face of said drafts (less said discount) was paid at the dates of said drafts respectively, by said plaintiff to said Defendant: that all of said drafts were duly sent by said plaintiff to said Bank of Peru according to said agreement, & were all duly presented to said Bank of Peru for payment: that said Bank of Peru has failed, neglected & refused to pay any one or any portion of said five drafts of all which said Defendant had notice: And plaintiff avers that all of said five drafts have been lost so that the said plaintiff cannot produce them to the said Court here. And plaintiff further avers that after the neglect & failure & refusal of said Bank of Peru to pay said drafts as aforesaid, & before the commencement of this suit to-wit: on the first day of January 1862 at said County. the said Defendant agreed & promised the said plaintiff, that he the said Defendant would pay to said plaintiff the amount of the said drafts so drawn & discounted as aforesaid, & which the said Bank of Peru had failed & neglected to pay to said plaintiff as aforesaid. By means whereof & by force of the Statute in such case made & provided the said Defendant then & there

became liable to pay to said plaintiff the said several sums of money in said last mentioned drafts specified, & being so liable, in consideration thereof, he the said defendant, then & there, undertook & faithfully promised to the said plaintiff to pay the said plaintiff the said several sums of money in said last mentioned drafts specified, according to the tenor & effect of the said drafts, & of his said last mentioned agreement: To wit: at the County aforesaid.

Endorsed

Filed March 18th 1863

Dr R Rowley Clk

By T. R. Bird Deputy.

And afterwards to wit, on the 8th day of April A.D. 1863, the defendant filed in the office of the Clerk of said Circuit Court his pleas, which are in the words and figures following, to wit:

State of Illinois	vs	In the Circuit Court
Co Davis County	vs	of Davis County
Bank of Galena		May Term A.D. 1863
Hermann Kupper		

67. First Plea.

And the said defendant by Johnson & Shessler his attorneys comes and defends the wrong and injury when &c., and saith that he did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against him. and of this he puts himself upon the Country &c.

And plff doth the like

R H McEllan

Or Weigley

Attys for plff

Second Plea.

And for a further plea in this behalf the said defendant by leave of the Court here for this purpose first had and obtained &c says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him. because he says that the several supposed promises and undertakings in the said first and second and sixth counts respectively mentioned were special promises. and each of them was a special promise for the debt of another person, to wit the said Bank of Peru. and that no agreement in respect of or relating to the supposed causes of action in the first and second and

sixth points of the said declaration or either of them. nor any memorandum or note thereof wherein the consideration or considerations for the said special promises or either of them was or were stated or shown. was or is in writing or was or is signed by the said defendant or by any other person by him thereunto lawfully authorized according to the form of the Statute in such case made and provided. And thus the said defendant is ready to verify. wherefore he prays judgment &c.

Third Plea.

And for a further plea in this behalf the said defendant by like leave of ^{the} Court &c. says action. because he says that the said defendant being engaged in the business of buying, selling, and shipping grain, at Galena in the said County of Jo Davis and State of Illinois. did sell and ship grain to the said Bank of Peru. a corporation located and doing business at Peru in the County of La Salle. Illinois. under a certain contract in writing, as follows to wit.

"Bank of Peru

Peru Ill June 7 1860

R. G. Parks is hereby authorized by himself or agent. to draw on the

69. Bank at not exceeding one dollar per bushel for wheat at Dunlap Galena or Warren accompanied by Ill Central Rail Road receipt for the same at such time as he shall arrange. Said drafts to be sent direct to this Bank for collection.

"N. R. Haskell." which said contract was signed by the said Haskell then and there being the Cashier of said Bank of Peru. and the said contract was shown to the said plaintiff. previous to the making of the said drafts declared in in said plaintiffs declaration.

And the said defendant further says. that in accordance with said contract. he the said defendant did at various times sell and ship grain to the said Bank of Peru. and draw drafts for the value of said grain accompanied by Illinois Central Rail Road receipts for the same. which said drafts and receipts were then and there delivered to the said plaintiff. And the said defendant further saith that the said plaintiff well knowing these facts. and trusting to and relying upon the credit and responsibility of the said Bank of Peru did pay the said indebtedness of the said Bank of Peru for the said

grain so sold & shipped. by this Defendant to the said Bank of Peru under the contract aforesaid, and the said indebtedness of said Bank of Peru. so paid by the said plaintiff, is the identical money and drafts, sued for, in said plaintiff's declaration.

And the said defendant further saith that the several supposed promises and undertakings in the said first and second and sixth counts respectively mentioned, were special promises, and each of them was a special promise for the debt of another person, to wit the said Bank of Peru, and that no agreement in respect of or relating to the supposed causes of action in the first and second and sixth counts of the said declaration or either of them nor any memorandum or note thereof wherein the consideration or considerations for the said special promises was or were stated or shown was or is in writing, or was or is signed by the said defendant, or by any other person by him thereunto lawfully authorized according to the form of the statute in such case made and provided. And this the said defendant is ready

71. to verify. wherefore he prays judgment &c.

4th Plea

And for a further plea in this behalf the said Defendant by like leave of the Court &c says actio non. because he saith that he the said Defendant being engaged in buying selling and shipping grain at Galena Illinois. Entered into an agreement to sell and ship grain to the Bank of Peru a corporation doing business at Peru Illinois. and under said agreement did sell and ship large quantities of grain to said Bank of Peru. all of which the said Plaintiff then and there knew. And the said Defendant further saith that the said Plaintiff acting for and on behalf of the said Bank of Peru. received the drafts mentioned in said plaintiffs declaration and paid the money on the same. for and on account of said Bank of Peru to whom the said Defendant was then selling and shipping grain from time to time as aforesaid. And the said Defendant further saith that the drafts were drawn for the value of each of said shipments of grain. and against the same, and said drafts were attached to Illinois Central Rail

Road receipts of each of said shipments corresponding in amount. And the said drafts so attached to said Illinois Central Railroad receipts covering the the amount of the value of said grain were then and there, before each of said shipments were made, delivered to said plaintiff, for and in account of said Bank of Peru. And are the identical causes of action sued on, in said plaintiff's declaration. And this the said defendant is ready to verify wherefore he prays judgment &c.

5th Plea

And for a further plea in this behalf the said defendant by like leave of the Court &c. says action now because he says that he the said defendant being engaged in the business of buying selling and shipping grain at Galena Illinois did sell and ship large quantities ^{of grain} at various times to the Bank of Peru a corporation doing business at Peru Illinois under the following instrument in writing.

Bank of Peru
Peru Ill June 7 1860

R. G. Parks is hereby authorized by himself or his agent to draw

73. on the Bank at not exceeding one dollar per bushel for wheat at Dunleith, Galena or Warren accompanied by Ill. Centr. Rail Road receipts for the same at such time as he shall arrange. Said drafts to be sent direct to this Bank for collection.

S. R. Haskell

And the said defendant further saith that the said Haskell was at the time of signing said instrument of writing and before the Cashier of said Bank of Peru. and that the said grain was shipped by the Illinois Central Rail Road all of which the plaintiff then and there knew. And the said defendant further saith that the Illinois Central Rail Road receipts of said grain when the same was ready for shipment were delivered to said plaintiff. and the said plaintiff in consideration that the said Illinois Central Rail Road receipts were so delivered, whereby the said plaintiff became the owner of said grain and entitled to be paid the value of the same before delivered to said Bank of Peru. agreed to pay and did ^{pay} the value of each of said shipments of grain to the said defendant, deducting one per cent therefrom. and the said defendant at the time of the transfer

74.

of said grain. also transferred the right to collect its value. by directing the said Bank of Peru to pay to the order of the said plaintiff. the amount of the value of such shipment.

And this defendant further saith that the said plaintiff thus being in possession of said grain. holding title to. And the owner of the same. under said Illinois Central Rail Road receipts transferred said grain to other parties: And the sums of money declared on and sought to be recovered from the defendant are the sums of money so paid by said plaintiff as the value of said shipments of grain. and which were afterwards and long since transferred by said plaintiff to other parties as aforesaid. And this the said defendant is ready to verify. wherefore he prays judgment

6th Plea

And for a further plea on this behalf, the said defendant say that the said plaintiff ought not to have and maintain its aforesaid action there against him because he says that the said plaintiff before and at the time of the commencement of the suit, to wit, at the County of So Daire and Circuit aforesaid was and still is indebted to the said

75. Defendant in a large sum of money, to wit, the sum of Seventy Thousand Dollars, lawful money of the United States, for work and labor, care, diligence and attendance of the said defendant by the said defendant and his servant before that time done, performed and bestowed in and about the business of the said plaintiff and for the said plaintiff and at its request; and for divers materials and other necessary things, by the said defendant before that time found and provided, and used and applied in and about the said work and labor for the said plaintiff and at its like request; and for divers goods, wares and merchandise sold and delivered by the said defendant to the said plaintiff at its like request; and for money by the said defendant before that time lent and advanced to, paid, laid out and expended for the said plaintiff and at its like request; and for money by the said plaintiff, before that time had and received, to and for the said defendant; and for money due and owing from the said plaintiff to the said defendant, for interest upon and for the forbearance

of divers large sums of money due and owing from the said plaintiff to the said defendant, and by said defendant forborne to the said plaintiff for divers long spaces of time before then elapsed; and for money due and owing from the said plaintiff to the said defendant upon an account stated between them for grain; which said sums of money, so due and owing to the said defendant, exceed the damage sustained by the said plaintiff, by reason of the non-performance by the said defendant of the said several supposed promises and undertakings in the said declaration mentioned. And out of which said sum of money, so due and owing from the said plaintiff to the said defendant, and the said defendant is ready and willing. And hereby offers to set off, and allow to the said plaintiff the full amount of the said damage according to the form of the Statute in such case made and provided. And this the said defendant is ready to verify, wherefore he prays judgment of the said plaintiff ought to have or maintain its aforesaid action thereof against him &c

Johnson & Shissler
Sole Attorneys

77.

Bank of Galena

To Hermann Kupper

Dr

1860

June 28 th	To	329	bushels wheat	339.78
29	"	324	" "	335.52
30	"	341	" "	352.88
July 2 nd	"	359	" "	372.07
Aug 24 th	"	788	" "	564.21
" 29	"	935	" "	735.29
" 30	"	642	" "	505.14
" 31	"	664	" "	528.10
Sept 1 st	"	666	" "	523.69
" 4	"	954	" "	749.73
" 7	"	681	" "	535.75
" 15	"	676	" "	580.69
" 17	"	1352	" "	1160.82
" 18	"	1003	" "	861.41
" 19	"	969	" "	832.07
" 20	"	1007	" "	862.74
" 21	"	1007	" "	862.52
" 22	"	681	" "	585.18
" 24	"	1349	" "	1158.26
" 26	"	688	" "	556.04
" 28	"	1006	" "	844.13
" 29	"	672	" "	563.63
Oct 1 st	"	990	" "	830.62
" 2	"	1008	" "	845.08
" 3	"	1024	" "	858.58
" 4	"	337	" "	280.53
" 5	"	1338	" "	1133.74
" 6	"	334	" "	280.18
" 8	"	1008	" "	860.86

Oct 9	To	1014	Bushels Wheat	852.88
" 10	"	675	" "	579.91
" 11	"	2048	" "	1758.35
" 12	"	335	" "	287.71
" 13	"	1014	" "	868.80
" 15	"	1025	" "	880.86
" 17	"	674	" "	583.63
" 19	"	1687	" "	1449.06
" 20	"	682	" "	586.08
" 22	"	1010	" "	847.27
" 25	"	1361	" "	1100.43
" 26	"	678	" "	548.62
" 29	"	1552	" "	1222.94
" 30	"	692	" "	545.34
Nov 1	"	1000	" "	787.80
" 3	"	684	" "	539.17
" 6	"	1286	" "	1039.54
" 8	"	674	" "	545.35
" 16	"	671	" "	542.91
" 17	"	1037	" "	838.39
" 17	"	345	" "	272.08
		<u>73.302</u>		<u>\$36170.27</u>

May 3 To American Gold special deposit \$1700.00
 T Cash deposited with Pttfs 30000.00

7 Plea

And for a further plea in this behalf by like leave of the Court, first had and obtained the said defendant says actio non because he says that he the said defendant

79. being engaged in the business of buying and shipping grain and produce at Galena in the County of Jo Davis and State of Illinois. made arrangement with said plaintiff by which he the said defendant would draw drafts on the said Bank of Peru (a corporation doing a Banking business under the laws of the State of Illinois at Peru Illinois) and ship grain to cover the same. taking the receipts of the Illinois Central Railroad Company for said shipment, which were to be delivered to said plaintiff to accompany said drafts and to be appropriated to the payment of said drafts. And said defendant avers that he did ship large quantities of grain at various times from Galena under said arrangement and drew drafts for the value of each of said shipments, which said grain and drafts or produce bills were delivered by the said defendant to the said plaintiff. And the money so paid by said plaintiff to said defendant is the money sued for in said plaintiff's declaration advanced on the said shipments of grain and the bills of exchange so drawn by said defendant on the Bank of Peru were

accompanied by receipts of the Illinois Central Railroad Company, and are the identical causes of action set forth in the said plaintiffs declaration. And the said defendant further avers that he did ship grain for each and every one of said drafts, of the amount stated in said drafts and to pay the same, and took receipts of the Illinois Central Railroad Company for each of said shipments and delivered the same with the said Bills of Exchange to the plaintiff, and the said plaintiff held the said grain as an equivalent for the value and amount of said drafts but the said plaintiff has never accounted for said grain, but has detained and appropriated the same to his own use. By means whereof the said drafts, sued on, and money stated in said declaration are satisfied & paid. And this he is ready to verify &c

8th Plea

And for a further plea in this behalf by leave of the Court first had and obtained, the said defendant says action now, because he says that the said defendant being in the business of buying and

81. shipping grain and produce at Galena in the County of Jo Davis and State of Illinois made an arrangement with the said plaintiff by which the said defendant on shipping grain to the Bank of Peru (a corporation doing business in the City of Peru Illinois) and drawing drafts on said Bank of Peru against said shipments and attaching the receipts of the Illinois Central Railroad Company for said shipments to said drafts. then said plaintiff would cash said drafts. and the said defendant avers that he shipped large quantities of grain to said Bank of Peru and drew drafts for the value thereof. and the said drafts with the receipts of the Illinois Central Railroad Company thereto attached. were delivered to said plaintiff and it then and there became the duty of the said plaintiff to account for the value of said shipments of grain. And the said defendant further avers that the causes of action stated in said plaintiffs declaration are five of said bills of exchange with receipts of the Illinois Central Railroad Company attached for shipments of grain of the value of the sum stated in said bills of exchange.

And the said defendant further avers that said plaintiff permitted said grain to go out of its control and delivered the same to the said Bank of Peru. And said Bank of Peru took up and paid for said bills of exchange and said shipments of grain by certain other bills of exchange drawn on certain parties doing business in New Orleans in the State of Louisiana. By means whereof said first mentioned ^{drafts} or bills of exchange were paid and satisfied. And this the said defendant is ready to verify &c.

9th Plea

And for a further plea in this behalf the said defendant by like leave of the Court &c says action now because he says that he the said defendant being engaged in the business of buying selling and shipping grain at Galena in the said County of Jo Davies and State of Illinois did ship grain to the said Bank of Peru a corporation located and doing a banking business at Peru in the County of La Salle and State of Illinois under a certain agreement the substance of which was that one R. G. Parks was

83.

Authorized by himself or agent to draw on the said Bank at not exceeding one dollar per bushel for wheat at Dunleith Galena or Warren. accompanied by Illinois Central Railroad receipts for the same at such time as he would arrange. said drafts to be sent to said Bank for collection. Which said contract was signed by one Haskell then and there being the Cashier of said Bank of Peru. and said contract was shown to said plaintiff. previous to the making of the said drafts sued on in this said plaintiff's declaration.

And the said Defendant States that under and by virtue of said agreement he did at various times ship wheat to said Bank of Peru at not exceeding one dollar per bushel. and drew drafts for the value of said wheat accompanied by Illinois Central Railroad receipts for the same. which said drafts with said receipts thereto attached, were delivered to the said plaintiff at the time of the execution. of said drafts.

And the said plaintiff well knowing the credit and responsibility of said Bank of Peru. did discount

said drafts and pay the amount
 less one per cent to the said defendant.
 That a large number of drafts,
 amounting to several thousand
 dollars, were drawn in the manner
 and under the agreement aforesaid,
 and were paid by said Bank of
 Peru, extending over a period of
 several months previous to the month
 of November A.D. 1860. And the five
 drafts declared on, in said plaintiffs
 declaration were likewise drawn
 under said arrangement and wheat
 of the value of the sum for which
 said drafts were drawn, was
 shipped to cover the same, and
 the Illinois Central Railroad receipts
 for said shipments of wheat were
 attached to said drafts and delivered
 to said plaintiffs. By means
 whereof the said drafts sued on,
 and money declared for in said
 plaintiffs declaration were fully
 paid and satisfied & this he is ready
 to verify &c

Johnson & Shissler
 Defts Attys

Endorsed

Filed April 8th 1863

W. R. Kowley, Ckr

By T. R. Bird Depty.

85. And afterwards truit. on the 21st day of May A.D. 1843. as yet of the May Term A.D. 1843. of said Circuit Court. in the record of the proceedings thereof in the above entitled cause. appears the following entry, to wit:

Bank of Galena
vs
Herman Kupfer

Assumpsit

Now at this day comes the plaintiff by its attorneys and files replications to defendants pleas. and files double replication to defendant third & fifth pleas herein.

The Replications referred to in the last above recited entry are in the words and figures following to wit:

State of Illinois
Ch. Danvers County

In Circuit Court
May term 1843

Bank of Galena
vs
Herman Kupfer

And the said plff. by Weigley & McClellan. its attys as to said 4th & 5th second plea. say precludi non &c: because they say that the said promises & undertakings in said first. second and sixth Counts in said declaration. were not special

promises: and each of them was not
a special promise for the debt of another
person: trust: the said Bank of Peru as
averred in said plea: and thus the
said plaintiff prays may be enjoined
of by the Country, &c

Wigley & McClellan
plffs Attys.

And for replication to said third
plea of said Deft. plff says precludi
non &c. because plff says: that it did
not trust to & rely upon the credit &
responsibility of said Bank of Peru
& did not pay the indebtedness of said
Bank of Peru for said grain sold &
shipped by Deft. to said Bank of
Peru under the supposed contract set
forth in said plea. as averred in
said plea: And of this plff puts
itself upon the Country, &c

Wigley & McClellan
plffs Attys.

And further replication to said
3rd plea. by leave of the Court &c. plff
says precludi non &c. because the
said promises & undertakings in
said 1st 2nd & 6th Counts were not nor
any or either of them special prom-
ises for the debt of another person: trust:
said Bank of Peru as averred in said
plea: And this plff prays may be

87. inquired of by the Country & C
Weigley & McClellan
plffs Attys.

And to replication to said 4th
plea of said Def^t. plff says precludi
non & C; because: said plff was not
acting for & on behalf of said Bank
of Peru & did not receive the drafts
mentioned in said plffs declaration
& pay the money on the same for &
on account of said Bank of Peru as aver-
red in said 4th plea. And this said
plff prays may be inquired of by the
Country & C

Weigley & McClellan
plffs Attys.

And for further replication to said 5th plea,
plff says precludi non & C. because plff says: that said plff did not
transfer said grain to other parties & the sums of money declared in & brought
to be received for said defendant, are not the sums of money paid by plff
as the value of said shipments of grain as averred in said 5th plea; and this
said plff prays may be inquired of by the Country & C.

And for replication to said 5th plea
of said Def^t: said plff says precludi non
& C; because plff says: that said plff
did not agree in consideration that the
said Illinois Central Rail Road receipts
were delivered to plff as stated in
said plea: that said plff would pay
& did pay the value of each of said
shipments of grain to the said Defen-
dant. deducting one per cent therefrom;
and this plff prays may be inquired
of by the Country & C.

Weigley & McClellan
plffs Attys.

* And for further replication to said 5th plea, by leave of the Court & C.
plff says precludi non & C. because plff says: that said plff did not
transfer said grain to other parties & the sums of money declared in & brought
to be received for said defendant, are not the sums of money paid by plff
as the value of said shipments of grain as averred in said 5th plea; and this
said plff prays may be inquired of by the Country & C.

*

And for replication to said 6th plea of said Deft: said plff says, precludi non &c because: said plff before & at the time of the commencement of this suit was not indebted to the said defendant in any sum of money whatever as averred in said plea & this said plff prays may be inquired of by the Country &c

Weigley & McClellan
plffs Attys.

And for replication to said Defts 7th plea plaintiff says, precludi non &c: because said plff says: that said Deft did not make the arrangement with said plff, stated in said 7th plea: by which said deft was to draw his drafts on said Bank of Peru & ship grain to cover the same, taking receipts of the Illinois Central Rail Road Company for said shipments, to be delivered to plff with said drafts & appropriated to the payment of said drafts, as averred in said plea & said drafts sued on & money stated in said Declaration were not satisfied, or paid, as stated in said plea. And this said plff prays may be inquired of by the Country &c

Weigley & McClellan
plffs Attys.

89.

And for replication to said Defts.
8th plea. said plff saith precludi m^ore:
because plff says: that it is not true.
that said Deft made an arrangement
with said plff. by which said Deft
in shipping grain to the Bank of Peru
& drawing drafts on said Bank
& Peru against said shipments &
attaching the receipts of the Illinois
Central Rail Road Company, for
said said shipments to said drafts:
that then said plff would cash said
drafts: and that said drafts & Bills
of Exchange were not paid and satisfied:
as averred in said plea- And this
said plff prays may be inquired of
by the Country &c.

Weigley & McClellan
plff Attys.

And for replication to said Defts
9th plea. said plff says precludi m^ore:
because said plff says: that the said
drafts sued on in this case have not
been fully paid and satisfied as
set forth in said 9th plea: and
this said plff prays may be inquired
of by the Country &c.

Weigley & McClellan
plffs. Attys

Endorsed

Filed May 21st 1873

W. R. Rowley, CLK.

By T. R. Bird deputy

And afterwards took on the 22nd day of May A.D. 1863 as yet of the May Term 1863 of said Court in the record of the proceedings therein in the above entitled cause appears the following entry, to wit:

Bank of Galena
vs
Herman Kupper

Assumpsit

The plaintiff at this day comes and files exceptions to the deposition of R. G. Parks. filed by the defendant in this cause.

The exception referred to in the last above recited entry are in the words and figures following to wit:

State of Illinois
So Davis County

In Circuit Court
May term A.D. 1863

Bank of Galena
vs
Herman Kupper

And said plff by Weigley & McEllan its attys. come & except to the deposition of Rollin G. Parks & move the Court to suppress the same; because, 1st there is no evidence of the official character of Nicholas Duncan as a Justice of the Peace.
2nd The certificate of said Nicholas

91. Duncan is not under seal.
3rd said Deposition has no relevancy
to the issues in this case.
4th

Plff excepts to the 5th Question &
answer. The question is leading &
the answer is not pertinent to the issue.

5th Plff excepts to the 6th Question & answer.
Question is leading & the answer is
irrelevant to the issue. The authority
testified to was given to witnesses & not
to Dept.

6th Plff excepts to answer to 8th Question.
It don't show the copy is a true copy
& it has nothing to do with this case.

7th The answer to Question 11 excepted
to by plff: not responsive to the question
& are ^{mere} matters of speculation on part
of witnesses: and is irrelevant to the
issue & has nothing to do with this
case.

Question 15 and answer excepted to as not relevant
8th Question 16 & answer also excepted to
also 17 & answer excepted to as irrele-
vant: 19 & answer excepted to for
same reason & leading

Question 22 also excepted to for same
reasons: Question 23 & answer also
excepted to as leading & improper.

and for other good reasons

Weigley & McEllan
attys for plff.

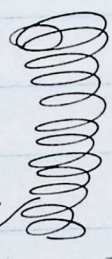
Endorsed

Filed May 22nd 1863

W R Rowley clk

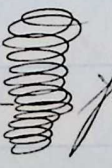
By T. R. Bird deputy.

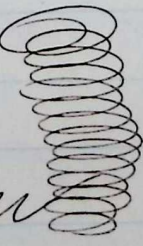
And afterwards tout on the 23rd day of May A.D. 1863. as yet of the May term A.D. 1863 of said Circuit Court, in the record of the proceedings thereof in the above entitled cause appears the following entry tout:

Bank of Galena  Assumpsit
vs
Herman Kupper  Now at

this day comes the defendant by his attorneys and files demurrer to the plaintiffs replication to the defendants pleas. in this cause.

The demurrer referred to in the last above recited entry is in the words and figures following tout:

State of Illinois  In Circuit Court
of Jo Daviess County  of Jo Daviess County
May Term 1863

Bank of Galena 
vs
Hermann Kupper 

and the said

93. Defendant by Johnson & Shippler saith that the replication of the said plaintiff to the said second plea of the said defendant and the matter therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law for the said plaintiff to have or maintain his aforesaid action &c and that he is not bound to answer the same &c

And this he is ready to verify. wherefore he prays judgment &c

And for special Cause of demurrer to said replication to second plea of deft the following is set forth.

Said replication is not a good replication to the 2nd plea. Said replication should set forth the agreement and in writing.

Wherefore he prays judgment &c.

Johnson & Shippler
Attys for deft.

And the said defendant comes and demurs to the 1st replication of the said plaintiff to the said third plea of the said defendant & saith that the same is not sufficient in law & he is not bound to answer the same &c

And for special causes of demurrer the said defendant assigns the

following.

Because. Said 1st replication to said 3rd plea. presents an immaterial issue.

Because. Said replication does not answer ~~this~~ said ^{3rd} plea.

Because. Said replication does not deny authority to draw drafts.

That drafts were drawn & wheat shipped under said contract with Bk of Peru Does not deny receiving the drafts mentioned in said plea.

Because. said plea shows the said drafts to be accepted drafts, & the debt of the Bank of Peru. which is not replied to.

Because. said replication is not a good & sufficient replication to said 3rd plea. wherefore he prays judgment &c.

Johnson & Shipley
Attys for Deft.

And the said Defendant comes and demurs to the second replication of said Plaintiff to said 3rd plea of said Defendant. and saith that the same is not sufficient in law and he is not bound to answer the same. And for special causes of demurres to said second replication to Defendants 3rd plea. assigns the following.

75- 1st Because said 2nd replication to
defts 3rd plea is not a good replication
& presents immaterial issue.

Because said 2nd replication to defts
3rd plea does not set forth the agree-
ment. Does not state Pltff relied
on promise in writing, or written
guaranty. Wherefore he prays
judgment &c.

Johnson & Shipley
Attys for Deft.

And the said Defendant comes
and demurs to the replication of
said plaintiff to the said fourth
plea of said defendant. And
says that the same is not suffic-
ient in law, &c., and he is not
bound to answer the same &c.,
and for special causes of demurer
to said replication to said 4th plea,
sets forth the following.

Because said replication presents
an immaterial issue.

Said replication does not
deny receiving Ill Cent R. R. receipts
of the grain. Does not deny
that shipments of grain were made,
& the railroad receipts for the
grain given to the plff.

Does not state plaintiff accounted
for said grain to defendant.

96. wherefore he prays judgment &c
Johnson & Shipster
Attys for Defendant.

And the said defendant comes
and demurs to the 1st replication
of said plaintiff to the said 5th plea
of said defendant. And says that
the same is not sufficient in law &c
And says that he is not bound
to answer the same &c.

And for special causes of demurrer
to said 1st Replication to said 5th plea
of said defendant states the following.

1st Said 1st Replication presents an
immaterial issue. Does not reply to said 5th plea.

2nd Does not deny receiving the grain

3rd Does not state plaintiff accounted for
the grain.

Wherefore said defendant prays judgment &c.

Johnson & Shipster
Attys for Defendant.

And the said defendant comes and
demurs to the second replication of said
plaintiff to the fifth plea of said defendant.

And saith that the same is not sufficient
in law & he is not bound to answer the
same &c. and states the following,
as special causes of demurrer to said
2nd replication.

1st Said 2nd Replication presents an immaterial

97. issue.

2nd Does not state grain accounted for, with the defendant.

3rd Does not deny receiving grain equal in value to the money paid on said drafts.

4th Does not reply to said 5th plea.

Wherefore he prays judgment &c.

Johnson & Shissler
Attys for defendant

And the said defendant comes and demurs to the replication of said plaintiff to the said seventh plea of said defendant and saith that the same is not sufficient in law and he is not bound to answer the same &c. And states the following special causes of demurmer to said replication.

1st Because said replication presents an immaterial issue

2nd Does not deny receiving grain to the value of drafts chased by plaintiff.

3rd Does not set up, that plaintiff accounted for value of the grain.

Wherefore said defendant prays judgment &c.

Johnson & Shissler
Attys for defendant.

And the said defendant comes

and demurs to the replication of said plaintiff to the eight plea of said defendant; and saith that the same is not sufficient in law. And he is not bound to answer the same &c. And for special causes of demurrer to said replication to said 8th plea. states the following.

1st. Said Replication sets forth an immaterial issue.

2nd Does not deny receiving grain equal in value to amount of the drafts paid by Plaintiff.

3rd Does not set up, that plaintiff either paid for said grain, or accounted with defendant for its value. Wherefore said defendant prays judgment &c.

Johnson & Shipley
Attys for Defendant.

And the said defendant comes and demurs to the said replication of the said plaintiff to the said ninth plea of said defendant. and saith that the same is not sufficient in law and he is not bound to answer the same &c. And states the following, as special causes of demurrer to said replication.

1st Said replication presents an immaterial issue.

99. 2nd Does not deny the receipt of grain equal in value to the amount of said drafts.

3rd Does not set up, that plaintiff paid defendant for said grain, or in any way accounted for the same.

Wherefore said defendant prays judgment &c

Johnson & Shipley
Attys & Defendant.

Endorsed

Filed May 23rd 1863

W. R. Rowley CLK

By T. R. Bird Deputy

And afterwards took on the 25th day of May A.D. 1863. as yet of the May Term A.D. 1863. of said Circuit Court in the record of the proceedings thereof in the above entitled cause appear the following entry to-wit:

Bank of Galena

vs

Herman Kupper

Assumpsit

Now at this

day came on to be heard. the demurrer heretofore by the defendants. to the plaintiffs replication to the defendants pleas. which demurrer after argument by Counsel

is taken under advisement by the Court. And the plaintiff by its attorneys files motion to suppress the depositions of Charles H. Herrick & C. H. Pendleton filed in this cause.

The motion referred to in the last above recited entry is in the words and figures following to wit:

State of Illinois } In Circuit Court
 So Davis County } May term 1863

Band of Galena
 vs
 Herman Kupper

And said plaintiff by Weigley & McClellan its attys comes & moves to suppress the deposition in this case purporting to be taken before Philip A. Hoyme for the reason that said Hoyme had no authority under the laws of this State to take the same not being a Justice of the Peace, or Clerk of the Circuit or County Courts. And for other good reasons.

Weigley & McClellan
 Plffs Attys.

Endorsed

Filed May 25th 1863

W R Rowley Clerk

By T. R. Bird Deputy.

101. and afterwards took on the 26th day of May A.D. 1863 as yet of the May Term A.D. 1863 of said Circuit Court in the record of the proceedings thereof in the above entitled cause appears the following entry to-wit:

Bank of Galena
vs
Herman Kupper

Assumpsit

The de-
murrer heretofore
filed by to the defendant to the plain-
-tiffs replications herein. having been
fully considered by the Court is this
day overruled by the Court. And the
motion heretofore filed by the plaintiff
to suppress the deposition of R. G. Parks
having this day come on to be heard.
after argument by counsel is overruled
-ed by the Court. to which ruling of the
Court: the Plaintiff by its attorneys
then and there excepts.

And afterwards took on the 1st day of June A.D. 1863. as yet of the May Term A.D. 1863. of said Circuit Court. in the record of the proceedings thereof in the above entitled cause appears the following entry to-wit:

Bank of Galena
vs
Herman Kupper

Assumpsit

Now

at this day came on to be heard the motion heretofore filed by the plaintiff to suppress the depositions of Charles H. Kerrick & C. H. Pendleton, which motion after argument by counsel, is sustained by the Court. And the defendant by his attorneys files affidavit and motion for continuance of this cause, which motion after argument by counsel is overruled by the Court. to which ruling of the Court the defendant by his attorney then and there excepts. And upon issue joined. Thereupon came a jury of good and lawful men to wit: Francis Boylan, William Black, James Temple, Joseph Mullin, Sampson Edwards, John Meendenhall, George Winter, Henry Hicks, Henry Hess, Samuel Scott, Thomas Coyle, & Joseph R. Morse, and after hearing the evidence, the further hearing of this cause is postponed until tomorrow morning. And the Plaintiff files affidavit of the loss of the drafts declared on in this cause.

The affidavit and motion for continuance, referred to in the last above recited entry is in the words and figures following to wit:

103.

State of Illinois
 to Danip County
 Bank of Galena
 Hermann Kupper

In Circuit Court
 of said to Danip
 County. May Term
 A.D. 1853.

Hermann Kupper
 being first duly sworn on his
 oath says that the Court on motion
 of Piffs counsel has suppressed the
 deposition of Charles H Herick and
 Charles H Pendleton of Chicago. by
 whom this affidavit expected to show
 that a certain letter of credit which
 is a material part of his defence to
 said suit is not in possession of
 said Herick & Pendleton. That this
 affiant last saw said letter of credit
 at the Bank of Galena. And did not
 learn that said Herick & Pendleton
 ever had said letter in their posses-
 -sion until he within ten days of
 this term of Court. that this applic-
 -ation is not made for delay but
 that justice may be obtained by
 the taking of the deposition of said
 witnesses. This affiant states that
 said letter of credit is not in his
 his possession. nor does he know
 where it is. unless it is in the
 possession of said Bank of Galena

where this Defendant saw it and
Took a copy of the same.

German Kupper

Subscribed & sworn to
before me this 1st day
of June 1863.

W R Rowley CLK
By T R Bird Deputy.

Endorsed

Filed June 1st 1863

W R Rowley CLK
By T. R. Bird Deputy.

The affidavit of loss of drafts, referred
to in last above recited entry is in the
words and figures following to wit:

Bank of Galena  In the Circuit Court
vs  of Davis County Ill.
H. Kupper  of the May Term A.D. 1863.

Nathan Cornish, being
first duly sworn deposes and says
that he has been for about the last two
years. And now is the President of
the Bank of Galena. the plaintiff in
the above entitled suit. and for the
last six years has been the prin-
cipal manager of the affairs of said
institution. That he is well acq-
uainted with the facts in said cause.

105

That the bills of exchange or drafts declared on in said suit are lost, so that he cannot produce them. That said drafts were each and all of them sent to the Bank of Peru by the order and direction of the defendant. That the Bank of Peru failed to pay said drafts to the plaintiff and retained them in its possession. This affiant further states that he caused letters to be written to said Bank of Peru by the Cashier of the plaintiff for the purpose of procuring payment of said drafts. And that he went to Peru where said Bank is located and applied to the President and the then acting Cashier of the bank for the drafts, but could not obtain them. That he there learned that the former Cashier of the Bank of Peru had absconded and left the State of Illinois, and taken the drafts with him as was supposed. That he has made diligent search for said drafts in every place where they were most likely to be found. That he went several times to the Bank of Peru for that purpose, once in the month of December next after the November when the drafts were drawn. That he does not know where said drafts are. And did not know at the time of searching for said drafts, where the

former cashier of said Bank of Peru. was, nor does he know now where he is, except from hearsay. That he believes he is out of and beyond the jurisdiction of this Court. That he has been informed, since the commencement of the trial of said cause, by one of the counsel of the defendant, that the defendant has in his possession two of said drafts, but this affiant does not know which of said drafts said defendant has. That he was informed by the President and Cashier of the Bank of Peru that the ^{former} Cashier of said institution had absconded and gone to Canada, and taken said drafts with him. That they were not in the possession or power of the Bank of Peru to produce.

And affiant further says that one A. R. Hassell, was the former Cashier of said Bank of Peru, & had the entire charge, custody & control of said drafts, when the same were sent to said Bank of Peru as aforesaid: that said Hassell left Peru before this suit was commenced, & went to Canada as this affiant was informed & believes but, where he did actually go, or where he is now this affiant has no knowledge.

And affiant further states that at one of his visits to the said

Bank of Peru. a thorough search was made by the officers of said Bank for said drafts amongst the papers & files of said Bank of Peru but the said drafts could not be found; that said search was made in the presence of this affiant.

Subscribed & sworn to
before me this 1st June 1843
W R Rowley Ckr
By T. R. Bird Deputy

Nathan Cornith

Endorsed

Filed June 1st 1843
W R Rowley Ckr
By T R Bird Deputy

And afterwards to wit, on the 2nd day of June. A.D. 1843. as yet of the May Term A.D. 1843. of said Circuit Court in the record of the proceedings thereof in the above entitled cause appears the following entry to wit:

Bank of Galena

vs

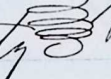
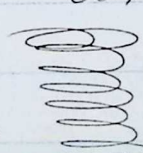
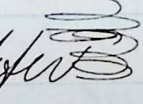
Herman Keyffer

Assumpsit

Now at this day came again the jury heretofore impaneled in this cause. and after hearing the arguments of counsel they retire to consider of their verdict. and after due deliberation they return unto

Court. with the following verdict
 to wit: We the jury find the issues
 for the plaintiff and assess its dam-
 -ages at the sum of Twenty seven
 hundred dollars. (\$2700.00) and the
 defendant by his attorneys moves
 the Court for a new trial and files
 his motion and reasons Therefor.

The motion for a new trial referred
 to in the last above recited entry is
 in the words and figures following
 to wit:

State of Illinois  vs Im Circuit Court of
 St. Davie County  said St. Davie County
 At the May Term thereof
 Bank of Galena  A.D. 1863.
 vs
 Hermann Kuppert 

And now at this
 day comes the said defendant by
 Johnson & Shippler their attorneys
 and move the Court to set aside the
 verdict of the jury and to grant
 a new trial in said case.

And sets forth the following causes.

1st Because the verdict of the jury is
 against the law in said case.

2nd Because the verdict is against
 the evidence in said case.

109. 3rd Because the Court admitted im-
proper evidence.
4th Because the Court rejected proper
evidence.
5th Because the Court gave improper
instructions.
6th Because the Court refused to give
proper instructions.
7th Because the jury disregarded
the law & the evidence in said case

And for other good and sufficient
reasons &c

Johnson & Shipster
Attorneys for Defendant

Endorsed

Filed June 3rd 1863
W. R. Rowley Clerk
By T. R. Bird Deputy.

And afterwards to wit: on the 5th day
of June A.D. 1863. in & of the May
Term A.D. 1863. of said Circuit Court
in the record of the proceedings thereof
in the above entitled cause appears
the following entry to wit:

Bank of Galena

vs
Herman Kupper

Assumpsit

Now
at this day
came on to be heard the motion

heretofore filed by the defendant for a new trial in this cause, which motion after argument by counsel is overruled by the Court, to which overruling of motion the defendant by his attorney, then and there excepts. It is thereupon considered by the Court that the plaintiff have and recover of the defendant the sum of Twenty seven hundred dollar (\$2700) for its damages herein as heretofore assessed by the jury in this cause, together with its costs by it in this behalf expended, and that it have execution against the said defendant, therefor. And the defendant by his Attorneys prays an appeal to the Supreme Court, which is granted, Conditioned that he file with the Clerk of this Court, within Thirty days from this date, a good and sufficient appeal bond, properly conditioned in the sum of Thirty five hundred dollars (\$3500.00) with William H Snyder and Madison G. Johnson as security.

And afterwards to wit, on the 8th day of June A.D. 1853. as yet of the May Term A.D. 1853 of said Circuit Court in the record of the proceedings there in the above entitled cause

111. appears the following entry tenet:

Bank of Galena

vs

Herrmann Kupper

Assumpsit

Now at this day comes the defendant by his attorneys, and files his bill of exceptions in this cause, which is certified by the Court.

The bill of exceptions referred to in the last above recited entry is in the words and figures following: tenet:

State of Illinois
Co. Daviess County

ps In the Circuit Court of
said Co. Daviess County,
at the May Term thereof
A.D. 1863

Bank of Galena

vs

Herrmann Kupper

Be it remembered that on the First day of June A.D. 1863, being then of the May Term of said Circuit Court of said Co. Daviess County, Illinois came on to be heard in the above entitled cause before the Hon^{ble} Benjamin R. Sheldon judge of the said Circuit Court and a jury impanelled therein. And the said plaintiff to prove and maintain the issues on its part offered the following testimony.

Enos Ripley sworn and testified as

follows.

I am a Clerk in the Bank of Galena. Have been clerk since March 1861. Nathan Cornith is principal manager of the Bank of Galena. I went with Mr Cornith to the Bank of Peru. He asked the President of the Bank for the drafts. but did not get them. He made demand on the Cashier and on the President. but could not obtain the drafts.

Cross Examined. Mr Cornith made demands for the drafts, but did not state the number stated only the gross amount.

The plaintiff then offered two affidavits of Nathan Cornith to the Court to prove loss of drafts &c. objected to by Defendants Counsel as insufficient. These affidavits were offered to lay foundation for introducing secondary evidence.

The Court overruled objection. to which ruling defendant excepted.

~~(The Affidavit referred to above heretofore copied in~~

The Affidavits referred to above are in the words and figures following to-wit:

State of Illinois

To Daviess County

Nathan Cornith
being first duly sworn deposes

113.

and says. that he is one of the members of the Corporation known as the Bank of Galena: that he is well acquainted with the facts intended to be proved in the case of the Bank of Galena vs McKuffer now pending and undetermined in the Circuit Court of said Jo Daviess County. That the five bills of Exchange sued on and sought to be recovered for in said case. were duly sent to the Bank of Peru. upon which they were drawn. by the special order of said Kuffer. That said Bank retained said drafts: And this affiant went to Peru. where said Bank was located. And saw the President of said Bank. and endeavored to get the said drafts: but could not. the said President alleging that the former Cashier of said Bank had clandestinely left and taken said drafts with him, or destroyed them so that they could not be found. This affiant further says. that he has made diligent search for said drafts and cannot find them. That the Bank of Galena did not preserve copies of said drafts. And that it cannot furnish copies to be filed with the declaration in said case.

Nathan Cornith
 Subscribed and sworn to before me
 this 17th day of March A.D. 1863

W. Ford Notary Public

Endorsed

Filed March 17th 1893.

W R Rowley Clerk

By T R Bird Deputy.

Bank of Galena  In the Circuit Court
vs of Davis County, Ill.
H. Kupfer  of the May Term A.D. 1893.

Nathan Cornith, being
first duly sworn deposes and says,
that he has been for about the last two
years, and now is the President of the
Bank of Galena, the plaintiff in the above
entitled suit, and for the last six years
has been the principal manager of the
affairs of said institution. That he is
well acquainted with the facts in said
cause. That the bills of exchange, or drafts,
declared on in said suit are lost, so
that he cannot produce them. That said
drafts were each and all of them sent to
the Bank of Peru, by the order and direc-
-tion of the defendant. That the Bank of
Peru failed to pay said drafts to the
plaintiff, and retained them in its
possession. This affiant further states
that he caused letters to be written to said
Bank of Peru by the Cashier of the plain-
-teff, for the purpose of procuring pay-
-ment of said drafts, and that he went
to Peru, where said Bank is located,
and applied to the President and

the then acting Cashier of the bank for the drafts, but could not obtain them. That he then learned that the former Cashier of the Bank of Peru had absconded and left the State of Illinois, and taken the drafts with him as was supposed. That he has made diligent search for said drafts in every place where they were most likely to be found. That he went several times to the Bank of Peru for that purpose, once in the month of December next after the November when the drafts were drawn. That he does not know where said drafts are, and did not know, at the time of searching for said drafts, where the former Cashier of said Bank of Peru was, nor does he know now where he is, except from hearsay. That he believes he is out of and beyond the jurisdiction of this Court. That he has been informed, since the commencement of the trial of said cause, by one of the Counsel of the Defendant, that the Defendant has in his possession two of said drafts, but this Affiant does not know which of said drafts said Defendant has. That he was informed by the President and Cashier of the Bank of Peru, that the former Cashier of

said institution had absconded and gone to Canada. and taken said drafts with him. That they were not in the possession or power of the Bank of Peru to produce.

And Affiant further says that one A. R. Haskell. was the former cashier of said Bank of Peru, & had the entire charge, custody & control of said drafts. when the same were sent to said Bank of Peru as aforesaid: that said Haskell left Peru before this suit was commenced, & went to Canada as this Affiant was informed & believes but. where he did actually go, or where he is now this Affiant has no knowledge.

And ~~this~~ Affiant further states. that at one of his visits to the said Bank of Peru. a thorough search was made by the officers of said Bank for said drafts amongst the papers & files of said Bank of Peru but the said drafts could not be found: that said search was made in the presence of this Affiant.

Subscribed & sworn to
before me this 1st June 1813
W. R. Rowley clk.
By T. R. Bird Deputy.

Nathan Cruik

Endorsed

Filed June 1st 1813
W. R. Rowley clk.
By T. R. Bird Deputy.

117. Walter Ford. Have been teller of the Bank of Galena for 4 years. Have known defendant for about same time. I know about these drafts. This memorandum (shown to witness) is correct. This account shown to witness by plaintiffs counsel is correct. I discounted the five drafts sued on, and brought in by Mr Kupfer. The drafts are as follows.

Drafts drawn Nov 6th 1860, on the Bank of Peru payable to the order of plaintiff 15 days after sight for \$1039.54

Draft drawn Nov 8th 1860, on the Bank of Peru payable to order of Plaintiff 15 days after sight for \$545.35

Draft drawn Nov 16th 1860, on the Bank of Peru payable to order of plaintiff 15 days after sight for \$542.91

Draft drawn Nov 17th 1860 on the Bank of Peru payable to order of plaintiff 15 days after sight for \$838.39

Draft drawn Nov 17th 1860, on the Bank of Peru payable to order of plaintiff 15 days after sight for \$272.08

Mr Kupfer had a large number of drafts discounted, as many as 50 in all.

Mr Kupfer came down to Bank of Galena to get drafts cashed. Mr Cornish told him, he would take them on the responsibility of Kupfer. In October 1860 Mr Cornish was afraid of the Bank of Peru and sent a draft

to Marine Bank of Chicago. Kupfer came in and said that the Bank of Peru had written to him and would not pay any drafts sent that way. Kupfer agreed to guaranty the drafts. (Defendant objected and excepted to all this testimony.) Mr Cornith afterwards sent the drafts to the Bank of Peru. These five drafts were not paid or reported as paid. I saw Mr Kupfer at Bank of Galena. My impression is that Cornith went down to Peru at his request. (All this testimony excepted to.)

A railroad receipt of wheat was attached to each of said drafts. Wheat was consigned to Bank of Peru. One of these receipts attached to each of these five drafts.

I know the Defendants handwriting. I have seen him draw checks. This letter (shown to witrep) is Defendants handwriting. Witrep identifies the draft dated Nov 6th 1860. for \$1039.54. and the draft dated Nov 8th 1860. for \$545.35. produced by the Defendant. as being two of the drafts sued on in this case.

Cross Examined by Defendants Counsel.
The first time of which I

have testified when conversation occurred between Mr Cornith and Mr Kupper was in the early part of June 1860. Railroad receipts were attached to each draft. Railroad receipt for so much wheat. Evidence of so much stuff is wheat shipped. Don't know anything was said about railroad receipts at the first time in June. Cornith said he would hold Kupper for them. Take them on his responsibility.

Conversation occurred three years ago. I could not remember distinctly the words. I cannot tell any more of what occurred there.

In the latter part of October. Kupper came down to the Bank of Galena. Cornith said he had fears of the Bank of Peru. Did not think the institution was sound. And said he would not take any more drafts unless Kupper guaranteed them.

We had taken Kupper's drafts before. Drawn on Chicago. A draft drawn by R. G. Parks in April 1861 on Chicago for 500\$ was brot in by Mr Kupper to be applied on the drafts due. The draft on Chicago was paid.

C. C. P. Hunt. I am and have ^{been} Cashier of the Bank of Galena for a number of years. Nathan Smith has been managing the bank affairs for the past four or five years and was the President of it. I have known defendant for 2 or 3 years. I attend to the correspondence of the Bank and forward all drafts for collection. The five drafts sued on were forwarded by me to Bank of Peru with request that the amount should be remitted to us. 1st Draft was sent on Nov 6th 1840. for \$1039.54 payable to plaintiff 15 days after sight. 2nd Draft Nov 8th 1840 for \$545.35. payable to plaintiff 15 days after sight. Another draft Nov 16th 1840. for \$542.91 payable to plaintiff 15 days after sight. Another draft Nov 17th 1840. for \$838.39 payable to plaintiff 15 days after sight. Another draft. Nov 17th 1840. for \$272.08. payable to order of plaintiff 15 days after sight. N R Haskell was the Cashier of the Bank of Peru at that time. Had a large amount of correspondence with him. Commenced in error. The last five drafts sued on were not paid. The last two drafts I was advised by letter were not expected. The drafts were generally acknowledged by Bank of Peru and this

121. was regarded by us as an acceptance.

A draft for \$500. drawn by R. G. Parks on Chicago was handed in by Kupfer and the money collected, and applied on a balance due on drafts, leaving \$292.14 to be applied on these five drafts. Cop Examined by Defendants Counsel.

The draft was collected and paid it on Kupfers account. I made the appropriation without any directions from Kupfer. I heard nothing said by Kupfer in regard to it.

I cannot say that there were more than 49 drafts drawn. The Illinois Central Railroad receipts were attached to each of said drafts.

(Bank book of defendant, shown to co-trust.) This book is account of deposits made with Bank of Galena.

Re-examined. Witness stated letter received by him. did not accept the last two drafts. letter read without Defendants objecting. (Letter in words and figures following to wit:)

Bank of Peru
Peru Ill. Nov 21 1860

C C Phunt Esq
Galena

Dear Sir

Your favor of the 17th inst is received with enclosures as stated. These drafts are

held without acceptance & should not have been made.

I send today \$2042⁷³ for balance acct as advised. I suppose by now the dfts on Cornith are provided for

Yours truly

A R Haskell

The balance 2042⁷³ was for former drafts. which had then matured and had nothing to do with the drafts in suit. & was applied on such former drafts.

Re-Crop Examined

The amount of \$2042⁷³ was for drafts to that amount. drafts making that specific sum.

These drafts drawn by Kupper on the Bank of Peru. were sent with instructions to remit. And they were coming and going all the time.

We charged the Bank of Peru on our bank books with the drafts when drawn & sent to them. When the drafts were paid we credited them with the amount.

I think drafts on New Orleans were sent by Bank of Peru. to A Cornith & Co. but I think none were

sent to Bank of Galena.

The Bank of Peru sent us currency by Express. Drafts on Chicago and drafts on A Cornith & Co. Money sent all the while to Bank of Galena. We had an account with the Bank of Peru.

Charles Wyeth sworn & examined.

I know the defendant by sight for the past three years. I was in the employ of A Cornith & Co. in 1860 & 1861.

On the 21st day of May 1861. I heard a conversation between Mr Kupfer and Nathan Cornith. Mr Cornith wanted Kupfer to appoint an early day on which to pay the drafts. Testimony objected to) Mr Kupfer said he would pay them in 4 months. My desk was near them.

Mr Cornith slipped a piece of paper on my desk with the word listen written on it. Cornith & Kupfer had just come into the Bank. I have given the sum and substance of what was said.

Some drafts were spoken of drawn by Kupfer on the Bank of Peru. The number not mentioned. Cornith wanted

them paid in 60 or 90 days, and Kupper wanted six months, to pay them in. he agreed to pay them in four months. All this testimony objected to & went in under such objection.

Plaintiff Counsel then offered in evidence, letter of Kupper June 6th 1860 having proved his handwriting.

To the reading of the letter the defendant excepted.

(The letter in the words and figures following, to wit:)

Galena June 6th 1860

R G Parks Esq
La Salle.

Dear Sir

I understood yesterday you made arrangements with the Bank of Galena to cash my drafts. After presenting your letter to A. Cornick & Co I found out that they are going to take the drafts only under my own responsibility. —

As it is now against my principles to sell grain on time. I would like you to make such arrangements here, as to get the cash for the wheat on delivery.

Expecting an answer from you immediately. I am

very Respectfully
yours

H Kupper

124.a.

The Defendant to prove and maintain the issues on his part then offered the following testimony.

To the Bank of Galena, or to
McClellan & Weigley its Attorneys.

You are hereby notified that on Thursday the 23rd day of April A.D. 1863. at the hour of ten o'clock on said day. I shall by myself or attorney attend at the office of Nicholas Duncan Justice of the Peace in the town of La Salle in the County of La Salle State of Illinois to take before said Nicholas Duncan the deposition of R. G. Parks a resident of the County of La Salle and State of Illinois. a material witness for the defendant and whose testimony will be offered in evidence on the trial of the suit of the Bank of Galena vs Hermann Kupper defendant. now pending in the said Circuit Court of Jo Daviess County. You can then & there attend the examination of said witness if you think proper.

Hermann Kupper
Galena March. 30, 1863. by Johnson & Shessler
his Attorneys.

Received a copy of the above notice this
31st day of March A.D. 1863. McClellan & Weigley
Attorneys

State of Illinois } In the Circuit Court
 of Daviess County, } of said County. Pending
 to the May Term 1863

Dann of Galena

Hermann Kupper Hermann Kupper
 being first duly sworn on his oath
 says that he is the defendant in
 the above entitled suit, which is now
 pending in the said Circuit Court
 of Daviess County. That R. G. Parks
 of the County of La Salle State of Illinois
 is a material witness for this affiant.
 and it is necessary to have his testimony
 on the trial of said Cause. That said
 witness lives in the County of La Salle
 in the State of Illinois. and this affidavit
 is made in order to take testi-
 mony of said witness.

Subscribed & sworn to Hermann Kupper.
 before me this 30th day
 of March A.D. 1863.
 W R Rowley Clerk
 By T R Bird Deputy.

Endorsed

Filed March 30th 1863
 W R Rowley Clerk
 by T R Bird Deputy

124.C

Bank of Galena

vs

It is agreed and
stipulated in this

Herman Kupper's cause between the parties that the time for taking the deposition of R. E. Parris before Nicholas Duncan a Justice of the Peace in La Salle be postponed and continued to Wednesday the 29th of April 1863 at 2 o'clock on said day at and before the said Justice that this continuance is had as a matter of convenience to both parties and the deposition is to be taken without any other notice by consent as if the same had been originally taken under the notice all objection as to time notice &c being hereby waived.

La Salle Ills

April 23rd 1863

Agreed to by us as Atty &c

M. Y. Johnson

Atty of Kupper

R. H. McClellan

Atty for plff

~~that the issue on his part then~~
offered the following testimony.
(Deposition in words and figures following Truth.)
Deposition of R & Parks offered and
read to the jury. Plaintiff excepted.
(Deposition in words and figures following Truth.)
The deposition of Rollin G Parks,
of La Salle County in the State of
Illinois. a witness produced sworn
and examined, upon his corporal
oath on the 29th Day of April A.D.
1843. at 2 O'clock P.M. of said day, at the
office of Nicholas Duncan Justice of the
Peace in and for said County and
State, in the City of La Salle under
the foregoing notice & stipulation, and
in a certain suit wherein the
Bank of Galena is plaintiff and Hermann
Kupfer is the defendant, - the said
Parks being first duly sworn by
me as a witness in said cause.
previous to his examination, to
testify the truth as well on the part
of the plaintiff as defendant in re-
-lation to the matters in controversy
between said plaintiff and defendant,
testified and deposed as follows.
to the interrogatories and cross interro-
gatories propounded by the defendants
and plaintiffs attorneys.

Plaintiffs Counsel asked the witness

Question Have you any interest in the event of this suit?

Answer Not any, whatever.

Question In case the Defendant should succeed in this suit, wholly, or partially, would you gain anything pecuniarily?

Answer I should not.

Direct questions by Defendants Counsel.

Question 1st What is your name, age, and occupation?

Answer Rollin G. Parks, Forty five years, Miller.

Question 2nd Do you know the parties—plaintiff & Defendant, to this suit if so how long have you known them respectively?

Answer I know Mr Kupper— not far from June 7th 1860. I met Mr Cornith the same day. I was introduced to Mr Cornith in the bank of Galena on the same day.

Question 3rd Do you know a corporation known as the Bank of Peru, located at Peru in the State of Illinois. How long have you known it?

Answer I have known the institution since its organization under the Banking law— for several years.

Question 4th Were you at any time at Galena, with the view to have grain shipped to La-Salle or Peru? And did you then meet the plaintiff & the Defendant, State, at what time it occurred if any such visit was made, tell all about it?

Answer ^{127.}

I visited Galena about the 7th of June 1860. for the purpose of securing wheat for shipping to La Salle at that time I met Mr Kupper and met also Messrs Cook & Pendleton, grain dealers. I went to the Bank of Galena in company of Mr Cook or Mr Pendleton who gave me an introduction to one of the Messrs Cornith, for the purpose of making the necessary arrangements for the payment of wheat so purchased.

Question 5th Did the Defendant, Kupper, at any time ship grain to the Bank of Peru, if so, in what way, and, and on what terms?

Objected to by plaintiffs counsel as leading and irrelevant.

Answer

Mr Kupper shipped wheat consigned to the Bank of Peru. his drafts for the cost of the wheat drawn at from ten to fifteen days was attached to the Rail Road receipts of the Illinois Central Rail Road Company, deliverable at La Salle.

Question 6 Was said wheat so shipped to the bank of Peru, under any written authority, or guarantee from said Bank of Peru, for the payment of the same. if so were the plaintiffs aware of such guarantee?

Objected to by plaintiffs counsel

as leading and irrelevant.

Answer I had written authority from the Cashier of the Bank of Peru. to have wheat shipped. consigned to the Bank. and drafts made upon the Bank. (of Peru) which letter of Authority was shown to Mr Cornish in the Bank of Galena.

Question 7 State if you know, what became of the letter of authority.

Answer I left the letter of Authority with the Bank of Galena or with some of the parties shipping wheat.

Question 8 State if you know, whether the paper here shown to you, and marked "Exhibit A"

(Bank of Peru

Peru All June 7. 1860

R. G. Parks. is hereby authorized by himself or his agent. to draw on the Bank at not exceeding one dollar per bushel for wheat at Dunleith Galena or Warren accompanied by All Central Rail Road receipts for the same at such time as he shall arrange - said drafts to be sent direct to this Bank for collection.

(V. R. Haskell.)

is a correct copy of the said letter of Credit?

Answer I can't say. that it is an exact copy

129. but it is substantially a copy of the letter of Credit.

Plaintiffs counsel objects to the exhibit because it is not shown to be a copy of the original.

Question 9 What persons shipped grain to the Bank of Peru under the letter of Credit of which you speak?

Answer Cook Pendleton & Company, & H. Cupper

Question 10 In whose possession was said letter of Credit when you last saw it?

Answer I cannot say whether in the possession of Cornith or Cook.

Question 11 Was any wheat shipped by Cupper to the Bank of Peru. at any time, if so, when, and were drafts drawn in favor of the plaintiff for the amount of such wheat so shipped. Answer this question fully and particularly.

Answer Cupper shipped wheat, consigned to the Bank of Peru. and drew drafts on the Bank of Peru for the cost of said wheat payable to the order of Mr Cornith and company or Bank of Galena. I am not certain which. Drafts were attached to the Rail Road receipts for all such shipments. Rail Road receipts of Illinois Central. The first shipment was made on the 25th of June 1860. and shipments continued to be made until the 17th November of the same year. (I suppose that all such wheat was shipped under

and subject to the letter of Credit, and from the fact that I received from the Bank of Peru a number of drafts with such Railroad receipts attached (I have every reason to believe it was for the payment of the wheat so shipped under the said letter of Credit.)

Answer objected to by plff counsel as not responsive to the question. And being matters of speculation by the nithep.

Question 12 Do you know that the wheat shipped was of the value of the drafts drawn in favor of the plaintiffs against said wheat?

Answer It was, as far as I have any knowledge.

Question 13 Who received the wheat, if you know shipped by the defendant to the Bank of Peru. against which said drafts were drawn in favor of the plaintiffs.

Answer I think that I received it all.

Question 14 State if you know how many of said drafts were paid? or who paid for said wheat?

Answer I took up from the Bank of Peru, I think forty six of such drafts, drawn by Copper.

Question 15 Did you take up and pay any of the drafts sued on in plaintiffs declaration?

131. Objected to by plaintiffs counsel.
unless shown that it was paid to
the plaintiffs.

Answer Draft for ten hundred thirty nine dol-
lars & fifty four cents, dated November
6th 1860. at fifteen days after sight,
and one for five hundred forty five
dollars and thirty five cents - dated No-
-ember 8th 1860. fifteen days after sight,
were taken up and settled by me -
the (two) drafts spoken of were payable
to the Bank of Galena. I made the set-
-tlement with the Cashier of the Bank
of Peru.

Question 16 If you know, state whether any ship-
-ments of grain were made to the Bank
of Peru, equal in value to the five
drafts sued on in said plaintiffs
declaration? State the question fully?
Objected to by plffs counsel as leading
& improper.

Answer I received wheat, shipped by Cupper
to the value of the amount of said
five drafts.

Question 17 State if you know, whether the wheat
was shipped by the defendant to the
Bank of Peru to cover the drafts sued
on in said plaintiffs declaration?
and to what amount?
Objected to as irrelevant to the issue in this
case.

Answer It was to the amount of thirty two

hundred and thirty eight dollars and twenty seven cents, the value of the wheat. Nov 6th 1860, Ten hundred thirty nine dollars fifty four cents the value of the wheat. Nov 8th 1860. Five hundred and forty five dollars thirty five cents. the value of the wheat. Nov 16th 1860, Five hundred and forty two dollars & ninety one cents the value of the wheat. Nov 17th 1860. Eight hundred and thirty eight dollars and thirty nine cents the value of the wheat. Nov 17th 1860. Two hundred and seventy two dollars & eight cents. the value of the wheat.

Question 18 Have you at any time sent to the plaintiffs any money to be appropriated on payment of said drafts and on, which were not taken up by you from the bank of Peru?

Answer I have never sent any money to the Bank of Galena.

Question 19 To the best of your recollection, is exhibit "A" attached to this deposition, a correct copy of the letter of credit shown by you to the plaintiffs at the time you were in Galena?

Objected to by plaintiff, as leading in form and because it is improper to introduce a copy, without introducing the original - or accounting for it.

Answer It is.

133.

Question 20

Have you the original letter of Credit of which exhibit "A" hereto annexed, is a copy in your possession, or do you know where the original now is?

Answer

I have not the original letter of Credit in my possession, neither do I know where it is.

Question 21

Did you come to possession of the wheat shipped by the defendant to the Bank of Peru. If so, to what amount, and how came you to obtain possession of it?

Answer

The Cashier of the bank of Peru gave me an order on the agent of the Illinois Central Rail Road, LaSalle to receive all wheat consigned to said bank on payment of the freight. And I so received the wheat shipped by Cupper to the amount of some seventy three thousand bushels to the best of my recollection.

Question 22

Was the grain alluded to in your last answer shipped to the bank of Peru. And drafts drawn against the same, in favor of the plaintiff, under said letter of Credit. Who was Cashier of said bank at the time said letter of Credit was executed?

First part of question objected to as leading and improper.

Answer

The grain so received by me, and shipped by Cupper with his drafts

attached to the bills of lading. Drawn on the bank of Peru. for the cost of wheat were in favor of the plaintiff. Cashiers name was A. R. Haskell.

Question 23

If you know, state what was the price per bushel of the wheat shipped by the defendant to the bank of Peru. and against which drafts were drawn in favor of the plaintiff— including those sued on in plaintiffs declaration. and being the same wheat shipped by you?

Objected to as leading and including the answer.

Answer

The price of said wheat ranged from sixty to ninety two cents. to best of my knowledge.

Crop examination.

Question 12

Did you make any copy of the letter of Credit referred to in your direct examination. And is exhibit A made by you— or in your handwriting?

Answer

I did not make any copy. neither is it in my handwriting.

Question 2

Have you ever seen the declaration in this case?

Answer

I have not. I have rec'd what I supposed to be a copy of the declaration.

Question 3

Do you know of your own knowledge, that the wheat shipped by Cupper— referred to in your direct examination

was shipped under the letter of credit so spoken of by you?

Answer I suppose it to have been shipped under that letter of credit.

Question 4 Do you know it?

Answer No farther than my supposition.

Question 5 Did you ever pay any of the drafts spoken of by you, to the plaintiff?

Answer No Sir.

Question 6 To whom did you make payment?

Answer To the Bank of Peru.

Question 7 Do you swear positively that you paid all these drafts to the Bank of Peru?

Answer I have not sworn any such thing.

Question 8 How many of said drafts have you paid to the Bank of Peru-if any?

Answer To the best of my belief I have settled with the bank of Peru to the number of forty six drafts and taken up such drafts.

Question 9 Have you taken up all the drafts for the wheat referred to in your direct examination—shipped by Caffer to the Bank of Peru?

Answer I have taken up but forty six drafts, and there appears to have been forty nine drawn.

Question 10 Did you pay the amount mentioned in said drafts, and take up the same?

Answer In all cases I gave my check on the Bank of Peru for the amount of said drafts—so taken up.

Question 12 Did you pay the checks?

Answer The checks were always charged to me in my account with the bank of Peru.

Question 13 Did you pay them?

Answer Yes I paid them by settlement.

Question 14 With whom was the settlement made?

Answer With the Cashier & President of the Bank of Peru. for all the drafts taken up by me - T. D. Brewster was President.

Question 15 Where is A. R. Haskell - former Cashier?

Answer I do not know.

Question 16 Is he still Cashier of the Bank?

Answer He is not.

Question 17 Do you know whether the plaintiffs have ever received payment for the drafts sued on in this case?

Answer I do not.

Question 18 Were any of the drafts referred to by you, in your direct examination, drawn by you, or were they drawn by the defendant - Cupper?

Answer None were drawn by me, but they were drawn by Cupper.

Question 19 State the name of the Cashier & President with whom you made the settlement, specifying by you?

Answer A. R. Haskell was the Cashier, Thornton D. Brewster I suppose to be President.

Question 20 Do you understand that Mr Haskell has left this part of the Country? Understanding of witness objected to by

137.

Defendant's Attorney.

Answer

I have every reason to believe that he has not left this part of the country. as I often hear of him being in Chicago.

Question 21

Do you know where his place of residence is?

Answer

To the best of my knowledge his family resides in Monroe-Michigan.

Question 22

Did you at the time the drafts spoken of by you, were drawn, keep a bank account at the Bank of Peru?

Answer

I did.

Question 23

Do you swear that the checks which you drew on said Bank of Peru, in payment of said drafts drawn by Cupper, were all charged to you in the books of said Bank of Peru, or in your Bank account?

Answer

To the best of my belief they were all charged to me. And will so appear in the books of said bank, to the best of my recollection. And will so appear also by my bank book,

Question 24

Do you know anything about the three drafts over the forty six spoken of by you, as drawn by Cupper, on said Bank of Peru. If so state what you know?

Answer

I know that three such drafts were drawn on shipments of wheat. I do not know where they are. But I have never taken them up, but I have

paid in account of said drafts five hundred dollars - remitted by me to Cuffer. by draft on Chicago - which draft was paid.

Reexamination.

Question 1 Did Cuffer ever send any grain to the bank of Peru. and draw drafts in favor of plaintiff against the same before said letter of Authority. was shown to the bank of Galena and Cuffer?

Answer Not to my knowledge.

Question 2 What did you do with the large quantity of wheat received by you. Did the proceeds of the flour manufactured from said wheat. go into said Bank of Peru. by deposit or otherwise?

Answer The wheat was manufactured into flour by me. and the proceeds. in the shape of drafts on shipments. were given to the Bank of Peru. on account. That is. in Bank account.

Question You were asked about the payment or settlement of these drafts. Did you settle them singly, and then obtain the Illinois Central Rail Road receipt for the wheat. against which each particular draft was drawn or in what manner was it?

Answer The usual custom with me. was to send a clerk each morning to the

139.

Bank of Peru to obtain currency for disbursements during the day for grain, who was authorized to sign check on the Bank of Peru for said currency for taking up any acceptances or drafts on myself, as well as for the amount of Coppers Drafts, or other shippers of wheat from Galena, also from Iowa City, in the possession of the bank, at the time, I had an order from the Cashier of the bank of Peru on the agent of the Illinois Central Railroad Company, to secure the wheat shipped from Galena, and consigned to the bank of Peru, on the payment by me of the freight.

Question

You are asked, if you understood that Mr Haskell has left this part of the country—Have you understood, that a settlement or arrangement, had been made between said Haskell and said bank of Peru.

Answer

I have heard that an arrangement had been made between Haskell and the bank of Peru, in regard to his matters.

Re-Cross examination

Question

Is your last answer given up—on your own knowledge, or only upon hearsay.

Answer

Upon hearsay.

Rollin C. Parks

State of Illinois
 La Salle County, *J. Nicholas Duncan*
 a Justice of the peace in and for the
 said County of La-Salle in the State
 aforesaid - Appointed and named
 in the foregoing notice & stipulation.
 to take the deposition of Rollin G Parks
 whose name is subscribed to the fore-
 going deposition. do hereby certify
 that previous to the examination of
 said Parks. in said suit between
 the Bank of Galena as plaintiff. and
 Hermann Kupper as Defendant. he
 was duly sworn by me. to tell the
 truth in relation to the matters in
 controversy between said Bank of Galena
 & Hermann Kupper. that his answers
 to the interrogatories of the defendant's
 attorney - and the cross interrogat-
 ories of the plaintiff attorney. were
 reduced by me to writing at my off-
 ice in the City of La Salle in said
 County & State. on the 29th day of Ap-
 ril A.D. 1862 (commenced) at two
 O'clock P.M. of said day in presence
 of said witness and of said plain-
 tiff and Defendant's attorneys.
 And after the said deposition was
 taken ~~by~~ by me. And interrogatories
 & answers were written. they were
 read over by the witness. and

141. Thereupon the same were signed by the said Rollin G Parks before me. In witness whereof I have hereunto set my hand and seal this 29th day of April A.D. 1863.

Nicholas Duncan
Justice of the Peace

Endorsed

Filed May 18th 1863

Dr. R. Ronley CLK.

By T. R. Bird Deputy

Exhibit "A"

Bank of Peru.

Peru Ill June 7. 1860

R G Parks is hereby authorized by himself or his agent to draw on the Bank at not exceeding one dollar per bushel for wheat at Dunkirk Galena or Warren accompanied by All Central Railroad receipts for the same at such time as he shall arrange paid drafts to be sent direct to this Bank for collection.

T. R. Haswell

John T Cook sworn & examined

I am a member of the late firm of
Cook Pendleton & Co. I know R. G.
Parks, saw him here, know of a
letter of Credit from the Bank of Penn.
Cannot swear whether this is a true
copy or not. (Copy shown to witness)
It is too long since I saw it. Can't
recollect its contents, so as to swear to
it. I have the books papers and
letters of the late firm of Cook Pen-
-dleton & Co. in my possession. I have
searched through carefully and several
times. And know the letter of Credit
is not there. I searched because I was
notified in regard to my being a wit-
-ess. I do not know where the letter of
Credit is.

Defendants Counsel then offered to ^{prove} the Court that plaintiffs Attorney had been notified to produce said letter of credit on the day of 1843. at the trial of said cause. Plaintiffs counsel admitted service of notice to produce said letter of credit, but objected that it was insufficient because it was not served on Plaintiff in person.

Defendants Counsel then offered to the Court the affidavit of the defendant Kupper for the purpose of laying a foundation for the introduction of secondary evidence of the said letter of credit.

(Affidavit in the words & figures following to-wit:)
 State of Illinois ss In Circuit Court
 So Daviess County of said County
 May Term 1843

Bank of Galena
 vs
 Hermann Kupper

Hermann Kupper being first duly sworn deposes & says that he is the defendant in the suit wherein the Bank of Galena is the plaintiff and Hermann Kupper is the defendant now on trial in said Circuit Court. That

it is material to his defence in said suit. that a certain letter of credit given by the Bank of Pau should be introduced in evidence or that secondary evidence of the same be given in evidence to the jury.

This affiant states he saw said letter of credit in the possession of the Bank of Galena in June 1860 and he then took a correct copy of the same which is hereto annexed marked "A"

That he left said letter in the possession of said Bank of Galena and did not take the same away & has no knowledge what became of it since that time. That he never saw said letter of credit, but on that single occasion. This affiant further states that he was told by one of his counsel Louis Shipley within ten days of the term of Court that from the evidence taken in said cause, the said letter of credit might have been in possession of the late firm of Cox Pendleton & Co, and that he caused the deposition or sworn statements of two of the members of said late firm to be taken, who on their oaths deny that they have any knowledge of the present whereabouts of said letter of credit.

Heerman Kupper

Subscribed & sworn to
before me this 1st June 1863

W R Rowley CLK

By J. R. Bird Deputy

"4"

Copy

Bank of Peru

Peru Ill June 7 1863

R. G. Parks is hereby authorized by himself or his agent to draw on the Bank at not exceeding one dollar per bushel for wheat at Dunleith, Galena, or Warren. accompanied by Ill Centr Rail Road receipts for the same, at such time as he shall arrange said drafts to be sent direct to this Bank for collection.

A. R. Haskell

Defendant then read the copy of the letter of credit.

To which plaintiff excepted.
Defendant then read the two drafts to the jury.

The said drafts are in the words and figures following to wit:

145. \$1039 ⁵⁴/₁₀₀

Galena November 6 1860

Fifteen days sight Pay to the
 Order of Bank of Galena -----
 one Thousand Thirty nine ----- ⁵⁴/₁₀₀ Dollars
 Value received and charge the same to account of
 To Bank of Peru ----- }
 Peru ----- } H. Kupper
 Endorsed

Remit as advised
 Chas & P Hunt
 Cash

\$545 ³⁵/₁₀₀

Galena November 8. 1860

Fifteen days sight Pay to the
 Order of Bank of Galena -----
 Five Hundred & forty five ----- ³⁵/₁₀₀ Dollars
 Value received and charge the same to account of.
 To Bank of Peru ----- }
 Peru ----- } H. Kupper
 Endorsed

Remit as advised
 Chas & P Hunt
 Cash

J. R. Booth. I am agent of the
 Illinois Central Railroad Company.
 was agent in 1860. I knew R. G. Parks.
 knew Kupper shipped wheat to Bank
 of Peru. one shipment made by my-
 self.

Cross Examination. My knowledge
 in regard to shipments of wheat to
 Bank of Peru. is derived from the books

of the Railroad Company. except the one in which I gave the receipt.

Walter Ford. sworn and examined.

The defendant deposited 1700.00\$ in American gold with the Bank of Galena on the 3rd day of May 1861.

The money was to be drawn out in gold. When currency was deposited the depositor could only draw for currency. when gold was deposited the depositor could draw gold on his checks.

Question what is the difference in value between American gold and treasury notes? (objected to by Plaintiff Counsel. objection sustained by the Court to which ruling the defendant excepted.)

The defendant drew out from the bank on his check 400\$ in gold.

Question. What is the difference in value between currency & American gold. Plffs Counsel objected & objection overruled

Answer. The difference in value between currency and American gold is now forty ^{American gold is now forty per cent} per cent premium. It is selling at 45 per cent we pay 40 per cent premium?

The balance due to the defendant on his deposit account is \$553.³²/₁₀₀

147. The Defendant drew out currency on all these checks. and I appropriated his gold to pay these currency checks. The defendant was entitled to draw out the full 1700.8 in gold, but having drawn only \$400. in gold, and having drawn checks for currency, I appropriated the gold to pay them.

Crop Examination. Gold was worth 12 per cent at the time of the deposit by the Defendant.

on the 21st day of May. 1861. the Defendant drew 300\$ in gold on his check on the 4th day of May 1861. The Defendant drew 100\$ in gold on his check.

A party could draw in gold on his checks, & they would be paid in gold. but only until he drew to an amount equal to his deposit in gold. If he drew checks in currency, they would be paid until he drew out the amount on deposit.

C C Phunt. testified as follows.

The first draft was drawn on the 27th June 1860. also a draft on the 29th of June and one on the 30th day of June.

Draft drawn on the 2nd of July and on the 3rd of July - No more in July.

Four drafts were drawn in the month of August. The greatest number were in the months of September and October. Six drafts drawn in November 49 drafts drawn in all.

I have examined the bank books and can't find any drafts amounting to the \$2042.73 balance mentioned in Hasbells letter of Nov 21. 1860. That amount is irrespective of any particular drafts.

Thomas McDermote. Sworn & examined.

I am the shipping clerk of the Illinois Central Railroad Company. Have been such for over three years. I know Kupper shipped wheat to the Bank of Peru. The Railroad receipts were to the Bank of Peru account of R G Parks. on the 6th day of November 1860. Kupper shipped

in Car No 2153	105 bags wheat	16.2400	cts
in Car No 2193	142 " "	20.008	"
in Car No 888	147 " "	20.453	
in Car No 288	147 " "	20.493	

to the Bank of Peru account of R G Parks over the Illinois Central Railroad. The Railroad receipts were given to Kupper.

on the 8th day of June 1860 Kupper shipped to Bank of Peru account of R. G. Parks

(39)

149. In car 2792. 150 bags wheat. 20.314 lbs
In car 732. 144 " " 20.186 "
Kupper took the All Central Railroad receipts.

On the 15th Nov 1860 Kupper shipped to
Bank of Peru account R. G. Parks.

Car 1542. 135. bags wheat 20.219 lbs
" 2290 137 " " 20.096 "

On the 16th Nov Kupper shipped to Bank of Peru
account R. G. Parks.

Car 1202 135. bags wheat. 20.636 lbs
Car 910 135. " " 20.693 "
" 150 152 " " 20.928 "

On 17th Nov 1860. Kupper shipped to the
Bank of Peru account R. G. Parks.

Car 1410 135. bags wheat. 20.722 lbs

I shipped all this grain. Know
shipments were made of my own
knowledge. The wheat in cars, went
away the following day after receipts
signed. I signed all the receipts
myself of these 5 shipments. The
receipts were given to Kupper. I
have the stubs of the receipts now in
my hand. They were signed at the
time of the shipments and the

Plaintiff then recalled C. E. P. Hunt.
Stated he never saw letter of Credit
from Bank of Peru. never saw R. G. Pa-
rks to his knowledge.

Walter Ford recalled by Plaintiff.
I have never seen letter of Credit
from Bank of Peru. I ever have seen
R. G. Parks to my knowledge.

This was all the testimony offered
on the trial of said cause, both on
the part of the plaintiff. And on
the part of the defendant.

The plaintiffs counsel asked the
following instructions to the jury
which were given by the Court
to the giving of which instructions
the defendant then and there excepted.

Plaintiffs Instructions

1st If the Jury believe from the evidence
that the Defendant drew the five
drafts sued on. And that plaintiff
discounted the same at the usual
rates of Discount; And sent them
directly to the Bank of Peru for col-
lection at the request and under
the direction of the Defendant; And
under the promise of the Defendant
to the plaintiff that he would pay
the same in case said Bank of Peru
failed to do so; And if said Bank
of Peru refused to pay said drafts

Given

157.

after they became payable according to their tenor and if said Drafts have never been paid to plaintiff by said Bank of Peru or said Defendant or other person: And that after said Drafts were sent & presented to said Bank of Peru & refusal of payment as aforesaid, the said Defendant knowing the fact of such refusal of payment promised said plaintiff to pay the said Drafts to plff in 4 months and has not paid them & that said four months ^{had} elapsed before the commencement of this suit. then the jury should find for the plaintiff the amount proven to be due on said Drafts: less the amount proven to be due to Defendant from said Bank of Galena.

Plaintiffs Instructions

2nd If the Jury believe from the evidence that the Deft. drew the five drafts sued on, and got them discounted by the plff. at the usual rates of discount: And that said drafts were presented at maturity by the plff. to the Bank of Peru for payment. and payment thereof was refused by said Bank of Peru: And that said Kupper had due

Given

notice of such refusal to pay the same: And if knowing of the presentation of said drafts & said refusal to pay the same on the part of said Bank of Peru the said Kupper afterwards agreed with & promised the plff to pay said drafts within a time which elapsed before the commencement of this suit: the Jury should find for the plff: the amount proven to be due & unpaid upon said drafts & six per cent interest: less the amount proven to be due Kupper by said Bank of Galena

3 Kent page 109, 112. & 113

Plaintiffs Instructions

^{3rd} In order to entitle the letter of credit referred to in this case to any consideration as evidence: the Jury must be satisfied from the proof that the drafts sued on were drawn by the Defendant Kupper Agent of R. G. Parks ^{and if the jury believe from the evidence} that said drafts were drawn by said Kupper on his own responsibility. And that he was not the Agent of said R. G. Parks: then said letter of credit should be disregarded by the Jury—

Given

153. The Defendants counsel then asked the Court to give the following instructions to the jury.

The defendant asks this Instruction

1. If the jury believe from the evidence that the defendant Kupfer shipped over the Illinois Central Railroad, wheat equal in value to the amount of the drafts sued on, and delivered the receipts of the Illinois Central Railroad Company for said wheat to the said plaintiff and that the wheat thereby became vested in the plaintiff, then the plaintiff must account to the defendant Kupfer for the value of said wheat. And if the jury further believe from the evidence that the said wheat so shipped was worth the sum stated in said drafts sued on, then the jury should find for the defendant.

2. The defendant asks this Instruction. If the jury believe from the evidence that there is a balance due to the defendant by the said plaintiff, then the jury should find a verdict for such balance in favor of the defendant.

Defendant asks this instruction

- 3 If the jury believe from the evidence that the defendant Kupper drew the drafts sued on under and in pursuance of a letter of credit from the Bank of Peru authorizing said drafts to be drawn on said Bank of Peru, and that said Kupper shipped wheat by the Illinois Central Railroad Company to said Bank of Peru equal in value to the amount of said drafts, and that the receipts of the said Illinois Central Railroad Company accompanied said drafts, and were delivered to the plaintiff with said drafts and that the plaintiff knew of the said letter of credit, then the law requires the plaintiff in order to recover under the three counts on a guarantee, to prove the guarantee or promise was in writing, and in case the plaintiff fails to prove distinct and independent promise in writing on the part of Kupper to the plaintiff to pay said drafts, the jury must find the issues under the three counts on a guarantee in favor of the defendant.

Given

The Defendant asks this Instruction

- 4 If the jury believe from the evidence that the Bank of Peru gave one R. G. Parks a letter of credit authorizing him or his agent to draw on said Bank of Peru for wheat at Galena Dunkleith or Warren. And that the letter of credit was shown to the plaintiff and the drafts sued on were afterwards drawn under said letter of credit. And shipments of wheat were made to said Bank of Peru of the value of the amount of said drafts. And that Illinois Central Railroad receipts for said wheat were attached to said drafts and delivered to the plaintiffs. And that afterwards the said wheat was delivered to said Parks. And the said drafts or any of them were taken up by said Parks and settled by him with the said Bank of Peru, and the said Bank of Peru failed to pay the Plaintiff then the plaintiff must pursue its remedy against said Bank of Peru as to any drafts so settled unless the plaintiff proves a written guaranty for the payment of said drafts by said Kupper. And on the failure to prove any such guaranty in writing. The jury

Refused

must find for the Defendant as to such drafts as were settled for by said Banks.

Defendant asks this instruction
 If the jury believe from the evidence that the Defendant Kupper shipped wheat to the Bank of Peru over the Illinois Central Railroad, and drew drafts for the value of the said wheat; And delivered the receipts of the Illinois Central Railroad Company for said wheat to said plaintiff attached to drafts drawn on said Bank of Peru in favor of said plaintiff, then the possession of the said Illinois Central Railroad receipts by said Plaintiff gave it the control over said wheat, and it became the duty of the plaintiff to obtain payment of said drafts before allowing the wheat to be delivered to said Bank of Peru or to other persons, and in case the jury believe from the evidence that the said plaintiff did allow said wheat to pass from its control and delivered it to other parties then the plaintiff cannot recover on said drafts without accounting for the value of said wheat.

Refused

The Defendant asks this Instruction

- 6th If the jury believe that by the terms of the contract between the parties in this suit that the said drafts were to be sent to the Bank of Peru for collection, and that the same were paid to the Bank of Peru, and said bank of Peru neglected to account for and remit as advised by the Bank of Galena, then the Bank of Peru was the agent of the Bank of Galena in remitting said amount so collected, and in failing so to do, the plaintiff's remedy is against the Bank of Peru and not against the defendant.

Refused

The Defendant asks this Instruction

- 7th If the jury believe from the evidence that the defendant made a special deposit of American Gold with the plaintiff, and the plaintiff appropriated said gold on the currency account of said Defendant, then the defendant is entitled to the difference in value between currency and gold.

Refused

The Defendant asks this Instruction

- 8th If the jury believe from the evidence that the Bank of Peru authorized the drafts sued on to be drawn, and that the said drafts were drawn under such authority, then the Bank of Peru became the principal debtor to the plaintiff and the said drafts were in the nature of accepted drafts, and any promise on the part of Ruffer is a collateral promise and the law requires should be a distinct and positive promise in writing by the defendant to the plaintiff.

Refused before given

and afterwards tried on the 22nd day of June
A.D. 1843 the defendant filed

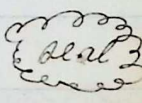
A part of which instructions marked
in the margin "Refused" the Court refused
to give. To the refusal of the Court to give said
instructions to the jury marked in the
margin "Refused" the Defendant then and
then excepted.

The jury returned the following verdict
in said case

(said verdict heretofore copied)

The Defendant then moved the Court
for a new trial in said case.

(Motion for a new trial heretofore copied)

Benj. R. Sheldon 

And afterwards tried on the 22nd day of June
A.D. 1843 the defendant filed in the Office of
the Clerk of said Circuit Court his appeal
bond in the words and figures following
to wit:

I know all men by these presents.
that we Herman Kupper, as principal
and Madison E. Johnson & William
H. Snyder as sureties, all of the County
of Co. David & State of Illinois are

held and firmly bound unto the Bank of Galena, in Galena, in said County and State, in the penal sum of Thirty five hundred dollars, current 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 and severally by these presents. Witness our hands and seals this 22nd day of June, A.D. 1863.

The condition of the above obligation is such, that, whereas the above named, Bank of Galena, did on the fifth day of June A.D. 1863 in the 2^d Davis County Circuit Court, in the State of Illinois, recover a judgment against the above bounden Herman Kupper, from which said judgment of the said Circuit Court, the said Herman Kupper has prayed an appeal, and obtained the same, to the Supreme Court of said State.

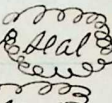
Now if the said Herman Kupper shall duly prosecute his said appeal with effect, and shall moreover pay the amount of the judgment, costs, interest and damages, rendered and to be rendered against him in case the said judgment shall

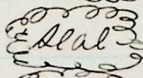
be affirmed in the said Supreme Court. Then the above obligation to be void, otherwise to remain in full force and virtue.

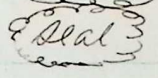
Taken and entered into before me at my Office in Galena.

This 22^d day of June A.D. 1863.

Wm R Rowley Clerk
By J. R. Bird Deputy

Hermann Kupper 

Madison Johnson 

Wm H Snyder 

Enclosed

Filed June 22^d 1863.

W. R. Rowley Clerk

By J. R. Bird Deputy

State of Illinois
Jo Daviess County

J. Wm R Rowley

Clerk of the Circuit Court in and for said County in the State aforesaid. I hereby certify the foregoing to be a full true and correct transcript of the record and proceedings of said Court in the above entitled Cause of The Parents of Galena vs Hermann Kupper as the same appear of Record in my office.

In testimony whereof
I have hereunto set

my name and affixed the seal
of said Circuit Court at my
Office in Galena this 2^d day
of December. A.D. 1868.

Attest: Wm R Rowley Clerk,
By J. D. Ford Deputy



Making Transcript -	\$32.80	
Court Seal & stamp	40	\$33.20
Costs in Circuit Court.		

And now at this day comes the Appel-
lant and says that there is manifest error in the
Records, proceedings, and in the judgment of the
Circuit Court above, and shows to the Court
the following errors.

- 1st In overruling the motion for a new trial.
- 2^d In rendering judgment.
- 3^d In admitting improper evidence.
- 4^d In rejecting proper evidence.
- 5^d In giving improper instructions.
- 6^d In refusing to give proper instructions.
- 7th Because the verdict of the jury is against
the law in said case.
- 8th Because the verdict is against the evidence
- 9th Because the jury disregarded the law and
the evidence in said case.

Wherefore he prays the judgment of this Court

and that the same may be reversed and
Corrected. &c.

Johnson & Thissler.

Attorneys for Hermann
Kupfer - ~~Defendant~~ *
Appellant

And now comes the same ap=
pelle The Bank of Kalmar and
say that in the serial Record &
proceedings aforesaid and in
the rendering of judgment in
Manner of form aforesaid
there is no Error as above.
Assigned

Glover, Book Comptroller
for Appellee

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Herman Kupfer

vs

Bank of Galena

Record & Errors

Filed April 7th 1864
L. Leland
Clerk