

No. 14609

Supreme Court of Illinois

Campbell

vs.

Stewart

71641  7

STATE OF ILLINOIS

SUPREME COURT,
THIRD GRAND DIVISION.

No. 225

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

Campbell

1864

Shaw

225-183

Supreme Court of Illinois.

COLIN CAMPBELL,
Plaintiff in Error.

v.

ROBERT STEWART,
Defendant in Error.

Error to the Superior Court of
Chicago.

POINTS FOR THE DEFENDANT IN ERROR.

THE controversy here relates to \$2,109.33, deposited with E. I. Tinkham & Co., bankers, and lost by their failure. There is no dispute that this was money which belonged to R. Stewart & Co., nor that it would have been subject to division between them. It is also equally clear, that the money is lost, and uncollectable. All this the bill fully admits. (Record, pp. 4, and 5) and the answer and proofs thus far harmonize with the bill.

The decree of the court below (p. 64 of the record,) found "that the moneys of the firm of Robert Stewart & Co., which were deposited with E. I. Tinkham & Co., were so deposited with the approbation of the complainant, and in the usual course of the business of said firm of Robert Stewart & Co." Therefore, the Chancellor considered, and by the decree declared, "that it would be in-

Given May 11. 1864
Shaw

equitable to charge the defendant with the loss of said money which has arisen from the failure of said E. I. Tinkham & Co."

It cannot be said, that the conclusion thus announced was formed hastily, or without the maturest investigation of the facts as well as the law, nor that it does not receive the most abundant support from all the testimony. Certainly, the facts are not to be mistaken, and if fault be alleged, the objection must be aimed at the rule to which the Chancellor was guided by the facts, and yet the evidence leads irresistably to the conclusion stated in the decree.

In December, 1860, the parties agreed to form an equal co-partnership, in the business of packing pork, under the name of R. Stewart & Co. Stewart, being already engaged in the business of a wood and coal dealer, was to continue that business, as he did continue it. He was also to have charge of the financial part of the business of R. Stewart & Co.; and Campbell was to take charge of the work of packing. (Deposition of Taylor, p. 58 of the record.) Stewart, in the packing season, was expected to have a much larger sum than Campbell to invest in packing. No bank account was kept in the name of the firm; but when moneys received at the packing house were to be deposited in bank, they were sent to the defendant's wood and coal office, and thence, after being counted, etc., taken to the bank of E. I. Tinkham & Co., and there deposited in the name of the defendant, in whose name checks were drawn when payments were to be made by checks, of the drawing of which the plaintiff knew, and some of which he used. (Deposition of Charles A. Stewart, record p. 33.; deposition of J. C. Davis, p. 42, etc.)

And not only was this so, but the evidence tends to show that the complainant did his own banking business with

the same bankers. (Deposition of J. C. Ambler, p. 29 of record.) And he more than once requested the making of such deposits there, and that too, after the principal sum of \$5,109.33 had been so deposited. (Pp. 34, 43, of record.) On one occasion, he manifested an extreme desire to have a deposit made, assigning as a reason that currency was going down every hour. (P. 43 of record.)

And coming down to the time when the bulk of the property of the firm was sold, we find the complainant participating in making the sale; (p. 53, 4 of record,) and currency being then depreciated, and the purchase money being payable therein, the checks received in payment, amounting to said sum of \$5,109.33, were deposited with the same bankers, for what seemed to be the best of reasons, that they could get a better class of currency than Mr. Stewart himself could draw, and also to discharge a note for over \$2,000, given for the benefit of R. Stewart & Co. The deposit served the purposes thus expected to be accomplished.

But yet the complainant did not wish to withdraw the remaining part of such deposit. On the contrary, besides having other money added to it, as has already been stated, he repeatedly expressed his desire to have the funds remain in the bank, stating that he thought it was "safer to have the money in the bank than to hold it on hand," (p. 34 of record,) and at another time that "it was better to have it there than to draw it out," etc., (*ib.*) and yet again, "that they might as well leave it in the bank as it could not get much worse," etc., (p. 61 of the record.)

And after the failure of Tinkham & Co., the complainant, in conversation with Davis, Malcolm Stewart and Prentice respectively, referred to the loss of R. Stewart & Co., by stumptail money, (pp. 44, 50 and 51 of the record.)

meaning, certainly, nothing else than the loss by the failure of E. I. Tinkham & Co., itself attributable, as we suppose it fair to infer, to the general breaking down of Illinois and Wisconsin bank bills.

Thus, therefore, at every stage, we find the complainant assenting to this way of keeping the bank account, directing to have deposits made in the bank, and urging that the money should be kept there.

Was it, then possible, that any other declaration than that of the decree, "that it would be inequitable to charge the defendant with the loss of this money," could be made upon these facts?

The brief of complainant's counsel has been handed to us since the foregoing observations were written. It seems to require some notice, since it might otherwise lead to some mistake as to the character of this case. This notice we must give, even though the case itself, properly stated, is too plain to require any argument.

Starting out with a partial statement of the contents of the bill, interspersed with a theoretical view of the case, the brief states, probably as a part of such theory, that the defendant, "in order to save himself from so much of the loss as he can, * * * now claims that \$2,114 of this sum belonged to the firm of R. Stewart & Co., and insists that complainant should bear half of the loss of that sum." It next states that, "this claim that the money on deposit with E. I. Tinkham & Co., in the name of defendants, at the time of their failure, was the money of R. Stewart & Co., was an afterthought." Afterwards, follows a statement, that the defendant charged himself with said \$5,109.33 on the books of R. Stewart & Co., and appropriated the same to his own use. The brief, also, among other things, states that the defendant used \$2,025 to pay an individual debt of his own to Meadowcroft; and on

page 3, that there was \$171 of R. Stewart & Co.'s money in bank when Tinkham & Co. failed.

It is quite inconceivable, that such statements and inferences should be presented and suggested with reference to the record in this case. Surely the counsel must have been imposed upon by listening to some baseless theory, or by taking at second hand a colored and fictitious view of the case. And yet their argument, with its frequent reiterations of the same imaginative hypothesis, has no other support.

As to all this we have to inquire, where is the evidence to support such allegations advanced mainly in the brief alone? Do the counsel propose to dispute the averments of the bill? How, for example, after averring therein, that \$2,114, so lost by the failure of Tinkham & Co., was a part of said \$5,109.33, received from the sale of pork belonging to R. Stewart & Co., can they now pretend that such was not the case? And how is it possible to say that the defendant converted that sum to his own use, when the fact is, that Tinkham & Co. held it in accordance with the expressed desire of the complainant himself, and when, by their failure, it became lost, not only to the complainant, but to the defendant?

Again, why should not the defendant say that said \$2,114 belonged to R. Stewart & Co., when such was the fact? To rehearse a portion of the testimony, it will be remembered, that as a matter of convenience, and in accordance with the agreement made on forming the partnership, and carried out as long as it continued, and thus adopted and acted upon by the complainant, the bank account was kept in the name of the defendant. That the deposit of \$5,109.33 was made with the bankers who had done all the banking business of the firm, and for the reason, among others, that they could get a better class of

currency on the checks than Stewart & Co. would be expected to get for themselves, and that a debt of the firm to the amount of \$2,025 was to be paid by the bankers, and was in fact paid out of the amount so deposited, and that there being much more coming to Mr. Stewart than to Campbell, some of this \$5,109.33 was drawn out by Stewart, but that yet enough of it was left in the bank to reimburse the whole amount deposited for Stewart & Co., and that this the complainant desired to have left there, for reasons which he clearly stated, and that it was accordingly left until lost by the failure of the bankers.

Again : where, in the whole record, is there any evidence whatever, that Mr. Stewart ever denied, or even so much as hinted, that this was not the money of Stewart & Co. ? The assumption that he so thought or so acted, is both unsupported and disproved. All the primary probabilities, too, are opposed to it, as will be manifest from considering the deranged state of the currency at the time the deposit was made, as well as from both the acts and the declarations of the parties.

As to the statement that the defendant charged himself with said \$5,109.33 on the books of R. Stewart & Co., it too, will be found to be erroneous ; the fact being simply that the charge was made by the book-keeper, in accordance, we suppose, with the manner which he had adopted of keeping the books, but yet that it was well understood by all that the money so deposited still remained the money of R. Stewart & Co.

And as to the payment of \$2,025 on the note to Mead owcroft, if the fact were, as so stated by the counsel, that this was a private debt of the defendant, yet as the defendant had advanced much more capital than the complainant the withdrawal of this money, leaving in the bank enough to satisfy the complainant, as a member of the firm, would

Campbell }
vs. }
Stewart. }

The evidence of Cha^s. A. Stewart, pp. 34-8 of Record, shows that the note to Meadows was for indebtedness in behalf of R. Stewart & Co., & that the transaction appeared on the books of that firm, about which books alone the witness testified. -

We ~~do~~ dispute the proposition of law stated by complainant's counsel that a loss which happens while a partner has in his hands moneys of his firm, ~~and~~ by robbery of his own house, for example, is necessarily to be charged to such partner alone. The law charges partners in such cases only with reasonable skill & diligence, & good faith.

Story on Partnership, § 69.
Here there was no bad faith.

on the part of the defendant;
but the fullest & fairest com-
pliance with the terms of the
co-partnership agreement,
& the wishes of the complainant.
And it is not only highly
improbable that at the crit-
ical & eventful period of the
deposit of \$5109.³³ with E. S. Tink-
ham & Co. (Apr. 19, 1861,) the de-
fendant was to be responsible
for their goodness or solvency,
but this view of the complainant's
counsel is disproved by all the
evidence.

Arrington & Dent,
for def^t Stewart.

325

Campbell v. Stewart.

Additional Bk
for def^t.

Filed May 17, 1864

L. L. and O. M.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

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

Present, The Honorable

John W. Nelson

Chief Justice of the
Superior Court of Chicago.

Wm H. Higgins
Grant Gordon

Judges.

Joseph Knox

Prosecuting Attorney.

David J. Hammond

Sheriff of Cook County.

Attest,

Thomas B. Carter

Clerk.

Be it remembered, that heretofore to-wit: on the Twenty first day of February in the year of our Lord one Thousand Eight Hundred and Sixty Three. Colin Campbell by Henry Anthony & Gust his attorneys filed in the Clerk's office of the said Superior Court of Chicago, his certain Bill of Complaint which is in words and figures following to-wit:

Superior Court of Chicago
of the March Term 1867.

To the Honorable the Chief Justice and associate
Justices of the Superior Court of Chicago,
In Chancery Petition.

Humbly complaining sheweth unto your Honor
your Orator Colm Campbell of the City of Chicago
County of Cook and State of Illinois, that on or
about the fifteenth day of December A.D. 1860 your
Orator entered into a verbal agreement with
our Robert Stewart of the said City of Chicago
to form a partnership with him in the business
of Port Packing and to use the firm name &
style of R. Stewart & Co. in the transaction of said
business.

And your Orator would further shew unto your
Honor that at the time the said agreement was en-
tered into by and between your Orator and the said
Stewart, the said Stewart was indebted to your
Orator in the sum of seven hundred Dollars for
money borrowed by the said Stewart before that
time from your Orator and which said sum of
seven hundred dollars was agreed to be placed
to the credit of your Orator on the firm books
of R. Stewart & Co. and charged to the said R. Stewart
which amount was replaced and charged on
the books of said R. Stewart & Co. and that your

^{has}
 oralon, from time to time made advances in cash
 to said firm which have been also placed to your
 oralon credit on said Books.

And your oralon would further show unto your
 Honor, that it was agreed by and between your
 oralon, and the said R. Stewart, that your oralon
 and the said R. Stewart should share equally
 the profit and loss of said business.

And your oralon further shewed, that the said
 copartnership business was entered upon and con-
 tinued to be carried on by your oralon and the
 said R. Stewart as copartners in pursuance of
 and under the aforesaid Verbal, agreement up to
 the month of September A.D. 1861, when they ceased
 to transact business although the said partner-
 ship has never been formally dissolved.

And your oralon would further state to your
 Honor, and so charge the fact to be, that during
 the time your oralon and the said Stewart were
 transacting the said business together under the
 said firm name of R. Stewart & Co. the said Stewart
 was in the frequent habit of taking large sums
 of money from the firm of R. Stewart & Co. charging
 it to his own account and depositing it with his
 banker to be used in the private business of the said
 Stewart (vizt. the Wood and Coal business which
 the said Stewart during all the time of his business
 connection with your oralon, carried on in his own

name. and on her own account,
And your orator would further state and show
unto your Honor that on or about the Eleventh
day of April A.D. 1861. the said Stewart made a sale
of a large amount of Goods belonging to the said
firm of R. Stewart & Co. which amounted in the ag-
gregate to the sum of Two thousand one hundred
and nine dollars and thirty three cents which
said sum of Two thousand one hundred and nine
dollars and thirty three cents the said Stewart charged
to himself on the books of the said firm of R. Stewart
& Co. and then deposited the said sum of Two
thousand one hundred and nine dollars and thirty
three cents into a certain banking firm then doing
business under the name of E. I. Finkham & Co. in his
own name and in his own individual account
with his own individual account money. and
not in any way subject to the cheque or other
control of your orator

And your orator would further state. and
show unto your Honor that the said banking
firm of E. I. Finkham & Co. have failed and
are utterly insolvent that at the time of the failure
of said E. I. Finkham & Co. the said R. Stewart had
on deposit to his credit with the said E. I. Finkham
& Co. a considerable sum of money and particularly
the sum of Two thousand one hundred and
fourteen dollars. which said sum said Stewart
claims since the failure of said Finkham & Co.

5
to have belonged to the said firm of R. Stewart & Co. and
considering the said sum of Mrs. Thompson one hundred
and fourteen Dollars so on deposit with the
said Finkham & Co to the credit of said Stewart.
when the said Finkham & Co failed, a total loss the
said Stewart has charged one half of the said sum
of Mrs. Thompson one hundred and fourteen
Dollars, so deposited with the said E. S. Finkham & Co
by the said Stewart, as aforesaid in his own individual
account to your orator, on the books of said R. Stewart
& Co. contrary to the remonstrances of your orator, and the
said Stewart insists that your orator should share
half of his said loss.

And the said your orator would further shew
unto your Honor that the said sum of Mrs. Thompson
one hundred and fourteen Dollars so lost by said
Stewart, by the failure of the said E. S. Finkham & Co
& the half of which said sum so lost by said Stewart
the said Stewart has charged to your orator on
the books of the R. Stewart & Co. as a part of the said
sum of Mrs. Thompson one hundred and nine
dollars, and thirty three cents the proceeds of the
sale of a large amount of Pork by the said firm
of R. Stewart & Co. and which said last mentioned
sum the said Stewart took and charged to himself
on the books of said R. Stewart & Co. and mixed up
with his other money, and deposited in his own
name and subject to his own individual order.

2
in the Bank of said E. S. Fitcham & Co., and
your orator charges that the said last mentioned
sum was not deposited into the said E. S. Fitcham
& Co. for or on account of the said R. Stewart & Co. but
on the contrary thereof the said firm of R. Stewart & Co.
looked to the said R. Stewart for an account of the
said last mentioned sum of Two thousand one hun-
dred and nine Dollars and thirty seven cents. as the
said Stewart had taken that amount and charged
himself with it. on the firm books of R. Stewart & Co.

And your orator would further show unto
your Honor that the said Stewart by charging
one half of the said sum of Two thousand one hun-
dred and fourteen Dollars & last as aforesaid by
the said Stewart makes your orator indebted
to the said firm of R. Stewart & Co. in about the sum
of one hundred and thirty six dollars.

And your orator would further show unto
your Honor that cancelling the said charge so
made by the said Stewart as aforesaid against
your orator one half of the said sum of Two
thousand one hundred and fourteen Dollars
so lost by the said Stewart as aforesaid there is
now equitably and justly due your orator from
the said firm of R. Stewart & Co. the sum of about
one hundred and thirty one dollars.

And your orator further shows that he has by
himself and his agents from time to time applied to
the said Robert Stewart and has requested him

7
to come to a full and fair account in respect of
the said copartnership transactions, into which
just and reasonable requests your orator well
hoped that the said defendant would have com-
plied as on justice and equity he ought to have done.

But now so it is may it please your Honor
that the said defendant Robert Stewart entraining
him to wrong and injure your orator in the pre-
mises he the said defendant absolutely refuses to comply
with such request, and he at times pretends that
the said sum of Two Thousand one hundred and
fifteen dollars is lost as aforesaid by the said
Robert Stewart by the failure of said E. S. Finkham
& Co was the money of the said firm of R. Stewart
& Co and not the money of individuals and that
your orator ought to share equally with the said
Stewart the said loss. Whereas your orator charges
the contrary thereof to be the truth, and that the
said sum of Two Thousand one hundred and foun-
teen dollars was the money of the said Robert Stewart and
not the money of said firm of R. Stewart & Co and that
your orator is not bound to share half of the in-
dividual losses of the said defendant Robert Stewart.
All which pretenses, doings and pretences of the said
defendant are contrary to equity and good conscience
and tend to do manifest wrong, injury and oppres-
sion of your orator in the premises In consideration
whereof and for as much as your orator is entirely

remedies in the premises according to the strict rules
of the Common Law, and can only have relief in a Court
of Equity where matters of this nature are properly
cognizable and relievable.

I do and therefore that the said defendant
Robert Stewart may full direct full and perfect
answer make (but not upon oath the oath of
the said defendant being hereby expressly waived)
to all and singular the matters hereinbefore stated
and charged, as fully and particularly as if the
same were hereinafter repeated, and he thereto dis-
cretely interrogated and that the said copartnership
may be decreed to be dissolved and that an account
may be taken of all and every the said copart-
nership dealings and transactions from the time
of the commencement thereof and also an account
of the moneys received and paid by your Orator and
the said defendant respectively in regard thereto,
And ^{that} the said defendant may be decreed to pay to
your Orator what if any thing shall upon the
taking of the said accounts appear to be due to him
your Orator being ready and willing and hereby
offering to pay to the said defendant what if any
thing shall upon the taking of the said accounts
appear to be due to him from your Orator, and
that your Orator may have such further and
other relief in the premises as the nature of his
case shall require and to your Honors shall seem
meet

may I please your Honor. to grant unto your
 orator the most. gracious writ of Subpoena. of the
 State of Illinois to be directed to the said Robert Stewart
 thereby commanding him at a certain day, and
 under a certain penalty therein to be specified per-
 sonally to be and appear before your Honor in this
 Honorable Court. and then and there to answer all and
 singular the premises and to stand, to perform, and
 abide such order and decree. therein as to your
 Honor shall seem meet, and your orator shall
 ever pray &c

Edwin Campbell

Murray Anthony & Galt.
 Solicitors for Complainant

And afterwards to wit on the day, and year afore-
 said, duly issued out of the Clerk's office of the said
 Court the Proper Writ of Subpoena or Process
 in Chancery which together with the return of
 the Sheriff. endorsed thereon, is in words, and
 figures following to wit

State of Illinois }
 County of Cook. } ss

The People of the State
 of Illinois to the Sheriff
 of said County Greeting,

We command you that you summon Robert
 Stewart of he shall be found in your County per-
 sonally to be and appear before the Superior Court
 of Chicago of said County of Cook. on the first day

of the next term thereof to be holden at the Court House in the City of Chicago in said County, on the first Monday of March next to answer unto Colm Campbell in his certain Bill of Complaint filed in the said Court on the chancery side thereof.

And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness Thomas B. Carlin Clerk of the said Court and the Seal thereof at the City of Chicago aforesaid this 21st day of February A.D. 1867
Thomas B. Carlin Clerk.

Seal

(endowment)

Served this writ on the within named defendant by delivering a copy thereof to him the 21st day of February A.D.

A. C. Keomg Sheriff
by Wm. P. Deputy.

And afterwards writ on the 25th day of March in the year aforesaid the defendant Robert & Stewart by Livingston & Post his solicitors filed in the Clerk's office of the said Superior Court of Chicago his certain answer, which now was and figures forming writ.

In Chancery

In the Superior Court of Chicago.

The answer of Robert Stewart, to the Bill of Complaint exhibited against him by Colm Campbell

The defendant saving all benefit of exception to the manifold errors and imperfections in said Bill contained for answer to so much, and such parts of said Bill as he is advised it is necessary for him to answer, answering says

He admits that a partnership was formed and was carried on, between himself and the complainant, in the business of pork packing under the name of R Stewart & Co. that the agreement therefor was verbal, and was made, on or about the 15th day of December A.D. 1860 that by the terms of said agreement, the said complainant was to give his whole time and attention to the business, but this respondent was only to give to said business what time he could spare from his other business, and as stated in the Bill the profits and losses were to be equally shared by and between the partners, that ~~said~~^{the} defendant was indebted to the complainant in about \$700.⁰⁰ which under said agreement was to be, and was placed to the credit of the complainant on the firm books as so much legitimate stock contributed by the complainant that said complainant afterwards made sundry

advanced to said firm with all which he was duly
ousted on the books of the firm, and that by a
latent understanding between the parties the partner-
ship relation of said ceased about the 1st of
September 1881 since which time (the personal
property of the firm having been before them dis-
posed of) no business has been done by the firm
except as to a few small sales and collections &
made subsequently

In forming said partnership
it was expected and understood between the
parties that the defendant would continue to carry
on his business as a wood and coal dealer in &
which business he was then engaged, and it was
further understood that during the season for buy-
ing pork he would be receiving and have on hand
considerable sums of money which would not be used
by him in the wood and coal business but &
would be used in the pork packing business and
that the moneys of the defendant which came &
was to be used would probably exceed very consid-
erably the amount contributed and which would
be contributed by the complainant to said firm of
R Stewart & Co. It was agreed that no bank account
need be opened by the firm but that to save ex-
pense and clutter his the bank account should be
kept in the name of the defendant with Messrs
E & Lintleam & Co who had previously been the &
bankers as well of the complainant as of the defend-

aut. The agreement was constantly acted upon while the partnership continued. No bank account was opened in the name of R Stewart & Co but with the Complainant's consent and acquiescence all moneys of the firm intended to be deposited in bank were so deposited with said E. L. & J. L. Lusk & Co in the name of the defendant and all checks used or paid out by said R Stewart & Co were drawn in the name of the defendant on said E. L. & J. L. Lusk & Co. The Complainant repeatedly directed as to the making of such deposits and the drawing of such checks and his direction were pursued by the Clerk and Bookkeeper of said R. Stewart & Co said Complainant well knowing during the whole time that the bank account was to be and in fact was kept in the name of the defendant with said E. L. & J. L. Lusk & Co never expressed any dissent or disapprobation at the time so far as the defendant is concerned.

The defendant is entitled to and has credit on the books of said firm for \$13. 108. ²⁶/₁₀₀

The charge against him amounts to only \$11. 838. ⁴⁵/₁₀₀ exclusive of an item hereafter mentioned

The Complainant has credit on the firm books for \$4. 463. ⁴/₁₀₀ and is charged thereon with

exclusive of the like item as mentioned with reference to the defendant's account

The said omitted item in each case is \$1057. ⁰³/₁₀₀

being half the money due from said E. S. Fink-
ham & Co as herein after mentioned. The defendant
admitted the sum to be charged up to himself &
also admitted the like charge to be made against
the Complainant, to complete the entries on the
books so as to show the state of the accounts said
money not being available, and the other business
of the firm being closed. This charge being made
the credit side of the defendant's account made
said firm exceed the debit side of said ac-
count by \$113.⁴⁷ and makes the debit side of the
Complainant's account exceed the credit side
thereof by \$176.²⁷

The defendant says that should
the money so due from E. S. Finkham & Co, ^{be collected} in
whole or in part the Complainant's account on
the books of said R. Stewart & Co should be made
good. This defendant should have the money &
due him from said firm according to said
books and the remainder of such money if any
should be equally divided between said Complain-
ant, and the defendant. The defendant hopes
that some part of said money may be realized
but is uncertain as to how much may be so
realized. He has always informed the Complain-
ant that if any such money could be collected
the firm of R. Stewart & Co were to have the full
benefit of all so collected.

A fairly in answer of facting

which prevented a favorable inspection of the
 pork packed by said firm of R Stewart & Co -
 contributed, to make their business a losing one
 but the defendant insists that the loss there arising
 was no more to be divided and shared between the
 Complainant and the defendant than was the
 loss which accrued on the bank account.

The defendant says the pork which re-
 alized \$5109 ³³ as stated in the Bill was sold
 by the Complainant himself to one Ralston on or
 about the 11th day of April A.D. 1861. that the de-
 livery of it was completed on or about the 18th
 day of that month that the Bill therefor was
 presented the next day and paid by the check
 for Simon Cunnery. Both together amounting
 to said sum one of them on N & Lutter & Co
 and the other on B & Langer & Co that Simon
 Cunnery was then at a discount of from ten to
 twenty per cent. that a debt of said firm of R.
 Stewart & Co to the amount of \$20.25. ⁰⁰ was soon
 thereafter to become due to one Meadowcroft who
 held a note therefor and also a Warehouse re-
 ceipt for 200 barrels of pork as collateral security
 for said note and said Meadowcroft refused
 to receive Simon Cunnery i.e. Simon bank
 bills in payment of it, that the defendant could
 not succeed in procuring such currency for
 said firm of R Stewart & Co in such way as to

thought advantageous, although he made effort to
do so. that day when he proposed to draw the
currency on such checks the said E. S. Lenthaw
he offered, if such checks were deposited with
them to take up said note from said meadow
croft without discount on that amount of said
currency. they having previously held such note
and they were well informed, this defendant that
they could dispose of said checks more advantageously
than he could or draw a better class of bank bills
thereon. whereupon the defendant, on said 19th
day of April deposited said checks with said
E. S. Lenthaw & Co in the usual way in which
deposits of money or checks belonging to said
R. Stewart & Co. had been made to the said E. S.
Lenthaw & Co being at the time in good credit as
bankers. said E. S. Lenthaw & Co afterwards
complied with said agreement on their part,
as to paying said debt to said meadowcroft.
and no loss occurred on that amount of said
currency. All these matters were at the time
well known to the Complainant and he expressed
no dissent on the contrary, he fully concurred
in all that was done and afterwards, himself
directed as to the making of further deposits with
said E. S. Lenthaw & Co as was done.

Said Complainant had the same control,
over the money so deposited which he before
had (at any time during the partnership) and

monies deposited in bank. for said R Stewart & Co and was conducted by the defendant as to whether the currency on deposit with said E & S Lusk & Co should be drawn out or suffered to remain on deposit there while not in use. and expressed his preference that it should remain there.

At the time of the deposit of the checks aforesaid to amounting to \$5109.³³ & the defendant had no money of his own on deposit but on the contrary, was considerably indebted to said E & S Lusk & Co for over drafts. It is true that some of the moneys of the defendant, derived from his wood & coal business & were added to said deposit account that is true & deposited as at the request of the Complainant was other money of said R Stewart & Co but the defendant drew out on account of his private business more than the amount of such deposits of money derived from his wood and coal business and drew left in the hands of said E & S Lusk & Co more of the private moneys of the defendant and not all the moneys of said R Stewart & Co the defendant knowing as he now insists was the fact that he was entitled by reason of the indebtedness of said firm of R Stewart & Co to him to draw out as much of said money as he did & draw

out. He adds that what he so drew out in so far as it exceeded the amount of his individual monies as distinguished from the amount received from the business of R. Stewart & Co and put on deposit was paid to said firm.

This defendant says that the whole of said \$214⁰⁰/₁₀₀ was, and is money belonging exclusively to said R. Stewart & Co and that he is in no wise chargeable with any thereof or with any loss on account of the same except only as said Complainant is chargeable under the aforesaid Co partnership agreement.

This defendant denies that he ever made any false pretences to said Complainant in & regard to the above mentioned bank account or otherwise. He denies that he ever misapplied the monies of said R. Stewart & Co or drew the same except as he was justly entitled to do.

He also denies that he has ever at any time agreed to come to a full and fair account with the Complainant. On the contrary he has ever been willing and has repeatedly offered to do so and has urged the Complainant to come to such settlement but the Complainant has refused and for excuse has pretended that because this defendant had more money invested in the business of said R. Stewart & Co than he the Complainant had this defendant should pay a larger portion of the loss by said E &

Frankham & Co. than he the Complainant should
and that he the Complainant should not be a-
quid to bear more than one third of such loss
but the deft. has insisted as he now does insist
that the Complainant according to the terms of the
Co partnership agreement should bear half the
loss of the firm of which loss this was one, and
the Complainant has refused to undo by said
agreement in this instance whereby such settle-
ment has been defeated.

This defendant denies all
unlawful combination and conspiracy wherein
he is charged in said Bill.

And now having fully answered
he prays to be hence dismissed with his costs.
in this behalf most impotently sustained

Birmingham & Deut.
Sols. & of Counsel for Deft

Robert Stewart.

And afterwards to wit, on the Thirtieth day of
March in the year aforesaid, the said Com-
plainant, Colm Campbell, by Henry Sutton
of said his Solicitor, filed in the Clerk's office
of the said Superior Court of Chicago his
Answer Replication which is in words & figures
following to wit.

The Supreme Court of Chicago
of the March Term 1862,
In Chancery.

The Replication of Edwin Campbell Complainant
to the answer of Robert Stewart defendant.

This replicant saving and reserving unto himself
all and all manner of advantage of Exception
to the manifold insufficiencies of the said an-
swer for replication therunto saith that he will
aver and prove his said Bill to be true cer-
tain and sufficient in the law to be answered
unto and that the said answer of the said
defendant is uncertain untrue and insufficient
to be replied unto by this replicant. Without den-
ying that any other matter or thing whatsoever in the
said answer contained material or effectual in
the law to be replied unto confessed and avoided
harbored or denied is true All which matters
and things this replicant is and will be ready
to aver and prove as this Honorable Court shall
direct and humbly prays as in and by his
said Bill he hath already prayed

Henry Anthony Esq.
Soli for Complainant

And afterwards to wit on the fifteenth day
 of October in the year aforesaid, the said Com-
 plaint by Henry Anthony Gaet his solicitor
 filed in the Clerk's office of the said Superior &
 Court of Chicago the certain deposition of Robert
 Meadowcroft, John C. Dumbler & Charles A.
 Stewart, ^{Taken before J. L. O'Connell, Jr. Notary Public} which are in the words and figures
 following to wit:

Said Robert Meadowcroft being first duly &
 sworn by me as witness in said cause previous
 to the commencement of his examination to testify
 the truth, as well on the part of the complain-
 ant as the defendant in relation to the matters
 in controversy between the said complainant
 and defendant so far as he should be interroga-
 ted testified and deposed as follows.

My name is Robert Meadowcroft I am of
 lawful age. I reside in Chicago and engaged
 in the trading and Exchange business. I
 know Robert Stewart the defendant I do not
 know the complainant I have had several &
 transactions with Mr Stewart in the way of
 making loans to him within the last two &
 years more between December (Dec.) and
 September (Sep.) The first one I made was made
 through Mr Fairbank that was in January

1861. for two thousand Dollars. It was a note, that I ascertained whether it was one of Robert Stewart, or Robert Stewart & Co. I do not remember.

The collateral that we relied upon early upon was E & Finkham & Co. they ^{guaranteed} the note the other collateral was a warehouse receipt for (my impression now is) two barrels of sugar, product whether it was Porto or Louisiana I do not now remember. The receipt was one of Robert Stewart or Robert Stewart & Co. I do not remember which. The note was paid but not when it was due. there was a question as to its payment. when he (Stewart) wanted to pay it some difficulty about stump tail money. but ultimately it was secured. the note was paid. The money that is the amount due to me. was deposited with Finkham I checked on Finkham for the money.

This Business was done through E & Finkham & Co. I had one subsequent transaction with Mr Stewart I do not recollect the amount. I think the note was Stewart & Co. and in this transaction the collateral was three or four of land my impression is this was directly after the stump tail. went out for the loan was in gold I think about five hundred Dollars the loan was made to Mr Stewart. that note I am pretty sure was paid before it was due by Mr Stewart. I do not know for what purpose the money was

known, or what use was made of it. I think Mr Stewart was carrying on the North Coal business at that time.

Chief Examination

I met Mr Stewart some where near Lake St. Judge kept the extension on the \$2000 note unpaid and told him that we would not take stamp tax money for that note. he said that he had sold the collateral, and that he either had or was going to deposit the checks with Smith & Co. for the payment of the note. The note was taken up directly after this conversation that ^{within} two or three days we received stamp tax money in payment as we found we could use it. It was a necessity for us to take it as the collateral was gone. The other transaction I should judge occurred I presume somewhere about the 1st June. I did not know that Stewart had a partner except by the note. I think the first note was signed R Stewart and the last was signed R Stewart & Co. I went to see the collateral in the second transaction I mean the land that I spoke of. It was on the basement of a brick building on Canal St. between Randolph & Lake. There was a sign on the building of "R Stewart & Co." That was the first knowledge that I had of the existence of the firm in the first transaction however might have been R

Stewart & Co

Robert Meadowcroft

And do said John C. Ambler being first duly sworn by me as a witness in said cause proceed to the commencement of his examination to testify the truth as well on the part of the Complainant as the defendant in relation to the matter in controversy between the said Complainant and defendant so far as he should be interrogated testified and deposed as follows.

My name is John C. Ambler, I am of lawful age I reside in Chicago and in the banking business am a member of the firm of E & J Fortmann & Co I know Robert Stewart I do not know Campbell Mr Stewart kept a bank account with our firm between December 1880 and June 1881 we had no bank ac. with Robert Stewart & Co The Bank ac. was the individual account of Robert Stewart I have an abstract of the ac. of Robert Stewart from our books from Dec. 13th 1880 to May 28th 1881 on the 13th Dec. there was a balance to his credit on previous transactions of \$1067.48 he had kept an account previous to the 13th December for a considerable time I think I have heard from him that he was engaged

in the Wood. and Coal. business. The amount deposited from 13th Dec. to 28th May. was 15,978.34

17 045.82

The amount drawn or charged to him between these dates was 14781.75

leaving a balance to his credit of £ 2264 07

In that time there was one deposit of £ 5109-33

on the 19th April the balance arranged fully for £2000. Since that time the balance before the 19th April would arrange about £500. the deposits were made frequently. I could not say exactly, perhaps twice a week. The checks drawn were signed in the name of Robert Stewart either by himself or by his clerk. I could not say who the clerk was. but who ever he was. he had authority. I do not know what he got the deposit of £500. for or how he procured the money. We would not have paid any checks signed Robert Stewart & Co. without authority from Robert Stewart. The account run in the name of Robert Stewart from December 13th to May the 28th in the same way that it had been kept before there was no change. I recollect procuring a discount from Mr. Meadowcroft for £2000. for Mr. Stewart. I can't state positively to whose credit this sum was paid & Stewart either got the money or it was paid to his credit. I could not tell who paid

do note I recollect extending it I do not
recollect. whether it was paid or not. The
balance previous to the deposit of \$500. was less
than \$1000 and the deposit left an amount
to his credit greater than the amount of the
deposit I state only from recollection. The
account was reduced by debts, & to \$224.⁰⁷
between the 19th April & the 28th May. there
were ~~between~~^{however} credits also to the a/c during
this time but the debts had exceeded the cre-
dits sufficiently to reduce the a/c to the said
balance. our firm ceased to do business on
the 3rd day of June 1861. the last transaction
with the defendant according to the books
appear to have occurred on the 28th May.

Examination adjourned to Tuesday mor-
ning the 18th March at 9 o'clock. By agree-
ment of solicitors

Examination resumed as per agreement the
18th day of March at 9 o'clock a.m.

Chief Examination

I find that previous to the deposit of \$5709³³
there was to Mr Stewart credit on the 19th
Apr, \$176.⁴²₁₀₀ I also find that on the 22nd
since there was among other payments

one of \$2025. for his account. I presume
 the payment was made. I take up the
 meadowcroft note Mr. ^{Stewart} stated to me some
 time during the winter that he was going into
 the Port's business I do not recollect who &
 whom he said some one was going in with
 him in the Port's Packing business I afterwards
 knew that he had gone into that business
 and he employed me to negotiate a loan
 on an hypothecation of part of his stock. This
 was the \$2000. loan the money on which I
 got from Meadowcroft. Between December
 and May I knew of his being engaged in the
 Port's Packing business the funds for that
 business were deposited indiscriminately with
 his other funds in one account. I have no rec-
 lection about the payment of the meadowcroft
 note but I infer that the \$2025 payment
 was to lift that note. with the interest on the
 same. My practice on the 19th April 1861. was
 to request customers making payments to me
 to give ^{me} checks rather than draw the currency
 themselves because I could get a better class
 of currency on the checks than they could
 I do not particularly recollect making this
 request in Mr. Stewart's case about the 19th
 April the currency in circulation at that
 time had depreciated about ten or fifteen

per cent. that bring about the price of Exchange
or Gold. It was a common occurrence, in
our office at that time not to bring in currency
but to let us draw the money on checks
for the reason stated, before. The collateral
for the meadowcroft note was 200 bushels
of Pork. represented by a warehouse receipt
and an Insurance Policy. The note now hand-
ed the Commissioner to be attached to this
deposition marked "Exhibit A" in the meadow-
croft note. heretofore mentioned. The proceeds
of this note were credited to Mr Robert Stewart
in his bank account on the 24th January 1881.
amounting to \$1947.50. The Insurance Policy
which accompanied the warehouse receipt
was to insure "Stewart & Co" on those goods I
speak from recollection but feel quite sure &
that the policy was made to Stewart & Co but
as to the receipt I do not recollect by whom it
was assigned the policy was taken out with
special reference to this loan.

"Complainant
solicitor objects to the contents of the policy being
given without its production"

The Policy is now
laid if it is on my possession I have made
search for it but cannot find it after the
transaction had been settled I thought ~~that~~
it was of no material consequence I now &

state on seeing the note, but attached material
 Exhibit A that it was paid by me, as it
 has the marks that I usually put on
 in such cases. Mr Stewart was indebted to
 us on the 19th April 1861 on a note of \$500,
 notwithstanding his account showed cash
 Credit of \$176. The note was due on the 1st
 May. There is nothing indicated by the note
 as to the date it was paid although it was
 probably cancelled. It appears by the Bank's
 books to have been embodied in a check of
 \$25.25 given to include this and the \$200.
 note and interest. The \$25.25 had previously
 been charged i. the \$200. note retained by
 us while Mr Stewart substituted his check
 of \$25.25 for the his notes of \$200. and \$500, with
 interest on the \$200. note. This transaction was
 a mere substitution of one check as Mr Stewart
 desired possession of his notes. After the 19th
 April the deposits of Mr Stewart amounted in
 the aggregate to \$1044. according to our books
 the amount now due on the bank acc to Robt.
 Stewart is \$2,264.07 I am under the impress-
 ion that Mr Colin Campbell had an eye on
 our books but of the nature or extent of it
 I cannot speak from recollection or with-
 out looking at the Ledger.

Re Direct examination
 The Bank Book to which I have referred
 is the Bank Book of Robert Stewart in ac-
 count with our Bank. It commences to date on
 the 13th December 1800 but there had been
 a previous book between Robert Stewart and
 the Bank. Mr Stewart had kept an ac-
 count or more draw a year previous to 13th
 December 1800. the commencement of this
 book was not a new ac- but a continuation
 of the old ac- the former book got filled
 up & the new one was commenced by carry-
 ing forward the balance from the old book.

The \$500. note exhibited to me, by Mr Dent
 was a note discounted by Linkham & Co. and
 the proceeds placed to the credit of Mr Stewart.
 It is dated the 8th April 1801. and was
 discounted on the 9th April & the proceeds placed
 to Mr Stewart's credit on that day.

"It is admitted that the assignment
 of Linkham & Co was made on the 6th or 7th
 day of June 1801."

I cannot state from
 recollection whether Mr Stewart's ac- was or
 drawn at the time the \$500. note was given
 or not. our Ledger would show.

John C. Sumner.

"Exhibit A."

8200.

Chicago Jan'y 23rd 1861
 Sixty days after date. I promise to pay to
 the order of E. & S. Smith & Co Two Thousand
 dollars 000. value of Port. being the col-
 lateral security as per receipt attached unto
 value received Due 24th/27 March

~~###~~

(Endorsement on Note)

For value received we hereby guarantee the
 prompt payment of the within note.
 E. & S. Smith & Co.

And the said Charles A. Stewart being just
 duly sworn ^{by me} as a witness in said cause pro-
 nounce to the Commencement of his examination to &
 testify the truth as well on the part of the
 complainant as the defendant in relation to
 the matter in controversy between the said Com-
 plainant and the said Defendant so far as
 he should be interrogated testified and depose
 as follows.

My name is Charles A. Stewart
 I am 25 years of age or rather on my 25th
 year I reside in Chicago and Clerk for
 Robert Stewart the defendant
 Int^{er} What was your business from December

13th 1860. to September 1861.
Ans. I was clerk off. and on at the Ward yard
of Robert Stewart.

Int 2? Did you act as clerk during that time
for the firm of R Stewart Co in the packing business
Ans I made up, and kept the books for them

Int 3? Will you look at this book. now show me
and state what book it is and in whose
handwriting the entries are?

Ans. It is the book that was used as a Ledger
in the Port's packing business of the firm of
R Stewart Co the entries are all in my hand-
writing. "Said Book is made part of
this deposition and marked "Exhibit B"

Int 4th Will you look at the paper now show me to
be attached to this deposition and marked #
"Exhibit C" and state what it is and in
whose handwriting it is?

Ans. It is a memorandum I took from the Ledger
written by myself.

Int 5th

Cross Examination

+ Int. 1st Did you keep all the books of R Stewart Co
Ans. I kept all the accounts, I took the account
of the sales and different charges from a book
that was kept at the Packing House Mr
Colin Campbell kept that book.

+ Int. 2? What was done with the outlay money
of the firm & in hand from time to time -

"objected to" because it is a subject not drawn out. or the direct examination"

Ans. It was used, in the business or deposited
+ Int. 3^d of deposited how and with whom & in whose name,
"Same objection"

Ans. By Rott Stewart in his name with E. S. Luskham & Co.
+ Int. 4th Did the complainant know of the deposits.
Same objection.

Ans. Yes.
+ Int. 5th How was the money drawn out when needed in
the business, (Same objection)

Ans. By checks drawn by Rott Stewart on E. S. Luskham & Co.

+ Int. 6th State whether any such checks were drawn at
the request of Mr Campbell the complainant.
Same objection.

Ans. I have drawn checks that he has money of
+ Int. 7th State whether he ordered or used any such
checks in paying out. money for the firm
(Same objection.)

Ans. He has and he has marked it on the book
that he kept himself as paid by checks.
+ Int. 8th Do you know what was the state of the Bank
of R. Stewart, with E. S. Luskham & Co. on the
19th April 1861. before the deposit of \$109.³³
on that day. "Same objection"

Ans. He had no money of his own there.
+ Int. 9th State whether any of the firm money of Robert

Stewart & Co. were after that date added to the deposit ac^t in the name of Robert Stewart, with said E & I Lintkham & Co. if or about how & much and at whose request. "same objection"

Ans^r. There were two deposits one of \$81. and the other of \$90 one was made at Mr. Campbell's request. and I am not sure that the other was not made at his request also

+ Int^r 10th State what occurred when he directed the deposit which you speak of as having been directed by him. "same objection"

Ans^r. He said he thought it was safer to leave the money in the bank than to hold it on hand

+ Int^r 11th State whether or not at any other time you heard him speak of the money on deposit with Lintkham & Co with reference to whether the same should be drawn out. or not. if so what did he say. "same objection"

Ans^r. He said it was better to leave it there & draw to draw it out because it might get better by leaving it there he did not think it could get worse

+ Int^r 12th Do you remember whether I Union Currency continued to be deposited with E & I Lintkham & Co failed. "same objection"

Ans^r. Yes it did

+ Int^r 13th State whether any monies were drawn from E & I Lintkham & Co for the firm of R. Stewart & Co after April 19th 1861. "same objection"

Ans^r There were,
 + Int. 14th At whose request & by whose direction
 same objection

Ans^r I can't tell at whose request it was or by whose direction,
 + Int. 15th Which of the members of the firm used the checks
 of your remittance. "Same objection"

Ans^r I don't remember of either one of them using
 the checks.

+ Int. 16th What were they used for. "Same objection"

Ans^r In the business of the firm

+ Int. 17th State whether any bank a/c. was kept in the
 name of P. Stewart & Co. during the partnership
 between the Complainant & the defendant. "Same objection"

Ans^r Not any that I ever heard of. I should probably
 have known it if there had been. I could
 not well have kept the books without knowing it

+ Int. 18th When you made the statement marked "Exhibit
 C." was the property of the firm of P. Stewart & Co. &
 disposed of.

Ans^r I saw not one. I think it was all sold, fur-
 niture and all.

+ Int. 19th Is there a small part not sold yet.

Ans^r I believe there is a smoke house left there.

+ Int. 20th At that time, where were the monies of the firm
 remaining to be distributed between the partners
 and to what amount?

Ans^r In E. & F. McKinnon & Co's Bank to the amount
 of \$2100 odd dollars.

+ Int. 21st How much of that did you find to be coming to Mr Campbell. & how much to Mr Stewart at the time this state ment. was made int viz Decmbr. 11th 1861.

Ans^r To Mr Campbell \$935 ⁴⁵/₁₀₀ and to Mr Stewart the balance of the money in the bank.

+ Int. 22nd State whether or not Mr. Campbell while ^{Minors} Bank Bills were depreciated bought any & such bills, belonging to the firm of R Stewart & Co to the Wood Price to be sold

Ans^r I don't know of any being bought. true or false

+ Int 23rd Do you know of any such bills being sold for the firm. "Same objection"

Ans^r I know of money having been sold

+ Int. 24th State whether or not. you know of Mr Campbell the complainant giving such bank notes belonging to the firm of R Stewart & Co. to Robert Stewart to be sold for the use of the business after the failure of Finkhams & Co. "Same objection"

Ans^r I have heard of it but I do not know anything about it.

+ Int 25th State whether or not. the business of R. Stewart & Co. resulted in a profit "Same objection"

Ans^r It did not. there was a loss.

+ Int 26th State whether or not. there was such loss aside from the failure of Finkhams & Co or would have been if the deposit. of the bank had been collected. "Same objection."

Ans^r There would have been a loss & there was a loss.

+ Int. 27th State whether or not. the monies realized by

Robert Stewart no longer was in business and
not need for immediate use. in that business
after January 3rd 1862. included the Capital
stock invested by Colm Campbell in the Port
Packing business taking into account such
monies paid out or used for the firm of R.
Stewart & Co while that firm was in business
Same objection.

Ans^r. Robert Stewart contributed more money in the
business than Colm Campbell did
+ Int. 28th. State whether the amount so contributed by
Robert Stewart was derived from the proceeds of
his word & legal business or monies of his on
deposit in the bank when the firm of R. Stewart
& Co commenced business "Same objection."
Ans^r I should say from both

"Examination adjourned till 3 o'clock P M
March 19th 1862"

"Pursuant to adjournment
the solicitor for the parties to this suit met on
Wednesday March 19th but on account of the
absence of the witness adjourned till 3 o'clock
P M Thursday March 20. 1862"

"Pursuant
to last adjournment examination was resumed
this 20th March at 3 o'clock. P M"

Re. Direct Examination

Out 5th. As far as you know. does the Ledger mention

Exhibit B. show correctly the transactions of the firm of Robert Stewart & Co.;

Ans^r. I believe it does.

Int. 6th. What is the date of that statement, which you have attached to the deposition marked "Exhibit C."

Ans^r. December 11th 1861. I think that was the day on which it was made or about that time.

Int. 7th. Do you know of Mr Stewart borrowing any sum and if so, what sum of money from Meadowcroft & Co.

Ans^r. I know of a sum of \$2000. having been borrowed, which sum was entered in our books.

Int. 8th. Is that \$2000. the same \$2000 which is credited to Finkham & Co.

Ans^r. It is the same.

Int. 9th. Do you know of any ^{other} ~~other~~ loan having been obtained by the defendant from Meadowcroft & Co. for which any of the property of the firm of R. Stewart & Co. was pledged, as collateral?

Ans. I have heard of such. I did not know of it myself. I have heard from the defendant.

Int. 10th. Do you know how much it was, when it was, & what property was pledged?

Ans^r. I heard it was \$500. I do not know when it was. I understood that Lard was pledged.

Int. 11th. Do you know if the transactions appeared on the books of R. Stewart & Co.

Ans^r. I don't think it did.

Crop Examination Resumed.
 + Sat 29th when the Land was sold did the sale of
 it appear on the books
 Ans: yes Sir

Chas. Stewart

Exhibit C.

Statement of Picking House
 Book. December 11th 1861 R. D. Ho.

	C. Campbell.	185 19.	1131. 76.
	R. Dubois	1032. 13.	124. 88
C. C.	Vincient	5. 46.	
C C	Reckin	2 34.	
C C.	Durr.	2 32.	
	D. Lyman.	1. 79.	
	Ruby	26. 36.	
		\$ 1255. 59.	1255 59

	C. C.		R. D.	
	1130. 76.		1032. 13.	
	185 19		124. 88	
to get	945. 57		got 907. 30	38. 27
up indent	5 46			to be collected
	\$ 940. 11			
Durr.	2. 32			
	937. 79			
Reckin	2 34			
	935. 45			

Exhibit B.

Exhibit B.
Dr. Robt. Stewart.

1861	To amount recd from folio	4	3015. 84.
July. 27	" meat for J. Smith.	29.	2. 70.
Aug. 16	" Ham & Rump.	33.	2. 40
April 4	" 9 lb. Pork.	34.	36.
" 10	" 20 1/2 " Ham	35.	1. 64.
" 11	" Sale of Pork.	35.	5709. 33.
" 26	" 9 1/2 lb. Shoulder.	38.	57
" 30	" 19 1/2 " Ham	38.	1. 56.
May 3	" 21 1/2 " "	38.	1. 72.
" 8	" Cash	40.	62. 40
" 31	" " "	40.	24. 20

And afterwards took, on the Eleventh day of
December in the year of our said the said defend-
ant Robert Stewart, by Amos T. Dent, his
solicitor, filed in the Clerk's office of the said
Superior Court of Chicago, the certain depositions
of John C. Davis, Malcolm Stewart, Wm B
Pentree, Wm. Rolson, James Taylor, Robert &
Stewart, taken before L. P. Maples Jr. Notary Public.
Said John C. Davis being first duly
sworn by me on the 18th day of April A.D. 1862
as a witness in said cause previous to the
commencement of his examination to testify the
truth, as well on the part of the complainant as the
defendant. So far as he ~~he~~ seemed to be interrogated
testified and deposed as follows.

Int. 1st What is your name, age, place of residence
& occupation.

Ans My name is John C. Davis and of lawful
age. I reside in West Chicago and ship ^{employment}
Int 2^d Do you know the parties to this suit & for how
long have you known them

Ans^r I have known Mr Stewart for eight years past
and Mr Campbell two or three years

Int 3^d State whether at any time you were in the
employment of R Stewart or while Mr Campbell
was a member of the firm

Ans^r A year ago last winter I was employed
by them to buy Pork on the street, on commission
Int 4th State whether or not, while you were so on

draw employ. you learned anything from
them or either of them as to where their money
in Paul's was kept. if so when, how and
from whom. did you learn it state all
you know about it if anything

Ans^r. I don't know anything about it as to where
their money was kept.

Ant. 5th State whether or not. you know of Paul's check
being drawn to be used in their business for
state all you know on that subject. as to who
drew the same and at whose request they
were drawn. "expected to"

Ans^r. Some time in February (or I think it was
bought a large lot of Pork for the firm (I
think there were seven single loads) after Mr.
Campbell summed up the amount. he gave
me a little order on a Card to go to Robert Steu-
art's Office on N. Wallst near Madison Street
I took the order and handed it to Mr. Charles
Stewart he said he would go after Mr. father
Mr. Robert Stewart asked him if he had currency
enough in the drawer to pay the order. Charles
replied he had not. Mr. R. Stewart told him
to draw a check on E. J. Linkleau Charles
made the check. & Mr. R. Stewart signed it. he
then took it off, and gave it to me. I carried
it to Mr. Campbell on North Canal Street - north
of Randolph st. Mr. Campbell then paid it
out to Tanner two or three in company with

some currency that he had made directions where they could find Finkhams Bank.

Int. 6th State whether or not you went on more than one occasion to the office of Robt Stewart the defendant at the request of Mr Campbell the complainant to get checks to be used in the business of R Stewart & Co.

"Objected to as leading"

Ans: I think I went one other time, but of currency.

"Objected to as not responsive by Mr. Henry"

Int 7th State what (if anything) you know about Mr Campbell the complainant having directed the deposit in the Bank's Bills or money belonging to the firm of R Stewart & Co. State the time and all the particulars if you know anything on the subject.

"Objected to as leading"

Ans: Last Spring I was in Robert Stewart's office I think it was in April 1861. Mr Campbell came in and took out a roll of money. I should judge there might have been \$100. or over, he told Charley Stewart to deposit it as soon as possible as money was depreciating every hour. Charley replied that he would go down pretty soon, and remarked that Finkham kept ^{open} an hour or an hour and a half later than any other bank. Mr Campbell then left and I observed Charley Stewart coming over the money.

Int 8th Are you sure as to what month it was?

Ans: Not any nearer than I have stated. My impression is that it was in the month of May from the

note that I was doing.
 Int 8th State all that was said by Mr Campbell, as near as you can.
 Quesⁿ I think I have already stated all that he said
 as near as I can recollect.

Int 9th State whether or not at any subsequent time you
 had any conversation with Campbell in reference
 to the business of R. Stewart & Co as to whether the
 same had been profitable or not. If so state
 what he said in such conversations, giving the
 time if you can.

Quesⁿ I think some time in September last. I
 was going home one afternoon and saw Campbell
 standing at the door of the packing house. I asked
 him if they were going to buy any Pork the
 coming winter. He asked me what I wanted
 to know for. I told him to excuse me. I did not
 wish to enquire into their business matters. I only
 wanted to buy for them if they intended doing so.
 he replied they had lost so much by stump tail
 that he did not think they would buy any
 for that winter.

Int 10th State whether or not he said anything at that
 time as to how R Stewart & Co had done, or suc-
 ceed in business. "objected to"
 Quesⁿ not at that time.

Int 11th State if he did at any other time if so state &
 what he said at such other time, objected to
 Quesⁿ I think some time last year. I asked Mr Campbell

how their Port business for that Winter paid them
he said they would have done very well if they
had not let so much by their stump tail money.

Int. 12th Q. State if you know whether or not the Port pack-
ed by them was of a merchantable quality and
if not why was it not merchantable
" Objected to as irrelevant "

Ans^r. There was. Objection made to it on account of
its not being properly cut the Cutter tried to
make the Port out of a hog. then was in a hog

Int. 13th Q. State whether or not you have heard the Com-
plainant or the defendant in the presence of the
Complainant speak of any loss to the firm by
reason of the manner in which the Port had been
cut. if so state what was said

Ans^r. I have heard Mr Stewart tell Mr Campbell that
they must get another packer to pack the Port
as the man they had was not competent and
was an injury to them every day. he packed
for them Mr Campbell agreed that they had better
get another man. I think Mr Stewart must have
been about the middle or latter part of June.
any it may have been later It was after the
Port was pretty nearly all packed they did
not pack as late as some other packers

Int 14th Q. When you saw Mr. Campbell leave the Port of his
to be deposited in the Bank as you have before
stated State whether or not you knew or whether
it was the fact at that time that Allinson

Currency or Bank Bills in circulation had become
 some what depreciated at that time. "Specie 6"

Ans^r.

They were depreciated & were going down every day.

Cross Examination by Mr. Henry

+ Int. 1st

Did the Complainant weigh the Port? you pur-
 chased to enable him to ascertain the amount for
 which he should give you the order you have spoken
 of on the defendant if so was the amount of the
 order for the amount ascertained by the weight of
 the Port.

Ans^r.

I weighed the Port for Mr Campbell at his request
 I gave him the weights he summed up the fi-
 gures. I could not state in regard to the amount
 as to what amount the Port came to I think
 he sent for his money. That the Port came to, as
 he had some currency in his possession.

+ Int. 2^d

Did the Complainant go with you to Mr Stewart's
 office when you got Mr Check that you have &
 spoken of

Ans^r

He did not

+ Int. 3^d

How many farmers were there from whom you had
 purchased the lot of Port?

Ans^r.

I think there were three from whom I purchased
 the other four were trustees hired to bring in
 the Port for them

+ Int. 4th

When Mr Campbell paid the Farmers with the
 check and the money of which you have spoken
 did he hand the Check and the money to the

same person, and how did they know how much
each one was to receive

Ans^r:

One of the Farmers he paid in currency the
other two he gave some currency and the checks
and gave the amount due to each one on a
piece of paper. with their names attached to it
By whom was this checked signed, and do you
remember the amount of it.

+ Int 5th

Ans^r:

It was signed by Robert Stewart the amount.
I do not remember I cannot state as to whether
it was signed R Stewart, or Robert Stewart or
R Stewart & Co.

+ Int. 6th

How did you learn that any objection was made
to the Port. on account of it being improperly cut
and that the cutter had endeavored to make
more ship Port. out of a Hog. than was in
a hog. Who told you?

Ans^r:

I learned it from Mr Campbell. and Mr Stewart
both on two or three occasions. Mr Wayman
the cutter paid them for wages for cutting
they objected to paying him because the Port
was cut bad. The Port being examined by
several Port Packers. and they said the Port was
unmerchantable I was present on one occasion
when they were examining the Port, and I heard
one or two others saying on account of the cutting
of the Port that it was damaged fifty cents to a
Dollar a barrel. Mr Stewart spoke to me about
giving evidence as to what I had heard these

injection say on the trial of Wayman's suit
The day the suit was coming off I went to the
packing house. Stewart and Campbell were
both there. Mr. Stewart said they had settled
the matter. that it would be an injury to the Port
to bring the matter before the public.

+ Int 7th Do you know of Wayman being discharged
and another packer being hired by the firm.

Ans^r. Yes Sir Wayman was discharged. Some time
toward spring for bad packing and a man
(I think) named John Young employed in his
place.

John C. Davis.

By consent of Solicitor this matter was recalled
and the following cross question put by Mr. Henry
Solicitor for the Complainant

+ Int 8th Have you had any conversation with the defend-
ant or his son Charles or any other person on
this case respecting the testimony which you have
given here to day. If so with whom have you
conversed when were such conversations and
how frequent?

Ans^r I have had none with any of the Stewart family
except with Mr Robert Stewart where con-
versations took place about a week perhaps two weeks
ago. he asked me if I knew anything about
their partnership business and as to how their
books were kept. I told him all that I knew

any thing about, was conversation that I
had with him and Mr Campbell. he asked
me what day were and when I had heard
I told him part of what I have testified today
and Mr Stewart said he did not want to hear
if I have talked with no others except Mr.
Deut. one of Mr Stewart's counsel I have told
Mr Deut. part of what I have testified here
to day. he asked me as to some particular points
as I told him what I have testified to day.
John C. Davis.

And do said Malcolm Stewart being just
duly sworn by me. on this 18th day of June A
D 1882. as a witness in said cause previous to
the commencement of his examination to
testify the truth, as well on the part of the Com-
plainant as the defendant so far as he should
be interrogated testified and deposed as follows.

Int 1st What is your name age place of residence and
occupation?

Ans^r. My name is Malcolm Stewart age twenty three
reside in Chicago and a Carpenter by trade

Int 2^d Do you know the parties to this suit if so how
long do you know them

Ans^r. I have known Mr Campbell two or three years
Mr Stewart is my Father

Int 3^d Did you have a conversation with Campbell
the Complainant in or about the month of

June 1861. in regard to the business of R Stewart & Co
of so state fully. what was said in such con-
versation

Ans. I asked Mr. Campbell, how they had made out
in Port. he said they had made out pretty
well. but they had lost a stump tail this was
some where. along in June I know because
I came back from New Orleans about the latter
part of May and it was shortly after I got
back.

Int. 4th. What was meant by the term "Stump tail"

Ans. I took it for money that was not at par then
or what I supposed it meant

Int. 5th. Was it stated where the money was. "objected to"

Ans. Mr. Campbell said the money was in Bank.
Malcolm Stewart

And he said William R. Prentiss being first duly
sworn by me on the 13th day of May. A.D. 1864.
as a witness in said cause previous to the
commencement of his examination, to testify
the truth, as well on the part of the complainant
as the Defendant so far as he should be interrogated
testified and deposed as follows.

Int. 1st. What is your name, age, place of residence
and occupation.

Ans. my name is W R Prentiss and of lawful
age. I reside in Chicago and in the Grocery.

Int 2?

and provision business
Do you know the parties to this suit for how
long have you known them.

Ans.

I have known Mr Stewart 4 or 5 years. Mr
Campbell I have known about 18 mo.

Int 3?

Did you have a conversation with Mr Campbell
the complainant in the year 1861. about the bu-
siness or the results of the business of the late firm of
R Stewart & Co. with which he was connected as
a partner of the defendant of year. give the
time and state what he said at such time.

Ans.

I did have a conversation with Mr. Campbell
in the year 1861 I cannot state exactly the time
I think it was some time in June. or during
the summer. I had understood from other
sources that they had lost money in their Port's
Business which led me to ask Mr Campbell.
in regard to it he stated that they had not
lost money in their Port's business, but had lost
on stump tail. It occurred at R Stewart & Co's place
of business.

Int 4th

Did he state anything about the extent of the loss

Ans.

I could not say that he did

Wm B. Prentice

And the said W B Prentice being first duly
sworn by me on the 17th day of May A.D. 1862
as a witness in said cause. previous to the
commencement of his examination to testify

do him as well on the part of the complainant as the defendant so far as he should be interrogated, testified and deposed as follows
 Q. What is your name, age, place of residence and occupation?

A. My name is W. H. Polson. I am of lawful age reside in Chicago am a Provision Broker

Q. Do you know the parties to the suit & how long have you known them

A. I have been acquainted with Mr Stewart over a year. I have known Mr Campbell about the same length of time but not so well as I know Mr Stewart

Q. Have you had any dealings you had with B Stewart & Co in the Spring of 1861?

A. On the 12th of April 1861 I sold 316 Bunches of Pork for them @ \$16.²⁵/₁₀₀ per Bunch to Messrs. & Galt House Memphis Tenn. and they paid me one half per cent. Commission I paid Robert Stewart for the Pork on the 18th April 1861 a check on B. F. Cannon & Co for \$2800.⁰⁰/₁₀₀ & a check on H. A. Tucker & Co. for \$2309.³³/₁₀₀ making a total of \$5109.³³/₁₀₀

Q. What kind of funds or on what way were the checks to be paid, "objected to by Mr. Henry"

A. Current funds that the Bank was paying out at that time

Q. What kind of funds were the Bank paying out.

Ques. I believe it was the currency of this state such as I had paid to other parties for purchases made previous and as I paid for purchases made after this date. I mean by currency the State of Illinois Bank notes and also Wisconsin money

Ans. 6th State what said Port's money have been made in specie at the time you sold it.

Ques. That I am not able to answer on account of the fluctuation in Exchange at the time.

Ans. 7th State whether Illinois Bank notes and Wisconsin Bank notes were depreciated at that time or not.

Ques. Between Gold and Silver they were from six to seven per cent. discount

Ans. 8th State whether or not you had any understanding with the parties as to how or in what funds the port was to be paid for?

Ques. No Sir no further than to give them a check for the money in the currency that was being paid out at the time.

Ans. 9th In what kind of funds was payment made to you

Ques. In the currency of this State the same as I paid on

Ans. 10th Who exhibited the Port to you and delivered it on your order

Ques. The gentleman who showed me the port I understood to be Mr Stewart's partner I gave my order to the Captain and do not know who delivered it on the order.

Ans. 11th Into whom did you make the bargain on the part of R Stewart & Co?

Ans

The gentleman whom I presumed to be Stewart's partner and who showed me the Port. three & panels were open.

Cross Examination

+ Int. 1st

Ans.

By whom were you employed to make the sale?
By Mr Stewart. & the two persons who showed me the Port whom I presumed was his partner.

+ Int. 2^d

Ans.

Was any price fixed per panel at which you were authorized to make sale & if so by whom?
at \$16 ²⁵/₄ by both parties, the party who showed me the Port after I had taken the purchaser over to see the Port. and he showed the Port to him told me he would get Mr Stewart and to the best of my knowledge Mr Stewart came to me and told me I could sell it at \$16 ²⁵/₄.

+ Int. 3^d

Was any thing paid by Mr Campbell at that time as to what kind of funds should be received in payment?

Ans.

No Sir.

+ Int. 4th

Ans.

In what manner were you paid by the purchaser or purchasers of the Port. if by Check or Check on any Banking House. Please state on what Bank or Banks the said checks were drawn.
It was partly paid in the state currency. there was a check drawn by a Mr Hall. on the Hann's Bank as near as I can recollect for from \$200 to \$250, the balance was paid in the currency.
+ Int. 5th State whether the checks which you gave Mr

Stewart: were your own checks on the Banking
Money you have named?

Ans^r.

They were my own checks. The Port was
sold on the 12th and delivered I think on the fol-
lowing day, but Mr Stewart did not call for the
money until the 18th. I think the money was not
all paid to me by the purchaser until the 15th
or 16th.

+ Int 6th

State whether at the time you received the money
Bank note of the Character, you have specified and
the currency which the check of Hall called for
was paper current in the City at par in
ordinary transactions of business?

Ans^r.

It was, for all I had to pay out to the trade.
I was dealing with

+ Int 7th

State whether in depositing the money which you
received for the Port. did the check which
you pay you received from Hall for a part of
the purchase money, you were credited by
your Bankers for the same at par?

Ans

I was.

+ Int 8th

State whether the checks which you gave to the
defendant on Barrow & Co. & Fisher & Co for the
purchase money of the Port. called for funds which
were then paying in the City at par. and
State whether the defendant received the said
checks from you at par?

Ans.

The checks did call for such funds as were
then current in the City at par. Mr Stewart re-

received them from me at par.
 + Int 9th Q. State if you know at what time Union & Wisconsin money, such as the checks you have spoken of called for, ceased to be received at par. in the ordinary transactions of business in this city?

Ans. I cannot tell unless I refer to my account, of the statement into Mr. Lucker I filled at 35% discount.

Re. Direct Examination

Int 12th Q. State whether or not. the funds you have mentioned passed in all transactions or were received by all the Banks in Chicago at par.

Ans. All that I deposited at that time, I understood that the Trust Company refused to take the Bills at par.

Int 13th Q. Under what circumstances or by what arrangement, if any did it pass in ordinary transactions in Chicago at par.?

Ans. The citizens agreed to take it, and the Banks agreed to receive it on deposit and pay it out I don't know that they all did, the majority of the Banks made this agreement.

Int 14th Q. State whether or not before such agreement the Banks and other Business men had to give to accept such Bank notes discriminatingly between them as to their value?

Ans. That I cannot answer for I don't know whether

they did it or not
Int 10th State whether or not you could have sold the
Pork at the Price you have stated in specie
Ans^r No Sir

"Crop Examination Resumed"
+ Int 10th Can you state what amount it could have
been sold for in specie or exchange,
Ans^r For Exchange it might have been sold for six
or seven per cent up for specie two percent up
than that at the time the Sale was made;

+ Int 11th Are you aware of any sales of produce having
been made about that time payable in Exchange
or Com.?

Ans^r No Sir

J. H. Poloson

And the said James Taylor being first duly
sworn by me on the 25th day of July A.D. 1862,
as a witness in said Cause previous to the
commencement of his examination to testify
the truth, as well on the part of the Complain-
ant as the Defendant, so far as he should be
interrogated testified ^{and deposed} as follows.

Int 1st What is your name, age, place of Residence
+ occupation?

Ans^r My name is James Taylor of lawful age
I reside in Chicago I am in the U. S. Army

Int 2^d Do you know the parties to this suit for how
long have you known them?

Ans^r

I have known Mr Campbell but a short time
say 3 years Mr Stewart I have known about
5 years.

Int 3^d

Stated whether you were acquainted with
them as partners in the year 1860 and whether
or not you did any business for them as such partners

Ans^r

I was acquainted with them as partners in the
year 1860. I did business for them as such partners

Int. 4th

State what kind of business you so did for them?

Ans^r

I bought Pork for them?

Int 5th

State whether you were present at any time
about the commencement of the partnership when
they together talked over or discussed the
manner in which the business should be
conducted if so when & what did they say?

offered to be leading.

Ans^r

Int. Mr Stewart and Mr Campbell, one night
at John Corgan. It was some where about the
1st of January 1860. Either a few days before
or after, on that evening the question arose
who should be the financial man in the business
It was so settled that evening between them
selfs. that Mr Stewart should be the man to
take the charge of the financial part of the
business outside and Mr Campbell should
take charge of the packing &c inside

Int. 6th

State as near as you can what was said at
that conversation and if you cannot give

their language give the substance of the conversation.

Ans^r. I don't know that I could give it any nearer. & than I have stated I do not recollect exactly what was said, only Mr Stewart told me. I could go to Work. and buy Port. for them that he would as soon give me a job. as anyone else.

Int. 7th. State whether or not you mean in your last answer. that you can only give the substance of what was said there.

Ans^r. That is all sir.

Int 8th. State if you know how the business was conducted as to which was the financial member of the firm and where their monies were kept. or by whom.

Ans^r. Robert Stewart was the financial member of the firm I have always seen the checks for Port. drawn by Mr Stewart on Fortkham Bank. I think I know I have seen some of them drawn on Fortkham, & related to so far as relates to checks.

Cross Examination by Mr Harvey.

+ Int. 1st. What was the name of the firm?

Ans^r. Robert Stewart and Company.

+ Int. 2nd. You say that Robert Stewart was to be the financial manager do you mean to be understood that he was the financial member of the firm of Robert Stewart & Co.

Ans^r. I mean to be understood that that was the

+ Int 3^d

talk that night, he was to be the financial member of the firm, that was talked of that night of Stewart & Company. in the buying of Pork?

Ans^r

Do you know whether Mr Stewart at that time and subsequently carried on any other business in his own name, and for his own use?

+ Int 4th

He was carrying on the Wood & Coal business. I do not know that Mr Campbell had any thing to do with that business.

Ans^r

Do you know whether Mr Stewart kept any Bank a/c. connected with his Wood and Coal business, if yes, where was it kept?

I don't know any thing about it.
Jas Taylor

And do said Robert Stewart being first duly sworn by me, on this 10th day of October A.D. 1862, as a witness in said Cause, previous to the commencement of his examination to testify the truth as well on the part of the complainant as the defendant, so far as he should be interrogated testified and deposed as follows:

Int 1st

What is your name, age, place of residence & occupation?

Ans^r

My name is Robert Stewart age 37 years. I reside in Chicago have been on the employ of my Father the Defendant within recently.

Int 2^d

State whether or not in the latter part of June

or early ^{part} of May. 1861. or about such time you heard any conversation between the defendant Robert Stewart & the Complainant Colin Campbell. in respect to the money. (if any) of Robert Stewart & Co. in Bank. if so state such conversation state what the parties said if any thing.

"objected to by Mr. Henry. because it is leading and because it is assuming that there was money in the Bank. belonging to Robert Stewart & Co."

Ans^r.

I heard Robert Stewart about the latter part of April or in May 1861 ask Colin Campbell what he thought it was best to do with the stump tail money in the Bank. whether it was best to draw it all out. or to leave it in.

Mr. Campbell said "we might as well leave it in the bank as it can't get much worse, and we stand a sight of its getting better."

Int^r 3^d

Where did such conversation occur?

Ans^r.

at Stewart & Campbell's packing house, on Canal Street. between Lake & Randolph.

Cross Exam^r. by Mr. Henry.

+ Int^r 1st.

Were you at any time in the employ. of Robert Stewart & Co. composed of Robert Stewart & Colin Campbell. if so in what capacity?

Ans^r.

I was in their employ. doing almost every thing carrying in ports. helping to salt hams. trying out Lard. & I would attend the store when Mr. Campbell would go out.

+ Int 2^d Had you any thing to do with keeping the books of the Concern. or did you know any thing of their financial matters, from your position now there

Ans^r I had nothing to do with keeping their books I knew nothing of their financial matters except what I heard them talk about.

+ Int 3^d Do you know of your own knowledge that at the time of the deposition to which you have testified, the firm of Robert Stewart & Co had any monies in Bank or had any Bank a/c. with any Banking house or ever had, had such, if so with what Bank?

Ans^r All I know is that I know Father had money in Bank. I know of money & that has been put in Bank that was taken from the packing house. over to the Ward Office I have taken it there myself & then taken down to the Bank. and deposited it it was with E. J. Finkham & Co It was deposited in Robert Stewart's name.

+ Int 4th Now then have you made such deposits & was the money which you say you brought over from the Packing Office, to the Ward Office mixed up with other money, belonging to your father & all deposited together to his credit?

Ans^r I used to make them some times & some times my brother would make them, I have made them at least two or three times they would.

Count it out first separate and then they would
mix it together. they would see first how much was
latter at the Packing House, when it got to the
Bank. It was all together and papered to the credit
of the same account.

+ Int. 5th That you were made. deposits at, any other
time of money from the Third office. alone. if
so were such deposits entered in the same book
& credited to the same acc.

Ans^r. I have made such deposits they were entered
in the same book. & credited to the same account

Robert Stewart Jr.

And a (warrant writ on the Twenty fourth day
of June in the year of our Lord one thousand
Eight hundred, and Fifty three the same being
one of the days of the June Term of said Court
the following among other proceedings were had,
and entered of Record in said Court. To wit:

Esq^{re} Campbell

vs^t

Robert Stewart

Deceit

This cause having been heard
on the Bids answer. Replication and evidence and
having been argued. by Counsil. (Messrs. Henry
Anthony & Gaet both for the complainant and Messrs
Armington & Deut. for the defendant appearing)
the Court being now fully advised in the premises

funds that the moneys of the firm of Robert Stewart & Co. which were deposited with E. I. Fritcham & Co. were so deposited with the approval of the Complainant, and in the usual course of business of said firm of Robert Stewart & Co.

It is therefore considered that it would be inequitable to charge the defendant with the loss of said money, which has arisen from the failure of said E. I. Fritcham & Co.

Now therefore it is ordered adjudged and decreed that said firm of Robert Stewart & Co. be dissolved with the right on the part of said Complainant to have from the moneys due from said E. I. Fritcham & Co. two thousand one hundred and four (2114.00) dollars and six cents (\$2114.06) so much as is coming to him the Complainant on account of his interest in said firm of Robert Stewart & Co. & which amount so coming to the Complainant is found to be nine hundred and thirty one dollar & forty five cents, (\$931.45) but one half of the necessary expense of collecting the moneys due from E. I. Fritcham & Co. may be recouped from the amount collected or in case of the collection or receipt of a smaller sum, than the whole amount so due from E. I. Fritcham & Co. the Complainant shall have one-half of the net proceeds & an amount not exceeding said sum of nine hundred & thirty one dollar and forty five cents.

§ 931.451,

And it is further adjudged and decreed that the
Complainant pay the costs of this suit and
that the defendant may ^{have} execution against the
Complainant for the costs of said defendant,
herein expended, to be taxed,

State of Illinois }
County of Cook }

I Thomas B. Carter Clerk
of the Superior Court of Chicago, within and
for the County and State aforesaid do hereby
certify the above, and foregoing to be a true
perfect and complete transcript of all the
papers on file in my office, together with all
orders and decrees made and entered of record
in said Court in a certain cause lately pending
in said Court on the Chancery side thereof
wherein Colin Campbell was complainant
and Robert Stewart was defendant

In Witness Whereof I have here-
unto set my hand, and affixed
the seal of said Court at the
City of Chicago, in said County
this 21st day of March A.D. 1864
Thomas B. Carter

Clerk



Assignment of Errors -

The Supreme Court of Illinois
Colin Campbell } ^{Plaintiff} Of the Third Grand Jurisdiction
vs } _{Defendant} April Term 1864
Robert Stewart } ^{Plaintiff} in Error

Afterwards, to wit, at the said term of the said Court, before the Justices thereof, comes the said Colin Campbell by Hervey Anthony Galt his Solicitor and says that in the records and proceedings aforesaid, and also in the rendition of the decree aforesaid, there is manifest error in this Court; The said decree is against the evidence and the law; that by the record aforesaid it appears, that the decree aforesaid in form aforesaid given, was given for the said Defendant in Error against the said Plaintiff in Error, whereas by the laws of the land and the evidence in the case, the said decree ought to have been given for the said Plaintiff in Error against the said Defendant in Error - And the said Plaintiff in Error prays that the decree aforesaid, for the errors aforesaid & for other errors apparent in the record & proceedings aforesaid, may be reversed annulled, & altogether held for nothing & that he may be restored to all things, which he hath lost by occasion of the said decree

Hervey Anthony Galt
Att for Plaintiff in Error

And the said Robert Stewart comes by
Arrington & Lent his solicitors and says
There is no error in the record and
proceedings aforesaid.

Arrington & Lent
for defendant in Error.

225-

C. Campbell

Robt. Stewart

Record &c

Filed Apr. 20 1864
Leland
Ch.

Ins.

\$ 17.05

Paid

J. H. Martin
Clerk