No. 14784

Supreme Court of Illinois

Musick

---

vs.

Hodgen

71641

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 109

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

State of Illinois
Supreme Court 3rd Grand Division
Ottawa April term 1865

Duston and Wesick
vs.
Samuel P Hodgen

Appeal from
McLean

The Appellants assign the following Errors upon the Record

1st The Court erred in granting a change of venue
2nd The Court erred in excluding proper evidence for the Defendants below
3rd The Court erred in admitting improper evidence for the Plaintiff below.
4th The Court erred in giving improper instructions for the Plaintiff below.
5th The Court erred in refusing proper instructions for the Defendants below
6th The Court erred in refusing to set aside the Verdict and grant a new trial.

For these Errors and others that will be apparent upon inspection of the Record the Judgment should be reversed and the cause remanded

K. E. Williams
Counsel for Appellants

And the defendant Comes and says there is no Error in the record proceedings more than

Pleas continued and held at the Court House in Bloomington in the Eighth Judicial Circuit of the State of Illinois before the Honorable Circuit Court of the County of McLean in said State in a certain cause therein pending wherein Samuel P Hodgen was Plaintiff and George Mensich and William McDustin were Defendants

Be it remembered that heretofore to wit on the 5th day of May A.D 1864 the following papers were filed in the office of the Circuit Clerk of McLean County by change of venue from the County of Logan

No 2 Summons

State of Illinois }
Logan County }

The People of the State of Illinois
To the Sheriff of said County Greeting

We Command you that you summon George Mensich & William McDustin if they shall be found in your County, personally to be and appear before the Circuit Court of Logan County, on the first day of the next term thereof to be holden at the Court House at Lincoln, in said County, on the first Monday of October next to answer Samuel P Hodgen in a plea of Assumpsit to his damage Four Thousand Dollars and have you then and there this writ, and

2 make return thereon in what manner you execute the same. Witness D C Webster Clerk of our Circuit Court and the Judicial seal thereof, at Lincoln, this 16th day of Sept A D 1861

(Seal) D C Webster Clerk

Which Summons is endorsed as follows to wit: "Executed this writ this 16th day of Sept 1861 at 2 o'clock P M by reading to the within named George Musick & Wm McDustin

A B Nicholson
Sheriff Logan County Ill
By Wm G Stanley Depty

Fees	Service	$1.00
	2 miles travel	10
	Return	10
		$1,20

Filed this 18 day of Sept A D 1861
D C Webster Clerk"

3rd Declaration & amended Declaration

"State of Illinois } ss Of the October Term of the Logan
Logan County } County Circuit Court A D 1861

Samuel P Hodgen }
vs } In Assumpsit
George Musick & } Damages $4000
William McDustin }

George Musick and William McDustin, the defendants in this suit were summoned to answer Samuel P Hodgen, plaintiff in this suit of a plea of Assumpsit, and thereupon said plaintiff by Austin Callen his attorneys

complains: For that whereas heretofore wit, on the 30th day of April A.D 1861 at Chicago to wit County and State aforesaid, said plaintiff authorized the firm of Mudd & Updike of Chicago to sell for said plaintiff a large quantity of corn, and at the special instance and request of said Defendants said Mudd and Updike by authority of said Plaintiff were to deposit the money received for said corn with Hoffman and Gilpeck Bankers of Chicago to the credit of said Defendants in consideration of which it was then and there agreed by and between said plaintiff and said defendants that the said plaintiff should when he saw proper draw on the said defendants who were and are bankers at Lincoln County and State aforesaid for whatever sum or sums of money which might be deposited by Mudd and Updike with Hoffman & Gilpeck to the credit of said defendants, the said plaintiff now avers that afterwards to wit on the 8th day of May A.D 1861 the said Mudd & Updike deposited with the said Hoffman & Gilpeck to the credit of said Defendants the sum of $1000 of which deposite said defendants were immediately notified by said Mudd & Updike That on the 13th day of May A.D 1861, the said plaintiff in like manner deposited the further sum of $1500, and immediately notified said

defendants thereof, and that on the 16th day of May A.D. 1861 the said parties in like manner deposited the further sum of $1000 making in all the sum of $3500 of which last deposit said defendants were immediately notified by said Mudd & Updike. Of all which several premises the said defendant afterwards to wit on the day and year last aforesaid at the County of Logan aforesaid had notice, By means whereof said defendants then and there became liable to pay to the said plaintiff the said sum of $3500 when they the said defendants should be thereunto afterwards requested, and being so liable they the said defendants in consideration thereof afterwards to wit on the day & year last aforesaid and at the place aforesaid undertook and promised to pay the said plaintiff the said sum $3500

And whereas also the said defendants afterwards to wit on the day and year last aforesaid, at the County and State last aforesaid were indebted to the said plaintiff in the further sum of $4000 of like lawful money for so much money by the said plaintiff before that time lent and advanced to said defendants at their special instance and request and being so indebted they the said defendants in consideration thereof afterwards to wit on the day and year last aforesaid at the County and State aforesaid

undertook and then and there faithfully promised the said plaintiff to pay him the last mentioned sum of money when they the said defendants should be thereunto afterwards requested,

And whereas also the said Defendants to wit on the day and year last aforesaid at the County and State aforesaid were indebted to the said plaintiff in the further sum of $4000 for so much money by said plaintiff before that time paid, laid out, and expended to and for the use of said defendants at their special instance and request: and being so indebted they the said defendants in consideration thereof afterwards to wit: on the day and year last aforesaid at the County and State aforesaid undertook and then and there faithfully promised the said plaintiff to pay him the last mentioned sum of money when they the said Defendants should be thereunto afterwards requested,

And whereas also the said defendants afterwards to wit, on the day and year last aforesaid at the County and State aforesaid were indebted to the said plaintiff in the further sum of $4000 for so much money by the said Defendants before that time had and received to and for the use of said plaintiff, And being so indebted they the said defendants in consideration thereof afterwards to wit on the day and year last

aforesaid at the County and State aforesaid undertook and then and there faithfully promised the said plaintiff to pay him the last mentioned sum of money when they the said Defendants should be thereunto afterwards requested. Nevertheless the said Defendants not regarding their said several promises and undertakings but contriving and fraudulently intending craftily and subtly to deceive and defraud the said plaintiff, in this behalf have not as yet paid the said several sums of money or any or either of them or any part thereof to the said plaintiff although often requested so to do: but the said defendants to pay him the same have hitherto wholly neglected and refused and still do neglect and refuse to the damage of said plaintiff of $4000 and therefore he brings his suit &c

Austin & Allen

Attorneys for Pltff

Copy of account sued upon

1st Count

George Musick &
William McAustin To Samuel P Hodgen Dr

May 8th 13th & 16th 1861 To amount deposited with Hoffman & Gilpsch for said Musick & Austin $3500.00

2nd Count

May 1861

George Musick &
William McAustin To Samuel P Hodgen Dr

To amount of money lent & advanced #4000.

3rd Count

May 1861 George Musick &
William McDustin To Samuel P Hodgen Dr
To amount of money laid out and expended #4000

4th Count

May 1861 George Musick &
William McDustin To Samuel P Hodgen Dr
To amount of money had and received #4000 "

Which Declaration was endorsed
"Filed Oct 5th 1861
L G Webster Clerk"

State of Illinois } In the Logan Circuit Court
Logan County }

Samuel P Hodgen
vs
George Musick &
William McDustin } In Assumpsit, Damages #4000

The said plaintiff by way of amendment to his declaration in the above entitled cause leave of Court for that purpose first being had and obtained, complains of the said defendants who were summoned &c in a plea of Assumpsit, for that whereas the said Defendants late bankers and partners doing business under the firm name and style of Dustin & Musick were heretofore to wit on the first day of September A D 1861 at the County of Logan & State of Illinois

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indebted to the plaintiff in the sum of Four thousand dollars for money then and there lent by the plaintiff to the defendants at their instance and request,

And in the sum of Four Thousand Dollars then and there paid by the plaintiff for the use of the defendants at their request,

And in the sum of Four Thousand dollars then and there received by the defendants for the use of the plaintiff, And in the sum of Four Thousand Dollars for money then & there deposited by the plaintiff to the credit of the defendants at their request,

General issue in short to 4th Count by consent joinder in short G. M.

And in the sum of of Four thousand Dollars for money found to be due from the defendants to the plaintiff on account then and there stated between them.

And the defendants afterwards to wit on the day & year last aforesaid at the County and State aforesaid in consideration of the premises respectively then and there promised to pay to the plaintiff the said several sums of money respectively, on request, yet although often requested so to do, they have not paid any of said sums of money in this Count mentioned or any part thereof to the plaintiff but have disregarded their said promises, to the plaintiffs damage four thousand Dollars and thereupon he brings suit &c

Montague & Attys
for Plaintiff

Copy of account sued on in the foregoing amendment to Plff Declaration

Dustin & Musick To Samuel P Hodgen Dr

May 1861 For money lent by plaintiff to Defts at their request $ 4.000
For money paid by plaintiff for use of Defts at their request $ 4.000
For money received by Defts for use of Plaintiff $ 4.000
For money money deposited by plaintiff to credit of the Defts at their request $ 4.000
For money due to plaintiff from Defts on acct stated between them $ 4.000"

Which amended Declaration is endorsed as follows

Filed April 25/62

L C Webster Clerk

4th Pleas

Wm McDustin, George Musick, ats, Samuel P Hodgen } Logan Circuit Court Of the October Term 1861

And now comes the said Defendants by their Attys and defends the wrong and injury when &c and say that they did not undertake and promise in manner and form as the said plaintiff has above thereof in his said Declaration complained against them, and of this they puts themselves upon the Country &c

(1)

Plaintiff doth the like

Lacy, Parks & McGalliard for Defts

Swett & Moore

And for a further plea in this behalf leave of Court for that purpose being first had and obtained

10 the said defendants by their attornies come and defend the wrong and injury whenetc, and as to all the said several supposed promises and undertakings in the second third and fourth counts of his said declaration mentioned, except as to the sum of $7 Dollars and eleven cents, parcel of the said several sums of money in the said second third fourth counts of declaration mentioned, say that they did not undertake and promise in manner and form as the said plaintiff hath above thereof in said counts complained against them and of this they put themselves upon the Country &c and as to the said sum of $7, and eleven cents, parcel of the said several sums of money in the said second third and fourth counts in said Declaration mentioned the said defendants say that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, to recover any more or greater damages than the said sum of $7,11 cents parcel&c &c in this behalf, because they say that after the making of the said several supposed promises and undertakings in the said second third fourth counts in said declaration mentioned, as to the said sum of $7.11 cents parcel &c &c and before the commencement of this suit to wit; on the 16th day of September A.D 1861, at the County of Logan aforesaid he the said defendant was ready and willing and then and there tendered and offered to pay to the said plaintiff the said sum of $7.11 parcel &c &c

to receive which of the said defendants, he the said plaintiff then and there wholly refused: and the said defendants in fact further say that they the said defendants always from the time of the making of the said several promises and undertakings in the said second third and fourth counts in said declaration mentioned, as to the said sum of $7.11 cents parcel &c &c hitherto at the County aforesaid have been ready to pay and still are there ready to pay to the said plaintiff the said sum of $7.11 cents parcel &c &c (and the said defendants aver that they the said defendants have paid the said sum of $7.11 cents into the Logan Circuit Court with the Clerk of said Court) in this action so depending as aforesaid - ready to be paid to the said plaintiff if he will accept the same: and this the said defendants are ready to verify: wherefore they pray judgment, if the said plaintiff ought to have or maintain his aforesaid action against them as to the said second, third fourth counts &c to recover any more or greater damages than the said sum of $7.11 cents parcel &c in this behalf &c

Lacy Parks & McGalliard

for Defendants

(3)

And for a further plea in this behalf by like leave of Court &c as to all the said several supposed promises and undertakings in the said second third & fourth counts in declaration mentioned, except as to the said sum of $7.11 cents parcel of the said several sum

And the Defendants now come and by way of amendment to this 2nd plea insert instead of words in parenthesis commencing at 2nd line the following words to wit "And they now bring the same into Court here"

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12 of money in said second third and fourth counts in declaration mentioned the said defendants say actio non &c because they say that the said plaintiff, before and at the time of this commencement of this suit to wit at the County of Logan aforesaid, was and from thence hitherto has been, and still is indebted to the said defendants, in a large sum of money, to wit in the sum of $4000- for divers goods- wares and merchandizes before that time sold and delivered by the said defendants to the said plaintiff at his instance and request: and for many by the said defendants before that time- lent and advanced to- and paid- laid out and expended for the said plaintiff at his like instance and request: and for other many by the said Plaintiff before that time had and received to and for the use of said defendants: and for other money due and owing from the said plaintiff to the said defendants upon an account before that time had and stated between them, which said sum of money aforesaid so due and owing from the said plaintiff to the said defend- ants- exceeds the damages sustained by the said plaintiff by reason of the non-performance by the said defendants of the said several supposed promises and undertakings in the said second third and fourth counts in said declaration mentioned except as to the said sum of $7.11 cents parcel &c &c and out of which said sum of money so due and

owing from the said plaintiff. to the said defendants they the said defendants are ready and willing and hereby offer to set off and allow to the said plaintiff the full amount of his said damages except as aforesaid, according to the form of the Statute in such case made and provided; and the said defendants (over that they the said defendants have paid the said sum of money to wit the sum of #7.11 cents parcel &c as aforesaid into the Logan Circuit Court to the Clerk of said Court in this action so depending as aforesaid, ready to be paid to the said plaintiff. if he will accept the same:

And this they the said defendants are ready to verify, wherefore they pray judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against them as to the said second third fourth Counts &c. except as to the said sum of #7.11 parcel &c &c

Lacey Parks & McGalliard
for Defts

Copy of Acct set off in this plea

Saml P Hodgen to

Wm McDustin & George Mousick Dr

1861 Sept 15

For Goods. Wares & Mdse sold & delivered	#4000.00
For money lent and adcanced &c	#4000.00
For money paid laid out & expended &c	#4000.00
For money had & received for their use &c	#4000.00

And now came the said Defendants and by way of amendment to the 3rd Plea, instead of the words included in the parentheses commencing at 12th line of this page insert the following words to wit "Now bring the same in Court here"

14 For Balance due on Acct stated #4000.00

Circuit Clerks Office Logan County
Nov 4th/1861

Rec'd of Dustin & Musick by Parks & McGalliard their attorneys - the sum of $7.11 - in lawful money of the United States - said by them to be tendered - in their second & third pleas herein above pleaded. to be held by me for the use of Saml P Hodgen plaintiff in this suit and to be delivered to him or to his attys, in case he or shall accept the same

D L Webster Clerk

And for a further plea in this behalf by like leave of Court &c - the said Defendants as to the first
(4) Count of said plaintiffs declaration say actio non &c because they say that the said plaintiff - before and at the time of the commencement of this suit to wit at the County of Logan aforesaid was and still is indebted unto the said Defendants in a large sum of money to wit in the sum of Four thousand dollars. for goods wares and merchandizes before that time, by the said defendants sold and delivered to the said plaintiff - at his request: and for money before that time lent and advanced to, and paid laid out and expended for the said plaintiff by the said defendants, at his like request: and for money by the said plaintiff before that time had and received to and for the use of the said defendant: and for money found to be due and owing from the said

plaintiff to the said defendants upon an account before that time had and stated between them, which said sum of money as aforesaid, so due and owing from the said plaintiff to the said defendants exceeds the damages 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 the said defendants are ready and willing and hereby offer to set offer to set off and allow to the said plaintiff the full amount of the said damages according to the form of the Statute in such case made and provided. And this the said Defendants are ready to verify: wherefor they pray judgment, if the said plaintiff shall have or maintain his aforesaid action, as to the said first count &c

Lacey, Parks & McGalliard
for Defts

Copy of Acct set off in this Plea

Danl P Rodgers to Wm McDustin & George Musick Dr

1861 Sept 15	For Goods Wares & Merchandize sold & delivered	$4000.00
	For Money lent and advanced &c	$4000.00
	For money paid laid out & expended &c	$4000.00
	For money had & received for use &c	$4000.00
	For Balance on Acct Stated	$4000.00

Which Pleas are endorsed as follows

Filed Nov 4th 1861

A C Webster Clk

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9th

Additional Pleas

Monick & Dustin } Logan Circuit Court
ats } Of the April Term 1861
Saml P Hodgen }

And for a further plea in this behalf by leave of Court &c the said Defendants defend the wrong and injury when &c and as to all of the said several supposed promises and undertakings, in the second third and fourth counts in his said Declaration mentioned except as to sum of Seven Dollars and Eleven cents, parcel of the said several sums of money in the said second third and fourth counts of the Declaration mentioned, say that they did not undertake and promise in manner and form, as the said plaintiff hath above thereof in said Counts complained against them. and of this they put themselves upon the Country &c. And as to the said sum of $7 11/100 parcel of the said several sums of money in the said second, third and fourth counts in his said Declaration mentioned, the said Defendants say that the said Plff ought not to further have or further maintain his aforesaid action thereof against them, to recover any more or greater damages than the said sum of $7 11/100 parcel &c which they aver was all then & still due owing from Defendants to plaintiff in this behalf because they say that after the making of the said several supposed promises and undertakings in the said

second - third and fourth counts in said Declaration
mentioned - as to the said sum of $7 11/100 parcel &c &c
and after the commencement of this suit, to wit on
the 17th day of September, at the County of Logan
aforesaid they the said Defendants were ready
and willing, and then and there tendered and
offered to pay to the said plaintiff the said plaintiff
the said sum of $7 11/100 parcel &c &c to receive which
of the said Defendants he the said plaintiff then
and there wholly refused: and the said Defendants
in fact further say that they the said Defendants
always from the time of the making of the said
several supposed promises and undertakings in
the said second, third and fourth counts in the
said declaration mentioned, as to the said sum of
$7 11/100 cents parcel &c &c hitherto at the County of Logan
aforesaid have been ready to pay and still are
ready to pay to the said plaintiff the said sum
of $7 11/100 parcel &c &c and the said Defendants
(over that they have paid the said sum of $7 11/100
into the Logan Circuit Court with the Clerk of said
Court) in this action so depending as aforesaid, ready
to be paid to the said plaintiff if he will accept
the same: and this the said Defendants are ready
to verify: wherefore they pray judgment &c &c

Lacey, Parks & McGalliard

for Defts

And now come the said Defendants and by
way of amendment to the plea above pleaded

18 instead of the words included in the parenthesis commencing 14th line of this page insert the following words to wit "how bring the same into Court here"

(6) And for a further plea in this behalf, by leave of Court &c the said Defendants come and defend the wrong and injury when &c and as to all of the said several supposed promises and undertakings in the 2-3-4th counts in his said Declaration mentioned except as to the sum of $7 11/100 parcel of the several sums of money in the said 2-3-4 counts of the said Declaration, say that they did not undertake and promise in manner and form, as the plaintiff hath above thereof in said Counts complained against them, and of this they put themselves upon the Country &c, And as to the said sum of $7 11/100 parcel &c &c the said defendants say that the said plaintiff ought not to further have or maintain his action aforesaid action thereof against them, to recover any more or greater damages than the said sum of $7 11/100 parcel &c which they aver was all that was then & still is due owing from Defts to Plff in this behalf because they say that after the making of the said several supposed promises and undertakings in the said second third and fourth counts &c as to the said sum of $7 11/100 parcel &c and after the commencement of this suit, to wit on the 5th day of April A.D. 1862, at the County of Logan, they the said Defendants were

ready and willing - and then and there tendered and offered to pay to the said plaintiff the said sum of $7 00/100 parcel &c as also as the costs made or incurred or sustained by the said plaintiff in the institution and prosecution of his said said suit, up to and at the date of the tender aforesaid, and also all the costs made or accrued, either by plaintiffs or defendants in said suit, and such further costs as were or might be necessary to be sustained by the said plaintiff, in the dismissal of the suit aforesaid, as the same were and had been, or might be taxed by the Clerk of the Court aforesaid, in which said suit was pending to receive which of the said defendants the said plaintiff then and there wholly refused; and the said defendants in fact further say that they the said defendants always from the time of the making of the said several supposed promises and undertakings, in the said 2-3-4th Counts &as to the said sums of $7 11/100 parcel - hitherto at the County of Logan aforesaid have been ready to pay to the said plaintiff the said sum of $7 00/100 (and they further aver that they have paid the said sum of $7 00/100 and the costs as aforesaid into the Logan Circuit Court with the Clerk of said Court) in this action so pending as aforesaid ready to be paid to the said plaintiff if he will accept the same, and this said defendants are ready to verify wherefore &c

Lacey, Parks & McGalliard

And now come the said defendants and by way of amendment to the plea last above pleaded, instead of the words included in the parenthesis commencing at the 7th line from the bottom of this page insert the following words to wit, "And the said Defendants now bring the same into Court here

State of Illinois, Logan County SS

Samuel P Hodgen
vs
Wm McDuston + J
George Mensick
} In Assumpsit Circuit Court October Term A D 1861

Clerks fees D L Webster Plaintiffs Costs

Fil'g prec & decl 10 Docket'g cause 10 Issu'g sev'l Sums 40	60
Ent'g app'ce atty 15 Ent'g rule to plead 20 rec'g Cont'n 20	55
April Term 1862	
Docket'g cause 10 Ent'g app'ce atty 15 Tak'g def'ts aff'dt 10	35
Fil'g a/c 5 Ent'g def'ts notice Exec'n 30	40
Satisf'n 15 Copy 30 & c 35	80
	2,70
Sheriff A B Nicholson on Sums $1.2..	1,20
	$3,90

State of Illinois } SS
Logan County } I D L Webster Clerk of the Circuit Court, within and for said County do hereby certify that the above Bill of costs is truely copied from the Fee Book in my office. Given under my hand and (Seal) seal at Lincoln this 5th day of April A D 1862

D L Webster Clerk

State of Illinois, Logan County, SS:

Saml P Hodgen
vs
Wm McDustin
George Musick

In Assumpsit Circuit Court
October Term A D 1861

Clerks fees A G Webster — Defendants Costs

Entg app & atty 15 Entg of[illegible] pleas 25 — 40
April Term 1862 Copy a/c 30 C & S 35 — 65
Entg app & atty 15 Latg of[illegible] affdvt 10 — 25
Execu & c 30 entg satisf 15 — 45 — 1,75

State of Illinois Logan County SS

Witness A G Webster, Clerk of our said Circuit Court, and the Judicial seal thereof, at Lincoln this 5th day of April A D 1862 and I do hereby certify that the above and foregoing Fee Bill is truly copied, as appears from the Fee Book in my office

Seal

A G Webster Clerk

Received of Dustin & Musick April 14th 1862 the sum of $3,90 plaintiffs costs, in the case of Saml P Hodgen vs Musick & Dustin, as per certified cost Bill attached hereto of date April 5th 1862: also the further sum of $1,75 Defendants costs as per said cost Bill also 40 cents the costs of dismissing said suit; also the further sum of $2,20 alleged to be the costs and charges of Plff in causing notices before that time to be served upon defendants in said cause of the taking of certain depositions said notices not being returned & filed

22 at the time of making said cost Bill being the ammnt of costs tendered and offered to said plaintiff as in his said last additional plea set forth; and which are now brot into Court, and deposited with the Clerk thereof to be paid to the said Plff if he will accept the same

April 14th 1862 D C Webster Clk Cir Court"

Which additional pleas were endorsed as follows to wit

"Filed April 14/62

D C Webster Clerk"

20th Demurrer to pleas

"Hodgen } Logan Co Circuit Court
vs } October Term 1862
Dustan & Musick }

And the said plaintiff comes & says that the said second third fifth sixth & seventh pleas by them above pleaded are insufficient in law for him further to answer the same wherefore he prays judgment &c D H Moore for Plff"

Which Demurrer is endorsed as follows to wit

"Filed Oct 10/62

D C Webster Clk"

22. Pleas

Musick & Dustin } Oct Term /62
ats } Pleas to amendment to
Same P Hodgen } Declaration

And now come the Defendants by

attys and by leave of Court - extend the 2-3-5
& pleas filed to the original Declaration - to all
the counts of the amendment thereto except the 4th
Count of said amendment to which they demur
in short by consent Lacey et al
and now come the said Defendants } attys for Deft
and by way of amendment to the
above pleas insert after the word
"pleas" in the 2nd line above the
words "as amended"

Which pleas are endorsed as follows to wit
"Filed Oct 16/1862
D L Webster Clk"

25 Bill of Discovery

"To the Hon David Davis Judge of the Eighth
Judicial Circuit sitting as Chancellor within for
the County of Logan

Your orator Samuel P Hodgen would respectfully
represent that there is now pending in the common
Law side of this Court a certain suit wherein your
orator is plaintiff & William McDuston & George Meinick
are Defendants that in the trial of said cause it is
material for your orator to prove that the defendants
received letters or some notice verbal or written or by
telegraph from Messrs Hoffman & Gelpke ~~at different~~
~~times~~ Bankers at Chicago telling said Defendants
that Messrs Mendd & Apdyke had deposited with
said Hoffman & Gelpke at different times the sum
of $3500. in all. which said sum was to be passed

24 by Musick & Austin on their books to the credit of your orator, that he knows of no witness or witnesses by whom he can prove the same facts except by the oath of said Austin & Musick. Your Orator therefor asks that the said Austin & Musick may each upon their corporal oaths answer each for himself the following interogatories

1 If at any time you received letters from Messrs Hoffman & Gelpcke stating that money had been deposited to your credit with them by Messrs Mudd & Opdyke. State when you received this notice how many were there

2 Was said notice or notices in writing by mail or verbal or by telegraph

3 If in writing will you give the times you received each notice

4 Will you file the original notices or letters sent you by Hoffman & Gelpcke in regard to deposits made by Mudd & Opdyke with them for you

5 If you have not the original letters notices or telegrams will you file copies of each

6 If you have not the originals nor copies state the substance of each of said notices

7 If at any time after May 8/62 you received from Meſs Hoffman & Gelpcke a statement of your account with them please file the original statement of that account

8 If you have not the original account please file a copy of the same if not a copy state in substance the date & amt of each item to your credit on Hoffman & Gelpckes books with its date on their statement 6 He Moore Sol

S P Hodgens being duly sworn deposes and says that the allegations in the above bill are true in substance & in fact & further he says not

Sworn to & subscribed this 18 day of October 1862 } S P Hodgen
I G Webster Clk "

Which Bill of Discovery is endorsed as follows to wit
Filed Oct 28/62
I G Webster Clk

+

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Hodgen vs Austin & Monick } April Term 1863
Logan County Circuit Court

And the said Plaintiff comes & as to the said 2d 3d 5th & 6th pleas says precludi non because he says that the said defendants did not in manner & form as in the said pleas mentioned

tender to the plaintiff the said sum of Seven Dollars & eleven cents & of this he puts himself upon the Country and as to the rest & residue of each said pleas wherein the defendants put themselves upon the Country the plaintiff doth the same

Swett & Moore p q

And the said plaintiff comes & as to the said fourth plea of the said defendants above pleaded says precludi non because he says that he the said plaintiff was not nor is indebted to the said defendant in manner & form as the said defendant hath above in his said fourth plea in that behalf alleged and this he prays may enquired of by the country &c Swett & Moore p q"

Which Demurrer is endorsed as follows to wit:

"Filed April 15th 1863

L C Webster Clk"

45 Notice & Petition for change of Venue

State of Illinois } In the Logan County Circuit Court
Logan County }

Samuel P Hodgen } Action of Assumpsit now
vs } pending
Austin & Musick

Messrs Austin & Musick Defendants in above cause

You are hereby notified that I will apply to the Hon John M Scott Judge of the 8th Circuit of Illinois at his Chambers in the City of Bloomington between the hours of ten o'clock A M and 4 o'clock P M on Wednesday the 31 day of March A D 1864 for a change of venue in the above cause

Lincoln March 18 A D 1864 Moore & Gremley for Pltff

Affidavit for change of venue

State of Illinois } ss
Logan County }

Samuel P Hodgen being duly sworn says that he believes he cannot obtain a fair and impartial trial of the above cause in the Logan Circuit Court of Logan County Illinois on account of the prejudice of the Inhabitants of said County against him

Sworn & subscribed before me this 18 day of March A D 1864

L C Webster Clk

To the Hon John M Scott Judge of the 8th Judicial Circuit of Illinois

Your Petitioner Samuel P Hodgen would respectfully represent unto your Honor that he is the plaintiff in a certain action now pending in the Circuit Court of Logan County in the ~~State~~ Circuit aforesaid wherein William M Austin and George Musick

45 Notice & Petition for change of Venue

State of Illinois } In the Logan County Circuit Court
Logan County }

Samuel P Hodgen } Action of Assumpsit now
vs } pending
Dustin & Musick }

Messrs Dustin & Musick Defendants in above cause

You are hereby notified that I will apply to the Hon John M Scott Judge of the 8th Circuit of Illinois at his Chambers in the City of Bloomington between the hours of ten o'clock A M and 4 o'clock P M of Wednesday the 31 day of March A D 1864 for a change of venue in the above cause

Lincoln March 18 A D 1864 Moore & Grennan for Pltff

Rec'd a true copy of the within petition & notice this 18 day of March A D 1864 Dustin & Musick Attys for Defts

To the Hon John M Scott Judge of the 8th Judicial Circuit of Illinois

Your Petitioner Samuel P Hodgen would respectfully represent unto your Honor that he is the plaintiff in a certain action now pending in the Circuit Court of Logan County in the ~~State~~ Circuit aforesaid wherein William M Dustin and George Musick are defendants. That the said cause is one of great importance to your petitioner, and that the said Dustin and Musick are men of great influence in said County, and are connected by business and marriage relations with several persons who to a great extent control

26½

the sentiments of the people of said County

And Petitioner would further show that the said Defendants Dustin & Music have by their business and other relations and undue influence over the minds of the inhabitants of said County of Logan so that Petitioner does not expect a fair trial of said action in said County. And Petitioner would further show that it is only since the last term of the Logan County Circuit Court that the extent of the undue influence aforesaid became so great as to satisfy Petitioner that he could not safely proceed to trial in said County and that the facts which establish said undue influence have been developing almost weekly since said last term and consist chiefly of expressions used by many inhabitants of said County in relation to said trial

Petitioner therefor asks that the venue in said cause be changed to some County where said undue influence does not exist

S P Hodgen being duly sworn says that the above Petition is true in substance of fact

S P Hodgen

Sworn & subscribed to before me
this 31st day of March 1864

(Seal) E R Roe Clerk

Which notice and Petition are endorsed as follows

Filed April 1st/64

L C Webster Clerk

For Order of Court on above Petition see page 33

Copy of Record

At a regular Term of of the Circuit Court of the Eighth Judicial Circuit of the State of Illinois begun and held at the Court House in the Town of Lincoln, within and for the County of Logan on the 7th day of October in the year of Our Lord One Thousand Eight Hundred and Sixty one

Among the proceedings of said Court are found the following to wit:

Lincoln Monday October 7th 1861

1218 Samuel P Hodgen vs George Mousick & William McDaniel } Assumpsit

This day comes the Plaintiff by Austin & Allen his attorny and on his motion the defendants are ruled to plead herein by the 3rd Monday. And this cause stands continued

And thereupon afterwards to wit at a regular Term of said Circuit Court begun and held at the Court House in the Town of Lincoln within and for the County of Logan on the 7th day of April in the year of our Lord One Thousand Eight hundred and sixty two

On Tuesday the 8th day of April 1862 being one of the regular days of said Term the following proceedings were had and appear of Record to wit:

1218 Samuel P Hodgen vs George Mousick & William McDaniel } Assumpsit

This day comes the Defendants by Parks & McClelland & Lacey & on their motion leave is granted to them to file additional plea of tender on payment of costs to beginning of Term. And now comes the Plaintiff by Montague and on his motion

28 leave is granted to him to amend his Declaration

Lincoln Monday April 14th 1862

1218 Samuel P Hodgen vs George Mensick & William McDustin } Assumpsit

This day came the Defendants and file their additional pleas herein

Lincoln Saturday April 26th 1862

1218 Samuel P Hodgen vs George Mensick & William McDustin } Assumpsit

This day comes the Defendants by L P Laceys & Parks & McGalliard their attornies and move the Court to suppress in Deposition of John L Mendd the 3rd Interrogatory and answer thereto & the 6th Interrogatory & answer on the re-examination which motion was heard by the Court and sustained and said 3rd & 6th Interrogatory on the re-examination of John L Mendd this respective answers thereto suppressed

Lincoln Thursday May 1st 1862

1218 Samuel P Hodgen
vs
George Musick &
William McDustin
} Assumpsit

This day came again the defendants by their attys & move the Court to suppress ~~the~~ deposition of Charles Schmidt George W Updike Francis A Hoffman on the ground that they are not named in notice, which motion was heard by the Court and overruled. And now the said defendants make motion to suppress all those parts of the plaintiffs deposition objected to before the officer taking them, by agreement of the parties said motion was taken under advisement and the Court to mark suppressed to each answer found objectionable & return to the Clerk by 1st day of August next. And this cause is continued.

And afterwards to wit, at the October Term of said Logan County Circuit Court A.D. 1862 the following proceedings were had and entered of record to wit:

Lincoln, Tuesday October 14th 1862.

1218 Samuel P Hodgen
vs
George Musick
William McDustin
} Assumpsit

This day comes the Plaintiff by Leonard

30 Swett his attorney and files his demurrer to the 2. 3. 5, 6. & 7th plea filed by the defendants in this cause, which demurrer was withdrawn by the Plaintiff for the present and on his motion the defendants ruled to plead to the amended declaration by Thursday next.

Lincoln Tuesday October 28th 1862

1218 Samuel P Hodgen
vs
George Musick &
William McDustin
} Assumpsit

By agreement of parties Plaintiff and defendants are to have the privilege of taking deposition of any resident Witness without affidavit being made upon giving to the other party ten days notice which depositions are to be read in Court, without objections as to the right to take the depositions.

And now comes the Plaintiff by Swett & Moore his attorneys and files his Bill of Discovery in this cause and L P Lacey enters the appearance of the Defendants to said Bill. On motion of said Plaintiff the Defendants are ruled to answer to said Bill by the 1st day of January next,

And afterwards to wit: at the April Term of the Logan County Circuit Court A.D. 1863 the following

proceedings were had and entered of record to wit

Tuesday April 7th 1863

Samuel P Hodgen
vs
George Mousick
William McDustin
} Assumpsit

This day comes the Plaintiff by Swett & Moore his Attys and file their demurrer to the 2.3.5.6.& 7. pleas, which demurrer was heard by the Court and sustained, On motion of the defendants leave is granted to them to amend their pleas, And now come the defendants and file their demurrer to the 4th Count of the amended declaration, which demurrer was overruled by the Court leave given to plead to said 4th Count

Lincoln Tuesday April 14th 1863

1218

Samuel P Hodgen
vs
George Mousick
William McDustin
} Assumpsit

This day this cause coming on for trial, the parties demanding a Jury, there come the following Jury, twelve good and lawful men to wit: Thomas Chappel, Frank Patterson, John Scott, John L Martin, Aaron Hansen, D F Eager, Jacob Baker

32 Stephen Hunkill. William B Bates, John Harman Measan Haugh & William Dannon, who being duly tried, elected and sworn, well and truly to try the issue herein joined, and the Jury after hearing the evidence and arguments of counsel retired to consider of their verdict but being not able to agree, were discharged,

And this cause is continued

And afterwards to wit at the October Term of the Logan County Circuit Court A D 1863. the following proceedings were had and entered of record to wit

Lincoln Wednesday October 7th 1863

1218 Samuel P Hodgen
vs
George Merrick
William McDustin } Assumpsit

Ordered by the Court that this cause is continued at the costs of the Plaintiff the parties agree, that each party may take depositions of either resident or non-resident witnesses without filing affidavit, on giving the usual notice of time and place

And afterwards to wit on the 31st day of March A D 1864 the Court during vacation made the following order

Samuel P Hodgen } In the Circuit Court
vs } of Logan County
William McDustin } in the State of Illinois
George Musick }

Be it remembered, that on this 31st day of March A.D. 1864 Samuel P Hodgen Plaintiff in the above suit personally and by his counsel appeared before the Hon John McScott, Judge of the 8th Judicial Circuit of Illinois at his Chambers in the City of Bloomington, and presented the above petition for a change of venue in said cause and the Court being satisfied from the evidence that written notice of this proceeding has been given to Defendants Dustin & Musick ten days before this date and said defendants appearing by their counsel and resisting said application, and the Judge aforesaid being satisfied from said petition, that the venue of said cause ought to be changed,

It is therefore ordered that the venue in the said cause to wit: Samuel P Hodgen vs William McDustin and George Musick be changed from the County of Logan, aforesaid to the County of McLean in the State and that the Clerk of the Circuit Court of said Logan County transmit all the papers in said cause to the Circuit Court of McLean County aforesaid, to the rendering of which said order the defendants then and there excepted, It is further ordered the Clerk of the

Circuit Court of Logan County aforesaid certify the record in said cause to the Circuit Court of McLean County aforesaid.

Given under my hand and seal this 31st day of March 1864 John McScott (seal)

Judge 8th Judicial Circuit

X

State of Illinois } ss
Logan County }

I S & C Webster Clerk of the Circuit Court within and for the County & State aforesaid do hereby certify that the above and foregoing is a true and complete transcript of the record of the proceedings in the above entitled cause and the papers herewith transmitted from 1 to 46 incl are all the papers pertaining to the same Given under my hand & official seal this 2nd day of May A D 1864

(seal) 5 cts Rev Stamp

I & C Webster Clerk

And afterwards to wit at a Special Term of the McLean Circuit Court begun and held within and for said County on Monday the 6th day of June A D 1864

Present

Hon Charles Emerson Judge of the 17th Judicial Circuit
Edward R Roe Clerk
Norval Dixon Sheriff

The following proceedings were had in said

cause as appears of record to wit:

Wednesday June 15th 1864

6514 Samuel P Hodgen vs George Mousick and William McDustin } In Asumpsit

This day come the said defendants by their attornies and enter their motion to suppress the Depositions of M E Hawkins & Judson A Moore taken by the Plaintiff in this cause

Monday June 20th 1864

6514 Samuel P Hodgen vs George Mousick & William McDustin } In Asumpsit

This day come the said Defendants by their attornies and on their motion leave is given them by the Court to amend their pleas herein

Thursday June 23d 1864

6514 Samuel P Hodgen vs George Mousich and Williams McDustin } In Asumpsit

This day come the parties hereto

by their attornies and the Court having heard the motion heretofor entered by the Defendants to suppress the Depositions of M E Hawkins & Judson C Moore taken on behalf of the Plaintiff in this cause doth order that said motion be overruled. And now this cause coming on for trial thereupon comes a Jury twelve good and lawful men to wit R E Stimpson, Benjamin Gray, W S Lewis, Joseph Young Henry Newlan, Joseph McIntosh, William Lawrence Seamman Rodman, Oliver Pease, Michael Cullen Aaron Harlan and George Pringy who being elected tried & sworn well and truly to try the issues joined herein, after hearing the evidence in the case and the arguments of counsel upon their oaths do say that they find the issues for the plaintiff and assess his damages at the sum of Thirty five hundred Dollars. Whereupon the Defendants by their attornies enter their motion to set aside the verdict of the Jury and to grant a new trial in this cause

Monday June 27th 1864

6514 Samuel P Hodgen vs George Musick and William M Austin } In Assumpsit

This day again came the parties hereto by their attornies, and the motion for a new

by their attornies and the Court having heard the motion heretofor entered by the Defendants to suppress the Depositions of M E Hawkins & Judson & Moore taken on behalf of the Plaintiff in this cause doth order that said motion be overruled. And now this cause coming on for trial thereupon comes a Jury twelve good and lawful men to wit R E Stimpson, Benjamin Gray, W S Lewis, Joseph Young Henry Newlan, Joseph McIntosh, William Lamme Seamman Rodman, Oliver Pease, Michael Cullen Aaron Harlan and George Pringy who being elected tried & sworn well and truly to try the issues joined herein, after hearing the evidence in the case and the arguments of counsel upon their oaths do say that they find the issues for the plaintiff and assess his damages at the sum of Thirty five hundred Dollars. Whereupon the Defendants by their attornies enter their motion to set aside the verdict of the Jury and to grant a new trial in this cause

Monday June 27th 1864

6514 Samuel P Hodgen vs George Musick and William M Dustin } In Assumpsit

This day again come the parties hereto by their attornies, and the motion for a new

trial heretofore entered by the defendants herein coming on for hearing is argued by counsel, and the Court being fully advised in the premises doth consider that said motion be overruled, It is therefore considered by the Court that the said plaintiff recover of the said George Musick & William McDaniel the sum of Thirty five hundred Dollars his damages as assessed by a Jury and also his costs by him in this behalf expended and that he have execution therefor Whereupon the Defendants by their attornies pray an appeal to the Supreme Court of this State which is granted them by the Court upon their entering into Bond in the penal sum of Seven Thousand Dollars conditioned as the law directs and by consent of parties the appeal Bond to be approved by the Clerk of this Court

And also to wit on the 27th day of June A.D. 1864 the following Bill of Exceptions was filed in said cause as follows to wit

State of Illinois
McLean Circuit Court

Special June Term 1864

Samuel P. Hodgen
vs
William McDaniel
George Musick

In Assumpsit

Be it remembered that on the

trial of this cause (a Jury having been empannelled and sworn) the plaintiff read in evidence the deposition of Thomas H Denny as follows:

Question 1st What is your name age residence & occupation

Answer 1st My name is Thomas H Denny, Am 47 years of age my residence is in Logan County and my occupation is that of a farmer

Question 2 If you are acquainted with Samuel P Hodgen and Austin & Musick state how long you have known each of them

Answer 2 I have known Hodgen five or six years and Austin & Musick Eight or Nine Years

Question 3 What has been Hodgens occupation and what Austin & Musicks since May 1861 and where have they resided and done business since that time

Answer 3 Hodgens occupation has been that of a dry goods grocery & grain merchant and Austin & Musick have been engaged in Banking, all have resided and done business in the Town of Lincoln during that time

Question 4th If at any time you had a conversation with Austin, about what he had agreed Hodgen

might do with his corn money, please state what it was and all that Dustin said in that one conversation about agreeing to let Hodgen deposit his corn money, state fully

Answer 4th I had a conversation with Dustin, it took place during the month of August or latter part of July 1861, Dustin said there was an agreement with Hodgen to deposit corn money, said arrangement was made on the first day of May 1861 in the City of Chicago, he said there was nothing said about the time when the deposit was to be made, but that Mr Hodgen told him the corn was then sold and he Dustin expected the deposit would be made in two or three days, but no part of it was made until the 8th day of May 1861, That if it had been deposited at the time he expected, they could have used it without loss, but being so long defered, could not so use it, and did not think himself bound on the 8th day of May for an arrangement that he supposed would be complied with by the third or fourth day of May And that when the deposit was made it was not with what purported to be deposited, owing to the depreciation that had taken place in the currency then being used, and so deposited,

Dustin said in that conversation that the deposit was to be made in the City of Chicago to the credit of Dustin & Musick

Question 5th If you say that Dustin said that he had agreed Hodgen might deposit his own money &c did you state what amount he said Hodgen might deposit, And the time when each sum was deposited, and state all he said in that conversation but nothing said in any other conversation

Answer 5 To the best of my recollection he said that the total amount deposited was thirty five hundred ($3500-00) Dollars, One Thousand Deposited on the Eighth day of May 1861, Another Thousand deposited about the 13th or 14th day of said month and Fifteen hundred Dollars deposited about the 16th or 17th day of said Month, I am not positive about these dates or amounts. Dustin said in that conversation, that there was more money deposited than was agreed upon or he expected, I am not certain which Thomas H Denny

Also the whole of the deposition of John L Mudd except the following questions and answers to wit: the seventh (7) question and answer, the ninth (9) question and answer: the 11th question & answer: the twelfth (12) question and answer: the words "protested and" in the last line of the 16th answer: the 3rd question and answer on Re-examination: 4th Question & answer on Re-examination 6th question and answer on Re-examination

The parts of Mudds deposition read by plaintiff were as follows

1st Ques State your name age residence and present occupation

Ans My name is John L Mudd. my age is Forty two years. I reside in Chicago or did until Sepr last, and yet consider that my home but since that have been in the Federal army.

2nd Ques Where did you reside during the year A D 1861 up to the first of Sepr and in what business were you engaged during that time,

Ans I resided in Chicago Illinois, was engaged in the Commission business

3rd Ques With whom were you doing business if any one, and what was the style of your firm

Ans From and after about the first day of May A D 1861 I was doing business with one George W Updike under the firm name of Mudd & Updike

4th Ques Are you acquainted with the plaintiff and defendants in this suit and if so how long have you known them

Ans I have been acquainted with the plaintiff for more than twenty years, have been somewhat acquainted with defendants about Seven years

5th Ques Did or ~~did~~ not you or the said firm of Mudd & Updike at any time by the direction of the plaintiff deposit any money or moneys with Bankers in Chicago. if so please state to whose credit such deposits were made, the sum or sums of money so deposited, when such deposits were made, and

the name of the Bank where the same was made

Ans — On the 8th day of May, 1861. I deposited at Hoffmann & Selpcke Bankers in Chicago One Thousand Dollars. On the 13th day of May deposited with the same parties Fifteen Hundred Dollars & on the 16th day of May One Thousand Dollars with the same Bankers all to the credit of Dustin & Musick the defendants to this suit and by order and for account of the plaintiff. I think I deposited all as a member of the company of Mondd & Updike. I had some little individual business with Mr Hodgen but I think it had nothing to do with these transactions.

6th Ques — Who if any one, did you notify of such deposits having been made, and when was such notice given if any.

Ans — I notified the plaintiff the plaintiff of each deposite on the day it was made

8th Ques — State whether or not you are acquainted with the handwriting of the defendants. if yea how you became acquainted with the same,

Ans — I think I am not acquainted with the hand-writing of either one of them individually I have frequently seen the handwriting in which the correspondence of the firm were done, but did not know which of them wrote it. I or we have received letters from them on business from which I reckon myself acquainted with the business hand of the firm

13th Ques — Do you answer to the last question you

state that Mondd & Updike had deposited money with Hoffman & Gelpcke for the plaintiff to the credit of the defendants, now please state how much, if any, you deposited with Hoffman & Gelpcke, to the credit of Defendants for or account of the plaintiff before Mondd & Updike received said telegraphic despatch, and had you or not any authority for making such deposites if any were made.

Ans On the 8th day of May 1861 we deposited at Hoffman & Gelpckes One thousand Dollars, by order of the plaintiff to the credit of defendants On the 15th day of May 1861, we deposited with Hoffman & Gelpcke fifteen hundred Dollars to credit of the defendants. I think we had at the time no orders from the plaintiff to deposite One thousand Dollars at that time, but having money to his credit, we deposited Five Hundred Dollars more than his order called for. On the 16th of May 1861 we deposited with Hoffman & Gelpcke One thousand Dollars by order of the plaintiff to the credit of defendants, all the above deposits were made before the receipt of the despatch from the defendants mentioned in former answers, the deposit on the 16th of May was made soon after the Bank opened in the morning, and the despatch from the defendants was received late in the evening of the same day or next morning, I think on the morning of the 17th

14th Ques At the time Mudd & Updike received said telegraphic dispatch or at any subsequent time, did they or did they not receive any authority or writing from the defendants that would authorize them Mudd & Updike to draw from said Bankers Hoffman & Gelpcke, any of the money which they had deposited with Hoffman & Gelpcke as you before stated, if yea state what authority it was.

Ans We never received any authority from them authorizing us to draw anything

15th Ques Examine the draft now shown you and make a copy thereof a part of your answer to this question and state if you know in whose hand writing the names of Dustin & Mousick signed thereto, are.

Ans I have examined the draft shown me which reads in the words & figures following to wit

$500.00 Wm McDustin George Mousick

Banking & Exchange Office

of

Dustin & Mousick

Lincoln Ills June 10 1861

Pay to the order of

Paid for Hoffman & Gelpcke Chicago Ills June 12 1861

Five Hundred Dollars

To Hoffman & Gelpcke

Chicago Ills

No 1846 Dustin & Mousick

I believe it to be in the handwriting of Dustin & Mousick which they correspond with

16th Ques State whether or not you have seen before said draft a copy of which you have given in your answer to the above question. if yea state when you first saw it, under what circumstances and what was done with the same

Ans On the 11th of June 1861. Mudd & Updike received said draft enclosed in a letter from the plaintiffs. with directions for us to collect it he having endorsed it and made it payable to us, and on the same day I endorsed on it our firm name of Mudd & Updike and demanded payment thereof at the Banking House of Hoffman & Selpcke in Chicago Ills, they refused to pay it, and being without instructions from the plaintiff what to do in case it was not paid, I handed it to a Notary Public to be protested it was subsequently handed to me

Cross Examined

1st 2ues Have you any interest in the result of this suit

Ans I have not

2d 2ues At the times you made these deposits or payments at the Bank did you or your firm owe Hodgen the amounts deposited

Ans I think we did

3rd 2ues In what kind of funds did you make the deposits or payments

Ans My recollection is that two of the deposits were in checks or orders on other Banks, I am doubtful about the last deposit, so much so that I think it

probable that it was made partly in Bank Bills or currency & partly in checks on other Banks. May recollection is indistinct in this matter.

4th Ques What kind of money did these checks call for and what kind of bank bills were these.

Ans I think the checks were given for so much money. the bank bills were in Illinois Banks there may have been some in Wisconsin Banks.

5th Ques If you had taken these checks to the banks would you have gotten anything but Illinois paper for them

Ans I would not have expected to have got anything better than Illinois paper for them

6th Ques When and how did Mr Hodgen direct you to make the last deposit

Ans By a telegraphic dispatch dated the 15th day of May 1861

7th Ques When did you receive the dispatch

A I received the dispatch on the evening of the 15th of May 1861 too late to deposite the money that day

8th Ques Have you that dispatch with you

Ans Yes.

9th Ques Will you mark it Exhibit "B" and let it be sealed with the deposition

Ans Yes Sir

10th Ques By what mode of communication did Mr Hodgen direct you to make the other two deposits

Ans I think it was by verbal communication

11th Ques How many verbal orders did you have from

Hodgen to deposit money there.

Ans — I remember but one now

12th Ques — Are you related to any of the parties to this suit.

Ans — I am not related to any of them. I have a Brother that maried Mr Hodgens Sister

13 Ques — When was that verbal order or direction given by Mr Hodgen to deposite the money and for what amount.

Ans — I cannot give the date. it was prior to the 8th ~~of~~ May 1861. the direction I believe was to deposite two thousand dollars when collected for him

Re-examined by Plaintiff

1st Ques — State whether or not. the checks. bank bills & currency which you deposited at Hoffman & Gelpcke as stated by you in your cross examination. were not at the time of such deposits. the basis and representatives of current funds and did they not pass currently as money.

Ans — They were the standard of values. taken by the banks, as par funds. received and paid out by the banks in notes. collections and checks generally.

2nd Ques — The telegraphic dispatched mentioned in your cross examination and marked Exhibit "B" directs Mudd & Updike to deposite One thousand dollars at Hoffman & Gelpcke's for Brainard and Austin now state why you deposited the thousand Dollars mentioned in said despatch to the credit of defendants please explain fully

Ans 48 I knew that Dustin & Musick succeeded Brainard & Dustin in the Banking business in Lincoln Illinois and believed that Hodgen intended it to be paid, as the former payments had been made, to the credit of defendants, there being no such firm as Brainard & Dustin then in existance as a banking house in Lincoln,

2nes Where were you and the plaintiff at the time he gave you verbal direction to deposite two thousand dollars to the credit of defendants, as stated in your cross examination

Ans We were in Chicago

3rd 2nes Were or not the defendants or either of them in Chicago at that time, if yes, state which one,

Ans I saw neither of them there at that time that I remember, John L Mudd

Defts objected to the reading of so much of the answer to the 13th question as related to the receipt of the telegraphic dispatch: the objection was overruled by the Court; and the whole answer read, to which ruling the defendants then and there excepted,

The plaintiff then read in evidence a draft drawn by Defendants on Hoffman & Gelpcke for $500.00 as follows to wit

#500.00 Wm M Dustin George Monsick

Bill for Banking & Exchange Office
Dustin & Monsick
Lincoln Ills June 10 1861

Pay to the order of

P Hodgin Esq

Five Hundred & 1 N A L Dollars

To Hoffman & Gelpcke Dustin & Monsick
No 1846 Chicago Ills

The plaintiff then read in evidence the answer of Defendants to the Bill of Discovery filed in the cause with letters and exhibits as follows to wit

" Hoffman & Gelpcke Chicago May 8th 1861
Bankers

Messrs Dustin & Monsick
Lincoln Ill

Gentlemen

We credit your account #1000 deposited by Mudd & Updike for a/c S P Hodgen

yours truly
Hoffman & Gelpcke

Exhibit No One (1)

Hoffman & Gelpcke Chicago May 13th 1861
Bankers

Messrs Dustin & Monsick
Lincoln Ill

Gents

We credit your account $1500 deposited by Mudd & Updike

yours truly

Hoffman & Gelpcke "

Exhibit No Two (2)

"Hoffman & Gelpcke Chicago May 16th 1861

Bankers

Messrs Dustin & Musick

Lincoln Ill

Dear Sir

Your favor of the 15th inst has been received with enclosure as stated for which we credit your account $400 also deposit of Mudd & Updike $1000 and 2 drafts Chs Randolph $400

yours truly

Hoffman & Gelpcke"

Exhibit No Three (3).

Dr		Messrs Dustin & Musick Lincoln		
61 May	1	To 2 dft 1709	77.19	
	2	" by 1000 50 : dft 1715, 20, 24 / 220, 100, 522 45	1842.95	
	3	" dft 727, 29, 30 / 282 98 68" 281 25	582.34	
	4	" 1723	200.00	
	7	" 1675. 1733. 38 / 75 25 4 / 85 34 25	152.35	
	8	" 2 checks 2700. 7 65	2707.65	
	"	" dft 1634, 1717, 22. 42, 49, 50. 52, 56 / 67. 226. 250. 14 : 06, 320 15 / 15 26 230	1267.22	6829.70
	9	" 1736 $7.20 2 checks 15 / 96	120.25	
	11	" by 2001 dft 1745, 61 / 35 35 / 102	2138.35	
	13	" dft 1730. 72 / 24 25 27 56	52.31	
	14	" 1713. 68. 71. 77 / 15 50 25 40 240, 88 55	369.25	
	15	" London £4	22	
	16	" dft 1640, 1763. 67. 84. 81 / 40, 24 55 100, 43, 26 15	233.70	
	17	" " 52 75 dft 1583. 1643. 1747. 96 / 49 25 16 25 78 50 23 25	221	3156 86
	31	" 1592	86	
		Balance	4936.75	
			16008.31	

Exhibit No Four (4)

Dr Messrs Dustin & Monsick Lincoln

61 May 1	To Dft 1709		77.19	
2	" by 1000 50 : dft 1715, 20, 24 / 220, 100, 522 45		1842.95	
3	" dft 727, 29, 30 / 232 98 68" 281 25		582.34	
4	" 1723		200.00	
7	" 1675, 1733, 38 / 75 25 4 / 85 34 25		152.35	
8	" 2 checks 2700. 7 65		2707.65	
"	" dft 1634, 1717, 22, 42, 49, 50, 52, 56 / 67, 226, 250, 143 00, 320 15 15 26 230	1267.22		6829.70
9	" 1736 # 9.20 2 checks 15 / 96		120.25	
11	" by 2001 dft 1745, 61 / 35 35 / 02		2138.35	
13	" dft 1730, 72 / 24 25 27 56		52.81	
14	" 1713, 68, 71, 77 / 15 50 25 40 240, 88 55		369.25	
15	" London £ 4		22	
16	" dft 1640, 1763, 67, 84, 81 / 40, 24 55 100, 48, 26 15		2881.78	
17	" " 52 75 dft 1583, 1642, 1747, 96 / 49 25 16 25 78 50 23 25	221		3156.86
31	" 1592		85	
	Balance		4936.75	
			15008.31	

Exhibit No Form (4)

in a/c with Hoffmann & Gelpcke Cr

1861 May 1	By Balance			9183.29
2	" Rum	50		
8	" Dep'd by Mudd & Updike	1000		
11	" Rum 165 23 22 . 50. 200. 100. 150	688.22		1738.22
13	" Dep't by Mudd & Updike	1500.		
14	" Rum 225. 43 26	268.26		
16	" " 250. 150 Dep't by Mudd & M	1000	1400.	
17	" Dep by Mr Dustin	891		4059.26
31	" Interest up to May 1	———		27.54
June 1	By Balance in Ill St Bks			15008.31
				4936.75

Please examine & report

Chicago June 1 1861

Hoffmann & Gelpcke

Dustin & Musick }
vs
Saml P Hodgen } The joint and separate answer of Wm M Dustin and George Musick to the Bill of Discovery filed against them by Saml P Hodgen in the suit now pending between said parties, in the common law side of the Logan Circuit Court, The said Respondents saving and reserving to themselves all manner of exception to the manifold errors and misstatements of facts contained in the body of said Bill and to the irrelevant and impertinent interrogatories proposed to the said Respondents, for answer to each and all of said interrogatories say

That they did receive certain letters or notices in writing from Messrs Hoffman & Gelpcke in relation to certain deposits alleged to have been made with them (the said Hoffmann & Gelpcke) by Mudd & Updike to the credit of these respondents. That the originals of these letters or notices are filed herewith in response to said Bill, 3 in number and marked respectively 1-2-and 3-; That they cannot remember the precise time when each of these letters or notices were received, but believe that each of them was received in the evening of the first or second day after its own date; that they were received by mail from Chicago. That since the 8th day of May 1862, they have not received from Messrs Hoffman & Gelpcke any statement of Respondents account with them or any communication relating to said deposits in

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any manner whatever. That previous to that time and somewhere soon after the 1st day of June 1861 they received from Hoffmann & Selpcke an account current which they attach hereto as part of their answer marked No 4. They say that they have received nor other or further communication, verbal, written or telegraphic in relation to said deposits, or in any wise relating to the matters in controversy in this suit, And now having fully answered, the said Respondents pray to be hence dismissed with their proper costs in this behalf expended

Wm McDustin
Geo Monsick

Sworn and subscribed to before me this 4th day of April A.D. 1863

L L Webster Clk

Plaintiff then called Hopkins Goddington who testified that the plaintiff on the day of its date gave witness to take to the Bank of Defendants for collection the following check

"No Lincoln Ill Sept 16 1861

Dustin & Monsick

Pay to J H Goddington or bearer
Fifteen hundred seven & 100 Dollars
in Current Bank Notes

" S P Hodgon "

that witness met Dustin outside of the Bank and presented the check to Dustin: Dustin said "I guess we will pay that" - Dustin turned around and went into the Bank, and spoke to Mr Musick and then said to witness "I think we wont pay it" "This was about 10 o'clock of the morning of the day the check bears date as near as I can recollect" -

Witness then said that he took the check and gave it to plaintiff. The plaintiff on the trial of the cause tendered the defendants the draft of $500 mentioned above saying that the plaintiff did not wish to sue the defendants for money and hold a draft for it at the same time, the endorsements on the back having previously been stricken out which the defendants refused to accept,

The Plaintiff here closed

Defendants then called and had sworn Thomas H Denny who testified - that he was the same person whose deposition had been read in evidence, that he had a conversation with Hodgen about the same time that he had the conversation with Dustin related in his deposition. that Hodgen told witness that he (Hodgen) had arranged with Dustin in Chicago about the first of May to deposit some money in Chicago to the credit of defendants. Hodgen said that he told Dustin that he wanted to deposit enough to pay some debts that he (Hodgen) was owing and that he wanted to pay them through the Bank, Hodgen in that

conversation told witness that he made this arangement with Dustin because owing to the uncertainty in reference to the value of the money he wished to avoid having the money pass through his hands: Witness further said that Hodgen in that conversation said that he told Dustin at that time that he wanted to deposit enough to pay the debts he was owing to Edwards and Latham, which was about $1000 each- Hodgen in that conversation admitted to witness that there was more money deposited than he (Hodgen) expected, or than Dustin expected or agreed he was not certain which word was used and that the money was not deposited as soon as he (Hodgen) or Dustin expected. Hodgen in that conversation told witness that defts were liable for $2000 of the first deposits, and did not know but thought he could hold them liable for the balance but did not think he should hold them liable and further said that defendants denied that they were liable for any of the money. Witness said that Hodgen in that conversation said something about agreeing with Dustin that the money should be brought down to Lincoln by Express at Hodgens expense but could not recollect what was said by Hodgen about that.

Defendants then read the deposition of John Mc Edwards as follows

Interrog 1st What is your name & where do you reside

Answer My name is John McEdwards & live in Logan County

Interrog 2d Where did you reside in the Spring of 1861

Answer In Logan Co Ills

Interrog 3d Are you acquainted with the parties to this suit S P Hodgen & Austin & Musick

Answer I Am

Interrog 4th How long have you known them

Answer For several years

Interrog 5th State whether or not you have had at any time any conversation with the plaintiff or with the defendants or either of them in the presence of Plaintiff in reference to any of the matters in controversy in this suit if so state when, where that conversation took place, with whom & what was said?

Answer In the fall or winter of 1860. I bought a note on Mr Hodgen the Plaintiff in this suit, the note became due April 6 1861. I was in the town of Lincoln after the note became due & Mr Hodgen told me that he had the money ready for me & wanted to settle with me on the note I held against him. On that day which was the 11th day of May 1861, I went to Mr Hodgen's store to settle with him as he requested me to do we went into a settlement. Mr Hodgen had bought up some claims against the Estate of my brother, Hiram Edwards, of which Estate I was one of the Administrators, these claims I allowed as a credit on the note I held against Mr Hodgen, the amount was about $230, odd dollars to the best of my recollection. The note was $1400.00 with the interest on it for about 5 months. The agreement between Mr

Hodgen one was, that I was to have a certificate of deposit from Dustin & Mousick for the balance of the note after deducting the claims, After we made the settlement & ascertained the amt after deducting the amount of claims, Mr Hodgen wanted Mr Ludy his clerk to go with me to Messrs Dustin & Mousicks bank, to get a certificate of deposit for the balance of the money due me on the note, Mr Ludy told Mr Hodgen that it was of no use for him to go, for they wouldn't give him a certificate, or that he couldn't get one, that was about the substance, that they (Dustin & Mousick) had refused to take money on deposit the day before, whether from him or not I cannot recollect, I then asked Mr Hodgen to go with me himself to the Bank of Dustin & Mousick to see if he could get a certificate of deposit for me, Mr Hodgen went with me to Dustin & Mousick's bank & asked Mr Mousick for a certificate of deposit for me for the amount due me on the note amounting to over twelve hundred Dollars, Mr Hodgen asked Mr Mousick if he would give me a certificate of deposit for $1000.00 that he had deposited to their credit at Chicago with Kauffmann & Siepcke Bankers as I recollect it, Mr Mousick told him that he could not & told him, that he might not to ask him to do such a thing as to take this $1000, in Chicago & give me a certificate for it here, in such precarious times, Mr Hodgen then said that under the circumstances he did not know that he could

blame Mr Mensick for not taking the money in Chicago & giving me a certificate, Mensick said that they (Mensick & Dustin) had more of the same currency on hand than they could use without loss and also said, they were bound to lose money on the currency anyhow on what they already had on hand. Mr Mensick also said, that Dustin had sent a telegraph despatch to him from Chicago, not to take any more currency on deposit. Mr Mensick asked Mr Hodgen in the same conversation who had been his Banker heretofore until this crisis came on until people got afraid of the money. Mr Hodgen said, that he kept his money himself & was his own banker. Mr Mensick said, that he had refused to take money from his old customers that he (Hodgen had only) deposited recently with them, since money was getting worthless, Mr Hodgen had a certificate on Dustin & Mensick for some money that he had deposited there before. he then got Mr Mensick to take up the old certificate & give me one for the balance over $1000 that was coming to me on the note I held against Hodgen & he Mr Mensick gave Mr Hodgen a certificate for the remainder that was coming to him on the old certificate. Mr Hodgen then wanted to give me an order on Dustin & Mensick to draw this $1000.00 for the remainder due me on his (Hodgen's) notes He said better for me to wait awhile before drawing the money, as he Hodgen thought the

money would get better that the Bankers would throw only the worst money first. We then left the bank went down to Mr Hodgens Store, where he wrote out this instrument of writing marked A & attached hereto as a part of my deposition (dated May 11/61) & gave it to me,

"I hereby authorize Dustin & Musick to use the Thousand Dollars deposited to their credit by Mr John L Mudd as directed by John McEdwards administrator of Hiram Edwards Estate

Lincoln May 11/61 S P Hodgen "

(A)

When I first took this instrument read it I objected to taking it on the ground that I did not think it was written out right. Mr Hodgen told me that it was written right so as to draw the money. I said it was drawn so that it would not hold Dustin & Musick or himself responsible for the money. Hodgen said that it had to be drawn in that way so to authorize Dustin & Musick to draw the money for me that Mudd & Updike were his agents to sell his corn & that they had deposited the money with Hoffmann & Gelpcke in Chicago to the credit of Dustin & Musick by his direction, under these circumstances this representations I took this order & gave the note to Mr Hodgen & I then left the store

Cross Examination

Interrog 1 What time was the note due that you spoke of

Answer On the 6th of April 1861 according to the best of my

recollection

Interrog 2 Was there any arrangement made by you & Mr Hodgen, by which the payment of said note was deferred until a few days after due. If so what was that arrangement & to what time was the payment postponed,

Answer Mr Hodgen made arangements with me to wait one month longer

Interrog 3 Did you go to Hodgens Store on the 11th day of May 1861 for the purpose of collecting the note,

Answer I did not, I saw Mr Hodgen at the corner where Mr Smith keeps store now & he told me that he had the money ready for me & that he wanted to pay me. Mr Hodgen had frequently told me befor that time that he would pay me as soon as he would make sale of his corn & had requested me to wait a month, until the corn would get to a certain price which I do not now remember & I told Mr Hodgen that I had no objection to waiting until the meeting of the Probate Court when I expected to obtain an order to pay out the money which we supposed to be about the 11th day of May but which was really a week later

Interrog 4th In your answer to Interrog 5 in the examination in chief what was the arrangement with Hodgen & Austin about which you commenced to tell & was stopped by Defts Attorney

Answer What the arrangement was I cannot tell you

Inter 5 In the conversation with Mr Hodgen that you spoke

of in your answer to the 5th Interrogatory, what was said about an arangement with Hodgen & Austin?

Answer — In the conversation I had with Mr Hodgen before we went up to the Bank, he told me, he had made an arangement with Wm Austin, while in Chicago to place $1000.00 to the credit of Austin & Mensick for me & that he (Hodgen) was to pay the expressage on it down to Lincoln & said, he intended the money for me

Interog 6 — When you went to the Bank had the conversation with Mensick & Hodgen in regard to the certificate of deposit spoken of in your answer did Mensick offer to pay you the amount?

Answer — I dont think he did, if he did I dont recollect it.

Interogatory 7 — Did Mensick at any other time offer to pay you the money for which you & Hodgen went to the Bank to get a certificate of deposit.

Answer — Mensick offered to take the order & send for the money for me or he would pay it to ~~me~~ them at the Bank in such currency as they (Austin & Mensick) were using right along.

Re Examined

Interog. 1st — At the conversation with Hodgen spoken of in your answer to the 5 cross-interrogatory when Hodgen was speaking about that arangement with Austin, were either Austin or Mensick present

Answer — They were not

Interog. 2d — How long was it after Hodgen gave you the

order you mentioned in your answer to the 7th Cross Interrog. before you presented it to Musick?

Answer — It was some 2 or 3 days

Interrog 3d — Was this order mentioned in your answer to the 7th Cross Interrogatory which you presented to Musick the same paper you have spoken of in your examination in chief which you have attached to this deposition marked Exhibit A

Answer — It was

Interrog 4th — Did not Musick when he offered to pay it at the Bank in such currency as they were using right along as you say in your answer to the 7th Cross Interrogatory say also that he would pay it to you that day, if you would take it away that day, but said he would not give you a certificate for it?

Answer — He told me that he would pay it then, if I would take it then, but that he would not give me a certificate for it.

Interrog 5 — Did you take it?

Answer — I did not

John McEdwards "

Also the deposition of Robert B Latham as follows

1st Int — Are you acquainted with the parties to this suit

Answer — I am

2d Int — You know of any business transaction between them in the year 1861

Answer

About the middle of May 1861 Mr Hodgen was owing me something over $1000. for corn & told me he would leave $1000.00 at Messrs Dustin & Mousick if it suited me. I told him it would, the next morning supposing that the money was left at Dustin & Mousick I took Mr Lacey there to pay him the amount of a claim on me which he held for collection. & found on inquiry that the money was not left there, I then took Mr Lacey to Mr Hodgens Store & remarked to Mr Hodgen, that he did not leave the money at Dustin and Mousick for me, he said no, but that he had deposited it at Chicago at Hoffman & Gelpcke to the credit of Dustin & Mousick for me, I then told him that I did not want the money at Chicago. Mr Hodgen then gave Mr Lacey a check on some persons in Chicago for $338.00 & $10.00 in money. Mr Lacey left & Mr Hodgen then remarked that he could not draw that many, that he would have to make some arangements with Dustin & Mousick to get it as the money was placed to the credit of Dustin & Mousick. Myself & Mr Hodgen went to the bank & Mr Hodgen got Dustin & Mousick to give their checks for $338.00 on Hoffman & Gelpcke. I endorsed the check & Mr Hodgen took it, to take it to Mr Lacey to take up his own check, the next I saw of the check it came back from Chicago protested, I remarked to Mr Hodgen & Mr Dustin & Mousick at the time we were in the Bank that if it would accomodate them I would take the balance of the $1000

at Ridgely's Bank in Springfield if they could send it there & Ridgely would take it and would pay some debts that I was owing. they told me they would send it to Springfield, but they never sent it, Most of the Ills currency at that time went down, 3 or 4 days afterwards I saw Mr Hodgen & in conversation remarked to him, Dustin & Musick would not be responsible for the money. he said that they were not responsible and ought not to be, I endorsed the check given by Mr Hodgen to Lacey & the one afterwards given by Dustin & Musick for Lacey

Cross Examined by Pltffs Atty

1st Int Did not Dustin & Musick at the time you were at their bank with Hodgen agree that they would place to your credit at Ridgelys in Springfield $1000, deducting the $348.00 that had been already paid?

Answer They agreed to send $652 to Springfield if Ridgely would take it & it would pay my debts,

2nd Int At the time of the 2d conversation with Hodgen when he said Dustin & Musick ought not lose this money, didnt he also say that he (Hodgen) ought not to lose it & that you ought to lose & that Dustin & Musick ought not to lose, but that the Bankers at Chicago ought to lose it?

Answer I dont recollect of any such statements

3rd Int Did Hodgen in that conversation say, that as between Dustin & Musick & Hodgen alone, that Dustin & Musick ought not to lose the money and that he (Hodgen) would?

Answer He said that Dustin & Musick ought not to lose it but didnt say, he should,

4th Int Did he say, that he didnt intend to hold Dustin & Musick responsible in case the Bank in Chicago failed?

Answer I dont think it was anything said about the of Chicago was failing

5th Int What was the standing of the Bank of Hoffman & Gelpcke in Chicago at that time?

Answer I dont know anything personally, they were in good repute as a Chicago Bank at that time so far as I know.

6th Int Did Mr Hodgen in that conversation release Messrs Dustin & Musick from any liability then existing to him on a/c of this money if any such liability existed?

Answer I dont recollect anything in that conversation but that I have not already stated

Re Examined by Defendants

1st Int Was it Dustin & Musick or Hodgen who was to send this money from Chicago to Springfield for you if Ridgely would take it & it would pay your debts?

Answer It was Hodgen I had nothing to do with Dustin & Merwick

Re Cross Examined by Pltff

1st Int Did Hodgen agree that he Hodgen personally would send this money to Springfield?

Answer When I made the remark that I would take the money at Springfield, Hodgen & Dustin talked together, and it is my best recollection that Dustin said he would send it

Re Examined by Dfdt Atty

1st Int Whose money was it that Dustin talked about sending to Springfield and for whose accommodation was it to be sent if sent at all?

Answer It was for Mr Hodgen accommodation it

Answer objected to was my understanding evidently that it was Mr Hodgens money

Robert B Latham

Also the deposition of L P Lacey as follows

Interrog 1st What is your name, where do you reside, what is your business

Answer My name is L P Lacey, live near Lincoln Logan Co Ills. My business is that of an attorney my place of business is Lincoln

inquired whether Mr Hodgen had deposited any money there for him she was informed by either Dustin or Mousick that he had not. I then went with Latham to Hodgens Store & Mr Latham then asked Mr Hodgen about the $1000.00 that Mr Latham said Mr Hodgen had agreed to deposit with Dustin & Mousick for him, which was the price or part of the price of corn. that Mr Latham had previously sold to Hodgen. Mr Hodgen admitted that he was to have deposited the money with Dustin & Mousick and said that he had deposited it, according to my recollection with Hoffman Gelpcke at Chicago to the credit of Dustin & Mousick Latham objected to taking the money at Chicago & said that he Hodgen was to have deposited it with Dustin & Mousick. Mr Hodgen admitted this & said that he had deposited it at Chicago for the reason or because he did not want the money to go or pass through his hands. Latham then agreed to take a draft from Mr Hodgen on Hoffman Gelpcke, as I recollect it for the amount of this claim less my fee of about $10.00 making the draft about $338.00, with the understanding that it would be available to Wm Blair & Co. I agreed to take the draft with Lathams endorsement thereon provided it would be available to Wm Blair & Co

Interog 9th

What was then done if anything at that time?

Answer

Mr Hodgen drew a draft payable to R B Latham or William Blair or to Wm Blair & Co &

dont recollect which, drawn on Hoffman & Gelpcke according to my recollection, for about $338.00 which I refused to accept without Lathams endorsement on it, Latham then endorsed & I accepted it with the understanding that it would be available to Wm Blair & Co. My best recollection now is, that Mr Hodgen then paid me $10.00 the amount which I wished to retain out of the collection for my fees & that I went with the money to Dustin & Musick & they declined to receive the $10.00 on deposit, I then immediately went back to Mr Hodgens Store & gave the $10.00 back to Mr Ludy Mr Hodgens Clerk. He then gave me a check in the name of Mr Hodgen on Dustin & Musick for the amount & I left the Store & went back to my office

Interrog 10th State what afterwards occurred if anything between you & Mr Hodgen

Answer On the same day that this draft was drawn & a short time afterwards perhaps a half an hour, Mr Hodgen came into my office & brought another draft drawn by Dustin & Musick on Hoffman & Gelpcke in favor of R B Latham for about $338.00 & endorsed by Latham to Wm Blair & Co & wished me to take it in place of the one that he had drawn himself & gave as a reason for wanting to make the exchange that, as the money had been deposited to the credit of Dustin & Musick he was afraid there might be some trouble in drawing the money on the other draft & I exchanged drafts with him

she then left my office.

Interog 11th What became of the draft Mr Hodgen last gave you.

Answer I sent the draft to Wm Blair & Co at Chicago & in a few days it came back with a letter purporting to be from them to which draft there was attached a protest for non payment.

Int 12th Where is that draft now?

Answer I hold it in my hands. it is dated Lincoln Ills May 16th 1861 is No 1803, signed Austin & Musick is for $338 88 is drawn on Hoffman Gelpcke Chicago Ills & endorsed, Pay to Wm Blair & Co. „R B Latham"

Int 13th Where did you get it?

Answer It was just handed to me by the Dpty Clerk taken from the papers in the case of R B Latham vs S P Hodgen in the Circuit Court of this County No 1137.

Cross Examination

Interog 1st In the conversation spoken of by you between Hodgen & Latham in Hodgens Store was there anything said about there being a misunderstanding between Hodgen & Latham as to when the money was to be deposited for Latham?

Answer If there was I have no recollection of it

Interog 2d What became of the draft you mentioned in your answer to the Interog 9. drawn by S P Hodgen

Answer I surrendered it to Mr Hodgen on receipt from

him of the other draft.

Interrog 3d Was not the first draft drawn on Mudd & Updike of Chicago?

Answer Mr Hodgen seems to think it was. my recollection is, that it was drawn on Hoffman & Gelpke,

Interrog 4th Is it not possible for you to be mistaken in regard to that?

Answer It is.

Interrog 5th What kind of paper was that draft written on, with what kind of ink was it printed, & in whose handwriting was it filled out?

Answer I have'nt at present any recollection if it was a printed or written blank, cant remember distinctly the color of the paper but think it was white. My recollection is that Mr Hodgen himself either wrote it out or filled it up

L P Lacey

Defendants then read in evidence the following questions and answers in the deposition of John L Mudd, to wit the 8th 9th 11th questions and answers as follows

8th Ques State whether or not you are acquainted with the handwriting of the defendants. if yea, how you became acquainted with the same

Ans I think I am not acquainted with the handwriting of either one of them individually I have frequently seen the handwriting in which

the correspondence of the firm were done, but did not know which of them wrote it. I or we have received letters from them on business from which I reckon myself acquainted with the business hand of the firm

9th Ques State whether or not, shortly after, you made the deposits you mention in this deposition you saw the plaintiff in Chicago, if so give the time as near as you can and state further if you say you saw the plaintiff whether or not you saw in his possession, a letter purporting to be from the defendants, you answer yea state whether or not you recognized such letter as being in the business hand write of the defendants, and state as near as you can its contents, if you cannot give the precise words give the substance of it

9th Ans I saw the Plaintiff in Chicago somewhere between the 20th of May and the first of June 1861 he had with him a letter of authority directed to the Banking House of Hoffman & Gelpcke authorizing him to draw from Hoffman & Gelpcke any money deposited with them, by Mudd & Updike to the credit of the defendants. I recognised the hand-writing of the letter to be that of Austin & Musick. I cannot give the exact wording of the letter but it was addressed to Hoffman & Gelpcke & directed them to pay to S P Hodgen any sum not exceeding the amount deposited by Mudd & Updike

11th Ques State whether or not the plaintiff received any

money from Hoffman & Gelpcke, on or by virtue of said letter, if yea, state how much was so received by him, if you answer nay state if you know, why he did not get any and state also your means of knowing the same

Ans At the request of the plaintiff I went with him to the Banking house of Hoffman & Gelpcke and presented the order or letter to one of the Bankers, I think Mr Gelpcke who refused to pay anything on it, giving as a reason that the defendants should have stated some definite amount, they should pay plaintiff he added that they would pay no orders given in that way. It might have been after the first of June but I think not, and it might have been before the 20th of May but I think not,

The defendants then read in evidence (the signature of plaintiff thereto being admitted) the following paper to wit

"Lincoln Ills June 10th/61

"I have this day purchased of Dustin & Monick a Draft on Hoffman & Gelpcke for Five Hundred Dollars No 1846 which they are not to be responsible to me for"

S P Hodgen"

Defendants then called and had Sworn Edward Thorp, who testified that he is now and has been for the last 8 years cashier of the Bank of Bloomington Defendants then asked said witness what was the state of the currency in Illinois during the month

of May 1861 to which plaintiff objected, which objection was sustained by the Court. to which ruling of the Court the defendants then and there excepted, defendants then proposed to prove by said witness that the currency of Illinois throughout the State was in a precarious condition all through the fore part of the month of May 1861: that from the first of said month it depreciated very rapidly until about the 17th of said month of May when it went down entirely and ceased to be current: that before that time all the Banks except a very few were greatly under par and to show the general state of the currency in Illinois during all the fore-part of the month of May 1861: to any and all of which the plaintiff objected and the Court sustained the objection to which ruling of the Court the defendants then and there excepted,

The above was all the evidence adduced in the cause,

The Court then gave for the plaintiff the following instructions to wit

(1) The Court instructs the Jury that if they believe from the evidence that Dustin & Musick were bankers at Lincoln Logan County Illinois that the plaintiff made an arrangement in Chicago with Dustin to deposit his corn money with Hoffman & Gelpcke to the credit of Dustin & Musick and Hodgen did in pursuance of said agreement have such money

so deposited with Hoffman & Gelpcke to the credit of Dustin & Musick without notice that said contract was terminated then the defendants are liable to the plaintiffs for the Amt so deposited

(2) That if the Jury believe from the evidence that no time or amount was specified in the contract to deposit then the contract could be terminated by the defendants or Hoffman & Gelpcke giving the Plaintiff or Mudd & Opdyke notice that they would not receive any more deposits from plaintiff that ~~sentie~~ such notice refusal to receive was given to the plaintiff or his agents Mudd & Opdyke the defendants are liabe to the plaintiff for the amt so deposited, if deposited within a reasonable time

(3) That the release in this case shown as given by Hodgen to Dustin & Musick only appeis to the draft for $500, & does not apply to the original deposit made by Peck for the benefit of Defendants.

(4) That in this cause if the Jury believe from the evidence that Dustin & Musick refused to pay any part of the money deposited before this suit was commenced that is a sufficient demand refusal to maintain this action

(5) That if the Jury believe from the evidence

instructions for the plaintiff and on the ground that the Court erred in refusing proper instructions for defendants: and on the ground that the verdict was contrary to the law and the evidence: which motion was overruled by the Court: to which ruling of the Court the defendants then and there excepted: and tender this their Bill of exceptions and pray that the same may be signed sealed and made part of the record of this cause: which is done by the Court

Chas Emerson Judge (Seal)

And afterwards to wit on the 20th day of July A.D. 1864 the following Appeal Bond was filed in said cause as follows to wit:

"Know all men by these presents that we George Minnick and William McDustin as principals and Benjamin H Brainard John Hawser and George W Edgar as securities are held and firmly bound unto Samuel P Hodgen, of the County of Logan and State of Illinois in the penal sum of Seven Thousand Dollars lawful money of the United States, for the payment of which well and truly to be made unto the said Samuel P Hodgen his heirs, executors, administrators and assigns we bind ourselves, our heirs, executors and administrators jointly severally and firmly by these presents.

Witness our hands and seals this 12th day of July A.D. 1864

The condition of the above obligation is such that whereas the said Samuel P Hodgen at the June Special Term of the Circuit Court held within and for the County of McLean and State of Illinois to wit on the 27th day of June A D 1864 recovered a judgment against the above bounden George Mousick and William McDustin for the sum of Three Thousand Five Hundred Dollars Damages and Dollars costs of said suit: from which said judgment the said George Mousick and William McDustin have prayed an appeal to the Supreme Court of the State of Illinois: Now therefore if the said George Mousick and William McDustin shall prosecute their said appeal with effect and shall pay whatever judgment, costs, interest and damages the said Supreme Court may direct in case the judgment aforesaid shall be affirmed or the appeal aforesaid shall be dismissed then and in that case the above obligation shall be and become of null and void; otherwise to be and remain in full force and virtue

Geo Mousick (seal)
Wm McDustin (seal)
by G Mousick (seal)
his attorney in fact
B H Brainerd (seal)
John Howser (seal)
G W Edgar (seal)

Signed and sealed
in presence of me this
12th day of July 1864
L G Webster Clerk

State of Illinois } ss
Logan County } I L G Webster Clerk of the Circuit Court within and for the County of Logan and State of Illinois, do hereby certify that the persons whose names are subscribed to the foregoing Bond as securities, own real and personal property in the County of Logan, free from incumbrance and over and above all their indebtedness, of the value of Thirty five Thousand Dollars. Witness my hand and official seal this 18th day of July A D 1864

Seal 5 Cts Rev Stamps

L G Webster Clerk

State of Illinois }
McLean County } Taken and approved by me this 20th day of July A D 1864

E R Roe Clk McLean Cir Court

State of Illinois } ss
McLean County } I Edward R Roe Clerk of the Circuit Court in and for said County do hereby certify that the foregoing pages contain a true & correct copy of the proceedings had in the case of Samuel P Hodgen vs George Merwick and William M Dustin as fully and completely as the same appears of record and on file in my office. Witness my hand and the seal of said Court this 15th day of February A D 1865



Edward R Roe Clerk

By L H Blodgett Deputy

8 Fee for Record $2.50 Paid by B & Williams Atty for Merwick & Dustin
E R Roe Clerk
By L H Blodgett Deputy

109-526

Dustin & Musick a/pellants

vs

Samuel P Hodgen a/pellee

Transcript of Record

Appeal from McLean

Filed March 24. 1865

L. Leland
Clerk