No. 14363

Supreme Court of Illinois

Tucker.

vs.

Gould.

71641

STATE OF ILLINOIS

SUPREME COU[illegible]

Third Grand Division.

No. 108.

14363

14363

Dwight

vs

Ewing

Goold et al
vs.
Tucker et al

Supreme Court of
State of Illinois

Error to Grundy

Brief of Plaintiff in Error

In this case I can only judge of what will be presented by the defense by the points made in the Court below -

It is contended by Counsel for Defft in that the assignment is void because (as alledged by him) it authorizes a sale on a credit - I do not admit that such is a fair construction of the instrument - by a fair construction applying the same rules as to other instruments of writing it does not authorize a sale upon credit. "Buchum vs. Sternes" et al. 9th Paige Chancery Reports Page 398. - "id". Page 405 & 6. the opinion of the Chancellor giving a construction to the instrument.

The most that can be said against the instrument is that it may be susceptible of two constructions the one of which would authorize a sale upon credit, and the other not - the other would make it illegal and the other legal - when this is the case the one which makes it legal is to be preferred -
"Parsons on Contracts" Vol. 2. Page 12. and Note o
This question came before the Courts of England at

a very early day and Lord Coke laid it down as a universal rule: that whensoever the words of a deed or of the parties without deed may have a double intendment and the one standeth with Law and Right and the other is wrongful and against Law the intendment that standeth with Law shall be taken. - id. The rule thus laid down has been steadily adhered to with great unanimity both in England and America from that day to this. See further "Parsons on Contracts" Vol. 2. Page 16 - "Chitty on Contracts" Page 88 - "Cattenden et al. vs. French" 2nd Am. Rep. 398.

It is also contended by Defts Counsel that the clause in the assignment authorizing the payment to O'Brien the Assignee of the monies then due or to become to him from the Vickers avoids the assignment. The fair construction of the instrument is that if there was any thing due to O'Brien on a liability already incurred or which might be incurred by a contract already entered into such amount to due or become due should be paid and if nothing was due or nothing should to become due then nothing should be paid. "Barnum vs. Hempstead et al." 7th Paige Ch. Rep. 568 and per particularly the first part of the opinion of the Chancellor - in the case last referred to for the construction of the instrument - See also "American

Leading cases" Vol. 1st Page 95

I do not admit the principle contended for by both counsel that a liberal construction will be given to instruments such as the one under consideration by Courts for the purpose of setting them aside, The principles of construction whether applied to simple contracts or instruments under Seal are of necessity very similar. The end is the same and that is the discovery of the true meaning of the words used. If that is not the case in the construction to be given to assignments, by what rules are they to be governed in their construction? If the language used in an assignment for the benefit of creditors is to be perverted for the purpose of avoiding the assignment such perversion should not be dignified by the name of construction but should rather be called the perversion of the plainly expressed meaning of parties to an instrument of writing by illegal intendment for the purpose of avoiding the instrument.

It is also contended by counsel for the defence that the preference to Smith makes the instrument void inasmuch as it authorizes (as alledged by counsel) the assignee to pay to Smith a certain amount a part of which was for services to be rendered by Smith to the assignee in settling up the business of the assignment.

This does not appear from the assignment itself but is raised by the special answers put in. It is by no means admitted by the creditors. They are represented by the assignee and by his answer they are bound and not by the answer of the assignors or the admissions of any other person. The answer of one defendant in Chancery is in no case evidence against another "Rector vs Rector" 3 Gil. Rep - 105 - I need refer to no other authorities on this subject as it is so well understood -

The assignors in this case occupy the same position so far as their admissions are concerned in reference to the property assigned as any other assignee of a "Chose in Action". The admissions of an assignor are not evidence against the assignee when the admissions are made after the assignment # Williams vs. Dudy 3 Gil. Rep. 282 -

It is further contended that the instrument is void because the Trustees set apart a small amount of money to each to pay his individual expenses for a short time so that it became his individual property immediately previous to the assignment - It is admitted that $50 was set apart to one and $100 to the other - this retaining under the circum-

stances was not unreasonable -
American Leading Cases Vol. 1. Pg. 98.
The court below at any rate should
not have ordered the assignee to pay over
the large amount which was ordered
without having first directed an account
to see if that much remained after the
payment of expenses -

E. R. Seeley
Solicitor for Plaintiff
in Error

108

Tucker

v

Gould

Pltffs. Brief

Filed Apl. 25th 1862

L. Leland

Clk.

Abstract of Record

James S. Gould and
William R. Gould
vs.
Christopher H. Tucker
Edgar M. Tucker and
Peter O'Brien —

} Grundy County
Circuit Court
in Chancery

Page "1"

Page "8"

Decree

Feb. 23rd 1861 — This cause having been brought on to be heard on Bill, Replication, Deed of Assignment, answers and Stipulation — it is decreed that said Assignment is fraudulent and void as against Complainants and that Peter O'Brien do on or before the 1st day of April next pay to Complainants out of the money in his hands as Assignee under said Assignment their judgment and costs as stated in said Bill of Complaint amounting to

Page "9" Eight Hundred and Sixty Five Dollars and Seventy Six Cents damages and costs together with Interest at Six per Cent per annum on said judgment and also all costs

by the Complainants expended — Whereupon Defendants excepted.

Bill of Complaint

Page "11" Complainants show that during the year 1855 and 1856 Christopher H. and Edgar M. Tucker were trading as Partners as merchants at Milwaukie in Kennedy County under the name and style of "C & E. Tucker" and in the course of their said business became indebted to Complainants in the Sum of upwards eight hundred dollars for goods sold to them at Chicago — That about the 30th day of June A.D. 1856 said Defendants assigned by Deed to Peter O. Brien all their property

Page "12" of every description for the benefit of their creditors and thereby gave to said O Brien authority to sell and dispose of said Property in such manner as he should deem for the interest of all persons interested and out of the proceeds to pay "first" — the expenses of the trust — next — all sums due or become due from said

Christopher and Edgar to said
O'Brien or for which he might be
liable for them and next to pay "pro
rata" as far as the assets would
extend the following named persons
and sums for pretended debts to wit:
Bennett, Lates & Johnson $ 276.06
Whipple, Alley & Billings 401.02
John Vernon & Co. 400.00
Ward, Doggett & Co 31.00
A. B. Smith 300.00
and lastly to pay their other creditors
that the proceeds of property assigned
will be absorbed in paying the pretend-
Page "13" ed debts preferred — That on the 9th
day of July A.D. 1856 in the County
Court of Grundy County Complainants
instituted an action against said
Christopher and Edgar to recover the
amount of the debt aforesaid —
That on Dec. 4th 1856 complainants
recovered a judgment against
said Christopher for Eight hundred
and Twenty Six Dollars and 41/100
besides $7.35 costs — all still due and
unsatisfied — That said Edgar plead
that he was an infant under 21 years
when said goods were sold and proved

said Plea to be true — and recovered judgment for costs against Complainants that on the 17th day of September 1856 an execution does issued on said judgment and placed in the hands of the Sheriff of Grundy County that on the 29th day of September 1856 said Sheriff certified that he could find no property of said Christopher in Grundy County to satisfy said Execution and returned the same

Page 14 wholly unsatisfied — That said O'Brien took possession of said property of said "C. & E. Tucker" and still has the same or the proceeds thereof — And said Defendants charge that said assignment is fraudulent and void that a great part of the debts pretended to be owing by the firm of "C. & E. Tucker" are fictitious and not in fact owing by said "C. & E. Tucker"

Page 15 — That said property was the exclusive partnership property of "C. & E. Tucker"

Page 18 Complainants pray that said Deed may be decreed fraudulent & void and said Peter O'Brien be decreed to pay them their said judgment interest & costs out of the proceeds of said property —

Page 21

Deed of Assignment

Indenture made June 20th 1856 between Christopher H. Tucker and Edgar M. Tucker of first Part and Peter O'Brien of Second Part - The said Parties of first part grant bargain & sell to said party of second part all their

Page 22

property of every kind name or nature. More particularly enumerated in the Schedule hereto to be annexed as soon as it it is possible to make the same to have and to hold said property to said party of Second part in Trust that is to say, that the said Party of the Second part shall take possession of said property and sell and dispose of the same upon such terms and conditions as in his judgment he may think best for the interest of the parties concerned and convert the same into money and pay first - all the just expences, costs charges and assessments on said goods and of executing and carrying into effect this assignment and with the residue to first pay and discharge the said several debts, sums and sums of money due or to grow due from the said party of the first part or for which they are liable to the said party of the Second part and the said several sum

persons and sums described in the Schedule hereto annexed together with all interest money due or to grow due thereon and with the remainder of said net proceeds if any there shall be said parts of the second part shall pay all the debts and liabilities now existing whether due or to become due of the said parts of the first part - Signed "Christopher H. Tucker, Edgar M. Tucker"

Page 31 Schedule "B"

Garnett. Gates & Johnson (proved to the amt)	$ 476.16
Whipple Alley & Billings	401.02
John Van Doren & Co. Dayton Ohio	400.00
Mark Doggett & Co.	81.00
A. B. Smith Owego Illinois	300.00

Page 32 Answer of Christopher H. Tucker admits the indebtedness as stated in said Bill -

Page 33 admits that on the 30th day of June 1857 C. & E. Tucker assigned to Peter O'Brien all their property for the benefit of their creditors -

Page 34 & 35 believes that the assets of property assigned will not more than pay the preferred creditors - admits the accuracy

persons and sums described in the Schedule hereto annexed together with all interest money due or to grow due thereon and with the remainder of said net proceeds if any there shall be said parts of the second part shall pay all the debts and liabilities now existing whether due or to become due of the said parts of the first part - Signed "Christopher H. Tucker, Edgar M. Tucker"

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Page 34 & 35 believes that the assets of property assigned will not more than pay the preferred creditors - admits the accuracy

of a judgment, issuing and return of an execution as stated in said Bill — That

Page "35" said judgment is wholly unsatisfied — admits that said Peter O. Buen took possession of the property as charged and still has either the goods assigned or the avails thereof — That said Defendant saith that said Deed of Assignment

Page "36" was made for an honest and bona fide purpose to secure the creditors of said "C. & E. Sueker" — That the preferred claims stated in the Schedule annexed to said Deed of assignment are honest and just and were at the time of making the assignment due and owing from said "C. & E. Sueker" — that said property assigned was the joint property of "C. & E. Sueker" — That all the property assigned was delivered over to Peter O. Buen and mentioned in the Schedule to the Deed annexed —

Page "37" That a small amount of claims were retained by Defendant for his expenses and support and not included in the Schedule and which did not pass by the assignment and which was necessary for Defendant as he then was and still is in very feeble

health —

Defendant saith that all the claims said Bain has pretends to have against said "C. & E. Tucker" are for services and expenses about and in pursuance of the Assignment — That the Claim of J. Gamer Geiger & Son is for ready made clothing purchased of them by said "C. & E. Tucker" — That the Claim of Whipple Alley & Billings is for B.B. & Shoes — purchased by said "C. & E. Tucker" — That the claim of Ward, Doggett & Co. is for Boots & Shoes purchased of them by said Tuckers. — That the Claim of Wm Van Doren & Co. was on a Note executed by them by said C. & E. Tucker as security for them — That the

Page 38. Page "39" Claim of A.B. Smith is for professional services rendered by him as an Attorney at Law for said C. & E. Tucker as well as for services by he rendered in settling up the business in pursuance of said Assignment —

Page 40 That the property assigned was a stock of dry Goods and Books of account

Answer of Edgar M. Zucker

Page 43 In substance the same as Christopher H. Zucker *

Answer of Peter D. Bien

Page "55" admits said Edgar M. & Christopher H. Zucker were trading as Partners as stated in Bill that on 3rd day of June 1885 Edgar M. & Christopher H. Zucker signed to this Deft. for the benefit of their creditors all their property and which this Deft. caused to be picked and annexed to the deed of assignment —

Page 54 Said Defendant believes that a judgment was obtained and execution issued and returned as stated in said Bill —

Page 58 admits that he took possession of the goods and property assigned and which are particularly enumerated — in the Schedule marked "A" and annexed to said Deed of Assignment —

Deft. saith that the goods assigned have all been sold that no distribution has been made of the money arising therefrom but that one fourth of the money arising from the sale of the goods has

Page 59 been paid out for expenses attending the business of assignment — that the nominal amount of the invoice of property was $3813.67 but that the invoice was altogether too high for when the goods were sold and which was for the best price which this Defendant could obtain they fell far short of the amount at which they were invoiced — that so far as this Deft has any knowledge or belief said assignment was made for an honest and bona fide purpose and to secure the creditors of "C & E. Zueken" and that it is his belief that the preferred claims stated in the Schedule annexed to said assignment are just, and are at the time of said assignment due and owing from said C & E. Zueken —

That the property assigned was mixed jointly by said C. & E. Zueken that all the property assigned was delivered over to him by said C. & E. Zueken. —

Page 60 — That previous to said assignment he had no claims against C. & E. Zueken that he now has some claims for his services as assignee and for his expenses pertaining thereto that he has no knowledge

as to what the claims of said several
creditors are for — that the property as-
signed was a Store of Dry Goods and
Groceries and the Books of account
of "C. & E. Tucker ——

Page 61 That are the goods assigned have
been sold — That to the best of his recollection
the aggregate of sales amounted to
about $1640 That the amount collected
on the accounts is about $700

Replication of Complainants

Page 69 —

Page 71 Stipulation
It is agreed that the answers of
C. & E. Tucker shall be considered
as amended so as to read that the
amount of claims assumed by them as
stated in the answers did not exceed
$1500 and that the same was set
apart & accepted before the assignment
in the following proportion — $600 to
C. H. — and $900 to Edgar C. Tucker
Signed George H. Bailey Sol. for Compl'ts
E. R. Duffy Sol. for Defts

Abstract

Know all men by these presents that we Peter O'Hare as principal and C. B Smith as surety are held and firmly bound unto John S Gould and William R Gould in the sum of two thousand dollars to be paid to the said John S Gould and William R Gould which payment well and truly to be made we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents

Witness our hands and seals this 3rd day of November 1861

Whereas the said John S. Gould and William R Gould in a certain proceeding in Chancery in the Circuit court in the county of Cumberland and State of Illinois at the February term thereof 1861 wherein the said obligees were complainants and the said Peter O'Hare and others were defendants the said obligees obtained a decree against the said Peter O'Hare that he pay over to the said obligees the sum of eight hundred and thirty two dollars and seventy five cents and interest on or before the first day of April then next and whereas the said Peter O'Hare is about to prefer said suit to the Supreme Court of the State of Illinois by writ of error

Now the condition of the above obligation is such that if the said Peter O'Hare shall prosecute with effect this said suit in the said

Supreme Court and shall well and truly comply with such order or decree as shall be rendered or made by said Supreme Court and if said decree rendered as aforesaid by the said Circuit Court shall be affirmed by the said Supreme Court, that then and in that case if the said Peter O'Brien shall in addition to the conditions aforesaid well and truly pay to the said Alonzo the said moneys and interest in said decree mentioned and set forth. that then these presents and everything herein contained shall be void and void.

Peter O'Brien
A B Smith

State of Illinois
County of Kendall
Be it remembered that on this 11th day of November A.D. 1864. Personally appeared before me Peter O'Brien and Alonzo B Smith known to me as the identical persons who signed the foregoing instrument of writing, and acknowledged that they executed the same freely and voluntarily for the uses and purposes therein set forth

In Witness Whereof I have hereunto set my hand and the seal of the County Court of Kendall County at my office in Oswego, the day & year first above mentioned

Elmer L Cole
Clerk

Christopher McGowan
Edgar McGowan and
Peter O'Hara

vs

John S. Lowes and
William R. Lowes

Supreme Court
of the State of
Illinois

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the officers of the court in pursuance of the laws of this State

Witness this 2nd day of December 1861

C. R. Ely

Tuckers stats vs Govts stat

Secy. Jr Cuts

Filed June 3d 1861
L. Leland
Clk.

Christopher A. Tucker
Edgar M. Tucker and
Peter O'Brien

vs.

James B. Good &
William A. Good

Supreme Court of
Illinois —
Error to Circuit
Court of Lund County.

Brief of Plaintiffs Counsel to be
presented / Duje for Supersedeas.

By the Record it will be seen that the proceedings in this case grow out of an assignment by C. A. & E. M. Tucker for the benefit of their creditors to Peter O'Brien.

This case stands upon Bill, answers and the Assignment. The Tuckers each answering for himself and O'Brien for the creditors — consequently no admission or statement made by either is evidence against the other and the case must be decided upon the construction to be given to the assignment.

That part of the assignment which the Counsel for the Plaintiffs below contends renders it void will be found on Page 22 of Record and is in these words "& the said Parties of the second part shall take possession of said property and sell and dispose of the

same upon such terms and conditions as in his judgment he may think best for the interest of the parties concerned and convert the same into money."

The Counsel for the Plaintiffs below contends, that the assignment authorizes the assignee to sell upon credit — the Counsel for the Defendants below contends that it does not. An instrument nearly in form with the one in question was decided in the Court of Chancery in New York not to authorize a sale upon credit See "Meacham vs. Stearnes & Sheldon" 9th Paige's - 398.

But an instrument is never to be construed illegal and fraudulent if it will bear a different construction and there being no authority in the Deed of assignment, the most that can be said against the instrument is that it may be susceptible of two constructions, the one of which would make it legal the other illegal and when such is the case the one which makes it legal shall be preferred. See Parsons on Contract Vol. 2nd Page 12 & Note "o" — id. Page 16 — Chitty on Contracts Page 80 — Crittenden et al vs French

21st Ultimus. Page 598.

E. A. Seeley
Solicitor for Plff. & Exor

Tucker et al vs Goulder et al

Pltffs. Brief

Filed Dec. 3. 1861

L. Leland
Clk.

STATE OF ILLINOIS, } ss.
SUPREME COURT,

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County Grundy Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Grundy County, before the Judge thereof, between John S. Gould & William R. Gould

Complainants

~~plaintiffs~~ and Christopher H. Tucker, Edgar H. Tucker & Peter O'Brien

defendants, it is said manifest error hath intervened, to the injury of the aforesaid Defendants

as we are informed by their complainant [redacted] and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 12 day of December in the Year of Our Lord One Thousand Eight Hundred and Sixty one.

L. Leland

Clerk of the Supreme Court.

108

Chris. A. Tucker et als

No. 387 vs.

Gould & Gould

WRIT OF ERROR.

FILED Dec. 3d A. D. 1861

L. Leland

Clerk.

State of Illinois } ss
Kendall County }

A. B. Smith being duly sworn on oath doth depose & say that he is now worth at least five thousand dollars over and above all legal claims against him

A. B. Smith

State of Illinois } ss
County of Kendall }

I Jeremiah J. Cole Clerk of the County Court in and for the County of Kendall and State aforesaid Do hereby certify that the foregoing Affidavit of A. B. Smith was Subscribed and Sworn to before me this 11th day of November A.D. 1861

In Witness Whereof I have hereunto Set my hand and Seal of said Court this 11th day of November A.D. 1861

Jeremiah J. Cole
Clerk

STATE OF ILLINOIS, } ss.
SUPREME COURT,

The People of the State of Illinois,

To the Sheriff of the County of Cook — Greeting:

Because, In the record and proceedings, and also in the rendition of the judgment ~~& Decree~~ of a plea which was in the Circuit — Court of Grundy County, before the Judge thereof, between

John S. Gould & William R. Gould

Complainants

~~plaintiffs~~ and Christopher H. Tucker, Edgar H. Tucker & Peter O'Brien

defendants, it is said that manifest error hath intervened, to the injury of the said defendants

as we are informed by their complaint ——— the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said John S. Gould & William R. Gould

that they — be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if they — shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said John S. Gould and William R. Gould

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 3 day of Dresmber in the Year of Our Lord One Thousand Eight Hundred and Sixty one.

L. Leland

Clerk of the Supreme Court.

318. 108

Christopher H. Tucker
& others —

No. vs.

John S. Gould &
William R. Gould

SCIRE FACIAS.

FILED April 29th A. D. 186 2

L. Lukens
Clerk.

Served this writ by Reading to the within named John S. Gould and William R. Gould this 18th Day of December 1861

Fees
2 S. 1,00
Mi 20
R 10
130

A. C. Heying Sheriff
by Wm Roy man Deputy

Paid $ Expenses Adv.

John S. Gould and
William R. Gould

vs.

Christopher H. Tucker,
Edgar M. Tucker and
Peter O'Brien.

Grundy County Circuit Court.

In Chancery.

Transcript of Record and other Papers.

(1)

State of Illinois,
Grundy County. }

Pleas before the Hon. Jesse C. Norton, Judge of the Eleventh Judicial Circuit of the State of Illinois, and Presiding Judge of the Circuit Court of said Grundy County, at a Special Term of said Court begun and held at the Court House in Morris in said County, on Monday the first day of June, in the year of our Lord One Thousand Eight Hundred and Fifty Seven, and of the Independence of the United States the Eighty-first.

Present: The Hon. Jesse C. Norton, Judge.
H. A. Bartleson, States Attorney.
A. C. De Wallace, Sheriff.
Attest: Graham Chatterton, Clerk.

Be it remembered that on the second day of June, in the year of our Lord One Thousand Eight Hundred and Fifty-Seven, it being one of the regular days of the said June Special Term, and the Court being then duly organized and sitting for the adjudication of business, the following proceedings, among others, were had and entered of record, by the said Court, in words and figures following, to wit:

(2)

"John S. Goold &
"William R. Goold
"25" vs. } Chancery.
"E. H. Tucker, E. M. Tucker
"and Peter O'Brien.

"This day come the complainants, by Geo.
"T. Bailey, Esq. their Solicitor, and the defendants by
"Seely & Vaughan, their Solicitors, Seely & Vaughan, (ex-
"cept Peter O'Brien,) also come, and upon motion of
"the said complainants Solicitor, the said defendants
"E. H. & E. M. Tucker, are ruled to answer the com-
"plainants bill herein by the first day of August
"next, and also that an alias summons issue to
"the said Peter O'Brien, directed to the Sheriff of
"Kendall County."

And afterwards, to wit: On the second day of April, in the year of our Lord One Thousand Eight Hundred and Fifty-eight, the said Court being one of the regular days of the March Term of said Court, and being judicially sitting for the adjudication of business, the following, among other proceedings, were had and entered of record by said Court, in words and figures following, to wit:

"John S. Goold & Wm. R. Goold
"14" vs. } Bill.
"E. H. Tucker, E. M. Tucker
"and P. O. Brian.

(3)

"Now on this day come the parties
"hereto, by their respective Solicitors, Geo. H. Bailey for
"the Complainants, and Seely & Sanford for the De-
"fendants, and the Court having had under con-
"sideration the exceptions of the Complainants herein,
"the answer of Christopher H. Tucker, one of the Defend-
"ants hereto, do order that said exceptions be sustained,
"thereupon leave is asked and granted to the Defendant
"to answer herein by the first of August next, and
"this cause continued."

And afterwards, to wit: On the Sixth day of October, in the year of our Lord One Thou-sand, Eight Hundred and Fifty Eight, it being one of the regular days of the October Term of said Court for said year, and said Court being duly organized and judicially sitting for the trans-action of business, the following, among other pro-ceedings, were had and entered of record by said Court, in words and figures following, to wit:

"John S. Goold
"Mrs. R. Goold
"9" vs. } In Chancery.
"C. H. Tucker, C. M. Tucker
"and P. C. Brian.

"Now on this day come the complai-
"nants, by G. H. Bailey, Esq. their Solicitor, and the

(4) "Defendants, by Seely & Sanford, their Solicitors, also
"come, and the said Defendants move the Court for
"an extension of time to answer herein."

And afterwards, to wit: On the thirty-
first day of December, in the year of our Lord
One thousand, Eight Hundred and Fifty Eight,
it being one of the regular days of the December
term of said Court for said year, and said
Court being duly organized and judicially sit-
ting for the adjudication of business, the following
among other proceedings, were had and entered
of record by said Court, in words and figures
following, to wit:

"John S. Goold,
"Ann. R. Goold,
"9" vs. In Chancery.
"C. H. Tucker,
"C. H. Tucker,
"P. O'Brien.

"This day come the parties hereto, by
"their respective Solicitors, and the said Defendants
"move the Court for leave to file an amended answer
"herein by the next term of this Court, which is
"granted and this cause continued."

And afterwards, to wit: On the twenty-

(5)

eight day of February, in the year of our Lord One Thousand, Eight Hundred and Fifty-nine, it being one of the regular days of the February term of said Court for said year, and said Court being duly organized and judicially sitting for the transaction of business, the following, among other proceedings, were had and entered of record by said Court, in words and figures following, to wit:

"John S. Goold &
"Wm. R. Goold
"7" vs. } In Chancery.
"C. H. Tucker, et. al.

"By order of the Court this cause is con-
"tinued."

And afterwards, to wit: On the third day of May, in the year of our Lord One Thousand Eight Hundred and Fifty nine, it being one of the regular days of the May term of said Court for said County and said Court being duly organized and judicially sitting for the transaction of business, the following proceedings were had and entered of record by said Court, among others, in words and figures following, to wit:

(6)

"John S. Goold,
"Wm. R. Goold
"8" vs. } Bill.
"C. H. Tucker, et. al.

"Now on this day come the Parties "hereto. Geo. ~~H.~~ J. Baily for the Complainants, and Seely "& Sanford for the Defendants, and upon motion "of the said Respondents, it is ordered that they have "leave to file an amended answer herein by the "first day of next term, and that this cause be "continued."

And afterwards, to wit: On the fifth day of November, in the year of our Lord One Thousand Eight Hundred and Fifty Nine, it being one of the regular days of the October Term of said Court for said year, and said Court being duly organized and judicially sitting for the transaction of business, the following, among other proceedings, were had and entered of record by said Court, in words and figures following, to wit:

"John S. Goold,
"Wm. R. Goold,
"8" vs. } Bill.
"C. H. Tucker, C. H. Tucker.
"and P. C. Briars.

(7)

"Now on this day come the com-
"plainants, by G. W. Bailey, their Attorney, and also
"comes the Defendants by Scely & Sanford, their At-
"torneys, and the said Defendants ask and obtain
"leave to answer herein by the first day of next term."

And afterwards, to wit: On the twenty third day of February, in the year of our Lord one thousand eight Hundred and Sixty One, it being one of the regular days of the February Term of said Court for said year, and said Court being duly organized and judicially sitting for the transaction of business, the following, among other proceedings, were had and entered of record by said Court, in words and figures following, to wit:

"John S. Gould and
"William R. Gould
vs.
"Christopher H. Tucker,
"Edgar M. Tucker and
"Peter O. Brien.

"In Chancery.
Bill.

"8"

"And now on this 23d day of
"February, A. D. 1861, it being the sixth day of the term,
"this cause having heretofore been brought on to be
"heard on the Bill of Complaint, the Answers of
"the several Defendants, the Replication and Assign-
"ment from the said Tuckers to the said O'Brien

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"(marked Exhibit "O") filed in said cause, and stipula-
"tion therein marked with the letter "P." and the said
"pleadings and exhibit and stipulation having been
"read, and Geo. F. Bailey of counsel for the complai-
"nants and Seeley of counsel for the defendants,
"having been heard, and the Court having duly con-
"sidered said pleadings, exhibit and arguments, and
"it appearing to said Court, that said assignments
"from Christopher H. Tucker and Edgar H. Tucker
"to Peter C. Brians, mentioned and referred to in said
"pleadings and filed in this cause, and marked
"Exhibit "O." is fraudulent, void and of no effect as
"against the said complainants, and that the same
"should be declared null and void and of no
"effect and be set aside. Now on this twenty
"third day of February, A. D. 1861, it is ordered, ad-
"judged and decreed that said assignment be
"set aside as fraudulent and void as to said
"complainants, and the same is hereby set aside
"and declared fraudulent, null, void and of
"no effect as against the said complainants.
"And it is further ordered, adjudged and decreed,
"that the said Peter C. Brians do on or before the
"first day of April next pay to the said complai-
"nants out of the money in his hands, as assignee,
"under said assignments, their said judgments
"and costs, recovered (as stated in said Bill of
"Complaints,) against the said Christopher H. Tucker

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"on the fourth day of September, 1856, in the County
"Court of Grundy County aforesaid, amounting to
"Eight Hundred and Thirty two Dollars and
"Seventy six Cents damages and costs-(the dama-
"ges being Eight Hundred and Twenty-five Dollars
"and forty-one cents, and costs Seven Dollars and
"Thirty-five Cents) together with interest at the rate of
"six Per cent per annum on said judgment
"from said last mentioned day to the time of
"payment, and also all costs by the Complainants
"in this cause expended. Thereupon, the Defendants'
"Solicitors take exceptions to the ruling of the Court."

State of Illinois,
Grundy County, } ss.

I, John B. Davidson, Clerk of the Cir-
cuit Court, in and for the County of Grundy and
State aforesaid, do hereby certify the within and forego-
ing to be a full, true and perfect copy of the records
of the proceedings had, (and still remaining in my
said office,) in the Grundy County Circuit Court in
the cause therein entitled: And I do also further cer-
tify that the papers following and hereunto annexed
marked respectively in red ink from No. 1 to No. 11,
inclusive, (the captions thereof also being in red ink,)
are true and perfect copies of papers filed in said
cause, and now remaining on file in my said
office.

(10)

In Testimony Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at my office in the City of Morris, in said Grundy County and State aforesaid, this fourth day of October, in the year of our Lord One Thousand, Eight Hundred and Sixty One.

John B. Davidson,

Clerk.

(111)

No. 1.—[Bill.]

State of Illinois, } In the Circuit Court of the
Grundy County, } March Term, A. D. 1857.

In Chancery.

To the Hon. S. M. Randall, Judge of the Circuit Court of the County of Grundy:

Complaining, show unto your honor your Orators John S. Gould and William K. Gould of the City of Chicago, in the County of Cook, in said State, merchants, under the name and style of Gould & Brother, that during the year of our Lord 1855, and the months of January to June inclusive in the year of our Lord 1856, Christopher H. Tucker and Edgar M. Tucker, defendants in this suit, of Grundy County aforesaid, were trading and doing business as partners as merchants at Minooka in said Grundy County under the name and style of C. & E. Tucker, and as such partners in the course of their said business, became indebted to your Orators in the sum of upwards of Eight Hundred Dollars for goods, wares and merchandize by your Orators sold and delivered to them at Chicago aforesaid to carry on their said business as merchants. That on or about the 30th day of June, A. D. 1856, at said Grundy County, the said defendants being so indebted to your Orators, pretending that they were insolvent and unable to pay all of their debts, assigned by deed to one Peter C. Brians, also defen-

Kant in this Dist. of Kendall County, all their property and effects of every description, including all debts due or accruing to them, in Trust, as they pretended by their deed of assignament, for the benefit of their creditors, and thereby gave to said O'Brian authority to sell and dispose of said property and effects in such manner as he should deem for the interest of all persons interested, and out of the proceeds to pay first the expenses of the Trust- ee, all sums due or to become due from said Christopher and Edgar to said O'Brian, or for which he might be liable for them in any manner- ner to pay pro rata as far as the assets would extend the following named persons and firms for pretended debts, the several amounts hereinafter stated in full- that is to say- Jarnett, Gates & Johnson the sum of Five hundred and seventy-six Dollars and six cents - Whipple, Arey & Billings the sum of Four hundred and one Dollars and two cents - John Vandoren & Co. the sum of Four Hundred Dollars - Ward, Doggett & Co. the sum of Thirty-one Dollars, and A. B. Smith the sum of Three Hundred Dollars - and lastly to pay their other creditors.

That as your Orators are informed and believe, the proceeds of all property and effects as- signed as aforesaid will be absorbed in paying the pretended debts preferred as aforesaid, and there will be nothing left to pay to the last class

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of creditors aforesaid. And your Orators further show that on the 8th day of July, A. D. 1856, in the County Court of the County of Grundy aforesaid, your Orators instituted an action against the said Christopher and Edgar to recover of them the amount of the debt aforesaid due from said Christopher and Edgar to your Orators, and afterwards such proceedings were had in said action that on the 4th day of September, A. D. 1856, in said County Court your Orators recovered judgment against said Christopher for the sum of Eight Hundred and twenty-five Dollars and forty-one Cents damages besides Seven Dollars and Thirty five Cents for their costs, all of which is still due and unsatisfied. That the said Edgar pleaded to said action that he was an infant within the age of twenty-one years, when said goods, wares and merchandise were sold and delivered, and moved the said plea to be true, and recovered judgment for his costs against your Orators. That on the 17th day of September, A. D. 1856, your Orators caused to be issued out of the Office of the Clerk of said County Court, and placed in the hands of the Sheriff of said Grundy County to be executed an execution in the usual form, against the goods and chattels, lands and tenements of the said Christopher on said judgment, on which execution said Sheriff on the 25th day of September, A. D. 1856, certified that he

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could find no property of the said Christopher in said Gamady County whereon to levy and satisfy said executions, and did therefore return the same to said office of said Clerk wholly unsatisfied, all of which will more fully appear by reference to the records of said County Court. Your Orators further show that the said C. Brian took possession of said property and effects of said firm of C. & C. Tucker under said assignment and still has the same or the proceeds thereof, and that the same amounted according to the inventory by said defendants made them to about the sum of Four Thousand Dollars. Your Orators show that said deed of assignment and inventory are in the possession of said C. Brian and not accessible to your Orators, so that they cannot make exhibits thereof. That your Orators are not informed or advised as to the details of the business transactions of the said firm of C. & C. Tucker, but that they are informed and believe and so charge the fact to be that said assignment is fraudulent and void as against your Orators in this that a great part if not all of the debts aforesaid pretended to be owing by said firm of C. & C. Tucker to said C. Brian and the other preferred persons and firms hereinbefore stated are and were fictitious and not in fact owing by the said C. & C. Tucker as so pretended. Your Orators further show that the property and effects so

(15)

assigned to said O'Brian were exclusively the partnership property and effects of the said firm of C. & C. Tucker, and that no part thereof were the separate property or effects of the said Edgar. And your Orators further charge that the said defendants have concealed large sums of money and large amounts of goods, wares and merchandize, rights and credits of the partnership property of the said firm of C. & C. Tucker and the separate property of the said Christopher which should be applied to the satisfaction of the judgment aforesaid, and that they have the same now in their possession and subject to their control, or the control of some of them, and also that the said Christopher and Edgar are the owners of or in some way or manner beneficially interested in some real estate acquired in whole or in part with their partnership property and effects, and also that the said Christopher has money, property, effects and credits, real and personal, concealed or otherwise held in trust for him, or in which he has some beneficial interest, which should be applied to the satisfaction of said judgment.

And your Orators well hoped that said defendants would have paid to them the amount of said judgment and interest, or that they would have applied sufficient of the partnership property and effects of the said firm of C. & C. Tucker to that purpose as in equity and

good conscience they ought to have done. But now so it is, may it please your Honor, that the said defendants combining and confederating with divers other persons, to your Orators unknown, but whose names when discovered they pray may be inserted herein with proper and apt words to charge them, and contriving how to injure and defraud your Orators in the premises, neglect and refuse to pay the amount so due to your Orators on their said judgment, or to apply for that purpose any property, money, effects or credits belonging to the firm of L. & C. Tucker aforesaid or to the said Christopher, and for reason whereof the said defendants set up a variety of unfounded pretences.

All which actings, doings, neglects and pretences are contrary to equity and good conscience, and tend to the manifest wrong and injury of your Orators in the premises. In tender consideration whereof, and forasmuch as your Orators are remediless at and by the direct and strict rules of the common law, and cannot have adequate relief save in a Court of equity, where matters of this and a similar nature are properly cognizable and relievable. To the end therefore that the said defendants and their confederates, when discovered, may upon oath, true, direct and perfect answers make to all and singular the

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matters and things hereinbefore stated and charged as fully and particularly as if the same were here again repeated, and they thereto distinctly interrogated, paragraph by paragraph, and especially that they may fully set forth and discover, according to the best of their knowledge and remembrance information and belief respectively, the nature, amount consideration and cause of each and every of the pretended debts, claims and demands of the said O'Brian, and the other said preferred persons and firms, against the said Christopher and Edgar, and when and how the same, and each of them, accrued, and on whose and what account: and the nature and situation, amount and value of all the property, interests and effects of the said firm of E. & E. Lucker, or the said Christopher separately, including all things in action, of whatever nature or kind, with all the particulars relating thereto, and all interests in any real estate in Grundy County, or elsewhere, with all particulars relating thereto. And the nature, situation, amount, and value of all property and effects, rights and credits received by said O'Brian, or under his control, under or by means of said assignment, or otherwise, of or from the said firm of E. & E. Lucker, or the said Christopher, or any other person for him or them, and if the same has been in any manner disposed of, in what manner, and the nature, situa-

tion and disposition of the proceeds. And that they may also state whether the said firm of C. & C. Tucker, or the said Christopher, has any other equitable interests or things in action or other means, belonging to them, or in which they are in any way interested, whereby they could pay any part of the amount so as aforesaid due to your Orators upon their said judgment.

And that the said defendants, Christopher and O. Brien, may be decreed to pay to your Orators the amount due to your Orators for said judgment, costs and interest, together with your Orators costs and charges in this suit expended, and may be decreed to apply for that purpose any property, effects, rights and credits of said firm of C. & C. Tucker, or said Christopher; and that said assignment may be set aside and declared null and void, and the said property and effects assigned applied to the satisfaction of said judgment. And that said defendants may be enjoined from making any disposition of such property and effects, rights and credits, until the further order of this Court, and that a Receiver be appointed according to the course of practice of this Court, and with the usual powers of Receivers in like cases, of all the property and effects, rights and credits of the said firm of C. & C. Tucker, or said Christopher; and that your Orators may have such

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other or such further relief in the premises as the nature of their case shall require and as shall be agreeable to equity and good conscience.

May it please your Honor to grant unto your Orators the People's Writ of Injunction, issuing out of and under the seal of this Honorable Court, to be directed to said defendants and to their counsellors, attorneys, solicitors, trustees and agents, therein and thereby commanding and strictly enjoining the said defendants, and the persons before mentioned, in manner aforesaid.

And may it also please your Honor to grant unto your Orators the Writ of Summons according to the statute in such case made and provided, requiring said defendants to appear and answer this bill, and to stand to, abide by and perform such order and decree in the premises as to this Court shall seem proper, and as shall be agreeable to equity and good conscience.

Bailey & Garey,
Solicitors for Complainants.

(20)

In the Circuit Court
Grundy County.

In Chancery.

John S. Gould &
William H. Gould
vs.
Christopher H. Tucker,
Edgar M. Tucker
Peter O'Brien.

Bill.

Filed Sept. 29th 1856.
Geo. H. Kiersted,
Clk.

Bailey & Gray,
Complts Sol's.

[Endorsed on back:]

No. 2.—[Deed of Assignment.]

(21)

This Indenture made this thirtieth day of June, in the year of our Lord one thousand, eight hundred and fifty six, between Christopher H. Tucker and Edgar H. Tucker, merchants, doing business under the name, style and description of C. & E. Tucker, of the Town of Morrisonka, in the County of Grundy, and State of Illinois, of the first part, and Peter O. Brian of Kendall County, and State aforesaid, of the second part: Whereas the said Christopher H. Tucker and Edgar H. Tucker, Merchants as aforesaid, of the first part, are justly indebted in sundry and divers sums of money which they have become unable fully and promptly to pay and discharge, and the said Parties of the first part being desirous to make a fair and just distribution of their property among their creditors, Now therefore this indenture witnesseth, that the said parties of the first part, in consideration of the premises, and the sum of one dollar to them in hand paid by the said Party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, released, assigned and set over, and by these presents do grant, bargain and sell, release, assign, transfer and set over unto the said Party of the second part, and to his heirs and assigns forever, all and singular the goods, chattels, merchandize, bills, bonds, notes, book accounts, claims, demands, shares in actions, books of account, judgments,

evidence of debt, and all the property of every name and nature whatever of the said parties of the first part, more particularly enumerated and described in the Schedule hereto to be annexed as soon as it possible to make the same. Said Schedule to be marked and known as "Schedule(A.)" to have and to hold the same and and every part and parcel thereof, to the said party of the second part, his heirs, executors, administrators and assigns, in trust nevertheless and to and for the following uses, interests and purposes, that is to say, that the said party of the second part shall take possession of all and singular the goods, chattels, property and effects hereby assigned and sell and dispose of the same upon such terms and conditions as in his judgment he may think best and most for the interest of the parties concerned, and convert the same into money: and also to collect all and singular the said debts, due bills, bonds, notes, accounts, claims, demands and choses in action, or so much thereof as may prove collectable, and by and with the proceeds of such sales and collections the said party of the second part shall first pay and disburse all the just and reasonable expenses, costs, charges, taxes and assessments on said goods, and commissions of executing and carrying into effect this assignment: and by and with the residue or nett proceeds and avails of such sales and collections the said party of the second part shall first pay and discharge in full the several

and respective debts, bonds, notes and sums of money due or to grow due from the said party of the first part, or for which they are liable to the said party of the second part, and the several other persons and firms designated in the Schedule hereto annexed marked and designated "Schedule B." together with all interest money due or to grow due thereon: and if the said nett proceeds and avails shall not be sufficient to pay and discharge the same in full then such nett proceeds and avails shall be distributed pro rata, share and share alike, among the said several persons and firms named in said Schedule B. according to the amount of their respective claims, and secondly by and with the residue and remainder of said nett proceeds, if any there shall be, the said party of the second part shall pay and discharge all the debts, demands and liabilities whatsoever now existing whether due or to become due, of the said party of the first part, provided such remainder shall be sufficient for that purpose, and if insufficient the same shall be applied pro rata, share and share alike, to the payment of said debts according to their respective amounts; and lastly the said party of the second part shall return the surplus of the said proceeds, if any there shall be, to the said parties of the first part, their executors, administrators or assigns. And for the better execution of these presents, and of the several trusts hereby reposed, the said parties of the

struments of writing as having signed the same and each of them acknowledged that they signed, sealed and executed said instrument in writing as his free and voluntary act for the uses and purposes therein expressed.

Given under my hand and seal this thirtieth day of June, A. D. 1856.

Samil S. Randall, (Seal.)
Justice of the Peace.

[Endorsed on back:]

L. & L. Number
No
Peter O'Brien.
Assignments.

State of Illinois,
Kankakee County,
I hereby certify that I received for record June 30th, 1856, at 10½ o'clock A. M., and recorded in Book No. 2, Page 479
Geo. H. Winston,
Recorder.

Exhibit "O."

Given Feb. 6, 1861,
James B. Davidson,
Clerk.

Exhibit "O."

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No. 3.— [Schedule A.]

Schedule (A.) to be attached to an assignment made by Christopher H. Tucker and Edgar H. Tucker to Peter O'Brian on the thirtieth day of June, 1856. The following being a correct list of the personal property mentioned in the assignment, with amounts as estimated added thereto, to wit:

33	Coats	57 00
100	Mns. Pants	102 75
2	Pr M. Check Suits	11 00
4	Coats	21 00
1	Mn. Pants	2 00
6	Vests	11 49
1	Under Shirt	1 00
34	Mn. Delaines and Chalies	162 52
5	" Flannel	19 92
26	" Gingham	113 94
15	" Lawn	33 23
68	" Calico	155 46
5	" Cashmere Shawls	12 50
4	Over Coats	17 75
2	Mourkey Jackets	5 00
12	Vests	14 50
2	Mn. Fine Red Calico	6 94
1	" Velvet	3 15
2	" Gala Vests	9 10
2	" Calico	5 44
1	Cut Cambric	39 05

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2 hs. bar a Drills	2	20
2 " Baker Hessian	6	00
3 " brash	5	00
15 " Brid Hessian	43	07
3 " check	11	57
2 " do.	6	04
7 " Ticking	33	53
3 " Flannel	13	70
1 " coat Lining	2	10
1 " Serge	3	00
1 " velvet	6	00
1 " Brk Alpaca	6	75
1 " do.	4	35
1 " Blue do.	3	60
1 Sat Serapes	4	00
1 Pr. canvass	2	00
1 " Table Cloths	1	25
1 " Brap	9	45
1 " do.	3	40
2 " Liners	10	00
1 " Nankin	2	72
1 " check	5	45
9 " cottonade	40	50
1 " Tweed	5	00
7 " do.	60	17
3 " Satinett	30	80
1 " Fancy cassimere	29	81
7 " Curtain Calico	17	44

(27)

2 hs. bar a Drills	2	20
2 " Baker Hessian	6	00
3 " brash	5	00
15 " Brid Hessian	43	07
3 " check	11	57
2 " do.	6	04
7 " Ticking	33	53
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1 " Blue do.	3	60
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1 Pr. canvass	2	00
1 " Table Cloths	1	25
1 " Brap	9	45
1 " do.	3	40
2 " Liners	10	00
1 " Nankin	2	72
1 " check	5	45
9 " cottonade	40	50
1 " Tweed	5	00
7 " do.	60	17
3 " Satinett	30	80
1 " Fancy cassimere	29	81
7 " Curtain Calico	17	44

(28)

9 lbs. Cambric & Swiss	20	16
1 " Chambra	5	00
11 " Blk & White Cassette	24	76
1 Cat Linen Handkerchiefs	26	00
1 " Collars	4	00
1 " Undersleeves	8	00
1 " Sundries	4	56
20 Silk Handkerchiefs	14	00
10 Cotton & Silk Cravats	3	70
1 Palma	3	25
2 lbs. Veiling	7	40
7 " Silk Lace	18	58
6 " Gimp	12	56
1 " do.	6	00
1 " Fringe	1	05
1 Cat Edgings & Laces	15	00
1 Bx Dress Trimmings	40	00
91 lbs. Cot. & Wool Hose	15	18
8 " " do.	1	00
1 Cat Cott. Silk & Kid Gloves	41	44
1 " Portmonies	6	10
1 " Suspenders	7	00
1 " Shirt, Pant, Coat & Vest Buttons	15	00
1 " Dress Buttons	10	00
1 " Silk Thread	20	00
1 " Cott. Shoe & Skein do.	26	27
9 " Shears	9	00
20 doz. Shoe Thread	2	50

(28)

9 lbs. Cambric & Swiss	20	16
1 " Chambra	5	00
11 " Blk & White Cassette	24	76
1 Cat Linen Handkerchiefs	26	00
1 " Collars	4	00
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10 Cotton & Silk Cravats	3	70
1 Palma	3	25
2 lbs. Veiling	7	40
7 " Silk Lace	18	58
6 " Gimp	12	56
1 " do.	6	00
1 " Fringe	1	05
1 Cat Edgings & Laces	15	00
1 Bx Dress Trimmings	40	00
91 lbs. Cot. & Wool Hose	15	18
8 " " do.	1	00
1 Cat Cott. Silk & Kid Gloves	41	44
1 " Portmonies	6	10
1 " Suspenders	7	00
1 " Shirt, Pant, Coat & Vest Buttons	15	00
1 " Dress Buttons	10	00
1 " Silk Thread	20	00
1 " Cott. Shoe & Skein do.	26	27
9 " Shears	9	00
20 doz. Shoe Thread	2	50

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3 Prs. Shears	1	12
1 doz. do. (1 small)	1	00
1 Lot Buck Gloves & Mitts	9	00
1 " Ribbon	75	00
1 " Satin Stocks	8	56
1 " Tape, Whalebone, &c.	6	00
5 Prs Gum Caps	$	12
1 Lot Veils	8	00
1 " Notions, Combs, Scissors, &c	20	00
7 Trays,	2	90
1 " Sundries (assrt)	10	00
1 " Boys Suspenders		6$
1 " Knives & Forks	17	50
1 " Belts	1	08
2 Prs. Bro. Drills	6	15
4 " " Muslin	11	2$
1 " " do.	2	$4
5 " " do.	5	08
5 " Hickory Shirting	14	$2
2 " Blue Drills	4	95
1 " Grey do.	$	60
1½ doz. Band Boxes	2	25
1 Lot Straw & Silk Bonnets, &c	9	$ 87
1 " Collars	2	50
1 Pr. Carpet	22	40
4 " Shawls	6	50
1 Red Thread	$	00
1 Lot Cotton Handkerchiefs	1	00

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1 Lot Groceries, Fruits, Browns, &c.	200	00
1 " Drugs, Medicines, &c.	197	50
1 " Boots, Shoes, &c.	400	00
1 " Hats, Caps, &c.	20	00
1 " Hardware	75	00
1 " Queensware	150	00
1 " Tin Ware & Looking Glasses	20	00
1 " Wadding	5	00
Invoice of Books, omit thereon	872	98
	$1813	67
Add 5 pr cent	190	80
	$4004	47

[Endorsed on back:]

State of Illinois,
Grundy County,
Filed for Record
July 2nd, 1856, at 9
o'clock A. M.

No. 3.

Hon

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No. 4.— [Schedule B.]

Schedule "B."

Chicago	Garnett, Gates & Johnson: preferred (to the amt of	$ 576.06
"	Whipple, Alley & Billings	" 401.02
Dayton	John Vandoren & Co. Dayton, Ohio	" 400.00
Chicago	Ward, Boggett & Co.	" 31.00
	A. B. Smith, Ossuego, Illinois	" 300.00

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No. 5.-[Answer of Christopher H. Tucker.]

(32)

John S. Gould
William R. Gould
vs.
Edgar H. Tucker
Christopher H. Tucker
Peter O. Briers

Circuit Court of
Grundy County
State of Illinois.
In Chancery.

The answer of Christopher H. Tucker, one of the defendants to the bill of complaint of John S. Gould and William R. Gould.

This defendant now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainants' said bill of complaint, contained for answer thereunto, or unto so much and such parts thereof, as this defendant is advised, is or are material or necessary for him to make answer unto, this defendant answering saith,

That it is true as stated in said Bill that during the year 1855, and from January to June 1856, that he the said Christopher H. Tucker and Edgar H. Tucker were trading and doing business in the County of Grundy and State of Illinois as merchants and partners under the name and style of C. & E. Tucker, and that as such partners they became indebted to the said Plaintiffs at the City of Chicago; that he the said de-

fendant does not recollect the precise amounts of purchases made by the said defendants Christopher H. Tucker and Edgar H. Tucker of the said plaintiffs but that it may have been something near eight hundred dollars.

And this defendant further answering saith, on the 30th day of June, A. D. 1856, the said Edgar H. Tucker and Christopher H. Tucker did assign their property for the benefit of their creditors to Peter O. Brian, but that the assignment made by the said Edgar H. Tucker and Christopher H. Tucker, according to the understanding of this defendant, was confined to the property enumerated in a Schedule marked (A.) and annexed to the deed of assignment executed by the said Edgar H. Tucker and Christopher H. Tucker to the said Peter O. Brian, and which deed of assignment and Schedule are now in the possession of Peter O. Brien and under his control, and that by the terms of said deed of assignment, the said Peter O. Brien was to pay out of the avails of the property so assigned to him, 1st, the expenses of the trust — 2d, all sums due or to become due from the said Christopher H. & Edgar H. Tucker to the said Peter O. Brien, or for which he might be liable for them — 3d, to pay pro rata as far as the balance of the assets would extend to the creditors of the said C. & E. Tucker, to wit: to Jennett, Yates & Galveston, the sum of Five Hundred and Seventy

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Six dollars and six cents; to Whipple, Alley & Billings the sum of Four Hundred and one dollars and two cents; to John Vandoren & Co. the sum of Four Hundred dollars; to Ward, Doggett & Co. the sum of Thirty one dollars, and to A. B. Smith the sum of Three Hundred dollars, and lastly, to distribute the balance, if any there should be, among the other creditors of the said E. & E. Tucker.

And said defendant further answering saith, that it is his belief that the avails of the property so assigned as aforesaid will not more than pay the said preferred creditors, but it is his further belief that if a proper disposition had been made by the assignee of the goods and accounts assigned, there would have been a large surplus after paying the preferred creditors to pay to others.

And said defendant further answering saith, that it is true as stated in said bill, that the said plaintiffs did commence an action against him and the said Edgar M. Tucker on or about the 8th day of July, A. D. 1856, in the County Court of the County of Grundy aforesaid, and that the said plaintiffs at the September term, 1856, of said County Court did obtain a judgment against him said defendant in this suit commenced as aforesaid for the sum of Eight hundred and twenty-five dollars and forty-one cents, according to the best information of this defendant, together with

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Six dollars and six cents; to Whipple, Alley & Billings the sum of Four Hundred and one dollars and two cents; to John Vandoren & Co. the sum of Four Hundred dollars; to Ward, Doggett & Co. the sum of Thirty one dollars, and to A. B. Smith the sum of Three Hundred dollars, and lastly, to distribute the balance, if any there should be, among the other creditors of the said E. & E. Tucker.

And said defendant further answering saith, that it is his belief that the avails of the property so assigned as aforesaid will not more than pay the said preferred creditors, but it is his further belief that if a proper disposition had been made by the assignee of the goods and accounts assigned, there would have been a large surplus after paying the preferred creditors to pay to others.

And said defendant further answering saith, that it is true as stated in said bill, that the said plaintiffs did commence an action against him and the said Edgar M. Tucker on or about the 8th day of July, A. D. 1856, in the County Court of the County of Grundy aforesaid, and that the said plaintiffs at the September term, 1856, of said County Court did obtain a judgment against him said defendant in this suit commenced as aforesaid for the sum of Eight hundred and twenty-five dollars and forty-one cents, according to the best information of this defendant, together with

the costs of suit, and that it is the belief of this defendant that said judgment is wholly unsatisfied, that the said Edgar M. Tucker pleaded to said action that he was an infant under the age of twenty-one years when the said goods were obtained, and proved the said plea to be true and recovered judgment for his costs against said complainants. That this defendant believes it to be true, as stated in said bill, that on the 17th day of September, A. D. 1856, an execution was sued out of said County Court on said judgment and and placed in the hands of the Sheriff of said Grundy County to be executed, and that said Sheriff on the 24th day of September, A. D. 1856, returned said execution in the office of the Clerk of said County Court, with his return thereon endorsed, stating that he could find no property out of which to make the money to satisfy said execution, and returned the same wholly unsatisfied.

And said defendant further answering saith, that the said Peter O. Brien, in pursuance of said assignment, immediately after the execution thereof, took possession of the goods and property so assigned to him, and which goods and property are particularly enumerated in the Schedule marked (A.) and annexed to the said deed of assignment, and that the said Peter O. Brien still has either the goods so assigned to him or the

(26) avails thereof.

And said defendant further answering saith, that after said assignment was made an invoice of the property thereby assigned was taken, but that he does not now recollect the amount of the invoice, that from his best recollection the invoice amounted to over three thousand dollars.

And said defendant further answering saith, that said deed of assignment was made for an honest and bona fide purpose and to secure the creditors of the said L. & E. Tucker; that the preferred claims stated in the Schedule annexed to the said deed of assignment, are honest and just, and were at the time of said assignment due and owing from the said L. & E. Tucker.

And the said defendant further answering saith, that the property assigned by said deed was the joint property of the said L. & E. Tucker and not the separate property of either of them.

And said defendant further answering saith, that from the best of his knowledge and belief none of the property which passed by said deed of assignment was kept back, but that the whole was delivered over to Peter O. Brien, but that all of the property and effects of the said L. & E. Tucker did not pass by said deed of assignment, but only that which was mentioned in the Schedule annexed to said deed of assignment; that it was expected that some

considerable time would elapse before either the said Christopher Mc. or Edgar Mc. Tucker could again enter into business, and that a small amount of claims was retained to defray their expenses in the mean time; that this defendant was in very feeble health at the time of said assignment and not able to attend ~~to attend~~ to any business, and has not since that time been able to attend to any business on account of sickness, and that it is the belief of this defendant that the amount of what was retained has been nearly or quite expended.

And said defendant further answering saith, that the said Christopher and Edgar Mc. Tucker are not to his knowledge and belief the joint owners of any real estate, neither are they jointly interested in any way beneficially in any real estate; that he has no property or effects concealed or held in trust for him, or any over which he has any control or in which he has any interest present or in expectancy, and which ought or could be applied to the satisfaction of said judgments; and this defendant denies all and all manner of confederacy or combination with any person to cheat or wrong the said complainants in any way.

And this defendant further answering saith, that all the claim which the said Peter O'Brien has or which he pretends to have against the said C. & E. Tucker, so far as this defendant is informed, or

(34) believes, is for services and expenses done and incurred about and in pursuance of the assignment aforesaid, and that the claim of Garnett, Gates & Johnson is for ready made clothing purchased of them by the said L. & R. Tucker sometime during the month of April, A. D. 1856, and for the goods so purchased there was due, at the time of said assignment, to the said Garnett, Gates & Johnson from the said L. & R. Tucker, the sum of Five hundred and seventy-six dollars and six cents; that the claim of Whipple, Alley & Billings is for boots and shoes purchased of them by the said L. & R. Tucker sometime during the month of April, A. D. 1856, and for the goods so purchased there was due, at the time of said assignment, to the said Whipple, Alley & Billings from the said L. & R. Tucker, the sum of Four hundred and one dollars and two cents; that the claim of Ward, Doggett & Co. is for boots and shoes purchased of them by the said L. & R. Tucker sometime in the month of September, A. D. 1855, and for the goods so purchased there was due, at the time of said assignment, to the said Ward, Doggett & Co. from the said L. & R. Tucker, the sum of Thirty-one dollars; that the claim of John Vandoren & Co. accrued in this manner: sometime during the year 1854, Stephen Tucker purchased of John Vandoren & Co. a quantity of dry goods, but the said Vandoren & Co. would not allow the said Stephen Tucker to take the goods

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without security, and to enable said Stephen Tucker to obtain said goods, C. & C. Tucker agreed to pay for the goods so purchased of the said Vandoren & Co. in case the said Stephen should fail to make payment therefor; That on the 2d day of June, A. D. 1856, Stephen Tucker having failed to make the payments for said goods bought by him of the said Vandoren & Co. as aforesaid, the said C. & C. Tucker in pursuance of said promise gave to the said Vandoren & Co. their promissory note therefor, and that at the time of said assignment there was due from the said C. & C. Tucker, on said promissory note, the sum of Four hundred dollars and upwards; That the claim of A. B. Smith is for professional services rendered by him as an attorney at law for the said C. & C. Tucker, as well as for services to be rendered; that the said Smith had done a considerable amount of business for the said C. & C. Tucker previous to said assignment, the first of which business was sometime in the year A. D. 1855, and it was expected by the said C. & C. Tucker that they would require some legal assistance from the said A. B. Smith after the assignment in settling up their business, and the services so to be rendered formed a part of the claim of the said A. B. Smith.

And said defendant further answering saith, that there is not to his knowledge, in-

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formation or belief, any property belonging to the firm of C. & C. Tucker, and neither is he informed of any interest which the said firm of C. & C. Tucker have in any property of any kind, except it may be in the property assigned to O'Brien as aforesaid; that he the said defendant has not more property than what would be exempt from execution by the laws of the State; that he has no interest in any real estate of any kind, either equitable or legal; that previous to entering into partnership with the said Edgar M. Tucker he was the owner of some real estate but which he disposed of and invested the avails thereof in the business of the firm of C. & C. Tucker.

And said defendant further answering saith, that the nature of the property assigned to Peter O'Brien as aforesaid was a stock of Dry Goods and Groceries and the Books of Account of C. & C. Tucker, and that the said defendant cannot make any more explicit answer than he has already made in the previous part of this answer; that it is the belief of this defendant that the goods have been disposed of by the said O'Brien, but what disposition he has made of the avails thereof, or how much the goods amounted to this defendant is not informed.

And said defendant further answering saith, that he is not able to make any further answer

than he has already made as to the property held or owned by the firm of C. & C. Tucker, whether legally or equitably, or the property or claims of this defendant; and that this defendant does not know of any means, either equitable or legal, belonging to the firm of C. & C. Tucker, or to this defendant, or in which they or this defendant have any interest other than as before stated.

And this defendant denies all and all manner of unlawful combinations and confederacy wherewith he is by the said bill charged, without this: that there is any other matter, cause or thing in said complainants' said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver and maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

C. H. Tucker.

State of Illinois,
Grundy County, } ss.

Christopher H. Tucker being duly

(412) Sworn, on oath saith, that what is contained in the above answer by him subscribed, as far as concerns his own act and deed is true to his own knowledge, and that what relates to the act and deed of any other person or persons he believes to be true. L. H. Tucker.

Subscribed and sworn to before me this 26 day of September, A. D. 1857.

B. H. Atherton,

Fees 25 cts Pd Jas. Pearce.

[Endorsed on back:]

Jas Shannon,

Answer.

Filed Nov. 30/58.

Wm. A. Kinsford, Clk,

Jas Shannon & Wife, et. al.

vs.

L. & A. L. Tucker, et. al.

Equity & Bankruptcy.

No. 6.—[Answer of Edgar M. Tucker.]

(43)

John S. Gould,
William R. Gould,
vs.
Edgar M. Tucker,
Christopher M. Tucker,
Peter O. Brien.

} Circuit Courts of Grundy County & State of Illinois. In Chancery.

The answer of Edgar M. Tucker, one of the defendants to the bill of complaint of John S. Gould and William R. Gould.

This defendant now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering saith,

That it is true as stated in said bill that during the year 1855 and from January to June, 1856, that he the said Edgar M. Tucker and Christopher M. Tucker were trading and doing business in the County of Grundy and State of Illinois as merchants and partners under the name and style of C. & E. Tucker, and that as such partners they became indebted to the said

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Plaintiffs in a large sum of money for goods, wares and merchandise bought by them of the said Plaintiffs at the City of Chicago. That he the said defendant does not recollect the precise amount of purchases made by the said defendants Edgar M. Tucker and Christopher M. Tucker of the said Plaintiffs, but that it may have been something near eight hundred dollars.

And said defendant further answering saith, that on the 30th day of June, A. D. 1856, the said Christopher M. Tucker and Edgar M. Tucker did assign their property for the benefit of their creditors to Peter C. Brier, but that the assignment made by the said Christopher M. Tucker and Edgar M. Tucker, according to the understanding of this defendant, was confined to the property enumerated in a Schedule marked (A.) and annexed to the deed of assignment executed by the said Edgar M. Tucker and Christopher M. Tucker to the said Peter C. Brier, and which deed of assignment and Schedule are now in the possession of Peter C. Brier, and under his control, and that by the terms of said deed the said Peter C. Brier was to pay out of the avails of the property so assigned to him, 1st, The expenses of the trust; 2d, All sums due or to become due from the said Christopher M. & Edgar M. Tucker to said Peter C. Brier, or for which he might be liable

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for them; 3d, To pay pro rata as far as the balance of the assets would extend to the creditors of the said C. & C. Tucker, to wit: To Jennett, Gates & Johnson the sum of Five hundred and Seventy six dollars and six cents; to Whipple, Lilley & Billings the sum of Four hundred and one dollars and two cents; to John Vandown & Co. the sum of Four hundred dollars; to Ward, Doggett & Co. the sum of Thirty-one dollars, and to A. B. Smith the sum of Three hundred dollars; and Lastly, to distribute the balance, if any there should be, among the other creditors of the said C. & C. Tucker.

And said defendant further answering saith, that it is his belief that the avails of the property so assigned as aforesaid will not more than pay the said preferred creditors.

And said defendant further answering saith, that it is true as stated in said bill, that the said plaintiffs did commence an action against him and the said Christopher H. Tucker on or about the eighth day of July, A. D. 1856, in the County Court of the County of Gennedy aforesaid, and that the said plaintiffs at the September term, A. D. 1856, of said County Court obtained therein a judgment against the said Christopher H. Tucker in this suit commenced as aforesaid for the sum of Eight hundred and twenty-five dollars and forty one cents, according to the best information of this

defendant, together with the costs of suit, and that it is the belief of this defendant that said judgment is wholly unsatisfied; that this defendant, the said Rodgar M. Tucker, pleaded to said action that he was an infant under the age of twenty one years when said goods were obtained, and proved the said plea, to be true, and recovered judgment for his costs against said complainants; that this defendant believes it to be true as stated in said bill that on the 17th day of September, A. D. 1856, an execution was sued out of said County Court on said judgment and placed in the hands of the Sheriff of said Kennedy County to be executed, and that said Sheriff on the 29th day of September, A. D. 1856, returned said execution in the office of the Clerk of said County Court with his return thereon endorsed, stating that he could find no property out of which to make the money to satisfy said execution and returned the same wholly unsatisfied.

And said defendant further answering saith, that the said Peter O'Brien, in pursuance of said assignment, immediately after the execution thereof, took possession of the goods and property so assigned to him, and which goods and property are particularly enumerated in a Schedule marked (A.) and annexed to said deed of assignment, and that the said Peter O'Brien still has either the goods so assigned to him, or the avails thereof.

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And said defendant further answering saith, that after said assignment was made an invoice of the property thereby assigned was taken, but that he does not now recollect the amount of the invoice; that from his best recollection the invoice amounted to over three thousand dollars.

And said defendant further answering saith, that said deed of assignment was made for an honest and bona fide purpose and to secure the creditors of the said C. & C. Tucker. That the preferred claims stated in the Schedule annexed to the said deed of assignment are honest and just, and were at the time of said assignment, due and owing from the said C. & C. Tucker.

And said defendant further answering saith, that the property assigned by said deed was the joint property of the said C. & C. Tucker and not the separate property of either.

And said defendants further answering saith, that from the best of his knowledge and belief, none of the property which passed by said deed of assignment was kept back, but that the whole was delivered over to Peter O'Brien, but that all of the property and effects of the said C. & C. Tucker did not pass by said deed of assignment, but only that which was mentioned in the Schedule annexed to said deed of assignment. That it was

expected that some considerable time would elapse before either of the said Christopher H. or Edgar H. Tucker could again enter into business, and that a small amount of claims was retained to defray their expenses in the mean time; that the said Christopher H. Tucker was in very feeble health and was then able to attend to any business, and has not since that time been able to attend to any business on account of sickness; and that it is the belief of this defendants that the amount of what was retained has been nearly or quite expended.

And said defendants further answering saith, that the said Christopher and Edgar H. Tucker are not, to his knowledge and belief, the joint owners of any real estate, neither are they jointly interested in any way beneficially in any real estate, and that he does not know of this said Christopher H. Tucker having any property or effects concealed or held in trust for him, or any over which he has any control or in which he has any interest, present or in expectancy, and which ought or could be applied to the satisfaction of said judgment; that the said Christopher H. Tucker manages his own individual business and does not trust the management thereof to this defendants; and this defendant denies all and all manner of confederacy or combination with any person to cheat or wrong the said Complainants in any way.

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And the said defendant further answering saith, that all the claim which the said Peter O'Brien has, or which he pretends to have, against the said L. & R. Tucker, so far as this defendant is informed, or believes, is for services and expenses done and incurred about and in pursuance of the assignment aforesaid, and that the claim of Jarrett, Gates & Johnson is for Readymade Clothing purchased of the said Jarrett, Gates & Johnson by the said L. & R. Tucker in carrying on their business as merchants, and to be disposed of in the course of their Trade; that the indebtedness to the said Jarrett, Gates & Johnson accrued sometime during the month of April, A. D. 1856, and at the time of said assignment there was justly due from the said L. & R. Tucker to the said Jarrett, Gates & Johnson the sum of Five hundred and seventy six dollars and six cents for the goods purchased of them as aforesaid; that the claim of Whipple, Alley & Billings is for Boots and Shoes purchased of them by the said L. & R. Tucker sometime during the month of April, A. D. 1856, and for the goods so purchased there was due, at the time of said assignment, to the said Whipple, Alley & Billings from the said L. & R. Tucker the sum of Four hundred and one dollars and two cents; that the claim of Ward, Doggett & Co. is for Boots and Shoes purchased of them by the said L. & R. Tucker sometime in the early part of the month of September, A. D. 1855, and for the goods so purchased there was due at

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the time of said assignment, to the said Ward, Doggett & Co. from the said L. & R. Tucker the sum of Thirty-one dollars; that the claim of John Vandoren & Co. accrued in this way: sometime during the year 1854, Stephen Tucker purchased of John Vandoren a quantity of dry goods, but the said Vandoren refused to permit the said Stephen Tucker to have the goods without security, and to enable the said Stephen Tucker to obtain said goods L. & R. Tucker agreed to pay for the goods so purchased of the said Vandoren in case the said Stephen should fail to make payment therefor; that on the second day of June, A. D. 1856, Stephen Tucker having failed to make the payment for said goods bought by him of the said Vandoren as aforesaid, the said L. & R. Tucker in pursuance of their said promise, gave to the said Vandoren their promissory note therefor; and that at the time of said assignment there was due from the said L. & R. Tucker, on said promissory note, the sum of four hundred dollars and upwards; that the claim of A. B. Smith is for professional services rendered by him as an attorney at law for the said L. & R. Tucker, as well as for services to be rendered; that the said Smith had done considerable amount of business for the said L. & R. Tucker previous to said assignment, the first of which business was sometime in the year 1855, and it was expected by L. & R. Tucker that they would

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need some assistance from the said A. B. Smith after the assignment in settling up their business, and the services so to be rendered formed a part of the claim of the said A. B. Smith.

And said defendant further answering saith, that he does not know of any property, real or personal, or choses in action, belonging to the firm of said C. & C. Tucker; that the whole has been disposed of as before stated; and that this defendant does not know, neither has he any information of Christopher Mc. Tucker having any interest in any real estate, and that it is the belief of this defendant he has no interest of any kind in any real estate in any place; and that all the knowledge or information this defendant has of the personal property owned by the said Christopher Mc. Tucker is from general report and appearances, and it is his belief that the said Christopher Mc. Tucker has not more personal property than will be exempt from execution by law.

And said defendant further answering saith, that the nature of the property assigned to Peter O'Brien as aforesaid was a stock of Dry Goods and Groceries and the Books of account of C. & C. Tucker, and that the said defendant cannot make any more explicit answer than he has already made in the previous part of this answer; that it is the belief of this defendant that the goods have been disposed of by the said O'Brien, but what

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disposition he has made of the avails thereof, or how much the goods amounted to this defendant is not informed.

And said defendant further answering saith, that he is not able to make any further answer than he has already made as to the property held or owned by the firm of C. & C. Tucker, whether legally or equitably, or the property or the claims of the said Christopher Mc. Tucker, and that this defendant does not know of any means, either equitable or legal, belonging to the firm of C. & C. Tucker or to the said Christopher Mc. Tucker, or in which they, or either of them, have any interest other than as before stated.

And this defendant denies all and all manner of unlawful combinations and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause or thing in said complainants' said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendants, all which matters and things this defendant is ready and willing to aver and maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable

(53) costs and charges in this behalf most wrongfully sustained. Edgar M. Tucker.

State of Illinois,
Grundy County, } ss.

Edgar M. Tucker being duly sworn, on oath saith, that what is contained in the above answer by him subscribed, so far as concerns his own act and deed, is true to his own knowledge, and that what relates to the act and deed of any other person or persons, he believes to be true.

Edgar M. Tucker.

Subscribed and sworn to
before me this 1st day of
October, A. D. 1857.

J. N. Reading,
Clk. Cir. Court
by W. C. B. Seller, Dep.

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Gahan S. Gould, et. al.,

vs.

G. & Re. Bunker, et. al.

In Chancery.

Answer.

Filed Mar. 30/58.

Wm. A. Kiersted

Clk.

Seeley & Baugher.

[Endorsed on back:]

(copy)

No. 7. [Answer of Peter O'Brien.]

(15)

John S. Gould and
William K. Gould
vs.
Edgar H. Tucker
Christopher H. Tucker and
Peter O'Brien.

} Circuit Court of Grundy County, and State of Illinois.
In Chancery.

The answer of Peter O'Brien, one of the defendants to the bill of complaint of John S. Gould and William K. Gould.

This defendant saves and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said complainants said Bill of Complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering saith,

That it is true as stated in said bill, as he is informed and believes, that during the year 1855, and from January to June, 1856, the said Christopher H. Tucker and Edgar H. Tucker were trading and doing business in the County of Grundy and State of Illinois as merchants and partners under the name and style of C. & E. Tucker, and that as such partners they

became indebted to the said plaintiffs but in what amount he does not know and neither has he any certain information.

And this defendant further answering saith, that on the 30th day of June, 1856, the said Christopher H. Tucker and Edgar H. Tucker did assign their property for the benefit of their creditors to this defendant, and which property so assigned this defendant caused to be scheduled and annexed a Schedule thereof to the deed of assignment, and which deed of assignment and schedule this defendant now offers to bring into Court: and that by the terms of said deed of assignment this defendant was to pay out of the avails of the property so assigned, 1st, The expenses of the trust; 2d, All sums due or to become due from the said Christopher H. Tucker and Edgar H. Tucker to this defendant, or for which he might be liable for them; 3d, To pay pro rata, as far as the value of the assets would extend, to the creditors of the said C. & E. Tucker, to wit: To Garnett, Gates & Johnson the sum of five hundred and seventy-six dollars and six cents; to Whipple, Alley & Billings the sum of four hundred and one dollars and two cents; to John Vandoren & Co. the sum of four hundred dollars; to Marsh, Doggett & Co. the sum of thirty-one dollars, and to A. B. Smith the sum of three hundred dollars, and lastly, to distribute

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the balance, if any there should be, among the other creditors of the said C. & C. Tucker: and that it is the belief of this defendant that the avails of the property so assigned as aforesaid will not more than pay the said preferred creditors.

And said defendant further answering, saith, that he is informed and believes it to be true as stated ~~in the bill~~ in said Bill, that the said plaintiffs did commence an action against the said Christopher Tucker and Edgar M. Tucker about the 8th day of July, 1856, in the County Court of Grundy County and State of Illinois, and that the said plaintiffs at the September term of said County Court, 1856, did recover a judgment against the said Christopher M. Tucker for the sum of eight hundred and twenty-five dollars and forty-one cents, together with costs of suit; and that it is the belief of this defendant that said judgment is wholly unsatisfied, and that the said Edgar M. Tucker pleaded to said action that he was an infant under the age of twenty-one years when the said goods were obtained, and proved the said plea to be true, and recovered judgment for his costs against said complainants; that this defendant is informed and believes it to be true that on the 17th day of September, 1856, an execution was sued out of said County Court on said

judgment, and placed in the hands of the Sheriff of said Gonzales County to be executed, and that said Sheriff on the 29th day of September, 1856, returned said execution into the office of the Clerk of said County Court, with his return thereon endorsed, stating that he could find no property out of which to make the money to satisfy said execution, and returned the same wholly unsatisfied.

And said defendant further answering saith, that in pursuance of said assignment, and immediately after the execution thereof, he took possession of the goods, chattels and property so assigned to him, and which goods and property are particularly enumerated in the Schedule marked (A.) and annexed to the said deed of assignment.

And said defendant further answering, saith, that the goods assigned to him as aforesaid, have all been sold, and that no distribution has as yet been made of the money arising therefrom to the preferred creditors, but that some part of the money arising from the sale of the goods has been paid out for expenses attending the business of the assignment.

And said defendant further answering saith, that after the execution of said deed of assignment by said C. & G. Decker, he caused an

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invoice of the property and accounts thereby assigned to be made, that the nominal amount of the invoice was $3813.67, but that the invoice was altogether too high, for when the goods were sold, and which were for the best price which this defendant could obtain, they fell far short of the amounts at which they were invoiced.

This defendant further answering saith, that so far as he has any knowledge, information or belief, said deed of assignment was made for an honest and bona fide purpose, and to secure the creditors of the said C. & C. Tucker, and that it is his belief that the preferred claims stated in the Schedule annexed to said deed of assignment are just, and were at the time of said assignment due and owing from the said C. & C. Tucker.

This defendant further answering saith, that the property and accounts assigned by said deed, were owned jointly by the said C. & C. Tucker, and not the separate property of either, as he is informed.

This defendant further answering saith, that all the property and accounts which passed by said deed were delivered over to him by the said C. & C. Tucker; that he has but very little knowledge of the business of the said C. & C. Tucker, or of the property owned by them, that his knowledge of their business and property has been obtained

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principally by being their assignee, and is entitled to the property assigned by said deed and received by him as before stated.

This defendant further answering saith, that previous to said assignment he had no claim against C. & C. Tucker, or either of them, that he now has some claims for his services as assignee and for expenses pertaining thereunto, and which he expects to retain out of the avails of the property assigned to him as aforesaid; that he has no knowledge as to what the claims of the several preferred creditors are for; that what information he has upon the subject has been derived from the said C. & C. Tucker, and that information was simply that the claims were just.

This defendant further answering saith, that the property assigned to him by said C. & C. Tucker was a Store of Dry Goods and Groceries and the books of account of C. & C. Tucker; that he cannot give any more perfect description of the property which passed by said deed of assignment than what is contained in the Schedule annexed to said deed.

This defendant further answering saith, that the goods assigned to him by said deed of assignment have all been disposed of by him, that some of them he sold at private sale for the best price he was enabled to obtain, and some

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were sold at public vendue; that before said goods were sold at public vendue he caused a large number of hand bills to be circulated and thereby gave a general notice of the time and place of sale, and that in disposing of said goods he made every effort in his power to have them sell to the best advantage for the benefit of the creditors of the said L. & G. Tucker; that to the best of his recollection the aggregate amount for which said goods were sold was about sixteen hundred and forty dollars; that some of the accounts which were assigned to him have been collected and some have not; that the amount collected on said accounts is about Five Hundred Dollars; that of the remaining accounts to be collected some are good and some are not, and what proportion are good this defendant is not now able to say.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged without this, that there is any other matter, cause or thing in said complainants' said Bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied is true, to the Knowledge or belief of this defendant, all which matters and things this defendant is ready

(61)

were sold at public vendue; that before said goods were sold at public vendue he caused a large number of hand bills to be circulated and thereby gave a general notice of the time and place of sale, and that in disposing of said goods he made every effort in his power to have them sell to the best advantage for the benefit of the creditors of the said L. & G. Tucker; that to the best of his recollection the aggregate amount for which said goods were sold was about sixteen hundred and forty dollars; that some of the accounts which were assigned to him have been collected and some have not; that the amount collected on said accounts is about Five Hundred Dollars; that of the remaining accounts to be collected some are good and some are not, and what proportion are good this defendant is not now able to say.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged without this, that there is any other matter, cause or thing in said complainants' said Bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied is true, to the Knowledge or belief of this defendant, all which matters and things this defendant is ready

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and willing to own and maintain and have as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained

Peter O. Brien.

State of Illinois,
Kankakee County, } ss.

Peter O. Brien being duly sworn on oath saith, that what is contained in the above answer by him subscribed, as far as concerns his own act and deed, is true to his own knowledge, and that what relates to the act and deed of any other person or persons he believes to be true.

Peter O. Brien.

Subscribed and sworn to
before me this 3d day of
October, 1857.

A. Bennett,
Master in Chancery.

[Endorsed on back:]

John L. Lyons
vs.
Chas. H. Lyons
et al
Peter O. Brien.

Chancery.

Filed Oct. 3d, 1857.
Reading, Clk.

(63)

No. 8.—[Exceptions to Christopher H. Tucker's answer.]

John S. Gould &
William R. Gould
vs.
Christopher H. Tucker,
Edgar H. Tucker &
Peter O'Brien.

Gwinnett County Circuit Court.
In Chancery.

Exceptions taken by complainants to the insufficient answer of Christopher Tucker one of the defendants.

For that the said defendant Christopher has not to the best of his knowledge, remembrance, information and belief answered and set forth whether the said defendants have not concealed large sums of money and large amounts of goods, wares and merchandize, rights and credits of the partnership property of the said firm of C. & C. Tucker, and the separate property of the said Christopher, which should be applied to the satisfaction of the judgment referred to in said bill of complaint, and have the same now in their possession and subject to their control, or the control of some of them; and whether the said Christopher has not money, property, effects and credits, real and personal, concealed or otherwise, held in trust for him, or in which he has some beneficial interest which should be applied to the satisfaction of said judgment.

For that the said defendant Christopher

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Tucker has not in manner aforesaid answered and set forth respectively the nature, amount, consideration and cause of each and every of the pretended debts, claims and demands of the said O'Brien, and the other pretended persons and firms against the said Christopher and Edgar, and when and how the same and each of them accrued, and on whose and what accounts, and the nature and situation, amount and value of all the property, interests and effects of the said firm of C. & E. Tucker, or the said Christopher separately, including all things in action, of whatever nature or kind, with all particulars relating thereto, and the nature, situation, amount and value of all property and effects, rights and credits received by the said O'Brien, or under his control, under or by means of said assignments, or otherwise, of or from the said firm of C. & E. Tucker, or the said Christopher, or any other person for him or them.

For that the said defendants Christopher has not answered and set forth whether the said firm of C. & E. Tucker, or the said Christopher, has any other equitable interests or things in action, or other means belonging to them, or in which they are in any way interested, whereby they could pay any part of the amounts due to the orators as in said bill of complaint alleged, upon said judgment.

To all which particulars the said complainants accept to the answer of the said defen-

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Grant Christopher as evasive, insufficient and insufficient, and humbly pray that that the said defendant may be compelled to put in full and sufficient answer thereto.

Geo. F. Bailey, Solr for Complts.

[Endorsed on back:]

Lyndon & Brother
vs.
Lo. & Co. Fowler & O'Brien

Exr. Lo. Lin, Ct. March T. 1858.

Motion to the several answers of Christopher Mo. Fowler.

Filed March 30th 1858.

Wm. A. Thurston, Clk.

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(66)

No. 9.—[Exceptions to Edgar M. Tucker's answer.]

Gabriel S. Gould,
William R. Gould
vs.
Christopher Tucker,
Edgar M. Tucker.
} Grundy County Circuit Court.
In Chancery.

Exceptions taken by Complainants to the insufficient answer of Edgar M. Tucker, one of the defendants.

For that the said defendant Edgar has not to the best of his knowledge, remembrance, information and belief, answered and set forth, whether the said defendants have not concealed large sums of money, and large amounts of goods, wares and merchandise, rights and credits of the partnership property of the said firm of C. & E. Tucker and the separate property of the said Christopher, which should be applied to the satisfaction of the judgment referred to in said bill of complaint, and have the same now in their possession and subject to their control, or the control of some of them, and whether the said Christopher has not money, property, effects and credits, real and personal, concealed or otherwise held in trust for him or in which he has some beneficial interest which should be applied to the satisfaction of said judgment.

For that the said defendant Edgar has not in manner aforesaid answered and set

forth respectively the nature, amounts, consideration and cause of each and every of the pretended debts, claims and demands of the said O'Brien and the other preferred persons and firms against the said Christopher and Edgar, and when and how the same and each of them accrued, or on whose and what accounts, and the nature and situation, amount and value of all the property, interests and effects of the said firm of E. & E. Tucker, or the said Christopher separately, including all things in action, of whatever nature or kind, with all particulars relating thereto, and the nature, situation, amount and value of all property and effects, rights and credits received by the said O'Brien, or under his control, under or by means of said assignments, or otherwise, of or from the said firm of E. & E. Tucker, or the said Christopher, or any other person for him or them.

For that the said defendants Edgar has not answered and set forth whether the said firm of E. & E. Tucker, or the said Christopher, has any or other equitable interests, or things in action, or other means belonging to them, or in which they are in any way interested, whereby they could pay any part of the amount due to the orators as in said bill of complaint alledged upon said judgments.

For all which particulars the said complainants pray leave to the answer of the said defendant, Edgar, as evasive, imperfect and insuffi-

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cients, and humbly prays that the said defendant Rodgers may be compelled to part in a full and sufficient answer thereto.

Geo. F. Bailey, Sol. for Complts.

[Endorsed on back:]

Gould & Brother
vs.
L. & G. Trustees & O'Brien.

For Loc. bin, bt. Mch. & 1858.

Exceptions to the several answers of Rodgers & Trustees.

Filed March 30th 1858.
Wm. A. Kinsteen,
Clk.

(691)

No. 10.— [Replications.]

John S. Gould &
William H. Gould
vs.
Christopher H. Tucker,
Edgar M. Tucker &
Peter O. Briers.

} Grundy County Circuit Court.
In Chancery.
March 9. 1858.

The Replication of the Complainants to the respective answers of the defendants.

The replicants, saving and reserving to themselves all and all manner of advantage to the manifold insufficiences of the said answers, for replication thereunto say, that they will aver and prove their said bill to be true, certain and sufficient in the law to be answered, and that said answers of the said defendants, respectively, are uncertain, untrue and insufficient to be replied unto by these replicants, without this, that any other matter or thing whatsoever, in said answers respectively contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied is true; All which matters and things these replicants are and will be ready to aver and prove as this Honorable Court shall direct, and humbly pray as in and by said bill they have already prayed.

May Geo. H. Bailey, their Solr.

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Gould & Bro.

vs.

Le. & Le. Tucker & O'Brien

Fr. Co. Cir. Court, March T. 1858.

Replevin

Filed Feb. 23/60.

Wm. A. Kirsted,

Clk.

[Filed on trial:]

No. 11. [Stipulations.]

(21)

Gould, et. al.,
vs.
Tucker, et. al.,

It is agreed that the answers of C. & C. Tucker shall be considered as amended, so as to read that the amount of claim reserved by them (as stated in their answers) did not exceed one hundred and fifty dollars, and that the same was set apart to each before the assignment in the following proportions: $100 to C. Tr. and fifty dollars to Edgar M. Tucker.

Geo. F. Bailey,
Solr for Complts.

C. P. Sealey,
Solr for Defendants.

[Endorsed on back:]

Filed Feb. 6, 1861.
John W. Davidson,
Clerk.

Exhibit
"P"

Gould vs. Tucker.

Stipulations.

Christopher H. Tucker
Edgar McTucker and
Peter Olvis

vs

John F. Tyndall and
William R. Tyndall

} Supreme Court
of the State of
Illinois
In Error to Tyrrell Co

And now to wit November 13th A.D. 1861
come the said Plaintiffs by E. D. Tenney
their Solicitor and assign errors upon the
within and foregoing record as follows
to wit

1st. The Court below erred in setting
aside the Assignment

2nd The Court erred in ordering the said
Peter Olvis to pay over to defendants
the amount ordered in said decree
to be paid without first ordering
an account to be taken.

E. D. Tenney
Solicitor for Pltffs

And now come the Defendants
this 28. April 1862. by Geo F. Bailey
their Solicitor & give in issue

Geo. F. Bailey
Solicitor for Defts
in Error

387 108

C. H. Tucker et al

v

John S. Gould et al.

Bond & Errors

Filed Dec. 3d 1861
L. Leland
Clk.

$5.00 Dkt. fee
paid Clk