

No. 14338

Supreme Court of Illinois

McCagg

vs.

Woodman.

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STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

1438

No. 163.

McHenry

vs

Wardman

1862

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SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1862. }

Ezra B. McCagg,

Plaintiff in Error,

vs.

Charles L. Woodman,

Defendant in Error.

STATEMENT OF CASE AND
POINTS OF DEFENDANT IN ERROR.

This was an action of assumpsit, brought by plaintiff in error against defendant in error, in the Superior Court of Chicago, to recover the amount of a promissory note for \$235, dated 8th of May, 1861, and payable thirty days after date, made by the defendant in error, payable to the order of Spafford, Stewart & Co., and by them endorsed to E. I. Tinkham & Co., and by E. I. Tinkham & Co. to the plaintiff.

Declaration on the note, in the usual form, and common counts.

Plea, general issue (and notice set out in the record) and issue thereon.

The facts of the case are briefly these: Woodman was a customer of Tinkham & Co., who were bankers in Chicago, and kept a deposit account with them, paying in money to his credit, and drawing checks, from time to time, as his occasions required.

Spafford, Stewart & Co., the payees of the note, were also customers of Tinkham & Co.; and the note in question had been discounted by Tinkham & Co., for them, and was, at the date of their (Tinkham & Co.'s) assignment, their absolute property.

At the date of the assignment by Tinkham & Co., the defendant had in their hands on deposit, \$282.74, an amount more than sufficient to pay the full amount of the note.

The plaintiff in error is the assignee in insolvency of Tinkham & Co., and claims title to the note in question, (although it is endorsed to him by Tinkham & Co.) only through the assignment. He is not a purchaser of it for a valuable consideration, nor *bona fide*, his only title being as assignee.

The defendant, under these circumstances, claims the right to set off against the note, in the hands of the plaintiff, the amount due to him from Tinkham & Co., or to apply it as a payment of the note.

The jury found a verdict for the defendant. The court below overruled a motion for a new trial.

The cause is brought to this court by writ of error.

Points of Defendant in Error.

I.

The plaintiff is *not* an indorsee for value or *bona fide*. He is simply the assignee of Tinkham & Co. for the benefit of creditors. He holds this note in this capacity, and no other.

How then does an assignee take ?

He succeeds only to the rights of the assignor.

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1 Page 127 ✓

He is affected by all the equities against him.

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Then, if this suit had been brought by Tinkham & Co., could the defendant have set off his demand against them, as an answer to their action? That he could, will not be questioned, had *his* demand (i. e. his deposit account) been due at the time of the commencement of suit by Tinkham & Co. on the note.

If then, the plaintiff stands in the position of Tinkham & Co., and in no other or better, and the defendant's demand against Tinkham & Co. was due at time the of the commencement of this suit, the defendant's right of set off is complete.

A deposit made with a banker, to be drawn for at sight, must, of course, be demanded, before it becomes due; and it was urged on the trial of this cause, that no demand by defendant, of his deposit, had been proved, before the plaintiff commenced his suit.

The answer to this is so obvious, that it only requires to be stated, and the precise point has been decided by this court, in

1410 469
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The act of assigning by, and failure of, Tinkham & Co., rendered no demand necessary; the defendant's money became due at the instant of the failure and assignment.

Moreover, no demand is necessary, when the party on whom it is to be made, has converted the article, or money, to be demanded, to his own use. The defendant's property was money deposited — currency. Tinkham & Co. *assigned* all the *money* they had on hand to the plaintiff; they therefore converted to their own use, the defendant's property; the assignment showing an appropriation of all the assets assigned, to other purposes than the payment of the defendant.

The plaintiff, as assignee of Tinkham & Co., is chargeable with notice of the fact, that they owed the defendant more than enough to pay the note.

It would be an act of the greatest injustice to the defendant, if, by any forced construction of law, he should be compelled to pay this note in full to the plaintiff, and also to lose the full amount of what Tinkham & Co. owe him for money, which he, in confidence in their solvency and integrity, deposited in their hands.

HERVEY, ANTHONY & GALT,

Attorneys for Defendant in Error.

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Lyra B Mc Cagg

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Charles L. Woodman

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Filed April 25th 1862
L. L. L. a
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SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, }
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At the date of the assignment by Tinkham & Co., the defendant had in their hands on deposit, \$282.74, an amount more than sufficient to pay the full amount of the note.

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HERVEY, ANTHONY & GALT,

Attorneys for Defendant in Error.

Ezra B McCagg

vs

Charles L. Goodman

Gifts Points

Filed April 25th 1862

L. Leland
clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862.

EZRA B. McCAGG, Pl'ff. in Error, }
vs. }
CHARLES L. WOODMAN, Def't. in Error. }

POINTS AND AUTHORITIES FOR PLAINTIFF IN ERROR.

This case is founded upon the following facts :

That Woodman made his note, dated the 8th May, 1861, for \$235, to Spafford, Stewart & Co., payable to their order, in 30 days after its date, at the office of Tinkham & Co., who were bankers at Chicago ;

That Tinkham & Co. bought this note of Spafford, Stewart & Co., before it was due ;

That on the 1st June, 1861, some 8 or 10 days before the note was due, Tinkham & Co. assigned and delivered it to the plaintiff, in trust for certain of their creditors named in the deed of assignment ;

That Tinkham & Co. were bankers at Chicago, and defendant kept an account with them, and that they owed defendant \$282 74, at the time they assigned to plaintiff, for money deposited, and that Tinkham & Co. became insolvent, and never have paid defendant that indebtedness ;

That Tinkham & Co. only assigned to the plaintiff *a part of their assets* principally notes and bills not then due, but did not attempt or pretend to assign to him their general estate.

There is no proof or pretence that the note was assigned to plaintiff to avoid the set off, by defendant, of his claim against Tinkham & Co., for money deposited, or that plaintiff knew of this indebtedness at the time of the assignment ;

Nor is there any proof that defendant ever offered to pay or arrange the payment of this note, out of his money deposited with Tinkham & Co.

These facts present the following question for decision : "Can the
" maker of a promissory note, which, before it is due, is assigned and
" delivered to the assignee of an insolvent debtor, for the benefit of his
" creditors, set off against such note, an indebtedness to himself from the
" insolvent debtor not in any way connected with the note ?"

We insist that he cannot, and shall try to maintain that the assignee of an insolvent debtor takes negotiable paper from his assignor, subject only to such defences as existed at the time of the assignment, and that no after arising equities or maturing demands can be set off against his title under the assignment.

It will be observed that the note in question was not payable to Tinkham & Co., but that they bought it of Spafford, Stewart & Co., the payees.

Unless the fact, that the plaintiff holds the note as an assignee of Tinkham & Co., for the benefit of their creditors, makes some difference in his rights, the case is parallel to that of

16 Ill. 269, *Peoria & Oquawka R. R. Co. vs. Neill*.
18 Ill. 147, *Root vs. Irwin*.

In the last case cited, the note was endorsed to the plaintiff *after due*, and the defendant tried to set off a claim against an intermediate endorsee, which the Court held could not be done.

Unless the assignee of an insolvent debtor, who takes negotiable paper before it is due, and holds it in trust for the creditors of the assignor, shall be held to stand in a worse situation than the assignee of overdue paper, the case of *Root vs. Irwin* is decisive of the present case, in favor of the plaintiff.

The claim against Tinkham & Co., which defendant set up as a defence to the suit upon the note, was not a proper subject of set off, for it was not a claim against the payee of the note, nor against the plaintiff on the record.

It was not a payment of the note, for no attempt to make it such had ever been attempted.

It was not a matter of recoupment, because it did not grow out of the same transaction with the note.

But the plaintiff held the note as trustee for the creditors of Tinkham & Co.; the latter could not collect it, release it, or encumber it after assignment and delivery to the plaintiff.

There was no mutual right of set off existing between Tinkham & Co. and defendant, at the time of the assignment and delivery of the note to plaintiff; the note was not then due, nor, so far as appears, was the indebtedness, from Tinkham & Co. to defendant, due, for no demand of payment had been made, and it was not due until a demand had been made and payment of it refused.

6 Hill 297, *Downes vs. The Phoenix Bank of Charlestown*.
8 Metcalf 217, *Watson vs. The Phoenix Bank*.

Neither the note nor the account were due at the date of the transfer of the note to the plaintiff. Had Woodman demanded payment of the account the day of the assignment, or at any time afterwards before maturity of the note, and brought suit to recover it, the note could not have been set off, because it was not due at the commencement of the suit.

1 Gilman, 649, *Kelly vs. Gallett*.
1 Scammon, 135, *Irwin vs. Wright*.

The plaintiff represented the creditors of Tinkham & Co., whose demands were named in the assignment.

His interest was in privity with them, and not with Tinkham & Co.; Burrill on Assignments, 325, and cases cited therein; and the proposition which, in our view, must dispose of the case, is the following:

That the assignee of an insolvent debtor takes negotiable instruments, assigned to him in trust for the creditors named in the deed of assignment, subject *only to such equities and defences as existed in regard to it at the date of the assignment*, and not those which arise afterwards; and we think that proposition is fully supported by the following authorities:

Burrill on Assignments, 438, cases cited.
6 Michigan, 168, *Lockwood vs. Beckwith et al.*
2 Duer, 78, 295, *Keep vs. Lord et al.*
4 Sanford, 604, *Beckwith vs. The Union Bank.*

This case was affirmed in the Court of Appeals.

5 Selden. 211, *Beckwith vs. Union Bank.*
22 New York, 489.

The doctrine of all these cases is consistent with that of

Talcott vs. Dudley, 4 Scammon, 435.

There were no equities or defences attached to the note at the date of the assignment of it to plaintiff.

It was not in any way connected with defendant's deposit account with Tinkham & Co., and if Tinkham & Co. had, after the assignment, no right to release it, receive payment of it, or in any way to interfere with it to the prejudice of the interests of their creditors under the assignment, it is difficult to see how their default or laches could in any way affect those interests which required the note to be paid to the assignee, in full, subject only to the equities attached to it when he took it.

The note not being due when plaintiff acquired his title to it, no payments having been made upon it before assignment of it to him, the set off claimed to be made by the defendant, not being a debt due either from the payees of the note or the plaintiff in the record, the case falls directly within the doctrine of *Root vs. Irwin*, 18 Ill., 147, unless this Court will hold, in opposition to those of Michigan and New York, that the assignee of an insolvent debtor holds the trust estate subject to all or any equities or defences arising after the date of the assignment, as well as those existing at the date of the assignment.

This ought not to be the law, because it would put the trust estate at the hazard of the conduct of the assignor after the assignment, leading to confusion and difficulty, whereas to adhere to the simple rule, that the trust estate is held by the assignee, subject only to the charges upon it at date of the assignment, secures the full rights of the creditors, and the free negotiability of commercial paper when held by assignees.

If these views are correct, the instruction asked by the plaintiff should have been given, and the judgment must be reversed.

April 22, 1862.

SCAMMON, McCAGG & FULLER,
For Plaintiff in Error.

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McLough

Woodman

Prints & Office

Filed April 28th 1862
L. Leland
Clerk.

Argued

Ready

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Printed by BEACH & BARNARD, 14 South Clark St. Chicago.

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Attorneys for Defendant in Error.

Box B. M. Cagg
No 163 as 163-86

Charles L. Wood

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[Faint handwritten notes and a scribble]

Filed April 25th 1862
L. L. L. L. L.
C. L.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1862. }

EZRA B. McCAGG,

vs.

CHARLES L. WOODMAN,

ERROR TO THE
SUPERIOR COURT OF CHICAGO.

ABSTRACT OF RECORD.

Rec. p. 1, This was an action of **Assumpsit**, brought by the plaintiff in error
2, 3, 4 against the defendant in error, upon a promissory note.

The Declaration contained a special count upon the note, and the
common counts.

4 The note sued on was dated May 8th, 1861, for \$235, due in thirty
days after date, made at Chicago by the defendant in error, payable to
the order of Spafford, Stewart & Co., at the office of E. I. Tinkham &
Co., and endorsed in blank by the payees, and by E. I. Tinkham & Co.

5 **Plea**, the general issue, and a notice:

6 That the note was given by defendant to Spafford, Stewart & Co.

That E. I. Tinkham & Co. discounted it for the payees, and became the purchasers of it from Spafford, Stewart & Co.

That on or about the 1st day of June, 1861, Tinkham & Co., being the absolute owner of the note, made an assignment of *certain* of their debts, assets and effects to the plaintiff, for the benefit of certain of their creditors.

That among the assets so assigned was the note sued on in this case.

7 That the plaintiff held it only as the assignee of Tinkham & Co., and did not pay any consideration for the assignment of the note to him.

That at the time of the assignment of the note to plaintiff, Tinkham & Co. were indebted to the defendant in the sum of \$282.74, for money which he had before then deposited with them.

That the plaintiff knew of said indebtedness from Tinkham & Co. to defendant, at the time of the assignment of the note to him.

That Tinkham & Co. were still indebted to defendant as aforesaid, at the time of pleading.

8 That defendant would give in evidence, that when he received notice from Tinkham & Co. that his note was about to mature, to wit, on or about May 25, 1861, while Tinkham & Co. were the holders of said note, he directed and requested them to apply so much of the money due from them to defendant as would suffice to pay the said note. To which appropriation Tinkham & Co. consented; and that defendant did not make any other appropriation of the money due him from Tinkham & Co., and that it so remained in their hands at the time of the assignment to the plaintiff.

That he would also prove that said note had been paid; and that after it had been paid, it was wrongfully and fraudulently put into circulation by Tinkham & Co., to compel defendant to pay it again.

9

Trial by Jury. Verdict for Defendant.

10 **Motion** for a new trial by plaintiff. Motion overruled, and judgment on the verdict. Exceptions by plaintiff.

11 On the trial, the note sued on was offered and read in evidence.

12 It was admitted that this note was the property of E. I. Tinkham & Co., and passed to the plaintiff by the assignment.

12 The defendant then read in evidence the deed of assignment from E. I. Tinkham & Co. to the plaintiff, dated June 6, 1861, which is in the ordinary form of such instruments, and conveys to the plaintiff the assets named in schedule A, attached to the assignment, which includes the note in question.

13 The plaintiff was authorized to collect the notes and assets assigned, and after paying the expenses of the assignment, was directed to apply the proceeds :

1st. To the payment of the indebtedness of Tinkham & Co. to E. B. McCagg, as endorser of notes and bills for the benefit of Tinkham & Co., amounting to \$6,250.

14 2nd. The indebtedness of Tinkham & Co. to the parties named in schedule B, in the order named, all of whom were accommodation parties to the paper named, for the benefit of Tinkham & Co.

15 3rd. To pay the debts named in schedule C.

15 4th. To pay all the other partnership debts of the firm of Tinkham & Co.

16 5th. To pay the separate debts of the members of that firm.

16 Lastly, to pay the surplus, if any, to the assignors.

17 Assignment executed by Edward I. Tinkham and John C. Ambler.

28 The defendant then called

Phillip R. Forrest,

Who testified : That he was a book-keeper for Tinkham & Co., who

Notice of the maturity of the note, was offered in evidence, which was written by witness and put in an envelope for the mail, in the ordinary course of business, as follows :

Chicago, May 29, 1861.

C. L. WOODMAN :—Your note for \$235, payable at our office, will be due June 7-10, 1861. E. I. TINKHAM & CO.

But witness did not know of Woodman's calling at the bank to see about paying the note ; had no recollection about it, or knowledge of Woodman's calling after the notice was written and sent.

This was all the evidence in the case.

To the admission of all which evidence of the witnesses Forrest and Brewster, the plaintiff, by his counsel, then and there objected, because of irrelevancy and incompetency.

The court overruled the objection and admitted the evidence.

The plaintiff then and there excepted to this ruling of the court.

30 The plaintiff then asked the court to give the following instruction to the jury :

In this case, the defendant cannot set off against the plaintiff's demand in this case, any indebtedness of Edward I. Tinkham & Co. to the defendant, notwithstanding the plaintiff holds the note as the assignee in insolvency of Edward I. Tinkham & Co. And unless the jury believe, from the evidence, that the note was actually paid before it was assigned and delivered to the plaintiff, they will find for the plaintiff the amount of the note sued on, and interest from the maturity of the same.

Which the court refused to give ; to which refusal, the plaintiff then and there excepted.

The jury then rendered a verdict for the defendant.

Plaintiff then moved for a new trial, because

- 1st. The court admitted incompetent and irrelevant evidence to go to the jury.
- 2d. The court refused proper instructions to the jury.
- 3d. Because the verdict is against the law and the evidence.
- 4th. Because the verdict and judgment should have been for the plaintiff.

Exception to overruling motion for new trial.

Errors Assigned.

FIRST. That the court erred in admitting the testimony of the witnesses, Forrest and Brewster, and the bank book of defendant kept with Tinkham & Co., to go to the jury.

SECOND. That the court erred in refusing to give the jury the instruction asked by the plaintiff.

THIRD. That the court erred in refusing to grant a new trial.

FOURTH. That the verdict of the jury was against the law and the evidence, and should have been for the plaintiff.

FIFTH. That the judgment was erroneously entered for the defendant, when it should have been for the plaintiff.

SIXTH. Because of other errors appearing on the face of the record.

By his Attorneys,

SCAMMON, McCAGG & FULLER.

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Ezra B. McCagg

vs

Charles L. Woodman

Abstract

Filed April 22-1862
L. Island
Clerk

NOTICE TO CREDITORS

Notice to Creditors of the Estate of Charles L. Woodman deceased. The undersigned, Charles L. Woodman, executor of the last will and testament of the said Charles L. Woodman, deceased, do hereby give notice to all persons having claims against the said estate to present the same to me at my residence in the town of ... on or before the 1st day of May next. All claims must be supported by proper vouchers and receipts. All claims not so supported will not be allowed. Dated this 15th day of April 1862.

Witness my hand and seal this 15th day of April 1862.

Charles L. Woodman

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1862. }

EZRA B. McCAGG,

vs.

CHARLES L. WOODMAN,

ERROR TO THE
SUPERIOR COURT OF CHICAGO.

ABSTRACT OF RECORD.

Rec. p. 1, THIS was an action of **Assumpsit**, brought by the plaintiff in error
2, 3, 4 against the defendant in error, upon a promissory note.

The Declaration contained a special count upon the note, and the
common counts.

4 The note sued on was dated May 8th, 1861, for \$235, due in thirty
days after date, made at Chicago by the defendant in error, payable to
the order of Spafford, Stewart & Co., at the office of E. I. Tinkham &
Co., and endorsed in blank by the payees, and by E. I. Tinkham & Co.

5 **Plea**, the general issue, and a notice:

6 That the note was given by defendant to Spafford, Stewart & Co.

That E. I. Tinkham & Co. discounted it for the payees, and became the purchasers of it from Spafford, Stewart & Co.

That on or about the 1st day of June, 1861, Tinkham & Co., being the absolute owner of the note, made an assignment of *certain* of their debts, assets and effects to the plaintiff, for the benefit of certain of their creditors.

That among the assets so assigned was the note sued on in this case.

7 That the plaintiff held it only as the assignee of Tinkham & Co., and did not pay any consideration for the assignment of the note to him.

That at the time of the assignment of the note to plaintiff, Tinkham & Co. were indebted to the defendant in the sum of \$282.74, for money which he had before then deposited with them.

That the plaintiff knew of said indebtedness from Tinkham & Co. to defendant, at the time of the assignment of the note to him.

That Tinkham & Co. were still indebted to defendant as aforesaid, at the time of pleading.

8 That defendant would give in evidence, that when he received notice from Tinkham & Co. that his note was about to mature, to wit, on or about May 25, 1861, while Tinkham & Co. were the holders of said note, he directed and requested them to apply so much of the money due from them to defendant as would suffice to pay the said note. To which appropriation Tinkham & Co. consented; and that defendant did not make any other appropriation of the money due him from Tinkham & Co., and that it so remained in their hands at the time of the assignment to the plaintiff.

That he would also prove that said note had been paid; and that after it had been paid, it was wrongfully and fraudulently put into circulation by Tinkham & Co., to compel defendant to pay it again.

9 **Trial by Jury. Verdict for Defendant.**

10 **Motion** for a new trial by plaintiff. Motion overruled, and judgment on the verdict. Exceptions by plaintiff.

11 On the trial, the note sued on was offered and read in evidence.

12 It was admitted that this note was the property of E. I. Tinkham & Co., and passed to the plaintiff by the assignment.

12 The defendant then read in evidence the deed of assignment from E. I. Tinkham & Co. to the plaintiff, dated June 6, 1861, which is in the ordinary form of such instruments, and conveys to the plaintiff the assets named in schedule A, attached to the assignment, which includes the note in question.

13 The plaintiff was authorized to collect the notes and assets assigned, and after paying the expenses of the assignment, was directed to apply the proceeds :

1st. To the payment of the indebtedness of Tinkham & Co. to E. B. McCagg, as endorser of notes and bills for the benefit of Tinkham & Co., amounting to \$6,250.

14 2nd. The indebtedness of Tinkham & Co. to the parties named in schedule B, in the order named, all of whom were accommodation parties to the paper named, for the benefit of Tinkham & Co.

15 3rd. To pay the debts named in schedule C.

15 4th. To pay all the other partnership debts of the firm of Tinkham & Co.

16 5th. To pay the separate debts of the members of that firm.

16 Lastly, to pay the surplus, if any, to the assignors.

17 Assignment executed by Edward I. Tinkham and John C. Ambler.

28 The defendant then called

Phillip R. Forrest,

Who testified : That he was a book-keeper for Tinkham & Co., who

(4)

were bankers at Chicago, Illinois; and produced a bank book kept by defendant with Tinkham & Co., in which were the following entries, and none other :

<i>Dr.</i>		E. I. TINKHAM & Co. <i>in account with</i> C. L. WOODMAN.		<i>Cr.</i>	
May 10.	To Cash.....	\$185.84	By Checks.....	\$15.00	
" 13.	" "	122.55	" "	13.26	
" 15.	" "	220.00	" "	277.30	
" 16.	" "	45.00	" "	14.00	
" 17.	" "	55.00	" "	18.75	
" 18.	" "	85.39	" "	51.14	
			" "	15.35	
			" "	16.58	
			" "	9.66	
			June 5, Balance.....	282.74	
		<u>\$713.78</u>	" 5, Pr. vouchers ret'd	<u>\$713.78</u>	
1861.					
June 15.	To balance.....	\$282.74			

Which the plaintiff admitted to be genuine and correct, so far as the entries appeared, but objected to its introduction in evidence as irrelevant and incompetent; but the court overruled the objection, and admitted it to be read in evidence; to which ruling of the court the plaintiff then and there excepted.

The witness further testified that Tinkham & Co. ceased to do business after the assignment, and discharged their clerks. He did not know they were insolvent. They stopped payment of depositor's checks.

The defendant called

Edward L. Brewster,

29

Who testified: That he had been in the employment of Tinkham & Co., who were bankers.

That Woodman (defendant) was a customer of theirs, and had notes there which were discounted by Tinkham & Co. for others; but he did not know who was the owner of the note sued on; or that it had been discounted by Tinkham & Co. for defendant. It was not his business to know of the discount of notes by Tinkham & Co. Don't know that Tinkham & Co. owned the note sued on. It was endorsed and delivered to plaintiff by Ambler, a member of the firm of E. I. Tinkham & Co., at the date of the assignment.

Notice of the maturity of the note, was offered in evidence, which was written by witness and put in an envelope for the mail, in the ordinary course of business, as follows :

Chicago, May 29, 1861.

C. L. WOODMAN :—Your note for \$235, payable at our office, will be due June 7–10, 1861.

E. I. TINKHAM & CO.

But witness did not know of Woodman's calling at the bank to see about paying the note ; had no recollection about it, or knowledge of Woodman's calling after the notice was written and sent.

This was all the evidence in the case.

To the admission of all which evidence of the witnesses Forrest and Brewster, the plaintiff, by his counsel, then and there objected, because of irrelevancy and incompetency.

The court overruled the objection and admitted the evidence.

The plaintiff then and there excepted to this ruling of the court.

30 The plaintiff then asked the court to give the following instruction to the jury :

In this case, the defendant cannot set off against the plaintiff's demand in this case, any indebtedness of Edward I. Tinkham & Co. to the defendant, notwithstanding the plaintiff holds the note as the assignee in insolvency of Edward I. Tinkham & Co. And unless the jury believe, from the evidence, that the note was actually paid before it was assigned and delivered to the plaintiff, they will find for the plaintiff the amount of the note sued on, and interest from the maturity of the same.

Which the court refused to give ; to which refusal, the plaintiff then and there excepted.

The jury then rendered a verdict for the defendant.

Plaintiff then moved for a new trial, because

- 1st. The court admitted incompetent and irrelevant evidence to go to the jury.
- 2d. The court refused proper instructions to the jury.
- 3d. Because the verdict is against the law and the evidence.
- 4th. Because the verdict and judgment should have been for the plaintiff.

Exception to overruling motion for new trial.

Errors Assigned.

FIRST. That the court erred in admitting the testimony of the witnesses, Forrest and Brewster, and the bank book of defendant kept with Tinkham & Co., to go to the jury.

SECOND. That the court erred in refusing to give the jury the instruction asked by the plaintiff.

THIRD. That the court erred in refusing to grant a new trial.

FOURTH. That the verdict of the jury was against the law and the evidence, and should have been for the plaintiff.

FIFTH. That the judgment was erroneously entered for the defendant, when it should have been for the plaintiff.

SIXTH. Because of other errors appearing on the face of the record.

By his Attorneys,

SCAMMON, McCAGG & FULLER.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

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

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

Sam H. Higgins } Judges.

Grant Woodruff }

Charles Dwyer Prosecuting Attorney.

Anthony Fleming Sheriff of Cook County.

Attest, Thos B. Carter Clerk.

Recit remembered that heretofore to wit: on the 21st day of June in the year of our Lord one thousand and eight hundred and sixty one, Ezra B. McCay Plaintiff, by his attorney, filed in the office of the Clerk of the Superior Court of Chicago his certain Declaration in the words and figures following, to wit:

1
State of Illinois The Superior Court of Chicago
Cook County &c. July Term A.D. 1861.

Ezra B. McCaughey plaintiff in this suit by
Samuel McCaughey & Fuller his Attorneys, Com-
plain, of Charles L. Woodman defendant
in this suit of a plea of Trespass on the case
upon promises. For that whereas, the said
defendant heretofore, to wit: on the eighth
day of May in the year of our Lord one
thousand eight hundred and sixty one
at Chicago, to wit: at the County of Cook,
and State of Illinois, made his certain note
in writing, commonly called a promissory
note, bearing date a certain day and year there-
in mentioned, to wit: the day and year last aforesaid
and then and then delivered the said note to
Messrs Spafford, Stewart & Co. by which said
note the said defendant then and then promised
to pay to the order of Messrs Spafford Stewart & Co.
within the term and State of C. L. Woodman
thirty days after date two hundred and
thirty five Dollars at the banking office of
E. D. Tinkham & Co. to wit: in Chicago, for value
received - And the said Spafford Stewart & Co.
then and then endorsed the said note in writ-
ing and delivered the same so endorsed to Edward
D. Tinkham & Co. who afterwards to wit: on the day
and year aforesaid, endorsed the same to the

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plaintiff, and then and there delivered the said promissory note so endorsed as aforesaid to the said plaintiff.

By reason whereof, and by force of the Statute in such case made and provided, the said defendant became liable to pay to the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note: and being so liable the said defendant in consideration thereof, afterwards to wit, on the same day and year and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note. And whereas also the said defendant afterwards to wit, on the nineteenth day of June in the year of our Lord one thousand eight hundred and sixty one, at the place aforesaid was indebted to the said plaintiff in the sum of five hundred dollars, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiff to the said defendant. And at the special instance and request of the said defendant. And for other money by the said plaintiff before that time paid claim out and expended for the said defendant. And at the like request of said defendant. And for other money by the said defendant before that time had same received to and for the use of the said plaintiff. And being so

indebted, the said defendant in consideration thereof, afterwards, to wit: on the same day and year last aforesaid, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in this Count mentioned, when the said defendant should be therunto afterwards requested.

Moreover also, the said defendant afterwards to wit: on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money, before that time due and owing from the said defendant to the said plaintiff and then and there being in arrear and unpaid, and upon such accounting, the said defendant then and there was found to be in arrear and indebted to the said plaintiff in the further sum of five hundred dollars of like lawful money as aforesaid. And being so found in arrear and indebted to the said plaintiff the said defendant in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned, when the said defendant should be therunto afterwards requested.

Nevertheless, the said defendant (although often requested, &c. to wit, on the day when the said debt became due and payable, according

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to the tenor and effect thereof, and oftentimes
since, to wit, at the place aforesaid has not been
paid the several sums of money above mentioned
or any or either of them, or any part thereof,
to the said plaintiff but to pay the same or any
part thereof to the said plaintiff the said defend-
ant has hitherto altogether refused, and still
does refuse to the damage of the said plaintiff
of five hundred dollars, and therefore the
said plaintiff brings suit &c.

Samuel McLaughlin
Plaintiff's atty.

Copy of the Instrument paid upon

\$235.00

Chicago 8th May 1861.

Thirty days after date I promise to pay
to the order of Messrs Spafford Stewart & Co. Five
hundred and thirty five Dollars at the Banking
Office of E. J. Dickinson & Co. True value received
Endorsed C. L. Woodman

Spafford Stewart & Co.

per C. L. Woodman

E. J. Dickinson & Co.

The Defendant will take notice that the
above note is the only cause of action in this
case

Samuel McLaughlin
Plaintiff's atty.

51
And after said, to wit: on the 3rd day
of July in the year aforesaid, the said de-
fendant, by his attorney filed in the office
of the Clerk of said Court, his certain plea
as noticed in the words of figures following,
to wit:

The Superior Court of Chicago
of the July Term 1881.

Charles L. Norman ^{Seaman} Def
vs
Ezra B. McLaughlin ^{Plff}

And the said defendant by Henry
Anthony & Galt his attorneys come to defend
the same and injury which he said says
that he did not undertake or promise in
manner and form as the said plaintiff
has above thereof complained against
him or of this but the said defendant puts
himself upon the Country &c

Henry Anthony & Galt
Attys for Def

And the said Plaintiff doth the like

Seaman McLaughlin
Plff, atty.

Messrs Seaman McLaughlin & Fuller
Attys for Plff

Here take

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notice that the said defendant will give in evidence under the general issue above pleaded and insist that the said note sued on in this case, was given by said defendant to Messrs Spafford Stewart & Co; that Edward J. Tinkham & Co. discounted the said note for and because the purchaser thereof from the said Spafford Stewart & Co. before the same became due and payable; that said note of the said Defendant was when the same was so discounted by the said Edward J. Tinkham & Co. endorsed in writing by the said Spafford Stewart & Co. to the said Edward J. Tinkham & Co. and delivered so endorsed to them and that said note thereupon became the absolute property of the said Edward J. Tinkham & Co. that the said Edward J. Tinkham & Co. on or about the first day of June 1861. made an assignment of certain of their outstanding debts, assets and effects to the said Ezra B. May Jr. the said Plaintiff, for the benefit of certain of their creditors: that the said note sued on in this case was the property of said Edward J. Tinkham & Co. at the time they made the said assignment to the said Plaintiff and that the said note if it was assigned and transferred to the said Plaintiff, was assigned and transferred to the said Plaintiff for the benefit of the creditors of Edward J. Tinkham & Co. in said assignment mentioned and for no other purpose, and that the said Plaintiff did not pay any consideration for the said transfer, if any such was made; that the said Edward J. Tinkham & Co. at the time they made

1
The said assignment to the said Plaintiff and
transfer of the said note to the said Plaintiff was
indebted to the said Defendant in the sum of
One hundred and Eighty two Dollars & Seventy
four Cents, for money which had been there-
fore deposited with the said Edward J. Sisk-
ham & Co. by the said Defendant and that
the said Plaintiff knew of the said indebtedness
from the said Edward J. Siskham & Co. to the
said Defendant at the time the said note was
so transferred to the said Plaintiff and that
the said Edward J. Siskham & Co. are still in-
debted to the said Defendant in the said sum
of One hundred and Eighty two Dollars &
Seventy four Cents.

And the said Defendant will further
give in evidence and insist that when he
received notice from said Edward J. Siskham
& Co. of the said note being about to mature,
to wit: on or about the 25th day of May A. D.
1861, & which the said Siskham & Co. were the
holders thereof, he directed and requested
the said Edward J. Siskham & Co. to apply
so much of the money belonging to the said
Defendant, which was then in their hands
to wit, the sum of One hundred and eighty
two Dollars and Seventy four Cents as might
be necessary to pay the said note in full &
then and there appropriated so much thereof
as should be necessary for that purpose for
the payment of the said note, which appor-
portionment was made with the consent and
sanction of the said Edward J. Siskham & Co.
and of the said Defendant. And that

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The said Defendant did not make nor did he attempt to make any other or different appropriation of his said money in the hands of the said Edward D. Tinkham & Co but that the same remained undivided of in any way, except as appropriated as aforesaid. But the time when the said Edward D. Tinkham & Co made the assignment hereinbefore set forth.

And that the Defendant will give in evidence and insist, that the said note sued on in this case has been wholly paid, and has after such payment been wrongfully and fraudulently attempted to be put into circulation by the said Edward D. Tinkham & Co in order to compel the said Defendant to pay the same a second time.

Dated this 2^d day of July 1861.

Hervey Anthony Galt
Att'y for Def.

And afterwards, to wit: on the 20th day of December in the year aforesaid, said day being one of the days of the December Term of said Court, the following among other proceedings now had and entered of record in said Court, to wit:

Ezra B. McLaughlin
 or
 Charles L. Woodman Assignee

This cause being this day called for trial comes said Plaintiff by Scammon McLaughlin his attorney, and the said Defendant by Henry Anthony & Galt his attorneys also comes and issues being joined herein it is ordered that a jury come whereupon comes the jury of good and lawful men to wit: Jas. P. Keefe, W. H. Hammond, L. W. Browning, Charles W. Bourne, J. R. Wright, O. P. Selser, Stephen White, Frederick Sawyer, Frederick Perkins, Peter Colwell, Henry Kulp George Demarest who being duly elected, tried and sworn to try the issues joined as aforesaid after hearing evidence arguments of Counsel and instructions of the Court retired to consider of their verdict, and afterwards returned into Court submit their verdict and say that the jury find issues for said Defendant, and whereupon said Plaintiff submits his motion herein for a new trial in this cause.

And afterwards to wit, on the 25th day of March in the year of our Lord one thousand eight hundred and sixty two, said day being one of the days of the March Term of said Court, the following among other proceedings were had & entered of record in said Court, to wit:

4
10
Ezra B. McCagg Act
Charles L. Woodman

And now at this day again comes
said plaintiff by Scammon McCagg & Muller his
attorneys and said defendant by Henry, Anthony
& Galt his attorney also comes, and this cause
coming on now to be heard before the Court sitting
in open court upon the motion of said plaintiff heretofore
submitted hereto at the December Term last past of
this Court (C. D. 1861) for a new trial in said cause
and counsel being heard thereon and the Court
being fully advised in the premises one of the opin-
ions that the reasons filed by said plaintiff
in support of his said motion are not sufficient.

It is therefore considered by the Court that the
motion be and is hereby overruled and a new trial
refused to said plaintiff.

So which ruling of the Court said plaintiff
then and there accepted and thereupon enters his
exceptions herein to the ruling of the Court in over-
ruling his said motion for a new trial.

Wherefore said Defendant ought to have
judgment for his costs upon verdict of the jury
rendered herein as aforesaid.

Therefore it is considered that said Defendant
do have and recover of said Plaintiff
his costs and charges about his defence in this
behalf expended and have execution therefor.

11
And after was to wit on the day and year last
aforesaid, the said Plaintiff by his attorneys
filed in the office of the Clerk of said Court, his
certain Bill of Exceptions in the words and figures
following, to wit:

In the Superior Court of Chicago
Cook County Illinois

Cyrus B. McCagg
Charles L. Woodman

Bill of Exceptions

Be it remembered that on the trial of this cause
the Plaintiff offered and read in evidence the
note set out in the declaration - which note is
in the words and figures following -

\$235.00. Chicago 8th May 1861.
Thirty days after date I promised to
pay to the order of Messrs Spafford Stewart & Co
Two hundred and thirty five Dollars, at
the Banking Office of E. J. Tinkham & Co
here valued received.
C. L. Woodman

Endorsed
Spafford Stewart & Co.
per A. Stewart

E. J. Tinkham & Co.

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And then recited his case.

It was admitted this note was the property of Edward J. Tinkham Co. at the time of its assignment to Plaintiff, and that it passed to the Plaintiff by the assignment. The Defendant then read in evidence to the jury the deed of assignment of Edward J. Tinkham Co. to the Plaintiff which deed of assignment is in the words and figures following.

This indenture made the 21st day of June in the year one thousand eight hundred and sixty one between Edward J. Tinkham and John C. Fuller Copartners under the name, style and firm of "E. J. Tinkham Co." of the first part, and Ezra J. McCagg of the second part.

Whereas the said parties of the first part are justly indebted to sundry persons in Schedule "B" hereafter named in sundry sums of money also in said Schedule named and are desirous to secure and pay the same in full.

Now this Indenture Witnesseth that the said parties of the first part, in consideration of the premises and of 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, conveyed sold, assigned, transferred and set over unto the said party of the second part his executors, administrators assigns all and singular the bank bills, bills, bonds, notes, claims, demands, choses in action, evidences of debt and property of every nature and description of the said parties of the first part in Schedule "A" hereto annexed, specified.

To have and to hold the same and every part and parcel thereof with the appurtenances to the said party of the second part his executors administrators

And assigns.

In Trust nevertheless to and for the following
uses, intents and purposes, that is to say, that the
said party of the second part, convert the same into
money, and shall also collect all and singular the
said debts, dues, bills, bonds, notes, choses in action
Claims and demands, or so much thereof as may
prove collectable; and thereupon execute, acknowledge
and deliver good and sufficient releases and all
other instruments that may be necessary and proper
to effect a sale and transfer of and all of the said
property and effects, lawfully assigned or intended so to
be, and to cancel and discharge the said evidences
of debt, when and as the same shall be respectively
paid, and with and out of the proceeds of such
sales and collections, the said party of the second
part shall first pay and discharge all the just
and reasonable expenses, costs charges and
Commissions of making, executing and carrying into
effect this assignment, and the trust thereby created
including a compensation to the said party of the second
part, for his services in executing the same.

And with and out of the residue or net proceeds
and avails of such money choses in action, and
collections the said party of the second part shall
pay and discharge the debts of the said parties
of the first part hereinafter named as follows.

First - To pay to E. B. McLogg any and all sums
of money due him, and also to fully pay and
satisfy and take up two certain Bills of Exchange
drawn by said McLogg and accepted by E. J.
Sinkland & Co. which said Bills amount in the
aggregate to the sum of six thousand two hundred
and fifty dollars. (\$6250) one of said being for

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14
Five thousand dollars (\$5000) and one for Twelve
hundred and fifty dollars (\$1250) and also all
interest costs and exchange on the same amount
of them - Said bills having been drawn by the said
McLagg solely for the benefit of said parties of the
first part. And the money obtained on same
having been had and received by said parties of
the first part for the use of their said firm -
And also to pay any and all outstanding indebtedness
of said firm of every kind and description in
which said McLagg shall or may be liable as
maker, drawer, acceptor or in any other way, or
under any other circumstances.

Any or all outstanding notes or drafts on which
said firm are in any way liable, that create or
show any liability at the part of said McLagg
having been made drawn accepted or endorsed
as the case may be, by the said McLagg solely
for the use of said firm and without any benefit
to him.

Second. The said parties of the second part
shall pay and discharge the several and respective
notes, drafts and sums of money named and designated
in the Schedule herunto annexed marked "Schedule
B" in the order in which they are named, together
with interest due and to grow due thereon, said
several notes and drafts, having been executed
for the benefit of said firm and the money received
on the same having been had and used solely by
said firm, without any benefit to the other parties
thereof. And if said net proceeds shall not be
sufficient to pay and discharge each and every
of the said debts and liabilities mentioned in
said Schedule B. in full then the same shall be

paid out of such net proceeds in the order in which they are named in said Schedule so far as the said proceeds will go.

Third. The said party of the second part shall pay and discharge in full the several and respective notes, drafts and sums of money named and designated in the Schedule herunto annexed marked "Schedule C", together with the interest due and to grow due thereon. And if said net proceeds shall not be sufficient to pay and discharge the said debts and liabilities mentioned in said "Schedule C" in full, then the same shall be paid out of such net proceeds, ratably, as far as the said proceeds will go in proportion to their respective amounts.

Fourth. With and out of the residue and remainder of the said net proceeds if any shall remain after the payment in full of the said debts and liabilities due the said E. B. McLaugh, or upon which the said E. B. McLaugh may be or become liable for or in respect of the said two several hereinafore mentioned Bills of Exchange, or otherwise, on account of said firm, and of the debts and liabilities mentioned in said Schedule B & C hereto annexed, the said party of the second part shall pay and discharge all the other copartnership debts, demands and liabilities whatsoever, now existing whether due or hereafter to become due against the said parties of the first part, provided such residue shall prove sufficient for that purpose, and if the same prove insufficient, then the said party of the second part shall apply the said residue to the payment and liquidation of such debts and liabilities ratably - share and share alike - as

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crediting to their respective accounts, as far as
such residue will extend for that purpose.

Fourthly. With and out of the residue and remainder
after paying all copartnership debts the said
parties of the second part shall pay and discharge
all the private and individual debts of the said parties
of the first part or either of them, whether due or to
grow due, provided the respective amounts of the
individual debts of each of said parties does not
exceed his portion of the surplus that may remain
after paying all the said partnership debts, and
if it should, then his interest in said surplus is to be
divided, pro rata, among his individual creditors
in proportion to their respective demands, it being
understood that no part of the said surplus which
will belong to each of said individual parties of
the first part respectively, after the payment of the
copartnership debts, is to be made liable for the
individual debts of the other of them.

Fifthly. If any surplus shall remain of the
said proceeds after the payment of all the debts due
by the said parties of the first part or either of
them, the said parties of the second part shall
return the same 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 created, the said
parties of the first part do hereby make, constitute
and appoint the said parties of the second part their
executors and administrators. And each of them
true and lawful attorney irrevocably, with full
power and authority to do, transact and perform
all acts, deeds, matters and things which may
be necessary in the premises as fully and completely

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as the said parties of the first part or either of them,
might or could do, if these presents had not been
presented: And attorneys, one or more, authorized
to make, nominate and appoint with full power
of substitution and revocation: hereby ratifying and
confirming all and whatsoever the said attorney and
his substitute or substitutes shall lawfully do or
cause to be done in the premises by virtue hereof.

In witness whereof the parties to these
presents have hereunto set their hands and seals, this
day and year first above written.

Sellen & delivered
in presence of

John Ambler
Edw. J. Kirkham

Schedule A

Account of property handed to E. B. Mc
Cagg by Edward D. Dickinson in John C. Ambler
comprising the firm of Carr & Dickinson Co.
in pursuance of an assignment made and
executed on the 15th day of June 1861.

Accounts Current

James Clapp	44 18
Chapin Woodcut Co (subject to a claim of Geo. C. Miller amounting to about \$128.99)	409 50
D. A. Casper	2622 85
D. F. Casper & Co.	241 37
A. C. Coventry	64 60
E. R. Hooper	409 64
Worcester Hall Co.	102 44
Francis R. Hitt	80 00
Parleton Jones	6253 79
All sums due us by Solon McCloy either by note or on the "Joint Account" of the Reporter.	
	288 36
All our interest in the assets of J. S. Saltonstall Co (Saltonstall notes) and interest	
	2416 03
Michael Terman	2378 39
A parcel or package of uncurrent Illinois Bank notes valued at	
	1000
William Whitney	1145 40
	\$16466 58

John C. Ambler

W. H. Bankdale Co (in bill at St. Louis)	1 note forward	16466	56
W. H. Russell		4469	58
J. L. McVicker (2 notes)		589	14
The residuary balance of the value of the Mechanical Bakery stock amounting to \$5000 subject to a loan from W. S. Newberry of \$2500 estimated as said Stock now in the hands of W. S. Newberry		5000	00
J. H. Mann		348	90
C. L. Harmon		4000	00

Bills Receivable, all sums due from Baker & McEwen		650	
Mr. Miller	check	1000	
Keith	"	150	
Geo Bell	note	1707	
J. Rickards	"	249	29
McElroy	"	200	
Vanderzager		198	03
Beers	3 notes	590	
Nayro		600	
Coleman		200	
Haley		200	
Dickinson	2 notes	205	17
J. C. Turner		1216	41
Forward		8561	66

J. Chamber

Brought Forward

J. Wright		3561 66
Mitchell & Zahn		3000
Tirman		1000
R. Porter		3000
Coffee Co.		160
Thompson	(4 notes)	600
Keeneston		2000
Campbell		100
Edwards & Balcom		350
A. H. Court		758 96
Spafford Stewart Co.		535 32
Kline Greeley Co.		3000
H. Coles		2 1/2
Mitchell Zahn		1200
Childs		1000
Edwards & Balcom	(2 notes)	1000
Chapin Howard		2000
E. Collingwood	check	1200
G. H. Tiffany	"	100
Brown & Wilder	"	33 57
Brown with amt of note \$100. bal 4 telegraph		48 33
Haito		110 45
Thompson & H		50
Hoodman		500
Wilson		235
Forward		1157 83
		62639 62

	Brought forward	62629.62
Ames		665
McElroy		250
do		400
Tucker		150
Hilds		715
Fuller		250
Castman		30
Smith		200
Wayro		500
		<hr/>
		65859.62
		\$57665.65

J. C. Amador

Circulating notes of Savings Banks of the State of Illinois \$24494. with from 40 cents to 50 cents on the dollar which \$24494 includes the package of uncurrent Illinois Bank notes valued at \$1000 here in before Schedules.

The following amounts applicable to the debts named in the assignment as per Schedule B. below.

Albert Crosby	3744.50
E. S. Hadsworth	331.10
J. Lind	4457.15
B. J. Lawer	2622.85
B. J. Lawer Co.	241.37
J. N. McMillan Cash Check	1000.00

Which amounts are to be charged as in Schedule B. provided, against the indebtedness in said Schedule B. Specified

7.
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Schedule B.

referred to in the annexed assignment and made
a part thereof.

The draft of E. D. Tinkham Co. on E. S. Hoar and accepted by him for \$500.00 dated May 16th 1861. and payable six months after date, which was negotiated to J. Sturges less \$31.10 the intention being only to provide for the amount of the draft less \$31.10.

The draft of E. D. Tinkham Co. on Remond Brothers Co. and accepted by them for \$1500.00 dated May 8th 1861. and payable four months after date which was negotiated to William C. Brown.

The draft of E. D. Tinkham Co. on Albert Crosby and accepted by him for \$2500.00 dated May 8th 1861. and payable four months after date and negotiated to William C. Brown.

The draft of N. Jones on A. Crosby for \$5000.00 dated Nov 24th 1860 and payable six months after date, which was negotiated to C. B. Blair. Less the sum of \$2000.00, it being intended to provide for no more than \$3000.00 of this draft and for the purpose of this assignment it is to be treated as a draft for \$3000.00 only.

The draft of Albert Crosby on E. D. Tinkham Co. and accepted by them for \$3000.00 dated April 29th 1861. payable six months after date at the Metropolitan Bank N. Y.

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From the \$800 amount of the last three drafts above mentioned it to be deducted the sum of \$304. the intent being to provide only for the payment on account of said three drafts, of \$800 less the sum of \$304, which is to be deducted from said drafts pro rata.

The draft of E. D. Dickinson Co. on W. D. Gilman and accepted by him, dated May 10 1861, and payable four months after date and negotiated to William H. Brown for \$2500.

The draft of W. W. Farrell on W. D. Gilman Co. and accepted by them for \$5000, dated May 6 1861, and payable ninety days after date at the Bank of the State of New York, negotiated to the Keokuk Branch Bank.

The draft of B. J. Carver on E. D. Dickinson Co. and accepted by them for \$5000 dated March 14 1861, and payable ninety days after date and negotiated to J. S. Wilford less the deduction hereinafter named.

One half of the draft of L. Kreigh on B. J. Carver accepted by him for \$5000, dated May 16 1861 and payable at Meigs & Breunler N. Y. ninety days after date: said E. D. Dickinson Co. are liable for only \$2500 of said draft and for the purpose of this assignment it is to be taken as a draft for \$2500 only, which amount is to be paid less the deduction hereinafter named.

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The draft of E. J. Pinkham Co on the Metropolitan Bank for \$5000 dated May 2^d 1861. endorsed by P. J. Casper and negotiated to E. Sturges less the deduction hereinafter mentioned

It is intended only to secure on the last three drafts \$12500 less \$2894.22, which sum of \$2894.22. is to be deducted from the amount of said three drafts pro rata, and the amount of each of said drafts as before fixed less its pro rata proportion of said \$2894.22. only is to be paid, that is \$12500 less \$2894.22.

The draft of J. C. Ambler on E. J. Pinkham Co and accepted by them for \$3135. dated May 24th 1861. and payable to the order of E. J. Pinkham at the Metropolitan Bank N. Y. six months after date and endorsed by said Pinkham.

The draft on E. J. Pinkham Co and accepted by them for \$2000 held to order by C. A. Doolittle, it being the only accepted for \$2000 of E. J. Pinkham Co held by him.

The draft of J. C. Ambler on E. J. Pinkham Co and accepted by them for \$2500 dated April 22^d 1861. and payable sixty five days after date, and negotiated to the Occident County Bank.

The draft of J. C. Ambler on E. J. Pinkham Co and accepted by them for \$2500 dated May 15th 1861. and payable sixty five days

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after date and negotiated to the Oneida
County Bank.

The last two drafts above mentioned
being the acceptances of E. J. Finkhams Co
now held by said Oneida County Bank.

It is intended by this assignment to secure
the two last above described drafts, less the
amount due from Hazen Coolittle to E. J.
Finkhams Co which amount is to be charged
against said two drafts, one half against each
the difference only between said indebtedness
and \$5000 amount of said two drafts being
secured by this assignment.

The draft of E. J. Finkhams Co on
the Metropolitan Bank endorsed by S. Lind
for \$5000. dated May 3rd 1861. negotiated to
S. Stuyvesant less \$4459.15 less the deduction
herein after named

The draft of E. J. Finkhams Co on S. Lind
and accepted by him for \$1000. dated May 11th
1861. and payable four months after date and
negotiated to William H. Brown.

It is intended only to secure on the last two
drafts \$6000 less \$4459.15. which sum of
\$1540.85 is to be deducted from the amount of
said two drafts ^{pro rata and the amount of}
each of said drafts as before fixed less its
pro rata proportion of said \$4459.15. only is
to be paid, that is \$6000. less \$4459.15.

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Approx. the balance of the account of the
Keokuk Branch Bank from which is to be
deducted the Check of the Cashier of said
Bank held by E. J. Dinkland Co. and all
demands due said E. J. Dinkland Co from said
Bank.

The demands of Lake & Blakeman on
S. S. Whitney & accepted by him for \$500 dated
Feb. 9th 1861, and payable ninety days from date
now held by the Keokuk Branch Bank &
which we are to pay to the said Branch Bank.

Schedule C.

referred to in the foregoing assignment
and under a part thereof

Metropolitan Bank New York (to come such drafts as have not been paid)	3000 00
Webster Moin Co	4200
Young Men's Association Chicago	151
Industrial Association Sailors fund about	500
Estate of George Barnett	1300
Stephen Swift	1800
Newspaper as per list hereto annexed about	2500
All widows & unmarried females to which said firm may be indebted, for a deposit made by such widow or unmarried female, the amount due them respectively, supposed to be in all about 700	
All debts for salaries due them or for funds in deposit with	1000
Bureau of Philadelphia	1250
E. Morrison New York	1000

List of New Accounts referred to in above Schedule C.

G. P. Adams	88	50
S. Roberts	124	84
Levy & Johnston	42	39
J. W. DeLondres	70	00
E. Burling	43	46
Wm. B. Adams	204	34
L. Kennedy	379	61
H. H. [unclear]	13	97
Johnson & Spencer Co.	24	48
D. Stewart	180	68
Paul Coghlan	216	75
W. S. Stewart	198	50
H. L. Birley Esq	12	80
Hazlett & Co	284	77
J. W. Rawson	133	14
W. H. [unclear]	297	87
J. Mann & Co	108	
	<hr/>	
	\$	2426 00

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 Defendant then called one Phillip R. Forrest who being duly sworn testified as follows, "I was bookkeeper of Siskham & Co. who were bankers at Chicago Illinois, and paying till the 31st Decr 1861. Defendant then produced a bank book kept by Defendant with Edward S. Siskham & Co. the entries in which are as follows.

Dr. E. Siskham & Co. in acct with C. L. Woodman Cer.				
May 10	Cash	185.84	By Checks	15
13	"	122.55		13.26
15	"	220.		277.80
16	"	45		14
17	"	55		18.75
18	"	85.39		57.14
				15.35
				16.58
				9.66
			June 5. Balance	282.74
		<u>713.78</u>	" 9 months acct	<u>713.78</u>

1861
 June 5 To Balance 282.74
 which Plaintiff admitted to be genuine and correct so far as the entries therein appeared but objected to its introduction in evidence, as irrelevant and incompetent, but the Court over-ruled the objection, and admitted it to be read in evidence to which ruling of the Court the Plaintiff then and there accepted.
 The witness further testified that Siskham & Co. ceased to do business after assignment and discharged their clerks. That when Siskham & Co. were insolvent, they stopped payment of their depositors checks.
 The defendant then called one Edward L. Brewster who being duly sworn testified as

follows.

That he was, in the employment of Tinkham & Co. who were bankers, that Woodman (defendant) was a customer of theirs, and had notes there, which were discounted by Tinkham & Co for others, and as note tello and have seen the note sued on, but I dont know who was the owner of it, nor that it had been discounted by Tinkham & Co for defendant.

It was not my business to know of the discount of notes by Tinkham & Co. I dont know that Tinkham & Co owned the note sued on, it was endorsed and delivered to Plaintiff by Amble a member of the firm of Edward & Tinkham & Co. at the date of the assignment. Notice of the maturity of the note offered in evidence was written by me put in an envelope for the mail in the ordinary course of business in the office as follows.

Chicago May 29 1861.

C. L. Woodman, Your note for \$200 payable at our office will be due June 7th 1861. E. Tinkham & Co. but I dont know of Woodman's calling at the bank to see about paying the note, have no recollection about it, and cannot say that I have any recollection of Woodman's calling to see about this note after the notice was written and sent.

This was all the evidence in the case. To the admission of all which evidenced of the said witnesses I object and Prorster the Plaintiff by his Counsel then and there objected because of irrelevancy and incompetency, but the Court overruled the objection, and admitted the evidence to which ruling of the Court the Plaintiff then and there excepted.

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The Plaintiff then asked the Court to give the jury the following instructions.

McCagg } Instructions for Jeff
Woodman }

Refused

In this case the debt cannot set off against the Plaintiff's demand in this case any indebtedness from Edward D. Dickinson No. to the Defendant, notwithstanding the Plaintiff holds the note as the assignee in insolvency of Edward D. Dickinson No. and unless the jury believe from the evidence, that the note was actually paid before it was assigned and delivered to the Plaintiff, they will find for the Plaintiff the amount of the note paid on and interest from the maturity of the same.

Which the Court refused to give, to which decision and refusal of the Court, the Plaintiff then and then accepted.

The jury then returned a verdict for the Defendant.

The Plaintiff then moved for a new trial, because the Court admitted incompetent and irrelevant evidence to go to the jury.

Because the Court refused to give proper instructions to the jury.

Because the verdict is against the law and the evidence.

Because the verdict should have been for the Plaintiff, but the Court overruled the motion for a new trial, and rendered judgment on the verdict for the Defendant, to which decision of the Court in overruling the motion for

a new trial, and rendering judgment for the
defendant the Plaintiff then and there accepted
and inasmuch as the several matters aforesaid
do not appear of record the Plaintiff prays that
this his Bill of Exceptions be signed and sealed
which is done.

Grant Godrich *Att'y*

State of Illinois
County of Cook J. Thomas D. Carter
Clerk of the Superior Court of Chicago, within
and for the County of Cook and State of Illinois
do hereby certify that the foregoing is a full,
true and complete transcript of the Declaration,
& Plea & Notice of Pleadings in my office & proceedings for
judgment entered of record in said Court to-
gether with the Bill of Exceptions in a certain
Cause, wherein Ezra P. McLaughlin Plaintiff
and Charles L. Woodman Defendant.

Witness my hand and Seal
of said Court at the City of
Chicago in said County, this
1st Day of April A.D. 1862.
Thomas D. Carter Clerk



Supreme Court of Illinois
3rd Grand Division
April Term AD 1862

Egna B. McCoy } Off in Error
Charles L. Woodman } Defts in Error

Error from the Superior Court
of Chicago. Cook County, Illinois

And now comes Egna B. McCoy
Off in error, and says that in the
Record & proceedings above, there
is manifest error, in this.

First.

That the Court erred in
admitting the testimony of the witnesses
Forester, and Brewster and the Bank
Book of Deft. kept with Fullman
to go to the jury

Second. That the Court erred in
refusing to give the jury the
instruction asked by the Off.

Third. That the Court erred in
refusing to grant a new trial

Fourthly. That the verdict of the jury
was against the law & the evidence
and should have been for the Off.

Fifthly. That the judgment was ~~Deft~~
moreoverly entered for the ~~Deft~~
when it should have been for
the ~~Deft~~

Sixthly. Because of other errors
appearing on the face of
the Record -

By his Atty
Leammur McLaughlin Fuller

And now comes the said
Charles L Woodman and says
that in the record and proceedings
aforesaid there is no error
and submits the same to the
hear of the Court

By his Atty -

Henry Anthony Galt
Atty for Deft

5. April. 1862.

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Ezra B. McGagg

vs

Charles S. Woodman

Filed April 12, 1862

J. Seane

Clerk

Fees \$7.00