

12763

No. _____

Supreme Court of Illinois

Earll, for use

vs.

Mitchell et al

71641  7

140 179

Strong 7 Earl for use &
vs

Jensen Mitchell & Co

140

12763

1859

140-177

D. H. Bull

vs
James Mitchell

Abstract by
R. H. H.

Filed March 24, 1859

L. Leland
Clerk

Page

State of Illinois }
Stephenson County } S.S.

Pleas before the Hon. Benj R. Sheldon Judge of the Fourteenth Judicial Circuit of the State of Illinois in the Stephenson County Circuit Court in a suit therein pending wherein Strong H. Call who sues for the use of Charles G. Patton is plaintiff and James Mitchell Holden Putnam, and Alexander Nedy co-partners under the name and style of James Mitchell & Co are defendants.

Present

Hon Benj R. Sheldon Judge
Urban D. Meacham State Attorney
J. Wilson Shaffer Sheriff
Luther M. Guitman Clerk

Be it remembered that heretofore to wit on the 18th day of August A.D. 1858 the said plaintiff by Meacham & Bailey his attorneys comes and files his process as follows to wit:

State of Illinois }
Stephenson County } S.S.

In the Circuit Court of Stephenson County Illinois of the September Term A.D. 1858

Strong H. Call for the use of Charles G. Patton

2

James Mitchell, Holden
Putnam & Alexander Nely
Copartners doing business } Assumpsit
under the name and } Damages \$6000.
style of James Mitchell & Co }

The Clerk of said Court
will please issue a summons in the
above entitled action to the Sheriff of
Stephenson County, also a summons to the
Sheriff of Boone County returnable according
to law.

Mackay & Bailey

Plffs Atty's -

An order in praesenti is the following endorsement to wit

"Filed Aug. 18. 1868. J. M. Linton Clerk."

On which Praesenti was issued the following
process to wit -

State of Illinois }
Stephenson County } ss.

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

We command you to summon
James Mitchell Holden Putnam, & Alexander
Nely Copartners doing business under the
name and ~~style~~ style of James Mitchell & Co -
if he be found in your County personally
to be and appear before the Circuit Court
of said County of Stephenson on the first day
of the next term thereof to be holden at the
Court House in the City of Freeport in said
County on the first Monday in the month

3

of September next to answer unto Strong & Call for the use of Charles G. Patten in a plea of assumpsit to the damage of the said Plaintiff as he says in the sum of six thousand dollars and have you then and there this writ with an endorsement thereon in what manner you shall have executed the same Witness Luther M. Guiteau clerk of our said Circuit Court and the seal of said Court at Freeport in said County this 18th day of August A.D. 1858

Seal

Attest L. M. Guiteau Clerk -

On which summons is endorsed the following return to wit:

Served the within by reading the same to the within named James Mitchell & Holden Putnam this 18th day of August 1858. the other within named defendant not found in my County.

J. M. Shaffer Shff -

Serve	11.00
Mileage	.48
Return	<u>1.0</u>
	\$1.50

4
Afterwards to wit on the 27th day of August
A.D. 1858 the said plaintiff by his said attorneys
comes and files his declaration as follows
to wit

State of Illinois }
Stephenson County } ss.

In the Stephenson County
Circuit Court of the September Term A.D. 1858

James Mitchell Holden Putnam
and Alexander Neely Late Copartners doing bus-
iness under the name and style of James Mitchell
do were summoned to answer Strong H.
Eckel who sues for the use of Charles G. Putnam of
a plea of assumpsit and thereupon the said
plaintiff by Messrs Bailey his attorneys com-
plains. For that whereas the said defendants
heretofore to wit on the first day of January
A.D. 1858 at said County of Stephenson were in-
debted to the said plaintiff in the sum of
six thousand dollars for so much money by
the said defendants before that time had and
received to and for the use of the said plaintiff and
being so indebted they the said defendants
in consideration thereof afterwards to wit on
the day and year last aforesaid at Stephenson
County aforesaid undertook and there used

there faithfully promised the said plaintiff to pay him the said sum of money above mentioned when they the said defendants should be thereunto afterwards requested.

And whereas also the said defendants afterwards to wit on the day and year aforesaid at Stephenson County aforesaid were indebted to the said plaintiff in the further sum of six thousand dollars for beaver goods wares and merchandize by the said plaintiff before that time sold and delivered to the said defendants and at their special instance and request, and also in the further sum of six thousand dollars for money by the said plaintiff before that time lent and advanced to the said plaintiff defendants and at their like special instance and request. And also in the further sum of six thousand dollars for money by the said plaintiff before that time paid out and expended for the said defendants and at their like special instance and request. And also in the further sum of six thousand dollars for other money by the said defendants before that time had and received to and for the use of the said plaintiff. And also in the further sum of six thousand dollars for so much money then and there found to be due and owing from the said defendants to the said plaintiff upon an account stated between them. And being so indebted the said defendants in con-

6 consideration thereof then and there undertaken and faithfully promised to pay the said plaintiff the said several sums of money above in this count mentioned when the same afterwards requested

Yet the said Defendants not regarding their said several promises and undertakings but contrivinge although after requested so to do have not paid said plaintiff either of said sums of money above mentioned or any part thereof but so to do have hitherto wholly neglected and refused and still do neglect and refuse to the damage of the plaintiff of six thousand dollars and therefore he brings this suit &c

Mackinnon Barclay
Plff. atty

Copy of account sued on -
James Mitchell & Co

To Strong H Eull for use
of Charles G. Patton

1854		Dr		Dr
January 12 th	To	\$250	February 2 nd	\$3.75
" 17	"	3.75	" 3	3.75
" 19	"	3.75	" 6	3.75
" 21	"	3.75	" 8	3.75
" 26	"	3.75	" 10	7.50
" 28	"	3.75	" 15	3.75
" 31	"	3.75	" 16	11.25
February 1 st	"	7.50	" 18	7.50

February 20 th Lo	\$ 5.75	May 17. Lo	\$ 5.00
" 22 "	3.75	" 22 "	3.75
" 25 "	7.50	" 24 "	5.00
March 1 st "	7.50	" 25 "	5.00
" 9 "	3.75	June 1 st "	5.00
" 14 "	5.00	" 7 "	5.00
" 16 "	7.50	" 9 "	6.00
" 17 "	10.00	" 28 "	5.00
" 20 "	5.00	" 30 "	5.00
" 24 "	5.00	July 1 "	5.00
" 28 "	5.00	" 7 "	5.00
" 29 "	5.00	" 8 "	5.00
" 30 "	5.00	" 31 "	5.00
April 8 "	5.00	August 7 "	5.00
" 14 "	5.00	" 16 "	5.00
" 18 "	5.00	" 21 "	5.00
1852 April 19 "	5.00	" 22 "	5.00
" 21 "	5.00	" 24 "	5.00
" 22 "	5.00	" 25 "	5.00
" 27 "	5.00	September 8 "	5.00
May 2 "	5.00	" 11 "	5.00
" 4 "	5.00	" 12 "	3.75
" " "	5.00	" 18 "	3.75
" 5 "	5.00	1852 September 16 "	5.00
" 8 "	10.00	" 21 "	3.75
" " "	10.00	" 25 "	6.00
" 9 "	10.00	" 26 "	3.75
" 12 "	12.50	31 30 "	5.00

October 4 To

" 7 "

" " "

" 15 "

" 21 "

" 24 "

" 26 "

" 27 "

" 28 "

November 1 "

2 "

6 "

11 "

27 "

December 4 "

6 "

8 "

12 "

" "

18 "

19 "

20 "

22 "

25 "

27 "

27 "

30 "

1858

January 2 "

\$5.00 January 3 To

8.75 " 4 "

5.00 " 5 "

5.00 " 6 "

8.75 " 9 "

5.00 " 10 "

5.00 " 12 "

5.00 " 13 "

8.75 " 16 "

5.00 " "

10.00 " 17 "

5.00 " 18 "

10.00 " " "

8.75 " 19 "

5.00 " " "

5.00 " 22 "

5.00 " 24 "

5.00 " " "

5.00 " 26 "

5.00 " 31 "

5.00 February 6 "

5.00 " " "

8.75 " 7 "

5.00 " 10 "

7.50 " 15 "

8.75 " 19 "

5.00 " " "

5.00 " 20 "

\$5.00

5.00

5.00

8.75

5.00

10.00

8.75

4.50

8.75

8.75

10.00

7.50

8.75

8.75

7.50

5.00

5.00

8.75

5.00

5.00

5.00

5.00

8.75

10.00

5.00

8.75

5.00

8.75

February 20 20

" 21 "

" " "

" 22 "

" 27 "

March 3 "

" 12 "

" 16 "

" 23 "

¹⁸⁵⁻⁵
March 29 "

April 10 "

" 11 "

" 12 "

" 13 "

" 18 "

" 25 "

" 26 "

" " "

" 30 "

May 2 "

" 3 "

" 5 "

" 9 "

" " "

" 17 "

" 18 "

" 22 "

" 23 "

" 24 "

" 28 "

\$5.00 May 30 To

5.00 June 1st "

5.00 " 4 "

5.75 " 5 "

5.00 " 7 "

5.00 " 8 "

10.00 " 9 "

10.00 " 11 "

5.00 " 13 "

20.00 " 16 "

15.00 " 2nd "

5.00 " 28 "

5.00 July 5 "

5.00 " 5 "

¹⁸⁵⁻⁵
10.00 July 7 "

5.00 " 11 "

5.00 " 14 "

5.00 " 16 "

5.00 " 21 "

10.00 August 2nd "

10.00 " 4 "

5.00 " 6 "

5.00 " 11 "

20.00 " 14 "

20.00 " 17 "

15.00 " 20 "

15.00 " 23 "

20.00 " 24 "

10.00 " 27 "

5.00 " 28 "

\$20.00

20.00

15.00

20.00

5.00

10.00

7.50

10.00

7.50

15.00

13.00

10.00

10.00

20.00

20.00

20.00

7.50

10.00

5.00

20.00

7.50

20.00

20.00

5.00

10.00

20.00

10.00

20.00

10.00

10.00

August 28 To

\$2.00 October 11 To

\$10.00

" 30 "

5.00

" 12 "

10.00

" 31 "

20.00

" " "

10.00

September 1 "

10.00

" 13 "

10.00

" 3 "

10.00

" " "

20.00

" 4 "

20.00

" 15 "

10.00

" 6 "

10.00

" 15 "

10.00

" 8 "

10.00

" 18 "

10.00

" 12 "

10.00

" " "

10.00

" " "

10.00

" 19 "

10.00

" 13 "

10.00

" 20 "

10.00

" 14 "

10.00

" 23 "

10.00

" 15 "

3.75

" 26 "

10.00

" 18 "

15.00

" 27 "

23.75

" 21 "

10.00

" 29 "

10.00

" 22 "

5.00

November 1 "

7.50

" 24 "

10.00

" 10 "

10.00

" " "

7.50

" 15 "

5.00

" " "

10.00

" 19 "

5.00

" 25 "

10.00

" 22 "

5.00

" 27 "

10.00

" 23 "

5.00

" 28 "

20.00

" 26 "

20.00

October 1 "

10.00

" 30 "

10.00

" 2 "

10.00

" 1 "

10.00

" 4 "

10.00

" 4 "

7.50

" 6 "

10.00

" 7 "

10.00

" 8 "

10.00

" 12 "

7.50

" 9 "

20.00

" 15 "

7.50

" 11 "

7.50

" " "

7.50

" " "

7.50

" " "

7.50

1855-56
December 14 *Lo*

" 15 "

" 18 "

" 19 "

" " "

" 20 "

" 21 "

" 22 "

" 24 "

" 26 "

" 27 "

" " "

" 28 "

" 31 "

1856
January 5 "

" 11 "

" 13 "

" 16 "

" 17 "

" 19 "

" 22 "

" 24 "

" 30 "

February 6 "

" 8 "

" 9 "

" 12 "

" 14 "

" 18 "

" 20 "

\$750 February 28 *Lo*

5.00 " 14 "

7.50 " 6 "

7.50 " 1 "

5.00 1856 March 8 "

7.50 " 19 "

15.00 " 19 "

3.75 " 29 "

7.50 April 2 "

7.50 " 10 "

7.50 " 28 "

5.00 May 6 "

7.50 " 12 "

5.00 " 14 "

7.50 " 20 "

7.50 " 23 "

7.50 " 29 "

7.50 " 31 "

7.50 June 11 "

7.50 " 18 "

7.50 " 23 "

7.50 " 26 "

7.50 " 27 "

7.50 July 1 "

7.50 " 2 "

7.50 " 5 "

7.50 " 9 "

7.50 " 10 "

7.50 " 15 "

7.50 " 16 "

7.50 " 19 "

7.50 " 30 "

7.50 August 5 "

7.50 " 11 "

7.50 " 13 "

3.75 " 21 "

7.50 " 27 "

7.50 " 30 "

\$11.00

3.75

10.00

10.00

10.00

10.00

10.00

10.00

10.00

10.00

10.00

10.00

10.00

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10.00

10.00

10.00

10.00

7.50

7.50

10.00

5.00

15.00

10.00

10.00

10.00

On which said declaration is endorsed the following to wit

Dated Aug 27 1858

J. M. Gentry Clerk,

And afterwards to wit at the regular September Term of said Court begun and held on the first Monday of September A.D. 1858 at the Court House in the City of Freeport in the County and Judicial Circuit aforesaid on the ninth day of September of said Term the following proceedings were had in said Cause as the same appears of record.

Strong H. Carrl for use of
Charles G. Patten.

vs

James Mitchell Holden Putnam
& Alexander Neely

Assumpsit.

Now come the said defendants by their attorney and file their affidavit and motion for security for costs -

And also on the 17th day of September as yet of said September Term of said Court the following appears of record in said Cause

Strong H. Cull for use of
Charles S. Patten

vs

James Mitchell Holden
Putnam & Alexander Neely

Assumpsit.

Now come the said de-
fendants by their attorney and file their motion
for a bill of particulars. And the said plaintiff
by his attorney also comes and files security
for costs -

And afterwards to wit on the 24th day of Sep-
tember as yet of said September Term of said
Court the following appears of record in this case.

Strong H. Cull for use of
Charles S. Patten

vs

James Mitchell Holden Putnam
and Alexander Neely

Assumpsit.

Now motion of said
defendants by their attorney it is ordered that
said plaintiff file a more specific bill of
Particulars -

And afterwards to wit on the 25th day of ^{November} ~~August~~
A.D. 1858 the said plaintiff by Meacham Bailey
his attorneys comes and files his amended
Bill of particulars as follows to wit -

15 Strong H. Eull for the
use of Charles C. Patton
as.

Superior led
Current Court Decem-
ber Term A.D. 1858

James Mitchell, H. Allen

Paterson & Alexander Hedy

Copentines under the name and

style of James Mitchell led

James Mitchell led

Plaintiffs demanded

Bill of Particulars,

To Strong H. Eull for use of
Charles C. Patton

1857					1858				
Jan 12 To Cash received of Plaintiff to Plaintiff					Mar 1 To Cash received of Plaintiff to Plaintiff				
" 17	"	"	"	"	3.75	" 10	"	"	"
" 19	"	"	"	"	3.75	" 14	"	"	"
" 21	"	"	"	"	3.75	" 16	"	"	"
" 26	"	"	"	"	3.75	" 17	"	"	"
" 28	"	"	"	"	3.75	" 20	"	"	"
" 31	"	"	"	"	3.75	" 24	"	"	"
July 1	"	"	"	"	7.50	" 28	"	"	"
" 2	"	"	"	"	3.75	" 29	"	"	"
" 8	"	"	"	"	3.75	" 30	"	"	"
" 6	"	"	"	"	3.75	April 8	"	"	"
" 8	"	"	"	"	3.75	" 14	"	"	"
" 10	"	"	"	"	7.50	" 18	"	"	"
" 15	"	"	"	"	3.75	" 19	"	"	"
" 16	"	"	"	"	11.25	" 21	"	"	"
" 18	"	"	"	"	7.50	" 27	"	"	"
" 20	"	"	"	"	3.75	" 29	"	"	"
" 22	"	"	"	"	3.75	May 2	"	"	"
" 25	"	"	"	"	7.50	" 4	"	"	"

1884

May 4 To cash received of plaintiff to plaintiff - 5/1 5.00 5/13 To cash received of plaintiff to plaintiff - 8.75

" 5"	"	"	"	"	5.00	" 16	"	"	"	"	5.00
" 8	"	"	"	"	10.00	" 21	"	"	"	"	3.75
" 11	"	"	"	"	10.00	" 25	"	"	"	"	6.00
" 9	"	"	"	"	10.00	" 26	"	"	"	"	3.75
" 12	"	"	"	"	1.25	" 30	"	"	"	"	5.00
" 17	"	"	"	"	5.00	Oct 4	"	"	"	"	5.00
" 22	"	"	"	"	3.75	" 7	"	"	"	"	3.75
" 24	"	"	"	"	5.00	" "	"	"	"	"	5.00
" 25	"	"	"	"	5.00	" 10	"	"	"	"	5.00
June 1	"	"	"	"	5.00	" 21	"	"	"	"	3.75
" 7	"	"	"	"	5.00	" 24	"	"	"	"	5.00
" 9	"	"	"	"	6.00	" 26	"	"	"	"	5.00
" 28	"	"	"	"	5.00	" 27	"	"	"	"	5.00
" 30	"	"	"	"	6.00	" 28	"	"	"	"	3.75
July 1	"	"	"	"	5.00	Nov 1	"	"	"	"	5.00
" 7	"	"	"	"	5.00	" 2	"	"	"	"	10.00
" 8	"	"	"	"	5.00	" 6	"	"	"	"	5.00
" 31	"	"	"	"	5.00	" 10	"	"	"	"	10.00
Aug 7	"	"	"	"	5.00	" 27	"	"	"	"	3.75
" 16	"	"	"	"	5.00	Dec 4	"	"	"	"	5.00
" 21	"	"	"	"	5.00	" 6	"	"	"	"	5.00
" 22	"	"	"	"	5.00	" 8	"	"	"	"	5.00
" 24	"	"	"	"	5.00	" 12	"	"	"	"	5.00
" 25	"	"	"	"	5.00	" "	"	"	"	"	5.00
Sept 8	"	"	"	"	5.00	" 18	"	"	"	"	5.00
" 11	"	"	"	"	5.00	" 19	"	"	"	"	5.00
" 12	"	"	"	"	3.75	" 20	"	"	"	"	5.00

1854

127

Dec 22 To bank received of plaintiffs to plaintiffs use \$8.75 July 10 To bank received of plaintiffs to plaintiffs use \$10.00

" 27	"	"	"	"	5.00	75	"	"	"	5.00
" "	"	"	"	"	7.50	" 19	"	"	"	8.75
" 29	"	"	"	"	8.75	" " "	"	"	"	5.00
" 30	"	"	"	"	5.00	" 20	"	"	"	8.75
1855										
Jan 2	"	"	"	"	5.00	" " "	"	"	"	5.00
" 8	"	"	"	"	5.00	" 21	"	"	"	5.00
" 4	"	"	"	"	5.00	" " "	"	"	"	5.00
" 5	"	"	"	"	5.00	" 22	"	"	"	8.75
" 6	"	"	"	"	8.75	" 27	"	"	"	5.00
" 9	"	"	"	"	5.00	March 8	"	"	"	5.00
" 10	"	"	"	"	10.00	" 12	"	"	"	10.00
" 12	"	"	"	"	8.75	" 15	"	"	"	10.00
" 13	"	"	"	"	7.50	" 28	"	"	"	5.00
" 16	"	"	"	"	8.75	" 27	"	"	"	20.00
" "	"	"	"	"	8.75	April 10	"	"	"	15.00
" 17	"	"	"	"	10.00	" 11	"	"	"	5.00
" 18	"	"	"	"	7.50	" 12	"	"	"	5.00
" "	"	"	"	"	8.75	" 15	"	"	"	5.00
" 19	"	"	"	"	5.30	" 18	"	"	"	10.00
" "	"	"	"	"	7.50	" 25	"	"	"	5.00
" 22	"	"	"	"	5.00	" 26	"	"	"	5.00
" 24	"	"	"	"	5.00	" " "	"	"	"	5.00
" "	"	"	"	"	8.75	" 30	"	"	"	5.00
" 26	"	"	"	"	5.00	May 2	"	"	"	10.00
" 31	"	"	"	"	5.00	" 8	"	"	"	10.00
July 6	"	"	"	"	5.00	" 5	"	"	"	5.00
" 6	"	"	"	"	5.00	" 9	"	"	"	5.00
" 7	"	"	"	"	8.75	" " "	"	"	"	20.00

1855-18

May 17 To bank rec'd of plaintiffs to plaintiffs use of 20.00 Aug 11 To bank rec'd of plaintiffs to plaintiffs use of 20.00

" 18	"	"	"	"	13.00	" 14	"	"	5.00
" 22	"	"	"	"	15.00	" 17	"	"	10.00
" 23	"	"	"	"	20.00	" 20	"	"	20.00
" 24	"	"	"	"	10.00	" 23	"	"	10.00
" 28	"	"	"	"	5.00	" 24	"	"	20.00
" 30	"	"	"	"	20.00	" 27	"	"	10.00
June 1	"	"	"	"	20.00	Aug 18	"	"	10.00
" 4	"	"	"	"	15.00	" "	"	"	20.00
" 5	"	"	"	"	20.00	" 31	"	"	5.00
" 7	"	"	"	"	5.00	" 31	"	"	20.00
" 8	"	"	"	"	10.00	Sep 1	"	"	10.00
" 9	"	"	"	"	7.50	" 8	"	"	10.00
" 11	"	"	"	"	10.00	" 4	"	"	20.00
" 18	"	"	"	"	7.50	" 6	"	"	10.00
" 16	"	"	"	"	15.00	" 8	"	"	10.00
" 21	"	"	"	"	15.00	" 12	"	"	10.00
" 28	"	"	"	"	10.00	" "	"	"	10.00
July 3	"	"	"	"	10.00	" 13	"	"	10.00
" 5	"	"	"	"	20.00	" 14	"	"	10.00
" 7	"	"	"	"	20.00	" 15	"	"	8.75
" 11	"	"	"	"	20.00	" 18	"	"	15.00
" 13	"	"	"	"	7.50	" 20	"	"	5.00
" 16	"	"	"	"	10.00	" 21	"	"	10.00
" 21	"	"	"	"	5.00	" 24	"	"	10.00
Aug 2	"	"	"	"	20.00	" "	"	"	7.50
" 4	"	"	"	"	7.50	" 25	"	"	10.00
" 6	"	"	"	"	20.00	" 27	"	"	10.00

Ad-1 The least received of ppp to ppp use of 20,000 as least received of ppp to ppp use of 10,000

2	"	"	"	"	10,00	" 28	"	"	5,000
4	"	"	"	"	10,00	Dec 1	"	"	10,00
6	"	"	"	"	10,00	" 4	"	"	7,500
8	"	"	"	"	10,00	" 7	"	"	10,00
9	"	"	"	"	10,00	" 12	"	"	7,500
11	"	"	"	"	20,00	" 13	"	"	7,500
"	"	"	"	"	7,500	" 14	"	"	7,500
"	"	"	"	"	10,00	" 15	"	"	5,000
" 12	"	"	"	"	10,00	" 18	"	"	7,500
"	"	"	"	"	10,00	" 19	"	"	7,500
" 13	"	"	"	"	10,00	" "	"	"	5,000
"	"	"	"	"	20,00	" 20	"	"	7,500
" 15	"	"	"	"	10,00	" 21	"	"	15,000
"	"	"	"	"	10,00	" 22	"	"	8,750
" 18	"	"	"	"	10,00	" 24	"	"	7,500
"	"	"	"	"	10,00	" 26	"	"	7,500
" 19	"	"	"	"	10,00	" 27	"	"	7,500
" 20	"	"	"	"	10,00	" "	"	"	5,000
" 23	"	"	"	"	10,00	" 28	"	"	7,500
" 26	"	"	"	"	10,00	" 31	"	"	5,000
" 27	"	"	"	"	3,750	Jan 5	"	"	7,500
" 29	"	"	"	"	7,500	" 11	"	"	7,500
Nov 1	"	"	"	"	7,500	" 15	"	"	7,500
" 18	"	"	"	"	10,00	" 16	"	"	7,500
" 15	"	"	"	"	5,000	" 17	"	"	7,500
" 19	"	"	"	"	5,000	" 19	"	"	7,500
" 22	"	"	"	"	5,000	" "	"	"	7,500
" 26	"	"	"	"	20,000	" 22	"	"	7,500

20

1856

June 24 To bank and of pfg to pfgs use 47,5					
June 11 To bank and of pfg to pfgs use 4100					
" 30	"	"	7,50	" 18	" 10,00
July 6.	"	"	7,50	" 28	" 10,00
" 8	"	"	7,50	" 26	" 10,00
" 9	"	"	7,50	" 27	" 10,00
" 12	"	"	7,50	July 7	" 10,00
" "	"	"	3,75	" 2	" 10,00
" 14	"	"	3,75	" 5	" 10,00
" "	"	"	3,75	" 9	" 10,00
" 15	"	"	7,50	" 10	" 10,00
" 20	"	"	7,50	" 15	" 7,50
" 28	"	"	10,00	" 16	" 1,50
March 6	"	"	10,00	" 19	" 15,00
" 7	"	"	10,00	" 30	" 5,00
" 8	"	"	10,00	Aug 5	" 15,00
" 12	"	"	10,00	" "	" 10,00
" 19	"	"	10,00	" 11	" 10,00
" 29	"	"	10,00	" 18	" 15,00
April 2	"	"	10,00	" 21	" 10,00
" 11	"	"	10,00	" 27	" 10,00
" 29	"	"	10,00	" 30	" 10,00
May 6	"	"	10,00		
" 12	"	"	10,00		
" 15	"	"	10,00		
" 20	"	"	10,00		
" 28	"	"	10,00		
" 29	"	"	10,00		
" 31	"	"	10,00		

Jan 12 To bank received of A. B. Williams to ^{base} ~~1000~~ 7 1/2 April 8 To bank recd of A. B. Williams to me 7 1/2 5.00

" 11	"	"	2,750	" 14	"	"	5,000
" 19	"	"	2,750	" 18	"	"	5,000
" 21	"	"	3,750	" 19	"	"	5,000
" 26	"	"	3,750	" 21	"	"	5,000
" 28	"	"	2,750	" 22	"	"	5,000
" 31	"	"	2,750	" 29	"	"	5,000
Feb 1	"	"	7,500	March 2	"	"	5,000
" 2	"	"	3,750	" 4	"	"	5,000
" 5	"	"	3,750	" 4	"	"	5,000
" 6	"	"	3,750	" 5	"	"	5,000
" 8	"	"	3,750	" 8	"	"	10,000
" 10	"	"	7,500	" 9	"	"	10,000
" 15	"	"	3,750	" 9	"	"	10,000
" 16	"	"	11,250	" 12	"	"	1,250
" 18	"	"	7,500	" 17	"	"	5,000
" 20	"	"	3,750	" 22	"	"	3,750
" 22	"	"	3,750	" 24	"	"	4,000
" 25	"	"	7,500	" 25	"	"	5,000
March 1	"	"	7,500	June 1	"	"	5,000
" 10	"	"	3,750	" 7	"	"	5,000
" 14	"	"	8,000	" 9	"	"	6,000
" 16	"	"	7,500	" 28	"	"	5,000
" 17	"	"	10,000	" 30	"	"	5,000
" 20	"	"	3,750	July 8	"	"	5,000
" 26	"	"	10,000	" 7	"	"	5,000
" 28	"	"	3,000	" 8	"	"	5,000
" 29	"	"	5,000	" 31	"	"	5,000
" 30	"	"	5,000				

Aug 7 To bank recd of A.B. Williams to use of p.p.p. & 4000 to bank recd of A.B. Williams to use of p.p.p. 50.00

" 16	"	"	5,000	Dec 4	"	"	5,000
" 21	"	"	5,000	" 6	"	"	5,000
" 22	"	"	5,000	" 8	"	"	5,000
" 24	"	"	5,000	" 12	"	"	5,000
" 25	"	"	5,000	" "	"	"	5,000
Sept 8	"	"	5,000	" 18	"	"	5,000
" 11	"	"	5,000	" 19	"	"	5,000
" 12	"	"	5,750	" 20	"	"	5,000
" 15	"	"	5,750	" 22	"	"	5,750
" 16	"	"	5,000	" 25	"	"	5,000
" 21	"	"	5,750	" 27	"	"	7,500
" 25	"	"	6,000	" 29	"	"	8,750
" 26	"	"	5,750	" 30	"	"	5,000
" 30	"	"	5,000	Jan 2	"	"	5,000
Oct 4	"	"	5,000	" 3	"	"	5,000
" 7	"	"	5,750	" 4	"	"	5,000
" "	"	"	5,000	" 5	"	"	5,000
" 13	"	"	5,000	" 6	"	"	5,750
" 21	"	"	5,750	" 9	"	"	5,000
" 24	"	"	5,000	" 10	"	"	10,000
" 26	"	"	5,000	" 12	"	"	5,750
" 27	"	"	5,000	" 13	"	"	4,500
" 28	"	"	5,750	" 16	"	"	5,750
Nov 1	"	"	5,000	" "	"	"	5,750
" 2	"	"	10,000	" 17	"	"	10,000
" 5	"	"	5,000	" 18	"	"	7,500
" 11	"	"	10,000	" "	"	"	5,750

July 1 To book recd of W. R. Williams to use of p. 18 35 Sept 15 Cash recd of W. R. Williams to use of p. 18 100.00

"	"	"	2.50	" 18	"	"	100.00
" 22	"	"	5.00	" 25	"	"	5.00
" 24	"	"	5.00	" 26	"	"	5.00
" "	"	"	8.75	" "	"	"	5.00
" 26	"	"	5.00	" 30	"	"	75.00
" 31	"	"	5.00	May 2	"	"	10.00
July 6	"	"	5.00	" 8	"	"	10.00
" "	"	"	5.00	" 5	"	"	5.00
" 7	"	"	8.75	" 9	"	"	50.00
" 10	"	"	10.00	" "	"	"	20.00
" 13	"	"	5.00	" 17	"	"	20.00
" 19	"	"	8.75	" 18	"	"	15.00
" "	"	"	5.00	" 22	"	"	45.00
" 20	"	"	8.75	" 25	"	"	20.00
" "	"	"	5.00	" 26	"	"	10.00
" 21	"	"	5.00	" 28	"	"	5.00
" "	"	"	5.00	" 30	"	"	20.00
" 22	"	"	8.75	June 1	"	"	20.00
" 27	"	"	5.00	" 4	"	"	15.00
Mich 3	"	"	5.00	" 5	"	"	20.00
" 12	"	"	10.00	" 7	"	"	5.00
" 16	"	"	10.00	" 8	"	"	10.00
" 23	"	"	5.00	" 9	"	"	75.00
" 29	"	"	20.00	" 11	"	"	100.00
April 10	"	"	15.00	" 13	"	"	75.00
" "	"	"	5.00	" 16	"	"	15.00
" 12	"	"	5.00	" 21	"	"	15.00
" 14	"	"	5.00	" 28	"	"	10.00

24

July 5 To cash received of A. B. Williams to pay of 7/11, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 10.00

" 5	"	"	20.00	14	"	"	10.00
" 7	"	"	20.00	15	"	"	10.00
" 11	"	"	20.00	18	"	"	10.00
" 14	"	"	2.50	21	"	"	10.00
" 16	"	"	10.00	22	"	"	10.00
" 21	"	"	8.00	24	"	"	10.00
Aug 2	"	"	20.00	"	"	"	10.00
" 4	"	"	7.50	25	"	"	10.00
" 6	"	"	20.00	27	"	"	10.00
" 11	"	"	20.00	Oct 1	"	"	20.00
" 14	"	"	8.00	" 2	"	"	10.00
" 17	"	"	10.00	" 4	"	"	10.00
" 20	"	"	20.00	" 6	"	"	10.00
" 23	"	"	10.00	" 8	"	"	10.00
" 24	"	"	20.00	" 9	"	"	10.00
" 27	"	"	10.00	" 11	"	"	20.00
" 28	"	"	10.00	" "	"	"	10.00
" "	"	"	20.00	" "	"	"	10.00
" 30	"	"	8.00	" 12	"	"	10.00
" 31	"	"	20.00	" "	"	"	10.00
Sept 1	"	"	10.00	" 15	"	"	10.00
" 3	"	"	10.00	" "	"	"	20.00
" 4	"	"	20.00	" 15	"	"	10.00
" 6	"	"	10.00	" "	"	"	10.00
" 8	"	"	10.00	" 18	"	"	10.00
" 12	"	"	10.00	" "	"	"	10.00
" "	"	"	10.00	" 19	"	"	10.00

Oct 20 to bank recd of W.B. Williams to use of p. 10. Dec 2 to bank recd of W.B. Williams to use of p. 10. 5.00

" 20	"	"	10.00	" 28	"	"	7.50
" 26	"	"	10.00	" 31	"	"	5.00
" 27	"	"	5.75	June 5	"	"	7.50
" 29	"	"	7.50	" 11	"	"	7.50
Nov 1	"	"	7.50	" 13	"	"	7.50
" 10	"	"	10.00	" 16	"	"	7.50
" 15	"	"	5.00	" 17	"	"	7.50
" 19	"	"	5.00	" 19	"	"	1.50
" 22	"	"	5.00	" 22	"	"	7.50
" 23	"	"	5.00	" 24	"	"	7.50
" 26	"	"	20.00	" 30	"	"	7.50
" 30	"	"	10.00	July 6	"	"	7.50
Dec 1	"	"	10.00	" 8	"	"	7.50
" 4	"	"	7.50	" 9	"	"	7.50
" 7	"	"	10.00	" 12	"	"	7.50
" 12	"	"	7.50	" 12	"	"	5.75
" 15	"	"	7.50	" 15	"	"	7.50
" 14	"	"	7.50	" 20	"	"	7.50
" 15	"	"	5.00	" 25	"	"	10.00
" 18	"	"	7.50	" 24	"	"	5.75
" 19	"	"	7.50	March 6	"	"	10.00
" "	"	"	5.00	" 7	"	"	10.00
" 20	"	"	7.50	" 8	"	"	10.00
" 21	"	"	15.00	" 12	"	"	10.00
" 22	"	"	5.75	" 19	"	"	10.00
" 24	"	"	7.50	" 29	"	"	10.00
" 26	"	"	7.50	" April 2	"	"	10.00
" 27	"	"	7.50	" 10	"	"	10.00
				" 28	"	"	10.00

26

May 6 to back rec'd of G. B. Williams to use of \$10.00

~~To back rec'd of G. B. Williams to use of~~

" 12	"	"	10.00
" 16	"	"	10.00
" 20	"	"	10.00
" 23	"	"	10.00
" 29	"	"	10.00
" 31	"	"	10.00
June 11	"	"	10.00
" 18	"	"	10.00
" 20	"	"	10.00
" 26	"	"	10.00
" 27	"	"	10.00
July 1	"	"	10.00
" 2	"	"	10.00
" 3	"	"	10.00
" 9	"	"	10.00
" 10	"	"	10.00
" 13	"	"	7.50
" 16	"	"	7.50
" 19	"	"	10.00
" 30	"	"	5.00
Aug 5	"	"	15.00
" 9	"	"	10.00
" 11	"	"	10.00
" 15	"	"	10.00
" 21	"	"	10.00
" 27	"	"	10.00
" 30	"	"	20.00

Wright's

(12743-19)

28

Aug 7 To Cash Recd of Geo Smith les to pffs ²⁰⁰⁰ 5.00						To Cash recd of Geo Smith les. to pffs ¹⁸⁷⁵					
16	"	"	5.00	Dec 4	"	"	"	"	"	5.00	
21	"	"	5.00	" 6	"	"	"	"	"	5.00	
22	"	"	5.00	" 8	"	"	"	"	"	5.00	
24	"	"	5.00	" 12	"	"	"	"	"	5.00	
25	"	"	5.00	" "	"	"	"	"	"	5.00	
28	"	"	5.00	" 18	"	"	"	"	"	5.00	
10	"	"	5.00	" 19	"	"	"	"	"	5.00	
12	"	"	5.75	" 20	"	"	"	"	"	5.00	
15	"	"	5.75	" 22	"	"	"	"	"	5.75	
16	"	"	5.00	" 27	"	"	"	"	"	5.00	
21	"	"	5.75	" 27	"	"	"	"	"	7.50	
25	"	"	6.00	" 29	"	"	"	"	"	8.75	
26	"	"	5.75	" 30	"	"	"	"	"	5.00	
30	"	"	5.00	185-5	January 2	"	"	"	"	5.00	
Oct 4	"	"	5.00	" 3	"	"	"	"	"	5.00	
7	"	"	5.75	" 4	"	"	"	"	"	5.00	
"	"	"	5.00	" 5	"	"	"	"	"	5.00	
10	"	"	5.00	" 6	"	"	"	"	"	5.75	
21	"	"	5.75	" 9	"	"	"	"	"	5.00	
24	"	"	5.00	" 18	"	"	"	"	"	10.00	
26	"	"	5.00	" 12	"	"	"	"	"	5.75	
27	"	"	5.00	" 13	"	"	"	"	"	4.50	
28	"	"	5.75	" 16	"	"	"	"	"	8.75	
Nov 1	"	"	5.00	" "	"	"	"	"	"	5.75	
2	"	"	10.00	" 17	"	"	"	"	"	10.00	
6	"	"	5.00	" 18	"	"	"	"	"	7.50	
10	"	"	10.00	" "	"	"	"	"	"	5.75	

Jan 19 th each received of Geo Smith less to Hffs use		18 th April 18 th each recd of Geo Smith less to Hffs use		1000	
" 4	"	"	7,500 25	"	" 5,00
" 22	"	"	5,00 " 26	"	" 5,00
" 24	"	"	5,00 " "	"	" 5,00
" 4	"	"	8,75 " 30	"	" 5,00
" 26	"	"	5,00 May 2	"	" 10,00
" 31	"	"	5,00 " 3	"	" 10,00
July 6	"	"	5,00 " 5	"	" 5,00
1855- July 6	"	"	5,00 " 9	"	" 5,00
" 7	"	"	8,75 " "	"	" 20,00
" 10	"	"	10,00 " 17	"	" 20,00
" 15	"	"	5,00 " 18	"	" 15,00
" 19	"	"	5,75 " 22	"	" 15,00
" "	"	"	5,00 " 23	"	" 20,00
" 20	"	"	8,75 " 24	"	" 10,00
" "	"	"	5,00 " 28	"	" 5,00
" 21	"	"	5,00 " 30	"	" 20,00
" "	"	"	5,00 June	"	" 20,00
" 22	"	"	8,75 " 4	"	" 15,00
" 27	"	"	5,00 " 5	"	" 20,00
March 3	"	"	5,00 " 7	"	" 5,00
" 12	"	"	10,00 " 8	"	" 10,00
" 15	"	"	10,00 " 9	"	" 7,50
" 20	"	"	5,00 " 11	"	" 10,00
" 29	"	"	20,00 " 13	"	" 7,50
April 10	"	"	15,00 " 16	"	" 15,00
" 11	"	"	5,00 " 21	"	" 15,00
" 12	"	"	5,00 " 28	"	" 10,00
" 15	"	"	5,00	"	"

1880 to Cash Account of Geo Smith - see to page 10, 11, 12 to Cash Account of Geo Smith - see to page 10, 11, 12

" 5	"	"	20.00	14	"	"	10.00
" 7	"	"	20.00	13	"	"	3.75
" 11	"	"	20.00	18	"	"	15.00
" 13	"	"	7.50	20	"	"	5.00
" 16	"	"	10.00	21	"	"	10.00
" 21	"	"	5.00	24	"	"	10.00
Aug 2	"	"	20.00	"	"	"	7.50
" 4	"	"	2.50	25	"	"	10.00
" 6	"	"	20.00	27	"	"	10.00
" 11	"	"	20.00	Oct 1	"	"	20.00
" 14	"	"	5.00	2	"	"	10.00
" 17	"	"	10.00	4	"	"	10.00
" 20	"	"	20.00	6	"	"	10.00
" 25	"	"	10.00	8	"	"	10.00
" 24	"	"	20.00	9	"	"	10.00
" 27	"	"	10.00	11	"	"	20.00
" 28	"	"	10.00	11	"	"	7.50
" "	"	"	20.00	"	"	"	10.00
" 30	"	"	20.00	12	"	"	10.00
" 31	"	"	22.00	"	"	"	10.00
September 1	"	"	20.00	13	"	"	10.00
" 3	"	"	10.00	13	"	"	20.00
" 4	"	"	20.00	13	"	"	10.00
" 6	"	"	10.00	"	"	"	10.00
" 8	"	"	10.00	18	"	"	10.00
" 12	"	"	10.00	"	"	"	10.00
" "	"	"	10.00	19	"	"	10.00

1856

set to Cash received of Geo Smith & Co 10/15/56 used 10,00 Jan 5 To Cash received of Geo Smith & Co 10/15/56 used 7,50

120	"	1	10,00	" 11	"	"	7,50
" 26	"	"	10,00	" 13	"	"	8,50
" 27	"	"	3,75	" 16	"	"	7,50
" 27	"	"	7,50	" 17	"	"	7,50
" 28	"	"	7,50	" 19	"	"	9,50
" 10	"	"	10,00	" 19	"	"	7,50
" 16	"	"	5,00	" 22	"	"	7,50
" 19	"	"	5,00	" 24	"	"	7,50
" 22	"	"	5,00	" 30	"	"	7,50
" 26	"	"	20,00	February 6	"	"	7,50
" 30	"	"	10,00	" 8	"	"	9,50
" 25	"	"	5,00	" 9	"	"	7,50
" Dec 1	"	"	10,00	" 12	"	"	7,50
" 4	"	"	7,50	" 1	"	"	8,75
" 7	"	"	10,00	" 14	"	"	8,75
" 12	"	"	7,50	" 1	"	"	3,75
" 18	"	"	7,50	" 13	"	"	7,50
" 14	"	"	7,50	" 20	"	"	7,50
" 15	"	"	5,00	" 28	"	"	10,00
" 18	"	"	7,50	March 6	"	"	10,00
" 19	"	"	7,50	" 7	"	"	10,00
" 20	"	"	5,00	" 8	"	"	10,00
" 20	"	"	7,50	" 12	"	"	10,00
" 21	"	"	15,00	" 19	"	"	10,00
" 22	"	"	8,75	" 29	"	"	10,00
" 24	"	"	7,50	April 2	"	"	10,00
" 26	"	"	7,50	" 11	"	"	10,00
" 27	"	"	7,50	" 29	"	"	10,00
" 28	"	"	7,50				
" 31	"	"	7,50				

May 6 To Cash Recd of Geo Smith & Co to p/for use of \$10,000 To Cash received of Geo Smith & Co to p/for use

" 12	"	"	10,00
" 15	"	"	10,00
" 20	"	"	10,00
" 28	"	"	10,00
" 29	"	"	10,00
" 31	"	"	10,00
June 11	"	"	10,00
" 18	"	"	10,00
" 23	"	"	10,00
" 26	"	"	10,00
" 27	"	"	10,00
July 7	"	"	10,00
" 2	"	"	10,00
" 5	"	"	10,00
" 4	"	"	10,00
" 10	"	"	10,00
" 23	"	"	7,50
" 16	"	"	7,50
" 19	"	"	13,00
" 30	"	"	3,00
Aug 15	"	"	15,00
" "	"	"	10,00
" "	"	"	10,00
" 15	"	"	10,00
" 21	"	"	10,00
" 27	"	"	10,00
" 30	"	"	10,00

On which I am indebted Bill of Particulars appears the following
 statement to wit

Filed Nov. 25, 1858

Wm. Anderson biller

To monies here and recd by defendants to plaintiffs use \$4000-

And afterwards to wit at the regular December Term of said Court begun and held on the first Monday of December 1858 on the 8th day of December of said Term the following proceedings were had in said Cause as the same appears of Record

Strong H. Carr for use of
Charles S. Patton.

vs.

James Mitchell, Holder

Putnam & Alexander Neely

Assumpsit

Now came the said defendants by their attorney and file the affidavits of George Parintore C.R. McDowell & Holden Putnam and their motion for security for costs.

Strong H. Carr for use of
Charles S. Patton.

vs.

James Mitchell Holder

Putnam & Alexander Neely

Assumpsit.

On motion of said defendants by their attorney it is ordered that ^{said} the plaintiff file security for costs by Tuesday morning next or show cause to the contrary.

And afterwards to wit on the 15th day of December
 as yet of said December Term of said Court the
 following appears of record in said cause

Strong H. Caill for use of James Mitchell Charles G. Patton	}	Assumpsit -
vs		
James Mitchell Golden Putnam and Alexander Reely	}	Now comes said Plaintiff by his atty and files his bond for costs. And the Defendants by their Attorney come and file their Pleas -

Stephenson Co Circuit Court
 September Term A.D. 1858

State of Illinois
 Stephenson County, I. L.

James Mitchell Golden Putnam
 - Alexander Reely

vs

Strong H. Caill for the use
 of Charles G. Patton

And the said
 defendants by Cinner and Sugalls their attorneys come
 and defend the wrong and injury charge and
 say that they did not undertake or promise in
 manner ~~as~~ former as the said plaintiff hath above

thereof Complained against them and of this they the said Defendants put themselves upon the Country as

And for a further plea in this behalf the said Defendants by leave of the Court here for that purpose first had and obtained according to the form of the Statute a say action now because they say that after the said supposed promises ~~was~~ mentioned in the said declaration were made, the said Defendants to wit on the first day of June A.D. 1858 at Stephenson County aforesaid fully paid and satisfied the said sums of money mentioned in the said declaration. And this they the said Defendants are ready to verify wherefore they pray judgment if the said plaintiff ought to have or maintain this aforesaid action thereof against them.

And for a further plea in this behalf the said Defendants by like leave of the Court here for that purpose first had and obtained according to the form of the Statute a say action now because they say that the said plaintiff before and at the time of the commencement of this suit to wit at Stephenson County aforesaid was and still is indebted to the said Defendants in a large sum of money to wit the sum of six thousand dollars for money before that time lent and advanced to and paid lent and used and did for said plaintiff by said de-

defendants at said plaintiffs request, and for
 money before that time had been received
 by said plaintiff to and for the use of said
 defendants. And also in the like sum for
 the labor care and diligence of said de-
 fendants before that time done and per-
 formed by said defendants for said plain-
 tiff at his like special instances and
 request and also in the like sum then
 and there found due and owing said
 defendants from said plaintiff are
 an account stated between them and
 in the like sum for money due and
 owing from the said plaintiff to the
 said defendants for interest upon and for
 the forbearance of divers large sums of money
 due and owing from the said plaintiff to the
 said defendants and by the said defendants
 forbore to the said plaintiff for divers long
 spaces of time before then depared. Which
 said sums of money so due and owing
 to the said defendants as aforesaid exceed
 the charges sustained by the said plain-
 tiff by reason of the nonperformance by the
 said defendants of the said several sup-
 posed promises and undertakings in the
 said declaration mentioned and out of
 which said sums of money so due and
 owing from the said plaintiff to the
 said defendants the said defendants are

ready and willing and hereby offer to set off
and allow to the said plaintiff the full amount of
the said damages according to the form of the
statute in such case made and provided and
this they the said defendants are ready to
verify wherefore they pray judgment if the
said plaintiff ought to have or maintain
his aforesaid action thereof against them.

Turner & Ingalls
Supts Attys

On which there is the following endorsement
to wit. Filed Dec^r 15, 1858.

L. W. Guntens Blake.

And afterwards to wit on the 17th day of
December as yet of said December Term of said
Court the following appears of record in
said cause

Strong H. Cull for use of
Charles G. Patten

vs

James Mitchell Holden Putnam
& Alexander Neely

Assumpsit -

Now comes plain-
tiff by his attorney

and files his motion for defendants to file a more
specific bill of set off - and it is ordered that defen-
dants furnish a more specific bill -

and afterwards to wit on the 20th day of December
as yet of said December Term of said Court the
following appears of Record in said cause.

Strong H. Ewell for one of
Charles G. Patten

vs

James Mitchell Holden Putnam
+ Alexander Hedy -

Assumpsit

Now come defen-
dents by their attor-

nys and file their bill of particulars.

S. H. Ewell

1854

In acf with James Mitchell Hedy

Dr

Jan'y 15	To Cash	388.36
17	"	384.
18	"	357.50
19	"	260.16
20	"	280.
21	"	230.
25	"	200.
26	"	400.
27	"	180.
30	"	300.
31	"	200. 3394.02
July 31	"	95-8.
2	"	355.75
3	"	200.

(38)	4	"	300.
	5	"	301.
	7	"	300.
	8	"	400.
	10	"	555.
	11	"	30.
	15-	"	400.
	"	"	950.
	16	"	1669.71
	18	"	880.
	20	"	300.
	22	"	585.
	28	"	300.
	25-	"	500.
	27	"	490. 9424.46
Milk	2	"	96.64
	4	"	45.79
	7	"	381.17
	8	"	300.
	10	"	600.
	13	"	400.
	15-	"	55.
	16	"	1150.
	17	"	862.91
	20	"	120.
	21	"	410.
	22	"	90.
	24	"	21.40
	25-	"	275.
	27	"	750.

40	28	To Cash 250	24	To Cash 119.
	29	" 7.30	25	" 700.
	30	" 350.00	26	" 200. — 7826.23
	31	" 100.00 — 6725.21 June 1		" 300.
Apr	3	" 100.	2	" 820
	6	" 100.	7	" 245.84
	8	" 515.	9	" 817.08
	14	" 130.	15	" 300.
	15	" 100.	28	" 400.
	17	" 90.	30	" 555.82 — 2918.74
	18	" 600. 165.51. July 1		" 565.
	20	" 488.07	7	" 400.
	21	" 300.	8	" 554.18
	27	" 100.	18	" 200.
	28	" 600.	21	" 62.50
	29	" 225.19 — 1713.26	22	" 56.
May	1	" 212.	26	" 150.
	2	" 447.29	31	" 115. — 210268
	3	" 174.59	May 2	" 250
	4	" 758.89	4	" 115.76
	5	" 600.	5	" 735.53
	6	" 110.52	15	" 300.
	8	" 1382.95	17	" 200.
	9	" 1299.79	21	" 300.
	10	" 300.	22	" 500.
	12	" 300.	23	" 200.
	13	" 230.	24	" 400.
	18	" 191.70	26	" 500.
	20	" 300.00	29	" 500. 4001.29
	22	" 200.00	Sept 8	" 450.
	23	" 300.	11	" 565.46

Sep. 12 To Cash 400.
 13 " 100.
 14 " 400.
 16 " 400. 2815.46
 1854
 Sep. 20. To Cash 100.
 21 " 300.
 25 " 699.
 26 " 400.
 27 " 100.
 30 " 550. - 2149.

October 4 " 300.
 5 " 20.
 7 " 400.
 11 " 400.
 18 " 400.
 14 " 250.
 21 " 450.
 24 " 400.
 25 " 250.
 26 " 400.
 27 " 100.
 28 " 814.
 30 " 205. - 4589.

November 1 " 500.
 2 " 600.
 3 " 350.
 4 " 216.70
 6 " 210.
 10 " 990.
 27 " 990. - 3956.70

Dec 4 To Cash 4,55.

5 " 337.80
 6 " 350.
 7 " 250.
 8 " 300
 11 " 200.
 12 " 800.
 13 " 200.
 18 " 500.
 19 " 472.55

20 " 500.
 22 " 1000.
 25 " 400.
 27 " 619.40
 28 " 400.
 29 " 800.
 30 " 750.

1855-
 Jan 1 " 18.52
 2 " 500.
 8 " 500.
 4 " 520.
 11 " 150
 5 " 500.
 6 " 580.
 9 " 500.
 10 " 550.
 12 " 490.
 18 " 440.
 15 " 600 - 50985.2
 16 "

185-5 (42)

June 16 Is Cash 1290-

17 " 1190.
18 " 1450.
19 " 1200.
20 " 500.
22 " 500.
23 " 201
24 " 500.
25 " 1000.
26 " 450.
31 " 300, - 86.00

July 6 " 1000.
7 " 400.
8 " 100.
10 " 1000.
15 " 400.
16 " 20.
17 " 20.
19 " 1000.
20 " 1000.
21 " 1000.
22 " 444.80
23 " 50.
27 " 500, - 7484.80

Mich 3 " 480.
12 " 1000.
16 " 1000.
28 " 500.

29 Is Cash 305; - 2485.

Apr 2 " 1091.85-

8 " 225;
4 " 225;
11 " 2000.
12 " 5000.
18 " 478.49
18 " 1000.
21 " 200.
28 " 100.
24 " 100.
25 " 79.
26 " 778.22
27 " 200.
28 " 200.
30 " 300, - 7272.06

May 1 " 172.

2 " 300.
5 " 1000.
5 " 830.
9 " 1048.67
11 " 600.
17 " 100.
18 " 1178.15-
19 " 500.
21 " 200.
22 " 700, - 6428.82
~~23~~ "

1855 (42)

May 23 To bank 1000.

24 " 95-7,
26 " 200,
28 " 305,
29 " 5-04
30 " 685-3601

June 1 " 400,
2 " 500,
4 " 700,
5 " 729.84
6 " 25,
7 " 700,
8 " 687.80
9 " 502,
11 " 265,
12 " 498.96
13 " 800,
14 " 30,
16 " 806.96
18 " 25,
20 " 300,
21 " 500,
22 " 405.57
27 " 50,
28 " 100,
29 " 200,
30 " 100, 4578.29

July 3 " 500

July 4 To bank 261.59

6 " 1078.82
7 " 700,
11 " 1000,
12 " 225,
14 " 800,
16 " 2137,
17 " 200,
18 " 175,
21 " 500,
27 " 10, 496.2, 91

Aug 2 " 1000,
4 " 140,
6 " 1216.85-
7 " 100,
11 " 1100,
14 " 500,
16 " 200,
17 " 300,
20 " 800,
22 " 300,
23 " 1000
24 " 1000,
27 " 1100,
28 " 1100,
29 " 160,
30 " 1000, -10816.85-

1858-434

Aug 31	Dr Cash 1000, 1000,	Oct 6	Dr Cash 1201,
Sept 1	" 1000	8	" 850,
3	" 600	9	" 165386
4	" 115-1,5-5-	10	" 420,42
5	" 72,57	11	" 3408.78
6	" 700,	12	" 2800,
8	" 1500,	13	" 15,47,
12	" 195-3,	15	" 1872,09
13	" 1000,	17	" 500,
14	" 1600	18	" 1929.28
15	" 602,	19	" 1681.23
17	" 206,	20	" 500,
18	" 000	23	" 500,
19	" 500,	24	" 125,
20	" 15,250	25	" 1000,
21	" 1298,70	26	" 250,
22	" 500,	27	" 600,
24	" 2068	29	" 700,-19887.66
25	" 1041,85-	Nov 1	" 1250,
26	" 20	2	" 201,50
27	" 1000,	5	" 50,
28	" 200,	9	" 500,
29	" 500,-17060,47	10	" 1500,
Oct 1	" 1300,	12	" 200,
2	" 580,50	13	" 175,
3	" 500,	14	" 250,
4	" 500,	15	" 500, 4626.50
5	" 125,		

(44)

Nov 16 To Cash 10,

19 " 165,

20 " 400,

22 " 545,65-

23 " 220,12

24 " 400,

28 " 2020,

30 " 1052,90-4798,67

Dec 1 " 998,37

3 " 250,

4 " 502,50

5 " 400,

" " 700,

8 " 40,

10 " 580,

11 " 110,

12 " 1095,

13 " 1000,

14 " 800,

15 " 1200,

18 " 1298,50

19 " 2400,

20 " 1180,

21 " 500,

22 " 1051,50

24 " 1200,

26 " 500,

27 " 1500,

Dec 28 To Cash 1000,

29 " 400

31 " 500-19070,07

1866
Jan 2 " 181,

3 " 1545,50

4 " 200,

5 " 500,

7 " 37,65

8 " 110,

9 " 125,

10 " 400,

11 " 661,25

12 " 510,

14 " 50,

15 " 500,

16 " 1000,

17 " 1000,

18 " 1192,50

22 " 500,

23 " 500,

24 " 1000

28 " 180,

29 " 500,

31 " 600-10752,88

Feb 1 " 500,

2 " 200,

3 " 500-8000

1856 (46)

July 8	To bank	15-00,
9	"	95-0,
11	"	15-12,
13	"	11, 25-
14	"	5-04, 5-0
15-	"	3-00,
18	"	2-0,
19	"	3-00,
20	"	149.84
21	"	2-00,
23	"	2-00,
25-	"	2-00,
26	"	228.75-
27	"	85-
28	"	556.75
29	"	175- — 6768.07
March 1	"	17, 5-0
4	"	4-00,
6	"	10-00,
7	"	1007.5-
8	"	10-00,
12	"	1012,
13	"	5,
14	"	8-00,
19	"	718.40
21	"	3-00,
29	"	1015.40 — 7275.80

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And afterwards to wit on the 22nd day of December A.D. 1858 as yet of said December term of said court the following appears of record in said cause

Strong H. Earl for use of
Charles G. Patten

vs

James Mitchell Holden
Patriemo Alexander Nely

Assumpsit.

Now comes said plaintiff
by his attorney and files his application to dis-
miss the plea

Strong H. Earl for the
use of Charles G. Patten

vs

James Mitchell Holden Patriemo
Alexander Nely Defendants

Steffenson County
Circuit Court Dec
term A.D. 1858.

And the said plaintiff
as to the said plea of the said defendants by
them first above pleaded and whereof they have
put themselves upon the Country, both the like

And the said plaintiff as to the said plea
of the said defendants by them secondly above
pleaded says preclude now because he says
that the said defendant did not pay to the said
plaintiff the said sum of money mentioned
in said declaration in manner and form
as the said defendants have above in their said

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second plea in that behalf alleged and that
the said plaintiff prays may be injured
of by the Country &

And the Defendants do the like

Turner & Ingalls Attys for Defs

And the said plaintiff as to the said plea of the
said defendants by them thereby above
pleaded says perduci non because he says
that the said plaintiff was not nor is
indebted to the said defendants in manner
and form as the said defendants have above
in their said ^{third} plea in that behalf alleged and
that the said plaintiff prays may be
injured of by the Country &

Messrs M. B. Bailey

Defts Attys

And the Defendants do the like

Turner & Ingalls

Attys for Defs

And which said opinion is the following ver-
diction to wit

Dated Dec^r 22 1858

L. M. Guntan clk

And afterwards to wit on the 27th day of December
A.D. 1858 as yet of said December Term of said

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Court the following appears of record in said cause

Strong H. Cull for use
of Charles S. Patton
vs
James Mitchell, Hadden
Patton & Alexander Nely } Assumpsit.

Now come the parties by
their attorneys and upon the issues joined for
trial put themselves upon the country. There-
upon came also a jury of twelve good and lawful
men to wit, John H. Schlott, Harvey W. Senchen,
George Schenck, John Siemer, William Hamm,
Benjamin Brown, Abraham Bower, Perry
Syder, William C. Best, John Sunderland, George
Haly, and John P. Fox who were severally duly
called and sworn and after hearing
a portion of the evidence the hour of adjourn-
ment having arrived the further hearing
is postponed until tomorrow morning
at nine o'clock

And afterwards took on the 28th day of Decem-
ber A.D. 1858 at pt. of said December Term of
said Court the following appears of record in
said cause

Strong H. Cull for use
of Charles S. Patton }

50
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Assumpaid

James Mitchell Holden Putnam }
Alexander Staley }

Now again come the parties
with their attorneys and also come the jury
heretofore empanelled in this cause and the
hearing of evidence having been resumed and
not concluded and the hour of adjournment having
arrived the further hearing is postponed until
tomorrow morning

And afterwards to wit on the 29th day of
December A.D. 1858 as yet of said December Term
of said Court the following appears of record in
said cause

Strong H. Carr for use
of Charles G. Putnam

vs

Assumpaid.

James Mitchell Holden
Putnam & Alexander Staley }

Now again come the parties
and the jury empanelled in this cause
and the further hearing having been resumed
and not concluded and the hour of adjournment
having arrived the further hearing is
postponed until tomorrow morning

Afterwards to wit on the 30th day of December

A.D. 1858 as yet of said December Term of said Court the following appears of record in said cause

Strong H. Ewell for use
of Charles G. Patten

vs

James Mitchell Holden
Patterson & Alexander Kelly

Assumpst

Now ~~again~~ on this day again came the parties with their attorneys and also the jury empanelled in this cause and the arguments of counsel having been resumed and concluded the jury retire in charge of an officer to consider of the verdict and after a short absence they return again into Court with their verdict as follows to wit - that they find the issues for the defendants thereupon the plaintiff by his attorney enters his motion for a new trial and in arrest of judgment -

And afterwards to wit on the 3rd day of January A.D. 1859 as yet of said December Term of said Court the following appears of record in said cause

Strong H. Ewell for use
of Charles G. Patten

vs

James Mitchell Holden
Patterson & Alexander Kelly

Assumpst

Now comes the said plaintiff by his attorney and files his motion for a new trial,

Strong H. Call for the use of Charles D. Patten
vs
James Mitchell & Co

In the Circuit Court
of Stephenson County

The counsel for the plaintiff asks the Court for a new trial for the following reasons

1st For the reason that the Court refused instructions asked by plaintiffs counsel

2nd For the reason that the Court gave instructions asked by defendants counsel

3^d For the reason that the verdict was clearly against ~~the~~ the evidence in the case

Martha A. Beasley

Attorneys for the Plff.

On which motion appears the following endorsement, to wit:

Filed Jan 7. 1859 L W Graham clk.

And afterwards to wit on the 14th day of January A.D. 1859 as pt of 2nd Decem^r of 2nd Court the following appears of Record in 2nd cause, to wit:

Strong H. Call for use

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of Charles B. Palmer

vs

{ Assumpsit

{ James Mitchell Holden
Peterson & Alexander Kelly }

Now comes on to be heard
the plaintiffs motion for a new trial and
arrest of judgment in this cause and
after arguments of said the court being
fully advised in the premises the motion
are overruled to which ruling of the court
the plaintiff excepts. It is thereupon ordered
and so ordered by the court that said defendants
have and recover of said plaintiff the costs by
them about their suit in this behalf expen-
ded and that they have execution for the same.
Thereupon the said plaintiff prays leave
to appeal and it is ordered that the appeal
be granted on condition that said plaintiff
for his appeal bond in the sum of
four hundred dollars properly conditioned
to defendants with Perkins D. Mearns as
surety within ten days from the rising of
this court.

State of Illinois
J. D. Stephenson County } S.S.

In the Circuit Court of said
Stephenson County,

Strong H. Carl for the
use of Charles S. Patten

vs
James Mitchell, Holden
Putnam & Alexander Neely.

Afterwards to wit,
at the day and place within contained
before the Hon. Benjamin R. Sheldon,
Judge of the 14th judicial Circuit of said
State in the Stephenson County Circuit Court
of the December Term thereof A.D. 1858.
Came as well the said Strong H. Carl who
sues for the use of Charles S. Patten by Menham
& Bailey his attorneys as the said James Mitchell
Holden Putnam and Alexander Neely Co-
partners under the name and style of
James Mitchell & company by Turner & In-
galls their attorneys and the jurors of the
jury whereof mention is within made being
called likewise came and after being elected
tried and sworn to try the several issues within
joined the attorneys for the plaintiff called A.M.
Wright a witness who was duly sworn as a witness
for the plaintiff who testified as follows that is to say
Is acquainted with defts James Mitchell, H.
Putnam & Alex. Neely since last day of September 1854

They were engaged in Banking at that & are now
 - Lending Money, receiving Deposits & buying and
 selling exchange. (Account Book Submitted to
 witness.) Am acquainted with Mr Putnam, ^{then Secretary} I have
 seen him write Recognize in this Book. Mr. Mitch-
 ell, Mr. Nichols & Mr Linton's very own hand writ-
 ting in this book. I call it a Bank Pass
 Book. It seems to be the account book of
 James Mitchell & Co with S. H. East. I balanced
 the book up to Sept 1st 1854. Mr Nichols was
 bookkeeper for James Mitchell & Co (The Book
 is now offered in evidence as exhibit "A", ob-
 jected to, obj. overruled, excepted to) (Account
 Book marked exhibit B. Submitted to witness.)
 It is the account of S. H. East with Stephens-
 County Bank from January 1st 1855 to December
 31st 1855. I don't know of any such firm
 as the Stephens County Bank. The Banking
 House of James Mitchell & Co was that name.

I recognize the writing of Mr Linton, Mr Putnam
 Mr Mitchell & myself in it. (Book offered in evidence
 obj. obj overruled & excepted to) (Account Book marked
 C Submitted to witness) This Book exhibit C. is
 Bank Pass Book of S. H. East in account with
 Stephens County Bank from January 1st
 1856 to April 1. 1856 (The portion of this Book re-
 ferred to is offered in evidence, obj. obj over-
 ruled & excepted to) Witness says I recognize
 Mr Mitchells, Mr Putnam's & my own hand
 writing in the book during that time.

Conced. for defendants object to all questions put to the witness and all answers made by him on the ground that the books were not proper evidence and also on the ground that the amounts stated in the plaintiffs Bill of particulars do not correspond with the Books.

Journal submitted to witness,
 Jan'y 12, 1854, was not there when that entry was made. Is in Putnam's handwriting, — Q — When a check was drawn on Chicago was it the custom of Mitchell & Co. to enter it as a cash deposit? (obj, obj overruled sustained)

It was the custom when a party deposited anything to credit it on this (left hand) page of the book Don't know what it was that was deposited at that time "To Cash Dr. S. H. Carrl Dep. \$572.50 is the entry — Q — Is there any other deposits on that day. — Ans. I see no evidence of any other deposits on this book — Q. State whether it was the practice of the defendants at that time to enter drafts on Chicago by them taken as cash deposited? (obj — overruled — excepted to) — I have no positive knowledge of their practice at that time except what I can infer from the books. —

Q What was their manner of doing business in regard to drafts on Chicago, were

they entered as cash deposits? — I have no knowledge except from the books. I have had none directly from themselves.

Q. What do their books show to be the practice? (obj overruled excepts) State if you have any means of information what their practice was?

A. Is there any other record of any other deposits on that day? I see none. — Q. — Have you any means of knowing what their practice was at that time in regard to entering drafts on Chicago as cash deposits? I have no positive means of knowing I have means of judging — Q. State what those means of judging are? obj. — I judge from the appearance of the books there, and by their subsequent practices which come under my observation —

Q. What were their subsequent practices in regard to Chicago drafts as to entering them as cash deposits? (obj. overruled. excepts) ans. They were in the habit of buying drafts on Chicago, (answer excepted to by Plaintiff, Counsel.)

A. by plffs Counsel — If a draft was drawn in favor of Jas Mitchell & Co were they entered as cash — No not while I was there. The drafts did not appear as such in the accounts with the individuals They were in the habit of buying drafts on Chicago & bought McEwens drafts as they bought other drafts —

Ques by plffs Counsel — How do these drafts appear on the books? The drafts ~~do not~~ ^{don't} appear on the books — How do the drafts appear — What was the practice in regard to entering the particular

thing deposited? How were the drafts on
 Chicago entered? As such they were not
 entered — They were not entered — What
 entry was made? — They had no practice
 in regard to it — I — What entry was made?
 From their practice not any necessarily —
 No entry of the draft — No entry regarding the
 draft. Presume they kept a record of ~~expending~~
 the drafts — What entry was made? —
 — Can't tell you — They had no practice in
 regard to entering drafts as credits. Their
 custom and practice was in regard to
 Chicago drafts to buy them and pay for
 them — I While you was there
 what was the practice of entering drafts
 with reference to the party they got them of
 Ans. No memorandum in regard to the
 party purchased of — What memorandum
 was made in their books? Cash was
 credited the amount of the draft. When
 a draft came into the office to be pur-
 chased cash was credited with the a-
 mount of the draft. and debited the
 amount of discount if any was made
 (Aft & Pap Book submitted to courtne) —
 I should infer from that that Mitchell
 has bought that draft of Earl and
 credited him so much the draft is
 not put down as Cash — I did
 they receive any cash? Could not state

60
59

Whether they received any cash or not? I should not infer that they paid Earll any cash at that time. Think the same method was pursued when I was there. ~~\$500~~ \$500 Draft dated January 12th 54 offered in evidence. (Objt to, Obj overruled except to) Dft read in evidence & drawn on A.R. Williams. Dft dated Jan 17, 1854 Five Hundred dollars. 10 days (Obj & excep) Dft dated Jan 21, \$500 - 10 days (Obj & excep) other drafts offered under objections - Do you recollect any instance of bargaining on the dft? Don't recollect any particular time. Earll wanted the rate reduced at one. They told Earll that was the usual rate (Passbook submitted to witness) I was this a dft discounted? I know nothing in regard to that - there seem to be entries here in my hand but I know nothing about any particular transaction. This book always shows cash and nothing but cash - Were most of these drafts filled up in the office? Think they were in the habit of filling up Earll's drafts at that time.

What were the rates in regard to Earll's transactions? I think Earll was charged $\frac{1}{4}$ per cent on sight drafts - Dft submitted to witness 20 days. Can't say what they advanced to Earll on that draft - dated March 16, 54 was not there then - Dft of \$1000

payable ten days after date submitted to witness
 Cannot identify the draft. Entry in the book
 shown witness. I made the entry in that book
 Am not able to identify the draft. None of
 the drafts are numbered. Always drew with-
 out numbering. I can give only my judg-
 ment in regard to the drafts, no private
 mark on them. How much money did
 they pay Earl on a 10 day draft? They
 discounted $3\frac{1}{4}$ of one per cent and paid Earl
 the balance of the draft. What rate would that
 be per annum? (obj) Ans $7\frac{1}{2}$ dollars, cannot
 tell what it would be per annum without
 figuring it out. Original blotter produced
 Entries are carried from this to Cash Book
 "S. H. Earl Debit \$497.50 (entry read)
 Checks date of book presented to him was
 1854 & corresponding with another book (obj
 & except.) 2. What does this column (first col-
 umn) in this Book (submitted to witness)
 mean (obj overruled & except.) Ans The
 book shows as plainly as I can de-
 scribe. Witness is asked what "G.S. Co."
 means as written in the book? (obj over-
 ruled and except-to) It means George Smith
 & Co. What does "26" mean (obj & except)
 It means "paid" or "payable" the 26
 June I don't know which

The Court rules that the witness is permitted to explain anything in the books which the jury would not understand (excepted to)

Witness is asked whether the memorandum on the books corresponds with a dft. (obj)

I can only judge from the dates and amounts. — Can you distinguish whether this entry was Cash or a dft. — Cannot tell. Drafts were not entered as cash

The avails of the Drafts were entered as cash either paid to the party or placed to his credit — I — What do you mean by avails? Ans. What they paid him for the

~~draft~~^{dft} — In this case I should judge they paid Mr. Eull \$497.50 as the avails of the

Draft — (Dft dated Jan 17/54 & must offer in evidence (obj) — I Is there in

corresponding entry in any other book? (obj to overrule & ex) Witness answered

There is a book these entries are copied in — This ^{book} shows what drafts were sent

to George Smith & Co but nothing to do with Eull's account — It contains a record of

drafts and whatever else was sent to Geo. Smith & Co — I — Do you know what year that is? (points out entries on the book

to witness) No I do not Entries in this book offered in evidence (obj to & ex)

63

Court rules he must state entries offered.
 Madam offers entries under date Jan 17/54
 page 166 offered in evidence (Obj) Blotter
 entry "S.H. Earll \$496.25 Jan 17. Offered
 in evidence (Obj) Pass Book marked exhibit
 "A" offered in evidence (Obj & excep) After
 date of the draft corresponds with date of
 blotter the jury can find them as well as
 Jan 21/54 S.H. Earll is credited \$496.25
 on Blotter offered as ev. (Obj) — "Jan 26
 S.H. Earll \$496.25" read by witness as
 evidence under objection. "What year do
 these transactions take place? I never
 used this book — Had no occasion to
 refer to it. — "Jan 28/54 S.H. Earll
 496.25" read by witness as ev under Obj.
 "Jan. 31st S.H. Earll \$496.25" read under
 Obj & "February 1st credit to S.H. Earll
 \$992.50" read as ev (Obj) "on Jan 28
 \$992.50 S.H. Earll" same date — "February
 2/54 S.H. Earll \$496.25 read as ev.
 Feb 3/54 S.H. Earll \$496.25 — Read as ev.
 Feb 6 S.H. Earll \$496.25 read as ev
 Feb 8/54 S.H. Earll \$496.25 read as ev
 Feb 10 S.H. Earll \$992.50"

(63) Nine plaintiffs counsel read to the jury
from Defendants blotter and formed the
following entries which were offered in
evidence in the case

1854
January 12th S. H. Earl vs By \$497.50 Dis \$2.50
" 17 S. H. Earl vs By \$496.25 Dis \$3.75
" 19 S. H. Earl vs By \$496.25 Dis \$3.75
" 21 S. H. Earl vs By \$496.25 Dis \$3.75
" 26 S. H. Earl vs By \$496.25 Dis \$3.75
" 28 S. H. Earl vs By \$496.25 Dis \$3.75
" 31 S. H. Earl vs By \$496.25 Dis \$3.75
February 1 S. H. Earl vs By \$992.50 Dis \$3.75
1854
February 2 S. H. Earl vs By \$496.25 Dis \$3.75
" 3 S. H. Earl vs By \$496.25 " \$3.75
" 6 S. H. Earl vs By \$496.25 \$3.75
" 8 S. H. Earl vs By \$496.25 \$3.75
" 10 S. H. Earl vs By \$992.50 \$3.75
" 13 S. H. Earl vs By \$496.25 \$3.75
" 16 S. H. Earl vs By \$1488.75 \$11.75
" 18 S. H. Earl vs By \$992.50 \$7.50
" 20 S. H. Earl vs By \$496.25 \$3.75
" 22 S. H. Earl vs By \$496.25 \$3.75
" 25 S. H. Earl vs By \$992.50 \$7.50
March 1 S. H. Earl vs By \$992.50 \$7.50
" 10 S. H. Earl vs By \$496.25 \$3.75
" 14 S. H. Earl vs By \$495.25 \$4.75
" 16 S. H. Earl vs By \$992.50 7.50
" 20 S. H. Earl vs By \$495. 5.00

64	17	S. H. Earll Cr By	\$990.	\$10.00
"	24	S. H. Earll Cr By	\$495.	\$5.00
"	28	S. H. Earll Cr By	\$495.	\$5.00
"	30	S. H. Earll Cr By	\$495.	\$5.00
April	8	S. H. Earll Cr By	\$495.	\$5.00
"	14	S. H. Earll Cr By	\$495.	\$5.00
"	18	S. H. Earll Cr By	\$495.	\$5.00
"	19	S. H. Earll Cr By	\$495.	Dis \$5.00
"	21	S. H. Earll Cr By	\$495.	Dis. \$5.00
"	27	S. H. Earll Cr By	\$495.	Dis. \$5.00
1882	April 29	S. H. Earll Cr By	\$495.	Dis. \$5.00
May	2	S. H. Earll Cr By	\$495.	Dis. \$5.00
"	4	S. H. Earll Cr By	\$495.	Dis. \$5.00
"	4	S. H. Earll Cr By	\$495.	Dis. \$5.00
"	5	S. H. Earll Cr By	\$495.	Dis. \$5.00
"	8	S. H. Earll Cr By	\$990	Dis \$10.00
"	8	S. H. Earll Cr By	\$990.	Dis \$10.00
"	9	S. H. Earll Cr By	\$990.	Dis. \$10.00
"	12	S. H. Earll Cr By	\$498.75.	Dis. \$12.50
"	17	S. H. Earll Cr By	\$495.00	Dis. \$5.00
"	22	S. H. Earll Cr By	\$496.25	Dis \$3.75
"	24	S. H. Earll Cr By	\$495.00	Dis \$5.00
"	25	S. H. Earll Cr By	\$495.00	Dis. \$5.00
June	1	S. H. Earll Cr By	\$495.00	Dis. \$5.00
"	7	S. H. Earll Cr By	\$495.00	Dis \$5.00
"	9	S. H. Earll Cr By	\$494.00	Dis \$6.00
"	28	S. H. Earll Cr By	\$495.00	Dis \$5.00
"	30	S. H. Earll Cr By	\$495.00	Dis \$5.00
July	7	S. H. Earll Cr By	\$495.00	Dis \$5.00
"	8	S. H. Earll Cr By	\$495.00	Dis. \$5.00

65	14	S.H. Earll	Cr By	\$500	each deposited	
"	31	S.H. Earll	Cr By	\$495.00	Dis.	\$5.00
August	7	S.H. Earll	Cr By	\$495.00	Dis	\$5.00
"	16	S.H. Earll	Cr By	\$495.00	Dis.	\$5.00
"	21	S.H. Earll	Cr By	\$495.00	Dis	\$5.00
"	22	S.H. Earll	Cr By	\$495.00	Dis	\$5.00
1854	24	S.H. Earll	Cr By	\$495.00		\$5.00
"	25	S.H. Earll	Cr By	\$450.00		\$5.00
"	29	S.H. Earll	Cr By	\$300.00		\$5.00
September	7	S.H. Earll	Cr By	\$495.00		\$5.00
in Prop Book 8	11	S.H. Earll	Cr By	\$495.00		\$5.00
"	12	S.H. Earll	Cr By	\$496.25		\$5.75
"	13	S.H. Earll	Cr By	\$496.25		\$5.75
"	16	S.H. Earll	Cr By	\$495.00		\$5.00
"	21	S.H. Earll	Cr By	\$496.25		\$5.75
"	25	S.H. Earll	Cr By	\$594.00		\$6.00
"	26	S.H. Earll	Cr By	\$496.25		\$5.75
"	30	S.H. Earll	Cr By	\$495.00		\$5.00
October	4	S.H. Earll	Cr By	\$495.00		\$5.00
"	7	Diff-Dis S.H. Earll	Cr By	\$495.00		\$5.00
"	13	" S.H. Earll	Cr By	\$495.00		\$5.00
"	21	" S.H. Earll	Cr By	\$496.25		\$5.75
"	24	" S.H. Earll	Cr By	\$495.00		\$5.00
"	26	" S.H. Earll	Cr By	\$495.00		\$5.00
"	27	" S.H. Earll	Cr By	\$496.25		\$5.75
"	28	" S.H. Earll	Cr By	\$496.25		\$5.75
November	1	" S.H. Earll	Cr By	\$495.00		\$5.00
"	2	" S.H. Earll	Cr By	\$990.00		\$10.00
"	6	" S.H. Earll	Cr By	\$495.00		\$5.00

(66)	10	"	"	S.H. Earth	\$ 495.00	\$ 5.00
"	27	"	"	S.H. Earth 2 dfts	\$ 991.25	\$ 8.75
December 4				S.H. Earth	\$ 495.00	\$ 5.00
"	6	"	"	"	\$ 495.00	\$ 5.00
"	8	"	"	"	\$ 495.00	\$ 5.00
"	12	"	"	"	\$ 495.00	\$ 5.00
"	"	"	"	"	\$ 495.00	\$ 5.00
"	18	"	"	"	\$ 495.00	\$ 5.00
"	19	"	"	"	\$ 495.00	\$ 5.00
"	20	"	"	"	\$ 495.00	\$ 5.00
"	22	"	"	"	2 \$ 5.00 each	\$ 10.00
"	25	"	"	"	\$ 495.00	\$ 5.00
"	27	"	"	"	\$ 992.50	\$ 8.75
"	29	"	"	"	\$ 495.00	\$ 5.00
"	"	"	"	"	\$ 496.25	\$ 3.75
"	30	"	"	"	\$ 495.00	\$ 5.00
1855- January 2				S.H. Earth br By	\$ 495.00	\$ 5.00
"	3			S.H. Earth br By	\$ 495.00	\$ 5.00
"	4			S.H. Earth br By	\$ 495.00	\$ 5.00
"	5			S.H. Earth br By	\$ 495.00	\$ 5.00
"	6			S.H. Earth br By	\$ 496.25	\$ 3.75
"	9			S.H. Earth br By	\$ 495.00	\$ 5.00
"	10			S.H. Earth br By	\$ 992.50	\$ 8.75
"	12			S.H. Earth br By	\$ 496.25	\$ 3.75
"	16			S.H. Earth br By	\$ 495.00	\$ 5.00
"	16			S.H. Earth br By	\$ 496.25	\$ 3.75
"	17			S.H. Earth br By	\$ 990.00	\$ 10.00
"	18			S.H. Earth br By	\$ 496.25	\$ 3.75
January 18				S.H. Earth br By	\$ 992.50	\$ 8.75
"	19			S.H. Earth br By	\$ 992.50	\$ 8.75
"	19			"	\$ 626.50	\$ 5.00

" 22	"	(68)	"	"	"	\$495.00	\$5.00
" 24	"	"	"	"	"	\$495.00	\$5.00
" 25	"	"	"	"	"	\$991.25	\$8.75
" 26	"	"	"	"	"	\$495.00	\$5.00
" 28	"	"	"	"	"	\$495.00	\$5.00
February 6	"	"	"	"	"	\$495.00	\$5.00
" 6	"	"	"	"	"	\$495.00	\$5.00
" 7	"	"	"	"	"	2 drafts \$991.25	\$8.75
" 10	"	"	"	"	"	\$990.00	\$10.00
" 13	"	"	"	"	"	\$495.00	\$5.00
" 19	"	"	"	"	"	\$496.25	\$8.75
" "	"	"	"	"	"	\$495.00	\$5.00
" 20	"	"	"	"	"	\$496.25	\$8.75
" "	"	"	"	"	"	\$495.00	\$5.00
" 21	"	"	"	"	"	\$495.00	\$5.00
" 21	"	"	"	"	"	\$495.00	\$5.00
" 22	"	"	"	"	"	\$496.25	\$8.75
" 27	"	"	"	"	"	\$495.00	\$5.00
March 3	"	"	"	"	"	\$495.00	\$5.00
" 12	"	"	"	"	"	\$990.00	\$10.00
" 16	"	"	"	"	"	\$990.00	\$10.00
" 28	"	"	"	"	"	\$495.00	\$5.00
" 29	"	"	"	"	"	2 drafts \$990.00 each	\$20.00
185-5-	"	"	"	"	"		
April 10	"	"	"	"	"	\$990.00	\$10.00
" "	"	"	"	"	"	\$495.00	\$5.00
" 12	"	"	"	"	"	\$495.00	\$5.00
" 15	"	"	"	"	"	\$495.00	\$5.00
" 18	"	"	"	"	"	\$990.00	\$10.00
" 25	"	"	"	"	"	\$495.00	\$5.00
" 26	"	"	"	"	"	\$495.00	\$5.00

	"	"	"	"	"	"	\$495.00	\$5.00
(69)	30	"	"	"	"	"	\$495.00	\$5.00
May 2	"	"	"	"	"	"	\$990.00	\$10.00
" 8	"	"	"	"	"	"	\$490.00	\$10.00
" 3	"	"	"	"	"	"	\$495.00	\$5.00
" 9	"	"	"	"	"	"	\$495.00	\$5.00
" 4	"	"	"	"	"	"	\$495.00	\$5.00
" 17	"	"	"	"	"	"	\$980.00	\$20.00
" 18	"	"	"	"	"	"	\$985.00	\$15.00
" 22	"	"	"	"	"	"	\$985.00	\$15.00
" 25	"	"	"	"	"	"	\$980.00	\$20.00
" 24	"	"	"	"	"	"	\$990.00	\$10.00
" 28	"	"	"	"	"	"	\$495.00	\$5.00
" 30	"	"	"	"	"	"	\$980.00	\$20.00
June 1st	"	"	"	"	"	"	\$980.00	\$20.00
" 4	"	"	"	"	"	"	\$985.00	\$15.00
" 5	"	"	"	"	"	"	\$980.00	\$20.00
" 7	"	"	"	"	"	"	\$495.00	\$5.00
" 8	"	"	"	"	"	"	\$490.00	\$10.00
185-5.								
June 9	S. H. Earth	by	B.				\$492.50	\$7.50
" 11	"	"	"	"	"	"	\$990.00	\$10.00
" 13	"	"	"	"	"	"	\$492.50	\$7.50
" 16	"	"	"	"	"	"	\$985.00	\$15.00
" 21	"	"	"	"	"	"	\$985.00	\$15.00
" 28	"	"	"	"	"	"	\$490.00	\$10.00
July 3	"	"	"	"	"	"	\$490.00	\$10.00
" 5	"	"	"	"	"	"	\$980.00	\$20.00
" 7	"	"	"	"	"	"	\$980.00	\$20.00
" 11	"	"	"	"	"	"	\$980.00	\$20.00
" 14	"	"	"	"	"	"	\$492.50	\$7.50

" 16	"	"	"	"	"	\$490.00	(69) 40)	\$10.00
" 21	"	"	"	"	"	\$495.00		\$5.00
August 2	"	"	"	"	"	\$980.00		\$20.00
4	"	"	"	"	"	\$492.50		\$7.50
6	"	"	"	"	"	\$940.00		\$60.00
11	"	"	"	"	"	\$980.00		\$20.00
14	"	"	"	"	"	\$495.00		\$5.00
17	"	"	"	"	"	\$490.00		\$10.00
20	"	"	"	"	"	\$980.00		\$20.00
23	"	"	"	"	"	\$990.00		\$10.00
24	"	"	"	"	"	\$980.00		\$20.00
27	"	"	"	"	"	\$990.00		\$10.00
28	"	"	"	"	"	\$990.00		\$10.00
28	"	"	"	"	"	\$980.00		\$20.00
185-5 30	"	"	"	"	"	\$495.00		\$5.00
August 31	S.B.	Earl	by			\$980.00		\$20.00
September 1	"	"	"	"	"	\$990.00		\$10.00
" 3	"	"	"	"	"	\$990.00		\$10.00
4	"	"	"	"	"	\$980.00		\$20.00
6	"	"	"	"	"	\$990.00		\$10.00
8	"	"	"	"	"	\$990.00		\$10.00
12	"	"	"	"	"	\$990.00		\$10.00
12	"	"	"	"	"	\$990.00		\$10.00
15	"	"	"	"	"	\$990.00		\$10.00
14	"	"	"	"	"	\$990.00		\$10.00
15	"	"	"	"	"	\$496.25		\$3.75
18	"	"	"	"	"	\$985.00		\$15.00
21	"	"	"	"	"	\$990.00		\$10.00
24	"	"	"	"	"	\$5.00.00		\$5.00
24	"	"	"	"	"	\$990.00		\$10.00

"	24	"	"	"	"	\$992.50	\$7.30
"	25	"	"	"	"	\$990.00	\$10.00
"	27	"	"	"	"	\$990.00	\$10.00
October 1	"	"	"	"	"	\$1980.00	\$20.00
"	2	"	"	"	"	\$990.00	\$10.00
"	4	"	"	"	"	\$990.00	\$10.00
"	6	"	"	"	"	\$990.00	\$10.00
"	8	"	"	"	"	\$300.00	
"	8	"	"	"	"	\$980.00	\$20.00
"	9	"	"	"	"	\$990.00	\$10.00
"	11	"	"	"	"	\$1980.00	\$20.00
October 11	S.B. Call	by	By			\$990.00	\$10.00
"	11	"	"	"	"	\$992.50	\$7.30
"	12	"	"	"	"	\$990.00	\$10.00
"	12	"	"	"	"	\$990.00	\$10.00
"	13	"	"	"	"	\$990.00	\$10.00
"	13	"	"	"	"	\$980.00	\$20.00
"	15	"	"	"	"	\$990.00	\$10.00
"	14	"	"	"	"	\$990.00	\$10.00
"	18	"	"	"	"	\$990.00	\$10.00
"	18	"	"	"	"	\$990.00	\$10.00
"	19	"	"	"	"	\$990.00	\$10.00
"	20	"	"	"	"	\$990.00	\$10.00
"	23	"	"	"	"	\$990.00	\$10.00
"	26	"	"	"	"	\$990.00	\$10.00
"	27	"	"	"	"	\$496.75	\$5.25
"	29	"	"	"	"	\$992.50	\$7.50
November 1	"	"	"	"	"	\$992.50	\$7.50
"	10	"	"	"	"	\$990.00	\$10.00
"	15	"	"	"	"	\$495.00	\$5.00
"	19	"	"	"	"	\$495.00	\$5.00

" 23	"	"	"	"	"	\$495.00	\$5.00
" 22	"	"	"	"	"	\$495.00	\$5.00
" 20	"	"	"	"	"	\$1980.00	\$20.00
" 30	"	"	"	"	"	\$990.00	\$10.00
December 1	"	"	"	"	"	\$990.00	\$10.00
¹⁸⁵⁵⁻ December 4	S. H. Earle	les	By			\$992.50	\$7.50
" 7	"	"	"	"	"	\$990.00	\$10.00
" 9	"	"	"	"	"	\$1000.00	no discount,
" 12	"	"	"	"	"	\$992.50	\$7.50
" 13	"	"	"	"	"	\$992.50	\$7.50
" 14	"	"	"	"	"	\$992.50	\$7.50
" 15	"	"	"	"	"	\$995.00	\$5.00
" 18	"	"	"	"	"	\$992.50	\$7.50
" 19	"	"	"	"	"	\$992.50	\$7.50
" 19	"	"	"	"	"	\$995.00	\$5.00
" 20	"	"	"	"	"	\$992.50	\$7.50
" 21	"	"	"	"	"	\$1985.00	\$15.00
" 22	"	"	"	"	"	\$996.00	\$4.00
" 24	"	"	"	"	"	\$992.50	\$7.50
" 25	"	"	"	"	"	\$992.50	\$7.50
" 27	"	"	"	"	"	\$992.50	\$7.50
" "	"	"	"	"	"	\$995.00	\$5.00
" 28	"	"	"	"	"	\$992.50	\$7.50
" 24	"	"	"	"	"	\$1000. no discount.	
" 31	"	"	"	"	"	\$995.00	\$5.00
¹⁸⁵⁶ January 5	"	"	"	"	"	\$992.50	\$7.50
" 11	"	"	"	"	"	\$992.50	\$7.50
" 15	"	"	"	"	"	\$992.50	\$7.50

" 16	"	"	"	"	"	\$992.50	\$7.50
" 17	"	"	"	"	"	\$992.50	(73) \$7.50
" 22	"	"	"	"	"	\$992.50	\$7.50
1856 January 24	S. H. East	br	By			\$992.50	Dis \$7.50
" 30	"	"	"	"	"	\$992.50	\$7.50
February 6	"	"	"	"	"	\$992.50	\$7.50
" 8	"	"	"	"	"	\$992.50	\$7.50
" 9	"	"	"	"	"	\$992.50	\$7.50
" 12	"	"	"	"	"	\$992.50	\$7.50
" 12	"	"	"	"	"	\$496.25	Dis \$3.75
" 14	"	"	"	"	"	\$496.25	\$3.75
" 15	"	"	"	"	"	\$992.50	\$7.50
" 20	"	"	"	"	"	\$992.50	\$7.50
" 28	"	"	"	"	"	\$990.00	\$10.00
March 6	"	"	"	"	"	\$990.00	\$10.00
" 7	"	"	"	"	"	\$990.00	\$10.00
" 8	"	"	"	"	"	\$990.00	\$10.00
" 12	"	"	"	"	"	\$990.00	\$10.00
" 19	"	"	"	"	"	\$990.00	\$10.00
" 21	"	"	"	"	"	\$100.00	no account
" 29	"	"	"	"	"	\$990.00	\$10.00
1855-							
January 19	"	"	"	"	"	\$696.50	Dis \$3.50

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Deposit Journal B extends from Sept 1st
1855 to end of time of old firm J. M. & Co.
Offered in evidence

Deposit Journal "A." offered in evidence
Deposit Ledger "B." offered in evidence

Drafts all offered in evidence (obj &
excp) Pap Books A. B. ~~and offered in~~
~~ex. (obj & excp)~~ and that portion of C con-
taining transactions with defendants
offered in ev. (obj & excp) Drafts and
pap books offered and read in evidence
are hereto attached as part of the testimony.

Excp -

You have run the drafts - What was plff
Carroll's business during the time of those dfts
Ans. Buying and shipping produce
& sending it to Chicago - Q. What is
that kind of paper called? Ans. Bills of
Exchange in our town and in all Banks
- When you were in the office of Mitchell &
Bank was there a good deal of such paper
presented there (Ex by plffs. obj sustained)
(Plffs proposed to show that at the time the
drafts in question were negotiated there was
a large amount of other paper negotiated
in a similar manner) (Ex by plffs
counsel obj sustained Ruling of the Court excepted to)

45 How long were you in that office as
bookkeeper or clerk? From last Sept '54
to middle of Nov '56 I am not able to
identify any of the paper as presented
at the counter while I was there. The only
knowledge I have is the comparisons
of the papers with the entries on the books
I stated that Mitchell & Co were engaged in
buying & selling at change & receiving de-
posits — Did they keep books to dis-
tinguish between money loaned & bills
bought? (objected to by Plffs counsel — obj
overruled. Plff excepts) They did — Where
money was loaned by that bank, and
how were such entries made (objected to
objection overruled & exception) Bills receivable
were charged with the amount of the loan on
the note — Are any of those entries
in any of those books which have been
presented here in court? There are —

Read from that book (Platters) the entry
that was made

Were any of these drafts charged to
Bills receivable? None to my knowledge

To what account did you charge such drafts?
Ans — To "Collections" afterwards I was
charged to "Bills of Exchange"

These questions and answers
were all excepted to
by Plffs counsel

What was the transaction between Earll & Mitchell when Earll presented this kind of paper? Earll was in the habit of bringing in his paper there during the early part of the transactions he would come in to see if they could accommodate him to draw on Chicago. Mitchell does received the drafts of Earll and papered the avails to his credit & deducted the amount of their discounts. Was frequently present while those transactions were made by Earll — 2. What is meant by the word discount as you have used it?

Whenever we bought a draft on Chicago or New York at less than its face the difference between the draft and what we give for it is called discount and when we sell the difference between the face of the draft and what we sell it for is called exchange.

Prof Boice submitted to witness — Some entries are in my handwriting. I took some of the drafts of Earll. I purchased Mr Earlls draft. I took the drafts ~~deducted~~ deducted the exchange and papered the avails to Earlls credit. Earll never applied for a loan of money in connection with the drafts.

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Did you as ~~defendants~~ defendants purchase any of those drafts for defendants (objected to objection overruled & excepted to) I have at various times purchased drafts of Mr East on A.R. Williams of Chicago - did it often in the office, I don't tell exactly how many I purchased - Have often been present when defendants purchased these drafts of East -

During the time I was with them all or nearly all were purchased in my presence In these books the first amount was the amount paid by Mitchell ~~for~~ for the drafts and the second amount was the amt charged by Mitchell ~~for~~ for the purchase - Q What was the market value of sight drafts on Chicago at the time? (obj to obj overruled & excepted to) No 1. drafts drawn by parties responsible were at 1/4 per cent discount - on 3 days paper ^{perhaps with grace 1/2 per cent} was - without grace - 1/2 per cent. 10 days paper 3/4 of 1 per cent. 15 days 1 per cent. - 20 days 1 1/2 - 30 days 2 per cent -

When you spoke of the entries on these books as referring to these drafts did you take it to be the same kind of transactions?

(obj overruled except)

Did you make the same kind of entries on the books when you were there as appear on the books before you went there so you have

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him easily! I have made the usual kind
of entries - I generally was present when Earle
came in & the reason ~~Mitchell~~ ^{Putnam} filled
them up was that he didn't know when he came
in the office whether he could dispose of
his drafts or not - Generally wanted more
than he could get. Subsequently Earle's
clerk used to fill out the drafts some
of them were in Earle's clerk's handwriting
Earle had an account at the bank
and these amounts were placed to
his credit for him to draw against.
and he did draw against them.

[Pap book submitted to witness - This
book contains Earle's account. In
January 1854 (read) balance credited to
Earle and carried over to next month
& vouchers were returned, when we were
in the habit of writing "Vouchers returned"
I notice the leaf is torn off - February
1854 balance carried over to next month
March 1854 - balance carried over to
next month - Book next balanced
June 1st & balance carried forward
Book was next balanced July 1st &
balance carried forward. August 1st
balance carried forward. Sep. 1st bal-
ance carried forward. October 1st
balance \$133.68 carried forward Nov 1st
bal. ^{Dec 1 bal. \$92.21, carried forward} carried forward. January 1st 1855
\$29.98 bal carried to other book -

Feb 1st bal card forward (A portion is in
my handwriting) March 1st bal card forward
May 1st bal card forward - June 1st bal
29.23 card forward

July 1st bal card forward Aug 1st
bal card forward Sep 1st bal card forward
Oct 1st ^{Drafts 769468} bal, carried forward, Nov 1.
bal. Cr \$294.64 carried forward. January
1. 1856 Dr. bal carried forward & vouchers
all returned. Feb 1st bal. 169.05 card forward
March 1. bal card forward April 1. bal. \$268.
Due Call card forward That \$268 was card
forward to the new book after the firm was
changed. Generally at the end of every
month Mitchell & Co settled with Earth and
returned vouchers to him. On the 1st of
April there was a settlement and vouchers
all returned. I generally handed back the
balanced books to Earth. He never ex-
pressed dissatisfaction to my recollection.

All the credits to Earth were cash
credits - generally the money on drafts
were placed to Earth's Credit on the books
and he checked against it and drew it right
out sometimes immediately -

By Machine

I purchased these drafts of Earth just as
I would purchase any other ^{man's} draft. It offered
the drafts just as any man would offer to
sell a draft.

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So far as we traded it was regular Mr. Earll
came there and gave me his draft - Cash
all just what Earll sent. I can tell the
transaction. Can't say whether Earll used
the word "sell," or "take" or "buy" Don't
know that in so many words Earll
ever asked me to buy a draft on Chicago.
It was just as much a bargain and sale
between Earll and myself as though I had
bought a draft on N York. Earll's arrange-
ments were only from one day to another.
Each draft was a separate transaction.
Never bought papers made by strangers
entirely. Can't remember that Earll asked
for money - Came there to see if they
would take his draft. The drafts that
Putnam wrote were drawn in
the office and then the proceeds were
entered on their books. The rates were va-
ried - I stated the rates before. Very often
something was said about the rates. Earll
frequently wanted the rates reduced. Never
heard them Putnam or Mitchell say that they
took them on their own responsibility.
Can't state any particular conversation.
There is not necessarily any talk about
buying and selling when we purchase any draft.
Whitely read from pup Book April 8. 1861 -
p. 495. It means that James Mitchell
had received of S. H. Earll on that day a

Draft and gave him credit for the
amount less discount which was \$495-

All the draft transactions were the same
principle. Don't know of any understand-
ing about Earle's having to pay the discount
in the end Don't know of any understanding
one way or the other. Don't recollect of there
being any understanding about the drafts
except what the drafts express themselves -
can't state that I made any proposition
to Earle to pay so much for the drafts -
can't state that any distinct proposition
was made - I purchased the drafts
according to my understanding -

Don't remember any drafts being sent
back without being accepted or paid. Think
some were sent back but were subsequently
met in Chicago. Have no recollection
that any came back. The drafts were all
ultimately taken up. Don't know whether
by Earle or not - Question by Drafts Counsel
While you were in Mitchell's employ did you
not buy a great many other drafts and
bills of other parties? I did - Question by
Drafts Counsel - Can you now recollect
any particular instance where you bought
a draft or bill of exchange that the words
buy or sell were used in the transaction
Answered I cannot -

A. H. Stone sworn. Was doing business in this place in 1854 & 1855. Bank Exchange was worth at that time from $1\frac{1}{4}$ to $1\frac{1}{2}$. It was generally sold at - 1 per cent premium that is exchange on New York. Never knew anything charged on Chicago. Banks never charged their customers anything. I dealt with these dependents some. Never have known any exchange on Chicago being sold. Never bought or sold any exchange on Chicago. Have known parties to be charged $\frac{1}{2}$ per cent for such exchange where they were not doing business at the Bank. Did not charge persons doing business at the Bank anything.

Oscar Luytor - Was doing business as Banker here in years 1854 & 55. Rate of exchange varied from par to $\frac{1}{2}$ per cent premium that was what we sold exchange for. There was no market value of ex on Chicago. One man would sell a draft on Chicago for nothing & another at $\frac{1}{2}$ per cent that refers to Banking drafts not to drafts drawn by other parties. Ordinarily we charged our customers nothing for drafts on Chicago. Don't know what James Mitchell's deal custom was.

Horner A Hubbard sworn. Don't know what
James Mitchell's custom was in 34. 55-
836 in regard to exchange or changes.
Plaintiff Rests.

Mr Fullerton sworn for defence examined by
Turner. Resides in Freeport for 2 years & 1/2
Have been and is now book keeper for Mitchell
also - commenced last of March 1856.
(Draft shown witness) They are Bills of
Exchange. It is kind of paper called
probate paper (Bank Pass Book shown witness)
(Sworn to date of November 1st 1855-) For credit
to Cash of \$998.55 Have kept the books since
1st May '56. When draft was received unless
we paid him for it we gave him credit
for him to check against. Have him
credit for the draft. - By Turner. What
entries were made when drafts were
purchased by these defendants? We gave
them credit for the draft less the amount
agreed upon by the parties.

By Turner - When these drafts were received
was it a purchase or loan of money (obj. sus-
tained except)

Am familiar with the business indicated by these
drafts & corresponding entries in Deft's books
By March - State whether the transactions in-
volving the presentation & acceptance of drafts
such as now exhibited and of which entries are

made as you find them in Dfts books are
 loans ~~of money~~ or purchases. (Obj. Sustained, except)

Orcus Taylor Called by Defence. Was engaged
 in Banking business in 34, 35, and up to
 last of March 36 in this town. Was
 acquainted with Bills of Exchange known
 as produce paper - Q - During that
 time what rate of Discount did you
 charge on such paper supposing them
 to be Sight Drafts? Discount on sight
 Dfts on Chicago by produce Dealers varied
 from $\frac{1}{4}$ to $\frac{1}{2}$ per cent Drafts for 10 or
 15 days ordinarily the same - I dealt
 extensively in such paper myself. Q -
 What was done with such paper. Ans It
 was payable in Chicago and had to be sent
 there to be collected. If it was made pay-
 able to us we had to endorse it before it was
 sent. The expense of sending & trouble I should
 say was $\frac{1}{4}$ per cent but the rate would vary
 from circumstances from per to $\frac{1}{2}$ per cent
 $\frac{1}{4}$ per cent would be the average rate I
 suppose. Bankers charged from $\frac{1}{4}$ to $\frac{1}{2}$
~~per~~ per cent for their own Drafts. Bankers
 Drafts were worth more than private
 Drafts (Drafts in suit shown witness - ad-
 mitted to be private Drafts) Q - what
 was produce paper worth from January
 1/34 to April 1/36? Depends on circum

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claimers We have taken that class of paper as we have other paper. The usual discount on that class of paper payable in Chicago on short time was 2 or 3 per cent a month.

Drop by Merchants Council for stuff. Where we took paper from produce dealers on Chicago you might call it discounting or buying. During those years I think as to a sight draft it would be called buying a draft - on time drafts it would be usually called discounting a draft -

By Turner Drafts Council I occasionally buy drafts on N. York on time. Call it either buying or discounting. What we take off of the draft - we call discount.

James D. Clark sworn for deponent. Was engaged in Banking in this town in 54, 55 & 56 part of the time (drafts in suit presented to witness) have seen such paper & dealt in it. I call it produce paper. S. H. Earl dealt at my Bank.

I What was sight draft - Produce paper on Chicago worth. One - $\frac{1}{4}$ per cent discount 5 days $\frac{1}{2}$ per cent - 10 days $\frac{3}{4}$ per cent & so on to 1 to 2 per cent. Had to send this class of paper to Chicago for collection and had to endorse it. I consider such paper more risky

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than any other kind of paper.

By Meathan for self. In 54, 55, & 56 considered this paper as good as any of that class of paper.

J. S. Greenwood. Resided here 4 or 5 years. In 54, 55 & 56 was in the grain and produce business (drafts in and through porters). Was acquainted with that class of paper. Known as exchange. Drafts like them are known as produce paper. Earl was in that business in 54, 55, & 56. Has your firm drawn a good deal of such paper during such time? Have both individually and as a firm — Defts propose to prove by Mr Greenwood that he sold a large amount of such paper in 54, 55, & 56 (Court books against defts — excepted to) Think such paper sold at from 2 to 2 1/2 per cent. — We sell the draft out & out. We take so much money

By Meathan Counsel for depts. We call that discounting a draft —

William Mitchell sworn for defence. During 54, 55 & up to 1st April '56 I was in employ of Earl from Sep. 55 to March or April '56. Earl was then and had been from winter of '56 & '54 in produce business. He had no other business while I was engaged with him. Know of no

Drawing drafts on Chicago and negotiating some of them at Stephenson & Co Bank. Have been frequently present when the drafts were negotiated. Have heard conversations in regard to buying drafts - They were not always received. Don't recollect the rates that were charged for receiving the drafts. Entries on the books will show what the rates were. On one or two occasions Sidney Smith a clerk of Eells came and asked what they charged on 15-day drafts. They told him 1 per cent. I never have seen his draft and bank book as the amount was put down. Never heard anything said at any such time of presentation of a draft of Eells of a loan of money. I am in the produce business and am in habit of drawing such paper "generally sell it" (last answer excluded by Court)

Q. What was each paper worth in 54.55 & 56. (Objected to by plffs counsel, objected & excepted to by plffs counsel) from $1\frac{1}{2}$ to 2 per cent per month. Sight drafts worth $\frac{1}{4}$ percent discount. The general inquiry was whether they wanted to take a draft on Chicago.

J. M. Sheffer - In '55 I did produce business (drafts in suit submitted to witness) It is known as produce paper - Q. What was the market

value of this class of paper in 1865 in Freeport
about 2 per cent. (Ruled out by Court &
Ruling excepted to by Affs Council)

What was a sight draft of this produce
paper worth in Freeport in 1855? (obj by plffs
Council obj overruled excepted) about 1/2
per cent discount 5 days 1/2 per cent and so
on.

By meekum for plff I have negated pro-
duce paper. What is shipped to China by
Rail Road

Defendants Rest.

Plff Rest.

The foregoing is all the evidence introduced
by either party on the trial of this cause

The plaintiffs Council here asks the Court
to instruct the jury as follows to wit:

1st It is a settled principle of ^{the} law that
when money has been loaned at a usurious
rate of interest and the borrower has paid
to the lender the principal sum borrowed
together with such interest before January 31
1857 the borrower may recover back from
the lender the excess of interest so paid over
and above six per cent per annum

2nd If the jury believe from the evidence
that the defendants loaned to the plaintiffs

Given

money upon the drafts in question in this cause at a usurious rate of discount and the plaintiff has paid or caused to be paid the drafts and the usurious rate of discount. Previous to June 31, 1857 the plaintiff may recover in this form of action the excess he has paid over legal rate of interest

3d If the jury believe from the evidence that the plaintiff Strong M. Call made and delivered the drafts in question to James Mitchell for to obtain a loan of money from the defendants and the defendants loaned the money by discounting said drafts at a greater rate of interest for the time said drafts were to run than the rate of discount allowed by law. at the time of the loaning of said money then all of such discount over and above the rate of six per cent per annum would be usurious and the plaintiff entitled to recover the same back provided the plaintiff has paid or caused to be paid to defendants the original sum borrowed and such discount previous to June 31.

1857

4th During the year 1854, 1855, and 1856 no person in this State was allowed by law to accept or receive in money or in any other way any greater sum for the loan of money or

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90

Refused.

Discount, of any money or thing in action
than at the rate of six dollars on one
hundred dollars for one year and after that
rate for a longer or shorter period of time
unless a special contract was made by the
parties to give and receive any rate not
exceeding ten per cent. But if the jury
believe from the evidence that the defen-
dants discounted the drafts offered in evi-
dence at a greater rate of discount than
was then allowed by the law of this state
and the plaintiff has paid or caused to be
paid the said drafts to the defendants in-
cluding such greater rate of discount.
he may recover back in this action
the exact over and above the legal rate of
interest.

3rd

Refused

It is a settled principle of the law that
if a person make his own Bill of exchange
and sell it for what he can get in money
this whole in appearance the sale of the
Bill is a loan and borrowing of the money
and if the apparent rate be for such a price
that the seller pays more than the legal
interest it is a usurious transaction

6th

The law will not countenance or uphold
any shift-contrivance or device of the lender
and borrower of money by which the lender
can receive or the borrower give to the

lender a greater rate of interest for the loan
 of money than that allowed by the law -
 The real inquiry in every case is whether
 there has been a borrowing and loaning
 at a greater rate of interest than the law
 allows and this becomes purely a question
 of fact for the jury to determine from all
 the circumstances of the particular case.
 The law looks at the intent and substance
 of the transaction and not to the color
 or form which the parties in their ingenuity
 may have given it. The parties will not
 be permitted successfully to evade the pro-
 visions of the statute by any conceivable
 scheme or expedient. The courts will
 follow them through all their shifts and
 devices and ascertain the true character
 and design of the transactions and
 if upon such investigation it appears
 that there was in substance a loan
 at an illegal rate of interest, no
 matter what form or shape the matter
 has been made to assume it will be
 declared to be usurious and the proper
 remedy applied.

92 The Defendants Counsel asks the Court to instruct the jury as follows.

1st The plaintiff is bound by his bill of particulars and he cannot recover for anything which is not contained in his bill of particulars.

Second The plaintiff having charged nothing in his bill of particulars excepting money received by the Defendants to the use of the plaintiff the plaintiff in order to recover in this suit must prove that the Defendants received money from the plaintiff as charge in the bill of particulars and if the plaintiff has failed to ^{prove} that Defendants received money for the use of the plaintiff the jury ought to find for the Defendants.

Third When a transaction will admit of two constructions one of which will make it usurious and the other not usurious the jury ought to construe the transaction to be not usurious provided the evidence will equally as well warrant such construction.

4th There are three things necessary to constitute usury There must be a loan or taking of more than lawful interest and a corrupt agreement and of the

9th

Given

jury find from the testimony in this case that the bills of exchange in question were sold to the defendants at their Market value at the time in the ordinary course of business and at a reasonable discount. the transaction was not usurious.

5th

Given

The Bills of exchange offered in testimony are not of themselves sufficient proof of the item contained in the plaintiffs bill of particulars unless there is some other proof connected with them.

6th

Given

The Books offered in evidence are not of themselves sufficient proof of the items contained in the plaintiffs bill of particulars unless some other testimony is connected with them.

7th

Given

Such of the Bills of exchange in question as were drawn by Earl the plaintiff payable to different individuals besides the defendants is a circumstance which the jury has a right to consider as tending to show that such one of the Bills were purchased by the defendants ^{from} ~~by~~ the plaintiff.

8th

If the jury find from the testimony that Earl the plaintiff settled his accounts with the defendants on the thirteenth day of March A.D. 1856 and at that said settlement there was found to

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Refused

be due to the plaintiff from the defendants the sum of two dollars and seventy eight cents and that the sum found due was afterwards paid. Thus the jury must find for the defendants unless the plaintiff has shown by the testimony that some items of the account had not been settled and then the plaintiff can only recover for such items as are not settled on the 30th March 1886 and they must be specifically charged in the Bill of particulars.

Smith A. Bill of exchange is not a promissory note and if the jury find from the testimony that Earl the plaintiff applied to the defendants to purchase the Bills in question the character of the transactions is not changed because Earl drew the bills payable to the defendants.

Given

Smith The Bills of exchange which in the hands of James Mitchell & Co and before acceptance were not promissory notes.

Given

95 And here the Counsel for and on behalf
of the plaintiff excepts to the decision of
the Court in refusing the 4th and 5th
instructions asked by the Counsel for plain-
tiff and likewise excepts to giving of the
instructions asked by the Counsel for
and on behalf of the Defendants.

And the Defendants Counsel here
excepts to the decision of this Court in giv-
ing the instructions asked by the plain-
tiffs Counsel and in refusing to give
the eighth instruction asked by the Counsel
for defendants.

And thereupon the jury retired to con-
sider of their verdict and after a
short absence returned into Court with
the following verdict.

The the jurors find for the Defendants.	
George Wolf	J. H. Schlott.
Perry Snyder	Ry Brown
Henry McElmuther	William Kremsa
John P. Fox	William C. Best
John Sumner	Abraham Bowers
George Schwantz	John D. Sanduland

And thereupon the Counsel
for and on behalf of the plaintiff moved
the Court for a new trial for the following
reasons

First

For the reason that the court refused instructions asked by the plaintiffs Counsel

2nd

For the reason that the Court gave instructions asked by Defendants Counsel

3^d

For the reason that the verdict was clearly against the evidence in the case.

Meacham & Bailey
Attorneys for the Plaintiff

And afterwards moved at the day and place within contained above an order heard the said motion for a new trial and after argument of Counsel the said Court did then and there overrule the said motion for a new trial to which decision of the Court overruling said motion the said Plaintiff by his said Counsel did then and there except. And because none of the evidence and said exceptions so offered and made to the opinions and decision of the said Court do appear upon the record of the said trial therefore on the prayer of the said Plaintiff by his said Counsel the said learned Judge hath to this bill of Exceptions set his seal according to the Statute in such case made and provided

Dated this 24th day of January

Buy R. Sheldon Clerk

Endorsed "Filed Jan 24. 1859
S. W. Guiteau Clerk"

State of Illinois }
Stephenson County } ss.

I, Luther W. Guiteau Clerk
of the Circuit Court within and for the County of
Stephenson in the State aforesaid: do hereby certify
that the foregoing transcript contains a full and
complete record of all the proceedings had in
said Court in a suit lately pending therein, wherein
Strong B. Eall for the use of Charles L. Patten is
Plaintiff, and James Mitchell, Holden Putnam
& Alexander Stealy are defendants, as the same
appears of the records and files in my office

In Witness Whereof I have hereunto
set my hand and the seal of said
Court at Freeport in said County this
18th day of March A.D. 1859-
S. W. Guiteau, Clerk

Strong & Earl for use of
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James Mitchell & others

Filed March 24th 1889
L. Leland
Clerk

State of Illinois
Supreme Court of Third Grand Division
April Term AD 1859

Strong & Earle for the
use of Charles G. Patten
Plaintiffs in Error

James Mitchell Holden Putnam
Alexander Stealy Copartners
under the name & style of
James Mitchell & Co
Defendants in Error

Afterwards to wit
on the 29th day of April AD 1859 at
the City of Ottawa in the County
of Cass in said State in this same
Term before the justices of the Supreme Court
of the State of Illinois at said ^{City} County
comes the said Strong & Earle for the
use of the said Charles G. Patten by his
Attorneys Mencham & Bailey and says
that in the Record and proceedings
aforesaid and also in the giving the
judgment aforesaid there is manifest
Error in this to wit that the said Circuit
Court ~~conducted~~ the trial of the said suit
allowed improper testimony to be
given to the jury on the part of the

Defendants. And there is error in the
tourt that by the record aforesaid
it appears that the said Circuit Court
refused to give ^{fourth and fifth} instructions to the
jury asked by the counsel for the
Plaintiff. And there is also error
in this tourt that by the Record
aforesaid ^{it appears} that the said Circuit
Court gave ^{the first second third fourth fifth sixth seventh eighth ninth} instructions asked
by the counsel for the Defend-
ants. And there is also error in this
tourt that by the Record and
proceedings aforesaid it appears
that the said Circuit Court overruled
the motion for a new trial.

And there is also manifest
Error in this tourt that by the Record
and proceedings aforesaid it appears
that the judgment aforesaid in favor
aforesaid given was given for the
said James Mitchell & Co against
the said Strong & Earle who sued
for the ^{use of the} said Charles G Patten whereas
by the Law of the land the said judg-
ment ought to have been given for
the said Strong & Earle for the use
of the said Charles G Patten.
And the said Strong & Earle for

the use of the said Charles G. Patton prays
that the judgment aforesaid for the Errors
aforesaid and other Errors in the Record
and proceedings aforesaid may be reversed
annulled and altogether held for
nothing and that he may be restored
to all things which he has lost by occasion
of the said judgment &c

Mr. A. C. Cham & Bailey
Attys for Plff
in Error

State of Illinois

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Supreme Court
Third Grand Division

Strong & Earle for
use & ©
of

James Mitchell's
Gifts in Error

Assignment of Error

Filed April 16, 1889

L. Leland
Clerk

IN THE SUPREME COURT OF ILLINOIS,

APRIL TERM OF THE THIRD GRAND DIVISION, A. D. 1859,

STRONG H. EARLL, for the use of
Charles G. Patten, *Plaintiff in Error*,

vs.

JAMES MITCHELL, HOLDEN
PUTNAM, and ALEXANDER
NEELY, co-partners under the name
and style of James Mitchell & Co.,
Defendants in Error,

ERROR TO STEPHENSON COUNTY,

- 1 Action of assumpsit by plaintiff in error, against defendants in error.—
4 The plaintiff declared on the common counts, with a bill of particulars charg-
6 ing money had and received by defendants to plaintiff's use. Defendants
12/ pleaded general issue, payment and set-off. The cause was tried before HON.
BENJAMIN R. SHELDON, and a Jury, at the December Term, 1858, of the
Stephenson Circuit Court.

PLAINTIFF'S EVIDENCE.

Testimony of Abner H. Wright:

- 55 Has been acquainted with defendants, Mitchell, Putnam and Neely, since
last day of September, 1854. They were then and are now engaged in
banking, loaning money, receiving deposits, and buying and selling exchange.

- 56 Witness is acquainted with defendant Putnam's hand-writing, and has seen
him write. (Bank pass-book, marked exhibit "A," submitted to witness.)—
Witness recognizes in this book the hand-writing of defendant Mitchell,
Mr. Nichols, Mr. Guiteau, and himself (witness.) It is the account book of
defendants with plaintiff; witness balanced the book up to September 1st,
1854; Mr. Nichols was book-keeper for defendants.

(Bank pass-book, marked exhibit "B," submitted to witness.) It is the
account book of defendants with plaintiff from January 1st, 1855, to Decem-
ber 31st, 1855. Witness recognizes the writing of defendants, Mitchell and
Putnam, of Mr. Guiteau, and himself (witness) in the book.

(Bank pass-book, marked exhibit "C," submitted to witness.) It is the
pass-book of plaintiff, and contains the account of plaintiff with defendants,
from January 1st, 1856, to April 1st, 1856. Witness recognizes hand-wri-
ting of defendants, Mitchell and Putnam and himself (witness) in this book,
during the above time.

The bank pass-books, "A," "B," and that portion of book "C," above
mentioned, offered in evidence; counsel for defendants object; objections
overruled by the Court; ruling of the Court excepted to by counsel for de-
fendants.

- 57 Counsel for defendants objected to all questions put to witness and all an-

swers made by him, on the ground that the books are not proper evidence; and also, that the amounts stated in plaintiff's bill of particulars do not correspond with the books.

57 The journal of defendants submitted to witness.

Witness reads entry dated January 12, 1854: "To cash debtor, S. H. Earll, dep. \$572 50," in hand-writing of defendant Putnam. Witness was not there at the time this entry was made.

Question by plaintiff's counsel—State whether it was the practice of the defendants at that time to enter drafts on Chicago, by them taken as cash deposited? (Objected to by counsel for defendants; objection overruled; defendants' counsel except.) Witness has no positive knowledge of their practice at that time, except what he can infer from the books; has had no information from defendants.

58 Question by plaintiff's counsel—What were their (defendants) subsequent practices in regard to Chicago drafts, as to entering them as cash deposits?—Objected to by defendants' counsel; objection overruled; defendants' counsel except.) Witness states they were in the habit of buying drafts on Chicago. (Plaintiff's counsel except to answer of witness.) Drafts drawn in favor of defendants were not entered as cash while witness was with them.—No entries were made regarding the drafts on Chicago, nor any memorandum in regard to the party purchased of. When drafts were purchased, cash was credited with amount of draft and debited the amount of the discount, if any was made.

59 Pass-book and draft submitted to witness. Witness would infer from that, that defendants bought the draft of plaintiff, and credited him so much.—

60 The draft is not put down as cash. Witness could not state whether they received any cash or not; should not infer they paid plaintiff any cash at the time; thinks same method was pursued when he (witness) was there.—Witness knows nothing about any particular transaction between plaintiff and defendants.

61 They were in the habit of filling up Earll's drafts in the defendants' office. Witness thinks plaintiff was charged 1-4 of 1 per cent, on sight drafts; 3-4 of 1 per cent on a ten days draft.

(Original blotter of defendants shown witness.) Witness thinks date of this book was 1854, corresponding with another book. (Objection by counsel for defendants; overruled; defendants' counsel except.) Witness reads entry: "S. H. Earll deposited \$497 50." Witness is asked by plaintiff's counsel what the first column in this book means. (Objected to by counsel for defendants; objection overruled; defendants' counsel except.) Witness states that the books show as plainly as he can describe. Witness is asked by plaintiff's counsel to explain the meaning of the entries in the book. Counsel for defendants object; the Court rules witness is permitted to explain; ruling excepted to by counsel for defendants. Witness is asked by plaintiff's counsel whether an entry on the book corresponds with a draft?—Witness can only judge from the dates and amounts; cannot distinguish whether the entry was cash or a draft; the drafts were not entered as cash. The avails of the drafts were entered as cash, either paid to the party or placed to his credit. The avails are what was paid for the draft. In this case I should judge they (defendants) paid plaintiff \$497 50, as the avails of the draft.

62 Question by plaintiff's counsel—Is there a corresponding entry in any other book? (Objected to by counsel for defendants; objection overruled, and excepted to.) Witness answered—There is a book these entries are copied in; this book shows what drafts were sent to George Smith & Co., but has nothing to do with Earl's account. Witness does not know what year the entries in this book were made. Entries in this book (journal) offered in evidence. (Objected to by counsel for defendants; objection overruled and excepted to.)

The original blotter of defendants offered in evidence. (objection by defendants' counsel; overruled and excepted to.)

64 Counsel for plaintiff reads the entries in the blotter and journal.

74 The drafts ranging from ^{Oct 12} July 12, 1854, to March 19, 1856, offered in evidence. (Objected to by counsel for defendants; objection overruled and excepted to.)

74 CROSS—Earl the plaintiff's business, during the time the drafts were drawn, was that of buying and shipping produce to Chicago. The paper is called bills of exchange.

Question by counsel for defendants—When you were in defendants' bank, was there a good deal of such paper presented there? (Objected to by plaintiff's counsel; objection sustained; exception by counsel for defendants.)—

75 Witness was in defendants' office as clerk from last of September, 1854, to middle of November, 1856. Is not able to identify any of the paper as presented at the counter while he [witness] was there. The only knowledge witness has, is by comparison of the papers with entries on the books.

Question by counsel for defendants—Did they [defendants] keep books to distinguish between money loaned, and bills bought? [Objected to by counsel for plaintiff; objection overruled; plaintiff's counsel except.] Witness answered—They did; when money was loaned, bills receivable was charged with amount of loan or note.

Question by defendants' counsel—Were any of those drafts charged to bills receivable? [Objected to by plaintiff's counsel; objection overruled; plaintiff's counsel except.] Witness answered—None to my knowledge.

Question by counsel for defendants—To what account did you charge such drafts? [Plaintiff's counsel object; objection overruled and excepted to.] Witness answered—To "collections," and afterwards to "bills of exchange."

76 Defendants received the drafts of plaintiff, and passed the avails to his credit, and deducted the amount of their discounts. Was frequently present while the transactions took place. Whenever we bought a draft on Chicago or New York at less than its face, the difference between the draft and what we gave for it is called discount; and when we sell, the difference between the face of the draft and what we sell for is called exchange. I took some of the drafts of Earl (the plaintiff.) I took the drafts and passed the avails to his credit. Plaintiff never applied for a loan of money in connection with the drafts.

77 Question by defendants' counsel: Did you, as clerk of defendants, purchase any of these drafts for defendants? (Objected to by plaintiff's counsel; obj. overruled, and excepted to.) Witness answered: I have at various

77 times; could not state how many; have often been present when defendants purchased drafts of plaintiff. In these books (in evidence) the first amount was the amount paid by defendants for the drafts, and the second amount was the amount charged by them for the purchase.

Question by defendants' counsel: What was the market value of sight drafts on Chicago at the time? [Objected to by plaintiff's counsel; objection overruled; excepted to.] Witness answered: Number 1 drafts, drawn by responsible parties, were at 1-4 of 1 per cent. discount. Five-days paper, 1-2 of 1 per cent.; ten-days, 3-4 of 1 per cent.; fifteen-days, 1 ~~1-4~~ per cent.; twenty days, 1 1-2 per cent.; thirty days, 2 per cent. discount. Witness made entries in the books while he was in employ of defendants, similar to those which appear to have been made before he was employed by them. The drafts filled out in defendants office were drawn up after plaintiff came in to negotiate. Part of the drafts (in evidence) were filled up by plaintiff's clerk. Plaintiff had an account at the bank, and the amounts were placed to his credit, and he drew against them.

78 Witness then read from Pass-books (marked exhibits "A," "B" and "C") the balance carried forward each month. April 1st, 1856, there was a balance of \$2 68 due plaintiff. That balance was carried forward to the new book, to plaintiff's credit, after the firm of Mitchell & Co. was changed. There was a settlement at that time, and vouchers were all returned to plaintiff.

80 DIRECT.—Witness cannot state what plaintiff said at the time of the draft transactions. The transactions were the same as when he (witness) bought a draft on New York. Plaintiff's arrangements were from one day to another; each draft was a separate transaction. Knows of no understanding about the drafts except what the drafts express. Does not remember any drafts being sent back without acceptance or payment. The drafts were 81 all ultimately taken up. Do not know by whom,

Testimony of A. H. Stone.

82 Witness was in business in Freeport in 1854 and 1855. Never knew any exchange on Chicago sold. Witness dealt with defendants' some. Have known parties to be charged 1-4 of 1 per cent. for such exchange when they were not doing business with the bank. Persons doing business at the bank were not charged anything.

Testimony of Oscar Taylor.

82 Was doing business as banker in Freeport, in 1854 and 1855. There was no market value of exchange on Chicago. One man would sell at par, another at 1-2 per cent. That refers to Bankers' drafts, not private drafts; ordinarily charged our customers nothing for drafts on Chicago. Plaintiff here rested his case.

DEFENDANTS' EVIDENCE.

Testimony of Mr. Fullerton.

83 Resides in Freeport; is book-keeper for defendants; commenced last of March, 1856.

Drafts in evidence are called produce paper. Witness is familiar with

the business indicated by the drafts (in evidence) and corresponding entries in the defendants' books.

Question by counsel for defendants: State whether the transactions involving the presentation and acceptance of drafts such as now exhibited, and of which entries are made as you find them in defendants' books, are loans or purchases? [Objected to by counsel for plaintiff; objection sustained; defendants' counsel except.

Oscar Taylor called for defense.

84 Was engaged in banking in Freeport in 1854, 1855, and in March, 1856. Witness is acquainted with bills of exchange, known as produce paper.—Discount on sight drafts drawn on Chicago by produce dealers, during that time, varied from 1-4 to 1-2 of 1 per cent.; witness dealt extensively in such paper. It was payable in Chicago and had to be sent there for collection. If made payable to us we had to endorse it before it was paid. The expense and trouble of sending, I should say, was 1-4 of 1 per cent; but the rate would vary, from circumstances, from par to 1-2 of 1 per cent. Suppose 1-4 per cent would be the average rate. [Drafts in suit shown witness; admitted by counsel for plaintiff to be private drafts.]

Testimony of Silas D. Clark.

85 Was engaged in banking in Freeport in 1854, 1855, and 1856. [Drafts in suit shown witness.] Witness has dealt in such paper; calls it produce paper. Plaintiff, S. H. Earll, dealt at my bank. Produce paper drawn at sight on Chicago, was at 1-4 of 1 per cent. discount; five-days paper at 1-2 of 1 per cent discount; ten-days paper at 3-4 of 1 per cent discount, and so on to 1 and 2 per cent. Had to send this class of paper to Chicago for collection and had to endorse it. I consider such paper more risky than any other kind of paper.

Cross.—In 1854, 1855, and 1856, considered this (plaintiff's) paper as good as any of that class of paper.

Testimony of T. S. Greenwood.

86 Was in the produce business in Freeport in 1854, 1855 and 1856; am acquainted with the kind of paper like the drafts in suit, known as produce paper; have drawn a great deal of it; think such paper sold at from 1 to 2 1-2 per cent.

Testimony of William Mitchell.

86 Witness was in plaintiff's employ during 1854, 1855, and up to April 1st, 1856. Plaintiff had no other business except produce business; knew of plaintiff's drawing drafts on Chicago, which were negotiated at defendants' bank; sometimes the negotiation was by plaintiff and sometimes by plaintiff's clerk. Have had ^{heard} conversation in regard to buying drafts, on one or two occasions. Plaintiff's clerk came in and asked what they (defendants) charged on 15-days drafts. They told him 1 per cent. Saw him leave his draft and bank book. Never heard anything said at any such time of a loan of money. The general inquiry was, whether they would take a draft on Chicago.

87

Question by counsel for defendants. What was such paper worth in 1854, 1855 and 1856? [Objected to by counsel for plaintiff; objection overruled; excepted to.] Witness answered from 1 1-2 per cent. to 2 per cent per month. Sight drafts were at 1-4 of 1 per cent discount.

Testimony of J. W. Shaffer.

87 Was in the produce business in 1855; [drafts in suit shown witness,] the paper is known as produce paper.

88 Question by defendants' counsel. What was a sight draft of this produce paper worth in Freeport in 1855? [Plaintiff's counsel object; objection overruled; excepted to.] Witness answered about 1-4 of 1 per cent. discount; five-days paper, 1-2 of 1 per cent. discount.

The plaintiff's counsel then asked the following instructions from the Court to the jury :

PLAINTIFF'S INSTRUCTIONS.

1st. It is a settled principle of the law, that where money has been loaned at a usurious rate of interest, and the borrower has paid to the lender the principal sum borrowed, together with such interest before January 31, 1857, the borrower may recover back from the lender the excess of interest over and above six per cent. per annum. Which was given.

2d. If the jury believe from the evidence, that the defendants loaned to the plaintiff money, upon the drafts in question in this cause, at a usurious rate of discount, and the plaintiff has paid or caused to be paid the drafts, and the usurious rate so discounted, previous to January 31, 1857, the plaintiff may recover in this form of action, the excess he has paid over the legal rate of interest. Which was given.

89 3d. If the jury believe from the evidence, that the plaintiff, Strong H. Earll, made and delivered the drafts in question to James Mitchell & Co. to obtain a loan of money from the defendants, and the defendants loaned the money by discounting said drafts, at a greater rate of interest for the time said drafts were to run, than the rates of discount allowed by law at the time of the loaning of said money, then all of such discount over and above the rate of six per cent. per annum would be usurious, and the plaintiff will be entitled to recover the same back, provided the plaintiff has paid or caused to be paid to the defendants, the original sum borrowed, and such discount previous to January 31, 1857. Which was given.

4th. During the years 1854, 1855 and 1856, no person in this State was allowed by law to accept or receive in money or in any other way, any greater sum for the loan, forbearance or discount of any money or thing in action, than at the rate of six dollars on one hundred dollars for one year, and after that rate for a longer or shorter period of time, unless a special contract was made by the parties to give and receive any rate not exceeding ten per cent.; and if the jury believe from the evidence that the defendants discounted the drafts offered in evidence, at a greater rate of discount than was then allowed by the laws of this State, and the plaintiff has paid or caused to be paid the said drafts to the defendants, including such greater rate of discount, he may recover back in this action, the excess over and above the legal rate of interest. Which was refused.

90 5th. It is a settled principle of the law, that if a person make his own bill of exchange, and sell it for what he can get in money this, while in appearance the sale of the bill, is a loan and borrowing of the money; and if the apparent sale be for such a price that the seller pays more than the legal interest, it is a usurious transaction. Which was refused.

91 6th. The law will not countenance or uphold any shift, contrivance or device of the lender and borrower of money, by which the lender can receive or the borrower give, to the lender a greater rate of interest for the loan of money, than that allowed by the law. The real inquiry in every case is, whether there has been a borrowing and lending at a greater rate of interest than the law allows; and this becomes purely a question of fact for the jury to determine from all the circumstances of the particular case. The law looks at the nature and substance of the transaction, and not to the color or form which the parties in their ingenuity may have given it. The parties will not be permitted successfully to evade the provisions of the statute by any conceivable scheme or expedient. The courts will follow them through all their shifts and devices, and ascertain the true character and design of the transaction; and if upon such investigation, it appears that there was, in substance, a loan at an illegal rate of interest, no matter what form or shape the matter has been made to assume, it will be declared to be usurious, and the proper remedy applied. Which was given.

The counsel for defendants asked the Court to instruct the jury as follows:

DEFENDANTS' INSTRUCTIONS.

92 1st. The plaintiff is bound by his bill of particulars, and he cannot recover for anything which is not contained in his bill of particulars. Which was given.

2d. The plaintiff having charged nothing in his bill of particulars excepting money received by the defendants to the use of the plaintiff, the plaintiff, in order to recover in this suit, must prove that the defendants received money from the plaintiff as charged in the bill of particulars; and if the plaintiff has failed to prove that the defendants received money for the use of the plaintiff, the jury ought to find for the defendants. Which was given.

3d. Where a transaction will admit of two constructions, one of which will make it usurious, and the other not usurious, the jury ought to construe the transaction to be not usurious, provided the evidence will equally as well warrant such construction. Which was given.

93 4th. There are three things necessary to constitute usury: There must be a loan, a taking of more than lawful interest, and a corrupt agreement; and if the jury find from the testimony in this case, that the bills of exchange in question were sold to the defendants at their market value at the time, in the ordinary course of business, and at a reasonable discount, the transaction was not usurious. Which was given.

5th. The bills of exchange offered as testimony are not of themselves sufficient proof of the items contained in the plaintiff's bill of particulars, unless there is some other proof connected with them. Which was given.

6th. The books offered in evidence are not of themselves sufficient proof of the items contained in the plaintiff's bill of particulars, unless some other testimony is connected with them. Which was given.

93 7th. Such of the bills of exchange in question as were drawn by Earll, the plaintiff, payable to different individuals besides the defendants, is a circumstance which the jury has a right to consider, as tending to show that such ones of the bills were purchased by the defendants from the plaintiff. Which was given.

94 8th. If the jury find from the testimony that Earll, the plaintiff, settled his accounts with the defendants on the thirtieth day of March, A. D., 1856, and that at said settlement, there was found to be due to the plaintiff from the defendants the sum of two dollars and sixty-eight cents, and that the sum found due was afterwards paid, then the jury must find for the defendants, unless the plaintiff has shown by the testimony that some items of the account had not been settled, and then the plaintiff can only recover for such items as were not settled on the thirtieth day of March, 1856, and they must be specifically charged in the bill of particulars. Which was refused.

9th. A bill of exchange is not a promissory note; and if the jury find from the testimony that Earll, the plaintiff, applied to the defendants to purchase the bills in question, the character of the transaction is not changed, because Earll drew the bills payable to the defendants. Which was given.

10th. The bills of exchange, while in the hands of James Mitchell & Co., and before acceptance, were not promissory notes. Which was given.

95 The counsel for the plaintiff excepted to the ruling of the court in refusing the fourth and fifth instructions asked by the plaintiff, and in giving the instructions asked by counsel for defendants.

The counsel for defendants excepted to the ruling of the court in giving the instructions asked by plaintiff's counsel, and in refusing the eighth instruction asked by defendants' counsel.

Thereupon the jury, by their verdict, found the issues for defendants,

JASON MARSH,
FREDERIC C. INGALLS,
Attorneys for Defendants in Error.

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140-179

Strong H. Earle for use of

^{or}
James Mitchell et al

Abstract by
Deft.

Filed May 10. 1859

L. Leland
clerk

Hon S. Bruce

SUPREME COURT—THIRD GRAND DIVISION.

APRIL TERM, 1859.

STRONG H. EARLL, for use, &c.,
Plaintiff in Error,

vs.

JAMES MITCHELL,
HOLDEN PUTNAM and
ALEXANDER NEELY,
Defendants in Error.

} Error to Stephenson.

POINTS FOR DEFENDANTS IN ERROR,

JASON MARSH and
FREDERIC C. INGALLS,
For Defendants in Error.

SUPREME COURT OF ILLINOIS.

Third Grand Division—April Term, 1859.

STRONG H. EARLL *for use of*
CHARLES G. PATTEN,
Plaintiff in Error,

vs.

JAMES MITCHELL,
HOLDEN PUTNAM and
ALEXANDER NEELY,
Defendants in Error.

Error to Stephenson.

ACTION—For money had and received by defendant to the use of plaintiff.

During 1854, 1855 and 1856, plaintiff, at Freeport, drew bills of exchange, payable at Chicago. Defendants, who were bankers at Freeport, purchased the bills, and charged plaintiff the usual rate of discount on bills of that description.

Plaintiff seeks in this action to recover the amount of the exchange charged by defendants on the bills, in excess of the rate of six per cent per annum, insisting that the transactions were loans of money, and *per se* usurious.

I contend—

FIRST—That in this State money paid as usurious interest on money loaned, during the time when the bills in this suit were negotiated, cannot be recovered back by the person who has paid it, in an action for money had and received, because,

At common law, parties have the right to fix the rate of in-

terest they will give and receive, and such contract is binding at common law, and will be enforced.

At the time of the transactions (in suit) there was no express prohibition in the statute against taking more than a certain rate of interest.

In *Madison County v. Bartlett*, 1 Scam. 69, the court hold that "at common law, interest is the consideration or price *agreed upon between the parties*, to be paid for the use of money for a stipulated time."

The case of *Tindall v. Meeker*, 1 Scam. 138, was brought under the Statute (Gales stat. 344) which, after regulating the rate of interest at six per cent per annum, further provided, "That *nothing in this act contained* shall be so construed, as to limit the rate of interest for the payment of which an express contract hath been made" and the court ruled that interest might be calculated at any rate upon which the parties had agreed, and affirming the previous ruling of the court, that at common law, parties may themselves fix the rate of interest between them.

The statute of 1845, after fixing the rate of interest at six per cent. per annum, enacts as follows: (Rev. Stat. 1845, chapter 45, sec. 3,) "No person or corporation shall directly or indirectly accept or receive in money, goods, discounts, or things in action, or in any other way, any greater sum or greater value, for the loan, forbearance or discount of any money, goods or things in action, than as above described."

This clause is the only prohibitory clause in the Statute, and it is repugnant and in conflict with both the statute of 1849 and that of 1857.

The statute of 1849 enacts, (Purple's statute, page 634, (9,) section 1,) "That from and after the passage of this act, money may be loaned at such a rate of interest not exceeding ten per cent per annum on each hundred dollars, as the parties may agree upon, anything in the laws of this State to the contrary, notwithstanding."

This clause in the statute of 1849, was in conflict with the prohibitory clause of the statute of 1845, and repealed it, so far as related to loans of money.

The penalties in the law of 1845, in regard to usury, were also all in conflict with the enactment of 1849. Those penalties and forfeitures were all for taking more than *six* per cent interest, while the statute of 1849 allowed ten per cent interest to be taken for money loaned.]

Therefore, at the time the bills in this suit were negotiated, there were no penalties for taking usurious interest for money loaned. At all events, the express prohibition in the statute of 1845 was not then in force.

"Statutes in derogation of the common law are to be strictly pursued." 18 Barb. N. Y. 393.

"A posterior statute inconsistent and repugnant to the provisions of a prior one, operates as a repeal of the old statute, without any express words to that effect." *United States v. Irwin*, 5 McLean, 178. "The provision in an act that 'all prior laws inconsistent with its enactment, are repealed,' is only declaratory of the principle, long since settled that a posterior statute inconsistent with and repugnant to the provisions of a prior one, operates as a virtual repeal of the old law.

Ibid, page 180.

"When there is a conflict between two statutes, effect must be given to the latest statute."

Moore v. Moss, 14 Ill. 110.

"When two laws are clearly inconsistent, in such case the latest statute must prevail. An affirmative statute is a repeal by implication of a prior affirmative statute, so far as it is contrary thereto."

Sullivan v. The People, 15 Ill. 234.

The case of *Crosby v. Bennett*, 7 Metcalf Rep. 17, was an action of assumpsit for money had and received, to recover back usurious interest. The plaintiff cited, 2 Comyn on contracts, 1 ed. 113, 117. *Inhab. of Worcester v. Eaton*, 11 Mass. 376; *Bond v. Hays*, 12 Mass. 34; *Boardman v. Roe*, 13 Mass. 105; *Ramsdell v. Soule*, 12 Pick. 126.

Chief Justice SHAW, in the opinion of the court in this case, says: "This is an action of assumpsit, brought to recover back money alleged to have been paid by the plaintiff to the defendant, as usurious interest, and proceeds on the ground that money thus received by the defendant, has been received on an illegal contract, and therefore that the plaintiff has a right, by the common law, to recover it back. But now the Rev. Stat. C. 35, sec. 2, expressly declare that no contract whereby usurious interest is allowed, shall be thereby rendered void, and in order to restrain the taking of usurious interest, the statute goes on to make certain specific provisions, first to allow a large deduction from the claim of the lender; when the law is resorted to to enforce the performance of such a contract, and secondly to permit the person who has paid such interest, to recover back three times the amount by an action of debt or a

bill in equity, provided such suit be commenced within two years from the payment. (Stat. 1783, C. 55; 1825 C. 143; 1826 C. 27.)

The consideration that now by law, the contract is not void, distinguishes this case from those cited, and takes away the ground upon which they rested. The ground upon which it was formerly held that an action for money had and received, would lie, was, that it was illegal and oppressive to take more than six per cent interest, and therefore it could not conscientiously be retained from the person who had paid it. This was the ground upon which the case of *Willie v. Green*, 2 N. H. 333, [cited by plaintiff in error in this suit] was decided. For although the statute of New Hampshire in force at the time was like our present law, in providing three times the interest might be forfeited and deducted, when such contract was in suit, and gave a suit to recover back, not the whole, but a part of the usurious interest; yet unlike ours, it *expressly prohibited* the taking of more than six per cent., and thereby made it illegal. It is proper to remark here that the cause does not depend upon the form of action, because if the present had been an action of debt on the statute, instead of assumpsit, the statute of limitations would have been a valid defence, all the alleged payments having been made more than two years before the commencement of this action."

The case of *Perillat v. Puech*, 1 Louisiana top page, 468, was an action brought to recover money paid as usurious interest. In the opinion in this case, the court say:

"The 1751st article of the Louisiana code divides natural obligations into four kinds, and under the first head classes those 'which are invalid for the want of certain forms, or for some reason of general policy; but which are not in themselves unnatural or unjust.' The 1752d article declares that 'although natural obligations cannot be enforced by an action, yet among their effects, one is, that no suit will lie to recover what has been paid or given, in compliance with a natural obligation.' Were it not for the definition given to the natural obligation in the 1751st article, we should have had great difficulty in deciding this cause. At the time this contract was entered into, the laws of Spain, in force in this state, had not been repealed. By them, contracts beyond the legal rate of interest were void: and although one does not readily perceive any difficulty in saying that if there was no law prohibiting taking interest at a certain rate, the promise to pay is not only a natural obligation, but one which might be enforced in a court of justice; yet, when the law has pronounced a contract null and void, it would seem that an agreement entered into in violation of it, could not produce any effect. Under which class does the contract

to obtain more than the legal rate of interest fall? Were we to follow the opinions of Pothier, it would be stamped with turpitude of the grossest kind; but since he wrote, we believe different views on this subject pervade the civilized world. We believe that those who desire to repress the practice, are moved more by views of public policy, than the belief that the obligation has no force as a natural one. Indeed, the prohibition of the contract by name, is an expression of the legislative understanding, that without such prohibition, it would be binding. We are of opinion that the prohibition in relation to taking more than a certain rate of interest for money, is founded upon motives of public policy, and not because the contract is immoral. In other words, that it is not *malum in se*, but *malum prohibitum*."

And in this case and in the case of *Rosenda v. Zabriskie*, 4 Robinson, La. 493, as well as in others, it was decided that money paid as usurious interest, could not be recovered back.

"Usury is *malum prohibitum* not *malum in se*. I am aware that by some ancient English statutes, usury was prohibited as being against the law of God, the laws of the realm and the laws of nature. It was tolerated, however, by the laws of Moses, and allowed to be taken by the Jews from the Gentiles, and, therefore, could not have been immoral in itself."

Savage, C. J., 2 Cow. 765.

In the case of *Bearce v. Barstow*, 9 Mass. 48, the court say,

"When a party liable upon a usurious contract will not avail himself of the remedy provided by the statute, for the purpose of avoiding it, where he voluntarily discharges it, there the provision no longer applies. Money paid upon a usurious contract is not to be recovered back."

In the case of *Seegar v. Seegar*, 19 Ill. 121, this court held that the defendant below, had the right to interpose the plea, provided by the statute of '49, after the repeal of that statute, and this court there say:

"The plea was not strictly a plea of usury." "The payee agreed to take the six per cent., unless the maker chose to pay the amount expressed on the face of the note. By taking the note in that form under the law, the payee agreed to leave it to the honor of the maker, whether he would pay the amount specified, or only six per cent. interest" Suppose the maker had paid the note, would this court have held that he could recover back?

A contract to pay more than the statutory rate of interest, in this state, is not void.

(Personal Privilege)

1 Barb 278

I further contend—

SECOND—That as this cause is presented to this court by the record, there is no usury in it.

The case of *Andrews v. Pond et al.*, 13 Peters (U. S.) 76, was a suit on a bill of exchange, drawn and negotiated in New York, and payable in Mobile, Alabama. Chief Justice TANEY, in deciding the case, says: "If ten per cent. discount was the usual price at which others purchased bills of this description in the market of New York, they had a right to take the bill at that rate in satisfaction of their debt. There is nothing therefore upon the face of the papers from which the court can undertake to say that usurious interest was exacted.

But although the transaction, as exhibited in the account appears on the face of it to have been free from the taint of usury, yet if the ten percent charged as exchange, or any part of it, was intended as a cover for usurious interest, the form in which it was done, and the name under which it was taken will not protect the bill from the consequences of usurious agreements, and if the fact be established, it must be dealt with in the same manner as if the usury was expressly contracted for in the bill itself. But whether this item was intended as a cover for usury or not, is a question *exclusively for the jury*. It is a question of intent. And in order to enable the jury to decide whether usury was concealed under the name of exchange, evidence on both sides ought to have been admitted, which tended to show the usual rate of exchange between New York and Mobile, when this bill was negotiated. There is no rule of law fixing the rate which may be lawfully charged for exchange. It does not depend altogether upon the cost of transporting specie from one place to another, although the price of exchange is no doubt influenced by it. But it is also materially affected by the state of the trade, by the urgency of the demand for remittance, and by the quantity brought into the market for sale, and sometimes material changes take place in a single day, although no alteration has happened in the expenses of transporting specie. The court, therefore can lay down no rule upon the subject. *Andrews and Co.*, when about to take this bill had a right to include in it a fair allowance for the difference in exchange; whether they exacted more or not for the forbearance of their debt, is a question for the jury to decide, and in order to enable them to decide it correctly, they must be allowed to hear the evidence which either of the parties may offer, as to the rates of exchange for such a bill as this, which was payable in specie, and not in any depreciated currency. Taking this view of the subject we think the

court below erred in rejecting the testimony offered by the plaintiff to prove the rate of exchange: and also in the direction given to the jury, that if there was no fixed rate of exchange the creditor had a right to take no more than the actual expense of transporting the specie or a small amount more, where the addition was not intended to cover usury. In fine, (page 80,) if the parties intended to allow no more than a fair rate of exchange testing it by the market price of good bills of this description, it was not usury."

It was long since decided in England, that bankers may take a reasonable commission on bills of exchange.

Baynes vs. Fry 15 Vesey Jr. 119 121.

Exparte Jones 17 Vesey Jr. 331.

Exparte Henson 1 Mad. 115. 70

2 Parsons on Contracts 3d, ed. 410.

In the case of *Levitt v. DeLauny*, 4 Comstock 368, the court say. "Foreign exchange is a commodity which may be bought and sold like merchandize. Its price is governed chiefly by the state of trade between the place where it is negotiated and the place where it is payable. The sale of exchange is, in effect, a transfer of funds which the drawer has, or is supposed to have, in another country, to the purchaser. Such funds are more or less valuable according to circumstances. Such value is chiefly affected by the state of trade between the country where the funds are owned, and that where they are held. Funds thus situated are the subject of commerce. The owner may sell them for the best price he can obtain, without the hazard of having the sale avoided for usury." (HARRIS J.)

(Page 374, GARDINER J.)—"The defendants were regular dealers in exchange, and their answer in response to the bill, alleges that the application to them by the banking company, was for the purchase of bills of exchange, and that the defendants, in pursuance thereof, agreed to sell, and did sell, such bills accordingly. The answer in this respect is sustained by the written agreement of the parties. The question then arising is simply whether upon a sale of credit made in good faith, the vender can reserve or secure to himself more than 7 per cent., without rendering the agreement usurious. This case was substantially decided in the affirmative in the case of *Dry Dock Bank* (3 Com., 344,) and by previous adjudications in this state, to which reference is there made. It is not denied that a sale of exchange in form may be adopted as a cloak for an usurious loan. But a party impeaching an agreement upon this ground must, by evidence, remove the covering from the transaction, and exhibit as a loan of money. He makes no progress in

this work when he stops with proving that he proposed to purchase bills, and subsequently put his proposition into the form of a written agreement."

In the case of *Manice v. New York Dry Dock Co.*, the Vice Chancellor, in deciding the case, says: (3 Edwards (N. Y.) Reports, 146.) "A bill of exchange drawn upon funds which the drawer has in the hands of the person on whom it is drawn, or upon the strength of a credit which he has with such person. operates, according to my understanding of it, as a sale and transfer of the amount of money for which the bill is drawn." P. 147—"In well regulated mercantile communities, both foreign and domestic exchange, like everything else which is the subject of negotiation and sale, will have a determinate market value, varying, however, from time to time according to the demand and the fluctuations of trade. When, therefore, a man draws and sells a bill of exchange, it seems to me perfectly consistent with the nature of the transaction to consider him as selling funds which he has, or is entitled to, in the hands of the drawer or acceptor, at the place where the bill is to be paid, and to regard the bill itself merely as the instrument by which those funds are transferred to the purchaser, or subsequent holder, of the bill. Such a transaction is not, then, the lending and borrowing of money, but a sale of foreign or absent funds." "I cannot, therefore, agree to the proposition that the drawing of a bill of exchange, by which money abroad is transferred to the holder of the bill, is a loan or advance of money, unless, indeed, the transaction is founded upon an express agreement for a loan."

"But the question still remains, whether there is not usury in the transaction we are now considering, arising from the credit price charged for the bill, and from reserving interest, at the rate of six per cent. for the period of such credit, in addition. There is some plausibility, at least, in the argument that the difference between the cash price and the credit price of bills, which, in this instance, was from three to four per cent., is but a cover for usury. But there may be other circumstances entering into the consideration of parties in fixing the difference of price. In times of great pressure, when confidence in mercantile credit is shaken or impaired, something is due to the hazard of making a bad debt in the sale of property, even when the vendor takes security deemed at the time sufficient; and in making his contract for price, he may properly demand more than if he were making a cash sale, though interest also should be charged for the forbearance of payment. I know of no law to prevent men from making their calculations, based upon

the present state of the money market, in regard to the price of any commodity they are about to sell, and to fix one price when payment is to be immediate, and another price when payment is to be postponed, and to graduate the difference by the value attached to the use of money at the time, provided it be a real sale, and not a mere cover or disguise for usury upon a loan. It will be perceived, according to these views, that while this can be regarded as a sale of bills of exchange, and not as a lending and borrowing of money, it is immaterial, as respects the validity of the contract, what was the amount of the premium charged, or what the difference between a cash and a credit sale, or for what cause and upon what principle, that difference was made."

In the case last cited and in the cases referred to below, it will appear that the fact that some of the bills were drawn on time, and that more was charged on time bills than on sight bills, made no difference; it was no evidence of usury—the *reason* of the proper allowance of a customary discount applying as well to time bills as to bills drawn payable at sight.

It is contended by the plaintiff that the defendants could not purchase these bills from the drawer. That view is shown to be erroneous by the case last cited from Edwards' Reports; also by the decision in 4 Comstock. It is also expressly shown in the decision of CURTIS J., in the case cited below, (in 13 Howard, 171,) that bills may be discounted as well of the drawer as of another—the reason of the rule of law allowing discount on bills of exchange, made in one place and payable in another, applies with equal propriety where the bills are discounted of the drawer. The right to purchase a note in the hands of a bona fide indorsee is *one* right; the right to discount a bill, drawn payable at another place, is *another* right.

In *Pilcher v. The Banks &c.*, 7 B. Monroe 548, the court say:

"The banks are authorized by their charters to deal in exchange. The law has not fixed the rate of exchange, at which they shall deal, or limited the discount in the purchase of bills by them, and from the very nature of this traffic, such limitations are wholly impracticable. The value of negotiable securities of all kinds must depend upon circumstances. Time and place of payment, and the condition of the business operations of the country, all have their influence. The purchase of bills of exchange is a mercantile operation of constant occurrence, and of vast importance, indispensably necessary to the existence of commerce, and the encouragement of trade and enterprise, and should not, therefore, be laid under any unnecessary restrictions. Some of the banks charged a larger pre-

mium by way of exchange on bills payable at four months, than they did on two months bills; and it is contended that this is of itself conclusive evidence of usury. The argument is, that exchange has no reference to the time, but only to the place of payment; that interest is taken for the time, and should be regulated by it, but exchange should be the same, whether a bill has a long or a short time to run. As the exchange on a bill is the difference in the relative value of money at different places, this reasoning would have some plausibility if applied to a bill of exchange payable in a country where the business and the money market are stable. But here the changes and fluctuation in the money market and in exchange, are frequent and their extent uncertain. The more distant the time, the greater the uncertainty. And as the hazard is increased by postponing the day of payment, an increase of the premium adequate to the additional risk, is naturally and properly demanded. These are matters moreover that have to be regulated by the current value of the various descriptions of bills, at the time they are brought into market and are properly left to the discretion of the parties concerned in the transaction."

In this case it was further held, p. 552, that where some of the bills discounted were sent to New Orleans for payment, and returned dishonored, the bank was entitled to recover the full amount of the face of the bill, from the drawer, without abatement of the exchange previously deducted.

In the case of *Buckingham v. McLean*, 13 Howard, U. S. Rep. page 171, Mr. Justice CURTIS, in the opinion of the court, deciding that case, says:

"There is no usury on the face of any one of these transactions. It is incumbent on the party who charges usury to prove it; and where it is alleged to consist in taking excessive rates of exchange, or in resorting to the form of a bill of exchange in order to keep out of sight a usurious compensation for the simple loan of money, these facts must be proved, (referring to *Andrews v. Pond*, 13 Pet. 65: *Creed v. Com. Bank*, 11 Ohio, 489.) The answer of each bank denies such intent, and avers that the exchange charged in each case, was the customary and regular rate, at the time of the discount of each bill. The counsel for the appellants urged that the rates were higher than were charged on sight bills. These were time bills, and it is no proof of usury, that the banks did not take the market rate on sight bills which they did not discount, if they took only the market rate on those they did discount."

Page 172.—"It was also insisted that the banks did not buy these bills, but were the first takers, for loans of money made to

the drawers. But we are unable to perceive how the fact that the banks were the first takers, can be of any importance in this case; nor do we deem it material that the bills were discounted for the drawers. The reason why the addition of the current rate of exchange to the legal rate of interest, does not constitute usury, is, that the former is a just and lawful compensation for receiving payment at a place where the money is expected to be less valuable. This reason exists when the drawer's bill is discounted as when the bill is purchased of payee. In neither case is it usury to take the regular and customary compensation.

It is argued that no usage or custom can make an unlawful contract valid. This must be admitted. But the contract is not unlawful unless more than six per cent has been reserved or taken for interest. If more has been reserved or taken, not for loan and forbearance, but for change in place of payment, then the contract is lawful, and in determining whether excess over six per cent has been received for interest, or as a just compensation for changing the place of payment, the custom, or the market value of this change is evidence of the real intent of the parties, and so evidence of the validity of the contract."

In the case of *Merritt v. Benton*, 10 Wend. 117, it was held that the including of 1 per cent. on a promissory note as the difference of exchange between Utica and New York, is not *per se* evidence of usury, and a new trial on that ground, was denied.

The Buffalo *Commercial* journal reports within the last few days a decision of the court of appeals of New York, in the case of *Oliver Lee & Co's. Bank, Buffalo, v. Wells D. Walbridge* as follows :

"The issue was made distinctly on the question whether the making of bank paper payable below, is usury. It was claimed by defendant, that the bank, in exacting of him paper payable in the city of New York, obtained more than legal interest, and was guilty of usury. The final decision of the Court of Appeals distinctly affirms the right of banks to negotiate paper payable in the city of New York, with its attendant advantages. This settles a vexed question in commercial ethics."

The question of usury is a question of fact to be decided by the jury. *Bank of U. S. v. Waggener*, 9 Peters 402, 403; 3 Gil. 567 *Stevens v. Davis*, 3 Metcalf 211. *4 Mantel & Co 192 (C. C. & P. A.)*

The jury are judges of fact. *Bartlett v. Williams*, 1 Pick. 295 and note.

A mixed question of law and fact is properly within the province

of a jury to decide. *Cook v. Scott*, 1 Gil. 341.

To constitute usury, there must be a loan in contemplation by the parties. *Nichols v. Fearson, et al.*, 7 Peters 103.

There must be a borrowing and lending of money. *Hancock v. Hodgson*, 3 Scam. 333.

Three things are necessary to constitute usury. There must be a loan, taking more than lawful interest and a corrupt agreement. 2 Cowen, 712.

When a contract admits of two constructions, one of which will bring it within and the other without the statute of usury, the latter construction should be adopted. *Archibald v. Thomas*, 3 Cowen 284.

Plaintiff was bound by his bill of particulars, and should not have been allowed to give any evidence out of them. Tidd's Practice 9th ed, 599 and cases ther cited.

OF NEW TRIAL.

Mann et al. v. Russell, 11 Ill. 586.

Newkirk v. Cone, 18 Ill. 454, and cases there cited.

Dishon v. Schorr, 19 Ill. 63,

Cited in brief.

FREDERIC C. INGALLS,
For Defendants' in Error.

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^{as}
Mitchell et alDepts Points

Oiled May 13. 183

A. Levent
Clerk

STATE OF ILLINOIS,
SUPREME COURT,

SS. APRIL TERM OF THE THIRD
GRAND DIVISION, A. D. 1859,

STRONG H. EARLL, for the use of
Charles G. Patten,
Plaintiff in Error,
VS.

JAMES MITCHELL, HOLDEN PUT-
NAM and ALEXANDER NEELY,
co-partners, under the name and
style of James Mitchell & Co.,
Defendants in Error.

ERROR TO STEPHENSON COUNTY.

This was an action for money had and received, brought by the Plaintiff in Error against the Defendants in Error, to recover back excess of usurious interest over the legal rate alleged to have been taken by the Defendants of the Plaintiff during the years A. D., 1854, 1855 and 1856, and was tried by a jury before Hon. Benjamin R. Sheldon, at the December Term of the Stephenson County Circuit Court, A. D., 1858.

The Plaintiff declared on the common counts, for money had and received by the Defendants to Plaintiff's use. Defendants pleaded general issue—payment and set-off.

The proof on the trial showed that during the period of time extending from the 12th day of January, A. D., 1854, to the 29th day of March, A. D., 1856, Strong H. Earll was engaged in the business of buying and forwarding produce from Freeport, in Stephenson County, to Chicago, and during the same period, at the same place, the defendants were brokers, and were engaged in the business of loaning money, buying and selling exchange, and receiving deposits. That during the time the plaintiff was engaged in the said business, he obtained all his money accommodations of the defendants in error, the whole amounting during that period, to some three hundred thousand dollars. That these money accommodations were obtained by Earll of the defendants, by drawing at frequent and short intervals, his bills of exchange in favor of the defendants, on one A. R. Williams, of Chicago. That the number of these bills so drawn, were some two hundred and sixty, and in amounts ranging from five hundred to two thousand dollars. That a few of the bills were drawn at sight, and the remainder ranging from five to thirty days. See the transcript of the bills, and pass books in the transcript in this case, and likewise see pages 64 to 73, inclusive of the transcript.

Bills. Pp. 64-73

The same references to the transcript show that the defendants, at the time the drafts were drawn, placed to the credit of Earll, on their books, and on the pass-books of Earll, the amount of the drafts, less 1-4 of 1 per cent, on sight drafts; on five day drafts, less 1-2 per cent.; ten days, 3-4 of 1 per cent.; 15 days, 1 per cent.; 20 days, 1 1-2 per cent., and 30 days 2 per cent., and the same testimony shows that the amount thus placed to his credit was what the defendants gave for the drafts. See drafts and transcript, page 77, and pass books.

Drafts. Pp. 77-80

The testimony shows that the drafts were all taken up at maturity, and that they were fully paid to defendants at maturity. See page 81,

page 81

This action was brought to recover back of the defendants in error, the excess over the legal rate of interest, which the defendants had received on the payment of said drafts—the plaintiff in error claiming that the transaction was nothing more or less than a borrowing and a loaning of money, and the defendants claiming

1st. That they purchased the drafts, and if not a purchase then

2nd. That they, by the custom of trade, had a right to charge the excess over and above the legal rate of interest as commission.

The testimony shows that when Earll wanted money, he would apply to the defendants to see if they could accommodate him. If they could, a draft on A. R. Williams was made out in the office of the defendants, payable to the defendants, and when delivered to them the defendants credited him with the avails of the drafts on their own books, and likewise on the pass-book furnished by the defendants to the plaintiff. The avails of the drafts were the amount placed to Earll's credit on the books. The amount placed to his credit on the drafts was the face of the drafts, less the discount. The discount on sight drafts was 1-4 of 1 per cent.; on 5 day drafts 1-2 of 1 per cent.; on 10 day drafts, 3-4 of 1 per cent.; on 15 day drafts, 1 per cent.; on 20 day drafts, 1 and 1-4 of 1 per cent., and on 30 day drafts, 2 per cent.—
Page 62 & 73 See pass-books, drafts, and pages 62 to 73, inclusive of the record. It was further proved by the plaintiff that rate of exchange on Chicago, during the period of time covered by these transactions, varied from par to 1-2 per cent premium. See pages 82 and 84.
Page 82 & 84

The plaintiff, after offering in evidence, the said drafts, pass-books, and the entries in the defendants blotter and journal, and the testimony of A. M. Wright, as appears on pages 54 to 74, inclusive of the record, rested his case.
Page 54 to 74

And the defendants, to maintain and prove the issue on their part, offered to prove that the defendants kept books to distinguish between money loaned and bills bought, and to the introduction of such testimony, the plaintiff, by his said counsel on the trial did object, and the court overruled said objection, and permitted the defendants to make such proof to which decision of the Court the plaintiff by his counsel did then and there except, which decision is here assigned for error. See page 75.
Page 75

And further to maintain the issue on the part of the defendants, their counsel asked the following question, to wit; "Were any of these drafts charged to bills receivable?" and the counsel for the plaintiff objected to the question, and the court then and there overruled the objection, and the counsel for the plaintiff then and there excepted to the decision of the court. See page 75 of the record.
Page 75

And further, the counsel for the defendants asked the witness this question, to wit: "To what account did you charge such drafts?" and the plaintiff objected to the introduction of such testimony, and the court overruled the said objection, and allowed the witness to answer such question to which the decision of the court the plaintiff excepted. See page 75 of the record.
Page 75

And further, to prove the issue on their part, the counsel for the defendants asked the following question:

"Did you, as Clerk of the defendants, purchase any of these drafts for the defendants?" and the counsel for the plaintiff objected to the question, and the court overruled the objection and permitted the witness to answer the question to which decision of the court the counsel for the plaintiff then and there excepted. See page 77.
Page 77

And the counsel for the defendants put the following question to the witness Wright, to wit: "What was the market value of sight drafts on Chicago at the time?" and the counsel for the plaintiff then and there objected to the question, and the court overruled the objection and permitted the witness to answer, and the counsel for the plaintiff excepted to the decision of the court. See page 77 of the record.

And further to maintain and prove the issue on their part, the counsel for the defendants put the following question to William Mitchell, one of the witnesses of the defendants, to wit:

Question—"What was such paper (referring to the drafts) worth in '54, '55 and '56?" which question the plaintiff's counsel objected to, and the court overruled the objection, and permitted the question to be answered by the witness, to which decision of the court the plaintiff's counsel then and there excepted. See page 88 of the record. See page 87 of the record.

And further to maintain the issue on their part, the defendants asked the witness Shaffer this question:

"What were sight drafts of this produce paper worth in Freeport, in 1855?" and the plaintiff, by his counsel, objected to the witness answering the question, and the court overruled the objection, and the plaintiff excepted.

The counsel for the plaintiff asked the court to give the following instructions to the jury:

1st. It is a settled principle of the law, that when money has been loaned at a usurious rate of interest, and the borrower has paid to the lender the principal sum borrowed, together with such interest, before January 31st, 1857, the borrower may recover back from the lender, the excess of interest so paid, over and above six per cent. per annum

Which was given by the court.

2. If the jury believe from the evidence, that the defendants loaned to the plaintiff, money upon the drafts in question in this cause, at a usurious rate of discount, and the plaintiff has paid, or caused to be paid the drafts, and the usurious rate of discount, previous to January 31st, 1857, the plaintiff may recover in this form of action, the excess he has paid over the legal rate of interest.

Which was given by the court.

3d. If the jury believe from the evidence that the plaintiff, Strong H. Earll, made and delivered the drafts in question to James Mitchell & Co., to obtain a loan of money from the defendants, and the defendants loaned the money by discounting said drafts at a greater rate of interest for the time said drafts were to run, than the rate of discount allowed by law, at the time of the loaning of said money, then all of such discount over and above the rate of six per cent. per annum would be usurious, and the plaintiff entitled to recover the same back, provided the plaintiff has paid or caused to be paid to defendants the original sum borrowed, and such discount previous to January 31st, 1857.

Which was given by the court.

4th. During the years 1854, 1855 and 1856, no person in this State was allowed by law to accept or receive in money or in any other way, any greater sum for the loan, forbearance or discount of any money, or thing in action, than at the rate of six dollars on one hundred dollars for one year; and after that rate for a longer or shorter period of time, unless a special contract was made by the parties to give and receive any rate not exceeding ten per cent.;

and if the jury believe from the evidence that the defendants discounted the drafts offered in evidence at a greater rate of discount than was then allowed by the law of this State, and the plaintiff has paid or caused to be paid, the said drafts to the defendants, including such greater rate of discount, he may recover back in this action, the excess over and above the legal rate of interest.

Which was refused by the court, and to which refusal the plaintiff's counsel did then and there except.

5th. It is a settled principle of the law that if a person make his own bill of exchange, and sell it for what he can get in money, this, while in appearance the sale of the bill, is a loan and borrowing of the money, and if the apparent rate be for such a price that the seller pays more than the legal interest, it is a usurious transaction.

Which was refused by the court, and to which refusal the plaintiff's counsel did then and there except.

6th. The law will not countenance or uphold any shift, contrivance or device of the lender and borrower of money, by which the lender can receive, or the borrower give to the lender a greater rate of interest for the loan of money than that allowed by the law. The real inquiry in every case is, whether there has been a borrowing and a loaning at a greater rate of interest than the law allows, and this becomes purely a question of fact for the jury to determine from all the circumstances of the particular case. The law looks at the intent and substance of the transaction, and not to the color, or form which the parties in their ingenuity may have given it. The parties will not be permitted successfully to evade the provisions of the statute by any conceivable scheme or expedient. The courts will follow them through all their shifts and devices, and ascertain the true character and design of the transaction, and if upon such investigation, it appears that there was in substance a loan at an illegal rate of interest, no matter what form or shape the matter has been made to assume, it will be declared to be usurious and the proper remedy applied.

Which was given by the court.

The defendants' counsel asked the court to instruct the jury as follows :

1st. The plaintiff is bound by his bill of particulars, and he cannot recover for anything which is not contained in his bill of particulars.

Which was given by the court.

2d. The plaintiff having charged nothing in his bill of particulars excepting money received by the defendants to the use of the plaintiff, the plaintiff, in order to recover in this suit, must prove that the defendants received money from the plaintiff charged in the bill of particulars, and if the plaintiff has failed to prove that defendants received money for the use of the plaintiff, the jury ought to find for the defendants.

Which was given by the court.

3d. When a transaction will admit of two constructions, one of which will make it usurious, and the other not usurious, the jury ought to construe the transaction to be not usurious, provided the evidence will equally as well warrant such construction.

Which was given by the court.

4th. There are three things necessary to constitute usury : There must be a loan ; a taking of more than lawful interest, and a corrupt agreement ; and if the jury find from the testimony in this case, that the bills of exchange in question were sold to the defendants at their market value at the time, in the

ordinary course of business and at a reasonable discount, the transaction was not usurious.

Which was given by the court.

5th. The bills of exchange offered in testimony are not of themselves sufficient proof of the items contained in the plaintiff's bill of particulars, unless there is some other proof connected with them.

Which was given by the court.

6th. The books offered in evidence are not of themselves sufficient proof of the items contained in the plaintiff's bill of particulars, unless some other testimony is connected with them.

Which was given by the court.

7th. Such of the bills of exchange in question as were drawn by Earll, the plaintiff, payable to different individuals besides the defendants, is a circumstance which the jury has a right to consider as tending to show that such one of the bills were purchased by the defendants from the plaintiff.

Which was given by the court.

8th. If the jury find from the testimony that Earll, the plaintiff, settled his accounts with the defendants on the thirteenth day of March, A. D. 1856, and that at said settlement there was found to be due to the plaintiff from the defendants the sum of two dollars and seventy-eight cents, and that the sum found due was afterward paid them, the jury must find for the defendants, unless the plaintiff has shown by the testimony that some item of the account had not been settled, and then the plaintiff can only recover for such items as are not settled on the 30th March, 1856; and they must be specifically charged in the bill of particulars.

Which was refused by the court.

9th. A bill of exchange is not a promissory note; and if the jury find from the testimony that Earll, the plaintiff, applied to the defendants to purchase the bills in question, the character of the transaction is not changed because Earll drew the bills payable to the defendants.

Which was given by the court.

10th. The bills of exchange, while in the hands of James Mitchell & Co., and before acceptance, were not promissory notes.

Which was given by the court.

To the giving of all which instructions asked by the defendants the plaintiff did except.

The jury thereupon, after a short absence returned their verdict, finding the issues for the defendants.

And thereupon, the counsel for and on behalf of the plaintiff, moved the court for a new trial for the following reasons;

1st. For the reason that the court refused instructions asked by the plaintiff's counsel.

2d. For the reason that the court gave instructions asked by defendants' counsel.

3d. For the reason that the verdict was clearly against the evidence in the case.

And after the arguments of counsel, the court did then and there overrule the said motion for a new trial, to which decision of the court overruling said motion, the counsel for the plaintiff did then and there except.

MEACHAM & BAILEY,
Attorneys for Plaintiff in Error,

IN THE SUPREME COURT OF ILLINOIS,

APRIL TERM OF THE THIRD GRAND DIVISION, A. D. 1859.

STRONG H. EARLL, for the use of
Charles G. Patten, Plaintiff in Error,
vs.

JAMES MITCHELL & CO.,
Defendants in Error.

ERROR TO STEPHENSON COUNTY.

12 Mags 135
13 " 105
8 Smead & Marsh 368
29 Vermont 540
7 Blackford 105

I.
This is an action for money had and received, brought to recover back usurious interest, which Plaintiff in Error alleges he paid to Defendants in Error, during the period of time extending from January 12, 1854, to March 29, 1856. The declaration is on the common counts for money had and received to Plaintiff's use. We rely on the following authorities to show the action will lie.

See Statute 1845, title interest. See 1 and 3, Chitty on contracts, 634.—1st Storey, Equity, Juris., 301 and 2. Wheaton vs. Hibbard, 20 John, 289. Webb vs. Wilshire, 19 Maine, 406. Willie vs. Green, 2 N. Hamp., 333. Smith vs. Bromley, 2, Douglas, 797. Astley vs. Reynolds, Strange 915.—Williams vs. Hedley, 8 East, 383. *Edwards on Bills* 351.

1st Story on Gov 606, 607. *Rep Temp Talbot* 40.
note n+r. *Cofft* 345. *Browning & Monis Cowp* 792

II.
It will be contended that the Plaintiff in Error has lost his remedy, because the Statute of 1845, giving a penalty for taking usurious interest, which was in force during the period covered by these transactions, has been repealed.

The true principle will be found to be, that where a party has a remedy at common law for a wrong, and a statute be passed giving a further remedy without a negative express or implied of the the common law, the party, notwithstanding the statute, may have his remedy at the common law. 2d Institutes, 200; Wheaton vs. Hibbard, 20 John, 293; Cowyn Digest, action on statute C., Stafford vs. Ingersol, 3 Hill, 38; Smith Com. 711, 5 Cowen, 155.

III.
The proof shows that from January 12, 1854, to March 29, 1856, Earll had his money accommodations of Defendants, and when they let him have money he would draw his bill of exchange on A. R. Williams of Chicago, in their favor or payable to themselves, and Defendants discounted the bills at the following rates: On sight drafts 1-4 of 1 per cent.; five-day drafts, 1-2 of 1 per cent.; ten-day drafts, 3-4 of 1 per cent.; fifteen-day drafts, 1 per cent.; twenty day, 1-1-4 per cent., and thirty days; 2 per cent. a month. That the bills were drawn at frequent and short intervals of time during the above years, and amounted to some \$300,000.

The proof shows that all the bills were paid at maturity, and now in the possession of Earll.

The bills in question were drawn and made payable to the Defendants for the loan of money. The transaction was not in any sense a purchase of the bills. See the following authorities:

Parson's Mercantile Law, page 265; Loyd vs. Keach, 2d Conn., 179; Tuttle vs. Clark, 4 Conn., 153; King vs. Johnson, 3, McCord, 365; 1st Dallas, 217; 6 B. Monroe, 529; French vs. Grindle, 15 Maine, 163; 16 Maine, 456; 20 Maine, 98; 13 Peters, 345; Powell vs. Waters, 8, Cowen, 685; 3d Wendell, 65. *Edwards on Bills* 349, 350, 351

3d John Cases 66+206 15 John 44
2d Sandford 60, 1st Kernan 368
17 John ~~483~~ 176 8 Cow 670 1st Hill 9
3 Gill & John 483 7 Blackford 105
1st Harris & Gills 477 2d John Cases 60
Lowes & Mazzamudo et al 1st Starbuck 384

3 Gul 508

IV.

It will be contended that the Defendants were entitled to a commission for taking and negotiating these bills. The testimony does not show that Earll employed Defendants to negotiate the drafts; but the testimony shows that the Defendants discounted the drafts and nothing was said about commission.

See the following authorities in regard to commission. See opinion of Nelson Ch. J. in Ketchum vs. Barber, 4th Hill; 4th Maul and Selw, 192; See Chitty on Contracts, 709.

If the transaction is a loan of money, it is usurious. See Cowper, 112; 4 Hill, 232; Chitty on Contracts, 703.

A person may charge for trouble and expense, if it is not a mere cover for usury. Dunham vs. Dey, 13 John, 40; 4th Hill, 231.

A charge for guaranteeing the payment of bills when unconnected with a loan by the party making it, is not usurious. See 4 Hill, 230; 1st Bos. and Pull, 153.

The case of Ketchum vs. Barber, in 4th of Hill, 229, was narrowed down to the point whether a sale of one's credit or security for the use and benefit of another unconnected with a loan of money is usurious. It was held that it was not.

There is a class of cases where Bankers and Merchants may, in addition to lawful interest on the discount of bills, take a reasonable commission for trouble and expenses, provided such commission be not intended as a cover to usury. On this subject see 4th Hill, 229; Aerial vs. Thomas, 2 T. R., 52; and Winch vs. Fenn, in note; Hammet vs. Yea, 1st Bos. and Pull, 144; 1st Campb., 445; 3 Campb, 488; 15 Vesey, 120; Carstairs vs. Stein, 4 Maul and Selw. 192 *Edward on Bills 362, 363*

2 Parsons on Con 418

V.

Giving and receiving designedly more than legal interest is without any express corrupt agreement usury. Bank of Utica vs. Wayar, 8 Cow. 669.

If the transaction between the parties to this suit was as the proof shows, a loaning of money by Defendants to Plaintiff, it makes no difference whether Defendants took, as security for the return of their money, a bill on Chicago or any other kind of security.

If they took bills on Chicago as security for their money, the presumption is, that it suited their convenience best. The question of usury will not depend upon the kind of security taken, but whether the transaction be a loan of money. See Statute 1845, title interest, sec. 1 and 3; 3 Kent Com. 74.

VI.

There was error on the trial in the court, permitting improper and irrelevant testimony to be given to the jury on the part of the Defendants.

VII.

The court erred in refusing the fourth and fifth instructions asked by the counsel for the Plaintiff. See authorities cited above under the 3d head.

VIII.

The court erred in giving 2, 3, 4, 5, 6, 7, 9, and 10th instructions asked by the Defendants. *19 Ill 29, 59-510-20 Ill 115, 448*

The court erred in denying motion for new trial.

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Attorneys for Plaintiff in Error.

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Supreme Court

Strong & Euell for us
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James Mitchell vs

Points & Authorities
of Plff.

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