

12336

No. _____

Supreme Court of Illinois

Harwood, et al

vs.

Tucker

71641  7

123

Edward Harman et al.
vs
Hiram A. Tucker et al.

123

1857

12336

X

State of Illinois }
County of Cook } ss.

Pleas before the Honorable John
M. Wilson Judge of the Cook County Court of Com-
mon Pleas within and for the County of Cook and
State of Illinois, at a regular term of the Cook County
Court of Common Pleas, begun and holden at the
Court House in the City of Chicago in said County &
State on the second Monday being the eighth day
of September in the year of our Lord One thousand
eight hundred & fifty-six, and of the Independence
of the United States the eighty first.

Present the Hon. John M. Wilson, Judge
Daniel M. Hroy Prosecuting Attorney
James S. Beach Coroner and
acting Sheriff of Cook County
Walter Kimball Clerk

Attest

Be it remembered that heretofore, to wit, on the fifth day of February in the year of our Lord one thousand eight hundred and fifty five, Edward Harwood and David M. Marsh, Com-
 3 plaints by Shumway & Waite their Solicitors filed in the Office of the Clerk of the Cook County Court of Common Pleas, their Bill of Complaint, Bond for Costs, Precipe for Summons and Affidavit of Non-Residence, which Bill of Complaint, Bond for Costs, Precipe for Summons and Affidavit of non residence are in the words and figures as follows, to wit

To the Honorable John M. Wilson Judge of the Cook County Court of Common Pleas in Chancery "Sitting" within and for the County of Cook and State of Illinois.

Your Orators Edward Harwood and David M. Marsh partners in trade under the name and style of Harwood & Marsh residents of the City of Cincinnati Ohio, humbly complaining represents unto your Honor that heretofore, to wit, On the twenty third day of October A.D. 1854, that they purchased of Ellis & Sturges a firm composed of Roland Ellis, William Sturges (and whom they pray may be made parties defendants hereto) a firm engaged in doing the business of Bankers & Brokers in the City of Cincinnati

a draft of two thousand dollars drawn by them
on the firm of N. A. Tucker & Co of the City of
Chicago - a firm composed of Hiram A. Tucker,
John Frink, Walter S. Gurney & Jacob B. Myrick
and whom he prays may be made parties defen-
dants hereto - and paid them the cash therefor -
that immediately upon the receipt thereof having
money to pay - they dispatched the same to their
agent D. William M. Brisbane to pay said sum
of money to parties at Mineral Point Wisconsin -
and he transferred the same to Washburn & Woodman
of said Mineral Point to collect for your Orators,
and they sent it to their Correspondent J. M. Bunch
& Co. at Chicago. to receive of the defendants N.
A. Tucker & Co. the funds & to send them to Wash-
burn & Miller to be applied to your Orators pur-
poses and uses - that said draft was on the
eighth day of November A.D. 1854 presented to
the defendants Hiram A. Tucker, Walter S. Gurney,
John Frink & Jacob B. Myrick, doing business
as aforesaid under the name and style of N.
A. Tucker & Co. at their Banking Office in Chicago,
- and payment of the same demanded and the
defendants N. A. Tucker & Co refused to pay the
same, and said draft was protested in due
form of law and the same or any part thereof
has not been paid by the drawers N. A. Tucker & Co.

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nor the drawers Ellis & Sturges, nor by any other person for them and in their behalf - that they have never parted with their equitable right to said draft, and that
7 + the same has always been & is now their property - and the endorsements made by them were merely for the purposes of collection and for no other purposes whatever - and the endorsements so made have been erased as will more fully and at large be seen by the draft itself.

And Complainants further represent unto your Honor that upon selling your Orators the draft aforesaid the said Ellis & Sturges sent by Express a package of
8 money of two thousand dollars directed to said "H. A. Tucker & Co.", and with which package of money was the following letter, to wit,
"H. A. Tucker & Co."

We hand \$2000. Bank Notes, drew same Amount \$2000.
Harrwood & Marsh.

Please Honor

Ellis & Sturges.

And which money together with the letter accompanying the same and copied above was duly delivered to said H. A. Tucker & Co.; and before the draft aforesaid was presented for payment and the receipt thereof recognized - and the same was in the hands of said H. A. Tucker & Co. when said draft was presented.
9

And your Orators further represent unto your Honor that they are informed and believe and so

10 charge the fact to be that the said sum of two thousand dollars so sent by said Ellis & Sturges to N. A. Tucker & Co. was appropriated by them to the payment of said draft - and that the sending the said sum of two thousand dollars being the exact amount of said draft accompanied with said letter is in equity an appropriation of said sum of money to the payment of said draft - and that the said N. A. Tucker & Co. had no right to appropriate said funds to any other purpose than to the payment of said draft; and that said N. A. Tucker & Co. in receiving said money received the same in trust for the payment of your Orators drafts - and have so continued to hold the same - That the drawing of said draft by said Ellis & Sturges was an assignment by them to your Orators of said sum of two thousand dollars and that your Orators can compel said N. A. Tucker & Co. to pay the same to your Orators -

11 And your Orators further shew unto your Honor that some time - the exact day they cannot state after the said draft was presented to payment said Ellis & Sturges failed - and stopped payment - but your Orators are & so charge the fact to be that said Ellis & Sturges never made any other or different appropriation of said funds - or ever counteracted said appropriation.

12 And your Orators further represent unto your Honor that they have repeatedly called on said N. A. Tucker & Co. and in a friendly manner requested

them to pay said draft - but they hitherto have utterly and entirely failed so to do, and have refused & still refuse to pay the same or any part thereof - sometimes pretending that since or about the time of said Ellis & Sturges failure they in some way acquired an indebtedness against them or in some way they have appropriated about six hundred dollars of said funds, and have only \$1400. of said \$2000. on hand, & your Orators offered to pay the same to them, though not legally or equitably bound so to do - if they would pay to them the balance but they entirely refuse so to do, and neither will pay the same or any part thereof.

And inasmuch as your Orators have not adequate relief in law; but can only have full adequate & complete relief in equity where such matters are clearly relievable and cognizable; they pray that the said Miram A. Tucker, Walter S. Gurnee, John Frink and Jacob B. Myrick, Roland Ellis and William Sturges may be made parties defendant, to this their bill of complaint, and that they may be compelled to answer all & singular the above as if here again repeated sentence by sentence, and they specially interrogated in reference thereto (an answer under oath being waived), and that the said "H. A. Tucker & Co." may be decreed and ordered to pay said sum of Two thousand dollars to your Orators with interest thereon, from the date of the presentation of

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said draft; and that the same may be decreed to
be appropriated by the said Ellis & Sturges to the
payment of the aforesaid draft; - or if it should not
be decreed to be assigned for or appropriated to the
payment of said draft, that then the said N. A. Tucker
&c. be decreed to pay to your Orators whatever funds
if any they may have in their hands; And that
your Orators may have such other and further relief
as may be equitable in the premises and as to your
Honor may seem meet - And they pray your Honor
to grant unto your Orators, a writ of summons to be
directed to said Miriam A. Tucker, "Walter S. Gurnee",
15
John Frink, Jacob B. Merrick, Roland Ellis &
William Sturges, commanding them at a day cer-
tain, and under certain penalty, therein to be lim-
ited personally to be and appear before your Honor
in this Honorable Court, and then & there full, true
and perfect answer make to all and singular the
premises and further to stand to, perform and abide
such order, direction and decree therein, as to your
Honor shall seem meet, And your Orators will ever pray,
&c.

Shumway & Waite
Solicitors &c.

State of Illinois, }
Cook County s.s. } Cook County Court of Common Pleas.

16
Edward Haywood et al. }
Miriam A. Tucker et al. } And now comes the Complain-

and amend their bill of Complaint in this case, -
 and wherever the names of Niram A. Tucker, Walter
 S. Gurnee, John Frink and Jacob B. Merrick appear
 as defendants and as composing the firm of "N. A. Tucker
 & Co." they strike out the name of John Frink and insert
 in the place and stead thereof the name of Julius S.
 Wadsworth so that Niram A. Tucker, Walter S. Gurnee
 Jacob B. Merrick & Julius S. Wadsworth shall be made
 the defendants to said bill of Complaint - and the persons
 named as composing the firm of N. A. Tucker & Co.

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by Shumway Waite & Towne
 their Solicitors

It is admitted that the ownership & facts in relation
 to the endorsement of the Bill of Exchange are as alleged
 in said bill.

We consent to the within Amendment.

Sedgwick & Walker.

Edward Harwood &
 David M. Marsh

vs

Niram A. Tucker et al.

Cook County Court of Common
 Pleas.

I do hereby enter myself secu-
 -rity for costs in this cause, and acknowledge myself
 + bound to pay or cause to be paid, all costs which may
 accrue in this action, either to the opposite party or to
 any of the officers of this Court in pursuance of the laws
 of this state. Dated this 5 day of Feb'y. AD 1855.

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Shumway & Waite

In Cook County Court of Com. Pleas.

Edward Harwood & David M. Marsh

vs

Niram A. Tucker, Walter S. Yarnes, In Chancery
John Frink, Jacob B. Merrick, Bill
Roland Ellis & William Sturges

Issue Sum^d. to Shf.

of Cook returnable to April Term 1855.

Feb. 5. 1855.

Shumway & Waite

Sol^r for Compt^r.

In Cook County Court of Common Pleas.

Edward Harwood & David M. Marsh

vs

Niram A. Tucker et al.

State of Illinois,
County of Cook,

Noratio G. Shumway being duly sworn says
that as he is informed & verily believes, Jacob B. Merrick,
Roland Ellis & William Sturges are non residents of
the State of Illinois, & further says not.

N. G. Shumway

Subscribed and sworn to this

5 day of Feb^y 1855 before me

Walter Kimball, Clerk
of Cook County Court of Common Pleas

State of Illinois, }
 County of Cook, ss. } The People of the State of Illinois,
 + To the Sheriff of said County, Greeting:

We command you that you summon Miram A. Tucker, Walter S. Gurnee, John Frink, Jacob B. Merrick, Roland Ellis & William Sturges if they shall be found in your County, personally to be and appear before the Cook County Court of Common Pleas, for the County of Cook, on the first day of the next term thereof, to be holden at the Court House, in the City of Chicago, in said County, on the first Monday of April next, to answer unto Edward Harwood & David M. Marsh in their certain Bill of Complaint filed in the said Court, on the Chancery side thereof against them.

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

Witness, Walter Kimball, Clerk of our said Court, and the seal thereof, at the City of Chicago aforesaid, this fifth day of February A.D. 1855.



Walter Kimball, Clerk

Served this writ on the within named John Frink, by reading and delivering a Copy thereof to him the 8th day of February 1855 - And on the within named Miram A. Tucker and Walter S. Gurnee by reading and delivering Copies thereof to them the 17th - The within named

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Jacob B. Merrick, Roland Ellis and William Sturges
are not to be found in my County.

the 17th day of February, 1855. James Andrew, Sheriff
by J. B. Bulkeley Deputy.

Jacob B. Merrick, Roland Ellis and William Sturges
are not to be found in my County.

the 17th day of February 1855. James Andrew, Sheriff.
by F. B. Bulkeley, Deputy.

And afterwards, to wit, On the thirty first day of
October in the year of our Lord one thousand eight hun-
dred and fifty five, the following ^{among} other proceedings
were had in said Court, and entered of record, to wit.

Edward Harwood & David M. Marsh

vs

Miriam A. Tucker et al

In Chancery

3 Bill.

And now comes

+ the said Complainants by Shumway & Waite their
Attorneys, and said defendants by Thompson & Burnham
their Solicitors also comes, And the Court after hearing
the argument of Counsel on said defendants motion
to dismiss the Bill in this cause, being now fully ad-
vised in the matter Over-rules said Motion.

And on motion of said Complainant it is ordered
that said defendants plead answer or demur to
said Complainants bill of Complaint by Monday mor-
ning next.

And afterwards to wit, On the tenth day of
November in the year last aforesaid, the defendants
by their Attorneys, filed in said Court their answer to

the Complainants Bill of Complaint, which answer is in the words and figures as follows, to wit

State of Illinois, }
Cook County. } In the Cook County Court of Common Pleas,
of the Term of September A.D. 1855.
In Chancery

Edward Harwood &
David M. Marsh
Complainants

vs

Miram A. Tucker,
Walter S. Gurnee
John Frink
Jacob B. Merrick
Roland Ellis &
William Sturges
Julius Wadsworth
Defendants

The joint & several answers of
Miram A. Tucker,
Walter S. Gurnee, Jacob B.
Merrick & Julius Wadsworth
to the Bill of Complaint of
Edward Harwood &
David M. Marsh,
Complainants.

These defendants now & at all times hereafter saving & reserving to themselves all manner of benefit & advantage of exception to the many errors & insufficiencies in the Complainants said Bill of Complaint for answer thereto, or unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, they answering say that they admit that said Complainants on the twenty third day of October A.D. 1854 purchased of

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Ellis & Sturgess a firm composed of Roland Ellis & William Sturgess lately engaged in doing the business of Bankers & Brokers in the City of Cincinnati, Ohio, a draft of two thousand dollars drawn by them on the firm of N. A. Tucker & Co. & these defendants aver that said draft was an ordinary Bill of Exchange, but these defendants deny that said firm of N. A. Tucker & Co. was then or at the time of the commencement of this suit composed of Hiram A. Tucker, Walter S. Gurnee & John Frink, but on the contrary these defendants state that said firm of N. A. Tucker & Co. was then & at the time of the commencement of this suit, composed of Hiram A. Tucker, Walter S. Gurnee, Julius Wadsworth & Jacob B. Merrick.

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But whether the said Complainants paid to said Ellis & Sturgess the cash for said draft or Bill of Exchange or whether on the receipt thereof they dispatched the same to William M. Brisbane, or whether the said Brisbane transferred the same to Washburn & Woodman or whether the said Washburn & Woodman sent the same to J. N. Pynch & Co. in the manner & for the purpose in said Bill stated these defendants do not know & cannot state.

28

And these defendants further answering say that they deny that said Draft was presented on the eighth day of November A.D. 1854 to Hiram A. Tucker, Walter S. Gurnee, John Frink & Jacob B. Merrick

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doing business under the name & style of N. A. Tucker
& Co. as in said Bill stated, & these defendants state
the facts to be, that said Draft or Bill of Exchange was
on the eighth day of November A.D. 1854 presented by
J. M. Burch & Co. to N. A. Tucker & Co. which firm was
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+ then composed of Hiram A. Tucker, Walter S. Gurnee,
Jacob B. Merrick & Julius Wadsworth as before
stated, at their Banking House in the City of Chicago
for payment & payment thereof was then & there demand-
ed in specie by the said J. M. Burch & Co. & which
said draft the said N. A. Tucker & Co. then or there
refused to accept or pay & that said N. A. Tucker & Co.
have not since accepted or paid said Draft or any
part thereof, but whether said Draft was protested in
due form of law on the same day or whether the same
or any part thereof has been paid by Ellis & Sturgess
30
+ or by any other person or persons for them or on their
behalf, or whether the said Complainants have inter-
posed with their equitable right to said draft or
whether the same has always been or is now their
property, or whether the endorsements on said Draft
were made for the purposes of collection merely or whether
the endorsements thereon have been crossed out as
in the said Bill stated, these defendants do not
know & cannot state but leave said Complainants
to prove the same as they may be able

31
And these defendants further answering

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admit that upon selling to said Complainants the said Draft aforesaid the said Ellis & Sturges sent by Express a package of money of Two thousand dollars in Bank Bills directed to N. A. Tucker & Co. & that said package of money was delivered to them before the Draft aforesaid was presented for payment & that the receipt thereof was acknowledged, but they deny that such package was accompanied by a letter of which a Copy is set forth in said Bill of Complaint or that a letter a copy of which is set forth in said Bill of Complaint was ever delivered to them, and these defendants also deny that the said money was in the hands of said N. A. Tucker & Co. at the time when said Draft was presented as in said Bill of Complaint is alleged.

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And these defendants further answering say & so charge the fact to be, that on the twenty sixth day of October A.D. 1854 the firm of N. A. Tucker & Co. received by Express a letter from the said Ellis & Sturges bearing date on the twenty third day of October A.D. 1854 which said letter was accompanied by a remittance of Two thousand dollars in Bank Bills & which said letter was in the words & figures following, that is to say,

Ellis & Sturges Bankers
Cincinnati Oct. 23^d 1854

N. A. Tucker & Co.

Dr Sir.

512336-89

15

We hand \$2000 B.B. notes for Cr.
 Draw same amt. \$2000. Please Honor
 Harwood & Marsh. Resp. Ellis & Sturges

As by reference to said letter now in the hands
 of these defendants ready to be produced & proved as
 this Honorable Court shall direct will more fully appear

24 And these defendants further answering say
 that of the said Two thousand dollars in Bank Bills
 so received as aforesaid from the said Ellis & Sturges
 by said N. A. Tucker & Co. there was the sum of Two
 hundred & forty dollars which was not current here
 & which the said firm of N. A. Tucker & Co. refused
 to receive & give to said Ellis & Sturges credit therefor,
 but immediately thereafter & on or about the twenty
 sixth day of October A.D. 1854 returned the same
 to said Ellis & Sturges & retained the balance of
 said sum of Two thousand dollars amounting to
 35 Seventeen hundred & sixty dollars & gave to said
 Ellis & Sturges credit for the same on account, in
 the Book of accounts of the said N. A. Tucker & Co. as
 requested in said Ellis & Sturges letter^{re} received
 with said remittance from them as aforesaid.

And these defendants further answering
 say that they deny that the said sum of Two thousand
 dollars sent by ^{said} Ellis & Sturges to N. A. Tucker & Co.
 was appropriated by them to the payment of said

Draft, & that the sending of the said sum of Two thousand dollars being the exact amount of said Draft accompanied by the letter which come with such package is in equity an appropriation of said sum of money to the payment of said draft as in said Bill of Complaint is stated.

And these defendants also deny that the drawing of said Draft by said Ellis & Sturgess was an assignment by them to said Complainants of said sum of Two thousand dollars & that said Complainants can compel said N. A. Tucker & Co to pay the same to said Complainants as in said Bill of Complaint is stated.

And these defendants also deny that said N. A. Tucker & Co, in receiving the said sum of money received the same in trust for the payment of said Draft of said Complainants & that they have so continued to hold the same as in said Bill of Complaint is also stated.

And these defendants further answering say that they admit that after said Draft was presented for payment said Ellis & Sturgess failed & stopped payment, but they deny that said Ellis & Sturgess did not make any other or different appropriation of said funds or did not counteract said appropriation as in said Complainants Bill of Complaint is alleged.

And these defendants further answering say that on the first day of October A.D. 1854 & for a long

time previously thereto the firm of N. A. Tucker & Co. were, ever since have been & still are Bankers doing a Banking business in the City of Chicago in the State of Illinois, & that the said firm of Ellis & Sturges were also on the day & year last aforesaid & continued to be until some time in November A.D. 1854. Bankers doing business as Bankers in the City of Cincinnati in the State of Ohio, & that these defendants were on the day & year last aforesaid & continued to be until the failure of the said firm of Ellis & Sturges herein before & in said Bill of Complaint mentioned, correspondents of the said firm of Ellis & Sturges & were in the habit of collecting notes & receiving money for the said firm of Ellis & Sturges & of receiving remittances of money from them & of making remittances to them, of paying Drafts drawn by the said firm of Ellis & Sturges on said N. A. Tucker & Co. in the usual & common way & manner in which Bankers & Banking Houses correspond & do business with each other, & that the said N. A. Tucker & Co. kept a general debtor & creditor account with the said firm of Ellis & Sturges & all moneys received by said firm of N. A. Tucker & Co. were credited to said Ellis & Sturges in such account on their Books of account as from the books of said firm of N. A. Tucker & Co. & from the letters of the said firm of Ellis & Sturges to the said N. A. Tucker & Co. now in the possession

of these defendants ready to be produced & proved, as this Honorable Court shall direct will more fully appear.

And these defendants aver that neither the said sum of Two thousand dollars nor any other sum of money was at any time sent to the said firm of N. A. Tucker & Co. by said firm of Ellis & Sturgess for any other purpose than to be placed to their credit & they never received from the said firm of Ellis & Sturgess any other or different request or direction respecting the said sum of Two thousand + dollars than to give them Credit for the same as herein before stated.

And these defendants further answering say that they did not receive the said sum of Two thousand dollars or any part thereof for the said Complainants nor in trust for them, that they received the said sum of Two thousand dollars from the said Ellis & Sturgess & returned to them the said sum of two hundred & forty dollars & placed the balance thereof to the credit of the said Ellis & Sturgess believing & supposing it at the time & ever since, to be the +property of them the said Ellis & Sturgess, & these defendants aver that the said J. M. Bunch & Co did not on the presentation of said draft for payment, as in said Bill alleged, demand of the said firm of N. A. Tucker & Co the said ~~sum~~ Two thousand dollars in Bank bills so remitted by said firm of

Ellis & Sturges to & received by said firm of N. A. Tucker & Co. as hereinbefore stated, On the Contrary the said J. M. Burch & Co. at the time said Draft was so presented for payment as aforesaid demanded of & from the said N. A. Tucker & Co. the sum of Two thousand dollars in Coin in payment of said Draft.

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And these defendants further aver that on the twenty sixth day of October A.D. 1854 after the said Two thousand dollars had been received by the said N. A. Tucker & Co. from the said firm of Ellis & Sturges, & after the said Two hundred & forty dollars thereof had been returned & the balance thereof credited as herein before stated, there was due from said N. A. Tucker & Co. to said firm of Ellis & Sturges about the sum of Nine hundred dollars only, that at the time the said Draft was presented by the said J. M. Burch & Co. for payment & payment thereof refused as aforesaid, to wit, on the eighth day of November A.D. 1854. there was standing to the credit of the said firm of Ellis & Sturges on the Books of account of the said N. A. Tucker & Co. due from said N. A. Tucker & Co. to said Ellis & Sturges only the sum of Twelve hundred & thirty four dollars & seventy five cents & no more, & that said N. A. Tucker & Co. have not since had in their hands money belonging to the said Ellis & Sturges sufficient to pay said Draft of

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two thousand dollars.

47.

And these defendants further answering say that they were summoned as Garnishes in a certain cause in Attachment in the Cook County Court of Common Pleas wherein James P. Holton is plaintiff & the said Roland Ellis & William Sturgess are defendants, & that the said Meram A. Tucker as the acting partner & the one who conducts & controls the business of the said firm of M. A. Tucker & Co. has filed his answer in said cause as such Garnisher wherein it is stated that there was on the first day of December, ¹⁸⁵⁴ the date of the issuing ~~receiving~~ of said writ of Attachment & Garnish-
-ce summons due from said M. A. Tucker & Co. to said Ellis & Sturgess the sum of Fourteen hundred & fifty five ⁷100 dollars which amount still remains due from said firm of M. A. Tucker & Co. to said firm of Ellis & Sturgess.

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+ And these defendants deny all unlawful combination in said Bill charged; without that any other matter or thing material or necessary for these defendants to make answer unto & not herein or hereby well & sufficiently answered unto confessed & avowed, traversed or denied is true to the knowledge or belief of these defendants.

All which matters & things these defendants are ready to aver, maintain & prove as

this Honorable Court shall direct & hereby pray
to be hence dismissed with their reasonable costs
& charges in that behalf most wrongfully sustained.

J. M. Walker of Counsel	}	M. A. Tucker
for M. A. Tucker & Co. defts		Walter S. Gurnee
Thompson & Burnham		Jacob B. Merrick
Sol ^r for Deft ^s		Julius S. Wadsworth.
M. A. Tucker & Co		defts.

And afterwards, to wit, on the twenty fourth
day of November in the year aforesaid the Com-
plainants, by their Attorney aforesaid filed in said
Court, their replication, which said replication
is in the words and figures as follows, to wit.

The State of Illinois, }
Cook County, ss. } Cook County Court of Common
Pleas.

Edward Harwood et al. }
vs }
Miram A. Tucker et al. }

The replication of Edward
Harwood & David M. Marsh Complainants, to
the answer of Miram A. Tucker, Walter S. Gurnee,
Julius Wadsworth & Jacob B. Merrick defendants.

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The repliants saving and reserving to himself all and all manner of exceptions to the manifold errors and insufficiencies of said answer for replication thereto say that they will aver and prove their said bill to be true, certain & sufficient in law to be answered unto; and that the said answer of the said defendants is uncertain & untrue & insufficient to be replied to by this repliant; without this, that any other matter or thing whatsoever in said answer contained material or immaterial effectual in law to be replied unto, confessed or avoided, traversed or denied is true; all of which matters and things these repliants are ready to aver & prove, as this Honorable Court may direct; and they pray as in & by the said bill they have already prayed,

By their Solicitors
Shumway, Waite & Towne.

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And afterwards to wit, on the twenty first day of October in the year of our Lord one thousand eight hundred and fifty six; the parties aforesaid, by their Solicitors aforesaid, filed in the Office of the Clerk of said Court, their admissions which said Admission is in the words as follows to wit.

State of Illinois Cook County ss.
Harwood & March } In Chancery.
vs }
H. A. Tucker et al } Cook County Court of Com. Pleas.

In this case it is admitted that the bill in Chancery correctly sets forth the facts in reference to the title & ownership of the bill of exchange therein described: And the answer the facts in regard to the suit in Attachment ~~the said bill of exchange~~ against N. N. Tucker & Co.

Shumway Waite & Towne
Complainants Solicitors
Bedgwick & Walker
Solrs. for Compl.

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And on the thirteenth day of February in the year of our Lord One thousand eight hundred and fifty six there was filed in the Office of the Clerk of said Court the deposition of Alfred A. Lawrence with Exhibits thereto attached which said Deposition and Exhibits are in the words and figures as follows, to wit.

The Deposition of Alfred A. Lawrence of the County of Hamilton and State of Ohio, a witness of lawful age, produced, sworn and examined, upon his Corporal Oath on the ninth day of February, in the year of our Lord
54 + One thousand eight hundred and fifty six at the Office of Tilden, Rindew & Curwen in the City of Cincinnati, in the County of Hamilton and State of Ohio aforesaid, by me, M. E. Curwen a Commissioner duly appointed by a *Decimus Prostatum* or Commission.

55

issued out of the Clerk's Office of the Circuit Court of Cook County, in the State of Illinois, bearing teste in the name of Walter Kimball Esq. Clerk of the said Circuit Court with the seal of said Court affixed thereto, and to me and Myron N. Tilden or either of us, directed as such Commissioners, for the examination of the said Alfred A. Lawrence, a witness in a certain suit and matter in controversy now pending and undetermined in the said Circuit Court, wherein Edward Harwood and others are plaintiffs and Meram A. Tucker and others are defendants on behalf of the said plaintiffs as well upon the Cross interrogatories of the defendants as on the interrogatories of the plaintiffs, which were attached to or inclosed with the said Commission, and upon none others.

Which Commission is hereto attached and herewith returned to said Clerk.

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The said Alfred A. Lawrence being first duly sworn by me as a witness in the said Cause, previous to the commencement of his examination, to testify the truth, as well on the part of the plaintiffs as the defendants in relation to the matters in controversy between the said plaintiffs and defendants so far as he should be interrogated, testified and disposed as follows:-

Interrogatory first.

State whether or not you are acquainted with the Complainants Harwood & Marsh; the defendants N. A. Tucker & Co. and Ellis and Sturges.

+ if you, how long have you been so acquainted with them, and what is now your business, and what has been your business for the last four years?

Answer to first Interrogatory. - I am acquainted with Mr Harwood and with Ellis and Sturges, I am not acquainted with Mr Marsh nor with N. A. Tucker & Co. I know N. A. Tucker & Co. by reputation only. I have known Mr Harwood about eight months, I have known Mr Ellis about five years. I have known Mr Sturges about two years and a half. I am now the book keeper
58 + of Ellis & Sturges. - The firm was formerly, Ellis and Morton. for the last four years, I have been employed as book keeper in that house, first by Ellis & Morton, and on the dissolution of that firm, July 1, 1853 when Mr Sturges succeeded Mr Morton in the House, I remained book keeper for the new firm, where I am still to this day.

M. E. Co.

Interrogatory Second. If in answer to the last interrogatory you say you have been book-keeper for or in the employ of Ellis & Sturges, what, if anything, do you
59 + know of the Complainant's purchasing a draft about the 23^d of October A.D. 1855 of Ellis & Sturges? If any thing, state the amount, on whom drawn, and state whether or not Ellis & Sturges, or either of them, notified the drawers of said draft of said drafts being drawn, and give a copy of such notice, if you have any; and was any thing remitted with said notice^{if so}, what, and at the time said draft was drawn, state whether or not

Ellis & Sturges had any funds in the hands of the drawees?

Answer to second Interrogatory. Harwood and Marsh did not purchase any draft of Ellis & Sturges, to my knowledge, in October Eighteen hundred and fifty five, for Ellis & Sturges had failed before that day - The Complainants did purchase a draft about the 23^d of October, Eighteen hundred and fifty four (1854) of Ellis & Sturges, for Two thousand dollars (\$2,000) upon A. A. Tucker & Co. of Chicago -

M. E. C.

To explain this answer and to answer the remainder of this interrogatory, I must state that I did not sell the draft to Harwood & Marsh. I did not then know either of them - I did not see Mr Harwood buy the draft, but in the course of the business of Ellis & Sturges, they keep a book called a "Draft Book," which contains a register of all the drafts drawn by the house on their various correspondents, in which is entered - First, the name of the person on whom the draft is drawn; Second, the number of the draft drawn by Ellis & Sturges - this N^o is placed in the Margin of the register, and corresponds with the number on the draft. Third, the name of the party in whose favor the draft is drawn. - Fourth, the amount of the draft, which in the register is expressed in figures with the dollar mark (\$) prefixed.

All drafts drawn in the course of the day are registered, each one before it is handed out to the purchaser, in this register, and each day after the bank is closed,

M. E. C.

it is the duty of the book-keeper to take this register and from it to carry into the Cash book to the credit of the persons upon drafts have been drawn during the day, the respective amounts. In October, 1854, it was my duty as book-keeper of Ellis & Sturges to make such entries; and on referring to the Cash book I find in my hand writing an entry giving credit to N. A. Tucker & Co. for draft No 2619 of \$2000. The entry is in these words

"October 23 ^d 1854"		[Credit side]	
[Here intervene several entries not relating to this transaction and after them this entry]			
" 720	M. A. Tucker & Co	2619	2 000 "

To one accustomed to the books of Ellis & Sturges, these words and figures express that "720 is the page of their Ledger, into which this entry is carried in the account that that bank had with N. A. Tucker & Co: that "N. A. Tucker & Co are credited "2619" explains that the occasion of that credit is a draft drawn by Ellis & Sturges on N. A. Tucker & Co. on that day, which draft is described by the contraction "2619" meaning number 2619, figures "2000" mean that the amount of the draft and consequently, of the credit to which N. A. Tucker & Co are entitled in consequence of Ellis & Sturges drawing upon them. This entry, as I have stated is in my hand writing and was made in the usual course of business on that day, October 23, 1854. This entry, I know I must have made, from the Draft Book of

which I have spoken. There are no other sources from which I could have made it - On referring to the Draft Book - the witness here produces and identifies the book - I find in the regular order of numbers, under No 2419 the following entry.

23 Oct			
[Here follow several entries, not related to this check]			
"N. A. Tucker & Co.			
" 2419	Harwood & Marsh	2000	✓"

This to one familiar as I am, with the Draft Book, expresses, that draft No 2419 was drawn by Elliot Stunges on N. A. Tucker & Co, made payable to Harwood & Marsh, or to their order, and was for the sum of Two thousand dollars (\$2,000) The mark "✓" in the column of cents means that the entry has been posted into the Cash-book.

On the same day October 23, 1854 is an entry in the cash book in my hand writing in the words and figures following:

October 23 rd 1854		(Debit side)	
" 720	N. A. Tucker & Co	Notes	2 000 "

This expresses that the substance of this entry is carried to page 720 of the Ledger; that N. A. Tucker & Co. are charged "notes" means bank notes were the occasion of the charge, and "2000" means that the amount of bank notes with

which N. A. Tucker & Co are charged is Two thousand
 7 dollars. This entry in the Ledger, appears on the side
 opposite to the one that refers to the draft, and reading
 the two in connection, any one who understands book keep-
 ing sees that it asserts that a draft was drawn by Ellis &
 Sturges on N. A. Tucker & Co. N^o 2619 for \$2000 and that
 Ellis & Sturges on the same day placed at the disposal
 of N. A. Tucker & Co. \$2000 in bank notes.

As to notice of the drawing of this draft, I have
 no direct knowledge of the fact; nor have I any direct
 knowledge of any remittance to meet that draft - I can
 + state however that Ellis & Sturges keep letter press copies
 of all letters sent from their House on business, and
 that in the natural order of dates in their letter book,
 is a letter press impression of which the paper I now
 produce is a correct copy, so far as the writing extends.
 I know that they used printed letter heads, like the
 one I now show, in October 1854, on which all their
 business letters were written, and I therefore feel safe
 in saying that the original of the paper I now show
 contained also that printed matter.

* [The witness here produces the paper hereto attached,
 which is marked Exhibit N^o 1 and is identified by his
 his signature and mine.

W. E. Curwen Commissioner]

The witness resumes,

I find also in the files of letters of

71 Ellis & Sturges an original letter, which refers to this transaction, and which has my mark upon it in pencil, from which I know that I must have seen this letter at the time it was received, as it was my duty to examine into the correctness of the calculations made at the foot of it. The letters "O.K." are mine: they mean that the facts stated in the calculations are "all correct" the backing is in the hand writing of a servant of our Bank.

[The witness here produces the paper hereto attached, which is marked Exhibit N° 2, and is identified by his signature and mine on its back]

The word "Express" at the head of this letter means that it came by Express and not by mail.

72 As to the state of accounts between Ellis & Sturges and N. A. Tucker & Co. October 23, 1854, on examining the accounts I find that at the opening of business + Oct. 23, 1854 Ellis & Sturges owed N. A. Tucker & Co. (\$106.25) One hundred and six dollars, twenty five cents. The transactions of that day did not change the state of the accounts on the face of the books on that day. On the receipt of this letter (N° 2) on the 28th (as appears by the acknowledgment mark "28" on the lower left hand corner,) N. A. Tucker & Co. were credited with the \$240. stated in the letter to be returned. The effect of the transaction was, that instead of \$2000. being in the hands of N. A. Tucker & Co on the 25th of October 1854 + to meet the draft of \$2000, there was that amount left

#240. Remittances were in the usual course of business, as will be stated presently, being made from day to day, out of which N. A. Tucker & Co. in the course of business, might consider themselves properly authorized to retain enough to make up this deficiency.

74

Interrogatory third. Have you the means of knowing the general course of business of Ellis & Sturges with N. A. Tucker & Co.? If so, state your means of knowledge and their course of business fully and at large.

75

Answer to Interrogatory third. - I have the means of knowing the course of business of Ellis & Sturges with N. A. Tucker & Co. from my position as book keeper for Ellis & Sturges. It was my duty to keep the accounts and watch the state of the accounts of the Bank with a class of their correspondents, a class which included all their dealings with N. A. Tucker & Co.. In this way I was required to examine daily the Draft Book, showing drafts drawn on them; the Remittance Book, showing Bank notes remitted to them by Mail or by Express; to examine all letters addressed by N. A. Tucker & Co. to the Bank with a view of ascertaining that funds which the letter stated were received or remitted were in fact so received or remitted; and that funds sent by the Bank were duly acknowledged by N. A. Tucker & Co. - It was my business - I may say it was nobody's business but mine in the Bank - to see that the accounts were kept straight, and all the usual

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means of informations, as letters, entries of Drafts drawn, and remittances, and Express Company's receipts, passed under my eye. The dealings of Ellis & Sturges with N. A. Tucker & Co. commenced July 1, 1853, and closed November 7, 1854, when Ellis & Sturges failed.

77 There had been some dealings with the predecessors of Ellis & Sturges, that is with Ellis & Morton; but they were all closed before July 1, 1853, except a small balance.

78 The course of dealing was this, N. A. Tucker & Co. had facilities for purchasing Exchange on New York cheaper than it could be had in Cincinnati, Ellis & Sturges had correspondents in New York, Sturges & Ellis on whom the Cincinnati House was accustomed to draw bills of exchange. - To keep their correspondents in New York in funds at the cheapest rates, Ellis & Sturges availed themselves of the facilities which N. A. Tucker & Co. offered them. They did this by remitting to N. A. Tucker & Co. bank notes which came into their Bank from day to day and which were not, in banking phrase, "currency"; that is not usually receivable in banks as fully equal in value to coin in Cincinnati; for example, notes of banks in Illinois, Northern Indiana, Michigan and the like. These remittances of bank notes were made usually by Express - perhaps in a few instances, but of this I am not sure that there is an instance, by mail. - As frequently as a sum sufficient to make a package of from two ^{hundred?} to eight

79

hundred dollars could be made up - perhaps Four
 hundred dollars might be safely assumed as the value
 of average packages. These funds were ^{not} sent with a view
 on the part of Ellis & Sturges of drawing on N. A. Tucker & Co.
 at Chicago; nor with any view to accumulate funds
 at Chicago to their credit in the hands of N. A. Tucker & Co.
 but to put N. A. Tucker & Co. in funds to purchase, with
 each package of notes as they received it, a bill of
 exchange on New-York for the amount of the package
 less the commissions of N. A. Tucker & Co. for making the
 purchase of that draft - N. A. Tucker & Co. remitted the
 drafts so purchased by them in Chicago to Sturges &
 Ellis, the correspondents of Ellis & Sturges, in New York,
 and advised the Bank in Cincinnati that they had
 done so. On the receipt of the drafts in New York,
 Ellis & Sturges received credit for their amount with
 their New York correspondent; and this credit in New-
 York constituted in part the fund against which the
 Cincinnati House drew their Eastern bills - By "purcha-
 sing," I do not mean that N. A. Tucker & Co. went out into
 the market to buy bills of exchange on New York. - The
 arrangement was that N. A. Tucker & Co. on the receipt
 of each package of bank notes from Ellis & Sturges were
 to send forward to New York drafts on New York to
 Sturges & Ellis to be carried to the credit of Ellis & Sturges
 of Cincinnati. N. A. Tucker & Co. might in consistency
 with the course of dealing, either go out into the money

80

81

M. E. C.

82

market and buy exchange of other parties for the benefit of Ellis & Sturges and remit those drafts to New York; or if they had funds of their own in New York, they might have sent forward their own drafts to New York.

83 N. A. Tucker & Co. never remitted bills of exchange direct to Cincinnati; the whole object of the arrangement being to transport the funds in the cheapest possible mode, which Ellis & Sturges could devise, to New York, to be there drawn against by drafts on Sturges & Ellis of that City.

84 W. E. C. Co. These funds so remitted from Cincinnati in Bank notes to N. A. Tucker & Co. were not sent with any view of being drawn against in the hands of N. A. Tucker & Co. by drafts on Chicago. Ellis & Sturges had correspondents in Chicago, namely, R. K. Swift & Co. through whom they conducted that kind of business. - The course of dealing was not to draw on N. A. Tucker & Co. but to draw on R. K. Swift & Co. with whom an arrangement for that purpose was made. - The contract between N. A. Tucker & Co. and Ellis & Sturges was simply silent as to the latter drawing on the former. It happened sometimes, - letter N^o 2 for example is an instance that Ellis & Sturges in remitting bank notes, sent some which happened not to be "currency" in Chicago, that is funds not bankable there; funds which would not purchase exchange; and N. A. Tucker & Co. instead of purchasing or furnishing bills of exchange to the amount of the package sent, left their commissions and the amount of the uncurrent money in the package, would

send forward to New York a draft for the whole amount of the package deducting their charges for commissions only; and would omit or neglect to deduct the amount from the next package of bills sent to them, so that although the regular course of business never contemplated that either House would have funds in the hands of the other, it happened sometimes by this kind of oversight or omission that an occasional balance, expressing the amount of uncurrent money in particular package, remitted in favor of N. A. Tucker & Co. on the books of Ellis & Sturges.

This was one branch of the course of dealing. It was the usual course of dealing. There were other transactions outside of this arrangement, which I will now state. Ellis & Sturges not intending to keep any funds in the hands of N. A. Tucker & Co. were necessarily compelled, if they should draw upon them, to provide for the drafts. This provision was made in one or the other of the following methods.

+ First, Ellis & Sturges remitted bank notes, say \$1,000; advised N. A. Tucker & Co. of it, and drew on them the same day a draft for the same amount \$1,000, allowing nothing for charges or commissions; the money by express and the draft on Chicago in the hands of the purchaser of it might reach Chicago at the same time; in the course of travel the draft could not be presented in Chicago to N. A. T. & Co. before the package of money which was destined to pay it arrived there—

M. E. L.

M. E. C.

The books of Ellis & Sturges show four transactions of this kind in which specific funds were sent forward to meet a specific bill, the remittance being contemporaneous with the drawing. - The accompanying copies of letters from the letter book of Ellis & Sturges, which I have made myself, and which I know to be correct copies explain all of these transactions. - And these are all the transactions of this kind of which I have any knowledge or can find any entries. - In all these cases, there are corresponding entries made by myself of the transaction in the books.

[The witness here produced papers hereto attached and marked Exhibits 3, 4, 5, 6, and identified by his signature and mine.]

The second mode of meeting bills drawn by Ellis & Sturges on N. A. Tucker & Co. was this.

In remitting bank notes under the arrangement to have them converted into Eastern exchange in Chicago by N. A. Tucker & Co. they occasionally in the letter advising N. A. T. & Co. of their sending the package of bills directed them to reserve a specified amount out of the package to meet a bill of exchange that Ellis & Sturges had then drawn, or was then about to draw on Tucker & Co. In the course of the business, five instances, and but five, occur. They are all fully shown by copies of the letters which I have taken from the letter book of Ellis & Sturges, and which I know to be correct copies.

M. E. C.

[The witness here produced the papers marked Exhibit 7, 8, 9, 10, 11 hereto attached and identified by his signature and mine.]

In regard to all these five transactions, I know that there are corresponding entries made by myself on the books of Ellis & Sturges.

91 One other class of transactions will include all of the dealings between the two houses. In three instances, Ellis & Sturges drew drafts on N. A. Tucker & Co. without remitting any funds to meet them; without giving any directions to reserve funds out of the packages sent, as usual, to buy exchange on New York; and without having any funds in the hands of N. A. Tucker & Co. which the latter were in any way instructed to apply either to specific bills or to bills drawn upon them generally. - They were drawn under an impression that N. A. Tucker & Co. would accept them and pay them, and would reimburse themselves out of the
 92 + packages of money which were being almost daily sent to them in the course of the usual dealing as to remitting exchange on New York. - The particulars of these three transactions are stated in the paper in my hand writing now produced, and which I know to correspond with the entries on the books of Ellis & Sturges.

[The paper Exhibit 12 was here produced and its contents stated by the witness.]

93 Interrogatory Fourth. State whether or not
Ellis & Sturges kept copies of their correspondence
+ with N. A. Tucker & Co. if so, can you produce
such copies and state whether the same are correct
copies or not.

94 M. E. C. Answer to Interrogatory Fourth. Ellis & Sturges
keep copies of all their business correspondence - there
are in the various letter books in their Bank about
a hundred and fifty letters, I should think to
N. A. Tucker and Company, being merely in the
employment of Ellis & Sturges, I cannot say that
the letter books of that Bank are in my custody, al-
though I have daily access to them. I have already
+ given copies of all the letters which I suppose
either party in this cause can desire, with the consent
of my employers. - The other letters are simply
advice of remittances of bank notes; and state-
ments of accounts and the like, which could be
of no service that I can conceive, except perhaps
to exhibit in detail what I have stated in sub-
stance in regard to the course of dealing. - I do
not furnish copies because I suppose that the
party asking it cannot be aware of the mass of
95 + letters that he calls for; and would not desire to
have them, if he knew how unimportant they were.

Interrogatory Fifth. - With whom did
Ellis & Sturges keep their general account at Chicago?
If with more than one person, with whom?

Answer to Interrogatory Fifth. - I have already answered this question - The general account was kept with R. H. Swift & Co., and with no other house in Chicago.

Interrogatory Sixth. Do you know of any other matter or thing of importance to the Complainants? If so, state the same fully and at large.

Answer to Interrogatory Fifth. I am not aware that I know of any thing of importance to the Complainants, or to the defendants, beyond what I have already fully stated.

Alfred A. Lawrence.

Signed in my presence.

M. E. Curwen Commissioner.

The nine preceding sheets of answers are authenticated by the signature of the witness on the back of each sheet, signed in my presence.

M. E. Curwen, Commissioner

I, M. E. Curwen of the City of Cincinnati, County of Hamilton and State of Ohio, a Commissioner duly appointed to take the deposition of the said Alfred A. Lawrence a witness, whose name is subscribed to the foregoing deposition, do hereby

99 W. E. C. certify that previous to the commencement of the examination of the said Alfred A. Lawrence as a witness in the suit between the said Edward Harwood and other, plaintiffs, and the said Hiram A. Tucker and other defendants, he was duly sworn by me as such Commissioner to testify the truth in relation to the matters and things in controversy between the said Edward Harwood and other Plaintiffs; and the said Hiram A. Tucker and other Defendants, so far as he should be interrogated concerning the same; that the said deposition was taken at the Office of Tilden, Rairden & Curwen in the City of Cincinnati in the County of Hamilton and State of Ohio, on the ninth day of February A.D. 1856, and that after said deposition was taken by me as aforesaid, the interrogations and answers thereto, as written down, were read over to the said witness, and that thereupon the same was signed and sworn to by the said deponent Alfred A. Lawrence before me, the Oath being administered by me, as such Commissioner at the place and on the day and year last aforesaid.

M. E. Curwen
Commissioner

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"Exhibits mentioned in and attached
to the foregoing Deposition"

Exhibit N^o 1 also Exhibit 6.

Ellis & Sturges, Bankers,

Cincinnati Oct. 23^d 1854

N. A. Tucker & Co.

Sir.

We hand \$2000 Bank
notes for Cr.

draw same amount \$2,000

Narwood & Marsh, please honor. Res.

(Signed) Ellis & Sturges

Alfred A. Lawrence

M. E. Curwen Commissioner

Exhibit N^o 2.

Exchange Bank of N. A. Tucker & Co.

Esq.

Chicago Oct 26 1854.

Thos. Ellis & Sturges

Cincinnati

Dear Sir

100 / We are in receipt of your
two favors of the 23^d inst with Bank Notes as
& advised, we credit \$1760 & return herein \$240
not received. Your draft for \$2000 shall be

duly honored. We remit 425²⁰ to Sturges &
Ellis chf ex 3⁸⁰

Yours truly
Wm B Doxey

345	1	345
59	$\frac{1}{2}$	29
25	$\frac{1}{4}$	6
429		380

OK.

Alfred A Lawrence
M E Curwen Commissioner

Exhibit N^o 3.

Ellis & Sturges, Bankers,
Cincinnati Sept 8th 1854

Shp M. A Tucker & Co.

Sirs

We hand \$586. 12k Notes
to pay our dft on you that amt drawn to day to J. B.
+ Evans - If there is any charge send figures.

Res

(signed) Ellis & Sturges

(We send \$582 pr Exp^o)

Alfred A. Lawrence
M. E. Curwen Commr.

Exhibit N^o 4.Ellis & Sturges, Bankers.
Cincinnati Sept. 16th 1854.

Messrs N. A. Tucker & Co.

D^r SirX We hand \$500 Ohio sc. to pay
our dft that amt W Borden

Res.

(Signed) Ellis & Sturges

Alfred A. Lawrence

M E Curwen Comm

Exhibit 5.Ellis & Sturges, Bankers.
Cincinnati Oct 5th 1854.

Messrs N. A. Tucker & Co.

D^r Sir102 X Messrs find \$750 Bank
Notes, have drawn on you same amount

Res

(Signed) Ellis & Sturges

p Alex Kincaid

Alfred A. Lawrence

M. E. Curwen Comm.

Exhibit 7.Ellis & Sturges, Bankers.
Cincinnati Aug 16th 1854.

N. A. Tucker & Co.

D^r Sir.

We hand for returns to Sturges & Co.

X \$513. Bank notes - less \$44²⁵ reserve for dft drawn
on you to day

We may draw a Bill or two now & then to
oblige & will send something same or succeeding mail.

Res.

(Signed) Ellis & Sturges

Alfred A. Lawrence

M. E. Curwen, Comm.

Exhibit 8.

Ellis & Sturges, Bankers.

Cincinnati Aug 17th 1854

Meisr N. A. Tucker Esq.

Dr Sir

Herein for usual returns

X \$1467 Bank notes,

Reserve \$32. for our No 2303.

Res.

(Signed) Ellis & Sturges

p Alex Kincaid

Alfred A Lawrence

M. E. Curwen, Comm

Exhibit 9.

Ellis & Sturges, Bankers.

Cincinnati Aug 24th 1854.

N. A. Tucker Esq.

Dr Sir,

We hand \$541 Bk. notes for

returns to Sturges & E.

Res

(Signed) Ellis & Sturges

drew \$25 please reserve.

Alfred A. Lawrence

M. E. Curwen, Comm

Exhibit 10.

Ellis & Sturges, Bankers.

Cincinnati Sept 25th 1854

N. A. Tucker & Co.

Dr Sir,

We hand \$515 for return to

Sturges & Ellis

Res

(Signed) Ellis & Sturges

Reserve \$50 for check on you

Alfred A. Lawrence

M. E. Curwen, Comm

Exhibit 11.

Ellis & Sturges, Bankers.

Cincinnati Sept 25th 1854

N. A. Tucker & Co.

Dr Sir,

We hand \$2500. assorted

Currency - drew \$400 which please reserve & send bal-
-ance to Sturges & Ellis best you can afford.

No trouble with Free Banks Indiana notes now
at all. Currency all kinds scarce

Res

(Signed) Ellis & Sturges

Alfred A. Lawrence

M. E. Curwen, Comm.

Exhibit 12.

1854

Aug 26 Ellis & Sturges drew a draft on N. A. Tucker
Hq. #2352 for \$100. in favor Rev^d W. Bradley

Sept 16 Ellis & Sturges drew a draft on N. A. Tucker Hq.
#2455 for \$300 in favor J. A. Gurley

Oct 26 Ellis & Sturges drew a draft on N. A. Tucker Hq.
#2638 for \$475. in favor Lewis Engels

The three above mentioned drafts are the
only ones ever drawn upon N. A. Tucker Hq by Ellis &
Sturges which they (N. A. Tucker Hq.) were not advised
of, the same or succeeding day, as having been drawn
upon them.

Alfred A. Lawrence

M. E. Curwen, Comm

And on the Eighth day of July in the year of our Lord one thousand eight hundred and fifty-six, there was filed in the Office of the Clerk of said Court, the Depositions of Hamilton B. Hoy & Horatio G. Shumway, which said Depositions are in the words and figures as follows, to wit:

Edward Harwood et al	}	Cook County, Court of Common Pleas
vs		
Miram A. Tucker et al	}	In Chancery.

Depositions of Hamilton B. Hoy & Horatio G. Shumway taken before A. C. Beattie Justice of the Peace at his Office in the City of Chicago on the 24th day of April 1856 by consent of parties, to be read in evidence in a certain cause now pending in the Cook County, Court of Common Pleas, wherein Edward Harwood et al are Plffs & M. A. Tucker & others are Defs. on the part of the said Defs.

Hamilton B. Hoy a witness produced sworn & examined says in Answer to

1st Int. Do you know the parties to this suit, or either & which of them? & how long have you known them or either & which of them?

Ans. I don't know the Plaintiffs. I know the Defs. & have known them since July 1854.

2^d Int. Do you know any thing about a Draft or bill of Exchange being presented for acceptance on or about the 8th of November 1854 to N. A. Tucker & Co. If yes, state who presented the same, whether the same was accepted; state fully all you know of the presentation & acceptance or refusal & the circumstances attending the same - & describe said bill of Exchange.

Ans. A Draft for \$2000, was presented on the 8th of November 1854 or thereabouts by J. H. Bench & Co. to N. A. Tucker & Co. payment was refused. The Draft was presented for payment: they were not in sufficient funds at the time to meet it - The payment of the draft was demanded to be made in Coin - The funds that B^{ch} received from Ellis & Sturges were in Bank Notes, generally on Banks located in Illinois, Wisconsin, Indiana & Michigan, & the Coin was worth about one & a half to two per cent more than these notes were - Tucker could not afford to pay Coin for such Bank notes.

The draft was drawn by Ellis & Sturges on N. A. Tucker & Co. for \$2000 - It was payable to Harwood & Marsh. It was in the ordinary form of a Bill of Exchange.

3^d Int. Did N. A. Tucker^{& Co.} on or about the 25th day of October 1854 receive from Ellis & Sturges of Cincinnati a package of Money? If so, how was the same sent, to whom was it directed, how much did it contain, if Bank bills, state what kind, what instructions, if any were sent by Ellis & Sturges in relation

50
to said money, and what was to be done with the same, & whether the same was sent as a specific deposit or to be passed to general account of Ellis & Sturges? & was there any specific appropriation of said package of money by Ellis & Sturges? & what was done with the same? (Objected to as to substance & not as to form)

Ans. On the 25th of October 1854 they received from them two packages of money - one of \$2000 - the other of \$429. - They came to N. A. Tucker & Co. by Express & directed to N. A. Tucker & Co. - The money were all in Western bank-bills - The instructions of Ellis & Sturges as to one package were we hand you \$2000 - in bank notes for credit. - The package was not sent as a specific deposit, but was placed to the general account of Ellis & Sturges. There was no specific appropriation of the money in this package of \$2000 - but it was to be placed to the credit of Ellis & Sturges in their general account like other packages of money received from them. of said package of \$2000 - \$1760 - was credited to them & \$240 was sent back as not being bankable.

4th Int. Do you know what was the state of accounts between N. A. Tucker & Co. & Ellis & Sturges at the time said bill of exchange was presented for acceptance & payment? If so, state how the account stood - (Objected to)

Ans. On the 8th of November 1854 the day on which the said Draft was presented there was \$1234.75 standing to the credit of Ellis & Sturges on the books of N. A. Tucker & Co - that was increased the next day by a remittance of \$221- and the account has remained so ever since as being \$1455.75 to the credit of Ellis & Sturges

5th Int. Are you acquainted with the kind of business done between the firms of N. A. Tucker & Co. & Ellis & Sturges? If so, state the same fully - And have you a copy of the account of Ellis & Sturges from August 1st 1854 to November 9th 1854? If so, will you produce the same & attach to your deposition.

Ans. I was acquainted with it from the 1st of August to the 9th of November 1854. Their remittances to Deft^s were for the most part in Bank notes on Illinois, Michigan & Wisconsin Banks which were placed to their account. I have copy of their account which I will annex to my deposition & mark the same Exhibit "A" - Ellis & Sturges kept a general account with Deft^s.

6th Int. Do you know when the firm of Ellis & Sturges failed? If so, state. (Objected to)

Ans. We received intelligence of their failure by Telegraph on the 9th of November 1854

Cross Examined.

1st Crop Int. - Did not Ellis & Sturges at the time of their remittance of the \$2000 package referred to state that they had drawn for same amount in favor of Harwood & Marsh & request the honoring of that draft?

Ans. In their letter of the 23^d of October '54, they did, the letter came by mail or in the package I don't know which.

2^d Crop Int. Is it not customary for Banks or Exchange Offices when they receive packages with advice that the same amount has been drawn for to keep the funds on hand to meet the advised draft?

Ans. It is not.

3^d Crop Int. What could be the object of advising of particular drafts being drawn? (Objected to)

Ans. I consider it as a matter of usage when the letter accompanies the money.

4th Crop Int. Was not the only reason for the refusal to pay the draft on the 8th of November 1854, because payment was demanded in specie?

Ans. We would have paid it on the 8th of November in currency & looked to Ellis & Sturges for the difference in their Account which would have been \$765.25

5th Int. Was not the same draft presented again the day following & payment thereof refused?

Ans. Mr Tucker told me that it was, we then had received notice of their failure.

1th Int. Were you at the time of these transactions Cashier of the Bank of N. A. Tucker & Co.

Ans. I was

Hamilton B. Hoy

H. G. Shumway sworn on the part of the
Complaint. says

On or about the 24th day of November 1854 Mr Harwood one of the Plaintiffs & myself went to see Mr Tucker one of the Deft^s in regard to the \$2000- draft of Ellis & Sturges in favor of Harwood & Marsh & notified Mr Tucker that the draft belonged to them & required payment of the draft- He said Ellis & Sturges had failed & that they had only twelve or thirteen hundred dollars in his bank.- He admitted the receipt of the \$2000 package & letter of Ellis & Sturges of the 23^d October 1854- One of us told him that this money was sent on specially to meet this \$2000, draft & he said he did not consider it so, but when it was received it was placed to the general account of Ellis & Sturges - He refused to pay the amount & we then tried to induce him to pay over the funds that stood to the credit of Ellis & Sturges on Deft^s Books and he refused to do that.

H. G. Shumway.

I certify that the foregoing depositions were taken before me on the 24th day of April 1856 by consent of parties, that they were reduced to writing by me & were sworn to & subscribed by said witnesses at the time & place of taking the same.

M. C. Brattin J.P.

1854

1854

Aug	1	To balance	100	Aug	1	By Bank Notes	2178
	"	Rem to Sturges & Co	2178		3	Do	1995
	3	Do	1995		4	Do	803 91
	4	Do	803 91		7	Do	1221
	7	Do	1221		9	Do	571
	9	do	571		10	Do	985
	10	Do	985		11	Do	955
	11	Do	955		12	Do	1352
	12	Do	1352		15	Do	461
	15	Do	461		16	Do	467
	16	Do	467		20	Do	513
	19	Check on you	30		"	Do	1467
	20	Run & Ex	1903 25		21	Do	5000
	21	Do	5000		"	Do	1164
	"	Do	1164		23	Do	916
	22	Check 2300	4475		"	Do	481
	23	returned	2		"	Do	5000
	"	Run & Ex	6395		24	Do	544
	24	Do	544		26	Do	6029
	26	Do	6004		28	Do	8100
	28	Do	8100		31	Do	6243
	29	15 Mapillow	525	Sept	1	Do	547
	30	Check 2342	25		"	Our Check 9823	50
	31	Run & Ex	6243		2	Bank Notes	447
	"	" 2303	32		4	Do	1096
Sept	1	Run & Ex	547		5	Do	977
	2	Do	447		7	Do	544
	4	Do	1096		9	Do	916
	5	Do	977		11	Do	586
	"	" 2352	100		"	Do	582
	7	Run & Ex	544		12	Do	341
	9	Do	916		13	Do	614
	11	Do	582		14	Do	1291
	12	Do	341		15	Do	2500
	13	Do	614		16	Check on Marine	215 50
	14	Do	1291		"	Bank Notes	1464
	15	Do	2000		18	Do	1298
	16	" 2408	586		19	Do	1398
	"	Run & Ex	1679 50		"	Do	500
	18	Do	1298		20	Do	1889
	19	Do	1398		21	Do	3134
	"	returned	80		22	Do	714
	20	Run & Ex	1389		23	Do	364
	"	" 2400	500				
	"	" 2455	300				
	21	Run & Ex	3134				
	22	Do	714				
	23	Do	364				
		Forward	67978 66			Forward	67913 41

1854		Forward	67	913	41
Sept	25	By Bank notes		456	
	27	" Do		3 015	
	28	" Do		398	
	29	" Do		1 301	
	30	" Do		1 472	
Oct ^r	2	" Do		372	
	3	" Do		538	
	5	" Do		2187	
	6	" Do		2 230	
	7	" Do		750	
	10	" Do		622	
	12	" Do		274	
	14	" Do		523	
	16	" Do		390	
	17	" Do		257	
	18	" Do		220	
	19	" Do		276	
	23	" On Check 10,590		74	
	24	" Bank notes		572	
	25	" Do		2429	
	27	" Do		376	
	28	" Do		207	
	30	" Do		237	
	31	" Do		159	
	"	" Wheelwright & Co		1 216	68
Nov	1	" Bank notes		192	
	2	" Do		423	
	3	" Do		257	
	4	" Do		384	
	6	" Do		774	
	7	" Do		334	
	8	" Do		220	
	9	" Do		223	
			1457 75 223 1234 75 221		
			91 272 09		

85219.41
85375.32
893.07
1216.68
2109.70

And afterwards, to wit, on the twenty first day of October in the year of our Lord one thousand eight hundred and fifty six, the following Among other proceedings were had in said Court and entered of record, to wit:

Edward Maywood & David M. Marsh	} In Chancery Bill.
vs	
Niram A. Tucker, Walter S. Gurnee Jacob B. Merick & Julius S. Wadsworth	

And now at this day come the said Complainants, and Defendants by their solicitors, And this cause came on to be heard before the Court on the bill of Complaint, answer, replication and proofs filed therein, and was argued by counsel, And the Court after due consideration being now fully advised in the premises, doth order and adjudge that the said Complainants take nothing by their said bill of Complaint, and that said bill be dismissed at the said Complainants Cost.

And thereupon the said Complainants pray an appeal in this cause to the Supreme Court, which is allowed by the Court upon said Complainants filing their Appeal bond herein in the sum of One hundred dollars with security to be approved by the Clerk, within ninety days from this day.

And afterwards, to wit, On the twenty eighth day of November in the year last aforesaid, the said Complainants by their Solicitors filed in the Office of the Clerk of said Court their Appeal bond, which said Appeal bond is in the words and figures as follows, to wit.

Know all men by these presents that we Edward Harwood and David Marsh principals & N. G. Shumway & N. F. Waite sureties are held and firmly bound unto Hiram A. Tucker, Walter S. Gurnee, John Frink & Jacob B. Myrick in the penal sum of One hundred dollars, for the payment of which well and truly to be made we bind ourselves, our executors and administrators,

Sealed with our seals and dated this 22nd day of November. A.D. 1856.

The condition of the above obligation is such that whereas the above bounden Harwood & Marsh filed in the Cook County Court of Common Pleas within & for the County of Cook and State of Illinois a bill in Chancery against the above named obligees which at the September Term A.D. 1856 of said Cook County Court of Common Pleas - was dismissed at Complainants costs, and from which decree, the above named Harwood & Marsh have taken an appeal to the Supreme Court, within and for the State of Illinois.

Now if the said Harwood &
Marsh shall duly prosecute their said appeal,
and pay all costs, judgment and interest and
damages in case said judgment shall be affir-
med then this Obligation to be null & void, other-
wise to be & remain in full force & virtue in law.

Edward Harwood

Seal

David M. Marsh

Seal

H. G. Shumway

Seal

N. F. Waite

Seal

Edw^d P. Towne

Seal

Approved by me, this

28th day of November AD 1856

Walter Kimball Clerk

Cook Co Ct Com Pleas.

The State of Illinois
On Supreme Court } ever from Court
Edmund Hamersdal } County

vs
Nesam A. Tucker

And now comes the plaintiffs Ray,
There is manifest error in the
record and proceedings aforesaid
in this

I. The Court should have rendered
a decree for the ~~to~~ complainants
instead of dismissing the case
~~instead of dismissing the case~~

II. The Court was in dismissing
the bill of complaint

III. The decree rendered in
the case is contrary to ~~the~~ the
evidence

IV. The decree rendered is
contrary to the law and equity
of the case. Wherefore the complainants
pray that said judgment be
reversed and a decree rendered
in their favor; and they intend to
all claim they have lost in the premises.

Shirley Watson
Atty for Complainants

And the said defendant
in answer to the foregoing
petition

Walter Stein Attorney
Came and says there
is no record for the
record and proceedings
of said or alleged
by said defendants
May 26-

Edmond W. Walker
Atty for Plaintiff

In Supreme Court
for Essex
Edward Warriss
Plat.

4

Wm. A. Tucker
Plat.

Assignment of moneys

Filed April 21, 1893
L. Leland
Clerk

Summary of facts & items
Atty for Plaintiff

123

Edward Harwood Esq.

vs

Hiram Tinker Esq.

Filed April 26, 1887

L. Leland

Clerk

Hampden & Marsh Prof.

3
H. A. Purkiss

The drawing of the draft in favor of Hampden & Marsh and the issuing of the funds was an equitable assignment of the same.

A drawing of a draft is an equitable assignment of the funds in the hands of the drawer. ~~and upon receiving~~
~~issue that the payee~~

The tender of funds has a right to order them appropriated to particular purposes, and the party issuing them cannot otherwise apply them, and when issued they are held in trust for the purposes for which they are sent.

All claims are assignable in equity - and
making such assignment and giving
notice to the debtor, gives the assignee
the equitable claim to debt assigned

In all this discussion we are to bear
in mind that these proceedings are
in equity.

The several propositions are so closely connected
that we discuss them all together.

2. Story Equity Jurisprudence Page 406 Sec 1042, 1043
1044, 1045 1046 1047

By these citations these two principles will
be noticed that Story Concedes

1st That at law the drawing of a
draft is not an assignment of the funds
in the hands of the drawee, - (and which
is conceding everything contained in any
and all cases cited for the dependants)
unless assented to by the drawee, so
far as a point at law is concerned.

quely That in equity it is an equitable assignment - and as such can be enforced

Story says - after enumerating in section 1043, the drawing of a draft, and concluding that at law it is not an assignment *se*, "but in cases of this sort, the transaction will have a very different operation in Equity." Thus for instance, if "A" having a debt due to him from "B" should order A to be paid to C, the ordered amount in equity to an assignment of the debt, and could be enforced in equity, although the debtor had not assented thereto.

again, section "1047." In order to constitute an assignment of a debt, a change in action, in equity no particular form is necessary. "A draft drawn by A on B in favor of C for a valuable consideration amounts (as we have seen) to a valid assignment of so much of the funds of A in the hands of B"

Now let us get us get back to the facts in this case on the 23rd day of October 1854, the complainant purchased a draft of Ellis Sturges & paid therefor \$2000 for the same; on the same day Ellis Sturges remitted \$2000 to "H A Tucker & Co," and accompanied the same with the enclosed letter.

W. A. Tucker Co. Cincinnati Oct 23^d 1854

"D. Sui" On hand \$2000, Bk
notes for credit, then same amount
\$2000 Harwood & Marsh - please Honor
Rev. Ellis & Stungis"

the draft still remains the property of
Harwood & Marsh - endorsed by them
for collection simply. J. B. Burch Co. presented
the same - and demanded specie, W. A.
Tucker Co. refused to pay specie but
offered to pay bills - ^{which the bank excepting Burch Co. tend to receive} and ^{and it was fulfilled as shown} by J. B. Burch Co. and before the money
was attached, Harwood & Marsh claimed
an equitable assignment of whatever
funds were in W. A. Tucker Co. hands
that the draft and bills together constituted
such an equitable assignment - and
notified them of such claim and that
before Ellis & Stungis had withdrawn the
appropriation, or any other rights had
accrued which perfected an equitable
assignment.

Ellis & Stungis when they sent the funds
had a right to direct to whom they
should be paid - W. A. Tucker Co. by
receiving those funds, took them subject
to the direction - ^{as a loan} and when the Creditors
assented thereto and notified W. A. Tucker Co.
their rights became perfected.

For due the attachment in person with
in right - for the same is subject
to the rightable assignment

Andersen & Deben - 6 Gallatin R 366
Bensen & Craig 1 Washington R 424

In case in support of assignment
2 Story & Gentry Smith & Moore 1044 Reg

3 Franklin R 393

1 Hsey Bent 331

18 Miso 564

5 Wheeler 645

6 Eng C R 276

12 Hsey R 120

18 Eng CR 702

23 England 311

Cases in also

Tucker

07

Renwood & Marsh

Smith