

No. 14600

Supreme Court of Illinois

Dickerson

VS.

^K
Darrick~~x~~son

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 211

J. W. Middleton & Co., Stationers, 190 Lake St.

Dickerson

vs
Lanning

1864

Pld

IN THE
SUPREME COURT
OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A.D. 1864.

— vs. —
THOMAS S. DICKERSON, Appellant,

R. R. DERRICKSON, Appellee.

APPELLEE'S BRIEF.

I.

In construing contract sued on, the intention of the parties must be interpreted in connection with and consistently with the fact that the judgment against Kimball was assigned, and bills and notes rendered to Dickerson, plaintiff in error, by Derrickson, defendant in error; and all right to collect the same was thereby vested in said Dickerson.

II.

The contract sued on cannot be a guaranty for the payment of indebtedness of Kimball to Derrickson, because all power of

Derrickson to collect of Kimball ceased with assignment of said judgment and rendering of said bills and notes ; and if a guaranty at all, the instrument must be a guaranty to collect Three Hundred and Twenty-Five Dollars of Kimball, or on failure to collect of Kimball, a promise by said Dickerson to pay, three months after date, Three Hundred and Twenty-Five Dollars to said Derrickson.

III.

When the instrument sued on is construed in connection with said assignment of said judgment, a rendering of said bills and notes of the same date, it seems clear the parties intended it should be an absolute promise to pay by Dickerson to Derrickson Three Hundred and Twenty-Five Dollars, three months after date.

IV.

An agreement will always be construed so as to support, and not so as to defeat a contract, where such a construction is possible.

Parsons on Contracts, vol. 2, p. 15.

Pollock vs. Stacy, 922 B., p. 1133. 2,

Smith vs. Parkhurst, 3 Atkins, 135.

Brown vs. Slater, 16 Conn., 192.

V.

No demand could be made by said Derrickson, because, having assigned all legal right in judgment and notes and bills against Kimball to said Dickerson, said Derrickson was completely powerless to demand or collect from Kimball.

VI.

It is not necessary to allege and prove consideration for contract sued on, since the consideration is acknowledged in the instrument itself which is sued on.

VII.

That said Dickerson assumed to pay no other and different indebtedness of George Kimball, than the said judgment, is clear *the consideration in the assignment of* —because judgment vs. Kimball, and amount Dickerson promises to pay are the same; and the assignment of said judgment against Kimball is the very consideration to pay the Three Hundred and Twenty-Five Dollars, agreed to be paid by said Dickerson to said Derrickson.

VIII.

The interest was rightly computed.

The agreement itself shows the consideration and the introduction of the record in the attachment case was unnecessary.

There was proof enough without that record. The introduction was proper. In any sense, it could do no injury to appellant.

It is sufficient that the legal effect of an instrument or contract be stated in the pleadings.

The parties to the contract sued on treated the judgment which was assigned as against the steamboat "Nile."

The contract sued on was not a collateral undertaking, it is a positive promise.

A payment by Kimball to Derrickson would not satisfy the judgment assigned to Dickerson, nor discharge the notes assigned to him. Kimball could pay no one but Dickerson, who held the claims.

SAMUEL K. DOW,

Att'y for Appellee.

211 - 108

Dickson

vs.

Derrickson

Appellor Brief

Filed May 28. 1864
J. L. Linnell

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1864. }

THOMAS S. DICKERSON, }
Appellant. }

v.

R. P. DERRICKSON, }
Appellee. }

APPELLANT'S BRIEF.

STATEMENT OF THE CASE.

This is a suit in assumpsit upon the following instrument:



The declaration contains three special and the common counts. The first count alleges that the plaintiff below had, at the January term, A. D. 1861, of the Superior Court of Chicago, recovered a judgment against the "Steamboat Nile" for \$334.86—and that at and before the making

of the promise and undertaking of the defendant, in said count mentioned, George Kimball was indebted unto the said plaintiff in the sum of \$500, for money loaned, which said sum was in part secured, to be paid by a promissory note, and in part in open account against said Kimball; and in consideration that said plaintiff did, on the 6th day of May, A. D. 1861, make and deliver to said defendant, a complete assignment and transfer of the aforesaid judgment, and did sell, assign and transfer, unto said defendant, certain notes, accounts, due bills, evidences of indebtedness against the said George Kimball and in favor of the said Dickerson, he, the said defendant, undertook and promised to pay the plaintiff \$325, three months from and after the time last aforesaid; and the said plaintiff avers that the said three months have long since elapsed and the said defendant has not paid, etc.

The second count alleges that, the plaintiff had and owned a certain judgment against the "Steamboat Nile" for \$334.86, recovered, as above stated, and at the time of the making of the said agreement of the said defendant, mentioned in this count, the said plaintiff owned certain promissory notes, signed by the said Kimball, and certain bills of account against the said Kimball, amounting to \$500, and in consideration that the plaintiff did, on the 6th of May, A. D. 1861, sell and assign said judgment so recovered, against said "Steamboat Nile", by proper deed of assignment, and did assign and deliver said notes and accounts unto said defendant, he, the said defendant, made and executed the following agreement—which is the agreement above set forth. In and by said agreement, said plaintiff avers that, the said defendant, in consideration of the premises, undertook and promised to pay the plaintiff \$325 three months after said 6th of May, 1861, and plaintiff avers that said three months have long since elapsed, and that said defendant has not paid said sum or any part thereof.

The third count sets forth that, before and at the time of the making the contract and agreement of the defendant in this count mentioned, the said plaintiff had, and owned, a judgment against the steamboat Nile, for the sum of \$334.86, recovered as above stated, and before and at the time of making the said agreement of the said defendant, mentioned in this count, the said plaintiff had and owned certain promissory notes and book accounts, against said Kimball, amounting to \$500,

and in consideration that the plaintiff would sell and assign all his, plaintiff's right, title and interest in and to the aforesaid judgment, so recovered against the steamboat Nile, as aforesaid, and would sell and assign to him, said defendant, said notes and accounts, the said defendant undertook, and then and there faithfully promised said plaintiff, by his writing obligatory, dated the 6th of May, 1861, to guarantee and pay unto the said plaintiff the payment of \$325, which the said Kimball, then owed to plaintiff, in case said George Kimball did not pay said sum in three months from the date of said writing, which writing is as follows:

“ In consideration of assignment of judgment against George Kimball
“ to T. S. Dickerson this day, and rendering of bill and notes to me, I
“ do hereby agree, in case George Kimball does not pay to R. P. Der-
“ rickson the sum of three hundred and twenty-five dollars in three months
“ from this time, to guarantee to said Dickerson the payment of said sum
“ of money; said judgment being against steamboat Nile.

CHICAGO, MAY 6th, 1861.

[Signed] THOMAS S. DICKERSON.”

And the plaintiff avers that, he, confiding in the promise of the defendant, made and delivered to defendant, a deed of assignment of said judgment against said steamboat Nile, and did thereby sell and assign, and deliver, said judgment to said defendant, and did sell, assign and deliver, to said defendant, said notes and bills of account against said George Kimball; and although the said three months, specified in said writing, have long since elapsed, yet the said George Kimball has not, although he was afterwards to-wit: on the day and year of the expiration of the said three months, requested by the plaintiff to do so, paid said sum or any part thereof, but has hitherto neglected and refused; of which said premises, the said defendant afterwards, to-wit: on the 6th day of August, A. D. 1861, there had notice; yet the said defendant, not regarding his said promise, but contriving, etc., has not as yet guaranteed to the said plaintiff, or paid the said sum of money, or any part thereof, although he, the said defendant, afterwards, to-wit: on the first day of August, A. D. 1863, was requested by the said plaintiff.

I.

The instrument upon which the defendant is sought to be charged, is not a promissory note, although the same is treated as such in the first and second counts of the declaration.

Story on Promissory Notes, sec. 22;

Chitty on Bills, 134;

Kelly v. Hemingway, 13 Ill., 605.

II.

But the same is a collateral undertaking; a conditional promise to guarantee the debt of another; and, therefore, the consideration should be alleged and proved.

See authorities, *supra*.

Also, *Weed v. Clark*, 4 Sandf. Sup. Ct. Rep., 31;

Green v. Dodge, 2 Ohio, 498;

Joslyn v. Collinson, 26 Ill., 61.

III.

The consideration, however, that is alleged, is not proved, but the same is essentially variant from the proof in each of the counts of the declaration.

1. As to the first count: the plaintiff states the consideration of the promise was, an assignment of judgment against the "*Steamboat Nile*."

The instrument signed by the defendant is equivocal; in the former part of it the judgment is stated to be against *Geo. Kimball*—in the latter part it is stated to be against the "*Steamboat Nile*."

The plaintiff seeks to explain this by offering additional proof, namely: the record of the judgment rendered by the Superior Court of Chicago, at the January term, A. D. 1861, and an assignment of the same by the plaintiff to the defendant; but this is not a judgment against the steamboat Nile, as is alleged in every count of the declaration, but a judgment

against *Geo. Kimball*. The defendant objected to the introduction of this record, as it was a variance from the declaration.

2. The first count also alleges as a part of the consideration, that the plaintiff assigned to the defendant certain notes, accounts, due bills—evidences of indebtedness against the said George Kimball, but the instrument signed by the defendant, which is the only proof upon the subject, shows a “*rendering of bill and notes*” to the defendant, but they nowhere appear to be against *George Kimball*.

Where more than is necessary is stated in a declaration, it is necessary to prove it.

1 Chitty's Plead., 304.

3. This count also alleges that the defendant promised (absolutely) to pay in three months; whereas the promise was not a simple, absolute, but a conditional, and not a promise to *pay* at all, but in a certain contingency to guarantee the payment.

There is an essential difference between an absolute and a conditional promise, and a variance between the allegations and proof in such a case is fatal.

2 Greenleaf Evi., sec. 11 ;

Hamburgh et al. v. Ella et al., 1 Adolph and Ellis, 61 ;

A contract should be correctly stated in the pleadings.

Crittenden v. French, 21 Ills., 598 ;

4. As to the second and third counts, the same variances exist, except in the third count the promise of the defendant is not alleged as an absolute, but a conditional one. But it is alleged in the third count that at the expiration of the three months mentioned in the writing of the defendant, a demand was made upon George Kimball for the said \$325, and notice thereof, and of non-payment, was at the same time given to the defendant; yet of this there was no proof whatever.

IV.

No suit is maintainable upon this instrument under the common counts.

Douglass et al. v. Reynolds et al., 7 Peters, 113 ;

V.

This is a conditional undertaking to guarantee the debt of another. Not the \$500, or any other indebtedness of George Kimball, pretended to have been assigned to the defendant; for that would not give a sensible construction to the contract; as the defendant would not undertake to guarantee the payment to the plaintiff, of an indebtedness which the plaintiff had assigned, and no longer owned, but a conditional undertaking to guarantee some other indebtedness which the said George Kimball still owed to the plaintiff.

To sustain a suit at all upon such an instrument, it is necessary for the plaintiff, not only to allege, as he has done in the third count of his declaration, but also to prove that, at the expiration of the three months named in the instrument, he made a demand upon the principal, the said George Kimball, and notice of non-payment to the defendant. There is no such proof.

Jones v. Pierce, 35 New Hamp., 295;
Green v. Dodge, 2 Ohio, 498;
Douglas et al. v. Reynolds et al., 7 Peters, 113;
Bank of New York v. Livingston, 2 Johns. Cases, 409;
Burton v. Fletcher, 31 Vermont, 418;
Mechanic's Fire Ins. Co. v. Ogden, 1 Wend., 137;
Morris v. Wadsworth, 11 Wend., 100;
Hance v. Miller, 21 Ills., 636;
Allison v. Waldham, 24 Ills., 132;

VI.

At least some legal excuse should have been plead and proved, for not making such demand.

VII.

Before the defendant can be called upon to pay, the plaintiff must prove that the debt was not paid by the said Geo. Kimball.

Craig v. Phipps, 23 Mississippi (1 Cush.), 240;

There is no such proof in the case. A. J. Knisely testifies that Kimball had not been in Chicago since the suit in attachment by Derrickson against him, to his knowledge. It certainly was not essential that Kimball should have been in Chicago, to enable him to pay voluntarily, or the plaintiff to collect an indebtedness against him.

VIII.

If the defendant is liable at all, he is not liable for interest upon the amount named in the instrument, except from the date of the demand upon the defendant. For until such demand the defendant could not be advised of the non-payment by Kimball, and hence not in default. There is no proof of any demand before suit, but interest is allowed by the verdict from the expiration of the three months named in the instrument, and the court erred in not allowing the motion for new trial, and rendering judgment upon the verdict.

CYRUS BENTLEY,

Attorney for Appellant.

211

DeKensm

18

DeKensm

Appellants Brief

First May 13. 1864

J. L. DeKensm

211

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable Erastus S. Williams Judge of the Seventh Judicial Circuit of the State of Illinois, and sole presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the Third Monday, (being the Sixteenth day) of November in the year of our Lord One Thousand Eight Hundred and sixty three and of the Independence of the said United States the Eighty Eighth.

Present, Honorable Erastus S. Williams Judge of the 7th Judicial Circuit }
of the State of Illinois. }

Joseph Knox States Attorney.

David S. Hammond Sheriff of Cook County.

Attest, Wm L. Church Clerk.

Be it remembered that heretofore to wit on
the twenty fifth day of August in the year of
our Lord One thousand eight hundred and
sixty three R. P. Derrickson by S. R. Dorr
his Attorney filed in said Court his certain
praecept & security for costs which are respect
ively in the words and figures following to-wit.
State of Illinois ss
Cook County }

In the Circuit Court of
Cook County September
A 10 1863

R P Derrickson

Thomas S. Dickerson

Assumpset Dam \$500

Will the Clerk of said
Circuit Court issue summons to the above

Case returnable to the Sept Term of said Court
and oblige
\$ R Dorr

Atty for plff

I hereby enter myself security for the costs in
the above case and acknowledge myself bound
to pay all the costs that may accrue and be
adjudged against the said plaintiff

\$ R Dorr

Chicago Aug 25 1863

And thereupon to wit on the same day and
year last aforesaid there was issued out of said
Court and under the seal thereof the People
writ of fi. fac. with the Sheriff's endorsement
thereon is in the words and figures following
to wit

State of Illinois
Cook County
The people of the State of
Illinois to the Sheriff of said County, greeting
We command you that you summon Thomas
Dickeron if he shall be found in your
County personally to be and appear before
the Circuit Court of Cook County on
the first day of the next term thereof, to
be holden in Chicago in said County of
Cook on the first Monday of September
next to answer unto R P Derrickson
in a plea of trespass on the case on
promises to the damage of the said

Plaintiff as is said on the sum of Five hundred
dollars, And have you there this writ with an
endorsement thereon in what manner you shall have
executed the same

Witness William L Church

Clerk of our said Court and the seal thereof
at Chicago aforesaid this twenty fifth day of
August 10 1863

(stamp) (Seal)

Wm L Church Clerk

Served by reading to the within named defendant
the 25th day of August 1863.

Fees service 50

Mile 10

Return 10 70c

David S Hammond Sheriff

By John A Nelson deputy

And afterwards to wit on the twenty eighth
day of August in the year last aforesaid
said Derrickson filed by his Attorney filed in
said Cause his certain Declaration and
Statement of account sued on which are
respectively in the words and figures following
to wit

State of Illinois In the Circuit Court of Cook
Cook County County September Term 10 1863
Richard P Derrickson
vs Thomas S Dickerson

4
Richard P Derrickson plaintiff in this suit by
Samuel R Wor his Attorney complains of Thomas D
Dickerson defendant in this suit who has been sum=
moned & on a plea of trespass on the case upon
promises, For that whereas before and at the time
of the making of the promises and undertakings
of the said defendant next hereinafter mentioned
the said plaintiff had by the consideration
of the Superior Court of Chicago recovered a
judgment against the "Steamboat Nile" so called
for the sum of three hundred and thirty four
dollars and eighty six cents and costs of suit
at the January Term of said Court A D 1861
wherein said Richard P Derrickson was
Plaintiff and one George Kimball was defendant
and that said judgment had not been paid
cancelled set aside or reversed but was in
full force and effect against the said Steamboat
Nile" so called and that at and before the
making of the promise and undertaking of the
said defendant in this Court mentioned the
said George Kimball was indebted unto said
Derrickson the said plaintiff in a large
sum of money to wit, the sum of five hun=
dred dollars for money loaned unto said
Kimball at said Kimball's request, and also
for materials furnished by said Derrickson
unto said Kimball at his said Kimball's like

request which said sum was in part secured to be paid by a promissory note made and executed by said Kimball and payable to said Derickson and in part in open account against said Kimball, and for and in consideration that said Derickson said plaintiff did on the sixth day of May A.D. 1861 at Chicago to wit at Cook County aforesaid make execute and deliver a complete assignment and transfer of the aforesaid judgment unto said defendant and did sell assign transfer and deliver unto said Defendant certain Notes accounts due bills and evidences of indebtedness against the said Leo Kimball and in favor of the said Derickson which he the said Derickson then held against said Kimball, he the said Defendant on the same day and at the place aforesaid undertook and then and there faithfully promised the said plaintiff to pay him the sum of Three hundred and twenty five dollars three months from and after the time last aforesaid, and the said plaintiff avers that the said three months have long since elapsed and that the said defendant has not paid said sum of money in this Court mentioned or any part thereof neither has any one for said defendant paid said sum or any part thereof although said

2^d Count

defendant has been requested by said plaintiff to
 pay said sum of money to wit at Cook County
 aforesaid. And also for that whereas before
 and at the time of making the agreement of the
 said defendant in this Court mentioned he the
 said plaintiff had and owned a certain judgment
 against the "Steamboat Kyle" (a vessel plying upon
 the navigable waters of Lake Michigan) for
 the sum of three hundred and thirty four dollars
 and eighty six cents recovered by consideration
 of the Superior Court of Chicago at the January
 Term of said Court A.D. 1861 wherein Richard
 P. Derrickson was plaintiff and one George
 Kimball was defendant which said judgment
 at the time aforesaid had not been set aside
 reversed or satisfied but was in full force
 and effect and before and at the time of
 the making of the said agreement of the
 said defendant mentioned in this Court
 the said plaintiff owned and possessed certain
 promissory notes signed by the said Kimball
 And certain bills of account against the
 said Kimball which the said Kimball
 owed to said plaintiff amounting in all to a
 large sum of money to wit the sum of Five
 hundred dollars which the said Kimball
 owed to said plaintiff. Said plaintiff avers
 that for and in consideration that the said

plaintiff did on the sixth day of May A.D. 1861
sell and assign said judgment so recovered
against said "Steamboat Hire" unto the said de-
fendant by proper deed of assignment for that
purpose and did assign and deliver said notes
and accounts unto said defendant he said
defendant made and executed the following
agreement in writing and delivered the same
to said plaintiff which agreement is in the
following words and figures: In consideration
of assignment of judgment agt Geo Kimball
to T S Dickerson this day and rendering
of bill & notes to me I do hereby agree on
case Geo Kimball does not pay to RP
Dickerson the sum of three hundred and
twenty five dollars in 3 mo from this
time to guarantee to said Dickerson the
payment of said sum of money said judgment
being agt Steamboat Hire

(Signed) Thomas S Dickerson
Chicago May 6th 1861

And by said agreement said plaintiff avers
that the said defendant in consideration of
the premises undertook promised and agreed
to pay unto said plaintiff the sum of Three
hundred and twenty five dollars three months
after the date thereof to wit three months
from and after the sixth day of May

AD 1863 and said plaintiff further avers that
 said three months has long since elapsed and
 that said defendant has not neither has any
 one for him paid said sum of money or any part
 thereof although said defendant has been often
 requested to do so at Cook County
 aforesaid. And also for that whereas before
 and at the time of the making of the contract
 and agreement of the said defendant in this
 Court mentioned the said plaintiff had and owned
 a judgment against the Steamboat Nile a vessel
 that upon the navigable waters of Lake Michigan
 and then at Chicago for the sum of three hun-
 dred and thirty four dollars and eighty six
 cents recovered by consideration of the Su-
 perior Court of Chicago at the January
 Term of said Court AD 1861 wherein Reh-
 ard P. Durrieckson was plaintiff and one
 George Kimball was defendant which
 said judgment at the time aforesaid was
 not satisfied set aside or reversed but
 was in full force and effect and before
 and at the time of making the said agree-
 ment of the said defendant mentioned in this
 Court, the said plaintiff ~~had~~ ^{had} owned and
 possessed certain promissory notes and book
 accounts against said Kimball which the
 said Kimball then and there owed to the

and Dickerson, amounting in all to a large sum
of money to wit; the sum of five hundred dollars
and for land in consideration that the said
plaintiff at the special instance and request
of the said defendant would sell assign trans-
fer set over and deliver all his said plaintiffs
right title and interest in and to the aforesaid
judgment so recovered against the Steamboat
Hile as aforesaid and would sell and assign
to him said defendant said notes and accounts
which he said plaintiff held and had against
said George Kimball, he the said defendant
undertook and then and there faithfully prom-
ised said plaintiff by his writing obligatory
bearing date the sixth day of May A.D. 1861
and by him duly signed and delivered to said
plaintiff to guarantee and pay unto the said
plaintiff the payment of the sum of three
hundred and twenty five dollars which
the said George Kimball then owed to said
plaintiff in case said George Kimball did
not pay said sum of three hundred and twenty
five dollars in three months from the date of
said writing obligatory which said writing
is in these words and figures following, "In
consideration of assignment of judgment agt
Geo Kimball to T D Dickerson this day and
rendering of bill & notes to me I do hereby

"agree in case Geo Kimball does not pay to R
 "P Herrickson the sum of three hundred and twenty
 "five dollars in 3 mo from this time to guarantee
 "to said Herrickson the payment of said sum
 "of money said judgment being against the
 "Steamboat Nile"

(Signed) Thomas S Dickerson
 Chicago May 6 1861

And the said plaintiff avers that he confiding
 in the promise and undertaking of the said
 defendant did afterwards to wit on the same
 day and year aforesaid to wit at Cook County
 to aforesaid make execute and deliver to
 said defendant a deed of assignment of said
 judgment against said "Steamboat Nile" and
 did thereby sell assign transfer and deliver
 said judgment to said defendant and did
 then and there sell assign transfer and render
 said notes and bills of account against
 said George Kimball which he then held
 unto said defendant and delivered the
 same to him so endorsed and assigned
 And although the three months specified in
 said writing obligatory in which the said Geo Kimball
 was by said agreement to pay to said plaintiff
 said sum of three hundred and twenty five dollars
 has long since elapsed yet the said George Kimball
 has not (although he was afterwards to wit on

"agree in case Geo Kimball does not pay to R
 "P Herrickson the sum of three hundred and twenty
 "five dollars in 3 mo from this time to guarantee
 "to said Herrickson the payment of said sum
 "of money said judgment being against the
 "Steamboat Nile"

(Signed) Thomas S Dickerson
 Chicago May 6 1861

And the said plaintiff avers that he confiding
 in the promise and undertaking of the said
 defendant did afterwards to wit on the same
 day and year aforesaid to wit at Cook County
 to aforesaid make execute and deliver to
 said defendant a deed of assignment of said
 judgment against said "Steamboat Nile" and
 did thereby sell assign transfer and deliver
 said judgment to said defendant and did
 then and there sell assign transfer and render
 said notes and bills of account against
 said George Kimball which he then held
 unto said defendant and delivered the
 same to him so endorsed and assigned
 And although the three months specified in
 said writing obligatory in which the said Geo Kimball
 was by said agreement to pay to said plaintiff
 said sum of three hundred and twenty five dollars
 has long since elapsed yet the said George Kimball
 has not (although he was afterwards to wit, on

the day and year of the expiration of the said three months
time to wit at Cook County aforesaid requested by the
said plaintiff so to do as yet paid to him said sum
of three hundred and twenty five dollars or any part
thereof, but has hitherto wholly neglected and refused
so to do to wit at Cook County aforesaid of all
which said promises the said defendant afterwards
to wit on the sixth day of August A D 1861 then
had notice, yet the said defendant not regarding
his said Agreement promise and undertaking in
said agreement made but contriving and intend-
ing to deceive and defraud the said plaintiff
in this behalf has not as yet guaranteed to the
said plaintiff or paid the said sum of money in
said agreement mentioned or any part thereof although
he the said defendant afterwards to wit on the
first day of August A D 1863 at Cook County
aforesaid was requested by the said plaintiff
so to do and has hitherto wholly refused and
still wholly neglects and refuses so to do and
the said sum of three hundred and twenty five
dollars still remains wholly due and unpaid
to the said plaintiff to wit at Cook County a-
foresaid, And whereas also the said defendant
afterwards to wit on the same day and year
and at the place ~~last~~ aforesaid was indebted
to the said plaintiff in the further large sum
of money to wit, the sum of three hundred

4th Court or
Comm Court

Dollars of like lawful money as aforesaid for money
 before that time lent and advanced by the said plain-
 tiff to the said defendant, and at the like request of
 the said defendant, And for other money by the said
 plaintiff before that time paid, laid out, and ex-
 pended for the said defendant and at the like request
 of the said defendant, And for other money by the
 said Defendant before that time had and received
 to and for the use of the said plaintiff, And for
 other money before that time and then due and owing
 the said plaintiff for interest upon and for the
 forbearance of divers other sums of money before
 that time and then due and owing from said De-
 fendant to said plaintiff, And being so indebted
 the said defendant on consideration thereof
 afterwards to wit on the same day and year
 and at the place aforesaid undertook and then
 and there faithfully promised the said plaintiff
 well and truly to pay unto the said plaintiff
 the said several sums of money in this Count-
 mentioned when the said defendant should be
 therunto afterwards requested, And whereas also
 the said Defendant afterwards to wit on the
 same day and year and at the place ~~last~~ aforesaid
 accounted with the said plaintiff of and concern-
 ing divers other sums of money before that time
 due and owing from the said defendant to
 the said plaintiff, and then and there being

in arrear and unpaid and upon such accounting
the said defendant then and there was found to
be in arrear and indebted to the said plaintiff in
the further large sum of money to wit the sum of
Three hundred and twenty five dollars of like
lawful money as aforesaid, And being so found in
arrear and indebted to the said plaintiff the
said defendant in consideration thereof after
wards to wit on the same day and year and at
the place aforesaid undertook and then and there
faithfully promised the said plaintiff well
and truly to pay unto the said plaintiff the
said sum of money last mentioned when the said
Defendant should be thereunto afterwards requested
Nevertheless, the said Defendant (although often
requested &c) has not yet paid the several
said sums of money above mentioned or any
or either of them, or any part thereof to the
said plaintiff, the said Defendant has hitherto
altogether refused and still does refuse
to the damage of the said plaintiff of
Five hundred Dollars and therefore the said
plaintiff brings suit to

Samuel R. Orr

Plaintiff's Attorney

(Statement of Account & Copy of Agreement
sued on)

Copy of agreement sued on, In considera-

tion of assignment of judgment agt Geo Rimball
to T & S Dickinson this day and the rendering of
bills & notes to me, I do hereby agree on case Geo
Rimball does not pay to R P Dickinson the
sum of three hundred and twenty five dolls on
3 mo from this time to guarantee said Dickinson
the payment of said sum of money said judgment
being agt Steamboat Nile

(signed) Thomas S Dickinson

Chicago May 6 1861

Copy of account sued on
T & S Dickinson Or

To R P Dickinson

To money had & recd	\$ 325.00
" " loaned	\$ 325.00
" " due on sale of judgment	
& bills & notes	\$ 325.00
" Accounts stated	\$ 325.00

And afterwards to wit on the 14th day of
September in the year of our Lord One thousand
eight hundred and sixty three, said defendant
Thomas S Dickinson by Arune Bentley & Reynolds
his Attorneys filed in said Court in said
cause his certain pleas in the words and fig-
ures following to-wit:

Thomas S Dickerson

^{vs}
Richard P Derrickson

In the Cook County
Circuit Court of the
September Term A.D. 1863

And the said defendant by Greene Bentley & Reynolds his Attorneys comes and defends the wrong and injury whereof and says he did not undertake and promise in manner and form as the said plaintiff hath above thereof complained against him, and of this he puts himself upon the Country &c.

Greene Bentley & Reynolds
Defendants Attys

And the said plaintiff does the like

O R Dorr Peff Attys

And for a further plea in this behalf the said defendant by leave of the Court here for this purpose first had and obtained, according to the form of the Statute in such case made and provided says actio non, because he says that the said Assignment of judgment and transfer and delivery of notes and accounts in said declaration mentioned, if any such were made, were at the time of the said alleged transfer at Cook County aforesaid of no value whatever, and the consideration of the alleged promises of the said defendant if any such were made wholly failed and

that the said defendant is ready to verify, wherefore
he prays judgment if the said plaintiff ought to
have or maintain his aforesaid action thereof
against him &c

Frederic Bentley & Reynolds
Defts Attys

And afterwards to wit on the Eighteenth day of
November in the year of our Lord One thousand
and eight hundred and sixty three said
Plaintiff by his Attorney filed in said Cause
in said Court his certain demurrer in the
words and figures following to-wit

Richard P. Dickerson	}	In the Circuit Court of Cook County October Term 1863
Thomas S. Dickerson		

And now comes the said plaintiff by his
Attorney J R Dorr and says that the plea
of the said defendant secondly above
pleaded is insufficient in law

J R Dorr Plff Attorney

And afterwards to wit at the November Term
of said Court to wit on the 23d day of
November in the year of our Lord One thousand
and Eight hundred and sixty three the
following proceedings were had in said
Court and entered of record to wit.

R P Herrickson

Thomas S Dickerson

Assumpsit

This Cause came on this day to be heard upon the demurrer of the plaintiff to the 2nd plea of the defendant filed therein and Counsel having been heard as well in support of said demurrer as in opposition thereto and the Court being now fully advised in the premises doth find that the defendant's said plea and the matters therein contained are not sufficient in law to bar or preclude the said plaintiff from having and maintaining his aforesaid action against the said defendant. Therefore it is ordered that said demurrer be and the same hereby is sustained with leave to the said defendant to amend his said 2nd Plea.

And afterwards to wit at the Term last aforesaid of said Court to wit on the 18th day of December in the year of our Lord One thousand eight hundred and sixty three the following proceedings were had in said Cause and entered of record to wit:

R P Herrickson

Thomas S Dickerson

Assumpsit

This day again comes the said plaintiff by

S R Dorr his Attorney and the said defendant
 by W Bentley his Attorney also comes and by
 Consent of said parties and on motion, it is
 ordered that the order heretofore entered contin-
 uing said Cause be and the same hereby is
 set aside and for nought returned, And issue
 being joined between the said parties
 it is ordered that a jury come, Whereupon
 come the jurors of the jury of good and law-
 ful men to-wit Morris Webster, Robert Moore
 John McLaughlin, William Emerson, John T
 Houter, Edgar Isahell, Peter S Dorney
 John T Caigne, Henry Foster, W W Sawyer
 J P Watch and P Webster who being duly
 elected tried and sworn well and truly to try
 the issues joined aforesaid and a true ver-
 dict render according to law and the evidence
 and after hearing the evidence and arguments
 of Counsel as well on the part of the Plaintiff
 as of the defendant and instructions from
 the Court retire to consider of their verdict
 and afterwards return into Court and say
 "We the jury find the issues for the Plaintiff
 and assess his damages to the sum of
 Three hundred and ninety one dollar and
 fifteen cents, Whereupon the said defendant
 by his Counsel moves the Court for a new
 Trial of said Cause

And afterwards to wit at the January Term of said Court
to wit on the 18th day of January in the year of our
Lord One thousand eight hundred and fifty four
the following proceedings were had in said Court
in said Cause and entered of record to-wit.

R P Derrickson

Thomas S Dickerson } Assumpsit

This day again come the said parties by their
Attorneys and Counsel having been heard as
well in support of the motion of the defendant
heretofore entered for a new trial of said Cause
as in opposition thereto and the Court being
now fully advised of and concerning the prem-
ises doth order that said motion be and the
same hereby is overruled to which ruling of
the Court in overruling said motion for a
new trial the defendant by his Counsel now
here excepts and on his motion two weeks are
allowed the defendant in which to prepare
and file his bill of Exceptions herein. Therefore
it is considered by the Court that said plain-
tiff do have and recover of the said defendant
his damages of Three hundred and ninety
one dollars and fifteen cents in form aforesaid
paid by the jury aforesaid assessed together
with his costs and charges by him about his
suit in this behalf expended.

and have execution therefor, Whereupon the said defendant excepts to the rulings and judgment of this Court in said cause and prays and appeal therefrom to the Supreme Court of the State of Illinois which is granted by the Court upon condition that the said defendant shall within two weeks from this date execute and file with the clerk of the Court his Appeal bond herein in the ^{penal} sum of Six hundred dollars conditioned according to law with good and sufficient surety to be approved by the Court,

And afterwards to wit on the first day of February in the year of our Lord One thousand eight hundred and sixty four said defendant by his Attorney filed in said Court his certain Bill of Exceptions in the words and figures following to wit.

Richard P. Herrickson	}	Circuit Court of Cook County
Thomas S. Dickinson		
Bill of Exceptions;		
State of Illinois	}	vs
Cook County		

Be it remembered that on this eighteenth day of December A D 1863 this cause came on to be tried upon the issues joined therein and the parties appearing by their respective

Counsel and a jury having been duly impaneled
The Plaintiff offered in evidence the following
papers in a cause commenced in the Superior
Court of Chicago by the said R P Derickson
Plaintiff and against the Steamboat Nile deft-
State of Illinois } ss
Cook County }

Richard P Derickson being first duly sworn
on his oath says that the Steamboat Nile is
a boat repaired & equipped and running upon
the navigable waters within the jurisdiction of
this State of Illinois that George Kimball is
the owner of said boat that there is due
this affiant on account of work done by
him as boatman in the service of said boat
and for supplies and materials furnished by
him for on account of and towards the repair-
ing furnishing & equipping said boat and its
machinery and furniture the sum of three
hundred and thirty four dollars and eighty
six cents that the whole of said sum became
due and payable between the 25th day of Sep-
tember A D 1860 and the 13th day of Decem-
ber instant that the said sum is now ready
wholly paid justly due and is wholly unpaid
and this affiant prays that a writ of
Attachment may issue against said Steam-
boat Nile and further the affiant saith not

Subscribed & sworn to
this 18th day of December
A D 1860 before me

R P Derrickson

Walter Kimball Clerk

Endorsed Filed Decr 18 1860 Walter Kimball Clerk

(Bond) Know all men by these presents that me Richard P. Derrickson, and Abram Kinsely, both of Chicago Cook County Illinois are held and firmly bound unto George Kimball in the penal sum of Six hundred and sixty nine dollars and seventy two cents lawful money of the United States for the payment of which said sum well and truly to be made me and ourselves our heirs executors and administrators jointly and severally by these presents sealed with our seals and dated this 18th day of December A D 1860.

The Condition of the above obligation is such, that whereas the above bounden Richard P. Derrickson has on the day of the date hereof prayed an attachment out of the Superior Court of Chicago Cook County at the suit of himself against the Estate of the above named George Kimball for the sum of Three hundred and thirty four dollars and eighty six cents and that same being about to be sued out of said Court

returnable on the first Monday of January next
to the term of said Court then to be holden.
Now if the said Richard P Derrickson shall
prosecute his said suit with effect or in
case of failure therein shall well and truly
pay and satisfy the said George Kimball all
such costs in said suit and such damages
as shall be awarded against the said Rich-
ard P Derrickson his heirs executors or ad-
ministrators in any suit or suits which may
hereafter be brought for wrongfully removing out
the said Attachment then the above obliga-
tion to be void otherwise to remain in full force
and effect

Richard P Derrickson (Seal)
Attorney at Law (Seal)
H. R. Knisely

(Endorsed) Filed December 18th 1860

W Kimball Clerk

(Writ) State of Illinois
Cook County

The people of the State of
Illinois to the Sheriff of said County, Greeting
Whereas Richard P Derrickson hath com-
plained on oath to Walter Kimball Clerk
of the Superior Court of Chicago, of Cook
County that George Kimball owner of the
Steamboat Nile is justly indebted to the said
Richard P Derrickson to the amount of

Three hundred and thirty four dollars and eighty six cents on account of work done by him as boatman in the service of said boat for supplies and materials furnished by him for on account of and toward the repairing furnishing and equipping said boat and its machinery and furniture while said boat was running upon the navigable waters of the State of Illinois and the said Richard P Derrickson having given bond and security according to the directions of the act in such case made and provided. We therefore Command you that you attach the said Steam boat with her engine machinery sails rigging tackle apparel and furniture to be found in your County as shall be of value sufficient to satisfy said debt and costs according to the said Complaint, and such Estates so attached in your hands to secure or so to provide that the same may be liable to further proceedings thereupon according to Law at a term of said Superior Court of Chicago to be holden at Chicago within and for the County of Cook on the first Monday of January next so as to compel the said George Kimball to appear and answer the Complaint of the said Richard P Derrickson and that you also

summon as garnishee to be and appear at
the said Court on the said first Monday of
next term and there to answer to what may
be objected against, when and where you shall
make known to the said Court how you have
executed this writ, And have you then and
there this writ, Witness Walter Kimball Clerk
of our said Court and the seal thereof at Chicago
in said County this 18th day of December
A.D. 1860

Seal Walter Kimball Clerk

(Endorsed) By virtue of the within writ, I have lined
upon the within described property this 18th
day of December 1860, Left not found
in my County this 7th day of January 1861
S 50 Paid by Compt Atty A G Keating Sheriff
m 10 by H Sumner Deputy
R 10
70

(Bar) State of Illinois | The Superior Court of
Cook County | Chicago of the January
Term A.D. 1861

Richard P. Quirkson Plaintiff in this
suit by Thompson & Bishop his Attorneys
Complains of George Kimball owner of the
Steamboat Alle and defendant herein of a
plea that he render unto the said plaintiff
the sum of three hundred and thirty four

dollar and eighty six cents of lawful money of the United States which he owes to and unjustly detains from him, For that whereas the said defendant heretofore to wit on the 13th day of December A D 1860 was indebted to the said plaintiff to wit at said County of Cook, in the sum of two hundred and seventy dollars for services as a boatman on board the Steam boat Nile of which Steamboat Nile the said George Kimball was the owner and for the work & labor care and diligence of the said plaintiff done & performed on & about said boat as boatman at the request of the said George Kimball the owner of said Steamboat whereby & by reason of said sum of money remaining wholly unpaid an action hath accrued to the said plaintiff to demand & have of & from the said defendant the said sum of Two hundred & seventy dollars parcel of said sum above demanded, And for that whereas also the said defendant heretofore to wit on the fourth day of October A D 1860 was indebted to the said plaintiff in the further sum of Sixty four dollars and eighty six cents for supplies and materials furnished by the said plaintiff on account of and towards the repairing and furnishing the Steamboat Nile a boat then running upon

the navigable waters within the jurisdiction of the State of Illinois and owned by the said defendant and at the request of the said defendant and said demand remains wholly unpaid, whereby & by reason of said sum of money remaining wholly unpaid an action hath accrued to the said plaintiff to demand & have of & from the said defendant, the said sum of fifty four dollars and eighty six cents part of said sum above demanded; And for that whereas also the said defendant is the owner of the Steamboat Nile and the said Steamboat Nile is a boat repaired and running upon the navigable waters within the jurisdiction of the State of Illinois and that the said plaintiff at the request of the said defendant as boatman did and performed work and labor on board of said Steamboat Nile for and during the space of ninety days and ending the 13th day of December A.D. 1860, for which said plaintiff avers that he reasonably deserved to have the sum of three dollars for each & every day and did also furnish sundry provisions & supplies to the value of forty four dollars and eleven cents to be used on said boat while running on said waters as aforesaid & on or about the 20th day of September A.D. 1860 and

ded also furnish for said boat one pump of the value of six dollars and twenty five cents and one Gang of the value of four dollars about Sept 20th 1860 and did expend the sum of ten dollars and fifty cents in fitting out said boat & raising a small boat belonging to said Steamboat Nile about Oct 4 1860 all of which said articles were furnished & work done at the request of said defendant the said owner of said Steamboat Nile & all which sums remain unpaid, Whereby an action hath accrued to the said plaintiff to demand & have of & from said defendant the sum of three hundred and thirty four dollars and eighty six cents parcel of said sum above demanded.

Yet the said defendant (although often requested so to do) hath not yet paid the said sum of three hundred and thirty four dollars and eighty six cents above demanded, or any part thereof to the said plaintiff, But he to do this hath hitherto wholly refused and still doth refuse to the damage of the said plaintiff of One hundred dollars, & therefore he brings his suit &c

Thompson & Bishop
Plff Attys.

Bill of particulars of plaintiffs demand Steam
 Boat the George Kimball owner
 To Robert P. Derrickson Or
 Sept 20 1860 to provisions furnished \$44.11
 " " " 1 Pump 6.25
 " " " 1 Long 4.00

Oct 4 * " Raising punkin boat (Expd) 10.50
 Dec 13 " 90 days services as boatman at \$3.00 270.00
 334.86

(Endorsed) Filed December 20th 1860 R. Kimball Clerk

(App) State of Illinois } ss The Superior Court of Chicago
 Cook County } January Term A.D. 1861
 Richard P. Derrickson }
 vs } Attachment
 George Kimball }
 I hereby waive service
 of process and enter my appearance in the
 above untitled cause and agree that judgment
 may be rendered against me in said cause
 for the sum of three hundred and thirty four
 dollars and eighty six cents
 And thereupon the plaintiff filed in evidence
 the following record of judgment rendered in
 said cause
 Richard P. Derrickson }
 vs } Attachment
 George Kimball }
 This day comes the said

(Judgment)

plaintiff by Thompson & Bishop his Attorneys and
 the said defendant in his own proper person comes
 and upon agreement as shown by stipulation filed
 herein, whereby defendant enters his appearance
 and waives service of process and consents to
 judgment being entered herein against him it is
 ordered that judgment be entered in favor of said
 plaintiff and against the said defendant on said
 stipulation for the sum of three hundred and
 thirty four dollars and eighty six cents damages
 besides costs of suit. Therefore it is considered
 that the said plaintiff do have and recover of
 and from the said defendant his damages of three
 hundred and thirty four dollars and eighty six
 cents in form aforesaid assessed by the Court upon
 said stipulation, and also his costs and charges
 in his behalf expended and thereof have Execution
 To the offering and reading of which said record
 to the jury the defendant by his Counsel then
 and there objected, said objection was overruled
 by the Court to which ruling of the Court the
 defendant by his Counsel then and there excepted
 and the said record was then read to the jury
 The plaintiff by his Counsel then offered in
 evidence the following assignment of judgment
 Richard P. Herrickson
 George Kimball owner of
 Steam boat Nile and

In the Superior Court of Chicago judgment # 334 ⁸⁶/₁₀₀
Rendered by said Court January 15- 1861,
In consideration of three hundred and twenty five
dollars to me in hand paid by Thomas S. Dick-
erson the receipt whereof is hereby Confessed.
I do hereby sell assign transfer and set
over to the said Dickerson the said judg-
ment above mentioned and all my right title
and interest thereto, to have and to hold unto
him the said Dickerson his heirs and assigns
absolutely forever, And I hereby authorize
and empower the said Dickerson his agents
and attorneys in my name or otherwise to
collect and receipt for said judgment and
for that purpose to pursue such course as
he may deem proper. Witness under my hand
and seal this the sixth day of May A.D. 1861
R P Derickson (Seal)

(Endorsed) Filed May 6th 1861 W. Kimball Clerk
A J Knisely was then called as a witness on
behalf of the plaintiff who being duly sworn
testified as follows. I know the parties
to this suit, I know the Steamboat Nile, I know
George Kimball, the last I heard of him he
was in New Orleans, I can't tell when he
was here, He has not been here since the
suit in attachment by Derickson against him
to my knowledge, He might have been here

and I not know it, I should likely have known it if he had been here, I had claims against him. He had no place of business in Chicago that time. William L. Greenleaf was then called on as a witness on behalf of the plaintiff and being duly sworn testified as follows without objection on the part of the defendant, I have computed the interest on the instrument now shown to me. In consideration of assignment of judgment agt Geo L. Emball to T. S. Dickerson this day and rendering of bill & notes to me I do hereby agree in case Geo L. Emball does not pay to R. P. Dickerson the sum of three hundred and twenty five dollars in three 3 mo from this time to guarantee to said Dickerson the payment of said sum of money said judgment being agt Steamboat Tile. (Signed) Thomas S. Dickerson

Chicago May 6 1861

and find the same from the 6th day of August 1861 to the 18th day of December 1863 twenty eight months and twelve days to be \$46.15. The plaintiff then read in evidence to the jury the instrument last referred to, and thereupon both the plaintiff and defendant by their respective counsel rested their case, and thereupon the Court in behalf of the plaintiff instructed the jury as follows.

If the jury believe from the evidence that the plaintiff sold and transferred all his right title and interest in and to a certain judgment against the Steamboat Nile which judgment was for the sum of \$334.86, and also sold and delivered certain claims which he said plaintiff had against one George Kimball all at the request of said defendant and that the defendant in consideration thereof undertook and promised the plaintiff in writing to pay him the sum of \$325⁰⁰ three months after such sale and transfer, the jury will find for the Plaintiff and assess the damages for the amount that shall be found due by said writing computing interest at 6 per cent on the amount found to be due from the time that the evidence shows it became due.

To the giving of which instructions the defendant by his Counsel then and there excepted. And thereupon the defendant asked the Court to instruct the follows

The jury are instructed that the plaintiff in order to recover is bound to prove not only an assignment of judgment but also a transfer of notes and accounts to the defendant and if no such proof has been made the jury will find for the defendant.

The jury are instructed that before the plaintiff can recover, the plaintiff must prove

Refused

Refused

that he has exhausted all legal efforts to recover the amount mentioned in the agreement out of George Kimball, and if the plaintiff has not proved that he made any efforts to recover said amount out of said Kimball they will find for the defendant.

Refused

The jury are instructed that the plaintiff in order to recover is bound to prove that a demand of payment was made upon George Kimball three months after the date of the agreement offered in evidence & a refusal of such payment & a notice of such demand and refusal given to the defendant and if no such proof is offered in evidence the jury will find their verdict for the defendant.

Which instructions so asked to be given on the behalf of the defendant the Court refused to give to which refusal of the Court the defendant by his Counsel then and there excepted, And thereupon the jury rendered the following verdict.

That the jury find for the Plaintiff and assess the damages at Three hundred and twentyone dollars and fifteen cents ($371 \frac{15}{100}$).

Wm. P. Hatch
Foreman

And thereupon the Counsel for the defendant entered a motion for a new Trial of said cause. The Court overruled said motion to which

ruling of the Court the defendant by his Counsel
then and there Excepted, And forasmuch as the matter
aforesaid do not appear of record the defendant
prays that this bill of exceptions may be duly
signed and sealed and made a part of the
record of said Cause which is done the
first day of February A.D. 1864

E. S. Williams (Seal)
Judge &c

And afterwards to wit on the first day of
February in the year of our Lord One thou-
sand eight hundred and sixty four said
defendant filed in said Cause in said Court
his certain Appeal bond in the words and fig-
ures following to wit:

Know all men by these presents that me Thomas
S. Dickerson and of the County of Cook
and State of Illinois are held and firmly bound
unto R. P. Dickerson in the penal sum of
Six hundred dollars (\$600) lawful money of
the United States for the payment of which
well and truly to be made me bind ourselves
our Executors and administrators jointly
and severally by and firmly by these presents
Witness our Hands and seals the first day
of February A.D. 1864.

The condition of the above obligation is such

that whereas, the said R P Derrickson did on the Eighteenth day of January A D 1864 in the Circuit Court of Cook County and State aforesaid and of the January Term thereof A D 1864 render a judgment against the above bounden Thomas & Dickerson for the sum of Three hundred and seventy one dollars and fifteen cents besides costs of suit from which said judgment of the ^{lower} Superior Court of Chicago the said Thomas & Dickerson has prayed for and obtained an appeal to the Supreme Court of said State. Wherefore if the said Thomas & Dickerson shall duly prosecute his said appeal with effect and moreover pay the amount of the judgment costs interest and damages rendered and to be rendered against him in case the said judgment shall be affirmed in said Supreme Court then the above obligation to be void otherwise to remain in full force and virtue

Thos & Dickerson *Real*
 Frank Sturges *Real*

Taken and entered into before me
 at my Office in Chicago this
 first day of February A D 1864
 E S Williams
 Judge &c

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of all pleadings, Proceedings of record Bill of exceptions and appeal Bond, in a certain cause lately pending in said Court, on the Common Law side thereof, wherein
R. P. Herrickson was plaintiff and C. Thomas
D. Dickerson was Defendant

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this
29th day of March

A. D. 1864

Wm L Church Clerk.



Thomas S. Dickerson
appellant
vs
R. P. Derrickson
appellee

Supreme Court of Illinois
Third Grand Division
April Term A.D. 1864

And the said defendant Thomas S. Dickerson by Cyrus Bentley, comes and assigns the following errors:

- 1 The Court below erred in admitting improper evidence
 - 2 In giving the instructions asked by the plaintiff below.
 - 3 In refusing the instructions asked by the defendant below.
 - 4 In overruling the motion for a new trial.
 - 5 In rendering judgment on the verdict.
- Cyrus Bentley
attorney for appellant.

Joinder in Error

Mr. W. Fuller attorney
for appellee

Dickerson

Derrickson

Records Errors

Filed April 20, 1864
L. Leland
Clerk

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1864. }

THOMAS S. DICKERSON,
Plaintiff in Error,

v.

R. P. DERRICKSON,
Defendant in Error.

} Appeal from the Cook County Circuit
Court.

ABSTRACT OF RECORD.

1, 2, 3 **Action of Assumpsit.**

The Declaration contains three special counts and the common counts.

5 The **FIRST COUNT** sets forth, that the plaintiff had recovered a judgment against the "Steamboat Nile," for \$334.86, and costs, at the January term of the Superior Court of Chicago, A. D. 1861, wherein said plaintiff was plaintiff, and one George Kimball was defendant; and that at and before the making of the promise, in this count mentioned, the said Kimball was indebted to said plaintiff \$500, for money loaned, and materials furnished, which was, in part, secured to be paid by a promissory note, and in part in open account; and in consideration that said plaintiff did, on the 6th May, 1861, make and deliver to said defendant an assignment of said judgment, and certain notes, accounts, and evidences of indebtedness against the said George Kimball, the defendant

undertook and promised to pay said plaintiff \$325, three months from and after the time last aforesaid; and plaintiff avers that the three months have elapsed, and defendant has not paid, &c.

- 6 The SECOND COURT sets forth that the plaintiff owned a certain judgment against the steamboat Nile, for \$334.86, recovered by the consideration of the Superior Court of Chicago, at the January Term, A. D. 1861, wherein the plaintiff was plaintiff, and one George Kimball, was defendant; also, owned certain promissory notes signed by said Kimball, and certain bills of account against said Kimball, which said Kimball owed to said plaintiff, amounting in all to \$500; and that on the sixth day of May, A. D. 1861, in consideration that the said plaintiff did sell and assign said judgment so recovered against said "steamboat Nile;" also, the said notes and accounts unto said defendant, he, said defendant, made, executed, and delivered to the said plaintiff the following agreement, viz.:

- 7 "In consideration of assignment of judgment against Geo. Kimball,
"to T. S. Dickerson, this day, and rendering of bill and notes to me, I
"do hereby agree, in case Geo. Kimball does not pay to R. P. Derrick-
"son the sum of three hundred and twenty-five dollars, in three months
"from this time, to guarantee to said Derrickson the payment of said
"sum of money; said judgment being against steamboat Nile.
[Signed.] "THOMAS S. DICKERSON.
"Chicago, May 6th, 1861."

And said plaintiff avers, that in and by said agreement, said defendant, in consideration of the premises, undertook and promised, to pay plaintiff \$325, three months after the date thereof. That said three months has elapsed, and said defendant has not paid, &c.

- 8 The THIRD COUNT sets forth the ownership of a judgment against the
“ steamboat Nile,” and of notes and book accounts, as stated in previous
counts; and that, in consideration that the plaintiff would sell and as-
9 sign to the defendant the judgment and notes and accounts, the defend-
ant undertook and promised by his writing obligatory, bearing date the
sixth May, 1861, to guarantee and pay unto the said plaintiff the pay-

ment of \$325, which the said Kimball then owed to said plaintiff, in case said Kimball did not pay said sum in three months from the date of said writing, and which said writing is as follows.

(Here is set out the same writing as in preceding count.)

- 10 And plaintiff avers, he did sell and deliver said judgment against said
"steamboat Nile," and notes and accounts, and although the three
months specified in said writing has elapsed, the said Geo. Kimball has
not—although he was afterwards, to wit., on the day and year of the ex-
11 piration of the said three months, requested so to do—paid said sum, or
any part thereof; all of which said premises, the said defendant after-
wards, to wit., on the sixth August, 1861, then had notice; yet the said
defendant, not regarding his said promise, but contriving, &c., has not as
yet guaranteed or paid to the said plaintiff said sum of money, or any
part thereof, although he, the said defendant, afterwards, to wit., on the
first day of August, A. D. 1863, was requested.

12-13 **Common Counts.**

18 **Trial, and Verdict** for plaintiff for \$371.15.

19 **Motion for new trial.** The same overruled by the court, and
exception by defendant.

20 **Appeal** prayed, and allowance of same.

ABSTRACT OF BILL OF EXCEPTIONS.

21-28 The plaintiff introduced in evidence the files of the Superior Court of
Chicago, in a certain suit wherein R. P. Derrickson was plaintiff, and
the steamboat Nile was defendant, among which was the following:

RICHARD P. DERRICKSON,	}	<i>Attachment.</i>
v.		
GEORGE KIMBALL.		

I hereby waive service of process and enter my ap-
pearance in the above entitled cause, and agree that judgment may be
rendered against me in said cause for the sum of three hundred and thirty-
four dollars and eighty-six cents.

[JUDGMENT.]

This day comes the said plaintiff, by Thompson & Bishop, his attorneys, and the said defendant in his own proper person comes, and upon agreement as shown by stipulation filed herein, whereby defendant enters his appearance, and waives service of process and consents to judgment being entered herein against him, it is ordered, that judgment be entered in favor of said plaintiff, and against the said defendant on said stipulation, for the sum of three hundred and thirty-four dollars and eighty-six cents damages, besides costs of suit. Therefore, it is considered that the said plaintiff do have and recover of and from the said defendant, his damages of three hundred and thirty-four dollars and eighty-six cents, in form aforesaid, by the court upon said stipulation; and also his costs and charges in this behalf expended, and thereof have execution.

The following assignment was then read to the jury:

RICHARD P. DERRICKSON,
v.
GEORGE KIMBALL, owner of
Steamboat Nile.

In consideration of three hundred and twenty-five dollars, to me in hand paid, by Thomas S. Dickerson, the receipt whereof is hereby con-

fessed, I do hereby sell, assign, transfer and set over, to the said Dickerson, the said judgment above mentioned, and all my right, title and interest thereto, to have and to hold unto him, the said Dickerson, his heirs and assigns, absolutely forever ; and I hereby authorize and empower the said Dickerson, his agents and attorneys, in my name or otherwise, to collect and receipt for said judgment, and for that purpose to pursue such course as he may deem proper.

Given under my hand and seal, this, the sixth day of May, A. D. 1861.

R. P. DERRICKSON. [SEAL.]

31 **A. J. Knisely** was then called as a witness, on behalf of the plaintiff, who testified :

That he knew the steamboat Nile ; also knew George Kimball ; that the last he heard of him he was in New Orleans ; could not tell when he was here ; has not been here since the suit in attachment, by Derrickson, against him, to his knowledge ; might have been here and he not know it ; should likely have known it if he had been here ; had claims against him. He has had no place of business in Chicago.

Wm. L. Greenleaf was then called as a witness, who testified :

That he had computed the interest on the instrument shown to him (which was the same instrument set forth in plaintiff's declaration), and finds the same, from the sixth day of August, 1861, to the 18th day of December, 1863, 28 months and 12 days, to be \$46.15.

The plaintiff then read to the jury the instrument mentioned in the plaintiff's declaration, and thereupon the court, in behalf of the plaintiff, instructed the jury as follows :

33 If the jury believe, from the evidence, that the plaintiff sold and transferred all his right, title and interest in and to a certain judgment, against the steamboat Nile, which judgment was for the sum of \$335.86, and also sold and delivered claims, which he, said plaintiff, had against one George Kimball, all at the request of said defendant, and that the defendant, in consideration thereof, undertook and promised the plaintiff in writing, to pay him the sum of \$325, three months after such sale

and transfer, the jury will find for the plaintiff, and assess the damages for the amount that shall be found due by said writing, computing interest at six per cent. on the amount found to be due, from the time that the evidence shows it became due.

To the giving of which instruction the defendant, by his counsel, then and there excepted.

And thereupon the defendant asked the court to instruct the jury as follows :

33-34 The jury are instructed that the plaintiff, in order to recover, is bound to prove, not only an assignment of judgment, but also a transfer of notes and accounts, to the defendant, and if no such proof has been made, the jury will find for the defendant.

34 The jury are instructed, that before the plaintiff can recover he must prove that he has exhausted all legal efforts to recover the amount mentioned in the agreement out of George Kimball ; and if the plaintiff has not proved that he made any efforts to recover said amount out of said Kimball, they will find for the defendant.

The jury are instructed that the plaintiff, in order to recover, is bound to prove that a demand of payment was made upon George Kimball, three months after the date of the agreement offered in evidence, and a refusal of such payment, and notices of such demand and refusal given to the defendant, and if no such proof is offered in evidence, the jury will find their verdict for the defendant.

Which instructions, so asked to be given on the part of the defendant, the court refused to give, to which refusal of the court the defendant, by his counsel, then and there excepted.

And thereupon the jury rendered the following verdict :

We, the jury, find for the plaintiff, and assess the damages at three hundred and seventy-one dollars and fifteen cents (\$371.15).

HENRY P. HATCH, Foreman.

35 And thereupon the counsel for the defendant entered a motion for a new trial. The court overruled the motion, and the defendant, by his counsel, excepted.

ERRORS ASSIGNED.

1. The court erred in admitting improper evidence.
2. In giving the instructions asked by the plaintiff below.
3. In refusing the instructions asked by the defendant below.
4. In overruling the motion for new trial.
5. In rendering judgment upon the verdict.

CYRUS BENTLEY,
Attorney of Appellant.

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Decker
as
Derrickson

Abstract

Given April 20. 1864
Leland CR