

No. 12513

Supreme Court of Illinois

Eames.

vs.

Preston, et al.

71641  7

In the Supreme Court -

of April Term 1858 -

James H. Earnes impleaded
with Henry N. Burlingame
& Joel Gray Offici Error

vs

Daniel Preston & Daniel Preston 2^d

} Error to Cook
County Court
of Bureau Place

And the said

Offici Error by H. T. Buzup his Attorney
comes and says that in the record and
proceedings aforesaid and in the judg-
ment aforesaid there is manifest and
material error appearing of record in
this That the court below overruled
and denied the motion for a continuance

2^d That the court allowed the note
being an instrument under seal
to be read in evidence & the action being
in assumpsit -

3^d That the evidence was insuffi-
cient for the finding of the court

4th That the judgment of the court
was given for the Plaintiffs ^{below} whereas
by the law of the land it should have
been for the Defendants ^{below} against
the plaintiffs below - & left in this court

And the said Offici Error prays

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that the judgment aforesaid for the
errors aforesaid and other errors appear-
ing in the record & proceedings afo-
said. may be reversed annulled
and altogether held for nought and
that in the said Errors may be restored
to all things that he lost by occasion
of the said judgment &c

W. L. Pongip

proff in error

~~And the said Court joins in the reversal~~
~~of the~~

~~affidavit~~
~~for debt.~~

United States of America
 State of Illinois
 County of Cook Sp.

Plas before the Hon
 orable John M Wilson Judge of the Cook
 County Court of Common Pleas within
 for the County of Cook and State of
 Illinois at a regular term of said
 Cook County Court of Common Pleas
 begun and holden at the Court
 House in the City of Chicago in
 said county on the first Monday
 being the second day of February in
 the year of our Lord one thousand and
 eight hundred and fifty seven
 and of the Independence of the
 United States the right first

Present the Hon John M
 Wilson Judge

Daniel McShoy prosecuting
 Attorney

John L. Wilson Sheriff -

Attest Walter Kimball

Clk

Be it remembered that heretofore
 to wit on the 21st day of March
 A D 1835 came David Preston and
 David Preston the Second by their
 Attorneys Goodrich Scoville & Seelye
 and filed their petition as follows

Cook County Court of Com Pleas	
David Preston &	}
David Preston	
the Second	
vs	} Asst Dab ^l Wro-
James H Eames	
Henry W Burlingame & Joel Gray	

Please issue Summons to
 Sff Cook Co

Goodrich Scoville & Seelye
 Plffs Attys

And therefore ^{upon} there was issued out
 of said Court a writ in the words
 and figures following to wit.

State of Illinois }
 County of Cook } So The People of
 the State of Illinois to the Sheriff
 of said County - Greeting
 We command you that you
 Summon James H Eames Henry

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W Burlingame & Joel Gray if they
shall be found in your County per-
sonally to be and appear before the
Cook County Court of Common Pleas
of said County 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 David Preston and
David Preston the Second in a
plea of Trespass on the Case on promise
to the damage of the said Plaintiff
as they say in the sum of one
thousand Dollars

And have you there & there this
writ with an endorsement thereon in
what manner you shall have executed
the same

L. J. Witness Walter Kimball Clerk
of our said Court and the
Seal thereof at the city of Chicago
in said County this 21st
day of March A.D. 1835

Walter Kimball

Which summons was returned "Served Clerk R"

by reading to the within named James H. Eames.
March 23 1835 the other defendants not being
found in my County Jas Andrew Sheriff
by J A Norton Sps

4. and that afterwards on the 23^d
day of March A.D. 1835 a declaration
was filed in said cause in the
words and figures following to wit

In the Cook County Court
of Common Pleas of the
April Term A.D. 1835

State of Illinois }
Cook County } p

David Preston and
David Preston the second partners
doing business in the county of Cook
aforesaid under the name style and
description of Preston & Co by Goodrich
Scoville & Sedge their Attorneys complain
of James H. Earnes, Henry W. Burlingame
and Joel Gray partners
doing business in the said County
of Cook under the name style
and description of Earnes Gray & Co
in a plea of trespass on the case
on promises

For that whereas
heretofore to wit on the ninth
day of November in the year of our
Lord Eighteen Hundred and fifty
four at Chicago in the said

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County of Cook the said Defendants
by the name Style and description
of James Gray & Co made their certain
promissory note in writing & thereby
then & there promised to pay
eighty five days after date to the order
of Nelson C Roe by the name Style
& description of N C Roe Cash (Cashier
meaning) or order the sum of Five
Hundred and eleven $\$3/100$ Dollars (mean-
ing Five Hundred & eleven Dollars & ninety
three cents) for value received with
interest at ten per cent (meaning
with interest at the rate of ten
per cent per annum) and then
and there delivered the said promissory
note to the said Nelson C Roe and
the said Nelson C Roe to whom
or to whose order the payment of the
said sum of money in the said
promissory note specified was
to have been made after the making
of the said promissory note and
before the payment of the said
sum of money therein specified
to wit on the day and year last
aforesaid at Cook County aforesaid

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by the same style and description
of N C Roe Cashier (meaning)
endorsed the said promissory
note by which, ^{said} endorsement the
the said Nelson C Roe then and
there ordered and appointed the
said sum of money in the said
promissory note specified to be paid
to the said plaintiffs by the same
style and description of Preston H
and then and there delivered the
said promissory note so endorsed
as aforesaid to the said plaintiffs
by means whereof and by force
of the statute in such case made
and provided the said defendants
then and there became liable to
pay to the said plaintiffs the
said sum of money in the said
promissory note specified according
to the tenor and effect true intent
and meaning of the said promissory
note. And being so liable
they the said Defendants in consid-
eration thereof afterwards to wit on
the day and year aforesaid to wit at
Cook County aforesaid undertook

9 and then and there faithfully
promised the said plaintiffs to pay
them the said sum of money in the
said promissory note specified
according to the tenor & effect true
intent and meaning thereof

And also for that whereas
the said defendants afterwards to wit
on the first day of March in the
Year of Our Lord one thousand
eight Hundred & fifty five to wit at
the said County of Cook were
indebted to the said plaintiffs
in the further sum of Seven
Hundred Dollars for so much money
before that time lent & advanced
to the said defendants by the said
plaintiffs and at their special instance
and request And also in the further
sum of Seven Hundred Dollars for so
much money by the said plaintiffs
before that time paid laid out
& expended to and for the use of
the said defendants and at their
like special instance and request
And also in the further sum
of Seven Hundred Dollars for so

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much money by the said defendants before that time had and received to and for the use of the said plaintiffs And also in the further sum of Seven Hundred Dollars for so much money then and there found to be due and owing to the said plaintiffs from the said Defendants upon an account then & there had and stated between them of and concerning divers other sums of money due & in arrear and unpaid from the said defendants to the said plaintiffs And being so indebted they the said defendants in consideration thereof afterwards to wit on the day & year last aforesaid at Cook County aforesaid undertook & then & there ^{faithfully} promised the said plaintiffs to pay them the said several sums of money in this Court mentioned when they the said defendants should be thereunto afterwards requested

Nevertheless the said Defendants not regarding their said several

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promises and undertakings but
contriving &c to deceive and defraud
the said plaintiffs on this behalf
have not ^{as} yet paid the said several
sums of money or any or either
of them or any part thereof to
the said plaintiffs or either of
them although often requested
so to do but the said defendants
so to do have hitherto wholly neg-
lected and refused & still do neg-
lect & refuse to the damage of
the said plaintiffs of one thou-
sand Dollars & therefore they bring
this suit &c

Gordrich Scoville & Seelys
Attorneys for Plff

Copy of note sued on
\$511.25/100 Chicago Nov 9 1834

Eighty five days after date we
promise to pay to H.C. Roe Cash or
order Five Hundred & eleven 25/100 Dollars
for value received with interest at
ten per cent

(Signed) James Gray &c
(Indorsed) Pay Preston &c
(Signed) H.C. Roe Cash

Before James Gray & Co
 vs
 David Preston & Co
 March 1835 to money lent & advanced \$700
 Money paid laid out & expended \$700
 Money had & received \$700
 Money found due upon account stated 300

And that on the 6th day of April
 A.D. 1835 a plea and affidavit
 in due form was filed in said cause
 as follows to wit:

State of Illinois
 Cook County Court of Common Pleas
 James H. Eames impleaded with
 Henry W. Burlingame and
 Joel Gray

Ads
 David Preston and
 David Preston & Co

Cook County vs And the
 said defendant James H. Eames
 by H. S. Jennings his Attorney comes
 and defends the wrong and injury
 when &c 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
H S Jennings

Atty for Jeff Eames
And the plffs do the like
Goodrich & Scoville

Plffs attys
Cook County &c

James Eames
being duly sworn doth depose and
say that the above plea is true in
Substance and in fact
Subscribed & Sworn to before J H Eames
On April 6th 1855
C Dewolf J.P.

And that on the sixth day of February
A.D. 1857. being one of the days of said
February Term 1857— the following
proceedings & judgment were had
and entered of record viz—

"Daniel Preston &
Daniel Preston 2nd
vs

James H Eames Henry
N. Burdick & Joel Gray

Assumpsit

And now

come the said plaintiffs by Goodrich & Scoville their attorneys and the said defendant James H. Rogers by by Francisworth and Buzzip his attorneys also comes and the said defendant enters his motion herein founded upon affidavits to continue this cause, which motion after being heard was overruled by the court to which ruling of the court the said defendant enters his exceptions -

And thereupon issue being joined herein this cause is submitted to the court for trial without the intervention of a jury by agreement of said parties and the court after hearing the testimony adduced and argument of counsel being now fully advised in the premises finds the issues for the plaintiffs & assesses their damages to the sum of six hundred & twenty six dollars & eighty four cents -

Thereupon it is considered that the said plaintiffs do have & receive of the said defendant James H. Rogers in phaid with the said Henry A. Burlingame & Joel Gray their damages of six hundred and twenty six dollars & eighty four cents in form as provided by the court here assessed and also their costs & charges by them about their suit in this behalf expended and have execution therefor

And that afterwards & on the 6th
day of February A D 1857 a Bill of
exceptions was filed as follows
to wit

James H Earnes	} Cook County Court of Common Pleas February Term 1857
impleaded with	
Henry W Burlingame &	
Joel May	
add	
David Preston &	
David Preston 2 nd	

Be it remembered
that on the 6th day of Feb^y the same
being one of ^{the days} ~~the~~ said term the said
Earnes by his Counsel moved the
Court to continue said cause and
presented to the Court in support
of said motion the following affidavits

James H Earnes	} Cook County Court of Com Pleas Feb Term 1857
impleaded &c	
add	
David Preston et al	

James H Earnes
Defendant in the above entitled
cause being duly sworn doth
depose and say that he cannot
safely proceed to trial at the

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present time on account of the
absence of Isaac Vanduzer
who has been duly subpoenaed & by
whom he expects to ~~prove~~ and
believes he can prove the facts.
Set forth in the Affidavit of the
Said Isaac Vanduzer on the
files in this cause filed March
22^d 1856 and which is made a
part of this affidavit The Said
Vanduzer this affiant is informed
and believes is now residing tempo-
rarily at Dr Witt in Iowa where
he has gone within a few days
past - the Said Vanduzer is a
Rail Road Contractor and makes
his head quarters at Chicago and
when he was subpoenaed to attend
this ^{term} trial he was in Chicago and
told this affiant he would be sure
to be in attendance at this time
which affiant verily believed and
relied upon Affiant intends to
take the necessary steps to obtain
the deposition of Said Vanduzer
immediately and has already
applied by his counsel to the

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Counsel of Plff to waive the
 notice required by law, ^{in such cases} so as to
 enable Affiant more speedily
 to obtain said Deposition so that
 a trial might be had at the
 present term which was refused
 by the Counsel of Plaintiff

This Affidavit is made
 not merely for delay but that
 Justice may be done in the
 premises J H Earnes
 Sworn & Subscribed before
 me this 6th day of
 February A D 1837

W Kimball CLK

James H Earnes impleaded &c of Cook County
 add
 David Preston et al of Court of Common
 Pleas
 State of Illinois Feb Term 1836
 Cook County vs

Isaac J Vanduzer
 being duly sworn doth depose and
 say that he is acquainted with
 James H Earnes Henry W Burlingame
 A G Roe & Joel Gray and that
 he knows for what the note
 sued on in this action was given

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That the said note was given as
he was informed by both Burling-
ame & Roe by the said Burling-
ame to the said Roe and he
knows that it was given to indem-
nify the said Roe for an acceptance
which the said Roe had given
for wheelbarrows for the firm of
Ames Gray & Co and which acceptance
the said Roe did not nor has he
paid

Affiant further says that
at the time said note was given
the said Burlingame was not a
member of the said firm of
Ames Gray & Co but the said firm
was composed of the said Ames
and the said Gray and this
Affiant And that the said
Burlingame was never a member
of said firm but the same
continued to be as aforesaid until
about the first of January 1835
when this Affiant and the said
Ames sold out their interest in
said firm to the said Burlingame
and the said Gray and from that

19 time the Business was carried
on by Gray and Burlingame
This Affiant knows that no
other or different consideration
existed or was given for said note
than as above stated

This Affiant further states
that he had agreed and promised
the said Ames that he would
attend as a witness upon the trial
of said cause and that he would
have done so but he was sick and
confined to his room at Dubuque at
the time this case came on to be tried
and had been sick for some two
weeks previous & continued so sick
for some two or three weeks afterwards

And further he saith Not
Sworn to & subscribed D. J. Sandager
Before me this 22nd day
of March A D 1856

C. S. Wolf J. P.

The Court overruled
said Motion to which ruling of the
Court the said Ames by his counsel
then and there excepted

And be it further remembered

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that on the trial of this cause
the plaintiff having introduced
testimony tending to prove that
the Note hereafter mentioned was
executed by Defendants as charged
in the Declaration then offered
to read the following note in
evidence

\$511²³

Chicago Nov 2 1854

Eighty five days after date we
promise to pay to N C Rollins or
order Five Hundred & Eleven ⁹/₁₀₀ Dollars
for value received, with interest at
Ten per cent.

James Gray & Co

to the introduction of which the
defendant James by his counsel
objected. The Court overruled
said objection and allowed said
Note to be introduced as evidence
to which ruling of the Court the
said James by his counsel then
and there excepted. No other evi-
dence was given on said trial.

The Court found for the
plaintiff the sum of \$626⁸/₁₀₀ Dollars

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and gave judgment thereon,
to which finding of the Court the
defendant then and there excepted
and now prays that this his
bill of exceptions may be sealed
which is done in open Court

John M. Wilson ^{Seal}

State of Illinois
County of Cook Ex: J. Walter Kimball
Clerk of the Cook County Court of
Common Pleas in and for said County
do hereby certify that the foregoing
transcript, is a full true & complete
copy and transcript of the record
proceedings & judgment in a cer-
tain cause lately pending in
said Court wherein Daniel Preston
& Daniel Preston 2^d were plaintiffs,
and James H. Eames & Joel Gray
and Henry W. Burlingame defen-
dants & of the whole thereof as the
same now remains of record in
my office.

Witness my hand and
the seal of said Court

at my office in Chicago
in said County this
20th day of May A.D.
one thousand eight hun
dred and fifty seven
Walter Kimball Clerk

New Transcript
per \$4.00
per \$1.00

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Sup. Court
James H. Ames vs. J. P. Ames

vs
Prothon & Prothon
Transcripts &
assessors

Filed May 26 1857
A. Leland
Clerk

Ogston et al
vs
Eames & Co

What in addition to what
is now in the record, the ~~proceedings~~ ^{proceedings} proceedings
on the Judge finally entered in this case
and the affs. filed to set it aside. Also
all affs. filed for a continuance ^{prior to the trial term}
Also the sick prison return on it
sworn on (Blundin) before the
last trial.

G. Goodrich

Order April 5th 1855

David Preston and
David Preston 2nd

vs.

James H. Carnes Henry W.
Barlingame & Joel Gray

Asst.

This day comes the said
plaintiffs by Godrich Scoville & depute their attorneys
and due personal service of summons, issued in this
cause having been had on the said Defendant James
H. Carnes only, and he being three times solemnly called
in open Court, comes not, nor does any person for
him but herein fails and makes default, which is on
motion of said plaintiffs ordered to be taken and entered
of Record. Wherefore the said plaintiffs ought to have
and recover of the said defendant James H. Carnes
impleaded with Henry W. Barlingame and Joel Gray
their damages herein sustained by occasion of the
premises. And the Court after hearing the proofs
submitted by said plaintiffs and being now fully
advised in the premises, assesses the said plaintiffs
damages to the sum of Five Hundred and Sixteen
Dollars and Sixteen cents.

Therefore it is considered that the
said plaintiffs do have and recover of the said defend-
ant James H. Carnes impleaded as aforesaid, their
damages of Five Hundred and Sixteen Dollars and
Sixteen cents, in form aforesaid by the Court, here asses-
sed, and also their costs and charges, by them in this
behalf expended and have execution therefor.

Default & judgment set aside
April 6th. 1855.

Affidavits filed April 6th 1853.

State of Illinois

The Cook County Court of Common Pleas.

James H. Eames impleaded
with Henry W. Burlingame
and Joel Gray

vs

David Preston and
David Preston Adm.

Cook County, Ill.

James H. Eames being
duly sworn doth depose and say, that he, this affiant
has a good sure and perfect defence on the merits
to the whole of the plaintiffs claim in the above suit,
that he never signed the paper on which this suit is
based, nor authorized any other person to do so, nor
did he ever receive any consideration whatever for
said note from any person, nor is he now nor was he
ever a member of any firm composed of James H.
Eames, Joel Gray, and Henry W. Burlingame,
and this affiant further says that he immediately
after being served with process in this cause, employed
Henry S. Jennings to defend the same and to file a
plea therein, and expected the same would be done
as he intends to defend said ~~said~~ suit, in good
faith

J. H. Eames

Subscribed & sworn to before me this 6th day of April A.D. 1853

Walter Kimball, cl

Cook County, Ill.

Henry S. Jennings being duly sworn
doth depose and say, that he is an Attorney at Law
and was employed by James H. Cairnes to defend
the above entitled suit. That in consequence of sickness
and death in his family, and continued sickness since
said death, his attention, time, and mind have been
almost wholly engrossed with the cares of his family.
That his business has necessarily been much neglected
and has greatly accumulated on his hands, and this
affiant further says that he was employed some ten
days before the commencement of this Court to defend
this cause. That soon after he was so employed he was
obliged to leave home for a few days, and returned
on Saturday last. That the above entitled suit,
entirely escaped his recollection and he had forgotten
it entirely until yesterday, when he found that a
default had been entered, & judgment rendered against
James H. Cairnes. and this affiant says that the
fault of permitting a default in this case, is entirely
chargeable upon this affiant, and was caused by reasons
above stated.

H. S. Jennings

Subscribed & sworn to
before me April 6th 1855.

W. Kimball Clerk

Order April 6th 1855.

David Preston & David Preston 2nd.

vs

asst.

James H. Eames, Henry W. Burlingame
and Joel Gray

This day comes the said
defendant James H. Eames by H. S. Jennings his attor-
ney, and on his motion founded on affidavit filed herein
It is ordered that the default and judgment, entered
in this cause be vacated and set aside at the cost of said
Eames. And it is further Ordered, that he plead
issuably to said plaintiffs action herein, by the opening
of Court tomorrow morning.

Plea filed April 6th. 1855.

State of Illinois

Cook County Court of Common Pleas
James H. Eames impleaded with Henry W.
Burlingame and Joel Gray.

vs

David Preston & David Preston 2nd.

Cook County ss. And the said defendant
James H. Eames by H. S. Jennings his attorney comes
and defends the wrong and injury when he said
says that 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 H. S. Jennings
atty for J. H. Eames

and the plffs as the like &c.

Goodrich & Scrille

Attys.

Cook County ss. James H. Eames being duly sworn
doth depose and say that the above plea is true in
substance and in fact. J. H. Eames

Subscribed & sworn to before me
April 6th 1855.

C. D. Hall J. P.

Affidavit filed Feby 19th 1856;

Cook County ss.

Cook County Court of Common Pleas..

Of the February Term A.D. 1856.

James H. Eames impleaded with
H. W. Burlingame & Joel Gray
vs
David Preston et al.

James H. Eames defen-
ant in the above entitled cause. being duly sworn
says that Isaac T. Vanduzer. is a witness whose
testimony he believes to be material upon the trial of
the above entitled cause; that he expects to prove by
said Vanduzer that the note upon which said action
is brought. was obtained without consideration. That said
Vanduzer was in Chicago until about a week ago;
that at that time he left Chicago for Iowa where he

now is: That said Vanduzar left Chicago without the
knowledge of this deponent. That the deponent has
written to said Vanduzar to come to Chicago imme-
diately, but that he has been unable to hear from him
or to learn just where he is though he has been informed
that he is in the vicinity of Dubuque.

Subscribed & sworn to this 19th day of Feb. 1856. before me
J. H. Canby,
W. Kimball CLK

Order Feby 19th 1856

David Preston & David Preston 2nd.
vs
James H. Canby, Henry W.
Burlingame & Joel Gray } Just.

And now at this
day come the said plaintiffs by Goodrich & Scoville
their attorneys, and the said Defendant James
H. Canby, unpleaded with the said defendants Burlin-
game and Gray, by J. H. Thompson his attorney
also comes. and issue being joined herein it is ordered
that a jury come, and thereupon come a jury of
good and lawful men to wit.

Benjamin Douglass, Moses G. Pratt, H. H. Denary,
Thomas Barrett, William Coleman, G. B. James,
J. S. Russell, W. B. Wightman, W. F. Johnson,
J. A. McEwen, Edward Williston & Levi Chipman,
who being duly elected tried and sworn well and

truly to try the issue joined as aforesaid. and after hearing the testimony adduced. argument of counsel and instructions of the Court. retire to consider of their verdict. and afterwards. come into Court and say to the Jury find the issue for the plaintiffs. and assess their damages to the sum of Five Hundred and seventy seven Dollars. and twenty five cents.

Therefore it is considered that the said plaintiffs do have and recover of the said defendant James H. Eames. impleaded with the said Henry W. Burlingame and Joel Gray. their damages of \$577.25 Five Hundred and seventy seven Dollars and twenty five cents. in form aforesaid by the Jury here assessed. and also their costs and charges by them about their suit in this behalf expended and have execution therefor.

Motion Filed 20th 1836.

David Preston & David Preston 2d.

vs

James H. Eames impl with
Henry W. Burlingame & Joel Gray

} Asst.

This day comes the said Defendant James H. Eames impleaded to. by his said attorneys. and enters his motion herein. for a new trial in this cause.

can prove by the said Burlingame if he can have his testimony in the case. And affiant further states that he had Employed H. S. Jennings Esq. an attorney of this Court, to attend to said suit for him, and supposed and believed he would do so. That he fully communicated to said Jennings, the nature and grounds of his defence to said action, and the names and residences of the witnesses, by whom to establish the same. That about the last day of January last, this affiant left this City, for New York, leaving said suit in charge of said Jennings as he supposed, and having agreed with the said Van Duzer to be in attendance when the said suit should be reached. Affiant did not return to Chicago until the evening of the 17th. of February, just in time for said trial. That on returning he learned that Mrs. Thompson had enquired for him, and that the said Jennings was away. Affiant then on calling upon the said Thompson, learned that Mr. Jennings had left said suit, with him to manage, without communicating to him the nature or the means of the defence.

This affiant intended to and would have been back to Chicago a week earlier than he did; but was prevented by snowstorms from so doing.

This affiant believes that he has a good and meritorious defence to said action, as he knows that said claim is unjust, inequitable and fraudulent,

Subscribed before me

J. A. Earnes

this 22nd day of March 1856.

(12573-16)

Walter Kimball Clerk

Affidavit filed March 22nd 1856,

Cook County Court of Common Pleas
Of the February Term A.D. 1856.

David Preston et al

vs
James H. Eames }

John H. Thompson being duly sworn says that soon after the commencement of the present term of the Cook County Court of Common Pleas, he was requested by Henry S. Jennings Esqr to look after his cases in the said Court of Common Pleas, during the absence of said Jennings, but the said Jennings communicated to this affiant at that time no information in regard to said cases, that on or about the 11th of February this affiant was informed that said Jennings had left town and this affiant then received a paper in the handwriting of said Jennings, on which among other memoranda were the following, "179 James H. Eames vs Preston et al. If Plt insists on a trial you must try it." (and at the bottom of the paper) "You will have to see Eames"

This affiant further says that he called at the said Eames' place of business, and was informed that he was at the East, but was expected home during the week. That this affiant left directions to have him come to affiant's office as soon as he returned. That this affiant made enquiries of the agent of

said Eames. to ascertain if there was any person who had any knowledge of the above entitled cause. but was unable to obtain any information in regard to the facts of the case, and that up to the 18th of February the affiant had no knowledge of the said cause, except that furnished by the memorandum aforesaid. that on the said 18th of February the said Eames called at the office of this affiant, and stated that he had a good defence in the above entitled cause. That one Isaac T. VanDuzer was his principal witness, and that said Van Duzer was in Iowa. That said Jennings knew all about the case and that he expected that said Jennings would have attended to it, and would have made the necessary preparations

And this affiant further says that when the said Eames called upon him as aforesaid. he stated that he had just returned to the City, and that he had relied upon said Jennings to attend to said cause. John W. Thompson

Subscribed and sworn to this 22nd
day of March 1856. before me

Walter Hamilton Clerk

Order April 1st. 1856.

David Preston & David Preston 2nd.

James H. Eames ^{vs} Henry M. Burlingame } asst.
and Joel Gray.

And now again come the said parties by their said attorneys, and the Court after hearing the motion of said defendant Eames for a new trial in this cause, sustains said motion, and doth Order that a new trial be had in this cause, on condition that said Eames pay all costs accrued in this cause up to this time, and it is further ordered that the judgment entered in this cause, stand as security to said plaintiffs and that said defendant be subject to a trial herein on ten days notice thereof being given him.

Copy of Subpoena & Return

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 J. F. Van Duzer if he shall be found in your County, personally to be and appear before the Cook County Court of Common Pleas, of said County on the second day of the term thereof, to be holden at the Court House

in Chicago in said County, on the first Monday of
February next, to testify and the truth to speak, in a
certain case now pending and undetermined in said
Court, between, David Trenton and David Trenton
2nd, plaintiffs, and James H. Earnest et al defendants,
on the part of the said defendants, and this he shall
in no wise omit, under the penalty of the law,
and have you then and there this writ, with an
Endorsement thereon in what manner you shall
have executed the same.

Seal.

Witness Walter Kimball Clerk of our
said Court and the Seal thereof at
Chicago in said County this 22nd day of
Decr. AD. 1856.

Walter Kimball Clerk

Endorsed.

Whereby accept service on the within process.
Decr. 22nd 1856.

J. T. Vanduzer

State of Illinois }
County of Cook ss.

J. Walter Kimball, Clerk of the
Cook County Court of Common Pleas, within and for
said County. Do hereby certify, that the above and
foregoing is a true copy of the following orders and
proceedings, had and entered of Record in said Court,
and of the following named papers filed in my office,
in the above case, to wit. Order April 5th AD. 1855

Affidavits filed April 6th A.D. 1855. Order April 6th 1855. Plea filed April 6th 1855. Affidavit filed February 19th 1856. Order February 19th 1856. Motion entered of Record February 20th 1856. Affidavits filed March 22nd 1856. Order April 1st 1856. and of the Subpoena issued out of said Court on the 22nd of December A.D. 1856. and of the return endorsed thereon. And I do further certify that the annexed note is the original ^{note} filed in my office on the 5th day of April A.D. 1855. on which this action is brought, in the case wherein David Preston and David Preston and, are plaintiffs and James H. Cause, Henry W. Burlingame and Joel Gray Defendants.



In Testimony Whereof I hereunto
subscribe my name and affix the
Seal of said Court at Chicago in said
County the 27th day of April A.D. 1858.
Walter Kimball Clerk



\$ 511.93

Chicago, Nov 9 1884

Eighty five days after date

promise to pay to A. C. Lockhart or order,

Five Hundred Eleven 93/100 DOLLARS,

for value received, with interest at Ten per cent.

Feb 4/9

E. M. Gray, & Co

Know all Men by these Presents, That the subscriber
justly indebted to upon a certain Promissory Note, bearing even date
herewith, for the sum of dollars, with interest
and due after date.

NOW, THEREFORE, in consideration of the premises, do hereby make, constitute and appoint
or any Attorney of any Court of Record, to be true and lawful Attorney,
irrevocably, for and in name place and stead, to appear in any Court of Record in term time, or in vacation,
in any of the States or Territories of the United States, at any time after the said Note becomes due, to waive the service of process
and confess a judgment in favor of the said or assigns,
or assignees, upon the said Note for the above sum, or for as much as appears to be due according to the tenor and effect of said
Note, and interest thereon, to the day of the entry of said judgment, together with costs and Attorney's fees; and also to file a
cognovit for the amount that may be so due, with an agreement therein, that no writ of error or appeal shall be prosecuted upon
the judgment entered by virtue hereof, nor any bill in Equity filed to interfere in any manner with the operation of said judgment,
and to release all errors that may intervene in the entering up said judgment, or issuing the execution thereon, and that
execution may issue on said judgment forthwith: and also to waive all benefit of advantage to which may be entitled
by virtue of any Homestead or other Exemption law, now or hereafter in force, in this or any State or Territory where judgment
may be entered by virtue hereof. Hereby ratifying and confirming all that said Attorney may do by virtue hereof.

WITNESS hand and seal this day of A. D. 18

IN PRESENCE OF

511.

511.93
51.19
51.19
12.00

626.31

511.93
2.55
1.27
1.85

516.60

29

due Feb 6 1887

Feb 7

511.93

114.91

626.84

IN SENATE

May 19

1879

REPORT OF THE COMMISSIONERS OF THE LAND OFFICE, IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE, MARCH 10, 1879, RELATIVE TO THE LANDS BELONGING TO THE UNITED STATES IN THE TERRITORY OF ARIZONA.

IN SENATE, MARCH 10, 1879.

REPORT OF THE COMMISSIONERS OF THE LAND OFFICE, IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE, MARCH 10, 1879, RELATIVE TO THE LANDS BELONGING TO THE UNITED STATES IN THE TERRITORY OF ARIZONA.

the undersigned

after date

(Signed with interest)

when a certain John A. Wolf, bearing and late

DEPOSITED

D.C. Johnson
in presence of
Ray Preston & Co

A. B. Roe & Co

Filed April 5 1879
W. H. Kimball
Clerk



to the ...

...

...

...

...

...

IN THE SUPREME COURT.

J. H. EAMES

VS.

DAVID PRESTON et al.

} *Error to Cook Common Pleas.*

PLAINTIFF'S ARGUMENT.

1st. Upon the motion for continuance. The facts set forth in the affidavits disclose a defence, and there is nothing but the question of diligence.

That we claim is sufficiently shown.

2d. That the note offered in evidence is a sealed instrument.

The parties by consent have brought before the court the note itself for its inspection.

The plaintiffs below introduced evidence to show that the defendants executed this note, and the fact of the execution of the note is not raised in this court; but that the paper itself is a sealed instrument, and could not be read in evidence in this form of action.

This note then being the act of the defendants, the case is not open to the question of what the rights of the parties would be if the instrument had been sealed by only one of the partners, or a sealed instrument executed by one without authority from the other partners.

It is a question for the court, upon inspection of the instrument.

Duncan vs. Duncan, 1 Watts, Pa., 327.

In Long vs. Ramsay, 1 Serj. & Rawl. 72, is a similar case—a note signed and a scrawl affixed—the court says: it is enough if there was a sealing and delivery; of that the jury are to judge, and upon proof of the handwriting of the obligor, they may *presume* the sealing and delivery.

In this case the hand-writing is proved; now is there a seal?

The scrawl put to the note is in the usual place of a seal. It is not a mere flourish of the pen after the name had been signed, (2 Halstead 272) but is an entirely distinct act. Put a seal in fact where the scrawl is, and can there be any doubt of the nature of the instrument?

It is not necessary to constitute an instrument a sealed instrument that it should so state in the body of it, no more than that it should state there that the party signed it. It is a question of fact. Has the party done such acts as indicate an intention to sign and seal, and consummated that intention by the acts done. A cross is a good signature by common law. A scrawl is made a good seal by statute, "if affixed by way of seal."

W. T. BURGESS, *for Plff.*

71.

James H. James

vs

David Preston et al

Argument

Filed May 17th 1858
A. Helms
Clerk

IN THE SUPREME COURT.

J. H. EAMES
vs.
DAVID PRESTON et al. } *Error to Cook Common Pleas.*

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W. T. BURGESS, for Plff.

S. H. Conner

vs.

David Preston Leal

Argument

Filed May 17. 1858
s. Leal
Clerk

IN THE SUPREME COURT.

J. H. EAMES
vs.
DAVID PRESTON et al. } *Error to Cook Common Pleas.*

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W. T. BURGESS, *for Plff.*

71

James H. Barnes

vs

David Preston Dal

Argument

Filed May 17, 1838

L Helmes
Clerk

James A. Crumpton }
vs }
Olive Preston et al } Clerk
Assignment of Rights in
them.

There are two questions as I understand
made by the pliff in error in this case

1st Is there a seal to the note held
as a?

2^d If a seal be attached by one party
to the partnership name, to can the
statement not required to the maker
seal, can the seal be disregarded
in the notice against the partner-
ship, and an action of assumpsit
be maintained against the part-
nership partners as a simple
contract debt?

I Is there a seal attached to the note
and as?

1st The Original note appears in
the record, and I submit, whether
there is any thing to indicate that the
signature appearing on the note
was intended as a seal? It has
not the letters "L.S." the word "Seal"

on any Statute, that the same note
is intended to be made.

3 We insist, that when a Seal is now
for and instead of a Seal something
must appear to show the intention
of the party that it is used for and
as a Seal -

The 56 Sec of the practice act de-
clares, that when the neck of an
instrument shall be affixed a Seal
by way of seal, it shall be of the
same effect as if the same were
sealed.

Now ^{it} is manifest, the legislature do
not consider a Seal a seal, but
they say when it shall be affixed
by way of seal, that it shall be
instrument shall have the same effect
as if sealed - It does not even de-
clare the instrument to be sealed after
a Seal is so affixed, but it
gives the instrument the same obligation
as if it were sealed - But the Seal
to have such effect must not only
be affixed to the instrument, but must
be so affixed by way of a seal, and
there must be something to show it is
so affixed by way, or for any purpose

An instrument may be covered with scrawl,
but unless there be something to show it
is thus "by way of seal", no such obli-
gation as the statute declares, attaches
to it. The statute prescribes
no shape or form of the scrawl, it may
be of any shape or form - it may be in
any place on the instrument, on the
side, before or after the name, and
if it appears to have been affixed
thus "by way of seal", it has the effect,
declared by the statute - But can it be
thus by putting a flourish, or scrawl
on any part of a note, without any
thing to indicate it was put, thus "by way
of seal", it will make it a sealed in-
strument.

If it had said writing our hand & seal,
on the letter L. S. or the word seal had
been written in the scrawl. then then
would have been something to show
it was used "by way of seal"

The flourish is such, that no one
could suppose it was so intended.

To this point is 1 Wm. & D. 487
1st Minor Club. Repts. 187

4 Am. 333

3 But it was a question for the Jury -
In Long vs Rummy 1 Cranch 72
Such was the opinion of the
Court. They say the Jury to me to
judge whether there was a sealing
and delivery; And if on proof
of the hand writing, they might
infer a sealing, so they might
infer from inspection of the
note, that it was not sealed -
The Court committed no error,
in allowing the note to go in evi-
dence, and when in evidence
it was for the Jury to determine whether
it was sealed or not - and
their finding cannot be disturbed,
and ought not to be on a pun-
tilliment like this, unless im-
piously required by the law.

The Counsel for plaintiff in error ad-
mitted it to be a question of fact,
and as such it has been so find-
ed upon by the Jury - And the fact that
it was a partnership note, & one partner had
no authority to make a sealed note to bind
the partnership, might reasonably jus-
tify the Jury in finding it was not sealed.

Even if there was a seal to the note,
we contend, that it was a sealed in-
strument only, as an individual obli-
gation of the party, but that as
a partnership obligation it was
a simple contract -

It is clear from the authorities, that
an agent, who under a special authority,
executes an instrument under seal,
which is not required by law to have
a seal in order to give it validity,
binds his principals as by a simple
contract, and that they may be sued
on such contract as a simple con-
tract - the Courts holding that though
the agent put a seal to the instrument,
as he had no authority, it does not bind his
principals, but that as the signature
was true & authentic, they will disre-
gard the seal, & hold them to be bound
as by a simple contract -

This is consonant with common sense,
and the spirit of the Courts in modern
times, to break away from the ancient
technical rules in regard to seals, as
no longer applicable to the present state
of society or promotion of justice -

known days in 5 Hills 113 Seldene
" vs Taylor, "if the contract be made
" without deed, the seal shall not
" prevent its being used as a simple
" contract, though the authenticity be by
" parole, or implied from the relation
" of between the parties principals & agents:
" as if they be parties"

See stay on part. Sec 122

So in 1st Seldene 339 the authorities
are all reviewed, and on page 340, the
Court say, the doctrine as applicable to
to parties is firmly established as ap-
plicable to parties, "that where an act
" done ^{by a party} within the scope of the partnership
" partnership would be valid if done by an
" unsealed instrument, then, although done
" by an instrument under seal, it will be valid
" and bind his copartners, if it is sanctioned
" by a prior parole authority"

Trust the Court will look at this case
as it is a thorough review of all the
authorities, and puts the case upon the
right ground -

And then, it is true that as in the case in
Le Term White as length 176, when a contract
is made by an agent under seal, the
without deed authority, the principal
may be sued in a simple contract, then

in a case when a partner gives a note
note without authority, the partnership
is bound as by simple contract and
may be sued in assumpsit - though
the partner signing may be bound under
seal, and might be sued in covenant - His
seal as to the partnership was affixed
without authority, and therefore as to
the partnership, is as if it had not been
there - because that, just the same done
by an agent without authority, is
as if it had never been done at all;
and a principal may be bound in
part, and not bound in the another
part - bound as to the signature
which is authorized, and not
bound as to the seal, which was
unauthorized.

There is a case cited or mentioned
in Vol. 1. Supplement to N.S. Digest
page 176. Sec 34, from 3^d Part 333
where it is said assumpsit may be brought
on a partnership note made by a
partner under seal
See also 7 Masson & W 332.

What error in overruling the motion for a continuance?

1 This Court can as well judge of the propriety of granting or refusing a continuance as can the Court below. How are various manoeuvres of parties to avoid judgment, after resorted to which an appeal is taken to the Court below, and yet do not appear in the record, and which if known to this Court would be satisfactory, that the motion was properly denied -

Besides, is not the granting of a ^{second} continuance under our Statute of the Court ^{entirely} within the discretion of the Court? If it were not so, if a party made affidavit twenty times embracing the requirements of the Statute, he would be entitled to a continuance.

2 But in this case no delinquency is shown. The defendant filed his plea April 6th 1833. And by the amended record filed since, it will be seen that a judgment was had against the defendants in a trial in March, ~~June~~ 1836, and was afterwards set aside on affd, & a new trial granted on account of absence of one of the Defs. Counsel and if ~~examined~~ ^{examined} rightly, the absence of this same witness ~~bound~~ ^{bound} -

The Cause was continued along until
~~March 1837~~ ^{February 1837} when bondsmen affidavits
was filed

The Cause was continued along until
July 1837, when Eams again filed his
affidavit for continuance, and made
bondsmen aff. a part of it - He
had been near two years, in which
Eams could have secured the testimony of
his witness. He says he is temporarily
residing at D'Witt Iowa - does not
say when he went there to reside,
but says his head quarters were at
Chicago. It shows he had no
right to rely upon his being in
Chicago, for his temporary residence
was out of the State. Edmund
Snook in circumstances of such
Cause a party Can continue a cause,
he may keep it off for five years.

The Court below found it a want
of diligence not to take his testimony
by deposition, in as much as
his business had for two years
called him to Iowa, where the
presumption was he would be.
Edmund's rights in admitted
Service on the subpoena -

At any rate his business ceased
residence being in Iowa, Evans
had no right to depend on two persons
in Chicago. - He had had ample
time, near two years to take his
testimony, & a failure to do so, was
laches, such as to justify the Court
in ~~refusing~~ refusing further con-
sideration - This taken in connection ^{with the fact} that
judge had been set aside to sit
in his testimony ~~that~~ against the Court
in justice to the plaintiff to overrule the
motion.

In this case, it is not pretended that
any injustice has been done under the
testimony, and the Court ought to af-
firm the judge, unless some strong prin-
ciple of law forbids it.

Wm. Goodrich
for def.

71
Preston et al
vs

Eames et al

Agreement
for debt in error

Filed May 19, 1858

Leland
OK

Wm. Goodrich
for debt

STATE OF ILLINOIS,
SUPREME COURT,

ss. The People of the State of Illinois,
TO THE CLERK OF THE ~~CIRCUIT~~ *Circuit* COURT FOR THE COUNTY OF *Cook* GREETING:

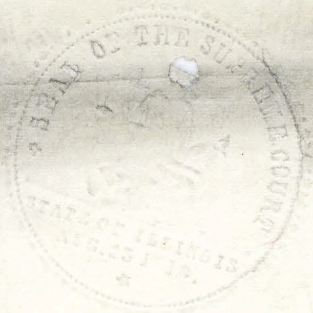
BECAUSE, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the ~~Circuit~~ *Circuit* Court of *Common Pleas of Cook County*, before the Judge thereof, between *David Preston & David Preston the*
Second

plaintiffs and *James H. James, Henry W. Burlingame*
and Joel Gray

defendant & it is said manifest error hath intervened, to the injury of the aforesaid

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

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *6th* day of *June* in the Year of Our Lord One Thousand Eight Hundred and Fifty *Seven*



L. Leland
Clerk of the Supreme Court.
By J. B. Rice Deputy

Chief of the Supreme Court



James H. Barnes
impleaded &c

David Preston et al

Writ of Error

This Writ of Error is made
a supersedeas and as
such is to be obeyed by
all concerned

L. Leland

Clerk

By J. B. Kier Deputy

Filed June 6. 1857

L. Leland

Clerk

Supreme Court
Illinois

Illinois
People of the State of Illinois

CLERK OF THE SUPREME COURT
STATE OF ILLINOIS

IN THE SUPREME COURT.

J. H. EAMES

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W. T. BURGESS, for *Plff.*

James H. Canes

vs

David Preston Coal

Argument

Filed May 17, 1838

to be heard

at law

246 71-131

James H. Barnes imp

vs

David Preston et al

71

Deposition

~~Boyd & Dumbell~~

12573

899!



Boyd & Dumbell