

No. 14533  $\frac{1}{2}$

# Supreme Court of Illinois

Orne

---

vs.

Cook

---

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division

No. 43

1863

1863

*Case*  
*of*  
*the*

14533 1/2

Chicago April 4/62

S. Delant Esq

Ottawa

Sir

We enclose

you Receipts & Bond for costs  
in case of James H. Orne vs  
Isaac Cook. Also \$5.<sup>00</sup> docket  
fee. Please inform Dept of Surv.  
and enclose us Sci. Co. for ser-  
vice on writ. at once. The  
Receipts are vice found by Officers  
travelling.

Yours Respectfully,

John McMichael Esq

Supreme Court of Illinois  
Third Grand Division

April Term A.D. 1862

James H. Orne

Plff. in error

vs  
Isaac C. Cook

Def. in error

error to Circuit Court  
of Cook County

We do hereby certify  
overdue security for costs in the above  
entitled case and acknowledge our-  
selves bound to pay or cause to be paid all  
costs which may accrue in said action  
either to the opposite party or to any of the  
officers of this Court in pursuance of  
the Laws of this State -

Chicago April 4<sup>th</sup> 1862

Scates McAllister De Witt -

State of Illinois vs

In the Supreme Court of Illinois

Third Grand Division

April Term A.D. 1862

James H. Orne

Plff. in error

vs  
Isaac C. Cook

Def. in error

error to Cook County  
Circuit Court

on

You will please give a writ  
of seque in the above entitled cause,  
and a Sci fa to the deft in seque, directed  
to Sherrif of Clark County - to be executed and  
returned to April Term of Court 1862  
Lester McCallister & Son  
atty for Sherrif in seque

~~44~~ 43

Seque County Sherrif  
James H. Orce  
Isaac Cook

Sci fa Clark  
Procurer

Filed Apr. 4, 1862  
J. Deland  
Clk.

STATE OF ILLINOIS,  
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Cook County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Cook County, before the Judge thereof, between

James H. Orne

plaintiff, and

Isaac Cook

defendant, it is said that manifest error hath intervened, to the injury of the said Orne

as we are informed by his complaints the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law. Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Isaac Cook

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

Isaac Cook

notice, together with this writ.

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 16<sup>th</sup> day of May in the year of our Lord One Thousand Eight Hundred and Sixty-two.

L. Deland  
Clerk of the Supreme Court.

510  
149 43

James St. Owen

No. VS.

Isaac Cook

Clavi SCIRE FACIAS.

Printed..... A. D. 1862

Clerk.

1863

Served by reading this writ to the within named  
Isaac Cook on the 23<sup>rd</sup> September 1862,

Anthony C. Hosking Sheriff  
John A. Nelson Deputy

Fees  
1 day 50  
4ml 10  
1 ret 10

Ed by Wm. O'Leary



The promise declared on is certainly not within the language of the Statute of Frauds, which is that, " No action shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person, unless," &c. If Hulme & White had promised to give an endorser, and the defendant had promised to furnish the endorser if they failed to do so, or that he would see that the endorser was provided, as agreed by Hulme & White, such a promise of the defendant would have been collateral to the promise of Hulme & White, and within the Statute of Frauds. But here, Hulme & White do not agree to give the endorser. Their promise is to sign the notes as makers, and the defendant promises to endorse them ; and the plaintiff, relying upon the defendant's promise, parts with his goods. The agreement was a tri-lateral one, and the promise of each party was an original and independant promise.

1 Smith's Leading Cases, 274.

*De Wolf vs. Rabaud*, 1 Peters, 476.

*Tounsley vs. Sunval*, 2 Peters, 170.

*Burkett vs. Bevan*, 1 Bing. N. C. 103.

It is submitted that the decision in *Carville vs. Crane*, 5 Hill, 483, is not good law in this State. If the foregoing positions are sustained by the Court, then the defendant's second plea was inapplicable, and the issue formed upon it was wholly immaterial, and should have been stricken out, on the plaintiff's motion.

## II.

The Circuit Court erred in overruling the plaintiff's motion for a new trial. The promise of defendant *was in writing duly signed by him* (Ab. 9 and 12). This is all our statute requires in any case. As to the facts and circumstances, there is no dispute or conflict of evidence ; and, as we regard them, nothing but perverseness of the jury, and willful disregard of the testimony, could enable them to find against the plaintiff.

The facts, briefly stated, are as follows :

In the fall of 1854, Hulme & White leased the hotel " Young Ameri-

ca" from defendant—he promising to assist them in furnishing it (Abstract 11). With this understanding, Hulme went to Philadelphia to select furniture for the house. He called upon witness, Henkle, who was a cabinet maker, and was introduced by Mr. Henkle to the plaintiff. He examined plaintiff's stock of carpetings, and was satisfied with them. He wanted to purchase upon credit, and offered the defendant as security; and to ascertain the defendant's responsibility, Mr. Henkle came to Chicago, and made inquiries on behalf of himself and the plaintiff. Satisfied with the result of his inquiries, Mr. Henkle returned to Philadelphia, and reported to the plaintiff. The plaintiff and Mr. Henkle then fixed the terms upon which they would respectively sell their goods for the furnishing of the house. These terms, Mr. Henkle, acting for himself and for the plaintiff, communicated in a letter to Hulme & White. The terms were: Hulme & White's note, at six months, for one-third of purchase, and for the balance their two notes of equal amounts, endorsed or *backed* by defendant, payable in 12 and eighteen months from date of sale. The letter of Mr. Henkle, stating these terms, was received by Hulme & White, and was, by Mr. Hulme, shown to the defendant, who assented to it fully. Mr. Hulme, acting for Hulme & White, thereupon wrote to Mr. Henkle, accepting the terms, and the defendant, in the same letter and over his own signature, added his assent thereto. This letter Mr. Henkle received and showed to the plaintiff, and upon the strength of the defendant's promise therein contained, the plaintiff parted with his goods to the amount of about \$2,560.00 (Ab. 10 and 13) and the goods were used in furnishing the hotel of the defendant, as proposed (Ab. 9). Here then was a proposition from the plaintiff, accepted by the defendant in writing signed by him, together, constituting an express contract, or agreement, upon which the plaintiff relied, and upon which he acted. The plaintiff performed his part of the contract in good faith. The defendant was often requested to perform on his part, but as often neglected to do so. Why should he not answer in damages for his default?

### III.

The defence, urged on the trial, was, that the undertaking of the plaintiff and the witness, Henkle, was joint; that it was an entire agreement to furnish carpetings and cabinet furniture for the hotel, and although

the defendant's promise was valid and binding upon him, and although plaintiff furnished the carpetings in pursuance of the contract, yet the contract being entire, and the cabinet furniture not having been furnished, the defendant was not bound to sign the notes to the plaintiff. The evidence does not support this theory. The plaintiff and Henkle had no business connection whatever. It was perfectly understood by all parties, that plaintiff had no interest in the cabinet furniture, and that Henkle had no interest in the carpetings. They were separate business houses, and separate bargains were made with each by Hulme & White. The terms of credit were the same in each case; but they were terms, as Mr. Henkle testifies, upon which "*I would sell my goods, and Mr. Orne would sell his.*" (Abstract 12).

Mr. Henkle's warerooms and goods were destroyed by fire, and therefore he could not fulfill his contract (Abs., 12); and the cabinet furniture was afterwards purchased, as Mr. Hulme says (Abs., 9), in Cincinnati, upon the same terms, Mr. Henkle had agreed to furnish it upon. But the carpeting the plaintiff did furnish, and the defendant knew it. He must also have known that Henkle could not and did not furnish the cabinet furniture, for he consented to and made the same terms with the Cincinnati house. When the notes to the plaintiff, which he had agreed to endorse, were presented for his signature, he did not deny his agreement or his obligation to fulfill it, to Mr. Orne; nor did he then urge or intimate the objection now made by his counsel (Abs., 10); thus showing that he understood the relations of the parties, and that the contract was a separate one with each of them. In short his treatment of the matter was an admission of his obligation to sign the notes.

With respect to the carpeting, Mr. Henkle acted simply as the agent of the plaintiff, and without the slightest personal interest. And this defence is as unreal as it is unjust. The carpets were retained in the hotel, and as well might Hulme and White deny their obligation to make the notes, for the reason suggested, as the defendant to endorse them. We insist that the jury in their verdict, and the Circuit Judge, in overruling the motion for a new trial, wholly disregarded the evidence in the case: and that, for this reason, the judgment should be reversed.

McALLISTER, JEWETT & JACKSON,

*Attorneys for Appellant.*

<sup>43</sup>  
Supreme Court

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James H. Crane

vs. Peff

Isaac Cook  
Deft

---

Peffs Points

Filed April 28, 1863

Georgia

c/r

Supreme Court,

Janus H. Ome

vs

Isaac Cook

}

Legal Points and authorities

The circuit court ruled properly in refusing to strike out the second plea.

For the statute has given the defendant the right to plead as many pleas as he may deem necessary for his defence and the case made in the declaration & under the proofs was within the statute.

On examining Smith's Leading Cases the court will see that 5 Hill 483 is sustained by the authorities.

Upon the other points made by the pff. It was a question of fact for the jury whether the pff had proved the case stated in his declaration and the terms and conditions of Cook's promise upon compliance with which he had undertaken to become liable for Hulme & White - and that they had been complied with so as to charge him.

The proposition that was in fact

submitted which is to be gathered from  
the letter which Huckle swears he  
wrote - p 60 - (11 of abs.)

I therefore wrote to Hulme &  
White that Mr Orme and I would send the  
goods, if they would give us Mr Cook's  
endorsement for two last payments  
the twelve and eighteen months payments  
of two thirds of the bills, and that we would  
take Hulme & White's note for the first  
payment at six months -

So this Cook said he was willing  
to back this paper for the twelve and  
eighteen months payments as proposed  
by us -

This is the substance of the letter  
shown to Cook upon which he acted -  
and accepted the terms proposed by  
them that is Orme & Huckle - by us  
as Huckle says - He had nothing to  
do with either Hulme's Orme's or  
Huckle's understandings outside  
of this -

What were these terms - that  
they Huckle and Orme would furnish  
the young America, send the goods  
agreed for, not that either of them  
might do so and not the other. for

the goods of one would be of no use unless  
the other furnished also each might  
have a separate right to his pay after  
they were furnished: but it is manifest  
from all the surroundings that it  
was understood at the time the arrange-  
ment was entered into that ~~both~~ both  
were to furnish, and if either failed  
so some further arrangement must be  
made or the inducement that led  
Cook into the matter the furnishing  
the hotel would not be accomplished.

Supposing this had been a letter  
of credit from Cook addressed to these  
parties requesting them to furnish  
Young America for Hulme & White  
his tenants and he would endorse this  
paper can there be any doubt unless  
they both accepted and performed that  
Cook would not be liable. To attain the  
object he had in view it was necessary  
that both should perform, that the  
whole house should be furnished. If only  
half furnished, that is performed by  
one only, it would be useless.

If each of these parties had in the credit  
any course of business with a separate letter  
and Cook had given ~~them~~ each a separate

acceptance or engagement that would  
have been a different case, but here  
you cannot in justice to Cook separate  
~~them~~ as a surety separate them. and the  
attempt is to make a cruel engagement  
of what upon the face of it was a joint one  
so far as Cook was concerned. And this view  
of it by the jury had a right to take.

Again ~~Cook~~ there is no evidence  
that Cook had notice from these parties  
that his proposition was accepted and  
would be acted upon. Chit on con. p. 500  
and note.

The Off. should have produced the  
notes tendered Cook for endorsement.  
How else could the jury tell whether  
they were right or not.

The case was fairly submitted  
to the jury upon questions of fact  
and they have found for the Depu-  
dant and their finding should  
not be disturbed.

W. J. P. J. J.  
for Dep.

Sup<sup>113-98</sup> Court

43.

Book

200

Ormes

Lefts Pring

Filed May 13, 1863

G. L. Leland  
clerk

Pring

*[Faint, mostly illegible handwriting in the left column]*

*[Faint handwriting in the top section of the right column]*

*[Faint handwriting in the middle section of the right column]*

*[Faint handwriting at the bottom of the right column]*

# SUPREME COURT OF ILLINOIS,

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

---

JAMES H. ORNE,  
*Plaintiff in Error.*

vs.

ISAAC COOK,  
*Defendant in Error.*

ERROR TO THE  
COOK COUNTY CIRCUIT COURT.

---

## ABSTRACT OF RECORD.

—♦♦♦—

This was an action of **Assumpsit**, brought by the plaintiff in error against the defendant in error, to the June term, A. D. 1858, of the Cook county Circuit Court.

**The Declaration** was filed on the 1st day of November, A. D. 1858, and contains eight counts.

**The first Count** is in substance as follows: That heretofore, to

( 2 )



That the eighteen months have long since elapsed, but that said two instalments are wholly unpaid.

16        **The Fourth Count** sets forth, that in consideration that plaintiff had bargained and contracted to sell to Hulme & White certain other carpetings of great value, to wit, of the value of \$2566.38, to be used by said Hulme & White in the furnishing of a certain other hotel of the defendant, to be occupied by Hulme & White as tenants of defendant, and in further consideration that plaintiff, at the special instance and request of the defendant, would deliver to the said Hulme & White said carpetings, for the purpose aforesaid, and would extend the time of payment for the same, so as to make the purchase price thereof payable in three equal instalments, in six, twelve and eighteen months respectively from date of said delivery, he, the defendant, undertook, and then and there promised the plaintiff that he would guarantee the payment of the two-thirds of the purchase price of said  
17 carpetings, having the longest time to run, to wit, the two instalments of said purchase price payable respectively in twelve and eighteen months from the delivery of said carpetings. That the plaintiff, confiding in the promise of the defendant, afterwards delivered to Hulme & White, for the purposes aforesaid, said carpetings, and extended the time for the payment of the purchase price, and made the same payable in three equal instalments, in six, twelve and eighteen months from the date of said delivery ; of all which defendant had notice.

18        The count then avers the lapse of the eighteen months from date of delivery ; that Hulme & White have wholly failed to pay the two instalments of the purchase price payable in twelve and eighteen months from date of delivery of the carpetings, of which defendant had notice. Yet the defendant, although requested so to do, has not guaranteed to the said plaintiff the payment of said two instalments, or paid, or caused to be paid, the same, or any part thereof.

19        **The Fifth Count** sets forth, that the defendant, in consideration that the plaintiff would sell and deliver to Hulme & White certain goods, &c., to be used in furnishing a hotel of the defendant, in Chicago, occu-

20        pied by said Hulme & White as tenants of defendant, and would give time of payment therefor, making the whole price payable in three equal payments, payable respectively in six, twelve and eighteen months from date of sale, he, the defendant, guaranteed to the plaintiff the payment of two-thirds of the price, that is to say, the two instalments payable in twelve and eighteen months from date of sale. That the plaintiffs, relying upon the promise and guaranty of the defendant, afterwards sold and delivered to said Hulme & White, for the purpose aforesaid, said goods, &c., amounting to \$2566.38, and gave time of payment, making it payable in equal instalments, in six, twelve and eighteen months from date of sale, of which defendant had notice. That more than eighteen months have elapsed since said sale, and neither the said Hulme & White, nor the said defendant, have paid said two instalments, or either of them, or any part thereof.

21        **The Sixth Count** sets forth, that in consideration that plaintiff would, at the special instance and request of defendant, sell and deliver to Hulme & White certain other goods, &c., to be used in furnishing a hotel of the defendant, in Chicago, to be occupied by the said Hulme & White, as tenants of defendant, and would give time of payment for the  
22        whole price thereof, making the same payable in three equal instalments, in six, twelve and eighteen months from date of sale, he, the defendant, undertook, and then and there promised the plaintiff that he would endorse the notes of Hulme & White for the amount of two-thirds of the purchase price of said goods; that is to say, the two-thirds having the longest time to run, and being the two instalments payable in twelve and eighteen months from date of sale.

23        That the plaintiff, confiding in the promise of defendant, sold and delivered to Hulme & White, to be used in furnishing said hotel of defendant, goods, &c., to the amount and value of \$2566.38, of which defendant had notice. That within a reasonable time after the sale, to wit, on the 1st day of January, A. D. 1855, two notes of said Hulme & White, each for one-third of the price of said goods, and payable respectively in twelve and eighteen months from date of said sale, being for the two instalments of said price having the longest time to run, were, at the instance of the plaintiff, duly presented to said defendant for his endorse-

ment thereof, and the defendant was requested to endorse the same, in pursuance of his promise aforesaid, but that he wholly refused, and has ever since refused do do so.

25 That although the eighteen months from date of said sale have long since elapsed, and the two instalments of said purchase price, for which defendant was to endorse the notes of said Hulme & White, have long since become due, yet the same has not, nor has any part thereof been paid. That when the same became due respectively, the said Hulme & White were, ever since have been, and still are, insolvent, and unable to pay these debts, and that suit against them would have been unavailing. That although Hulme & White have at all times since date of said last mentioned sale, been ready and willing to execute and deliver to plaintiff their notes for the two instalments of the price of said goods, &c., aforesaid, and have often, at the instance of the plaintiff, requested the defendant to endorse their notes for the same, according to his promise, &c., yet the defendant, in disregard of his promise, &c., has not endorsed said notes, or either of them, or paid the amount of said two instalments, or any part thereof, but has utterly refused so to do.

26 **The Seventh Count** states that whereas, heretofore, to wit, on the 1st day of November, 1854, in consideration that the plaintiff had bargained to Hulme & White certain other goods, &c., of the value of \$2566.38, to be used in furnishing a certain other hotel of the defendant, in Chicago, to be occupied by said Hulme & White as tenants to defendant, known as the Young America, and in further consideration that the plaintiff would sell and deliver to said Hulme & White said last mentioned goods, &c., to be used as aforesaid, and would give time of payment for the same, making the purchase price payable in three equal instalments, payable in six, twelve and eighteen months from date of sale and delivery, the defendant undertook and promised the plaintiff  
27 in writing, duly signed by him, (but which writing has since been accidentally destroyed by fire, and therefore cannot be produced,) that he would endorse the notes of said Hulme & White for the two-thirds of said purchase of said goods, &c., having the longest time to run, to wit, for the two instalments of said price payable respectively in twelve and eighteen months from date of such sale and delivery.

(7)

That the plaintiff, confiding in the said promise and undertaking of the defendant, did afterwards, to wit, on the day and year aforesaid, sell and deliver to said Hulme & White said goods, &c., of the value aforesaid, and did give time of payment therefor, making the price payable in six, twelve and eighteen months, in equal instalments, of which the defendant was duly notified. That afterwards, and within a reasonable time to wit, on the 1st day of January, A. D. 1855, plaintiff caused the promissory notes of said Hulme & White, duly executed by them for the two instalments of said purchase price, payable respectively in twelve and eighteen months, to be presented to the said defendant for his endorsement, and defendant was then and there requested to endorse the same, but that defendant then refused, and has ever since neglected and refused, to endorse said note, or either of them. That the eighteen months from date of said sale and delivery have long since elapsed, but that said two last instalments of said purchase price are wholly unpaid. That at the several times when the same became due, Hulme & White were insolvent, and suit against them to recover the same would have been wholly unavailing, of which defendant had notice.

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30, 31, 32 **The Eighth Count** is in substance like the sixth.  
33, 34

Pleas.

37 1. General issue.

( 8 )

**2.** That the said promises and agreements in the declaration mentioned, and a memorandum thereof, were, and each and every one thereof, at the time of making thereof, in writing signed by the said defendant.

40, 41, 42 **Trial**, and verdict for defendant, and motion for new trial.

43 **Motion** for new trial overruled, and excepted to by plaintiff, and  
44 final judgment on verdict for defendant.

### Bill of Exceptions.

45 The **Bill of Exceptions** shows a trial at the April term, 1861, before the court and a jury, and that on said trial the deposition of

**George Hulme**





( 11 )

57           The bill of exceptions further shows, that plaintiff, on said trial, read  
to the jury the deposition of

**George I. Henkle,**





71        **Motion** for new trial for following reasons :

1. Verdict is contrary to the evidence.
2. Verdict is contrary to the law and the facts.
3. The court improperly overruled the motion of the plaintiff to strike out the issue formed upon the defendant's second plea.

72        **Order of Court** overruling motion for new trial excepted to by the plaintiff.

#### Errors Assigned.

1. The court below erred in refusing, upon the motion of the plaintiff, to strike out the issue tendered by, and formed upon, the defendant's second plea.
2. The court below erred in overruling the motion of the plaintiff for a new trial.

SCATES, McALLISTER & JEWETT,  
*Attorneys for Plaintiff in Error.*

43-98

Superior Court

JAMES H. ORW

v

Isaac Cook

Abstract -

Filed Apr. 22-1863

L. L. Land

Clerk

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delivered the opinion of the Court:

Mr. Justice

Waller

There was no error in refusing to strike the plea of the Statute of frauds from the files. If it was insufficient in substance ~~and~~ form. The only means of taking advantage of the defect was by demurrer. If it was sufficient as a plea it was for the jury and not the court to determine whether it was sustained by the evidence. If the court ~~was~~ after the evidence ~~was~~ <sup>was</sup> of all heart, <sup>must</sup> to assume the right to strike out a plea because it was not sustained by the proof, the right of the jury to try issues of fact would be violated, and trial by jury, thus terminated. This has never been indulged, and cannot <sup>be</sup> as long as trial by jury obtains. The court has the right to inform the jury what facts must be proved to sustain the issue, but not to determine whether such facts have been established, and if the court thinks they have not, to take the issue from the jury by striking out the pleadings.

The next question is, so whether the

finding of the jury is so manifestly  
 against the evidence, that the verdict  
 should be set aside, and a new trial  
 awarded. Hulme <sup>and</sup> Hinkle both testi-  
 -fy, that plaintiff would not have  
 parted with the goods, if defendant  
 had not first agreed, to endorse the  
 notes at twelve and eighteen mon-  
 -ths. Before the goods were purchased,  
 defendant was seen, and he agreed  
 if the goods were furnished, he would  
 endorse for Hulme & White, to enable  
 them to furnish the hotel. Hulme tes-  
 tifies, that he wrote out a proposition,  
 stating the terms upon which he and  
 White were willing to purchase. The  
 proposition was, that they were to give  
 their notes due in six, twelve and  
 eighteen months, the two last to bear  
 interest after six months, and defen-  
 -ant to endorse ~~them~~ twelve and  
 -eighteen months notes. That when these  
 propositions were handed to defen-  
 -ant he endorsed on ~~to~~ a note by  
 which he accepted the terms, and  
 signed it. These propositions were sent  
 to Hinkle, and ~~upon them the goods~~  
~~were furnished, to Hulme & White.~~

The witness Hinkle, testifies, that

He received such a letter, and showed  
 it to plaintiff, but says he never  
 saw defendant write. He however  
 says, that he supposes he had frequ-  
 -ently seen defendant's name sign-  
 -ed to ~~bank~~<sup>bank</sup> notes. Now Hulme tes-  
 -tifies, that defendant made the en-  
 -closure ment on the letter and signed  
 it, and that he sent it by mail to  
 Hinkle, who testifies that he receiv-  
 -ed ~~such~~ a letter, the same in all  
 -~~the~~ particulars. Can it be doubted  
 that this was the same, or that  
 there is proof, that defendant sign-  
 -ed the letter received by Hinkle and  
 upon which plaintiff furnished the  
 goods? This identified the letter, stating  
 the terms, accepted or agreed to by  
 defendant, as fully as proof could  
 be made, unless the letter could have  
 been produced. But having been  
 destroyed by fire, it could not be  
 produced on the trial, and proof of  
 its contents, <sup>and execution</sup> had to be made without  
 its production. This we think has been  
 satisfactorily done, and fully answers  
 - the statute even if it was a collater-  
 -al undertaking.

But this was no answer

The Evidence did not warrant the finding of the jury, and the court below erred in refusing to grant a new trial, and the judgment is reversed.

~~Judgment Reversed.~~

~~In his opinion the whole court concurred.~~

Judgment reversed.

~~The judgment heretofore entered in this cause affirming the judgment below, is set aside and a judgment of reversal is to be entered of record.~~

~~Sept. 25, 1863.~~

~~J. D. Catton~~

~~J. H. Walker~~

~~Wm. Greese~~

J H Orme

43 vs 98

D Books

Opinion by  
Manning

4<sup>th</sup>  
1863

Recorded

Pages 688



## II .

The Circuit Court erred in overruling the plaintiff's motion for a new trial. The promise of defendant *was in writing duly signed by him* (Ab. 9 and 12). This is all our statute requires in any case. As to the facts and circumstances, there is no dispute or conflict of evidence; and, as we regard them, nothing but perverseness of the jury, and willful disregard of the testimony, could enable them to find against the plaintiff.

The facts, briefly stated, are as follows :

In the fall of 1854, Hulme & White leased the hotel " Young Ameri-



ca" from defendant—he promising to assist them in furnishing it (Abstract 11). With this understanding, Hulme went to Philadelphia to select furniture for the house. He called upon witness, Henkle, who was a cabinet maker, and was introduced by Mr. Henkle to the plaintiff. He examined plaintiff's stock of carpetings, and was satisfied with them. He wanted to purchase upon credit, and offered the defendant as security; and to ascertain the defendant's responsibility, Mr. Henkle came to Chicago, and made inquiries on behalf of himself and the plaintiff. Satisfied with the result of his inquiries, Mr. Henkle returned to Philadelphia, and reported to the plaintiff. The plaintiff and Mr. Henkle then fixed the terms upon which they would respectively sell their goods for the furnishing of the house. These terms, Mr. Henkle, acting for himself and for the plaintiff, communicated in a letter to Hulme & White. The terms were: Hulme & White's note, at six months, for one-third of purchase, and for the balance their two notes of equal amounts, endorsed or *backed* by defendant, payable in 12 and eighteen months from date of sale. The letter of Mr. Henkle, stating these terms, was received by Hulme & White, and was, by Mr. Hulme, shown to the defendant, who assented to it fully. Mr. Hulme, acting for Hulme & White, thereupon wrote to Mr. Henkle, accepting the terms, and the defendant, in the same letter and over his own signature, added his assent thereto. This letter Mr. Henkle received and showed to the plaintiff, and upon the strength of the defendant's promise therein contained, the plaintiff parted with his goods to the amount of about \$2,560.00 (Ab. 10 and 13) and the goods were used in furnishing the hotel of the defendant, as proposed (Ab. 9). Here then was a proposition from the plaintiff, accepted by the defendant in writing signed by him, together, constituting an express contract, or agreement, upon which the plaintiff relied, and upon which he acted. The plaintiff performed his part of the contract in good faith. The defendant was often requested to perform on his part, but as often neglected to do so. Why should he not answer in damages for his default?

### III.

The defence, urged on the trial, was, that the undertaking of the plaintiff and the witness, Henkle, was joint; that it was an entire agreement to furnish carpetings and cabinet furniture for the hotel, and although

the defendant's promise was valid and binding upon him, and although plaintiff furnished the carpetings in pursuance of the contract, yet the contract being entire, and the cabinet furniture not having been furnished, the defendant was not bound to sign the notes to the plaintiff. The evidence does not support this theory. The plaintiff and Henkle had no business connection whatever. It was perfectly understood by all parties, that plaintiff had no interest in the cabinet furniture, and that Henkle had no interest in the carpetings. They were separate business houses, and separate bargains were made with each by Hulme & White. The terms of credit were the same in each case; but they were terms, as Mr. Henkle testifies, upon which "*I would sell my goods, and Mr. Orne would sell his.*" (Abstract 12).

Mr. Henkle's warerooms and goods were destroyed by fire, and therefore he could not fulfill his contract (Abs., 12); and the cabinet furniture was afterwards purchased, as Mr. Hulme says (Abs., 9), in Cincinnati, upon the same terms, Mr. Henkle had agreed to furnish it upon. But the carpeting the plaintiff did furnish, and the defendant knew it. He must also have known that Henkle could not and did not furnish the cabinet furniture, for he consented to and made the same terms with the Cincinnati house. When the notes to the plaintiff, which he had agreed to endorse, were presented for his signature, he did not deny his agreement or his obligation to fulfill it, to Mr. Orne; nor did he then urge or intimate the objection now made by his counsel (Abs., 10); thus showing that he understood the relations of the parties, and that the contract was a separate one with each of them. In short his treatment of the matter was an admission of his obligation to sign the notes.

With respect to the carpeting, Mr. Henkle acted simply as the agent of the plaintiff, and without the slightest personal interest. And this defence is as unreal as it is unjust. The carpets were retained in the hotel, and as well might Hulme and White deny their obligation to make the notes, for the reason suggested, as the defendant to endorse them. We insist that the jury in their verdict, and the Circuit Judge, in overruling the motion for a new trial, wholly disregarded the evidence in the case: and that, for this reason, the judgment should be reversed.

McALLISTER, JEWETT & JACKSON,  
*Attorneys for Appellant.*

<sup>113</sup> Supreme Court <sup>98</sup>

James H Orne

vs Plff in

Isaac Cook

Defendant

Puffs Points

Filed Apr 24, 1853

J. Selman  
clerk

# UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable George Manion 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 Second Monday, (being the Eighth day) of July in the year of our Lord One Thousand Eight Hundred and Sixty one and of the Independence of the said United States the Eighty Sixth,

Present, Honorable George Manion Judge of the 7th Judicial Circuit }  
of the State of Illinois. }

Charles Haven States Attorney.

Anthony C. Nesing Sheriff of Cook County.

Attest, M. L. Church Clerk.

Be it Remembered, that heretofore, to wit, on the  
on the Eleventh day of June in the year of our  
Lord One thousand eight hundred and fifty  
eight James H. Cone by Messrs Scates McAllister  
Jewett & Teabody his Attorney filed in the office  
of the Clerk of the Court aforesaid a certain  
Bond for Costs, in the words and figures following  
to wit:

James H. Cone

Cook County  
Circuit Court

Isaac Cook

He do hereby enter  
ourselves security for costs in this cause, and  
acknowledge ourselves bound to pay or cause to be  
paid, all costs which may accrue in this action,  
either to the opposite party, or to any of the officers

of this Court, in pursuance of the laws of this State.

Dated this 9th day of June A.D. 1858 } Scates M<sup>c</sup>Allister Jewett  
and Peabody

And thereupon, on the day and year aforesaid, to wit: on the Eleventh day of June A.D. 1858 said James H. Cone by Scates M<sup>c</sup>Allister Jewett & Peabody his Attorney, read out of the office of the Clerk of said Court & under the seal thereof, the Peoples certain writ of Summons directed to the Sheriff of Cook County to execute, and clothed in the words and figures following viz;

State of Illinois  
County of Cook. The People of the State of Illinois,  
to the Sheriff of said County, Greeting:

We command you that you summon Isaac Cook 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 at the Court House, in Chicago, in said County, on the fourth Monday of June inst, to answer unto James H. Cone in a plea of trespass on the case upon promises to the damage of the said Plaintiff as is said, in the sum of two thousand Dollars,

And have you then and 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,

✓  
3  
this Eleventh day of June A.D. 1858.

Seal

W. L. Church Clerk,

And afterwards, to wit: on the 15<sup>th</sup> day of June in  
in the year last aforesaid said writ was returned into the  
Court aforesaid by said Sheriff endorsed as follows, to wit:

Served by reading to the within named Defendant  
the 15<sup>th</sup> day of June 1858. Fees: 1 Service, 50. 2 Miles 10.  
1 Return 10. - 70 - Pd by off. atty. - John L. Wilson, Sheriff -  
By Thos. J. Holt, Deputy -

And afterwards, to wit: on the first day of  
November in the year last aforesaid, said Plaintiff by his  
said Attorney files in the Court aforesaid his certain declaration  
in said cause in the words and figures following to wit:

State of Illinois, County of Cook, p:

In the Circuit Court of said County.

Of the November Term A.D. 1858

James H. Cone, Plaintiff in this suit, by Scales  
McAllister & Jewett, his Attorney, complains of Isaac  
Cook Defendant in this suit who has been summoned  
&c. of a Plea of Trespass on the case upon promises,

1 For that whereas, heretofore to wit: on the first day  
of November in the year of our Lord one thousand eight  
hundred and fifty four (A.D. 1854) at Philadelphia, to wit:  
at the County aforesaid, in consideration that the said  
Plaintiff at the special instance and request of the

said Defendant, would sell and deliver to  
 George Wolome and J. Stockton White, Partners  
 using the firm name of Wolome & White, a large  
 quantity of Carpetings to be used by them in and  
 about the furnishing of a certain Hotel in the  
 City of Chicago, owned by the said Defendant  
 and to be occupied by the said Wolome &  
 White as Tenants to the said Defendant, and  
 known as the "Young America" said sale to be  
 upon a credit and the Amount thereof to be  
 paid in three equal payments secured by the  
 promissory notes of the said Wolome and White  
 payable in Six, Twelve and eighteen months  
 from the date of said sale, he the said Defen-  
 dant, undertook and then and there faithfully  
 promised the said Plaintiff, in writing duly  
 signed by the said Defendant (but which said  
 writing has been accidentally destroyed  
 by fire and therefore cannot be procured by  
 the said Plaintiff, nor a copy thereof given,  
 that he the said Defendant would guarantee  
 the Payment of the Promissory Notes of the  
 said Wolome and White for ~~two~~ thirds of the  
 Amount of said sale, that is to say, the two prom-  
 issory Notes of the said Wolome and White, so  
 to be given for the purchase price of said  
 carpetings, as aforesaid, having the longest time  
 to run, and bring the notes aforesaid payable

respectively in twelve and eighteen months from the date of said sale. And the said Plaintiff avers that he confided in the Promise and undertaking of the said Defendant, and relying upon his guaranty aforesaid did afterwards to wit, on the day and year aforesaid at Philadelphia to wit, at the County aforesaid sell and deliver to the said Boulme + White a large quantity of carpetings of great value to wit, of the value of Twenty five hundred and Sixty Six dollars and Thirty eight cents (\$2566.38) to be used in and about the furnishing of the said Hotel, and the same were afterwards used by the said Boulme and White for that purpose, of all which the said Defendant afterwards to wit on the day and year aforesaid at the County aforesaid, had notice.

And the said Plaintiff further avers that afterwards, and within a reasonable time after the sale and delivery of the said Carpetings as aforesaid to the said Boulme and White, to wit, on the first day of January A.D. 1855, he caused to be made out, executed and presented to the said Defendant for his guaranty three of two certain promissory notes of the said Boulme + White, each for one third part of the Purchase Price of the Carpetings aforesaid, and being

for two thirds of said purchase price, payable to the order of the said Plaintiff in twelve and eighteen months respectively from the date of said sale, and being the notes of the said Wolme and White aforesaid and having the longest time to run, and then and there requested the said Defendant to guarantee the payment of the same, in pursuance of his promise and undertaking, aforesaid. But the said Defendant did not nor would at the time, when the said promissory Notes were so presented to him for his guaranty thereof as aforesaid, nor at any other time before or afterwards, guarantee the payment of said Notes or either of them but on the contrary thereof wholly neglected and refused so to do, and the said Plaintiff thereupon returned the said two notes of the said Wolme and White so executed for two thirds of the purchase price of said Carpetings as aforesaid & wholly refused to accept the same

And the said Plaintiff further avers, that although Eighteen months from the date of said sale long since elapsed, the said Wolme and White have not paid to the said Plaintiff the two thirds part of the purchase price of said Carpetings, so sold & delivered to them by the said Plaintiff as aforesaid and

payable respectively in twelve and eighteen months from the date of said sale, or either of them or any part thereof (although after requested so to do) but to pay him the same the said Wolme and White have hitherto wholly neglected and refused. and the said two thirds of said Purchase Price is now due and wholly unpaid to the said plaintiff. And Although the said Wolme and White have ever since the presentation of said notes aforesaid to the said Defendant for his guaranty thereof as aforesaid, were ready and willing to return said notes to the said plaintiff and at the special instance and request of the said Plaintiff, have after requested the said Defendant to guarantee the payment of the same according to his Promise and undertaking aforesaid. Yet the said Defendant not regarding his promise & undertaking, but continuing and intending to injure and defraud the said plaintiff in that behalf has not guaranteed the payment of said notes or either of them, or paid or caused to be paid the sum of money therein specified or any part thereof to the said plaintiff.

2 Also for that whereas, heretofore to wit, on the first day of November A.D. 1854 at Philadelphia to wit at the County aforesaid.

in consideration that the said Plaintiff, at the special instance and request of the said Defendants, would sell and deliver to George Holmes and J. Stockton White, Partners using the firm name and style of Holmes and White, a large quantity of goods, wares, and merchandise to be used by them in and about the furnishing of a certain other hotel of the said Defendants, situated in the City of Chicago, and to be occupied by them as Tenants to the said Defendants and known as the "Grand America" and would receive in payment thereof three certain promissory notes of the said Holmes and White, of equal amounts, payable in six, twelve and eighteen months respectively from the date thereof, to wit the date of said sale, he the said Defendant undertook and then and there faithfully promised the said Plaintiff, that he the said Defendant would guarantee the payment of the notes of the said Holmes and White for the proceeds of the Purchase Price of the said Goods, Wares & Merchandise by the said Plaintiff sold and delivered to the said Holmes and White, for the purpose aforesaid that is to say, the two Promissory Notes of the said Holmes and White having the longest time to run, and being the two notes aforesaid payable respectively in twelve and eighteen months from the date thereof. And the said Plaintiff

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are that he confiding in the promise and undertaking of the said Defendant aforesaid and relying upon the guaranty of the said Defendant for two thirds of the Purchase Price of said Goods and Wares and Merchandise did afterwards to wit, on the day and year aforesaid at Philadelphia to wit, at the County aforesaid sell and deliver to the said Wolcott & White a large quantity of goods, wares and merchandise of great value to wit, of the value of Twenty five hundred and sixty six dollars and thirty eight cents (\$2566.38) to be used in and about the furnishing of the said last mentioned Hotel of the said Defendant. Of which the said Defendant afterwards to wit, on the day and year aforesaid, at the County aforesaid, had notice.

And the said Plaintiff further are that afterwards, and within a reasonable time after the said sale and delivery to wit, on the first day of January and 1855 at the County aforesaid, the Promising Note of the said Wolcott & White for two thirds of the Purchase price, of said goods, wares and merchandise to wit, two promising notes of said Wolcott & White, each for one third part of the purchase price of said Goods Wares & Merchandise and payable respectively in two

and eighteen months from the date thereof, ~~made~~  
 at the instance of the said plaintiff duly pre-  
 sented to the said Defendant for his guaranty  
 thereof, and the said Defendant was there  
 and then requested to guarantee the payment  
 of the same according to his Promise and  
 understanding aforesaid, but the said Defendant  
 did not, nor would at the time when the said  
 Promissory Notes were so presented to him for  
 his guaranty thereof as aforesaid, nor at any  
 other time before or afterwards, guarantee the pay-  
 ment of said Notes, either of them, but on the contrary  
 thereof wholly neglected and refused so to do.

And the said Plaintiff further avers  
 that although eighteen months from the date of said  
 sales have long since elapsed, and the whole of  
 the Purchase Price of said goods, wares and mer-  
 chandise has long since become due and payable, yet  
 the said Holme & White have not (although after  
 requested so to do) paid to the said plaintiff the two  
 third parts of the purchase Price of said Goods, Wares  
 and Merchandise, so to be paid as aforesaid in  
 twelve and eighteen months, respectively from  
 the date of said sales, or paid or cause to be paid  
 the sum of money in the said two promissory  
 Notes, specified or any part thereof, and the same  
 are now due and wholly unpaid to the said  
 plaintiff, of all which said several premises the

6.  
//  
said Defendant afterwards to wit, at the several times when the said payments should have been made, according to the tenor and effect of the said Promissory Note, to wit, at the County aforesaid had notice. Yet the said Defendant (although after requested so to do) hath not guaranteed the Return of Notes of the said Hulme and White for the two thirds of the Purchase Price of said Goods Wares and Merchandise having the longest time to run, to wit, the two promissory notes of the said Hulme and White aforesaid payable in twelve and eighteen months respectively, from the date thereof or either of them, or paid or caused to be paid the said two thirds of said purchase Price, or any part thereof to the said Plaintiff

Also for that whereas heretofore to wit on the first day of November A.D. 1854 at Philadelphia to wit, at the County aforesaid in consideration that the said Plaintiff, at the special instance and request of the said Defendant, would sell and deliver to George Hulme and J. Stephen White, partners using the firm name and style of Hulme & White, a certain other large quantity of goods, wares, and merchandise, to be used in the furnishing of a certain other hotel of the said Defendant situated in the City of Chicago, and to be occupied

by the said Holme & White as Tenants to the said Defendants, known as "Young America" and would give time of Payment for the same making the Purchase Price thereof payable in three equal installments, payable respectively in six, twelve and eighteen months from the date of said sale and delivery, he the said Defendant undertook and then and there faithfully promised the said Plaintiff that he would guarantee the payment of the promissory notes of the said Holme & White to be given to the said Plaintiff for two thirds of the Purchase Price of said last mentioned Goods wares and Merchandise, that is to say the promissory notes of said Holme and White to be given for the two thirds of said Purchase price, having the longest time to run to wit the Installments payable in Twelve and Eighteen months from the date of said sale.

And the said Plaintiff avers that he confiding in the Promise and undertaking of the said Defendant did afterwards to wit on the day and year aforesaid at the County aforesaid sell and deliver to the said Holme and White a certain other large quantity of Goods Wares and Merchandise of great value to wit

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of the value of Twenty five hundred and Sixty Six dollars and thirty eight cents (\$2566.38) to be used by them in the furnishing of said last mentioned hotel of the said Defendant And did give time of payment therefor - making the purchase price thereof payable in three equal Installments payable in six, twelve and eighteen months from the date of said sale respectively, of all which the said Defendant afterwards to wit on the day and year last aforesaid at the County aforesaid had notice.

And the said Plaintiff further avers that afterwards and within a reasonable time after the sale and delivery of said last mentioned goods, wares and merchandise as aforesaid to wit, on the first day of January A.D. 1855 at the County aforesaid the promissory notes of the said Hulme & White for the two third parts of the purchase price of the said last mentioned goods, wares and merchandise having the longest time to run, to wit, two promissory notes of the said Hulme and White, each for one third part of said Purchase Price and payable respectively in twelve and eighteen months from the date thereof, to wit the date of the sale and delivery of the said

Last mentioned goods wares and merchandise and executed by the said Whelme and White in pursuance of the promise and undertaking of the said defendant aforesaid, and duly presented to the said Defendant for his Surety thereof and the said Defendant was there and there requested to guarantee the payment of said two Promissory notes according to his promise and undertaking aforesaid, but the said Defendant did not, nor would, at the time when the said promissory notes of the said Whelme and White <sup>were</sup> ~~was~~ so presented to him for his Surety thereof as aforesaid, or at any other time before or afterwards guarantee the Payment of said Promissory Notes or either of them, but on the contrary thereof wholly neglected and refused so to do.

And the said Plaintiff further avers that, although the eighteen months from the date of said last mentioned sale, have long since elapsed and although the said Whelme and White wholly failed and made default in the payment of the two thirds of the Purchase price of said last mentioned goods wares and merchandise upon which the largest credit was given to wit. the two Just all ments of said Purchase Price

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payable respectively in Twelve and eighteen months  
from the date of said sale and the notes executed  
therefore as aforesaid and have hitherto wholly  
neglected and refused to pay the said two In-  
stallments, or the sums of money specified in  
said two Promissory Notes or either of them or  
any part thereof, of which said failure, default,  
neglect and refusal of the said Colburn & White  
the said Defendant afterwards to wit, at the sev-  
eral times when said Installments respectively  
became due and payable, at the County aforesaid  
had notice.

Yet the said Defendant not regarding  
his Promise and undertaking aforesaid, but con-  
tinuing and intending to injure and defraud  
the said Plaintiff in that behalf, hath not  
although often requested so to do, guaranteed  
the Payment of the said Promissory Notes of  
the said Colburn & White so again as aforesaid  
for two thirds of the Purchase Price of said last  
mentioned Goods Wares and Merchandise as aforesaid,  
and payable, respectively in Twelve and  
Eighteen months from the date thereof as aforesaid  
or paid or cause to be paid the sums of money  
 therein specified, or either of them or any part  
 thereof to the said Plaintiff.

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Also for that when  
as, heretofore to wit, on the first day of November

A.D. 1854 at Philadelphia, to wit: at the  
 County of said, in consideration that the said  
 Plaintiff has bargained and contracted to  
 sell to George Wolme and S. Stratton White,  
 Partners, using the firm name and style of  
 Wolme and White, a certain other large quan-  
 tity of Carpetings of great value to wit, of the  
 value of Twenty five hundred and sixty six doll-  
 ars and thirty eight cents (\$2566.38) to be used  
 by said Wolme & White in and about the fur-  
 nishing of a certain other Hotel of the said  
 Defendant situated in the City of Chicago, to be  
 occupied by the said Wolme & White as Tenant  
 of said Defendant under as the "Young America"  
 and in further consideration that the said  
 Plaintiff at the special Instance and request  
 of the said Defendant would deliver the said  
 last mentioned Carpetings, to the said Wolme  
 & White for the purposes of aforesaid, and would  
 extend the time of Payment for the same  
 so as to make the Purchase Price thereof  
 payable in three equal Installments, in  
 six, twelve and eighteen months respectively  
 from the date of said delivery, he the said  
 Defendant undertook and then and there faith-  
 fully promised the said Plaintiff, that he the  
 said Defendant would guarantee the Payment  
 of the said three thirds of the Purchase Price of said

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last mentioned carpetings having the longest time to run, that is to say, the two Installments of said Purchase Price payable respectively in twelve and eighteen months from the delivery of said last mentioned carpetings.

And the said Plaintiff avers, that he confiding in the Promise and undertaking of the said Defendant, did afterwards to wit: on the day and year aforesaid, to wit, at the County aforesaid, deliver to the said Blaine and White for the purposes aforesaid, the said last mentioned carpetings, of great value to wit, of the value aforesaid, and did extend the time for the payment of the Purchase Price of the same and make the same payable in three equal Installments in six, twelve and eighteen months from the date of said delivery, of all which the said Defendant afterwards to wit, on the day and year aforesaid at the County aforesaid had notice.

And the said Plaintiff avers, that although, the eighteen months from the date of the delivery of the last mentioned carpetings have long since elapsed, and although the said Blaine + White wholly failed and made default in the payment of the two Installments of the Purchase Price of said last mentioned carpetings, payable

in twelve and eighteen months respectively from the date of the delivery thereof as aforesaid, and (although often requested so to do) have wholly neglected and refused to pay the same, of which said failure, default neglect and refusal of the said Holmes and White the said Defendant afterwards to wit: when the said two Installments of aforesaid respectively became due and payable at the County aforesaid, had notice.

Yet the said Defendant not regarding his Promise and undertaking aforesaid, but continuing and intending to injure and defraud the said Plaintiff in this behalf has not (although often requested so to do) guaranteed to the said Plaintiff the payment of the said <sup>two</sup> last mentioned Installments of said Purchase Price or either of them, or paid or cause to be paid to the said the said two installments of said Purchase Price, or either of them or any part thereof to the said Plaintiff.

Also for that whereas, heretofore, to wit, on the first day of November A.D. 1854 at Philadelphia to wit, at the County aforesaid in consideration that the said Plaintiff would at the special instance & request of said Defendant sell and deliver to George Holmes and Stockton White, Partners using the firm

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name and style of Boume and White, a certain  
 other large quantity of Goods Ware and Mer-  
 chandise to be used by them in and about the  
 furnishing of a certain other hotel of the said  
 Defendants, situated in the City of Chicago, and  
 to be occupied by the said Boume and White, as  
 Tenants to the said Defendant, and would  
 give time of Payment therefor, making the whole  
 of the Purchase Price thereof payable in three  
 equal Installments payable <sup>respectively</sup> in six, twelve and  
 eighteen months from the date of said sale, by the  
 said Defendant then and there guaranteed to  
 the said Plaintiff the Payment of the two third  
 parts of said Purchase Price having the long-  
 est time to run, that is to say the two Install-  
 ments of said Purchase Price payable respecti-  
 vely in twelve and eighteen months from the  
 date of said sale.

And the said Plaintiff avers,  
 that he confiding in Promise of the said Defendant  
 and relying upon his Guaranty of aforesaid, did  
 afterwards to wit, on the day and year aforesaid  
 at Philadelphia to wit at the day County of  
 said sell and deliver to the said Boume +  
 White for the purposes aforesaid, a certain  
 other large quantity of Goods, Ware and  
 Merchandise of great value to wit, of the  
 value of Twenty five hundred and sixty.

six dollars and thirty eight cents (\$2566.38) and did extend the time of payment thereof, and make the whole of the Purchase Price thereof payable in three equal installments payable respectively in six, twelve and eighteen months from the date of the sale, and delivery aforesaid, of all which the said defendant afterwards to wit, on the day and year aforesaid, at the County aforesaid had notice.

And the said Plaintiff further avers that although eighteen months from the date of said last mentioned sale and delivery have long since elapsed and although the said Bolme and White wholly failed and made default in the Payment of the two third parts of the purchase Price of said last mentioned Goods Wares and Merchandise, having the longest time to run, to wit, the two installments of said Purchase Price payable respectively in twelve and eighteen months from the date of said sale and delivery, and have hitherto neglected and refused to pay the same or any part thereof, of which said failure, default neglect and refusal of the said Bolme and White the said defendant had due notice,

Yet the said defendant not regarding the guaranty aforesaid, but continuing

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and intending to injure and defraud the said Plaintiff in this behalf has not (although after requested so to do) paid to the said Plaintiff the said two installments of the Purchase Price of said last mentioned Goods <sup>or</sup> and Merchandise payable respectively in twelve & eighteen months from the sale and delivery thereof, or either of them or any part thereof, but to pay him the same the said Defendant has hitherto wholly neglected and refused and still does neglect and refuse.

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Also for that whereas hereofore to wit on the first day of November A.D. 1857 at Philadelphia to wit. the beauty of one and in consideration that the said Plaintiff would at the special instance and request of the said Defendant sell and deliver to George Wolme and J. Hoaxter White partners using the firm name and style of Wolme and White a certain other large quantity of Goods Wares and Merchandise to be used in and about the furnishing of a certain other hotel of the said Defendant situated in the City of Chicago of one and to be occupied by said Wolme and White as Tenants to the said Defendant and would give time of Payment for the whole of the Purchase Price thereof making the same payable in

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three equal Installments in six, twelve and eighteen months respectively from the date of said sale. he the said Defendant undertook and then and there faithfully promised the said Plaintiff, that he the said Defendant would endorse the Promissory Notes of said Holme and White for the amount of two thirds of the purchase Price of said last mentioned Goods Wares and Merchandise that is to say, the two thirds of said Purchase Price having the longest time to run, and being the two Installments of said Purchase Price payable in twelve and eighteen months respectively from the date of said sale.

And the said Plaintiff avers that he confiding in the Promise and undertaking of the said Defendant did afterwards to wit on the day & year aforesaid at the County of on said sell and deliver to the said Holme and White, to be used in and about the furnishing of the said last mentioned Hall of the said Defendant w certain other large quantity of Goods, Wares and Merchandise of great value to wit, of the value of Twenty five hundred and sixty six dollars and thirty eight cents (\$2566.38) of which the said Defendant afterwards to wit, on the day and year last aforesaid at the County aforesaid

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had notice. And the said Plaintiff further avers that afterwards and within a reasonable time after the sale and delivery of the said last mentioned Goods Wares and Merchandise as aforesaid to wit, on the first day of January A.D. 1855. to wit at the County of aforesaid, two Promissory Notes of the said Holmes & White each for one third part of the Purchase Price of the said last mentioned Goods, Wares and Merchandise and payable respectively in twelve and eighteen months from the date of said sale and being for the two Installments of said Purchase Price having the longest time to run were at the special instance of the said Plaintiff duly presented to the said Defendant for his Indorsement thereof, and the said Defendant was then and there requested to endorse the same in pursuance of his Promise and undertaking aforesaid but the said Defendant did not, nor would at the time when the said Promissory Notes were so presented to him for his Indorsement thereof as aforesaid nor at any other time before or afterwards, endorse the said Promissory Notes or either of them, but on the contrary thereof, wholly neglected and refused so to do.

And the said Plaintiff further avers that although eighteen months from the

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Date of said last mentioned sale. how long since  
 elapsed and the two Installments of the Purchase  
 Price of said last mentioned Goods Wares and  
 Merchandise. for which the said Defendant  
 was according to his Promise and undertaking  
 aforesaid. to indorse the Promissory Note of the said  
 Holme & White. have <sup>long</sup> since become due and  
 payable. yet the said Holme and White  
 (although often requested so to do) have not  
 paid the same or any part thereof to the  
 said Plaintiff and the said two Install-  
 ments of said Purchase Price are now due  
 and wholly unpaid to the said Plaintiff  
 And the said Plaintiff further avers that at  
 the expiration of the credit aforesaid upon  
 the said two installments of said Purchase  
 Price respectively. to wit, at the times when  
 the said two Installments. became respect-  
 ively payable. the said Holme & White. were  
~~and~~ <sup>ever</sup> since have been and still are wholly  
 insolvent and unable to pay the same.  
 And the Institution of a suit or suits  
 against them for the recovery of the said  
 two Installments or either of them. would  
 have been unavailing. of all which said  
 several Premises the said Defendant after-  
 wards to wit; at the several times when the  
 said Installments became due and pay-

able to mit. at the beauntly of onsaid. the  
said Defendant had notice.

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And the said Plaintiff  
further avers that, although the said Hulme  
& White have at all times, since the date  
of the said last mentioned sale <sup>being</sup> ready  
and willing to execute and deliver to  
the said Plaintiff their Promissory Notes  
for the two installments of the Purchase  
Price of said last mentioned Goods, Wares  
and Merchandises, aforesaid and have often  
at the instance of the said Plaintiff re-  
quested the said Defendant to endorse  
their notes for the same payable as aforesaid,  
according to his promise and under-  
taking aforesaid, yet the said Defendant  
not regarding his said Promise and un-  
dertaking aforesaid, but contriving and  
intending to injure and defraud the said  
Plaintiff in this behalf has not (although  
often requested so to do) indorsed the said  
Promissory Notes of the said Hulme & White  
for the two Installments of the Purchase  
Price of said last mentioned Goods, Wares  
and Merchandises aforesaid, or either of  
them or paid or caused to be paid the  
said two Installments of said Purchase  
Price, or either of them or any part thereof.

to the said Plaintiff.

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Also for that whereas, heretofore to wit, on the first day of November A.D. 1854 at Philadelphia to wit, at the County of said in consideration that the said Plaintiff had bargained to George Hulme & J. Steerter White, Partners using the firm name and style of Hulme and White a certain other large quantity of Goods Wares and Merchandise of great value to wit, of the value of Twenty five hundred and sixty six dollars & Thirty eight cents (\$2586.38) to be used in and about the furnishing of a certain other hotel of the said Defendant situate in the said City of Chicago. to be occupied by the said Hulme & White as Tenants to the said Defendant, and known as the "Young America" and in further consideration that the said Plaintiff would sell and deliver the said last mentioned Goods Wares and Merchandise to the said Hulme & White, to be used as aforesaid, and would give time of Payment for the same, making the Purchase Price thereof payable in three equal Installments, payable respectively in six, twelve, and eighteen

\* No. 14  
the said defendant mistook and then and there fraudulently procured the said Plaintiff in writing duly  
expressed in form that which said writing was since lawfully destroyed by fire, and therefore cannot be produced by  
the said Plaintiff or a copy thereof given, and by the said Plaintiff and others before the Master of the said Glebe & White  
for the two thirds of the purchase price of said last mentioned goods wares and merchandise bearing the longest time  
of term that is to say for the two installments of the said purchase price payable respectively in twelve and eighteen  
months from the date of the sale and delivery

months from the date of <sup>said</sup> sale and deliv-  
ery of said last mentioned Goods Wares  
and Merchandise.

And the said Plaintiff  
avows that he confiding in the Promise and  
undertaking of the said Defendant aforesaid  
did afterwards to wit, on the day and  
year last aforesaid at Philadelphia  
to wit, at the County aforesaid, sell and  
deliver to the said Glebe & White, to be  
used as aforesaid, the said last mention-  
ed Goods Wares and Merchandise of great  
value to wit, of the value of aforesaid and  
did give time of Payment for the same  
making the Purchase Price thereof pay-  
able in three equal Installments, payable  
respectively in six twelve and eighteen months  
from the date of said sale and delivery, of  
which the said Defendant afterwards to wit  
on the day and year aforesaid at the County  
aforesaid had notice.

And the said Plaintiff  
further avows that afterwards and within a  
reasonable time after the sale and delivery  
of the said last mentioned Goods Wares  
and Merchandise, to wit, on the first day  
of January AD 1855 to wit, at the County  
aforesaid he caused the Promissory Note

of the said Hulme & White duly executed by them, for the two installments of the Purchase Price of said last mentioned Goods Wares and Merchandise having the longest time to run, amounting together to the two thirds of the whole Purchase Price of said last mentioned Goods, Wares and Merchandise: that is to say the Promissory Notes of said Hulme and White for the two Installments of said Purchase Price payable respectively in twelve and eighteen months from the date of said sale and delivery to be presented to the said defendant for his indorsement thereof. And the said Defendant was then and there requested to indorse the same according to his promise and undertaking aforesaid, but the said defendant did not nor would at the time when the said promissory notes of the said Hulme & White <sup>were</sup> ~~was~~ so presented to him for his indorsement thereof as aforesaid nor at any other time before or afterwards, indorse the said notes or either of them, but on the contrary thereof the said Defendant wholly neglected & refused so to do.

And the said Plaintiff further avers that (although eighteen months from the date of the sale and delivery of the said last mentioned goods, wares and merchandise, has long since elapsed, and the time within which the payment of the two last instalments of said purchase price, was to be made, has long since

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passed, yet the said Hulme & White have not paid to the said Plaintiff the said ~~two~~ last instalments of said purchase price, or either of them, or any part thereof (although often requested so to do) but to pay him the same the said Hulme & White have hitherto wholly neglected and refused and the said two instalments of said purchase price aforesaid, <sup>are</sup> ~~are~~ now due and wholly unpaid to the said Plaintiff.

And the said Plaintiff further avers that at the several times when the said two last mentioned instalments of said purchase price became due and payable, to wit: in twelve and eighteen months respectively from the date of said sale & delivery aforesaid the said Hulme & White were, ever since have been and still are wholly insolvent and unable to pay the same, and that the institution of a suit or suits against them for the recovery thereof would have been unavailing; of all which the said Defendant afterwards, to wit: at the several times last aforesaid at the County aforesaid had notice.

And the said Plaintiff further avers that, although the said Hulme and White have at all times since the date of the sale and delivery of the said last mentioned goods, wares and merchandises as aforesaid, been ready and willing to deliver to the said Plaintiff their two promissory notes for the two instalments of said purchase price, payable respectively in twelve and eighteen months from the date of said sale & delivery and have held the said notes duly executed by them for that purpose, and have at the

special instance of the said Plaintiff, often requested the said defendant to endorse the said notes according to his Promise and undertaking aforesaid. Yet the said Defendant not regarding the said promise and undertaking but contriving and intending to injure and defraud the said plaintiff in this behalf, has not endorsed the said Promissory notes of the said Hulme and White or either of them or (although often requested so to do) paid or caused to be paid the said two last, Installments of the Purchase Price of said last mentioned Goods Staves and Merchandise, or either of them or any part thereof to the said Plaintiff.

8 Also for that whereas heretofore to wit, on the first day of November A.D. 1858 at Philadelphia to wit, at the County aforesaid in consideration that the said Plaintiff at the special instance and request of the said Defendants, would sell and deliver to George Hulme and J. Stecker White, Partners, using the firm name and style of Hulme and White a certain other large quantity of Goods, Staves and Merchandise of great value to wit; of the value of Twenty five hundred and sixty six dollars and thirty eight cents (\$2566.38) to be <sup>used in</sup> and about the furnishing of a certain

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other Hotel of the said Defendant situated in the city of Chicago, to be occupied by the said Holmes and White as Tenants to the said Defendant and would give time for the payment of the Purchase Price thereof making the same payable in three equal Installments payable respectively in six, twelve and eighteen months from the date of said sale he the said Defendant undertook <sup>and</sup> there faithfully promised the said Plaintiff that he the said Defendant would indorse the Promissory Note of the said Holmes & White for the two thirds of said Purchase Price of said last mentioned Goods, Wares and Merchandise, having the longest time to run, that is to say, the Promissory Note of the said Holmes and White to be given for the two Installments of said Purchase Price payable respectively in twelve and eighteen months from the date of said sale

And the said Plaintiff avers that he confiding in the Promise and undertaking of the said Defendant aforesaid did afterwards to wit, on the day and year aforesaid at Philadelphia to wit: at the County aforesaid sell and deliver to the said Holmes & White to be used in and about the furnishing of said last

mentioned & sold of the said Defendant  
 the said last mentioned Goods Wares  
 and Merchandise of great value to wit  
 of the value aforesaid and did then and  
 there give time for the payment of the  
 Purchase Price thereof making the same  
 payable in three equal Installments pay-  
 able respectively in six twelve and eighteen  
 months from the date of said sale of all  
 which the said Defendant afterwards to  
 wit on the day and year last aforesaid  
 at the County aforesaid had notice.

And the said Plaintiff  
 further avers that afterwards and within  
 a reasonable time after the date of said  
 last mentioned sale to wit on the first  
 day of January A.D. 1855 at Chicago Ill.  
 at the County aforesaid the Promissory Note  
 of the said Hulme and White for two thirds  
 of the Purchase Price of said last mentioned  
 Goods Wares and Merchandise that is to  
 say the Promissory Note of the said Hulme  
 & White for the two Installments of said  
 Purchase Price payable respectively in  
 twelve and eighteen months from the date  
 of said sale were presented to the said  
 Defendant for his Indorsement thereof  
 at the special instance of said Plaintiff

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and the said Defendant was then and there requested to indorse the same in pursuance of his Promise and Undertaking aforesaid. but the said Defendant did not nor would at the time when said Promissory Notes were presented to him for his Indorsement thereof as aforesaid, nor at any time before or afterwards, indorse the said Promissory Notes of the said Hulme and White, or either of them but so to do the said Defendant wholly neglected and refused.

And the said Plaintiff further avers that although eighteen months from the date of said sale have <sup>longer</sup> since elapsed and although the said Hulme and White wholly failed and made default in the Payment of the two third parts of the Purchase Price of said last mentioned Goods Wares and Merchandise, having the longest time to pay, to wit the two Installments of said Purchase Price, payable respectively in twelve and eighteen months from the date of said sale, and have hitherto wholly neglected and refused to pay the same in any part thereof, of which said failure, Default, neglect and refusal of the said Hulme and White, the said Defendant had notice. And although the said

Wulme and White were at all times ready and willing to deliver to the said Plaintiff their Promissory Notes for the two thirds of said Purchase Price, having the longest time to run, that is to say, the two Installments of said Purchase Price payable respectively in twelve and eighteen months from the date of said sale and have after at the Special Instance of the said Plaintiff requested the said Defendant to endorse said Promissory Notes in pursuance of his Promise and undertaking aforesaid.

Yet the said Defendant not regarding his Promise and undertaking aforesaid but contriving and intending to injure & defraud the said Plaintiff in that behalf has not (although after requested so to do) endorsed the said Promissory Notes of said Wulme & White for the two thirds of the Purchase Price of said last mentioned Goods, Wares and Merchandise, or either of them or caused to be paid, the two thirds of said Purchase Price aforesaid, or any part thereof to the said Plaintiff.

To the Damage of the said Plaintiff of Two Thousand Dollars, and therefore he brings this suit &c.

Scot, McAllister & Jewett  
Attys for Plt.

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Copy of Bill of Goods sold by Plaintiff  
to Holmes & White.

Messrs Holmes & White

| Date     | Description                            | Quantity | Unit Price        | Total  |
|----------|--|----------|-------------------|--------|
| 1854.    | To James Ho Orme                       |          |                   | 200    |
| Dec 20   | 19 4/8 yds Velvet Carpet               | 651.     | 1.75              | 339.72 |
| "        | 79 3/4 " " "                           | "        | "                 | 139.56 |
| "        | 1 " " "                                | "        | "                 | 1.75   |
| "        | E. Lo on prith waits a/c               |          |                   | 34.31  |
| 1855.    | Jan 24 Bal 1+2. 32 3/8 yds Pap. Carpet | 206.     | 1.25              | 40.84  |
|          | 59 3/4 " " "                           | 1.       | "                 | 74.69  |
|          | 50 1/2 " " "                           | 27.      | "                 | 63.12  |
|          | 44 " " "                               | 45.      | "                 | 55.00  |
|          | 105 " " "                              | 651.     | "                 | 131.22 |
| Bal 3+4. | 19 1/2 " " "                           | 116.     | "                 | 24.38  |
|          | 29 1/4 " " "                           | 45       | "                 | 36.56  |
|          | 16 1/3 " " "                           | 153      | "                 | 20.42  |
|          | 35 7/8 " " "                           | 710      | 1.37 <sup>2</sup> | 49.32  |
|          | 40 1/2 " " "                           | 158      | 1.25              | 50.63  |
|          | 16 1/4 " " "                           | 31       | "                 | 20.31  |
|          | 26 7/8 " " "                           | 744      | 1.37 <sup>2</sup> | 36.95  |
|          | 42 1/2 " Velvet                        | 27       | 1.50              | 63.37  |
|          | 34 " " "                               | 167      | "                 | 51.00  |
| Bal 5+6  | 120 1/2 " Pap                          | 27       | 1.25              | 150.62 |
|          | 41 7/8 " " "                           | 651      | "                 | 32.35  |
|          | 33 " " "                               | 125      | "                 | 41.25  |
|          | 59 1/2 " " "                           | 1        | "                 | 74.38  |
| Bal 7    | 33 1/2 " " "                           | 125      | "                 | 41.88  |
|          | 9 1/2 " " "                            | 45       | "                 | 11.88  |
|          | 60 1/2 " Velvet                        | 1        | 1.60              | 91.80  |

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|            |         |     |               |      |      |                |
|------------|---------|-----|---------------|------|------|----------------|
| Bale 8.    | 77      | Yds | Velvet Carpet | 198. | 1,60 | 123.20         |
|            | 7 3/2   | "   | "             | "    | 1    | 119.60         |
|            | 6 2 3/4 | "   | "             | 31   | 1,50 | 94.12          |
| Bale 9.    | 74 3/4  | "   | "             | 15   | "    | 112.12         |
|            | 74 3/4  | "   | "             | 12   | "    | 112.12         |
|            | 76 1/4  | "   | "             | 27   | "    | 114.37         |
| Bale 10    | 18 3/4  | "   | "             | Ends | "    | 28.13          |
|            | 19 1/2  | "   | Tape          | "    | 1,25 | 24.37          |
| 25 Bale 10 | 94      | "   | "             | "    | "    | 119.50         |
|            |         |     | Baling Carpet |      |      | 8.00           |
|            |         |     |               |      |      | <u>2553.88</u> |

Insurance 12.50  
 2566.38

1855  
 April 10  
 1856  
 Nov 5

|                      |               |                |
|----------------------|---------------|----------------|
| By Bills Receivable. | 844.03        |                |
| " Cash               | <u>395.00</u> | <u>1239.03</u> |
|                      |               | <u>1327.35</u> |

The Defendant will please take notice that the written agreement upon which the action is brought is the same one described in the first count of the foregoing declaration, and therein referred to as accidentally destroyed by fire

Deats, McAllister & Smith  
 Attys for Plff.

And afterwards, to wit: on the 16<sup>th</sup> day of December A.D. 1859 the said Defendant by W. P. Burgess his Attorney filed in the Court aforesaid his certain Pleas to the said plaintiffs said declaration in the words & figures following to wit:

In the Court Circuit Court

Isaac Cook

vs

James W. Orme

} Asst

Of Nov Term 1859

And the said defendant by his Attorney W. P. Burgess comes and defends the wrong & injury when &c and says that he did not undertake or promise in manner and form as the said Plaintiff hath above thereof declared against him and of this he puts himself upon the Country &c.

And for a further plea in this behalf said defendant says actio non because he says that by Chapter forty four of the Revised Statute of the State of Delinaia entitled frauds & perjuries, it is enacted that no action shall be brought whereby to charge any defendant upon any special promise to answer for the debt default or miscarriage of another person unless the promise or agreement upon which such action shall be brought or some memoran-

form or note thereof shall be in writing and signed by the party to be charged therewith or some other person therewith by him lawfully authorized.

And the said Defendant avers that the said Plaintiff has brought his said Action for the default debt & misadvice of George Hulme & Job S. White late partners doing business under the firm name of Hulme & White and for no other purpose whatever, and that the supposed premises & undertakings aforesaid of the said Defendant in the said declaration specified were not and are not in writing nor were nor are any note or notes or memorandum or memorandums thereof respectively made as required by the Statute. And this he is ready to verify. Wherefore he prays judgment &c.

Ch. T. Burgess  
for Deft.

And afterwards to wit: on the 30<sup>th</sup> day of January A.D. 1860 the said Plaintiff by his said Attorney filed in the Court aforesaid in said Cause his certain Replication to the said Defendant said Plea in the words & figures following to wit:

Cook County Circuit Court

James W. Ornd  
vs  
Isaac Cook

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And the said plff. as to the said plea by the said deft first above pleaded wherein the deft hath put himself upon the Country says that he doth the like &c.

And the said plff. as to the said plea by the said deft secondly above pleaded says precludimon because he says that the said plff has not brought his suit aforesaid for the debt default or miscarriage of George Osborne & Job S White in manner and form as in said plea alleged and this he prays may be inquired of by the Country

And for a further replication to said second plea by leave of the Court & the plffs says precludimon because he says that the said promises and agreements in the said declaration mentioned and a memorandum thereof were and such and every thereof at the time of making thereof to wit on the day and year and at the place in said declaration mentioned in writing signed by the said defendant and that the said plff prays may be inquired of by the country  
Scotus McAllister & Sewell  
Plffs Attys.

And afterwards, to wit: at the April Term of said Court to wit, on the 7<sup>th</sup> day of May A.D. 1861 the following proceedings among others in said Court, were had and entered of record therein in said cause, to wit:

James W. Osney  
 vs  
 Isaac Cook } Assumpsit.

This day comes the said Plaintiff by Deats, Mc Allister and Jewett his Attorney and the said Defendant by William T. Burgess his Attorney also comes, and issue being joined herein it is ordered that a jury come, whereupon come the jurors of a Jury of good and lawful men To-wit: Cornelius Wan, O. W. Colby, John F. Smith, Peter Schlund, Henry Simparth, Harvey Lamb, O. S. Merricks, T. C. Lamb, Reuben Taylor, Henry Pink, George W. Lozier and John Tyler, who being duly elected, tried and sworn well and truly to try the issue joined aforesaid, and a true verdict render according to law and the evidence, and after hearing a part of the evidence the hour of adjournment having arrived by consent of said Parties said Jury is allowed to separate to meet the Court the coming in thereof to morrow morning at nine o'clock

And afterwards, to wit, at the same Term of said Court last aforesaid, to wit: on the 8<sup>th</sup> day of May in the year last aforesaid the following proceedings, among others in said Court, were had and entered of record therein in said cause to wit:

James W. Ornel }  
 vs } Assumpsit.  
 Isaac Cook }

This day again came the said parties by their Attorneys and the jurors of the Jury aforesaid also came, and having now heard all the evidence offered in said cause, the arguments of counsel as well on the part of the Plaintiff as of the Defendant and instructions from the Court before to consider of their verdict with the further instruction given by consent of said parties to sign and seal up their verdict, when they shall have agreed upon the same, and afterwards separated to meet the Court on the evening in thereof to morrow morning at nine O'clock.

And afterwards, to wit: at the same Term of said Court last aforesaid, to wit: on the 9<sup>th</sup> day of May in the year last aforesaid the following further proceedings were had and entered of record in said Court to wit:

James H. Orney  
 vs  
 Isaac Cook } Assumpsit.

This day again come the said parties by their Attorneys, and the Jury aforesaid having agreed upon said settled their verdict, returned into Court and say, "We the Jury find the issues for the Defendant" Whereupon the Plaintiff by his counsel moves the Court for a new trial of said cause. And Thereupon it is ordered that said Plaintiff he and he hereby is ruled to file specific grounds for a new trial herein by Saturday next.

And afterwards, to wit, at the May Term of said Court to wit, on the 1<sup>st</sup> day of June in the year last aforesaid the following further proceedings were had, and entered of record in said cause to wit:

James H. Orney  
 vs  
 Isaac Cook } Assumpsit.

This day again come the said ~~Parties~~ Plaintiff by their Attorneys and Counsel having been heard as well in support of the motion of the Plaintiff heretofore entered for a new trial of said cause as in opposition

therto and the Court not being sufficiently advised in the premises takes said motion under advisement.

And afterwards, to wit: at the July Term of said Court, to wit: on the 11<sup>th</sup> day of July in the year last aforesaid, the following further proceedings among others in said Court were had and entered of record therein in said Court, to wit:

James H. Bond }  
                  vs    } Assumpsit.  
Dorcas Cook }

This day again came the said Parties by their Attorneys and Counsel having been heard as well in support of the motion of the Plaintiff heretofore entered for a new trial of said cause as in opposition thereto, and the Court being now fully advised of and concerning the Premises 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 Plaintiff by his counsel now here accepts.

Therefore it is considered that said Defendant do have and recover of the said

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Plaintiff, his costs and charges by him about his suit in this behalf expended And have Execution therefor.

And on motion it is further ordered that said Plaintiff have ten days in which to prepare and file his Bill of exceptions in said cause,

And afterwards, to wit: on the 12<sup>th</sup> day of July in the year last aforesaid said Plaintiff by his said Attorneys filed in the Court aforesaid his certain Bill of Exceptions in said cause in the words and figures following, to wit:

Ancient Court of Cook County Ill.  
July Term AD 1861

1825 }  
James H. Connel }  
vs }  
Deaac Cook }

Be it remembered that on the trial of this cause before the Hon<sup>ble</sup> George Mannion, Judge of said Court and a Jury, at the April Term AD 1861 of said Court the said Plaintiff for the purpose of sustaining the issues on his part offered as evidence and read to the Jury, the deposition of one George Hulme as follows to wit:

Interrogatory First.

45-

What is your name, age and occupation, and where do you reside, and where are you staying at the time of the giving of this your deposition?

Answer - My name is George Holmes, age is forty six years, occupation at present farming. I reside at Mount Holly, Burlington County in the State of New Jersey. I have come to the City of Philadelphia to day for the purpose of giving this deposition and expect to return home to Mount Holly this evening.

Interrogatory 2<sup>nd</sup>

Are you acquainted with the parties Plaintiff and defendants in the title of these Interrogatories named, or either and which of them, and how long have you known them respectively?

Answer - I know both the parties, I have known Isaac Cook since 1853 and James H. Crane since the fall of 1854.

Interrogatory 3<sup>rd</sup>

What was your business, and how and with whom were you connected in business in the year 1854 + 1855, and where was said business carried on?

Answer - I kept in company with Mr. J. S. White under the firm of Hulme & White the Young America Hotel at Chicago, Illinois in the years 1854 and 1855.

Interrogatory 4<sup>th</sup>

If you say you was during any part of the time referred to in the foregoing Interrogatory engaged in the keeping of a Public House or Hotel, State the name of the House or Hotel at that time, where it was situated, who was associated with you in the management of it? who was the owner of the House when and from whom did you lease it.

Answer - I kept the Young America Hotel at that time in Chicago as one of the firm of Hulme & White. J. S. White was the only person associated with me. The house was owned by Isaac Cook the defendant. We leased it from Isaac Cook in the fall of 1854.

Interrogatory 5<sup>th</sup>

What was the condition of said House at the time you leased it. By whom was it furnished and from whom was the furniture obtained for that purpose, did you have anything to do with the furnishing of said House, or with the

the purchasing of said furniture. If you  
 what? state fully.

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Answer - A portion of the House at the  
 time we leased it was being built, about the  
 time of the addition being completed. I came  
 in to New York and Philadelphia to make  
 arrangements for the purchase of the furni-  
 ture. I called upon Mr. George Kenble in  
 Philadelphia, after stating to him what I  
 could do, he referred me in the purchase of  
 the carpeting to Mr. Orne the Plaintiff. I  
 went to see Mr. Orne, and found that he  
 had articles that would answer our purpose  
 and I arranged so far with Mr. Kenble  
 and Mr. Orne that they would furnish the  
 house provided the security was made sat-  
 isfactory - At the time we were about leaving  
 the House, Mr. Cook told me that there would  
 be no difficulty about means to furnish the  
 House, that we were welcome to the use of his  
 name in the purchase of furniture. I told Mr.  
 Cook that we were not able to furnish the house  
 ourselves without assistance, and it was his enga-  
 gement to assist us with his name in the purchase  
 of furniture that was the inducement that made  
 us lease the house. After finding that I could suit  
 myself at Mr. Orne's in Carpeting I returned to

Mr Wenkle and requested him to come to Chicago & learn the standing of ourselves as well as the gentleman who was to endorse our paper Mr Cook. Mr Wenkle did visit Chicago and said that he had enquired into our standing as well as Mr Cook's and said it would be perfectly satisfactory. Mr Wenkle returned to Philadelphia and there wrote to Hulme & White the terms on which Mr Orne & him will sell us the goods, the terms were six, twelve and eighteen months with interest after six months, the first note was to be on firms paper, the last two notes to be endorsed by Mr Isaac Cook which Mr Cook after my showing him Mr Wenkle's letter agreed to do, we then replied to Mr Wenkle that the terms were acceptable and Mr Cook wrote a postscript to the same letter that he accepted the terms. Mr Orne thereupon sent us the carpeting as agreed upon. Mr Wenkle was prevented from doing so by his warehouse being destroyed by fire and the furniture being consumed. I then went to Cincinnati & purchased the furniture of Mr Johns there, on the same terms of payment as I had agreed with Mr Wenkle and Mr Orne.

Interrogatory 6.

Where you in the City of Philadelphia

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in the latter part of the year 1854, or the first part of the year 1855. If you state at what time, and upon what business? If you say, you were endeavoring to make arrangements for the furnishing of the Hotel in the City of Chicago, known as the "Young America" state what, if any arrangement was made by you with the plaintiff with reference to that object. Did you make any effort to purchase any goods of the said plaintiff to be used in the furnishing of said Hotel. If you state fully all that took place between you and the said Plaintiff at that time respecting said purchase. Did you effect the purchase with the plaintiff at that time? If not, why not?

Answer. I was in Philadelphia in the fall of 1854 my business was to procure furniture for the Hotel "Young America" at Chicago. I made the arrangements there with the Plaintiff that I have stated fully in my answer to the fifth Interrogatory to which I refer in answer to this.

Interrogatory 7<sup>th</sup>

If you say that a part of the goods <sup>were</sup> purchased of the plaintiff used in the furnishing of said Hotel, state what the goods were and what was the amount of

Q of the purchase, what were the terms and conditions of the purchase and what was done with the goods?

Answer. The goods purchased of the Plaintiff were carpeting, the amount of the purchase was about 2500 dollars. the terms of the purchase were three notes of equal amounts at 6, 12 + 18 months the last two drawings interest after six months, and to be endorsed by Mr Isaac Cook. the first note to be <sup>own</sup> note without endorsement, the goods were used in furnishing the Young America Hotel.

Interrogatory 8<sup>th</sup> Did you ever have any conversation with the defendant Isaac Cook, respecting the payment for the goods purchased of the said plaintiff and used in the furnishing of the Hotel aforesaid.

Did you state to said defendant the proposition respecting said purchase made by the said plaintiff? If yes, what did he say in reply thereto, and was the Plaintiff advised of it, state the conversation in full and when did the same occur.

Answer. - After my return from Philadelphia to Chicago in the fall of 1854 I received

a letter addressed to our firm by Mr George Wankle of Philadelphia, stating that Mr Ome and he would furnish the Young America Hotel on these terms our own note for one third of the purchase at six months and for the balance our note at 12 and 18 months with interest after six months, endorsed by Isaac Leck this letter I took to Mr Cook and showed it to him, and had a conversation with him on the subject. he said he accepted the terms proposed in this letter as satisfactory, and I wrote to that effect to Mr Wankle and Mr Cook also wrote in the same letter himself that he accepted the terms and signed it and the letter was mailed to Mr Wankle.

Interrogatory 9.

Do you know of the defendants receiving any letter or letters from George W. Wankle or from said Plaintiff respecting said purchase and the payment to be made or the security to be given therefor. If yes. Do you know of your own knowledge, or from any conversation with the defendant, whether any reply was given thereto by said defendant. If yes, state the circumstances in full respecting said letters for what purpose they were written, what was

the date of them respectively, what has been done with said letters, state also the contents of said letters as nearly as you can remember it.

Answer — I do not know of any letter from Mr. Keenle or Mr. Cook to the Defendant the only letter I know of was from Mr. Keenle to our firm, and I have given the particulars of that in my answer to the 8<sup>th</sup> Interrogatory. I saw Mr. Cook write the postscript to our reply to that letter which I have before stated, he wrote it in my presence and signed his name to it. I do not recollect the date of said letter, it was shortly after I had been to Philadelphia to make the arrangements it was about the first of December 1854. The contents of these letters as near as I can remember I have stated in my answers to previous Interrogatories. This letter of ours said postscript there to by the defendant was written for the purposes of secure the purchase of the goods on the terms above stated Interrogatory 10<sup>th</sup>.

If any goods were purchased of the Plaintiff for the furnishing of the Young America Hotel aforesaid, our said

~~and~~ purchases for cash or credit. If on credit, what credit was or was the payment therefor to be secured? If by notes, whose notes and how many of them and by whom and in what manner were said notes to be executed, and the payment of them or either of them secured?

Answer - I refer to my answers to Interrogatory 5<sup>th</sup> and 8<sup>th</sup> for my answer to this Interrogatory.

Interrogatory 11<sup>th</sup>

If you say that said goods were purchased of the plaintiff on credit and the payment therefor was to be secured by the promissory notes of Nolme and White which were in whole or in part to be executed by said Defendant, or in any manner secured by the Defendants name thereon, state whether or not the notes so to be secured or executed by the said Defendant was ever in fact made<sup>out</sup> and presented to him. If yes, state the time and circumstances of such presentation. By whom was it made, was it before or after the arrival of the goods purchased of the Plaintiff in the City of Chicago? what if anything was said by the defendant at the time, were or

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was not said notes or either of them ever signed by said Defendant in any way State if you know respecting said Purchase the manner of payment if any agreed upon and the Defendants connection therewith.

Answer - Soon after the receipt of the goods from Mr Orne requesting us to send him the notes as agreed upon. We immediately endorsed him the note for the first payment as agreed upon. which note was paid at maturity. Mr Cook was then in Washington City and we wrote Mr Orne that we would get his endorsement on the other two notes. on his return and send him the notes.

After Mr Cook returned from Washington we presented the notes to him and requested him to endorse them. he evaded doing so saying it was time enough. or words to that import. he then left again for the Country on a visit to his family where he was taken sick. on his return to Chicago again we requested him to endorse the paper as we had received another letter from Mr Orne requesting us to forward the notes as soon as possible. He still evaded doing so. saying there was no hurry, or something of that character. Mr Orne then wrote

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no several letters requesting these notes, and when reminded of it by Mr Orne's letter, we insisted on Mr Cooks complying with the contract. he never in a single instance to my knowledge, denied his agreement to endorse the notes, but evaded in some way or other, denying it at the time. Finding we could not get Mr Cooks endorsement, we finally sent Mr Orne our own notes without Mr Cooks name on them, for the last two payments which Mr Orne immediately returned to us, saying they were not in accordance with the contract, and then the matter rested as far as I know.

Interrogatory 12.

What was the pecuniary condition of said Holmes & White, at the time when the payments for said goods became due and payable respectively and what has been the condition since?

Answer. At the time the first note became due no pecuniary condition I considered good that note was paid, when the 12 months note was due, we had received some extensions from creditors. I left after that and went to Europe & left Mr White in sole charge of the firm's business. I was in ~~the~~

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Europe when the 18 months note was due and cannot state what the condition of the firm was at that time, since then we have been insolvent.

Interrogatory 13<sup>th</sup>

Do you know any other matter or thing of benefit or advantage to the said Plaintiff in the trial of said cause if you state the same as fully and particularly as though you were thereunto specially interrogated—

Answer— I know nothing further, only that I am satisfied from my conversation with Mr Orne and his letters to me at the time of the purchase of those goods that he would ~~never~~ have sent us the goods only in the assurance of Mr Cook that he would secure two thirds of the purchase.

Subscribed and affirmed to by  
the said George Boulme before me } George Boulme  
this 12<sup>th</sup> day of April 1859. }  
Wm. H. Turner  
Commissioner

The said Plaintiffs further to sustain the issues on his part next offered as evidence and read to the jury, the deposition of one

George Winkler as follows. to wit:  
 Interrogatory first -

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What is your name, age, occupation and place of residence?

Answer - My name is George J. Winkler, age forty years, occupation cabinet maker, my place of residence in the City of Philadelphia

Interrogatory 2<sup>nd</sup>

Do you know the parties plaintiff and defendant in the caption to these interrogatories mentioned, or either and which of them and how long have you known them respectively?

Answer - I know both of them. I have known James H. Orne twelve or fifteen years. I have known Leek since the fall of 1854.

Interrogatory 3<sup>rd</sup>

Are you acquainted with George Hulme + J. Stockton White or either and which of them and how long have you known them?

Answer - I am acquainted with both of them have known Hulme since the fall of 1854, and White for some years previous to that time.

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Interrogatory 4<sup>th</sup>

If you say you are acquainted with said Heulme and White. State when said acquaintance commenced. In what business were they engaged, and how connected in business during the year 1854 + 1855. If you say they were partners and Hotel Keepers, during any portion of said time state when they commenced said business what was the name of the house kept by them, where it was situated, and what was the name of the House.

Answer - My acquaintance with Heulme & White commenced with Heulme about September 1854. In the year 1854 + 1855 I believe they were partners in the Hotel business. They were about opening the Young America Hotel in Chicago in the fall of 1854. I was in Chicago in October 1854 and stopped at the house as a guest of Mr White they were then having the house finished for the purpose of opening it as a Hotel. The owner of the house was J. Cook who was then Postmaster of Chicago. I did not know his first name. Mr Cook told me himself he was the owner.

Interrogatory 5<sup>th</sup>. In what business was the Deff Engaged in the Year 1854, & 1855, and where was his place of business?  
 Answer: He was Engaged in the Carpet business in Philadelphia in the Year 1854 & 1855.

Interrogatory 6<sup>th</sup>

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Do you know of the Plain-  
 tiffs selling any goods of any kind, and  
 if so, what kind to be used in furnishing  
 a Hotel in the City of Chicago, known as  
 the "Young America" If you state what kind  
 of goods they were, where they sold, who  
 negotiated the said sale, and what were  
 the terms of it state fully all you know  
 respecting it.

Answer - In the early part of the fall of  
 1854 Mr George Wolme called on me to  
 purchase the furniture and carpeting for the  
 Young America Hotel in Chicago. Introdu-  
 ced Mr Wolme at that time to Mr Cane to  
 purchase his carpets. Mr Wolme was sat-  
 isfied with the carpets and told me he could  
 purchase what he wanted there if Mr Cane  
 would give him a credit. Cane said that Mr  
 Cook would back their paper for any amount  
 the time he wanted to purchase on one  
 third in six, and one third in twelve and one  
 third in eighteen months. Mr Cane + myself  
 were satisfied to sell him the furniture & car-  
 peting provided we ascertained that Mr Cook  
 was responsible, to ascertain which I visited  
 Chicago in October 1854 and made inquiry re-

garding Mr Cook which was satisfactory. On my return to Philadelphia, I reported to Mr Orne and after consultation with him wrote on his behalf as well as for myself, Mr Orne relied altogether on my judgment & I was willing to sell my goods he was willing to sell his. I therefore wrote to Hulme & White that Mr Orne + I would send the goods if they would give up Mr Cook's endorsement for the two last payments the 12 + 18 months payments of two thirds of the amount of the bills, and that we would take Hulme + White's ~~own~~ paper for the first payment of one third at 6 months. I received a letter from Hulme + White, enclosing an addition to it from Mr Cook, in which Mr Cook said that he was willing to back their paper for the 12 + 18 months payments as proposed by us. I then wrote to them that Mr Orne + myself would send the goods which they required to have before the first of January, and the 14<sup>th</sup> day of December 1854 my store, factory and warehouse were totally destroyed by fire and I was unable to comply with my contract with Hulme + White in consequence, of which I immediately notified them. This letter I have referred to and all the correspondence with Hulme + White

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were also destroyed in this fire.

Interrogatory 7<sup>th</sup>

Did you have any correspondence with the Defendant Isaac Cook respecting said sale. If yes, state at whose instance and how many letters, if any did you write to said defendant, did you receive any letter or letters purporting to be from and written by the said defendant respecting said sale. If yes, have you said letter or letters now in your possession. If you have attach them as exhibits to your deposition. If you say said letter or letters are not now in your possession state what examinations if any you have made for them, where were they kept by you, what has been done with the same. If you say said letter or letters are lost state the particulars of such loss, and give as nearly as you can the contents of such letter or letters & state whether or not you advised the Plaintiff of the same or when?

Answer - I never wrote to Mr. Cook. The only letter I ever received from him was the address he wrote to the letter to me of Hulme & White in which letter Hulme & White stated that they accepted the terms on which I had written to them I would sell them my

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goods and Mr Orme would sell them his, which terms were these, one note for one third at 6 months and three notes for the other two thirds at 12 & 18 months endorsed by Mr Cook to the letter of Hulme and White an addition was written as I believe in Mr Cook's handwriting and signed J. Cook stating that he would endorse the paper of Hulme & White as requested and agreed on. I am not sure in whose handwriting the letter was as I had never seen Mr Cook's writing. But it was signed in an apparently original signature "J Cook" I had no doubt of the genuineness of the signature from the fact that I had while in Chicago talked a great deal with Mr Cook on the subject of this Hotel and he told me he would do anything in the world for Hulme & White to get them fairly started in the Hotel as he was very desirous for his own credit to have the Hotel successful he expressed unlimited confidence in ~~the~~ Hulme & White, and gave me confidence in them from his own experience. This letter I took up when I received it and showed it to James H. Orme and in the strength of that letter we agreed both of us to send our goods, that letter is not now in my possession. It was kept in a safe that was built

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in the wall in the centre of my store, where I kept all my papers except those that were in daily use. all my papers filed away were kept in this safe. my store was totally destroyed by fire on the night of the 14<sup>th</sup> of December 1854 and when the wall fell it carried away the back of the safe and destroyed all the papers and contents of the safe. I examined the safe and the mins adjacent to it and there was not a fragment of papers or books to be found

Interrogatory 8<sup>th</sup>

If in answer to any of the foregoing Interrogations, you say that the goods were sold by the said Plaintiff to be used in furnishing the Young America Hotel in Chicago. State whether they were sold and delivered by him before or after the receipt of the letter or letters by you from or purporting to be from the said defendant, state fully all you know respecting the time and terms of such sale, and the delivery of said goods, and by what means did you become acquainted with the facts respecting said sale?

Answer - The goods were delivered after the

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receipt of the letter by me and showing it to Mr Orne. I know Mr Orne held the goods until this letter was received, and would not have sent them if we had not received this written engagement of Mr Cooks. The time of the sale was about November or December 1854. I mean the delivery of the goods. I became acquainted with the facts of said sale by being at Mr Ornes store with Mr Holmes and Mr White at different times assisting them to select from my correspondence with the parties. From Mr Holmes and Mr Ornes statements.

Interrogatory 9<sup>th</sup>

Do you know what amount of goods if any, and the value of them sold by the said Plaintiff for the purpose aforesaid and the date of such sale. If you state fully and particularly all you know respecting the same?

Answer- I do not know the amount or value of the goods sold by Mr Orne to Holmes & White neither Mr Orne or Mr Holmes ever informed me that I recalled.

Interrogatory 10<sup>th</sup>

If you say in answer to any of the foregoing Interrogatories, that George

15-  
 Hulme and J. Strocker White or either of them applied to the said Plaintiff to purchase said Goods to be used in the furnishing of the Hotel above mentioned. State, what arrangement or understanding was made or had between said Plaintiff and said Hulme and White, or either of them respecting said purchase, what credit if any was given upon said purchase and upon what consideration?

Answer - I have stated all I know on this subject in my answers to the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Interrogatories to which I refer as my answer to this Interrogatory - Interrogatory 11<sup>th</sup>.

Did you have any communication with the defendant respecting said purchase of the said Plaintiff? If yes, state fully what was said?

Answer - I have had communication with Mr. Cook while in Chicago in 1854 in October I told him I had come there to see about the furnishing of the Hotel, and he expressed great friendship for Hulme & White and said he was desirous the Hotel should succeed, and that he would

assist Holmes & White to the utmost of his ability, and do anything he could for them. I cannot recollect the particulars of these conversations, but they all impressed me with the conviction that Mr. Cook would help Holmes & White in any extremity in conducting the boat -

Interrogatory 12.

Do you know of any other matter or thing of benefit or advantage to the said Plaintiff, in the trial of this cause. If you state the same as fully - as though you were thereto particularly interrogated.

Answer - I do not know of any thing else -

Interrogatory -

If you say in answer to the 7<sup>th</sup> Interrogatory you received any letter or letters purporting to be written by the deft then state, whether or not you ever saw the defendant write, if not do you state these or this letter to be his handwriting, what was the character of the handwriting, to whom was the letter addressed.

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Answer - I have never seen the defendant write. I know Mr Cook was a banker in Chicago in 1854. I was in his Bank while there. I feel satisfied that the signature to that letter was in his hand writing. because I have seen his signature frequently on his Bank notes and was familiar with it. The signature was sprawling and like what a nervous man would write. the letter was addressed to me -

Subscribed and sworn to } Geo. J. Winkels,  
by the said George J. Winkels }  
before me this 12<sup>th</sup> day of April 1859.  
Wm. H. T. Jones  
Commissioner

The Plaintiff here rested, and the defendant offering no evidence on his part, the foregoing is all the testimony introduced on the trial of said Cause and the Plaintiff there moved the Court to strike out the issue tendered by and made upon the Defendants second Plea being a Plea of the Statute of frauds on the ground that said **ISSUE** was immaterial inasmuch as the Promise and agreement of the defendant, declared on and established by the evidence was an original and not a collateral one, and therefore not embraced in

the statute of frauds. Which motion of the Plaintiff was overruled by the Court and to the decision of the Court in overruling said motion the Plaintiff by his counsel then and there excepted.

The Court thereupon at the request of the Plaintiff instructed the Jury as follows.

Orme }  
vs } Plaintiff asks this Instruction.  
Cook }

Given

If the Jury believe from the evidence that the Defendant in consideration, that the Plaintiff would sell and deliver to Holme & White certain carpetings for the Young Amice Hotel upon a credit, provided and agreed to endorse or guarantee the note to be given by said Holme and White, for two thirds of the value of said carpetings, payable in 12 + 18 months from the date of sale, and that said Promise and Agreement was in writing signed by the deft. before the sale and delivery of said carpetings. And that the Plaintiff relying upon said Promise and Agreement of the Defendant sold and delivered the said Carpetings to the said Holme and White for the purpose aforesaid but that the Defendant, afterwards and upon being requested so to do, and upon presentation of said

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notes to him for that purpose if they shall find from the evidence that such request and tender were made, neglected and refused to endorse or guarantee the same, and that the Plaintiff has not in any manner waived his right to enforce the Promise and Agreement of said Defendant and that said Carpetings have not been paid for, then the Jury will find for the Plff and the measure of Damages in such case, in the amount of the notes so agreed to be endorsed or guaranteed by the Defendant with Interest from the time when said Notes were to begin to bear interest, according to the terms of the agreement.

The Court at the instance of the Defendant instructed the Jury as follows,  
 Defendants' Instructions:

That if the Jury believe from the evidence in this cause that the Plff. Orme & the Witness Kunkle jointly agreed to furnish goods to the parties Hulme & White and made a joint proposition to them, including a proposition for Cook to endorse or back part of the notes given by Hulme & White for such goods then unless the said Plff Orme & Kunkle did each of them furnish goods to Hulme

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and White as contemplated by said joint proposition, then Cook the D<sup>f</sup> was not bound to endorse the papers for goods - furnished by One the Plaintiff alone -  
 2 Defendants Instr.

That unless the Jury find from the evidence that notes endorsed -  
 partially exactly in amount with that part  
 of the goods sold viz. one third at 12 months  
 + one third at 18 months to be endorsed  
 by Cook were tendered to him within a  
 reasonable time for execution then he is  
 not liable in this action -

To the giving of which said Instructions so asked for by the Defendant and each of them no objection was taken either at the trial or on the argument of the motion for a new trial.

The Jury thereupon retired to consider of their verdict, and shortly afterwards returned into Court with a verdict for the defendant, which verdict being read the Plaintiff by his counsel moved the Court to set aside said verdict and to grant a new trial in said cause, and afterwards, and at the same term of said Court filed in said cause his motion in writing as follows, to wit:

Circuit Court of Cook County  
April Term AD 1861.

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James H. Oney  
vs  
Isaac Cook

And now comes the said Plaintiff by Scots Mc Allister + Jewett his Attorneys and moves the Court to set aside the verdict of the Jury heretofore rendered in this case, and for a new trial therein. And for cause shows 1<sup>st</sup> said Verdict is contrary to the evidence in the case,

2<sup>nd</sup> said verdict is contrary to the law and the Instructions of the Court

3<sup>rd</sup> said verdict is contrary to the law and the facts of the case.


4<sup>th</sup> The Court gave improper Instructions at the instance of the Defendant -

5<sup>th</sup> The Court improperly overruled the motion of the Plaintiff to strike out the issue in the second plea of the Defendants, being a Plea of the Statute of Frauds and made on the ground that said issue was immaterial the Promise and undertaking of the Defendant set up in the declaration and proved on the trial being an original and not a collateral one.

Scots Mc Allister + Jewett  
Attys for Plt

but no objection was urged on the argu-  
 ment of this motion to the instructions  
 Which motion after agreement by  
 Counsel was afterwards, to wit: on the 11<sup>th</sup> day  
 of July A.D. 1861. that being one of the days of  
 the July Term A.D. 1861 of said Court, was  
 overruled by the Court, and judgment en-  
 tered upon said verdict against the Plain-  
 tiff for costs. And to the decision of the  
 Court in overruling said motion and enter-  
 ing judgment upon said verdict, the Plaintiff  
 by his Counsel, then and there excepted.

And forasmuch on the several  
 rulings and decisions of the Court aforesaid  
 and the exceptions of the said Plaintiff there  
 to, do not appear of record in said cause,  
 the said Plaintiff by his counsel prepares  
 and tenders this his Bill of Exceptions. And  
 prays that the same may be signed and  
 sealed by the Court and made a part of  
 the Record in said cause, which is accor-  
 dingly done. this the 11<sup>th</sup> day of July A.D. 1861.

Geo. Manierre   
 Judge of 7<sup>th</sup> Judicial  
 Circuit, Ills.



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 the bond for costs original writ pleadings bill of exceptions and order judgment entered of record in a certain cause lately pending in said Court, on the Common Law side thereof, wherein James N. Orme was Plaintiff and Isaac Cook was Defendant

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this thirty first day of March A. D. 1862.

W. L. Church, Clerk.

Recd for Record 4/8/30

Orme

Cook



Paid by peffath

mschman

18 85

State of Illinois

Supreme Court of said State of Illinois

Third Grand Division

April Term A.D. 1862

James H. Orne

vs Affidavit  
Isaac Cook  
Defendant

Essex Co. Circuit Court -

And the said James H. Orne, Plaintiff in error, by Seaton McAllister & Sewell, his Attorneys comes and says that in the Record and Proceedings aforesaid and also in the giving of the Judgment aforesaid, there is manifest error in this Court:

1<sup>st</sup> That the said Circuit Court erred in overruling the motion of the said Plaintiff to strike out the issue tendered by & found upon the second Plea of the said Defendant.

2<sup>d</sup> That the said Circuit Court erred in overruling the said Plaintiff's motion to set aside the verdict of the Jury in said Cause and for a new trial thereon - and in rendering Judgment against the said Plaintiff upon said verdict -

And the said James H. Orne, prays that the Judgment aforesaid, for the reasons aforesaid, and other reasons

in the event and proceedings aforesaid,  
may be covered, successful and altogether  
held for nothing, and that he may be restored  
to all things which he hath lost by occasion  
of his Judgment &c -

Scotus McAlister & Sewell -  
Atty for Plff. in error -

and the said defendant Isaac Cook by  
his Atty Pompey comes and says there is no  
error in the judgment aforesaid in  
ON. J. Pompey  
for defl

found in favor of  
April 21st 1876

L. Adams etc

149 183  
Supreme Court of Ill.  
James H. Orme  
v  
Isaac Cook

Record &  
Errors -

Filed April 12, 1862.  
L. Seland  
Clk.