

13356

No. _____

Supreme Court of Illinois

Bishop Hill Colony

vs.

Edgerton et al

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 221.

Bushnell Hill
Calvary
73
Edgerton

13356

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

THE BISHOP HILL COLONY, Appellant }
vs. LYCURZUS L. EDGERTON et al. Appellees. }

POINTS FOR APPELLEES.

I. No exception was taken to the overruling of the motion to quash the writ, and that question cannot now be considered.

The writ *was* signed with the name of the clerk. If it had not been signed, but was properly *tested* in the name of the clerk, such *testing* is a sufficient *signing*.

4 Blackford Rep. 87.

The rule in *Hannum v. Thompson*, 1 Scam. 238, and *Anglin v. Nott*, 395, does not apply. In those cases nothing whatever in the nature of a seal was affixed to the writ.

II. No exception was taken to the overruling of the motion for a continuance, and that question cannot now be considered.

The suit was not brought upon an account; it was brought upon a note and a *verbal* contract to pay the proceeds of certain broom-corn, belonging to Shoup, and which had been sold by appellant for Shoup, and the money received by it, and the appellant promised to pay it to the appellees, and thereby cancel a debt due from appellees to Shoup. The verbal contract was fully set out in the 3d, 4th, 5th and 6th counts of appellees declaration.

The appellees *did* file a stipulation that they would seek to recover on nothing but the note (a copy of which was filed in due time) and the verbal contract set up in the 3d, 4th, 5th and 6th counts of the declaration, and by filing the stipulation (which was done in due season) the appellees were within the rule even if an exception had been taken.

The appellant appeared below and went to trial in the case, without objection, and by taking such steps in the case waived all irregularities if any there were.

III. Interest was properly recovered on the verbal agreement to pay the appellees the proceeds of the sale of the broom-corn. The account

was stated, and the amount liquidated, and fixed at \$385 95, and interest was recoverable both under the Statutes of 1845 and the act of 1857.

Revised Statutes, 1845, Sec. 2, Chap. 45.
Scates' Statutes, Sec. 1, p. 600.

The cases of *Sammiss vs. Clark*, 13 Ill. 544; *Hitt vs. Allen*, Ibid, 592; *Clement vs. McConnell*, 14 Ill. 154; *Aldrich et al vs. Dunham et al* 16 Ill. 403, do not apply. In each of these cases interest was sought to be recovered on an open account, and under the law *as it then was*; no recovery could be had. In this case there never was an open account; the amount was agreed upon in the first instance, and the amount agreed to be paid by appellant to appellees was fixed.

The Statutes of 1845 have been changed, and interest is now recoverable on all contracts or agreements, whether express or implied, verbal or written.

Scates' Statutes, sec. 1, p. 600.

There was no error in allowing appellees to prove and recover ten per interest on the note *after maturity*.

The case of *O'Reer vs. Strong*, 13 Ill. 688, does not apply. That was a case where the plaintiff sought to prove by parol a part of a contract, while the other part was in writing, and both were made *at the same time*. Had the parties by a *subsequent* parol contract sought to extend, vary, change or modify the written contract, it would have been proper, and the Court would have enforced so much of the written contract as was not inconsistent with the parol contract, while it would have enforced the *whole* of the latter.

The two contracts should be construed together, so long as both can stand, but if either is to give way, the former must.

The agreement to pay ten per cent. interest was valid under the interest laws of this state, and rested upon a good consideration, whether there was an extension of the day of payment to any definite period or not.

Interest was not recoverable at common law without an express agreement to that effect; 1st Scam. Rep. 67, 69, *Madison Co. vs. Bartlett*. In this case the court remark that "At common law interest is the consideration or price that is agreed between the parties to be paid for the use of money for a stipulated time." "At common law, if no agreement for interest be made, it cannot be recovered, although the payment of the debt should be unreasonably delayed." The Court in the same case further say, (p. 70,) "Statute interest may properly be defined to be the legal damages or penalty for the unjust detention of money."

By the Revised Statutes of 1845, chap. 54, sec. 2, "Creditors shall be allowed to receive at the rate of six per cent. per annum for all moneys *after they become due*, on any bond, bill, promissory note, or other instrument of writing, &c.; likewise on money lent, money due on the

settlement of accounts, &c., &c." Under this statute, the maker of a note, after maturity, becomes liable to pay interest at six per cent. Then by the act of 1857, (see laws 1857, p. 45, sec. 1 and 2,) the rate of interest on all contracts and agreements, whether verbal or written, express or implied, for the payment of money, shall be six per cent. per annum, unless *otherwise expressly stipulated by the parties*; and sec. 2d provides that it shall be lawful for the parties to stipulate or agree that ten per cent. per annum, or any less sum of interest, shall be taken and paid upon every one hundred dollars of money loaned, or in *any manner due or owing* from any person or corporation to any other person or corporation in this state."

Here "the money was due and owing." "A penalty in damages" for the unjust detention of the debt "thus due and owing by way of interest is imposed by statute, the rate fixed by the statute being six per cent., or ten per cent.," if the parties choose so to agree. The detention of the debt after it becomes due, is, under the statute, an ample consideration of itself for the promise.

IV. There was no error in allowing the witness Cole to testify to what Shoup said at the time of the making of the agreement between Shoup, Johnson, the trustee and agent of the appellant, and Cole, the agent of the appellees. What Shoup said was a part of the *res gestae*, and the question propounded to the witness Cole was confined to the conversation at the *time* the agreement was made.

1st vol. Greenleaf's Evidence, sec. 108 to 114.

H. BIGELOW & T. G. FROST,
Attorneys for Appellees.

81 No 221

The Bishop Hill Colony

vs

Sycurus & Edgerton
et al

Points for appellates

Filed Apr. 26 - 1861

G. Lalumel

Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,
APRIL TERM, 1861, AT OTTAWA.

THE BISHOP HILL COLONY, Appellant }
vs. }
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The appellees *did* file a stipulation that they would seek to recover on nothing but the note (a copy of which was filed in due time) and the verbal contract set up in the 3d, 4th, 5th and 6th counts of the declaration, and by filing the stipulation (which was done in due season) the appellees were within the rule even if an exception had been taken.

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There was no error in allowing appellees to prove and recover ten per interest on the note *after maturity*.

The case of *O'Reer vs. Strong*, 13 Ill. 688, does not apply. That was a case where the plaintiff sought to prove by parol a part of a contract, while the other part was in writing, and both were made *at the same time*. Had the parties by a *subsequent* parol contract sought to extend, vary, change or modify the written contract, it would have been proper, and the Court would have enforced so much of the written contract as was not inconsistent with the parol contract, while it would have enforced the *whole* of the latter.

The two contracts should be construed together, so long as both can stand, but if either is to give way, the former must.

The agreement to pay ten per cent. interest was valid under the interest laws of this state, and rested upon a good consideration, whether there was an extension of the day of payment to any definite period or not.

Interest was not recoverable at common law without an express agreement to that effect: 1st Scam. Rep. 67, 69, *Madison Co. vs. Bartlett*. In this case the court remark that "At common law interest is the consideration or price that is agreed between the parties to be paid for the use of money for a stipulated time." "At common law, if no agreement for interest be made, it cannot be recovered, although the payment of the debt should be unreasonably delayed." The Court in the same case further say, (p. 70,) "Statute interest may properly be defined to be the legal damages or penalty for the unjust detention of money."

By the Revised Statutes of 1845, chap. 54, sec. 2, "Creditors shall be allowed to receive at the rate of six per cent. per annum for all moneys *after they become due*, on any bond, bill, promissory note, or other instrument of writing, &c.; likewise on money lent, money due on the

settlement of accounts, &c., &c." Under this statute, the maker of a note, after maturity, becomes liable to pay interest at six per cent. Then by the act of 1857, (see laws 1857, p. 45, sec. 1 and 2,) the rate of interest on all contracts and agreements, whether verbal or written, express or implied, for the payment of money, shall be six per cent. per annum, unless *otherwise expressly stipulated by the parties*; and sec. 2d provides that it shall be lawful for the parties to stipulate or agree that ten per cent. per annum, or any less sum of interest, shall be taken and paid upon every one hundred dollars of money loaned, or in *any manner due or owing* from any person or corporation to any other person or corporation in this state."

Here "the money was due, and owing." "A penalty in damages" for the unjust detention of the debt "thus due and owing by way of interest is imposed by statute, the rate fixed by the statute being six per cent., or ten per cent.," if the parties choose so to agree. The detention of the debt after it becomes due, is, under the statute, an ample consideration of itself for the promise.

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1st vol. Greenleaf's Evidence, sec. 108 to 114.

H. BIGELOW & T. G. FROST,
Attorneys for Appellees.

81 N^o 221

The Bishop Will Colony

as

Synergus & Edgerton
exec

Points of Appelles

Filed Apr. 26 1861

L. Garland
Clark

1
State of Illinois }
County of Henry }

Pleas before the Hon. John H. Howe
Judge of the 6th Judicial Circuit At a Special Term
of the Circuit Court begun and holden at the court
house in Cambridge in said county on Monday the
sixteenth day of April in the year of our Lord one
thousand eight hundred and sixty being the third
Monday of said month

Present

Hon. John H. Howe Judge
Thomas Wiley & Clerk
Parnel H. Sniff Sheriff

Know ye that on the 9th day of February AD 1860
came William Bigelow as atty for plff and filed
his precept for a summons and also his bond for
costs in the following entitled cause in words
and figures following to wit.

State of Illinois }
Henry County } ss

Henry County Circuit Court
March Term AD 1860

Lycurgus Edgeston
William H. Dunning
John G. Wright

vs
The Bishop Hill Colony

Damages \$1000

The Clerk of the Circuit Court
will please issue summons in favor of the above named
plaintiffs and against the above defendants in a

2

plea of Trespass on the case on promises Damages
\$1000. returnable according to law & place the same
in the Sheriff's hands to serve

Feb 4. 1860

Wm Bigelow

Atty for Plaintiffs

State of Illinois

Henry County

} ss Henry County Circuit Court
March Term AD 1860

Sycurus Edgeston
William W Dunning
John C Wright

} Assumpsit

vs
The Bishop Hill Colony

I Hiram Bigelow do hereby
enter myself security for costs in the above entitled
cause and acknowledge myself bound to pay or cause
to be paid all costs that 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 Feb 4th 1860

Hiram Bigelow

And afterwards to wit on the day and year last
aforesaid... a summons issued out of said court
in said cause in words and figures following to wit:

State of Illinois
Henry County

} ss The People of the State of Illinois
To the Sheriff of said county Greeting;

You are hereby commanded to Summon

3

The Bishop Hill Colony to appear before the Circuit Court of Henry County on the first day of the next term thereof to be holden at Cambridge on the first Monday of March next to answer the complaint of Sycurgus Edgerton William Mc Dunning & John G Wright in a plea of trespass on the case on promises. Damages claimed \$1000.00 And have you then and there this writ, Witness Thomas Wiley & Clerk of said Court and the seal thereof this Sevenths day of February 1860

(Seal)

T. Wiley & Clerk

Upon which summons appears the following return
 " I have served the within Summons by reading the same
 " & by delivering a true copy to the following persons
 " Jacob Jacobson Olof Johnson Jonas Erickson Jonas
 " Olson Swan Swanson they being Trustees & Guardians
 " of Bishop Hill Colony This 25th day of February 1860
 P Mc Smiff Sheriff Henry Co Ills
 By Geo A Brown Deputy "

And afterwards to wit on the 22^d day of February AD 1860 the said plaintiffs by Bigelow their atty file their declaration in said cause in words and figures following to wit:

State of Illinois

Henry County

Henry County Circuit Court
 March Term AD 1860

1 Sycurgus Edgerton John G Wright and William Mc Dunning who are copartners in trade

doing business in the city of New York under the name
 style and firm of Le Edgerton & Dunning plaintiffs
 in suit by W. Bigelow their attorney complain of "The
 Bishop, Hill Colony," of the County of Henry and State
 of Illinois defendant in suit who has been summoned to
 answer unto the plaintiff in a plea of trespass on the
 case on promises. For that whereas the said defendant
 heretofore to wit on the first day of April AD 1858 at said
 County made its certain promissory note in writing of
 that date and delivered it to Solomon Shoup whereby said
 defendant promised to pay the order of Solomon Shoup (un-
 der the name of S Shoup) the sum of five hundred and
 fifty dollars at their office in Galva six months after the
 date thereof for value received. And the said Solomon
 Shoup afterwards to wit on the day and year and at
 the place aforesaid indorsed said note in writing and
 delivered it to said plaintiffs by which said indorse-
 ment said Solomon Shoup ordered and appointed
 said money mentioned in said note to be paid to
 said plaintiffs of which the said defendant then and
 there had notice and the said time limited for the
 payment of said note has long since elapsed.
 By means whereof and by force of the Statute in such case
 made and provided the said defendant became
 liable to pay and then and there in consideration
 of the premises promised to pay the amount of
 said note to the said plaintiff according to the
 tenor and effect of said note and the indorsement
 aforesaid to wit at the place aforesaid

And whereas also the said defendant afterwards to wit on the day and year and at the place aforesaid made his certain other promissory note in writing and delivered it to said Solomon Shoup, which said note was and is in the words and figures as follows to wit;

" \$550 " Galva Ills April 1st 1858 "

" Six months after date we promise to pay to the "
 "order of S Shoup five hundred & fifty dollars at our "
 "office in Galva Value received

" " Bishop Hill Colony "

" " per O Johnson "

And the said Solomon Shoup by and under the name of S Shoup indorsed said note in writing and delivered it to said plaintiffs and then and there ordered and appointed said sum of money mentioned in said note to be paid to said plaintiffs by and under their said copartnership name of S Edgerston & Dunning and afterwards to wit on the first day of October AD 1858 and on the day the said note became due and payable the said defendant in consideration that said plaintiffs would forbear and give to said defendant further time to pay said note the said defendant undertook and promised to pay said plaintiffs interest on the amount of said note at the rate of 10 per cent per annum until paid to wit that said note should draw ten per cent interest from maturity until paid and the said time limited for the payment of said note has long since elapsed

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of all of which said defendant then and there had notice to wit at said county of Henry and then and there in consideration of the premises promised to pay to said plaintiffs the said money mentioned in said note with interest thereon after due at 10 per cent until paid. By means whereof and by force of the statute in such case made and provided said defendant became liable to pay and then and there promised to pay the amount of said money mentioned in said note with interest thereon after maturity at the rate of 10 per cent until paid to plaintiffs according to the tenor and effect of said note and said promise to pay said interest as aforesaid to wit at the said county aforesaid.

3 And whereas the said defendants afterwards to wit on the 16th day of November A.D. 1858 to wit at said county received of Solomon Shoup fifty three bales of broom corn weighing 10,427 lbs to be shipped to New York sold and proceeds paid to said Solomon Shoup, and the said Broom Corn was then and there shipped to said New York and by the consignee of said defendant to wit one Julius A. Durkee the said Broom corn was sold for the sum of three hundred eighty five dollars and ninety five cents and the proceeds paid to said defendant and the said sum of money was after said sale to wit on the first day of March A.D. 1859 by the said defendant then and there to wit at said county

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then due and owing to said Solomon Shoup and the said defendant afterwards to wit on the 10th day of March AD 1839 then and there by and through Olof Johnson one of the Trustees of said Defendants in consideration that said Solomon Shoup would release said defendant from the payment of said money and ~~and~~ every part thereof undertook and promised to pay the amount of said money to wit the said sum of three hundred eighty five dollars and ninety five cents to said plaintiffs when he the said defendant should be hereunto afterwards requested, By means whereof and by force of the statute in such case made and provided said defendant became liable and then and there in consideration of the premises promised to pay the amount of said money to wit the said $\$383\frac{95}{100}$ to the said plaintiffs by and under their said copartnership name to wit at the place aforesaid

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And whereas also the said defendant afterwards to wit on the first day of March AD 1839 to wit at said county became and was indebted to said Solomon Shoup in the sum of Three hundred and eighty five dollars for money before that time had and received by said defendant to and for the use of said Solomon Shoup. And the said defendant afterwards to wit on the day and year last aforesaid in consideration that said Solomon Shoup would forever release and discharge the said defendant from the further or other payment of said money undertook and then and there promised to pay

the amount of said money as aforesaid to said plaintiffs and the said Solomon Shoup did then and there agree to release said defendant from the further payment of said money as aforesaid at the time said defendant so promised to pay the same to said plaintiffs By means whereof and by force of the statute in such case made and provided said defendant became liable to pay and then and there in consideration of the premises promised to pay the amount of said money as aforesaid to said plaintiffs

5

And whereas also the said defendant afterwards to wit on the 20th day of March AD 1839 was indebted to one Solomon Shoup of said county in the sum of three hundred eighty five dollars and ninety five cents for money which the said defendant had then and there received from and on account of the sale of 10427 lbs broom corn before that time delivered by said Solomon Shoup to said defendant for the purpose of sale and conversion into money and the said defendant then and there promised that if the said Solomon Shoup would forever release and discharge the said defendant from the further payment of said money he the said defendant would pay the same and ^{any} part thereof to said plaintiffs and the said Solomon Shoup did then and there release and discharge said defendant from the further or other payment of said money and the said defendant in consideration of the premises promised to pay the amount of said

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money so received on account of said sale of said
brown corn to said plaintiff to wit at said county,
aforesaid

- (6) And whereas also the said defendant afterwards to wit
on the 16th day of November AD 1858 received in store of
one Solomon Shoup, for shipment to N.Y. fifty three
bales brown corn weighing 10427 lbs and the said brown
corn was then and there by said defendant shipped
to said New York and was afterwards to wit on the
first day of March AD 1859 sold and converted into
money and the said money so received for said
brown corn was then and there due and owing by
said defendant to said Solomon Shoup and afterwards
to wit on the 20th day of March AD 1859 the said plaintiffs
paid the said Solomon Shoup the sum of two hundred and
seventy three dollars for the said money then due and owing
by the said defendant to the said Solomon Shoup for
and on account of the sale of said brown corn and
which had before that time been received by said de-
fendant for said brown corn and the said defendant
then and there in consideration that said Solomon
Shoup would release and discharge the said defendant
from the further or other payment of said money
and each and every part thereof so received for said
brown corn that the said defendant would pay
said money and ~~any~~ every part thereof to said
plaintiff and it was then and there agreed in
consideration of the premises that they the said
plaintiffs would receive and that the said defendant

should pay the amount of the proceeds of said sale to said plaintiffs when thereunto afterwards requested and the said Solomon Sharp then and there agreed & promised to discharge said defendant from the further or other payment of said money or any part thereof, and the said understanding and agreement was fully arranged entered into and completed by and between the said plaintiffs herein represented by their said agent M. T. Cole the said defendant represented by Olaf Johnson and said Solomon Sharp in person and the said defendant then and there in consideration of the premises promised to pay said plaintiffs said sum of money so received for and ~~on~~ account of the sale of said brown corn when he the said defendant should be thereunto afterwards requested. By means whereof and by force of the statute in such case made and provided said defendant became liable to pay and then and there in consideration of the premises promised to pay the whole amount of money so received for and on account of the sale of said brown corn to said plaintiffs.

6 And whereas also the said defendant to wit on the first day of January in the year of our Lord one thousand eight hundred and sixty to wit at said county became and was indebted unto the plaintiffs in a large sum of money to wit One thousand dollars for money before that time lent and advanced

to said defendant by said plaintiffs at said Defendant's request and also in the like sum for money before that time paid laid out and expended for said defendant by the said plaintiffs at the like special request of said defendant and in the like sum for money before that time had and received by said defendant to and for the use of said plaintiffs and also in the like sum for goods wares and merchandise before that time sold and delivered by said plaintiff to said defendant at his like special instance and request and also in the like sum for the labor care and diligence of said plaintiffs before that time done and performed by said plaintiffs for said defendant and at the like instance and request of said defendant and also in the like sum then and there found to be due and owing to said plaintiff on an account stated between them and being so indebted said defendant in consideration thereof then and there undertook and promised to pay said plaintiffs said several sums of money above mentioned when thereunto afterwards requested.

Yet the said Defendant not regarding said promises and undertakings but contriving &c although often requested so to do has not paid said plaintiffs either of said sums of money above mentioned or any part thereof but so to do has hitherto wholly neglected and refused and still does neglect and refuse to the

damage of said Plaintiffs of the sum of One
thousand dollars and therefore they bring this suit

H Bigelow

Plff. atty

Note filed

~~25502~~

Galva Ills April 1st 1858

Six months after date we promise to pay to the order
of S Shoup Five hundred & fifty dollars at
our office in Galva Value received

Bishop Hill Colony
per O Johnson

Enclosed

Pay to the order of Le Edgerton & Dunning
S. Shoup

Protest

State of Illinois

County of Henry Town of Galva } *LD*

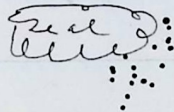
Be it known that on this
fourth day of October in the year of our Lord
one thousand eight hundred and fifty eight
I Wm Ayres Notary Public duly commissioned
and sworn and residing in the town of Galva
in said county and state at the request of
the American Express Company went with the
original note of which a true copy is above written
to the office of the Bishop Hill Colony and demanded
payment which was refused whereupon I the
said Notary at the request aforesaid did protest

13.

and by these presents do Solemnly Protest as well against the makers of said note the endorsers thereof as all others whom it doth or may concern for exchange re-exchange and all costs charges damages and interest already incurred by reason of the non-payment of the said note. And I the said Notary do hereby certify that on the same day and year above written due notice of the foregoing protest was put in the Post office at Galva as follows:

Notice for Bishop Hill Colony Galva
 " for J Shoup "
 " for L Edgerton & Dunning "
 " for J H Burch & Co Chicago

Each of the above named places being the reputed place of residence of the persons to whom this notice was directed In testimony whereof I have hereunto set my hand and affixed my official seal the day and year above written

 Wm Ayres Notary Public

And afterwards ~~at~~ to wit on the 19th day of April it being the 3rd day of the term aforesaid the following proceedings were had in said cause to wit:

Lycurgus Edgerton
 Wm H Dunning
 John G Wright

Assumed

as
 The Bishop Hill Colony

At this day came the

the plaintiffs by Bigelow & Frost their attys and
the defendants by Bennett and Knox Eustace &
Reed their attys, and this cause being called for the
hearing of motions &c. Motion is made by defts
attys to quash writ for reasons stated to wit

" 1 The said writ is not tested in the name of the Clerk
as per Stat. &c

" 2 The said writ is not signed by the clerk of the Circuit
Court as per statute &c

" 3 The said writ is signed by "F. Wiley & and the name
of the clerk is "Thomas Wiley &"

" 4 The said writ should be against "The Bishop. Hill
Colony"

" 5 There are other informalties in said writ.

Motion overruled by the court. Motion by
defts attys for continuance for the reason

" There is no copy of the account upon which it is

" sought to recover on the 3^d 4th 5th & 6th & 7th counts

" of the plaintiffs Declaration

And motion by plffts attys to strike motion for
continuance from the files, Motion overruled
by the court

And afterwards to wit at the term aforesaid and
on the day and year aforesaid comes the said
defendant & files an affidavit of merits in said
cause in words and figures following to wit

Le-Edgerton & Dunning

The Bishop Hill Colony

Olof Johnson being

deuly sworn say that he is one of the agents of the said defendant. Affiant says that the said defendant has a good and valid defense to the whole amount of the promissory note in the plaintiffs declaration mentioned & the interest therein & further saith not

Olof Johnson

Subscribed & sworn to before me this 19th day of April AD 1860

Linus D Bishop, Notary Public

And afterwards to wit at the Term aforesaid and on the 20th day of April. came the plaintiff in said case by P. Ogden their atty and filed his stipulations with said defendants in words and figures following to wit

~~Lycurgus~~ ^{State of Illinois} Henry County Grant
Henry County Court of the Special April Term 1860

Lycurgus Edgerton
John F. Wright
William H. Dunning
Is
The Bishop's Hole Colony

Stipulation

And now comes the said plaintiffs by the P. Ogden their atty and stipulate to and with the said Defendant. that the said plaintiffs will not seek to prove any other account or bill of particulars or any other demand or claim whatever than the several promissory notes mentioned in said first three counts of said plaintiffs declaration and the said parcel contract or agreement set up and declared in the 3^d, 4th & 5th & 6th counts of said declaration, and said pl^{ts} notify said de^{fts} that they are ready for trial

W. P. Ogden
Pl^{ts} Attorney

And afterwards, ^{to wit} at the term aforesaid and on the
3^d day of May of said Term the following proceedings
were had ^{in said cause} ^{to wit}

At this day of the term aforesaid
came the parties herein by their atty as aforesaid
and on the hearing of the motion for continuance
It is ordered by the court that the same be and is hereby
overruled

And afterwards ^{to wit} at the term aforesaid
and on the 3^d day of May 1860 the said defendant
by their atty and file their demurrer to said
plaintiffs declaration in words and figures ~~and~~
following ^{to wit};

The Bishop Hill Colony

ads

Sycurgus Edgeston et al

} Demurrer to 1st count

And now comes the said

Bishop, Hill Colony by Reed & Bennett.
attorneys & defends &c & craves oyer of the
said supposed promissory note mentioned
& described in the first count of said declara-
tion and it is read in words and figures
following to wit

" \$550. # Galva Ills April 1st 1858 "

" Six months after date we promise to pay "

" to the order of S Shoup Five hundred & "

" fifty dollars at our office in Galva Valm "

" received Bishop, Hill Colony "

per O Johnson "

Enclosed

" Pay to the order of Le Edgerton & Dunning
S Shoup. " which
being read & heard by the court said defendant
says that said count is insufficient in law
for said plaintiffs to maintain said actions as to
said count wherefore said defendant prays
judgment & costs said court

Reed & Bennett

attys for deft

Bishop, Hill Colony

vs

Lycurgus Edgerton

John G Wright &

William H Dunning

Demurrer to Narr

And the said Defendant
by John I Bennett their attorney come and defend

the wrong and injury when &c and say that the said second (2) third (3) fourth (4) and fifth (5) & sixth (6) counts of the said Plaintiffs said declaration and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law for the said Plaintiff to have or maintain his aforesaid action thereof against the said Defendant and they the said defendants are not bound by law to answer the same to wit the said 2^d 3^d 4th & 5th & 6th counts of the Plaintiffs declaration. And thus they are ready to verify wherefore by reason of the insufficiency of the said counts of the said Declaration in this behalf the said defendant pray judgment and that the said Plaintiffs may be barred from having or maintaining his aforesaid action thereof against him &c upon said counts of said declaration And the said defendants according to the form of the statute in such case made & provided states and shows to the Court here the following causes of Demurrer to the said counts of said declaration that is to say The second count is defective for the following reasons to wit -

- 1 There is no sufficient time laid in said count when said Note was made
- 2 There is no venue laid in said count where said note was made
- 3 The said count is double in that it avers & sets

out two different times for two different sums and which said promises are otherwise different and

4 For other defects in said count

The third count is defective as follows to wit

- 1 The said count or the pretended cause of action therein set out is within the statute of frauds
- 2 There is no averment that defendant shipped & sold said brown corn
- 3 There is no averment that the proceeds of said corn were requested to be paid to Defendants by said Defendant
- 4 In & by said count Plaintiff alleges that Defendant was & is indebted to one Solomon Shoup upon an open account and not upon any assignable instrument & yet suit is brought in the name of the plaintiffs for said alleged indebtedness
- 5 There is no averment that Olof Johnson as one of the Trustees of Defendant had the power to bind defendant and

6 For other defects

The fourth count is defective for all of the above reasons and also the following to wit

- 1 No sufficient venue is laid
- 2 There is no averment that said Solomon Shoup ever has released the defendants from the payment of the said \$385 and

3 For other defects

The fifth count is liable to all of the objections

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- urged to third and the following also to wit
- 1 The Alleged promise of the Defendant is hypothetical & conditional & not absolute
 - 2 There is no allegation in said fifth count that the Defendant had notice that they were released from their obligation to pay said shop.
 - 3^d The said count is vague & indefinite in the use of the phrase "the further or other payment of said money and
 - 4th Said count is altogether too vague & indefinite. The sixth count is liable to all of the objections to count number three (3) and is also defective for the following causes to wit
- 1 There is no promise or undertaking alleged in said count
 - 2 It does not appear by said count what parties there & there agreed " &c and the said 2^d 3^d 4th 5th & 6th counts are in other respects uncertain informal and insufficient wherefore the said defendant pray judgment of the said court and that the said plaintiffs may be barred from having or maintaining their aforesaid action on them or either of them &c

John J Bennett
att'y for depts

And afterwards to wit at the term aforesaid and on the 8th day of May the following proceedings were had in said cause to wit

Lycurgus Edgerton
 Wm Le Dunning
 John G Wright

} Assumpsit

vs
 The Bishop, Keel Colony }

And now at this day comes
 the said parties herein as aforesaid and the
 said defendants by their attys and enter their
 demurrer to the declaration filed herein which
 demurrer is by the court sustained and on
 motion of plffs attys leave is given by the court
 to amend declaration instant and defendants
 ruled to plead by to morrow morning

And afterwards to wit at the term aforesaid
 and on the 9th day of May came the said
 defendants by their attys and file their plea
 to 1st count in words and figures following to wit

Bishop, Keel Colony }

ads

L Edgerton & Dunning }

And the said Defend-
 ants by Bennett & Reed their attorneys come
 & defend the wrong & injury where and say
 that they did not undertake or promise in
 manner or form as the said Plaintiffs have
 above thereof complained against them and
 of this they put themselves upon the Country &c

Bennett & Reed

attys for Defts

And the said plffs do the like by
Bigelow & Frost

Plffs atty

And the said Defendants by John J Bennett
their attorney come and defend the wrong
& injury when &c and also all the said several
supposed promises and undertakings in the said
first count of the Plaintiffs Declaration mentioned
except as to the sum of Three hundred & twelve
dollars parcel of the said sum of money in said
count mentioned say that they did not undertake
or promise in manner & form as the said plain-
tiffs have above thereof complained against
them & of this they put themselves upon the country
&c And as to the said sum of Three hundred
and twelve dollars parcel of the said sum of
money in the said first count mentioned
the said Defendants say that the said plaintiffs
ought not to have or maintain their aforesaid
action thereof against them to recover any more
or greater damages than the said sum of
Three hundred and twelve dollars parcel of
the said sum in said count mentioned in
this behalf because they say that after the making
of the said several supposed promises and under-
takings in the said count mentioned as to the
said sum of Three hundred and twelve
dollars parcel &c and before the commencement
of this suit to wit on the 12th day of May

AD 1859 at Galva in the County of Henry aforesaid they the said defendants were ready & willing and then & there tendered and offered to the said plaintiffs the said sum of Three hundred and twelve dollars lawful money of the United States of America parcel &c to receive which of the said Defendants they the said plaintiffs then & there wholly refused and the said Defendants in fact further say that they the said defendants always from the time of the making of the said several promises and undertakings in the said court mentioned as to the said sum of Three hundred and twelve Dollars parcel &c hitherto at the County of Henry aforesaid have been ready to pay and still are then ready to pay to the said Plaintiffs the said sum of Three hundred and twelve dollars parcel &c (and they now bring the same into court here ready to be paid to the said Plaintiffs if they will accept the same) and thus they the said Defendants are ready to verify wherefore they pray judgment of the said Plaintiffs ought to have or maintain their aforesaid action against them to recover any more or greater damages than the said sum of Three hundred and twelve dollars parcel &c in this behalf &c

And for a further plea in this behalf as to all the said several supposed promises & undertakings in the said court mentioned except as to the said sum of Three hundred and twelve dollars parcel &c the said Defendants by leave of the court

here for this purpose first had & obtained according to the form of the statute in such case made & provided say that the said plaintiffs ought not to have or maintain their aforesaid action thereof against them because they say that the said plaintiffs before and at the time of the commencement of this suit to wit at the county aforesaid were and from thence hitherto have been and still are indebted to the said defendants in a large sum of money to wit the sum of two hundred and ninety dollars and seventy four cents (\$290.74) for money by the said defendants before that time to wit on the 20th day of March A.D. 1859 at said county lent & advanced to & paid laid out and expended for the said plaintiffs at their like request and the interest thereon accrued and for other money by the said plaintiffs before that time had and received to & for the use of the said defendants and for other money due & owing from the plaintiffs to the said Defendants for interest upon and for the forbearance of divers large sums of money and by the said defendants for borne to the said plaintiffs for divers long spaces of time before then elapsed at the like special instance of the said plaintiffs and for other money due & owing from the said plaintiffs to the said defendants upon an account stated between them which said sum of money so due and owing from the said plaintiffs to the said defendants exceeds the damages

sustained by the said plaintiffs by reason of
 the non performance by the said defendants of
 the several supposed promises and undertakings
 in the said count mentioned except as
 to the said sum of Three hundred & twelve dollars
 (\$312) parcel &c and out of which said sum of
 money so due and owing from the said
 plaintiffs to the said defendants they the said
 Defendants are ready & willing and hereby offer
 to set off and allow to the said plaintiffs the
 full amount of the said damages in said
 count mentioned except as aforesaid according
 to the form of the statute in such case made
 and provided and that they the said defend-
 ants are ready to verify wherefore they pray
 judgment if the said plaintiffs ought to have
 or maintain their aforesaid action thereof
 against them except as to the said sum of
 three hundred & twelve dollars parcel &c

John I Bennett

Defts Atty

And afterwards to wit on the day and year
 last aforesaid comes the said plaintiffs by
 Bigelow their atty and file their replication
 to Defendants pleas in words and figures
 following to wit

Lycourges Edgerton et al

vs

The Bishop Hall Colony

} And as to the said

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plea of the said defendant by him secondly above pleaded as to the said sum of three hundred and twelve dollars parcel &c the said plaintiffs say that they by reason of anything by the said defendant in that plea above alleged ought not to be barred from having and maintaining their aforesaid action thereof against him to recover further damages than the said sum of \$312 parcel &c in this behalf. Because they say that the said defendant did not tender or offer to pay to the said plaintiffs the said sum of \$312 parcel &c in manner and form as the said defendant hath above in his said plea in that behalf alleged and this the said plaintiffs pray may be enquired of by the country &c

H Bigelow Plffs atty

And the said Deft doth not like by

J J Bennett & C H Reed

Attorneys for Deft

And as to the said plea of the said defendant by him lastly above pleaded the said plaintiffs say that they by reason of anything by the said defendant in that plea above alleged ought not to be barred from having or maintaining their said action thereof against him because they say that they were not nor are indebted to the said defendant in manner and form

as the said defendant hath in his said last
plea alleged. And thus the said plaintiffs also
pray may be required of by the country &c

H Bigelow

Pliffs attorney

And the said Defs doth the like by

J I Bennett & C W Reed

Their attorneys

And afterwards to wit at the term aforesaid
and on the 9th day of May the following pro-
ceedings were had in said cause to wit:

Sycurgus Edgeston

Wm Dunning

John L Wright

vs

The Bishop Hill Colony

Assumpsit

At this day this cause being
again called and pleas filed and issue
joined herein It is ordered by the court that
a Jury be called and thereupon to try this cause
came the jurors of a jury of good and lawfull men
to wit Orson Jones ^{John Boyd} John White Charles Brown Benj Fritz
Wm Follett J H Hamwood Jackson Brown N Gaines
J Paden M Rickel and James Mackesney who
were duly selected chosen and sworn to well and
truly try this cause and a true verdict render ac-
cording to the evidence And the jury having heard
the evidence the arguments of the counsel and all
things to be adduced herein return into court

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their verdict for the plaintiffs, in words and figure following: to wit "We the jury in this cause find the issues for the plaintiffs and assess their damages at \$758.99" which verdict is by the court approved And thereupon the said defendants by their atty enter their motion for a new trial for reasons stated to wit

" 1st The court erred in admitting improper evidence to the jury

" 2^d The court erred in admitting the evidence of the Witness M J Cole in relation to the interest on the note & on the brown corn account

" 3^d The court erred in allowing the plaintiffs to prove interest on the brown corn account And the verdict is greater in amount than the evidence justified

" 4th The court erred in admitting the evidence of the witness Cole as to the whole amount of the note & interest & the brown corn account & interest And the court having heard the motion and being now fully advised in the premises overrules the motion and judgment entered on the verdict Whereupon it is considered and ordered by the court that the plaintiffs have and recover of the Defendant the sum of Seven hundred and fifty eight & 99/100 dollars judgment together with their costs in this behalf expended and that they have execution therefor against the said defts, And now upon the rendering of said judgment comes the defts by their atty and pray an appeal from the

judgment of this court to the Supreme court of the State of Illinois which appeal is granted by the courts

And afterwards to wit at the term aforesaid and on the 11th day of May . . comes the said defendants and file their appeal bond in words and figures following to wit:

" Know all men by these presents that we The
 " Bishop, Hill Colony as principal and Thomas
 " Wiley & as surety are held and firmly bound
 " unto Lyncurgus Edgerton John G Wright and
 " William H Dunning in the penal sum of one
 " thousand dollars lawful money of the United
 " States of America for the payment of which well
 " and truly to be made we hereby bind ourselves our
 " heirs executors administrators and assigns
 " firmly by these presents. Witness our hands
 " and seals this 9th day of May AD 1860

" The condition of the above obligation is such that
 " whereas on the 9th day of May AD 1860 at and
 " during the special April term AD 1860 of the Circuit
 " court of Henry County and state of Illinois the said
 " Lyncurgus Edgerton John G Wright and William H
 " Dunning as partners under the name of L
 " Edgerton & Dunning recovered a judgment
 " against The Bishop, Hill Colony for the sum of
 " Seven hundred and fifty eight dollars and
 " ninety nine cents in a certain action of
 " assumpsit wherein said Edgerton Wright and

" Dunning are plaintiffs and The Bishop, Hill Colony
 " is Defendant and whereas the said Defendant has
 " taken an appeal from said judgment to the Supreme
 " Court of the State of Illinois Now if the said De-
 " fendant shall duly prosecute said appeal and
 " shall pay the said judgment costs interest and
 " damages in case said judgment shall be af-
 " firmed then this obligation is to be void otherwise
 " to be and remain in full force and effect

" Bishop, Hill Colony @

" per Peter Peterson jr

" Thomas Wiley & @

Which Bond is approved by the court, and on
 motion 30 days are given to prepare and file
 their bill of exceptions

And afterwards to wit on the 8th day of June
 the said defendant by their attys file
 their bill of exceptions in this cause in words
 and figures following to wit:

Lycurgus Edgerton

John G Wright

William Mc Dunning Partners &c

vs
 The Bishop, Hill Colony

} Assumpsit

But it remembered that on the
 9th day of May AD 1860 at and during the
 said Term of said court the said suit was
 called for trial before the court and a

jury duly impaneled and sworn therein
 Whereupon the plaintiffs aforesaid to maintain
 and prove the issues in said cause on their part
 offered and read in evidence to the jury a
 certain promissory note and the assignment
 thereof of which note and assignment the following
 is a true copy to wit:

" \$550.00 Galva Ills April 1st 1838

" Six Months after date we promise to pay
 to the order of S Shoup five hundred and

" fifty dollars at our office in Galva value

" received

Bishop, Uddell Colony

per O Johnson

" Pay to the order of S Edgerston & Dunning"
 " S Shoup "

to the reading of which said note and the
 assignment thereof in evidence the said de-
 fendant by its attorneys then and there objected
 which objection was then and there overruled by
 the court to which ruling said defendants by
 its attorneys then and there excepted And
 thereupon said plaintiffs further to maintain the
 said issues on their part called as a witness one
 M. J. Cole who being first duly sworn testified
 as follows to wit:

I live in Chicago, am agent for the plaintiffs
 am acquainted with the parties to this suit, I
 have been the agent of the plaintiffs since the

first of March AD 1859

I was present at a conversation between myself Mr Johnson and Mr Solomon Shoup at Galva on the 25th day of March AD 1859 Mr Johnson acted as Trustee & agent for the Defendant the Plaintiffs by their attorneys here asked said witness the following question to wit: What was then said by Olof Johnson Solomon Shoup & yourself? To which question said defendant by its attorneys then and there objected which objection the court then and there overruled and permitted said witness to answer the same to which ruling the said defendant by its attorneys then and there excepted.

Answer, Mr Johnson said that the defendant (the Colony) had shipped to New York a quantity of broom corn belonging to Mr Solomon Shoup with other corn belonging to the Colony and that it was all shipped in the name of the Colony - that on the passage to New York of the corn the marks on the bales became erased so that it was impossible to distinguish the corn of Mr Shoup from the Colony corn when it arrived at New York that on the sale of the corn (which was all sold together) one Mr Durkee accounted to the Colony for the corn and that in order to get at the proceeds they estimated that the Colony had received from Mr Durkee three hundred and eighty five dollars and ninety five cents (\$385.95) as the proceeds from the sale of Mr Shoup's corn and

Mr Johnson promised to pay that amount to me as the agent of the plaintiffs

At that time Mr Sharp was owing the Plaintiffs more than that amount and it was then mutually agreed by all three parties together that that amount should be paid by the defendant to me as the agent of the plaintiffs and I understood that Mr Sharp then released the Colony from further liability on account of the Broom corn. The next interview I asked Johnson for the money on the broom corn account and he said he would not pay it as he had been garnished for the same thing, this was in Chicago and a few days after the first conversation

It has never all been paid. Mr Johnson said at ~~that~~ the same time and at the last interview that he had sent some money to Mr Durkee a portion of which was to be paid to Mr Durkee and the balance to the plaintiffs. Mr Durkee afterwards paid over to the plaintiffs two hundred and seventy three (\$273) dollars for the defendant.

There was some conversation at Mr Bigelow's office. Mr Bennett was there. The substance was that although he (Johnson) had agreed to pay it he would not then because he had been garnished in the case of Pierce vs Whittelsey & Corson for the same matter. I have seen the note read in evidence. The defendant by Mr Johnson agreed to pay ten per cent interest on it after maturity until it was paid. This agreement was made shortly

after the note became due and was made between Mr Johnson as Trustee of the Defendant and myself as agent of the plaintiffs. The Deft by its attorney here objected to said witness stating what Mr Johnson agreed or said about paying ten per cent interest on the note in question. Which objection the court then and there overruled to which ruling the Defendant then & there excepted. And thereupon said witness statement as above set forth concerning the agreement by Olof Johnson as Trustee of the defendant to pay ten per cent interest upon the note in question after its maturity till paid was by the court allowed to go to the jury as evidence. The said plaintiff here asked said witness the following question to wit:

Have you computed the interest on the note in question at the rate of ten per cent since its maturity? To the asking of which question the said Defendant by its attorney then & there objected which objection the court then & there overruled, to the overruling of which objection the said Defendant by its attorney then & there excepted and to which question the said witness answered as follows:

I have computed it and it amounts to Eighty eight dollars and forty five cents.

The Plaintiffs here asked said witness the following question to wit:

Have you computed the interest on the brown corn account at six per cent?

To the asking of which question said Defendant by its attorneys then and there objected which objection the court then & there overruled, to which ruling the said Defendant by its attorneys then & there excepted and to which question said witness answered as follows "I have computed the interest on the broom corn account after deducting the \$278- paid by Mr Durkee and it amounts to seven dollars & fifty nine cents". The whole amount of principal and interest of the unpaid balance of the broom corn account is one hundred and twenty dollars and fifty four cents.

The Plaintiff here asked said witness the following question to wit,

What is the whole amount of the note and the interest thereon at ten per cent after maturity and the broom corn account and interest thereon at six per cent? To the asking of which said question the said Defendant by its attorneys then and there objected which objection the court then & there overruled to which ruling said Defendant by its attorneys then & there excepted.

To which question the said witness answered as follows:

The whole amount of them all is seven hundred and fifty eight dollars & ninety nine cents (\$758.99)

Cross examined by Defendant's attys.
Mr Shoup, at the time of the agreement con-

cerning the proceeds for the sale of the broom corn requested Mr Johnson to pay the amount of the broom corn account to me as agent of the plaintiffs and thereby cancel the debt due him (Shoup) from the colony.

This Mr Johnson agreed to do as the Trustee of the colony and Mr Shoup then released the colony from any further liability on the broom corn account and the colony by Mr Johnson agreed to pay the same to me as agent of the plaintiffs. The matter was fully understood & agreed to by all parties and the colony was by Mr Shoup then & there discharged from the payment of the broom corn money to him. I said a receipt was given to Durkee for \$273. I was so informed by a letter from the plaintiffs. The note in question was in the hands of Keayne Muller & Lewis for collection in April 1859.

The said plaintiffs here produced as their next witness Peter Peterson who being duly sworn testified as follows to wit:

I knew the Bishop Hill Colony but not the Plaintiffs. Olof Johnson was one of the Trustees of the Bishop Hill Colony in the months of March & April AD 1839.

A Majority of the Trustees behind the colony Johnson does not always. He sometimes conferred with the others. He lives at Galva a part of the time. In March & April AD 1839 Olof Johnson was the acting agent of the Bishop Hill Colony who

did their business. he became Trustee when the colony was incorporated:

The Plaintiffs here next produced George Farr who being duly sworn testified as follows to wit:

I know Olof Johnson. In March & April AD 1859 & prior thereto and since he became Trustee Olof Johnson was the general agent of the Bishop Heile Colony who did their business.

The Plaintiffs here offered to read the act incorporating the Bishop Heile Colony approved January 17th AD 1833 & the said Defendant by its attorneys waived the reading of the same and agreed that the same should go to the jury and be considered by the jury as having been read as evidence on the part of the plaintiffs.

The above & foregoing is all of the evidence offered in said cause on the trial thereof.

Whereupon the said cause was submitted to the jury without any instructions on behalf of either party and thereupon after considering of their verdict the jury returned the same in to court in the words and figures as follows to wit:

"We the jury in the case of Le Edgerston & Dunning vs The Bishop Heile Colony find the issues for the plaintiffs and assess their damages at \$758.⁰⁰/₁₀₀

J H Hurwood

Foreman "

Whereupon the jury being duly called rendered their verdict in favor of the plaintiffs and against

the Defendant for the sum of \$758.99

And thereupon said Defendant by its attorneys then & there moved the court for a new trial in said cause which motion is in the words & figures following to wit:

"Sycurgus Edgerton et al

Partners &c

vs

The Bishop Hill Colony

Henry Co Ill Circuit
Court Special April Term
A.D. 1860

And now comes the said Defendant by its attorneys and moves the court for a new trial in said cause for the following reasons to wit:

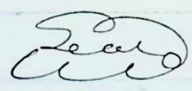
- 1st The court erred in admitting improper evidence to the jury
- 2^d The court erred in admitting the evidence of the witness M. J. Cole in relation to the interest on the note & Brown corn account
- 3^d The court erred in allowing the plaintiffs to prove interest on the brown corn account and the overdraft is greater in amount than the evidence justifies
- 4th The court erred in admitting the evidence of the witness Cole as to what the whole amount of the note & interest thereon and the brown corn account & interest thereon was

May, 9th 1860

Bennett Knox Eustace & Reed
attys for Defr "

which said motion for a new trial the court then & there overruled to which overruling of which motion the said Defendant by its attorneys then & there excepted

And inasmuch as the matters & things herein above contained do not appear of record in said cause the said Defendant prays that this his Bill of exceptions may be signed and sealed which is now done

J H Howe 
Judge Cth Circuit of Illinois

State of Illinois }
Henry County } I, Amos Gould, clerk of
the Circuit Court for said county do hereby cer-
tify the foregoing to be a full true and complete ^{and also of all the papers}
~~record~~ copy of the record of the proceedings in the
foregoing cause as appears of record in my
and also a true copy of all the papers filed up my Office in said cause
office. Witness Amos Gould clerk of said
Court and the seal thereof at Cambridge this
10th day of April A.D. 1861

Amos Gould clerk

By W. D. Allyniple Depy



221
Le Edgerton et al
vs
The Bishop, Heil Colony

Copy of Record
Henry County
6th Judicial Circuit

Filed Apr. 17, 1861
Ireland
Clerk.

5/4 p.

ASSIGNMENT OF ERRORS.

And now comes the said appellant, by KNOX, EUSTACE & REED, and say, that in the record and proceedings aforesaid, and in the rendition of the judgment aforesaid, there is manifest error ; in this, to wit :

1. The Court erred in overruling the motion to quash the summons.
2. The Court erred in overruling the motion for a continuance.
3. The Court erred in admitting improper evidence to the jury, offered by the appellees.
4. The Court erred in overruling the motion for a new trial.
5. The Court erred in rendering the judgment aforesaid in manner and form aforesaid.

Knox Eustace & Reed
Attys for Appellant

POINTS FOR APPELLANT.**I.**

The Court should have quashed the summons ; it was clearly void, not being signed "with the name of the clerk."

Sec. first, Practice Act, page 820, vol. 1st, Purple's Statute, requires that the summons should be signed with the *name* of the clerk. This requirement is as positive, as that it shall be under the seal of the Court.

This Court in *Hannum vs. Thompson*, 1 Scam. 238, and *Anglin vs. Nott*, 395, decided that a summons issued without the seal of the Court should be quashed on motion.

And the said appellants H Bigelow ^{the attorney}
comes and says that in the record proceedings and
judgments aforesaid there is no such error as com-
plaint of by the said ~~plaintiffs~~ appellants and they submit
the same to this court and ask that the said judg-
ment may in all respects be affirmed and that
they may recover their costs herein ~

April 18/61

A Bigelow
Att'y for appellants

The summons is signed "T." Wiley, Jr., whereas the record shows that *Thomas* Wiley, Jr., is the *name* of the clerk. *T.* is not his christian name; *T.* stands for Titus, Theophilus, or Timothy, &c., as well as *Thomas*.

If the christian name, or a part of it, may be omitted in signing the summons, why not omit the whole of it? and if so, why not omit the entire surname also?

II.

The Court erred in overruling appellant's motion for a continuance.

A copy of the account should have been filed ten days before the first day of the term.

Hawthorn vs. Cooper, 22 Ills. 225.

III.

The Court erred in allowing appellants to prove and recover interest on the broom corn account.

Sammis vs. Clark, 13 Ills. 544.

Hitt vs. Allen, Ibid 592.

Clement vs. McConnel, 14 Ills. 154.

Aldrich et al. vs. Dunham et al., 16 Ills. 403.

IV.

The Court erred in allowing appellees to prove and recover ten per cent. interest on the note in question.

The evidence fails to show any consideration for the pretended agreement of Olof Johnson to pay ten per cent. on the note after maturity.

The agreement was not in writing, but rested wholly in parol.

*A contract cannot rest
partly in writing and
partly in parol.
Oker vs Strong 13 Ill. 688.*

The evidence and declaration fail to show that the payment of the note was extended for any definite time after its maturity; therefore, the delay was no consideration for the agreement to pay ten per cent.

1 *Parsons on Contracts*, 3d ed. 368.

The Court erred in allowing the witness, Cole, to state as evidence the declarations of Solomon Shoup. It was hearsay evidence, merely.

Shoup was a competent witness. He should have been called.

1 vol. *Greenleaf's Evidence*, sec. 124.

Thos Eustace & Reed
Attorneys for Appellant

Supreme Court

Third Grand Division,
April Term ad 1861.

The Bishop Will Colony appellants }
as }
Georgeus Edgerton Will- }
iam H Dunning and } Offend from
John S Wright appellees } Henry County

And the said appellees by H Bigelow
their attorney come and say that in the record
proceeding and judgment aforesaid there is
no such error as complained of by the
said appellants and they submit the same
to this Court and ask that the said judg-
ment may in all respects be affirmed and
that they may recover their costs herein.

Georgeus Edgerton William H Dunning
and John S Wright by H Bigelow
Their Attorney

April 1861

²²¹
Bishop Hill Colony

vs

Lycourus Edgerton
et al

~~Abstract of Record~~
~~& Appellants~~
~~Brief~~

Filed Apr 17, 1861

Leland
Clerk