

14672

No. _____

Supreme Court of Illinois

King

vs.

Bush.

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 58

J. W. Middleton & Co., Stationers, 126 Lake St.

*Kirk
vs
Bush*

14672

RECORD
PAGE

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM THEREOF, 1864.

JOHN M. KING,

versus

MYRON P. BUSH, AND

GEORGE HOWARD.

} *Appeal from the Superior Court of
Chicago.*

ABSTRACT OF RECORD.

3 Declaration filed September 27, 1861, in assumpsit.

First Count. Myron P. Bush, and George Howard, doing business under the name and style of Bush & Howard, plaintiffs; and count is on a promissory note alleged to have been delivered to Myron P. Bush and George Howard, in and by which note the defendant promised to pay plaintiffs \$349.52, four months after date.

5 Common counts.

10 Defense: 1st, General issue; 2nd, Plea of payment.

11 Affidavit of defense.

There is no replication to the plea of general issue and plea of payment contained in said Record, nor on file in the papers in said suit. There is an affidavit on file in the Supreme Court, showing that replications to plea of general issue and plea of payment were filed in due time in said suit, in said court, and that their loss was not discovered until brought up to this court; which affidavit and pleas are in the following words:

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

Superior Court of Chicago.

MYRON P. BUSH, and }
GEORGE HOWARD, }

vs.

JOHN M. KING. }

STATE OF ILLINOIS, }
COOK COUNTY. }

F. W. Tourtellotte being duly sworn, doth depose and say that he is one of the attorneys for the plaintiff in the above entitled suit; that on the eighth day of October, 1861, the said defendant by his attorneys, Hosmer & Peck, filed in said court said defendant's plea of general issue to the declaration of the said plaintiffs in the above entitled suit, before that time filed, and also his special plea of payment; that the said pleas of general issue and special plea of payment were the only pleas filed by said defendant in said above entitled suit; that afterwards and at the November term, 1861, of said court, and before the trial of the above suit, this deponent drew up and filed in said above suit a replication to the plea of general issue, and at said time also a replication to the special plea of payment; that at said November term of said court, when this affiant filed said replication to said pleas of general issue and payment, he handed the same to the clerk of said court, and that said clerk then and there endorsed the filing on said replications, and the same were placed with the papers in the case at said time; that both replications were written on one piece of paper and on the same side of the paper; that on the trial of said suit it was considered by all parties to said suit, by their attorneys, that said suit was at issue, and that the said defendant offered in evidence the testimony of Wendell R. King.

And this deponent says that neither he nor his partner—the only attorneys for the said plaintiffs—had any knowledge of the absence of said replication from the files of the papers in the above suit until after the appeal of the aforesaid suit to the Supreme Court of this State, and that it first came to their knowledge by one of the errors assigned in said Supreme Court, which was, that the case was tried “with the special plea not replied to;” that the record made by the said clerk of said court and filed in said Supreme Court of the State of Illinois, as this affiant is informed by H. B. Hurd, Esq., who attended to said suit in said Supreme Court, does not contain either said replication to said plea of general issue or the replication to the said plea of payment; copies of which said replication, as near as this deponent can recollect the same, are hereto annexed, and marked Exhibit A.

F. W. TOURTELLOTTE.

Subscribed and sworn to before me this }
5th day of May, 1862. }
ANDREW J. BROWN, }

Notary Public.

EXHIBIT A.

STATE OF ILLINOIS, }
COOK COUNTY. } ss. Superior Court of Chicago,
NOVEMBER TERM.

MYRON P. BUSH, and }
GEORGE HOWARD, }
vs. }
JOHN M. KING. }

And the said plaintiffs, as to the plea of the said defendant by him first above pleaded, and whereof he hath put himself upon the country, doth the like, etc.

By ELDRIDGE & TOURTELLOTTE,
Plaintiff's Attorneys.

And the said plaintiffs, as to the said plea of the said defendant by him secondly above pleaded, say that the said plaintiffs by reason of anything by the said defendant in that plea alleged, ought not to be barred from having or maintaining their aforesaid action thereof against the said defendant, because they say that the said defendant hath not paid said sum of money to said plaintiffs, as the said defendant hath above in his said second plea in that behalf alleged, or any part thereof. And this they, the said plaintiffs, pray may be inquired of by the country, etc.

By ELDRIDGE & TOURTELLOTTE,
Plaintiff's Attorneys.

12 Trial by jury.
Verdict for plaintiff for \$494.52.
Motion for new trial overruled. Defendant excepted.
Judgment.

BILL OF EXCEPTIONS.

Plaintiffs offered in evidence a note, which is as follows:

\$349 $\frac{52}{100}$. OTTAWA, ILL., June 26, 1860.

Four months after date, I promise to pay to the order of Bush & Howard, three hundred & forty-nine $\frac{52}{100}$ dollars at their office in Buffalo, N. Y., value received.

JNO. M. KING.

18 To the introduction of this note the defendant, by his attorney, objected, for the reason that the note upon its face appeared to have been altered, and because it varied in amount from the note described in the declaration.

The plaintiff, to explain said alteration, called Isaac Bush, who testified that he called upon the defendant in March last and presented this note. It was the same then in all respects as it appears now, and the account annexed to the declaration. He said he thought the note had been paid. He referred to his book and said that the amount on the note and account was right, excepting a credit of \$2 for exchange, which he knew nothing about, but that it was good; that he could not pay it then, but was worth the amount.

Upon cross-examination, the witness Bush stated: "The defendant saw the note when I presented it. I can't say positively whether or not he took it in his hand; I think he did. I laid it upon the counter before him; he was on one side of the counter, and I was on the other. I saw him look at it. I did not call his attention to the alterations, and don't know whether he knew of them or not."

Whereupon the court overruled the objection to said note, and admitted it in evidence. Defendant objected.

19 The defendant then called Wendell R. King, who testified that, the defendant sent me hides here in Chicago to pay this note and account. I shipped the hides to Buffalo to my correspondent, together with other hides.

The defendant, by his attorney, here asked the said witness, "what instructions he sent to the plaintiffs with these hides." Objected to by plaintiffs. Objection sustained. Defendant excepted.

The defendant then and there offered in evidence the following copies of letters written by witness, Wendell R. King, to Bush & Howard.

Plaintiffs objected, because they were not the original letters, and because they were irrelevant.

Defendant asked time to get the original letters. He then called upon the plaintiffs to procure them, while said suit was being tried. The court consented to give the plaintiffs time to get said letters, if, upon inspection of the copies, it should appear that they were admissible in evidence. The court, upon examination of their contents, decided that the letters were irrelevant, and refused to wait or give time to procure the originals, and excluded them from the jury.

To which ruling the defendants excepted.

The following are the copies so offered by defendant:

First Letter.

"MESSRS. BUSH & HOWARD, Buffalo, N. Y.:

"The lot of 120 country hides were bundles containing calf skins, and had one knot in the string. I would say open all of that lot before weighing, as they belong to another party. I hope to have accounts of the entire soon. If these are desirable, I can make you further shipments.

WENDELL R. KING."

Second Letter.

CHICAGO, Oct. 12th, 1860.

"MESSRS. BUSH & HOWARD, Buffalo, N. Y.:

"I hope you will be able to dispose of the 777 hides by 29th inst. I wish to pay John M. King's note with the proceeds due you at that time, for \$349.52. Other dealers in your city report the market active. I leave it entirely with you as to the propriety of sending them to N. Y. Kease and Pearsall are a good house to ship to, if you have no preference.

WENDELL R. KING."

Third Letter.

CHICAGO, Oct. 20th.

"MESSRS. BUSH & HOWARD, Buffalo, N. Y.:

"Your letter of the 18th is in and noted. My letters from N. Y., same date, report sales of some of my hides at 9c. cash, and 9½ at 6 m. In view of these facts I would say, you may take the entire lot at 8c. nett, as you propose in your letter. There were several bundles of calf in the 120 lot that should sell for a higher price.

WENDELL R. KING."

Fourth Letter.

CHICAGO, Nov. 23rd, 1860.

"MESSRS. BUSH & HOWARD, Buffalo, N. Y.:

"On the 11th day of Sept. I sent you 897 hides, green salted, to sell for my Acc. Since then I have sent to New York 3,100, that have been sold from 8¾ to 9½c. To-day I received a telegraph from you, for which I paid \$1.80, which amount you may place to my credit. I will not submit to these hides being sold now at panic prices. The hides are worth all I drewed for, and the amount of J. M. King's note, \$349.52, which amounts they are intended to pay. When they are sold at decent prices and fall short of balance I will remit.

WENDELL R. KING."

The witness, Wendell R. King, further testified, that "the plaintiffs never requested me to pay this note and account. Hides were worth in Buffalo on the 12th of October, 8 to 8½ cents per pound. If my hides had been sold at that time they would have brought enough to pay all advances and this note and left me a margin besides. I don't know what they did with them. Bush, the witness, called on me to pay this note and account in March, 1861. The hides I sent were sold in June, 1861, at about 5 to 5½ cents per pound. I did not receive any reply from the plaintiffs to my letter of October 18th until November 23rd.

26 "Before these hides were sent, about the 7th of September, 1861, I had a talk with Howard, one of the plaintiffs. He said he would allow me 8 cents for hides delivered in Buffalo, and would dispose of light hides which he could not use for 8 to 8½ cents, and would pay my draft to 6½ cents a pound on shipments. Two-thirds or three-fourths of the hides I sent were such as he could use and had agreed to take. He found fault with the hides and would not take them, and then I directed him to dispose of them."

To all the testimony of Wendell R. King the plaintiffs, by their counsel, objected. Court overruled the objection. Plaintiffs excepted.

Upon cross-examination the witness testified "there was suit brought against me by plaintiff, involving these hides and others to the number of 898." I never told Bush & Howard that the hides belonged to Wendell R. King. I never told the plaintiffs that defendant owned the hides sent.

27 Plaintiffs then re-called Isaac Bush, and offered to prove that Wendell R. King had, after the sale of said hides, offered to pay said note and account.

Defendant objected. Objection sustained.

The witness, Bush, then stated, "when I presented the note and account to defendant, the defendant told me that he had paid the note and account to Wendell R. King, and to go to him for my pay."

Upon cross-examination the witness stated that "after this I wrote to plaintiffs what defendant said; then plaintiffs told me to collect it of Wendell R. King if I could, as they did not want any litigation.

This was all the evidence offered on both sides.

The plaintiffs asked the following instructions:

1. If the jury believe, from the evidence, that the defendant, John M. King, admitted the note in question to be correct after the alteration and when it was presented to him by the witness, then the jury will find for the plaintiffs on said note.

2. If the jury believe, from the evidence, that the alteration was made at the time the note was made, then they will find for the plaintiffs on said note.

Which the court modified as follows, and gave to the jury:

28 1. If the jury believe, from the evidence, that the defendant, John M. King, admitted the note in question to be correct, after the alteration, and when it was presented to him by the witness, then the jury would be justified in finding for the plaintiffs on said note, if they believe, from the evidence, that the alteration was honestly made by the express or implied consent of the maker.

2. If the jury believe, from the evidence, that the alteration was made at the time the note was made and before its delivery, then they must find for the plaintiffs on said note, unless the jury believe the note has been paid.

29 To the giving of which instructions as modified, the defendant, by his attorneys, excepted.

The defendant, by his attorneys, asked the following instructions:

The jury are instructed that if the note appears on its face to have been altered, the law presumes this to have been done after its execution, and they will not find against the defendant on the note, unless they believe, from the evidence, that the defendant consented to the alteration; and the fact that the defendant said that the note was good (if proven) when presented to him, is no evidence of his assent, unless he knew then of the alteration. And if the alteration is in the amount, it is immaterial whether it is so altered as to make it larger or smaller.

Which the court refused to give, but gave it with these words:

But an acknowledgment of the debt, if such acknowledgment was made when the note was presented to the defendant, would be some evidence tending to show that the defendant himself considered the note valid and legal.

To the refusal of the court to give said instructions as asked for, and to the addition and modification to said instructions, the defendant, by his attorneys, then and there excepted.

Jury returned and rendered verdict for plaintiffs for \$494.52.

- 31 Defendant, by his attorneys, moved for a new trial. Court overruled the motion. Defendant excepted.

ERRORS ASSIGNED.

1. The court erred in admitting improper testimony on the part of plaintiffs.
2. The court erred in excluding testimony offered by the defendant.
3. The court gave improper instructions on the part of the plaintiffs.
4. The court erred in not giving the instruction asked for by defendant as it was originally asked for.
5. The court erred in modifying the instructions asked for by the defendant, and in giving the same as modified.
6. The verdict was against the law and the evidence.

BRIEF AND POINTS OF DEFENDANTS IN ERROR.

The plea of general issue and payment were replied to, as shown by affidavit filed in this Court.

There was no variance between the note declared on, and the one offered in evidence.

The defendants in error averred, in their declaration, that they were doing business under the name and style of Bush & Howard, and that said note was made payable to the said plaintiffs, Bush & Howard. It was not necessary to prove that the defendants in error were partners, in order to entitle them to judgment in said suit.

Wright v. Curtis et al., 27 Ill. 514.

The note when presented shows it to be payable to Bush & Howard: as averred.

The court below properly excluded the letters offered by appellant, of Wendell R. King, to Bush & Howard, as they did not show that Bush & Howard ever knew that any of the hides sent belonged to John M. King, the appellant; nor had they ever agreed to take said hides, or any of them, in payment for said note of said appellant, or to apply any money received for said hides on said note.

The court below did not err in giving the two instructions for said defendants in error: under the circumstances of the case they were properly given.

The court did not err in amending or adding to the appellant's instructions before he gave the same.

The testimony of Wendell R. King ought not to have been allowed; but if allowed, only goes to show that the amount of said note was \$349.52, at the time the same was signed, and that no alteration was made after the signing of the same.

The testimony fully shows that the amount of said note was \$349.52, at the time the same was signed, and that no alteration was ever made in the same after it was signed and delivered to Bush & Howard.

That it was not necessary, under the circumstances, for the appellees to prove in the first place and before they could introduce said note, that the alteration was made before the same was executed.

1 Greenl. Ev., Sec. 564.

The Court will not disturb the verdict if they see from the evidence that the verdict is justified by the evidence, although the judge below may have made mistakes in the law of the case.

Gillett et al. v. Sweet, 1 Gilm. 475.

No objection was made to the introduction of the note by the appellees in the court below, on the ground of variance: the only objection to it was, that it varied in amount from the one declared on, in that it had been altered.

ELDRIDGE & TOURTELLOTTE,

Attorneys for Appellees.

58 58

John M. King
vs
Myron P. Bush
Abstract

Filed April 25th 1824
L. Leland
Clerk

1992 } John M King
v }
Myron P Bush & }
George Howard }
Supreme Court of Illinois
3^d Grand Division
April Term 1892
Appeal from Superior Court of Cook

And now comes the said
appeal by Eldred & Lombard their
Attys and suggests to the Court that
the record filed herein is not a full
& true record of the proceeding & pleaded
in the Court below in that it does
not contain

1st The replication to the plea of gen-
eral issue filed in said case before
the trial of said case in said Court
below

2nd The replication to the plea of
payment by the said King filed in said case
wherein said replication was duly
filed by Bush & Howard before the
trial of said case

And said appellants move for
a writ of certiorari to the Clerk of
the Superior Court of Chicago to certify
said replication to this Court in
due form of law

Eldred & Lombard
Attys for said Appellants
My H. B. Hunt

751 58

John W. King

292

2

Bush & Howard

Motion for C.

Filed Apr. 29, 1862
Clarence
Clerk
Courtroom
allowed

Concluded to motion

Be sworn for op

Supreme Court of the State of Illinois
In the Third Grand Division

State of Illinois vs

John M. King
appellant
vs
Myron P. Bush -
George Hayward
appellees

} Appeal from the
} Supreme Court of Chicago

State of Illinois
Cock County vs

J. M. Tarnstedt being duly sworn doth depose and say that he is one of the attorneys for the appellees in the above entitled suit; That on the Eighth (8) day of October 1861 the ~~above~~ named appellant by his attorney Myron P. Bush filed his plea of general issue, and his special plea of payment in said ~~Supreme Court of Chicago~~ Supreme Court of Chicago. That the two said pleas were all the pleas filed in said suit by the said appellant. That afterwards at the November Term 1861 of said Court this appellant drew up a replication to said special plea of payment, denying said special plea and the matters therein set forth; and concluded said ~~replication~~ replication to the Court, and filed said replication in said Court, at said November Term 1861; That said replication was placed after being ~~examined~~ examined, ^{the Clerk of said Court} on the day upon which said replication was filed with ^{the} papers in said suit, on the files of said Court. That the said replication was never

taken from the files of said Court to the knowledge of
 this affidavit, nor was this affidavit sworn of the absence
 of said Replication from the files of papers in
 said suit in said Supreme Court of Illinois, until
 the said appellant by his attorney had filed
 his points in the said Supreme Court of the
 State of Illinois: That when said Court was
 then in said Supreme Court of Illinois the issue was
 fully joined, ~~and was so continued by~~

J. M. Farnwell

Subscribed and
 sworn to before me
 this 28th day of April
 1862

Thomas B. Carter
 Clerk

244-68

John M. Ewing
appellant

vs
 Wm. P. Birch &
 George Howard
appellees

Affidavit of
 J. M. Farnwell

Filed April 28, 1862
 L. Leland
 Clerk

STATE OF ILLINOIS, SS. }

Supreme Court, Third Grand Division, at Ottawa: }

The People of the State of Illinois,

To the Clerk of the Superior Court of Chicago Cook County:

WHEREAS, in a certain plea between *Myron P. Bush & George Howard* ^{GREETING} ~~parties~~ under the name & style of *Bush & Howard*.

plaintiffs and *John M. King*

defendant lately depending in the said Superior Court of Chicago, in said Court of said County, wherein judgment was rendered for the said plaintiffs

and against the said defendant

and the said defendant having prayed & obtained & appeal from

the judgment of said Court, rendered against the said defendant

as aforesaid, to the Supreme Court, held at Ottawa, on the first Tuesday after the first Monday in April, 1877 and in pursuance of the said appeal a transcript of the record and the proceeding in the plea aforesaid was transmitted. And, also, whereas it hath been suggested, on the part of said *Myron P. Bush & George Howard* the appellants herein

that the said record has been diminished, inasmuch as the replication to the plea of general issue filed in said cause before the trial of said cause in said Superior Court of Chicago & the replication to the plea of payment filed in by said King which said replication was filed by said Bush and Howard before the trial of said cause in said Superior Court of Chicago

hath not been sent up; and forasmuch as the said Supreme Court are not satisfied that there is a sufficient record sent in the plea aforesaid, but in the record there is a diminution: YOU ARE, THEREFORE, HEREBY COMMANDED, That, without delay, the said record described above therein you cause to be transmitted to the Supreme Court, to be held at Ottawa, on the ~~now in session at~~ *Ottawa forthwith* next, without any diminution or addition whatsoever, to the end that speedy justice may be done in the premises, according to law; whereof you are in no wise to fail; and send you then there this writ.

Witness The Hon. JOHN D. CATON, Chief Justice of said Court, and the seal thereof, at Ottawa, this 29th day of April in the year of our Lord one thousand eight hundred and fifty-six two.

L. Leland
Clerk of the Supreme Court.
J. M. King

I Thomas P. Carter Clerk of the Superior Court of Chicago,
 within & for Cook County State of Illinois. do make return
 to the within writ that at the time the same was presented
 and served on me to wit the 18th day of April A.D. 1864.
 the Replications were not in the files appertaining to said
 cause. I cannot therefore } Thomas P. Carter Clerk
 obey said Command

~~242-58~~
 John W. King
 vs
 Myron J. Bush & Co
Debtors

Filed April 19. 1864.
 L. Deland
 Clerk.



SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862.

JOHN W. KING	}	<i>Appeal from the Superior Court of Chicago.</i>
<i>vs.</i> MYRON P. BUSH <i>et al.</i>		

ABSTRACT OF RECORD.

3 Declaration filed Sept. 27, 1861, in assumpsit.

1st Count. Myron P. Bush and George Howard, doing business under the name and style of Bush & Howard, plaintiffs, &c., the count is upon a promissory note, which is alleged to have been delivered to Myron P. Bush and George Howard, in and by which said note said defendant, by the name, style, and description of John M. King, promised to pay to the order of said Bush & Howard \$349.52 four months after date, &c.

5 Common counts.

10 1st Plea. General issue; 2d, payment.

11 Affidavit of defence. There was no replication to the plea of payment.

12 Trial by jury.

Verdict for plaintiff, \$494.52.

Motion for new trial overruled.

Defendant excepted.

Judgment.

BILL OF EXCEPTIONS.

Plaintiff offered in evidence a note, which is as follows :

\$349 52.

OTTAWA, ILL., June 26th, 1860.

Four months after date, I promise to pay to the order of Bush & Howard three hundred and forty-nine dollars and fifty-two cents, at their office in Buffalo, N. Y., value received.

JOHN M. KING.

- 18 Defendant objected, for the reason that the note appeared upon its face to have been altered, and because it varied from the note described. The plaintiff, to explain the alteration, called *Isaac Bush*, who testified: I called upon defendant in March last, and presented the note; it was the same then in all respects that it appears now; he said he thought the note had been paid; said the amount was right enough, and the account, except \$2; I did not call his attention to the alteration in the note; don't know whether he knew of them or not.

Objection overruled.

Defendant excepted.

- 19 Defendant called *Wendell R. King*, who testified: the defendant sent me hides here to pay the notes, and I shipped them to my correspondents in Buffalo, with other hides.

Defendant asked witness, "What instructions did you send to plaintiff with the hides?"

Plaintiff objected to the question.

The Court sustained the objection, and defendant excepted.

- 20 Defendant offered in evidence copies of letters from witness to plaintiff.

Plaintiff objected, because they were not original, and because they were irrelevant.

Defendant called upon plaintiff's attorneys to produce the letters. Plaintiff's attorney admitted that the letters were in his possession, either at his office or at the U. S. Court room, distant about three blocks.

The Court consented to give the defendant time to obtain the original letters, if upon inspection of the copies it should appear

that they were admissable in evidence, the witness having testified that the copies were true copies.

The Court, upon the examination of the copies, decided that the letters were irrelevant, and ruled them out.

Defendant excepted.

First Letter.

"MESSRS. BUSH & HOWARD, Buffalo, N. Y. :

"The lot of 120 country hides were bundles containing calf skins, and had one knot in the string. I would say open all of that lot before weighing, as they belong to another party. I hope to have accounts of the entire soon. If these are desirable, I can make you further shipments.

"WENDELL R. KING."

Second Letter.

"CHICAGO, Oct. 12th, 1860.

"MESSRS. BUSH & HOWARD, Buffalo, N. Y. :

"I hope you will be able to dispose of the 777 hides by 29th inst. I wish to pay John M. King's note with the proceeds due you at that time, for \$349 52. Other dealers in your city report the market active. I leave it entirely with you as to the propriety of sending them to N. Y. Kease & Pearsall are a good house to ship to, if you have no preference.

"WENDELL R. KING."

Third Letter.

"CHICAGO, Oct. 20th.

"MESSRS. BUSH & HOWARD, Buffalo, N. Y. :

"Your letter of the 18th is in and noted. My letters from N. Y., same date, report sales of some of my hides at 9c cash, and 9½ at 6 m. In view of these facts I would say, you may take the entire lot at 8c nett, as you propose in your letter. There were several bundles of calf in the 120 lot that should sell for a higher price.

WENDELL R. KING."

Fourth Letter.

"CHICAGO, Nov. 23d, 1860.

"MESSRS. BUSH & HOWARD, Buffalo, N. Y. :

"On the 11th day of Sept. I sent you 897 hides, green salted, to sell for my Acc. Since then I have sent to New York 3,100, that have been sold from 8¾ to 9¼c. To-day I received a telegraph from you, for which I paid \$1 80, which amount you

may place to my credit. I will not submit to these hides being sold now at panic prices. The hides are worth all I drew for, and the amount of J. M. King's note, \$349 52, which amounts they are intended to pay. When they are sold at decent prices and fall short of balance I will remit.

"WENDELL R. KING."

The witness further testified: Plaintiffs never requested me to pay this note and account; hides were worth in Buffalo, on the 12th of Oct., 8 to 8½ cents per lb.; If my hides had been sold at that time, they would have brought enough to pay all advances and this note, and left a margin besides; I don't know what they did with them; Bush, the witness, called on me to pay this note and account in March, 1861; the hides were sold in June, 1861, at about 5 to 5½ cents; I did not receive any reply from the plaintiffs to my letter of Oct. 18th until Nov. 23, 1851; Before these hides were sent, about the 7th of Sept., 1861, I had a talk with Howard, one of the plaintiffs; he said he would allow me 8 cents for hides, delivered in Buffalo, and would dispose of light hides, which he could not use, for 8 to 8½ cents, and would pay my drafts to 6½ cents per lb. on shipments; two-thirds or three-fourths of the hides I sent were such as he could use and had agreed to take; he found fault with the hides and would not take them, and then I directed him to dispose of them; I never told Bush & Howard that the hides belonged to Wendell R. King; there was a suit brought against me by plaintiffs, involving the hides sent, and others, to the number of 898; I never told plaintiffs that defendant owned the hides sent.

27 *Isaac Bush* recalled by plaintiffs. I presented the note and account to defendant, and he told me he had paid the note and account to Wendell R. King, and to go to him for the money; after I wrote to plaintiffs what he said they told me to collect it of Wendell R. King if I could, as they did not want any litigation.

This was all the evidence.

Instructions for Plaintiff.

28 1st. If the jury believe from the evidence that the defendant, John M. King, admitted the note in question to be correct after the alteration, and when it was presented to him by the witness, then the jury would be justified in finding for the plaintiffs on

said note, if they believed from the evidence *that the alteration was honestly made by the express or by the implied consent of the maker.*

2. If the jury believe from the evidence that the alteration was made at the time the note was made, and before its delivery, then they must find for the plaintiffs on said note, unless the jury believe that the note has been paid.

29 Defendant excepted to each of these instructions.

The defendant asked this instruction. The jury are instructed that if the note appears on its face to have been altered, the law presumes this to have been done after its execution, and they will not find against the defendant on the note, unless they believe from the evidence that the defendant consented to the alteration, and the fact that the defendant said that the note was good (if proven) when presented to him, is *no evidence of his assent, unless he knew then of the alteration; and if the alteration is in the amount, it is immaterial whether it is so altered as to make it larger or smaller.*

The Court refused to give the instruction as asked, and qualified it as follows: But an acknowledgment of the debt, if such acknowledgment was made when the note was presented to the defendant, would be some evidence tending to show that the defendant considered the note valid and legal. Defendant excepted to the refusal of the Court to give the instruction as asked.

31 Defendant moved for a new trial. Court overruled the motion. Defendant excepted.

The original note is sent up to be inspected, and is made part of the bill of exceptions.

ERRORS ASSIGNED.

35

1st. The Court erred in excluding proper testimony offered by defendant below.

2d. The Court erred in admitting improper evidence, offered by the plaintiffs below.

3d. The Court erred in giving each of the instructions asked by plaintiffs.

4th. The Court erred in refusing to give the instructions asked by defendant below.

5th. The Court erred in trying the cause with the special plea not replied to.

6th. The Court erred in overruling the motion for a new trial.

7th. The Court erred in rendering the judgment aforesaid.

POINTS AND AUTHORITIES.

The special plea was a full answer to the declaration, and was not replied to.

There was a variance between the note offered and the one declared on. It is not averred that the defendant promised to pay plaintiffs by the name and style of Bush & Howard, or that plaintiffs were partners. The proof showed cause of action in favor of Bush & Howard, but failed to show that the plaintiffs constituted the firm of Bush & Howard. Had they sued as partners, our statute might have dispensed with such proof. *Woodworth vs. Fuller*, 24 Ill., 109.

The letters, when taken in connection with the testimony of Wendell R. King, show payment of the note. King swears that he made an agreement with plaintiff, Howard, to send plaintiffs' hides at 8 cents per lb., and that he sent plaintiffs' hides enough to pay the note and account, and the letters show that he directed the application of the proceeds to the payment of the note.

At least there was testimony tending to prove this fact, and it should have been left to the jury, but by the 1st instruction, the Court took that question away from the jury, and instructed them that they should find for the plaintiffs on the note, if the alteration was accounted for, thus taking the question of payment away from the jury. *Frasure vs. Zimmerly*, 24 Ill., 202.

GLOVER, COOK & CAMPBELL.

John W. King
vs
Myron P. Bush
Abstract

Filed April 29, 1862
L. Leland
Clerk.

Supreme Court.

Third Grand Session of the State of Illinois.

Solomon E. King being first duly sworn
states on oath that John M. King the appellant
in the case of King vs Bush. now pending in
this court died on the 9th day of June A. D.
1862.

S. E. King

Subscribed & sworn to
before me this 22nd day
of April A. D. 1863

E. H. Holbrook

Master in Chancery

58

58

King

195 to
Burk

Officer of S. E. King

Filed Apl. 28^d 1863.
L. Seland
Clk.

UNITED STATES OF AMERICA,
STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Fifth day of January in the year of our Lord One Thousand Eight Hundred and Sixty two and of the Independence of the United States of America the Eighty sixth

Present, The Honorable John M. Wilson Chief Justice of the }
Superior Court of Chicago. }

Van N. Higgins and } Judges.
Grant Goodrich }

Charles Haven Prosecuting Attorney.

Anthony C. Neering Sheriff of Cook County.

Attest, Thomas B. Cant Clerk.

Be it remembered that heretofore to wit, on the Eleventh day of September in the year of our Lord One thousand eight hundred & sixty one there issued out of and under the seal of the Superior Court of Chicago a certain Summons, which together with the Sheriffs return thereon evidence are in the words and figure following to wit:

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

We Command you that
you summon John W. King if
he shall be found in your County
personally to be and appear before
the Superior Court of Chicago of
said Cook County, on the first
day of the next term thereof to be
holden at the Court House in
Chicago, in said Cook County,
on the first Monday of October
next to answer unto Myron P. Bush
and George Howard in a plea of
trespass on the case upon promises
to the damage of the said plaintiffs
as is said in the sum of Seven
Hundred dollars,

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

Witness Walter Kimball Clerk of our said
Court and the seal thereof at Chicago
aforesaid this 11th day of September 1886.
Walter Kimball Clerk

3 Served by reading to the within
named John M King defendant
this 11th day of September A.D. 1861.

I hereby deputize & appoint Mr
Isaac S Bush my special Deputy
to serve the within summons this 11th
day of Septbr 1861

Anthony C Hearing
Sheriff

And afterwards to wit on the 27th
day of September in the year aforesaid
there was filed in the office of
the Clerk aforesaid, a certain
declaration in the words and
figures following to wit.

Superior Court of Chicago
Of the October Term A.D. 1861.

State of Illinois
County of Cook ss.

Myron R Bush &
George Howard doing business
under the name and style of
Bush and Howard plaintiffs in this
suit by Eldridge & Tourtellotte their

4

attorneys Complain of John W King Defendant who is summoned &c. of a plea of trespass on the case on promises. For that whereas the said Defendants heretofore to wit: on the twenty sixth day of June in the year of our Lord one thousand eight hundred & sixty at Ottawa Ills to wit: at said County of Cook made his Certain promissory Note in writing, bearing date the day and year aforesaid, and then & there delivered the same to Myron P Bush & George Howard in and by which said Note said Defendants by the name, style, and description of Jno W King promised & pay to the order of the said Bush & Howard or order, the sum of Three Hundred and forty nine $52\frac{1}{100}$ dollars four months after the date thereof at their office in Buffalo N.Y. for value received.

By means whereof and by force of the Statute in such case made and provided, the said Defendants became liable to pay said plaintiffs said sum of money

5- Mentioned in said note, according to the tenor and effect of the said note, and of the endorsement so thereon made as aforesaid, and being so liable, the said defendant in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff, according to the tenor & effect of the said note, and of the endorsement aforesaid. to wit: at the place aforesaid.

And whereas also the said defendant afterwards to wit, on the twenty first day of February in the year of our Lord one thousand eight hundred & sixty one to wit at said County, became and now is indebted to the plaintiff, in a large sum of money. to wit seven Hundred for money before that time lent and advanced to said defendant by said plaintiff, 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 plaintiff at the like

6 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 plaintiffs to
said defendant, at the like special
instance and request, and also
in the like sum for the labor, care
and diligence of the 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
being so indebted, said defendant
in consideration thereof, then and
then undertook and promised
to pay said plaintiff said several
sums of money above mentioned
when ~~thereunto~~ afterwards requested

And whereas also the said
defendant afterwards to wit: on
the same day and year last
aforesaid, and at the place aforesaid
said accounted together with the
said plaintiffs of and concerning

7 Divers other sums of money before
that time due and owing from the
said defendant to the said plaintiffs
and then and there being in arrear
and unpaid, and upon such
accounting, the said defendant
was found to be in arrear and
indebted to said plaintiffs in the
further sum of Seven Hundred
dollars. And being so found in
arrears, and indebted to said plaintiff
the said defendant in Consideration
thereof, afterwards to wit, on the
same day and year last aforesaid
and at the place aforesaid,
undertook and then and there
faithfully promised the said plaintiffs
to pay unto the said plaintiffs the
said sum of money last above
mentioned when he the said
defendant should be thereunto
afterwards requested. —

Yet the said defendant nor
regarding his said promises &
undertakings but contriving & to
although often requested so to do
has^{*} hitherto wholly neglected and
refused, and still does ^{neglect} refuse

* Not paid said plaintiffs either of
said sums above mentioned for
any part thereof but so to do
has

to the damage of said plaintiffs,
 of seven hundred dollars and
 therefore they bring suit &c
 Eldredge & Tourtellotte
 Plaintiffs attorneys.

Cop. of Instrument and account
 sued on Ottawa Ill June 26th 1860
 \$349 ⁵⁷/₁₀₀ Four months after date
 I promise to pay to the order
 of Bush & Howard Three
 Hundred & forty nine ⁵⁷/₁₀₀ dollars
 at their office in Buffalo N.Y.
 value received Chas W King

Buffalo February 2nd 1861.

Mr John W King To Bush & Howard D^r

Oct 27/60 To Medals & Cash 314.88

By draft &c

402.00

112.88

Feb 2/61 To Interest to date @ 7% 2.52

115.40

9 John M King
 To Bush & Howard Dr.
 To Money lent & advanced \$ 700.00
 To Money paid laid out & Expended \$ 700.00
 To Money had rec'd to & for the use of said plff \$ 700.00
 To Goods Wares & Merchandise sold & returned \$ 700.00
 To Labor & Service \$ 700.00
 To balance due on account stated \$ 700.00

And afterwards to wit on the 10th
 day of October in the year aforesaid
 there was filed in the office of
 the Clerk aforesaid a certain
 Plea & Affidavit in the words
 and figures following to wit:

Superior Court of Chicago
 Of the October Term A.D. 1861.
 State of Illinois
 Cook County ss

John M King
 at
 Myrre J Bush & Howard

And the said defendant by Rosmer & Seck his attorneys, comes & defends the wrong & injury when of and says that he did not undertake or promise in manner & form as the said plaintiffs have above complained against him, And of the the said defendant puts himself upon the Country &c.

Rosmer & Seck

Deft. attys.

And for a further plea in this behalf as to the said note in the said declaration mentioned the said defendant says action non, because he says that he the said defendant after the maturity of said note and before the commencement of this suit, to wit: on the first day of December A.D. 1860 at Buffalo to wit at Cook County aforesaid paid to the said plaintiffs said sum of Three Thousand & forty nine & $\frac{52}{100}$ Dollars in the said note mentioned together with all interest then due thereon, And this the said

11 Defendant is ready to verify.
wherefore he prays Judgment &c.
Hosmer & Peck
Deft attys.

Superior Court of Chicago
Oct Term A.D. 1861.
State of Illinois

John M King
ats
Myron T Rush &
George Howard

~~~~~

John M

King being duly sworn deposes  
and saith that he is the de-  
fendant in the above entitled  
suit & has a good defence  
upon the merits to said suit  
as he is advised by Counsel &  
verily believes

Subscribed & sworn John M King  
before me this 27<sup>th</sup> day  
of September A.D. 1861.

Sam C Walker, Notary Public  
in and for the City of Ottawa in the  
County of Kosciusko & State of Illinois.



12 And afterwards to wit. on the 9<sup>th</sup>  
day of January 18162. said  
day being one of the days  
of the January Term of said  
Court the following among other  
proceedings were had and entered  
of Record in said Court.

Myron R. Bush &  
George Howard  
John M<sup>4</sup> King vs. Assumpsit.

This cause being  
this day called for trial comes  
said plaintiffs by Eldridge & Truitt  
their attorneys and the said defendant  
by Hosmer & Beck his attorneys also  
comes and issues being joined  
herein it is ordered that a jury  
come whereupon comes the jury  
of good & lawful men to wit:  
Wm. Rooney, Edward Kehoe, Edward  
Langan, Hesselbracht, Wm. Blodow,  
John Schwelger, R. W. Adams, W. J. Higby,  
Nancy Cunningham, Wm. McMillen, J. H.  
Lamparter, & Richard Appleyard who  
being duly elected tried and sworn



to try the issues joined as aforesaid after hearing evidence arguments of Counsel and instructions of the Court return to Consider of their verdict and afterwards return into Court submit their verdict to say. We the jury find issues for the said plaintiffs and assess their damages herein against said defendant to the sum of Four Hundred & Ninety four dollars and fifty two cents. And thereupon said defendant submits his motion herein for a new trial in said Cause which said motion for a new trial is overruled by the Court, to which ruling of the Court said defendant excepted and enters his exceptions herein to the ruling of the Court in overruling his said motion herein for a new trial in said Cause. Therefore it is considered that the said plaintiffs do have and recover of and from the said defendant their damages of Four Hundred and Ninety four dollars and fifty two cents



14 inform aforesaid by the jury  
here found and assessed to-  
-gether with their costs and charges  
in this behalf expended and  
have execution therefor -

And thereupon the said  
defendant having entered his  
Exceptions prays an appeal herein  
to the Supreme Court of this State  
from the judgment of this Court,  
which is allowed to him upon  
filing his appeal bond in penalty  
of Eight Hundred dollars with  
security to be approved by a Judge  
of this Court, and to be filed  
with his Bill of Exceptions within  
twenty days from this day.

And afterwards to wit on the 25<sup>th</sup>  
day of January A.D. 1862 there  
was filed in the office of the  
Clerk aforesaid a certain  
Appeal Bond in the words  
and figures following to wit:-



From all men by these presents.  
 That we John M King of the  
 County of LaSalle & State of  
 Illinois and Mendell R King and  
 William Wright of the County of  
 Cook and State of Illinois are  
 held and firmly bound unto  
 Myron P Bush and George Howard  
 also of the same County & State  
 in the penal sum of Eight  
 Hundred Dollars lawful money  
 of the United States for the payment  
 of which, well and truly to be  
 made. We bind ourselves, our  
 heirs, executors and administrators,  
 jointly, severally and firmly, by  
 these presents.

Witness our hands and seals  
 this 25<sup>th</sup> day of January A D 1862  
 The Condition of the above obli-  
 -gation is such. That whereas the  
 said Myron P Bush and George  
 Howard did, on the Ninth  
 day of January A D 1862 in the  
 Superior Court of Chicago in and  
 for the County of Cook, and  
 State aforesaid, and of the  
 January Term thereof A D 1862



16 record a Judgment against the  
above bounden John M King for  
the sum of Four Hundred and  
Ninety four Dollars and fifty two  
cents. besides Costs of suit. From  
which said judgment of the said  
Superior Court of Chicago. the  
said John M King has prayed  
for and obtained an appeal  
to the Supreme Court of this State.

Now therefore if the said John  
M King shall duly prosecute  
his said appeal with effect,  
and moreover, pay the amount  
of the judgment, Costs, interest  
and Damages rendered, and  
to be rendered, against him in  
Case the said Judgment  
shall be affirmed in said Supreme  
Court. then the above obligations  
to be void, otherwise to remain  
in full force and virtue.

Taken and entered by John M King  
into before me at my office in Chicago this  
twenty fifth day of January  
A D 1862

W H Higgins Judge



And afterwards to wit: on the  
29<sup>th</sup> day of January in the year  
aforesaid there was filed in the  
office of the Clerk aforesaid a  
Certain Bill of Ex ceptions in the  
words and figures following. to wit:

State of Illinois  
County of Cook ss.

Superior Court of Chicago  
January Term A.D. 1862.

Myron P. Bush  
George Howard

vs  
John M. King

Assumpsit on note.

Be it remembered  
that on the trial of this Cause  
on the 9<sup>th</sup> day of January A.D.  
1862 before the Honorable Court  
Higgins Judge. and a Jury, the  
plaintiff offered in evidence a  
note in the words and figures  
following to wit.

"349 <sup>52</sup>/<sub>100</sub>" Ottawa Ill June 26 1860

Four months after date I  
promise to pay to the order of Bush  
17 & Howard Three Hundred & forty nine



18 \$2/100 Dollars at their office in  
Buffalo N.Y. value received -

Jno W King"

To the introduction of which note  
the defendant by his attorneys  
Hosmer & Beck objected for the  
reasons that the said note appeared  
upon its face to have been altered  
and that it varied in amount  
from the note described in the  
declaration.

The plaintiff to explain the  
alteration then called as a witness  
Isaac Bush who testified as follows  
I called upon the defendant in  
March last and presented this  
note it was the same then in all  
respects as it appears now, and  
the account answered to the declaration.  
He said He thought the note had  
been paid. He referred to his  
books and said that the amount  
on the note and act was right  
excepting a credit of \$2.00 for  
exchange which he knew nothing  
about. but that it was good.  
that he could not pay it then.  
but was worth the amount"



Upon Cross Examination the witness stated. "The defendant saw the note when I presented it. I cant say positively whether or not he took it in his hand I think he did. I laid it upon the counter before him. he was on one side of the counter & I was on the other. I saw him look at it. I did not call his attention to the alterations; dont know whether he knew of them or not."

Whereupon the Court overruled the objections and admitted the note in evidence to which the Objection by his attorneys then and there excepted.

The defendant then called as a witness Wendell R King who being duly sworn testified as follows.

The defendant sent me hides here in Chicago to pay this note and account and I shipped the hides to Buffalo to my Correspondent together with other



The deft by his attys here asked the witness what instructions he sent to the jess with these hides. to which question the jess by their attorneys objected obj sustained and left them and there excepted.

To all of the testimony of the witness W R King the jess by their attys objected then others to the Court overruled the objections. jess excepted.

The defendant then offered in evidence the following copies of letters from the witness to the plaintiffs - To the introduction of which the jess by their attorneys objected - Because the original letters were not offered. and because the letters were irrelevant.

The defendant then proposed to obtain the original letters to obviate the first objection and asked the Court to allow him a few minutes to procure them. The defendant then called upon the plaintiffs attys to produce the original letters - The jess



attys admitted them to be in  
their possession either at their  
office or at the U S Court  
room, distant about three  
Blocks from the Court room  
where the case was being  
tried. - The Court then consented  
to give the defendant time to  
obtain the original letters if  
upon an inspection of the copies  
it should appear that they were  
admissable in evidence - The  
witness having testified that the  
Copies were true Copies, the  
Court upon an examination  
of the contents, decided that  
the letters were irrelevant &  
refused to wait or give time  
to procure the originals, and  
excluded them from the jury on  
the objection taken by the Plaintiff.  
To which ruling of the Court  
the Deft by his attorneys then  
and there accepted. - The Ref.  
at the same time insisting  
upon their objection to the copies  
and not the original letters  
being introduced -



Chicago Sept 17 1860  
Messrs Bush & Howard  
Buffalo N.Y.

Sir The lot of  
120 Country hides sent you  
were bundles containing calf  
skins and had one knot in the  
string. I would say open all  
of that lot. before weighing -  
as they belong to another party.  
I hope to have accounts of the  
entire soon. If they are desirable  
I can make you further  
shipments.

Your friend  
Hendell R King

Chicago Oct 12 1860  
Messrs Bush & Howard  
Buffalo N.Y.

I hope you  
will be able to dispose of the  
447 hides by 29<sup>th</sup> inst - I wish  
to pay John M Knips note with  
the proceeds due you at that  
time for \$349<sup>52</sup>. Other dealers  
in your city report the market



active. - I leave it entirely  
with you as to the propriety  
of sending them to N.Y.

Kearse & Pearsall are a good  
house to ship to you if you have  
no preference.

Your friend  
Hendell R King

Chicago Oct 25<sup>th</sup>  
Messrs Bush & Howard  
Buffalo N.Y.

Your letter  
of the 18<sup>th</sup> is in and noted - My  
letters from N.Y. same date  
report sales of some of my  
hides at 9 c Cash and 9 1/4 c  
C M. - In view of these facts  
I would say you may take  
the entire lot at 8 c net as  
you propose in your letter.

There were several bundles  
of calf in the 120 lot that should  
sell for a higher price

Your friend  
Hendell R King



Chicago Nov 23 1860.  
Messrs Bush & Howard  
Buffalo N.Y.

On the 11<sup>th</sup> of September I sent you 897 hides (green salted) to sell for my acc. Since then I have sent to N.Y 3100 that have been sold from 8 $\frac{3}{4}$  to 9 $\frac{1}{4}$  c. Today I recd a telegraph from you for which I paid \$1.50 which amount you may place to my Credit. I will not submit to these hides being sold now at panic prices - The hides were worth all I drewed for and the amount of \$349.<sup>00</sup> also his acc for 112.<sup>00</sup> which amounts they are intended to pay.

When they are sold at decent prices and full short of "balance" I will remit.

Your friend  
Hendell R King

The witness Hendell R King further testified that "the Refs



never requested me to pay this note and acf=

Hides were worth in Buffalo on the 12<sup>th</sup> of Oct 8 to 8 1/4 cts pr lb. If my hides had been sold at that time they would have brought enough to pay all advances & this note and left a margin besides - I don't know what they did with them.

Push the witness called on me to pay this note and account in March 1861. The hides I sent were sold in June 1861. at about 5 to 5 1/2 cts. - I did not receive any reply from the plaintiffs to my letter of Oct 18<sup>th</sup> until Nov 23<sup>rd</sup>.

Before these hides were sent. about the 7<sup>th</sup> of September 1861, I had a talk with Howard one of the plaintiffs. He said he would allow me 8 cts for hides delivered in Buffalo & would dispose of light hides which he could not use for 8 to 8 1/2 cts and would pay my drafts to 6 1/2 cts - a lb on shipment -



26 In thirds or three fourths of the hides I sent were such as he could use and had agreed to take. — He found fault with the hides and would not take them & then I directed him to dispose of them.

Upon Cross Examination the witness stated,

"I never told Bush & Howard that the hides belonged to Wendell K King. — There was suit brought against me by piffs involving these hides and others to the number of 898" — I never told piffs that deft owned the hides sent.

The Plaintiff then recalled Isaac Bush as a witness. & offered to show that Wendell K King aforesaid after the sale of the hides offered to pay this note & acc<sup>t</sup> to which the deft objected and objection was sustained. The witness Bush then stated that "when I presented the note and account to defendant the deft told me



that he had paid the note & acf. to Mendell R King and to go to him for his pay.-

Upon Cross Examination the witness stated that "after this I wrote to Jeff what defendant said. then Jeff told me to collect it of Mendell R King if I could as they did not want any litigation.

This being all the evidence offered in the case. the case was closed on both sides -

The Jeff asked the Court to instruct the jury on his behalf as follows.

1<sup>st</sup> If the jury believe from the evidence that the defendant John M King admitted the note in question to be correct after the alteration and when it was presented to him by the witness. then the jury will find for the plaintiffs on said Note.

2<sup>d</sup> If the jury believe from the evidence that the alteration was made at the time the



note was made. then they will find for the plaintiffs on said note.

Which the Court modified as follows. and gave to the jury.  
 1<sup>st</sup> If the jury believe from the evidence that the defendant John M King admitted the note in question to be correct after the alteration and when it was presented to him by the witness then the jury would be justified in finding for the plaintiffs on said note: if they believe from the evidence that the alteration was honestly made by the express or by the implied consent of the maker.

2<sup>d</sup> If the jury believe from the evidence that the alteration was made at the time the note was made and before its delivery. then they must find for the plaintiffs on said note unless the jury believe the note has been paid -



To the giving of which instructions as modified the defendant by his attorney then and there excepted.

The defendant by his attys asked the court in his behalf to instruct the jury as follows.

The jury are instructed that if the note appears on its face to have been altered, the law presumes this to have been done after its execution and they will not find against the deft - on the note, unless they believe from the evidence that the defendant consented to the alteration - and the fact that the deft said that the note was good (if proven) when presented to him is no evidence of his assent unless he knew then of the alteration.

And if the alteration is in the amount it is immaterial whether it is so altered as to make it larger or smaller.

Which instructions as asked



for the Court refused to give, but gave it with these words added - "But an acknowledgment of the debt if such acknowledgment was made when the note was presented to the defendant would be some evidence tending to show that the defendant himself considered the note valid and legal -"

To the refusal of the Court to give said instructions as asked for and to the addition and modification to said instruction by the Court, and to the giving of said instruction as modified by the Court the defendant by his attorneys then and there excepted:-

The jury then retired and brought in a verdict as follows

We the Jury find for the plaintiff, and assess the damages at \$494.52

Richard Applegard  
Foreman.



The Defendant by his attys then moved the Court for a new trial for the following reasons,

1<sup>st</sup> The Court erred in admitting improper testimony on the part of the plaintiffs.

2<sup>d</sup> The Court erred in excluding testimony offered by the Defendant.

3<sup>d</sup> The Court gave improper instructions in behalf of the plaintiffs.

4<sup>th</sup> The Court erred in not giving the instructions asked for by the deft as it was originally asked for.

5<sup>th</sup> The Court erred in modifying the instructions asked for by the defendant, and in giving the same as Modified.

6<sup>th</sup> The Verdict was against the law, and the evidence.

Which Motion for a New trial the Court then and there overruled to which the deft by his attys then and there excepted.



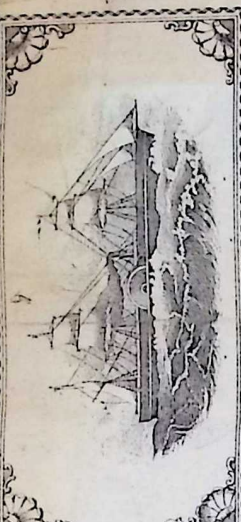
Judgment was thereupon entered upon the verdict and an appeal prayed by the deft - which was allowed upon the filing of a bond and bill of Exceptions within twenty days. Sanctions to be approved by the Court.

On order that the proceedings herein contained may become matters of record in this cause the deft prays the Court to sign this Bill of Exceptions in said cause - And inasmuch as the Exceptions taken upon the trial to the note given in evidence by the plaintiffs cannot be made manifest to the Supreme Court without an inspection of the original note the defendant prays that it may be included herewith and made a part of this Bill of Exceptions.

Hosmer & Beck  
 Deft attys  
 Van N. Higgins  
 Judge



Original Note, used on the trial.

|                                                                                  |                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                        |
|----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|
|  | <p><sup>\$24.00</sup><br/><del>\$349.75</del></p> <p>Four months — after date I promise to pay<br/>to the order of Rush &amp; Son<br/><del>Three hundred &amp; forty nine \$400</del> Dollars<br/>at their office in Buffalo N.Y.<br/>Value received</p> <p>N<sup>o</sup> _____ Due Oct 26/29</p> <p><small>Sage &amp; Son, Buffalo</small></p> | <p>Ottawa Ill June 26<sup>th</sup> 1860</p> <p><i>Geo. M. King</i></p> <p><small>Gold &amp; Parsons &amp; Johnson, Buffalo</small></p> |
|----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|



State of Illinois  
Cook County ss.

I Thomas  
Baxter Clerk of the Superior  
Court of Chicago in and  
for said County, do hereby Certify  
the above and foregoing to  
be a full true and complete  
Transcript of all the pleadings  
on file in my office together  
with the order of Judgment  
made and entered of Record,  
the appeal Bond and Bill of  
Exceptions <sup>and the original note</sup> in the case wherein  
Myron P. Bush & George Howard  
are plaintiffs & John M. King  
defendant.

In testimony whereof I  
have hereunto set my hand  
and affixed the seal of said  
Court. at the City of Chicago  
in said County this 29<sup>th</sup>  
day of March 1886  
Thomas Baxter  
Clerk





now comes the said John M King  
Appellant and shows to the Court  
that in the record and proceedings  
aforesaid and in the rendition of  
judgment aforesaid there is man-  
ifest error in this to wit

- 1 The Court erred in excluding proper  
testimony offered by Defendant below
  - 2 The Court erred in improper evidence  
offered by Plaintiffs below
  - 3 The Court erred in giving each of  
the instructions asked by Plaintiffs
  - 4 The Court erred in refusing to give  
each of the instructions asked by De-  
fendant
  - 5 The Court erred in trying the Cause  
with the Special plea not replied  
to
  - 6 The Court erred in overruling  
the motion for a new trial
357. The Court erred in rendering the



judgment aforesaid

Moore, Cook & Campbell  
for appellants

And now comes the said appeal  
by Eldridge & Fourtallott his attorneys &  
say there is not any error in the  
foregoing record & proceedings & judgment  
Eldridge & Fourtallott  
Attorneys for appellants



151 272 56  
Bush et al  
ats  
King

Transcript

Filed Apr. 24, 1862  
V. Seland  
Clk.

Fees \$6.50

Paid by  
Hoover & Rich  
J. W. Clark  
Clk.