

No. 13021

# Supreme Court of Illinois

Bartholomew

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vs.

Bartholomew

STATE OF ILLINOIS.

SUPREME COURT.

Third Grand Division

No. 34.

*Bartholomew*

*Bartholomew*

*Bartholomew*

*Bartholomew*

*Bartholomew*

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

NOYES E. BARTHOLOMEW,  
vs. LUZERNE BARTHOLOMEW,  
vs.  
AMBROSE C. BARTHOLOMEW. } Error to Peoria.

POINTS AND AUTHORITIES OF DEFENDANT.

1. The verdict of the jury is fully sustained by the evidence. The signature to the receipt offered in evidence by the defendant, though denied under oath by the plaintiff, is proved clearly to be in his hand writing.

2. The receipt of Luzerne Bartholomew, introduced by plaintiff, is admitted.

3. There is no evidence tending to shew that the notes sued upon were not included in the settlements made at the time the receipts were given.

4. The receipts are *prima facie* evidence that all matters and claims of every description between the parties were settled.

5. No *proper* evidence offered by the plaintiff was excluded by the Court. The offers of the plaintiff to prove his hand writing by comparison, was properly rejected.

Starkie's Evidence, part 2, p. 511.

Junpertz vs. *The People*, 21 Ill. 407-S.

Pate vs. *The People*, 3 Gil. 644.

6. The instructions given by the Court for the defendant were all legal and pertinent.

7. Had the demurrer to the defendant's third plea, the statute of limitations of five years, remained undecided, the plaintiff could not possibly have been prejudiced thereby. An issue formed upon the plea would have been wholly immaterial.

*Dana vs. Phillips*, 1 Scam. 498.

*Freeman vs. Williams*, 11 Ill. 229.

*Atlantic Insurance Co. vs. Wright*, 22 Ill. 472.

8. The position that the demurrer to the first rejoinder to third replication to the fourth plea remained undecided, is not well taken. There was a direct issue made upon this third replication by defendant's *second* rejoinder, in which the plaintiff joined.

9. But both these issues were in fact settled and decided by the Court, as will appear by reference to pages 9 and 10 of the Record.

10. The instructions given by the Court, at the request of the defendant, were all legal, pertinent, and proper.

N. H. PURPLE,  
*Defendant's Attorney.*



<sup>34-31</sup>  
Bartholomew  
21 9  
Bartholomew

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Paints by  
Wright

Filed Apr. 24. 1860  
L. Island  
Clk.



STATE OF ILLINOIS,  
SUPREME COURT,

} ss. The People of the State of Illinois,

To the Clerk of the Circuit

Court for the County of Peoria Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Peoria County, before the Judge thereof, between Noyes D. Bartholomew for the use of Luzerne Bartholomew plaintiff; and Ambrose Bartholomew

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

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

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this ninth day of March in the Year of Our Lord one thousand eight hundred and fifty-nine.

L. Deland

Clerk of the Supreme Court.  
by J. B. Rice Deputy

130  
Noyes D. Bartholomew  
for use &c.

vs  
Ambrose C. Bartholomew  
Writ of Error

Filed March 9. 1859  
L. Leland  
Clerk





STATE OF ILLINOIS, } ss. The People of the State of Illinois,  
SUPREME COURT,

To the Sheriff of the County of Peoria Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Peoria County, before the Judge thereof, between Noyes D. Bartholomew for the use of Luzerne Bartholomew

plaintiff, and Ambrose C. Bartholomew

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

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

Ambrose C. Bartholomew

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

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this ninth day of March in the Year of Our Lord One Thousand Eight Hundred and Fifty-nine.

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



Noyes Dr <sup>130</sup> Bartholomew  
for use &c.

vs

Ambrose B. Bartholomew  
-Sci fa.

State of Ill.  
Peoria Co If served the  
within writ on Ambrose  
B. Bartholomew by reading  
the same to him this 14<sup>th</sup>  
day of March 1859

John Bryner Shuff  
His A. S. W. Attorney Rep.  
Serving .50c  
 mileage 125 mts 1.25  
 Returning 10  
 \$1.85

Red map fees in full on  
this writ of Sci fa at  
John Bryner  
Shuff

Clerk of Court

# STATE OF ILLINOIS--THIRD GRAND DIVISION.

Supreme Court thereof. April term, 1860.

NOYES D. BARTHOLOMEW, for the use of  
LUZERNE BARTHOLOMEW,  
vs.  
AMBROSE C. BARTHOLOMEW.

Error to Peoria Circuit Court.

## PLAINTIFF'S POINTS.

1. This cause was tried while a demurrer interposed to the third plea of defendant, and a demurrer to the first rejoinder to the third replication to the fourth plea remained undisposed of. It was error to try the cause while those demurrers remained undisposed of.

Moore vs. Little, 11 Ill., 549.

Nye vs. Wright, 2 Scam., 222.

Stedman vs. Watson, 5 Gil., 249.

Sammis vs. Olark, 17 Ill., 398.

Chapman vs. Wright, 20 Ill., 120.

2. The Court erred in permitting the receipts of Noyes D. Bartholomew and of Luzerne Bartholomew to be read in evidence to the jury as evidence of the payment of the notes in controversy. The notes were payable to the plaintiff for the use of Betsey Bartholomew, thus upon their face showing that the equitable title was in Betsey Bartholomew; and a general receipt given by the plaintiff would not, without further proof of the fact, be evidence of the payment of a note in which he only held a legal title, the real ownership being in another person.

So the receipt of Luzerne Bartholomew, being given long after the death of Betsey Bartholomew, did not tend to prove that said notes had been paid. They were her property, and being choses in action, could not by said Luzerne Bartholomew, as her husband, be collected and appropriated to his use after her decease. Again: said notes being given to a trustee for the use of said Betsey, Luzerne,

The plff had a right to receive the money on these notes and receipt for them and the only real question in the case is was this receipt given for and upon a payment by the debtor in good faith

The question on the demurrer is of not much account for the plea was no bar

The comparison of hands no go.

The husband had no right to receive payment of the notes. It is error to admit the receipt in evidence.

Rever Domestic relations 12. These notes went to wife rep.



as her husband, could not legally control them or their proceeds, and his receipt was not evidence, therefore, of their payment.

*Reeve's Dom. Rel. 4 Kent's Com. 2, 135.*

3. The Court erred in excluding testimony of experts to <sup>dis-</sup>prove the genuineness of the signature in dispute <sup>by comparison</sup> with the signatures admitted to be genuine.

*Hammond's case, 2 Greenleaf R., 33.*

*Moody vs. Rowell, 17 Pick. R., 485.*

*Horner vs. Wallis, 11 Mass. R., 309.*

*McCorkle vs. Binns, 5 Binney R., 349.*

*2 Starkie Evidence, 517, Note B.*

*2 Hayward, 379.*

*3 Hawks, 393.*

4. The verdict is against the weight of evidence.

**MANNING & MERRIMAN & COOPER,**  
*for Plaintiff in Error.*

84-31

Burtholomew

no

Burtholomew

Pliff Prints

Filed Apr. 17, 1860

L. Deland

Clark



SUPREME COURT OF ILLINOIS,

*Third Division—April Term, 1859.*

NOYES D. BARTHOLOMEW, use }  
LUZERNE BARTHOLOMEW, }  
vs. }  
AMBROSE C. BARTHOLOMEW.

ABSTRACT.

p1, 2 This is an action of debt brought to the March term, 1856, of the Peoria circuit court, on the following notes, viz :

Peoria County, Nov. 18, 1841.

p. 7. Two years from date, I (or we) promise to pay to Noyes D. Bartholomew or order, for the use and benefit of Betsy Bartholomew, the sum of one hundred and fifty dollars, with six per cent. interest, from date, for value received.

A. C. BARTHOLOMEW.

Peoria County, Nov. 18, 1841.

p. 7. Three years from date, for value received, I (or we) promise to pay to Noyes D. Bartholomew or order, for the use and benefit of Betsy Bartholomew, the sum of one hundred and fifty dollars with six per cent. interest from date.

A. C. BARTHOLOMEW.

Peoria County, Nov. 18, 1841.

p. 7. Four years from date, I (or we) promise to pay to Noyes D. Bartholomew or order, for the use and benefit of Betsy Bartholomew, the sum of one hundred dollars, for value received, with six per cent interest from date.

A. C. BARTHOLOMEW.

p3, 4. The declaration contains one special count on said notes, amended as on pages 10 and 11, and the common counts, pages 5 & 6, amended as on page 11.

Defendant plead,

- 12.
1. The general issue, in which the plaintiff joins.
  2. Payment.
  3. That debt was not indebted within five years.
  4. Settlement and receipt in full, in words and figures following :

Received of A. C. Bartholomew, three doll. and twenty-five cents, it being in full of all accounts, notes, whatsoever, up to this date.

N. D. BARTHOLOMEW.

Newburg, August 23, 1847.

12, 13 Issue joined on first and second pleas, and demurrer to 3d & 4th pleas.  
 " " Affidavit of plaintiff denying execution of receipt and the following replication to said fourth plea.

14. 1. Plaintiff did not account and settle with defendant. Issue joined.  
 2. Plaintiff did not execute said receipt. Issue joined.  
 3. Said receipt was given without consideration received to or for the use of said Luzerne or Betsy Bartholomew.

To said third replication defendant rejoins,

15. 1st, Said receipt was given for a good and valid consideration in law. Demurred to by plaintiff.

2d, Said receipt was given for a good and valid consideration received by said Betsy or Luzerne Bartholomew, on which plaintiff joins issue. Plaintiff's demurrers to the 3d plea, and 1st rejoinder to said 3d replication not disposed of.

16. Trial by jury at November term, 1857, and verdict for defendant.

17. November 30, 1857, motion for new trial, for reasons following:

26. 1st Improper evidence admitted for defendant.  
 2d Exclusion of proper evidence offered by plaintiff.  
 3d Erroneous instructions given for defendant.  
 4th & 5th Verdict against law and evidence.

17. Motion overruled and exception taken. The bill of exceptions shows  
 18. that on the trial, plaintiff, to maintain the issues on his part, read to the jury without objection, the three notes above set out, and rested. Defendant then offered in evidence said receipt, to the reading of which to  
 19. the jury, plaintiff objected.

Defendant then called Anson S. Andrews, who stated that he had known Noyes D. Bartholomew for ten or twelve years; had seen him write occasionally, say two or three times a year, and knew his handwriting; had settled with him and passed receipts. Conversd with him in fall of 1847, and thinks plaintiff then stated he had settled with deft., and that defendant owed him less than \$20, which was less than he had supposed. Witness further stated, he believed the signature to the receipt offered in evidence, to be genuine. Said receipt was then read to the jury. Defendant next offered the following receipt, the signature to which was admitted to be genuine, viz:

"Received of A. C. Bartholomew, one dollar, in full of all demands up to this date.

LUZERNE BARTHOLOMEW.

Newburgh, Peoria Co., May 19, 1848."

To the reading of which in evidence, plaintiff objected. Court overruled objection, and permitted the same to be read to the jury and plaintiff excepted. Defendant here rested.

20. The plaintiff then called Noyes E. Bartholomew, who stated he was the son of plaintiff; had often seen him write and knew his handwriting well. Has no doubt the receipt read in evidence, purporting to be signed by plaintiff, is spurious. Said signature keeps the line too closely; the letter "t" in the name, is shorter than plaintiff makes it. There is a want of



connexion in the capital letters unusual in plaintiff's handwriting. When plaintiff only uses the initials of his first name, he begins with the letter "N" and does not raise his pen till he ends the name. Four other signatures were here shown to witness, which he pronounced genuine. Witness lived with his father till in 1848, and for some time previous, had charge of his business; was familiar with his papers, and once <sup>near</sup> ~~seen~~ was in business with him.

Plaintiff then called Robert A. Smith, who stated that he has been Cashier of a Bank, and accustomed to distinguish between forged and genuine signatures by comparison of handwriting; that he did not know the handwriting of plaintiff; could not tell by comparison whether a signature was genuine or not, unless he knew the genuine; but if a signature admitted to be genuine were shown, he could satisfy his own mind by comparison, as to whether another purporting to be written by the same person was genuine, whether witness himself knew the true signature of such person or not. Plaintiff then offered to prove by this witness, by a comparison of the signature to the receipt of plaintiff read in evidence, with other signatures of plaintiff admitted to be genuine, that said receipt was not genuine, to which defendant objected, and the court sustained the objection, and plaintiff excepted.

Plaintiff next offered to prove by John A. McCoy, and other experts by comparison of handwriting, that said receipt was not genuine; defendant objects. Objection sustained by court, and plaintiff excepts.

M. L. K. Huse, called, says has known plaintiff since 1838: has not seen him write for four or five years past. The signature to said receipt resembles plaintiff's handwriting; can't say it is his; thinks it and another signature shown him, may be plaintiff's.

Frederick Kellogg—Has seen plaintiff write and knows his handwriting, and thinks the signature to the receipt genuine.

William H. Kellogg, called by defendant, knows plaintiff's handwriting; has seen him write and thinks the receipt genuine.

Defendant next called William Dixon who said he knew plaintiff's handwriting; had often seen him write, and thinks said receipt genuine. Witness being here shown a signature purporting to be plaintiff's, stated he had no doubt but it was genuine, and that another, admitted to be genuine, was not, in his opinion, genuine.

Plaintiff then exhibited to said witness, Andrews, the signature last pronounced genuine by said Dixon, and said Andrews also pronounced the same genuine.

Noyes E. Bartholomew recalled by plaintiff; stated that when he lived with his father, he had a note on defendant for ten dollars; knew his father's business at the time, and thinks he should have seen the notes sued on, if they had been in his father's possession; that he never ~~seen~~ <sup>saw</sup> them in plaintiff's possession; that witness first saw them in 1852. They were then in Luzerne Bartholomew's possession; were then written in an account book of said Luzerne, and had never then been cut out. Witness never saw this book in plaintiff's possession.

Plaintiff then called A. L. Merriman, who testified that the signature purporting to be plaintiff's, shown to said witnesses, Dixon and Andrews, as above, and pronounced by them to be genuine, had been written by witness during the progress of the trial.

Defendant then called F. S. Kellogg, who stated that Betsy Bartholomew was wife of Luzerne Bartholomew and that she died in 1843.

This was all the evidence.

The court instructed for the plaintiff in substance as follows :

1. The receipt of plaintiff being denied under oath, the burden of proof is on the defendant, and unless the jury believe the preponderance of proof favors its genuineness, they will disregard said receipt.

2. If the jury believe from the evidence said receipt was given, but that the parties did not intend thereby to cut off the notes sued on, they may disregard said receipt.

3. That the facts, that said receipt, if given, is for much less than the notes; that said notes were left in the hands of the party to whom given, without explanation, and that the notes are for the use of another person than the plaintiff; are all proper to be considered by the jury, in determining the application of said receipt.

4. The jury will not consider the receipt given by Luzerne Bartholomew, unless they believe from the evidence that when given, Luzerne was the beneficial holder of said notes, or authorized to receive payment of them, and that the parties intended to include said notes in that receipt.

5. That the discrepancy between the amounts named in said receipts, and the notes sued on, is proper evidence for the consideration of the jury to show that said notes were not in the contemplation of the parties to said receipts when given.

6. If the jury find for plaintiff, they will assess the amount of principal and interest due on said notes.

7. It is for the jury to determine from the evidence, what the parties intended in making said receipts, and if they believe from the evidence, that the parties did not intend to adjust said notes by said receipts, they will disregard said receipts.

8. Said notes being given for the use of Betsy Bartholomew, was notice to defendant that she was the equitable owner of them at the time they were made.

For the defendant the court instructed as follows :

24. 1. That the receipt of 23d August, 1847, is prima facie evidence of payment to him of the notes sued on, provided the notes then belonged to him, or provided the defendant had no notice of the equitable assignment of said notes to any other person, and the presumption of law is, that the notes belonged to him and remained his property, until it is shown by the plaintiff, that some other person had an interest in the same, and that the defendant had notice of such interest.

24, 25 2. The receipt of May 19, 1848, signed by Luzerne Bartholomew, is prima facie evidence that the notes sued on were paid and settled at that date; provided said Luzerne had any interest in said notes at that time.

25. 3. That Betsy Bartholomew has nothing to do with this case, and no interest of hers, or supposed interest, can be taken into consideration by the jury.

25. 4. That the several receipts read, except those of 23d August, 1847, and 19th May, 1848, are only in evidence to test the judgment of the witnesses, and the jury are not authorized to consider the same by way



of comparison to determine the genuineness of the receipt of 23d Aug. 1847.

25. 5. A receipt in full of all demands is prima facie evidence of settlement and payment of all notes and claims then existing between the parties, and in this case, if such receipts have been made, the jury will find for defendant, unless the plaintiff has proved to their satisfaction that the notes in question were not included in such settlement and receipts.

25. 6. If the jury believe from the evidence, that the notes in suit were given and payable to Noyes D. Bartholomew, for the use of Betsy Bartholomew, and that Betsy was the wife of Luzerne Bartholomew, and the defendant paid the notes to Luzerne, then the jury will find for the debt.

25. 7. The affidavit of Noyes D. Bartholomew, that he did not sign the receipt in question, is no part of the evidence in this cause, and is not proper for the consideration of the jury for any purpose whatever, but the jury are to determine the question of the genuineness of said receipt, upon the testimony of the witnesses acquainted with the handwriting of the plaintiff only, and should there be a preponderance of evidence in favor of the genuineness of said receipt, the jury should so find.

25. To the giving of which instructions for debt., plff. excepted.  
Jury return verdict for debt.

Motion for new trial as above, which is overruled by the court and judgment rendered against plaintiff, to all which plaintiff excepts, and assigns these errors on the record.

1st. In trying and rendering judgment in said cause, leaving the demurrers of plaintiff to the 3d plea of defendant, and to the first rejoinder of defendant to plaintiff's 3d replication to defendant's 4th plea, undisposed of.

2d. In admitting improper evidence for defendant.

3d. Excluding proper evidence offered by plaintiff.

4th. Erroneous instructions to the jury for defendant.

5th. Refusing new trial.

6th. Rendering judgment for defendant and against plaintiff.

MANNING & MERRIMAN & COOPER,  
*For Plaintiff in Error.*

34 ~~130~~ 31

Bartholomew

no

Bartholomew

Abstract

Filed April 23, 1859  
H. Leland  
Clerk



Roger S. Bartholomew }  
 vs Lezemo Bartholomew } In Superior  
 " } Court -  
 Ambrose C. Bartholomew }

## Argument No.

1st.

There is no ground whatever of assailing the Judgment in this case, because the verdict is against Evidence -

All matters of fact were fairly submitted to the Jury

The Plaintiff attempted first to avoid the legal effect of the receipt upon the ground that he never Executed it - He denied it under Oath - The ~~entire~~ preponderance of the Testimony is that the Receipt is ~~not~~ his - That he never Executed it - With the Exception of one of his Sons all the witnesses agree that the Signature to the Receipt is his

I need not cite authorities to prove, that if the weight of Evidence was against us, the Judgment for such reason would not be disturbed -



Ques. The Plaintiff being unable to maintain ~~the position~~ the position that he never executed the Receipt Next, undertakes to convince the Court and Jury, that although he gave the Receipt, or Settlement in full of all accounts, notes, claims demands &c. (and that too without evidence;) that the Notes And are now not included in the Receipt or Settlement. From the naked facts alone that they are payable to Plaintiff for the use of Betty Bortholomew.

In the first place he denied the Execution of the Receipt under Oath - Defeated in this by the Evidence he tried to get the Jury to indulge in the weak ~~plea~~ defence that this particular note; (although the Receipt is "in full of <sup>all</sup> accounts and notes," what does it say?); was not included in the Receipt - Might he not as well contend that some particular accounts was omitted to be settled? The Reply to this will be, this note was given to the Plaintiff and upon its face expressed to be for the use of Betty



Bartholomew - ~~Whose name~~ <sup>Bartholomew</sup> ~~Butley~~ <sup>Butley</sup>, ~~except that she is dead~~ ~~and she never~~  
~~appears~~ - She died in 1843.

The Plaintiff next makes a  
sort of staggering effort to show that  
he never was the owner of the notes  
and never had them in his possession.  
He calls upon his son Royal, C. to  
prove that he was acquainted with  
his father's business, and that he  
never had the notes in his possession;  
that the first he ever saw of the  
notes, they were in an old account  
book, where they were written, which  
belonged to Eugene, his uncle, and  
was then the last he saw of them;  
and so this suit, although the  
notes in fact, as is contended, be-  
longed to Butley; is brought for the  
use of Eugene Bartholomew.

It would be difficult to account  
for the conduct of the Plaintiff and his  
associates in this suit, if it were not  
apparent from the circumstances dis-  
closed, that these Bartholomews are  
a sort of slipping generation; never  
entertaining a thought, that it is  
well to do any thing in a straight



line, if they could find a crooked one, through which, by chance they might arrive at the same result.

Well, then, the Plaintiff, after every other fiction had failed him, concludes that Suzanne is the Real Owner of the Note, and brings the Suit for his use. - It fortunately happens that we had preserved his Receipt too, apparently given on Settlement & in full of "all demands";

We all understood that among farmers and neighbours, these receipts are often passed - But as I think never except on Settlement. The parties claims and accounts are brought together looked over and arranged - Receipts are passed and no money paid, although so expressed in the Receipt - The fact that these notes having been written in Suzanne's book may well account for their not being surrendered at the time of the Settlement, and passing of the Receipt between Plaintiff and defendant -

The facts in this case, and all the presumptions, arising from any fact appearing were fairly submitted



to the Jury upon and under proper instructions - At least they were as favorable to the Plaintiff, as he could ask or claim -

3rd. I have carefully Examined the Plaintiffs abstract, and can not find that any improper Evidence was offered by Defendant - nor any proper Evidence rejected which was offered by the Plaintiff.

So far as the Record shows the Plaintiff only objected to the two Receipts of Royce E. & Eugene Bartholomew being given in Evidence - And all the Evidence offered by the Plaintiff, which was Excluded, was, his Offer to prove by two Witnessed Experts, by Comparison with the admitted hand writing of Plaintiff that the Receipts of Royce E. was forged.

This Evidence was properly Excluded - There is but one legitimate method of Proving the hand writing of a Party - The question to be asked the Witnesses are - 1st



Are you acquainted with the handwriting of the Party and if so how did you obtain such knowledge — 2nd - From such knowledge state whether in your opinion the signature to the instrument offered in Evidence is his?

*Gump's vs The People, 21. Ills. 407-8*

*Pate vs The People, 3 Lib. 644.*

Comparisons for the purpose of forming Opinions, are always rejected. *Stark's Evidence. part 2. p 511.*

I do not suppose that it will be contended here that the Receipts offered by the Defendant were not proper Evidence

I know of no objection that can be urged against them —

The Plaintiff occupy a strange and anomalous position, they have some notes between them payable to one A. and in his name for the use of the other & yet, strange to tell neither of them are authorised to receive or to receipt for the money.

*A. M.*

The Plaintiff can have no complaint to make in relation to the instructions



asked by him - The Court gave him all he prayed for -

3.<sup>d</sup> The Instructions given for the defendant are all legal proper and pertinent.

These instructions assert, but the well settled doctrine, that a Receipt in full of all demands is prima facie Evidence of what on its face it purports to be - a Settlement and accounting between the parties. That such receipts may be rebutted and Explained by other Evidence, showing that certain matters or things were not included in the Settlement - but were omitted by Mistake, accident or design.

The Plaintiff had the full benefit of this rule, to the extent and limit of the law in the instructions asked, and given in his behalf.

There is no Error in the instructions given for the defendant -



On

The Plaintiff assigns for Error that there was no disposition of the demurrer to the 3rd Plea - The Statute of limitations for 5 years - This is a mistake in fact - The demurrer to this Plea was sustained  
See pages - 9-10 of Record

I think it immaterial whether it was or was not sustained

The Plea I think was clearly bad. It was his demurrer - and his business to call it up if he desired the Court to settle it -

The Court will not permit a party to thus take advantage of his own wrong - in the midst of a multitude of intricate pleadings, to demur to a Bad plea - and never call it up for hearing

See *Ward v. Phillips* 1. Scam. 534  
*Hurnace v. Williams* ad 11<sup>th</sup> Ill. 229. 498  
*Atlantic Insurance Co. v. Wright*, 22 Ill. 472



7<sup>th</sup>

The fact that the Demurr to the 1st Rejoinder to 3rd Rep. to 4 Plea does not appear to have been settled is another ground of Complaint -

If it was important for him why did he not call it up and ask to have it decided - again it was his Demurr - a Party should not be permitted to sit trap in a Court below to Spring them upon his antagonist in this Court,

But the fact that this demurr remained undecided, (if it did so) could not possibly prejudice the Plaintiff - There was a direct issue made upon this third Replication by Defendants Second rejoinder in which the Plaintiff joined -

The Replication is "Said Receipt was given without consideration received to or for the use of Luzena or Betsy Bartholomew"; and the 2nd Rejoinder is, "Said Receipt was given for a good and valid consideration received by said Betsy or Luzena Bartholomew," upon which Plaintiff took issue -



So that the Plaintiff had the entire benefit of a direct issue upon his Replication - This is all he can claim -

The Court will observe that the last of these notes fell due in Nov. 1845. This Suit is not commenced and so far as any thing appears no claim was ever made for the money apparently due on them until March A.D. 1856 - More than 10 years after the last note was due

Although this delay may not bar the Plaintiff's Suit, yet it strongly tends to prove that all these notes were considered as settled at the time the receipts were given



As regards the Plaintiffs Demurrer to the Defendants third Plea, I have before remarked, that said Demurrer was in fact settled by the Court, as appears on pages 9 & 10 of the Records. On the 20. May 1857, the Demurrer to this 3rd Plea was decided, the Demurrer being ~~overruled~~ sustained - On the same day a Jury was empanelled to try the issue - The Plaintiff found that his declaration was insufficient; and the Court permitted a Juror to be withdrawn, and gave leave to the Plaintiff to amend his declaration. On the 26<sup>th</sup> Sept 1857. he amended his declaration - Then on the 23<sup>rd</sup> November 1857

p. 10.

p. 12

by leave of Court all the Original pleadings in the cause are allowed to be refiled - On the 27<sup>th</sup> Nov. 1857. The Original Pleas are refiled the 3rd Plea among the Rest, On the same day the Plaintiff refiled his Demurrer to this 3rd Plea & Replications &c to the Other pleas &c. The Judgment of the Court had already been pronounced upon this Plea, and it was wholly unnecessary that it should have been again repeated upon the refileing of the Pleadings to the amended Declaration -



But the Plea itself was a nullity  
No Material issue could have been  
formed upon it. A decision of  
the Demurrer either way, could  
have been of no possible benefit to  
either party — If the decision had  
been in the Plaintiffs favor on the de-  
murrer he could not have complained.  
Of course he did not want it deci-  
ded against him — If it had been,  
and an issue had been formed to  
try the question, submitted by the  
Plea, whether the Cause of action  
accrued within five years, and the  
issue had been found in his favor,  
he could not have been injured, and  
If the Jury had found it for ~~him~~  
the Defendant, the issue would have  
been wholly immaterial, and he  
must have had Judgment in his  
favor " Non Obstante Verdicto,"

It is a strangely ridiculous posi-  
tion for a party to occupy — To be  
insisting upon the reversal of a  
Judgment because the Court did  
not decide a question, the deter-  
mination of which either way could  
not possibly have benefited or injured him.



I insist however that one decision upon the same plea, remaining upon the Record is enough although the plea may be repiled, after the decision is made

But the principle of the pleading - (Even if it was necessary ordinarily to decide twice where matters pleaded are material;) is as I understand it definitely settled in the case of the Atlantic Insurance Co vs Wright, 22. Ill. 472.

§ 10. The same rules of law laid down in this and in the other cases cited, apply to the Point made by Plaintiff that the Demur to the Rejoinder to the 3rd Replication to the 4th Plea was undisposed of by the Circuit Court - And I find upon more thorough examination, that this Demur was also sustained by the Court in the same order in which the Demur to the third Plea was disposed of so that there is no foundation in the Record for either position.



The Cases of  
 Bradshaw vs Hoblett . 4 Scow 53  
 Nye vs Wright. 2 n 222  
 Nottingham vs Wilson 2 n 256  
 Bradshaw vs McKinney 4 n 54  
 McKinney vs May 1 n 535  
 Newman Erol vs Watson 5 Gil. 249.

Are all Cases (except Nottingham vs Watson) and which is not at all in point); where material defence are interposed by Demurrers to Declarations or to Second Counts therein, and which bear portions of the real Merits of the Cases under-  
 cided

For these Reasons and numerous others which without being here repeated will readily suggest themselves to the Court there is no Error in this Record and the Judgment ought to be affirmed.

M. P.  
 Atty for Deft in Error



Bartholomew  
or  
Bartholomew

Argument for  
Dependence  
by M. P. P.

12. 24. 137



1. Be it remembered that heretofore to wit, on the twenty sixth day of January in the year of our Lord one thousand eight hundred and fifty six there was filed in the office of the Clerk of the Circuit Court in and for the County of Peoria in the State of Illinois a process in the words and figures following to wit:

Precipe

"Voyce D. Bartholomew } Circuit Court  
vs. Luzerne Bartholomew } Peoria Co., Ill.  
March Term 1856  
Ambrose C. Bartholomew } In debt

Debt \$500-

Damages 500-

The Clerk of said Court now files issue summons in debt in the above entitled suit, returnable according to law-

Cooper & Reynolds  
for self

To J. Gale Esq

Clerk &c."

And on the same day to wit: on the twenty sixth day of January in the year of our Lord one thousand eight hundred and fifty six there was <sup>issued out of</sup> filed in the office of the clerk of said Circuit Court in said cause a Summons in the words and figures following which with the return endorsed therein are as follows to wit:

Summons

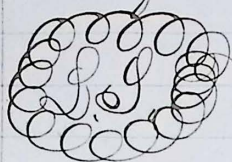
"The People of the State of Illinois

to the Sheriff of Peoria County, Greeting:

We Command you to summon Ambrose C. Bartholomew if he may be found in your county, to appear before our Circuit Court on the first day of the term thereof to be held at Peoria, within and for the said County of Peoria, on the first Monday of March next then and there, in our said Court to answer unto Voyce D. Bartholomew for the use of Luzerne Bartholomew the sum of five



hundred dollars, which he owes to and unjustly detains from the said Joyce D. Bartholomew to his damage five hundred dollars as he says and make return of this writ with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said Court, to be held as aforesaid.



Witness Jacob Sale, clerk of our said Court, and the seal thereof, at Peoria, this 26th day of January in the year of our Lord one thousand eight hundred and fifty six  
Jacob Sale, Clerk.

[endorsement]

Endorsement  
on Summons

Served on Ambrose C. Bartholomew by reading to him this writ  
writ, February 7th 1856. D. D. Irons, Sheriff  
by A. R. Fiddell Deputy

Proceedings at a term of the Circuit Court begun and held at the Court House in the City of Peoria in and for the County of Peoria in the State of Illinois on the 24th Monday day of November in the year of our Lord one thousand eight hundred and fifty six, it being the seventeenth day of said month. Present the Honorable Elisha N. Pavell Judge of the sixteenth Judicial Circuit in the State of Illinois, David D. Irons, Sheriff and Crook P. Huan, clerk, to wit:

Monday November 24th A.D. 1856.

Joyce D. Bartholomew

for the use of Luzerne Bartholomew

Debt

Ambrose C. Bartholomew

The Plaintiff by Cooper & Reynolds his attorneys asks for a rule of court awarding a replader in this cause.

Thursday November 27th A.D. 1856

Joyce D. Bartholomew for the use of Luzerne Bartholomew

Debt

Ambrose C. Bartholomew

This day this cause came on to be heard



on the Motion of the Plaintiff for a rule of Court regarding a repleader in this cause, and the Court being fully advised in the premises allowed said Motion at the costs of the Plaintiff to this time, and it is ordered that all the pleadings of the parties to this action respectively be and the same is hereby set aside and that the Plaintiff have leave to replead in this cause. It is considered that the defendant have and recover of the Plaintiff all costs which have hitherto accrued in this action by him about his defense in this behalf expended and that he have execution therefor.

And afterwards to wit; on the first day of December in the year of our Lord one thousand eight hundred and fifty six there was filed in the office of the Clerk of said Court in said cause a Declaration, <sup>which said Declaration is</sup> in the words and figures following, to wit:

Declaration

"State of Illinois, } In the circuit Court of Peoria County, Illinois  
Peoria County, ss. } In November Term 1856

1. Moses D. Bartholomew for the use of Luzerne Bar-  
2. tholomew, the Plaintiff in this suit complains of  
3. Ambrose C. Bartholomew, the Defendant in this  
4. suit of a plea that he render to the said plain-  
5. tiff the sum of Five hundred dollars which  
6. he owes, and unjustly detains from him for that  
7. Whereas the said defendant heretofore to wit;  
8. on the eighteenth day of November in the year  
9. of our Lord one thousand eight hundred and  
10. forty one, at the County aforesaid, made his three  
11. certain promissory notes in writing, bearing date  
12. a certain day and year therein mentioned, to wit,  
13. the day and year aforesaid, and then and there de-  
14. livered the said Notes to the said Plaintiff, by one  
15. of which said promissory notes he the said defen-  
16. dant then and there promised to pay two years  
17. after the date thereof, to the said Plaintiff or order,  
18. <sup>here insert amendment No. 1</sup> the sum of one hundred and fifty dollars with  
19. interest from the date thereof for value received  
20. by another of which said promissory notes he,  
21. the said defendant then and there promised to  
22. pay three years after the date thereof, to the said  
23. Plaintiff or order, <sup>here insert amendment No. 2</sup> the sum of one hundred and  
fifty dollars with interest from the date thereof  
for value received, and by the other of which



Said Promissory Notes, he, the said defendant then and there promised to pay four years after the date thereof, to the said plaintiff or order, <sup>here insert amendment p 140, 3-</sup> the sum of one hundred dollars with interest from the date thereof for value received; by means whereof and by force of the Statute in such case made and provided the said defendant then & there became liable to pay to the said plaintiff the said several sums of money in the said promissory notes specified, according to the tenor and effect of the said promissory notes; and although the said several sums of money in the said promissory notes specified have been long since due and payable, according to the tenor and effect thereof of the said notes - yet the said plaintiff in fact saith that the said defendant (although often requested so to do) did not nor would pay the said several sums of money in the said notes specified, or either of them, or any part thereof to the said plaintiff in manner aforesaid or otherwise however, but hath hitherto wholly neglected and refused so to do - whereby an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sum of \$400. in the said notes specified, parcel of the said sum above demanded.

And whereas also the said defendant hath come to wit. ( <sup>here insert amendment p 140, 4-</sup> on the day and year last aforesaid ), at the County aforesaid was indebted to the said plain



tiff in the further sum of \$500. of like Law-  
 ful money for the work and labor care and del-  
 igence of the said Plaintiff by the said Plaintiff  
 before that time done performed and bestowed in  
 and about the business of the said defendant and  
 for the said defendant and at his special in-  
 stance and request; and also in the sum  
 of \$500.00 of like lawful money for divers goods  
 wares and Merchandise by the said Plaintiff  
 before that time sold and delivered to the said  
 defendant and at his special instance and  
 request; and also in the further sum of \$500.00  
 of like lawful money for money by the said plain-  
 tiff before that time lent and advanced to and  
 paid, laid out and expended for the said defen-  
 dant and at his like special instance and  
 request; and also in the further sum of \$500.00  
 of like lawful money for other money by the  
 said defendant before that ~~time~~ time had and  
 received to and for the use of the said plain-  
 tiff; and also in the further sum of \$500.00  
 for so much money before that time and then  
 due and payable from the said defendant to  
 the said Plaintiff, for interest upon and for the  
 forbearance of divers large sums of money before  
 then due and owing from the said defendant  
 to the said Plaintiff, and by the said Plaintiff  
 forbore to the said defendant for divers long  
 spaces of time before then elapsed at the like  
 special instance and request of the said defendant



(16) 3<sup>d</sup> And whereas also the said defendant afterwards  
to wit: on the day and year aforesaid, at the Coun-  
ty aforesaid, accounted with the said Plaintiff  
of and concerning divers other Sum of Money, be-  
fore that time and then due and owing and in  
arrears and unpaid, from the said defendant to  
the said Plaintiff in the further Sum of \$1000.  
of like lawful Money to be paid by the said  
defendant to the said Plaintiff, when he the  
said defendant should be therunto afterwards  
requested. Whereby and by reason of the said last  
~~mentioned~~ <sup>said several</sup> Sums of Money being and remaining  
wholly unpaid an action hath accrued to the  
said Plaintiff to demand and have of and from  
the said defendant the said last <sup>several</sup> ~~mentioned~~  
Sums of \$ Money in this <sup>comparable mentioned</sup> residue of the of the said  
Sum above demanded. Yet the said defen-  
dant (although often requested so to do) hath  
not as yet paid the said <sup>several</sup> Sums of \$ Money  
above demanded Nor either, or any part thereof  
to the said Plaintiff. But he to do this hitherto  
wholly refused and still doth refuse to the  
damage of the said Plaintiff of \$500.00  
And therefore he brings his suit &c  
Cooper & Reynolds  
Atty for Plff.



[7]

Copy of Note Due on

Peoria County Nov. 18, 1841  
Two Years from date I (or we) promise to pay to Nages  
D Bartholomew or order for the use and benefit of  
Betsey Bartholomew the sum of one hundred and  
fifty dollars with six pr. interest from date for  
value received  
A C Bartholomew

\$150  
Peoria County Nov. 18, 1841  
Three Years from date for value received I (or we)  
promise to pay to Nages D Bartholomew or order for the use  
and benefit of Betsey Bartholomew the sum of one  
hundred and fifty dollars with six pr. interest  
from date

A C Bartholomew

Peoria County Nov. 18, 1841  
Four years from date I, or we promise to pay to  
Nages D Bartholomew or order for the use & benefit  
of Betsey Bartholomew the sum of one hundred  
dollars with six pr. interest from date for value received



(8)

Proceedings at a term of the Circuit Court begun and held at the Court House in the City of Peoria in and for the County of Peoria in the State of Illinois on the third Monday of November in the year of our Lord one thousand eight hundred and fifty six it being the seventeenth day of said Month, Present the Honorable Edwin S. Powell Judge of the Sixteenth Judicial Circuit in the State of Illinois, David D. Stone, Sheriff and Enock P. Sloan, clerk, to wit;

Tuesday December 2<sup>nd</sup> A.D. 1856  
Noyes D. Bartholomew for the use of Luzerne Bartholomew

Debt

Ambrose C. Bartholomew

On Motion of defendant by N.H. Purple his attorney this cause is continued to next term.

And afterwards to wit: on the third day of March in the year of our Lord one thousand eight hundred and fifty seven there was filed in the office of the clerk of said Court in said cause a plea of the defendant in the words and figures following, to wit;

N.D. Bartholomew  
use Luzerne Bartholomew

Ambrose C. Bartholomew

At Circuit Court of Peoria County

And for further plea in this behalf the said defendant says Acts now because he says that on the 23<sup>rd</sup> day of August A.D. 1847 and before the commencement of this suit he the said defendant settled and accounted with the said Plaintiff of and concerning all the said several supposed ~~indebtedness~~ ~~promises and undertakings~~ in said plaintiffs declaration mentioned, and upon such settling and accounting the said plaintiff gave to the said defendant a receipt in full of all accounts & notes whatever which said receipt is in substance as follows

"Received of A. C. Bartholomew Three Dollars and twenty five cents it being in full of all accounts, notes whatever up to this date  
New Smy August 23. 1847. N.D. Bartholomew."

what have been filed. March 3/57. Nov. 1. 2. 3.



and this the said defendant is ready to verify therefore  
he prays Judgment &c

Purple & Pratt  
for Debt.

Proceedings at a term of the Circuit court began and held at the  
Court House in the City of Peoria, in and for the County of Peoria and  
State of Illinois, on the first Monday of March in the year of our Lord  
one thousand eight hundred and fifty seven, it being the second  
day of said month. Present the Honorable Elihu N. Powell judge  
of the sixteenth Judicial Circuit in the State of Illinois, Francis W.  
Smith Sheriff, and Enoch P. Sloan, clerk, to wit:

Friday March 6th A.D. 1857

Noyes D. Bartholomew for  
use of Suzanne Bartholomew

Debt.

Ambrose C. Bartholomew

This day came the defendant by J. W.  
Cooper his attorney and moved the court to continue this  
cause to the next term of this court, which motion was al-  
lowed, and cause continued.

Proceedings in the Circuit court at a term thereof began and held  
at the Court House in the City of Peoria, in and for the County of  
Peoria and State of Illinois on the second Monday of May in the  
year of our Lord one thousand eight hundred and fifty seven,  
it being the eleventh day of said month. Present the Honorable  
Elihu N. Powell judge of the 16th Judicial Circuit in said State;  
Francis W. Smith Sheriff and Enoch P. Sloan, clerk, to wit:

Wednesday May 20. A.D. 1857

Noyes D. Bartholomew for  
use of Suzanne Bartholomew

Debt.

Ambrose C. Bartholomew

This day this cause came on to be heard  
on the demurrer of the Plaintiff to the defendants 3<sup>d</sup> & 4<sup>th</sup> pleas,  
After argument of counsel and the court being satisfied in the prem-  
ises, it is considered by the court that the Plaintiff's demurrer to

insert Dec 11-17 1857 filed as  
of date March 1/57 - not in  
book - almost fresh - to be placed  
among 9 Nov 857 - 11 Dec 1857 - 14/57



insert new replication no. 3 to plea 4th plea  
 at 20/57 - inserted in book 10 p. 7 -  
 also demurred to replication no. 3  
 at 20/57 - inserted in book 10 p. 7 -  
 insert new replication no. 3 to plea 4th plea  
 at 20/57 - inserted in book 10 p. 7 -  
 also demurred to replication no. 3  
 at 20/57 - inserted in book 10 p. 7 -

(10) defendants 3<sup>d</sup> plea is good in law and is therefore sustained, and  
 that said demurrer to said 4th plea is not good in law, and is  
 therefore overruled, Leave is given to plaintiff to reply double as  
 to said 4th plea. The defendant then demurred to plaintiffs 3<sup>d</sup>  
 replication to said 4th plea, which demurrer, after argument of  
 Counsel, is overruled by the court. The defendant then filed a rejoinder  
 to said 3<sup>d</sup> replication to said 4th plea, to which plaintiff demurred,  
 and the court being satisfied in the premises sustains said demurrer  
 to said rejoinder to said 3<sup>d</sup> replication to said 4th plea. The defendant  
 then by agreement with the plaintiff, rejoined double to said 3<sup>d</sup>  
 replication to said 4th plea. The issues being joined in this cause  
 it is ordered by the court that a jury be empanelled to try said  
 issues, whereupon came a jury of twelve good and lawful men to wit:  
 Mathew Brown, Albert Clark, William L. Moss, Hideon D. Cutler,  
 James Dunn, W. P. Hledge, Stewart Keile, John D. Dutts, Samuel D. King,  
 Henry Morrell, H. V. Flagler and Benjamin Rogers who were duly chosen,  
 tried and sworn to well and truly try the issues joined in this cause,  
 and a true verdict give according to the evidence. The Plaintiff  
 failed to prosecute his suit, whereupon it is ordered by the court that  
 the jury empanelled to try the issues in this cause be withdrawn.  
 The Plaintiff, on motion, has leave to amend his declaration filed  
 herein, on his paying all the costs of this suit up to this date.  
 Ordered that this cause be continued.

And afterwards to wit; on the twenty sixth day of September  
 in the Year of our Lord one thousand eight hundred and fifty  
 seven the said Plaintiff in case the office of the clerk of said court in  
 said cause the Plaintiff Amends to declaration in said the  
 words and figures following, to wit:

"Noyes D. Bartholomew } Circuit Court, Poria County, Ills.  
 vs. Luzerne Bartholomew } To the November Term A. D. 1857  
 In debt  
 Ambrose C. Bartholomew }

The Amendment of the Plaintiff herein to the declaration in debt  
 by him filed December 1<sup>st</sup> 1856 in this case -  
 The said Plaintiff comes and by leave of court first  
 had and obtained Amends his said declaration by inserting at  
 the Commencement of the 18th line, <sup>from the top</sup> as numbered, on the first  
 page of said declaration - the words for the use and benefit of



(11)

"Betsey Bartholomew", before the words "the sum" &c. in said 1<sup>st</sup> line = and in the 2<sup>nd</sup> line from the top on said page as numbered, after the words "or order" - ~~to~~ insert the words "for the use & benefit of Betsey Bartholomew" and on the 2<sup>nd</sup> page of said declaration in line No. 3 from the top, after the words - "or order" insert the words "for the use & benefit of "Betsey Bartholomew" - And in the second line of the 2<sup>nd</sup> count of said declaration strike out the words "on the day & year "last aforesaid" and insert in lieu thereof the words, "on the first day of January "A.D. 1856" = ~~all which said several amendments~~ Plaintiff And in the 2<sup>nd</sup> line of the 3<sup>rd</sup> count of said declaration, on the 4<sup>th</sup> page thereof, after between the words "year" & "aforesaid" insert the word "last" - all which said several amendments, Plaintiff prays may be taken & considered as part & parcel of his said declaration herein =

Manning, Cooper & Rey -  
wds. for plff = "

Proceedings in the Circuit Court at a term thereof began and held in the Court House in the city and County of Bond, in and for said County, and State of Illinois on the third Monday of November in the year of our Lord one thousand eight hundred and fifty seven, it being the sixteenth day of said month. Present the Honorable Elihu W. Powell Judge of the 16<sup>th</sup> Judicial Circuit in the State of Illinois, Thomas W. Smith Sheriff and Crook P. Sloan, Clerk, to wit:

Monday November 23<sup>d</sup> A.D. 1857  
Voyce D Bartholomew for  
use of Luzerne Bartholomew

<sup>vs</sup>  
Ambrose C. Bartholomew

Debt

This day came the Plaintiff by Mr Cooper his attorney and by leave of Court filed his amended declaration against the defendant, And also came the defendant by N. H. Purple his attorney and moved the Court



to strike said Amended declaration from the files, which Motion on consideration of the Court was overruled, On motion of Plaintiff's attorney, the defendant is ruled to plead to said Amended declaration instantler. By leave of court all the original Pleadings in this Cause required by council are refiled.

And afterwards to wit: on the twenty seventh day of November in the year of our Lord one thousand eight hundred and fifty seven there was refiled in said Cause Pleas of the defendant in the words and figures following, to wit:

Wages D. Bartholomew  
use of Luzerne Bartholomew  
vs  
Ambrose C. Bartholomew  
In the Circuit court  
of Peoria County  
March Term 1857

1 And now comes the said defendant by Purple & Pratt his attorneys and says that <sup>at the time when he</sup> he <sup>was</sup> did not ~~indebted~~ ~~assume and promise~~ in manner and form as stated in said plaintiff's declaration and of this he puts himself upon the country &c.

Purple & Pratt for  
def<sup>t</sup>—  
And Plaintiff doth  
likewise  
Cooper & Reynolds  
for pl<sup>ff</sup>.

2 And for further plea in this behalf the said defendant says acts now because he says that on the first day of January A.D. 1856, and before the commencement of this suit, he paid the said plaintiff the said several sums of money in said declaration mentioned and all the interest due thereon & this he is ready to verify wherefore he prays judgment &c.

Purple & Pratt  
for def<sup>t</sup>.

3 And for further plea in this behalf the said defendant says acts now because he says that he ~~did~~ <sup>may</sup> not ~~assume and promise~~ <sup>indebted</sup> in manner & form as stated in said declaration within five years next preceding the commencement of this suit & this he is ready to verify, wherefore he prays judgment &c.

Purple & Pratt  
for def<sup>t</sup>.

15/11/1857  
Court plea No. 4 suff. denying execution of the receipt  
not accepted. Dec. 27/57



12 1/2

And on the same day to wit: on the twenty ~~second~~ <sup>third</sup> day of November <sup>seventy</sup> in the year of our Lord one thousand eight hundred and fifty eight there was filed in said cause a plea of defendant in the words and figures following, to wit:

"N. D. Bartholomew  
vs  
Luzerne Bartholomew

In Circuit Court of Perry County

Ambrose B. Bartholomew

4<sup>th</sup>

And for further plea in this behalf the said defendant says Acts Now because he says that on the 20<sup>th</sup> day of August A.D. 1847 and before the commencement of this suit he the said defendant settled and accounted with the said plaintiff of and concerning all the said several supposed, ~~promises and undertakings~~ <sup>indebtedness</sup> in said plaintiff's declaration mentioned and upon such settling and accounting the said plaintiff gave to the said defendant a receipt in full of all accounts & notes whatever which said receipt is in substance as follows

"Received of A. B. Bartholomew three \$20 and twenty five cents it being in full of all accounts, notes whatever up to this date. Newburg August 23. 1847  
N. D. Bartholomew,"

And this the said defendant is ready to verify, Wherefore he prays Judgment &c  
Purp & Part for Deft."

afterwards  
And ~~on the same day~~ to wit: on the twenty seventh day of November in the year of our Lord one thousand eight hundred and fifty seven there was filed in said cause an Affidavit in the words and figures following, to wit:

"Noyes B. Bartholomew  
vs  
Luzerne Bartholomew

Circuit Court  
Perry County, Ill  
March Term 1857

Ambrose B. Bartholomew

Noyes B. Bartholomew the plaintiff above named being first duly sworn says, that he is advised by Counsel and believes that it is the intention of said defendant to offer in evidence to defeat a recovery by the plaintiff on the trial of this cause a pretended receipt of which the following is substantially a copy, viz:

"Received of A. B. Bartholomew, three \$20 and twenty five cents it being in full of all accounts notes whatever up to this date. Newburg August 23, 1847"  
(signed) "N. D. Bartholomew."



received Nov. 27/57 -

13

And on the same day to wit: on the twenty seventh day of November in the year of our Lord one thousand eight hundred and fifty seven there was replied in said cause the plaintiffs replication and demurrer in the words and figures following to wit:

|                                                                                             |                                                          |
|---------------------------------------------------------------------------------------------|----------------------------------------------------------|
| "Noyes D Bartholomew<br>vs Luzerne Bartholomew<br><sup>(12)</sup><br>Ambrose C. Bartholomew | } Circuit Court<br>Peria County, Ill<br>March Term 1857. |
|---------------------------------------------------------------------------------------------|----------------------------------------------------------|

And for replication to the 2<sup>nd</sup> plea of said defendant herein, plaintiff says preclusion, because he says that the said defendant did not pay the said plaintiff the said several sums of money in said declaration mentioned, in manner & form as in said plea is alleged - and this plaintiff prays may be enquired of by the County &c.  
Manning, Cooper & Reynolds  
for self -

And as to the 3<sup>rd</sup> & 4<sup>th</sup> pleas of said defendant plaintiff says the same and the matters & things therein contained in manner & form as therein stated & set forth, are not sufficient in the law ~~for said plaintiff to bar~~ to bar the action of said plaintiff, and that said plaintiff is not by law <sup>bound</sup> to answer the same - and this he is ready to verify - wherefore he prays judgment &c.  
Manning, Cooper  
& Reynolds for self."



And on the same day to wit: on the twenty seventh day of November in the year of our Lord one thousand eight hundred and fifty seven then was replied in said cause the following in the words and figures following to wit:

St. Bartholomew  
use of Luzern Bartholomew

vs  
Ambras Bartholomew

1 And for replication to the 4th plea Plaintiff says Actio non because he says that said Plaintiff did not account and settle with said Defendant, as in said plea alleged and this he prays may be inquired of by the Country &c

Manning Cooper &  
for p<sup>ty</sup>  
Defendant like  
(Purph & Batt)

2 And for further replication to said plea & said Plaintiff says that he did not execute said receipt in said plea mentioned, and this he prays may be inquired of by the Country

Manning Cooper &  
for p<sup>ty</sup>  
Defendant like  
(Purph & Batt)

3 And for further replication to said plea & said Plaintiff says that said notes being given for the use of Betsey Bartholomew the equity right in which has passed to said Luzern Bartholomew said receipt was given without any consideration received to or for the use of said Luzern or Betsey and this said Plaintiff is ready to verify. Wherefore

Manning Cooper et al for p<sup>ty</sup>



And for rejoinder to said third replication to 4th plea herein Defendant says actio non because he says the said receipt was given for a good and valid Consideration in law and of this he puts himself upon the Country  
Grove & Pratt

And the said Plaintiff comes & says that said rejoinder to said 3rd replication is not good and sufficient in law  
Manning & Cooper  
for p[er]

And on the same day to wit; on the twenty second day of November in the year of our Lord one thousand eight hundred and fifty eight there was filed in said Cause a rejoinder of said defendant in the words and figures following to wit;

"And the said Deft for further rejoinder to said 3rd replication to 4th plea filed herein says actio non because he says the said receipt was given for a good and valid Consideration received to and for the use of said Betsey or Eugene Bartholomew and of this the defendant puts himself upon the Country &c  
Grove & Pratt

And the Plaintiff doth  
thelike Manning & Cooper &c  
for p[er].

Proceedings in the Circuit Court at a term thereof begun and held in the court house in the city and county of Peoria in and for said County and State of Illinois on the third Monday of November in the year of our Lord one thousand eight hundred and fifty seven, it being the sixteenth day of said Month. Present the Honorable Elisha W. Powell Judge of the 16th Judicial District in the State of Illinois, Francis W. Smith Sheriff and Geo. P. Sloan, Clerk, to wit:



Friday November 27th A.D. 1857  
 Moses D Bartholomew for  
 use of Luzerne Bartholomew

Debt.

<sup>vs</sup>  
 Ambrose C Bartholomew

This day came the plaintiff by Joseph Reynolds & Merriam his attorneys and the defendant by Euplex & Pratt his attorneys. And it is ordered by the court that a jury be empannelled to try the issues joined in this cause, whereupon came twelve good and lawful men, to wit: Albert Clark, William P. Smith, David Paine, Seth Griffin, Frederick Hartshorn, Anderson Grimes, Joseph Cone Jr, A. O. Garrett, William A. Hovey, Eideon B. Cutler, John Keller and Caleb Lows who were duly chosen, tried and sworn to well and truly try the issues joined in this cause and a true verdict give according to the evidence. And the said jury not having heard the argument of counsel were adjourned to meet the court to-morrow morning at 9 o'clock.

Saturday November 28th A.D. 1857  
 Moses D Bartholomew for  
 use of Luzerne Bartholomew

Debt

<sup>vs</sup>  
 Ambrose C Bartholomew

This day came the parties by their attorneys and also came the jury who were on yesterday empannelled and sworn to try the issues in this cause and a true verdict give according to the evidence. And after argument of counsel and instructions from the court, the said jury, upon their oaths aforesaid, do say "We the jury find the issues for the defendant". Therefore it is considered by the court that the said Ambrose C Bartholomew go hence without day; and have and recover of the said Moses D Bartholomew his costs and charges by him about his defence in this behalf expended, and that he have execution therefor.



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Monday November 30th A.D. 1857

Noyes D Bartholomew  
for use of Luzerne Bartholomew

Debt.

Ambrose C Bartholomew

This day came the  
plaintiff by Cooper his attorney, and moved  
the Court for a new trial for reasons on file,  
which Motion the Court overruled.



And afterwards, to wit: on the fourth day of January A.D. 1858  
 there was filed in the office of the Clerk of said Court in  
 said cause the plaintiff's Bill of Exceptions in  
 the words and figures following, to wit:

"Noyes D. Bartholomew for the use of Luzerne Bartholomew } In Peoria Circuit Court  
 v }  
 Ambrose Bartholomew } November Term  
 A.D. 1857

Be it remembered that on this day of ~~October~~ <sup>November</sup> A.D.  
 1857 this cause came on to be heard upon the issues joined  
 and the plaintiff to maintain the issues on his part  
 introduced in evidence without objection three promissory  
 notes, in words and figures following, to wit:

"Peoria County Nov. 18 1841

Four years from date I or we promise to pay to Noyes D. Bartholomew  
 or order for the use & benefit of Betsey Bartholomew the sum of one  
 hundred dollars for value received with six per cent interest  
 from date  
 H. C. Bartholomew

\$150 Peoria County Nov. 18 1841

Three years from date for value received I (or we) promise  
 to pay to Noyes D. Bartholomew or order for the use and benefit  
 of Betsey Bartholomew the sum of one hundred and fifty dollars  
 with six per cent interest from date  
 H. C. Bartholomew

Peoria County Nov. 18 1841

Two years from date I (or we) promise to pay to Noyes D.  
 Bartholomew or order for the use and benefit of Betsey Bartholomew  
 the sum of one hundred and fifty dollars with six per cent interest  
 from date for value received

H. C. Bartholomew "

Plaintiff here rested the case

Defendant then offered in evidence a receipt of  
 plaintiff to defendant as follows

"Received of H. C. Bartholomew three doll and twenty  
 five cts it being in full of all Accounts notes whatever



up to this date Newburg August 28<sup>th</sup> 1847  
 N. D. Bartholomew "

to the introduction of which the plaintiff objected, the execution thereof being denied by plaintiff under oath. The defendant then called Simon S. Andrews to prove the signature to the receipt who testified that he had been acquainted with Noyes D. Bartholomew for ten or twelve years, had seen him write occasionally, say two or three times a year and was acquainted with his hand writing, that he had settled with plaintiff frequently and that they had passed receipt, that he had with him two receipts given by plaintiff that in fall of 1847 he had a conversation with plaintiff in which witness's impression is that plaintiff stated that he had settled with defendant and that defendant owed him less than he supposed - that he owed him less than twenty dollars - that he supposed he owed him sixty - The receipt is now shown to witness who testified that from his knowledge of his hand writing he believed his signature thereon to be genuine. The defendant then read the said receipt to the jury -

Defendant then offered in evidence a receipt of Luzerne Bartholomew dated May 19 1848 to the introduction of which the plaintiff then and there objected, which objection (the signature to the same being admitted by plaintiff to be genuine) the Court overruled and the said receipt was then read to the jury, which receipt is as follows

"Received of N. D. Bartholomew one dollar in full of all demands up to this date  
 Newburgh Peoria Co. May 19 1848

Luzerne Bartholomew - "

To the ruling of the Court in admitting said receipt the plaintiff then and there excepted -

Defendant here rested -

Plaintiff then called Noyes C. Bartholomew who testified that he was son of plaintiff and was well



acquainted with his hand writing and had very frequently seen him write - The receipt of Stoyes D. Bartholomew (Plaintiff) read in evidence by defendant was shown to witness who testified that from his knowledge of Plaintiffs hand writing that there was no doubt in his mind that said signature was not Plaintiffs - that the signature to the receipt keeps the line too closely - never knew Plaintiff to keep the line so close - The letter "t" in the word Bartholomew is not as Plaintiff makes it <sup>that letter is shorter than plaintiffs makes it</sup> - There is a want of connection in the capital letters unusual in his hand writing - In writing his signature when he only uses the initials of his first names he commences with the letter "S" and does not raise his pen from the paper until he reached the end of his name - Four other signatures were shown to witness purporting to be those of the plaintiff which he said were genuine - that witness lived with his father until 1848 and for some time previous to leaving him had charge of his father's business and was familiar with his papers and business and for one season Deacon Mason was in business with his father -

Plaintiff then called Robert St. Smith who testified that he had been engaged as Cashier of a Bank and was accustomed to distinguish between signatures for the purpose of detecting forgeries by comparison of hand writing - that he was unacquainted with the hand writing of Plaintiff - This ~~stated~~ witness stated also that he could not determine whether a signature was genuine by comparison unless he knew the genuine signature of the party; but that if a signature admitted to be genuine was shown to him he could determine so as to satisfy his own mind as to the genuineness or otherwise of another signature purporting to be written by the same person whether witness himself knew the true signature of such person or not -

Plaintiff then offered to prove by said witness by a comparison of the signature of the receipt of Plaintiff read in evidence with other signatures of Plaintiff admitted to be genuine that the signature to said receipt was not genuine



Of the introduction of which evidence the defendant objected and the Court sustained the objection and refused to permit the witness to testify to those facts, to the ruling of the Court in sustaining said objection and in overruling said evidence the Plaintiff then and there excepted.

Plaintiff then offered to prove by John H. McCoy & other experts by comparison of handwriting that the signature to said receipt was not genuine, to the introduction of which proof defendant excepted and the Court sustained the objection, and Plaintiff excepted.

J. L. H. Hues testified that he has been acquainted with Plaintiff since 1838, has not seen him write for the last four or five years, was formerly acquainted with his handwriting - (The receipt is shown him) Can't swear that the signature is Plaintiff's handwriting - it resembles Plaintiff's handwriting - Is shown a paper (another signature admitted to be the signature of Plaintiff) thinks that is Plaintiff's handwriting - Some difference between the two both might be his (Plaintiff's) handwriting - think they are both Plaintiff's signatures.

Frederick Kellogg called as a witness on part of Plaintiff to whom the receipt is shown & testified that he was acquainted with handwriting of Plaintiff, had often seen him write and ~~must~~ should think the signature genuine and the handwriting of Plaintiff.

William H. Kellogg being sworn for defendant testified that he is acquainted with Plaintiff's handwriting and had often seen him write and should think the signature to the receipt genuine -

Defendant next introduced William Dixon who testified that he was acquainted with Plaintiff's handwriting and had often seen him write and thinks the signature to the receipt here shown him to be genuine. Plaintiff here showed witness a paper folded so as only to show the signature upon it which purported to be the signature of Plaintiff, and asked him if from this



Knowledge of Plaintiff's handwriting. He believed that signature to be genuine to which he replied in the affirmative, that he had no doubt of the same and that another signature admitted to be that of Plaintiff was not in opinion of witness his handwriting.

Plaintiff then recalled Dixon S. Andrews and showed him the same signature as last above pronounced by said witness Dixon to be genuine and enquired of him as to his belief of the genuineness of the same to which he replied that he believed it to be genuine.

Plaintiff then recalled Moses C. Bartholomew who testified that when he lived with his father (Plaintiff) he had a note against Defendant for ten dollars, knew the state of his father's business at the time and thinks he should have certainly seen the notes sued on if they had been in possession of his father at that time, and that he never saw said notes in his possession that the notes sued on were in Luzerne Bartholomew's possession in 1852 when witness for the first time saw them - that they were written in an account book belonging to Luzerne Bartholomew, when witness saw them having ~~them~~ <sup>them</sup> never been cut out - witness never saw this book or the notes in his father's possession.

J. L. Merriman being called by Plaintiff testified that the signature purporting to be that of Moses C. Bartholomew last shown by Plaintiff to witness Dixon & Andrews as above and pronounced by them to be genuine was written by witness during the progress of the trial.

Defendant called J. S. Kellogg who testified that Betsey Bartholomew was wife of Luzerne Bartholomew and that she was dead - and died in 1845 - This was all the evidence in the case.

The Court then instructed the jury as follows on the part of Plaintiff.

"Plaintiff's instructions"

1. The receipt of Plaintiff Moses C. Bartholomew being denied under oath the burden of proof of the same is upon the Defendant and unless the jury believe that



23  
Given

the preponderance of the evidence is in favor of the genuineness of the signature they will find for the plaintiff upon that issue & will disregard the receipt

Given

2 If the jury believe from the evidence that the receipt pleaded was given and that from the facts and circumstances in evidence before them in case the jury believe that it was not the intention of the parties by the receipt offered in evidence to cut off the notes offered in evidence the jury are at liberty to disregard the receipt -

Given

3 That the fact that the receipt read in evidence (if the jury believe the same was given) is for a much less amount than the notes and that the notes were still left in the hands of the party to whom they were given without explanation, and that said receipt is given by N. D. Bartholomew alone while the notes are made to him for the use and benefit of Peter Bartholomew are all facts proper for the jury to consider in determining the application of the receipt, and if the jury believe from the evidence that the notes were not taken into consideration at the time the receipt was given they will reject the receipt from their consideration.

Given

Given

4. The jury will not consider the receipt given by Luzerne Bartholomew unless <sup>at</sup> the same time they believe from the evidence that at the time such receipt was given Luzerne Bartholomew was the beneficial holder of said notes or authorized to receive payment of the same and that it was the intention of the parties at the same time to include said notes in said receipt

Given

5. That the discrepancy between the amounts specified in the receipts offered and the amount of the notes sued on is proper evidence for the consideration of the jury to show that the notes were not in the contemplation of the parties to the receipts when they were given.



24  
Given

6. In case the jury find for the plaintiff they will assess the damages at the amount due of principal & interest on the notes in evidence.

Given

7. That it is entirely for the jury to determine from the facts and circumstances of the case in evidence what was the intention of the parties in making said receipt and if they believe from the evidence that the intention of the parties was not to settle and adjust said notes by said receipt the jury will disregard the receipt.

Given

The notes being given to plaintiff for the use of Peter Bartholomew was notice to defendant that Peter Bartholomew was the equitable owner of the said notes at the time of the making thereof.

The Court then instructed the Jury on the part of defendant as follows  
"Wyes D. Bartholomew  
vs of Luzerne Bartholomew

Ambrose & Bartholomew

Instructions asked by the

defendant

1st That the receipt of the 23 August 1847, if genuine is prima facie evidence of payment to him of the notes sued on in this suit, provided the notes then belonged to him, or provided the defendant had no notice of the equitable assignment of said notes to any other person, and that the presumption of law is, that the notes belonged to him and remained his property until it is shown by the plaintiff that some other person had an interest in the same and that the defendant had notice of such interest.

Given

2nd That the receipt of May 19th 1848 signed by Luzerne Bartholomew is prima facie evidence that the notes sued on in this case were paid and settled at the date of the said receipt; provided the said Luzerne Bartholomew had

Given



25 Any interest in the said notes at the date of said receipt

Given

3 That Peter Bartholomew has nothing to do with this case, and that no interest of fact or supposed interest can be taken into the consideration of the jury

Given

4 That the several receipts given in evidence except those of 23 Aug. 1847 & 19 May 1848 are only in evidence for the purpose of testing the judgment of the witnesses and the jury are not authorized to consider the same by way of comparison, to determine the genuineness of the receipt of 23 Aug 1847

Given

5 That a receipt in full of all demands is prima facie evidence of a settlement and payment of all notes and claims then existing between the parties and that in this case, if such receipts have been made, the jury will find for the defendant unless the plaintiff has proved to their satisfaction that the notes in question were not included in such settlement and receipt

Given

That if the jury shall believe from the evidence that the notes in suit were given and payable to Noyes & Bartholomew for the use and benefit of Peter Bartholomew and that Peter Bartholomew <sup>was</sup> the ~~agent~~ <sup>agent</sup> of Lazarus Bartholomew and the defendant has paid the notes to Lazarus Bartholomew then the jury will find for the defendant

6th The Affidavit of Noyes & Bartholomew that he did not sign the receipt in question - is no part of the evidence in this cause - and is not proper for the consideration of the jury for any purpose whatever - but the jury are to determine the question of the genuineness of said receipt upon the testimony of the witnesses acquainted with the hand writing of the Plaintiff ~~of the Plaintiff only~~ and should there be a preponderance of evidence in favor of the genuineness of said receipt the jury should so find

Given



to the giving of which instructions on part of defendant the Plaintiff then & there excepted

The jury returned a verdict for defendant - The plaintiff then moved the Court for a new trial of said cause for the reasons following

"Noyes D. Bartholomew  
vs Luzerne Bartholomew  
vs Bartholomew  
Ambrose C. Bartholomew

Circuit Court  
Nov. Term 1857

The Plaintiff in this case moves for a new trial and for cause shows

1<sup>st</sup> The Court admitted improper evidence for the defendant

2<sup>nd</sup> The Court excluded proper evidence offered by the plaintiff.

3. The Court gave erroneous instructions to the jury on the part of the defendant =

4. The verdict of the jury is against law

5. Said verdict is against the evidence in the case.

Merriman, Cooper  
& Reynolds for plff."

Which Motion the Court overruled and rendered judgment in favor of defendant against Plaintiff, to the decision of the Court in overruling said Motion for new trial & in rendering said judgment the plaintiff then & there excepted, and tenders this Bill of Exceptions and prays the Court to sign & seal the same which is done.

C. O. Powell Seal

State of Illinois  
County of Peoria I, Noah P. Hann of  
the Circuit Court in and for the County of Peoria in the State  
of Illinois do hereby certify that the foregoing is a  
true and correct transcript from the files and records  
of my office in a certain cause wherein Noyes D.



Bartholomew for the use of Luzome Bartholomew  
is plaintiff and Ambrose Et Bartholomew is  
plaintiff defendant as the same appear of record  
and on file in my office

In witness whereof I have set my  
hand and affix the Seal of said Court  
at office this twenty fourth day of  
May A. D. one thousand eight hun-  
dred and fifty eight.

And now comes the said plaintiff and says that Manifest  
Error in the record, proceedings & judgment of said Circuit Court  
herein hath intervened to his prejudice in this =

1<sup>st</sup> Said Court Erred in proceeding to try & render judgment  
in said Cause without settling the demurrers of plain-  
tiff to defendant's 3<sup>d</sup> plea, and to the first rejoinder of  
the defendant to plaintiff's 3<sup>d</sup> Replication to defence-  
ant's 4<sup>th</sup> plea =

2<sup>nd</sup> Said Court Erred in admitting improper Evidence  
to the jury, on the part of the defendant =

3<sup>d</sup> Said Court Erred in Excluding proper Evidence offered by  
the plaintiff =

4<sup>th</sup> Said Court Erred in the instructions given to the jury for  
the defendant =

5<sup>th</sup> In Overruling the Motion of said plaintiff for a new  
trial =

6<sup>th</sup> In rendering judgment against the plaintiff & in fa-  
vor of the defendant in said Cause =

Wherefore & for other good & sufficient reasons  
appearing in said Record said plaintiff prays  
that the judgment of said Court herein may be  
set aside, reversed & wholly for naught & entered  
Manning & Merriman  
& Cooper for plaintiff in Error =

The Defendant comes and says there is no Error in  
this Record & prays that the Judgment may be affirmed  
J. C. Pugh  
for defendant



~~Notes~~ D. Bartholomew  
for use of 34

Ambrose C. Bartholomew  
Transcript of Record  
& Assgt of Errors.

Filed March 2, 1852.  
L. Leland  
Clerk

\$8.50 paid by J. H. Cooper,  
C. H. Evans, clk