

No. 13666

# Supreme Court of Illinois

Hunt, et al

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vs.

Wier

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STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 188

Hunt

Wren

1862

1866

Referred

# SUPREME COURT OF ILLINOIS,

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

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William J. Hunt, and  
Edwin T. Hunt,

*Appellants.*

vs.

John B. Wier,

*Appellee.*

APPEAL FROM  
SUPERIOR COURT OF CHICAGO.

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## ABSTRACT OF RECORD.

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Suit upon a note for \$900, dated January 1st, 1860, payable 1st October, 1861, to John R. Hamlin or order, endorsed to Wier. Tried at the January term, A. D. 1862.

Page 9 Defendants plead general issue, and gave notice that at the time of the giving of the note, one C. M. Brown was indebted to Hamlin for a quantity of wood; that it was agreed by Brown and Hamlin that Brown should give this note, executed by himself as principal, and by the Hunts as sureties; that in pursuance of the agreement, the note was written out and handed to the Hunts, and for the sake of convenience, they signed the note, leaving a place for Brown to put his name as principal; that Hamlin got possession of the note by theft, without its being signed by Brown; that it was never delivered by them or Brown, and that they never intended to be bound on the note except as sureties for Brown, and on his executing the same, as principal, of which Hamlin had notice, charges that Wier is not the holder in good faith.

10

Evidence.

- 17        The note, which is in the usual form, except that a line is left for the signature of Brown, showing that Brown was to sign as principal.

Defense.

- 18        **Caleb B. Brown.** Am clerk of Circuit Court, DeKalb county.  
The note was for wood I bought of Hamlin. I was to give two notes,  
19        signed by the Hunts as security, and myself as principal. The contract was that I was either to build a house for Hamlin or pay him the money at specified time. Hamlin drew the notes in March and dated them back to the time the contract was made. I had Wm. T. Hunt sign his name, and I think E. T. Hunt. I put the notes in a drawer until I got ready to finish the contract. I wanted a writing about ~~finishing~~ *building* the house. Hamlin owed me \$60. I wanted it indorsed on them. I put the notes in the drawer, and that is the last I saw of this note. I was to sign the notes as principal before they were delivered. I expected to have a contract drawn before I gave them up; never did give them up.  
20        When Hunt signed the notes he did not want them given up. If I did not build the house he wanted the amount indorsed on what Hamlin owed him and he take the notes. I did not sign the note sued upon as principal. I wanted my contract drawn up, and Hunt objected to delivering the notes unless I built the house. Hunt wanted me to pay him on what Hamlin owed him. I did not deliver the note to Hamlin, or any person for him. I can't say how he came possessed of it. The drawer I have spoken of was in a little desk on the east side of the bank, where I generally did my writing. Hamlin is said to be in California. He left Sycamore in the spring of 1860. I did not know of his having the note before he left; did not think anything about it till after he left, when I looked for it and could not find it. Hamlin was in the bank where said desk was as often as two or three times a day up to the time he left. Besides myself, Hamlin and the Hunts did business in said bank. Each appeared to have his own desk. They rather assigned the desk, where I put the note, to me.

**Cross Examination :**

- 21        I failed in business in 1858; assigned to Wm. J. Hunt about \$30,000

in notes and accounts, besides real estate, and owed about \$30,000; about \$20,000 remained unpaid January 1st, 1860.

22 About \$10,000 was realized from my assets. I spent my time before  
23 the wood contract in settling up; finished up a railroad contract for my  
assignee after I assigned. I have had no property since my assign-  
ment. The wood was sold to the Galena Co. under a contract with  
Waterman & Elwood. The cutting and hauling was done in my own  
24 name. I drew the pay in checks, part payable to me, part to Hunt, per-  
haps all to me. I came in and settled for it myself and deposited the  
money with Adsit, payable to the credit of Hamlin, Hunt & Co. I got  
through cutting in March; can't say if I finished cutting before the note  
was written; am not positive this note was not written in February,  
26 think it was in March; think Hamlin did not give me a bill of sale of  
the wood. I suppose I was so situated that I could not hold property in  
my own name. Hamlin may have left three or four weeks after I  
finished up the wood matter. There were no papers in the drawer be-  
longing to other parties when I put the notes in it.

26 The other note was payable in October, 1860. I put this note in the  
drawer immediately upon its being signed by the Hunts. They signed  
it in the same room; think these were the first notes Hunt signed for  
me after my failure; am not sure. They have never, to my knowledge,  
signed notes for me, without my name appearing as co-maker. I have  
never said this note was signed in such a manner as to leave room for  
the Hunts' signatures. It should have been so. I was to have signed  
it as principal.

**Direct Resumed:**

27 The first note has been paid. I paid it about the time it was due. I  
had the money deposited to the account of Hamlin, Hunt & Co., be-  
cause I owed them. They furnished me money, and credited it to my  
account. The firm of Hamlin, Hunt & Co. was composed of John R.  
Hamlin and E. T. Hunt.

**Plaintiff** moved to exclude evidence of Brown, on account of  
**interest.**

**Motion** overruled by the Court.

**Plaintiff Excepted.**

18        **The Plaintiff** also objected to the reading of the deposition of Brown, on the ground that defendant could not prove, under the issues, the non-delivery of the note, its execution not having been denied under oath.

28        **The Plaintiff** admitted, for the purpose of the trial, that any defense that would be good against Humlin, should be taken as good as against the plaintiff.

**Defendant Rested.**

**Plaintiff** moved to exclude testimony of defendants as tending to show **non-delivery**.

**Court** overruled the motion.

**Plaintiff Excepted.**

29        After the plaintiff's attorney, Tuly, had made his opening argument, and as defendant's attorney, Hurd, was about to address the jury, the plaintiff asked leave to introduce Joseph N. Barker, one of plaintiff's attorneys, as witness, to which the defendants objected.

**The Court** overruled the objection, and defendants excepted.

**Barker** testified: The first of the two notes referred to by the witness, Brown, was sent to Barker & Tuly for collection. I wrote letter to defendants, at Sycamore, that we had the same for collection; and within a few days thereafter, Edwin T. Hunt, defendant, came to my office, in Chicago, and paid me the note; that he said nothing about Brown's connection with the note. We never knew or heard of Brown having anything to do with them till after we received the note sued upon, and made demand of payment.

**This was all the Evidence.**

### Plaintiff's Instructions.

**1.** If the jury believe, from the evidence, that said note was one of two notes, which were at first signed by defendants, for the purpose of being signed by witness Brown, before delivery; and if the jury further believe, from the evidence, that the Hunts knew where the notes were put, and afterwards delivered them to Hamlin, the plaintiff is entitled to recover the amount of note and interest; and that they may take the facts into consideration (if such they believe have been proved by the evidence) that Hunts paid one of said notes without objection; that they knew where the notes were put by Brown, and that the notes were given after the wood was all cut and sold, and proceeds put to the credit of Hamlin, Hunt & Co.; that Brown was insolvent to a large amount; that the notes were given after the wood was cut, and the contract, so far as the building of a house, was abandoned, as circumstances tending to show a subsequent delivering by the Hunts, or one of them.

**2.** If the jury believe, from the evidence, that the note sued on was given in consideration for wood, the proceeds of which went into the hands of the defendants, Hunts, and further believe, that said defendants delivered said note to John R. Hamlin, they will find for the plaintiff. If the jury believe, from the evidence, that said note was executed by said defendants, Hunts, and was delivered by them to John R. Hamlin, that then they will find for the plaintiff.

**3.** If the jury believe, from the evidence, that said note was executed by said defendants, Hunts, to be delivered to John R. Hamlin, in payment of a contract for wood, and further believe that it was delivered by said defendants to John R. Hamlin in payment of that wood contract, that then they will find for the plaintiff.

**4.** The law presumes that the note was delivered to the payee, John R. Hamlin (when produced on the trial of the cause by the plaintiff); and unless that presumption is rebutted by satisfactory proof, the jury will find for the plaintiff.

To the giving of each of which the defendants then and there excepted.

### Defendants' Instructions.

And upon the part of the defendants, the Court gave the following instructions :

If the jury believe, from the evidence, that it was understood between Brown, Hunts & Hamlin, that the defendants should sign the note in question, as sureties, and that Brown was to sign them as principal, and that Hamlin took them without Brown's signature, then, in the absence of proof that the Hunts delivered them, the jury will find for the defendants.

If the jury believe, from the evidence, that the note in question was not delivered to John R. Hamlin, or some one for him, they will find for the defendant.

32 If the jury believe, from the evidence, that C. M. Brown presented the note to the Hunts to sign, as sureties, and they so signed it, and delivered them to Brown, to be afterwards delivered to John R. Hamlin, upon the making of a writing between Brown and Hamlin about building a house, and upon his (Brown) signing the note as principal, and that Brown put the note in his drawer, and did not deliver the same to Hamlin, but that Hamlin got possession of it by taking the same from Brown's drawer without authority, then the jury will find for the defendants.

14 **The Jury** found for the plaintiff, \$1,083.75.

**The Defendants** moved for new trial, and filed the following reasons :

1. The Court erred in giving the plaintiff's instructions.
2. The verdict is against the evidence.
3. Jury misbehaved.
4. Newly discovered testimony.

**The Court**, on 25th January, 1862, overruled the motion for new trial, and the defendants excepted, and took an appeal.

Errors Assigned.

1. The Court erred in giving the plaintiff's instructions.
2. The verdict was contrary to the evidence.
3. The Court erred in overruling the defendant's motion for a new trial.

HURD, BOOTH & POTTER,  
*Attorneys for Appellants.*

*Handwritten notes:*  
Appellants  
Hurd Booth & Potter  
Respondent  
Hurd Booth & Potter  
Appellants  
Hurd Booth & Potter

188-114

Supreme Court

Wm. J. Hunt and  
Edwin J. Hunt  
Appellants

vs.  
John B. Wier  
Appellee

---

Abstract

Filed April 22 - 1862  
L. Lorland  
clerk

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 Sixth day of January in the year of our Lord One Thousand Eight Hundred and Sixty One, 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 H. Higgins }  
Grant Godrich } Judges.

Carlos Hearn Prosecuting Attorney.

Anthony C. Hering Sheriff of Cook County.

Attest, Thomas P. Carter Clerk.

Be it remembered that heretofore to wit, on the Sixteenth Day of October, in the year of our Lord One thousand Eight hundred and Sixty one, there issued out of the office of the Clerk of the Superior Court of Chicago. The Peoples Writ of Summons, which writ with the Sheriffs return thereon endorsed, is in the words and figures as follows to wit,

State of Illinois }  
County of Cook } ss.

The People of the State of Illinois,  
To the Sheriff of said County - Greeting:

We command you that you summon William J. Hunt & Edwin J. Hunt if they shall be found

2  
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 the City of Chicago, in said Cook  
County, on the first Monday of November next, to  
answer unto John P. Heir in a plea of trespass on  
the case on promises, to the damage of said plaintiff  
as he says in the sum of Fifteen 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  
the City of Chicago, in said County,  
this 16<sup>th</sup> day of Oct 1861

Walter Kimball Clerk

Served by reading to the within named Edwin  
Hunt this 17<sup>th</sup> day of Oct 1861. the other defendants  
not found in my County. the 17<sup>th</sup> day of Oct 1861

A. C. Hession Sheriff

By Wm. P. Gray Deputy

Seal

State of Illinois  
County of Cook & Ss.

The People of the State of Illinois,  
To the Sheriff of said County - Greeting:

We Command you that you summon William  
J Hunt & Edwin J Hunt if they shall be found  
in your County, personally to be and appear before  
the Superior Court of Chicago in said Cook County, on  
the first day day of the next term thereof, to be  
holden at the Court House, in the City of Chicago  
in said Cook County, on the first Monday of  
November next, to answer unto John P. Weir in  
a plea of trespass on the case on promises to the  
damage of said plaintiff as he says in the sum  
of Fifteen 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 the City  
of Chicago in said County, this 16<sup>th</sup>  
day of Oct 1861  
Walter Kimball Clerk

Copied  
J. B. Barber  
1861

Seal

Served by reading to the within named Edwin J  
Hunt the 17<sup>th</sup> day of Oct 1861. the other defendant  
not found in any county the 17<sup>th</sup> day of Oct. 1861

Attest  
J. B. Barber Sheriff

By W. P. Gray Deputy.

And afterwards to wit on the Eighteenth day of  
October in the year aforesaid there issued out of  
the Office of the Clerk aforesaid a certain other  
writ of Summons, which summons, with the Sheriff  
return thereon, is in words and figures as follows,

4  
State of Illinois  
County of Cook & S.S.

The People of the State of Illinois,  
To the Sheriff of DeKalb County - Greeting;

We Command you that you summon  
William J. Hunt & Edwin Hunt, if they  
shall be found in your County, personally to be and  
appear before the Superior Court of Chicago in said  
Cook County, on the first day of the next term thereof,  
to be holden at the Court House, in the City of  
Chicago, in said Cook County, on the first Monday  
of November next to answer unto John B. Weir his  
a plea of trespass on the case on premises, to the damage  
of said plaintiff as he says in the sum of Fifteen  
Hundred Dollars, And have you then and  
then 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  
the City of Chicago, in said County,  
this 18<sup>th</sup> day of Oct A.D. 1861.

Walter Kimball Clerk

(Seal)

I have duly served the within summons by  
reading the same to the within named William  
J. Hunt this 19<sup>th</sup> day of October A.D. 1861.

Baldwin Woodruff Sheriff of  
DeKalb Co.

By B. Woodruff Deput Sheriff

And afterwards, to wit on the twentieth fourth day of October, in the year aforesaid, the plaintiff filed herein his Declaration, which is in the words and figures as follows, to wit

Superior Court of Chicago  
Of the November Term AD 1861

State of Illinois }  
County of Cook & S.S.

John P. Stein Plaintiff in  
this suit, by Parker & Sulby his Attorneys, com-  
plains of William J. Hunt and Edwin J. Hunt  
Defendants who are summoned by a plea of  
trespass on the case on promises: For that whereas  
the said Defendants heretofore, to wit on the first  
day of January in the year of our Lord one  
thousand eight hundred and sixty at Sycamore  
to wit, at said County of Cook made their  
certain Promissory note in writing, bearing  
date the day and year aforesaid, and then  
and there delivered the same to J. R. Hamilton  
in and by which said note said Defendant by  
the name style and description of ~~William J.~~  
Hunt and E. J. Hunt promised to pay to the  
order of the said J. R. Hamilton on or before  
the first day of October AD 1861 the sum of Nine  
hundred dollars with interest at the rate of ten  
per cent per annum from & after the first day  
July next (meaning after the date of said note)  
for value received, And the said J. R. Hamilton  
to whom or to whose order said note was payable,  
afterwards, to wit on the day and year aforesaid,  
at Sycamore that is to say, at the County of

6  
book aforesaid, endorsed said note in writing,  
by which said endorsement the said J. R. Baffin  
then and there ordered and appointed the  
said sum of money in said note mentioned  
to be paid to said John P. Weir, and then  
and there delivered said note so endorsed to the  
said John P. Weir.

By means whereof, and by force of the  
Statute in such case made and provided, the  
said Defendants became liable to pay said  
Plaintiff said sum of money mentioned in  
said note, and being so liable, in consideration  
thereof, then and there undertook and promised  
to pay the same to the said Plaintiff according  
to the tenor and effect of the said note and of  
the endorsement aforesaid, to wit, at the place  
aforesaid.

And Whereas, also, the said Defendants,  
afterwards, to wit, on the tenth day of October in  
the year of our Lord one thousand eight hundred  
and sixty one, to wit as said County became  
and were indebted unto the said Plaintiff in  
a large sum of money to wit, the sum of  
fifteen hundred dollars, for money before that  
time lent and advanced to said Defendants  
by said Plaintiff at said Defendants request,  
and also in the like sum for money before  
that time paid, laid out and expended for  
said Defendants by said Plaintiff, at the like  
special request of said defendants, and in  
the like sum for money before that time had  
and received by said Defendants to and for  
the use of said plaintiff, and also in the  
like sum, for goods, wares and merchandise,

before that time sold and delivered by said Plaintiff to said Defendants, and at the like special instance and request, and also in the like sum for the labor, care and diligence of said Plaintiff before that time done and performed by said Plaintiff for said Defendants, and at the like instance and request of said Defendants, and also in the like sum, then and there found to be due and owing to said Plaintiff on an account stated between them; and being so indebted, said Defendants in consideration thereof, then and there undertook and promised to pay said Plaintiff said several sums of money above mentioned, when thereunto afterwards requested.

(Yet the said Defendants not regarding their said promises and undertakings, but continuing &c, although often requested so to do, have not paid said Plaintiff either of said sums of money above mentioned, or any part thereof, but so to do have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of said Plaintiff of fifteen hundred Dollars, and therefore he brings this suit &c

Parker & Selig.

Plaintiff Attorneys.

Copy of Instrument and Account paid on  
p. 900.

Sycamore June 1. 1860

Now or before the first day of October 1861 we or either of us promise to pay to the order of J. R. Hamilton nine hundred dollars with interest at the rate of ten per cent per

annum from & after the first day of July next -  
Value received

Wm J Hunt  
E J Hunt

Enclosed

"Pay to the order of J R Weir  
J R Hamilton"

Wm J Hunt & E J Hunt  
To John R Weir J.

To Money lent and advanced.	\$1500
To Money paid, laid out, and expended	\$1500
To Money had and received to and for the use of said Plaintiff	\$1500
To goods, Wares and Merchandise sold and delivered	\$1500
To Labor and Services.	\$1500
To Balance due on account stated	\$1500

Notice is hereby given that we rely solely upon  
the above note as our cause of action  
Barker & Sulley.

And afterwards to wit on the sixth day of November  
in the year aforesaid the defendants filed herein  
their certain Pleas and affidavit of merits in words  
and figures as follows to wit

Superior Court of Chicago  
November Term 1851

John R Weir  
vs  
William J Hunt  
& Edward J Hunt

And now come the

said defendants by Harry B. Hurd their Attorney  
and defends the wrong and injury when & c  
and say that they did not undertake and  
promise in manner and form as in the said  
plaintiffs said declaration mentioned, and this  
they pray may be enquired of by the Country &c

& the Jff doth the like

Barker & Tully

Jff attys

W B Hurd  
Atty for defts

To John R. Wier plaintiff in the above  
entitled cause,

Please to take notice that upon  
the trial of this cause the said defendants will  
insist and prove in defence, that at or before the  
time the supposed note in the said declaration  
mentioned bears date one to M Brown. was  
indebted to the said John R. Hamlin for a quantity  
of wood bought by said Brown of said Hamlin,  
that it was arranged and agreed by said Brown  
& Hamlin that the said Brown should give,  
and the said Hamlin received in part payment  
for said indebtedness a note of the amount, date  
and time of payment mentioned in said supposed  
note executed by himself as principle, and by  
the said defendants as sureties, that in fur-  
-suance of said agreement the said supposed  
note was written out and handed to these de-  
-fendants and for the sake of convenience these  
defendants signed the same leaving a place for  
the said Brown to put his name as principle  
thereto, and for a time held the same in their  
possession for the purpose of having the said

Brown being  
he put their  
names in his  
possession

0  
Prove to execute the same, that the said John  
R Hamlin occupied the same office then  
occupied by said defendant C. I. Hunt who had  
the possession of said note, as aforesaid, and was  
then in partnership with said C. I. Hunt. That  
soon after the signing of said Note by these  
defendants for the purpose aforesaid, the same  
was taken from the possession of said C. I. Hunt  
without his assent or knowledge, and without the  
assent or knowledge of either of said defendants  
and that at the time it was so taken the same  
had not been signed by said Brown, and that  
these defendants never made or delivered the  
said supposed note as their note and never  
intended to be bound on said note except as  
sureties and then only in case the same was  
duly executed by Brown as principal as aforesaid  
of all of which, the said John <sup>R Hamlin</sup> had notice.

And these defendants will further prove that  
the said plaintiff is not the holder of said note  
in good faith, but that the same is still in  
fact the property of the said John R Hamlin.

And the said defendants will further  
prove and insist upon the trial of the above  
entitled cause that at the time of the bringing of  
this suit, and for a long time before, the said  
John R Hamlin was and that he still is, justly  
indebted to the said defendants in a large sum,  
to wit the sum of Two Thousand Dollars for money  
paid laid out, and expended for the said John  
R Hamlin at his special instance and request  
and in the like sum for <sup>upon</sup> his promissory note  
bearing date the 5<sup>th</sup> day of June A.D. 1857. for

the sum of One Thousand Dollars payable to Charles B. Clark or order with interest at the rate of ten per cent payable semi annually with exchange on New York City, and duly assigned to the said defendant. And that the <sup>said</sup> plaintiff is not the bona fide holder of said note but that the same is assigned to him for the purpose of defrauding these defendants, and without any valuable consideration paid by the said plaintiff. And the said defendants are ready and willing to set off so much of the aforesaid indebtedness of said Hamilton to them as will be sufficient to balance the amount of the said supposed note and interest mentioned in the said plaintiff declaration, if the same shall be found due and owing from them in manner and form as the said plaintiff hath alleged.

H. B. Beard

Atty for Defts

Copy of Note to be set-off.

\$1000. <sup>00</sup>/<sub>100</sub> Chicago June 5<sup>th</sup> 1857  
Five years after date for value received, I promise to pay Charles B. Clark or order One Thousand Dollars with interest at ten per cent payable at the office of Present Agent Chicago. The interest to be paid semi-annually to wit on the 5<sup>th</sup> day of Dec and June in each year with exchange on New York City. This note is for borrowed money and the whole is to become due on any failure to pay the interest at the time specified.  
(signed) J. R. Hamilton

Endorsed  
William Briggs. Charles B. Clark  
O J Hunt

H P Hard  
Attorney for Deft.

State of Illinois }  
Cook County }  
Superior Court of Chicago  
Nov. Term A.D. 1861.

John P. Mier }  
vs. }  
Wm J Hunt & }  
Edwin J Hunt }

State of Illinois  
De Kalb County ss.

Edwin J Hunt being duly sworn  
deposes and says that the said defendants  
of which he is one have a good defense  
in said cause upon the merits thereof  
O J Hunt

Subscribed & sworn to  
before me this 4<sup>th</sup> day of  
Nov A.D. 1861.

P M Alden  
Notary Public

(100)

And afterwards to wit on the fifteenth  
day of January in the year Eighteen hundred  
and Sixty two, said day being one of the days  
of the January term of said Court. the following  
among other proceedings was had in said Court  
and entered of Records, to wit.

John B. Keir

vs. Appraisit

William J. Hunt and  
Edwin T. Hunt.

This cause being this day called  
for trial comes said plaintiff by Charles Tuley  
his attorney, and the said defendants by H. B. Ward  
their Attorney also come, and issues being joined  
therein, it is ordered that a Jury come, whereupon  
come the jury of good and lawful men to wit,  
A. Jewell, Joseph Hale, Edward Langley, O. Bushnell,  
Joseph M<sup>c</sup> Chesney, Henry Ritter, Gerrit Elfrink,  
Leonard Peche, D. G. Mason, William Spordeler, Herman  
Heinsch, and Samuel Webb, 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, retire to consider of their  
verdict, and the hour of adjournment having arrived  
it is ordered upon agreement of the parties that when  
the jury shall have agreed upon a verdict, they  
shall reduce the same to writing, sign and seal the  
same, and afterwards separate, and meet the Court  
the morrow morning.

And afterwards, to wit, on the sixteenth day of January in the year aforesaid, said day still being of the January term of said Court, the following among other proceedings was had and entered of Record in said Court to wit,

John B. Meir

vs.

Spencer

William J. Hunt and  
Edwin F. Hunt.

This day again comes said Plaintiff by Parker and Tuley his Attorneys, and said defendants by H. B. Gould their Attorney also come and the jury empanelled herein on yesterday for the trial of said cause also come and submit their verdict and say that the jury find issue for said plaintiff and assess his damages herein against both of said defendants to the sum of One thousand and eighty three dollars and seventy five cents. And thereupon said defendants submit their motion herein for a new trial in said cause

And afterwards to wit on the twenty fifth day of January in the year aforesaid, said day still being of the January term of said Court, the following among other proceedings, was had and entered of Record in said Court to wit

John P. Kerr

vs.

Assumpsit

William J. Hunt and  
Edwin J. Hunt

This day again comes said plaintiff by Parker & Tuley his attorneys, and said defendants by H. P. Board their attorney also come, and this cause coming on now to be heard upon the motion of said defendants heretofore submitted herein at the present term of this court for a new trial in said cause, and counsel being heard thereon, and the Court being fully advised in the premises, is of the opinion that the reasons filed by said defendants in support of their said motion for a new trial are insufficient to support the same the defendants said motion for a new trial in said cause is therefore hereby overruled, to which ruling of the Court said defendants except and thereupon inter their exceptions herein to the ruling of the Court in overruling their said motion for a new trial,

Wherefore said plaintiff ought to have judgment for his damages upon the Verdict of the jury rendered herein as aforesaid

Therefore it is considered that the said plaintiff do have and receive of and from said defendants his damages of One thousand and Eighty three dollars and seventy five cents in form aforesaid by the jury here found and assessed, and also his costs and charges in this behalf expended and have execution therefor.

And thereupon said defendants having inter their exceptions pray an appeal herein to the Supreme Court of this State from the judgment of this Court, which is allowed to them upon filing their

Appeal bond in the penalty of sixteen hundred dollars with security to be approved by a judge of this Court within twenty days from this day and with their bill of exceptions to be filed within      days from this day

And afterwards, to wit on the Eleventh day of February in the year aforesaid, the defendants filed herein their Bill of Exceptions and Appeal Bonds, which are in the words and figures as follows. to wit.

John B Weir

<sup>vs.</sup>  
William J Hunt  
Edwin T Hunt

Be it Remembered that on the day of January AD 1862. that being one of the days of said Court, this cause came on for trial upon the issues therein joined before the Hon<sup>ble</sup> Grant Goodrich one of the Judges of said Court and a jury of twelve men And thereupon on his part the plaintiff gave in evidence and read to the jury a note in words and figures following to wit & of which the following is a fac simile

\$900<sup>00</sup>      Sycamore Janry 1. 1860  
On or before the first day of October AD 1861. He or either of us promise to pay to the Order of J. R. Hamilton Nine Hundred Dollars with interest at the rate of ten per cent per annum from & after the first day of July next Value Received

Wm J Hunt  
E T Hunt

(Enclosure)

Pay to the order of  
J B Weir  
J R Hamilton  
J. B Weir

And thereupon the plaintiff rested, and the said defendants to maintain the issues on their part offered to read in evidence the deposition of Leabel M Brown, whereupon the plaintiff objected by their Counsel

upon the ground that the said deposition was in evidence tending to show the non delivery of the note, <sup>in question and that the same delivery of the note</sup> could not prove under the issues in this cause, the defendant nor either of them having filed an affidavit of the non execution of the note sued upon, which objection the Court overruled and plaintiff excepted -

And thereupon the Court permitted the said deposition which is as follows, to be read

Int. 1<sup>st</sup>. What is your age, Occupation, and where do you reside? Do you know the parties to this suit Plaintiff & Defendants, and John R. Scamlin, and how long have you known each respectively, and do you know the note in suit.

Answer

My age is Forty three years, and Clerk of the Circuit Court of De Kalb County, residence Sycamore in said County, I know all the parties except the plaintiff. Have known William J. Hunt since I can remember, have known C. J. Hunt since his birth and have known Scamlin about sixteen years, I know of such a note as the one copied on the declaration.

Int. 2<sup>nd</sup>

What was the consideration of said note, State all you know about the note,

(Question objected to by plff atty)

Ans.

The consideration was for Wood which I bought of John R. Scamlin standing on thirty one acres of land in De Kalb County, I made the contract about the first of January for

the Wood - I was to give him two notes signed by William J Hunt and C J Hunt as security. We were all to sign the notes. The Contract was that I was either to build him a house or pay him the money at a specific time. I believe Mr Kaunlin drew up the notes. Sometime in March & dated the notes the time the contract was made, I had W J Hunt put his name on. and I think C J Hunt, I put the notes in a drawer until I got ready to finish the contract. I wanted a writing about building the house, Kaunlin was owing me about Fifty or Sixty dollars, and I wanted to endorse that on it. I put the note in the drawer and that is the last I saw of it, this note -

(Answer objected to by Plff Atty)

Int. 3<sup>rd</sup> Has there any thing further to be done between the Hunts or either of them and Kaunlin or yourself before the notes were to be delivered to Kaunlin, if so what,

(Question objected to by Plff as leading & irrelevant)

Answer I was to sign the notes,

Int 4<sup>th</sup> In what capacity were you to sign them,  
(Objected to by Plff Atty)

Ans I was to sign them as principal

Int. 5 - Was any thing else to be done?

Ans I expected to have a contract drawn before I gave them up, I never did give them up.

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accounts. besides Real Estate, and owed about thirty thousand dollars.

Cross.

Int. 2<sup>d</sup>

State as near as you can how much of that thirty thousand dollars indebtedness remained unpaid on the first of January 1860. and how much now remains unpaid,

Ans.

About twenty thousand dollars remained unpaid on 1<sup>st</sup> January 1860. and now remains unpaid

Cross

Int. 3<sup>d</sup>

Then from the assets assigned there was realized about Ten thousand dollars was there not?

Ans.

About that sum, it might be left.

Cross

Int. 4<sup>th</sup>

What business were you engaged in from the time of your assignment up to the time of making the contract for the wood,

Ans.

I spent about all my time in settling up my Estate,

Cross

Int. 5<sup>th</sup>

Did you not speculate during that time, or buy or sell anything,

Ans.

Not of any consequence, I took a contract for building a Rail Road previous to my assignment & finished it afterwards,

Cross

Int. 6<sup>th</sup>

Then you afterwards finished it in the name of your Assignee did you not?

Ans.

The contract was put into my assignment, and

the assignee finished it. I did the business, I superintended the work.

Cross  
Int. 7<sup>th</sup>

Did you or not carry on all business in which you were engaged during that time, in or under the name of your assignee or of the two Agents.

Ans.

I did not carry on any business during that time except to finish my Contract, and what pertained to my assigned estate.

Cross

Int. 8

Did you have or hold any property of any kind subsequent to your Assignment in your own name. If so when and what property.

Ans.

I have no recollection of any.

Cross

Int 9

For what purpose was the wood bought your paper to.

Ans.

I thought I could make something out of it.

Cross

Int. 10

Where was it sold

Ans.

To the Galena Company. I cut it & had it hauled

Cross Int. 11

In whose name did you have the Cutting & hauling done & in whose name did you sell it, draw the pay, and deposit the money, if you deposited it.

Ans

The Wood was sold by Watterman and Elwood of Sycamore. the Cutting & hauling was done in my own name, I got Check I believe payable part to me & part to Hunt perhaps all to me I came in & settled it myself

22

and deposited the money with Adsit to the credit of Hamlin & Co. & Company. I commenced cutting right away after making the contract. Waltham & Elwood had the contract for furnishing the Boling Company & I put my Wood in under this contract.

Cross

Int. 12 Did you superintend the cutting & hauling of the Wood yourself?

Ans. I did. I was there once or twice a day & had men employed.

Cross

Int. 13 When did you get through cutting the Wood?

Ans. Sometime in March I believe.

Cross. Int. 14 Did you finish cutting the Wood before or after the note was written?

Ans. I cannot say.

Cross

Int. 15 Are you positive the note was written in February or March?

Ans. I cannot say. I think it was in March.

Cross

Int. 16 Did Hamlin give any bill of sale of the Wood or deed of the Wood land at the making of the contract or at any time afterwards to you?

Ans. I should think not.

Cross

Int. 17 Were you not in such a condition as to your

pecuniary affairs at the time of making this contract that you could not with safety own any property in your own name or engage in business in your own name,

Ans. I suppose I was. I suppose if they levied on the Wood they would have got about half of it

Cross  
Int. 18 What business were you engaged in from the time you got through cutting the Wood until Hamlin left Sycamore.

Ans I was engaged in settling up my own estate, & have been for two or three years.

Cross  
Int. 19 About how long after you finished up the Wood matter was it until Hamlin left.

Ans I can't say, It may have been three or four Weeks. More or less.

Cross  
Int. 20 In this drawer where you put this note were there not other papers belonging to other parties,

Ans I think the drawer was empty, before I put the notes in it

Cross  
Int. 21 When was the other of the two notes you speak of payable

Ans. In the fall of 1860. October I think,

Cross  
Int. 22 Did you put this note in the drawer immediately upon its being signed by the Hents,  
(23)

24  
Ans.

Yes Sir,

Cross

Int. 23

Where did they sign it.

Ans

I think they signed it in the Bank in the same Room

Cross

Int. 24

Were these the first Notes W. Hunt or either of the Hunts signed for you subsequent to your failure.

Ans.

I think they were, but am not sure. I never asked them to sign a note but what they did it

Cross

Int. 25<sup>th</sup>

Have they not signed other notes for you without your name appearing as a co-maker?

Ans

They were none to my knowledge

Cross

Int. 26<sup>th</sup>

Did or did you ever state to any person in regard to this note that it was signed by the Hunts in such a manner as to leave room between the Note & their signatures for your own name

Ans

I don't recollect of saying so - It should have been so. I was to have signed it as principal,

Cross

Int. 27

Whenever they have signed notes as surety for you has not your name appeared first on the note as first signer.

Ans

I should think it did, that is my impression

Caleb W Brown  
Subscribed & sworn to  
before me this 16<sup>th</sup> day  
of Dec. 1861.  
Thos B. Carter Clk

Direct Examination Resumed

Int. 11 Has the first of the two notes been paid, and if  
so by whom

Question objected to by Plff.

Ans It has, I paid it, about the time it was due

Int. 12 Why did you have money which you say was deposited  
with Hunt to account of Hamilton Hunt & Co. so  
deposited.

Question objected to by Plaintiff

Ans. Because I owed them, they furnished me money,  
The Bank credited it to my account with Hamilton  
Hunt & Co.

Answer objected to by Plff.

Int. 13 Who composed the firm of Hamilton Hunt & Co.

Ans. John R Hamilton & C. J. Hunt, do not know  
whether they had anybody else with them or not.

Cross Examination Resumed

Ans Det 28<sup>th</sup> How long after Mr. Hamilton left the Country  
did Mr. Hunt continue the business under the  
name of Hamilton Hunt & Company.

I cannot say, my impression is entire Fall  
C. W. Brown

Subscribed & sworn to before  
me this 16<sup>th</sup> day of Dec 1861  
Thos. B. Carter clk

State of Missouri,  
Cocke County J. C.

And upon the reading of the  
interrogatories in chief the plaintiff moved the  
Court to exclude the evidence of said Brown &  
and said deposition upon the ground that the evidence  
of said Brown showed him to be an interested  
witness. Which motion the said Court overruled  
and plaintiff thereupon excepted. The said  
defendant then offered to prove that said note  
was transferred to plaintiff without consideration  
and for the purpose of suing upon it in plaintiff's  
name whereupon plaintiff admitted. That for  
the purpose of this trial only any defence that  
would be good against said Hamilton payee  
should be taken & considered as good against the  
plaintiff on this trial. Whereupon the said  
defendant rested their defence and thereupon  
the said plaintiff moved the Court to exclude  
from the jury all the testimony of defendants  
tending to show a non delivery of the note sued  
upon in this suit, upon the ground that the same  
was inadmissible under the issues in the case  
which motion the Court overruled and plaintiff  
excepted.

The plaintiff's Attorney M. J. Tuley made  
his opening argument to the jury and upon  
closing the same and as the Attorney C. B. Ward

for defendants was about the address the jury,  
the said Mr. Tuley asked leave of the Court to  
introduce the Witness Joseph A. Barker, one of the  
Attorneys for the Plaintiff to prove the payment by  
defendant of the first of the two notes. Testified to  
by said Brown upon the ground that it was a  
mere omission & forgetfulness of Plaintiff's Counsel  
in not introducing the said witness sooner;  
the Attorney for Defendant objected to the intro-  
-duction of said witness upon the ground that the  
evidence was not offered in proper time; which  
objection the Court overruled and permitted the  
said witness to be sworn (with the right to defend-  
-ant to introduce any further testimony) to which  
decision of the Court overruling said objection  
the defendant then and there excepted.

Whereupon said Joseph A. Barker was  
duly sworn and testified that the first of the two  
notes referred to by Witness Brown was sent to  
the office of Parke & Tuley for collection - Witness  
wrote a letter to defendants at Syracuse that  
he had the same for collection and that within  
a few days thereafter Edwin S. Hunt defendant  
came to witness' office in Chicago and paid  
me the note that said Edwin S. Hunt said  
nothing about the witness Brown's connection  
with the said note and that the said firm never  
knew or heard of said Brown having anything  
to do with the said note or the consideration  
thereof until after the second note was received  
and payment demanded -

That the first note was received by said  
firm about the time it became due and was  
paid in October last -

The foregoing is all the testimony upon either side given at the trial of said cause  
 Whereupon after the argument of Counsel the Court gave the following instructions on the part of plaintiff

If the jury believe from the evidence that said Note was one of two notes which were at first signed by Defts for the purpose of being signed by Witness Brown before delivery, and if the jury further believe from the evidence that the Hunts knew where the notes were put and afterwards delivered them to Hamlin the plaintiff is entitled to recover the amt of note and interest and that they may take the facts into consideration (if such they believe have been proved by the evidence) that Hunts paid one of said notes without objection - that they knew where the notes were put by Brown and that the notes were given after the Wood was all cut and sold and proceeds put to the credit of Hamlin Hunt & Co. That Brown was insolvent to a large amount - That the notes were given after the wood was cut & the contract so as far as the building a house was abandoned as circumstances tending to show a subsequent delivery by the Hunts or one of them

If the jury believe from the evidence that the note sued on was given in consideration for wood the proceeds of which went into the hands of the defendants - Hunts and further believe that said defendants delivered said Note to John Hamlin they will find for the plaintiff

given  
If the jury believe from the evidence that said note was executed by said defendants Beents and was delivered by them to John A Hamlin that then they will find for the plaintiff

given  
If the jury believe from the evidence that said note was executed by said defendants Beent to be delivered to John A Hamlin in payment of a contract for wood - and further believe that it was delivered by said defendants to John A Hamlin in payment of that Wood Contract that then they will find for the plaintiff

given  
The Law presumes that the note was delivered to the payee John A Hamlin (when produced on the trial of the cause by the plaintiff) and unless that presumption is rebutted by satisfactory proof the jury will find for plaintiff

to the giving of each of which the defendant then & there excepted.

And upon the part of the defendants the Court gave the following instructions

given  
If the jury believe from the evidence that it was understood between Brown Beents & Hamlin that the defendants should sign the note in question as sureties & that Brown was to sign them as principal & that Hamlin took them without Brown's signature then in the absence of proof that the Beents delivered them the jury will find for the defendants.

29  
If the jury believe from the evidence that the

Note in question was not delivered to John R. Scamlin or some one for him, they will find for the defendants.

If the jury believe from the evidence that C. W. Brown presented the notes to the Counts to sign as sureties & they so signed it and delivered them to Brown to be afterwards delivered down to Board to be to John R. Scamlin upon the making of a writing between Brown & Scamlin about building a house & upon his Brown signing the note as principal & that Brown put the note in his drawer & did not deliver the same to Scamlin, but that Scamlin got possession of it by taking the same from said Browns drawer without authority then the jury will find for the defendants.

The jury thereupon retired and afterwards returned into Court their verdict in favor of the plaintiff for the sum of \$

Whereupon the defendants moved the Court for a new trial & filed the following reasons

1<sup>st</sup> The Court erred in giving the plaintiff instructions

2<sup>nd</sup> The Verdict is against the evidence

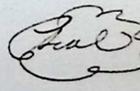
3<sup>rd</sup> The jury misbehaved after they retired to consider their verdict & before rendering the same

4<sup>th</sup> The defendants have discovered new testimony material to the issue & not cumulative

H B Ward

Atty for deft.

And afterwards on the twenty fifth day of January  
1862 the Court overruled the said motion for  
new trial & rendered final judgment upon said  
Verdict for said plaintiff for the amount of the  
same. to the overruling of which motion & the rendering  
of said judgment the said defendants then  
there excepted & prayed an appeal to the Supreme  
Court of said State, which was granted upon the  
said defendants filing their bond with sufficient  
security to be approved by the Court. in the sum of  
fifteen hundred dollars & twenty days was then and  
there given to file said bond & their Bill of exceptions  
Witness the hand and seal of the said Grant  
Goodrich Judge as aforesaid this            day of  
February 1862

Grant Goodrich 

Know All Men by these presents, That we  
William J Hunt and Edwin J Hunt  
principal and Henry L Boies William H  
Beavers James C Elmwood surety of the County  
of DeKalb in the State of Illinois are held  
and firmly bound unto John P Wier in the  
penal sum of six teen hundred (\$1600.) 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 admin-  
istrators, jointly, severally and firmly by these  
presents.

Witness our hands and seals this Tenth  
day of February A.D. 1862

The condition of the above obligation  
is such, that whereas the said John P Wier  
did on the twenty fifth day of January A.D. 1862  
in the Superior Court of Chicago in the County of  
Cook render a judgment against the above  
bounden William J Hunt and Edwin J Hunt  
for the sum of One thousand and Eighty three  
and 75/100 (\$1083.75) Dollars from which judgment  
the said William J Hunt and Edwin J Hunt  
have taken appeal to the Supreme Court of the State  
of Illinois, Now if the said William J Hunt and  
Edwin J Hunt shall prosecute this appeal with  
effect, and in case the said judgment shall be  
affirmed, shall pay said judgment together  
with all costs, interest and damages then the  
above obligation to be void, otherwise to remain  
in full force and effect.

William J Hunt Seal  
Edwin J Hunt Seal  
H L Boies Seal  
William H Beavers Seal

J. C. Ellwood Seal

Approved by the Court.

this 11<sup>th</sup> day of February  
1882

Grant Goodrich Judge  
of Superior Court of Chicago.

State of Illinois  
County of Cook } S.S.

I, Thomas B. Carter, Clerk  
of the Superior Court of Chicago within and for  
the County and State aforesaid, do here by certify  
that that above and foregoing is a full, true and  
complete transcript of all the Pleadings on file  
in my office and of all orders, and judgment  
entered of Record in said Court, together with the  
Bill of Exceptions and Appeal Bond in a certain  
suit wherein John P. Hein is plaintiff, William  
J. Hensat and Edwin J. Hunt are defendants.

In testimony whereof I hereunto  
subscribe my name and affix the  
Seal of said Court, at the City of  
Chicago in said County, this 20<sup>th</sup>  
day of March 1882

Thomas B. Carter Clerk



William J. Hunt &  
Edison J. Hunt

Supreme Court of Illinois  
April Term AD 1862

v  
John B. Weir

And now come the said appellants by Hunt Booth & Porter and say there is manifest error in the foregoing judgment & record in this

1<sup>st</sup> The Court erred in giving the instructions of the plaintiff below

2<sup>nd</sup> The verdict was contrary to the evidence

3<sup>rd</sup> The Court erred in overruling the defendants' motion for a new trial  
Hunt Booth & Porter  
Attorneys for Appellants.

Now comes the said appellee by Barker & Tuley his attorneys and joins in prayer and says that there is no error in said record

Barker & Tuley  
for appellee

188  
William J. Hunt  
vs  
John B. Wier  
Record

Filed April 22 1862  
L. Leland  
Clerk

Fee \$8.00