

No. 13587

Supreme Court of Illinois

Austin

vs.

Lott

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

1852
No. 29

1862

Austin

vs
Lott

13587

Prepared

STATE OF ILLINOIS,--SUPREME COURT.

THIRD GRAND DIVISION--APRIL TERM, 1861.

CORNELIA AUSTIN, Administratrix of
 J. M. AUSTIN, deceased,
vs.
 LEWIS P. LOTT. } Appeal from Grundy County Court.

BRIEF AND POINTS OF APPELLEE.

This was a judgment by *cognovit* in Assumpsit in favor of the appellee in this court, entered in vacation on the 4th of December, 1858, on a promissory note with power of Attorney for confessing judgment in the usual form. The note was made payable to D. G. Frary or order by George Jones, in the sum of \$75, dated February 18, 1858, and due December 1, 1858, with ten per cent interest, and endorsed by D. G. Frary. The power of attorney provided for entering up with the judgment \$10 attorney's fees.

Judgment was entered for \$93, being an error of \$2 05 too much.

Execution issued at the date of the judgment, and was returned by the Sheriff *nulla bona*, the defendants refused to turn out property.

Alias execution issued Oct. 15th, 1859, and was levied on a lot of corn of defendant, Austin, on the 24th day of October, 1859, which was advertised for sale November 20, 1859.

Austin died on or about the 18th of Nov., 1859.

The appellant, his widow, was appointed Administratrix of his estate.

Execution was stayed by the judge of the County Court, Nov. 25th, 1859, on the affidavit of W. T. Hopkins, the attorney for the administratrix. The application was *ex parte*.

At the December term of the court, 1859, a motion was made by the said administratrix through her attorney to set aside the judgment and execution. Motion denied; and the Court ordered \$2 07, being the error in the amount of the judgment to be endorsed by the Sheriff on the Execution.

Appeal taken by the administratrix to this Court.

The appellee, among other things, relies upon the following points, to sustain the ruling of the court below in refusing to set aside the judgment and execution, &c.,

No notice was given the plaintiff in the court below of the intended motion to set aside the judgment and execution. The motion was made without such notice; such notice being necessary. *Ryder vs. Twiss* 3, *Scam.* 5; *Sears vs. Low* 2, *Gilm.* 281; *Dazy vs. Orr* 1, *Scam.* 535.

The staying of the execution does not operate as such notice, as the proceeding was *ex parte*, and the affidavit on which the motion staying the execution was made, asked that the same might be stayed only to give the opportunity to make such motion, without stating that such motion would be made, or the time when, &c.

The administratrix could not make the motion. She was not a party to the suit. So far as the Record shows she was an entire stranger to it. No steps were taken to make her a party, even if she could have been made a party at that stage of the case. The execution lien had become absolute on the property, and as administratrix she had no interest except it may have been in any surplus after sale and satisfaction of the execution. *In re Summers et ux Guardians &c.* 25 Ill 391

This motion come too late. Nearly a year, and four terms of the court had elapsed since the rendition of the judgment. The Sheriff's return to the first execution, that the "defendants refused to turn out property," shows very clearly that the defendant Austin had actual knowledge of the judgment and execution, and he also permitted the alias execution to be levied without interposing any objection and did not at all in his life time. He may from these facts, be well presumed to have waived any objections to the judgment and execution. He should have availed himself of the first reasonable moment to correct any such errors. *Ryder vs. Twiss* 3, *Scam.* 5.

A power of attorney to confess a judgment need not be under seal. *Truett vs Wainright* 4, *Gilm.* 417.

Courts of law may exercise an equitable jurisdiction over judgments by confession. *Frazer vs. Frazer* 9, *Johns.* 80; *Wintingham vs. Wintingham*, 20 *Johns.* 296; *Barrow vs. Bispham* 6, *Halstead* 110; *Brinkerhoof vs. Marvin* 5, *Johns. C. R.* 320; *Lake vs. Cook* 15, *Ills* 356. The excess of the judgment was abated, and no substantial injury results.

The execution of the power of attorney for confession of the judgment is not denied. The affidavit on which the motion to set aside the judgment and execution was predicated, admits its execution. This affidavit is embodied in the appellants bill of exceptions. No substantial injury is therefore complained of in this particular, but the evident intention of the power of attorney has alone been carried into effect. The objection therefore becomes merely technical.

When judgment too large may be remitted Phillips vs. Nichols 3 Blackf. 133. Johnson vs. Hunkins 2 Blackf. 459.

J. W. NEWPORT, Attorney for Appellee.

81 29

Austin

vs

Lutt

~~Atkins~~

Points of Appellee

Filed Apr. 29 - 1841

G. Ireland

Colver

Lewis P. Lott } In County Court
George Jones } Dec. Term 1859
J. M. Austin }
& Steward Jones } On Motion of Cornelia
Austin adm^r to vacate
Judgment & ex^e.

And afterwards to wit on
the 6th day of December AD 1859
being a day in Term of the said
County Court the Hon Calph
Grant County Judge of the said
County of Grundy Presiding in
said Court, comes Cornelia
Austin as the administratrix
of J. M. Austin one of the defendants
^{in this suit}
and now deceased, by Wmth Hopkins
her attorney and now moves the
said Court to vacate the Judgment
rendered in this suit at the Dec-
-ember Term of 1858 of this Court
for the sum of ninety three dollars
ditto and damages and the costs
of suit, and also to set aside and
vacate ^{& recall} an execution issued
thereon and now in the hands
of our Sheriff of said County of
Grundy for the following among
other causes:

That the said Judgment was

rendered upon the confession
and confession of John B. Armstrong
by one of the attorneys of this Court
as the attorney appearing for and
on behalf of said defendants,
upon a promissory note of which
the following is a copy

"\$75⁰⁰ Morris Ills Feb 15th 1858
On or before the first of December of the
date, we the subscribers of the County
of Grundy State of Illinois promise
to pay to D. G. Gray or order seventy
five dollars for value received
with interest at ten per cent

George Jones

J. M. Austin

Steward Jones"

endorsed "D. G. Gray"

and the following is a copy of
the paper purporting to be a power
of attorney, upon which the said
John B. Armstrong assumed to appear
on the part of the said Defendants
and confess the said judgment.

"Know all men by these presents
that we the subscribers are justly
incapable to Daniel G. Gray upon a
certain promissory note, bearing

even date herewith for the sum
of seventy five dollars with interest
two per cent and due December
first after date. Now therefore
in consideration of the premises
we do hereby make, constitute
and appoint E. P. Seelye or any
attorney of any Court of Record to
be our true and lawful attorney
irrevocably for us and in our
names places and steed to appear
in any Court of Record in term
time or in vacation, in any of
the States or Territories of the United
States, at any time after the maturity
of said note, to waive the service
of process and confess a judgment
in favor of the said Daniel G. Gray
or his assigns or assignees, upon
the said note for the above sum
or for as much as appears to be
due according to the tenor and
effect of said note, and interest
thereon to the day of the entry of said
judgment, together with costs and
ten dollars attorney's fees; and
also to file a capias for the
amount that may be so due

with an agreement therein that
no writ of error on appeal shall
be prosecuted upon the judgment
entered by virtue hereof, nor any
bill in equity filed to interfere in
any manner with the operation
of said judgment; and to release
all errors that may intervene
in the entering up said judgment
or issuing the execution thereon;
and also to waive all benefits
of advantages to which they may
be entitled by virtue of any homo-
stead or other exemption law
now or hereafter in force, in this
or any state or territory where judg-
ment may be entered by virtue
hereof. Hereby ratifying and con-
firming all that our said at-
torney may do by virtue hereof

Witness our hands and seals this
18th day of February AD 1858

George Jones
J. M. Austin
Stewart Jones "

~~The said judgment being irregular
illegal and invalid for the~~

And it appeared in evidence upon the hearing of said motion that the said John M. Austin died on or about the 18th day of November, A.D. 1859, and that the applicant Cornelia Austin was regularly appointed administratrix of the goods and chattels, rights & credits of the said decedent; and also that the said administratrix is the widow of the said decedent. It also appeared from the execution docket of the Clerk of said Court that one execution was issued upon said judgment on the 4th day of December, A.D. 1858, and delivered to the Sheriff of Grundy County, which was afterwards returned no property found, and that an alias execution was issued on the 15th day of October, A.D. 1859, and is now in the hands of said Sheriff, and upon said alias execution, appears the following endorsement by

saide Sheriff:

" State of Illinois }
 Grundy County } ss

By virtue of the within and
foregoing execution and process
I have levied on forty acres of
corn standing and being on
the farm of Charles Moody
formerly James Longhead, also
four stacks of hay on the saide
farm October 24 1859

J R Webber Sheriff

" This execution stayed by order
of the court

J R Webber Sheriff

and it is admitted on the part
of the plaintiff that the property levied
upon as above, was property
belonging to the ~~State~~ State of the
saide J M Austin, and that
the same was advertised & have been
sold on the 20th day of ~~October~~ November 1859

and it is contended on
the part of the saide applicant
that the saide payment is irreg-
ular, erroneous, illegal and
invalid for the following
reasons

following among other reasons:

1 That the power of attorney under & by virtue of which the said Armstrong assumed to appear & confess a judgment for the said defendants purports upon its face to be a sealed instrument, and the defendants never having attached seals to their names, it was never fully executed by them, and consequently of no validity.

2 That the said John G. Armstrong assumed to appear for the said defendants without any proof of the execution of the said power of attorney ^{by said defendants}, and not knowing that he had any authority from them so to do.

3 That the said John G. Armstrong in appearing for the said defendants and confessing a judgment for the sum of ninety three dollars, confessed a judgment for more than appeared to be due upon said promissory note according to its tenor & effect. - There being at the time of entering said judgment not exceeding

eight dollars ^{and} ~~and~~ ^{cents} ~~cents~~, for
the said ~~sum~~ ^{sum} ~~promissory note~~ ^{according to its tenor & effect}, to
which of ten dollars is added
for attorneys fees would make
but \$90.00, and therefore ex-
ceeded any authority that might
be supposed to be conferred by
the said power of attorney, and
having exceeded his authority
by conferring a ~~greater~~ judgment
for a greater sum than he was
empowered to do, the whole judgment
is erroneous and illegal, and
the act of the said attorney is
nowise binding upon the
said defendants.

which motion was resisted on the
part of the said plaintiff by J. H. New-
port & his counsel.

And the said court upon hearing
the arguments of counsel upon said
motion, did declare it as the opin-
ion of the said court that the said
motion ought not to prevail, and
did thereupon deny to the said Cor-
nellius Austin his said motion,
and did refuse to vacate the said
judgment or to open the same for a
rehearing upon the merits of the

case, and the said court did,
also refuse to vacate or set aside
& vacate the execution ^{issued upon said judgment} now in
the hands of our said sheriff
So ^{all of} ^{several} "which" rulings of the said
County Court the said Cornelia
Austin, as the administratrix
of the estate of J. M. Austin one
of the said defendants, by her
said counsel did then & there
except.

Holy Grant 
County Judge

102 ~~255~~ 81 29

J. P. Latt,

vs

Geo Jones

& al

Mov. to vacate

judgt &c

Bill of exceptions

Filed April 26, 1860

L. Leland

Clerk

Record Copy of Note and warrant of attorney.

445 10.

Moine Ill Dec 18th 1858

And before the first of December after date
we the subscribers of the County of Grundy State of
Illinois promise to pay to W. G. Drury or order
Seventy Five Dollars for value received, with interest
at ten per cent

Now—

George Jones

J. M. Austin

Steward Jones

Knows all men by these Presents that we the subscribers
are justly indebted to Daniel G. Drury upon a certain
Promissory Note bearing even date herewith, for the
sum of Seventy Five dollars with interest ten per
cent and due December first after date

Now therefore, in consideration of the promises
we do hereby make, constitute and appoint
E. P. Selby or any Attorney of any Court of Record
to be our true and lawful Attorney, irrevocably,
for us and in our names places and stead
to appear in any Court of Record in term time
or in vacations, in any of the States or Territories
of the United States, at any time after the date of
said Note, to waive the service of process and confer
a judgment in favor of the said Daniel G. Drury
or his assigns or assignees, upon the said Note for
the above sum or for as much as appears to be due
according to the tenor and effect of said Note, and

interest thereon, to the day of the entry of said judgment
together with costs and two dollars Attorneys fees
and also to file a cognovit for the amount that
may be so due, with an agreement therein, that
no writ of error or appeal shall be prosecuted upon
the judgment entered by virtue hereof, nor any
bill in Equity filed to interfere in any manner
with the operations of said judgment, ~~entered by~~
~~virtue hereof, nor any to~~ and to release all errors
that may intervene in the entering up said
Judgment or in giving the execution thereon; and
also to waive all benefit of advantages to which
they may be entitled by virtue of any Homestead
or other exemption law now or hereafter in force
in this or any State or Territory where judgments
may be entered by virtue hereof Herby certifying
and confirming all that our said Attorney may
do by virtue hereof

Witness our hands and seals this 18th day of February
A.D. 1858

George Jones

J. W. Austin

Steward Jones

Endorsed on back of note

"H. S. Strong"

State of Illinois
Greene County

I Samuel P. Thomas Clerk of the
County Court in and for said County and State
do hereby certify the foregoing to be a true copy
of the note and answer of attorney which were filed
in said Court in a certain cause lately therein
pending wherein Lewis P. Satt was Plaintiff and
George Jones J. W. Austin and Steward Jones were
defendants, upon which judgment was entered
by a jury on the 4th day of December A.D. 1858

Given under my hand and the
seal of said Court at Morris this
1st day of May A.D. 1862

Samuel P. Thomas Clerk

29 162

Cornelia Austin
Admin of J. M. Austin

vs.

L. P. Lott.

Record
Copy of note and
power of Attorney.

Filed May 2 1862
L. Seland
Clerk

81 29

Supreme Court
Third Grand Division
State of Illinois

Cornelia Austin
Admrs of S. M. Austin
vs.

Lewis R. Lott

Off. for certified
Record.

Filed Apr 19. 1861

Adelbert

Clerk

Certificates Allowed

STATE OF ILLINOIS—SUPREME COURT,

THIRD DIVISION—APRIL TERM, 1861.

CORNELIA AUSTIN, Administratrix of J. M. AUSTIN,
vs.
LEWIS P. LOTT.

APPEAL FROM GRUNDY CO. COURT.

ABSTRACT.

This was a proceeding to obtain judgment by confession in favor of Lewis P. Lott, plaintiff, vs. George Jones, J. M. Austin and Steward Jones defendants, in Grundy Co. Court.

p. 2 Narr. in *assumpsit* on a promisory note for \$75, dated Feb. 18, 1858, executed by said defendants, and payable to D. G. Frary or order on or before Dec. 1st, 1858, with 10 per cent interest, and note assigned to Lott. Narr. also contains usual common counts; (no count for \$10 for Atty's fees.)

No power of the Attorney in the record.

6 Cognovit for \$93 and costs.

s.p.7 As to what purports to be a judgment for \$93, *debt and damages* and costs and order for execution.

Execution issued.

7 Motion of said administratrix to open judgment, to set the same aside, stay proceedings, recall execution, &c. Motion overruled and
13 ordered by Court below, that Sheriff endorse on execution \$2,07, as amount of excess of judgment over amount of the note and interest, and as being the amount of error in rendering judgment originally.

Administratrix appealed to Supreme Court.

ERRORS ASSIGNED.

1st, The Court below erred in rendering judgment on said narr. and cognovit.

2d, Court erred in rendering judgment for \$93.

3d, The judgment is informal and insufficient.

4th, Court erred in overruling the motion to set aside the judgment &c.

5 Other errors apparent on the face of the record.

W. T. HOPKINS, Att'y for Appellant.

162 St. 29
Rauwapps
abstract

Filed Apr 17, 1861
A. Leonard
Clerk

STATE OF ILLINOIS—SUPREME COURT,

THIRD DIVISION—APRIL TERM, 1861.

CORNELIA AUSTIN, Administratrix of J. M. AUSTIN,
vs.
LEWIS P. LOTT.

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5 Other errors apparent on the face of the record.

W. T. HOPKINS, Att'y for Appellant.

162 ~~87~~ 29

Paintiffs

Abstract

Filed Apr 17, 1861
L. Selman
Clerk

State of Illinois. Supreme Court.
Third Grand Division
April Term 1861.

Cornelia Austin
Administratrix of }
J. M. Austin } Appeal from
vs. } Grundy.
Lewis P. Lott }

And the said Lewis
P. Lott now comes and
says that there is no error,
either in the record and
proceedings aforesaid, or
in the judgment aforesaid;
and therefore he prays that
the said judgment may be
affirmed, and that his
costs may be adjudged
to him &c.

Attest
Attorney for
Appellee.

81

Supreme Court
3rd Grand Division

Cornelia Austin
Admrx

vs.

Lewis P. Lott
~~~~~

Order in  
Error.

Filed April 18. 1861  
L. Leland  
Clerk

Report.

7.  
Grand Jury Court December Term A.D. 1858

State of Illinois }  
Grand Jury } ss

Plas Pleadings motions orders  
Judgments and Decrees had been made ordered  
obtained and entered of Record in and before  
the Hon<sup>ble</sup> The County Court at the regular  
December term thereof begun and held at the  
Court House in the city of Morris in said County  
and State on the first Monday of said Month  
and being the 6<sup>th</sup> day of December A.D. 1858 and  
of the Independence of the United States the  
Eighty third

Present Hon<sup>ble</sup> Judge Grant County Judge  
Denny W. Armstrong County Clerk  
Samuel R. Nettor Sheriff

Be it remembered that at the said term of  
Court the following among other proceedings were  
had to wit

In the matter of  
Lewis P. Pitt  
George<sup>vs</sup> Jones  
J. W. Austin  
Steward Jones

Cognovit

Wherefore to wit on the 6<sup>th</sup> day  
day of December A.D. 1858 the said Plaintiff by

2

S W Newport his Attorney filed in the office of the clerk of said Court his declaration in the words and figures following to wit

Grand County Court - Office December Term AD 1858  
State of Illinois  
County of Grand } ss

Lewis P. Galt Plaintiff in this  
suit by S. W. Newport his Attorney complains of George  
Jones S. W. Austin and Steward Jones Defendants  
of a plea of assumpsit For that whereas the said  
Defendants heretofore to wit on the eighteenth day of  
February in the year of our Lord one thousand eight  
hundred and fifty eight at Morris to wit at the  
said County of Grand made his certain promissory  
note in writing bearing date the day and year  
aforesaid, and then and there delivered the same  
to Daniel G. Frary in and by which said note  
said Defendants by the name style and description  
of George Jones S. W. Austin & Steward Jones promise  
to pay to the order of the said Daniel G. Frary the  
sum of Seventy five Dollars or or before the first  
day of December next after the date thereof to wit  
or or before the first day of December AD 1858 with  
ten per cent interest from date which period  
hath now elapsed for value received  
And the said Daniel G. Frary to whom a  
whose order said note was payable afterwards

to wit on the day and year aforesaid at Morris  
that is to say at the County of Grundy aforesaid  
endorsed said Note in writing by which said en-  
-dorsement the said Daniel G. Travy then and there  
ordered and appointed the said sum of money in  
said Note mentioned to be paid to said Lewis P  
Lott and then and there delivered said Note so  
indorsed to the said Lewis P Lott

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 indorsement aforesaid to wit  
at the place aforesaid

And whereas also the said Defendants afterwards  
to wit on the first day of December in the year of  
our Lord one thousand eight hundred and fifty  
eight to wit at said County became and were  
indebted to the Plaintiff in a large sum of  
money to wit Ninety three \$100 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 Defendant by the said Plaintiff

4

at the like special request of said Defendants; and in the like sums for money before that time had and received by said Defendants to and for the use of said Plaintiff; and also in the like sums for goods wares and merchandise before that time sold and delivered by said Plaintiff to said Defendants at the like special instance and request; and also in the like sums 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 sums, 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 therunto afterwards requested.

Yet the said Defendants not regarding their said promises and undertakings but contriving &c although often requested so<sup>th</sup> 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 Ninety three <sup>12</sup>/<sub>100</sub> dollars

5  
and therefore they bring this suit - &c

J W Newport Plaintiffs Attorney

Copy of Instrument and account paid on  
\$4500 Morris Ill Feby 15<sup>th</sup> 1858

On or before the first of December after date we the  
subscriber of the county of Grundy State of Illinois  
promise to pay to D Y Strony or order Seventy  
five Dollars for value received with interest  
at ten per cent -

George Jones.

J W Austin.

Steward Jones.

George Jones J W Austin  
Steward Jones

To Lewis P Lott Dr

|                                                                |         |
|----------------------------------------------------------------|---------|
| To money lent and advanced                                     | \$93.12 |
| To money paid laid out and expended                            | \$93.12 |
| To money had and received to and for the use of said plaintiff | \$93.12 |
| To goods wares and merchandises sold and delivered             | \$93.12 |
| To labor & services                                            | \$93.12 |
| To balance due on account stated                               | \$93.12 |

Afterwards to wit on the 4<sup>th</sup> day of December  
AD 1858 the said Defendants by John G  
Armstrong their attorney files their cognovit  
which cognovit is in the words and figures  
following to wit -

State of Illinois } Gundy County Court  
 Gundy County } ss December Term 1858

Davis P. Lott }  
 George Jones } Cognovit  
 J. W. Austin }  
 Steward Jones }

And now come the said defendants by J. G. Armstrong their Attorney and for plea to the said Plaintiff's declaration as above declared against them say that they cannot deny that they are indebted to the said Plaintiff on the said note in the said declaration described and that there is now due thereon including Ten Dollars Attorney Fee as provided for in the Power of Attorney attached to said note the sum of ninety Three Dollars, and they waive service of summons and hereby confess judgment for said sum with costs of suit and release all errors that may appear in entering up judgment in this case and agree that no writ of Error or appeal shall be taken from the same and no bill in Equity filed to interfere in any manner with the operation of said judgment and also waive any benefit or advantage that they may be entitled to by virtue of any homestead or exemption law now in force in this State

J. G. Armstrong Atty for Deft

Grundy County Court - December Term A D 1858  
Monday December 6<sup>th</sup>

Lewis P. Lott  
George Jones  
J. W. Austin &  
Steward Jones } Cognovit

And now to wit on this first day of  
the term comes the Plaintiff by J. W. Newport his Attorney  
files his declaration or judgment note as well as the  
defendants by John G. Armstrong their Attorney who  
file their cognovit in confession of judgment for  
Ninety three dollars debt and damages together  
with costs of suit whereupon it is considered and  
adjudged by the Court that said Plaintiff have  
judgment for the aforesaid sum of Ninety three  
dollars together with his legal costs of suit and  
that Execution issue therefor.

And afterwards to wit at the  
December Term A D 1860 the following other proceedings  
were had to wit

Lewis P. Lott } Motion to open judgment and set  
George Jones } aside execution heretofore issued on  
Steward Jones } judgment obtained by cognovit Dec  
John W. Austin } 24 1858

Cornelia Austin Administratrix  
of John W. Austin deceased who was one of the

\* For a copy of which execution see Exhibit A hereto attached and made a part of this  
Records and afterwards said Execution was returned and a writ of Execution was  
issued for a copy of which see Exhibit B hereto attached made part of this  
this Record  
J. W. Armstrong Clerk of Court

Defendants in this suit - by her Attorney having heretofore paid on the 25<sup>th</sup> day of November last served a notice upon the Plaintiff in this suit of his intended application at this Term of Court to open the judgment and set aside the Execution heretofore issued, and the said Cornelia Austin Adm. by her said Attorney having on the said 25<sup>th</sup> day of November last filed her petition with the judge of this Court in the words and figures following to wit

State of Illinois } ss  
 Grundy County }

William Hopkins being duly sworn says that he is the Attorney of Cornelia Austin who is the Administratrix of the estate of John W Austin deceased that Lewis J. Holt on the fourth day of December A.D. 1858 being the holder of a promissory note dated February <sup>1858</sup> A.D. 1858 for the sum of seventy five dollars and interest at the rate of two per cent payable Dec 1 1858 to the order of D. J. Strany and executed by George Jones & W Austin & Stewart Jones to which note was annexed a power of Attorney authorizing any attorney of any court of record at any time after the maturity of said note to confess a judgment in favor of the said Daniel J Strany or his assigns upon the said note for as much as appears to be due according to the tenor and effect of said note and interest

thereon to the day of the entry of judgment together with costs and two dollars attorneys fees did cause a judgment to be entered up in the County Court of Grundy County upon said promissory note for the sum of ninety three dollars damages in assumpsit and that John G Armstrong Esq an attorney of said Court without any proof of the execution of said <sup>power of attorney by said</sup> George Jones J W Austin & Steward Jones did on the said Dec 11 1858 as the Attorney of George Jones J W Austin & Steward Jones execute & file a cognovit confessing a judgment upon said note in favor of said Lewis P Sott for the said sum of ninety three dollars damages in assumpsit together with costs of suit to be taxed And that Lewis P Sott has since said out an Execution upon said judgment and levied the same upon the property of the said John W Austin

And this affiant further says that the said John W Austin died on or about the <sup>11th</sup> 18<sup>th</sup> day of November A D 1859 and that the said Cornelia Austin the widow of said John W Austin is the Administratrix of the estate of said John W Austin deceased And this affiant further says that there was not due nor did appear to be due upon the said promissory note according to its tenor and effect with the interest thereon & two

dollars attorneys fees at the time of entering up said judgment were then the sum of ninety dollars and ninety five cents

And this affiant says that the said judgment is erroneous irregular invalid and illegal for the following among other reasons

- 1 That the Power of Attorney purporting to be under seal and not being sealed was never fully executed
- 2 That the said Solus G Armstrong assumed to appear for the said Makers of said note without any proof of the execution of the power of Attorney and without any authority from them so to do
- 3 That the said Solus G Armstrong superceded any authority which might be supposed to be conferred by said Power of Attorney in that he confessed a judgment for more than appeared to be due upon said note and that the said George Jones M Austin & Steward Jones are in no wise bound by the act of the said Solus G Armstrong in so confessing a judgment against them

Wherefore for the above other reasons this affiant as the attorney of and for on behalf of the said Cornelio Austin administrator as aforesaid prays that proceedings upon said judgment & execution may be

11  
stayed until a motion to set aside said  
judgment & execution can be made & heard  
before the court in which the same was entered  
W. J. Hopkins

State of Illinois  
Grant County } ss

W. J. Hopkins being duly sworn  
saith that the foregoing affidavit is true  
in substance and in fact

W. J. Hopkins

Subscribed and sworn to

before me this 25 day of Nov 1859

Colgr Grant County Judge

State of Illinois  
Grant County } ss

I Colgr Grant County Judge  
in and for said County certify there is probable  
cause for staying further proceedings on the  
judgment & Execution set forth in the foregoing  
petition It is therefore hereby ordered that  
the sheriff stay all further proceedings on the  
Execution against J. M. Austin until <sup>the</sup> further  
order of the court on the motion to set aside  
s&c &c in the case Witness my hand this  
25<sup>th</sup> day of Nov 1859

Colgr Grant  
County Judge

And now to wit on this first day of the Term  
 come the parties hereto by their respective  
 Attorneys John W. Newport for the Plaintiff  
 and William J. Hopkins for the defendant  
 Cornelia Austin Administratrix of the Estate  
 of John W. Austin Deceased defendant  
 and the cause is set for hearing on the coming  
 in of Court on the second day of the Term  
 And afterwards to wit on the second day of the  
 Term again come the parties hereto by their  
 respective Attorneys as aforesaid and having  
 submitted to the Court their several proofs  
 and allegations it is considered and adjudged  
 by the Court that said motion be denied  
 And it is further ordered by the Court  
 that the Sheriff in whose hands the said  
 Execution now is be directed to endorse thereon  
 the sum of Two dollars and Seven cents  
 being the amount of Excess of judgment  
 over the amount of note & interest and  
 being the amount of error in rendering  
 judgment originally to which ruling of  
 the Court and order the said defendant  
 excepts and asks for an appeal to the  
 Supreme Court which is granted by the Court  
 upon the execution and filing of Bond in  
 the penal sum of Two Hundred dollars  
 with Charles Moody as surety and ten

days given to perfect the appeal and afterwards took on the 16<sup>th</sup> day of December the said Defendant filed her appeal Bond in compliance with the order of this court and this case stands appealed to the Supreme Court

Attest- Perry W Armstrong Clerk

State of Illinois  
Gentry County J<sup>ss</sup>

I Perry W Armstrong Clerk of  
of the County Court in and for said County  
and state do hereby certify the foregoing to be  
a full & correct copy of the Record proceeding  
had in said Matter in & before said Court

In testimony whereof I have hereunto  
set my hand and affixed the  
seal of the Gentry County Court  
at Morris this 30<sup>th</sup> day of March  
AD 1860

Perry W Armstrong  
Clerk

State of Illinois - Supreme Court  
Third Division

April Term 1861.

Cornelia Austin adm<sup>rs</sup>,  
of J. M. Austin dec<sup>d</sup> }  
vs } Appeal from  
Lewis P. Lott } Grundy Co. Court

Now comes the said Appellant  
by W. J. Hopkins his attorney & says that  
in the record & proceedings aforesaid, there  
is manifest error in this Court;

1<sup>st</sup> The Court below erred in rendering  
judgment on said declaration & Cognovit.

2<sup>d</sup>. Court below erred in rendering  
judgment for ninety three dollars.

3<sup>d</sup> The said judgment is informal  
& insufficient.

4<sup>th</sup>. Court below erred in overruling  
said motion to set aside the  
judgment &c.

5<sup>th</sup> Other errors apparent on the face  
of the record.

W. J. Hopkins  
Att<sup>y</sup> for Appellant

State of Illinois; Supreme Court  
Third Grand Division  
April Term 1860.

Cornelia Austin }  
vs. } Appeal from Gundy  
Lewis P. Lott }

It is stipulated and  
agreed between the parties  
to this suit that the transcript  
in this cause may be filed  
by the 26<sup>th</sup> of April 1860, and  
that the right of the parties  
to a hearing at this term  
shall not be prejudiced  
thereby.

W. S. Hopkins  
Atty for Appellant  
J. W. Newpoil  
Atty for Appellee

State of Illinois, }  
GRUNDY COUNTY, } ss.

"Exhibit A"

The People of the State of Illinois, to the Sheriff of said Grundy County—GREETING:

WE COMMAND YOU, ..... That of the Goods and Chattels, Lands  
and Tenements of.....

George Jones, J. M. Austin and Steward Jones

..... Defendant in your County, you cause  
to be made the sum of Ninety-three  
Dollars and ..... cents, which.....

Lewis P. Galt

..... Plaintiff lately in the  
County Court of said County of Grundy, at a Term thereof, begun and held at Morris, on the  
first Monday of December ..... A. D. 1858. to wit: on the day of  
the date hereof December fourth A. D. 1858. .... as of said Term, by the confession of said  
Defendant, recovered against the said Defendant and which by the said Court was adjudged to  
the said Plaintiff for his debt including Ten Dollars  
Attorney's fees.....

And also the further sum of Four ..... Dollars,  
and..... cents, which were adjudged to the said Plaintiff for ..... costs  
and charges in that behalf expended, whereof the said defendant do stand convicted, as appears to  
us of Record: And have you these moneys ready to render to the said Plaintiff for damages, debt  
and costs aforesaid, and make return of this writ with an endorsement thereon in what manner you  
shall have executed the same, in ninety days from the date hereof.

WITNESS, P. A. Armstrong, Clerk of our said Court, and the  
seal thereof, at Morris, in said County of Grundy, this fourth  
day of December ..... A. D. 1858

Perry W. Armstrong, Clerk

Execution on Judgment Confessed

Grundy County Court,

Fee Book *W.* Page *308*

Whole No. *360* Fi Fa. No. *360*

*Lewis Platt*

VS.

*George Jones*

*J. M. Austin*

*Steward Jones*

|                     |          |
|---------------------|----------|
| Debt.....           | \$ 75 00 |
| Damages.....        | 18 00    |
| Costs—Plaintiff, \$ | 4 00     |
| — Defendant,        | 1 10     |

Total amount \$98.10

|                                      |      |
|--------------------------------------|------|
| Judgment, <i>Dec 14</i> .....        | 1868 |
| This Writ Issued <i>Dec 14</i> ..... | 1868 |
| Return Day, <i>Mar 14</i> .....      | 1869 |

Collect interest at six per cent per annum from above mentioned date of Judgment.

SHERIFF'S FEES.

|                              |     |
|------------------------------|-----|
| Levying Execution.....       | 50c |
| Advertising Property.....    | 25c |
| Miles Travel.....            |     |
| Commission on \$             |     |
| Returning Execution.....     | 10  |
| Certificate of Purchase..... | 25  |

Filed in County Court this *14*

day of *March 1869*

A. D. 1869.

*P. A. Amashing* Clerk.

*Amashing* Attorney

*Amashing* left "

*"Exhibit-B"*

STATE OF ILLINOIS, }  
GRUNDY COUNTY, } ss.

THE PEOPLE OF THE STATE OF ILLINOIS, TO THE SHERIFF OF SAID GRUNDY COUNTY—GREETING:

WE COMMAND YOU, *as we have heretofore commanded you*

That of the Goods and Chattels, Lands and Tenements of

*George Jones & Wm Austin & Stewart Jones*

Defendant, in your County, you cause to be made the sum of

*Thirty Three*

Dollars

and \_\_\_\_\_ Cents, which

*Lewis P. Gatto*

Plaintiff

lately in the <sup>County</sup> Circuit Court of the said Grundy County, at a Term thereof begun and held at *Meris* in said Grundy County, on the *Tenth* Monday of *December* A. D. 1858, *to wit on the 14<sup>th</sup> day of December*

recovered against the said Defendants and which by the said Court was adjudged to the said Plaintiff for *his debt & damages*

And, also, the further sum of *Five* Dollars

and *Twenty* Cents, which were adjudged to the said Plaintiff for costs and charges

in that behalf expended, whereof the said Defendants do stand convicted, as appears to us of Record: And have you these moneys ready to render to the said Plaintiff for *his damages* debt and costs aforesaid, and make return of this Writ, with an endorsement thereon in what manner you shall have executed the same, in ninety days from the date hereof.

WITNESS, *Jerry W. Armstrong*, Clerk of said Court, and the seal thereof, at *Meris* in said County, this *15<sup>th</sup>* day of *October* A. D. 1859

*Jerry W. Armstrong* CLERK.

Whole No. \_\_\_\_\_ Term No. \_\_\_\_\_ Ex. No. \_\_\_\_\_

Fee Book \_\_\_\_\_ Page \_\_\_\_\_

State of Illinois, Grundy County, \_\_\_\_\_ *December* \_\_\_\_\_ Term, A. D. 18 *58*

In the matter of

*Co*  
CIRCUIT COURT.

FEE BILL, \_\_\_\_\_

PLAINTIFF'S COSTS, *\$5.46*

*Lewis P. Salt*  
vs.  
*George Jones*  
*J. W. Austin*  
*Stewart Jones*

|                                                       |             |
|-------------------------------------------------------|-------------|
| <i>App 10 doc 10 fil 4 papers 20 Ex confession 20</i> | <i>60</i>   |
| <i>Ord judy 20 Ent 25 doc 10 Ord Ex 20</i>            | <i>75</i>   |
| <i>Ex 4 fil 45 doc 10 Copy B of 6 20 Ex 10</i>        | <i>85</i>   |
| <i>Sat 15 m &amp; c ent 30 Cor &amp; Seal 35</i>      | <i>80</i>   |
| <i>Court fee</i>                                      | <i>100</i>  |
|                                                       | <i>400</i>  |
| <i>Pro alias &amp; alias fil 45 Copy B of 6 20</i>    | <i>70</i>   |
| <i>doc Ex 10 Ex 10 Sat 15 Cor &amp; Seal 35</i>       | <i>70</i>   |
|                                                       | <i>5.46</i> |

*Jerry A. Armstrong* Clerk of the *Grundy County* Circuit Court, do hereby certify that the above and foregoing is a true copy from my Fee Book of *Plaintiff's* costs in the above entitled suit. Witness my hand and the seal of said Court.

*Jerry A. Armstrong* CLERK.

Defendant's Costs in the foregoing entitled Matter.

1858 December Term:

app<sup>r</sup> fee Coy 15 Bof 6 20 \$110  
mr & cost 30 Cer & Seal 35

75

65

110

I, Sam A Armstrong, Clerk of the County ~~Circuit~~ Court of Grundy County,  
DO CERTIFY that the above is a true copy from my Fee Book of Defendants costs.  
Given under my hand and the seal of said Court.

Sam A Armstrong CLERK.

365

# EXECUTION.

Fee Book        Page        <sup>Co</sup> Circuit Court.  
Fi. Fa. No.       

*J.P. Salt*

vs.

*J. Louis Et al*

|                       |    |               |
|-----------------------|----|---------------|
| Costs—Plaintiff,      | \$ | 5.40          |
| Defendant,            |    |               |
| <i>Subt &amp; dau</i> |    | <i>4'3'00</i> |
| Total amount,         | \$ | 99.30         |

|                   |               |    |    |
|-------------------|---------------|----|----|
| Judgment,         | <i>Nov 4</i>  | 18 | 58 |
| This Writ issued, | <i>Oct 15</i> | 18 | 59 |
| Return Day,       | <i>Jan 11</i> | 18 | 59 |

Collect interest at six per cent. per annum, from above mentioned date of Judgment.

### SHERIFF'S FEES.

|                          |     |
|--------------------------|-----|
| Levyng Execution,        | 50c |
| Advertising Property,    | 25  |
| miles travel,            |     |
| Commission an \$         |     |
| Returning Execution,     | 10  |
| Certificate of Purchase, | 25  |

Filed in the Circuit Court and approved by me this 11 day of Jan A. D., 1860

*Perry A. Armstrong* Clerk.

STATE OF ILLINOIS, }  
GRUNDY COUNTY, } ss.

THE PEOPLE OF THE STATE OF ILLINOIS, TO THE SHERIFF OF SAID GRUNDY COUNTY—GREETING:

WE COMMAND YOU, That if the above or within Fee Bill, amounting to One Dollars

and Zero Cents, shall not be paid within thirty days after being by you demanded, you cause the same to be levied of the goods and chattels, lands and tenements of George Jones, Ill. Austin & Plaintiff Jones

in your County, according to the statute in such case made and provided: And make return of this writ within ninety days, as the law directs, with an endorsement hereon in what manner you shall have executed the same.

WITNESS, Perry A. Armstrong, Clerk of said Court, and the seal thereof, at Meris in said County, this 15<sup>th</sup> day of October - A. D., 1859

Received this Execution this 18 day of October A. D., 1859 at 2 o'clock and - minutes 4 M. J.R. Metter Sheriff.

STATE OF ILLINOIS, }  
GRUNDY COUNTY, } ss.

By virtue of the within and foregoing Execution and Process, I have levied on

*Twenty acres of corn standing and being on the farm of Charles Mowbray formerly James Longheads also four stacks of Hay of Hay on the said farm October 24 1859*  
*J.R. Metter Sheriff*

*Filed April 26, 1860*  
*L. Leland*  
*Clerk*

*29 355 87*  
*Austin 162*  
*Lott*  
*Transcript*

*This Execution stay'd by order of the Court - J.R. Metter shiff*