

14319

No. \_\_\_\_\_

# Supreme Court of Illinois


Pennington

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vs.

People

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71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

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No. 276.

14319

*Pennington*

*vs*  
*Jaycox*  
1862

SUPREME COURT

OF THE

STATE OF ILLINOIS,

THIRD GRAND DIVISION,

April Term at Ottawa, 1862.

ANDREW J. TAYLOR,  
*Appellant,*  
vs  
ELISHA PENNINGTON,  
*Appellee.*

} Appeal from Henry.

ABSTRACT OF THE RECORD.

PAGE 1. Pleas at a regular term of the Henry County Circuit Court, begun and holden at the Court-house in Cambridge, on the first Monday of March, A. D. 1861.

The plaintiff files precipe for summons and bond for costs.

PAGE 2. Summons, and the Sheriff's return thereon.

PAGE 3. The plaintiff's declaration containing special count on a promissory note, and the common counts for money, goods and labor; damage laid at \$400.

PAGE 4. Copy of note and account sued on.

The defendant's motion to quash the writ—overruled.

PAGE 5. The defendant's plea.

1st. A plea of general issue.

2d. Special plea of offsett.

3d. Money &c., work, labor and goods, offset claimed \$400.

PAGE 6. Conclusion of plea and account of the offset claimed.

PAGE 7. The replication of the plaintiff and—the similiter.

PAGE 8. Jury called, cause tried and a verdict for the plaintiff of \$260,54,

The defendant prays and obtains leave to appeal and file bill of exceptions and bond, to be approved by the Clerk.

Page 9.

## BILL OF EXCEPTIONS.

The bill of exceptions contains

1st. The note sued on, set in words and figures.

\$250.00

On or before the first day of October, A. D. 1860, for value received, I promise to pay to Elisha Pennington or order, the sum of two hundred and fifty dollars.

Oct. 14, 1859.

A. J. TAYLOR.

The plaintiff having offered said note in evidence rested his case.

The defendant then called Jonas Johnson, a witness duly sworn, who testified that he heard Pennington, the plaintiff, say that Taylor was to pay money to Mr. Greenlee.

Page 10 The defendant also called James Greenlee, a witness duly sworn, who testified that he knew the parties &c.,

That Taylor owed Pennington several notes, this one in suit and others.

That Pennington owed him (witness) about \$200. That he (Pennington) told Taylor to pay witness the amount whatever it was and he would allow it as payment on the note then due. The note in suit is the note then due.

Pennington was here just about the time the note was due.

Taylor was to pay me the amount due me, and Pennington agreed to allow it on this note. (witness was here shown the note in suit.) Never saw this note before, but knew from the conversation of both parties that this is the note.

In pursuance of this agreement, Taylor paid me \$203, or \$204.

In reply to cross interrogations, the witness testified that he knew the agreement from conversation of the parties in my presence and separately with me.

Pennington never denied the agreement to my knowledge. After Taylor paid me he wanted me to wait and take my money out of the second note, but I would not. I believe he did try to back out after Taylor paid me the money.

Pennington may have told Taylor not to pay me the money, but if he did I never knew it.

Taylor did pay me 203 or 204 dollars cash on this note, by Pennington's direction.

The defendant thereupon rested his case.

The plaintiff then called a witness, James Mascal, duly sworn &c., who testified:

Pennington lives in Mo., he left this note in suit, and others against Taylor with me for collection and settlement.

There was one note against Taylor of the same amount as this, which was due about Christmas after this was due.

Page 11 Taylor called the day it was due to pay it. I asked him if he wanted to pay this note, the note in suit, and he replied that he wanted to pay it on the note due that day. He paid that note in full, and took it up.

He also said that he had paid Greenlee a little over \$200, on the note in suit. He said that Pennington told him to pay Greenlee out of this note in suit, but that afterwards, Pennington told him to pay Greenlee out of the second note, which was the note which he had just paid me.

The plaintiff rested his case. This was all the evidence.

## THE INSTRUCTIONS.

## The Plaintiff's Instructions.

1st. If the Jury believe from the evidence in this case that the defendant, Taylor, paid the note in question, or any part thereof, to the witness Greenlee, without the consent of the plaintiff, he did so at his peril, and the jury will find for the plaintiff the whole amount of the note.

2d. If the Jury believed from the evidence, that the defendant had no request from the plaintiff to pay any amount to Greenlee which might be due to him, the said plaintiff, upon the note in evidence, they will find for the plaintiff, even though they should believe from the evidence that there was an agreement, that an amount to Greenlee was to be made out of another note.

3d. A verbal promise to pay the debt of another, is not binding, and in this case the jury are instructed that an agreement of that kind between the plaintiff and defendant, is not binding on either.

To the giving of which instructions, and each of them, the defendant objected; but the court overruled the objections and decided to give the said instructions: to which ruling the defendant then and there excepted.

Page 12 The defendant thereupon asked the Court to instruct the jury as follows:

## The Defendant's Instructions.

1st. If the jury believe from the evidence, that the plaintiff authorized the defendant to pay the money in said note on which this suit is brought, or any part of it to any other person, and that the defendant did pay such person any money, they will deduct the amount of money so paid from the amount of the note on which this suit is brought, unless the jury believe that the authority to pay the money to such other person was revoked by Pennington before the money was paid by Taylor, or before Taylor knew of the revocation.

2d. A payment to a person authorized to receive it for another, is the same as a payment to the person direct. If the jury believe from the evidence that the defendant has paid any money to any person authorized by the plaintiff to receive it. The jury may, under the plea of offset filed in this case, allow the amount so paid as an offset to the defendant, and it makes no difference on what account the money was paid, and thereupon the Court erased the following words from the said last instructions, to wit: the words "and it makes no difference what account the money was paid on," which words were erased by drawing a pen through them. To the erasing of which the defendant, by his counsel, then and there objected, but the Court give the instructions so erased as aforesaid, and the defendant then and there excepted.

The jury returned a verdict for the plaintiff of \$260,54.

And thereupon the defendant moved the Court for a new trial, but the Court overruled the motion and rendered judgment for the plaintiff for the said sum of \$260,54 and the defendant excepted.

Signature and seal of the Judge.

Page 13 The bond.

Page 14 Certificate, signature and seal of the Clerk.

## OF THE ERRORS ASSIGNED.

The verdict of the jury was manifestly contrary to the evidence and the law of the land.

The verdict is wholly unsupported by the evidence.

The Court erred in giving the instructions asked by the plaintiff. They were not the law, they were even totally inapplicable to this case. They were calculated to mislead and embarrass the the jury, and should have been refused.

The court erred in altering the instructions asked by the defendant. The alteration was calculated to mislead the jury.

The verdict should have been for the defendant, and the Court erred in not granting the defendant's motion for a new trial.

The Court erred in rendering judgment for the plaintiff.

The verdict was wholly unsupported by the evidence, and the judgment on the verdict was contrary to the law of the land.

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1862.

SUPREME COURT AT OTTAWA.

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ANDREW J. TAYLOR  
vs  
ELISHA PENNINGTON,

*Appellant,*

*Appellee.*

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APPEAL FROM HENRY.

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*Abstract*

*Filed Apr. 24, 1862*

*L. G. Leacock  
clerk*

State of Illinois  
County of Henry } At a Regular Term of the Circuit Court in and for the County of  
Henry and State of Illinois begun and held at the Court House  
in Cambridge in said County and State on the first Monday of March in the year of  
our Lord One Thousand Eight Hundred and Sixty One it being the fourth day of  
said month the following among other proceedings were had

Present Honorable John W. Howe Judge  
Amos Gould Clerk  
Ardam H. Hoarney Sheriff

Know Ye that on the 15<sup>th</sup> day of February A D 1861 came J A McKenzie an  
Attorney for the plaintiff and filed his precept for a Summons and also his Bond  
for costs in the following entitled cause: in words and figures following to wit.

State of Illinois } Henry County Circuit Court  
Henry County } Of March Term A D 1861

Elisha Pennington }  
vs } Assumpsit Damages \$400.  
Andrew J Taylor }

Issue a Summons in the above cause to the Sheriff  
of Henry County returnable to the said term of said Court  
To Amos Gould Clerk of said Court  
McKenzie P & Co

State of Illinois } Circuit Court of Henry County  
Henry County } of the March Term A D 1861

Elisha Pennington }  
vs } Assumpsit Damages \$400.  
Andrew J Taylor }

We hereby enter ourselves as security for costs in this  
above entitled cause and acknowledge ourselves bound to pay all costs that may  
accrue either to the opposite party or to any of the Officers of this Court in

purvance of the laws of this State

J. C. McKenzie ③  
James Masceall ③

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

State of Illinois }  
Henry County } The People of the State of Illinois. To the Sheriff of Henry County Greeting, You are hereby commanded to summon Andrew J Taylor to appear before the Circuit Court of Henry County on the first day of the next term thereof to be holden at Cambridge on the first Monday of March next to answer the complaint of Elizabeth Pennington in a plea of assumpsit. Damages claimed \$ 400. And have you then and there this writ. Witness Annis Govee Clerk of our said Circuit Court and the seal thereof at Cambridge this 15<sup>th</sup> day of February in the year of our Lord One thousand eight hundred and sixty one



Annis Govee Clerk  
By W L Dabrymple Depy

Upon which summons appears the following return

"I have served the within summons by reading the same to the within named Andrew J Taylor this 15<sup>th</sup> day of February A D 1861  
A K Hoernsey Sheriff of Henry County

And afterwards to wit. on the 15<sup>th</sup> day of February A D 1861 the said Plaintiff by J A McKenzie his Attorney files his declaration in said cause in words and figures following to wit

State of Illinois }  
Henry County }

Henry County Circuit Court  
Of the March Term A D 1861

Elizabeth Pennington Plaintiff in this suit by J A McKenzie his Attorney complains of Andrew J Taylor Defendant in a plea of Trespass

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in the case in premises. For that whereas the said Defendant, here tofore to wit  
in the fourteenth day of October in the year of our Lord One thousand Eight hundred  
and fifty nine to wit at said County of Henry, made his certain promissory  
note, and then and there delivered the same to said Plaintiff, in and by which  
said note, said Defendant, by the name style and description of A J Taylor  
promised to pay to the said Plaintiff, by the name style and description of  
Elisha Pennington the sum of Two Hundred and Fifty Dollars on or before  
the first day of October A D 1860 for value received. By means whereof  
and by force of the Statute in such case made and provided the said Defendant  
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, true intent and meaning of the said note, at the place aforesaid  
And Whereas, also the said Defendant, afterwards, to wit, on the 7 day of  
January in the year of our Lord One thousand Eight Hundred and Sixty One  
to wit at said County, became and is indebted unto the Plaintiff in a larger  
sum of money, to wit Four Hundred Dollars, for money before that time  
lent and advanced to, and paid, laid out and expenced for said Defendant  
by said Plaintiff at said Defendant request; and for money before that time  
had and received by said Defendant, to and for the use of said Plaintiff;  
and also for like sum for goods, wares and merchandises, before that time  
sold and delivered by said Plaintiff to said Defendant at like special  
instance and request; and also in like sum for the labor, care, and diligence  
of said Plaintiff before that time done and performed by said Plaintiff;  
for said Defendant, and at the like instance and request of said Def-  
endant, and being so indebted, said Defendant, in consideration  
thereof, then and there undertook and promised to pay said Plaintiff  
said last mentioned sum of money, when thereunto afterwards requested  
Yet the said Defendant, not regarding his said promise and undertakings  
but contrary etc, although often requested so to do, has not paid said  
Plaintiff either of said sums of money or any part thereof. But has hitherto  
wholly neglected so to do and refused, and still does neglect and refuse  
to the damage of said Plaintiff of Four Hundred Dollars, and

he brings this suit, etc

J A McKenzie Plffs Atty

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The Instrument sued on is herewith attached and marked "C"

\$ 250.<sup>00</sup>/<sub>100</sub>

Oct 14<sup>th</sup> 1859

On or before the first day of October A D 1850 for value received I promise to pay to Elisha Pennington or order the sum of Two Hundred and Fifty Dollars

A J Taylor

Copy of Account sued on

Account of Taylor

To

Elisha Pennington

Dr

To Money lent and advanced

\$ 400.

To Money expended and paid out for

\$ 400.

To Money received for use of

\$ 400.

To Goods Wares and Merchandise

\$ 400.

To Labor and services

\$ 400

To Balance on account stated

\$ 400.

J. A. McKenzie  
Plffs Atty

And afterwards term at said Term and on the 4<sup>th</sup> day of March it being the fourth day of said term the following proceedings were had in said cause

To wit

Elisha Pennington

vs

Andrew J Taylor

} Assumpsit

At this day comes the said Plaintiff by McKenzie Plffs Atty and the defendant by Wells Plffs Atty and this cause being called for the hearing of motions & Motion by Defendant to quash

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not which is overruled by the Court, and rule on defendant to plead by Tuesday Morning next

And afterwards to wit, at the time aforesaid <sup>on the 12<sup>th</sup> day of March.</sup> came the said Defendant by Wells his Attorney and files his plea in said cause in the words and figures following to wit

State of Illinois }  
Henry County }

Of the March Term of the  
Henry County Circuit Court A.D. 1861

Andrew J Taylor }  
          do }  
Elisha Pennington } Assumpsit

And now comes the said Defendant by H W Wells his Attorney, and defends the wrong and injury when &c and says that he did not undertake or promise in manner and form as the said Plaintiff hath <sup>above</sup> thereof complained against him, and of this he puts himself upon the Country to the H W Wells Atty for P<sup>l</sup>

And for a further plea in this behalf the said Defendant by leave of the Court for that purpose first had and obtained say Actio non. because he says that the said Plaintiff before and at the time of the commencement of this suit, to wit, at the County of Henry aforesaid was and still is indebted to the said Defendant in a large amount of money to wit the sum of Four Hundred Dollars, for the work and labor, care diligence and attendance of the said defendant, by the said Defendant and his servants before that time done, performed, and bestowed, in and about the business of the said Plaintiff, and for the said Plaintiff and at his request, and for divers materials and other necessary things by the said Defendant before that time found and provided and used and applied in and about the said work and labor of the said Plaintiff, and at his request, and in a like sum, for divers goods, wares and merchandise sold and delivered by the said defendant, to the said Plaintiff, and at his like request, and in a like sum for money by the said Defendant

before that time lent and advanced to, and paid, laid out, and expended for  
 the said Plaintiff and at his request. And in a like sum for Money by  
 the said Plaintiff before that time had and received to and for the use of  
 the Defendant and at his request. And in a like sum for money due  
 and owing by the said Plaintiff to the said Defendant upon an  
 account stated between them. Which said sums of money so due  
 and owing to the said defendant as aforesaid exceeds the damages  
 sustained by the said Plaintiff by reason of the non performance by  
 the said Defendant of the said several supposed promises and undertakings  
 in the said declaration mentioned and out of which said sums of Money  
 so due and owing from the said Plaintiff to the said Defendant, the said  
 Defendant is ready and willing, and hereby offers to set off and allow  
 to the said Plaintiff the full amount of the said damages, according  
 to the form of the Statute in such case made and provided. And the said  
 defendant is ready to verify, wherefore he prays judgment if the said Plaintiff  
 ought to have or maintain his aforesaid action thereof against him.

He W Wells  
 Atty for Defd

Offsets

|  |    |                 |         |
|--|----|-----------------|---------|
| Elosha Pennington                              | To | Andrew J Taylor | Dr      |
| To Work & Labor & Materials for same           |    |                 | \$ 400. |
| " Goods Wares & Merchandise                    |    |                 | \$ 400. |
| " Money paid out laid out and expended for you |    |                 | \$ 400. |
| " Money paid you                               |    |                 | \$ 400. |
| " Money had and received by you to my use      |    |                 | \$ 400. |
| " Money due on account stated                  |    |                 | \$ 400. |

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And afterwards to wit on the 23<sup>d</sup> day of March 1861 at said term of said Court came the said Plaintiff by his Atty as aforesaid and files his replication to said Plea of said Defendant - in the words and figures following to wit

State of Illinois  
Henry County }  
Henry County }  
}

Henry County Circuit Court  
of the March Term AD 1861

Elisha Pennington }  
vs } Assumpsit  
Andrew J Taylor }

And the said Plaintiff as to the said Plea of the said Deft by him justly above pleaded in which he puts himself under the Country &c doth the like

And the said Plaintiff as to the said Plea of the said Defendant by him recently above pleaded says procludi non because he says he was not nor still is indebted unto the said Defendant in manner and form as the said Deft in his said plea hath alleged, and thus he prays may be injured of by the Country &c

And the said defendants  
doth the like Holds for defendant

J A McKenzie  
Plffs Atty

And afterwards to wit at the Special June Term of said Henry County Circuit Court on the 11<sup>th</sup> day of June, 1861, it being the second day of said term the following proceedings were had in said Cause to wit

Elisha Pennington }  
vs } Assumpsit  
Andrew J Taylor }

At this day came the plaintiff by McKenzie his Atty and the defendant by Wells his Atty and this came being called for hearing. Now came the defendant by his Atty and enters his motion for continuance

and afterwards to wit at the term last aforesaid and on the 14<sup>th</sup> day of June  
AD 1861 it being the fifth day of said term the following proceedings were  
had in said Cause to wit

Elisha Permynton  
vs  
Andrew J Taylor } Verdict

At this cause being again called, motion for continuance  
withdrawn by defendant. And issues being now joined. It is ordered that a  
jury be called and thereupon came the jurors of a jury of good and lawful  
men to wit, J J Fausd, Geo Kunkaie, W W Cotton, W B Dabrymple, James  
Bernard, J A Atwater, S J Longaker, H G Cassin, J S Headrel, J Long  
Korano Grant & J Ricker, who were duly selected chosen and sworn to well and  
truly try the issues joined and a true verdict render according to the evidence  
and the jury having heard the evidence, the arguments of the counsel and all  
things to be adduced herein, retired to their room to consider of their verdict  
Now comes the jury aforesaid and returns into court their verdict in said cause  
which is in the words and figures following to wit, "We the jurors in the above  
case find for the plaintiff and award him damages at the sum of \$2607<sup>54</sup>/<sub>100</sub>  
James Bernard Foreman" which is received by the Court and ordered to be filed  
Now comes the defendant by his City and enters his motion for a new trial  
which is overruled by the court, and it is ordered by the Court that judgment  
be rendered upon the verdict. It is therefore ordered and adjudged by the Court  
that the plaintiff have and receive of the defendant the said sum of  
Two Thousand and sixty Dollars and fifty four cents his damages as  
aforesaid together with his costs in this behalf expended and that he have  
execution therefor. And now comes the said Defendant by his City as  
aforesaid and prays and Appeals from the judgment of this Court to the  
Supreme Court of the State of Illinois which is granted by the Court  
and leave given to file Bill of Exceptions, and Bond within thirty days,  
in the sum of Five Thousand Dollars with sureties to be approved by the  
Judge of this Court by agreement of the parties herein

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And afterwards to wit, on the 13 day of July AD 1861 came the said Defendant by his atty and filed in the Office of the Clerk of said his Bill of Exceptions and Bond in the sum of \$500. which are in the words and figures following to wit

State of Illinois }  
Henry County }

Henry County Circuit Court  
June Special Term AD 1861

Elisha Pennington }  
vs }  
Amos J Taylor }

Be it remembered that at the said term of the said Court at the trial thereof the said plaintiff to sustain the issues on his part and behalf to be sustained offered to read in evidence a note which is in the words and figures following to wit.

250<sup>00</sup>

Oct 14 1859

On or before the first day of October AD 1860 for value received I promise to pay to Elisha Pennington or order the sum of Two Hundred and fifty Dollars

A J Taylor

To the reading of which the defendant by his counsel objected. but the Court decided that the said note might be read in evidence to which ruling the defendant by his counsel then and there excepted

The plaintiff thereupon read the said Note to the jury and rested his case The Defendant then called James P Johnson a witness who was duly sworn and testified. That he knew the parties to this case. Elisha Pennington and Amos J Taylor. Pennington lives away somewhere. dont know exactly but thinks he lives in Mo. I heard Elisha Pennington say that Mr Taylor was to pay some money to Mr Greenlee on a note which Taylor owed him. I cannot say this is the Note or not. I never saw this before. Taylor was to pay Greenlee out of the first or second Note I dont know which this is. there were two or three other Notes as I understood

The Defendant then called James Greenlee a witness duly sworn

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who testified that he knew the parties. Pennington lives in Missouri.  
Taylor lives in this Henry County. Pennington was here last fall - he  
went back to Missouri. I have not seen him since. I think I should have  
known it if he had been back here. I don't think he has been here since last  
fall. Taylor owes Pennington two or three notes - this one and others.  
When Pennington was here last fall he was owing me about \$200.  
he told Taylor to pay me whatever the amount was and that he would  
allow it as a payment on the note then due. The note in suit is the  
note then due. Pennington was here just about the time the note was due  
- Taylor was to pay me the amount of money due to me from Pennington  
and Pennington agreed to allow it on this note (Wetzel was here when note  
in suit) I never saw this note before but I know from the conversation  
of both Pennington and Taylor that this is the note. In pursuance of  
this agreement Taylor paid me \$203<sup>00</sup> or \$204<sup>00</sup> I don't remember  
exactly which. In reply to cross interrogatories the said Wetzel testified  
I knew the agreement that Taylor was to pay me from both the parties  
in conversations had together in my hearing and at other times separately.  
Pennington never denied the agreement to my knowledge. he afterwards  
wanted me to wait until the second note from Taylor was due and have  
me take it out of that after Taylor paid me the money but I would not  
do it, and he did not seem very anxious about the matter. I believe  
he did try to back out of the bargain after the money was paid. I never  
knew that Pennington told Taylor not to pay the money to me. Taylor  
never told me so. Pennington may have told Taylor not to pay me  
the money as we agreed, but I never knew anything of it if he did  
Taylor paid me \$203<sup>00</sup> or \$204<sup>00</sup> in each by Pennington's direction  
on this note. The defendant thereupon rested his case

The counsel for the Plaintiff then called Mr James Maswell a witness  
who being duly sworn testified. That he knew the parties. Pennington  
lives in Missouri. he was here last fall about the time this note in  
now was due. he left after the note was due. He left this and other  
notes in my hands for collection and settlement. There was one note  
against Taylor the defendant for the same amount this note is

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due about Christmas after this Note was due. Taylor called the day  
it was due to pay some money. I asked him if he wanted to pay  
it on this note (referring to the Note now in suit) he said no he  
wanted to pay it on the Note due that day. he paid the Note due  
then in full and took it up. I asked him about this note (referring  
to the Note in suit) he said that he had paid Greener a little over  
\$200 on that Note. He said that when Punnington was here last  
fall he told him to pay Greener out of this Note (note in suit) but  
afterwards Punnington told him to pay Greener out of the second  
Note which was not this note (referring to the Note in suit) but the  
one due about Christmas and which Taylor had just paid me  
The Plaintiff then rested his case. This was all the evidence in the  
case

And thereupon the counsel for the Plaintiff asked the Court to instruct the  
jury as follows

1<sup>st</sup> If the jury believe from the evidence in this case that the defendant  
Taylor paid the Note in question or any part thereof to the witness Greener  
without the consent of the Plaintiff he said so at his peril, and the  
jury will find for the Plaintiff the whole amount of the note

2<sup>d</sup> If the jury believe from the evidence that the defendant had no  
request from the plaintiff to pay any amount to Greener which might  
be due to him or a plaintiff upon the Note in evidence. They will find for  
the plaintiff. Even though they should believe from the evidence that  
there was an agreement that an amount to Greener was to be paid out  
of another note

3<sup>rd</sup> A parol promise to pay the debt of another is not binding and in  
this case the jury are instructed that any agreement of that kind between  
Plaintiff and Defendant is not binding upon either

To the giving of which instructions and each and all of them the defendant  
by his counsel then and there objected, but the court overruled the objections  
and decided to give the said instructions and all of them to the jury  
to the giving of which and the said ruling, the defendant by his counsel  
then and there at the time then excepted

The counsel for the defendant thereupon asked the Court to instruct the jury for the said Defendant as follows

1<sup>st</sup> If the jury believe from the evidence that the Plaintiff Pennington authorized the defendant Taylor to pay the money on said Note on which this suit is brought, or any part of it to any other person, and that the defendant did pay such person any money, they will deduct the amount of money so paid from the amount of the note on which this suit is brought unless the jury believe that the authority to pay the money to such other person was revoked by Pennington before the money was paid by Taylor, or before Taylor knew of the revocation

2<sup>a</sup> A payment to a person authorized to receive it for another is the same as a payment to the person direct. If the jury believe from the evidence that the defendant has paid any money to any person authorized by the plaintiff to receive it from him, the jury may under the plea of offset filed in this case, allow the amount so paid as an offset to the Defendant, and it makes no difference what account the money was paid on.

And thereupon the Court erased all the following words from said Court instruction asked to wit, the words "and it makes no difference what account the money was paid on" which words were erased by the erasing a pen through them. To the erasing of which said words the defendant by his counsel then and there objected, and thereupon the Court gave the said instructions for the defendant as erased as aforesaid and the counsel for the defendant then and there excepted to the erasing said words as aforesaid

Whereupon the jury retired to consider of their verdict and returned a verdict to the Court as follows to wit

Elisha Pennington }  
vs }  
Andrew J Taylor }

We the jury in the above case find for the plaintiff and assess his damages at the sum of Two Hundred and sixty and

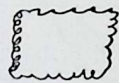
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54/100 Dollars \$ 260<sup>54</sup>

James Bernard Freeman

The counsel for the defendant thereupon moved the Court to set aside the said verdict and for a new trial. But the Court overruled said motion and rendered judgment on the verdict, to which said decision and ruling of the Court the counsel for the defendant then and there excepted. Wherefore in as much as the said matters do not appear upon the record of this court, the counsel for the defendant prayed the Judge of the said Court to sign and seal this Bill of Exceptions which is done

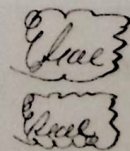
J. H. Howe  
Judge &c



Copy of Bond

Know all men by these Presents that we Andrew J Taylor as principal and James Greenlee as security one held and firmly bound unto Elisha Pennington in the penal sum of Seven Hundred Dollars for the payment of which we hereby bind ourselves our heirs executors and administrators jointly severally and our firmly. Witness our hands and seals 13 day of July AD 1861. The enactment of this obligation is such that whereas the above named Elisha Pennington did at the June Special Term of the Henry County Court recover a judgment against the above bounden Andrew J Taylor for the sum of Two Hundred and Sixty & 54/100 Dollars from which judgment the said Taylor has taken an Appeal to the Supreme Court of the State of Illinois now therefore if the above bounden Andrew J Taylor shall well and truly pay and satisfy the said judgment together with all costs interest and damages in case said judgment shall be affirmed and shall prosecute his said appeal to effect then this obligation to be void otherwise to remain in full force and effect

Andrew J Taylor  
James Greenlee



State of Illinois  
 Henry County } I Amos Gould Clerk of the Circuit Court in  
 and for said County and State do hereby certify that the foregoing  
 is a full, true, correct and perfect copy of the Record of the proceedings  
 had in the above entitled cause as appears of Record in my Office  
 Witness Amos Gould Clerk of said Court and the seal thereof at  
 Coombsville in said County this 8 day of August A.D. 1861

Amos Gould Clerk  
 By E.S. Bond Deputy





7 The verdict was wholly ~~is~~ unsupported  
by the evidence and the judgment on the  
verdict was contrary to the law of the  
land

Wherefore and for diverse other errors  
in the said record and proceedings  
and in the rendition of judgment the  
said defendant prays that the said  
judgment may be reversed

H. W. Wiles  
atty for Dept

Clarke Pennington <sup>276</sup>

Amelia <sup>75</sup> J Taylor

Appeal from Henry Circuit Court

Filed April 24, 1862  
L. Deland  
Clk.