

13615

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

# Supreme Court of Illinois

Conkling

---

vs.

Vail

718  
STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 194

~~165 at app. term 1863~~

*Carroll*

*15*

*Some for wharving*

*amount*

*136 15*

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

HENRY R. GONKLING, Appellant, }  
vs. } *Appeal from La Salle.*  
JOHN W. VAIL, Appellee: }

## ABSTRACT OF RECORD.

PAGE  
Of Record.

- 3 Action—Assumpsit—begun March 10th, 1853, in Grundy County Circuit Court.
- 5 *Declaration* upon a promissory note given by appellant, October 1st, 1851, for \$175.00, payable to the order of Daniel W. Edgerton, one year from date, with interest annually. Endorsed to appellee.
- 17-18 Venue changed to La Salle County March 24, 1857.
- Pleas filed November 5th, 1860.
- 23 1ST. General issue.
- 2D. That said note was made without any good or valuable consideration. That Daniel Edgerton received said note as the agent of the plaintiff, (appellee,) and assigned it to appellee.
- 3 That on and prior to the first day of January, A. D. 1850, John Moore  
24 and Horace Moore were the owners in fee of the north-east quarter of section 9, 34, 7 east 3 P. M.; but although the legal title was in them, they really held the same as security for an indebtedness from one Daniel W. Edgerton to them. On said January 1st, 1850, by an arrangement between said Edgerton and said John and Horace Moore and the plaintiff, said John and Horace Moore, in discharge of \$400 of the indebtedness of Edgerton to them, conveyed, by their deed of that date, to said John W. Vail, the south half of said quarter section of land, and the said Vail,

gave to said Edgerton a contract to convey the said south half to said Edgerton upon being paid said four hundred dollars. On the 28th of July, 1851, the legal title to said south half of said quarter section of land so being in said Vail, and the legal title to the north half of said quarter section being still in said John and Horace Moore, as security for the remainder of the debt due them from said Edgerton, the said Edgerton and this defendant made and entered into a contract in writing. That  
 25 said Edgerton doth bargain and sell unto appellant the North-east quarter of section 9, 34, 7 east 3 P. M.; also 2 acres of timber land in section 19, 34, 8 east 3 P. M., &c. Said appellant agreed to pay unto said Edgerton \$1150—\$800 October 1st, 1851—balance in two yearly  
 26 equal instalments, to be secured by a mortgage on said premises, Edgerton to make title to appellant when \$800 paid, possession to be given on or before the second day of August, 1851, on payment of \$100—part of the \$800.00.

27 2d day of August, 1851—\$100 paid.

August 14th, 1851—Said John W. Vail (appellee), then residing in Vt., conveyed to Orson B. Galusha, for expressed<sup>1</sup> consideration of \$400, said south half of said quarter section.

September 8th, 1851, said Galusha, for \$400, conveyed said south half of said quarter section to appellant.

September 20th, 1851, said John & Horace Moore conveyed the north half of said quarter section to appellant.

Said deed from said Vail (appellee) to said Galusha was without consideration; that said Galusha, in receiving said conveyance and conveying to appellant, acted as the agent of said Vail (appellee), and was a mere nominal holder of the title, for convenience in transacting the business of his agency.

28 At the time of the conveyance to appellant, by said Galusha, appellant actually paid the sum of \$400, in cash, which was all the consideration said Vail (appellee) was entitled.

There was due from said Edgerton to said John & Horace Moore, at the time they executed the deed aforesaid to appellant, \$650, and at the time of the execution of said deed, appellant paid to said John & Horace Moore \$300 in cash. After the payment of said \$100 to Edgerton, \$400 to Galusha for Vail (appellee), and at the time of the payment of said \$300 to John and Horace Moore, making \$800, it was agreed between said Edgerton, John and Horace Moore, and appellant, that the remaining \$350, mentioned in said agreement as that to be secured by a mortgage, should be paid by letting the said John & Horace Moore have the mortgage contemplated in said agreement. The ~~closing~~<sup>closing</sup> of said agreement by the preparation and execution of said mortgage was carelessly neglected till March,  
 29 1852; said Edgerton, in the meantime, had applied to his own use the \$400

which belonged to Vail (appellee), and which Galusha had permitted him to take. March, 1852, said Edgerton, and Atherton, a lawyer in Morris, insisted that it was necessary that the notes should run to Edgerton, as the contract was made with him, and prevailed upon appellant to execute the mortgage and notes (one of which is that declared upon) to said Edgerton, instead of to said John & Horace Moore, with the fraudulent motive on the part of said Edgerton to assign the notes and mortgage to said Vail (appellee), to make good, in part, the money of said Vail so appropriated by said Edgerton to his own use. Thereupon said Edgerton, for no other consideration, took and immediately assigned said notes to the plaintiff (appellee), and they were left with said attorney (Atherton) to be collected for said Vail (appellee).

32 Nov. 9th, 1861—demurrer to 2d and 3d pleas.

33 Nov. 20th, 1861—demurrer sustained to the 3d plea and overruled to the 2d.

33 Dec. 5th, 1861—common counts. Noll. ~~passed~~ *frased*  
1st and 2d plea withdrawn. Judgment for plaintiff (appellee).

34 Appeal prayed and perfected.

ERRORS ASSIGNED.

1st. The Court erred in giving judgment for plaintiff (below).

2d. The Court erred in sustaining demurrer to the 3d plea.

3d. The Court erred in not giving judgment for plaintiff (below).

LELAND & BLANCHARD,  
*For Appellant.*

118

194

Cooklin

or

paid

abstract

Filed April 22, 1862

J. Selman

clerk

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

HENRY R. CONKLING, Appellant, }  
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2d. That said note was made without any good or valuable consideration. That Daniel Edgerton received said note as the agent of the plaintiff, (appellee,) and assigned it to appellee.

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Said deed from said Vail (appellee) to said Galusha was without consideration; that said Galusha, in receiving said conveyance and conveying to appellant, acted as the agent of said Vail (appellee), and was a mere nominal holder of the title, for convenience in transacting the business of his agency.

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LELAND & BLANCHARD,  
*For Appellant.*

11<sup>th</sup> - 194

Continued

as

Wail Abstract

Filed April 22, 1862

L. Deland

Clerk

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

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APRIL TERM, 1862, AT OTTAWA.

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HENRY R. CONKLING }  
                          <sup>vs</sup> } *Appeal from La Salle.*  
JOHN W. VAIL.        }

## BRIEF OF APPELLANT.

The only question in this record is, whether, if the allegations in the 3d plea are true, the defendant ought to pay the note declared upon? The question is simply this: If A owes B a sum of money, and C, to whom A owes nothing, can deceive A so as to make him give him, (C), a note for it, without the consent of B, and without any discharge by B of A's liability to him, can B and C both collect the \$100 of A, or can B only collect it? The giving a note by A to C for a debt A owes B, does not, of course, discharge A from the debt to B; and if so, it seems clear that there is no consideration for A's promise to C; otherwise, A can be compelled to pay twice. The gist of the plea is this: The Moores held the title to a quarter section of land, as security for a sum of money due them from Edgerton. Vail paid the Moores \$400 for Edgerton, and the Moores thereupon conveyed to Vail the south-half of the quarter, and Vail gave Edgerton a bond to convey it to Edgerton when he paid the \$400. Edgerton contracted to sell the whole quarter to defendant (Conkling). The conveyance of the north half was, of course, to come from the Moores, and that of the south half from Vail; and Vail and the Moores were respectively to be paid their debts. All that Vail was entitled to was \$400. He made Galusha his agent and nominal grantee. Galusha, for Vail, conveyed to Conkling, and the latter paid him the \$400. Vail, therefore, by his agent, thus received all that was due him. Galusha entrusted the money to Edgerton, and the latter, instead of sending it to Vail, spent it. Edgerton, by false pretence, caused Conkling (the defendant) to give the note and mortgage to him, for the debt due the Moores, and immediately assigned them to Vail, and thus made up \$350 of Vail's money which Edgerton had spent, and left Conkling still indebted to the Moores \$350. The receipt of the \$400 by the agent of Vail is distinctly

alleged, and it also clearly appears by the plea that it is all to which he was entitled. The giving the note to Edgerton was, then, clearly without consideration, and Vail had no right to it, under the assignment, because his agent (Galusha) had already received the \$400. Vail, by Galusha, his agent, received his \$400, and of course legally had notice, when the note was assigned to him, that he had no right to a note and mortgage for a debt previously paid to him, and that Edgerton had no legal right to take a note and mortgage for a debt not due him. Suppose Vail did not actually know his \$400 had been paid to Galusha for him, he had actually legally received it himself, because the payment by the defendant to Galusha was, in law, a payment to Vail himself. It may be possible, but it is not probable, that Vail did not know that Galusha had received and paid over to Edgerton the \$400. Vail and Edgerton were brothers-in-law, and Galusha trusted to Edgerton to send Vail his money, and he omitted to do it, and it slipped away from him. Hence the dodge in Atherton's office. We rely upon the fact that payment to the agent is payment to the principal. The facts, as they can be proved, are stated in the 3d plea. If they furnish no defence, the defendant must pay the \$350 twice. It seems to us that the facts in the plea constitute a good defence, and that there was no consideration for the note given Edgerton, and that Vail having once been paid his debt, cannot recover it again. His agent was authorized to receive the money, and did receive it, and Conkling should not pay it twice, because Galusha did not see that his principal got his \$400. The common counts were not pressed, and the other pleas were withdrawn, so that the single question could be presented, whether the facts alleged in the 3d plea show that there was no consideration. The motives and circumstances under which the note was given, are stated, and it is alleged that there was no other consideration for giving it.—When any supposed defects in the plea, which we have not discovered, shall have been pointed out, we will endeavor to answer them.

LELAND & BLANCHARD,  
*For Appellant.*

119 194

Montbri

vs  
Dail

Appellants Brief

Filed Apr. 23-1862

L. Leland

Clerk

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LELAND & BLANCHARD,

*For Appellant.*

1901

Countess

vs

Deane

Appellant Pring

Filed April 23-1902

L. Lorland

Clark

State of Illinois } Pleas before the Honorable Madison  
Safalle County }<sup>ss</sup> E. Hollister Circuit Judge for the  
North Judicial District in and for said  
State, and the Presiding Judge of the Safalle County Circuit  
Court, at a term of said Court commenced and held  
at the Court House in Ottawa on the first Monday  
in the month of November, <sup>the same being the first day of November</sup> in the year of Our Lord  
One Thousand Eight Hundred and fifty Eight  
and of the Independence of the United States of Amer-  
ica the Eighty Third.

Present The Honorable Madison E.  
Hollister Presiding Judge  
John F. Nash Clerk  
Washington Bushnell States Attorney  
Eri L. Waterman Sheriff

Be it remembered That heretofore to wit  
on the 10<sup>th</sup> day of March 1853, a precept was  
filed in the Circuit Court of Grundy County, Ill.  
And afterwards said precept was filed in the  
Office of the Clerk of Circuit Court, of Safalle  
County, <sup>on the 12<sup>th</sup> day of February 1853,</sup> which precept is in the words and  
figures following To Wit:

" State of Illinois } Grundy Circuit Court  
Grundy County }<sup>ss</sup> March Term 1853,

John W. Vail vs Henry R. Conklin.

Clerk! Please issue Summons, returnable at next term, Plea- Chespap on the Case Damages \$300<sup>00</sup>

Suit founded on Dfts note of hand dated 1 October 1851 for 175 Dollars payable in one year from date with interest annually to D<sup>r</sup> W Edgerton or order and by him indorsed to Plf,

B. M. Atherton

Plf Attorney

Morris 7 March 1853, "

Be it remembered that heretofore to wit on the 10<sup>th</sup> day of March 1854, the following security for Costs was filed in the office of the Grundy County Circuit Court, and was afterwards to wit, on the 12<sup>th</sup> day of February the same was filed in the Lafalle County Circuit Court, which is in the words and figures following To wit,

"State of Illinois }  
Grundy County } 88,

In the Circuit Court of Grundy County

John M. Vaic }

vs }

Henry R. Conklin } Suit instituted returnable at March Term 1854. I do hereby enter

Myself Security for costs in this case and acknow-  
 -ledge myself bound to pay or cause to be paid  
 all costs which may accrue, either to the defen-  
 -dant or to any of the officers of this Court in  
 pursuance of the laws of this State. Dated this  
 8<sup>th</sup> day of March 1834, C. B. Galusha.

Be it remembered that heretofore to  
 wit on the 10<sup>th</sup> day of March AD 1833, a Sum-  
 -mons was issued out of the Gundy County  
 Circuit Court, which summons, and the  
 endorsements thereon are in the words and  
 figures following To Wit:

"State of Illinois } The People of the  
 Gundy County }<sup>ss</sup> State of Illinois. To  
 our Sheriff of said  
 County, Greeting: We command you  
 that you summon Henry R Conklin  
 if he be found in your County, personally  
 to be and appear before our Circuit Court  
 of our said County, on the first day of the  
 next term thereof, to be holden at the Court  
 House in Morris in said County on  
 the 4<sup>th</sup> Monday of March instant to  
 answer John W. Paie, in a certain plea  
 of Trespass on the Case in which said Paie

4,  
is Plaintiff

and you said Conklin are debt, to the  
damage of him the said Plaintiff Three  
Hundred Dollars, as is said: And  
have you then, there, this writ;

Witness George H. Kersted, Clerk  
of our said Court, and the Seal thereof have  
to affixed in said County this 10<sup>th</sup> day of  
March AD 1853

E Seal

Geo. H. Kersted Clerk "

John W bail

vs

(2)

Henry R Conklin

} Sum to debt  
Damage of 300.<sup>00</sup>

I have served the within summon  
by reading the same to the within named  
Henry R Conklin this 15 day of March  
1853 and return.

for serving	50 cents
for miles	39 "
for returning	<u>12 "</u>
	\$1.01

J. B. Jones Sheriff  
by H. Beebe, Deputy Sheriff

Filed Mar 28/53, Geo H. Kersted, clk

Filed February 12, 1858,

J. F. Nash Clerk

2  
5-

Be it remembered that heretofore to wit  
on the 22<sup>nd</sup> day of September 1853. A  
Declaration was filed in the office of the  
Clerk of the Circuit Court, in & for Grundy  
County, <sup>and afterwards on the 12<sup>th</sup> day of July 1858, filed in Sagadahoc County Circuit Court,</sup> which is in the words and figures  
following To wit:

"State of Illinois } In Grundy Circuit Court  
Grundy County } do October Term 1853.

John W. Haie } Henry R. Conklin was sum=  
vs } = moned to answer unto John W.  
Henry R. Conklin } Haie, in a plea of Trespass on the  
Case upon promises, and now comes  
the said John W. Haie by B. M. Atcherson his attorney and  
complains against the said Henry R. Conklin in a plea  
of Trespass on the Case upon promises for that whereas  
the said Henry R. Conklin heretofore to wit on the  
first day of October in the year of our Lord. Eighteen  
Hundred and fifty one at said Grundy County made  
his certain promissory note in writing bearing date the  
day and year aforesaid and thereby thereunto there  
promised one Daniel W. Edgerton to pay to him or his order  
in one year from said date the sum of One Hundred  
and seventy five Dollars with interest annually, and  
then and there delivered the said promissory note  
to the said Daniel W. Edgerton, and the said Daniel  
W. Edgerton, to whom or to whose order the payment

of the said sum of money in said promissory note  
 specified was to be made, after the making of  
 said promissory note and before the payment  
 of the said sum of money therein specified  
 to wit: on the day and year last aforesaid  
 at said Gundy County, indorsed the said promissory  
 note by which said indorsement the said Daniel  
 M. Edgerton then and there, ordered and appointed  
 the said sum of money in the said promissory  
 note specified to be paid to the said Plaintiff  
 and then and there delivered the said promissory  
 note so indorsed as aforesaid to the Plaintiff.  
 By means whereof and by force of the Statute in  
 such case made and provided, the said defendant  
 then and there became liable to pay to the said  
 Plaintiff the said sum of money in said promissory  
 note specified according to the tenor and effect  
 of the said promissory note, and being so liable  
 he the said defendant in consideration thereof  
 afterwards to wit on the day and year last  
 aforesaid undertook and then and there faith-  
 fully promised the said Plaintiff to pay him  
 the said sum of money in the said promissory  
 note specified, according to the tenor and effect  
 thereof. Yet the said defendant not regarding his  
 said promise, and undertaking but contriving and  
 fraudulently intending to wrong and injure the  
 Plaintiff in this behalf has not paid the said

7

sum of money or any part thereof to the Plaintiff, although said day of payment has elapsed although often requested so to do, but the said defendant to pay the sum or any part thereof has hitherto refused and still does refuse to the damage of said Plaintiff the sum of Three Hundred Dollars and therefore he brings suit &c

B. M. Atherton  
att<sup>o</sup> for Plf

Copy of the note declared on;

1. October 1851. For value received I promise Daniel M. Edgerton to pay him or order, or order One Hundred & seventy five Dollars in one year from the date hereof with interest annually

"Signed" Henry R. Cooklin  
Indorsed "Pay the within to John M. Baird or order"  
Signed "D. M. Edgerton"

Be it remembered that Heretofore to wit: on the 28<sup>th</sup> day of March 1853, <sup>as of March 27/55</sup> a Demurrer was filed in the Grand Jury County Circuit Court, and the same was filed in the office of the Clerk of the Circuit Court of LaSalle County, July 12, 1858, which is in the words and figures following To wit:



3  
9

State of Illinois  
Gundy County

In the Circuit Court  
of Gundy County

Henry R Conklin  
vs  
John W Baie

Henry R Conklin  
being duly sworn  
Says that he cannot

Safely proceed to trial of said cause  
at the present term of this court, on ac-  
count of the absence of two material wit-  
-nesses - John Moore of Sishon in Ren-  
-dall County Illinois & Carpenter G. Conklin  
of said Gundy County, That both of said  
witnesses were duly subpoenaed in time  
for their attendance at this term of this  
court & both of them have informed this  
affiant, since the commencement of said  
term, that they would have <sup>been</sup> in attendance  
had their health been ~~so~~ <sup>such</sup> as to have  
rendered it possible. That both of said  
witnesses are sick & confined to their homes  
& entirely unable by reason of such sickness  
to be present at this term, That this affiant  
expects to be able to prove by said John  
Moore that said promissory note de-  
-clared on, was given in part payment  
of a certain tract of land purchased by  
said Conklin, That no part of the

Consideration of said note, was going to  
 or of right belonged either to said Edgerton  
 or said Plaintiff, that the same was taken  
 by said Edgerton, for the use and benefit  
 of said Plaintiff, while acting as the  
 agent of said Plaintiff, that said note  
 was signed & delivered by said Conklin  
 under the false and fraudulent representations  
 of said Edgerton & without any just or  
 valid consideration existing therefore, ei-  
 -ther in said Plaintiff or said Edgerton  
 and that said note was immediately on  
 its delivery assigned by said Edgerton  
 to said Plaintiff without any new,  
 or additional consideration passing  
 between them, And further says that  
 he expects to prove by said Carpenter G.  
 Conklin that said note was made and  
 delivered to said Edgerton in part payment  
 of a certain tract land, purchased by  
 this affiant & that said defendant had  
 before that time, paid and satisfied said  
 bail & said Edgerton in full for all that  
 was rightfully their due for the same,  
 And further says that he expects to be able to pro-  
 -cure the evidence of said witnesses at the next term  
 of this Court.

Henry R. Conklin

Sworn to & subscribed before me this 4<sup>th</sup> day of October 1853,  
 Geo. H. Thurston Clerk.

Be it remembered that heretofore to wit On the 12<sup>th</sup> day of February, 1858 a Transcript from the Records of the Grundy County Circuit Court, was filed in the office of the Clerk of the Circuit Court in & for Seafall County, which is in the words & figures following to wit;

"Grundy County, Circuit Court, March Term 1857

"State of Illinois }  
Grundy County } Pleas before the  
Honorable Jesse C. Norton  
Judge of the Eleventh Judicial Circuit of  
the State of Illinois, and Presiding,  
Judge of the Circuit Court of said  
Grundy County, at a Circuit Court  
begun and held at the Court House  
in Morris in said County, on Monday  
the 23<sup>d</sup> day of March, in the year of our  
Lord One Thousand Eight Hundred and  
fifty seven, and of the Independence of the  
United States the Eighty first;

Present The Honorable  
Jesse C. Norton Judge  
F. A. Bantleson State attorney  
A. C. D. Wallace Sheriff  
attest John Galloway Clerk

Be it remembered that heretofore  
 To wit: On the 30<sup>th</sup> day of March AD 1833,  
 it being one of the days of session of  
 said Court for the March Term 1833,

The Hon<sup>ble</sup> Hugh Henderson, presiding  
 the following among other proceedings were  
 had before & entered of record, in said  
 Court, To wit:

John W. Vaie }  
 vs }  
 Henry R. Conklin }  
 } Presop on the case

It is ordered that  
 this cause be continued for want of  
 a narrative,

And afterwards to wit: on  
 the 4<sup>th</sup> day <sup>October</sup> of 1833, at a term of said Court  
 then held, the Hon. Hugh Henderson  
 presiding, the following further pro-  
 ceedings were entered of record in  
 said Cause To wit:

John W. Vaie }  
 vs }  
 Henry R. Conklin }  
 } Presop on the case

This day comes  
 the Plaintiff by Atherton & Glover his

4  
13

attorneys, and the defendant by Norton  
his attorney also Powers, and on mo-  
-tion of the said Plaintiff the defen-  
-dant is ruled to plead herein by  
One o'clock P.M. of this day,

And afterwards, as yet  
of the same term and day the  
following further proceeding were  
had and entered of record in said  
Cause to wit;

John W. Blair }  
vs } Resped on the Case  
Henry R Conklin }

This day again  
came the parties hereto, by their respective  
attorneys, and by their agreement the  
bond for costs and pleas herein, are to  
be filed by the first day of January  
next and the Counsel for the Plaintiff  
to be furnished with a copy of the  
pleas, <sup>though the pleas</sup> ~~and~~ not be filed if the security  
bond is not filed.

And afterwards to wit; on the  
27<sup>th</sup> day of March 1854, at a Term of  
said Court then held, the Hon.

Hugh Henderson, presiding, the following further proceedings in said cause were had before and entered of record in said Court To wit;

John W. Vaie }  
 vs }  
 Henry R Conklin }  
 } Resp on the Case

On motion of the Plaintiffs attorney it is ordered that the defendant be ruled to plead herein by Eight o'clock To morrow Morning.

And afterwards, and as yet of the same Term & day, the following further proceeding was entered of record in said Cause To wit;

John W. Vaie }  
 vs }  
 Henry R Conklin }  
 } Resp on the Case

The rule to plead heretofore entered herein is vacated by consent of parties and this cause continued.

And afterwards To wit;

On the 27<sup>th</sup> day of March 1835, at a Term of said Court then holden, the Hon S. W. Randalo Presiding, the following further proceedings were had before said Cir Court & entered of record in said Cause to wit;

John W. Vaie }  
 vs }  
 Henry R. Conklin } Trespas on the Case

By agreement of the parties this Cause is continued till Thursday next at 12 o'clock, reserving all rights to the parties.

And afterwards To wit;  
 On the 29<sup>th</sup> day of March 1835, as yet of the same Term, the following further proceedings were entered of record in said Cause To wit;

John W. Vaie }  
 vs }  
 Henry R. Conklin } Trespas on the Case

Now again come the parties hereto, by their respective attorneys and the defendant withdraws his demurrer to the Plaintiff's narrative, and by agreement

of the parties the demurrer to the pleas is submitted and this cause to be decided by the Court in vacation as of this term, and this cause continued.

And afterwards To wit: on the 4<sup>th</sup> day of October AD 1833, at Term of said Court then held, the Hon S. W. Randall presiding the following further proceedings were had & entered of record in said Cause To wit:

John W. Vaile }  
vs }  
Henry R Conklin }

Trespas on the Case

This day comes the defendant by Boston & Roberts his attorneys and upon affidavit filed moves the Court for a continuance herein for the reasons set forth in said affidavit, and the Court being fully advised in relation thereto, do order that the same be granted, and this cause continued at the Defendants costs.

And afterwards, To wit: on

5  
17

Tuesday the 2<sup>d</sup> day of December 1836, it being one of the days of a Special Term of Said Court then holden, the following further proceeding was entered of record in Said Cause To wit:

John W. Waie }  
          vs      } Presap on the Case  
Henry R. Conklin }

This day come the parties hereto by their respective attorneys B. M. Thurton for the Plaintiff and Norton & McRoberts for the defendant and upon motion of the Said defendant by his said attorneys, it is ordered that this cause be continued at the defendants ~~cause~~, Costs.

And afterwards To wit: on Tuesday March the 24<sup>th</sup> 1837, at a Term of Court then holden. The Hon<sup>ble</sup> Jesse C. Norton, Presiding, the following further proceedings were had & entered of record in Said Cause to wit:

John W. Waie }  
          vs      } Presap on the Case  
Henry R. Conklin }

The present judge of this Court having been of Counsel herein it is ordered that the venue in this cause be changed to the Circuit Court of Lofalle County & that the papers & a certified copy of the records be transmitted

State of Illinois }  
 Grundy County } ss

I, John Galloway  
 Clerk of the Circuit Court, within & for  
 said County in the State aforesaid, do  
 hereby Certify the foregoing to be a full  
 true and correct copy of the proceedings  
 had before said Court in the above entitled  
 cause, and that the papers accompanying  
 this Transcript marked (1) (2) (3) (4) (5)  
 (6) (7) and (8) are all the papers remain-  
 =ing on file in my said office pertaining  
 to said cause

Seal

In Testimony Whereof I  
 have hereinto set my hand  
 and affixed the seal of said  
 Court at Morris this 17<sup>th</sup> day  
 of June AD 1857.

John Galloway clerk  
 By Geo H. Keister

sep 11

Be it remembered that heretofore to wit,  
 on Tuesday November 9<sup>th</sup> 1838, the same  
 being one of the days of the November Term  
 of said <sup>Safalle county circuit</sup> Court for said year, The following  
 proceedings were had and entered of record.

John W. Waie }  
 vs }  
 Henry R Conklin } Trespas on the Case

On Motion of the  
 defendant by Scotland & Scotland his attorneys  
 it is ordered that they have leave, to file  
 additional pleas herein, and by agreement  
 of parties it is ordered that this cause be  
 continued.

Be it remembered that heretofore  
 to wit on the 1<sup>st</sup> day of March AD 1839  
 The same being one of the days of the Feb-  
 -ruary Term of the Safalle County Circuit  
 Court, and ordered was entered of record  
 as follows viz;

John W. Waie }  
 vs }  
 Henry R Conklin } Trespas on the Case

This day the  
 Plaintiff comes by Atherton his attorney

and the defendant by Seeland and Seeland his attorneys and by agreement of parties it is ordered by the Court that the Plaintiff have leave to amend his declaration herein on or before the first day of May next.

~~John W. Vaie }  
vs }  
Henry R. Conklin } Respon on the Case~~

~~On motion of the defendant by Seeland & Seeland his attorneys, the Plaintiff is ruled to file replications to defendants pleas on or before the coming in of the Court tomorrow morning.~~

But remembered, that heretofore to wit, on the 13<sup>th</sup> day of June the same being one of the days of the June Term of the Saffall County Circuit Court for the year 1859, the following order was entered of record viz:

John W. Vaie }  
vs }  
Henry R. Conklin } Respon on the Case

An Motion of the defendant by Seeland & Seeland his attorneys, the Plaintiff is ruled to file replications to defendants pleas on or before the coming in of the Court Tomorrow morning.

Be it remembered that heretofore to wit on the 16<sup>th</sup> day of June 1839, the same being one of the days of the June Term of the Saffall County Circuit Court, for said year, an order was entered of record in the words and figures following To wit:

John W. Vaile }  
                  no }  
Henry R. Conklin }    Dues paid on the Case

By agreement of parties it is ordered that this cause be continued.

Be it remembered that heretofore To wit: on Wednesday June 15<sup>th</sup> 1860, the same being one of the days of the June Term of said Saffall County Circuit Court for said year, the ~~same being~~ following order was entered of record, viz:



Now comes the said defendant by Seeland & Seeland his attorneys & defends &c & says actio non &c because he says that he did not undertake & promise in manner & form as said Plaintiff hath above thereof declared against him & of this he puts himself upon the Country &c

Seeland & Seeland  
defts attys

& Plff doth the like, Glover, Cook & Campbell  
his attys

And for another and further plea in this behalf by leave of Court &c said defendant says, actio non &c because he says that said note in the declaration mentioned was made and entered into without any good or valuable consideration & that at the time of the Execution thereof, the said Daniel Edgerton acted as the agent of the Plaintiff & as such agent received said note and assigned it to the Plaintiff & this he is ready to verify wherefore he prays Judgment &c.

And for another & further plea in this behalf, by leave of Court &c said defendant says actio non

So because he says that on & prior to the first day of January AD 1830, John Moore & Horace Moore were the owners in fee of the North East quarter of Section Nine (9) in Township Thirty four (34) North, of Range Seven (7) East of the Third Principal Meridian, but although the legal title was in them, they really held the same as security for an indebtedness from one Daniel W Edgerton to them - on said first day of January AD 1830, by an arrangement between said Daniel W. Edgerton the said John Moore & Horace Moore & the Plaintiff in this suit, said John Moore & Horace Moore in discharge of four hundred dollars of the indebtedness of Edgerton to them conveyed by their deed of that date to said John W Vaie the South half of said quarter section of land & the said Vaie gave to said Edgerton a contract to convey the said South half to said Edgerton upon being paid said four hundred dollars, on the Twenty Eighth day of July AD 1837, the legal title to said South half of said quarter section of land so being in said Vaie & the legal title to the North half of said

25

Quarter Section being stite in said John & Horace Moore as security for the remainder of the debt due them from said Edgerton, the said Edgerton & this dependant made & entered into a contract in writing in the words & figures following " This agreement made this 28<sup>th</sup> day of July 1831 between Dan W Edgerton of Saratoga, Gundy Co & State of Illinois of the first part & Henry R Conklin, of Saratoga, Gundy Co, & State of Illinois of the second part that the party of the first part doth have & gain and sell unto the party of the second part, The North East quarter of section Nine, Township Thirty four Range Seven East 3<sup>rd</sup> P.M. in Gundy Co, and State of Illinois, and also Two acres or more of Timber Land on Sec 19, Town 34, R. 8, East 3<sup>rd</sup> P.M., and all my interest in the crops, and also the abediments and hew detiments and appurtenances Thereunto belonging consisting of what Timber and Rails and Posts & boards now lying about on said lands, The party of the second part doth agree to pay rent. The party of the first part the sum of Eleven Hundred & fifty Dollars in payments To wit, Eight Hundred Dollars on or before the first day of October

Eighteen Hundred and fifty one and the balance to be paid in Two Yearly equal instalments, the interest on the last instalments to be paid yearly or annually to be Secured by a Mortgage on Said premises or lands - The party of the first part further agrees to make unto the party of the second part a good and sufficient title to the premises or lands above described at the time the party of the second part shall make the payments of the Eight Hundred Dollars, The party of the first agrees to give quiet & peaceable possession of the above premises to the party of the second part, on or before the second day of August 1851, on the payment of One Hundred Dollars, which is part payment of the Eight Hundred Dollar payment. In witness whereof we bind ourselves, our heirs, our executors and assigns to perform the obligations herein set forth, Witness our hands and seals the year and month first above written,

Dan W Edgerton  
 Henry R Conklin

on the

Second day of August AD 1831, the defendant paid to said Edgerton the said sum of one Hundred Dollars mentioned in said agreement, On the fourteenth day of August AD 1831, said John W Vail, then residing in the State of Vermont by his deed of that date sold & conveyed to one Erson B. Galusha for the expressed consideration of four hundred dollars the said South half of said quarter section, On the eighth day of September AD 1831, said Galusha for the consideration of four Hundred Dollars conveyed said South half of said quarter section to the defendant in this suit. On the twentieth day of September AD 1831, said John Moore & Horace Moore by their deed of that date conveyed the North half of said quarter section to the defendant in this suit, said deed from said Vail to said Galusha was without consideration & the said Galusha in receiving the conveyance & conveying to said Conklin acted as the agent for said Vail & was a mere nominal holder of the title for convenience in transacting the business of his agency, At the time of

the conveyance to this defendant by  
 said Galusha of the title so nominally  
 held by him as agent, this defendant actu-  
 ally paid the said sum of Four Hundred  
 Dollars in cash, which sum was all the  
 consideration to which said vaie was  
 entitled as aforesaid. There was due from  
 said Edgerton to said John & Horace Moore  
 at the time of the execution by them of the  
 deed to this defendant as aforesaid, the  
 sum of Six Hundred and fifty Dollars  
 & at the time of the execution of said deed  
 this defendant paid to said John & Horace  
 Moore, the sum of Three Hundred Dollars  
 in cash - After the payment of said One  
 Hundred dollars to Edgerton, four Hundred  
 Dollars to Galusha for vaie & at the time of  
 the payment of said Three Hundred dollars  
 to said John & Horace Moore, making  
 Eight Hundred Dollars, it was agreed  
 between said Edgerton, John & Horace Moore  
 & this defendant, that the remaining Three  
 Hundred and fifty Dollars mentioned in  
 said agreement was that to be secured  
 by a mortgage. Should be paid by letting  
 the said John & Horace Moore have the mort-  
 -gage contemplated in said agreement. The  
 closing of said ~~arrangement~~<sup>agreement</sup> by the preparation

& execution of said Mortgage was carelessly  
 neglected till sometime in March AD  
 1832. The said Edgerton in the meantime  
 had applied to his own use the Four  
 Hundred Dollars which belonged to Vaie  
 & which Galusha had permitted him to  
 take. Sometime in March AD 1832 said  
 Edgerton & one B. W. Atherton a Lawyer in  
 Morris & in the office of said Atherton  
 in Morris, insisted that it was necessary  
 that the notes should run to Edgerton  
 as the contract was made with him & pre-  
 vailed upon this defendant to execute the  
 Mortgage & notes (one of which is that declar-  
 ed upon) to said Edgerton, instead of to  
 said John & Horace Moore as had been  
 agreed, with the fraudulent motive on  
 the part of said Edgerton to assign the  
 notes & Mortgage to said Vaie to make  
 good in part the money of said Vaie  
 so appropriated by said Edgerton to  
 his own use. & thereupon the said Edgerton  
 for no other consideration took & immedi-  
 ately assigned said notes to the Plaintiff & they  
 were left with said Attorney Atherton to be  
 collected for said Vaie the Plaintiff, And this said  
 defendant is ready to verify, wherefore he prays judg-  
 ment &c. Iceland & Seland attop for def<sup>t</sup>

Be it remembered that heretofore to wit  
 on Tuesday the 5<sup>th</sup> day of February, the same  
 being one of the days of the February Term  
 of said Lafalle County Circuit Court for  
 the year 1861. The following further pro-  
 ceedings were had and entered of record  
 To wit:

John W. Vaie }  
 vs }  
 Henry R. Conklin } Trespas on the Case

By agreement of  
 parties it is ordered that this cause  
 be continued,

Be it remembered that heretofore  
 To wit, on Monday the 10<sup>th</sup> day of June  
 AD 1861. The same being one of the  
 days of the June Term of said Court, for  
 said year, the following order was  
 entered of record, viz:

John W. Vaie }  
 vs }  
 Henry R. Conklin } Trespas on the Case

By agreement of  
 parties, it is ordered by the court, that  
 this cause be continued.

Be it remembered that heretofore to  
 wit on the 7<sup>th</sup> day of November A D 1861  
 the same being one of the days of the  
 November Term of said Court for said  
 The following order was entered of  
 record viz;

John W. Haic }  
 vs }  
 Henry R. Conklin } Trespas on the Case

On Motion of the  
 defendant by Secland & Secland his  
 attorneys, the Plaintiff is ruled to file  
 his replication to defendants pleas  
 on or before Saturday Morning next.

Be it remembered that heretofore  
 to wit on the 9<sup>th</sup> day of November 1861  
 the same being one of the days of the November  
 Term of said Court, the Plaintiff files in  
 said Court a Demurrer to 2<sup>d</sup> & 3<sup>d</sup> pleas of  
 the defendant, which Demurrer is in the  
 words & figures following To wit:

<sup>1</sup>  
 State of Illinois }  
 La Salle County }  
 And Circuit Court  
 thereof to November Term A D 1861.

John W. Vaie }  
 vs }  
 Henry R. Conklin } Assumpsit

Now comes the Said Plaintiff by Glover, Cook & Campbell his attys and as to the 2<sup>d</sup> & 3<sup>d</sup> Pleas of said Defendant, and to each of them severally says, precludi' non, &c because he says that the Same & each of them are insufficient in Law, to preclude the Said Plaintiff from maintaining his Said action & that he is not bound by law to answer the Same, & this he is ready to verify wherefore he prays Judgment,

Glover, Cook & Campbell  
 his attys.

Be it remembered that hactore to wit on the 20<sup>th</sup> day of November AD 1861, the Same being one of the days of the November term of Said Court for Said year, the following further proceedings were had, and entered of Record viz:

John W. Vaie }  
 vs }  
 Henry R. Conklin } Trespass on the Case

This day come the

parties to this suit by their attorneys, and after argument of Counsel it is ordered by the Court, that the plaintiff's demurrer to the defendant's second plea be overruled and it be sustained as to the third plea of said defendant.

Be it remembered that heretofore to wit, on Friday December 5<sup>th</sup> 1861, The same being one of the days of the November Term of said Court, for said year, the following proceedings were had, & entered of record, viz:

John W. Vaie	}	Trespas on the Case
no		
Henry R. Conklin		

This day comes the Plaintiff by Glover Cook & Campbell his attorneys, and entered a nolle prosequi, herein as to the common counts in said Plaintiff's declaration and thereupon comes the defendant by E. S. Sedland his attorney, and withdraws the pleas filed herein on the part of said defendant, except the third plea of said defendant. It is therefore considered by the Court, that judgment be entered herein against the said defendant by default.

for want of a plea

And it appearing to the Court that this suit is founded on an instrument in writing for the payment of money only, The Clerk is directed to assess the damages herein and report the same to this Court, which is done and found to be the Sum of Two Hundred & Eighty One Dollars and Eighty Three cents, which is reported to, and accepted by the Court. It is therefore considered by the Court that the Plaintiff have and recover of the defendant the said Sum of Two Hundred and Eighty one Dollars and Eighty Three cents for his damages, also his Costs and Charges by him herein expended, and that he have execution therefore.

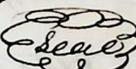
And now come the defendant by C. S. Iceland, his attorney, and moves the Court for an appeal herein to the Supreme Court, which motion is sustained by the Court, upon condition that said defendant shall by the first day of March next, enter into a bond payable to the Plaintiff in the penal sum of Three Hundred Dollars with security to be approved by the Clerk of this Court.

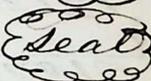
Be it remembered, that heretofore to wit; On the 14<sup>th</sup> day of February 1862, an appeal Bond was filed in the Circuit Court of said Safulle County which Bond is in the words and figures following To wit:

"Know all men by these presents that we Henry R. Conklin and Philip Collins are held and firmly bound unto John W. Vaie in the Penal sum of Three Hundred Dollars, for the payment of which well and truly to be made unto the said John W. Vaie, his heirs, executors, administrators or assigns, we bind ourselves and each of our heirs, executors and administrators jointly and severally firmly by these presents Witness our hands and seals this Tenth day of February AD 1862

The Condition of the above obligation is such that whereas the said John W. Vaie, did at the November Term AD 1861, of Safulle County Circuit Court in the State of Illinois obtain a judgment against the above bounden Henry R. Conklin for the sum of Two Hundred and Eighty One Dollars and Eighty Three Cents and costs of suit from which

Judgment, said Henry R Conklin  
then and there prayed an appeal  
to the supreme Court of said State  
of Illinois, Now therefore if the  
said Henry Conklin shall prosecute  
his said appeal with effect, and shall  
pay said judgment and costs and the  
interest thereon, and whatever damages  
may be awarded by the Court, in  
Case said Judgment should be affirm-  
-ed, then this obligation to be void, oth-  
-erwise to remain in full force and effect

Henry R Conklin 

Philip Collins 

Filed & approved by me  
this 14<sup>th</sup> day of July 1862.

A B Moore Clerk,

State of Illinois }  
Safall County } 88.

I Absalom B Moore  
Clerk of the Circuit Court in and for  
said County in said State, do hereby  
certify, that the foregoing is a true  
full & perfect copy, of the record  
and of the papers on file in my  
office, in the above entitled Cause

"10"

of John W. Waite vs Henry R. Conk-  
-lin.

In Testimony whereof I have  
hereunto set my hand, and  
the seal of said Court this  
18<sup>th</sup> day of March A.D. 1862  
A. B. Moore  
Clerk,

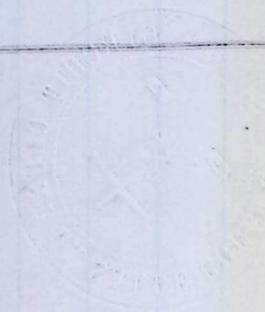
State of Illinois  
Suprem Court Third Grand Division  
April Term A.D. 1860  
Henry R. Conkling  
vs  
John W. Waite

Error to LaSalle

Now comes Henry R.  
Conkling appellant by Silas Blanchard his  
attorney and says there is manifest error  
in the foregoing record proceedings of judgment  
therefore he asks that the same be reversed  
and remanded in pursuance of law  
and as a special assignment of errors says

- 1<sup>st</sup> The Court Erred in giving judgment for  
Plaintiff (below)
- 2<sup>d</sup> The Court Erred in sustaining demurrer  
to 3<sup>d</sup> plea of defendant (below)
- 3<sup>d</sup> The Court Erred in not giving judgment for  
defendant (below)

Silas Blanchard  
for Appellant



Compare  
# 500

118 194

Henry R Conkling  
as  
John W Vail  
Appeal from LaSalle

Filed April 22. 1862  
L. Leland  
clerk