

12292

No. _____

Supreme Court of Illinois

Searls.

vs.

Munson.

71641  7

17
United States of America }
State of Illinois LaSalle County } P. Pleas before
the Honorable Buckner S. Morris, Judge of
the Seventh judicial Circuit of the State of
Illinois, at a special term of a Circuit
Court for the County of LaSalle in said circuit,
begun and held at Van Buren in said county,
on the second day of March in the year
of our Lord one thousand eight hundred
and fifty four and of the independence of
the United States the Seventy Eighth, said
term of Court being held pursuant to a
special order of the Honorable Buckner
S. Morris, Judge of the Seventh judicial
Circuit of said State and presiding Judge
of the Circuit Court of LaSalle County aforesaid
bearing date on the sixth day of
February A.D. 1854 and calling said
special term to commence on the second
day of March A.D. 1854 for the trial,
hearing and determination of all pleas
that may be depending in said court,
civil, criminal and mercantile, due notice
of said special term having been given by
the Sheriff of said County according
to the Statute in such case made and provided
Present the Honorable Buckner S. Morris, Judge,
Augustus Granger, Sheriff of LaSalle County
Attest, A. B. Bates, clerk R3

Be it remembered that heretofore, to
wit, on the second day of March A.D.
1854, said day being one of the days
of the Special March term A.D. 1854
of the Circuit Court of Lake County
in the State of Illinois, the following
papers hereto attached to wit; the
transcript from the County Court of
Lake County and the assignment of
errors, were filed in the office of
the clerk of the said Circuit Court

The following is a true copy of the cost
in the above entitled cause writ

1833 Francis F. Munson vs William S. Searls

July Term	Plaintiffs Costs	Assumpsit	
Judges fee	W. A. Boardman		2.00
Notarary Clerk	fil 3 papers 15 - iso Sum 35 - doct 10 Ent, atty app 10	75	
	order to Return	20	25
Sheriff	Orange Sum Sum 50 1 mile travel 5 Ret 10		65
October Term	doct 10	10	1.00
1834	July Term doct 10 fil 6 papers 30 iso Sub 35 -	75	
Notarary Clerk	July Term 15 - doct 2 with 10 Rec July verdict 15 -	40	
	Ent order of judgment 25 - fil 2 papers 10	35	
	Ent Saturn 15 - M & C each bill 30	45	1.95
Sheriff	Orange Sum Sub 100 4 miles 20 Ret 10		1.30
De R. B. Tiffin	Not		1.00
L. S. Overday	"		1.00
R. Munson	"		2.00
			<u>7.10 90</u>

Defendants Costs

1833	July term		
Notarary Clerk	Ent atty app 10 Sub fil aff 10 fil Return 5 order to return 20	45	
October term	Sub fil aff 10 order to return 20	30	75
1834	July term fil 2 papers 15 Sub fil 6 affs 60 order to fil Return 20	95	
	Ent order order overruling Mo for change of venue 20 order to ²⁰ Cont	40	
	Ent order 20 Sub 2 with 10	30	
	order overruling Mo for new trial 20 order to fil ³⁰ appeal	40	
	order to fil Bill & exhibits 20 order overruling objections ³⁰	40	
	fil 2 papers 10 watching bond 50	60	
	Centif's Seal	35	3.40
	State County Jury fee		3.00
			<u>7.15</u>

State of Illinois,

Said County, Jp I James C Bidwell com

Clk of the County Court
do hereby certify that the foregoing is
a true and correct copy of the facts
in said Court in the above entitled cause
as will appear from the records in this
office

In Testimony whereof I have hereunto
set my hand and affixed the Seal
of said Court at Monticello this 18th
day of Feb'y A.D. 1874

James C Bidwell com Clk

Be it remembered that heretofore to wit on the eleventh
day of June A D ~~1853~~ 1853 the same being a day
in vacation between the April term of the County Court
of Sate County & State of Illinois and the July term
of said Court for the year last aforesaid a writ
was filed in the office of the Clerk of said Court which
is in the words and figures following to wit

" Sate County Court

" Francis F Munson

" vs

" William S Sears

} against

Damages \$ 200.00

And for Matrimonial exp. Clerk

" You please issue Summons in the above cause
against wth Pet at the next term of your Court
& oblige Smith & Williams

" Waukegan June 11th 1853

Attest atty

And that afterwards to wit on the 27th day of June
A D 1853 the same being one of the days in vacation
between the April term of the County Court of Sate
County State of Illinois and the July term of said
Court for the year last aforesaid a summons
was issued out of the office of the Clerk of said
Court which is in the words & figures following to wit

" State of Illinois

" Sate County } ss The people of the State of
" Illinois to the Sheriff of said County greeting
" We Command you that you summon William
" S Sears if he shall be found in your County
" personally to be and appear before the County
" Court of said County on the first day of the
" next term thereof to be holden at the Court House
" in Waukegan in said County on the second
" Monday of July next to answer unto Francis

" & Munson in the plea of assumpsit to the
" damage of said plaintiff as he says in the sum
" Five Hundred dollars, And have you then and
" there this writ with an endorsement in what
" manner you executed the same

" Witness Amos Stratton Clerk of said Court
" Seal of the) And the seal thereof at Waukegan in said
" County, Court County, this 27th day of June AD 1833
" of Lake County) Amos Stratton Clerk
" see

And upon the back of which said Summ is
endorsed in the words and figures following to wit
" 15 - Lake County Court of Lake Co Ills July Term
" AD 1833 Francis & Munson vs William Searls
Summ Executed this writ this 30th day of July
June 1833 by reading to & in presence & hearing
" of the within named William Searls

" Geo Searls 50

" 1 Mule 5-

" Reby 10

" \$0,65

" Almonen Sheriff

"United States of America }
"State of Illinois Lake County }p

" Pleas before the Honorable
" William A Boardman the County Judge of Lake
" County in the State of Illinois at a term of the
" ^{of said County} ~~Court~~ ^{begun and held at the Court House in Maclester and said County}
" County Court of said County on the second Monday
" of April the same being the eleventh day of said
" month of April, in the year of our Lord one tho-
" usand eight hundred and fifty three and of the
" Independence of the United States the Seventy Seventh
" Present the Honorable William A Boardman ^{Judge} ~~of said~~
" Augustus Young Sheriff of Lake County
" Alast Amos Waterman Clerk"

Be it remembered that heretofore to wit on the
Twenty eighth day of June A D 1853 the same being
a day in vacation between the April term of
the County Court of Lake County ^{in the State of Illinois} for the year last
aforesaid and the July term of said Court for
the same year Francis F Munson by Smith
and Williams his attorneys filed in the office
of the Clerk of said Court a declaration which
is in the words and figures following to wit

" State of Illinois
" Lake County Court of the July Term in the year of our
" Lord one thousand eight hundred and
" Lake County so fifty three
" Francis F Munson

" Plaintiff in this suit by Smith & Williams his attorneys
" complains of William S Searls Defendant who is
" summoned & in a plea of trespass on the case on
" promises. For that whereas the said Defendant
" heretofore to wit: on the 21st day of August in the
" year of our Lord one thousand eight hundred and

“ fifty two at Hankyau. to wit, at Hankyau in said
“ said County of Sate 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 W^d Seale ~~or bearer~~
promised to pay, to the said Plaintiff or bearer
by the name style and description of J^{ts} Munson
Three Hundred Dollars with use six months after
date 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 said Plaintiff according to the tenor
and effect true intent and meaning of said note
to wit, at the place aforesaid.

And Whereas also the said Defendant afterwards, to
wit, on the first day of June in the year of our
Lord one thousand eight hundred and fifty three
to wit, at Hankyau in said County became and was
indebted unto the Plaintiff in a large sum of money
to wit, three Hundred dollars for money before that
time lent and advanced to, and paid laid out and
expended for said Defendant by said Plaintiff
at said defendants request and for money before
that time had and received by said Defendant to
and for the use of said Plaintiff and also in the
like sum, for goods wares and merchandise
before that time sold and delivered by said Plaintiff
to said Defendant at like special instances and
request; and also in the like sum for the labor

" Care and diligence of said Plaintiff before that time done and performed by said Plaintiff for said Defendant and at the like instance and request of said Defendant 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 promises and undertakings, but contriving &c although often requested so to do has not paid said Plaintiff either of said sums of money or any part thereof but so to do has hitherto wholly neglected and refused and still does neglect and refuse to the damage of said Plaintiff of Three Hundred dollars and therefore he brings suit &c

Atty for Plaintiff
Smith and Williams

And on the back of which said declaration are ^{Endorsed} the following words and figures to wit,

" Copy of the note said on
" Houshegun August 21st 1852
" Six months after dated promise to pay \$1
" Munson or bearer Three Hundred Dollars value
" received with use
" W J Sears "

Endorsed

" \$100⁰⁰ Recd Feb 23rd 1833 on this note one hundred Dollars
" \$100 "
" \$20⁰⁰ Recd on this note twenty dollars March 5th 1833 "
" \$45⁰⁰ Recd on this note forty five dollars March 10th 1833 "

United States of America
State of Illinois Lake County ^{Ill} ss

Plas before the Honorable William
A Boardman the County Judge of Lake County in the State
of Illinois at a term of the County Court of said County
of Lake began and held at the Court House of Waukegan
in said County on the second Monday of July
(the same being the eleventh day of ^{the} said month of July)
in the year of our Lord one thousand eight hundred
and fifty three and of the Independence of the United
States the Seventy seventh

Present the Honorable William A Boardman Judge
aforesaid Augustus Granger Sheriff of Lake County
Attest Amos S Watnman Clerk

And that afterwards to wit on the eleventh day of
July A D 1853 the same being one of the days of the July
term of the said County Court of Lake County for the
year last aforesaid proceedings were heard in
said suit which are entered of record in the words
and figures following to wit

15 Francis S. Munson }
vs } Stampert
William S. Scurle }

Now comes the ~~said~~ ^{said} parties by their
respective Attorneys. The said Plaintiff by Smith &
Williams his Attorney and the said defendant by Ferry
his Attorney and thereupon the said defendant
enters his motion founded upon affidavit filed to conti-
nue this cause and after arguments of counsel
the court takes the same under advisement

And that afterwards to wit on the twelfth day of July A D 1833 the same being one of the days of the July term of the said County Court of Lake County for the year last aforesaid, proceedings were heard in said court which are entered of record in the words and figures following to wit

" Francis F. Munson }
 " 15 vs } Appellant
 " William S. Sears } Defendant

" Now comes the said parties by
 " their respective Attorneys. The plaintiff by Smith &
 " Williams his Attorney and the said defendant by
 " Perry ordered that the rule to plead in this
 " Cause be extended until to morrow morning at
 " 9 o'clock

And that afterwards to wit on the thirteenth day of July A D 1833 a Plea was filed in the office of the Clerk of the said County Court which are in the words and figures to wit

" County Court of Lake County

July 7th 1833

" William S. Sears
 " at } Apt
 " Francis F. Munson }

" And the said deft by Perry his Atty
 " comes and defends the wrong & injury when he & says that
 " he did not undertake to in manner in manner of form
 " as the said plaintiff hath above thereof complained
 " against him & of this the said defendant puts himself
 " upon the Country

Perry /
 Atty for Deft

And that afterwards to wit on said thirteenth day of July A D 1833 the said Francis F Munson by Smith & Williams his attorneys added his similiters to the said plea of the said William S Searls which is in the following words to wit

" And the said Pleft doth the like

" by his Atty. Smith & Williams

And that afterwards to wit on the fourteenth day of July A D 1833 the same being one of the days of the July term of the said County Court of Sutte County for the year last aforesaid proceedings were heard in said suit which were entered of Record in words and figures following to wit

" Francis F Munson }
 " 15 vs } Defendant
 " William S Searls }

" Now come the parties by their
 " respective Attorneys and the said defendant enters ^{his motion}
 " to continue this cause on application to the Court."

And that afterwards to wit on the fifteenth day of July A D 1833 an affidavit was filed in the office of the clerk of said county court which is in the words and figures following to wit

" Sutte County Court
 " July Term 1833

" William S Searls }
 " vs } apt
 " Francis F Munson }

E Peter Ferry being duly sworn doth depose &

11 day that he is the Atty for deft. that said deft
 11 left this place on Saturday last as said deft
 11 informed this affiant to go to Chicago to procure
 11 medical advice & service, for inflammation of the eyes
 11 with which he was so severely afflicted as to
 11 incapacitate him for business
 11 That said defendant informed this affiant that he
 11 might return in time for the trial of this cause but
 11 would not do so if the Physician advised him to
 11 remain. That said deft sent this affiant
 11 word by his Brother in Law to have this cause cont-
 11 inued & further this affiant saith not
 11 Subscribed & Sworn to before E Pyers Perry
 11 me this 14th day of July }
 11 A D 1833 }
 11 A Bleates Clerk of
 11 Court Court of said
 11 County

And that afterwards to wit on the fifteenth day
 of July A D 1833 the same being one of the days of
 the July term of the said County Court of Lake
 County for the year last aforesaid proceedings
 were heard in said suit which are entered of
 record in the words and figures following to wit

11 Francis F Munson }
 11 vs } Assumpsit
 11 William Searles }

11 Now come the parties by their
 11 respective Attorneys whereupon on the motion of
 11 the said defendant founded upon affidavit filed
 11 to continue this cause heretofore entered

" ordered by the court that this cause be and
" the sum is hereby continued at the costs of the
" said defendant

United States of America {
State of Illinois Talle County, } ss

Pleas before the Honorable
William A Boardman the County Judge of Talle County,
in the State of Illinois at a term of the County
Court of said County of Talle begun and held at the
Court House in Naukegon in said County, on the second
mouduen of October (the same being the tenth day of
said month of October), in the year of our Lord
one thousand eight hundred and fifty three
and of the Independence of the United States the
Seventy seventh, Present ~~the~~ Honorable William A Boardman Judge as
aforesaid Augustus Granger Sheriff of Talle County, Altes Amos of Matamoras Clerk
And that afterwards to wit on the fourteenth day
of October A D 1853 the same being one of the
days of the October term of the said County
court of Talle County, for the year last
aforesaid a general ^{order} was entered of record
which is in the words following to wit

" ordered by the court

That all suits and proceedings
pending in this court ^{be} continued to the next
term thereof

And that on the Eleventh day of October
A.D. 1833 an affidavit was filed in the office
of the Clerk of said County Court of Lake County,
which is in the words and figures following to wit

" Lake County Court for the County of Lake of the
October term A.D. 1833

" Francis D. Munson

" do

" William S. Scarle }

" State of Illinois

" County of Lake p William S. Scarle of said County
being duly sworn doth depose

and say that he is the defendant in the above entitled
cause and that at the time ^{that} the declaration was filed
in this cause he was sick and unable to do business
and continued sick and unable to do business from
that time until after the July term of said Court for
the Year A.D. 1833 and that at the July term Aforesaid
this deponent was absent from the County of Lake
under the care of a Physician & unable to do business
and could not plea in said cause & that Mr
Derry appeared in said cause for this defendant
and moved to continue said cause merely
for the accommodation of this deponent & then
put in the plea of the general issue not then
knowing what plea to file this deponent not
having given him any instruction therein
And that this deponent has a good cause
of set off to said note which this deponent
verily believes cannot be given in evidence
under the pleas now on file and he therefore

asked leave to file additional plans

W S Searls

Subscribed and sworn to
before me this 11th day of
October A D 1833

Amos S. Waterman Clerk

United States of America {
State of Illinois Lake County } ss.

Plens before the Honourable John
I Turner the County Judge of Lake County in the State of
Illinois at a term of the County Court of said County of
Lake began and held at the Court House in Waukegan
in said County on the Fourth Monday of January
(the same being the twenty third day of January in the
year of our Lord one thousand eight hundred and
fifty four and of the Independence of the United
States the seventy eighth

Present the Honourable John I Turner County Judge
Augustus Granger Sheriff of Lake County
Alfred James & Biddlecoms Clerk

And that afterwards to wit on the twenty third day
of January A D 1854 the same being one of the days
of the January term of the said County Court of
Lake County for the present year aforesaid proceedings
were heard in said Suit which are entered of
record in the words and figures following to
wit

15 " Horacio F. Manson {
vs { Assumpsit
William Sears }

Now come said parties said
" plaintiff by J L Williams his attorney and said defendant
" in his own proper person and thereupon said
" defendant enters his motion founded on affidavit
" filed for leave to file additional pleas herein
" and after arguments of counsel the Court being

" being fully advised in the premises it is ordered
" that said defendant have leave to file additional
" pleas herein forthwith whereupon the said defendant
" files his said pleas "

And that afterwards to wit on the twenty third
day of January A D 1834 a plea was filed in the
office of said the Clerk of the said county court
of Lacle County, which is in the words and figures
following to wit

" County Court for the County of Lacle State of Illinois
of the October term A D 1833

William Searls

vs

Francis S. Winson

And the said defendant in his own proper person
comes and defends the wrong where and says that
the said plaintiff ought not to have or maintain
his aforesaid action thereof against him because
he says that after the making of the said several
promises and undertakings in the said declaration
mentioned the said plaintiff the said plaintiff
became indebted unto the said defendant to wit
in the County of Lacle and State of Illinois ~~in~~
the sum of six hundred dollars and at the
time of the commencement of this suit to wit at
the County of Lacle aforesaid the said plaintiff
was and from thenceforth hitherto hath been and
still is indebted unto the said defendant in a
large sum of money to wit the sum of ~~six~~ six
hundred dollars lawful money of the United
States and in the further sum of two hundred

dollars and in the further sum of one hundred
and twenty five dollars like lawful money and
in the further sum of forty dollars like lawful
money and in the further sum of fourteen dollars
like lawful money which said sums of money so
due and owing ^{from} said plaintiff to said defen-
dant exceeds the damages sustained by the said
plaintiff by reason of the nonperformance by the said
defendant and of the said several supposed prom-
ises 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 he 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 cases made and provided and
this he the said defendant is ready to verify where-
fore he prays judgement if the said plaintiff
ought to have or maintain his aforesaid action

And for the further plea in this behalf the said
defendant says action on because he says
that after making said promissory note in said
declaration mentioned the consideration upon
which said promissory note was made wholly
failed to wit levancy of Lake State of Illinois and
this the said defendant is ready to verify

And for the further plea in this behalf said defen-
dant says action on because he says that there was
no consideration passing from said plaintiff to said
defendant and that said promissory note is

" wholly without consideration and that the said defendant is ready to verify

And for a further plea in this behalf the said defendant says actis now because he says that the promissory note in the said declaration mentioned was given by the said defendant to the said plaintiff for the balance of the purchase money for a village lot in the village of Mountgarn County of Lute and State of Illinois which the said plaintiff then sold the said defendant and the said defendant avers that the said plaintiff then ~~falsely and fraudulently~~ represented to the said defendant that he was then seized of said lot in fee simple and had full power to sell the same and that he would give said defendant a good and lawful title to the said lot and the said defendant further avers that at the time of making the said note as above stated and of the making of the said representations as above set forth the said plaintiff was not the owner of the said lot in fee simple and has not conveyed the said lot to the said defendant as he then agreed to do to wit at the County of Lute and State of Illinois and said defendant avers that the said plaintiff now absolutely refuses to convey to the said defendant the said lot all of which the said defendant is ready to verify

W. S. Sears
attorney for said defendant

And ^{that} afterwards to wit on the twenty fourth day
of January A D 1834 a notice to take change of
venue was filed in the office of the clerk of the
said county court of Sall County which is
in the words and figures following to wit

" ~~Sall~~ ^{the} County Court in & for the County of Sall
" and State of Illinois

" Francis S. Munson
" ^{vs} William Searls } Assumpsit
" To Francis S. Munson
" & Smith & Williams his attorneys

" You are hereby notified that
" at the next term of the County Court in & for
" the County of Sall and State of Illinois to be
" holden on the fourth Monday of January
" A D 1834 I shall apply to said Court for a
" change of venue in the above entitled cause
" for the reason in the petition there to be
" presented set forth

" Dated this 13th day of January A D 1834
" William Searls

And on the back of which said notice is an
affidavit in the following words and figures
to wit

" State of Illinois {
" Sall County, } p C F Runyan being of said
" County being duly sworn doth depose and
" say that on the thirteenth day of January

" A D 1834 and in the afternoon of said day
" this deponent served upon Francis F. Munson
" in the village of Mantegau in the County of Sate
" & State of Illinois, a true and correct copy of
" the within notice
" Subscribed and Sworn to E. F. Rogers Remyan
" before me this 23^d day of
" January A D 1834
" V. A. Biddlecom Clerk "

And that afterwards to wit on the twenty fourth
day of January A D 1834 the same being one
of the days of the regular term of said County
Court of Sate County, a ^{verified by affidavit} petition was filed in the
office of the Clerk of said County Court of Sate
County, which is in the words and figures
following, to wit

" The County Court in & for the County of Sate &
" State of Illinois
" of the January term A D 1834
" Francis F. Munson
" do } as respondent
" William S. Searls }
" V. John S. Turner presiding Judge of the
" County Court in & for the County of Sate State
" of Illinois
" Your petitioner William S. Searls the defendant
" in the above entitled cause respectfully sheweth
" unto your Honor that he entertains serious &
" well grounded fears that he cannot receive a

a fair & impartial trial of the above entitled cause
in said country court on account of the prejudices
that your petitioner believes exists in the minds of
the presiding Judge of said Court who is now
on the bench and that your petitioner believes those
prejudices so great against your petitioner that he
would be unsafe in submitting to a trial of
said cause before the said Judge ^{of said} Court
I Turner and your petitioner further sheweth
states that the cause above stated for a change
of venue of said cause has arisen since the
last term of said Court the said presiding
Judge to wit the said John I Turner having
commenced his official term as Judge of said
Court since that time of & said cause not
existing as to the former Judge of said Court
to wit William A Boardman Now petitioner
therefore prays that a change of venue of said
cause may be granted to some County where
~~said~~ ^{the} cause aforesaid does not exist

And for a further cause for a change of venue
in said cause your petitioner further sheweth
unto your Honor that as he verily believes
the adverse party to wit Francis F Munson
has an undue influence over the minds of
the inhabitants of the County of Lake where
above entitled cause is pending so that this
your petitioner cannot receive a fair and
impartial trial in said County & in said Court
and that your petitioner was not aware of
said influence of said Munson until since the
last term of said County Court & that this is
the first term of said Court since your

" petitioner learned said fact and that this is the
" first term of said Court at which this your petitioner
" could have applied for a change of venue since he
" learned the fact of the influence of said ^{Since} Munson
" said cause was commenced your petitioner
" therefore prays that a change of venue may be granted
" in said cause to some county where said cause
" does not exist

William S. Sears

" State of Illinois
" Lake County } ss. William S. Sears of said County,
" being duly sworn oath depose and
" say that he is the defendant in the above entitled
" cause and that he has made the foregoing peti-
" tion and knows the contents thereof and that
" the same is true as therein stated except as
" to the matters and things as therein related to him
" upon his information & belief & as to these things
" he believes it to be true

William S. Sears

Subscribed and sworn
to before me this 23^d
day of January 1834

Attest Biddicom Clall

And afterwards to wit on the twenty fourth day of
January A D 1834 the sum being one of the days of
trial term of the said court, Court of Sake County,
for the present year an affidavit was filed in the
office of the clerk of the county, Court of said County,
which is in the words and figures following
to wit

The County Court for the County of Sake State of
Illinois

Francis D Munson

vs

William Searls

William Searls, of said County,
do hereby depose and say that he is the defendant
in the above entitled cause and that he cannot now
safely proceed to the trial of said cause on the account
of the absence from said County of one Jeremiah
Thorn who is a material witness for said defendant
upon the trial of said cause, who resides in the
State of Wisconsin and that said witness left Wauke-
gan last night for his home in Wisconsin where
he was called without any notice sufficient to
enable this deponent to take his deposition on the
account of sickness in his family, and that this
deponent expects and verily believes that he shall
be able to prove by said witness that this deponent
paid the said Francis D Munson the sum of
two hundred dollars to apply upon the note sued
upon in this cause and that said Munson then
agreed to endorse it upon this the note sued
upon in this cause which said Munson has not
done and this deponent further says that said

Two hundred dollars forms a good and valid set off to
said plaintiffs cause of action and was paid previous to
the commencement of this suit and that he does not now
know of any other person by whom this defendant
can prove the same facts and further that this
deponent was ready for a trial of said cause
yesterday at which time said witness could be had
but that he is not now for the reason that said
witness has gone out of the state and out of the
reach of this deponent and further that said witness
was yesterday in attendance of this court at the
request of this defendant as a witness in this cause
and that this deponent did not know that said
witness was a going away until he had started
on his way and when it was too late for this depo-
nent to get a subpoena for said witness and that
said witness was sent for on the account of sickness
of his family & that this deponent verily believes that
he can produce said witness at the next term of this
Court as a witness herein and that said sum of \$200
is over and above any and all sums endorsed upon
said note & that this application is not made for
delay but that justice must be done and that this
deponent has used due diligence & every means to
be ready for a trial of this cause at this time
of court & that the not being ready is not his
fault

Subscribed & sworn to W S Sears
before me this 26th day
of January, A D 1834

J C Bidell com Clerk

And that afterwards to wit on the twenty fourth day of January AD 1824 the same being one of the days of the January term of the said County Court of Sulte County for the present year aforesaid proceedings were heard in said suit which are entered of record in the words and figures following to wit

" Francis S. Munson
" 5 vs { Assumpsit
" William S. Searle

" Now come said parties said
" plaintiff by Williams his attorney and said defen-
" dant in his own proper persons whereupon the
" said defendant presents his petition verified
" by affidavit for a change of venue of this cause
" and after arguments of Counsel the Court being
" fully advised in the premises it is ordered that
" the prayer of said petition be and the same is
" hereby denied at the said defendants cost, to
" which decision of the Court the said defendant
" excepts. And afterwards the said defendant
" enters his motion ~~for a new trial~~ founded on
" affidavit filed for a continuance of this
" Cause "

And that afterwards to wit on the twenty fourth day of January AD 1824 the same being one of the days of the said County Court of said term a ~~deposition~~ ^{deposition} was filed in the office of the clerk of said Court which is in the words and figures following to wit

Stromer's & Munson } County Court in and for the County,
21 } of Lake and State of Illinois
William S. Sears } January Term of said Court Ad
1884

And the said Plff as to the first second and fourth special pleas of the said debt by him above pleaded with that the said pleas and the matters therein contained in manner and form as the same are therein above pleaded set forth are not sufficient in law nor are either of said pleas sufficient in law to bar or preclude him the said Plff from having or maintaining his aforesaid action thereof against him the said debt & that the said Plff is not bound by law to answer the same pleas or either of them and that the said Plff is under to verify whereas for want of sufficient pleas in this behalf the Plff prays judgment & his doings by reason of the not performing of the said several promises & undertakings in said declarations mentioned to be adjudged to him &c

And the said Plff according to the form of the Statute in such case made and provided shows and points out to the Court here the following causes of deemed to said Pleas to wit to said first Special Plea

- 1st that the nature or cause of the debt or indebtedness mentioned in said pleas is not stated or alleged
- 2^d the facts alleged & stated in said plea does not fully or sufficiently apprize the plff of the cause or nature of the aforesaid claim
- 3^d that said plea is vague & uncertain both in form & substance

" To said second plea
" 1st that the said Plea amounts to
" the General issue only
" 2^d that it is not shown or stated or
" set forth in said Plea how the consideration of said
" note failed or in what manner it ^{has} failed or in what
" the failure of the consideration existed
" 3^d That said plea is vague & uncertain
" both in form & substance
" by Smith & Williams Atty for Plff.

" To said Fourth special plea

" And the said Plff says to the third special plea of the
" said deft by him above pleaded with that he the Plff
" ought not to be barred from having or maintaining his
" action aforesaid thereof against the said deft because
" he says it is not true that there was no consideration
" passing from sd Plff to said deft and ~~and~~ that said
" note is wholly without consideration as stated &
" alleged in said plea but on the contrary, the Plff
" says that said note was made executed & delivered by
" said deft to said Plff for and upon a good & valuable
" consideration and of this the said Plff puts himself
" upon the Country by Smith & Williams his atty "

And ^{that} afterwards to wit on the twenty fourth day
of January A.D 1834 the said William S. Sears
in his own proper person added his signature
to the said publication and demand of the said
Francis S. Munro which ~~is~~ in the following words
to wit

" And said defendant puts himself upon the Country
" Wth Searls
" in proper person."

And that afterwards to wit on the twenty sixth day
of January A D 1834 the same being ^{one} of the days of the
Sitting term of said Court of Lake County
proceedings were had in said suit which are
entered of record in the words and figures
following to wit

Francis S Munson }
vs } attempt
William Searls }

Now come said parties by their
respective attorneys and after arguments of counsel
the Court being fully advised as to the said
plaintiffs demurrer to the said defendant's first
second and fourth pleas filed herein it is ordered
that the said demurrer be and the same is hereby
sustained whereupon it is ordered that the said
plaintiff have and recover of the said defendant his
costs and charges in and about his said demurrer
expended and that he have execution therefor
And it is further ordered that the said defend-
ant have ~~leave~~ ^{leave} to amend his said
first and fourth pleas hereinforthwith and
thereupon the said defendant files his amen-
ded pleas

And that afterwards to wit on the twenty sixth
day of January A D 1834 the same being one of the
days of the January term of said County Court of
Lake County Amended pleas were filed in the
office of the clerk of said court which are in the
words and figures to wit

" County Court of Lake ^{for the} County of Lake State of
Illinois of the October ^{term} A D 1833
William S Searls
vs
Francis F Munson

And the said defendant in his own proper person
comes and defends the wrong which he says that
the said plaintiff ought not to have or maintain
his aforesaid action thereof against him because
he says that after the making of the said several
promises and undertakings in the said declaration
mentioned the said plaintiff became indebted unto
the said defendant to wit in the County of Lake
and State of Illinois in the sum of six hundred dollars
for money had and received ^{by defendant} of the plaintiff of the
defendant ^{by plaintiff} at the request of said plaintiff to
the account of the said defendant before the com-
mencement of this suit and at the time of the com-
mencement of this suit to wit at the County of Lake
aforesaid the said plaintiff was and from thenceforth
hitherto hath been and still is indebted to the said
defendant in a large sum of money to wit the
sum of six hundred dollars lawful money of the
United States and in the further sum of Two
hundred dollars and in the further sum of one

one hundred and twenty five dollars like lawful money and in the further sum of forty dollars like lawful money and in the further sum of all of which fourteen dollars like lawful money all of which various sums was paid by Defendant to Plaintiff in money & at his the said plaintiffs instance & request before the commencement of this suit at Mankato in the County of Sable State of Illinois which said sums of money so due and owing from said plaintiff to said defendant 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 sum of money so due and owing from the said plaintiff to the said defendant he 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 cases made and provided and this he the said defendant is ready to verify wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action

And for the further plea in this behalf said defendant says active non because he says that after making said promissory note in said declaration mentioned the consideration upon which said promissory note was made and previous to the commencement of this suit wholly failed to wit County of Sable State of Illinois and this the said defendant is ready to verify

1 Sulte Co Court } Francis S. Morrison
2 " May 8 1874 } 91

William S. Searle

3 And for a further plea in this behalf by leave of the Court
4 first heard and obtained the said defendant says action
5 now because he says that the promissory note in
6 said declaration mentioned & set forth was given on
7 the day of the date thereof by the defendant to the
8 plaintiff for the sum therein mentioned in consid-
9 eration of the sale of a lot of land situated in the
10 village of Waukegan in the County of Lake & State of
11 Illinois and that that was the sole consideration
12 of said note and that previous to and at the time
13 that said note was written the said plaintiff at
14 Waukegan in said County of Lake represented to
15 said defendant that he was the owner of said
16 lot & had a good & valid title thereto and then and
17 in consideration that said defendant would give
18 said note to him the said plaintiff agreed to sell
19 and convey said lot to said to said plaintiff within
20 within thirty days from and after the date of said
21 note to wit at Waukegan in the County of Lake
22 & State of Illinois by a good and sufficient
23 warrant deed free and clear of & from any
24 and all incumbrances & delivered the same to defendant
25 and upon the representations and agreements above
26 set forth so made by said plaintiff the said defendant
27 did execute and deliver to said plaintiff said note on
28 the day that it was dated and upon no other or
29 different or other agreement or representations to wit
30 at Lake County aforesaid and said defendant
31 further avers that the representations of said

" plaintiff thus as aforesaid made was false and
" fraudulent & made for the express purpose of obtaining
" said note from the defendant and that said plaintiff
then well knew that he had no title to said lot &
could not deed the same to the defendant as he then
agreed and that said plaintiff has not since that
time obtained any right or title to said lot whatso-
ever and that said plaintiff did not within 30 days
from and after the making of said note execute &
delivered to said ^{defendant} a deed of any kind for said lot
nor has he since that time executed or offered to execute
to said defendant any deed for said lot of any kind
as aforesaid in any manner to fulfil his said contract
with the defendant and that this defendant has not
been able under and by virtue of said contract to
obtain from said mason a title to said lot as
said plaintiff agreed. and said defendant further
avows that through the fraudulent and false repres-
entations of said plaintiff above set forth & through
the noncompliance of said plaintiff with his said
agreement said defendant says has received
no consideration for the making of said note
and all of this the said defendant is ready to
aver maintain and prove

W S Lusk

In pro person

And that afterwards to wit on the twenty sixth
day of January A.D. 1834 the same being one of
days of the January term of the said County Court
for the year aforesaid there was filed in the office
of Clerk of the said County Court a replication to
said defendants special ^{amended} plea which are in the words
following to wit

" J. S. Munroe }
" vs }
" W. S. Lewis } against

" And now comes the said Plaintiff by
" his attys Smith & Williams his attys & says that by
" answering any thing in said defendants special amended
" plea by him above specially pleaded he ought
" not to be barred or precluded thereof against his
" the said deft from having or maintaining his aforesaid action
" because he says that he denies that said note is the
" said plaintiffs said declaration mentioned was not
" given in consideration of the said sale of land from
" said Plaintiff to said defendant nor was the said note
" given in consideration of any representation made by the
" said Plaintiff to said defendant by or concerning any
" title to any lot of land sold or conveyed to said defendant
" by the said plaintiff or for or in consideration of any
" agreement to convey to said defendant within thirty
" days or any other time any other lot or parcel of land
" by deed of warranty free or clear of all incumbrance or
" deliver the sum to said defendant or that any false
" or fraudulent representations were made by the plaintiff
" to the defendant as the said defendant hath above
" therof in his said special amended plea alleged

" & this he says may be enquired of by the County
" by Smith & Williams his attys

" And that afterwards on the said twenty sixth day of January
A.D. 1834 aforesaid the said William Searls in his own
proper person added his signature to the said replication
of the said Munson which is in the following words to wit
" And the said defendant doth like

W S Searls in prop person

And afterwards to wit on the twenty sixth day of January
A.D. 1834 aforesaid a replication was filed by the
said Plaintiff to said defendants plea of off set which
is in the following words to wit

" J. J. Munson; Take co ct Jan term 1834

" vs

" W S Searls and now comes the said Plaintiff by

" Smith & Williams his attys attorneys and in answer

" to the first special plea by said defendant firstly

" above specially pleaded with that by reason of any

" thing in said plea contained he ought not to be bound

" of form having and maintaining his aforesaid action

" thereof against the said defendant because he says

" that said plaintiff was not nor is answerable to the said

" defendant in manner and form as the said defendant avers

" in his said first special plea alleged & this he says

" may be enquired of by the County

" by his attys Smith & Williams his attys

" And that afterwards on the twenty sixth day of January A.D. 1834

" aforesaid the said William Searls in his own proper person

" added his signature to said replication of the said Munson which

" is in the words following to wit

" And the said defendant puts himself upon the County

" in relation to said plea W S Searls in prop person

And that afterwards to wit on the twenty sixth day
of January A.D. 1834 the same day, one of the days
of the Spring term of said County Court of Lake
County for the present year as aforesaid proceedings
were heard in said suit which are entered of record
in the words and figures following to wit

Francis T. Munson
vs
William S. Sears } Assumpsit

Now come said parties said plaintiff
by William his Attorney and said defendant in his
own proper person and issue being joined it is
ordered that a jury come and thereupon come a
jury to wit Daniel Brown Chas. Branger J.B.
Hearwood L.B. Hartiff John Cornell Matthew Steele
James S. Davis A. Fossance Edmund Plympton James
Hartley William Dalziel and S. Stowell who being
duly empanelled and sworn to will and truly try
said issue and a true verdict give according to
the evidence and having heard the evidence and argument
of counsel retire to consider of their verdict and
the hour of adjournment having arrived by agreement
of parties it is ordered that when the said jury
shall have agreed upon a verdict that they sign
and seal the same and afterwards separate to
meet the court to-morrow at nine o'clock to-
morrow morning

And that afterwards to wit on the twenty seventh day
of January A.D. 1834 the same day, one of the days
of the Spring term of said County Court of Lake County
for the year as aforesaid the proceedings were had
in said suit which are entered of record in the

words and figures following to wit

1 Francis S. Munson
15 vs { Assendant
2 William S. Sears }

" Now come said parties said plaintiff
" by Smith his Attorney and said defendant in his
" own proper person and the jury, formerly impaneled
" -held herein also come and deliver the following
" verdict. We the jury find the issue for the plaintiff
" and assess his damages at the sum of one hundred
" and thirty seven dollars and seventy seven cents
" and thereupon the said defendant enters his motion
" for a new trial ^{and in arrest of judgment} and after arguments of counsel
" the court being fully advised in the premises it
" is ordered that the said motion be and the same
" is hereby overruled at the cost of the said defendant
" to which decision of the court the said defendant
" recedes whereupon it is ordered that the said plaintiff
\$137.77 have and recover of the said defendant the said sum
" of one hundred and thirty seven dollars and seventy
" seven cents for his damages so as aforesaid assessed
" together with his costs and charges in this behalf
" expended and that he have execution therefor, and
" thereupon comes the said defendant and prays
" an appeal to the circuit court of Lake County
" which is granted on condition that the said
" defendant shall by himself his agent or attorney give
" bonds with Henry Sunderland as surety, in the penal sum
" of three hundred dollars and file the same in the
" office of the clerk of this court within fifteen days from
" and after the present term thereof and afterwards comes

" the said defendant and tenders to the court a bill of
" exceptions in this cause and the Court not being fully
" advised as to the said exceptions it is ordered that the
" same be settled signed and filed within twenty days
" after the adjournment of this Court

And that afterwards to wit on the twenty seventh
day of January A.D. 1834 the same being one of the
days of the January term aforesaid, a motion was
made in the office of the Clerk of said Court, court aforesaid
filed, which are in the words and figures following to
wit

" The Sable County Court for the County of Sable of
" the January T 1834

Francis H Munson

vs

William L Searls

Motion for a new trial and in arrest of judgment
First because the Court did not grant a change of
venue in said Cause

Second & herein the Court erred in not granting
a continuance of said Cause

Third because the Court erred in receiving the
verdict of the jury in said Cause

Fourth because the Court erred in permitting the
verdict in said Cause to be entered of record

Fifth the Court erred in not entering the defend-
ants motion on the record of said Court. previous to
entering the verdict in said Cause from the Jury

W L Searls

And that afterwards to wit on the twenty seventh
day of January A.D. 1833 aforesaid and affidavit
was filed in the office of the Clerk of said Court

aforsaid which are in the words and figures following,
to wit

" The County, Court in & for the County of Latah &
State of Illinois of the year, Jan A D 1834

Francis S Mansour

vs

William S Sears

State of Illinois

County of Latah p William S Sears the defendant
in the above entitled cause being duly sworn doth
depose and say that he never consented that
the jury in the case should or might seal up
their verdict in said case or that they might
disperse after agreeing upon their verdict & bring
their verdict into court on the morning of the 27th
Aug, A D 1834 or at any other time and that their
so doing is expressly against the consent of the
defendant & that he has no attorney in said
cause & that he attended to the case himself without
any assistance & that he never authorized any
person to consent to that said jury might agree
and seal up their verdict & then separate to
meet the Court on the morning of the 27th Aug, 1834 or
at any other time or that they might seal up
their verdict & meet the Court on the day of the 27th
Aug 1834 or at any other time and that their sealing
said verdict & dispersing was against his will
& wishes

Subscribed to & Sworn

before me this 27th

day of August A D 1834

J C Biddlecom Clerk

W S Sears in his
own proper person

And that afterwards to wit on the twenty seventh day of January A.D. 1854 the same being one of the days of the January term aforesaid proceedings were had in said suit which are entered of record in the words and figures following to wit

" Francis F. Munson {
" 5 { assumpsit
" William S. Searls { After the Jury, formerly
" impaneled herein had come and delivered their
" verdict in writing sealed and signed by the said
" Jury and the same had been opened and read
" in open Court by the clerk of this Court thereupon
" came the said defendant and objected to the entering
" of said verdict from said Jury for the reason
" that the said defendant had never ~~agreed~~ consented
" that the said Jury might seal up their verdict and
" separate to meet the Court this morning said motion
" being founded upon the said defendants affidavit
" on file herein and afterwards the Court having
" heard testimony and argument of Counsel
" and being fully advised in the premises it
" was ordered that the said objection be and the
" same was overruled

And that afterwards to wit on the Fourth day
of February A.D. 1834, the same being a day in
vacation between the January term A.D. 1833
and April term of said County Court of Lake
County aforesaid for the year 1834 a bond
in the office of the Clerk of said court
was filed by W. Searls which is in the words
and figures following to wit

" Know all men by these presents that we William
" Searls & Elmsly Underlin of the County of Lake
" & State of Illinois are held & firmly bound unto
" Francis F. Munson in the penal sum of three
" thousand Dollars lawful money for the payment
" of which well and truly to be made we
" jointly severally and firmly bind ourselves
" our heirs executors & administrators by these
" presents With our hands and Seals this
" first day of February A.D. 1834
" The Condition of the above obligation is such
" that whereas the above named Francis F.
" Munson did at the January term of the County
" Court of the County of Lake & State of Illinois
" recover a judgement against the above bounden
" William Searls in a certain action of Assumpsit
" pending in said Court wherein the said Francis
" F. Munson was plaintiff and the said William
" Searls was defendant from which said
" judgement the said Searls has taken an appeal
" to the Circuit Court in and for the County of
" Lake & State of Illinois Now if the said William
" Searls shall duly prosecute his said appeal

And in case the judgement of said County Court
shall be affirmed shall well and truly pay &
satisfy said judgement together with the costs
interests and damages or shall take an appeal
from said Circuit Court to the Supreme Court
of said State according to the provisions of the
Statute or writ of Error as he shall choose then
the above obligations shall be void otherwise to
remain in full force

William S Searls Seal
Elmsley Vanderlin Seal

And that afterwards to wit on the fourteenth day of February A.D. 1834 the same being ^{in vacation} a day between the January Term A.D. 1834 and the April term A.D. 1834 of the County Court of Lake County aforesaid a bill of exceptions was filed in the office of the Clerk of said Court which are in the words and figures following to wit

" Lake County Court in & for the County of Lake
of the January Term A.D. 1834

Francis F. Munson

vs

William S. Seale

At the January Term of the County Court in & for the County of Lake State of Illinois the following the facts proceedings were had in said Cause First said Defendant comes into Court & upon affidavit on file asks leave to file additional pleas in said Cause and the Court being fully advised in the premises grants permission to the defendant to file his said pleas whereupon said defendant files the same and afterwards the said defendant comes into Court in his own proper person and files his petition & notice to plaintiff for a change of venue in said Cause sworn to by himself for a change of venue in said Cause and upon said petition said defendant moves the Court for a change of venue in said Cause for the reason and causes set forth in said petition the following being a true copy of said petition and the affidavit attached to the same to wit

" The County Court in & for the County of Lake

" & State of Illinois of the Spring term
A.D. 1834

Francis H. Munson

vs { Assumpsit

William S. Sears }

To John S. Turner presiding judge of the County
Court in and for the County of Lake State of Illinois
Your petitioner William S. Sears the defendant
in the above entitled cause respectfully sheweth
unto your Honor that he entertains serious & well
grounded fears that he cannot receive a fair &
impartial trial of the above entitled cause in
said County Court on account of the prejudices
that your petitioner believes exists in the minds
of the presiding judge of said Court who is
now on the bench and that your petitioner
believes those prejudices so great against your
petitioner that he would be unsafe in submit-
ting to a trial of said cause before the said judge
to wit said John S. Turner and your petitioner
further sheweth & states that the cause above stated
for a change of venue of said cause has arisen
since the last term of said Court the said pre-
siding judge to wit the said John S. Turner
having commenced his official term as judge
of said Court since that time & said cause
not existing as to the former judge of said
Court to wit Melvin A. Boardman your
petitioner therefore prays that a change of venue
of said cause may be granted to some County
where the cause aforesaid does not exist

And for a further cause for a change of venue in
said cause your petitioner further sheweth unto
your Honor that as he verily believes the adverse
party to wit Francis S. Munson has an undue
influence over the minds of the inhabitants
of the County of Lake wherein the above entitled
cause is pending so that this your petitioner
cannot receive a fair ~~trial~~ & impartial trial
in said County & in said Court & that your petitioner
was not aware of said influence of said Munson
until since the last term of said County Court
& that this is the first term of said Court since
your petitioner learned said fact and that
this is the first term of said Court at which
this your petitioner could have applied for a
change of venue since he learned the fact of
the influence of said Munson & since said cause
was commenced your petitioner therefore prays
that a change of venue may be awarded in
said cause to some County where said cause
does not exist

William S. Searls

State of Illinois }
County of Lake } William S. Searls of said
County being duly sworn doth
depose and say that he is the defendant in the
above entitled cause and that he has read
the foregoing petition and knows the contents
thereof and that the same is true as therein stated
except as to the matter & things ~~set~~ therein stated to
be upon his information & belief & as to those
things he believes it to be true

William Searls

Subscribed and sworn to
before me this 23^d day
of January, 1854

Sub C Biddleman Clerk "

and endorsed filed Jan., 24, 1854 I C Biddleman
Clerk and the Court being fully advised in
the premises denies the application for a change of
venue of said cause whereupon the said defendant
excepts to the ruling of the Court in relation thereto
and after issue being joined in said cause the said
defendant comes into Court in his own proper person
& entered his motion in said Court for a continu-
ance of said cause founded upon his affidavit
on file therein which said affidavit is in the words
& figures following, to wit

The County Court for the County of Cook & State
of Illinois

Francis S. Munson

vs

William S. Searls

William S. Searls of the
said County, being duly sworn doth depose and
say that he is the defendant in the above entitled
cause that he cannot now safely proceed to
the trial of said cause on the account of the ab-
sence from said County of one Jeremiah Shaw
who is a material witness for said defendant upon
the trial of said cause & who resides in the State
of Wisconsin and the said witness left Hawkegan
last night for his home in Wisconsin where he
was called without any notice sufficient to
enable this deponent to take his deposition on the
account of sickness in his family and that this
deponent expects and verily believes that he shall

be able to prove by said witness that this deponent
paid to said Francis H. Munson the sum of two
hundred dollars to apply upon the note said
upon in this case and that said Munson then
agreed to endorse it upon this the note said
upon in this case which said Munson has not
done and this deponent further says that said
two hundred dollars forms a good and valid
set off to said Plaintiff's cause of action
was paid previous to the commencement of this
suit and that he does not now know of any
other person by whom this deponent can prove
the same facts and further that this deponent
was ready for trial of said cause yesterday
at which time said witness could be had
but that he is not now for the reason that said
witness has gone out of the state & out of the
reach of this deponent and further that said
witness was yesterday in attendance of this Court
at the request of this defendant as a witness
in this ~~case~~ case and that this deponent did
~~and that this deponent did not know that~~
said witness was going away until he
had started on his way & when it was too
late for this deponent to get a subpoena for
said witness and that said witness was sent
for on account of the sickness of his family &
that this deponent verily believes that he can
produce said witness at the next term of this
Court as a witness herein and that said sum of
\$200 is over and above any and all sums
endorsed upon said note & that this application
is not made for delay but that justice may

be done and that this defendant has used due diligence & every means to be ready for a trial of this cause at this term of Court & that the not being ready is not his fault

Subscribed and sworn to W S Searls
before me this 24th day
of January A D 1834

J C Biddlecom Clerk

Filed January 24 1834 J C Biddlecom Clerk
And the Court after hearing arguments of counsel overrules said motion for a continuance whereupon the defendant reacts to the ruling of the Court in relation thereto And afterwards comes said defendant in his own proper person and enters his motion in said cause for a change of venue in said cause founded upon the petition hereinbefore set forth for the reasons therein mentioned & set forth and the Court denies said change of venue whereupon said defendant reacts to the ruling of the Court in relation thereto And afterwards a jury was called & said cause proceeded to a trial and the plaintiff first offered in evidence a paper of which the following is a true copy

Winnipeg Aug 21st 1832

Six months after date I promise to pay J S Munson or bearer three hundred Dollars value received
with and W S Searls

upon which was the following endorsements
to wit: \$ 100 # Recd Feb 23rd 1833 on this note one hundred dollars \$ 100 \$ 20 # Recd on this note twenty dollars March 5th 1833 \$ 45 # Recd on this note forty five dollars March 10th 1833 which said note was

read in evidence to the jury, and the plaintiff rested
his case and the defendant then called William
Cuthbert who testified that plaintiff told him that
he would endorse fourteen dollars on the note
and that he asked him to do so at the request of
defendant and here the defendant rested and the
plaintiff then called Samuel Munson who testified
that upon a settlement had with defendant & the
firm of S. S. & P. Munson on the 12th day of January
A.D. 1833 the fourteen Dollars spoken of by
Cuthbert was paid to Searls by said witness
and further that he was present when said fourteen
dollars was paid by Searls & that it was left with
the firm of S. S. & P. Munson & not with S. S. Munson
and that S. S. Munson had nothing to do with it
individually, and said plaintiff then called
Julius Loides who testified that he was present
at the time that Cuthbert said that plaintiff
agreed to make said endorsement & that he did
not hear Munson agree to make said endorse-
ment upon said note and the said plaintiff
then offered in evidence the Receipt of which
the following is a true copy, to wit: Wanklegan
January 12th 1833 Received of S. S. Munson & Co one
dollar in full of all demands up to this date
W. S. Searls

And this being all of the evidence in the case the
jury retired to consider of their verdict and the
hour of adjournment of said court having arrived
by agreement of parties it was ordered by said Court
that when said jury shall have agreed upon a verdict
that they sign & seal the same and afterward separate
to meet the said Court at nine o'clock the ensuing

morning to wit the morning of the 27th of June 1834 -
and the sheriff was told by said Court to inform
said J. J. of said order and instruction of said Court
which he accordingly did - the consent and agreement of the
parties to said order and instruction was moved by W. D. Smith
att'y for Plaintiff and George Thompson answering and acting
for said Defendant Seals in open Court - and afterwards to wit
on the morning of the 27th of June 1834 the jury came
into Court with a sealed verdict they having agreed upon
a verdict and sealed the same and afterwards separated
under and pursuant to the said order and instruction
of said Court to meet said Court at that time to return
their verdict in said cause into said Court - and
after said jury had come in and delivered their
verdict in writing signed by the said jury and the
same had been read in open Court by the Clerk of said
Court the said Defendant objected to the entering of
said verdict from the jury for the reason that said
Def't had never consented that the jury might seal
up their verdict ~~and~~ & separate to meet the Court this
morning to wit the morning of said 27th of June
afore said - said objection being founded upon the said
Def't affidavits on file in said cause which is as
follows to wit - "The County Court in & for the County
of Lake State of Illinois of the Day June 27 1834 ^{J. J. Morrison} vs William Seals State of Illinois Comptroller of Lake
vs William Seals the defendant in the above entitled
cause being duly sworn doth depose and say that
he never consented that the jury in this ^{should or} cause might
seal up their verdict in said cause or that they might
dissever after agreeing upon their verdict and bring
their verdict into court on the morning of the 27th of

January Ad 1834 or at any other time and that they so
doing is expressly against the consent of the defendant and
that he never authorized any person his not attorney in
said cause & that he attended to the case himself without
any assistance & that he never authorized any person to come
to that said jury might ^{agree} seal up their verdict & then
separate to meet the Court on the morning of the 27th Aug
1834 or at any other time or that they might seal up
their verdict & meet the Court on the morning of the 27th
Aug 1834 or at any other time and that their sealing
said verdict & dispersing was against his will &)
wishes
Mr Searls in his own
subscribed to before me seven persons
this 27th day of January

A D 1834 at Biddeford Me

And George Thompson was then called sworn and
testified that as the defendant was about leaving the
the Court ~~the~~ room after the said cause was submitted and
jury had retired he the defendant came to said witness
and as he the witness understood him told him that he
might consent on his behalf and for him in his absence
and might so inform the Court that if said jury should
not return a verdict before said Court adjourned
for the day that they might if they should agree on a
verdict after said adjournment of said Court seal the
same and return it into Court in the morning on
the coming in of said Court on cross examination said
Thompson further testified that said Searls among other
things requested him to enter a motion for a new trial
for him if the jury came in in his absence, and that
he told said Searls he would do so - and would do all that
was necessary to be done in his absence, and from
what was said he understood from the ovt that he

the witness had authority to consent on the part of said Defen-
-dant that the jury might seal their verdict and then separate
to meet said Court this morning and that he did so consent
and agree for said Defendant that he was certain that said
Deft either told him to consent and inform the Court or
or that he the witness told the Defendant he would do so
to which said Deft did not object or dissent and that
he understood Deft as authorizing him to consent & inform
the Court as he did do whereupon the Court received said ^{verdict} ~~verdict~~
and the same was entered of record and the Court refused
to order the placing of the Deft's said objections preceding
the entry of the said verdict But did order the same to
be entered of record and the same was recorded & made
a part of the record in said cause in the words & figures
following as will appear by the records in said suit
which are referred to & made a part this cause case & ex-
-cutions - " Day 27 " after the jury formerly impanelled
" herein had come and delivered their verdict in writing
" signed by said jury and the same had been opened and
" read in open Court by the Clerk of this Court thereupon
" comes the said defendant and objects to the ^{entering} ~~entry~~ of
" of said verdict from said jury for the reason ^{that} of the
" said Deft had never consented that the said jury might
" seal up their verdict and separate to meet the Court this
" morning said motion being founded upon the said Deft's
" affidavit on file herein and afterwards the Court having
" heard testimony and arguments of counsel and being
" fully advised in the premises it ^{was} ~~is~~ ordered that the said
" objection be and the same was overruled -"
" to which decision of ^{said} ~~the~~ Court said Deft & cts

and then entered his motion & in said cause
for a new trial & in arrest of judgment which
said motions are ~~therein~~ for the following reasons
causes to wit Motion for a new trial and in arrest
of judgment for the following reasons first Because
the Court did not grant a change of venue in
said Cause Second Because the Court erred in
not granting a continuance of said Cause Third
because the Court erred in ~~sustaining~~ ^{receiving} the verdict of
the jury in said Cause Fourth Because the Court
erred in permitting the verdict in said cause to be
entered of record

W L Sears

Fifth the Court erred in not entering the defen-
dants motion & on ^{the} records of said Court previous
to entering the verdict in said Cause from the
jury

W L Sears

And the Court overruled said motions for a new
trial & in arrest of judgment & thereupon the defen-
dant excepts and unders to the Court this his bill
of Exception to be signed and sealed & prayed
an appeal of the case to the Circuit Court of Lake
County which was granted upon the defendants
entering into bond with Elmsley, Sunderland as
surety in the sum of \$300 within 15 days from
& after this date

Signed and sealed before me this fourth
day of February A D 1834

John I Turner Co Judge

State of Illinois }
Salem County } ss

Francis D. Munson }
vs } Assumpsit
William Ideals }

I James C. Biddlecome
Clerk of the County ^{Court} and for said County do
hereby Certify that the above transcript is a
true & correct Copy of the records & of all the
proceedings had in the above entitled Cause
also of all the Pleas, affidavits, and bills of
Exceptions, on file in my office in the above
entitled Cause

In witness whereof I have hereunto
set my hand and affixed the
Seal of said Court this Eight-
eenth day of February
A.D. 1834

James C. Biddlecome
Clerk

Clerk fees for Transcripts \$14.00

Filed Mch. 2nd 1834
A. B. Bates, Clerk

121

The Circuit Court for the County
of Lake State of Illinois

At the March Term
Term A.D. 1854

William S. Leach
plaintiff
in Error & Appellant

vs
Francis F. Munson
defendant in
error & Appellee

Now Comes the
said William S. Leach Appellant
and plaintiff in error in the
above entitled Cause and
assigns the following Causes
of error in said Cause

The Court was in not granting
a Change of Venue in said
Cause

The Court was in not granting
a continuance of said Cause

The Court was in receiving the
evidence from the jury in said Cause

The Court was in permitting the
jury in said Cause to seal up their
verdict ~~and~~ & refuse to correct
the Court on the following
morning without the Consent

of the new plaintiff & Appellant

The Court was in not entering
the motion of leave, ^{and the word} not to
give the verdict from the jury in
said cause in the order that the
same was made

The Court was in not granting a
new trial in said cause

The Court was in not arresting
the judgment in said cause

W. S. Leach
in. pro. pro.

Leach & Co. Court

W. S. Leach

no

J. J. Morrison

Filed 2 March 1854

J. J. Morrison Clerk

United States of America,
State of Illinois, LaSalle County.

I was before the Honorable George Man-
ierro Judge of the Seventh judicial circuit
of the State of Illinois, at a term of a cir-
cuit court for the County of LaSalle in said
circuit, began and held at Van Hook in
said County on the eighteenth day of Octo-
ber in the year of our Lord one thousand
eight hundred and fifty five and of
the independence of the United States the
Eightieth

Present the Honorable George Manierro
Judge
John F. Gyles, Sheriff of LaSalle County
Daniel McElroy, State Attorney
Attest, A. B. Bates clerk

And that afterwards, to wit; on the ele-
venth day of October A.D. 1855, the said
being a day of the October term of said cir-
cuit court for the year last aforesaid, pro-
ceedings were had in said last mentioned
court which are entered of record in
the words and figures following, to
wit;

"William T. Sears
Appellant

35

vs.
Francis F. Munson
Appellee

Appeal from County
Court of Lake Co.

Now come said parties,
said appellant, in his own proper
person, and the said appellee by Smith,
his attorney, and, joined in error
being had herein, after arguments of
counsel the Court, not being fully advised
in the premises, takes the same under
advisement."

And that afterwards, to wit; on the
thirteenth day of October A.D. 1855, the
same being also one of the days of the
said October term of said Court for
the year last aforesaid, proceedings were
had in said Court, which are en-
tered of record in the words and fig-
ures following to wit:

"William T. Sears, appellant

35

vs.
Francis F. Munson, appellee

Appeal from County
Court of Lake County

Now come said parties, said

appellant in his own proper person and the
said appellee by Smith, his attorney, and
the Court, being now fully advised in the
premises, finds that there is no error
in the record herein, to which decision
of the Court the said appellant Excepts;
and therefore on motion of the said at-
torney of the said appellee it is consid-
ered and adjudged that the judg-
ment of the Court below, being the
County Court of Lake County, be af-
firmed, and that a writ of proce-
dendo issue herein to said last men-
tioned Court; and afterwards it is fur-
ther ordered on motion of the said
appellee that he have and recover of
the said appellant his costs and charges
in this behalf by him in this Court
Expended and that he have Execution
therefor and therefore the said ap-
pellant prays an appeal herein to
the Supreme Court of this State, which
is granted on condition that the said
appellant by himself, or agent, or at-
torney give bond conditioned according
to law in the penal sum of three hun-
dred dollars with Amos S. Watkinson
as security and file the same with the

Clerk of this Court within thirty days
after the present date "

And that afterwards, to wit; on
the twenty fifth day of October A.D.
1855 an appeal bond was filed in the
office of the Clerk of the said Circuit
Court which is in the words and fig-
ures following, to wit;

Know all men by these presents that We William S. Searls and
Amos S. Waterman of the County of Lake and State of Illinois
are held and firmly bound unto Francis F. Munson in the
penal sum of three hundred dollars lawful money for the payment
of which well and truly to be made we jointly severally and firmly
bind ourselves our heirs executors and administrators by
these presents. Witness our hands and seals this 22^d day of October
A.D. 1855.

The condition of the above obligation is such that whereas the above
named Francis F. Munson did at the October term of the Circuit
Court of said Lake County recover a judgement against the
above bounden William S. Searls in a certain appeal then
pending in said Court from the County Court of Lake County, which
said appeal was then tried by said Court and the judgement of said
County Court affirmed & judgement of said Circuit Court for costs
rendered against said William S. Searls from which said judgement
so rendered by said Circuit Court the said Searls has taken an appeal

to the supreme Court of the said State of Illinois, Now if the said William S. Searls shall duly prosecute his said appeal and in case and in case the judgement of said Circuit Court shall be affirmed shall well and truly pay and satisfy said judgement together with the costs interest and damages then the above obligation shall be void otherwise to remain in full force

William S. Searls *Seal*

Amos S. Waterman *Seal*

Upon which said appeal bond is an indorsement by the said Clerk of the said Circuit Court of his approval thereof, which is in the words and figures following to wit:

Approved by me at my office this twenty fifth day of October
A.D. 1855.

A.B. Cotes, Clerk

And that the following is a copy of the costs from the Fee Book of the Clerk of the said Circuit Court,

35 William S. Searls, Appellant vs. Francis F. Munson, Appellee
1854. appeal from County Court of Lake Co

Mich Spt Term

Appellants costs

Cotes Clerk Fily transcript & Assignment of Errors 10

10

Doct^g suit 10, ord^r to Court, 20

30

June Term 1855 Doct^g suit 10, ord^r to Court 20

30

July Term Doct^g suit 10

10

Mich Spt Term Doct^g suit 10, order to Court 20

30

October Term Doct^g suit 10, ent^g app^{ts} 5

15

Cotes Clerk Entry of tak^g under advisement (1 fol) 10

10

Ent^g Judgt 25, taking app^t bond & fil^g 55

80

Fees for Transcript 1,65

\$ 2 15

Cotes Clerk
[12292-31]

~~65~~
\$ 3 80

1855

October Term

Appellee's Costs

Costs, Clerk

Entg attys app^{ts} 10. makeg & entg cost bill &c 30

140

\$ 0. 40

10

12

20

10

20

20

10

Lake County circuit court
William F. Sears
Appellant

35

vs.
Francis F. Munson
Appellee

} Appeal from the
County Court of
Lake County

State of Illinois }
Lake County } P. S. Augustus B. Cates,
Clerk of the circuit court of Lake County
in said State, hereby certify the fore-
going to be a true transcript from the
records and files of my office of the
original transcript and assignment
of errors filed in my office in the
above entitled cause and also of the
appeal bond filed therein and also
of the proceedings in the said circuit
court in said cause

In testimony whereof I have here-
unto set my hand and the seal of
said court at Waukegan, in
said County, this twenty third day
of June A. D. 1856

A. B. Cates, Clerk

Supreme Court of the State of Illinois

William S. Sears

Appellant

35

v.

Francis F. Munson

Appellee

Appeal from
the Circuit Court
of Lake County

We hereby stipulate and agree
that the foregoing papers hereto attached
are a true and correct transcript of
all the files, records, and proceedings
in the above entitled Cause in the
Courts below and that the same
may and shall be filed and used
as such in the said Supreme Court
of the State of Illinois.

Dated June 23rd 1856

}
}
}

H. O. Smith Atty for Applee
W. S. Sears

It is also hereby stipulated that the
errors assigned in the Circuit Court, are
& shall be taken as the errors assigned
in the Supreme Court.

W. S. Sears
H. O. Smith Atty for Applee

W. J. Seals ¹⁴⁵ Applicant
vs.
F. F. Munson Appellee

Filed June 24, 1856
L. Leland
Clerk

W. S. Seals appellant } In the Supreme Court
vs } at Ottawa June
James F. Munson appellee } Term 1886

Appeal from Lake County
Assignment of Errors

- 1st The County Court erred in refusing to
Grant a Continuance in this Cause at the former
Term A D 1884
- 2nd The County Court erred in not granting a
Change of Venue in said Cause
- 3rd That the Circuit Court, ^{erred} in affirming the
Judgment of the County Court in this Cause
in refusing the Continuance and Change
of Venue aforesaid —

A. W. Wright for Appellant
And now Comes the said Appellee and says
there is no error in the Record proceedings
& Judgment herein in manner & form
as above stated and this he is ready to verify
by the ^{said} record whereof — A. Smith Atty for
the Appellee

In Supreme Court
3^d Division

Sum Term 1856

Wm S. Kears
Appellant
(vs.)

Francis F. Munson
Appigment of Errors

Filed June 24, 1856
L. Leland
Clerk

Francis F. Munson }
vs
William S. Leach }

The County Court should have granted a change of venue upon the application of the defendant

The application was sufficient 2^d Hill.
P 42

The rules practice & proceedings of the County Court are the same in all respects as those of the Circuit Court when their ~~their~~ jurisdiction is concurrent. In ~~Decision~~ Laws of 1849
P. 66 Sec. 24

The jurisdiction of the County Court and that of the Circuit Court was concurrent in this case and hence a change of venue should have been granted

Second The County ^{Court} should have granted a continuance of the case upon the affidavit of defendant

The defendant was entitled to a continuance as a matter of right the affidavit for the

same setting forth fully & clearly all
of the material provisions of the
Statute of 1845 Page 415 Sec 13 under
which the application was made

Courts in granting or refusing a
Continuance of a Cause that may
be within their discretion ought to
use a legal discretion

If the application for a Continuance
in this case can be said to come
within the discretion of the Court
& not be a matter of right of defendant
then the discretion used by the Court
was not a sound, judicious or
legal discretion

For the reasons above stated the Circuit
Court erred in not reversing the
dismissal of the County Court & remanding
the Cause

M. J. Seale
In Prop. Per.

145

Searls

v

Mason

Plaintiff's

Brief

W. S. Seabolt App't; Sup Ct Ottawa Jan 1. 1836
vs
F. F. Munson Opp't } Brief for Applee

The motion was for a Continuance of this Cause till the
next ensuing term of the County Court

This motion was addressed to the discretion of the Court, and
though by Statute, Exceptions are allowed to the overruling of
a motion for Continuance, still there is some discretion
necessarily exercised by Courts in motions of this kind
for which Error cannot be assigned -

Unless the Affidavit contains & discloses every fact
and Statement required by the Statute and is in Conformity
thereto, so as to Entitle the party to a Continuance as a matter
of legal right it is not Error to refuse a Continuance

The Statute requires the Affidavit to Show that due diligence
has been used to obtain the testimony, or a warrant of time to obtain it;
Also the name and residence of the witness, among other things

Rev Stat 415 Sect 13

I. This Affidavit does not Show the use of due diligence to
obtain the desired testimony

1 The Deposition might have been taken - Deft had
from July 1833 to Long Jan 1834 to take down - neglected to do so.

2 Deft neglected to subpoena the witness -

He had no right to rely on his staying in atten-
dant without being subpoenaed, and his fees
paid in this case, as he came without the County

The Court could not infer that the witness
would have left had he been subpoenaed or

at least it is not Error for the Court to infer
that he would not have done so - This on the

part of the Deft below was neglect and want of the use of the ordinary
diligence - It was gross neglect - If a party chooses to rely on the
voluntary attendance of his witness, he does so at his peril -

II- The affidavit was filed for 24th 2 day of the Term in the morning on opening of Court - The cause was tried on the 26th for the 4th day of the Term -

The affidavit says on the 24 I cannot move go to trial &c. Does not state or show that he cannot this term or on the 26th -

As that the witness cannot be obtained or his testimony at this term & before trial - No reasons are assigned why he could not have ^{had} the testimony during the term & before trial the 26th

III The affidavit does not show the residence of the witness this is in peremption - It states that the witness "started for his home in Wisconsin" - This is too indefinite -

The reason of this statutory requirement is to enable the Court to judge & determine whether due diligence has been used &c, & whether there is time to obtain the testimony or attendance of witness before trial - There are some at least of the reasons why statute requires residence given

This witness might have resided in Wisconsin and not have resided over 8 miles from Waukegan & the Court house where this cause was tried - He lives near the State line - He might have lived also any where on the line of Rail Road ~~between~~ in Wisconsin between Waukegan & Milwaukee and come from the farther end of it twice a day in one & half hour ride -

It was easier to obtain the attendance of the wit from many places in Wisconsin than from most of the towns in our own County - The Court will not say that it was error in the Court to ^{have} refused a continuance in this case when from ought that is disclosed the witness might have been easily had for the trial on the 26th. Especially when the party had neglect to have him subpoenaed when he was in attendance -

This is a continuing suit - Been pending since July 1853
Most 3 years. The pleas interposed and record history
of this case shows that delay and design to make expense
for Oppr is the great object of Oppr who is an Attorney and
Conveyancer on a suit at little expense - This cause was
once continued at his request in Co Court - No evidence
was offered under some pleas which were only put in
to embarrass the paper to delay cause - Now was
offered under pleas of failure & want of consideration

This Affidavit contains an irreconcilable inconsistency
in stating that he expected to prove by this witness
a payment of \$200 agreed to be endorsed on the note over and
above all sums & payments then endorsed - This would
have been paid the note \$60 - as the note & endorsement
thereon & copy attached to the Air & judgment shows

II. Upon the question of Change of Venue

I submit this is not a Common Law right
It must be conferred by Statute -

The Statute extending the jurisdiction of the Lake
County Court does not confer this right
OR empower the Court to order a change
See Session laws of 1853 page 262

Wm. S. Lewis appt

is

F. J. Munson appt

Brif. for appt

145

William S. Sears

vs

Francis F. Munson

1836

1856

12292

XX