

No. 13241

Supreme Court of Illinois

Dunlap

vs.

Haggerty

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

13244
No. 143.

*Dunlap
vs
Haggerty*

1861

Refused

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of

Cook

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Superior -
Court of Chicago County, before the Judge thereof, between

Cyrus R. Haggerty

plaintiff, and

Andrew J. Brown

defendant....., it is said that manifest error hath intervened, to the injury of the said Brown

as we are informed by his
complaints..... the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Cyrus R. Haggerty

that he..... be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Haggerty

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 18th day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty one;

L. Deland

Clerk of the Supreme Court.

136

743

Andrew J. Brown

No.

vs.

Cyrus R. Haggerty

SCIRE FACIAS.

FILED Apr. 18 A. D. 1861

De Veland

Black.

29 W. Haines

James W. Haines

Chargen Allen

Served this writ by Reading to the within named
Cyrus R. Haggerty This 20th Day March 1861
paid by Plaintiff A. J. Brown

fees
1 Service 50
mile 10
Return 10
70

C. C. Heeling Sheriff
by Wm. Waymon Deputy

In the Supreme Court

Andrew J. Brown
vs
Cyrus K. Haggerty.

Enclosed you have
receipt for writ of
error & in this
case & five dollars
your fees &
submits to me

Yours
Chicago March 16/61
W. J. Phelps

In the Supreme Court of Illinois -

Andrew J. Brown

vs

Cyrus K. Haggerty

} Error to Superior
Court of Chicago

The clerk of said court will
issue writ of error to clerk of
superior court. for transcript of
record wherein said Haggerty
was off & said Brown left -
judgment rendered in favor
of Haggerty -

Also Sci fa to Haggerty -

(W. J. Pruey
for Brown)

143
Andrew J. Brown
Cyrus R. Haggerty
Pence

Filed March 18, 1861.
L. Deland Clk.

SUPREME COURT,

STATE OF ILLINOIS.

APRIL TERM, A. D. 1861.

DUNLAP, COLBURN & BROWN,
 Plaintiffs in Error,
 vs.
CYRUS R. HAGGERTY,
 Defendant in Error.

NOTES OF EVIDENCE.

+

Abstract of Record

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3

This is an action of assumpsit brought on a promissory note, in the words and figures following, to wit:

\$500

Chicago, August 30th, 1856.

Ninety days after date, for value received, we jointly and severally promise to pay to the order of F. H. Benson & Co., at the office of F. H. Benson & Co., in Chicago, five hundred dollars, with interest at ten per cent. per annum, it being for money loaned.

DUNLAP, COLBURN & CO.
ANDREW J. BROWN.

Indorsed: "F. H. Benson & Co." [Erased.]
"F. H. Benson & Co."

8

To plaintiff's declaration, the defendants, Dunlap & Colburn, plead—

1st. The general issue.

2nd. Payment, surrender, and cancellation of the note.

9

To which defendant Brown pleads—

1st. General issue.

10

2nd. Payment, surrender and cancellation of the note.

11

3rd. That he signed said note as surety for Dunlap & Colburn—that when said note fell due, the same was in the hands of F. H. Benson & Co., indorsed in blank—that the said Dunlap & Colburn, at the request of this defendant, applied to F. H. Benson & Co. for said note to pay the same—and said F. H. Benson & Co. produced said note to said Dunlap & Colburn, and they then and there, with the knowledge of this defendant, so being such surety, took up and paid said note, and the same was thereupon cancelled and surrendered to Dunlap & Colburn—which note afterwards the said Benson & Co. fraudulently obtained from Dunlap & Colburn, and caused this suit to be instituted thereon, in the name of said plaintiff

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- 12 Plaintiff's replication to defendants' second pleas.
- 13 Plaintiff's replication to defendant Brown's second separate plea.
- 14 Plaintiff's replication to defendant Brown's third plea.
- 16 Record of trial—Dunlap & Colburn withdraw their pleas—judgment by default entered against them.
- 17 Jury impaneled to try the issue joined between plaintiff and defendant Brown.
- 18 Verdict against all the defendants, for \$663.60.
- 19 Motion of defendant Brown for a new trial overruled, and judgment rendered against all the defendants.
- 21 Stipulation of parties, extending the time for the filing of bill of exceptions to September 21, 1860.
- 22 Bill of exceptions.
- 32 Plaintiff's notice to defendants to produce a note that matured November 24, 1856.

- 22 *John Woolner*, testified :—In the year 1856, I had charge of the commission department of F. H. Benson & Co.'s business, and until October,
23 1857 ; there were business transactions between F. H. Benson & Co. and Dunlap, Colburn & Co. ; Benson & Co. negotiated some notes for Dunlap, Colburn & Co. ; notes were left by Dunlap, Colburn & Co. for negotiation, and when negotiated, the net proceeds were placed to the credit of Dunlap, Colburn & Co., who had an account with F. H. Benson & Co., or to the credit of R. L. Dunlap, according to directions ; they had business transactions together for some time ; I don't think they commenced this business before May, 1856 ; continued to October, 1857.

This note (now in suit) was left with F. H. Benson & Co. by R. L. Dunlap or Dunlap, Colburn & Co. (I don't know which) for negotiation, about the beginning of September, 1856, or last of August ; this note was sold to Haggerty by F. H. Benson & Co., and proceeds placed to the credit of R. L. Dunlap on the 4th of September, 1856, in their bank account with F. H. Benson & Co.

- 24 There was another note of five hundred dollars left by same parties, R. L. Dunlap, to be negotiated between the 20th and 30th of August, 1856, signed by the same parties, and had the same time to run ; this note was sold to Watson, Tower & Co., by F. H. Benson & Co. ; I don't remember I ever saw the note since it was delivered to Watson, Tower & Co. ; I have searched for the Watson, Tower & Co. note, at the request of Haggerty and Benson ; I can't tell when I made the search ; it was some time after the maturity of the note, considerable time after ; have searched two or three times ; I searched through all the papers of the office of F. H. Benson & Co. ; the file of vouchers and all other places it was likely to be ; I have made what I consider to be a diligent search ; I searched several times through all the papers of the office, as long as I thought there was any prospect of finding it.

The occasion of making the search was in consequence of the loss of this, the Haggerty note.

- 25 Haggerty left his note at the office of F. H. Benson & Co. for collection, on the 26th of November, 1856. I searched for this note at the same time I searched for the other, at Haggerty and Benson's request, some months after maturity of note ; I can't tell when I looked for the note at different times during a period of three or four months ; I did not find either of the notes.

- 33 *Woolner recalled*, stated : There was no partner at that time, to my knowledge, in F. H. Benson & Co. There were other clerks in the office besides myself.

There was a settlement with Dunlap, Colburn & Co. after the maturity of those notes and papers given up, but what they were I don't know.

28. J. H. Benson being ^{introduced} ~~assembled~~ as
a witness ~~testified~~ was objected
to by Defendant Brown on
the ground of interest which
objection was overruled ~~excepted~~
to —

25- *F. H. Benson*, being admitted as a witness, testified that he was engaged in the banking and brokerage business, in 1856, at 46 Clark St. under the name of *F. H. Benson & Co.* In 1856, knew the firm of *Dunlap, Colburn & Co.*—*R. L. Dunlap* and *J. E. Colburn*, were members of the firm of *Dunlap, Colburn & Co.* I had business transactions with that firm. They kept a bank account with me.

I was in the habit of loaning them money and selling notes for them of their own making, in some cases. This note (now in suit,) was left with me for sale—was entered upon my books for that purpose—left by *Robert L. Dunlap*—it was disposed of by me to *Mr. Haggerty*, the plaintiff—sold to him.

26 There was another note left with me by *Mr. Dunlap*, about the same time, and was sold to *Watson, Tower & Co.* When it matured, it was paid, either by myself or one of my clerks, to *Watson, Tower & Co.*

It was paid the day it matured, the 24th day of November.

I know it was paid either by myself or clerk, but don't recollect which of us paid it.

Dunlap came in and gave us a check for it a day or two after it was paid. I saw the check—it was signed by *Dunlap, Colburn & Co.*,—given for the note. It was some day or two after the note was paid. [Witness was not present when the note was paid, and check given.]

Mr. Dunlap never made any other payment to me on account of the *Watson & Tower* note, than the one I spoke of.

We paid this note out of our own funds, to *Watson & Tower*. We were in the habit of paying the notes we sold to *Watson, Tower & Co.*, the morning the notes matured.

27 The note paid to *Watson, Tower & Co.*, was delivered up to me. I have searched for the *Watson & Tower* note. I don't think I can give the date I searched for it. It was in the fall of 1857. After the note I have here was found, I searched through my papers in the office. Had *Mr. Dunlap*, in connection with *Mr. Moss*, search through all his papers, and had the clerk in my office search through it for the note, and could not find it. I can't say where it is. I don't think it is in my possession. I have made a diligent search for it. When I say in my possession, I mean among papers I have control of.

27

I searched for the Haggerty note in the fall of 1857. I think then—I have forgotten dates—it was some time in 1857. I don't recollect when I first made the search. It was some time after the note matured. I made search at the request of Mr. Haggerty. Haggerty left the note with me for collection, and did not call for it when due.

The counsel for the plaintiff proposed to the witness this question: "Had you any conversation with Dunlap, before and about the time it fell due? If so, state it." Objected to, and objection overruled and excepted to.

28

Answered. "I had. I think it was before the 26th of November, 1856. The subject of the conversation was with reference to the extending of the note. Dunlap said he could not pay but one of the notes, and wanted the other one extended. I said I thought Haggerty would extend the time of payment. I think there was something said about suing him. Whether I (witness) told him I would see Haggerty, or advised him to see him, I don't recollect. This was all the conversation that occurred at that time. I think I had another conversation with Dunlap at about the time of the maturity of the note. I think it was within a day or two of its maturity. He told me that he had arranged with Mr. Haggerty for the extension of the time of payment of the note, he did not say how long; I don't recollect how long it was he said. I had another conversation with him after the note was found; I don't recollect the exact date.

There was no other payment made at our office on account of either of these notes except the check for five hundred dollars. The check is in Dunlap's possession, I presume. Five hundred dollars was the amount paid.

29

The witness is asked the question, "Did you ever sell Watson, Tower & Co. any other note of the same denomination?" which question was objected to, and objection overruled, and the ruling excepted to. Witness answered, "I never did."

I saw this note in Moss' possession; he brought it to the office from Dunlap's house, with these erasures on it. I think it was in its present shape. It was then given to Haggerty.

Benson Cross-Examined.

p. 29. Dunlap, Colburn & Co., kept their bank account with me. I loaned them money from time to time. The money obtained on these notes was placed to their credit.

Dunlap brought me these notes. I think Mr. Brown's name was got at my suggestion, and was on the notes when they came there. I knew Mr. Brown had signed the note without expecting to get any of the proceeds. He did it at my suggestion. I regarded him as surety for Dunlap & Colburn.

p. 30 I don't know whether Haggerty knew that Brown signed the note as surety. I do not think he knew that fact until after this suit was commenced. I am not certain I personally negotiated this note to Haggerty. I recollect having a conversation with him previous to his taking the note, but don't recollect that any conclusion was come to at the time.

I had no personal knowledge of the payment of the Watson & Tower note, only from having seen the check, and Mr. Dunlap telling me that he had paid it. He told me this when we were looking for the note. I cannot say whether I was in the office or not when the note was paid, or if there, that I saw it done.

I did not go with Moss to get the note. Moss left it, after he got it, with me, at my office. I saw the note when Mr. Haggerty left it at my office for collection. I don't recollect whether Haggerty kept his account with me.

p. 31. When I got the note from Moss, I gave it to Haggerty. I did not indorse it at that time; don't recollect when I put the second indorsement on the note. I think I stated on the former trial, that it was my impression that I put it there after the note was brought back from Dunlap's. I put the "& Co." there; it is in my hand writing; should think the "& Co." was put there after the F. H. Benson. It was put there before this suit was commenced. My impression now is, that when the note was brought back, I noticed the upper indorsement was stricken out and then put the other indorsement there. I think the note was brought back the latter part of 1857, or early part of 1858.

I think I saw the Watson & Tower note after it was paid, though I cannot say; don't recollect whether I stated, on the former trial of this case, that I had not seen the Watson & Tower note at all since I negotiated it to them, though I do not think I did. I am very certain that the note was in Watson & Tower's hands, but cannot say whether I sent my clerk or got it myself.

31. I think Haggerty knew at the time that he got this note, that the money raised on it was going to Dunlap & Colburn. I think I told him so.

I don't know how long an extension was given on this note; think Haggerty told me, but don't know.

At the time this note was re-delivered to Haggerty, Dunlap & Colburn and myself had failed.

36 *F. H. Benson*, recalled by the plaintiff, is asked by plaintiff's counsel: "How was the money appropriated that was received from Dunlap?" which question was objected to by defendant Brown; objection overruled, and exception taken thereto. Witness replied: It was appropriated to the Watson & Tower note.

Question. "Did you ever pay any money to Haggerty?" Objected to; overruled, and exception taken thereto.

Answer. I did not.

On further cross-examination, witness stated, there was an open unsettled account between Dunlap & Colburn and Benson & Co. Witness don't know how the balance is; don't know whether the notes were charged or not; the check was; the books will show.

33

John Watson testified :—I was a member of the firm of Watson, Tower & Co. in 1856. There was a note purchased by Watson, Tower & Co. of F. H. Benson & Co., on the 23rd of August, 1856 ; I cannot say positively, but am under the impression it was paid by F. H. Benson & Co. ; it was held when due by Watson, Tower & Co. ; when paid, it was delivered to those who paid it, of course. It was not paid by Dunlap & Co.

Watson recalled, and the question is asked him :—“ What was the amount and contents of the note you held, of which you have testified about ?” To which question the defendant Brown excepted.

Objection overruled, and exception taken.

Answer.—The note was for \$500, due the 21st and 24th of November, 1856, signed by Dunlap, Colburn & Co., due ninety days from date to the order of F. H. Benson & Co.

It was endorsed by F. H. Benson & Co.

36

Wm. P. Moss testified :—I am one of the assignees of F. H. Benson ; I have seen this note before in the house of Robert L. Dunlap ; I went to his house in March, 1858 ; he was the only person there ; I looked at the papers he brought me, and found this note among them ; he delivered it up to me ; I brought it and showed it to F. H. Benson, and gave it to him. The names of the makers of the note and power of attorney were erased at the time he gave it to me ; “ F. H. Benson & Co.” has been written in since ; in all other respects it is as it was handed to me.

34

Charles W. Long was produced as a witness, by the plaintiff, who testified that he knew F. H. Benson & Co. in 1856—was in their employ as teller till 1857, when he closed his business. I was teller in the office of F. H. Benson & Co., in November, 1856. Saw this note (now sued) before in the bank of F. H. Benson. Mr. Dunlap came into the bank in the afternoon, when I was making up my cash. Dunlap said he had a note there that was due, and he wanted to take it up. Witness went to the pocket book and took this note and marked out Mr. Benson's name on the back of it, but the names of the makers I did not touch. He gave me a check for five hundred dollars, and I gave him the note and went about my usual duties. Witness is certain this was on the 26th of November. I found this note in the pocket book among other notes—looked them over, and this one was the first one I came to. I did not look particularly at the note at the time, to see when it fell due. There was nothing said at the time as to when this note was due. Dunlap took the note and left with it. I was engaged with my cash at the time, and did not look at the note particularly enough to see when it fell due. The note is in the same condition it was then, except the erasure of the maker's names and the second indorsement. I searched for the Haggerty note afterwards in connection with Mr. Woolner, among the papers of the assignees of F. H. Benson; also for the Watson & Tower note, and could not find either of them. I did not notice particularly the filing of the note when I delivered it to R. L. Dunlap.

35

37 The plaintiff offered to read to the jury the note shown to Woolner. The defendant objected; objection overruled, and note read, to which defendant excepted.

Note reads as follows:

\$500.

Chicago, August 30th, 1856.

Ninety days after date, for value received, we jointly and severally promise to pay to the order of F. H. Benson & Co., at the office of F. H. Benson & Co., in Chicago, five hundred dollars, with interest at ten per cent. per annum, it being for money loaned.

DUNLAP, COLBURN & CO.
ANDREW J. BROWN.

38 The signatures to the note, "Dunlap, Colburn & Co.," and "Andrew J. Brown," are erased. On the back of the note, and indorsed at the top by way of filing, after it had been folded, are the following memoranda which were alluded to by the witness, Charles W. Long, viz.:

"Dunlap, Colburn & Co.,"
"due Dec. 1."

The note is indorsed,

"F. H. Benson & Co.,"

erased as stated by the said Long, to have been by him, and then,

"F. H. Benson & Co.,"

is again endorsed under that erasure, which is the endorsement alluded to by Benson in his testimony, as having been put on since the note was obtained from Dunlap.

And the defendant Brown, moved the court to exclude the testimony of the witness Benson, from the jury, which the court refused, and the defendant Brown then and there excepted.

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39, 40

Plaintiff's instructions given by the court, to which defendant Brown severally excepted, which was noted.

Defendant's 4th, 5th and 6th instructions :

42 4. That if the jury believe, from the evidence, that Dunlap applied at
the office of F. H. Benson & Co. to pay a note made by him — that the
43 note in question was, in response to such application, produced to him —
Given. that he then paid the money due on it, took it away, kept it in his pos-
session and cancelled it — that is evidence of its payment, and they will
find for the defendant: *Unless the jury believe there was a mutual mis-
take in regard to the note, and the wrong one was delivered.*
Qualified.

5. If the jury believe, from the evidence, that Dunlap, or the defend-
ant, called at F. H. Benson & Co.'s, Nov. 26, 1856, to pay a note, and
the note in question was delivered, and the amount due thereon was
Given. paid, the defendants had a right to consider the note in question paid,
and said Benson had no right to apply the money received on any other
note, or to any other person than the legal holder of the note now in
question, without the consent of all the makers of this note. *This is
Qualified. so, unless there was a mutual mistake in regard to the note delivered.*

44
Given.

Qualified.

40, 41, 42, Defendant Brown's instructions, of which the court gave those marked
43, 44, 45. given, and refused or qualified those so marked, to the qualifications and
refusal of which, respectively, the defendant Brown excepted, which was
noted.

45 The jury having brought in a verdict for the plaintiff, the defendants moved for a new trial, for the following reasons :

- 1st. Because the evidence was not sufficient to warrant the verdict.
- 2nd. Because the Court allowed improper evidence to go to the jury.
- 3rd. Because the Court allowed the witness Watson to testify to the contents of the note to which he did testify as stated above.
- 4th. Because the Court did not exclude the evidence of Benson from the jury.
- 5th. Because the evidence showed an extension to Dunlap, of payment of note, without notice to or consent of Brown.
- 6th. Because the paper and writing produced and shown to witness Woolner was allowed to be read to the jury.
- 7th. Because the Court gave the plaintiff's instructions, and refused or qualified the defendants'.

46 And the Court denies said motion for new trial, to which the defendants then and there excepted, and tender their bill of exceptions.

ERRORS.

1. The court erred in permitting F. H. Benson to testify as a witness for plaintiffs, and in not excluding his testimony from the jury, on motion of defendant Brown.
2. Because the court gave improper instructions to the jury, for the plaintiffs.
3. Because the court improperly modified defendants' instructions.
4. In allowing the note to be read in evidence.

M. J. Briggs
& A. J. Brown,
~~SCAMMON, MCCAGG & FULLER,~~
For Plaintiffs in Error.

143, - 31

Dunlap Colburn & Horn
Pests in error

"

Cyrus R. Haggerty
Drift in error

~~~~~

Abstract of Record

Filed Apr. 29, 1861.  
L. Keland  
Clk.



# UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Second day of July in the year of our Lord One Thousand Eight Hundred and Sixty Seventh and of the Independence of the United States of America the Eighty Seventh

Present, The Honorable John W. Wilson Chief Justice of the }  
Superior Court of Chicago. }

Wm H Higgins }  
Grant S. Smith } Judges.

Charles H. Brown Prosecuting Attorney.

John Gray Sheriff of Cook County.

Attest, Walter Kimball Clerk.

Page 1.

It is remembered that heretofore, to wit, on the 16<sup>th</sup> day of April in the year of our Lord one thousand eight hundred and fifty eight, there issued out of and under the seal of the Cook County Court of Common Pleas, the People's writ of Summons, which said writ with the Sheriff's return thereon indorsed, is in the words & figures following, to wit:



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

We command you that you summon our Robert  
L. Simlaff, Josiah E. Colburn & Andrew  
J. Brown if they shall be found in your County  
personally to be and appear before the Cook &  
County Court of Common Pleas of said County  
on the first day of the next term thereof, to be  
holden at the Court House in the City of  
Chicago, in said County, on the first Monday  
of June next, to answer unto Cyrus R. Haggerty  
in a plea of Trespass on the case on promises  
to the damage of said plaintiff as he says in  
the sum of One thousand Dollars.

And have you then and there this  
writ with an end orsement thereon, in what  
manner you shall have executed the same.

Witness Walter Kimball  
Clerk of our said Court  
and the seal thereof, at the  
City of Chicago, in said County  
this 16<sup>th</sup> day of April A.D.  
1858.

Walter Kimball, Clerk

(Endorsed) Served by reading to the within named defendants, this day of May 1858.  
John L. Wilson Sheriff  
By John H. Dent Deputy

Sent



And afterwards, to wit, on the 20<sup>th</sup> day of May in the year of our Lord One thousand eight hundred and fifty eight, Cyrus R. Hagerby the said Plaintiff by his Attorney filed in the office of the Clerk of said Cook County Court of Common Pleas his certain Declaration in the words of figures following, to wit:

State of Illinois In the Cook County  
Cook County & Court of Common Pleas  
of the June Term A.D. 1858.

Cyrus R. Hagerby Plaintiff in this suit,  
by Daniel & Broff his Attorney, complains  
of Robert L. Demlap Josiah E. Colburn  
late partners doing business under the name  
style & firm of Demlap, Colburn & Co. and Andrew  
J. Brown Defendants in this suit in a plea  
of trespass on the case upon promises:

For that whereas the said defendants hereto-  
fore, to wit, on the thirtieth day of August in  
the year one thousand eight hundred and fifty  
seven at Chicago in the County of Cook afore-  
said made their certain promissory note in writ-  
ing, bearing date the day and year last aforesaid,  
and then and there delivered the said note to



4.

J. H. Benson & Co. Bankers doing business in Chicago at the County aforesaid. by which said note the said defendants by the name and style of "Amelia Colburn & Co" and Andrew J. Brown ninety days after the date thereof for value received jointly severally promised to pay to the order of said J. H. Benson & Co. at the Office of J. H. Benson & Co. in Chicago Five hundred dollars. with interest at ten per cent per annum after due it being for money loaned, and then & there delivered the said promissory note to the said J. H. Benson & Co. and the said J. H. Benson & Co. to whom or to whose order the payment of the said sum of money in the said promissory note specified was to be made after the making of the said promissory note and before the payment of the said sum of money therein specified to wit on the day & year last aforesaid at the County aforesaid and used the said promissory note by which said invoice made they the said J. H. Benson & Co. then & there ordered and appointed the said sum of money in the said promissory note specified to be paid to the said plaintiff and then & there delivered the said promissory note so invoiced as aforesaid to the said plaintiff.

By reason whereof and by force of the Statute



5 in such case made and provided, the said defendants became liable to pay to the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note, and of the said endorsement so thereon made as aforesaid: and being so liable, the said defendants in consideration thereof, afterwards to wit, on the same day and year, and at the place aforesaid, undertook and faithfully promised the said plaintiff well and truly to pay to the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note, and of the said endorsement so thereon made as aforesaid.

And whereas also, the said defendants afterwards, to wit, on the first day of April in the year One Thousand and Eight Hundred and fifty eight at the place aforesaid, were indebted to the said plaintiff in the sum of One thousand and Dollars, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiff to the said defendants, and at the special instance and request of the said defendants. And for other money by the said plaintiff before that time paid, laid out and expended for the said defendants and at the like request of the said defendants. And for other money by



6. The said defendants before that time had and received to and for the use of the said Plaintiff.

And for other money found due and owing from the said defendants to the said plaintiff upon an account then and there stated, between the said plaintiff and the said defendants, and being so indebted, the said defendants in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in this Count mentioned when the said defendants should be thereunto afterwards requested. Nevertheless the said Defendants (although often requested) have not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof to the said plaintiff but to pay the same, or any part thereof to the said plaintiff the said defendants have hitherto altogether refused, and still do refuse, to the damage of the said plaintiff of One thousand dollars: and therefore the said plaintiff brings suit for

Daniel & Bro

Plaintiff Attorneys



# Copy of Note sued on

7.

\$500

Chicago August 31. 1856.

Twenty days after date for value received the jointly and severally promised to pay to the order of J. H. Benson & Co. at the office of J. H. Benson & Co. in Chicago. Five hundred dollars with interest at ten per cent per annum after due it being for money loaned.

(Signed) Rumlaf Colburn & Co  
Andrew J. Brown.

# Copy of Account

|                         |               |
|-------------------------|---------------|
| Money lent and advanced | \$1000.       |
| " paid laid out & £     | \$1000        |
| " had received          | \$1000        |
| " now as stated         | <u>\$1000</u> |

And afterwards, to wit, on the 9th day of June in the year aforesaid, the said defendants by their Attorneys filed in the office of the Clerk of said Court, their certain Pleas & affidavits, in the words & figures following, to wit:



8.

In the Court of Court Com Pleas  
 Robert L. Amclap &  
 Josiah E. Colburn implt  
 with H. J. Brown  
 vs  
 Cyrus R. Haggerty Assumpsit

And the said Defendants  
 Amclap & Colburn impleaded vs. by H. J. Brown  
 their Attorney come & defend the wrong & injury  
 whereof. And say that they did not in-  
 take or promise in manner and form as  
 the said plaintiff hath above thereof declared  
 against them impleaded vs. & of this they  
 put themselves upon the Country.

And for a further plea in this behalf  
 as to the Counts of said declaration  
 said defendants impleaded vs. say, Actio non  
 because they say, that the said Note in the  
 said Counts mentioned was heretofore before  
 this suit was commenced & when the same  
 matured fell due to mt. on the 26<sup>th</sup> day  
 of November A. D. 1856. at Chicago. before  
 said fully mt. said Note was paid by the said  
 Defendants & thereupon said Note was surrendered &  
 cancelled & that they are ready to verify, wherefore they  
 pray judgment. W. D. Briggs Esq. Atty.



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Cook County Court Com Pleas

Robert L. Dumlaf &

Josiah C. Colburn et al

vs  
Ogus R. Haggerty

Assumpsit.

State of Illinois,

Cook County of }

Robert L. Dumlaf and  
of the Defendants in the above entitled  
suit being duly sworn therein say that  
the defendants have agreed defended upon  
the merits therein as they are advised & verily  
believe.

Subscribed & sworn to  
before me this 9<sup>th</sup> day of  
June A.D. 1854.

R. L. Dumlaf

In the Cook County Court of Common Pleas  
Andrew J. Brown  
impleaded with Dumlaf  
& Colburn

vs

Haggerty

Ass

And the said Defendant  
Brown impleaded vs. by H. F. Briggs his



10. Attorney comes and defends the wrong and injury  
when he. And says that he did not undertake  
or promise in manner or form as the said plaintiff  
states above thereof declared against him  
impleaded &c. & of this he puts himself upon  
the Country.

And for a further plea in this behalf as  
to the first Count of said Declaration said  
Defendant impleaded &c. says. Actio non  
because he says that the said note in that  
Count mentioned was hereof before this suit  
was commenced & when the same matured  
fell due to wit on the 26<sup>th</sup> day of November  
A. D. 1836. at Chicago aforesaid fully met  
paid and satisfied, by the said Defendants  
and thereupon the said note was surrendered  
and cancelled and this he is ready to verify  
wherefore he prays judgment &c.

And for a further plea in this behalf  
as to said Counts of said Declaration said  
Brown impleaded &c. says. Actio non. because  
he says that he signed said note as surety, for  
the said Dunlap & Colburn & for their accom-  
modation and not otherwise or for any other  
consideration, which fact was and always  
since has been well known to the said plaintiff.



11 That when the said note fell due the same was in the hands of F. H. Benson & Co. indorsed in blank, that the said Sumlap & Colburn at the instanced request of this defendant applied to the said F. H. Benson & Co. for the said note, to pay the same, & thereupon the said F. H. Benson & Co. produced the said note to the said Sumlap & Colburn & they then & there with the knowledge of this defendant & being such surety as aforesaid, took up & paid the said note & the same was thereupon cancelled and surrendered to the said Sumlap & Colburn. which note afterwards the said Benson & Co. fraudulently obtained from the said Sumlap & Colburn & caused this suit to be instituted thereon in the name of said plaintiff & this the said defendant impleads &c. is ready to verify, wherefore he prays judgment &c.

W. S. Burgess  
Deft's Atty

Cook County Court of Common Pleas.

Andres J. Brown et al

vs.

Waggoner

Ass

State of Illinois

County of Cook J. Andres J. Brown and



12. of the defendants in the above intitled cause  
being duly sworn therein says that the de-  
fendants have a good defence upon the  
merits therein as he is advised & truly believes.  
Subscribed & sworn to before me  
this 9<sup>th</sup> day of Jan. A. D. 1838. Andrew H Brown  
W. H. Hickney J. C.

And afterwards to wit, on the 13<sup>th</sup> day of De-  
cember in the year aforesaid, the said Plaintiff  
by his Attorneys filed in the office of the Clerk  
of said Court his certain Replications in the  
worded figures following to wit:

Cook County Court of Common Pleas  
Cyrus R. Waggener  
as  
Robert L. Amlap &  
Josiah C. Colburn  
impleaded with  
Andrew H Brown  
And the said plaintiff  
as to the Plea of the said defendants impleaded



to say them separately secondly above pleaded  
 with that the said plaintiff by reason of  
 any thing by the said defendants in that plea  
 alleged ought not to be barred from pleading  
 and maintaining his aforesaid action there  
 against them: because he says that the  
 said defendants did not nor did either  
 of them pay the said promissory note in the  
 said plaintiff's declaration mentioned nor  
 was the said promissory note surrendered  
 and cancelled in manner and form as the  
 said defendants have above in their said  
 second plea in that behalf alleged. And this  
 he the said plaintiff prays may be enjoined  
 of by the Country &c.

Daniel S. Brown

Attorneys for Plaintiffs.

Cook County Court of Common Pleas

Cyrus R. Haggerty

vs

Robert L. Dunlap

Joseph E. Colburn

impleaded with Andrew

S. Brown

And the said plaintiff



off as to the plea of the said defendant Andrew J. Brown impleaded &c. recently, separately above pleaded saith that the said plaintiff by reason of anything by the said defendant in that plea alleged ought not to be barred from having and maintaining his aforesaid action thereof against him. Because he says that the said defendants did not nor did either of them pay the said promissory note in the said plaintiff's declaration mentioned nor was the said promissory note surrendered and cancelled in manner and form as the said defendant hath above in his said second plea in that behalf alleged, and this he the said plaintiff says may be inquired of by the Country &c.

And the said plaintiff as to the plea of the said defendant Andrew J. Brown impleaded &c. which separately above pleaded saith that the said plaintiff by reason of anything by the said defendant in that plea alleged ought not to be barred from having and maintaining his aforesaid action thereof against him because he says that the said Andrew J. Brown did not sign the said promissory note in the said plaintiff's declaration mentioned as the surety of the said Amos and



Colburn and for their accommodation to the knowledge of the said plaintiff, that when the said Note became due the said Note was not in the hands of the said J. H. Benson and Company Endorsed in blank, that the said Note at the time of the maturity thereof was not produced by the said J. H. Benson and paid by the said defendants or either of them; that the same was not thereupon cancelled and surrendered to the said Linsap & Colburn nor was the said Note afterwards fraudulently obtained by the said Benson and Company from the said Linsap & Colburn and this suit instituted thereon in the name of the said plaintiff at the request of the said Benson and Company or at their instigation in manner and form as the said defendant hath above in his said third plea in that behalf alleged and thus the said plaintiff prays may be required of the Country &c

J. Anderson & Co  
Attorney for Plaintiff.



And afterwards to wit, on the 1<sup>st</sup> day of March in the year of our Lord one thousand eight hundred and sixty. said day being one of the days of the March term of the Superior Court of Chicago. the following among other proceedings were had and entered of record in said Court. to wit.

Cyrus R. Haggerty

Robert L. Annap, Isaiah E. Colburn  
Gottfried J. Brown.

This day comes said plaintiff by Jansen & Bopp his Attorneys and said Defendants by Burgess & Hawley their Attorneys also come and issues being joined herein it is ordered that a jury come whereupon comes the jury of good and lawful men to wit. C. E. Cook, L. H. Ten, C. G. Conkey, J. J. Bennett, John Corbridge, John Reese, H. H. Childs, R. J. Bullis, C. A. Colby, Caleb Nixon, Joseph Webb & A. Frizell who being duly elected tried on & sworn to try issues joined with all said Defendants as aforesaid and after hearing a part of plaintiffs testimony on motion leave is given Defendants Annap and Colburn to withdraw their pleas from



17 The files, which being done, and said defendants Dunlap & Colburn being severally called and not appearing or failing to plead over it is ordered that their default be so truly entered of record want of a plea, and proof testimony being heard on the issues joined with said defendant Andrew J. Brown, upon agreement it is ordered going separate until this-morrow morning.

And after a cor. to wit. on the 9<sup>th</sup> day of the month of Apr. last aforesaid, said day being one of the days of the March Term of said Court the following among other proceedings were had & entered of record in said Court to wit:

John R. Haggerty  
vs  
Robert L. Dunlap, Josiah E. Colburn  
vs Andrew J. Brown.

And now again comes the said plaintiff as well said defendant Andrew J. Brown and the jury empanelled herein on yesterday for the trial of this cause also come and after hearing all the evidence arguments of



88 Counsel and instructions of the Court. retired to  
consider of their verdict, and after an adjournment  
into Court. submit their verdict and say in the  
jury find issues for said plaintiff on issues  
joined with said defendant Andrew J. Brown  
And assess his damages herein against all  
of said defendants to the sum of Six hun-  
dred and fifty three dollars and sixty cents.  
And thereupon said defendant Andrew  
J. Brown submits his motion herein for a  
new trial in this cause.

And after words to wit, on the 2<sup>nd</sup> day of the  
month of year aforesaid, said day being end  
of the day of the said Term of said Court  
the following among other proceedings were had  
and entered of record in said Court. To wit:

Cyrus R. Haggerty  
vs  
Robert L. Amelapinski & Colburn  
vs Andrew J. Brown.

And now again comes



19 The said plaintiff as well said defendant Andrew J. Brown by Scammon McLagg & Fuller his attorneys and on application to dispose of motion made herein by said defendant for a new trial, the Court being advised both oral that the application to dispose of said motion be continued.

And afterwards, to wit on the 13<sup>th</sup> day of July in the year aforesaid, said day being one of the days of the July Term of said Court the following among other proceedings were had and entered of record in said Court to wit:

Cyrus R. Hagerty

vs  
Robert L. Dunlap. Sarah E. C. Brown  
And Andrew J. Brown.

This day again comes said plaintiff by Dansen & Bess his attorneys and said defendant Andrew J. Brown by Scammon McLagg & Fuller his attorneys all comes and counsel being heard on the motion heretofore submitted herein by the said defendant Brown

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for a new trial in this Cause, and due deliberation being thereupon had and the premises being fully understood, it is considered by the Court, that said defendants motion for a new trial be and is hereby overruled, whereupon said Defendant Brown enters his exceptions, wherefore plaintiff ought to have judgment entered herein on the verdict of the jury rendered herein against all said defendants.

Therefore it is considered that said plaintiff do have and recover of said defendants this damages of six hundred and eighty three dollars and sixty cents in form aforesaid by the jury here found and assessed and also his costs and charges in this behalf expended. And have execution therefor.

And thereupon said defendant Andrew J. Brown by his Counsel having entered his exceptions prays an appeal herein to the Supreme Court of this State, which is allowed on filing bond in the sum of One thousand dollars. To be approved by a judge of Court. in sixty days with bill of exceptions.



And afterwards to wit on the  
1<sup>st</sup> day of November in the year aforesaid  
there was filed in the office of the Clerk  
of said Court a certain stipulation in  
the words of figures following, to wit:

Superior Court

Haggerty }  
Amable et al }

It is hereby stipulated that  
the time for filing bill of Exceptions in the  
above entitled cause may be extended un-  
till the 21<sup>st</sup> of September instant  
Sept 7. 1861.

Wm Miller Lewis  
Plffs Attys

Let the bill of Exceptions be filed as of the  
21 of Sept

Wm Miller Lewis



And afterwards by agreement, there was filed, as of the 21<sup>st</sup> September A. D. 1860, in the office of the Clerk of said Court, a certain Bill of Exceptions in the words of figures following to wit:

In the Superior Court of Chicago  
 of the Term 1860  
 Cyrus R. Haggerty )  
 Robert L. Dunlap & Isaac )  
 E. Colburn & Andrew J. Brown )

Be it remembered on the trial of this cause before the Hon. Jas. M. Higgins one of the Judges of said Court & a jury duly empanelled & sworn the Plaintiff introduced as a witness on his behalf

John Woolner

Who being duly sworn testified as follows viz: In the year 1836. I had charge of the Commission department of J. H. Brown & Co. business until October 1837. They were note brokers and dealers in Land Warrants &c. &c. Clark Street Chicago.

I then knew Dunlap Colburn & Co. by reputation. I knew Dunlap - there was knowledge



23 Transactions between J. H. Benson & Co. & Am-  
lap Colburn & Co. Benson & Co. negotiated  
some notes for Amlap. Colburn & Co. notes  
were left by A. C. & Co. for negotiation and  
when negotiated the net proceeds were placed  
to the credit of Amlap. Colburn & Co. who  
had an account with J. H. Benson & Co. or to  
the credit of R. L. Amlap according to directions.  
They had business transactions together for  
some time. Amlaps name was familiar  
in the house when I went there in the early  
part of the year 1836. I don't think they com-  
menced this kind of business before May  
1836. Continued to October 1837.

A note is here shown to witness  
who says I have seen this note before.  
This is a note left with J. H. Benson & Co.  
by R. L. Amlap or Amlap Colburn & Co.  
(I don't which) for negotiation about beginning  
of Sept 1836. or last of August, this note  
was sold to H. agency by J. H. Benson  
& Co. and proceeds placed to the credit of R. L.  
Amlap on the 4<sup>th</sup> of Sept 1836. in his bank  
account with J. H. Benson & Co. There  
was another note of Five hundred dollars  
left there by same parties. R. L. Amlap  
to be negotiated between the 20<sup>th</sup> & 30<sup>th</sup> August  
1836. It was signed by the same parties



and had the same time to run. This note was sold to Watson. Torrey & Co by J. H. Benson & Co about 26 August 1836. I don't remember that I saw and the note since it was delivered to Watson. Torrey & Co. It was delivered either by me or J. H. Benson. I have searched for the Watson or Torrey note at the request of Benson or Haggerty. I can't tell when I made the search. It was some time after maturity of note. Considerable time after. I have searched two or three times. I searched through all the papers of the office of J. H. Benson & Co. the file of vouchers and all other places where it was likely to be. I made what I considered to be a diligent search. I searched several times through all the papers of the office as long as I thought there was any prospect of finding it. The occasion of making the search was in consequence of the loss of this note. the Haggerty note. Haggerty left his note at the office of J. H. Benson & Co. for collection on 26 November 1836. I searched for this note at same time I searched for the other at Haggerty & Benson's request some months after maturity of note. I can't tell when. I looked for the note at different times during a period of three or four



25 Months. I did not find either of the notes.  
I recollect Mr Moss went to Amclap office  
to see if the Haggerty note was there.

J. H. Benson offered as a witness by  
Plff. objected to by Deft Brown as in com-  
petent, objection overruled, Deft accepted  
which was noted and witness sworn - testified  
as follows, viz:

I was engaged in Banking and  
Brokerage business in 1856. at 46 Court  
Street, under the name of J. H. Benson & Co.  
In 1856. I knew the firm of Amclap Colburn  
& Co. R. L. Amclap & J. E. Colburn (I think  
first names) were members of the firm of  
Amclap Colburn & Co. I had business trans-  
actions with that firm. They kept a  
bank account with me. I was in the  
habit of loaning them money & selling notes  
for them of their own making in some cases  
(The witness here showed the same note shown  
to Holmes). I have seen this note before - This  
note was left with me for sale was entered upon my books  
for that purpose Left by Robert L. Amclap. It  
was disposed of by me to Mr Haggerty the Plff.  
sold to him - There was another note left with  
me by Mr Amclap about the same time and was  
sent to Watson & Son & Co. - When it matured it was



26 paid, either by myself or one of my clerks of Watson  
Torrer & Co. It was paid the day it matured, the  
24<sup>th</sup> day of November. I know it was paid either  
by myself or Clerk but I don't recollect which  
of us paid it. Lundap came in and gave us a  
check for it a day or two after it was paid.

I saw the check it was signed by Lundap,  
Colburn & Co. given for this note. It was some  
day or two after the note was paid.

Mr Lundap never made any other payment  
towards account of the Watson Torrers note,  
than the one I spoke of. He paid this note out  
of our own funds to Watson & Torrers. We were  
in the habit of paying all the notes we sold  
to Watson Torrers & Co. the morning the notes ma-  
tured - The note paid to Watson Torrers & Co. was  
delivered up to me. I have searched for the Watson  
& Torrers note. I don't think I can give the date  
searched for it. It was in the Fall of 1857,  
after the note I have here was found.

I searched through all my papers in the office  
Read Mr Lundap in connection with Mr Moss  
search through all his papers. And had the Clerk  
in my office search through it for the note and  
could not find it. I can't say where it is  
I don't think it is in my possession. I have  
made a diligent search for it - when I say



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my possession. Any among papers I have  
control of.

I looked for the Haggerty note in Fall  
of 1854. I think thus. I have forgotten date.  
It was some time in 1854. I don't recollect when  
I first made the search. It was some time  
after the note matured. I made the search  
at request of Mr Haggerty. Haggerty left  
the note with me for collection and did not  
call for it when due.

The Council for the Diff proposed to the Witness  
his question "Had you any conversations  
with Simlap before about the time it fell due?  
Yes, State it" which was objected to by the Left  
Branch by the Council, but the Court overruled  
the objection, and allowed the question to be asked  
and answered, to which Left Branch then offered  
objection which was noted.

The witness thereupon answered the question "I had  
I think, it was before the 26<sup>th</sup> Nov 1836. The  
subject of the conversation was with reference  
to the extension of the note. He said he could  
not pay but one of the notes and wanted  
the other one extended. I said I thought  
Haggerty would extend the time of payment.  
+ I think there was something said against suing  
him. Whether I told him I would sue him  
or advised him to sue him I don't recollect



This is all the conversation that occurred at that time I think. I had another conversation with him at about the time of the maturity of the note. I think it was within a day or two of its maturity. He told me he had arranged with Mr. Haggerty for the extension of the time of payment of the note. He did not say how long - I don't recollect how long it was he said.

I had another conversation with him after the note was found. I don't recollect the exact date.

The Deft. Donald Colburn asked leave of the Court to withdraw this plea filed which is allowed & the plea withdrawn.

The Witness Benson proved id. with his evidence there was no other payment made at our office on account of either of these notes except the check for five hundred dollars. The check is in Donald's possession & possession. Five hundred dollars was the amount that was paid.

The witness is asked the question "Did you ever sell Watson & Son the any other note of the same denomination" which question is objected to by Deft. Brown & objection



examined & question allowed by the Court to be asked and answered to which Robert Brown then & there accepted.

"I never did. I saw this note in Mrs' possession; he brought it to the office from Dunlap House. with three exchanges on it. (alluding to the signatures to the note and the endorsement of J. H. Benson Co. on the back of it) I think it was in its present shape when then given to Mr Haggerty -

### Cross Examination

Dunlap Colburn & Co. kept their Bank account with me & I loaned them money from time to time, the money obtained on these notes was placed to their credit. Dunlap brought me these notes. I think Mr Brown's name was got at my suggestion and was on the note when this came there. I know that Mr Brown had signed the note without expecting to get any of the proceeds. He did it at my suggestion. I regarded him as surety for Dunlap & Colburn.

I don't know whether Haggerty knew that Brown signed the note as surety. I do not think that he knew that fact until after this suit was commenced. I am not an



tain that I personally negotiated this note to Haggerty. I recollect of having a conversation with him previous to his taking the note but I do not recollect that any conclusion was come to at the time. I had no personal knowledge of the payment of the Watson & Trow note - only from having seen the check & Mr Dunlap telling me that he had paid it. He told me this when we were looking for the note. I cannot say whether I was in the office or not when the note was paid, or if there, that I saw it done. I did not go with Moss to get the note. He left it after he got it with me at my office. I sent the note when Mr Haggerty left it at my office for collection. I don't recollect whether Haggerty kept his account with me.

When I got the note from Moss, I gave it to Haggerty. I did not endorse it at that time. I don't recollect when I put the 2<sup>d</sup> endorsement on the note. I think I stated on the former trial that it was my impression that I put it there after the note was brought back from Dunlap. I put the "H" there it is my hand writing. I should think the "H" was put there after Mr F. H. Benson. It was



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put there before this suit was commenced. My own impression now is that when the note was brought back Justice that the upper endorsement was stricken out & then put the other endorsement there. I think the note was brought back the latter part of 1857 or the early part of 1858.

I think I saw the Watson & Tower note after it was paid though I cannot say. I don't recollect either I stated on the former trial of this cause that I had not seen the Watson & Tower note at all since I negotiated it to them. though I do not think I did. I am very certain that the note was in Watson & Tower hands but I cannot say whether I sent my clerk or got it myself.

I think that Haggerty knew at the time that he got this note that the money raised on it was going to Amos & Colburn. I think I told him so.

I do not know how long an extension was given on this note. I think Haggerty told me but don't know.

At the time this note was received by Haggerty Amos & Colburn & myself had failed.



It was admitted that previous to the former trial of this cause the following notice was served on Deft Briggs Atty, and should serve for this trial.

Superior Court

Cyrus R. Haggerty  
 or  
 Robert L. Lundap & others }  
 vs  
 H. S. Briggs Atty. Sir

You will please to produce on the trial of this cause a certain promissory note made by the Defendants in this cause payable to the order of J. H. Benson & Co. And maturing on or about the 21<sup>st</sup> day of November A. D. 1836. Said note has my hand given for \$500. and payable in ninety days after date or second day evidence of its contents will be given.  
 Chicago Sept 6 1837. Jansen & Dross  
 Atty for Plff



John Watson Brown says.

Was member of the firm of Watson Brown & Co. in 1836. There was a note purchased by Watson Brown & Co. of J. H. Benson & Co. on 23<sup>d</sup> August 1836. I can't say positively but am under the impression it was paid by J. H. Benson & Co. It was held when due by Watson Brown & Co. when paid it was delivered to them who paid it of course. It was not paid by Lumsap & Co.

Watson is recalled & states  
There was no partner at that time to my knowledge in J. H. Benson & Co. There were other clerks in the office besides myself - there was a settlement with Lumsap, Robinson & Co. after the maturity of these notes & papers given up but what they were I don't know.

Watson is recalled & the question is asked him.  
What were the amount & contents of the note you held of which you have testified about.  
To which question the Left Brown objected.  
His objection overruled by the Court & the question allowed to be put & answered by the witness to which the Left Brown then & there objected which was



noted & the witness answered the question.

The note was Five hundred dollars and due the 21/24 November 1856. I allowed the grace. Signed by Amos Colburn of our ninety days from date to the order of J. H. Benson & Co. did not draw interest. I don't know whether it was the same as this note you have here or not. It was in the form of a judgement note. It was indorsed by J. H. Benson & Co.

Charles W. Long sworn says.  
I knew J. H. Benson & Co. in 1856. was in their employ as teller till 1857. when he closed his business.

Witness is shown same note shown to Wolcott says I was teller in the office of J. H. Benson & Co. in November 1856. I have seen this note before at the Bank of J. H. Benson. I know R. L. Amos. knew him in November 1856. I have no recollection when I first saw the note Mr Amos came into the bank in the afternoon when I was making up my cash. Amos said he had a note there that was due and he would take it up. I went to the pocket book took this note and marked out Mr Benson's name in back of it - but the name of the maker I did not touch. He



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gave me a check for amount of Five Hundred dollars. I gave him this note & went about my usual duties. This was the latter part of November 1856. between the 25<sup>th</sup> & 30<sup>th</sup>. I think it was the 26<sup>th</sup> the bank will show. I am confident that was the date. I found this note in the pocket book among other notes, looked them over, & this one was the first one I came to. I did not look particularly at the note at the time to see when it fell due. There was nothing said at the time as to when the note was due. He took the note and left with it. I was engaged with my cash at the time and did not look at the note particularly enough to see when it fell due.

The note was in the same condition it was then except the erasure of the makers names & the second endorsement.

I searched for the Haggerty note afterwards in connection with Mr. Warner among the papers of the assignees of J. H. Benson & also for the Watson & Torrey note & could not find either of them. I did not notice particularly the filing of the note when I delivered it to R. L. Chapin.



Wm J. Mass. sworn - dep.  
 I know the firm of J. H. Benson & Co. I am  
 one of the assignees - no member of the firm  
 but J. H. Benson. I have seen this note  
 before in the house of Robert L. Dumlaf.  
 Went to his house in March 1838. He was  
 the only person there. I looked at the paper  
 he brought me, and found this note among  
 them, he delivered it up to me. I brought  
 it & showed it to J. H. Benson & gave it to him.  
 The names of the makers of the note & power of  
 Attorney were erased at the time he gave it  
 to me. J. H. Benson & Co. has been written on  
 since, in all other respects it is as it was handed  
 to me.

J. H. Benson recalled and is asked by  
 Off. How was the money appropriated that  
 was received from Dumlaf - which was objected  
 to by Left Brown, objection overruled, question  
 allowed to be answered & exception taken to the  
 ruling.

The Witness replies. It was appropriated to  
 the Watson & Torner note.

Question. Did you ever pay any money to  
 Haggerty. Objected to! Overruled.  
 allowed to be answered & exception taken



and the witness replied "I did not."

On further cross-examination -  
There was an open unsettled account between Am-  
lup Colburn & Co. & Benson & Co. I don't know  
how the balance is. I don't know whether  
the notes were changed or not. The check was  
the books will show.

The Plaintiff then offered to read to the jury  
the note shown to the witness Wolner - the de-  
fendant objected - objection overruled, note was  
to which R. H. Brown excepted.  
Said note is as follows.

\$500. Chicago August 30<sup>th</sup> 1856.  
Sixty days after date of our value received  
we jointly & severally promise to pay to the order  
of J. H. Benson & Co. at the office of J. H.  
Benson & Co. in Chicago Five Hundred dollars  
with interest at ten per cent per annum after  
due it being for money loaned.  
(Signed & sealed) Amalup Colburn & Co.  
J. H. Benson & Co. Amos J. Brown  
J. H. Benson & Co.



38 The signatures to the note of "Amclap Cal-  
burn Co" & "Andrew J. Brown" are erased.  
On the back of note and endorsed at the top  
by way of filing after it has been folded  
are the following memoranda which were  
alluded to by the witness Charles H. Long, viz.  
"Amclap Calburn Co"  
"due Dec 1st"

The note is endorsed "J. H. Benson Co"  
erased stated by the said Long to have been  
by him, and then "J. H. Benson Co" is  
again endorsed under that erasure which  
is the endorsement alluded to by Benson  
in his testimony as having been put on  
since the note was obtained from Amclap.

Which was all the evidence in the case,  
and the Left Brown moved the Court to  
exclude the testimony of the witness Benson  
from the jury which the Court refused the  
Left Brown then offered excepted.

And the Court at the instance of the  
Plaintiff gave the following instructions.



39

If the Jury shall believe from the evidence that the note given in evidence in this cause has never in fact been paid or otherwise discharged and that the erasures were made over the signatures of the makers by one of the defendants without the knowledge or consent of the plaintiff, then those erasures constitute no defence to this action, and the plaintiff is entitled to recover.

If the Jury believe from the evidence that Duntap one of the defendants on or about the 24<sup>th</sup> of November 1856 paid unto J. N. Benson & Co his check for 500.00 and that his intention at the time of such payment, was to have such payment applied upon another note, and not the one in evidence in this cause, and such payment was so applied, but that through the mistake of the parties the note in evidence was delivered up to Duntap instead of the other one, and that no other payment was made upon the note in evidence, and that the erasures were made without the knowledge or consent of the plaintiff,



then the Jury may find for the plaintiff notwithstanding such erasures.

Given.  
If the Jury believe from the evidence that the note sued on has not been paid by the defendants, and the erasures of the signatures of the makers was not made with the knowledge and assent of the plaintiff, then the plaintiff is entitled to recover.

Given.  
If the Jury believe from the evidence that Benson or his agents for him, paid the note sold to Tower and Watson at maturity, the defence of such payment may exist against such note in whosoever hands it came after maturity.

To the giving of which the Left Brown severally assented which was noted.

And the Left Brown tendered to the Court the following instructions viz



41.

1<sup>st</sup> That if the Jury believe from the evidence that Dunlap called at the office of F H Benson & Co for the purpose of paying any other note expressly naming the amount, date and who ordered by re. yet he had a right to change his mind and pay any other note presented to him for payment. And if the Jury believe the note in question was presented for payment, and the amount due thereon was paid it was for the benefit of all the makers on said note and in discharge of their liability and said note cannot be revived without the consent of all the makers of said note. But the Jury will determine from all the evidence whether he did change his mind, or whether there was a mutual mistake in regard to the note.

Given,

Dunlap

2<sup>nd</sup> The presumption is that Dunlap knew at the time that the note then presented and shown for payment would become due December 1<sup>st</sup> 1856 and the same being Nov 26, 56 then in the hands of said F H Benson & Co payable to said F H Benson & Co at



in response to such application produced to him, that he then paid the money due on it, took it away. Kept it in his possession & cancelled it that is evidence of its payment, and they will find for the Defendant. Unless the jury believe there was a mutual mistake in regard to the note & the money one was delivered

5<sup>th</sup> If the jury believe from the evidence that Amulap or the Defendants called at J. H. Benson & Co. office Nov 26. 1856. to pay a note - and the note in question was delivered - and the amount due thereon was paid - the Defendants had a right to consider the note in question paid. And said Benson had no right to apply the money received, on any other note, or to any other person, than the legal holder of the note now in question without the consent of all the makers of this note. This is so unless there was a mutual mistake in regard to the note delivered.

6<sup>th</sup> If the jury believe from the evidence that the Defendants paid to said J. H. Benson on the 26<sup>th</sup> day of November 1856. the amount due on the note in question & took a receipt



note, and said Benson had a right to receive the money <sup>thereon</sup> by authority from the legal holder of the same, and the defendants had no notice of the application of the money paid on said note other than in full payment of the note taken up for several months after payment, until after the failure of said Dunlap & Colburn & after the failure of said Benson - the said Benson has no right to alter the destination of the money paid on said note, other than payment to the legal holder of said note & note in payment of a note due to himself the said Benson, without the consent of all the Defendants. This is so unless there was a mutual mistake as to the note & the wrong note delivered up & cancelled.

7<sup>th</sup> After going before from the evidence that Benson by arrangement with Dunlap was to take up the notes of Dunlap & Co. and also take up the note held by Watson Iron Co. and held the same for his own use. to collect the same of Dunlap and afterwards Dunlap called at Benson's office for a note made by Dunlap & Co. of Brown and a note was presented to Dunlap which he paid & took it away - and this last note was the property of Haggerty, Haggerty as between himself & Benson



45 was entitled to the money paid on it.

of which the Court gave those marked given and refused or qualified those so marked. to the qualifications or refusal of which respectively the Left Brown excepted. which was noted.

And the Jury having brought in a verdict for the plaintiff the Defendants moved for a new trial which motion is for the following reasons.

1<sup>st</sup> Because the evidence was not sufficient to warrant the ~~verdict~~ verdict.

2<sup>d</sup> Because the Court allowed improper evidence to go to the Jury.

3<sup>d</sup> Because the Court allowed the witness Watson to testify to the contents of the note to which he did not testify as stated above.

4<sup>th</sup> Because the Court did not exclude the evidence of Benson from the Jury.

5<sup>th</sup> Because the evidence showed an intention to mislead of payment of note without notice or consent of Brown.

6<sup>th</sup> Because the paper writing produced & shown to witness Holmes was allowed to be read to the Jury.

7<sup>th</sup> Because the Court gave the Plffs instructions or refused or qualified the Defendants



#6. And the Court then said motion for a new trial to which defendants then & there except and tender this their bill of exceptions to be signed & sealed by the Judge of the Court & it is done accordingly.

Now having been given to this day for that purpose.

Wm H. Higgins  
Judge



State of Illinois  
Cook County J.

I Walter Kimball Clerk  
of the Superior Court of Chicago, formerly Cook  
County Court of Common Pleas, within and for the  
County of Cook State of Illinois, do hereby  
certify the foregoing to be a full true & complete  
transcript of the Process, Declaration, Pleas &  
affidavits, Replications on file in my office. &  
proceedings & judgment entered of record in the  
said Superior Court of Chicago, together with  
the Bill of Exceptions in a certain Cause, wherein  
Cyrus R. Henggey was Plaintiff and Robert L.  
Dunlap, Isaac C. Colburn & Andrew J. Brown  
Defendants.



Witness Walter Kimball Clerk  
of the Superior Court of Chicago,  
at the Seal thereof at the City of Chicago  
in said County & State this 13th  
day of April A. D. 1861.  
Walter Kimball Clerk



Supreme Court of the State of Illinois

April Term AD 1861.

Daniel Colburn & Brown  
Plffs in error

Cyrus B. Kappert  
Def in error

And now comes the said Plaintiff

in Error and say that in the foregoing Record and Proceedings of the Court there is manifest error in this

1<sup>st</sup> Because the Court erred in permitting F. H. Benson to testify as a Witness for Plaintiff and in not excluding his testimony from the jury on motion of Defendant Brown

2<sup>d</sup> Because the Court gave improper instructions to the jury for the Plaintiff

3. Because the Court improperly modified Defendants instructions

4. In allowing the note to be used in evidence

Samuel McCogg & Fuller  
for Plffs in error



Lynn R. Hagerty. Deft in error  
ad,  
Dunlop, Leoburn & Brown. Plffs in error } Supreme Court of Illinois  
In error - April Term 1861

And hereupon afterwards. to wit. at the  
April Term of the said Supreme Court AD 1861. the said Lynn  
R. Hagerty. by Hogen Miller Lewis. his Attorneys. came here into  
Court. and says that there is no error either in the record and proceed-  
ings aforesaid. or in the rendition of the judgment aforesaid. and prays  
that the Justices of the Supreme Court now here may proceed to ex-  
amine as well the record and proceedings aforesaid as the matters  
aforesaid above assigned for error and that the judgment  
aforesaid. in form aforesaid given. may be in all things  
affirmed &c

Hogen Miller Lewis  
Attys for Deft in Error



143-31

C. R. Haggerty

R. L. Luntford

Transcript

Filed Apr. 18. 1861  
N. Keland

Rec'd \$1000  
Rec'd above from A. J. Haggerty  
H. Kimball Ck.