

No. 13528

Supreme Court of Illinois

Wear et al.

vs.

Parish.

64
STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 188.

Wear
vs
Parish

1861

SUPREME COURT OF ILLINOIS.

Third Grand Division.—April Term, 1861.

JAMES WEAR, AARON D. WEAR, and WASHINGTON C. WEAR, <i>Appellants.</i>	} <i>Appeal from County Court of Peoria County.</i>
vs.	
JOSEPH W. PARISH, <i>Appellee.</i>	

ABSTRACT.

Page. 1. This is an action of assumpsit brought by appellees against appellants, to the July term, 1860, of the Peoria County Court upon the following note :

\$1500.

PEORIA, May 12th, 1857.

4 One year after date, for value received, we, jointly and severally, promise to pay to Albert G. Long, the sum of Fifteen Hundred Dollars, with interest, at the rate of six per cent. per annum, from date.

JAMES WEAR,
AARON D. WEAR.
WASHINGTON C. WEAR.

Endorsed as follows :

7 For value received, I hereby endorse and assign the within note to Joseph W. Parish.

ALBERT G. LONG.

3, 4, 5 & 6 The declaration contains two special counts on said note ; also, the common counts and a count for interest, with copy of account.

7 Defts. plead the general issue only, with an agreement signed by counsel for both parties, that Defts. may prove thereunder anything which they might prove under any special plea well pleaded, they to furnish Plff. with statement of character of defence before first day of next term.

12 Jury waived trial by Court at October term, 1860, and judgment for Plff. for \$984,28, and costs.
Motion for new trial by Defts. overruled.
Appeal prayed, and bond filed.

13 The Bill of Exceptions, filed October 25th, '60, shows that on the trial Plff. read in evidence the note sued on, with endorsement as above. This note has also credits as follows, to-wit: Feb'y. 16th, '59, \$600, and Feb'y. 9th, '60, \$300, in all \$900 paid thereon.

Plff. here rested.

Agreement that statement, called for in stipulation, filed with general issue, was duly furnished to counsel for Plff.

Defts. then called Wm. Rutherford, who testified: "I know Albert G. Long, the payee of said note. I acted as his agent in taking the note. I don't know it is endorsed to Plff. It was endorsed in blank by *Long* when I had it and sold it to Plff. I purchased it, and owned it February 16th, '59, when the \$600 was paid. It was then endorsed by *Long* I became the owner of it about that time; I sold it to Plff two or three months before the Three Hundred Dollar payment was made, February 9th, '60. I received the money as agent for Plff, and paid it to him." Defts here moved on this proof to strike out the special endorsement over signature of Long and to exclude said note from evidence. Motion overruled, and Defts excepted.

15 Witness then further testified "That when note was given there was a sale of real estate, and the note was part of the consideration paid. I made the sale to Defts as Long's agent. A deed of the property sold was executed at or about time the note was given; I was not present when the deed was executed. It was made in Memphis, Tennessee, where Long was. I was in Peoria. I had the deed made out in Peoria, sent it to Long, and it came back executed. I delivered it to Wears. I saw the deed at the time; do not remember whether I read it," Defts here exhibited a deed from Albert Long and wife to Defts, dated May 12th, '57, in which, for the consideration of \$2900,00, said Long and wife convey to said Wears all of lot 6 in block 48 in Munson & Sanfords Addition to the city of Peoria, in Peoria County, Ill., with full covenants of seizin in fee, general warranty and freedom from incumbrance

13 & 17.

18 Witness said: "I think this is the same deed, I believe it to be the same I sent to Long, which he returned to me, and I delivered to Wears." Defts then offered and read said deed in evidence against the objection of Plff. Witness further said: "There was no other consideration for said note, except the deed, and property then sold by Long to Wear. The note was not all the consideration paid by Wears on the premises. They paid \$1400,00 cash on the delivery of the Deed. The whole purchase money was \$2900,00. At or about the time the deed was delivered and note given, Wears gave mortgage to Long to secure the note."

19

Defts. here offered and read in evidence a mortgage from Wears to Long, dated June 25th, '57, to secure the payment of the note sued on.

19 & 20

31 This mortgage covers all of said lot 6, in said block 48.

Witness then further testified: "Defts. were never in possession of the part of the lot on the alley. At the time they purchased, the German Lutheran Church were occupying and claiming as their own 60 ft. of said lot on Sanford street, by 50 feet on the alley, had it enclosed and a church and school house on it, which they still occupy. The part so

22 held by said society, was worth, at the time of sale to Wears, without improvements, \$600. The improvements were worth 10 to 15 hundred dollars.

On cr.-ex. witness testified: "That said note and \$1400.00 were only given for the part of said lot fronting on 4th street by 90 feet deep on Sanford street. Wears did not purchase any more of said lot. The Society were in possession of back part of lot. Wears knew it and did not purchase it. A mistake was made in both deed and mortgage, which were both made out for the whole lot. They should have been for 90 feet on Sanford by 50 feet on 4th street. There was a house then on front part of the lot and a fence dividing church lot from part Wears bought. I was agent for Long, and knew front part only was sold to Wears. I put them in possession of 90 by 50 feet which was all they bought and they still retain possession of this. When the note fell due, I saw Wears about paying it. Only objection they made was times were hard and they could not pay. Afterwards said they could pay \$600 if I would not push them for whole. They paid \$600 and I agreed to wait on them, they agreeing to pay ten per cent. on ballance. I did not know the deed or mortgage called for whole lot till two years afterwards. To all which testimony on cross-examination Defts objected. Objection overruled, and evidence admitted. Defts excepted.

Defts. next called Alpheus Richardson, who said: "I know the lot in question; live near it. The church was built on back part of it 6 or 8 years ago, and Wears have never had possession of that part. That part was, when Wears bought, worth \$500 without improvements, and with them, from \$1500.00 to \$1700.00.

Henry Story called by Defts., said: "Sixty feet on Sanford street by 50 feet on alley of said lot was worth, at the time of Wears purchase \$600 Defts rested.

24 Plff then called Henry Thielbar, who said: "I know old Mr. Wear, and talked with him a year ago last spring, I went to see him on behalf of the church, and asked him for Quit Claim deed for the part of the lot occupied by the church. He said he never bought that part of the lot, but it was deeded to him, and how it came he did not know. To this testimony of Theilbar Defts objected. Objection overruled. Defts excepted.

Plff next called Wm. Schroeder, who said, "I know Defts. I talked two years ago with the old man and one of the sons. I asked what he would take for House and Lot purchased of Long. He said \$3,500. I asked him if he owned the whole Lot. He said no. I asked him how much he owned. He said he did not know, but his part was fenced in, and the other part belonged to a society that meets on it—he did not know the name. I told him we owned part of the Lot, but he had a Deed for all of it. He said he knew nothing about it. He had n't the Deed, but would come to Peoria and see about it. He came. We wanted a Quit-Claim—he said he must see his Atty. I saw him afterwards, and he said he would fix it. I saw him about a year after-

25 wards and he said there was a mortgage and some taxes on the Lot, and he didn't know how to fix it. I was one of the Trustees of the church. Evidence of Schroeder objected to by Defts. Objection overruled. Evidence admitted. Defts excepted.

This was all the evidence.

Judgment for Plff as above. To the rendering of which judgment Defts objected and excepted.

ASSIGNMENT OF ERRORS.

1. In overruling motion of Defts below to strike out special endorsement and exclude note from evidence.
- 28 2. In admitting testimony to contradict the Deed and Mortgage read in evidence.
3. In overruling motion for new trial.
4. In amount of damages assessed against Defts.
5. In rendering judgment for Plff.
6. In not rendering judgment for Defts.

J. K. COOPER, *for Appellants.*

Joinder in Error by H. GROVE, *for Appellees.*

~~170~~ 188-64

SUPREME COURT OF ILLINOIS.

Third Grand Division—April Term, 1861.

JAMES WEAR,
AARON D. WEAR, and } Appellants.
WASHINGTON C. WEAR.

vs.

JOSEPH W. PARISH, Appellee.

APPEAL FROM PEORIA Co. COURT

ABSTRACT.

H. Couch, Printer, Peoria, Ill.

Filed Apr 16. 1861

A. Kellogg
Clerk

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Third Grand Division.—April Term, 1861.

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AARON D. WEAR.
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6. In not rendering judgment for Defts.

J. K. COOPER, *for Appellants.*

Joinder in Error by H. GROVE, *for Appellees.*

~~187~~ 188

SUPREME COURT OF ILLINOIS.

Third Grand Division—April Term, 1861.

JAMES WEAR,
AARON D. WEAR, and } *Appellants.*
WASHINGTON C. WEAR.
vs.
JOSEPH W. PARISH; *Appellee.*

APPEAL FROM PEORIA Co. COURT

ABSTRACT.

H. COUCH, Printer, Peoria, Ill.

Filed April 16. 1861
A. Deland
Clerk

1

J. H. Parrish Be it Remembered, That on the
vs 25th day of June A.D. 1860 then issued, from
James Wear the Office of the Clerk of the County Court of Peoria
et al County State of Illinois a certain writ of Summons
in words and figures following To Wit,

Summons. State of Illinois The People of the State of Illinois
Peoria County To the Sheriff of Peoria County ^{acting.}

We command you, that you
Summon James Wear, Aaron D. Wear ^{2nd}
Washington C. Wear if they shall be found in
your County, personally to be and appear before the
County Court in said Peoria County on the first day of
the next term thereof to be holden at the Court House
in Peoria in said Peoria County on the Fourth
Monday of July 1860 to answer unto Joseph
H. Canish in a plea Trespass on the case
upon promises to the damage of the said plaintiff
as he say in the sum of Two Thousand Dollars.
And have you there and there this writ with an indorse-

Q

ment thereon in what manner you shall have executed the same.

Seal

Witness Charles Kettelle clerk
of our said Court and the seal thereof
at Peoria aforesaid this 25th
day of June A. D. 1860

Chas Kettelle clerk

By Geo. H. Kettelle deputy clerk

which writ was returned by the Sheriff on the 21st
day of July A. D. 1860, endorsed as follows,

Return
on
Summons

State of Illinois

Peoria County SS. I have duly served ^{the within} by reading
the same to the within named James Near, Aaron
D. Near, and Washington C. Near July 6th 1860
as I am therein commanded.

John Bryner Sheriff for Murray Deputy

And on the same day to wit the 25th day
of June A. D. 1860 there was filed in the office
of the Clerk of the said County Court, a "Declaration"
of the said Joseph Parrish which in words and figures
is as follows To Wit,

Declaration

State of Illinois
Peoria County S.

In the County Court
of Peoria County.

To July Term A.D. 1860

Joseph W. Parish

vs

James Wear, Aaron W. Wear
& Washington C. Wear In Assumpsit

Joseph W. Parish plaintiff
in this suit complains of James Wear, Aaron W.
Wear, and Washington C. Wear, defendants in this
suit in a plea of Trespass on the case on promises,
For that whereas the said Defendants heretofore to wit on the
12th day of May A.D. 1857 at Peoria in the County of
Peoria and State of Illinois made their certain promissory note
in writing and then and there delivered the same to Albert
G. Long and thereby then and there said defendants in and
by the name, style and descriptions of James Wear, Aaron
W. Wear and Washington C. Wear promised to pay
to the said Albert G. Long Fifteen Hundred
Dollars with interest at the rate of six per cent per
annum from date for value received one year after
the date thereof, which period has now elapsed; and
the said Albert G. Long then & there endorsed
and assigned the said promissory note to the plaintiff
whereof the said defendants then and there had no-
tice and then and there in consideration of the sum-
ise promised the said plaintiff to pay ^{to} him the ^{amount}
of the said note according to the tenor and effect
thereof. Also for that whereas the said De-
fendants on said 12th day of May A.D. 1857 at
Peoria in the County of Peoria and State of Illinois

aforesaid made their certain other promissory ^{note}
in writing in words and figures following, to wit,
\$1500 = Peoria May 12th 1857

One year after date for value received we
jointly & severally promise to pay to Albert C. Long
the sum of Fifteen Hundred Dollars, with interest
at the rate of six per cent per annum, from date,

James Wear

Amos W. Wear

Washington C. Wear

And then and there delivered the same to said Albert
C. Long and thereby then and there said Defendants
in and by the name, style and description aforesaid
promised to pay to the said Albert C. Long
Fifteen Hundred Dollars with interest at the
rate of six per cent per annum from date, for
value received one year after the date thereof,
which period has now elapsed; and the said Albert
C. Long then and there endorsed and assigned the
said promissory note to the Plaintiff, whereof the
said Defendants had notice, and then and there in con-
sideration of the premises promised the said Plaintiff
to pay ^{to} him the amount of the said note according to
the tenor and effect thereof. And whereas also
the said defendants afterward, to wit on the first
day of June A. D. 1860 at Peoria in the County
of Peoria and State aforesaid were and still are
indebted to the said Plaintiff in the sum of One
Thousand Dollars, for the price and value of goods

5

wares and merchandise, there before that time bargained and sold by the said plaintiff to the said Defendants at their special instance and request.

And in the sum of One Thousand Dollars for the price and value of goods, wares and merchandises there before that time sold and delivered by the said plaintiff to the said Defendants at their ^{special instance and} request.

And in the sum of One Thousand Dollars for money there before that time paid, laid out and expended by the said plaintiff in and about the business of the said Defendants at their special instance and request.

And in the sum of One Thousand Dollars for money there before that time lent and advanced to the Defendants by the said Plaintiff And for the use and benefit of the said Defendants at their special instance and request.

And in the sum of One Thousand Dollars for money there before that time had and received by the said Defendants to and for the use of the said Plaintiff.

And in the sum of One Thousand Dollars for the price and value of work, labor and services there before that time performed and bestowed and materials for the same provided by the said Plaintiff for the said defendant at their special instance and request.

And in the sum of One Thousand Dollars for money found to be due from the said,

6

Defendants to the said Plaintiff on an account
there before that time stated between them.

And in the sum of One Thousand ^{Dollars}
for so much money before that time ^{and} then due
and payable from the said Defendant to the said
Plaintiff for interest upon and for the forbearance of
divers large sums of money before then due and
owing from the said Defendants to the said Plaintiffs
and by the said Plaintiff forbore to the said Defen-
dants for divers long spaces of time before then elapsed, at
the like special instance and request of the said De-
fendants.

And whereas the Defendants afterwards
on the first day of June 1860 in consideration of the
promises, then and there promised to pay the several
sums of money in this declaration mentioned to the
Plaintiff on request; yet said Defendants have
disregarded their promises and have not (though
often requested) paid the said several sums of
money, nor either of them, nor any part thereof, to the
damage of the said Plaintiff Two Thousand
Dollars and thereupon he brings Suit Etc.

By H. Grove atty for Pl^{ff}.

State of Illinois In the County Court of Peoria County
Peoria County Ill. To July Term A.D. 1860.
Joseph H. Canish

VS
James Wear, Aaron D. Wear
Washington C. Wear

In Assumpsit
Damages \$2000⁰⁰

7

Issue a summons in the above cause to
the Sheriff of Peoria County returnable according to
law.

To C. Kettell clerk of said Court

A. Grove atty for p^{er}ff.

A copy of the note sued on, is correctly set out in the second count of the
foregoing Declaration,

A correct copy of Indorsement on note sued on,
For value received & truly endorse and
assign the within note to Joseph W. Parish
Albert G. Long.

Copy of Account sued upon.

To Goods, wares and Merchandise bargained and sold	1000 \$
To Goods Wares ^d Merchandise sold and delivered	1000 \$
To Money paid, laid out and expended	1000 \$
To Money lent and advanced	1000 \$
To Money had ^d and received	1000 \$
To Work Labor and Services performed ^d & bestowed ^d materials ^{provided}	1000 \$
To Money due on Account Stated	1000 \$
To Money due for interest on divers large sums of ^{money}	1000 \$

Plaintiff claims to recover interest
on the note sued on at the rate of ten per
cent after the maturity thereof.

8

And afterwards to wit on the 23^d day of July A. D. 1860 there was filed in the office of the Clerk of the said County Court a certain "Plea" of the said defendant, which in words and figures is as follows, to wit;

Plea Joseph W. Parish

vs

James Wear,

Harold W. Wear

Washington C. Wear

In the County
Court,
July Term
1860,

And the said defts by J. K. Cooper their attorney come & defend the wrong and injury when &c & say they did not undertake or promise in manner and form as said Jeff hath alleged thereof declared against them; and of this they put themselves upon the Country &c.

Cooper for Defts.

And afterwards to wit on the 25th day of July A. D. 1860 there was filed in said court an "Agreement" between the said parties which in words and figures is as follows,

Agreement.

Joseph W. Parish

vs

James Wear & als.

In the County Court
July Term 1860

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It is agreed between the parties to this suit that under the general issue pleaded herein the defendants may make & prove any defence or defences which they would be entitled to set up & establish under any special plea or pleas well pleaded; they to furnish the peff. or his attorney with a statement indicating the character of the defence or defences expected to be made by the first day of the next term of this Court = or place the same on the files in this cause,

Grove for Peffs.
Cooper for Defs

Record.
of
Court.

Proceedings of the County Court of Peoria County State of Illinois, began and held at the Court House in the City of Peoria in said County on Monday July 23^d 1860 for Judicial and other business. Present Hon. Wellington Love's Judge, Charles Kenville clerk and John Bryner Sheriff.

52 Joseph W. Parish
vs
James Wear, Aaron D. Wear
Washington C. Wear

This cause is ordered
to be continued until the 4th Monday in August 1860

A. Lamborn

Proceedings of the County Court of Peoria
County State of Illinois began and held at the Court
House in the City of Peoria in said County on

Monday August 27th 1860.
for Judicial and other Business, Present Hon.
Wellington Loucks Judge, Charles Kettelle
clerk and John Bryner Sheriff.

Joseph W. Parish

40

VS

Assumpsit.

James Near, Aaron D. Near
Washington C. Near

On motion of Jeffs Attorney
this cause ~~cannot~~ to be heard is ordered to be
continued untill the 4th Monday September 1860.

Proceedings of the County Court of
Peoria County State of Illinois (under its extended juris-
diction) began and held at the Court House in the City
of Peoria in said County on Monday September
24th 1860 for Judicial and other Business Present
Hon. Wellington Loucks Judge Charles Kettelle
clerk and John Bryner Sheriff.

Joseph W. Parish

33

VS

Assumpsit.

James Near, Aaron D. Near
Washington C. Near

This day came the said plaintiff
 by H. Grove his attorney and the said Defendants
 by Jonathan K. Cooper his attorney and on motion of the
 said Defendants this cause is ordered to be continued untill
 the 4th Monday in October A. D. 1860, Therefore
 it is considered by the Court that the said Joseph
 W. Parish do have and recover of and from the said
 James Wear, Aaron Wear and Washington C.
 Wear his costs and charges by him in this behalf expended
 at this term and that he have execution therefor.

Proceedings of the County Court of
 Peoria County State of Illinois, began and held at the
 Court House in the City of Peoria on Monday October 22^d
 1860 for judicial and other business. Present Hon.
 Wellington Dorock Judge, Charles Kettelle Clerk and John
 Bryner Sheriff.

Wednesday October 24th 1860.

Joseph W. Parish

28

vs

Assumpsit.

James Wear, Aaron W. Wear
 Washington C. Wear

This day came the said plaintiff
 by H. Grove his attorney and the said defendants by J. K.
 Cooper their atty, and it is ordered by the Court that a jury
 be empaneled to try said cause, Whereupon both parties

waive a trial by Jury and agree that all matters both of law and fact arising in this cause, should be tried by the Court. The Court having heard the evidence in the case and the arguments of counsel doth find for the plaintiff and assesses his damages at \$984.28 Nine Hundred and Eighty Four and ²⁸/₁₀₀ Dollars,

Thereupon the said defendants entered their motion for a new trial of this cause for reasons on file. The Court being sufficiently advised in the premises doth overrule the said motion. Therefore it is considered by the Court that the said Joseph W. Parish do have and recover of and from the said James Wear, Aaron W. Wear and Washington C. Wear the sum of \$984.28 Nine Hundred and Eighty Four and ²⁸/₁₀₀ Dollars his damages aforesaid in form aforesaid assessed and also his costs and charges by him about his suit in this behalf expended and that he have execution therefor. Thereupon the said Defendants prayed an appeal of this cause to the Supreme Court of this State - which is allowed on his entering into Bonds in the penal sum of Eighteen Hundred Dollars within twenty days. Security to be approved by the Court.

13 And afterwards to wit on the 24th day of October 1860 there was filed in the office of the Clerk of said Court, a "Bill of Exceptions" which in words and figures is as follows To Wit,

Bill of Joseph W. Parish
Exceptions vs
James Wear, Aaron W. Wear
Washington C. Wear

In the County Court
Pena County Ills.
of the October Term
A. D. 1860.

But Remembered
that on the trial of this cause by the Court, a jury
being waived by the parties, the plaintiff to maintain the
issue on his part offered & read in evidence, without
objection a note & endorsement thereon, in words and
figures, as follows,

\$1500

Pena May 12th 1857

One year after date, for value received,
we jointly & severally promise to pay to Albert
G. Long the sum of Fifteen Hundred Dollars
with interest at the rate of six per cent per annum
from date.

James Wear
Aaron W. Wear
Washington C. Wear

(Endorsed)
For value received I hereby endorse and assign
the within note to Joseph W. Parish.

Albert G. Long

Recd on the within six hundred Dollars, Pena July 16 1857.

C. J. Mathew Cash

Rec'd on the within note Three Hundred Dollars
 Peoria Feby 9th 1860 W^m Rutherford

Plaintiff then rested his case.

The depts then called William Rutherford who testified as follows, = I know Albur G. Long the payee of the note, sued on and acted as his agent, in taking said note & at the time it was given = I don't know that the note is endorsed to the peff. - It was endorsed in blank by Long when I had it & sold it to peff. - I had purchased said note & owned it on the 16th of February 1859 when the Six Hundred Dollars, payment was made and it was then endorsed by Long.

I became the owner of it about that time. I afterwards sold it to Peff. some one, two or three months before the payment of February 9th 1860 of Three Hundred Dollars, was made - I received that money as agent of Plaintiff & paid it over to him - Defendants here moved to strike out the special endorsement ^{over} on the signature of said Long, & to exclude the note from evidence as not legitimate evidence for the peff upon this proof, the same not being endorsed to the peff. by said Rutherford, But the Court overruled said motion & refused to exclude said note - To which ruling of the Court the Defendants by their Counsel then & there excepted.

It is agreed that the statement called for in the affidavit is false
 with the General Store herein, was duly furnished to the Court for
 Plaintiff as required by said agreement.

Said Witness then further testified for Defendants That at the time said note was given there was a sale, of real estate with which said note was connected as part of the consideration. Said sale was made by me as agent of said Long to the Wears, the defendants. There was a deed of the property sold executed at or ^{about} the time the note was given by said Long to the Wears. I was not present when this deed was executed. It was executed in Memphis Tennessee, where Long was at the time, and I was in Peoria - I had the deed made out in Peoria and sent it to Long, and it came back executed, and I delivered it to the Wears, - I saw the deed at the time but do not remember whether I read it. Defendants attorney here exhibited to the Witness a deed in words and figures following, viz, "This indenture, Made this twelfth day of May in the year of our Lord one Thousand Eight Hundred and Fifty Seven between Albert C. Long and Josepha his wife of Memphis in the State of Tennessee of the first part and James Wear, Aaron D. Wear, and Washington C. Wear, of the second part. Witnesseth, That the said party of the first part for and in consideration of the sum of Twenty Nine Hundred Dollars, paid by the said party of the second part, the receipt of which is hereby acknowledged, have granted, bargained, sold and conveyed and by these presents do grant bargain, sell and convey,

and confer in unto the said parties of the second part their heirs and assigns a certain tract or parcel of land, situated in the County of Peoria and State of Illinois and described as follows, Lot number six (6) in Block number forty eight (48) in Monson & Sanfords Addition to the City of Peoria in the County & State aforesaid, Together with all and singular the hereditaments, rights, privileges and appurtenances therunto belonging or in any wise appertaining, to have and to hold, the said premises as above described, with the appurtenances to the said parties of the second part their heirs and assigns forever, And the said Albert G. Long and Josepha his wife for themselves and their heirs, executors, and administrators do hereby Covenant to and with the said party of the second part their heirs, executors, administrators and assigns, that they are well seized of the premises above conveyed as of a good and indefeasible estate in Fee Simple and have good right to sell and convey the same in a manner and form as aforesaid - that they are free from all incumbrance and that the above bargained premises in the quiet and peaceable possession of the said party of the second part their heirs or assigns against the claim of all persons whomsoever, will forever warrant and defend, In witness whereof the parties of the first part have hereunto set their hands and seals the day and year first above written,

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Signed Sealed ^{and}
delivered in presence of
Wm A. Rose

Albert G. Long Real

Mary Josephine Long Real

State of Tennessee ss
Tully County

I, William A. Rose
a Notary Public in and for said
County do certify that on this day personally appeared
before me Albert G. Long whose name appears
subscribed to the foregoing Deed of conveyance
as having executed the same, who is personally
known to me to be the real person who and in
whose name the acknowledgement is proposed
to be made and acknowledged the execution
thereof as his voluntary act and deed for the uses
and purposes therein expressed, and also Mary
Josephine Long wife of the said A. G. Long hav-
ing by me made acquainted with the contents
of the said Deed, and by me examined sep-
arate, and apart from her said husband, whether
she had executed the same and relinquished her
to the lands and tenements, therein mentioned
all other interests by her claimed therein; acknowledged
that she had done so voluntarily and freely
without compulsion of her said husband and does
not wish to retract.

Seal

Witness my hand and notarial seal at
Memphis this Twelfth day of May A.D. 1857.
Wm A. Rose Notary Public.

State of Illinois
Peoria County

I Enoch S. Sloan, clerk of the Circuit Court in and for the County of Peoria in the State of Illinois and ~~his~~ Recorder of Deeds in said County, do hereby certify that the annexed Deed was filed for Record in my office on the 15th day of July A. D. 1857 and has been duly recorded with the accompanying certificate on pages 193, & 194 in Book X. A. in said Recorder's Office. In witness whereof I have set my hand and affix the Seal of the said Circuit Court at my office in Peoria this 26th day of August A. D. 1857.

Seal

Enoch S. Sloan clerk & Recorder

And witness then said I think this is the same ^{deed} - I believe it to be the same deed I sent to Long- and which was returned to me, & I delivered to the Weas = Defendants then offered to read said deed in evidence to which pliffs counsel objected - But the Court overruled the objection and admitted said deed in evidence = Witness then further stated, there was no other consideration for said note, outside of said deed and the property then sold by said Long to the Weas = But said note was not the whole consideration paid by said Weas on said purchase, They paid besides Forty Hundred Dollars in cash down on delivery of the Deed, The whole purchase

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money was \$2900 = At or about the time the deed was delivered and the note given the Weas executed a Mortgage to Long to secure the note - Defendant now showed to the Witness and offered to read in evidence the following Mortgage, viz.

Know all men by these Presents, That we James Weas, Aaron L. Weas, & Washington C. Weas of the City of Peoria & State of Illinois for & in consideration of the sum of Fifty Hundred Dollars to us paid by Albur Long of Memphis Tennessee the receipt whereof we truly acknowledge, have granted bargained, sold & conveyed & by these presents do grant bargain, sell, alien & confirm unto the said Albur L. Long the following described lot or parcel of land, situate in the County of Peoria, in the said State of Illinois - to wit, Lot No. Six (6) in Block No. Forty Eight (48) in Munson & Sanfords Addition to Peoria the said City of Peoria - To have & to hold the same together with all and singular the improvements, rights, privileges & appurtenances thereto belonging or in any wise appertaining, to him the said Albur L. Long, his heirs and assigns to his & their use behoof & benefit forever.

But on this Condition That whereas we the said James, Aaron, L. & Washington C. Weas are justly indebted to the said Albur L. Long in the sum of Fifty Hundred Dollars, for the payment whereof we have executed to him our promissory

note, dated the 12th day of May 1857, payable in one year from date with interest at the rate of 6 per cent per annum from date - Now if the said James Aaron W. Washington C. Near, shall pay or cause to be paid the said note as the same becomes due & payable, according to the tenor & effect thereof - then this deed to become void, otherwise to remain in full force, virtue & effect in the law. In witness whereof we hereunto set our hands & seals this 13th day of June A. D. 1857.

James Near Seal
 Aaron W. Near Seal
 Washington C. Near Seal

State of Illinois
 Deoria County Act

Before me J. A. Mc Coy
 Justice of the Peace in and for said County, came James Near, Aaron W. Near, Washington C. Near, who are all personally known to me to be the same persons whose names appear subscribed to the foregoing Mortgage Deed as having executed the same and acknowledged the execution thereof as & for their act & deed for the purposes therein expressed.

Given under my hand and Seal at
 Deoria this 13th day of June A. D. 1857

J. A. Mc Coy J. P.

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State of Illinois
Peoria County ss

I, Enoch P. Sloan, Clerk of the Circuit Court in and for the County of Peoria in the State of Illinois and ex-officio Recorder of Deeds in said County do hereby certify that the annexed Mortgage was filed for record in my office on the third day of December A. D. 1857 and has been duly recorded with the accompanying certificate's on pages 351 & 352 in Book Vol. 8 in said Recorder's Office, In Witness whereof I hereunto set my hand and affix the Seal of the said Circuit Court, at my office in Peoria this 15th day of December A. D. 1857.

Enoch P. Sloan

Seal

clerk & Recorder

To the reading of which in evidence the peff, by his counsel objected - but the Court overruled the objection & permitted said Mortgage to be read in evidence. Said Witness then further testified on the part of the defendants, That they the defendants, had never been in possession of the part of the lot named in said Deed which lies on the alley - That at the time they purchased, the German Lutheran Church were occupying & claiming as their own sixty feet of said lot on Sanford street by fifty feet on said alley, and had the same enclosed, & had a Church & School House on it, - which they still occupy -

And that the part of said lot so held by said Society was worth, without improvements at the time of the sale to the Weas, Six Hundred Dollars, and that the improvements were worth ten to fifteen Hundred Dollars. Wefts here closed the examination of said Witness.

And thereupon on cross examination, said witness was permitted against the objection of the Defendants to testify as follows, for the plff. - Said note and said fourteen hundred Dollars payment were only made & given for that part of said lot fronting on 4th Street by ninety feet deep on Sanford Street - The Weas did not purchase any more of said lot. The Church Society was in possession of the back part of said lot and they knew they did not purchase that. There was a mistake made in both the deed & the mortgage - which were both made out for the whole lot, when they should have been for only 90 feet on Sanford by 50 feet front on 4th Street - There was a house on the front part of said lot then and a fence divided the Church lot from what the Weas bought. - I acted as agent for Long, and knew that the front part only was sold to the Weas. I put them in possession at the time of said 90 by 50 feet, which was all they purchased, and they still retain possession of that part.

When the note fell due, I saw the Weas about paying it - The only objection they then made was at that time were hard and they could not pay. Afterwards they said they could pay \$600, if I would not push them for the whole - They paid the \$600.

and I agreed to wait on them, they telling me they would pay 10 per cent, on the balance. I did not know the Deed or Mortgage called for the whole Lot till two years afterwards,

To the whole of which testimony of said Witness elicited on cross examinations, the defendants by their counsel then & there as the same was offered & given objected, but the Court overruled said objections & permitted said testimony to be given in evidence - to the overruling of which said objections permitting said evidence to be given, defendants then & there by their counsel excepted =

Defendants next called, Asaphus Richardson who said, I know the lot in question, - I live near it. - The Church was built on the back part of it seven or eight years ago - The Weas have never been in possession of that part of the lot fenced off to the Church & School House - The part so fenced off was worth at the time of Weas purchase \$500, without improvements - With the improvements I should say from \$1500 to \$1700 =

Henry Story next called by Defts said, At the time of the sale to the Weas the 60 feet on Sanford Street by 50 feet on the Alley of said Lot was worth Six Hundred Dollars.

Defendants here rested.

Plff then called Henry Thilbar, who said - I know old Mr Near and had talk with him a year ago last Spring. I went to see him on behalf of the German Lutheran Church of Peoria. I asked him for a quit claim deed for the part of said lot occupied by said Church - He said he never bought that part of the Lot - but it was deeded to him and how it came he did not know. To the giving of which testimony by said Witness, Defendants then & there objected; but the Court overruled the objection and received said evidence and the defendants, by their Counsel excepted =.

Plff next called William Schroeder - who stated I know all the Defendants - Two years ago I, talked with the old man & one of the sons. I asked what he would take for the House & Lot he purchased of Long. He said \$3500 - I then asked him if he owned the whole lot - He said No - I asked him how much he owned. He said he did not know exactly but his part was fenced in - I then asked him who the other part belonged to - He said it belonged to the little Society that meets on it; he did not know the name - I told him then that we owned a part of the lot, and he had a deed for the whole of it, - He said he didn't know anything about that - He hadn't the deed - it was at Mr Johnsons office - said he would

come in to Peoria — He did so and found the Deed — We wanted a quit claim deed — He said he must see his Attorney — I saw him after he saw his Atty. and he told me he would fix it up. — After this about a year I went out again — And he then said there was a Mortgage on the lot which had to be paid and some taxes and he didn't know how to fix it. — I was one of the Trustees of the Church. — To the giving of all which evidence by the said Schroeder the Defendants by their Counsel at the time objected — but the Court overruled the objections taken and permitted said testimony to be given and received the same in evidence — to all which the Defendants then and there by their Counsel excepted.

This was all the evidence in the case and thereupon the said Court found said issues for the Plaintiff and rendered judgement in his favor for the sum of Nine Hundred & Eighty Four ²⁸/₁₀₀ Dollars & costs. To which finding of the Court and the rendition of said judgement, said Defendants by their Counsel then and there ^{objected &} excepted and prayed that this their Bill of Exceptions may be signed & sealed by the Court — Which is done.

Wellington Loucks, Clerk
County Judge

And afterwards to wit November 1st 1860
there was filed in the office of the Clerk of
said County Court, an "Appeal Bond" which
in words and figures is as follows, To Wit,

Appeal
BOND

I know all men by these Presents,
That we James Wear, Aaron D. Wear, Washington C.
Wear, and Peter Aton are held and firmly boundth
Joseph W. Parish in the sum of Eighteen Hundred
Dollars for the payment of which well and truly to be
made we bind ourselves and our legal representatives
jointly & severally, firmly by these presents - But on
this condition - That, whereas at the October
Term A. D. 1860 of the County Court of Peoria County
Illinois, by the consideration of said Court, the
said Joseph W. Parish recovered a Judgement against
the said James Wear, Aaron D. Wear, Washington C.
Wear, in a certain Suit then pending in said Court for
the sum of Nine Hundred & Eighty Four ²⁵/₁₀₀ Dollars
damages and costs of Suit, from which said Judgement
the said Wear, have prayed an appeal to the Supreme
Court of said State, Now if the said James,
Aaron D. & Washington C. Wear, shall well and truly
prosecute their said appeal, and shall pay whatever judg-
ment, costs interest, & damages may be adjudged
against them in case said judgement shall be affirmed
then this obligation to be void, otherwise of force

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and virtue in the law. In witness whereof the said James Near, Aaron D. Near, Washington C. Near and Peter Auten have run unto their hands & seals this 27th day of October A. D. 1860.

James Near Seal
 By A. D. Near his atty Seal
 Washington C. Near Seal
 Peter Auten Seal
 Aaron D. Near Seal

STATE OF ILLINOIS,)
 COUNTY OF PEORIA.) SS.

I, CHARLES KETTELLE, Clerk of the County Court of Peoria County, State of Illinois, do hereby certify that the foregoing is a FULL, TRUE and PERFECT transcript from the ^{files and} Records of said Court of the proceedings had in a certain cause pending therein, wherein Joseph W. Parrish is plaintiff and James Near Aaron D. Near ^{& from the files} Washington C. Near ^{are} defendants as appears of record in my office.

WITNESS my hand and official seal, at Peoria, this
 A. D. 1861.

11th day of March
 Chas Kettelle Clerk.
 per Geo. A. Kettelle
 Spty.

#9.25

Recd of J. K. Cooper Esq Nov 18 & 25/100
 Dollars costs of Transcript.

Kettelle clk

28- And now come the said James Wear, Aaron D. Wear & Washington C. Wear, the Appellants herein, and say - That Manifest Error in the Record, proceedings & judgment of said County Court, in this cause, hath intervened to their prejudice, in this - To wit:-

155.
11. Said Court erred in overruling the motion
of the defendants below to strike out the special
endorsement to the plff on said Note, and to
exclude the same from evidence =

2nd said Court overruled in admitting testimony on the part of the party below to contradict the deed & mortgage read in evidence by the depts =

3⁸/₁₁ The court voted in overruling the motion of the depts below for a new trial =

4th The Court erred in the amount of damages
awarded against said defendant:

5th The court erred in rendering judgment for said plaintiff =

6th The Court asked is not rendering judgment for the dependants below =

Wherefore, & for other sufficient reasons appearing in said Record, Appellants pray that the said judgment of said Court herein, may be set aside, reversed & wholly for naught esteemed =

J. K. Cooper
for Appellants

And the defendant Joseph W. Parrish comes says that there is no error in the above proceeding or that if there be, he says may be mischievous or detrimental to the Court. It is now left for the Court to decide.

¹⁸⁸
Meas. vs. Parish

Add^e Memo =

Filed April 19 1881
Leland

James Mearns & Co,
 Appellants = } In the Supreme Court =
 vs. } of the April Term 1861 =
 Joseph W. Parise,
 appellee = } Appeal from Peoria County
 Court =

And now come said Appellants, and by leave
 of court, assign additional errors herein,
 and say, that in the record, proceedings, & judgment
 of said County Court therein, there is further error
~~in this~~ to the prejudice of said Appellants, in this,
 to wit:

1st That the damages assessed against said Appel-
 lants, by said County Court, are excessive:

2nd The finding & judgment of said County Court
 are not warranted by the evidence in the
 case:

Wherefore the Appellants pray as they
 have heretofore prayed:

J. K. Cooper
 for Appellants

And the said Appellee, Joseph W. Parise,
 comes & says, that in the said Record, proceed-
 ings & judgment of said Court, there is no such
 error as is above alleged: Wherefore he prays
 as already prayed by him prayed:

~~188~~ - ~~188~~
Joseph H. Parrish

VS

James D. Wear

Aaron Wear

Washington C. Wear.

Transcript from County Court
in
County of Peoria County Illinois.

Filed April 16. 1881
L. Leland
Clerk