No. 14811

Supreme Court of Illinois

Childs

vs.

Davidson

71641

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 135

J. W. Middleton & Co., Steam Printers, 190 Lake St.

1865

Child

vs

Davidson

11811

STATE OF ILLINOIS,

IN THE

SUPREME COURT,

OTTAWA TERM, A. D. 1865.

SHUBAEL D. CHILDS
vs.
GILBERT C. DAVIDSON,
} APPEAL FROM COOK.

BRIEF OF

CHARLES C. BONNEY, J. EDWARDS FAY, AND CHARLES W. GRIGGS, FOR APPELLANT.

CHICAGO:
HORTON & LEONARD, STEAM BOOK AND JOB PRINTERS,
104 and 106 Randolph Street.

1865.

Horton & Leonard, Printers, Chicago.

STATE OF ILLINOIS,} ss.

IN THE SUPREME COURT,

OF THE APRIL TERM, A. D. 1865.

SHUBAEL D. CHILDS, JR.,
vs.
GILBERT C. DAVIDSON,
} APPEAL FROM COOK.

ABSTRACT OF THE RECORD.

Page of the Record.

ACTION OF ASSUMPSIT, Gilbert C. Davidson, vs. Shubael D. Childs, Jr., commenced to January Term, 1861, damages $500.

1. Bond for costs.
2. Summons and return.
3. Declaration: "Circuit Court, State of Illinois, County of Cook, of the January Term, A. D. 1862. Gilbert C. Davidson, of Albany, in the State of New York, by Evans & Towslee, Attor-
4. neys, complains of Shubael D. Childs, Junior, of Chicago, defendant, who is summoned, &c., of a plea of trespass on the case on promises. For that whereas the said defendant heretofore, to wit: on the Nineteenth day of September in the year of Our Lord

one thousand eight hundred and fifty-nine, at Chicago, to wit: at said County of Cook, made his certain promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the same to Shubael D. Childs, in and by which said note said defendant by the name, style and description of S. D. Childs, promised to pay to the order of the said Shubael D. Childs Two Hundred Dollars, with interest, payable to I. Vose or bearer, on the first day of July next, meaning the first day of July next after the date of said note at Messrs. Forrest Bros. & Co., Banking house, Chicago city, Ill., for value received. And the said Shubael D. Childs, to whom or to whose order said note was payable, afterwards, to wit: on the day and year aforesaid, at Chicago, that is to say, at the County of Cook aforesaid, endorsed said note in writing, by which said endorsement the said Shubael D. Childs then and there ordered and appointed the said sum of money in said note mentioned to be paid to said Gilbert C. Davidson, and then and there delivered said note, so endorsed, to said Gilbert C. Davidson. **5.** By means whereof and by force of the Statute in such case made and provided, the said defendant became liable to pay said plaintiff said sum of money mentioned in said note, and being so liable in consideration thereof then and there undertook and promised to pay the same to the said plaintiff according to the tenor and effect of the note and of the endorsement aforesaid, to wit, at the place aforeraid.

And also for that whereas the said defendant heretofore, to wit: on the 19th day of September, 1859 at Chicago, to wit: at said Cook County, made his certain other promissory note, in writing, bearing date the day and year aforesaid, and then and there delivered the same to Shubael D. Childs and Franklin Vose, in and by which said note said defendant by the name style and description of S. D. Childs, Jr., promised to pay to the order of the said Shubael D. Childs, Two Hundred Dollars, with interest, and which said sum of money with the interest thereon, was also to be paid to F. Vose or bearer, the first day of July next, meaning first of July next after the date of said note, at the banking office of Forrest Brothers & Co., in Chicago city, Illinois, for value received. **6.** And the Shubael D. Childs and Franklin Vose to whom said note or to whose order the same was payable, afterwards, to wit: on the day and year aforesaid, at Chicago, that is to say, at the County aforesaid, endorsed said note in writing, by which said endorsement

the said Shubael D. Childs and Franklin Vose, ordered and appointed the said sum of money in said note mentioned to be paid to said plaintiff. By means whereof and by force of the statute in such case made and provided, the said defendant became liable to pay said plaintiff said sum of money mentioned in said note, and being so liable in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff according to the tenor and effect of the said note and of the endorsement aforesaid, to wit: at the place aforesaid.

7. Common counts for money lent, &c., money paid, &c., money had and received; goods, &c., sold, &c.; labor performed, &c.; money due on account stated, &c.

Copy of instrument and account sued on:

[redacted]

On the back is endorsed, "S. D. CHILDS."

"I guarantee the payment of the within note.

"FRANKLIN VOSE."

Account in the usual form.

9. Plea of the general issue.

19. Cause submitted to Court for trial. Trial and finding for plaintiff $263.

Motion for new trial.

20. Motion for new trial overruled, and motion in arrest of judgment.

Motion in arrest overruled and judgment for $263.

21. Appeal to Supreme Court prayed, allowed and perfected.

22. Bill of Exceptions.

Plaintiff's Evidence.

23. The plaintiff offered in evidence the following instrument:

$200 CHICAGO, ILL., Sept. 19, 1859.

For value received, I promise to pay to the order of SHUBAEL D. CHILDS, Two Hundred Dollars, with interest, payable to J.

Vose or bearer, on the first day of judgment, at Messrs. Forrest Brothers & Co., Banking House, Chicago City, Ills.

SHUBAEL D. CHILDS, JR.

On the back of said instrument were the following endorsements:

"S. D. CHILDS, Chicago, Ill."

"I guarantee the payment of the within note.

"FRANKLIN VOSE."

Pay I. H. Burch & Co. or order.

The defendant made the following objections to the admission of said instrument in evidence:

1. There is a variance between the instrument offered in evidence and the description of the same in the several counts of the decla-

[redacted]

back of said note is Franklin Vose.

2. The instrument declared on is not assignable; yet the suit is sought to be maintained in the name of an assignee.

3. Said instrument is void by the statute of negotiable instruments.

4. Said instrument is not a promissory note.

5. There is no assignment of said instrument sufficient to vest the title to the same in the said plaintiff, or purporting to vest the whole interest in the same in him.

Objections overruled and instrument admitted in evidence.

This was all the evidence.

25. Court found issues for plaintiff.

Motion for new trial for following reasons:

1. The court admitted improper evidence for the plaintiff against the objections of the defendant.

2. The finding of the court is contrary to the law and the evidence in the case.

3. The finding of the court is otherwise manifestly against the law of the land.

26. Court overruled said motion for new trial and defendant moved in arrest of judgment for the following reasons:

1. Because said declaration is insufficient in law.

2. Because said instrument declared on is not assignable, and this suit is brought in the name of an assignee.

3. Because said instrument is void by the statute of negotiable instruments.

4. Because said instrument is void for uncertainty.

27. 5. Because said instrument is void by public policy which requires all negotiable instruments to be certain and regular in form.

6. Because there is no indorsement assigning the whole interest or any part thereof in the said instrument.

7. Because said instrument attempts to sever the interest from the principal and to transfer the title to the same in severalty.

8. Because said instrument is not a promissory note.

9. For that the second count of said declaration declares the same sum of money to be payable to each of two persons.

The court overruled said motion and gave judgment for $263.

29. Certificate in proper form.

ERRORS:

1. The court erred in admitting improper evidence for the plaintiff against the objection of the defendant.

2. The court erred in overruling the motion for new trial.

3. The court erred in overruling the motion in arrest of judgment.

4. The court erred in rendering judgment for the plaintiff.

5. The said judgment and the proceedings whereon the same are founded, are otherwise manifestly erroneous, informal and illegal.

CHARLES C. BONNEY &
J. EDWARDS FAY,
Attorneys for Appellant.

STATE OF ILLINOIS, ss.

In the Supreme Court, at Ottawa,

OF THE APRIL TERM, A. D. 1865.

SHUBAEL D. CHILDS Jr., v. GILBERT C. DAVIDSON.

BRIEF OF CHARLES C. BONNEY AND J. EDWARDS FAY, FOR APPELLANT.

1. This action is brought in the name of an indorsee, upon what is alleged to be a negotiable instrument.

2. The object of the defence is to defeat this action, and compel the plaintiff—if he will sue at all—to bring his action in the name of the original party, declaring on the original consideration. In such a case, the appellant would expect to succeed upon the facts, as he now does upon the law.

3. The defence rests upon two general grounds:

I. The instrument sued on is not a negotiable instrument.

II. The evidence was not admissible under the declaration, and does not sustain the finding in favor of the plaintiff.

4. Negotiable instruments are governed, not by any general law of the country, but depend, in each State, upon the peculiar provisions of the statutes which authorize and define them. The statute of Illinois differs materially from the statute of Anne, and from the statutes of many of our sister States. For example: paper payable to bearer is not authorized by our statute; and we assume to say that most of the questionable decisions touching negotiable paper, have arisen from a disregard of the rule that, in determining questions concerning such paper, the statutes and de-

cisions of the State in which the paper was made, are everything; and decisions on paper made under other and different statutes, to be regarded only as illustrative of general principles.

5. The fundamental rule governing this case, is this:

That the essential qualities of negotiable paper shall be inexorably required in all cases; but that when these qualities exist, liberal intendments shall be indulged to promote the use and circulation of such paper.

The paper must pass a strict rule to enter the favored class; but having done so, it shall be supported by a liberal one. The policy of the law is to prevent the corruption and debasement of commercial paper, by allowing the negotiation of instruments in any respect calculated to lead to doubt, vexation, controversy and litigation. The wayfaring man, however unlearned, should be able to tell whether a piece of paper offered him as a negotiable instrument, ought to be taken as such. This is the spirit of the whole course of adjudication on the subject.

Now let this argument be admitted, and the case is at an end. For the piece of paper on which the action was brought, is of such a character that no one can be certain what it means, or determine from its terms to whom the money is to be paid, or whether the principal and the interest are to be paid to the same or to different persons. There may be *opinion* on all these points, as to what the parties to the paper intended to provide, but there can be no *knowledge*, without going outside of the paper for an explanation of circumstances and intention.

On this branch of the case, we cite the following authorities:

6. The question of variance is plain, and will be determined by inspection. See printed abstract, where the objections are so particularly specified that they need not be repeated here.

On this point we cite the following cases:

Bogardus *v.* Trial. 1 Scam. 63.
Pearson *v.* Lee. 1 Scam. 195.
Curtis *v.* Mars. 29 Ills. 508.
Rives *v.* Marrs. 25 Ills. 315.

135.

Childs

v

Davidson

Appellants

Brief

Filed April 6. 1865

L. Leland

Clerk

Printed by Rounds & James, 46 State St., Chicago.

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION,
Of the April Term, A. D., 1865.

Gilbert C. Davidson,
Appellee,
ads.
Shubal D. Childs, Jr.,
Appellant.

Brief of the Appellee.

The APPELLEE presents the following points:

I.

All the objections which can be raised in this case, on the part of the appellant, is to the *form* of the instrument declared on—and it is submitted, that although the instrument in itself is not in the usual form of a prommissory note, in every particular, yet, that it contains all the essential requisites of a negotiable promissory note.

1st. The note is made by the defendant, Childs, [S. D., Jr.]

2d. It is made payable to the order of Shubal D. Childs.

3d. It contains an absolute promise to pay a sum certain in money. And lastly,

4th. The promise is for value received, to pay at a given time, specified in the note.

The above four ingredients are the essential requisites of all promissory

notes—vide *Chitty on Bills*, pages from 153 to 160. But in the case of *Willis vs. Green*, in 10th Wendall Reports, page 519, the Court say:

"There is no particular form essential to these instruments, and their "great utility in promoting commercial transactions. The confidence given "to such paper by business men of every description, and its consequent "general use, have influenced Courts to adopt *greater liberality of construc-* "*tion* in giving effect to *them*, than *is applied to other contracts*. *Two things* "are indispensable. They must be payable with *certainty*, or *absolutely*, and "in *money* only. These requisites being found in an instrument, the Court "will look at its substance and meaning, and give effect and operation to it "according to the intent and rights of the parties."

We refer the Court particularly to the above case, because, the case is similar in all essential particulars, to the case now before the Court, and was the leading authority which governed the Court below, in giving judgment for the appellee in this case.

In the case in 10th Wendall, above quoted, the note was made by Pinney, by which he promised to pay to Willis, to *the order* of Johnson & Green, a sum certain, and at a given time and place; and all the difference between that note and the one now at issue is, that the note in this case promises to pay to the order of Childs, payble to Vose, or bearer. That note was a promise to pay Willis to the order of J. & G. Yet the Court in the Wendall case declared the paper was a promissory note, "a note payable to order of defendants, to be negotiated to the plaintiffs—vide page 520. What is the note in this case but a promise [by S. D. Childs, Jr.,] to pay to F. Vose, or bearer, a note to be endorsed over to him, by S. D. Childs, junior? Evidently such was the meaning of the parties in this case. They supposed, in order to get the security of the old man, Childs, that they must make the note payable to his order, on the *face of the note*. As in the N. Y. case, if the name of C. D. Childs had been left out of the face of the note, it would have been in the usual form. If the 10th Wendall case is good law, it disposes of this case.

To the same point we refer to *Chitty on Bills*, page 157, *et sequitu*. Also

II.

The only other objection of any legal characteristic is, that the note in question has now been assigned, so as to vest the right of action in the plain-

tiff. This objection seems to be a chronic complaint peculiar to the counsel for appellant, but has been fully disposed of by the S. Court of this State.

For the note now in controversy is endorsed in blank by S. D. Childs, the payee, and is also endorsed by Franklin Vose, by his written guarantee on the back of the note, and such endorsement and guarantee are sufficient to vest the right of action in the plaintiff in this case. Vide *Haton vs. Hurlbut*, 3 Scam., R., page 439.

III.

The objections raised by the appellant in the Court below, as to variance and the assignment of said note so as not to vest title in plaintiff below, are regarded as so obviously unfounded, as not to require only an inspection of the record to be fully disposed of.

E. W. EVANS,
Attorney for Appellee.

CHICAGO, March 14th, 1865.

135 69.

Davidson
vs
Childs

Appellees
~~Defts~~. Brief

Filed April 17, 1865
S. Leland Clk.

Horton & Leonard, Printers, Chicago.

STATE OF ILLINOIS, } ss.

IN THE SUPREME COURT,

OF THE APRIL TERM, A. D. 1865.

SHUBAEL D. CHILDS, JR., *vs.* GILBERT C. DAVIDSON, } APPEAL FROM COOK.

ABSTRACT OF THE RECORD.

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1. Bond for costs.
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3. Declaration: "Circuit Court, State of Illinois, County of Cook, of the January Term, A. D. 1862. Gilbert C. Davidson, of Albany, in the State of New York, by Evans & Towslee, Attor-
4. neys, complains of Shubael D. Childs, Junior, of Chicago, defendant, who is summoned, &c., of a plea of trespass on the case on promises. For that whereas the said defendant heretofore, to wit: on the Nineteenth day of September in the year of Our Lord one thousand eight hundred and fifty-nine, at Chicago, to wit: at said County of Cook, made his certain promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the same to Shubael D. Childs, in and by which said note said defendant by the name, style and description of S. D. Childs, promised to pay to the order of the said Shubael D. Childs Two Hundred Dollars, with interest, payable to I. Vose or bearer, on the first day of July next, meaning the first day of July next after the date of said note at Messrs. Forrest Bros. & Co., Banking house, Chicago city, Ill., for value received. And the said Shubael D. Childs, to whom or to whose order said note was payable, afterwards, to wit: on the day and year aforesaid, at Chicago, that is to say, at the County of Cook aforesaid, endorsed said note in writing, by which said endorsement the said Shubael D. Childs then and there ordered and appointed the said sum of money in said note mentioned to be paid to said Gilbert C. Davidson, and then and there delivered said note, so endorsed, to said Gilbert C. Davidson.
5. By means whereof and by force of the Statute in such case made and provided, the said defendant became liable to pay said plaintiff said sum of money mentioned in said note, and being so liable in consideration thereof then and there undertook and promised to pay the same to the said plaintiff according to the tenor and effect of the note and of the endorsement aforesaid, to wit, at the place aforeraid.

And also for that whereas the said defendant heretofore, to wit: on the 19th day of September, 1859 at Chicago, to wit: at said Cook County, made his certain other promissory note, in writing, bearing date the day and year aforesaid, and then and there deliv-

ered the same to Shubael D. Childs and Franklin Vose, in and by which said note said defendant by the name style and description of S. D. Childs, Jr., promised to pay to the order of the said Shubael D. Childs, Two Hundred Dollars, with interest, and which said sum of money with the interest thereon, was also to be paid to F. Vose or bearer, the first day of July next, meaning first of July next after the date of said note, at the banking office of Forrest Brothers & Co., in Chicago city, Illinois, for value received.

6. And the Shubael D. Childs and Franklin Vose to whom said note or to whose order the same was payable, afterwards, to wit: on the day and year aforesaid, at Chicago, that is to say, at the County aforesaid, endorsed said note in writing, by which said endorsement the said Shubael D. Childs and Franklin Vose, ordered and appointed the said sum of money in said note mentioned to be paid to said plaintiff. By means whereof and by force of the statute in such case made and provided, the said defendant became liable to pay said plaintiff said sum of money mentioned in said note, and being so liable in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff according to the tenor and effect of the said note and of the endorsement aforesaid, to wit: at the place aforesaid.

7. Common counts for money lent, &c., money paid, &c., money had and received; goods, &c., sold, &c.; labor performed, &c.; money due on account stated, &c.

Copy of instrument and account sued on:

$200 CHICAGO, ILL., Sept. 19, 1859.

8. For value received, I promise to pay to the order of SHUBAEL D. CHILDS, Two Hundred Dollars, with interest, payable to F. Vose or bearer, the first day of July next, at Messrs. Forrest Brothers & Co., Banking House, Chicago City, Ill.

S. D. CHILDS, JR.

On the back is endorsed, "S. D. CHILDS."

"I guarantee the payment of the within note.

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Account in the usual form.

9. Plea of the general issue.

19. Cause submitted to Court for trial. Trial and finding for plaintiff $263.

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20. Motion for new trial overruled, and motion in arrest of judgment.

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SHUBAEL D. CHILDS, JR.

On the back of said instrument were the following endorsements:

"S. D. CHILDS, Chicago, Ill."

"I guarantee the payment of the within note.

"FRANKLIN VOSE."

Pay I. H. Burch & Co. or order.

The defendant made the following objections to the admission of said instrument in evidence:

1. There is a variance between the instrument offered in evidence and the description of the same in the several counts of the decla-

24. ration, and also a variance between the said instrument and the alleged copy thereof annexed to the said declaration, to wit: The said instrument is made "payable to J. Vose or bearer." The

first count in the said declaration describes it as payable to "I. Vose," &c., and the second count of said declaration describes it as payable to "F. Vose," &c. The purported copy annexed to the declaration also reads payable to "F. Vose." The name on the back of said note is Franklin Vose.

2. The instrument declared on is not assignable; yet the suit is sought to be maintained in the name of an assignee.

3. Said instrument is void by the statute of negotiable instruments.

4. Said instrument is not a promissory note.

5. There is no assignment of said instrument sufficient to vest the title to the same in the said plaintiff, or purporting to vest the whole interest in the same in him.

Objections overruled and instrument admitted in evidence.

This was all the evidence.

25. Court found issues for plaintiff.

Motion for new trial for following reasons:

1. The court admitted improper evidence for the plaintiff against the objections of the defendant.

2. The finding of the court is contrary to the law and the evidence in the case.

3. The finding of the court is otherwise manifestly against the law of the land.

26. Court overruled said motion for new trial and defendant moved in arrest of judgment for the following reasons:

1. Because said declaration is insufficient in law.

2. Because said instrument declared on is not assignable, and this suit is brought in the name of an assignee.

3. Because said instrument is void by the statute of negotiable instruments.

4. Because said instrument is void for uncertainty.

27. 5. Because said instrument is void by public policy which requires all negotiable instruments to be certain and regular in form.

6. Because there is no indorsement assigning the whole interest or any part thereof in the said instrument.

7. Because said instrument attempts to sever the interest from the principal and to transfer the title to the same in severalty.

8. Because said instrument is not a promissory note.

9. For that the second count of said declaration declares the same sum of money to be payable to each of two persons.

The court overruled said motion and gave judgment for $263.

29. Certificate in proper form.

ERRORS:

1. The court erred in admitting improper evidence for the plaintiff against the objection of the defendant.

2. The court erred in overruling the motion for new trial.

3. The court erred in overruling the motion in arrest of judgment.

4. The court erred in rendering judgment for the plaintiff.

5. The said judgment and the proceedings whereon the same are founded, are otherwise manifestly erroneous, informal and illegal.

CHARLES C. BONNEY &
J. EDWARDS FAY,
Attorneys for Appellant.

135 — 69

Childs
v
Davidson

Abstract —

Filed Apl 4. 1865
L Leland Clk

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable Erastus S. Williams Judge of the Seventh Judicial Circuit of the State of Illinois, and sole presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the third Monday, (being the twentieth day) of February in the year of our Lord One Thousand Eight Hundred and Sixty five and of the Independence of the said United States the Eighty ninth.

Present, Honorable Erastus S. Williams Judge of the 7th Judicial Circuit of the State of Illinois.

Charles H. Reed States Attorney.

John A. Nelson Sheriff of Cook County.

Attest, Wm L. Church Clerk.

Be it Remembered, that heretofore, to wit: on the 21st day of December A.D. 1861 Gilbert C. Davidson by Messrs Evans & Fowler his attorneys filed in the office of the Clerk of the Court aforesaid a certain bond for costs in the words and figures following, to wit:

Gilbert C. Davidson
vs
S. C. Childs Junior

Cook County Circuit Court

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any

of the offices of this Court, in pursuance of the laws of this State

Dated this Twentieth day of December A.D. 1861 } H.B. Fowler

And thereafter afterwards, to wit: on the day and year last aforesaid, said Davidson by his said attorneys sued out of the office of the Clerk of said Court the People certain writ of summons directed to the Sheriff of said County to execute and clothed in the words and figures following to wit;

State of Illinois } ss
Cook County }

The People of the State of Illinois to the Sheriff of said County - Greeting:

We command you that you Summon Shubael D. Childs Junior. if he shall be found in your county, personally to be and appear before the Circuit Court of Cook County, on the first day of the next term thereof, to be holden at the Court House, in Chicago in said County of Cook, on the first Monday of January next to answer unto Gilbert C. Davidson in a plea of trespass on the case upon promises to the damage of the said Plaintiff, as is said, in the sum of Five Hundred Dollars.

And have you there this writ, with an endorsement

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

(LS) Witness William L Church, Clerk of our said Court and the seal thereof at Chicago aforesaid, this twenty first day of December A.D. 1861

Wm L Church Clerk

And afterwards, to wit, on the same day and year last aforesaid said Sheriff returned said writ into the Court aforesaid endorsed as follows, to wit;

Served by reading to the within named Shubael D. Childs Junior the 21st day of December 1861

Anthony L Hesing Sheriff
By A Bowring Deputy

And afterwards, to wit: on the day and year last aforesaid, said Plaintiff by his said attorneys filed in the Court aforesaid his certain declaration in said cause in words and figures following, to wit;

Circuit Court

State of Illinois } ss Of the January Term A.D. 1862
County of Cook }

Gilbert L Davidson of Albany in the State of New York, Plaintiff in this suit by Evans & Fowler his Attorneys complains of

Shubael D Childs Junior of Chicago Defendant who is summoned, &c, of a plea of trespass on the case on promises; For that whereas the said Defendant heretofore, to wit, on the Nineteenth day of September in the year of our Lord One thousand eight hundred and fifty nine at Chicago to wit at said County of Cook made his certain Promissory Note in writing, bearing date the day and year aforesaid, and then and there delivered the same to Shubael D. Childs, in and by which said Note said Defendant by the name, style and description of S. D Childs promised to pay to the order of the said Shubael D. Childs Two Hundred dollars with interest payable to S Vose or bearer on the first day of July next meaning the first day of July next after the date of said note at Messrs Forrest Brothers & Co Banking house Chicago City Ill for value received.

And the said Shubael D Childs to whom or to whose order said Note was payable, afterwards, to wit, on the day and year aforesaid, at Chicago, that is to say, at the County of Cook aforesaid, endorsed said Note in writing, by which said endorsement the said Shubael D Childs, then and there ordered and appointed the said sum of money in said Note mentioned to be paid to said Gilbert & Davidson and then and there delivered said Note, so endorsed to the said Gilbert & Davidson

By means whereof, and by force of the Statute

in such case made and provided, the said Defendant became liable to pay said Plaintiff said sum of money mentioned in said Note, and being so liable, in consideration thereof, then and there undertook and promised to pay the same to the said Plaintiff according to the tenor and effect of the said Note, and of the endorsement aforesaid, to wit, at the place aforesaid and also for that Whereas the said defendant heretofore to wit on the 19th day of September 1859, at Chicago, to wit at said Cook County made his certain other promissory note, in writing, bearing date the day and year aforesaid, and then and there delivered the same to Shubael D Childs, and Franklin Vose in and by which said Note said defendant, by the name, style and description of S. D Childs promised to pay to the order of the said Shubael D Childs Two Hundred dollars with interest, and which said sum of money, with the interest thereon, was also to be paid to F. Vose or Bearer, the first of July next meaning first of July next after the date of said note, at the Banking Office of Forrest Bolton & Co in Chicago City Illinois for value received, and the said Shubael D Childs, & Franklin Vose to whom said note or to whose order the same was payable afterwards, to wit on the day and year aforesaid at Chicago, that is to say at the County aforesaid Endorsed said note in writing, by which said endorsement the said Shubael D Childs and

Franklin Voze ordered and appointed the said sum of money in said Note mentioned to be paid to said Plaintiff and then and there delivered said Note so endorsed to the said Plaintiff. By means whereof and by force of the Statute in such case made and provided the said defendant became liable to pay said plaintiff said sum of money mentioned in said Note, and being so liable in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff, according to the tenor and effect of the said Note, and of the endorsement aforesaid, to wit: at the place aforesaid -

And Whereas, also the said Defendant, afterwards, to wit, on the Nineteenth day of December in the year of our Lord one thousand eight hundred and Sixty one to wit, at said County, became and was indebted unto the said Plaintiff in a large sum of money, to wit, the sum of Five Hundred dollars, for money before that time lent and advanced to said Defendant by said Plaintiff at said Defendants request; and also in the like sum, for money before that time paid, laid out and expended for said Defendant by the said Plaintiff at the like special request of said Defendant; and in the like sum of money before that time had and received by said Defendant to and for the use of said Plaintiff; and also in the like sum, for goods

wares and merchandise, before that time sold and delivered by said Plaintiff to said Defendant at the like special instance and request: and also in the like sum for the labor, care and diligence of said Plaintiff before that time done and performed by said Plaintiff for said Defendant, and at the like instance and request of said Defendant: and also in the like sums then and there found to be due and owing to said Plaintiff on an account stated between them: and being so indebted, said Defendant, in consideration thereof, then and there undertook and promised to pay said Plaintiff said several sums of money above mentioned, when thereunto afterwards requested

Yet the said Defendant not regarding his said promises and undertakings, but contriving &c., although often requested so to do, has not paid said Plaintiff either of said sums of money above mentioned, or any part thereof, but so to do has hitherto wholly neglected and refused and still does neglect and refuse, to the damage of said Plaintiff of Five Hundred Dollars and therefore he brings this suit, &c

Evans & Fowler, Plaintiff's Attorneys

Copy of Instrument and Account Sued on

$ 20. Chicago Ill Sept 19. 1859

For Value recieved I promise to pay to the

order of Shubael D. Childs. two hundred dollars with interest, payable to F. Vose or bearer the first day of July next at Messrs Forrest Brothers & Co's Banking House Chicago City Ill

"S. D. Childs Jr"

on back of note is endorsed

"S. D. Childs"

I guarantee the payment of the within note

Franklin Vose"

S. D. Childs Junior

To Gilbert C Davidson Dr

To money lent and advanced	$300.
To money paid laid out and expended	$300.
To money had and received to and for the use of said Plaintiff	$300.
To goods, wares and merchandise sold and delivered	$300.
To labor and services	$300
To balance due on account stated	$300

And afterwards, to wit; on the 25th day of November AD 1862 the said Defendant by Bonney & Fay his Attorneys filed in the Court aforesaid in said cause his certain plea &c in the words and figures following to wit;

State of Illinois }
Cook County } ss Circuit Court of Cook County
Of the November Term AD 1862

Gilbert C Davidson
vs
Shubael D Childs Junior } Defendants Pleas and Notice of Defense

And the said defendant by Charles C Bonney and J Edwards Fay his attorneys comes and defends the wrong and injury when &c and says that he did not undertake and promise in manner and form as the said Plaintiff has above thereof complained against him the said defendant and of this he puts himself upon the Country &c

C C Bonney and
J Edwards Fay Defts Attys

To Messrs Evans & Towsley Esqrs
Attorneys for Plaintiff
Sirs } The defendant above named by Charles C Bonney and J Edwards Fay his Attornies hereby gives notice by virtue of the Statute in such case made and provided, that on the trial of the above entitled cause he will give in evidence and insist upon the following facts and matters in defense of said action — to wit —

Defendant says that on the Nineteenth day of September in the year of our Lord one thousand Eight Hundred and Fifty Nine at the City of

Chicago, to wit, at said County of Cook, the notes in Plaintiffs declaration mentioned were made - and defendant says that the said notes were and each of them was procured to be made by the fraud and falsehood of one Vose as hereinafter is set forth - Defendant says that the sole and only consideration of said Notes and each of them was a pretended sale to the said Defendant and his Father S. D. Childs Senior by one Franklin Vose (above mentioned) as agent as is hereinafter stated and who is one of the alleged endorsers of said notes. of an interest in a certain Patent Right, described as "an Improved Method of Photographing on Wood" said pretended sale being the right to said Patent Right to and in the County of Cook in the State of Illinois, meaning that said Defendant and his father aforesaid and their assigns were to have the sole right to use the said Patent Right in said County, which said pretended sale was alleged by said Vose to be made by him as agent and attorney in fact for the several owners of the said Patent Right who he represented to be J. H. Knight, Robert Price & J. B. Yates and Wm W. Ayres - And, defendant says that said Vose falsely and fraudulently stated, represented and warranted to said defendant and his father that the said

Patent Right securing the said Improved Method of Photographing was of great value and that the said "Improved Method of Photographing on Wood" was the only method by which the process of Photographing on Wood could be performed without producing such a body of Composition and such a surface upon the Wood as to prevent working upon the wood with a graver (meaning an instrument used by Engravers). And defendant further says that processes of photographing on wood being processes concerning which very little is generally known and the said "Improved Method of Photographing on Wood" being of such a nature that he not being learned and skilled in that behalf could not judge of its value and of the truths of the representations and statements made by said Vose then and there ~~respecting~~ and inform himself thereof he (the said defendant) necessarily trusted entirely to the false and fraudulent representations and statements of said Vose respecting said Patent Right in the purchase thereof as aforesaid: and that he (defendant) was thereby induced to execute said notes. And defendant says that there are and then were many other methods of Photographing on Wood.

without injury to the wood by the process and that the said "Improved Method of Photographing on Wood" cannot be used without producing a body of composition and surface upon the wood such as to prevent working upon the wood with a graver to a much greater extent than many other methods of Photographing on Wood and that the said Patent Right so sold to the said Defendant and his father S. D. Childs Sr. as aforesaid was and is of no value whatever wherefore defendant says that the consideration of the said notes in said Plaintiffs declaration mentioned has wholly failed And defendant further says that at the time the said notes in Plaintiffs declaration mentioned were made and executed as aforesaid he also made and executed several other promissory notes the consideration for which last mentioned notes was not other nor different from the consideration of the said notes in Plaintiffs declaration mentioned and defendant says that as the said "Improved Method of Photographing on Wood" was not and is not as the said Vose then and there stated, represented and warranted it to be as is hereinbefore more fully set forth the said Patent Right was and is of very little value. And defendant

7

says that he has already heretofore paid upon two of the said several other notes than those mentioned in Plaintiffs declaration the sum of Two Hundred Dollars, which sum exceeds the full value of the said Patent Right. Wherefore defendant says that the consideration of the notes in Plaintiffs declaration mentioned has wholly failed.

And defendant further says that as the said Patent Right and Improved Method of Photographing on Wood was not nor is as said Vose represented and stated in respect to it as is hereinbefore more fully set forth the said Patent Right was and is of less value than the sum of Four Hundred Dollars to wit of value not to exceed the sum of Two Hundred and twenty five Dollars. And defendant says that he has paid towards said Patent Right the sum of Two Hundred Dollars as above stated. Wherefore defendant says that the consideration of the said notes in Plaintiffs declaration mentioned has in a great degree and partially failed to wit, for so much as may appear to be due thereupon above the sum of twenty five Dollars

And defendant further says that before the commencement of this suit and before the alleged assignment or endorsement of the

said notes in Plaintiffs declaration to wit at the City of Chicago in said County of Cook, on or about the nineteenth day of September AD 1859 he (defendant) paid to said Vose who by his agent in that behalf then and there received the same the further sum of Twenty five Dollars and defendant says that the said sum of Twenty five Dollars was to be endorsed upon the said notes mentioned in Plaintiffs declaration and that he (defendant) is ready and willing to set off and allow the said sum to said Plaintiff against any demand of the said Plaintiff to be proved at the trial of this cause or so much of said sum as may be sufficient to discharge such demand — And defendant further says that before the commencement of this suit and before the endorsement of said notes by said Vose to the said Plaintiff as alleged in Plaintiffs declaration to wit at sometime in the month of August AD 1861 at the City of Worcester in the state of Massachusetts the said defendant at great trouble and expense to himself by his agent duly authorized thereto, did tender and propose to J H Knights (now of Vendors in manner as hereinbefore mentioned of the interest in said patent right purchased by the said defendant and his

father aforesaid) that if the said Knights and associates vendors in manner as aforesaid would cancel and annul the said notes herein mentioned as having been executed for said Patent Right which were then and are now outstanding he (defendant) would reconvey to said Knights and his associates the interest in said Patent Right so sold by them to this defendant and his father as aforesaid and defendant has ever since continued to be ready and willing so to reconvey and does now here tender and offer at the time of trial of this suit or at any time before said trial to reconvey to said Plaintiff or otherwise as the Court may direct the said interest in the said Patent Right upon the condition that the said sum of Two Hundred and twenty five Dollars paid as aforesaid by this defendant be repaid to him and that the said notes now outstanding be cancelled and made of none effect or surrendered to the said defendant—

And defendant further says that the said Notes in Plaintiffs declaration mentioned were transferred by the said Vosets the said Plaintiff (if they were so transferred) long after the said notes became due and at some time since the first day of September AD 1861. and

that such transfer was made without consideration from the said Plaintiff therefor—
And defendant says that the said Plaintiff at the time the said notes were so transferred and assigned to him threw had notice of all the facts and matters set forth in the premises and each and every of them and that the said notes were so transferred by said Voze with the sole purpose and intent on his behalf of depriving this defendant of his just and legal defense in this action of which intent and purpose the said Plaintiff then and there had notice—
And defendant says that he will give in evidence and insist at the trial of this action upon the following special matter of defense—upon the facts hereinbefore set forth—to said action to have their due and proper effect according to law—that is to say—
1st That the Notes sued upon were procured to be executed and delivered by the Covin, fraud and deceit of the said Voze and the said Plaintiff—
2nd False warranty of said Patent Right to said defendant whereby he has suffered great damage, harm and loss, with notice of same to Plaintiff—And which damage he (defendant) will set off against

any claim of Plaintiff to be proved -
3rd That the said notes sued upon were procured to be delivered by the fraud of said Vose of which the said Plaintiff had notice at the time they were transferred to him -
4th That the consideration of the notes sued upon has wholly and entirely failed -
5th That the consideration of the notes sued upon has partially failed to extent of whatever appears to be due thereon above and over the sum of Twenty five Dollars -
6th That defendant has ~~to be credited, set off against said notes~~ to the amount of Twenty Five Dollars in money paid to Vose recieved by the agent of Vose -
7th That defendant has been subjected to great trouble and expense about said notes and damage by reason of the deceit of said Vose to the amount of Nine Hundred Dollars of which the Plaintiff had notice which defendant will set off against claim of the plaintiff to be proved and claim Judgment for the balance -
8th That defendant has tendered a reconveyance of the said Patent Right to the Vendors -
9th That the notes sued upon were transfered after they became due -
10th That the Notes sued upon were transfered

to Plaintiff without consideration and with intent to deprive defendant of his Equities in defense —

11th That said Vose is now and was at time suit was commenced the legal owner of the notes sued upon —

12th That the Plaintiff had Knowledge of the matters and facts stated in the premises, when the notes sued upon were transferred to him —

13th That the Plaintiff at the time the notes sued upon were transferred to him had notice of all the matters and facts stated in the premises

C.C. Bonney and
J Edwards Fay
Attys for Defts

And afterwards, to wit; at the November term of said Court A.D. 1864. to wit on the 10th day of December in the year last aforesaid, the following proceedings among others in said Court were had and entered of record therein in said Court viz

Gilbert & Davidson
vs
Shubael Childs Jr } Assumpsit

This day again come the said parties by their Attorneys and by their mutual consent now here given in open Court said cause is submitted to the Court for trial upon the issue Joined therein and the intervention of a Jury waived and the Court after hearing the Evidence and arguments of Counsel adduced by the said Parties and being fully advised in the premises doth find the issues for the Plaintiff and assesses his damages therein by reason of the premises to the sum of Two Hundred and Sixty three dollars." Whereupon the defendant by his Counsel moves the Court for a new trial of said cause

And Afterwards, to wit; at the February term of said Court to wit; on the 15th day of March A.D. 1855. said Cause having been continued from term to term until the present term. the following proceedings among others in said Court. were had and entered of record in said cause viz-

Gilbert & Davidson
vs
Shubael Childs Jr } Assumpsit
This day again come the

said parties by their Attorneys and Counsel having been heard as well in support of the motion of the defendant heretofore entered for a new trial of said Cause as in opposition thereto and the Court being now fully advised in the premises doth order that said motion be and the same hereby is overruled Whereupon the Defendant moves the Court in arrest of Judgement which motion the Court upon due consideration thereof overrules, which ruling of the Court in overruling said motion for a new trial and in arrest of Judgment the defendant by his Counsel here excepts —

Therefore it is considered by the Court that said Plaintiff do have and recover of the said Defendant his damages of Two Hundred and Sixty three dollars in form aforesaid assessed together with his costs and Charges by him about his suit in this behalf expended and have Execution therefor —

Whereupon the said Defendant by his Counsel excepts to the rulings and Judgement of the Court in said cause and prays an Appeal therefrom to the Supreme Court of the State of Illinois. Which is granted by the Court upon Condition that said Defendant shall by to morrow morning execute and file with the Clerk of this Court his Appeal Bond herein in the Penal sum of Five

Hundred Dollars, conditioned according to law with Isaac Clapsin as surety thereto -

And afterwards, to wit; on the day and Year aforesaid said defendant filed in the Court aforesaid his certain appeal Bond in said Cause in the words and figures following, viz -

Know all Men by these Presents, That we Shubael D. Childs jr as principal and Isaac Clapsin as surety, both of the County of Cook and State of Illinois, are held and firmly bound unto Gilbert C Davidson of the City of Albany in the State of New York in the penal sum of Five Hundred ($500 00) Dollars, lawful money of the United States, for the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents -

Witness our hands and seals, this fifteenth day of March A.D. 1865.

The Condition of the above Obligation is such That Whereas, the said Gilbert C. Davidson did, on the fifteenth (15th) day of March A.D. 1865 in the Circuit Court of Cook County, in the State aforesaid, and of the February Term thereof, A.D. 1865, recover a judgement against the above bounden Shubael D. Childs jr for the sum of Five Hun-

dred and Sixty three ($263 co) Dollars, besides costs of suit; from which said judgement of the said Circuit Court of Cook County, the said Shubael D. Childs jr has prayed for and obtained an appeal to the Supreme Court of said State—

Now Therefore, if the said Shubael D Childs jr shall duly prosecute his said appeal with effect, and moreover, pay the amount of the judgement, costs, interest, and damages rendered, and to be rendered, against him in case the said judgement shall be affirmed in said Supreme Court, then the above obligations to be void, otherwise to remain in full force and virtue—

Taken and entered into before me at my Office in Chicago this 15th day of March AD 1865—

Shubael D. Childs jr (Seal)
Isaac Claflin (Seal)

Wm L Church Clerk

And afterwards, to wit, on the day and year last aforesaid said defendant by his said Attorneys filed in the Court aforesaid his certain bill of exceptions in said cause in the words and figures following; to wit.

State of Illinois } ss
Cook County }

In the Circuit Court

Gilbert C Davidson
vs
Shubael D Childs jr

Defendants Bill of Exceptions

Be it remembered that on the trial of this cause by the said Circuit Court the plaintiff by his counsel offered in evidence an instrument of writing, which with the indorsements thereon is as follows to wit;

$200- Chicago Ills Sept 19. 1859-

For value received I promise to pay to the order of Shubael D Childs. two hundred dollars with interest payable to F. Voze or bearer on the first day of July next at Messrs Farrel Brothers & Co Bankers Exchange Chicago City Ills

Shubael D Childs Jr

On the back of said instrument were the following endorsements to wit:

S. D. Childs

Chicago Ills

I guarantee the payment of the within note

Franklin Voze-

Pay I H Burch & Co or order-

to the admission of which evidence the defendant by his counsel interposed the following objections.

Obj 1st That there is a variance in the instrument offered in evidence and the description of the same in the several counts of the declaration. and also a variance between the said instrument and the alleged copy thereof annexed to the said declaration to wit.

The said instrument is made payable to F Voze or bearer" The first count in the said declaration

describes it as "payable to I Vose &c" and the second count of said declaration describes it as "payable to F Vose &c" The purported copy annexed to the declaration also reads "payable to F Vose &c. The name on the back of said note is Franklin Vose.

Obj 2nd The instrument declared on is not assignable, yet this suit is sought to be maintained in the name of an asignee.

Obj 3rd Said instrument is void by the Statute of negotiable instruments.

Obj 4th Said instrument is not a promissory note

Obj 5th There is no asignment of said instrument sufficient to vest the title to the same in the said plaintiff or purporting to vest the whole interest in the same in him.

Each of which said several objections of the said defendant were respectively overruled by the Court. and the said instrument was admitted in evidence. to which said rulings of the Court and the admission of said evidence the defendant by his counsel then and there duly excepted.

And this was all the evidence offered and given in the Case.

After argument of Counsel the Court found the issues for the plaintiff

and thereupon the defendant by his counsel moves the Court to grant the defendant a new Trial.— which said motion and the reasons in support thereof are in words and figures as follows to wit.

State of Illinois }
Cook County } In the Circuit Court
Of the November Term AD 1864

Shubael D Childs jr }
vs }
Gilbert C Davidson } Defts Motion for new Trial

And the said defendants by his attorneys C.C. Bonney and J Edwards Fay moves the Court for a New Trial in the above entitled cause for the reasons following, to wit;

1st The Court admitted improper evidence for the plaintiff against the objections of the defendant made thereto

2nd The finding of the Court is contrary to the law and evidence in the case

3rd The finding of the Court is otherwise manifestly contrary to the law of the land

Charles C Bonney and
J Edwards Fay
Defendants Attorneys

Chicago Dec 12th 1864

The Court overruled the said motion and refused to grant a New Trial, to which the said defendant by his counsel then and there duly excepted, and the defendant thereupon moved the Court for an arrest of Judgement in said cause which motion is in words and figures as follows—

State of Illinois
Cook County } ss. In the Circuit Court
Of the February Term AD 1865.

Shubael D Childs jr
ats
Gilbert C Davidson } Defts motion in Arrest of Judgment

And now comes the said defendant by his Counsel and moves the Court for an arrest of Judgment in the above entitled cause for the following reasons to wit,

1st Because the said declaration is insufficient in law—

2nd Because said instrument declared on is not assignable and this suit to brought in the name of an assignee.

3rd Because said instrument is void by the Statute of negotiable instruments,

4th Because said instrument is void for uncertainty.

5th Because said instrument is void by public policy which requires all negotiable instruments to be certain and regular in form.

6th Because there is no indorsement assigning the whole interest or any part thereof in the said instrument.

7th Because said instrument attempts to sever the interest from the principal and to transfer the title to the same in severalty.

8th Because said instrument is not a promissory note.

9th For that the second Count of the said declaration declares the same sum of money to be payable to each of two persons

C C Bonney and
J Edwards Fay
Attorneys for Defendants

Chicago March 15th 1865

But the Court overruled the said motion and refused to grant the same to which the said defendant by his said counsel then and there duly excepted.

And forasmuch as all the said matters and things herein contained do not appear of Record the defendant presents this his Bill of Exceptions and prays the Court to sign

and seal the same. and that it may be ordered that the original instrument of writing in this suit as aforesaid may be transmitted with the Record to the Supreme Court for inspection by them which is accordingly done

D. S. Williams L S
Judge &c

$200 Chicago Ill. Sept. 19, 1839.

For value received I promise to pay to the order of Shubael D. Childs two hundred dollars with interest payable to D. Bosse a Lawyer on the first day of July next at Messrs. Forrest Bates & Co. Banking House Chicago Cty Ill.

S. D. Childs Jr.

S. L. Childs

Chicago Ill.

I guarantee the payment
of the within note

Franklin Bosa

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of the bond for Costs, Summons & return, declaration, plea & notice, proceedings of record, Appeal, bond and bill of exceptions in a certain cause lately pending in said Court, on the the Common Law side thereof, wherein Gilbert & Davidson was plaintiff and Shubael D. Childs was Defendant: And I further certify that the annexed note is the original instrument of writing filed in said Cause

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court, at Chicago, this twenty first day of March A. D. 1865.

Wm L. Church Clerk.

Fees for Record $6.50
Stamp .5
$6.55

21

State of Illinois } ss.

In the Supreme Court
Of the April Term a.d. 1860

Shubael D. Childs Jr.
vs.
Gilbert C. Davidson } Appeal from Cook

And thereupon comes the said Shubael D. Childs junior by Charles C. Bonney and J. Edwards Fay his attorneys and says that in the record and proceedings aforesaid and also in the rendition of the judgment aforesaid there is manifest error in this to wit; that the court erred in admitting improper evidence for the plaintiff Gilbert C. Davidson, against the objection of the defendant. There is also error in this that the court erred in overruling the motion for a new trial, and in this that the court erred in overruling the motion in arrest of judgment; and in this that the court erred in rendering judgment for the plaintiff; and in this that the said judgment and the proceedings whereon the same are founded are otherwise manifestly erroneous, informal and illegal.
Wherefore the said Shubael D Childs Junior prays that the judgment aforesaid, for the errors aforesaid and for other errors apparent in the record and proceedings aforesaid may be reversed, annulled and altogether held for nothing and that he may be restored to all things which he hath lost by occasion of the said judgment &c

Charles C. Bonney
Chas W. Grigg - & J. Edwards Fay
Attorneys for Appellant.

Joinder in Error
And the said Davidson by E. W. Evans his attorney comes and says that there is no error in the record, judgment or proceedings aforesaid. And prays that said judgment may be affirmed &c.

E. W. Evans
Pltff atty.

Chicago
Apl 3. 1860

135 – 69

Gilbert C. Davidson

vs

Shubel D. Cutler Jr

Record

Assignment of Errors and joinder in Error

Filed April 4. 1825
L. Leland
Clerk