

12588

No. _____

Supreme Court of Illinois

Moir, et al

vs.

Phelps

State of Illinois)
Monroe County)

Pleas before the Honorable
John S Thompson Judge of the Tenth Judicial
Circuit Court of the State of Illinois at a
Special Term of the Circuit Court of said
County began and held at the Court House in
Oquawka on the third Monday of the month of
December in the year of our Lord one Thousand
Eight Hundred and fifty Seven it being the
twenty first day of said month in said year

Present Hon John S Thompson Judge
James W Stewart State atty
W M Graham Sheriff
Hugh L Thomson Clerk

James Moir &
Robert Moir

vs

Stephen S Phelps

Debt

Be it Remembered that heretofore to wit on
the 11th day of ~~January~~ December A D 1857 the
plaintiff by their attorney filed their declaration
which Reads in the words and figures following
To wit

State of Illinois
County of Henderson }

Special Term of the Circuit
Court of Said County to be held on the third
Monday of December A D 1857

James Moir and Robert Moir the
plaintiffs in this Suit complain of Stephen
S Phelps the defendant in this Suit who has
been summoned to answer unto Said plaintiffs
Twenty Thousand Dollars which he owes to
and unjustly detains from them

For that whereas
Said defendant by the name of S S Phelps
heretofore to wit on the Twenty Ninth day of
April in the year of our Lord one Thousand
Eight Hundred and fifty Seven at the Coun-
ty aforesaid by his certain writing obligatory
Sealed with his Seal and now here to the Court
Shown the date whereof is a certain day and
Year above named to wit the day and Year afo-
resaid acknowledged himself to be bound and
firmly bound unto Said Plaintiffs in the Sum
of Twenty Thousand Dollars above demanded to
be paid to Said Plaintiffs

Yet Said defendant
although often requested So to do hath not as
yet paid Said Sum of Twenty Thousand Dollars
above demanded or any part thereof to Said

plaintiffs or either of them but hath hitherto wholly neglected and refused and still neglects and refuses so to do to the damage of said plaintiffs of Seven Thousand Dollars and therefore they bring suit.

By C M Harris their attorney
Know all men by these presents that S T Phelps
am held and firmly bound unto James
Moir and Robert Moir in the Penal Sum
of Twenty Thousand Dollars for the payment
of which well and truly to be made to said
James Moir and Robert Moir I hereby bind
myself my heirs, executors, and administrators
said Moirs having loaned stock and cabin
of Keithsburg Illinois Five Thousand Dollars
on my agreement with them said Moirs to
deliver to them said Moirs in their own hand
and twenty days after the date hereof bonds issued
by the County of Hancock in the State aforesaid
for the payment of Stock by said County taken
in the Warsaw and Rockford Rail Road Com
pany organized in the State aforesaid amount
ing to Ten Thousand Dollars together with
the coupons belonging thereto as collateral se
curity for the payment to said Moirs within
said time of said Five Thousand Dollars and
the interest that may accrue thereon after said
time at the rate of ten per cent per annum

4.
Should I within said time deliver to said Moirs
said bonds amounting to Ten Thousand
Dollars and said Coupons as collateral secu-
rity for the payment of said Five Thousand
Dollars within the time aforesaid and said
interest or pay said Five Thousand Dollars
this obligation will ~~be void~~ become void other-
wise remain in full force and effect

Signed and Sealed by me this 29th
April A D 1857

the words "or pay said Five Thousand ~~Dollars~~
Dollars" were interlined before this obligation
was signed J. S. Phelps Seal

The foregoing is a copy of the bond upon
which this Suit was brought

C. M. Harris
attorney for plaintiff herein

And afterwards to wit on the twenty first day
of December A. D. 1837 at said Special Term of
the Court then holden the Court caused a
General Order to be entered upon the Records
thereof which reads in the words and figures
following to wit

It is ordered by the Court that in all
actions on promissory notes where pleas are
filed an affidavit must accompany the
same of the defendant or some one for him
that he has a good and sufficient Defence

State of Illinois (Hennawson, Circuit Court
Hennawson County) December Term A 1857

Moir et al

vs

Phelps

And Said Defendant comes
and defends and Says that the Said
declaration is not sufficient in Law for
him to answer unto and of ther he puts him
self upon the Court.

Stewart & Hearnings
Defendants

James Moir & Robert Moir

vs

Stephen L Phelps

Debt

This day came on
this cause for hearing on the defendants
Demurr to the Plaintiffs Declaration filed
herin after being advised in the premises
it is considered by the Court that the Demurr
be overruled

State of Illinois (Monrovia Circuit Court
Monrovia County) Dec. Special Term 1858

Stephen A Phelps
vs

James Meir & Robert Meir

1. And Said Defendants
comes and defends the wrong and injury which
and Says that he did not undertake and agree
as is in Said declaration is alleged and of this
he puts himself upon the Country &c

Stewart & Harding
attorney for Defendants

2^d And further plea in this behalf the
Said defendant Says actio non because he
Says that the Said Supposed writing obligatory
in Said declaration mentioned is not his act
and deed and of this he puts himself upon
the Country &c

And Said plaintiff } Stewart & Harding
doth the like } Defts attys
& M Harris

attorney for Plaintiffs

3 And for further Plea in this behalf the
Said defendant Says actio non &c because
he Says that he doth not owe the Said

plaintiff the Said Sum of Money above
demanded or any part thereof in manner
and form as is in Said Declaration and
of this he puts himself upon the country
Stewart & Harding
Deffs Attorneys

4th And for further plea in this behalf the
Said defendant Says actio non est because
he Says that at the time of the commence-
ment of this Suit the Said plaintiffs were
and still are indebted to the Said defendant
in the Sum of Five Thousand dollars for
the like Sum of Money paid and advan-
ced to Said plaintiffs at their request before
the commencement of this Suit which
Said Sum of Money so due and owing from
the Said plaintiffs exceed the supposed debt
due and owing from the Said defendant
and the damages sustained by the Said
plaintiffs by the reason of the detention of
the Said supposed debt so alleged to be due
and owing to the Said plaintiffs as in the
Said declaration mentioned and all of
which Said Sum the Said defendant is ready
& willing and hereby offers to set off and allow
to the Said plaintiffs the full amount of the
Said supposed debt & damages according to
Law and this the Said defendant is ready to
verify
Stewart & Harding Deffs atty

5 And for further Plea in this behalf
the Said defendant Says arlio non et
una Says that he ought not to be charged
with the Said Debt by virtue of the Said sup-
posed writing Obligatory because he Says that
before the making the Said writing in the
Said Declaration mentioned to wit on or
about the Said 5th day of December A
185th aforesaid it was corruptly and
against the form of the Statute in such
case made & provided, agreed by and bet-
ween the Said plaintiffs and one Benjamin
p Frick and one James C Capen that
the Said plaintiffs should lend and ad-
vance unto the Said defendant the Sum
of Five Thousand dollars lawful money
of the united States and that the Said
plaintiffs should forbear and give day
of payment thereof to the Said defendant
until and upon the 29th day of April
A 1857 then next ensuing, and that
the Said Frick & Capen for the loan of
the Said Sum of Five Thousand dollars
^{was} for giving day of payment thereof
as aforesaid for the time aforesaid should
give and pay to the Said plaintiffs
on the 29th day of April A 1857 aforesaid
then next ensuing, more than lawful

Value at and after the rate of ten per cent
um per annum on the Said Sum of Five
Thousand Dollars that is to say the Sum
of Four Hundred & Sixty Eight ⁹⁵/₁₀₀ Dollars
of like lawful Money Making together with
the Said Sum of Five Thousand Dollars &c
to be lent and advanced by the Said plain-
tiffs to the Said Frick & Caban as aforesaid
the Said Sum of Five Thousand four Hun-
dred and Sixty Eight ⁹⁵/₁₀₀ Dollars of which
Five Thousand Dollars in the Said condition
mentioned is a part and also that the
Said Frick and Caban Should pay to
the Said plaintiffs interest on the Said
Sum of Five Thousand dollars from the
5th day of Decembre D 1856 as aforesaid
until the time of the payment of the Said
Sum of Five Thousand dollars in the bond
mentioned and that for Securing the
payment of the Said Sum of Five Thous-
and dollars with interest for the Same as
aforesaid to the Said plaintiff he the Said
defendant Should make and Seal and
as his own act and deed deliver to the Said
plaintiffs a certain writing obligatory and
Should thereby bind himself in the penal
sum of \$ 20000, conditioned for the pay-
ment of the Said Sum of five Thousand
dollars and as is set forth in the Said

instrument to the Said plaintiffs declaration
and the Said defendant in fact further
saith that in pursuance of the Said corrupt
and unlawful agreement so made as aforesaid
the Said plaintiffs afterwards to wit
on the Said 5th day of December D 1856
aforesaid to wit at the county of Winston
aforesaid lent and advanced to the said
Frick & Caben the Said Sum of Five Thou
sand Dollars and that for securing the
repayment thereof together with the Said
Sum of (\$ 468⁹⁵/₁₀₀) dollars so to be
paid and given to the said plaintiff as aforesaid
for the purpose aforesaid on the Said 29th
day of April D 1857 aforesaid the next ensu
ing with interest in the meantime as aforesaid
for the purpose aforesaid to be paid as well for
the Said Sum of Five Thousand Dollars so lent
and advanced as aforesaid as for the Said Sum
(\$ 468⁹⁵/₁₀₀) dollars so to be given and paid to
the Said plaintiff as aforesaid for the purpose
aforesaid making together the Sum of (\$ 5468⁹⁵/₁₀₀
Dollars as aforesaid the Said defendant in further
pursuance of the Said corrupt and unlawful
agreement then and there to wit on the 29th
day of April D 1857 at the place aforesaid made
and sealed and as his act and deed delivered
to the Said plaintiffs the Said writing in the

declaration mentioned and the Said plaintiff
then and there accepted and received the Said
writing with the Said condition thereunder
written of and from the Said defendant in
pursuance of the Said corrupt and unlawful
agreement and for the purpose aforesaid And
the Said defendant avers that the Said Sum of
\$468 7500 dollars so as aforesaid agreed to be given
and paid to the Said plaintiff for the purpose of
aforesaid and the interest of the Said Sum of Ten
per cent per annum on Said principal Sum so
reserved and made payable to the Said plaintiff
by the Said condition of the Said writing as
aforesaid exceeds the rate of ten per centum per
annum for the forbearing and giving day
of payment Contrary to the Statute & by means
whereof by force of the Statute in such case
made and the Said plaintiff forfeited
three fold the amount of the whole interest
so reserved and taken upon the same so
loaned as aforesaid And this the Said
defendant is ready to verify &c

Stewart & Harding
Defendants Attorneys

6 And for further Plea in this behalf the
Said defendant Says actio non est because
he Says that the Supposed writing obligatory
was Given (if Given at all) as Security for the
payment of the Sum of Five Thousand dollars
by one Benjamin P Frick and one James C
Cabeen to Said plaintiff on the day of the
date thereof and for no other consideration
whatever and that after the making of Said
writing obligatory and after the Period of
four months from the date of Said Instru-
ment the Said plaintiff for valuable consid-
eration by an instrument in writing made to
and with the Said Frick and Cabeen and with-
out the knowledge of Said Defendant agreed to
continue and extend the payment of the sum
of Five Thousand Dollars loaned by Said plain-
tiff to them and for the payment of which
Said bond is conditioned to the Injury of the
Said defendant and thus the Said Defendant
is ready to verify &c

Stewart & Harding
Defendants Attorneys

7 And for further plea in this behalf the
Said defendant brings Over of Said bond and
Says Actio Non est because he Says that the Sole
and only consideration of Said bond was

the Extension and forbearance of by the Said Plaintiff of the debt of Five Thousand dollars then owing by Said Benjamin P Frick and James C Cabern therein described to Said Plaintiff and that the Said Plaintiff did on the 29th day of April D 1857 corruptly and against the Statute Contract^{to} and with the Said Frick and Cabern receive the rate of two percent per month of Interest upon the Said sum so loaned by Said Plaintiff to Said Frick and Cabern from the date of Said loan and that at the date of Said bond the Said Plaintiff did corruptly contract and agree to and with the Said defendant to receive interest upon the Said sum of ~~money~~ Five thousand Dollars described in said bond at the rate of fifteen per centum per Year for the period of four months from the date of Said bond exceeding the rate of ten per centum per annum Contrary to the Statute &c Wherefore the Plaintiff have forfeited &c and thus the defendant is ready to verify &c

Stewart & Harding
Defendants Attorneys

- 8 And for further Plea of in this behalf the Said defendant Graves oyer of the Said writing obligatory and says Oerari non &c because he says that the Said bond (if given at all was

Given for the Sole and only Consideration
of Security for the payment to Said plain-
tiffs of the Sum of Five Thousand dollars
loaned before that time by the Said plaintiff
to one Benjamin P. Frick and James C. Cabern
that said loan was made on or about the
fifth day of December D 1886: that at the
time of making Said loan the Said plaintiff
contracted to and with Said Frick & Cabern
corruptly and against the Statute to Receive
for the loan of Said Money & the forbearance
thereof for the term of Sixty days from that
date interest on Said Sum to the amount of
Two Hundred dollars which exceeds the rate
of ten per cent per annum interest on Said
Sum loaned That at the Expiration of Said
Sixty days the Said plaintiffs and Said Frick
& Cabern corruptly & against the Statute
contracted to Receive on Said Sum the Sum
of Two Hundred Dollars for the renewal and
forbearance of Said loan for a further term
of Sixty days which exceeds the legal amount
of Interest on Said Sum at the rate of ten
per cent per annum that at the Expiration
of Said last named period the Said plaintiffs
contracted and with the Said Frick & Cabern
corruptly & against the Statute to for Bear the Said
Sum of Five Thousand dollars for a further period
of one Month and twenty four days at and

after the rate of two percent Interest per month
to wit for the sum of One hundred and Eighty
Dollars, which Exceeds the legal rate of ten
percent per annum upon Said Money loaned
for Said period That on the 29th day of April
1857 it was corruptly and against the Stat
ute contracted by the Plaintiff with Said
defendant to receive on the Said sum of five
Thousand dollars the sum of Two Hundred
and fifty Dollars usurious Interest on Said
sum for the forbearance thereof for the period
of four months after Said last named date
which Exceeds the Interest thereon at the rate
of ten percent per annum And the defendant
averts that the Said several sums of Interest
so usuriously and corruptly contracted for
were paid by the Said defendant to Said plain
tiffs by giving his note therefor payable to them
one hundred and Twenty days after date
and Defendant avers that the Five Thous
and dollars described in Said bond and
which the Same is conditioned to pay is the
same principal sum so loaned to Said Frick
and Caben and the Said several contracts
were made in Henderson County Illinois
and so the Said defendant Says the Said
Plaintiffs have corruptly and against the Statute
contracted to receive a greater rate of Interest
than ten per centum per annum upon

the principal Sum of Five Thousand dollars
described in the condition of Said bond
Wherefore he says the plaintiffs have forfeited
the whole of Said Interest so contracted
to be Received. and this he is ready to verify
Stewart & Harding
Defts attorneys

State of Illinois } Wendenburg Circuit Court
Wendenburg County } December Term A.D. 1854

James Moir }
Robert Moir }
Stephen^{us} Phelps }

The defendant by his attorney
Graves Ayer of the Said writing Obligatory in
the declaration mentioned and it is read to him
in these words. Know all Men by these presents
That I S. S. Phelps am held and firmly bound
unto James Moir and Robert Moir in the penal
Sum of Twenty Thousand dollars for the pay-
ment of which well and truly to be made to Said
Said James Moir and Robert Moir I hereby bind
myself my heirs Executors & administrators

He also Graves Ayer of the condition of the Said
writing Obligatory and it is read to him in the
words, Said Moir having loaned Truck and Carriage
of Kithsburg Illinois Five Thousand dollars
on my agreement with them Said Moirs to

deliver to them Said moirs within one Year
and Twenty days after the date hereof
Bonds Issued by the County of Hancock in
the State aforesaid for the payment of Stock
by Said County taken in the Warsaw & Rockford
Rail Road Company organized in the State
aforesaid Amounting to Ten Thousand
dollars Together with the coupons belonging
thereto as Collateral Security for the payment
to Said Moirs within Said time of Said
Five Thousand Dollars and the Interest
that may accrue thereon after Said time
at the rate of ten per centum per annum
Should I within Said time deliver to Said
moirs Said bonds amounting to Ten Thous
and Dollars and Said coupons as collat
eral Security for the payment of Said Five
Thousand dollars within the time aforesaid
and Said Interest or pay Said Five Thous
and dollars then obligation will become
void Otherwise remain in full force and
Effect which being Read and heard the
defendant Says that he did from time to
time and at all times after the making
of the Said ^{writing} Obligation and the Said Con
dition thereof well and truly observe per
form fulfill and keep all and singular
the article clauses payments conditions
and agreements in the conditions of the

Said writing obligatory mentioned in all things therein contained on his part and behalf to be observed performed fulfilled and kept according to the tenor and effect true intent and meaning of the Said meaning of the Said condition of the Said writing obligatory and thus he the defendant is ready to verify

Stewart C. Heard
Attorney for Deft

10 And for further Plea in his behalf the Said defendant Comes and defends the wrong and injury which he and Says Acted ~~to~~ to be done over of the Said writing obligatory in the declaration mentioned and it is read to him in these words, Know all men by these That I J S Phelps am held and firmly unto James Moir and Robert Moir in the penal Sum of Twenty Thousand dollars for the payment of which well and truly to be made to Said James Moir & Robert Moir I hereby bind myself my heirs Executors and administrators He also craves Oyer of the condition of the Said writing obligatory and it is read to him in these words

Said Moir having loaned Truck and Caber of Keithsburg Illinois Five Thousand Dollars

on my agreement with them Said Moirs
to deliver to them Said Moirs within one
one hundred and twenty days after the
date hereof Bonds Issued by the County of
Wancock in the State aforesaid for the pay-
ment of Stock by Said County Taken in
the Warsaw and Keosau Rail Road Com-
pany organized in the State aforesaid
amounting to Ten Thousand Dollars to
gether with the Coupons belonging thereto
as collateral Security for the payments
to Said Moirs within Said time of Said
five Thousand Dollars and the Interest
that may accrue thereon after Said time
at the rate of ten per cent per annum
Should I within Said time Deliver to Said
Moirs Said Bonds amounting to Ten Thou-
sand Dollars and Said Coupons as collat-
eral Security for the payment of Said Five
Thousand dollars within the time aforesaid
and Said Interest or pay Said five Thousand
dollars, this obligation will become void
otherwise to remain in full force and effect

Which being Read and heard the defendant
Says that he has well and truly performed the
condition of Said writing obligation ac-
cording to the terms thereof by well and
truly within Said term of one hundred
and twenty days after the date of Said

writing obligatory, delivering to Said plain-
tiffs Said Hancock County Bonds amount-
ing to ten Thousand Dollars and Said
Coupons described in Said writing oblig-
atory according to the tenor and Effect true
intent and meaning of Said writing oblig-
atory and this the defendant is Ready
to verify

Stewart & Harding
Defendants Attorneys

affiant for
continuance

The State of Illinois }
County of Henderson } Special Term Dec 1887
of Circuit Court

James Moir &
Robert Mur

vs

Stephen S Phelps

Stephen S Phelps the Defen-
dant being duly Sworn defends and Says
that he cannot safely proceed to trial in
the above cause at this term of this Court
for the want of the testimony of James C Caben
who is a Material Witness for him and without
whose testimony he cannot make out his
defence That he believes he has a good defence
to this action if he ~~has~~ is allowed to from the
same that the Summons in Suit was only

Served on this affiant on the 12th day of
November last = and that the whereabouts
of the Said Cablen was then Entirely unknown
to this affiant and that it was only a few
days since & too late to take his deposition
in time for this Court that he learned or
heard that the Said Cablen was in the State
of Ohio and without the reach of a process from
this Court, That he expects to be able to prove
by Said Cablen that the Said Plaintiff contracted
to Receive corruptly and against the Statute
a large amount of Usurious Interest to wit about
the amount of Eight Thousand dollars upon &
for the forbearance of the five Thousand dollars
by Said Plaintiff to Said Frick and Cablen
and for the payment of which Said bond sued
on was given as Security and affidavit avers
that so the Said Plaintiff forfeited according
to the Statute be, Three Fols of the amount of
Interest so corruptly contracted to be received.
be, which is to be deducted off and from the
Five Thousand dollars described in the condition
of Said bond your affiant further States that
he expects to be able to prove by other Testimony
& evidence that the Sole and only Consideration
of Said bond was the forbearance of the Said Sum
of Five Thousand dollars originally loaned by
Said Plaintiff to one Frick and Cablen for
the payment of which this bond was given as Secu
(rity

That He Expects to be able to procure the
attendance of Said Babeen at the next term
of this Court or his deposition to be used at
that time and that he knows of no other
witness by whom he can so well prove the
above facts & that this Motion is not
made for delay but that Substantial Justice
may Be done

J J Phelps

Sworn to & Subscribed }
before me this 23^d day }
of December 1857 }
Hugh L Thomson }
Clerk }

Moir & Brothers }
vs } Debt
Stephen S Phelps }

Orar to overrule motion per Court
This day the came the defend
ant by His attorney and moves the Court and
files his affidavit for a continuance herein
after being advised in the premises it is ordered
by the Court that the Motion be overruled

Demurr to
Pleas

State of Illinois } Special Term December
County of Hancock } D 1857 of the Circuit
Court of Said County
James B

James Moir & Robert Moir

vs

Debt on
Bond

Demurr to
Plea 1st

Stephen J Phelps

And Said Plaintiff

Comes and defends
for demurr to the Plea of Said defendant first
above pleaded. We and Say that Said plea and
the matters and things therein contained as
therein stated are not sufficient in law
to bar Said plaintiff &c wherefore for want of
a sufficient Plea they Pray Judgement accord-
ing to the Statute in such cases made and
provided And Said Plaintiff Shew to
the Court the following Causes of Demurr
which are 1st ~~That~~ that Said Plea is a plea
of ^{non}assumpsit 2^d That a plea of non est factum
is pleaded by Said Defendant, Said Suit

By C M Harris their atty

Demurr to
Plea 3^d

And Said Plaintiff for further Demurr
to plea of Said Defendant thirdly above pleaded
comes and defends and Says that Said last
mentioned Plea and the matters and things
therein contained as therein stated are not in
law sufficient to bar Said Plaintiff &c wherefore
for want of a sufficient Plea they Pray Judge-
ment according to the Statute in such cases
made and provided And Said Plaintiff Shew
to the Court the following Causes of Demurr
which are 1st That the Plea last aforesaid

is a Plea of nil debit and that Said defen-
dant has ^{the plea of} ~~plea~~ non Est factum in Said action
By C. M. Harris their attorney

Demurs to
Plea 4th

And Said plaintiff for further demurrer
to ^{the} plea fourthly above pleaded by Said defendant
Comes and defends be and Says that Said last
mentioned plea and the matters and things therein
contained as therein stated are not in law
sufficient to bar Said plaintiff wherefore for
want of a sufficient Plea they pray Judgment

And Said Plaintiff according to the Statute
in such cases made and provided States and
Shews to the Court here the following Cause
of Demurr to Said fourth Plea, That Said de-
fendant has not in his Said fourth Plea set
forth the sum really due Said Plaintiff
from ~~him~~ Said defendant at the commencement
of Said Suit in Said writing obligatory by
Said Conaction thereof for the principal and
Interest in Said Conaction mentioned

By C. M. Harris Attorneys
for Plffs

Demurs to
Plea 5th &
7th & 8th

And Plaintiff for further demurr to
the Pleas of Said defendant fifthly Seventhly
& Eighthly above Pleaded Comes and defends be
and Says that Said last mentioned Pleas and

Each of them mentioned pleas, and the
matters and things in them and each of
them contained as stated in them and each
of them are not in law sufficient to bar said
plaintiffs &c wherefore for want of a sufficient
Pleas they Pray Judgment
By C. M. Harris their Attorney

And said plaintiffs for further Decree
to the plea of said defendant sixthly above
pleaded comes and defends &c and says
that said last mentioned plea and the
matters and things therein contained
as therein stated are not in law sufficient
to bar said plaintiffs &c wherefore for want
of a sufficient plea they pray Judgment
By C. M. Harris their Attorney

And said plaintiffs for further Decree
to the plea of said defendant seventhly above
pleaded comes and defends &c and says
that last mentioned plea and the matters
and things therein contained as therein
stated are not in law sufficient to bar
said plaintiffs &c wherefore for want of a
sufficient plea they pray Judgment
By C. M. Harris their Attorney

And afterwards, to-wit: on the 31st day of December
A.D. 1857, the Court made the following Order to-wit:

James Blair	}	Lett
Robert Blair		
or	}	This day again came on
Stephen S. Phelps		

This cause for hearing on the plaintiff's Demurrer to the defendants' pleas, And after being advised in the premises it is ordered by the Court that the Demurrer be sustained as to all the pleas but but No. 10. and amended as to that, with leave to defendant to amend plea No. 10.

And afterwards on the same day, the Court made following order, to wit:

Moir & Bros }
vs } Debt
Stephen S. Phelps }

This day came the defendant by his attorney and reads the Court and files his affidavit for a continuance herein, after being advised in the premises it is ordered by the Court that the Motion be overruled.

Be it remembered that on the trial of this cause Plaintiff offered in evidence a Bond with conditions which Bond is as follows

Know all men by these presents that S. S. Phelps, am held and firmly bound unto James Moir and Robert Moir in the special sum of Twenty thousand dollars for the payment of which well and truly to be made to said James Moir and Robert Moir I hereby bind myself my heirs, executors and administrators, said Frank Moirs having loaned Frank and Robert of Kentucky Illinois, Five thousand dollars on my agreement with them said Moirs to

deliver to them said Moirs in hundred and twenty days after the date hereof Bonds issued by the County of Hancock in the State aforesaid for the payment of Stock by said County taken in the Warsaw and Rockford Rail Road Company organized in the State aforesaid amounting to ten thousand dollars together with the Coupons belonging thereto as collateral security for the payment to said Moirs within said time, of said Five thousand dollars and the interest that may accrue thereon after said time at the rate of ten per cent per annum, Should I within said time deliver to said Moirs said bonds amounting to Ten thousand dollars and said Coupons as collateral security for the payment of said Five thousand dollars, within the time aforesaid and said interest or pay said Five thousand dollars, this obligation will become void otherwise remain in full force and effect, signed and sealed by me this 29th April A.D. 1857. The words or pay said Five thousand dollars were intended before the obligation was signed.

S. S. Phelps (Seal)

The defendant moved to reject said bond as evidence, the court overruled the motion to which overruling defendant excepts

John McKinney a witness produced and sworn on the part of plaintiffs testified that Hancock County bonds, in said bond mentioned were worth as much as fifty cents on the dollar and always have been

William R Jamison testified that they were worth 50 cts. on the dollar up to the middle of September 1857 & he did not know what they were worth afterwards

John Edwards said, said bonds were worth fifty cents on the dollar on the last of August and first of September and that since that time he did not know that they had a market value at all, he could not say that they were worth more than forty cents on the dollar, did not know what they were worth, which closed the evidence on the part of Plaintiff.

Defendant introduced no evidence.

And afterwards, to-wit: on the same day, the 31st day of December AD 1857, the following order was made, to-wit:

James Moir &

Robert Moir

vs

Stephen S. Phelps

} Debt

This day came the parties and their attorneys and issues being joined for trial put themselves upon the country, there upon came a Jury, to-wit: James A. Henderson, James Tracy, J. G. Harrison, John Schager, James Mark, C. S. Edwards, Frederick Ray, J. T. Martin, Lambert Hoppe, William M. Dobbin, Robert Armstrong and David M. Cus who being elected tried and sworn well and truly to try the issue joined herein after hearing the evidence upon their oaths do say "We the

Jury find for the plaintiffs, the sum of Twenty thousand dollars Debt and the sum of Five thousand one hundred and sixty six dollars and sixty six cents damages" thereupon came the defendant by his counsel and entered his motion for a new trial and in arrest of Judgment after being advised in the premises it is ordered by the court that the motion be overruled, Therefore it is considered by the court that the plaintiffs have and recover of the said defendant the sum of Twenty thousand dollars Debt and the sum of Five thousand one hundred and sixty six dollars and sixty six cents damages, the said Debt to be liquidated and discharged upon the payment of the damages, thereupon came the defendant by his attorney and prayed an appeal to the Supreme Court, which is allowed upon the defendant entering into bond with security in the sum of Eight thousand dollars to be approved by the clerk, bill of Exceptions and bond to be filed within forty days from the date hereof

The Jury returned a verdict for Plaintiffs for the sum of \$20,000. Debt and \$6,666. damages, before the verdict was received & enforced the Jury was asked if that was their verdict to which some of them answered in the negative the Court then permitted the Jury again to retire, when they returned a verdict for the plaintiffs for the sum of \$20,000. Debt and \$5,166. - damages, to which verdict and the permission of the Court allowing the Jury to retire defendant then and then excepted, the defendant by his counsel then filed his motion for a new

trial which said motion is as follows.

Moir & Brothers } December Special Term
vs } AD 1857
Stephen S. Phelps }

The defendant moves the Court for a new trial for the following reasons.

- 1 The verdict of the Jury is contrary to law
- 2 The verdict of the Jury is contrary to evidence
- 3 The Court refused a continuance upon proper affidavits for the same
- 4th The Court admitted improper testimony to the Jury
- 5th The Court erred in sustaining the Demurrer to Defendants 1st, 3rd, 4th, 5th, 6th, 7th, 8th, and 9th Pleas
- 6th The Court erred in requiring Defendant to accompany his pleas with an affidavit that the defendant had a meritorious defense to the cause of action in said cause

Moir & Brothers } December Special Term
vs } AD 1857
Stephen S. Phelps }

The defendant comes and moves the Court to amend the Judgment herein for the reason that improper evidence was in this that a bond for \$20,000 with conditions to pay \$5000, and interest thereon or deliver Ten thousand dollars in Hancock County Bonds in one hundred and twenty days.

2nd That the Court erred in overruling Demuree
to plaintiffs Declaration

3rd That the Court erred in sustaining the Demuree
to the Demuree to the Defendants 1st 3rd 4th 5th 6th
7th 8th and 9th pleas

4th The Jury returned a verdict for \$1500 more than
they should have done and were permitted
to change their verdict

5th The Court refused a continuance on proper
affidavits for the same

6th The Court erred in requiring defendants
to accompany his pleas with an affidavit
that defendant had a meritorious defence
to the cause of action in said cause

To which Motions the Court overruled, to
which overruling by the Court the defendant
then and there excepted. And inasmuch
as the foregoing facts do not appear of Record
the defendant prays that this his bill of
exceptions be signed and sealed which is
done John S. Thompson (Seal)

And afterwards on the 25th day of January
A.D. 1858. the defendant filed his bond which
was duly approved, and reads in the words
and figures following to wit:

"Know all men by these presents that we Stephen
S. Phelps as principal and William J. Hatch
in son as security of the County of Henderson

and State of Illinois are held and firmly bound unto James Moir and Robert Moir in the special sum of Ten thousand dollars for the payment of which well and truly to be made us and each of us, bind ourselves our heirs executors and administrators, jointly and severally and firmly by these presents, sealed with our seals and dated at Ogawoka this twenty second day of January Anno Domini one thousand Eight hundred and fifty Eight

The condition of the above obligation is such that whereas on the thirty first day of December A D 1857, James Moir and Robert Moir recovered a Judgment against the above bounded Stephen S. Phelps in the Circuit Court within and for the County of Henderson and State of Illinois in a suit brought by the said James Moir and Robert Moir against the said Stephen S. Phelps for the sum of Twenty thousand dollars Debt and fifty one hundred and sixty six dollars and sixty six cents damages and costs of suit to be satisfied by the payment of said damages viz. Fifty one hundred and sixty six dollars and sixty six cents and costs of suit from which Judgment the said Stephen S. Phelps has appealed to the Supreme Court of the State of Illinois. Now if the said Stephen S. Phelps shall prosecute his appeal with effect and shall pay the Judgment, costs, interest and damages in case the Judgment shall be affirmed, then this obligation to be void, otherwise to remain in full force and effect

Stephen S. Phelps (Seal)
Wm J Hutchinson (Seal)

Taken and entered into before me at my office
and the Security approved by me this 25th day
of January 1858. Hugh L. Thompson clerk

State of Illinois }
Henderson County }

I Hugh L. Thompson clerk
of the Circuit Court within and for said County
and State do hereby certify that the above
and foregoing contains a full true and
correct copy of the Record in said cause
as appeared to me from the Record and
proceedings in said cause

Given under my hand and the
Seal of said Court at Ogonaoka
this 11th day of April AD 1858

Hugh L. Thompson
Clerk

James Minshall

vs
Stephen Phelps

And now comes the
said appellant by his attorneys and
says that in said record in this case there
is manifest manifold error and
asks the following -

1. The court erred in sustaining the demurrer to each & all of the defendants' pleas to which the same was sustained.

2. The Court erred in not carrying back & sustaining said demurrer to the declaration.

Record.

Filed April 21. 1858

L. Delaney
clerk.

Refilio App. 29. 1858.
L. Delaney

3. The Court erred in admitting said evidence.

4. The Court erred in allowing the jury to charge their verdict.

5. The Court erred in overruling the defendants' motion for a new trial & in arrest of judgment.

6. The Court erred in rendering judgment for Plaintiff in not rendering judgment for Defendant. ^{the defendants' 8th plea being answered}
1. because the plaintiffs assigned breaches neither in declaration nor in any pleading
wherefore for the reasons above set out & for other reasons the Appellant prays that said judgment be reversed &
Pruple Standing
Atty for Appellant

177-503
James M. M. 1837
L. Delaney

STATE OF ILLINOIS, }
SUPREME COURT,

ss. The People of the State of Illinois,

To the Clerk of the

Circuit

Court for the County

Henderson

Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the *Circuit* Court of *Henderson* County, before the Judge thereof, between *James Moir & Robert Moir*

plaintiffs and *Stephen S. Phelps*

defendant, it is said manifest error hath intervened, to the injury of the aforesaid *Defendant*

as we are informed by *his* complaint and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *22nd* day of *May* in the Year of Our Lord our thousand eight hundred and fifty- *eight*

L. Leland
Clerk of the Supreme Court.
by *J. B. Rice* Deputy

Stephen S. Phelps
vs
James Moir & Robert
Moir —

Writ of Error

This Writ of Error is
made a Supersedeas
as such is to be obeyed
by all concerned.

L. Leland

clerk

by J. B. Rice Deputy

Filed May 22, 1858

L. Leland

clerk

Know all men by these presents that we Stephen S. Phelps as principal and Arthur S. Phelps and Abner C. Harding as sureties are held and finally bound unto James Morris & Robert Morris in the penal sum of Even Thousand Dollars for the payment of which well and truly to be made we hereby bind ourselves our heirs Executors and administrators jointly by these presents

The condition of this obligation is such that whereas the said Stephen S. Phelps has sued out a writ of error from the Supreme Court of the State of Illinois to reverse a judgment rendered in the Circuit Court of Henderson County Illinois on December 31st 1857 Against said Stephen S. Phelps for \$20,000, debt to be discharged by the payment of \$5,166. Damages in a suit wherein said obligees were plaintiffs and said Stephen S. Phelps was defendant and whereas the said Supreme Court have on May 4th 1858 ordered the said writ of error to be made a Superedeas. Now if the said Stephen S. Phelps shall pay said judgment and all costs interest and damages in Case the said judgment shall be affirmed and shall duly prosecute said writ of error, then this obligation to be void else to here remain in full force & virtue. Given under our hands & seals May 5th 1858.

Stephen S. Phelps Seal
by G. S. Harding fact
Arthur S. Phelps Seal
by G. S. Harding fact
Abner C. Harding Seal
by G. S. Harding fact

Know all men by these presents that
I, Allen C. Harding do hereby authorize
& appoint George B. Harding my true
& lawful attorney, to make, sign, seal & execute
for me any & all appeal bonds or
other bonds deemed by him necessary
in the cases of James M. Blair & Robert Blair
vs Stephen S. Phelps, & of same plaintiffs
against said Phelps, Hopkins & Harrington
which are now appealed by said Phelps
to the Supreme Court of Illinois and are then
pending - And in case said appeals shall be
disrupted then I authorize said ^{Geo. B.} Harding
to execute any bond or bonds deemed by him
necessary in said cases in case said de-
fendants procure a writ of error thereon.

Given under our hand & seal this 1st day
of April A.D. 1838 in said cases now stand
301 & 303 on the docket.

A. C. Harding Seal

Moir et al
Phelps

Moir et al

Phelps Harrington &
Hopkins

Filed May 22, 1838
L. Leland
Clk.

W. P. Harrington

Supreme Court 3 terms
Division April term
1838

Wm. S. Phelps
vs. E. S. Phelps

James M. W. Stetson

And now comes the defendant
in cross and says that no
such error in the record
and proceeding of record
both intervened or the
Plaintiff both alleged
Wherefore they pray that
the same be in all things
affirmed &c

O. C. Mosier
for defendant

303

Shells
in
Mintol
Jorda
in case

Filed May 6th 1858

Leland
Bell

James M. O'Neil
ad.

L. L. Phelps

303

1858

12588

Mo. for Supd.

allaint Bant. \$7000.