

No. 13351

Supreme Court of Illinois

cole

vs.

Toles et al

Supreme Court of the State of Illinois Third Grand Division
Miles Cole Plff in error Term A.D. 1852

vs.
Neil Donnelly &
Job Folis
Defts in error

Writ of error from Lake County

The plaintiff in error assigns the following errors —

- 1st The Circuit Court erred in dissolving the injunction in said cause on motion of said Defendant.
- 2^d Said Court erred in dismissing said Complainant's Bill on the final hearing —
- 3^d Said Court erred in its final decision in said cause.

W. S. Charles for Plff in error.

Supreme Court
2d Division
June 7 1858

Wm. Cole

vs.

Job Fols &
Wm. Drummell

Assignment of errors

" United States of America }
" State of Illinois, LaRe County } P.

" Pleas before the Honorable Hugh
" T. Dickey Judge of the seventh judicial
" Circuit of the State of Illinois

" A special term of a Circuit Court
" for the County of LaRe, in said Circuit, began
" and held at Waukegan, in said County
" on the ninth day of March in the year
" of our Lord one thousand, Eight hundred
" and fifty two, and of the independence
" of the United States the seventy sixth,

" Said term of Court being held pursuant
" to a special order of the Honorable Hugh
" T. Dickey, Judge of the seventh judicial
" Circuit of said State, and presiding Judge
" of the Circuit Court of LaRe County aforesaid,
" bearing date on the twenty first day
" of January A.D. 1852 and calling said
" special term to commence on the Eighth
" day of March in the year last aforesaid,
" for the trial, hearing and determination
" of all pleas that may be depending in
" said Court, Civil, Criminal and Chancery,
" due notice of said special term having
" been given by the Sheriff of said County,
" according to the Statute in such case made
" and provided

" Present the Honorable Hugh T. Dickey
" Judge aforesaid, Lyman Sprague, Sheriff
" of LaRe County, Henry W. B. Lodge, State
" Attorney pro tempore

" That, A. B. Coates, Clerk
" Be it remembered that heretofore, to wit:

on the third day of March A.D. 1852, the
same being a day in the vacation between
the January term and the March
special term of the Lake County Circuit
Court in the State of Illinois for the year
last aforesaid, a transcript was filed in
the office of the Clerk of the said Circuit
Court, which is in the words and fig-
ures following, to wit:

"United States of America,"

"State of Illinois } ss

"McHenry County }

"Pleas before the Honorable Isaac G. Wilson
Judge of the thirteenth Judicial Circuit of the State of Illinois
and presiding Judge of the McHenry County Circuit Court,
at a Circuit Court begun and held at the Court house
in Woodstock in said county on Tuesday the twentieth day of
January in the year of our Lord one thousand eight hundred
and fifty two, and of the Independence of the said United
States the seventy fifth."

"Permit the Hon^{ble} Isaac G. Wilson"

Judge"

"Attest"

"J. M. Johnson

Clerk

"Amos B. Coon

"State's Attorney

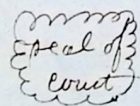
"John Brink

"Sheriff.

"And thereafter to wit, on the thirty first day of January in
the year of our Lord one thousand eight hundred and
fifty two, it being one of the days of the late January term
of the McHenry County Circuit Court, and the said court
then being in session at Woodstock in said county the fol-
lowing proceedings were had, to wit,"

"Miles Cole
 " ^{vs}
 " Job Toles and
 " Skill Donnelly } Bill for an Injunction, " And now come
 " and the plaintiff in his own proper person and there-
 " upon it appearing that this Court is of counsel in this
 " cause, it is therefore ordered by the agreement of the parties
 " that the venue herein be and the same is hereby changed to
 " the county of Lake in the seventh Judicial Circuit of the State
 " of Illinois, and that the Clerk of this court certify and
 " transmit to the Clerk of the Circuit Court of said Lake
 " County a copy of the record herein, and also all papers filed
 " in and pertaining to this cause,

" State of Illinois } ss I, the undersigned Clerk of the Circuit
 " McHenry County } Court in and for the said county and
 " State aforesaid, do certify that the foregoing is a true copy
 " of the record and proceedings in the above entitled cause and
 " that the accompanying papers numbered from one to seven in-
 " clusive are all of the papers filed in and pertaining to said
 " cause in this office,

" 
 " Witness Joel W. Johnson Clerk of our said
 " Court and the seal thereof at Woodstock
 " this 2^d day of March A.D. 1852
 " Joel W. Johnson
 " "Clerk"
 "

And that on the said third day of March A.D. 1852, the same
 being a day in the aforesaid vacation, and at the time
 when the said transcript was so as aforesaid filed there
 was also filed in the office of the said Clerk of the said
 Circuit Court of Lake County a summons which is in
 the words and figures, following, to wit,

"State of Illinois } ss The People of the State of Illinois to
 "McHenry County } the Coroner of said County Greeting,
 "We command you that you summon J. H. Tides & Neill
 "Donnelly, if they shall be found in your county, personally
 "to be and appear before the Circuit Court of said County, on
 "the first day of the next term thereof, to be holden at the
 "Court House in Woodstock in said County, on the second
 "Monday of April next, to answer unto Miles Cole in a
 "certain bill in Chancery for an injunction and to stand
 "and abide such order as may be made by the court in
 "the premises, And have you then and there this writ, with
 "an indorsement thereon in what manner you shall have
 "executed the same, Witness J. H. Johnson Clerk of our
 "said court, and the seal thereof at Woodstock aforesaid, this
 "twenty sixth day of October A. D. 1850.

my
 seal of
 court

J. H. Johnson

Clerk of the Circuit Court,

On the back of which said summons were indorsed
 when the same was so as aforesaid filed the words and
 figures following, to wit,

" 2 Services	1.00
" 7 Miles travel	35
" Ret,	10
"	<u>71.45</u>

" served by looking on
 " the with Defendants
 " John Brink
 " Sheriff

" February 27th 1851,

" 2 Services	1.00
" 7 miles travel	35
" Return	10
	<u>1.45</u>

"served by copy on the within defendants this fifth day
"of March 1857

W^m Allen

"

Attorney

"

"Filed March 5th 1857,

"

J. W. Johnson

"

Att^y

And that on the said third day of March A. D. 1852, the same being a day in the aforesaid pactation, and at the time when the said transcript was so as aforesaid filed there was also filed in the office of the said clerk of the said Circuit Court of Lake County a Bill of Complaint which is in the words and figures, following, to wit,

"State of Illinois } ss
"McHenry County }

"To the Honorable Hugh Henderson Judge
"of the McHenry County Circuit Court, in chancery sitting.
"Humbly complaining, sheweth unto your Honor your Oration
"Miles Cole of the s^d County of McHenry, that heretofore
"to wit, at the January Special Term A. D. 1850 of the Circuit
"Court of the County of Kane State of Illinois your orator
"recovered a judgment in an action of debt on a bond
"in the penal sum of five hundred dollars before that
"time executed to him by Job Ides whom your orator asks
"may be made defendant herein, for the sum of two
"hundred and eighty one dollars & 81/100 or thereabouts
" & costs of suit, amounting in all to about the sum of
"five hundred dollars, that afterwards, to wit, on the 13th
"day of March A. D. 1848 execution was duly issued on said
"Judgment directed to the Sheriff of McHenry County to
"execute, which said execution was afterwards to wit,
"on the 14th day of June 1848 levied on the following land
"the property of said Ides. to wit, the NE 1/4 of SW 1/4 of Sec 11

" T 46 R 7 East containing 40 acres of land lying in
" McHenry County. which said land was afterwards, to wit,
" on the 7th day of August 1848 sold on execution to your
" orator for the sum of fifty dollars, which said levy &
" sale was endorsed on said execution and duly returned
" to the office of the Clerk of the Circuit Court of said Kane
" County, and afterwards to wit, on the 20th day of October
" A. D. 1848 an alias execution was issued on said judg-
" ment directed to the Sheriff of McHenry County to
" execute which said execution was afterwards, to wit,
" on the 4th day of January A. D. 1849 levied on the following
" land the property of said Joles to wit, part of the W 1/2 of
" S W 1/4 of Section Eleven T 45 N Range 7 East containing
" 74 acres lying in McHenry County aforesaid, which
" said land was afterwards, to wit, on the 25th day of
" January last aforesaid sold on said execution to your
" orator for the sum of four hundred and seventy one
" dollars & 7/100, which said levy and sale was endorsed on
" said alias execution, and the same was duly returned
" to the office of said Clerk of the Circuit Court of Kane
" County, and your orator avers that the aggregate amount of
" the said two bids was the amount of the Judgment & costs in
" said suit and no more.

" And your orator further sheweth unto your Honor that
" afterwards, to wit, on the first day of January A. D.,
" eighteen hundred & fifty the said Joles voluntarily and
" without any solicitation or request on the part of your
" orator, redeemed said lands so as aforesaid sold to your
" orator by paying to your orator the amount of the
" judgment and costs aforesaid and ten percent thereon,
" and your orator further sheweth that the land so as aforesaid
" paid off by him for the satisfaction of said Judgment
" and costs was not and never has been taken possession of

"by your orator nor any one for or under him nor has
 "he demanded of, nor received from the said Sheriff any
 "deed or other instrument in writing conveying to him
 "the said lands, nor does he now demand or expect a
 "deed nor did he assign the Certificate of purchase,
 "received from said Sheriff on said sale; and he
 "hereby relinquishes all claim or right under and by
 "virtue of such Certificate. And your Orator further shew-
 "eth that after the payment to your orator by said
 "Tolles of said money for the satisfaction of said judg-
 "ment & costs, to wit, on the first day of May A.D. 1850
 "the said Tolles, ascertaining that the Clerk of said Kane
 "Circuit Court had by mistake entered the finding
 "of the jury and the judgment thereon in the said
 "action of Debt in the form of a verdict and judgment
 "in an action of Assumpsit instead of the form in an
 "action of Debt, caused said suit to be taken to the Su-
 "preme Court of the State of Illinois by writ of Error, and
 "at the June Term A.D. 1850 obtained a judgment in
 "said Supreme Court reversing the judgment rendered
 "in said suit by said Kane Circuit Court in
 "consequence of the informality & defect in entering
 "up said Judgment so as aforesaid occasioned by the
 "mistake of said Clerk, although your orator endeav-
 "ored to prevent the reversal of said judgment. And
 "your orator further sheweth that afterwards and in order to
 "harass and oppress your orator the said Tolles caused suit
 "to be commenced in the Circuit Court of McHenry County
 "on the Common Law side thereof to wit, an action of
 "assumpsit to wit, at the September Term A.D. 1850, to
 "recover from your orator the money which he had as
 "hereinbefore stated paid in satisfaction the Judgment so
 "as aforesaid rendered against him in the Kane Circuit

" Court and although your orator endeavored to prevent
" the same the said Sides prosecuted said suit to final
" judgment, and obtained against your orator a
" Judgment in that behalf for the sum of five hundred
" and four dollars, or thereabouts, And your orator fur-
" ther sheweth that the Judgment so as aforesaid rendered
" by the Circuit Court of Kane County against said Sides
" on said bond was by the mistake of the Clerk of said
" Court entered up in the form of a Judgment in an
" action of Assumpsit instead of debt, which mistake was
" not known to your orator, or his counsel until after
" said Sides had taken said suit to the Supreme Court
" as aforesaid, Your orator further sheweth that the said
" Judgment was reversed on account of said informality
" and on no other or different account, and your
" orator avers that the said Sides had no substantial defence
" whatever to said suit on said bond, nor did he appear
" either in person or by counsel at the trial of said suit
" thereon although he had by artful devices and by
" filing special Pleas succeeded in preventing your orator
" from bringing said suit to trial for two or three years,
" And your orator further sheweth that in the Judgment
" aforesaid of the Supreme Court reversing the Judgment of
" said Kane Circuit Court it was also ordered & adjudged
" that the said cause be remanded to the said Kane Circuit
" Court for a new trial, and your orator sheweth that
" in pursuance of said order the said cause has been
" placed on the docket and is now pending & undetermined
" in said Kane Circuit Court, and your orator is pro-
" ceeding to obtain a Judgment on said bond in said
" suit, and expects and really believes that he will obtain
" Judgment thereon for more than the said sum of five
" hundred & four dollars at the next term of the Kane

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Circuit Court which said sum ought in good conscience
to be applied & sett off against the said Judgt. obtained
by said Joles against your orator, and your orator
further sheweth that notwithstanding the premises, the
said Joles in order to harass your orator is proceeding
to take steps to collect the Judgment so by him
unjustly & against good conscience obtained against
your orator in said McHenry Circuit in said action
of Assumpsit, and he has caused an execution on
said Judgment to be issued by the clerk of said
McHenry Circuit Court against the goods & chattels
lands & tenements of your orator for the amount of said
Judgment & costs of said suit, and placed the same
in the hands of the Sheriff of said McHenry County
Nell Donnelly Esq. (whom your orator asks may be made
defendant hereto) to execute, and your orator sheweth
that said Sheriff is proceeding to execute said writ and
has already levied the same on the lands of your
orator and now threatens to go on & complete the ex-
ecution of the same by advertising & selling said lands,
All which actings and doings of said Joles & the said
Sheriff Nell Donnelly are contrary to equity and tend
to the manifest injury of our orator, And your orator
further sheweth that the said Joles is wholly insolvent and
has no unincumbered property whatever out of which an
execution could be satisfied for any amount so that
it would greatly injure and defraud your orator should
the said Joles be allowed to collect the money on the
Judgment so as aforesaid obtained by him in the Mc-
Henry Circuit Court in as much as your orator would
be wholly unable to collect any judgment he may obtain
in said Kane Circuit Court in said suit on said
bond, pending as aforesaid for as much therefore as

"your orator is remedied by the strict rules of the
"common law may it please your honor to take
"the case of your orator under consideration and
"that the said defendants may full, true and per-
"fect answers make respectively without oath which
"is hereby expressly waived to all and singular the
"premises as fully and minutely as if the same were
"herein again repeated and they thereto specially in-
"terrogated, And that said Jiles & said Sheriff Mill Donnelly
"their agents attorneys or deputies may be enjoined and
"restrained by the Peoples writ of Injunction issuing out
"of and under the seal of this Honorable court from
"proceeding any further with the collection of said Judgment
"and execution until the further order of this court, and
"that the said Jiles may be restrained by decree of this
"court from collecting said Judgment until the de-
"cision of the cause so as aforesaid remanded to the
"circuit court of Kane County by the Supreme court
"can be had, and that your orator may have such
"other and further relief as is agreeable to equity & good
"conscience, May it please your Honor to grant unto
"your orator a summons directed to the said Jiles &
"Mill Donnelly Sheriff as aforesaid, commanding them
"to be & appear before this Honorable court on the first
"day of the next term thereof then & there to stand to &
"abide by such order and decree in the premises as to
"your Honor shall seem meet & as shall be agreeable
"to equity, And your orator &c

"Me des lede"

"Wilson & Bush of Counsel"
"Solicitors."

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" State of Illinois } Miles led the complainant in the
" McHenry County } foregoing bill, being duly sworn on
" oath says that the matters & things therein stated as of
" his own knowledge are true; and that so far as he
" swears from information derived from others he believes
" them to be true.

" Subscribed & sworn to before me } "Miles led"
" this 25th day of October A. D. 1850 }
" A. B. Coon Master in Chancery
" McHenry County Ills."

" State of Illinois } ss The Clerk of the McHenry County
" McHenry County } Circuit Court will give the in-junct-
" ion agreeable to the prayer of the above bill, by the
" complainants entering in to bonds in the penal sum
" of Twelve hundred dollars (\$1200) with Endsley Doleyn
" or Elizabeth Smith or John McCallum or Harvey Will-
" son or John Brind as his security."

" A. B. Coon

" Master in Chancery
" McHenry Co Ills."

" Masters fees

" Injunction \$1.00

" Attesting bond 50

" 1.50 paid by complainant.

" A. B. Coon "

On the back of which said bill of complaint were in-
dorsed when the same was so as aforesaid filed the
words and figures following, to wit,

" Filed Oct 24th 1850. J. W. Johnson CLK,

" Clerk will please give summons and injunction.
Wilson & Bush,

And that on the said third day of March A. D. 1852 the same being a day in the aforesaid vacation, and at the time when the said transcript was so as aforesaid filed there was also filed in the office of the said clerk of the said Circuit Court of Lake County a Bond which is in the words and figures, following, to wit,

"Know all men by these presents that we Miles Cole as principal and Lindsey Joslyn & John Brint as surety are held and firmly bound unto Jof Joles and Neill Donnelly in the penal sum of Twelve hundred dollars, to the payment of which we and each of us bind ourselves and our, and each of our heirs, executors and administrators, jointly severally and firmly by these presents.

"Witness our hands and seals at Woodstock this 25th day of Oct A. D. 1850.

"The condition of the above obligation is such that whereas the above bounden Miles Cole has this day filed his certain bill of complaint in the McHenry Circuit Court in Chancery praying amongst other things for an injunction against the above named Jof Joles, enjoining him from proceeding to collect a certain judgment lately obtained by him in the McHenry Circuit Court for the sum of Five hundred & four dollars or thereabout and costs of suit against the above bounden Miles Cole, And also praying that said Neill Donnelly Sheriff of said county may be restrained from proceeding farther with an execution issued on the judgment aforesaid, Now if the said Miles Cole shall well and truly pay or cause to be paid to the said Joles all money and costs due, or to be due to the said Jof Joles in the said action at law upon the final determination thereof, and

"also all such costs and damages as shall be awarded against the said Meiles lode in case the said Injunction shall be dissolved then this obligation to be void, else to remain in full force and virtue,

"In Presence Of }
 "D. C. Bush }

Meiles lode Seal
 Lindsey, Joslym Seal
 John, Brink Seal

On the back of which said bond were indorsed when the same was so as aforesaid filed the words and figures following to wit,

"Filed Oct 26th 1850

" J. W. Johnson

" clerk"

And that on the said third day of March A. D. 1852, the same being a day in the aforesaid vacation, and at the time when the said transcript was so as aforesaid filed there was also filed in the office of the said clerk of the said Circuit Court of Lake County a writ of Injunction which is in the words and figures following, to wit,

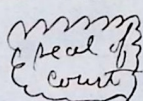
"State of Illinois } ss

"McHenry County } The People of the State of Illinois, To
 "Jot Toles & Keil Donnelly and you, and each of your agents,
 "attorneys and deputies of said County Greeting;

"Whereas Meiles lode has filed his certain bill of complaint in
 "the McHenry Circuit Court in Chancery against you the
 "said Jot Toles and Keil Donnelly Sheriff of said County
 "wherein amongst other things it is represented to us that
 "you the said Jot Toles have lately recovered a judgment
 "unjustly and against good conscience in your favor and
 "against the said Meiles lode for the sum of five hundred
 "and four dollars or thereabouts in the McHenry County
 "Circuit Court in said State of Illinois and that you are
 "proceeding against equity and good conscience to collect

"the same, and that the said Neill Donnelly so being
"Sheriff as aforesaid is aiding and assisting you the
"said Toles by executing your said writ of execution so
"issued upon said Judgment, and that you threaten
"to enforce the collection thereof, all of which actings and
"doings are against equity; And the said Neill Donnelly having
"given bond and security according to law; We do therefore
"command and enjoin you the said Job Toles and Neill
"Donnelly your agents, attorneys and deputies to absolutely
"and entirely desist & refrain from collecting or taking
"any farther steps towards collecting said judgment or
"any part thereof, and from interfering in any way
"or manner whatever with said judgment, until the
"other and further order of this Court. You are fail not
"but make return of this writ and of the manner in
"which you have executed the same on the first day of
"the next term of our said Circuit Court."

"Witness I seal the Johnson Clerk of our said Court and the
"seal thereof at Woodstock this 26th day of Oct A. D. 1850.

" Seal of Court

J. W. Johnson
Clerk"

"On the back of which said writ of Injunction were in-
"dorsed when the same was so as aforesaid filed the
"words and figures following to wit,

"Filed Oct, 26th 1850"

"J. W. Johnson
Clerk"

"And also the words and figures following, to wit,
"I acknowledge due service of the within writ this 26th Oct
"1850,
"Neill Donnelly Sheriff
"of Mc Henry County Ill."

"And that on the said third day of March A. D. 1852 the

same being a day in the aforesaid vacation, and at the time when the said transcript was so as aforesaid filed there was also filed in the office of the said clerk of the said Circuit Court of Lake County a Bond, which is in the words and figures following, to wit,

"Know all men by these presents that we Miles Cole
"Principal and Harry Wilson security are held and firmly
"bound unto Job Toles and Neill Donnelly in the penal
"sum of twelve hundred dollars to the payment of which
"well and truly to be made. We and each of us bind
"ourselves our heirs, executors, administrators and
"assigns firmly, jointly & severally by these presents, Witness
"our hands and seals at Woodstock this fifteenth day
"of April A. D. 1857.

"The condition of this obligation is such
"that whereas the above bounden Miles Cole did on the 25th
"day of October last 1850 file his certain bill of complaint
"in the McHenry Circuit Court in Chancery praying amongst
"other things for an Injunction against the above named
"Job Toles enjoining him from proceeding to collect a certain
"judgment lately obtained by him in the McHenry Circuit
"Court for the sum of five hundred and four dollars
"or thereabouts and costs of suit against the above bounden
"Miles Cole, and also praying that said Neill Donnelly
"Sheriff of said County may be restrained from proceeding
"further with an execution issued on the Judgment
"aforesaid. Now if the said Miles Cole shall well and truly
"pay or cause to be paid to the said Toles all money and
"costs due to the said Job Toles in the said action of law
"upon the final determination thereof, and also all such
"costs and damages as shall be awarded against the
"said Miles Cole in case the said Injunction shall be
"dissolved, then this obligation to be void, else to remain

"in full force and virtue"

"

Miles Cole

seal

"

Harvey Wilson

seal "

On the back of which said bond were indorsed when the same was so as aforesaid filed the words and figures following, to wit,

"Filed Apr 16, 1857

"J. W. Johnson

"clerk"

And that on the said third day of March A. D. 1852 the same being a day in the aforesaid vacation, and at the time when the said transcript was so as aforesaid filed there was also filed in the office of the said clerk of the said Circuit Court of Lake County an answer which is in the words and figures following, to wit,

"In Chancery

"McHenry Circuit

"Court Jan Term 1852

"Miles Cole,

} The answer of Job Miles one of the defendants to the bill of complaint of

"This defendant now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainants bill of complaint contained, for answer thereto or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says he admits that the complainant recovered a Judgment in the Circuit Court of Kane County at the January Special Term 1848, (improperly stated in said bill 1850) as alleged in said bill, and that executions issued thereon to said County of McHenry, and that said executions were levied on the property (the lands) of this defendant, which property was sold on said executions, and by means of such sales

"were fully satisfied, and that this defendant after-
 "wards redeemed his land sold on said executions
 "from such sale within one year from such sales,
 "and that after such redemption on the application
 "of this defendant the Supreme Court of the State reversed
 "the judgment obtained by the complainant against
 "this defendant in said Kane Circuit Court as aforesaid,
 "and remanded the cause back to the circuit court of
 "said Kane County for further proceedings and is now
 "pending and undetermined in said court, and that said
 "complainant has not taken any deed for the lands
 "bid off by him under the said executions or taken
 "possession of said lands as is set forth and alleged
 "in said bill of complaint.

"And this defendant further
 "answering says he admits that this defendant did recover
 "a judgment in the court on the common law side
 "thereof against said complainant for the money paid
 "by this defendant on the redemption of the lands sold
 "by said complainant, as is set forth and charged in
 "said bill, And this defendant further answering says that
 "it is untrue as charged in said complainant's bill of
 "complaint, that this defendant has no good defence
 "to said suit now pending in the said Circuit Court of
 "Kane County, but this defendant expressly alleges and
 "so charges the facts to be, that he has a good and
 "meritorious defence to said suit, and that such defence
 "has been pleaded by this defendant in defence of said action,
 "and that issue is now pending in said suit between this
 "defendant, and said complainant upon several distinct
 "pleas, pleaded by this defendant in said suit in bar of said
 "complainant's cause of action therein, and this defendant
 "has fully stated the facts constituting his defence in said

suit, to this defendants counsel retained to defend said
suit, and said counsel advise this defendant that he
has a full, legal and meritorious defence to said suit,
and this defendant verily believes that on the trial of said
suit when the same may be tried, this defendant will
be able to make a full and successful defence in said
suit, and defeat said complainants obtaining any
judgment for any amount against this defendant in
said suit. That the bond sued on in said suit is
without consideration, and this defendant was induced
to execute said bond by the false and fraudulent
representations of said complainant, and that said
complainant hopes, through the technicalities of the
strict rules of the common law, to defeat this de-
fendants using such want of consideration, deceit
and fraud, as a defence in said suit. That this
defendant verily believes that he can fully sustain the
pleas by him pleaded in said suit in bar thereof, and
upon which issue is now joined by sufficient evidence,

And this defendant further answering says that
he admits that said complainant obtained judgment in
said suit at the January Special Term 1848 (stated
improperly in said bill to be 1850) of said Kane County
circuit court, against this defendant by default, but
this defendant expressly alleges and charges the fact so
to be that this defendant was at the time of said default
being taken engaged in building a grist & flouring
mill in said McHenry Co., and could not without
a great loss leave his business in the northern part of
McHenry County to attend to this case personally in
Kane County after this suit was transferred to said
county, and this defendant retained Isaac N. Arnold
one of the Attorneys and Counsellors of the Supreme

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"court of this State to defend said suit for this de-
"fendant, and said Arnold agreed so to do, and
"this defendant is informed and verily believes that
"said Arnold from sickness or accident was prevented
"from attending said court at said term, and de-
"fending said suit for this defendant, and that
"said Complainant taking advantage of such absence
"of this defendant and his counsel obtained judgment
"by default against this defendant in said suit, as
"is set forth in said bill, and that such default
"was without the consent, or without intention of this
"defendant, that this defendant intended at the time of
"such default, to defend against said suit, and ex-
"pected to succeed in such defence,

"And this defendant further answering says that he
"expressly denies the charge in said bill of complaint, that
"this defendant is wholly insolvent and has no unim-
"mumbered property whatever out of which and execution
"could be satisfied, but this defendant expressly charges
"and states the fact to be that he has a large unim-
"mumbered property from which a larger judgment than
"said Complainant can obtain in said suit can be
"satisfied,

"And this defendant further answering says that the
"January Special Term 1848 of Kane County Circuit Court
"above said at which said term default was obtained,
"was Special term of said Court, and this defendant
"was not aware or informed that said term was called
"or would be held until said term was ended, that this
"defendant resided at that time in said McHenry County.
"And this defendant denying &c without that anything
"matter or thing material or necessary for this defend-
"ant to make answer unto, and not herein or hereby

"sufficiently answered unto, confessed or avoided,
"traversed or denied, 'is true to the knowledge or
"belief of this defendant, All which matters and
"things this defendant is ready to verify, maintain
"and prove, as this honorable court may direct and
"humbly prays to be hence discharged with his rea-
"sonable costs and charges in that behalf most wrong-
"fully sustained.

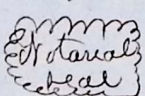
"
" Jof. Joles."

"State of Illinois } ss Jof Joles being duly sworn doth
"McHenry County } depose and say that he has heard
"read the foregoing answer by him signed and that
"the matters and things therein stated as of his own
"knowledge are true, and that so far as he appears
"from information derived from thus he believes the
"same to be true,

"Subscribed and sworn to before

"me this 22nd day of Jan^y
"1852, Witness my hand

"and Notarial seal

"
"  Notary Public

" Wm Sloan Notary Public,
" McHenry County State Illinois,"

On the back of which said answer were indorsed when
the same was so as aforesaid filed the words and
figures following, to wit,

"Filed Jan^y 22 1852,"

" J. W. Johnson "

" clerk "

And that afterwards, to wit, on the eleventh day of
March A. D. 1852 the same being a day of the March
Special Term of said court for the year last aforesaid

the following among other proceedings were had
in said Court and entered of record, to wit,

33 "Meiles Cole
" ^{vs}
" Job Ides and Keill Donnelly } Bill for Injunction,

" Now come said defendants
" by Sloane their Solicitor and enter their motion to dissolve
" the Injunction issued herein, upon the bill and answer
" filed in this cause".

And that afterwards to wit on the said eleventh day
of March A. D. 1854 it being a day of said March
Special Term of said Court the following among
other proceedings were had ^{in said Court} and entered of record to wit,

33 "Meiles Cole
" ^{vs}
" Job Ides and Keill Donnelly } Bill for Injunction

" Now come said defendants
" by Sloan their Solicitor and enter their motion to have
" the replication of the said complainant to the said
" defendants answer herein stricken from the files of this
" Court and thereupon comes the said complainant by
" Bloyette his Solicitor and after arguments of counsel
" it is ordered that said motion be granted, and afterwards
" comes the said complainant, and on his motion it is
" ordered that he have leave to file his replication to
" the said defendants answer herein ainstanter,

And that afterwards to wit on the said eleventh
day of March A. D. 1854 the same being a day of the
said March Special Term of said Court for the said

year, the said Complainant filed his replication in
the office of the Clerk of the court, which is in the
words and figures following, to wit:
"In Chancery, } The replication of Miles Cole
"Lake County Circuit Court } Complainant to the answer of Jot
"March Special Term 1852 } Tels one of the Defs to the com-
"plainants said Bill,

"This replicant saving and reserving
"unto himself all and all manner of advantage of exceptions
"to their manifold insufficiencies of the said answer for
"replication therto saith that he will aver and prove
"his said bill to be true, certain and sufficient in the
"law to be answered unto, and that the said answer
"of the said defendant is uncertain, untrue and insuffi-
"cient to be replied unto by this replicant without this,
"that any other matter or thing whatsoever in said answer
"contained material or effectual in law to be replied
"unto confessed and avowed traversed or denied is true,
"All which matters & things this replicant is & will be
"ready to aver and prove as this Honorable Court shall
"direct and humbly prays as in & by his said bill he
"hath already prayed &

"Miles Cole
"By Blodgett & Mpton his
"Solicitors"

And that afterwards, to wit: on the thirteenth
day of March A.D. 1852, the said being also
a day of the said March Special term of said
Lake County Circuit Court, the following, among
other proceedings, were had in said court and
entered of record, to wit:

" Miles Cole
 " 33 vs
 " Job Toles and
 " Will Donnelly } Bill for Injunction

" Now come said parties by their
 " respective solicitors, and after arguments of Counsel,
 " the Court being fully advised as to the motion
 " formerly entered, to dissolve the Injunction herein,
 " It is ordered that the said injunction be, and
 " the same is hereby dissolved at the costs of the
 " said Complainant"

" United States of America }
 " State of Illinois, Lake County } ss.

" Pleas before the Hon-
 " orable Hugh T. Dickey, Judge of the Seventh
 " Judicial Circuit of the State of Illinois, at a
 " Circuit Court for the County of Lake in said
 " Circuit, began and held at Waukegan, in
 " said County, on the seventh day of June in
 " the Year of our Lord one thousand Eight
 " hundred and fifty-two and of the indepen-
 " dence of the United States the seventy sixth
 " Present, the Honorable Hugh T. Dickey, Judge
 " aforesaid, Symon Smagard, Sheriff of Lake County,
 " Henry W. Blodgett, State Attorney pro tempore
 " Attest, A. B. Otis, Clerk"

And he it also remembered, that afterwards,
 to wit: on the seventh day of June A.D. 1852
 the same being one of the days of the June term
 of the said Lake County Circuit Court for the

year last aforesaid, the following, among other proceedings, were had in said Court and entered of record, to wit:

Miles Cole
" 25 vs
" Job Fols and
" Keith Donnelly } Bill for injunction
" Now come said parties by their
" respective Solicitors and this cause having been
" brought on for hearing upon the pleadings on
" file therein, and the Court being fully advised
" in the premises, it is ordered that the said
" Complainant's bill of Complaint herein be,
" and the same is hereby dismissed at the costs
" of said Complainant and that said Defendant
" ants have and recover of said Complainant
" their costs and charges in this behalf ex-
" pended and that they have Execution therefor"

Miles Cole } Lake County Circuit Court
25 vs } Bill for injunction
Job Fols and
Keith Donnelly }
State of Illinois }
Lake County } p. p. Augustus
B. Cotes, Clerk of the Circuit Court in and
for the said County of Lake, hereby certify
the foregoing to be a true transcript from
the records and files of my office of

the pleadings and proceedings in the above
entitled cases

In witness whereof I have here-
unto set my hand and the seal of
said Court at Waukegan, in
said County, this third day of
July A.D. 1852

A. B. Bates Clerk

Fees for transcript \$6.85

25
Lake Co. Circ. Court

Miles Cole

25 vs
Job Toles and
Neill Donnelly

Transcript -

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- ~~1852~~

1853