

No. 14532  $\frac{1}{2}$

# Supreme Court of Illinois

Osgood

---

vs.

McConnell

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STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division

No. 220

*Osgood*

1863

*Plaintiff*

7502  
1863

14532 1/2

SUPREME COURT---STATE OF ILLINOIS,  
THIRD DIVISION.

URI OSGOOD, Appellant,  
*vs.*  
Delos W. McConnell, Appellee. } Appeal from Will Circuit Court.

Further Abstract of Record of Case by Appellee, under Rule XIV, on imperfect Abstract of Pl'ff.

- 27 Testimony of George S. House continued, to-wit: The amount of this certificate marked "A," (the same being the certificate or note in evidence,) I believe was made up of a former certificate drawn by defendant,[Osgood] a check of \$158, on the Joliet Bank which drew Illinois and Wisconsin Bank bills I believe, and the balance in bills on Illinois and Wisconsin Banks.

After the cross-examination of said witness House, read his re-examination to-wit:

28. The difference between Eastern Bank notes and gold coin at the date of said certificate was about two per cent. After the Illinois and Wisconsin Banks went down, Eastern bills and gold and silver coin composed the principal money in circulation with some Ohio and Indiana and Iowa money, and the difference between that and gold coin was about two per cent.

Further testimony of A. A. Osgood in deposition to-wit:

- 29-30 On 8th day of May, 1861, I was engaged in my father's banking office in this city (Joliet.) Ans. 3.

My father is defendant in this suit, and was lawyer and banker at that date.—Ans. 4.

30 He did advertise as is the custom with bankers, for deposits, and did receive deposits and issued certificates of deposits therefor.—Ans. 5.

31 I was cashier or teller.—Ans. 6.

31-32 At the date expressed in this paper marked "A," I did as such cashier in behalf of defendant, receive THE SUM OF MONEY expressed in this paper, from pl'ff McConnell, and made and delivered to said McConnell the paper here referred to, in conformity to the authority to me given by defendant, and was previous to that time authorised and empowered by defendant to make and deliver in name of and for use of Defendant, certificates of deposit &c.—Int. and Ans. 7.

32-33 Said certificate marked "A," is in form of and the kind of instrument in writing which I was prior to date thereof, authorised by said defendant to make and deliver in his name and for his use upon receipt of money deposited with him.—Int. and Ans. 8.

33 Said authority to execute and deliver said certificate was in exercise by me and unrevoked by said Defendant at the date of said paper, marked "A," and I did make and deliver said paper marked "A," in the name of said Def't, for his use and benefit, and as his act and deed.—Int. and Ans. 9.

34-35 Cross-Int. 2d, 3d and 4th, objected to by plff's Att'y.

35

Int. 10. Were or were not the fund or funds of money which on the day of the date of said paper above referred to marked "A," you say that you received from the said pl'ff for and in behalf of said def't, and in consideration of which you made and delivered the said paper marked "A," as aforesaid testified by you, current money, and on that day last above referred to received and paid out in the locality where the said paper marked "A," was made

by banks and bankers as and for current money at par, and as such by you then and there received as aforesaid testified by you, as and for the amount of dollars in money expressed and specified in the said paper above referred to, marked "A?"

Ans. 10. These bank notes mentioned in said instrument in writing, were received and paid out at par at that time, but was not denominated by banks and bankers as money.

35 Int. 11. What were they denominated?

Ans. 11. Wild Cats, Stump-Tail, Currency, &c.

36 Ans. 13. To the best of my recollection said funds were Ill's and Wis. State Bank notes.

37 Ill's and Wis. bank notes were received on deposit by banks and bankers on said day, in said locality as current bank notes.  
Int. and Ans. 15.

38 Int. and Ans. 17. A part consideration of said paper marked "A," was an old certificate of deposit made by def't to pl'ff, made some time previous.

39 Int. and Ans. 24. I don't know that I could state, in case where there had been no previous deposit and in payment from one to another among the people, whether said "circulating medium" was received, used and counted at par.

Int. 25. Give your best knowledge thereof.

Ans. 25. To the best of my knowledge it did pass among the people in payment of debts and other obligations at par or nearly so.

40 Int and Ans 26. Gold and silver, U. S. Treasury notes and the bills of some of the Eastern banks and some of the bills of Ill's

banks, in said locality are now received and paid out *as and for money*.

41 Int. and Ans. 31. To the best of my knowledge I believe there are no bank notes used and circulated in said locality at this time, except those which are used and circulated at par.

42 Int. and Ans. 32. All Ill's banks bills of which are now circulated at par were then at the date of said paper marked "A," established and had issued bills.

Further testimony of witness Allen, to-wit:

45-46 Ill's and Wis. Bank notes were not used as *current bank notes*, when they became depreciated below 15 per cent. &c., but were then retired from circulation. Some of the Ill's and Wis. bank notes were at the date of said certificate of deposit, ever since that time have been and are now used as *current bills*. After Ill's and Wis. Banks went down, which I believe was in June, 1861, and about the last of July, I took about \$2200, of that kind of funds to Chicago, *and sold it for 46 cts. on the dollar for gold*.

49 Page 7 of plff's Abstract of Record. After the amended verdict, (in form) of the jury read as follows:—"The jury were then "asked by the Court if the verdict as thus amended, was their "verdict, and they said it was." This was done before they left the jury box.

**R. E. BARBER,**  
Att'y for Appellee.

220

Sup. Ct 3rd G. Sec.

Wm. Osgood

U. S. The Council

Further Abs. Records  
by Wm. Osgood

Waiting apts.

Whether testimony of witnesses taken before:

18-19

41 The 1st and 2nd bills. All the bills of which are now in-

42 tain, except those which are used and circulated in the

43 1st and 2nd bills. To the best of my knowledge I believe them

44

15. H. B. BAILEY  
Att'y for Appellee.

the jury box.

"verdict and they said it was." This was done before they had

45 asked by the Court if the verdict as thus amended, was their

46 Page 7 of Bill's Abstract of Record. After the amended ver-

to Chicago, and went to the office on the 10th of July.

about the last of July. I took about \$2000 of that kind of bills

47 His books were down which I believe was in June, 1861, and

48 time have been and are now used as currency. After the said

49 notes were at the date of said circulation of deposit, ever since that

50 date they became deposited before 19 Feb. 1861, but were

51-52

53 The 1st and 2nd bills, which were taken before the

SUPREME COURT---STATE OF ILLINOIS,  
THIRD DIVISION.

URI OSGOOD, Appellant,  
*vs.*  
Delos W. McConnell, Appellee. } Appeal from Will Circuit Court.

ABSTRACT OF CASE.

Record	
1-2	Summons.
2 to 8	Declaration.
2-3	1st Count—Special Count on Certificate of Deposit. 2d Count, also special setting out Certificate of Deposit.
8	Plea—General issue.
8 to 17	Special plea.
18 to 20	Replication to pleas—filed March 3d, 1862.
21	December Term, 1861, commences December 2d, 1861.
22	Dec. 6, 1862, case set for trial on motion of Plaintiff.
22	Deft. excepts to the case having been set for trial.
23	Dec. 10, 1862—on motion of Plf, Court ordered a trial:
28	Deft. excepts to the order of trial.
23-24	Trial by jury. Verdict for Plf, \$450,00.

Motion for new trial.

- 24-25 Motion for new trial argued:—*denied*:—Deft. excepts.
- 25-26 Appeal prayed to Supreme Court:—granted by Deft. entering into bond in the sum of \$800,00, with security.
- 26 Appeal Bond presented in open Court and approved.
- 27 Bill of exceptions signed by Judge and filed in open Court.
- 27to50 Bill of exceptions.
- 27 George S. House, a witness for Plf., computed the interest on certificate of deposit and made amount principal and interest, \$450,00.

On cross examination, he said at date of the certificate, the difference between Illinois and Wisconsin currency or bank bills and gold was 10 to 12, and perhaps 15 per cent. At the time it fell due the difference was from 45 to 60 or 65 per cent. and nearly the same difference between that and Eastern bank bills. Illinois and Wisconsin currency or bank bills were the principal currency of the country at the date of the certificate, and were what was called in common parlance current bank bills, or current bank notes, &c.

Plaintiff McConnell introduced the deposition of Augustus A. Osgood, both the direct and cross examinations as his own. Deft, declining to use or introduce any part of said deposition.

- 29to43 Augustus A. Osgood's deposition as introduced by Plf.
- 30-31 On direct examination, witness authorized to receive money on Deposit for Deft. and issue Certificates for the same in Def'ts name. Int. and Ans. 6.
- 31-32 Received the money specified in and executed and delivered to Plf. the Certificate marked "A," in name of Deft. for same.

- 34 In answer to cross interrogatory 2d, witness says Illinois and Wisconsin State Bank bills, were the kind of funds denominated current bank notes in the locality where said instrument marked "A," was issued and at the Banking office of the Deft. herein.

In answer to cross interrogatory 3d. At the date of said instrument marked "A," witness said—I could not state the exact value of what were denominated by Banks, current bank notes. It was just at the beginning of stump-tail times, and all bank notes then in circulation in this section of the country were more or less depreciated—gold and silver being worth from 5 to 25 per cent. premium on the dollar over current bank notes.

In answer to cross interrogatory 4, at the time of the date of said instrument "A," witness said :—to the best of my recollection gold and silver coin was at a premium from 10 to 20 per cent.

- 36 Ans. to 13th direct Int. The funds received for said certificate were Ill's and Wis. State Bank notes.

Ans. to 14th direct Int. Ill's and Wis. State bank notes were received and paid out as current bank notes when such notes were deposited.

- 38 Direct 18th. Illinois and Wisconsin State Bank notes were at a discount for money.

- 39 Direct 19th—Gold and silver paid and circulated as money at that time.

Direct 20th. Hardly any bank notes in circulation that passed as money—most all being at a discount.

Direct 21st. Illinois and Wisconsin notes passed as a sort of a circulating medium.

Direct 22d. It was sometimes used as a circulating medium at par and sometimes not.

Direct 23. "When Ill's and Wis. State Bank notes were deposited they were paid to the same party at par; when other kind of funds were deposited such funds were used in place of Ill's and Wis. currency.

40 Direct 26th. Gold and silver and U. S. Treasury notes and bills of some Eastern and some of the bills of Ill's banks are now received and paid out.

Direct 27. The banks of Ill's and some of the Eastern banks are now worth 87 cents on the dollar. Old U. S. demand notes, \$1.04 and \$1.05. Gold and silver from 10 to 15 per cent. over bank notes.

41 Direct 28. Gold and silver and U. S. Treasury Notes par funds now in said locality.

Direct 29. Some other funds I believe.

Direct 30. Some Eastern Bank notes and I believe some of the Ill's bank notes.

41-2 Cross Int. and Ans. 4. At the date of the paper marked "4," (Cert. Dep.) all or nearly all the bank bills issued by all the Banks of Ill's and Wis. were denominated and passed by banks and banking institutions as current bank notes.

Cross Int. 5. And generally as par funds.

44 Plf. under objection, introduced the following paper, marked "A":

Uri Osgood's Exchange and Collection Office,  
Joliet, May 8th, 1861.

D. W. McConnell, Esqr., has deposited with me three hundred eighty-eight 50-100 Dollars, in current Bank notes to the credit of himself, which will be paid in like funds to his order hereon, three months after date with interest at 10 per cent. Uri Osgood,  
No. 4003. Pr. A. A. Osgood.

PLF. RESTS HIS CASE.

45 Rufus R. Allen, a witness for Deft., testified that in 1860 and 1861, he was in Sharpe & Co's Bank, and knew value of Ill's and Wis. currency or bank bills. They were principal circulation here then—in May—or, at date of this certificate. Ill's and Wis. bank bills were at a discount of 10 or 12, or perhaps 15 per cent. Ill's and Wis. bank bills at that time were called and known as current bank bills and continued so till the Ill's and Wis. Banks went down, which was in June or about that time, 1861. When this certificate fell due, Ill's and Wis. bank bills were at a discount of 40 to 60 or 70 cents on the dollar.

On cross examination witness said, Eastern bank bills I believe at date of certificate and during the summer, were at a discount of about 2 per cent., perhaps  $2\frac{1}{2}$  per cent., and after the Ill's and Wis. banks went down Eastern bills and gold and silver were the principal money in circulation, principally Eastern. Ohio, Indiana and Iowa bills about same as Eastern, not worth quite as much. Legal tender notes are at a discount of some 50 or 60 cts. for gold at this time and the difference between U. S. Legal tender notes and good current bank bills is now  $\frac{1}{4}$  to  $\frac{1}{2}$  difference.—  
46 Legal tender notes being worth that much the most.

46-7 The Court instructed the jury for plaintiff as follows, under exception by Defendant :

“ If the jury believe from the evidence, that the Defendant did promise to pay the Plaintiff as declared upon in said declaration, and that payment has not been made upon said promise by said Defendant to said Plaintiff, the Court is requested to instruct the jury on behalf of the Plaintiff, that a promise to pay in ‘Current bank notes,’ is a promise to pay in current money and the Plaintiff is entitled to recover of the Defendant such sum as the jury may find to be due upon said instrument in writing, declared upon and introduced in evidence in this case in money.”

The Court then refused to give the following instructions, as asked by Deft. and marked them “*Refused*,” to which the Deft. then and there excepted :

47 For Deft. 1st:—

“*Refused.*” “ The Plaintiff is only entitled to recover in this suit the value of the current bank notes mentioned and set forth in the certificate introduced in evidence before you. And if the jury believe from the evidence that such bank notes were at a discount they are authorized to find for the Plaintiff the value of such bank notes and the interest at ten per cent. on such value.”

48 For Deft. 2d.

“*Refused.*” “ If the jury believe from the evidence that the bank notes mentioned and described in the certificate of deposit, introduced in evidence by the Plaintiff were not equal in value to gold and silver coin of the United States, then the jury will only find for the Plaintiff, the value of such current bank notes in such gold and silver coin, with interest on such amount at ten per cent.”

For Deft. 3d.

“If the jury believe from the evidence that the current bank  
 “notes mentioned and described in the certificate of deposit, in-  
 “troduced in evidence by the Plaintiff were at the time such bank  
 “notes were deposited and when the same became due, less than  
 “par value, then the jury are authorized to find for the Plaintiff  
 “the value of such bank notes in par funds with interest thereon  
 “at ten per cent.”

49 Verdict of jury,—“We the jurors, find for the Plaintiff \$450.”  
 Verdict of the jury as altered by the Court and filed:

“We the jurors find for the Plaintiff and assess the damages at  
 “\$450.”

MOTION AND CAUSES FOR NEW TRIAL.

1st. The Court gave improper and illegal instructions to the jury on the part of Plaintiff.

2d. The Court refused to give to the jury proper and legal instructions on the part of Defendant when asked.

3d. The verdict of the jury is contrary to law and the evidence under the issues in the case.

4th. The verdict of the jury is contrary to the law and the evidence.

5th. The Court permitted improper and illegal evidence to be given to the jury by the Plaintiff.

Motion for new trial overruled and judgment on verdict ex-  
 50 cepted to by Deft.

50-51 Appeal Bond—approved in open Court.

51-52

Clerk's certificate.

## 53 Errors assigned in thist Court :

1st. The Court in which said suit was tried gave improper and illegal instructions to the jury on the part of Plaintiff below.

2d. Said Court refused to give the jury proper and legal instructions on the part of Defendant when asked.

3d. The verdict of the jury in the Court below was contrary to law and the evidence.

4th. The Court below, improperly refused to grant a new trial.

5th. ~~The Court below tried said case without authority of law and allowed improper and illegal evidence to be given to the jury on said trial by Plaintiff.~~

## AUTHORITIES RELIED ON BY APPELLANT.

As to the exception that the case was tried without authority of Law :—

Session Laws, 1859, P. 60, Sec. 5.

“ “ 1853, Pages 172-3, Sec's 1 and 4.

As to the measure of damages and refusal of Deft's instructions:

12th Ill's Rep. 184, Smith et. al. vs. Dunlap.

14th “ “ 103, Stevenson vs. Unkefer.

3d Connecticut 366, Philips vs. Riley.

4th Pike, 175, Dillard vs. Evens.

1st Johnson's Ch. Rep. 231, Mann vs. Ex'rs of Mann.

As to improper instruction of Plf. below :—

20th Ill's 464, Ewing vs. Runkle.

Id. 485, Galena & Chicago R. R. Co. vs. Jacobs.

23d Ill's 472, Matthews vs. Hamilton.

URI OSGOOD, APPELLANT,  
In pro. per. and Att'y.

75 220

Mr Osgood  
vs

Mr Cornell

Abstract Brief

Filed Apr 27. 1863.

Leland  
CM

\$10. per. by appellant

State of Illinois  
Supreme Court 3<sup>rd</sup> Grand Division

Mr Osgood Appellant }  
vs } Appeal from Will  
Delo W. McConnell }  
Appellee }

And now comes  
the said appellee by R. E. Barber his  
attorney and enters his motion for a  
rule on said appellant to file <sup>in this Court</sup> a certified  
record of all orders in the said cause  
made by the Court below by Saturday  
the ninth day of May A.D. 1863

Delo W. McConnell

by R. E. Barber  
his atty

75

As good

11

McConnell

~~~~~

No. of left for  
full record

Frid day 2<sup>d</sup> 1863.  
L. Island  
Ch.

Overrule  
no other specified

In Supreme Court - 3d. Division

Mr Orgood  
vs. Appellant  
Delos W. McConnell  
Appellee  
Appeal from Will

State of Illinois, Will County vs. Mr Orgood of said Will County  
appellant in the above suit says that on account of ill health  
he has not been able to make up an argument in the above  
suit, that at this time when he is exercising moderately  
the open air, he feels very well, with the exception of a head ache  
but that he is unable to read & investigate law questions, & has  
been thus unable, ever since his affirmation for a continuance  
in said suit was filed herein & is still unable to read & in-  
vestigate law questions, that as often as he undertakes to investi-  
gate any question requiring study & reflection, he is compelled, from  
ill health to desist - and he refers to his affirmation filed in  
said suit, on his application to continue the same & makes the  
same a part hereof - He believes he will be compelled, for a time  
to entirely desist from attempting to practise law, on account of  
his ill health - He hopes a decision of said suit will be deferred  
till next term, when he believes he will be able to make up & file  
an argument therein

Subscribed & affirmed to the 24th  
day of June A.D. 1883 - Witness B. F.  
Sawell Clerk of Will County Circuit  
Court the seal of said Court

B. F. Russell  
Clerk

attest  
Seal

Mr Orgood

Uri Osgood  
Delos W. McCoull  
Affr. of Peff.

Filed June 30. 1863.  
Deland  
etc.

Alaska - please file  
M.A.

State of Illinois  
Supreme Court  
Wm Asgood

3<sup>rd</sup> Grand Division

220

vs  
Delos W. McConnell

} Appeal from Will

State of Illinois, Gasalle County

3<sup>rd</sup> Grand Div. } p

Royal E. Barber  
of Will County in said State being first  
duly sworn saith that the said record  
in the above entitled cause is not a full  
record of all of the orders made and entered  
by the Court below in said cause

Subscribed & Sworn to before  
me this 2<sup>nd</sup> day of May 1863  
Delos W. McConnell

R. E. Barber

75

229

Agood

14

McCormell

off R.E. Barber  
on his for full record

Filed May 2<sup>d</sup> 1863.  
L. Island  
Clerk.

Supreme Court 3rd C. Div. State of Illinois

Wm Osgood  
Appellant

vs  
H. W. Conwell  
Appellee

} Appeal from Will

It is stipulated

between said parties to the above  
written cause that appellant have  
until Monday the 18th inst to file argument  
in said cause

Done at Ill May 12. 1863

Wm Osgood appellant  
H. W. Conwell appellee  
by R. E. Barber atty

75 220

Supreme Court

Wm. Osgood  
vs. appelland

John W. Mc Connell  
appelland

Stipulation to extend  
time to file agr.

Filed May 12, 1863  
S. L. Carter  
AM

Supreme Court

State of Illinois  
3<sup>rd</sup> Cir. Div.

220  
Mr. George Spillane }  
Delos W. McConnell } Appeal from the

And now coming  
said appellee by R. E. Barber his solicitor  
attorney and resists said motion of  
said appellant for a continuance of  
said cause, but is willing to further  
extend the rule on appellant requiring  
him to file his argument in said  
cause, hoping that he may during the  
present term of said Court to prepare the  
same, for appellant is very anxious  
to have said case disposed of at this time

R. E. Barber

Atty for Appellee

228

appellu  
no. con.

Supreme Court State of Illinois vs

Mrs Csgood. Appellant

vs

Devs Wm W. Cornell Appellee

State of Illinois Will County vs

Mrs Csgood of said Will County being duly affirmed according to Law says he is the Appellant named in the above entitled suit - that he is an attorney & counsellor at Law by profession and has himself attended to said suit both in the Court below and in this suit and has not had any other counsel employed. That ever since the Record of said suit was filed in this Court he has been quite ill and that with much <sup>Excision</sup> ~~Excision~~ and injustice to his own health he was able to make up the abstract of the Record and he expected and hoped to so far recover his health as to be able to make up and prepare his argument therein but that on account of his ill health he has been unable to do so. And that when the time was extended by stipulation to file the argument herein until this morning he then hoped to be able to have it prepared but since the said stipulation had been entered into he has been almost entirely unable to do any business. That he has endeavored to prepare his argument being anxious to dispose of the suit but that for the present at least he is entirely unable to accomplish any office labor examine legal questions or attend to the ordinary labors

of his profession - in account of his illness and  
severe indisposition - That he deems it very  
much for his interest as applicant in the above  
entitled suit that the errors by him assigned  
therein be supported by argument and asks  
of this Court that the said cause may be  
continued until next term -

Subscribed & affirmed to the 18th day Wm Osgood  
of May A. D. 1863 before me the under-  
signed Clerk of the Circuit Court of Will  
County of said at my office in Joliet in  
said County - Witness the seal of said Court  
hereto attached.

B. F. Russell  
Clerk

75-200

aff. for Court

Filed May 18, 1863

Wm Osgood

SUPREME COURT---STATE OF ILLINOIS,  
THIRD DIVISION.

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URI OSGOOD, Appellant,  
*vs.*  
Delos W. McConnell, Appellee. } Appeal from Will Circuit Court.

ABSTRACT OF CASE.

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2 to 8 Declaration.  
2-3 1st Count—Special Count on Certificate of Deposit.  
2d Count, also special setting out Certificate of Deposit.  
8 Plea—General issue.  
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23-24 Trial by jury. Verdict for Plf, \$450.00.

Motion for new trial.

- 24-25 Motion for new trial argued:—*denied*:—Deft. excepts.
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In answer to cross interrogatory 4, at the time of the date of said instrument "A," witness said :—to the best of my recollection gold and silver coin was at a premium from 10 to 20 per cent.

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Ans. to 14th direct Int. Ill's and Wis. State bank notes were received and paid out as current bank notes when such notes were deposited.

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Direct 22d. It was sometimes used as a circulating medium at par and sometimes not.

Direct 23. "When Ill's and Wis. State Bank notes were deposited they were paid to the same party at par; when other kind of funds were deposited such funds were used in place of Ill's and Wis. currency.

40 Direct 26th. Gold and silver and U. S. Treasury notes and bills of some Eastern and some of the bills of Ill's banks are now received and paid out.

Direct 27. The banks of Ill's and some of the Eastern banks are now worth 87 cents on the dollar. Old U. S. demand notes, \$1,04 and \$1,05. Gold and silver from 10 to 15 per cent. over bank notes.

41 Direct 28. Gold and silver and U. S. Treasury Notes par funds now in said locality.

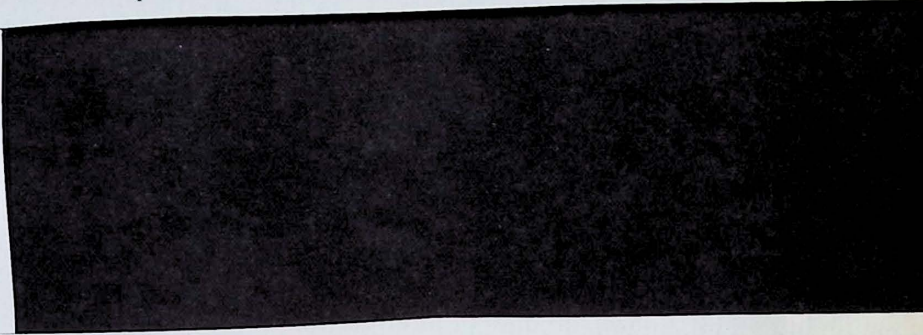
Direct 29. Some other funds I believe.

Direct 30. Some Eastern Bank notes and I believe some of the Ill's bank notes.

41-2 Cross Int. and Ans. 4. At the date of the paper marked "A," (Cert. Dep.) all or nearly all the bank bills issued by all the Banks of Ill's and Wis. were denominated and passed by banks and banking institutions as current bank notes.

Cross Int. 5. And generally as par funds.

44 Plf. under objection, introduced the following paper, marked "A":



PLF. RESTS HIS CASE.

45 Rufus R. Allen, a witness for Deft., testified that in 1860 and 1861, he was in Sharpe & Co's Bank, and knew value of Ill's and Wis. currency or bank bills. They were principal circulation here then—in May—or, at date of this certificate. Ill's and Wis. bank bills were at a discount of 10 or 12, or perhaps 15 per cent. Ill's and Wis. bank bills at that time were called and known as current bank bills and continued so till the Ill's and Wis. Banks went down, which was in June or about that time, 1861. When this certificate fell due, Ill's and Wis. bank bills were at a discount of 40 to 60 or 70 cents on the dollar.

On cross examination witness said, Eastern bank bills I believe at date of certificate and during the summer, were at a discount of about 9 per cent. perhaps 21 per cent. and after the Ill's and Wis. banks went down Eastern bills and gold and silver were the principal money in circulation, principally Eastern. Ohio, Indiana and Iowa bills about same as Eastern, not worth quite as much. Legal tender notes are at a discount of some 50 or 60 cts. for gold at this time and the difference between U. S. Legal tender notes and good current bank bills is now  $\frac{1}{4}$  to  $\frac{1}{2}$  difference.— Legal tender notes being worth that much the most.

46-7 The Court instructed the jury for plaintiff as follows, under exception by Defendant :

“ If the jury believe from the evidence, that the Defendant did  
 “ promise to pay the Plaintiff as declared upon in said declaration,  
 “ and that payment has not been made upon said promise by said  
 “ Defendant to said Plaintiff, the Court is requested to instruct  
 “ the jury on behalf of the Plaintiff, that a promise to pay in  
 “ ‘Current bank notes,’ is a promise to pay in current money and  
 “ the Plaintiff is entitled to recover of the Defendant such sum as  
 “ the jury may find to be due upon said instrument in writing, de-  
 “ clared upon and introduced in evidence in this case in money.”

The Court then refused to give the following instructions, as asked by Deft. and marked them “ *Refused*,” to which the Deft. then and there excepted :

47 For Deft. 1st:—

“ *Refused.*”  
 “ The Plaintiff is only entitled to recover in this suit the value  
 “ of the current bank notes mentioned and set forth in the certifi-  
 “ cate introduced in evidence before you. And if the jury believe  
 “ from the evidence that such bank notes were at a discount they  
 “ are authorized to find for the Plaintiff the value of such bank  
 “ notes and the interest at ten per cent. on such value.”

48 For Deft. 2d.

“ *Refused.*”  
 “ If the jury believe from the evidence that the bank notes  
 “ mentioned and described in the certificate of deposit, introduced  
 “ in evidence by the Plaintiff were not equal in value to gold and  
 “ silver coin of the United States, then the jury will only find for  
 “ the Plaintiff, the value of such current bank notes in such gold  
 “ and silver coin, with interest on such amount at ten per cent.”

For Deft. 3d.

*“Refused.”*  
 “If the jury believe from the evidence that the current bank notes mentioned and described in the certificate of deposit, introduced in evidence by the Plaintiff were at the time such bank notes were deposited and when the same became due, less than par value, then the jury are authorized to find for the Plaintiff the value of such bank notes in par funds with interest thereon at ten per cent.”

49 Verdict of jury,—“ We the jurors, find for the Plaintiff \$450.”  
 Verdict of the jury as altered by the Court and filed :

“ We the jurors find for the Plaintiff and assess the damages at \$450.”

MOTION AND CAUSES FOR NEW TRIAL.

1st. The Court gave improper and illegal instructions to the jury on the part of Plaintiff.

2d. The Court refused to give to the jury proper and legal instructions on the part of Defendant when asked.

3d. The verdict of the jury is contrary to law and the evidence under the issues in the case.

4th. The verdict of the jury is contrary to the law and the evidence.

5th. The Court permitted improper and illegal evidence to be given to the jury by the Plaintiff.

Motion for new trial overruled and judgment on verdict accepted to by Deft.

51-52 Clerk's certificate.

53 Errors assigned in thist Court :

1st. The Court in which said suit was tried gave improper and illegal instructions to the jury on the part of Plaintiff below.

2d. Said Court refused to give the jury proper and legal instructions on the part of Defendant when asked.

3d. The verdict of the jury in the Court below was contrary to law and the evidence.

4th. The Court below, improperly refused to grant a new trial.

5th. The Court below tried said case without authority of law and allowed improper and illegal evidence to be given to the jury on said trial by Plaintiff.

AUTHORITIES RELIED ON BY APPELLANT.

As to the exception that the case was tried without authority of Law :—

Session Laws, 1859, P. 60, Sec. 5.

“ “ 1853, Pages 172-3, Sec's 1 and 4.

As to the measure of damages and refusal of Deft's instructions:

12th Ill's Rep. 184, Smith et. al. vs. Dunlap.

14th “ “ 103, Stevenson vs. Unkefer.

3d Connecticut 366, Philips vs. Riley.

4th Pike, 175, Dillard vs. Evens.

1st Johnson's Ch. Rep. 231, Mann vs. Ex'rs of Mann.

As to improper instruction of Plf. below :—

20th Ill's 464, Ewing vs. Runkle.

Id. 485, Galena & Chicago R. R. Co. vs. Jacobs.

23d Ill's 472, Matthews vs. Hamilton.

URI OSGOOD, APPELLANT,  
In pro. per. and Att'y.

75 220

Wm Osgood

vs Wm. Connell

Abstract & Brief

Filed Apr 27 1863

Delaware

MR.

\$10. pd. by appellee

SUPREME COURT.---STATE OF ILLINOIS.

THIRD GRAND DIVISION.

Uri Osgood, Appellant,  
vs.  
Delos W. McConnell, Appellee. } Appeal from Will.

ARGUMENT OF APPELLEE.

I.

I contend that said instrument in writing declared on and introduced in evidence upon the trial of said cause in Court below, is a promissory note. In support of this position I cite,

Story on Promissory Notes 15 § 12 and 17 § 14,  
Chitty on Bills 40 and Notes, and 516-129-and 525,  
111 Kent's Commentaries 75,  
12 Ohio Reports 302, Moore vs. Gano,  
14 Conn " 363, Kilyore vs Bulkley,  
2 Hill N. Y. " 295, Bank of Orleans vs Merrill,  
3 Comstock " 19, Leavitt vs Palmer,  
13 Howards U. S. 218, Miller vs Austin, et al,  
19 Johns N. Y. Reports, 144, Judah vs Harris,  
18 Ill. Reports, 565, Bank of Penn. vs Farnsworth,  
19 " " 391, Laughlin vs Marshall,  
20 " " 144, Swift et. al. vs Whitney and }  
Marsh vs same }

which said cited authorities are so conclusive in support of said position that I deem it unnecessary to comment thereon.

Said instrument in writing being a note is not subject to the operation of those principles of law regulating the question of damages upon a *Special Contract*.

## II.

Said note being payable in "current Bank notes," was payable *in money*.

|                      |                                        |
|----------------------|----------------------------------------|
| John's Ch. Rep. 231, | Mann vs Ex'rs of Mann,                 |
| 20 Ill.              | " 144, 2 cases vs Whitney,             |
| 21 "                 | " 101, Trowbridge vs Seaman,           |
| 27 "                 | " 501, C. F. & M. Ins. Co., vs Keiron, |
| 27 "                 | " 525, Marine Bank vs Chandler.        |

## III.

"Current Bank Notes" at the date of said note, ever since that time have been and now are used, passed and circulated through said State as and for cash or money, and of this fact the Court is bound judicially to take notice.

See Dillon vs Dillon, 4 Pike, 178.

It is in proof that Appellant was a banker and a lawyer, that he advertised as such banker for money, that witness Osgood was his teller or cashier, was by him authorized to receive said money for his use, to execute and deliver said note (certificate of deposit) in said form thereof in his name and for his benefit, that at the date thereof "all or nearly all the bank bills issued by all the Banks of Illinois and Wisconsin were denominated and passed by banks and banking institutions as current bank notes," "and generally

“as par funds,” that said witness “did as such cashier in behalf of said appellant receive *the sum of money* expressed in this paper (said note meaning) from appellee and made and delivered to appellee in conformity to authority to him given by appellant, the paper (note) referred to for use of appellant,” “that these bank notes mentioned in said instrument in writing were received and paid out at par at that time,” that “a part consideration of said paper marked “A” (note) was an old certificate of deposit, made by appellant to appellee *some time previous*,” that all Ill. banks, bills of which are *now* circulated at par were then established and had issued bills,” that some of the Ill. and Wis. bank notes were at the date of said certificate of deposit (note,) ever since that time have been and now are used as “*current bills*,” “that Ill. and Wis. bank notes were not used as *current bank notes* when they became depreciated below 15 per cent., but were then retired from circulation,” which was in June or about that time “1861.”

The terms of said note show that appellant did not receive the sum therein expressed from appellee as a *bailment*, but as a *loan*, for a time certain therein expressed, for the forbearance of which appellant agreed to pay interest thereon, and then converted it to his own use, and for all that appears in evidence, then realized dollar for dollar upon it and never lost anything upon it by reason of depreciation and retiring from circulation of the then *current bank notes*.

Appellant does not attempt to prove that said current bank notes were of the *poorest*, or of a *poor* grade of Ill. and Wis. bank notes. How can it be presumed that they were of a *poor* grade rather than of a good grade which ever since have been and now are *current bank notes*. How can the presumption be against the terms of the note except by proof?

Appellant received said money at his own risk of value and of depreciation. A part of it he actually received from appellee *some time previous* to the date of said note, and does not attempt to show that it was not coin.

Said note was not made payable in a *specific commodity*, not in any limited currency or bank issues, as "in current bank bills such as pass in Norfolk," or in "Georgetown bank notes," or in the "Common Currency of Arkansas," or in "State of Illinois indebtedness," and is not limited even to "Illinois Currency," or "Illinois and Wisconsin banks notes"—but is made payable in *CURRENT* bank notes, thus assuming to pay *current* bank notes at maturity thereof, or in lieu of *such* bank notes, to pay coin, and in any event, to pay *money*, for there is no limitation in the contract to any class or description of paper money for bank notes which may be *current* one day may be supplanted in current circulation the next day by other bank notes, so he that receives them as *current*, assumes all the risk of their remaining so. Appellant by the terms of his contract as well as by the proof, received said sum expressed in said note as money, and was responsible to appellee for said sum with interest thereon as expressed, in *money*. Currency in U. S. Treasury notes is now not only *money*, but a legal tender for money and that, when it is at a discount of forty to seventy per cent. for gold coin, the constitutional money of the Country, and when it is only  $\frac{1}{4}$  or  $\frac{1}{2}$  per cent. premium for current bank bills.

Witness Osgood endeavored to maintain a distinction between "Current bank notes" and "money," assuming that *coin* only was money, and yet on page 31 of record, admitted that he, as such cashier of appellant received for appellant *the sum of money* expressed in said note, from appellee, and on page 35 that these bank notes were received and paid out at par at that time, thus rejecting the adjudicated construction of the term *money*, by its *popular and legal meaning*, as denoting *cash*.

## IV.

Said instruction of Court below for appellee is proper, for it is based upon legitimate evidence in the case.

18 Ill's R. 266, Coughlin vs. The People.

## V.

As to authority of Circuit Court to try said cause—said cause was at issue by replecations filed March 3, 1862.

Sec. 6, page 60, Ses. Laws 1859, provides that the first week of each Term of Will Circuit Court shall be as a vacation term, and the remainder of the term shall be a trial term upon the provisions of the act of pages 172—3, of Ses. Laws 1853, referred to by appellant. Sec. 4, of act last referred to, provides that when issue is made up at a vacation term the parties shall determine whether the cause is to be tried by a jury, or by the Court, and an order shall be made accordingly, and the cause shall be set down for trial in the *manner* stated in said order and *not otherwise*.

Now, unless an order of Court was entered at vacation term, stating the manner of trial, a cause could not be forced to trial at trial term. Trial by jury, is a *right* to either party, and unless both parties agree to try the cause by the Court without the intervention of a jury, then it must be tried by jury. When cause is at issue, plaintiff is entitled to press it for trial. And if defendant chooses not to *agree* as to the manner of trial, has plaintiff no remedy in Court? All that defendant would have to do to prevent a trial for all time under said act, would be to refuse to *agree* as to the manner of trial, or absent himself from Court at vacation term, so that he could not be called upon to agree as to manner of trial, if the construction should be given to said act that defendants agreement at vacation term was necessary to enable the Court to set a cause at issue for trial by jury. Plaintiff has the right of jury trial without agreement of defendant thereto.

December Term, 1862, commenced Dec. 1, 1862. The first week of said term expired on the 6th day of that month, and the cause was set for trial by jury on said 6th day of said term.

Appellant did not then object thereto, nor did he object until the 9th day of said month, being the second day of said term at said term of said Court.

## VI.

This cause was at issue on all of the pleas before the Court, and the Court below had full power to render a verdict, and a duty to put said verdict in form before the jury were

- 1 Gil. 333, Cook vs Scott,
- 16 Ill. 39, Flinn vs Barlow,
- 21 " 620, Parmelee et. al. vs Smith,
- 22 " 357, Smith impl. vs Williams.

Appellant excepted to every act of appellee in this cause.

**R. E. BARBER,**

Att'y for

75 220  
Uri Osgood  
D. W. McConnell  
Ct. of Appeals

Filed June 30. 1863.  
L. Seland  
Clerk.

The People of the State of Illinois by  
the Grace of God free and Independent;  
To all to whom these presents  
shall come or may come Greeting;

Know Ye  
that we having caused to be inspected the Records  
and proceedings now remaining in the Office  
of the Clerk of Circuit Court in and for our  
County of Will do find there certain Records  
and proceedings in words and figures following  
to wit,

"State of Illinois)

"County of Will) St."

"The People of the State of Illinois  
to the Sheriff of said County Greeting,"

"We command You, That you  
summon Wm Osgood if he shall be found in  
said County, personally to be and appear before  
the Circuit Court of Will County, on the first  
day of the next term thereof, to be holden at the  
Court House in Joliet in said County, on  
the first Monday of December next, to answer  
unto Delas W Mc Connell in a plea of  
Respas on the case upon Promise, to the damage  
of the said Plaintiff as is said, in the sum of  
Five Hundred Dollars"

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

"Witnes Benjamin H Russell

2 "Clerk of our said Court, and the seal  
"thereof at foliet aforesaid, this  
"16<sup>th</sup> day of November A D 1861"  
"Seal"  
"B. F. Russell Clerk"

And on the back of the Summons as aforesaid  
appears the return of the Sheriff of said Will County,  
as follows to wit:  
"Served by reading to the within  
"named Uri Osgood the 16<sup>th</sup> day of November A D 1861  
"Fees Service 50. Release 5 Return 10 \$ . 65"  
"W. H. Bartlett Sheriff"

and  
the filing of said Clerk as  
follows to wit:  
"Filed 6<sup>th</sup> day of December A D 1861"  
"B. F. Russell Clerk"

And afterwards to wit on the 22<sup>nd</sup> day of November  
A D 1861, there was filed in the office of the said  
Clerk the declaration of said Plaintiff in words  
and figures as follows to wit

"State of Illinois"  
"Will County Circuit Court"  
"Of the December Term A D 1861"  
"County of Will. ss."  
"Delos W<sup>m</sup> Connell plaintiff in  
"this suit by R. C. Barber his Attorney complains  
"of Uri Osgood defendant in this suit who  
"has been summoned &c of a plea of Trespass  
"on the case upon promises. For that where

27

the said Defendant heretofore to wit on the Eighth  
day of May in the year of our Lord one thousand  
Eight hundred and Sixty one at wit that is  
to say at the County of Will and State of Illinois  
made his certain instrument in writing common  
ly called a certificate of Deposit bearing date  
at a certain day and year therein mentioned  
to wit; the day and year last aforesaid and  
thereby then and there promised to pay to the said  
plaintiff or order three months after the date thereof  
the sum of three hundred and eighty eight  
dollars and fifty cents in Current Bank  
Notes with interest at ten per cent meaning  
thereby with interest thereon at the rate of ten  
per cent per annum Value received and  
then and there delivered the said Certificate  
of Deposit to the said plaintiff by means whereof  
and by force of the Statute in such case made  
and provided the said Defendant then and  
there becomes liable to pay to the said plaintiff  
the said sum of money in the said Certificate  
of Deposit specified according to the tenor and effect  
of the said Certificate of Deposit and being so  
liable he the said Defendant in consideration  
thereof afterwards to wit on the same day and  
year and at the place aforesaid undertook and  
then and there faithfully promised the said plaintiff  
well and truly to pay unto the said plaintiff the said  
sum of money in the said Certificate of Deposit  
specified according to the tenor and effect of the  
said Certificate of Deposit."

"And whereas also the said Defendant  
afterwards to wit on the Eighth day of May in the year

4 of our Lord One Thousand Eight hundred  
and sixty one at the place aforesaid made his  
certain other instrument in writing in substance  
as follows to wit

1861 \$ 388<sup>50</sup>/<sub>100</sub> by Uri Osgood's  
Exchange and Collection Office  
Police May 8<sup>th</sup> 1861

1861 D N Mc Connell Esq has deposited with  
me Three Hundred Eighty Eight <sup>50</sup>/<sub>100</sub> Dollars in  
Current Bank Notes to the credit of himself  
which will be paid in like funds to his order  
thereon three months after date with interest  
at 10 per cent Uri Osgood

1861 No 41113 for A A Osgood

and then and there delivered the said other  
instrument in writing in substance as aforesaid  
recited to the said plaintiff by means whereof and  
by force of the Statute in such case made and  
provided the said defendant then and there became  
liable to pay to the said plaintiff the said sum of money  
specified in the said other instrument in writing  
in substance aforesaid recited according to the  
tenor and effect thereof and being so liable he  
the said defendant in consideration thereof after  
wants to wit on the same day and end year  
and at the place aforesaid undertook and there  
and there faithfully promised the said plaintiff well  
and truly to pay unto the said plaintiff the said sum  
of money specified in the said other instrument  
of writing in substance aforesaid recited accord-  
ing to the tenor and effect of the said other instru-  
ment <sup>in writing</sup> last aforesaid referred to

"And whereas

5 " also the said defendant afterwards to wit  
 " on the first day of November in the year of  
 " our Lord One Thousand Eight Hundred and sixty  
 " one was indebted at the place aforesaid to the  
 " said plaintiff in the sum of Five Hundred  
 " dollars lawful money &c for money before  
 " that time lent and advanced, & the said  
 " Plaintiff to the said defendant and at the  
 " special instance and request of the said  
 " defendant, and for other money by the said  
 " defendant before that time had and received  
 " to and for the use of the said Plaintiff & being so  
 " indebted the said defendant in consideration  
 " thereof afterwards to wit on the same day and  
 " year and at the place last aforesaid undertook  
 " and there and there faithfully promised the said  
 " plaintiff well and truly to pay to him the said  
 " plaintiff the said last mentioned sum of money  
 " when so the said defendant should be there<sup>unto</sup>  
 " afterwards requested"

" And whereas also the said  
 " defendant afterwards to wit on the same day and  
 " year last aforesaid and at the place aforesaid acco-  
 " unted together with the said Plaintiff of and  
 " concerning divers other sums of money  
 " before that time due and owing from the  
 " said defendant to the said plaintiff and then  
 " and there being in arrear and unpaid, and upon  
 " such accounting the said defendant was then and  
 " there found to be in arrear and indebted to  
 " the said plaintiff in the further sum of five hundred  
 " dollars of like lawful money and being so found in  
 " arrear and indebted to the said plaintiff the said

6. "defendant in consideration thereof afterwards  
"to wit on the same day and year last aforesaid  
"and at the place aforesaid undertook and then  
"there faithfully promised the said plaintiff to  
"pay to him the said plaintiff the said sum of  
"money in this Count mentioned when he  
"the said defendant should be thereunto afterwards  
"requested"

"And whereas also the said defendant  
"afterwards to wit on the twelfth day of November  
"in the year of our Lord one thousand Eight hundred  
"and sixty one at Follet to wit at said County of  
"Mill and State of Illinois was indebted to the  
"said plaintiff in the further sum of five hundred  
"dollars like lawful money for so much money  
"before that time and then due and payable from  
"the said defendant to the said plaintiff for interest  
"upon and for the forbearance of divers large sums  
"of money before then deposited with and lent  
"and advanced by the said plaintiff to the said  
"defendant and at the special instance and  
"request of the said defendant and by him the  
"said plaintiff forbore to the said defendant  
"for divers long spaces of time before then elapsed  
"at the like special instance and request of the  
"said defendant and for also for other money  
"before that time and then due and payable from  
"the said defendant to the said plaintiff for interest  
"upon and for the forbearance of divers other large  
"sums of money before then due and owing from the said  
"defendant to the said plaintiff and by the said plaintiff  
"forbore to the said defendant for divers large spaces of  
"time before then elapsed at the like special instance

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and request of the said defendant and being so indebted  
 to the said defendant in consideration thereof  
 afterwards to wit on the day and year last aforesaid  
 at the place aforesaid undertook and then and there  
 faithfully promised the said plaintiff to pay him the  
 said plaintiff the said last mentioned sum of money  
 when by the said defendant should be thereunto  
 afterwards requested"

"Notwithstanding the said defendant  
 notwithstanding his said several promises and undertak-  
 ings but contriving &c (although often requested &c)  
 to wit on the day when the said Certificate of Deposit  
 and said other instrument in writing became due and  
 payable according to the tenor and effect thereof &  
 oftentimes since to wit at the place aforesaid)  
 has not <sup>yet</sup> paid the said several sums of money above  
 mentioned or any or either of them or any part thereof  
 to the said plaintiff but so to do has heretofore wholly  
 neglected and refused and still does neglect & refuse  
 to the damage of the said plaintiff of five hundred  
 dollars and therefore the said plaintiff brings suit &c

"R E Barber"  
 "Plffs Atty"

"Copy of instrument account given on  
 \$ 388.<sup>50</sup>/<sub>100</sub> by Wm Osgood's  
 Exchange and Collection Office  
 Joliet May 8<sup>th</sup> 1861

"D. W. Mc Donnell Esq has deposited with me  
 Three Hundred Eighty Eight <sup>50</sup>/<sub>100</sub> dollars in Current  
 Banks Notes to the Credit of Himself which will be  
 paid in like funds to his order hereon Three  
 months after date with interest at 10 percent

8  
15  
" 15  
No 41113

(Signed) Uri Osgood  
Per Wm Osgood

" Uri Osgood vs Delos W Mc Connell Jr  
" \$ Money lent & advanced \$ 500,00  
" \$ Money had & received to & for the use of said Plaintiff 500,00  
" \$ Balance due on account stated 500,00  
" \$ Interest upon & for forbearance of divers large sums of money &c 500,00

And afterwards to wit on the twenty second day of January in the year A D 1863 the following Pleas of record filed in said Court by the said Defendant in said Cause which pleas are in words and figures following to wit

" Will County Circuit Court "

" Uri Osgood vs "

et als

" Delos W Mc Connell vs "

" And the said defendant in this own proper person comes & defends the wrong & injury where he says that he did not undertake nor promise in manner & form as the said plaintiff hath above thereof complained against him & of this he puts himself upon the Country &c

" Uri Osgood Deft in Pro Per

2 " And for a further plea in this behalf the said defendant says that the said plaintiff acted non because he says that before the commencement of this suit, to wit, on the 15<sup>th</sup> day of November A D, 1861, to wit at Joliet in the County of Will aforesaid he fully paid satisfied & discharged to the said plaintiff

9 "all the said supposed indebtedness, promises  
 " & undertakings in the said plaintiffs declaration  
 " specified & set forth & mentioned & this he is  
 " ready to verify, wherefore he prays judgment &c  
 " Uri Osgood Deft in pro, per

3 " And for a further plea in this behalf the said  
 " defendant says that the said Plaintiff actio non,  
 " because he says that all & singular the said  
 " supposed promises & undertakings in said  
 " Plaintiffs declaration mentioned & set forth  
 " were obtained by the said Plaintiff from the  
 " said defendant by and through fraud &  
 " circumvention & not otherwise, & this the said  
 " defendant is ready to verify, wherefore he prays  
 " judgment &c  
 " Uri Osgood Deft, in pro, per

4 " And for a further plea in this behalf the said  
 " defendant says that the said Plaintiff actio non,  
 " because he says that all & every the said  
 " supposed promises & undertakings in said plaintiffs  
 " declaration mentioned & set forth were & are  
 " usurious & corrupt & contrary to Law, & this the  
 " said defendant is ready to verify wherefore  
 " he prays judgment &c  
 " Uri Osgood Deft, in pro, per

5 " And for a further plea in this behalf the said  
 " defendant says that the said Plaintiff actio non,  
 " because he says that the said certificate of deposit  
 " instrument & the said several supposed promises  
 " & undertakings in said declaration mentioned

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"were made & given to the said Plaintiff in  
"consideration that the said Plaintiff would  
"loan to & deposit with the said defendant  
"immediately on receipt of said certificates of  
"deposit & instruments in writing the sum of  
"three hundred eighty eight dollars & fifty cents  
"in good current bankable funds whereas in  
"truth & in fact the said Plaintiff on receiving  
"said certificates of deposit & instruments in writing  
"from the defendant to wit on the 5<sup>th</sup> day of  
"May A.D. 1861 utterly refused to loan & deposit  
"with this defendant said sum of money as  
"he had so agreed & so the said defendant says  
"that the consideration for which said supposed  
"certificates of deposit & instruments in writing  
"as the said several supposed promises & under-  
"takings were made & given herein wholly & entirely  
"failed, and this the said defendant is ready to  
"verify - ~~thereupon~~ wherefore &c - he prays judgment &c  
"Vri Aquod Vt in pro pro

6

"And for a further plea in this behalf the  
"said defendant says that the said plaintiff Acti-  
"on, because he says that the said certificates of deposit  
"as the instruments in writing & the said several sup-  
"posed promises & undertakings in the said plaintiff's  
"declaration mentioned & set forth was & were  
"made & given for the amount specified in  
"the said certificates & instruments in writing  
"for that amount of uncurrent money being in  
"depreciated bank bills only worth to wit the  
"amount of forty cents on the dollar & in con-  
"sideration that the said defendant would receive

11 the same & execute & deliver to the said plaintiff  
 the said certificates of deposit & instruments in  
 writing in his said declaration mentioned  
 set forth & would make to said plaintiff the  
 said several promises in said declaration  
 mentioned & set forth, he the said plaintiff  
 faithfully promised the said defendant that  
 he the said plaintiff would make up & pay  
 to him the said defendant the difference between  
 the said depreciated funds & the value of good  
 & marketable funds & money within thirty days  
 from the date of said certificates of deposit, &  
 instruments in writing being a difference  
 of sixty cents on each & every dollar, specified  
 in said certificates of deposit & instruments in  
 writing and the said defendant says & alleges  
 that the said Plaintiff utterly failed & refused to  
 perform his said agreement & promise & make up  
 & pay to him the said defendant the said difference,  
 being the amount of sixty cents on each & every  
 dollar mentioned & set forth in the said certificates  
 of deposit & instruments in writing & so the said  
 defendant says that the consideration for which  
 said certificates of deposit & instruments in writing  
 said several supposed promises & undertakings  
 were made & given herein failed to the full amount  
 of sixty cents on each & every dollar specified  
 & set forth in said certificates of deposit & instru-  
 ments in writing & this the said defendant is  
 ready to verify - Wherefore &c - he prays  
 judgment &c

"Wm Osgood Deft. in pro pro

7 "And for a further plea in this behalf  
 "the said Defendant says that the said Plaintiff Actio  
 "non because he says that the said supposed cer-  
 "tificates of deposit & instruments in writing &  
 "Supposed promises & undertakings were made  
 " & given to the said Plaintiff by the said Defend-  
 "ant in consideration that the said Plaintiff &  
 "would furnish & deliver to the said Defendant  
 "within forty days from the date of ~~the~~ said supposed  
 "certificates of deposit & instruments in writing  
 "a bill of exchange drawn by some good & resp-  
 "sible individual or Banking Establishment  
 "on some good Solvent Bank in the City & State  
 "of New York of equal amount <sup>with the</sup> of said supposed  
 "Certificate of deposit & instrument in writing  
 "to be used by the said Defendant in the City of  
 "New York, and the said Defendant says that  
 "the said Plaintiff utterly failed & refused to furnish  
 " & deliver to the said Defendant said Bills of Exchange  
 "so by him agreed to be furnished & delivered as afo-  
 "resaid, and as the said Defendant in fact says that  
 "the consideration of said supposed Certificate of  
 "deposit & instruments in writing & of said several  
 "supposed promises & undertakings herein wholly  
 " & totally failed & this the said Defendant is ready  
 "to verify - wherefore &c - the said Defendant  
 "prays judgment &c.

"Vr̄i Osgood Deft. in pro-pri

8 "And for a further plea in this behalf the said  
 "Defendant says that the said Plaintiff Actio non  
 "because he says that previous to & at the time of  
 "making & delivering to the said Plaintiff by the said

Defendant of the said supposed certificates of deposit  
 instruments in writing & the making of said  
 several supposed promises & undertakings in  
 said Plaintiff's Declaration mentioned & specified  
 set forth, the said Plaintiff fraudulently rep-  
 resented & held out to said Defendant that he  
 the said Plaintiff was to receive from the City  
 of New York in the State of New York Certificates  
 of deposit issued by the Metropolitan Bank of  
 the City of New York of the same amount of the said  
 supposed certificates of deposit & instruments in  
 writing alleged by the said Plaintiff to have  
 been taken and received by him of the said  
 Defendant & that the said Plaintiff then & there  
 to wit, on the 9th day of May - 24. 1861, at said  
 in the County of Will aforesaid faithfully under-  
 took & promised, that on the receipt of said certificates  
 of deposit issued by the said Metropolitan Bank,  
 he would deliver the same to the said Defendant  
 for his said Defendant's certificates of deposit &  
 instruments in writing so received by said Plaintiff  
 of said Defendant and which are the same certificates  
 of deposit mentioned & described in said Plaintiff's  
 declaration; and the said Defendant alleges  
 that at the time the said Plaintiff so received the  
 said certificates of deposit & instruments in writing  
 from the said Defendant & the said several supposed  
 promises & undertakings the said Plaintiff well  
 knew that he was not to receive in the next thirty  
 days any <sup>such</sup> certificates of deposit issued by the said  
 Metropolitan Bank, that he did not intend  
 to deliver to said Defendant such certificates,  
 & so the said Defendant says that said supposed

14 "certificates of deposit & instruments in writing  
" & said several supposed promises & undertakings,  
" were & each & every of them were obtained by  
" said Plaintiff from him the said defendant,  
" by & through fraud & circumvention & not  
" otherwise - & this the said Defendant is ready to  
" verify - wherefore &c - he prays judgment &c.  
" Uri Osgood Deft. in pro, per

9 "And for a further plea in this behalf the said  
" said Defendant says that the said Plaintiff  
" Actio non because he says that before and at  
" the time of the commencement of this suit, to  
" wit on the 16<sup>th</sup> day of November A. D. 1861, at  
" Follet in the County of Mill aforesaid, the  
" said Plaintiff was & still is indebted to the said  
" Defendant in the sum of five hundred dollars  
" lawful money for so much money before that  
" time lent & advanced to, & paid said out &  
" expended to & for the use of the said Plaintiff & in  
" the further sum of five hundred dollars for Counsel,  
" advice & services before that time given, rendered,  
" & done to & for the said Plaintiff as an Attorney &  
" Counsellor at law at his special instance &  
" request, & in the further sum of five hundred  
" dollars for divers journeys made & performed in  
" about the business of the said Plaintiff & for  
" the said Plaintiff at his like request - & in the  
" further sum of five hundred dollars for labor &  
" services upon that time done performed & bestowed  
" as an Attorney & Counsellor at law in & about  
" the trial & advertising of divers suits at law  
" & in Chancery for him the said Plaintiff & at

15 This like special instance & request, which said  
 several sums of money the said Defendant is  
 willing & hereby offered to set off against any  
 claim the said Plaintiff may be able to prove  
 against the said Defendant & take judgment  
 for the balance - and this he is ready to verify -  
 therefore he prays judgment &c -

"Uri Osgood Deft. in pro per  
 Copy Defts account"

"1859 Jan 30<sup>th</sup> To Counsel & advice relative to the matter of notes  
 & mortgage & the course proper to be pursued by you  
 relative to the collection of the same \$ 25.00

" " 25<sup>th</sup> " Counsel & advice relative to the matter of trespasses  
 alleged by you to have been committed against  
 you by parties in Plainfield Hills - - - - - 15.00

" Feb 1 " Counsel & advice relative to your difficulties  
 with parties in Plainfield, where you were  
 desirous of commencing suit in Chancery - 25.00

" " 5 " Services &c in going to Osweys in Kendall  
 County for you & attending to business there  
 for you as an Atty at law - being about  
 2 days - - - - - 25.00

" " " " Cash paid for horses & buggy & for expenses  
 on the trip to Osweys - - - - - 5.00

" " 10 " Services &c going to Asherville & looking  
 after & attending to your business as an Attorney  
 to secure debts for you being about three days - 30.00

" " " " Cash pd. for horses & buggy & for expenses on said  
 trip to Asherville - - - - - 8.00

|      |       |    |   |                                                           |        |
|------|-------|----|---|-----------------------------------------------------------|--------|
| "    | "     | 15 | " | Cash advanced for you in your business of                 | 50,00  |
| "    | "     | 20 | " | Cash advanced for you to secure debt for you              | 100,00 |
| "    | "     | 25 | " | Cash advanced at this date for you to secure debt for you | 250,00 |
| 1860 | April |    | " | Counsel services in attending to prosecuting              |        |
|      |       |    | " | Suit for you in Dupays County Circuit Court               |        |
|      |       | 16 | " | at the April term thereof 1860                            | 30,00  |
|      |       |    | " | Counsel in relation to divers notes &                     |        |
|      |       |    | " | securities held by you against different                  |        |
|      |       |    | " | individuals & in relation to the manner of                |        |
|      |       |    | " | proceeding to collect the same                            | 50,00  |

10 "And for a further plea in this behalf the  
 "said Defendant says that the said Plaintiff acted  
 "now because he says that the said <sup>general</sup> ~~supposed~~ instruments  
 "in writing & promises & undertakings were made &  
 "given to the said Plaintiff by the said Defendant  
 "under the following arrangement & agreement;  
 "that is to say the said Plaintiff to wit on the  
 "8<sup>th</sup> day of May A.D, 1861 had in uncurrent bank  
 "notes & funds the sum of three hundred & eighty  
 "eight dollars & fifty cents which said bank notes  
 "and funds were worth at that time fifty cents  
 "on the dollar only, & at the special instance  
 "and request of the said Plaintiff the said Defendant  
 "took the said bank notes & funds of the said  
 "Plaintiff & gave to him the said instrument of  
 "writing set out in the second count of said  
 "declaration, with the express agreement on the  
 "part & behalf of the said Plaintiff that he  
 "would pay or make up to the said Defendant

17 the ballance to make up the full amount  
of said instrument in writing or certificate  
of deposit to make the same of the value of ~~the~~  
<sup>said</sup> sum of three hundred & eighty eight dollars &  
fifty cents being the amount to wit of fifty  
cents on the dollar of said sum, & that he the  
said Plaintiff would make up & pay the same  
to said Defendant within ten days next after  
the date of said instrument in writing or  
certificate of deposit, & with that understanding  
& agreement the said Defendant did make &  
deliver to said Plaintiff the said instrument in  
writing or certificate of deposit which is the  
same instrument in writing or certificate of  
deposit set out in said Plaintiffs second  
Count of his said declaration, & the said Defendant  
alleges that the said instrument in writing or  
certificate of deposit set out in said second Count  
is the said Plaintiffs sole & only cause of action  
in this suit on which the other counts & all  
of them in said declaration are founded  
& that this the said Defendant is ready to verify  
& therefore he prays judgment &c  
"Wm Osgood Deft. in pro per

Said afterwards to wit on the Thirtieth day of March  
in the year A D 1863 the following Replications of  
the said Plaintiff by H. D. Babcock his Attorney were  
filed in said Court in said cause which Repli-  
cations are in words and figures following  
& with

"Deles H McConnell }  
"28521  
"2d  
"Mr Osgood }

"And the said Plaintiff  
"as to the plea of the said defendant by him first  
"above pleaded and whereof he hath & doth the like  
"R E Barber Plffs Atty

"And the said plaintiff as to the said plea  
"of the said defendant by him secondly above  
"pleaded saith precludi non because he saith  
"that the said defendant did not & hath not fully  
"paid &c the said indebtedness &c or any part  
"thereof in manner & form as in that plea alleged  
"or in any other manner & form and this he the  
"said plaintiff prays may be inquired of &c  
"R E Barber Plffs Atty.

"And the said plaintiff as to the said plea  
"of the said defendant by him thirdly above pleaded  
"(& waiving the adjudged legal insufficiency thereof)  
"saith precludi non because he saith that said  
"promises &c in said declaration set forth were  
"not obtained by said plaintiff from said defendant  
"by & through fraud &c as in that plea attempted to  
"be alleged or alleged & this the said plaintiff prays  
"may be inquired of &c  
"R E Barber Plffs Atty.

"And the said Plaintiff as to the said plea of  
"the said defendant by him fourthly above pleaded  
"(& waiving the adjudged legal insufficiency thereof) saith

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"precludi non because he saith that said  
 "promises &c in said declaration &c were not  
 "and are not usurious, corrupt &c as in that  
 "plea alleged or attempted to be alleged and this  
 "the said plaintiff prays may be inquired of &c  
 "R. E. Barber Plffs Atty

"And the said plaintiff as to the said plea  
 "of the said defendant by him fifthly above pleaded  
 "saith precludi non because he saith that said  
 "consideration for which said promises &c were  
 "made & given have not wholly & entirely failed  
 "in manner and form as in that plea alleged  
 "and this the said plaintiff prays may be inquired of or  
 "R. E. Barber Plffs Atty,

"And the said plaintiff as to the said plea of  
 "the said defendant by him sixthly above pleaded  
 "saith precludi non because he saith that  
 "said consideration for which said promises &c  
 "were made & given have not failed to the full  
 "amount of sixty cents to each & every dollar —  
 "specified &c as in that plea alleged and this the  
 "said plaintiff prays may be inquired of &c  
 "R. E. Barber Plffs Atty.

"And the said Plaintiff as to the said plea  
 "of the said defendant seventhly above pleaded  
 "saith precludi non because he saith that said  
 "consideration of said promises &c have not wholly  
 "and totally failed as in that plea alleged and  
 "this the said plaintiff prays may be inquired of &c  
 "R. E. Barber Plffs Atty,

"And the said Plaintiff as to the said plea  
 "of the said Defendant by him eighthly above  
 "pleaded saith precludi non because he saith  
 "that said premises &c were not nor were either  
 "of them obtained by said plaintiff from the said  
 "defendant by <sup>and</sup> ~~or~~ through fraud &c as in that  
 "plea alleged & this the said plaintiff prays may  
 "be inquired of &c

"R. E. Barber Plffs. Atty.

"And the said Plaintiff as to the said plea  
 "of the said defendant by him ninthly above  
 "pleaded saith precludi non because he saith  
 "that he was not nor is impleaded to the said  
 "defendant in manner and form as the  
 "said defendant hath in that plea above alleged  
 "& this the said plaintiff prays may be inquired of &c

"R. E. Barber Plffs. Atty.

"And the said plaintiff as to the said plea of the said  
 "defendant by him tenthly above pleaded saith precludi  
non because he saith that said several instruments  
 "in writing promises &c were not made and given  
 "to the said plaintiff by the said defendant under the  
 "said pretended arrangement understanding and  
 "agreement in that plea alleged, and that said  
 "plaintiff's cause of action in this suit is as well  
 "the consideration for which said instruments  
 "in writing &c promises &c were made & given  
 "& as the said instruments in writing &c and this  
 "the said Plaintiff prays may be inquired of &c

"R. E. Barber Plffs. Atty.

21.

"United States of America }  
"State of Illinois } ss. "  
"County of Will

"Pleas before the Honorable  
"Sidney M Harris Judge of the Eleventh Judicial  
"Circuit of the State of Illinois and sole presiding  
"Judge of the Will County Circuit Court at a Term  
"thereof began & held at the Court House in the City of  
"Joliet in Said County and State on the first Monday  
"(the same being the second day) of December in the year  
"of our Lord One Thousand Eight Hundred and Sixty  
"One and of the Independence of the United States the  
"Eighty Sixth"

"Present

"Honorable Sidney M Harris Judge as aforesaid

"Henry Logan States Attorney

"William W Barrett Sheriff

"Attest Benjamin F. Russell Clerk

And afterwards to wit on the sixth day of December  
in the year of our Lord One Thousand Eight Hundred  
and Sixty Two the same being one of the regular days of  
the December Term of said Court for the year 1862  
and the said Court being then duly organized  
and sitting in open Court for the transaction of

23

of December in the year of our Lord One Thousand Eight Hundred and Sixty Two the same being one of the regular days of the December Term of said Court for the said year A D 1862 and the said Court being then duly organized and sitting in open Court for the transaction of business the following among other proceedings were had and entered of Record by said Court in words and figures following to wit

"Delos W. McConnell }  
"Uri Osgood } In response to the case upon Promise"

"Now on this day comes the said Plaintiff by R E Barker his Attorney and enters his motion to call this case for trial by jury, the said case being now reached in its order for trial upon the call of the docket by the Court of cases heretofore duly set for trial by jury Whereupon it is ordered by the Court that the trial of said cause do now proceed and that a jury do now come herein for that purpose Thereupon the said defendant enters his exceptions to the order of the Court as aforesaid And now come the jurors of a jury of good and lawful men to wit

Worsham Gabriel Morris Miss Isaac B Schermerhorn  
Isaac Joseph James Ryan Robert S Eward James  
No. Corning Alanson W Wilcox Washington Carpenter  
Caleb Chapman Patrick Fitzpatrick El Michael Adler who  
were duly empaneled and sworn to well and truly  
try the issues joined between the parties to said  
suit and a true Verdict render according to the

24 "evidence adduced by the said parties

"Whereupon the said jurors sat together  
"and heard the evidence adduced by the said  
"parties and the arguments of counsel for the  
"Plaintiff and the arguments of the said Defendant  
"and after receiving the instructions of the  
"Court said jurors retire in charge of an  
"Officer of the Court to consider of their Verdict  
"And afterwards said jurors return into  
"open Court and for Verdict here say  
"We the jury find for the Plaintiff and assess  
"his damages in the sum of Four hundred ~~dollars~~  
"and fifty dollars"

"Whereupon comes the said Defendant and  
"enters his motion for a new trial"

"And afterwards do sit on the ninth day of  
"February in the year of our Lord One thousand  
"eight hundred and sixty three the same being  
"one of the regular days of the December Term of  
"said Court for the year of our Lord One thousand  
"eight hundred and sixty two and the said Court  
"being duly organized and sitting in open Court  
"for the transaction of business the following  
"among other proceedings were had and entered  
"of Record by said Court in words and figures  
"following to wit:

"Delos H. McConnell }  
"2854 (vs) } Greepson the case upon Promiss  
"Uri Osgood }  
"And now on this day comes  
"the said Plaintiff by R. E. Barber his Attorney and

25  
the said defendant also comes in his own  
proper person and now on motion of said  
plaintiff it is ordered that the motion for a  
new trial herein heretofore entered by said  
defendant be now taken up for hearing  
And the Court having heard the arguments  
of Plaintiffs Counsel and of the said defendant  
and being now fully advised in the premises  
finds the reasons submitted by said defendant  
in support of his said motion for a new trial  
not sufficient to support the same and it is  
therefore ordered by the Court that said motion  
for a new trial be and the same hereby is  
overruled Thereupon said defendant enters  
his exceptions to the ruling of the Court in over-  
ruling his motion for a new trial  
Wherefore the said plaintiff ought now to have  
judgment entered upon the verdict of the  
jury entered against the said defendant  
in this cause

Therefore it is considered by the  
Court that said plaintiff do have and recover  
of said defendant his damages by said jury  
as aforesaid in their verdict assessed in  
the sum of Four Hundred and Fifty dollars  
together with his costs and charges by him  
about his suit in this behalf expended and  
that he have execution therefor

And thereupon the said defendant  
having entered his exceptions prays an appeal  
herein to the Supreme Court of this State from  
the judgment of this Court, which is allowed

26 } to him upon his filing herein his bond  
in the sum of Eight thousand dollars

And afterwards to wit on the Sixth day of  
March in the year of our Lord one thousand  
eight hundred and sixty three the same being  
one of the regular days of the December Term of  
said Court for the year of our Lord one thousand  
eight hundred and sixty two and the said Court  
being then duly organized and sitting in  
open Court for the adjudication of business  
the following proceedings were had and entered  
of record by said Court in words and figures  
following to wit to

"2854

"Delos H. McConnell  
"Wm Osgood } Suspended on the case upon Promises"

"And now on this day appears the said  
"Defendant in his own proper person and presents to  
"the Court his Appeal Bond in this cause to the Supreme  
"Court and upon motion of said defendant and the  
"Court being now fully advised in the premises it is  
"ordered by the Court that the same be and it is  
"hereby approved and filed herein Thereupon the  
"said defendant filed in open Court his Bill of  
"exceptions (signed by the judge of this Court) in  
"this cause"

The following is a true copy of the Verdict of the  
jury aforesaid in said cause filed the tenth day  
of December in the year A D 1862 in said Court  
to wit to

27

"The jury find for the plaintiff & assess the  
 Damages at \$450"

And afterwards to wit on the 6<sup>th</sup> day of March in the year  
 A D 1863 there was filed in said Court in said cause  
 the Bill of Exceptions of said Defendant which said  
 Bill of Exceptions is in words and figures following to wit:

"Hill County Circuit Court - December 1862  
 Delos M. M<sup>c</sup>Connell }  
 vs }  
 Mrs Osgood }"

"Be it remembered that on the  
 trial of this suit, the Plaintiff to sustain the issue  
 on his part introduced to the Court & Jury the follo-  
 wing evidence viz -  
 George S Wouse being sworn on the part of Plaintiff  
 testified substantially as follows - I live in  
 Polist & have for ten years at least I know  
 the parties in this suit - I have cast the interest  
 on the Certificate of deposit shown me, marked  
 "A" - & make the interest on same \$61.50 - & the  
 principal & interest \$450.00

"On Cross Examination witness testified as  
 follows - At the date of said Certificate the  
 difference between Illinois & Wisconsin in Currency  
 or ~~bank~~ bills & gold was ten to twelve per cent  
 & perhaps fifteen per cent - At the time it fell  
 due the difference was from forty to sixty or sixty  
 five per cent as near as I can recollect, & there  
 was nearly the same difference between that  
 & Eastern Bank bill Illinois & Wisconsin bank  
 bills Currency or bank bills were the principal  
 currency of the country at the date of the Certificate

28 " & was what was called in common parlance  
"Current bank bills or Current bank notes -  
"The amount of this Certificate marked "A" I  
"believe was made up of a former Certificate drawn  
"by defendant a check of \$ 158, on the Follet Bank  
"which drew Illinois & Wisconsin bank Bills I  
"believe & the balance in bills on Ill & Wisconsin  
"Banks"

"On re-examination by Plaintiff said  
"Witness testified that the difference between Eastern  
"bank notes & gold coin at the date of said  
"Certificate I believe was about two per cent  
"more or less - There was but very little Eastern  
"money in circulation at the date of the Certificate  
"& for some time afterwards - After the Ill & Wisconsin  
"banks went down Eastern bills & gold & silver  
"composed the principal money in circulation here  
"with some Ohio & Indiana & Iowa money, & the  
"difference between that & gold coin I believe  
"was about two per cent & may have been three per  
"cent or more"

"The Plaintiff then introduced & read to the jury  
"the deposition of Augustus A Osgood, both the  
"direct & Cross examination as his own evidence,  
"the Defendant declining to introduce or use the  
"Cross Examination of said Witness in any manner  
"stating that if Plaintiff read said Cross Examination  
"he would read it as his own evidence for that  
"the Defendant would not introduce it - said  
"deposition is as follows -"

#7  
29 "Qnty 1<sup>st</sup> What is your name, age occupation and place  
of residence, & how long have you there resided,

"Ans 1<sup>st</sup> My name is Augustus D Osgood age 23 in  
"Sept next & by Occupation an accountant, resident  
"of Forest Hill County & State of Illinois, have  
"resided 22 years & upwards

"Qnty 2<sup>d</sup> Are you acquainted with the said parties to  
"this Suit and if so how long have you known them  
"respectively?

"Ans 2<sup>d</sup> I am - have known the defendant ever since  
"my birth the Complainant about 4 or 5 years,

"Qnty 3<sup>d</sup> In what business or occupation was you engaged  
"in on the 5<sup>th</sup> day of May A D 1861 and for a time  
"prior & subsequent thereto?

"Ans 3<sup>d</sup> I was engaged at that time & prior thereto  
"as accountant in my Fathers Banking Office  
"in this City"

"Qnty 4<sup>th</sup> Please state your Fathers name and his conn-  
"nection if any with the above entitled case,  
"and in what business he was engaged at the time  
"and times referred to in the last foregoing inter-  
"rogatory if you know

"Ans 4<sup>th</sup> My Fathers name is Wm Osgood I believe he  
"is defendant in this Suit and was engaged  
"in the Law and Banking business at the time  
"mentioned

"Qnty 5<sup>th</sup> In the pursuit and performance of his said  
"Banking business at the time and times referred to  
"in your last two foregoing answers, did he or

" did he not advertise for and receive on  
 " deposit in the usual way and manner of  
 " Bankers sums of money and in consideration  
 " thereof issue and deliver to the person or persons  
 " making such deposit of money with him his  
 " certain Instruments in writing commonly  
 " known and designated by Bankers & others  
 " as Certificates of deposit or such other evidence  
 " of his indebtedness for and on account of such  
 " deposits of money as might be agreed upon  
 " by himself and the person or persons making  
 " such deposit of money with him }

" Ans 5<sup>th</sup> He did advertise, as is the custom with  
 " Bankers, for deposit and did receive deposits,  
 " and did issue his Certificate of deposit for  
 " sums deposited with him

" Duty 6<sup>th</sup> Was you or was you not while engaged as  
 " Accountant in your Father's Banking Office  
 " at the time and times referred to as stated in  
 " your answer to the foregoing direct interrogatory,  
 " and in the said interrogatory last above referred  
 " to, employed by your Father, the said defendant  
 " as his Cashier or teller, in performing the business  
 " of his said Banking business, and was you or  
 " was you not by him said defendant then  
 " authorized and empowered to receive in his  
 " name and for his use sums of money or  
 " deposit in his said Banking Office and in  
 " consideration thereof, sign his said defendant's  
 " name to such certificates of deposit for and in  
 " his behalf

"Ans 6<sup>th</sup> At the time mentioned I was employed  
 "as Cashier or teller to receive money on deposit  
 "and empowered to sign his name to certificates  
 "of deposit, by the said defendant

"Truly y<sup>e</sup> Pleas'd look at the paper now here shown to  
 "you & marked A & state whether or not you  
 "did as such Cashier or teller for and in  
 "behalf of <sup>the</sup> said defendant receive on the day  
 "therein in the date thereof expressed from  
 "the said plaintiff D W M Connell by the  
 "certain sum of money in Current Bank Notes  
 "therein stated to have been deposited by the said  
 "Plaintiff with the said defendant, and whether or  
 "not you did then and there at said Banking  
 "Office make and deliver to the said plaintiff  
 "the said paper marked A above refered to  
 "by virtue of and in conformity to the authority  
 "or power confered by the said defendant upon  
 "you as stated in your answer to the said  
 "foregoing 6<sup>th</sup> direct interrogatory and whether  
 "or not you was at or previous to the said  
 "date of the said paper marked A above  
 "refered to instructed and authorized by the  
 "said defendant to make and deliver in the  
 "name of and for the use of the said defendant  
 "the said paper marked A above refered to  
 "for the said sum of money therein expressed  
 "payable at the time and with interest therein  
 "and at the rate therein expressed and  
 "whether or not you did then and there  
 "make for and in behalf of the said defendant  
 "the said paper marked A above refered to

32 "and deliver the same to the said plaintiff  
"in obedience to and in conformity with  
"such instructions or authority to you given  
"by the said defendant as aforesaid."

"Ans 7<sup>a</sup> At the date expressed in this paper I did  
"as such cashier or teller for and in behalf  
"of s<sup>d</sup> defendant receive the sum of money  
"expressed in this paper from d<sup>r</sup> M. McConnell  
"the plaintiff and at that time did make and  
"deliver to said d<sup>r</sup> M. McConnell Esq<sup>r</sup> the paper  
"here referred to in conformity to the authority  
"to me given by said defendant, and that  
"I was previous to that time authorized and  
"empowered to make and deliver by the said  
"defendant in the name and for the use of  
"s<sup>d</sup> defendant certificates of deposit for any  
"sums of money deposited with him payable  
"upon time agreed upon, & upon interest not  
"exceeding ten per cent per annum.

"Duty 8<sup>th</sup> It is not the said paper marked "A" above  
"referred to in form of and the kind of instrument  
"in writing which you were prior to the date  
"thereof authorized and empowered by the said  
"defendant to make and deliver in the name  
"of and for the use of said defendant and above  
"designated by you as certificate of deposit upon  
"the receipt of money deposited with him the  
"said defendant."

"Ans 8<sup>th</sup> It is"

33  
"Duty 9"

In your answer to the 7<sup>th</sup> direct interrogatory  
aforesaid you state that previous to the time  
of the date of the said paper above referred to  
marked "A" you was authorized and empowered  
by the said defendant to make and deliver in  
the name and for the use of said defendant  
certificates of deposit &c. Has or was not that  
power and authority last above referred to in  
exercise by you and unrevoked by the said  
defendant on the day of the date of the said  
paper above referred to marked "A" and did  
or did you not make and deliver the said  
paper last above referred to in the <sup>name</sup> ~~name~~ of  
and for the use of the said defendant and  
as his act and deed

"Ans 9<sup>th</sup>"

That power was in exercise by me and  
unrevoked by the said defendant, on the day of  
the date of the said paper above referred to, and  
I did make and deliver said paper marked  
"A" in the name of the said defendant and  
for his use and benefit, and as his act  
and deed

"Plaintiff rests"

"Cross Duty 1<sup>st</sup>"

At the date of the said instrument marked  
"A" how long had you been engaged in the  
"Banking business & where?"

"Ans 1<sup>st</sup>"

Some three years and upwards in the City of  
"Poleit"

<sup>34</sup>  
"Cross Entry 3<sup>d</sup> At the date of the said Instrument marked  
"A" what kind of funds were denominated  
"Current Bank Notes in the locality where  
"the said instrument marked "A" was issued  
"and at the Banking office of the Defendant  
"herein?"

~~Ans~~ "Objected to by Counsel for Plaintiff"

"Ans 3<sup>d</sup> Illinois & Wisconsin <sup>State</sup> Bank notes

"Cross Entry 3<sup>d</sup> At the date of the said instrument marked  
"A" what was the relative value of what was  
"then and there denominated Current Bank  
"Notes and gold & Silver coin of the United States?  
"Objected to by Counsel for Plaintiff"

"Ans 3<sup>d</sup> I could not state the exact value of what were  
"denominated by Banks, Current Bank Notes  
"It was just at the beginning of Stamp tax  
"times, and all Bank Notes then in circulation  
"in this section of the country were more or less  
"depreciated, gold & Silver being worth from  
"5 to 25 per cent premium on the dollar  
"over current Bank Notes"

"Cross Entry 4 State as near as you can what premium  
"United States gold & Silver coin, bore over  
"Current Bank Notes at the time of the date  
"of said Instrument marked "A"  
"Objected to by Counsel for Plff"

"Ans 4<sup>th</sup> To the best of my recollection gold & Silver  
"coin was at a premium from 10 to 25 per cent

35 "at the date of said Instrument in writing

"Direct examination of the witness was here resumed  
"by the Counsel for Plaintiff R. E. Barber Esq and  
"made answers as follows"

"July 10<sup>th</sup> There or were not the fund or funds of money which  
"on the day of the date of said paper above referred to  
"marked 'A'" you say that you received from the  
"said plaintiff for and in behalf of said defendant  
"and in consideration of which, you made and  
"delivered the said paper marked 'A' as aforesaid  
"testified to by you current money and on that  
"day last above referred to, received and paid  
"out in the locality where the said paper marked  
"'A'" was made, by Banks and Banking institu-  
"tions, as and for current money at par, and  
"as such by you then and there received as  
"aforesaid testified by you, as and for the  
"amount of dollars in money expressed and  
"specified in the said paper above referred to  
"marked 'A'"

"Objected to by G. S. House Counsel for Defendant"

"Aug 10<sup>th</sup> These Bank notes mentioned in said Instrument  
"in writing were received and paid out at  
"par at that time but were not denominated  
"by Banks & Bankers as money"

"July 11<sup>th</sup> What were the Bank notes of which you  
"speak in your last answer then and there  
"at the time therein referred to, denominated

"Ans 11<sup>36</sup>"

Wild Cats, Stump tails, Currency &c

"Quty 12

On the day last above referred to, did you or  
"did you not pay out of the said Banking  
"institution of the said defendant in satisfaction  
"and payment in full of checks of depositors, drawn  
"thereon for dollars the said Wild Cats, Stump  
"tail, Currency &c spoken of in your last  
"answer at par?"

"Ans

I did when such "Wild Cats," "Stump tail"  
"Currency" &c had been deposited, otherwise not

"Quty 13<sup>th</sup>

What funds or kinds of money did you on that  
"day last above referred to receive of and  
"from the Plaintiffs for said defendant  
"and in consideration of which you made  
"and delivered the said paper marked "A" as  
"aforesaid testified to by you? (objected to)

"Ans 13<sup>th</sup>

So the best of my recollection the funds received  
"were Illinois & Wisconsin State Bank Notes

"Quty 14<sup>th</sup>

When Illinois & Wisconsin State Bank  
"Notes on <sup>the</sup> that day last above referred to received  
"and paid out by Banks & Banking institutions  
"in the said locality, and for Current Bank Notes?

"Ans 14<sup>th</sup>

They were when such notes were deposited

"Quty 15<sup>th</sup>

Were they received on deposit last above  
"referred to by said Banks & Banking institutions  
"in the said locality as Current Bank Notes

"Ans<sup>27</sup> 15<sup>th</sup> They were "

"July 16<sup>th</sup> Please look at the paper now here shown to you  
marked "B" of date of May 8<sup>th</sup> 1861 drawn by William  
Wells on Fidelity Bank for \$ 158.00 payable to J. W.  
McConnell Esq or bearer and state whether  
or not you then and there received the said paper  
marked "B" from the plaintiff for the 1<sup>st</sup> defendant  
150 and for one hundred and fifty eight dollars,  
the said paper marked "B" and whether or not the  
said \$ 158<sup>00</sup> last ~~last~~ above mentioned is a  
part of the consideration to that amount of the  
said paper heretofore referred to marked "A";

"Ans 16<sup>th</sup> I cannot state positively that I ever before  
saw the paper here referred to - I might & it  
"might not"

"July 17<sup>th</sup> State whether or not the said Plaintiff held  
on the day and at the time when the said  
paper above referred to, marked "A" was made  
as aforesaid a certain other certificate of  
deposit made by the said defendant and bearing  
date some ~~time~~ three months prior thereto or  
thereabouts and payable to said plaintiff or which  
was due at the time ~~when~~ said paper marked  
"A" was made the sum of \$ 150.00 or thereabouts  
and whether or not the sum of money last  
aforesaid was a part of the consideration to  
the amount thereof for which said paper above  
referred to marked "A" was made and delivered  
"as aforesaid"

"Aug 17 I believe that he did give the amount of  
387  
" which was \$ 15000, \$ 50.00 having been paid  
" at some time previous, the bal due on old  
" certificate at the date of the 2<sup>nd</sup> paper heretofore  
referred to marked it" was \$ 10000 & it was a  
" part of the consideration"

" By consent and agreement of said parties  
" to this cause by their respective Counsel the  
" further taking of deposition in this cause is  
" hereby continued until Monday Aug 21<sup>st</sup> 1862  
at 10 o'clock A.M. Aug 2<sup>nd</sup> 1862

" B. F. Russell Comr "

" Monday Aug 21<sup>st</sup> 1862  
" The further taking of deposition is hereby resumed  
" pursuant to the adjournment above mentioned  
" B. F. Russell Commissioner

" Puty 18<sup>th</sup> At the date of the said paper heretofore referred  
" to marked A" and in the locality where it  
" was made did or did not Illinois & Wisconsin  
" State Bank notes pass and circulate by and  
" with Banks Banking institutions and  
" the people as and for money at par?

" Aug 18<sup>th</sup> I believe not, they were at a discount for money

" Puty 19 At the time and place in the last foregoing  
" interrogatory referred to what was paid and  
" circulated as aforesaid as and for money?

"<sup>29</sup> Aug 19

## Gold & Silver"

"July 20

Was anything else than Gold & Silver then and  
"there used and circulated as aforesaid, as  
"and for money & if so state fully what?"

"Aug 20<sup>th</sup>

Bank bills notes, there was hardly any  
"Bank notes in circulation that passed  
"as money most all being at a discount

"July 21<sup>st</sup>

For what uses and purposes were Illinois &  
"Wisconsin State Bank notes then and there  
"used & circulated as aforesaid?"

"Aug 21<sup>st</sup>

As a sort of circulating medium

"July 22<sup>nd</sup>

Was that circulating medium then and there  
"used as aforesaid and counted at par?"

"Aug 22<sup>nd</sup>

Sometimes it was & sometimes it was not

"July 23<sup>rd</sup>

Must discriminate & explain fully?

"Aug 23<sup>rd</sup>

When Illinois & Wisconsin State Bank notes were  
"deposited, they were paid to the same party at par  
"When other kind of funds were deposited,  
"such funds were used in place of Illinois  
"or Wisconsin currency."

"July 24<sup>th</sup>

In case when there had been no previous  
"deposit, and in payment ~~and~~ use of obligations  
"from one person to another among people, was  
"or was not the said circulating medium

received used and counted at Par?

Ans 24<sup>th</sup> I dont know that I could state

Quty 25<sup>th</sup> Give your best knowledge thereof?

Ans 28<sup>th</sup> To the best of my knowledge, it did pass  
"among the people in payment of debts and  
"other obligations at par or nearly so

Quty 26<sup>th</sup> What is now received and paid out in the locality  
"where the 8<sup>d</sup> paper marked "A" was made, as and  
"for money by Banking institutions & the People  
"generally?

Ans 26<sup>th</sup> Gold & Silver United States Treasury Notes  
"and the Bills of some of the Eastern Banks  
"I believe also some of the bills of the Banks  
"in Illinois"

Quty 27<sup>th</sup> What is now in the 8<sup>d</sup> locality the relative value  
"of sd Bills of Banks in Illinois and of some  
"of the Eastern Banks, of U. S. Treasury Notes  
"of Gold & Silver coin of the United  
"States respectively"

Ans 27<sup>th</sup> The Banks of Illinois & some of the Eastern  
"Banks are worth I believe 87 cents on  
"the dollar Old United States demand Notes  
"are worth a dollar four & a dollar five  
"Gold & Silver is at a premium from 10 to  
"15 per cent over Banks Notes

"Entry 28<sup>th</sup> <sup>41</sup> What are now in sd locality per funds;

"Ans 28<sup>th</sup> United States Treasury Notes Gold & Silver

"Entry 29<sup>th</sup> Are or are not any other funds than U. S. Treasury Notes and Gold & Silver now used and circulated as aforesaid in the said locality at per?

"Ans 29<sup>th</sup> I believe they are"

"Entry 30<sup>th</sup> State what funds as near as you can

"Ans 30<sup>th</sup> Some of the Eastern Bank Notes & I dont know but some of the Illinois Bank Notes

"Entry 31<sup>st</sup> Is your knowledge are there any Bank Notes used and circulated as aforesaid at this time in the said locality excepting those which are used and circulated <sup>there</sup> at per?

"Ans 31<sup>st</sup> To the best of my knowledge I believe not

"Cross Examination here resumed by Geo S. House Esq counsel for defendant and the following answers were elicited to wit:

"Drop Entry 4 If the date of the paper marked 'A' in the locality where the said paper was issued State whether or not the Bank Bills issued by all the Banks or nearly all the Banks there established in the States of Illinois & Wisconsin when held denominated & passed

42 "by Banks & Banking institutions and business  
men generally as Current Bank Notes  
"Objected to"

"Ans 4<sup>th</sup> They were"

"Comp Duty 3<sup>rd</sup>" At the date of the said paper marked "A" in  
"the locality where said paper was made, state  
"whether or not the Bank Bill issued by all  
"or nearly all the Banks then established  
"in the State of Illinois & Wisconsin were  
"considered held and circulated by Banks,  
"Banking institutions and the people  
"generally as per funds and Bankable  
"funds, with reference to every other  
"circulating medium except United  
"States Gold & Silver coin and the Bank  
"Notes of Banks in other States that were  
"considered good, solvent and specie  
"paying Banks?"

"Ans 5<sup>th</sup> To the best of my knowledge they were

"Direct examination resumed by  
"R. E. Barber Esq counsel for Plff & the  
"following answers were elicited to wit:

"Duty 32<sup>nd</sup>" Where or were not the Banks of the State  
"of Illinois the Bills of which you state are  
"now used and circulated in the said locality  
"as aforesaid at par established and doing  
"Banking business at the date of the said  
"paper heretofore referred to marked "A"?

43  
"Ans 3<sup>d</sup> They were all established and issued Bills

"Augustus Osgood"

"State of Illinois

"County of Will Cos'

"J<sup>es</sup> Benj<sup>m</sup> F. Russell Clerk

"of the Circuit Court in and for said County  
"in the State aforesaid do hereby certify that  
"the foregoing annexed deposition of said  
"Augustus Osgood was taken before and  
"by me at my Office in Joliet in said County  
"as a Commissioner on the days hereinafter  
"mentioned to wit: on Saturday the 2<sup>nd</sup> and  
"on Monday the 4<sup>th</sup> day of August A D 1862  
"pursuant to the Notice hereto attached in  
"the above entitled cause and the respective  
"adjournments hereinbefore mentioned.

"That said Deposition was taken on the  
"part of said Complainant and that George  
"Horse attorney for said defendant was  
"present at the examination of said Witness  
"That said Witness before giving his said  
"deposition was duly sworn by me to testify  
"the truth in said matter so far as he should  
"be interrogated and after giving his said  
"deposition ~~the~~ contained were true according  
"to the best of his knowledge and belief.

"In Attestation Whereof I have  
"hereunto subscribed my  
"Name and affixed the seal of  
"said Court (the same being  
"my Official Seal) at my

"I signed the same in my presence and made oath before me that the several annexed  
"depositions are respectively in his said depositions"

" Office in Joliet in Seuil  
 " County this 11<sup>th</sup> day of August  
 " A.D. 1862

" Seuil  
 " Circuit  
 " Court

" B. F. Russell Clerk  
 " And Commissioner

" The Plaintiff then offered to introduce  
 " in evidence to the jury the following Certificate  
 " of deposit being the same testified to by George  
 " S. House as being marked "A" - it is as  
 " follows "

" \$ 388<sup>57</sup>/<sub>100</sub> by Uri Osgood, Exchange  
 " Office Joliet May 8<sup>th</sup> 1861

" D. W. McConnell Esqr has deposited with  
 " me three hundred Eighty Eight <sup>57</sup>/<sub>100</sub> Dollars in  
 " Current Bank Notes to the credit of himself  
 " which will be paid in like funds to his order  
 " hereon, three months after ~~the~~ date with  
 " interest at 10 per cent

" No 41103

" Uri Osgood

" Pr A. A. Osgood

" To the introduction of which the defendant  
 " then and there objected, & said objection was  
 " overruled by the Court and said Certificate  
 " read to the jury as evidence, to which  
 " ruling of the Court & the reading of said Certi-  
 " ficate to the jury, the said defendant then &  
 " there excepted

" The Plaintiff then rested his case

" The defendant called

45- Rufus R Allen as a witness who being sworn, testified, as follows

I lived here in Joliet in 1860 & 1861 - I was in  
 the value of Ills. & Wisconsin currency or bank  
 Bills - They were the principal currency in  
 circulation here at that time - in May 1861  
 at the date of this certificate (referring to the cert-  
 ificate introduced in evidence by Plaintiff) Ills. &  
 Wisconsin bank bills were at a discount of  
 ten or twelve & perhaps fifteen per cent - Illinois  
 Wisconsin bank bills at that time were called  
 known as current bank bills, & continued so  
 I believe until the Illinois & Wisconsin banks  
 went down, which I believe was in June or  
 about that time in 1861 - When this certificate  
 fell due (the certificate given in evidence by Plaintiff)  
 in August 1861 I believe Illinois & Wisconsin bank  
 bills were at a discount of from forty to sixty  
 or seventy cents on the dollar -

On cross ex-  
 amination said witness testified as follows -  
 Eastern bank bills, <sup>I believe</sup> at the date of the certificate  
 & during that summer were at a discount  
 of about two per cent, perhaps two & half per  
 cent & after the Illinois & Wisconsin banks  
 went down Eastern bills & gold & silver were  
 the principal money in circulation principally  
 Eastern bills, & Ohio Indiana & Iowa bills,  
 which were about the same as Eastern.  
 not worth quite as much I believe - Ills & Wisconsin  
 bank notes were not used as current bank notes,  
 when they became depreciated below fifteen per cent

46 I believe, at least not to any very considerable extent, but were retired from circulation - Some of the Ills. & Wisconsin bank notes are now used & a few of them have been ever since the date of said Certificate I believe, been used as current bills, & were at that time.

Legal tender notes are at a discount of some fifty or sixty cents for gold at this time, I believe, & the difference between United States Treasury legal tender notes & good current bank bills now used as currency I believe is from one fourth to one half per cent difference - the legal tender notes being worth that much more than the bills. After Ills. & Wisconsin banks went down & in or about the last of July or first of August 1861, I took, I believe about \$2200 of that kind of funds to Chicago & sold it for 46 cents on the dollar in gold for Sharps & Co.

"The foregoing is substantially all the evidence given in the case both on the part of plaintiff & defendant."

"The Court then gave to the jury on the part of the Plaintiff the following instructions"

"If the jury believe from the evidence that defendant did promise to pay the plaintiff as declared upon in said declaration and that payment has not been made upon said promise by said defendant to said plaintiff, the Court is requested to instruct the jury on behalf of

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"~~of~~ the plaintiff that a promise to pay in  
"Current Bank Notes" is a promise to pay in  
"Current money and the plaintiff is entitled  
"to recover of the defendant such sum as the  
"jury may find to be due upon said instrument  
"now writing declared upon & introduced in evidence  
"in this case in money?"

"To the giving of which said instrument  
"the defendant then & there objected - but said  
"objection was overruled & said instrument  
"instructions were read to the jury, to which  
"ruling & the reading of said instructions the  
"sunt defendant then & there excepted -

"The Defendant then asked the Court to give  
"to the jury the following instructions marked  
"number 1<sup>st</sup>, 2<sup>d</sup>, 3<sup>d</sup>" ~~which the said Court~~  
~~then & there refused to do, & marked the said~~  
~~instructions severally "Refused" - to which~~  
~~refusal & marking of said instructions "Refused"~~  
~~the Defendant then & there excepted~~

"3<sup>rd</sup> of Sept. 1<sup>st</sup>"

"The Plaintiff is only entitled to recover  
"in this suit the value of the current bank notes  
"mentioned & set forth in the certificate introduced  
"in evidence before you, and if the jury believe  
"from the evidence that <sup>such</sup> bank notes were  
"at a discount, they are authorized to find for  
"Plaintiff the value of such bank notes & the  
"interest at ten per cent on such value

"For Dept. 2<sup>d</sup>"

"If the jury believe from the Evidence that the bank notes mentioned & described in the Certificate of deposit introduced in Evidence by the Plaintiff were not equal in value to gold & silver coin of the United States, then the jury will only find for the Plaintiff the value of such current bank notes in such gold & silver coin, with interest on such amount at ten per cent -"

"Depts. 3<sup>d</sup>"

"If the jury believe from the Evidence that the current bank notes mentioned & described in the Certificate of deposit introduced in Evidence by the Plaintiff were, at the time such bank notes were deposited & when the same became due, less than par value then the jury are authorized to find for the Plaintiff the value of such bank notes in par funds with interest thereon at ten per cent -"

"Which the said Court then and there refused to do, & marked the said instructions severally "Refused" - So which refusal & marking of said instructions "Refused" the Defendant then & there excepted - The jury having retired, came into Court, & brought in the following verdict viz: - "We the jurors find for the Plaintiff \$ 450<sup>00</sup>" - and after the Court had asked the jurors if that was their verdict, & they having answered in the affirmative - the Court inserted in said verdict

49 after the word "Plaintiff" & before the character  
 "4 figures" "\$ 450 the following words" & assess the damages  
 "at" so as to make the same read "The the jurors  
 "find for the Plaintiff & assess the damages at  
 "\$ 450."

"The jury were then asked by the Court  
 "if the verdict as thus amended was their verdict  
 "and they said it was. This was done before  
 "they left the jury Box.

"So the insertion of which  
 "words the Defendant then & there excepted.

"The Defendant thereupon entered his  
 "motion for a new trial, & assigned the following  
 "causes for such new trial."

"1<sup>st</sup> The Court gave improper & illegal instructions  
 "to the jury on the part of Plaintiff"

"2<sup>d</sup> The Court refused to give to the jury proper &  
 "legal instructions on the part of Defendant when asked"

"3<sup>d</sup> The Verdict of the jury is contrary to law & the evi-  
 "dence under the issues in the case"

"4<sup>th</sup> The verdict of the jury is contrary to the law & the evi-  
 "dence"

"5<sup>th</sup> The Court permitted improper & illegal evidence to be  
 "given to the jury by the Plaintiff"

"The Court overruled said motion for a new  
 "trial & ordered judgment to be entered entered"

now said verdict, To which ruling & order  
of said Court the said Defendant then & there  
excepted and prayed that this his bill of  
exceptions be signed sealed & made a part of  
the record in said suit which is accordingly  
done in open Court - in the said December  
Term A D 1862 of said Court

"S W Harris Esq  
Judge of the 10<sup>th</sup> Judicial Circuit

And afterwards to wit on the sixth day of March in the year A D 1863 there  
was filed in said cause in said Court the Appeal Bond of said Defen-  
dant to the Supreme Court which said Bond is in words &  
figures following to wit:

Know all men by these presents, That We Wm  
Osgood as principal & Firmus Mack as security  
of Mill County & State of Illinois, are held &  
firmly bound unto Delos W Mc Connell of  
the same County & State in the penal sum of  
Eight Hundred dollars, lawful money of the  
United States; for the payment of which well  
& truly to be made, we bind ourselves, our heirs,  
executors & administrators jointly severally &  
firmly by these presents. Witness our hands  
& seals this 6<sup>th</sup> day of March A D 1863,

The conditions of the above obligation  
is such, that whereas the said Delos W Mc Connell  
did at the December Term A D, 1862 of the Circuit  
Court held in & for said County of Mill in the State  
of Illinois aforesaid, recover a judgment against  
the above bounden Wm Osgood for the sum of  
Four Hundred & fifty dollars damages together

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with costs of suit; from which said judgment  
of the said Circuit Court the said Wm Osgood  
has prayed for & obtained an appeal to the  
Supreme Court of said State, Now if the said  
Wm Osgood shall duly prosecute his said appeal  
with effect, & shall moreover pay the amount  
of the judgment, costs, interest & damages -  
rendered & to be rendered against him in case  
the said judgment shall be affirmed in the  
said Supreme Court, then the above obligation  
to be void, otherwise to remain in full force  
& virtue,

Wm Osgood  
Firman Mack

Taken & approved in open court, }  
in the said December Term A D 1862 }  
this 6<sup>th</sup> day of March A D 1863 of }  
said Term }  
Attest Ben<sup>g</sup> Russell Clerk }  
Ill Co Circuit Court }

State of Illinois  
County of Will Co,

I Benjamin F. Russell Clerk  
of the Circuit Court in and for said County in  
State aforesaid do hereby certify the above and certify  
to be a full true and perfect copy of the Summons  
Plaintiffs Declaration, Defendants Pleas, Replications,  
of Plaintiff and Orders of Court as regards the  
trial of said cause and all orders of the said Court  
from the time of the trial of said cause up to and  
including the perfecting of the appeal of said cause

To the Supreme Court of said State the same being all the orders of said Court of Record of the December Term of said Court for the year A. D. 1862, the Verdict of the jury in said cause, as filed therein, Bill of Exceptions and of the Appeal Bond to the Supreme Court in the cause therein entitled wherein Delos W. Mc is Plaintiff and Wm. Osgood is defendant as appears from the Records and files of said Court now remaining in my said Office

And I further certify that the foregoing averments of the said Clerk are true

In Attestation Whereof I have herewith subscribed my name and affixed the seal of said Court at Office in the City of Joliet in said County and State this 20<sup>th</sup> day of April A. D. 1863

B. F. Russell  
Clerk



In the Supreme Court - State of Illinois  
vs Ozgood appellant,  
vs  
Delos W. McConnell appellee

The said vs Ozgood comes in his own proper person & says that in the record & proceedings aforesaid & also in giving the judgment aforesaid there is manifest error in this to wit:-

1st. The Court in which said suit was tried gave improper & illegal instructions to the jury - on the part of Plaintiff below

2d - Said Court refused to give to the jury proper & legal instructions on the part of Defendant below, when asked

3d. The verdict of the jury in the Court below was contrary to Law & evidence

4th The Court below improperly refused to grant a new trial

5th. The Court below tried said case without authority of law - & allowed improper & illegal evidence to be given to the jury at said trial by Plaintiff:-

And the said vs Ozgood prays that the judgment aforesaid, & the errors aforesaid & other errors in the record & proceedings aforesaid may be reversed, annulled & altogether held for nothing & that he may be restored

to all things which he hath lost by occasion of  
the said judgment - Mr Ozgood Appellant  
In pro per & atty in

State of Illinois  
Supreme Court

3rd Dec 1858

Mr Ozgood  
Appellant  
vs  
Delos Hill & Connell  
Appellee

} Appeal from Hill

And now comes the said  
Appellee by K E Barber his attorney  
and as to the said pretended errors assigned  
by the said Appellant in the above entitled  
cause saith, that there is no error in  
the said record <sup>and proceedings,</sup> nor in the judgment of the  
Court below in said cause

K. E. Barber  
Atty for Appellee

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Filed Apr. 25. 1863.  
Leland  
Off.

75 220  
Supreme Court

Mr Osborn  
appellant.

vs  
John W. McConell  
appellee

Filed Apr 23 1863

J. L. Land  
Clerk

Clerks Fees on Transcript  
\$16<sup>00</sup> Paid by Defendant  
below  
B. J. Russell