

12248

No. _____

Supreme Court of Illinois

Nolan

vs.

Jackson

State of Illinois }
Jo Daviess County } ¹⁴ Fourteenth Judicial Circuit

Pleas in the Circuit Court begun and held in
within and for the County of Jo Daviess aforesaid on the
second Monday of March AD 1855 before the Hon.
Benjamin R. Sheldon Judge of the 14th Judicial
Circuit of the State of Illinois

Wm H. Kowley Sheriff

W. B. Green Clerk

Bernard Nolan Administrator
of Estate of Bernard Nolan deceased

^{vs}
Alexander J. Jackson

Be it remembered that heretofore
to wit on 2nd day of March AD 1855 the plaintiff
above named by his attorney filed in the office of the
Clerk of the Circuit Court in and for said County his ap
p^{peal} ~~plea~~ ^{decree of administration} and declaration against the Defendant aforesaid
which declaration p^{re} ~~sent~~ ^{decree of County Court} and account ^{decree of County Court} are in the words
and figures following to wit:

^{to the} The declaration ^{is} ~~is~~ ⁱⁿ words & figures following to wit
State of Illinois } Circuit Court of said County to
Jo Daviess County } March Term of said Court 1855

Bernard Nolan Plaintiff in this suit
whereas as administrator of all and singular the goods
and chattels rights and Credits of Bernard Nolan deceased
who died intestate in said County by his Attorney complains
of Alexander J. Jackson the Defendant in this suit of a
plea of trespass with the case on promises

Now that whereas the said Defendant heretofore
to wit on the twenty fifth day of November in the year of

The precept heretofore referred to is in the words and figures following to wit

Bernard Nolan adm^r of Est. of Bernard Nolan dec^d } State of Illinois } J^d Davess County }
 Andrew S. Jackson } In Circuit Court to March Term 1855 }
 To the Clerk of said Court

Issue summons to Defendant returnable to the next term of said Court in April term, damages \$500.

Filed March 2nd 1855 A. L. Cummings Atty for Pltff

Wm H. Bradley, Clerk

And thereupon on the same day a summons issued to the said Defendant which summons is in the words and figures following to wit

State of Illinois } The People of the State of Illinois to the
 J^d Davess County } J^d Sheriff of said County Greeting

We Command you to summon Alexander Jackson to appear before the Circuit Court of J^d Davess County, ^{at the next term} to be holden at Galena on the second Monday of March next Instant to answer Bernard Nolan adm^r of Estate of Bernard Nolan dec^d in a plea of trespass on the case upon promises, damages Five hundred dollars have you then and then this writ. Witness William H. Bradley Clerk of the Circuit Court of J^d Davess County Illinois and the Seal thereof at Galena this 2^d day of March A.D. 1855

Attest Wm H. Bradley Clerk

The declaration heretofore referred to is in the words & figure following to wit
 State of Illinois } J^d Davess County } - Circuit Court of said County to March Term ^{of said Court} 1855
 Bernard Nolan dec^d }
 vs } Alexander Jackson

Bernard Nolan Plaintiff in this suit who sues as administrator of all and singular the goods and chattels rights & credits of Bernard Nolan dec^d who dec^d intestate in said County, by his Attorney, ~~Albin~~ complains of Alexander Jackson the Defendant in this suit of a plea of trespass on the case on promises, for that whereas the said Defendant heretofore to wit on the twenty fifth day of November in the year of

our Lord one thousand eight hundred and fifty three
at to wit, the County aforesaid became and was indebted
to ^{Said} Plaintiff as administrator as aforesaid in the sum of three
hundred and ninety five Dollars lawful money of the United
States the purchase money of a certain lot of land adjoining
the City of Galena on the east side of the same and bounded on
the West side by fourth street in said City and known as lot
No one in Bonthullen Row. and set out by metes and bounds
in a certain deed herewith filed and now to the Court shewn
which ^{Said} deed also contains a copy of a decree of the County Court as
setting as a Court of Probate for said County made at the
September Term of said Court to wit on Thursday the twenty
second day of September in said term authorizing and appointing
said Plaintiff as administrator as aforesaid to make sale of said
Lot as the property of his intestate as aforesaid for the payment of the
debts of his intestate which sale was made by said Plaintiff
in pursuance of said Authority and after due notice as required
by law and was a public sale to the highest and best bidder for
one half Cash, the other half in six months with interest from
date ~~from~~ of said sale secured on said lot until paid, and
at which sale as aforesaid on the day aforesaid the Plaintiff
then and there sold by virtue of his said Authority, and the said Defendant
then and there bought being the highest and best bidder the
said Lot above described at the said sum of three hundred and
ninety five Dollars payable as aforesaid and in consideration
of said sale by said Plaintiff to said Defendant, he the
said Defendant then and there promised to pay to the said
Plaintiff the said sum of three hundred and ninety five dol-
lars whenever by the terms of said sale the same should
become due and payable with interest as aforesaid and that by
the terms of said sale the one half of the said sum of three hun-
dred and ninety five Dollars to wit one hundred and ninety seven
and one half Dollars became then and there immediately due
and payable and the other half of said sum of three hundred and

ninety five Dollars to wit one ²¹ hundred and ninety seven and one half
Dollar, by the terms of said Sale became due and payable six months
thereafter to wit on the ^{twenty fifth} day of May, A.D. 1854 and that said
Plaintiff hath made and executed his deed as administrator
as aforesaid conveying to the said Defendant the said lot in
as full and ample manner as the said Plaintiff as admin-
istrator as aforesaid could or ought, to convey the same the
sufficiency of which Deed is apparent being here to the Court
Shewn, and filed herewith as a perpetual tender of the
same to the said Defendant whenever he shall entitle him-
self thereto, the which Deed being duly executed and acknowledged
was tendered to the said Defendant on the same day, the same was
executed and long after the entire purchase money was due
and payable to wit on the ^{in the year of our Lord one thousand eight hundred and fifty five} second day of March, A.D. 1855
and payment of the said Sum of Money was due as aforesaid
was then and then demanded of the said Defendant who then
and then became and was liable to pay to the said Plaintiff
the said Sum of then Hundred and ninety five Dollars
the purchase money due on said Lot as aforesaid of which
said Defendant then and then had due notice, and being
so liable, the said Defendant then and then undertook and
faithfully promised to the said Plaintiff as administrator as
aforesaid to pay to the said Plaintiff administrator as afore-
said the said Sum of then hundred and ninety five
Dollars whenever he the said Defendant should ^{be} thereto
afterwards requested.

And whereas also the said Defendant afterwards to wit
on the ^{Twenty eighth} day of November in the year of our Lord one
thousand eight hundred and fifty three, at to wit, the County
aforesaid was indebted to the said Plaintiff, as administrator as afore-
said in the further sum of Five hundred Dollars in like lawful
money of the United States, for a certain lot of land with the appur-
tenances of the said Plaintiff, intestate before that time bargained and
sold by the said Plaintiff as administrator as aforesaid to the

Said Defendant and at his special instance and request, and being so indebted he the said Defendant in consideration thereof afterwards to wit on the day and year last aforesaid at to wit the County aforesaid undertook and then there faithfully promised the said Plaintiff as administrator as aforesaid to pay him the said last mentioned sum of money when he the said Defendant should be thereunto afterwards requested

Yet the said Defendant not regarding his said promises and undertakings but contriving and intending to deceive and defraud the Plaintiff as administrator as aforesaid in this behalf hath not as yet paid the said sums of money or either of them or any part thereof to the said Plaintiff as administrator as aforesaid, although often requested to do so, but he so to do hath hitherto wholly refused and still refuses to pay the same or any part thereof to the said Plaintiff to the damage of the said Plaintiff as administrator as aforesaid of five hundred dollars and therefore bringing his suit &c

And the said Plaintiff brings into Court heretofore of administration and the said decree of the County Court of said County setting as a Court of Probate, which give sufficient evidence to the said Court here of the grant of administration to the said Plaintiff as aforesaid and of his authority in the premises above set forth the date whereof is a certain day and year therein named to wit the day & year in that behalf above mentioned to
A. L. Cummings ~~Att~~ for Plaintiff

Filed March 2^d 1855

Wm H Bradley CR

The premises above referred to is in the words and figures following to wit

Bernard Holm Ad ^r	{	State of Illinois for Deane County	3 ^d 1855
of Est. Bernard Holm Ad ^r		In Circuit Court to March Term	1855
Alexander V. Jackson		To the Clerk of said Court	

Issue Summ^{is} to defendant returnable to the next term of
said Court in August
Filed March 2ⁿ 1855
Wm H Bradley Clk
A. L. Jennings Atty for Plff

The afc before referred to is in the words & figures following to wit

Alexander J Jackson
vs Bernard Nolan Adm^r
of Bernard Nolan Dec^{ed}
1853

Nov. 25th To purchase money for Lot 1

Front Street Row \$395.00

Interest on the same to March 2ⁿ 1855 about 30.00

\$425.00

~~Sum of the Court~~
~~Sum of the Court~~
And the afc before referred to is in the words & figures following to wit

Whereas at
the death of the Applicant
of Bernard Nolan

And afterward to wit on the 13th day of March
A.D. 1855, the said Defendant by his Attorney filed
in open Court his Summ^{is} to the Plaintiffs decla-
ration which Summ^{is} is in the words and figures fol-
lowing to wit

Bernard Nolan Administrator vs In Circuit Court of Jo Darceps
County to March term A.D. 1855
Alexander J. Jackson

And the said Defendant by Stevens & Rawlins his
Atty comes and defends the wrongs & injuries wherein and
says that the said declaration and the matters therein
contained are not sufficient in law for the said Plaintiff
to have or maintain his aforesaid action thereagainst

the said Defendant, and he the said Deft is not bound.
by law to answer the same. And thus he is ready to verify
wherefore he prays Judgment &c. and that the said
Plaintiff may be barred &c.

Filed March 13th 1855 } Stevens & Hawley, atty for Deft's
W H Braidley Ck. }

And on the same day to wit on the 13th day of March
1855. of said March term of said Court in the record of
the proceedings thereof in said Cause is the following
Entry to wit,

Bernard Nolan Administrator
of Est. of Bernard Nolan dec'd }
" } lease
Alexander J Jackson }

The Defendant by his Attor
ney comes and files his demurrer to the Plaintiffs
Declaration

and afterwards to wit on the 20th day of March
as yet of said March term of said Court in the
Record of the the proceedings thereof in said Cause
is the following Order Entry to wit,

Bernard Nolan Administrator
of Est. of Bernard Nolan dec'd }
" } lease
Alexander J Jackson }

The Defendant by his Attorney
withdraws his demurrer & files his pleas herein

which pleas are in the words and figures following to
wit,

In To David Circuit Court

March Term 1855

Assumpsit

Andrew J Jackson
vsBernard Nolan Administrator
of Estate of Bernard Nolan decd

And the said Defendant by Shuman & Kunkin his Attorneys comes and defends the wrong injury where and say that he did not undertake and promise in manner and form as the said Plaintiff hath above thereof complained ^{against} him and of this he puts himself upon the country &c

And for a further plea in this behalf the said Defendant says that the said Plaintiff ought not to have and maintain his aforesaid action thereof against him because he says that the Plaintiff before and at the time of the Commencement of the suit to wit at Galena at the County aforesaid was and still is in debt to the said Defendant in a large sum of money to wit the sum of five hundred dollars lawful money of the United States for labor work & labor care diligence and attendance of the said Defendant by the said Defendant and his servant before that time done performed and bestowed in and about the business of the said Plaintiff and for the said Plaintiff and at his request, and for diverse materials and other necessary things by the said Defendant before that time found and provided and used and applied in and about the said work and labor for the said Plaintiff and at his like request and for divers goods wares and merchandise sold and delivered by the said Defendant to the said Plaintiff at his like request and for money by the said Defendant before that time lent and advanced to paid laid out and expended for the said Plaintiff and at his like request, and for money by the said Plaintiff before that time had and received to and for the use of the said Defendant, and for money due and owing from the said Plaintiff to the said Defendant for in

terest upon and for the forbearance of divers large sums of money due and owing from the said Plaintiff to the said Defendant and by the said Defendant forbore to the said Plaintiff for divers long spaces of time before then elapsed and for money due and owing from the said Plaintiff to the said Defendant upon an account stated between them, which said sums of money so due and owing to the said Defendant exceed the damage sustained by the said Plaintiff by reason of the non performance by the said Defendant of the said several supposed promises and undertakings in the said declaration mentioned and out of which said sum of money so due and owing to the Pl from the said Plaintiff to the said Defendant, and the said Defendant is ready and willing and hereby offers to set off and allow to the said Plaintiff the full amount of such damage as he may be entitled to according to the form of the statute in such case made and provided. And thus the Defendant is ready to verify wherefore he prays judgment of the said Plaintiff ought to have or maintain his aforesaid action thereof against him &c

Stearns Newbys Atty for Deft
(Copy of account)

Bernard Nolan Administrator
of Bernard Nolan decd
vs To A J Jackson

To Money paid	\$ 500.00
To Money had received	\$ 500.00

Filed March 20th 1855
Wm H Bradley Clk

And afterwards to wit on the 21st day of March as yet of the said March Term of said Court in the record of the proceedings thereof in said Cause is the following entry to wit,

Bernard Nolan admr of	}	Case
Est. Bernard Nolan Decd		
Alexander J Jackson		

Now at this day came the parties by their Attornies and submit this Case to the Court upon the Pleadings and on an agreed Statement filed herein as part of this Cause

and afterwards to wit on the 27th day of March as yet of the March Term of said Court in the Record of the proceedings thereof in said Cause is the following entry to wit,

Bernard Nolan Administrator	}	Case
of Est. Bernard Nolan decd		
Alexander J. Jackson		

This day came the parties by their Attornies and thereupon this Cause is submitted to the Court. Thereupon proof being heard the issue is found for the Plaintiff and his damages ascertained at the sum of eight Dollars and seventy Cents. It is thereupon Considered by the Court that the Plaintiff have and recover of and from the said Defendant the said sum of eight Dollars and seventy Cents, ascertained as aforesaid together with his costs in this behalf expended and that he have his execution therefor. To which finding & Judgment of the

Count the Plaintiff by his attorney accepts and prays
an appeal to the Supreme Court and tenders his Bill
of exceptions herein,

And afterwards to wit on the 29th day of March as
y^t of the said March Term of said Court in the Record
of the proceedings thereof in said cause is the following
entry to wit,

Bernard Nolan Administrator of the Estate of Bernard Nolan decd	}	Lease
Alexander J. Jackson		

This day came the parties by
their attorneys and thereupon it is ordered by the Court
that the appeal to the Supreme Court heretofore prayed
for by the Plaintiff herein be allowed upon Plaintiff's
entering into appeal Bond to the Defendant in the
sum of One hundred and fifty Dollars with John
Curly as security within twenty days from the rendition
of this Judgment.

And thereupon on the same day to wit the 29th day of
March, y^t of the said March term of said Court, on the
trial of the above entitled cause ^{the exceptions heretofore tendered} ~~the following exceptions~~
were ^{filed} ~~made~~ and allowed, in the following ^{which} ~~Bill of~~
exceptions to wit in the words & figures following to wit,

Bernard Nolan Administrator of the Estate of Bernard Nolan decd	}	In Circuit Court March Term 1855, To Davenport County, State of Illinois
Alexander J. Jackson		

The Bill of exceptions tendered to the Court
by the Plaintiff in the above entitled cause heard at the
March term as aforesaid, shews that the following

testimony was heard in the said Cause, and that the same is all the testimony heard in the same

Plaintiff offered in evidence an agreement signed by the Attornies of Record of the said parties which being admitted without objection was received by the Court and read in words and figure, following to wit,

Bernard Nolan deceased } In Circuit Court of So
of Est of Bernard Nolan dec'd } Dances County, Ill.
04 } to the March term AD 1855
Alexander J Jackson }

In this cause it is agreed by the parties by their Attornies that the Deft. Jackson bought at a public sale by the Plaintiff as administrator of the Estate of Bernard Nolan deceased the lot or land described in the Plaintiff declaration in this cause for the sum of three hundred and ninety five Dollars, that being the highest and best bid for said lot. It is also further agreed that said Deft Jackson has paid to said Plaintiff the sum of one hundred and ninety five Dollars all the purchase money for said lot except the sum of Two hundred Dollars, and interest on whole amt which said sum the Off avers more has been paid to him or to any one for him who was lawfully authorised to receive said two hundred Dollars. The Defendant Jackson on his part avers said Two hundred Dollars has been paid, and this is the only matter or item in dispute in this suit except interest on said \$395.00

Now if upon a hearing of this Case (upon the pleadings, this argument which is made part of the Case), and such evidence as the respective parties shall introduce) by the Court which is hereby submitted to the Court by the parties, The Court shall

be satisfied that the Defendant Jackson has or did before the Commencement of this suit pay said two hundred Dollars to said Plaintiff or to any agent of said Plaintiff having Authority to receive said two hundred Dollars then and in that case Judgment is to be rendered for the Defendant except the matter of Interest submitted, but if the Court shall be of a contrary opinion, then Judgment is to be entered for the Plaintiff for the sum of two hundred Dollars such interest if any as the Court shall find and Costs of suit, each party to have the right to introduce evidence, except to all rulings and overrulings of the Court in this case also to appeal to or prosecute a writ of Error to the Supreme Court

(Signed) A. L. Cummings Atty for Plff
Stevens & Rawlins Atty for Deft

Endorsed filed March 21st 1855

W. H. Bradley Ck

The following deed was then offered in evidence and received without objection, and the decree set forth in said deed admitted a true copy of the records of the County Court sitting as a court of Probate (Which said deed is in the words and figures following to wit)

Know all men by these Whereas at the September term 1853 of the County Court of Lawrence County Illinois held at the Court House in the City of Galena in said County on the third Monday of September, a petition duly notified in all respects according to law setting forth the insufficiency of the personal Estate to pay the debts was presented by me as the administrator of the Estate of Bernard Nolan late of said

County deceased to said Court, praying for an order to sell Certain real Estate of said deceased for the payment of debts, which said Real Estate is fully described in the said Petition, and in the order of said Court thereon hereinafter recited, and to which reference is made for said description, and whereas on hearing of said Petition in said Court on the twenty second day of September A.D. 1853. and the proofs in support thereof an order was then and there granted by said Court and entered of Record in the words and figures following to wit

In the Matter of the Estate of

Bernard Nolan deceased } Petition for Sale of Real Estate

And now at this day came Bernard

Nolan Administrator of the Estate ^{of said} Bernard Nolan deceased
By B. D. Jackson Esq. his attorney and presents a petition for the Sale of Real Estate of which the said deceased died seized and possessed and it appearing to the Court that the said Estate is indebted to divers persons, and it also appearing that the personal property is insufficient to pay the debts of said Estate and the said Administrator having filed an appraisement Bill amounting to the sum of \$16.30 altogether insufficient to pay the debts of said Estate, and notice having been duly given and proved according to law, of the presentation of said petition, and no one appearing to resist or make objection to the sale of said Real Estate, and the Court having heard the allegations and proof of said Administrator and upon examination being satisfied of the truth of the allegations contained in said Petition and of the necessity of said sale of Real Estate for the purpose of paying the debts of said deceased, doth hereby Order and decree that the Real Estate described in said Petition to wit that portion of the north half of fractional Sec

tion No twenty (20) in Township No twenty eight (28) north of Range one (1) East of the 4th Principal Meridian, bounded as follows Commencing at a point on the easterly boundary of the City of Galena bearing North fifty eight and half (58½) degrees east and one foot distant from the Angle well planted near the head of Benthall Street in Said City, running thence with said City line North fifty eight and half (58½) degrees east two hundred and seven feet (207) thence South forty seven (47) degrees east forty five and one half feet, thence South twenty eight degrees West one hundred and twenty two feet and 10/12 (172 10/12) feet thence North sixty two degrees (62) West one hundred and forty five feet to the place of beginning, said ground being known as lot No one (1) in Benthall Row, purchased by Bernard Nolan in his lifetime of Philip Byrne & wife & E. B. Washburn and wife, and Artemus Holmes and wife, be sold by said Administrator to pay the debt or debts due by said Estate and all costs arising or attending to this proceeding and from said Sale After due notice thereof and according to the Statute in such Case made and provided and that he make due return to this Court of his acts and doings and proceedings in the premises

And whereas in pursuance of said decree a notice of the Sale of said lands above described to take place at public vendue at the Court House in said County on the 25th day of November 1853, between the hours of — — — was posted up, in four of the most public places in said County of Jo Darceps for six weeks successively, and caused to be published in the Galena Jeffersonian a news paper published therein for the same time

And whereas in pursuance of said decree and notice I Bernard Nolan as such Administrator did at the place and at the time mentioned in said notice expose to sale at public vendue the said tract of land in the foregoing Order of said Court described to the highest and best bidder therefor

And whereas Alexander J. Jackson of said

County and State did bid for said land the sum of
three hundred and ninety five Dollars that being the
highest bid and he the best bidder therefor, whereupon
the same was sold to him for the Consideration of three
hundred and ninety five Dollars, Now this Indenture
Witneth that I the said Bernard Nolan administrator
as aforesaid for and in Consideration of the said sum of
three hundred and ninety five Dollars to me in hand
paid the receipt whereof is hereby acknowledged, and by
virtue of the order and decree aforesaid, have granted bargained
sold, released and Conformed and by these presents do grant
bargain sell release and Confirm unto the said Alexander J
Jackson all the right title and interest of the said Bernard
Nolan deceased, in his life time, and at the time of his decease
in and to the land, lot and Real Estate described, and as the
same is described in the foregoing Copy of the order of sale
of said County Court reference being hereby made thereto for a
full and perfect description of the said land ground lot
and Real Estate sold to said Jackson as aforesaid and
intended to be hereby conveyed together with the buildings and
improvements thereon, and all the rights and appurtenances
therunto belonging and appertaining. I have and to hold
said Real Estate with its appurtenances unto the said Alexander
Jackson his heirs & assigns forever

In Witness whereof I have hereunto set my
hand and seal this second day of March
A D 1855.

Bernard Nolan Administrator *Seal*
of the Estate of Bernard Nolan deceased

State of Illinois
Jodanesh County }

Before me the undersigned Notary Public
of Galena in said County personally appeared Bernard

Nolan to me personally known to be the same person who executed the foregoing deed and acknowledged to me that he had executed the same as administrator of the Estate of Bernard Nolan died freely and voluntarily for the uses and purposes therein mentioned

Witness my Signature and Seal Notarial
this 2nd day of March A.D. 1855

Attest W^m C. Bastwick Not Pub.

Robert Brand was then sworn and examined by Defendant, was acquainted with the hand writing of B. D. Jackson a deceased Brother of Defendant and had seen him write, was then shown a paper purporting to be signed by B. D. Jackson as Attorney for Plaintiff and asked if it were in the hand writing of said deceased, answered it was, said paper was then offered in evidence by said Defendant and objected to by Plaintiff, and reasons stated, which objections were overruled by the Court and the paper was admitted, to which overruling of objections and admissions of evidence, ^{the Plaintiff} excepted at the time which paper being a receipt for \$197.50 was in words and figure following to wit,

Galena November the 29th 1853

Received of Alexander J. Jackson the sum of one hundred and ninety seven Dollars fifty cents being the one half of the purchase money for the sale of the lot known and described as Lot number one (1) in Northallen Row in East Galena Township in Jo Daviess County ^{and} State of Illinois, said Lot being sold by order of the Probate Court of Jo Daviess

Wm C Bastwick
Notary Public
Galena Ill

Curtesy by Bernard Nolan Administrator of the
Estate of Bernard Nolan deceased On the 26th day of
November AD 1853. The said Jackson on the fur-
ther Compliance with the terms of said Sale being entitled
to a deed in fee for said Lot

B. D. Jackson
Attorney for
Bernard Nolan Admin-
istrator Bernard Nolan decd

Witness sold said lot as Auctioneer for the sum
of three hundred and ninety five Dollars, one
half cash, the other half in six months with interest
from the date of sale thinks said Sale was on the
twenty sixth day of November 1853 - Witness was then
asked as to the following declarations & acts of B. D. Jackson
at and before the time of sale which were objected to generally
by Plaintiff Unders B. D. Jackson's authority to bind the Plaintiff
thereby were otherwise shown it being only admitted that he
was Plaintiff's Attorney of Record in the matter of said Sale
Objection overruled and the following testimony admitted
to which nothing and evidence an exception was taken by
the said Plaintiff

Witness stated that B. D. Jackson employed Witness
a week or two before said Sale to sell said lot as auc-
tioneer, that he made the sale at his request, but did
not receive the purchase money of said Sale. That
Plaintiff and said B. D. Jackson were present at the sale
that B. D. Jackson took an active interest as to the
selling and bidding on the lot, that Defendant offered
to pay the whole ~~of the~~ purchase money down if Plff
would make a certain discount which he refused to do
B. D. Jackson requested Defendant to go down with
himself and Nolan to his Office to pay the money, and

that they altogether went down the street towards said Jacksons Office, dont know who received the money, B. D Jackson afterwards paid Wetzel for his services in selling the lot, Wetzel was re-examined asked about a resale or attempted resale of the same lot, said re-examination was objected to and overruled and exceptions taken by the Plaintiff, a general objection to all proof of a resale or offer to resell was offered on the ground that Defendant was estopped by his agreement from denying or otherwise impeaching the validity of the sale to him, and also as irrelevant, both of which objections were overruled and exceptions taken by Plff.

Wetzel then stated that said lot was there afterwards last fall offered for sale at the instance of Plff. on the same terms, and that Defendant Jackson then claimed the lot and said that whoever bought the lot would buy a law suit, There was no sale in consequence of said threat, Defendant said to the crowd generally, that he had bought the lot and paid part of the purchase money, did not say how much, dont know whether Plaintiff heard him or not, Plff was present at the time, and made no objection as Wetzel heard to said statement - was present at a trial in the Probate Court of Judascep County, and Plff objected that there was some defect in the notices, Plff was asked why he had not put up sufficient notices, he replied that he had left the whole ^{matter} to Mr. Jackson to attend to.

Geo. M. Mettelt sworn and examined by Defendant was Judge of the County Court when trial spoken of by Brand was had before him as a Court of Probate, B D Jackson was plff

Attorney of Record in ^{the} proceedings order of sale, that they were frequently in his office. Consulting about the property After B. D. Jackson's death trial was had R. H. Jackson presented a report of said sale, acknowledging the receipt of the money which Plaintiff refused to sign objecting that the notices were not correct, witness enquired of him why he did not have them right. he replied that he had employed Jackson to attend to the whole matter for him, witness then asked him if he had received the money, he said he had not, that he had not received anything witness stated that B. D. Jackson urged him to attend the sale and be on the lot, evidence objected to as incompetent & objections overruled by the court and exceptions taken by the Plff's Counsel to the ruling.

R. H. Jackson Esq. sworn and examined by Dep't - stated that Plff came to him as Attorney and wished to employ him to procure order of sale but said he asked too large a fee, and he would see his Brother Ben, was asked what occurred at that conversation, objected to on the ground that witness was asked to disclose confidential communications objection overruled and ^{he asked} objected to by Plff, witness stated that Plaintiff said he wished him to attend to the whole business of selling said land but did not make any contract with him was told by his Brother Ben, afterwards that he was employed by Plff, Nolan who afterwards occasionally called at the office and saw Ben, witness ^{saw} said the money paid by Dep't. to B. D. Jackson, and said receipt given, afterwards, Nolan told witness to prepare a deed, after the death of B. D. Jackson witness made out a report of said sale for said Plff but did not ^{read} ~~hand~~ it to him until he was before the Probate

And Court, because he wanted to hear what he would say to the fact of payment when Others were present. Plff had never denied to Witness the payment of said money up to that time, though never asked the question directly Plff refused to sign said Report, Broganann admitted that he was the general law partner of B. D. Jackson during the time when all the above transactions occurred to the time of his death, Plff asked to exclude his testimony as that of an interested Witness being liable as surviving partner of deceased in case said money had not been paid over to Plaintiff. The motion was overruled by the Court and the Witness held Competent. The ruling of the Court was excepted to by the Plff Counsel, and this was all the testimony in this case and is hereby signed and sealed and made a part of the Record in this cause

Benj. R. Sheldon Clerk

Filed March 29th 1855

W. B. Green

The appeal Bond heretofore referred to is in the words of figures following to wit

Know all men by these presents that we Bernard Nolan and John Curly of the City of Galena County of Co. Duwess and State of Illinois are held and firmly bound unto Alexander J. Jackson in the penal sum of One hundred and fifty Dollars lawful Money of the United States to the payment of which well and truly to be made we bind our selves our heirs and personal representatives jointly severally and firmly by these presents sealed with our seals and dated this 16th day of April A.D. 1855

on condition of the
The above obligation is such that whereas the above
Bernard Nolan heretofore to wit at the
March term of the Circuit Court of No Davenport County
1855
recovered a judgment against the said Alexander I
Jackson for the sum of eight ~~two~~ dollars on the
27th day of March in said term from which judgment the
said Nolan prayed & obtained an appeal to the Supreme
Court conditioned on the said Nolan giving a Bond with
John Curly his security in the sum of One hundred and fifty
Dollars within twenty days from the 29th day of March according
to law.

Now if the said Bernard Nolan do well and truly
prosecute his said appeal with effect or do well and truly
pay or cause to be paid all costs that may be awarded
against
him upon said appeal either in the Supreme Court or
in this Court then this Bond to be void and of no
effect otherwise to be and remain in full force & effect

Filed April 16th 1855
W B Green Clerk

Bernard Nolan Clerk
John Curly Clerk

State of Illinois
No Davenport County

I W B Green Clerk of the Circuit
Court in and for said County do hereby Certify that
the foregoing transcripts is a true and perfect copy
from the records of said Court of all the proceedings
had & done in said Court in the foregoing entitled cause
and also of the papers & process issued and filed in said
Cause in said Court

Witness my hand with the Seal of said
Court attested this 9th day of June A D 1855
W B Green Clerk

Bernard Nolan Ad^r of the Supreme Court of the State of Ill.
Bernard Nolan Cr^d at Ottawa to the June Term 1855
or
Appellant App^d
Alex^r J. Jackson

And now comes Bernard Nolan
Ad^r & the Appellant and also the Plaintiff in the
Court below, ^{by assuming by Attorney} and assigns the following errors & causes of
appeal from the decision of the Court below, viz

1st
The receipt of B. D. Jackson the attorney of record for procuring
the order of sale of said lot was improperly admitted in
proof to charge the Plaintiff with said payment. To render
it competent a special agency to receive and receipt for
said payment ^{should be shown} and even then the receipt should be in the
name of the principal by his agent. In other words
the Plaintiff should be a party to said receipt before
it can be received in evidence against him to charge
him with the receipt of said money.

2nd
Proof of the acts of B. D. Jackson beyond the scope of his author-
ity as Attorney of Record was ^{against the Plaintiff} improperly admitted, without
connecting him directly with said acts, or proving special
authority from the Plaintiff to do these acts. Much more
proof of the declarations of B. D. Jackson, unconnected
with proof of his authority except that furnished by the
declarations themselves.

3rd
Proof of an attempt ^{by Plaintiff} to nullify the property mentioned in
the pleading subsequently to the sale to Defendant
under which he claims & which he admits to be valid
was improperly admitted, there being no issue to which
such proof could apply.

4th

Confidential communications made to R. D. Jackson in relation to employment as Attorney in this very matter, were improperly admitted, It was sustained by Jackson's own testimony when Cross-examined that he was a general Law Partner of R. D. Jackson at the time when first spoken to in relation to their employment by the Plaintiff and continued so until the death of R. D. Jackson. It was then moved the Court to exclude his testimony on the ground already stated, and also on the ground of his direct interest as surviving Partner of R. D. Jackson, to establish the receipt of the money by the Plaintiff, which motion should have been sustained and the testimony excluded and the overruling of which motion is assigned as error.

5th

There is no issue in the Pleadings in this case. The only ^{in this case} issue is an agreed issue, and that ^{by the agreement} is limited to one particular, to wit, the Payment or non Payment of two hundred Dollars. There is no proof in the Record of the Payment of two hundred Dollars and proof of a different amount was improperly received under that issue. For the same reason the finding of the Court upon that issue was erroneous. The finding of the Court upon the issue should have been for two hundred Dollars and interest, in favor of the Plaintiff or simply for the Defendant.

6th

The ^{entire} proof of Payment in the case, even if it were all properly admitted, might properly apply to the ^{admitted} sum, to have been paid, viz. the sum of One hundred and ninety five Dollars admitted in said agreement; And the fact that the Payment exceeds the amount admitted, by the sum of two dollars and fifty cents does not justify the finding of the Court, which finding was accepted to and is assigned for error.

For all which Causes of error above assigned an appeal
was taken to this Court. All which are prayed to be con-
sidered by the Court, and the same revised, and re-
versed, and the said Cause remanded to the Court
below for a new trial, according to statutes in such
case made and provided, and the rules & customs
of this Court

A. Cummings Att. for
Bernard Nolan, Appellant

Bernard Nolan Adv. of
Bernard Nolan Adv.

Assignment of Error

Writ and do do do do do

Filed June 22. 1854
L. Nelson Adv.

Cummings Att. for
Appellant

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Bernard Etolan

Alex. J. Jackson

Reed & Co.

Filed July 12, 1855.

L. Leland Clk.

12248

1855

In Supreme Court of the
State Illinois 3^d Grand Division
Bernard Nolan Adm^r &c } Plff. in Error
of B. Nolan deceased }

vs.
Alexander J. Jackson } Deft. in Error

And the said Defendant comes &c.
And says that neither in the proceedings
or judgment of the Circuit Court in this
cause is there any error whatever. And
prays that the judgment of said Circuit
Court may in all respects be affirmed
&c.

J. P. Stevens and
John A. Rawlins
Atty for Deft in Error

Clerk Supreme Court 3^d L. Division
At Ottawa Ill.

The above entitled cause is hereby agreed
to be and is by us submitted to the Court
upon written arguments which will be
sent to you in a few days.

Stevens & Rawlins Atty
for Appellee -

A. L. Cummings Atty for
Appellant

July 5th 1855.

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Stolans Jackson
London & Stiplu.

Fils July 12, 1855.
L. Island Ch.

Bernard Nolan Adv of
Bernard Nolan Dec^r
vs
Alexander Jackson
The Supreme Court of the State of
Illinois at Ottawa. Term
1853

A. S. Cunniff for Plaintiff in error submits the following
points in written Argument & Prays a reversal of the Judgment.

1215 There is no issue upon Defendants Pleas filed to Plaintiff Declaration. "When Pleas are filed and not in any way disposed of, it is erroneous to proceed to trial upon other Pleas & issues"

Clark vs the People et al. Crano 13th Ill. 213. The doctrine that there must be an issue on all the Pleadings is recognized in the following cases, Stetman vs Watson 5 Gil. 249. Adams vs al vs Neely 13th Ill. 380.

The only issue in the Case is an agreed one as to the payment or non payment of the two hundred Dollars. There being no proof of any such payment the issue should have been found in favor of the Plaintiff for two hundred ^{Dollars} interest & costs. The finding said issue against the Plaintiff makes him the unsuccessful party & entitles him to appeal. Nor is he made the successful party by a judgment for a merely nominal amount of interest. Since the finding of the only issue in the Case is adverse to him,

See Pickney vs Pickney, Besides the agreed issue gives either party the right to appeal
13th Ill. 120 & appearance of the appellee & finding in error gives jurisdiction.

2nd The receipt of B. Q. Jackson was improperly received in evidence against the Plaintiff Nolan. A mere Attorney of Record to procure an order of Sale of Land is not authorized to sell or convey or to receive the purchase money & neither for the Land. In the language of Justice Catron in the Case of Holmes vs Field 12th Ill. 424. "A person makes payments at his peril and is bound to know whether the person is authorized to receive his money." This is indeed the true test by which to deter

-min whether he shall be protected in making the Payment,
whether or not the Payor could successfully resist a suit instituted
by the Payee". If it purp agency were proved it might change
the nature of the proof somewhat; but even then, The Plaintiff
Nolan should have been a party to the receipt & signed
by ^{B.O. Jackson} ~~him~~ as agent. See Gray et al, vs Gilliland et al, 15 Ill, 454
As the learned Judge remarked in regard to the paper then
received in evidence, "No rule of law or evidence will allow
an assumption as proof of an agency. Reducing it to writing
makes no difference in this respect. The instrument does
not purport to be the act of Plaintiff". So in this case
The Plaintiff is no party to the writing offered in evidence.
It does not even purport to be the act of the Plaintiff.
The legal presumption would rather be that Jackson who
was a brother of Defendant, held the money on deposit
until the Ord was executed by Plaintiff Nolan to
Gift, since by the terms of the Contract, the money was
not to be paid until the Ord was executed. The acts
were simultaneous both to be done at one and the
same time. Had Plaintiff Nolan deposited the Ord
with B.O. Jackson to be delivered when the money was
paid it would have been but an escrow & would have
vested no title until perfected by a valid delivery.
Neither was the money to be paid over until delivery of
the Ord, and if it had been so paid over it might
have been recovered back from Plaintiff Nolan on default
in delivering the Ord. This accounts for the receipt
given in the name of B.O. Jackson; if it had been
a Payment to Plaintiff the receipt would have
said so & been in his name by B.O. Jackson agent.
So that neither by operation of Law, or otherwise was it a Payment
nor was it so considered at the time by the parties to the receipt,

Not until after the death of P. B. Jackson was an attempt made to set it up as a valid payment. The Ord was undelivered, unexecuted, and until that time no right existed in Plf Nolan himself to claim the payment or power to cancel the payment - or even to demand the same. After the death of P. B. Jackson, when it was ascertained that the lot must fall somewhere, then for the first time was this heard of as a payment of money, to the Plf Nolan. Besides, the Plf was acting in a fiduciary capacity, and even if his authority could be delegated, the Court was bound to protect the interests of those interested beneficially, and to require strict proof of a compliance with such authority, in addition to strict proof of such delegated authority, neither of which were proved, but assumed by the Court below without any proof whatever.

3^o The acts & declarations of P. B. Jackson the Attorney of the Record were improperly admitted as proof of Jackson's authority to do those acts. No independent proof whatever of said Jackson's authority was adduced except the saying of Plf Nolan "that he employed Jackson to attend to the whole matter" and that must be understood to apply exclusively to the subject-matter of the previous conversation; that was in regard to the giving notice of the sale and nothing further. Now it is the usual practice for the Attorney of Record to attend to the proper publication of notice, & indeed being a part of the Record, the publication of notice according to law may be considered the business of the Attorney of Record; But making sale is as much a separate matter & the receiving the purchase money another, as is the making the conveyance to the purchaser

and all these latter acts must be done by the Person appointed by the Court - to make the sale & receive the Conveyance, in order to make those acts valid in Law. But if any man the agent to receive the purchased money, it was the Auctioneer who made the sale he was for this purpose acting for Nolan & with his agent publicly given - but if a Payment to the Auctioneer would have been good if received by him in the name of his Principal, yet that does not imply any authority in any one else to receive the money, save the Principal himself.

4th

The Capt Jackson. Claims under the sale set forth in Plaintiff's Declaration, and is stopped from proving or attempting to prove, any subsequent sale or attempt - would, the effect of which would be to impeach his title. There is no issue in regard to damages arising from the supposed tortious acts of Elfr Nolan, and the evidence ^{of an attempted money sale relating thereto} could not apply to the issue before the Court and was improperly received.

5th

The testimony of R. H. Jackson was objectionable for two reasons it was in violation of Professional Confidence, and was also the testimony of an interested witness. The whole design of his testimony was to show that Elfr Nolan had received the money & thus to release himself from liability as surviving Partner. His whole conduct as detailed by himself aimed to trap Elfr Nolan into an admission of the full receipt of the money, and an attempt, from the length of time that elapsed after the making of the report - before the denial was made, to induce the belief that the money had been received by Nolan. This if true would release him from all liability as surviving Partner & was clearly the testimony of an interested witness & should have been excluded on motion, by the Court.

These Points are respectfully submitted to the Court on behalf of

Demard Nalan Adm'r - }
vs. }
Alexander J. Jackson } Appellee. }

In Supreme Court at Ottawa, Ill.

Points made - and authorities relied upon. By
Stevens and J. A. Rawlins, Attorneys, for Appellee
are as follows.

1st. It is insisted upon, and urged, that B. D. Jackson
is soliciting Bidders to attend a sale of, and in
making a sale of the lot mentioned in this
case - the employment of an Auctioneer for
that purpose, and paying him for the same -
and in the receipt of a part of the purchase
money for said lot - from the Defendant - he
acted as the Agent of - and not merely as the
Attorney of the Plaintiff Nalan - This
we think, is clearly established, ~~and~~ by
the evidence of Brown - Mitchell and R. H.
Jackson, and by the acts and declarations of
Nalan himself - It also appears by
the Bill of Exceptions that at the second sale
or rather an attempt by Nalan, to make a
second sale of said lot - that Defendant
(Jackson) appeared and publicly forbid
the second sale or pretended sale - and
stated in the presence and hearing of Nalan
that he Defendant had bought said lot at
a former sale and had paid a part of the
purchase money therefor - which was not
denied or disputed by Nalan -

2^d. - This Cause was not submitted to - or decided
by the Court below - upon an agreed case
(as is argued by the opposing counsel) but
was submitted upon the pleadings, this agree-
ment and such evidence as the respective
parties may introduce. Upon this point
it is respectfully urged that the Plaintiff Nalan
can not to the advantage of his own errors
and omissions in Pleading as a ground for
a reversal of this case - On this point the Court
is referred to the case of Furness vs. Williams Adm'r.
11th Ill. R. 229 - & 237 - also to the case of Waters vs.
Simpson 2^d Gillman R. 570 -

3^d. - The second Plea of the Defendant was and is
a full answer to the whole cause of action
set out in Plaintiff's Declaration, and in no
wise being answered - is to be taken true - and
therefore a complete and conclusive bar to
any recovery - And the Court below should
have so held; and rendered judgment for the
Defendant - But this the Appellee does not
urge as a ground for reversing this case. And
upon the whole record, insists that the
Judgment below ought to be affirmed -

J. B. Stevens & J. A. Rawlins
Attys for Deft.

The appellant in the Case of Nolan vs Jackson by
his Attorney A. L. Cummings in reply to the
first Point made in Argument by Counsel for appellee
that the testimony on which said Counsel relies
is under objection as being improperly ad-
mitted and that the same cannot form the basis
of a final decision in this Case. That if the fact
were otherwise ^{does} the testimony ~~does not~~ show that Plaintiff
Nolan either heard or could ^{hear} Defendant claim that
he has made a part payment for said lot, nor
if the fact were established that he heard without ob-
jection is there anything to show that it was not
a payment of the admitted amount & not
the amount in controversy.

A. L. Cummings, Atty. for Appellant

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Nolan vs Jackson

Arguments —