

No. 14456

# Supreme Court of Illinois

Linton

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vs.

Porter

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71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division

No. 237

14 50

Linton

23

Mr. Justice Pease. This was an action brought before a Justice of the Peace on a promissory note made by the appellant to the appellee, the plaintiff below, and judgment for her. On appeal to the Superior Court of Chicago the judgment was affirmed.

The defence was want of consideration. The facts are, that the plaintiff's deceased husband died possessed of an iron pile hammer, which the plaintiff sold and delivered to the defendant ~~on~~ <sup>receiving</sup> the note in full ~~for the purchase~~ ~~price~~ in payment therefor.

The hammer is in defendant's possession, and the defendant offered to return it and the sale and delivery to him, by a good consideration for the note. The plaintiff, by her sale of the hammer, impliedly warranted the title to it, and if it shall be taken out of the possession of the defendant, he can recover its value on this warranty.

It would be great injustice to allow this defence, and at the same time allow the defendant to keep the hammer. Having undisturbed and unquestioned possession of the hammer, he must pay the note. He cannot be allowed to repudiate his note, and keep the property also. The judgment is affirmed.

~~the whole court concurred~~  
Judgment Affirmed.

237 - 94

Linton

or

Porter

—

opinion by

Greene J.

Reporter reports  
former cases on  
same question

Recorder Book 13  
p. 96,

Comp. 2

In the Supreme Court  
of the State of Illinois

Third Grand Division  
April Term 1863

William Benton  
appellant  
vs

M. A. Porter  
appellee

} Appeal from the  
Superior Ct. of Chicago

And now comes the said M. A. Porter  
appellee by Ward Stamford & Alkin her  
atys., and says that there are no  
errors in the said <sup>& judgment</sup> rulings of this  
said Superior Court of Chicago as by  
the said appellant alleged - And  
prays that the said rulings and  
judgment may be compromised &c.

Ward Stamford & Alkin  
Atty for appellee

794 237  
Supreme Court of  
State of Illinois

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William Sinton  
appellant

vs  
M. A. Foster  
appellee

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founder in error

Filed Apr 27, 1863  
J. Seland  
clerk

Ward Stanford  
attorney for appellee

In the Supreme Court  
of the State of Illinois

Miliano Sinton

vs  
M. A. Porter

Third Grand Div<sup>n</sup>  
April Term 1863

It is hereby stipulated and agreed by and between the parties to the above entitled cause that the same be submitted to the Court for decision upon the printed <sup>and written</sup> briefs - points and authorities of the respective parties to be filed - - -

Walker & Thomas

attys for Appellant  
Saml Stauffer & Arin  
attys for Appellee

94 237

Supreme Court  
of Illinois

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William Linton  
"

M. A. Foster

Stipulation to  
submit to Court on  
printed Briefs &c

Filed May 5<sup>th</sup> 1863  
L. Leland  
Clerk

Order for Appointment

924 237

Linton

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Porter

Copy 16, Burgess-Davis

Given May 6, 1863

J. S. Hancock  
Clerk

"Chicago Post Company," Printers, 82 Dearborn Street.

# IN THE SUPREME COURT

OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION—APRIL TERM, 1863.

WILLIAM LINTON,  
Appellant,  
vs.  
M. A. <sup>Porter</sup> BROWN,  
Appellee.

APPEAL FROM THE SUPERIOR COURT  
OF CHICAGO.

## BRIEF AND POINTS FOR APPELLANT.

The only question in this case is simply this: Can a widow, without letters of administration being applied for or taken out, sell on her own account and for her own benefit, the personal property belonging to the estate of her deceased husband, who died intestate, and convey a good title thereto to the purchaser, when there are unpaid debts outstanding against such estate, and while the children and heirs at law of the deceased husband are still living? The question is squarely presented, and if decided in the

negative by this Court, as we apprehend it will be, the judgment must be reversed.

Upon the death of the intestate, the *legal* title to his personal estate remains in abeyance until an administrator is appointed. *Equitably* it belongs to his creditors and heirs at law; but there is no *legal* title in any one. The heirs at law cannot convey even an *equitable* title, because they have only an equitable *interest* in (*not title to*), the estate, and that equitable interest is subordinate and secondary to the equitable interests of the creditors; and the precise equities of neither can be ascertained, until, by the intervention of the law, the estate has been administered upon. "Upon the grant of letters of administration, the legal title to the personal estate thereby vests in the representatives of the estate, in trust for the heirs or distributees and creditors of the estate."

*Cross vs. Carey, et ux, 25 Ill., 564.*

And the appointment of the administrator relates back to and covers the intermediate space of time between the death of the intestate and the date of such appointment. #

*See 4 Vol. Bouvier's Bacon's Abridgement, p. 74.*

*Murphy v Moon & Gilman 474-6*

If, therefore, the legal title to the personal estate is vested only in the administrator, as the legal representative of the estate, it follows as a matter of course, that he alone, through the prescribed forms of the law, can convey a *legal title*. It may be admitted that when (*as in Riley vs. Loughrey, adm., &c., 22 Ill., 99*), there are no creditors, and no children of the marriage, the widow could convey a good title: because all the equitable interests in the estate, in that case, would center in her; there would be no one to contest her right to the property, and no one to question the title of her vendee; by the statute she would be the sole owner of the property.

*Scates Comp., sec. 46, p. 1199.*

But by that same statute, it is provided that intestates' estates, "*after all just debts and claims against such estates shall be paid—shall descend to and be distributed to his or her children, and their descendants, in equal*" #

*When administrator succeeds to the legal title to the personal estate and the title takes effect by relation from the death of the intestate. # Gilman 476*

"parts." In the case at bar, there are creditors of the estate: there are children of the marriage; there are other distributees of the estate—others having equitable interests in the estate—equal to some and paramount to others of the widow's interests. She is not the administratrix of the estate; she never had any legal title to the property, (cast iron pile hammer), she sold to appellant. All she owned was *one*, among several other equitable interests therein. Suppose the appellant pays her for the property—what protection is that to him, should an administrator be now appointed, and he cited under the statute, (*sec. 90, p. 1197*), to appear before the Probate Court, or should he be sued for the value of the property? None whatever.

4 *Bacon Abr.*, p. 31 and 32.

*Mumford vs. Gibson*, 4 *East R.*, 441.

The appellee cannot shield herself under the plea that she was acting as an executrix *de son tort*, for she will not be allowed to take advantage of her own wrong. The law, concerning executors *de son tort*, was established only to prevent third persons from being injured by the acts of one who meddles with the property of an intestate estate, as if he were a lawful executor or administrator, and not for the purpose of enabling such intermeddler to sell such property for his own advantage. A contrary doctrine would enable irresponsible persons to sell the property of intestate estates *ad libitum*, before the appointment of administrators, and sue for, recover, collect and squander the sale money, to the injury of creditors and heirs.

4 *Vol. Bouvier's Edition Bacon's Abridgement*, p. 32,

*And authorities there cited.*

WALKER & THOMAS,

*Attorneys for Appellant.*

"Chicago Post Company," Printers, 83 Dearborn Street.

# IN THE SUPREME COURT

OF THE STATE OF ILLINOIS.

—♦—  
THIRD GRAND DIVISION—APRIL TERM, 1863.

—♦—  
WILLIAM LINTON,  
vs. *Appellant,*  
M. A. PORTER,  
*Appellee.*

} APPEAL FROM THE SUPERIOR COURT  
OF CHICAGO.

—♦—  
APPELLEE'S POINTS AND AUTHORITIES.

This was a suit on a note for \$40, given by appellant to appellee.

The only defence was that the consideration of the note was a pile hammer, and that it belonged to the estate of deceased husband of appellee.

That no administration had been granted on estate of said deceased.

That there were children living, and unpaid debts of said deceased.

The appellant should not defeat recovery on the note for the reasons stated, because

1st. There is no failure in whole or in part of the consideration of the note. The appellant received, and still enjoys unmolested possession of the property for which he gave the note.

The possibility of appellant's title being hereafter defeated by administration of deceased estate, does not constitute defence to this suit. The Court will compel him to pay his note, and when his title is defeated, his remedy is ample against appellee, on her implied warranty of title.

2d. But it cannot be insisted that administration granted on the estate of appellee's deceased husband, could or would defeat the title of appellant, for the appellee, as widow, had the right to select the pile hammer as part of her allowance under the statute, (*Purple's Ed., 2d Vol., page 1224, sec. 156 and 159*), and by such selection the property becomes absolutely hers, free from all claims against the estate of her deceased husband, and her sale would give to appellant an indefeasible title. And by selling the same she has selected the pile hammer as part of her allowance. At least it cannot be said that administrator *will* defeat appellant's title, for the widow *may* select the pile hammer as part of her allowance, and her warranty of title would be a strong inducement for her to do so.

3d. The selling of the pile hammer, and taking the note sued on, would be good and binding on appellant, "for, *quo ad hoc*, she may be regarded as an executrix, *de son tort*." A third party is protected in his purchases from one acting in this capacity, for the law concerning executors *de son tort* was established to protect third parties.

22 Ill., 99, *Riley vs. Loughrey*.

"Whatever is honestly done by one acting in that character, and not contrary to law, is binding between the parties."

22 Ill., 99.

*Cross vs. Carey*, 25 Ill., 562.

In any event the appellant should not be allowed to defeat a recovery on the note until he has tendered back the pile hammer to the appellee—otherwise the hammer—by destruction or sale—may be placed beyond the reach of any administration of said estate. Certainly he should not defeat recovery on the note, and still retain the consideration thereof.

WARD, STANFORD & AKIN,

*Attorneys for Appellee.*

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Superior Ct. of Illinois  
3rd Grand Div<sup>e</sup>

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William Sinton  
appellants

v

M. A. Porter  
appellee

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Appellee points & Authorities

Filed May 5<sup>th</sup> 1883  
Leland  
Clerk

Hard Stanford Arkin  
Att. for Appellee



Page of  
Record.

3d. Because the Court erred in excluding each and every item of evidence offered by defendant.

4th. Because the finding of the Court was against the law.

14 Motion for a new trial overruled, and judgment entered for \$42.40 and costs. Appeal prayed and granted.

16 & 18 Bond filed, and Bill of Exceptions.

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### BILL OF EXCEPTIONS.

On the trial Plaintiff offered the following note, and read the same in evidence:

\$40.00. For value received, ninety days after date, I promise to pay Mrs. M. A. Porter only, the sum of Forty Dollars, payable at my residence in South Chicago.

WILLIAM LINTON.

August 23, 1860, A. D.

Witness, WM. PORTER.

19 And thereupon, the Defendant then and there proposed and offered to prove that the sole and only consideration for the giving of the said note was the sale by the Plaintiff to Defendant of a certain iron pile hammer which the said Plaintiff, at the date of said sale and the giving of said note, claimed to have the right to sell and dispose of, but that said hammer was in fact, at the date of said sale, the property of the estate of the deceased husband of the Plaintiff; that the said Plaintiff had not at said date received letters of administration thereon, nor had any letters of administration been granted on said estate; that there was then living children and heirs of the said deceased, and unpaid debts outstanding.

Page of  
Record.

No further evidence being offered, the Judge found the issues for the Plaintiff, and assessed the damages at \$42.40; to which finding of the said Judge the Defendant, by his Counsel, then and there excepted.

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THE ERRORS ASSIGNED ARE

1st. The Court erred in rejecting the evidence offered by the Defendant.

2d. The finding of the Judge was against the evidence and contrary to law.

3d. The evidence offered by the Defendant should have been received, and the finding of the Judge and the Judgment should have been for the Defendant.

WALKER & THOMAS,

*Counsel for Appellant.*

94 237

Linton  
vs  
Pantis

Abstract

Filed Apr. 23-1863

Leland

Clerk

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord One Thousand Eight Hundred and Sixty \_\_\_\_\_ and of the Independence of the United States of America the Eighty \_\_\_\_\_

Present, The Honorable John M. Wilson Chief Justice of the Superior Court of Chicago. }

Van H. Higgins  
Isaac G. Green } Judges.

Joseph King Prosecuting Attorney.

Anthony C. Hennig Sheriff of Cook County.

Attest, Thomas D. Carter Clerk.

Be it remembered that hereunto is set on the County fourth day of December in the Year of Our Lord One Thousand Eight hundred and Sixty one this was filed in the office of the Clerk of the Superior Court of Chicago a certain transcript in words and figures following to wit

Justice Thos }  
 Doct 20 }  
 Crim 25 }  
 2 Subp 50 }  
 Veris 50 }  
 Cont 15 }  
 Cont 15 }  
 1 vask 5 }  
 1 Subp 25 }  
 1 vask 5 }  
 Veris 50 }  
 Transcript 50 }  
 Stutnant 150 }  
 14 Sonns 70 }  
 Judg 35 }  
 Ent Veris 25 }  
 1 vask 5 }  
 Ed 25 }  
 Mr Porter 620 }  
 James Hamilton 50 }  
 John Mansfield 50 }  
 Fleming 45 }  
 Veris 100 }

McArthur

William Linton

Debt \$45.00

December 3/61

The Papers in this Case

Came before me by Change of Venue from A D Stutnant

Esq Veris issued to Charles Court - Case Continued

to December 3<sup>rd</sup> at 2 P.M. Case Continued to

December 5<sup>th</sup> at 2 P.M. Veris issued Dec 3/61

to Mr Fleming, who returned the same with signatures

for Veris. Jurors sworn, Case called for trial.

Parties present after hearing the evidence the jury

retired and came in with their verdict, that the

find for the Plffs, therefore judg is rendered in favor

of the Plffs by this Court and against the Debt for

Judg \$42.46 & Cost December 5/61

December 1861 Executive issued in orth to Plffs to

Fleming Court

State of Illinois

County of Cook

I Certify the foregoing

is a true transcript of all the proceedings before me

in the above entitled Case from my Doctet

Dated this 23<sup>rd</sup> day of Decr 1861

Chas H Barron C. J. P.

And on the same day and year aforesaid the  
defendant in this cause filed herein his certain  
Appeal Bond in words and figures following to wit

Know all men by these Presents that we William  
 Linton and John Johnson of the County of Cook  
 and State of Illinois, are held and firmly bound  
 unto M A Porter also of the same County and State  
 in the special sum of One hundred and twenty five  
 dollars law full money of the United States, for the  
 payment of which well and truly to be made, we  
 bind ourselves, our heirs, executors and administrators,  
 jointly, severally and firmly by these presents.  
 Witness our hands and seals the 24<sup>th</sup> day of  
 December A D 1861

The Condition of the above obligation is  
 such, that whereas the said M A Porter did on  
 the 8<sup>th</sup> day of December A D 1861 before Charles  
 H Barmine a Justice of the Peace, in and for the  
 County of Cook, recover a judgment against the  
 above bounden William Linton for the sum of Party  
 two dollars and Party Cents ~ dollars, Cents  
 from which said judgment of the said Justice the  
 said William Linton hath taken an appeal to the Su-  
 preme Court of Chicago, of the said County of Cook  
 and State of Illinois. Now if the said William Linton  
 shall prosecute his appeal with effect, and shall  
 pay whatever judgment may be rendered by the  
 Court upon dismissal or trial of said appeal, then the  
 above obligation to be void otherwise to remain in full  
 force and virtue

William Linton Seal  
 John Johnson Seal

Approved by me at

my office the 21<sup>st</sup> day  
of December A.D. 1861

The 4<sup>th</sup> Circuit Ct. of Chicago

And afterwards admit in the Seventh day of  
January in the Year of our Lord One thousand eight  
hundred and Sixty two - The defendant filed  
before his Court an affidavit of Omit in words  
and figures following to wit

Mc A. Poston

Supreme Court of Chicago  
Appeal

vs  
William Sinton

The defendant William Sinton  
under oath & says that he has a good and  
curritious defence to the action in the above  
entitled suit as he is advised by Counsel & claims

Sworn to & subscribed before  
me this 7<sup>th</sup> day of January  
A.D. 1862

William Sinton

John P. Thomas

Notary Public

We hereby certify our appear-  
ance as atty for Deft in above case

Thomas & Thomas

And afterwards on the Fifteenth day of January in  
the Year aforesaid the Plaintiff came by G. W. Stearns

4 In attorney enters his appearance in words and figures following

Mary Ann Porter  
vs  
William Linton

In Superior Ct of Chicago

} Appeal

And now comes the said Pff by his attorney and enters his appearance & waives service of same

G W Stamford

Atty for Pffs

And afterwards on the Twenty Eighth day of January in the year aforesaid the Plaintiff herein by his attorney filed a Customs and Excise <sup>and affidavit</sup> return in words and figures following

M. A. Porter  
vs  
Wm Linton

Sup Ct of Chicago

And now comes the said Pff by his atty & on app. in file came the Ct to rule left to show cause why new security should not be filed in this cause

G W Stamford

Atty for Pffs

Mary Ann Porter  
vs  
William Linton

Superior Court of Chicago  
Appeal

7

State of Illinois }  
Cook County } ss

Mary Ann Porter being duly sworn says that she is Plaintiff in above suit. This deponent further says that said suit is brought on a note for forty Dollars - that she obtained judgment against said defendant for the cost of said note and interest before the justice & that said defendant appealed from said judgment to this Court. That on said appeal one James Johnson became security on the appeal bond. This deponent further says that she has made diligent inquiry among the friends and acquaintances of said James Johnson and is informed and believes that he is not worth sufficient over and above his obligations to pay the amount of said judgment. That all his property is mortgaged or otherwise incumbered and that he affords no security to this deponent for the payment of said judgment. This deponent further says that she is afraid said judgment will be lost if no security be not filed, Wherefore she prays for a Rule in said debt to show Cause why a new bond should not be filed in said Cause.

Mary Ann Porter  
x  
msw

Subscribed & sworn to before me  
on this 6<sup>th</sup> day of July 1864 }  
A. L. Minter  
J. P.

8

And afterwards do sit on the third day  
of February in the pm. but a former. Said day  
being one of the days of the February Term of  
Said Court the following among the proceedings  
was had in Said Court and returned of record  
to wit

M A Porter  
vs  
William Linton      Appeal

This day came Said  
Plaintiff by George W. Stanford his attorney  
and said defendant by Morris & Thomas his  
attorneys also came and in motion plaintiff  
attorney insisted that said defendant be and  
is hereby required to file additional appeal bond  
within

And afterwards do sit on the same day  
and pm. but a former the defendant  
William Linton filed down his Oath  
additional appeal Bond in words and  
figures following to wit

9

Know all men by these presents, that we William Linton & Stephen Smith of the County of Cook and State of Illinois, are held and firmly bound unto M. A. Porter also of the same County and State in the penal sum of one hundred & twenty five dollars lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves our heirs executors and administrators, jointly severally and firmly by these presents.

Witness our hands and seals this 3rd day of July A.D. 1862.

The Condition of the above obligation is such, that whereas the said M. A. Porter did on the 5th day of Decr A.D. 1861. before Chas H. Hammond, a Justice of the Peace, in and for the County of Cook, recover a judgment against the above bounden William Linton for the sum of forty two dollars, & forty cents damages and costs; from which said judgment of the said Justice the said William Linton has taken an appeal to the Superior Court of Chicago, in said County of Cook and State of Illinois. Now if the said William Linton shall prosecute his appeal with effect, and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain in full force and virtue.

Approved by me, at my office,  
 this 3rd day of July A.D. 1862.  
 Thomas B. Carter,  
 Clk

William Linton (Seal)  
 Stephen Smith (Seal)

And afterwards did on the fourth day  
of June in the Year last aforesaid. Said day being  
one of the days of the June Term of said Court  
the following Verdict the proceedings had  
in said Court and extent of record to wit

M. A. Potter

<sup>11</sup> William Linton Appeal

This Cause being the day  
called for trial Comes said Plaintiff by  
W. Stanford his Attorney and said Defendant  
by Morris & Thomas his Attorneys also Comes  
and a plea agreement of the parties made now here  
in open Court the Cause is hereby submitted to  
the Court for trial upon the issue found therein  
without intervention of a jury and the Court now  
here after hearing evidence and arguments of Counsel  
and being fully advised in the premises, find issues  
for said plaintiff and assess his damages herein  
against said Defendant to the sum of forty two  
dollars and forty Cents

And therefore said Defendant submit his  
motion herein for a new trial in said Cause

11 And afterwards on the Fifth day of June in the Year aforesaid, the Defendant by Morris & Thomas his attorneys filed herein his Motion for a new trial in words and figures following to wit

In the Superior Court of Chicago  
Mc. A. Porter      Of the June Term A.D. 1862

Wm. Lintan      ) Appeal

And the Said Defendant by Morris & Thomas his Attorneys Comes and Comes the Court for a new trial for the following reasons to wit

- 1<sup>st</sup> Because the Court erroneously rejected the evidence offered by the Defendant to prove amount or factum of Circulation of the Note Said as
  - 2<sup>nd</sup> Because the Court improperly excluded the evidence establishing a set off offered by the Defendant
  - 3<sup>rd</sup> Because the Court erred in excluding each and every item of evidence offered by the Defendant
  - 4<sup>th</sup> Because the finding of the Court is against the Law
- Mc. A. Porter  
Deft. Atty

And afterwards to wit on the Sixth day of June in the Year last aforesaid Said day being one of the days of the June Term of Said Court the following among other proceedings was had in Said Court and to wit of record

12

M. A. Porter

vs  
William Sinton Appeal

This day again Comes Said Plaintiff by G. W. Stanford his Attorney and Said Defendant by James S. Thomas his Attorneys also Comes and a fine Agreement of the parties made now here in open Court it is ordered that the above entitled Appeal Suit be and is hereby dismissed at Cost of Said Defendant

Therefore it is Ordered the Said Plaintiff do have and recover of and from Said Defendant his Costs and Charges in this as well in Court below in this behalf expended and have execution therefor

And afterwards to wit on the fifteenth day of June in the year aforesaid Said day being one of the days of the June Term of Said Court the following Among other proceedings was had in Said Court and entered of record to wit

M. A. Porter

vs  
William Sinton Appeal

This day again Comes Said Plaintiff by G. W. Stanford his Attorney and

Said defendant by Morris & Thomas her Attorneys  
also Comes and a plea agreement of the parties made  
before her in open Court it is ordered that the order  
heretofore entered herein be vit in the 7<sup>th</sup> day of  
June instant dismissing said Suit be and is  
hereby set aside and the Cause reinstated for  
further proceedings

And after a C. writ in the County Court day  
of June in the year last aforesaid, said day being  
one of the days of the Term Term of said Court the  
following among other proceedings were had in  
said Court and entered of record to wit

M. A. Porter

vs  
Appal

William Linton

This day again Comes said  
Plaintiff by G. N. Stanford, her Attorney and said  
defendant by Morris & Thomas, her Attorneys also  
Comes and the Cause coming on now to be heard  
upon the motion of said defendant heretofore admitted  
herein at the present time of the Court for a new  
trial in said Cause and Counsel being heard thereon  
and the Court being fully advised in the premises  
are of the opinion that the defendant deacons filed

14

in support of his said motions are insufficient. it is therefore considered by the Court that the motions of said defendant be and is hereby overruled and a judgment rendered

Therefore it is considered that said Plaintiff do have and recover of and from said defendant her damages of forty two dollars and forty cents in form as provided by the Court, one pound and a penny and also six Cents and Charges in this behalf expended and done executing therefor

And afterwards do sit on the Twenty fifth day of June in the year aforesaid said day being one of the days of the June Term of said Court the following Among other proceedings was had in said Court and to wit of record to wit

M. A. Porter

vs Appeal  
William Linton

This day Comes said defendant and prays the appeal herein to the Supreme Court of the State from the judgment of this Court which is allowed so long as a full filing bond in the sum of two hundred dollars with Security to be approved by a Judge of this Court and to be filed with his Bill of Exceptions within ten days from the day

On the afternoon of the fifth day of July  
in the year last aforesaid the Defendant herein  
filed in the office of the Clerk aforesaid an Certain  
Appeal Bond in words and figures following to wit

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Know all men by these presents that we, William Linton and Stephen Smith are held and firmly bound unto, Mr. A. Porter in the special sum of Two Hundred Dollars, lawful money of the United States for the payment of which sum well and truly to be made we bind ourselves our heirs and administrators, jointly severally, and firmly by these presents.

Witness our hands and seals this 5th day of July A.D. 1862.

The condition of the above obligation is such that whereas the said Mr. A. Porter did on the day of June A.D. 1862, in the Superior Court of Chicago recover against the above bounden William Linton a judgment for the sum of Forty Two Dollars and Forty cents, from which judgment the said William Linton has taken an appeal to the Supreme Court of the State of Illinois,

And if the said William Linton shall duly prosecute the said appeal, and shall pay the said judgment with the costs interest and damages thereon, in case the said judgment shall be affirmed then the above obligation to be void, otherwise to remain in full force and effect.

Approved by me,  
 July 5th 1862.

William Linton. Seal  
 Stephen Smith. Seal

Approved Grant Goodrich.

17 And afterwards to wit on the fifth day of  
July in the Year aforesaid the defendant herein  
filed in the office of the Clerk aforesaid his Counter  
Appeal. Bill of Exceptions in words and figures  
following, to wit -

18

State of Illinois }

Cook County }

U. S. Superior Court of Chicago  
Of the June Term A. D. 1862.

M. A. Porter }

vs

William Linton }

Be it remembered that on the trial of the above cause, at the June Term A. D. 1862. of said Court, the said cause being tried by Hon. Van H. Higgins one of the Judges of the said Court without a jury by agreement of parties, the Plaintiff offered in evidence a certain promissory note in the words & figures following viz:

\$40- For value received, ninety days after date I promise to pay Mrs. M. A. Porter only the sum of Forty Dollars, payable at my residence in South Chicago. August 23. 1860. A. D.

Witness

William Linton  
Wm. Porter.

And thereupon the said Defendant then and there proposed and offered to prove that the sole and only consideration for the giving of the said note, was the sale by the Plaintiff to the Defendant of a certain iron pile hammer, which the said Plaintiff at the date of said sale, and the giving of said note, claimed to have the right to sell and dispose of, but that the said hammer was in fact, at the date of said sale

the property of the estate of the deceased husband of the Plaintiff, that the said Plaintiff had not at said date received letters of administration thereon nor had any letters of administration been granted on said estate, that there were then living children and heirs of the said deceased, and unpaid debts outstanding against the said estate.

And the said Judge, no further evidence being offered by either party, found the issues for the Plaintiff and assessed his damages at Forty two dollars and thirty cents, to which finding of the said Judge the said Defendant by his counsel then and there excepted.

And because none of the exceptions so offered and made to the decisions of the said Judge do appear upon the record of said trial, therefore, at the prayer of the said Defendant, the said Judge hath to this bill of exceptions, set his seal this day of June A.D. 1862.

Wm. H. Higgins  
Judge

(Seal)