

No. 14592

Supreme Court of Illinois

Farwell

vs.

Meyer

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 84

J. W. Middleton & Co., Stationers, 196 Lake St.

Jennell

~~1864~~

1864

14532

It is remembered that heretofore to
wit on the thirtieth day of December
in the year of our Lord one thousand
Eight hundred and Fifty Eight
Charles B. Farwell, filed in the office
of the Clerk of the Court County Court of
Common Pleas (now the Superior Court
of Chicago) his certain Bill of Complaint
for Injunction, which, together with the
order of the Judge of said Court entered
thereon, directing the Clerk to issue said
Writ, with the Writ and figures following
to wit:

In the Court County Court
of Common Pleas Chancery
State of Illinois }
County of Cook } p.
On the Honorable John
Mc Wilson Judge of the said Court,

Humblly complaining shew unto your
honor your orator Charles B. Farwell
of said County that on or about the
fifteenth day of October in the year of
our Lord one thousand Eight hundred
and fifty seven one of his common
was indebted unto Levi Rosenberg
and Jacob Rosenberg in the sum of

Eight hundred Dollars or thereabouts
upon a certain note which was then in
the hands of "Greenbaum Brothers" for
collection & fell due that day. That an
arrangement was effected between the
owner of said note and the said Gimm-
erman to extend the time for the pay-
ment of Seven hundred and fifty dollars
of said note for thirty days upon ob-
taining security thereon. That ac-
cordingly you acted at the request
of & for the sole accommodation & benefit
of said Gimmelman, & without any
consideration of any kind to himself execu-
ted with said Gimmelman on that
occasion and for that purpose a certain
note substantially as follows. viz
\$737.

Chicago Oct. 16th 1857
Thirty days after date for value
received he promises to pay to Greenbaum
Brothers or order the sum of Seven hundred
and fifty dollars with interest after due
at ten per cent. per annum for money
borrowed payable at the office of Greenbaum
Brothers Chicago

H. H. Gimmelman
C. D. Darnell
as Security

That said said Note, your orator & the said
Gimmelman executed a power of attorney
authorizing the entry of judgment there-
on which contains the usual powers in
that behalf, as by said Note, and power
of attorney now on file in this Court, re-
ference being thereto had more par-
ticularly and at large appear.

And your orator further shows
upon his information and belief the said
Rosenfeld & Rosenberg exacted and
took from the said Gimmelman in
interest at the rate of two and one half or
three per cent a month at the time of
the execution of said Note for the time for
which they had so extended the
payment of said sum demanded and
fifty Dollars amounting to the sum of
from Eighteen ⁷⁵/₁₀₀ Dollars to twenty two
⁵⁰/₁₀₀ Dollars.

And your orator further &
shows upon his information & belief that
at the time the said Note fell due the
same belonging to said Rosenfeld &
Rosenberg, to whom Gimmelman ap-
plied for another extension through some
member of the firm of Greenbaum Bu-
ren - that thereupon it was agreed
between the said Gimmelman & the

holders & owners of said note. do said
Rosenfield and Rosenberg - that if the
said Gimmernan would pay in
advance interest at the rate of three per
cent. a month, the time of payment
of said note should be extended for two
months longer that accordingly do
said Gimmernan did at or about the
time said note fell due pay the
said Rosenfield and Rosenberg the sum
of Forty Two Dollars, and they in con-
sideration thereof agreed to and did ex-
tend the time of payment of said
note for two months thereafter.

And your orator further shows
that this agreement was made and
the extension of the time of payment
of said note, and the payment
of the sum of Forty Two Dollars for
that purpose, entirely without the
knowledge, or consent of your orator
& that he was in entire ignorance of
any such extension until long after
the same had been so granted as you
said

And your orator further shows
that the said Gimmernan from time
to time afterwards agreed to and with

the said Rosenfield & Rosenberg then
being the holder and owner of said note
to extend the time of payment thereof
to future times upon his paying them
interest therefor at the rate of three
per cent a month in advance for
such extension, that such interest was
agreed to be paid and was paid & such
extensions granted without the know-
ledge or Consent of your orator decto.

And your orator further shows that the
said Gimmelman paid interest on
said note to said Rosenfield & Rosen-
burg at the rate aforesaid from and
after the same fell due to the first day
of May 1858, & hath paid them thirty
dollars since that time as interest &
thereon, & that during all the time
from the time of the giving of said note
to within a short time past, and just
before the entering of the judgment herein-
after mentioned the said Rosenfield &
Rosenburg were and continued to be the
holders & controllers of said note, & they
are in fact now at your orator verily
believes the real owners thereof though they
have caused a judgment to be entered on
said note in the name of Max W. Meyer

And your Orator further shows unto your Honor that on the twenty second day of December 1858, the said Rosenfeld & Rosenberg as your Orator is informed & believes caused to be filed said note and Warrant of Attorney in the office of the Clerk of the Court with a declaration on said Note & Cognovit for eight hundred, and Eighteen Dollars and twenty five cents damages and costs upon which Judgment was rendered against your Orator & said Gimmelman for said last mentioned sum of money & costs of suit That such Judgment was so entered without the knowledge or consent of your Orator, or his authorizing any person to appear & consent for him otherwise that as appears by the said Warrant of Attorney filed as aforesaid

And your Orator further shows that said Plaintiff in said Judgment had caused out execution return directed to the Sheriff of Cook County to whom the said same hath been delivered & who is now seeking to enforce the payment thereof by a levy upon the property of your Orator.

And your Oralor further shows unto your Honor upon his information and belief that the said Rosenfield & Rosenberg at various times upon various valuable considerations by them received from said Gimmelman, agreed with him to extend and did in fact extend the time of the payment of said Note without the knowledge or consent of your Oralor

And your Oralor further shows & submits to the Court that your Oralor having signed said note as surety merely for said Gimmelman and without any other consideration therefor, & the fact that he so signed the said note as such surety appearing on the face of said Note the said Note Rosenfield & Rosenberg by the several extensions so granted to the said Gimmelman of the payment of said Note after the same fell due, for the considerations aforesaid and without the knowledge or consent of your Oralor, thereby released and discharged your Oralor from any liability thereon & that said Max A. Meyer in whose name said fragment was entered having acquired said Note after the Note fell due

with the same charged with notice of
the equities of your orator, and his de-
ference to said note

And your orator further shows that he
had well hoped, that the said Defendant,
and his suit would have ceased to
urge the collection of said Bequest
& to enforce the collection of said Ex-
ecution out of your orator's property, and
noneo, have discharged him from all
liability & trouble as in equity & good
conscience they ought to have done.

But now so it is may it please
your Honor, the said Rosenfeld & Ben-
burg & Meyer

Combining & confederating
with divers persons to your orator unknown
but whose names when as covered he
prays may be inserted into paper,
and apt means to charge them herein
to injure your orator in the pre-
mises absolutely refuse so to do, and
for excuse thereof allege a variety
of unfounded pretences & have instructed
the Sheriff of said County, to make a
demand of, and levy upon the property

of your Orator under said Execution

All of which acts and doings neglect
pretences, and upholds are contrary to Equity
and good conscience and tend to do manifest
wrong injury, and prejudice of your Orator
in the premises.

In under consideration thereof
and in as much as your Orator is unduly
in the premises, at & after the strict rules of the
Common Law, and can only have relief in a
Court of Equity where matters ~~matter~~ of this
and similar nature are properly cognizable
and alleviable

Or do and therefore that the
said Defendants may without oath answer
this Bill of Complaint, their answer under
oath being hereby waived, and that said
Judgment may be as to your Orator vacated
& set aside and declared of no force or
effect

That the said Defendants by the
Extensions of payment so granted as aforesaid
may be decreed to have the charges of
your Orator from all liability upon the
said Note, and the said Plaintiff of Attor-
ney as to your Orator become null and
void

That the said Max A Meyer
Rosenfeld & Rosenberg be enjoined & restrained

by order of this Court, in the mean time
and until the further order of the Court
from the further prosecution of said Judgment
& execution, levying the same upon the
property of your Orator and that such
execution be made perpetual, and
may be required by this Court, to entire satis-
faction upon said Judgment as to your
Orator.

or for such other or further relief as
may be agreeable to equity and good
conscience

May it please your Honor to grant
unto your Orator the writ of Subpoena
going out of and under the seal of this
Honorable Court to be directed to the said
Levi Rosenfield, Jacob Rosenberg Max
A Meyer, Henry, St. Nimmerman Com-
manding them and each of them by a
certain day and under a certain penalty
themselves to be inserted to be, and appear
before this Honorable Court no Chansey
and then and there to answer the pre-
mise and further to stand to and abide
such order, and decree therein as shall be
agreeable to equity and good conscience And
also that of Injunction enjoining restrain-
ing said Defendants as herein before prayed

for.

And your Oration will ever pray &c

C. B. Darwell

State of Illinois }
County of Cook } p

Charles B. Darwell
of said County. being duly sworn, doth
say that he is the Complainant to
the above intitled that he has heard
the foregoing Bill of Complaint by him
subscribed read and knows the contents thereof
of, and that the same is true except the matters
therein stated upon information and belief &
as to those matters he believes it to be true
Oswego to before me C. B. Darwell
this 29th day of December
A.D. 1858

Walter Kimball clerk

State of Illinois }
County of Cook } p

Henry W. Zimmerman
of said County. being duly sworn doth
say that he is the person who executed
with the said Charles B. Darwell the
note and power of attorney mentioned
in the foregoing Bill of Complaint that
he has heard the foregoing Bill of Com-

plaint read, that he knows the contents &
thereof, and that the same is true in sub-
stance, and in fact as therein stated that
the facts touching the extension of the time,
of payment of said note the considerations
upon which the same were made & given
& the time when the same took place are
truly stated therein

Attest before me this
29th day of December
1858 (Halle Shmell club
")

Let the Court of Exchequer give in enforce-
ment into the prayer in the foregoing Bill
of Complaint; the Complainant filing a
Bond in the penalty of Seventeen Hundred
Dollar with Henry Harwell as surety
John W. Phelps Judge
For the Clerk of the Court be sent to. Please
look to Court Com Pleas

And thereupon afterwards to wit on the day
and year aforesaid there paid out of the
office of the Clerk of the Court County Court
of Common Pleas. The Peoples Writ of
Injunction which together with the
return of the Sheriff endorsed thereon, is
in Words and figures following to wit

State of Illinois }
County of Cook } ss.

The People of the State
of Illinois

To Max A Meyer Levi Rosenfeld &
Jacob Rosenberg and to your attorneys
petition Agents and Sureties and to each
and every of them. Greeting

Whereas it hath been represented
to the Honorable John M. Nelson Judge of
the Cook County Court of Common Pleas
in said County and State of aforesaid on
the part of Charles B. Darwell
Complainant in his certain Bill of Complaint
exhibited before said Judge and filed in
said Court against you the said Max
A Meyer, Levi Rosenfeld & Jacob Rosen-
berg to be relieved touching the matters there
in complained of. In which Bill it
is stated among other things that you are
combining and conspiring with others to

injure the complainant touching the
matter set forth in said Bill, and that
your doings and things on the premises
are contrary to equity, and good conscience
And the said Judge having under his
hand, endorsed upon said Bill an order
that a Writ of Injunction, issue out of
said Court according to the prayer of
said Bill

He therefore in consideration thereof
and of the particular matters in said Bill
set forth, do strictly command you the
said Max A. Meyer, Levi Rosenfield &
Jacob Rosenberg and the persons before
mentioned, and each, and every of you
that you do absolutely desist and refrain
from the further prosecution of a return
magnum, and execution as set forth in said
Bill and levying the same upon the property
of said complainant Charles B. Darnell, under
this Honorable Court in Chancery sitting,
shall make other order to the contrary. Under
penalty of what the law
directs

Do the Sheriff of said County to
execute, and return in due form of
law.

Witness Walter Kimball Clerk

(D.P.)

of our said Court and the said
Court, at Chicago in said
County, the 30th day December
A.D. 1858

Walter Kimball Clerk

sent the said writs to the within named
Levi Rosenfield, Jacob Rosenberg, & Max
& Meyer by delivering a copy thereof to
each of them the 31st day of December
1858

John Gay Sheriff
By A Steinhaus Deputy

State of Illinois }
County of Cook } ss

I Thomas B. Carter
Clerk of the Superior Court of Chicago,
(State of Cook County Court of Common
Pleas) within and for the County, and
State aforesaid, do hereby, certify the above
and foregoing to be true copies, of the Bill
of Complaint, order for issuing, ^{injunction} and injunction
with return of Sheriff endorsed thereon,
^{on file in my office} in a certain cause wherein, Charles B.
Farwell, was Complainant, and Max,
A Meyer, Levi Rosenfield, and Jacob Rosen-
berg were Defendants.

In Witness Whereof I have here-
unto set my hand, and affixed
the seal of said Court, at
Chicago in said County this
Twenty Fifth day of April
A.D. 1864

Thomas B. Carter,
Clerk



84 1864

Tranwell

no 83

v}
Myer

Record of }
Injunction }

Filed May 4. 1864.
L.eland
Clerk.

Fees \$4.25.

UNITED STATES OF AMERICA,
STATE OF ILLINOIS, COUNTY OF COOK, SS.

fol. 1

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 21st day of January in the year of our Lord One Thousand Eight Hundred and Sixty One and of the Independence of the United States of America the Eighty First

Present, The Honorable

John W. Wilson Chief Justice of the }
Superior Court of Chicago. }

Saml. Higgins }
Judges. }

Frank Thorndick }

Charles Hagen Prosecuting Attorney.

Anthony J. Hering Sheriff of Cook County.

Attest,

Thomas White Clerk.

Be it remembered that on the 30th day of December in the year of our Lord One Thousand eight Hundred and fifty eight, Charles P. Jarrell Complainant by his Solicitor, filed in the office of the Clerk of the Cook County Court of Common Pleas his certain Bill of Complaint in the words & figures following to wit:

In the Cook County Court of
Common Pleas, In Chancery
State of Illinois
County of Cook vs.

To the Honorable John M. Wilson
Judge of the said Court. Humbly complaining
Shews unto your Honor. Your petitioner, Charles B.
Farwell of said County that on or about the sixteenth
day of October in the year of our Lord One thousand
and eight hundred and fifty seven, one H. H.
Zimmerman was indebted unto Levi
Rosenfeld & Jacob Rosenberg in the sum of
fifteen hundred dollars or thereabouts upon a cer-
tain note which was then in the hands of "Greenbaum
Brothers" for collection, & fell due that day. That
an arrangement was effected between the owners
of said note & the said Zimmerman to extend the
time for the payment of Seven hundred and
fifty dollars of said note for thirty days upon
obtaining security thereon. That accordingly
your Petitioner at the request of & for the sole re-
compensation benefit of said Zimmerman &
without any consideration of any kind to himself
executed with said Zimmerman on that occasion
& for that purpose a certain note, substantially
as follows. Viz:

4750

Chicago Oct 16th 1887

Thirty days after date for value received
we promised to pay Greenbaum Brothers or order
the sum of Seven hundred and fifty dollars
with interest after due at ten per cent per annum
for money borrowed payable at the office of Green-
baum Brothers Chicago

H. Zimmerman
C. J. Farwell
As Security

That with said note your orator & the said
Zimmerman executed a power of attorney
authorizing the entry of judgment thereon which
contains the usual powers in that behalf a by
said note & power of attorney now on file in this
Court, reference being thereto had, will more fully
and at large appear.

x And your Orator further shows
upon his information and belief, the said Rosen-
feld and Rosenberg exacted and took from
the said Zimmerman interest at the rate of two
& one half or three per cent a month at the
time of the execution of said note for the time
for which they had attended the payment
of said seven hundred and fifty dollars,
amounting to the sum of four hundred & seventy
dollars & twenty five & no dollars.

And your orator further shows upon his information & belief that at the time the said note fell due the same belonged to said Rosenfield & Rosenberg to whom said Zimmerman applied for another extension through some member of the firm of Greenbaum Brothers — that thereupon it was agreed between the said Zimmerman & the holders & owners of said note the said Rosenfield & Rosenberg — that if he the said Zimmerman would pay in advance interest at the rate of three per cent a month the time of payment of said note should be extended for two months longer, that accordingly the said Zimmerman did at or about the time said note fell due pay the said Rosenfield & Rosenberg the sum of forty five dollars & they in consideration thereof agreed to and did extend the time of payment of said note for two months thereafter.

And your orator further shows that this agreement was made and the extension of the time of payment of said note, and the payment of said sum of forty five dollars for that purpose entirely without the knowledge or consent of your orator. and that he was in entire ignorance of any such extension until long after the same had been so granted as aforesaid.

3
5
And your Orator further shows that the said Zimmerman from time to time afterwards agreed to and with the said Rosenfield & Rosenberg then being the holders and owners of said note to extend the time of payment thereof to future times upon his paying them interest therefor at the rate of three per cent a month in advance for such extension. - that such interest was agreed to be paid, and was paid & such extensions granted without the knowledge or consent of your Orator there to.

And your Orator further shows that the said Zimmerman paid interest on said note to said Rosenfield & Rosenberg at the rate aforesaid from and after the same fell due, to the first day of May 1858. & hath paid them thirty dollars since that time as interest thereon & that during all the time from the time of the giving of said note to within a short time past, and just before the entering of the judgment herein after mentioned the said Rosenfield & Rosenberg were and continued to be the holders & controllers of said note - & they are in fact and as your orator verily believes the real owners thereof, though they have caused a judgment to be entered on said note, in the name of May A Meyer

And your Orator further shows unto
your honor that on the twenty second day
of December 1838. the said Pringle &
Rosenberg as your Orator is informed and
believes caused to be filed said note & warrant
of attorney in the office of the Clerk of this
Court. with a declaration on said note &
cognovit for eight hundred and eighteen dollars
and seventy five cents damages & costs upon
which judgment was rendered against your
Orator & said Zimmerman for said last
mentioned sum of money & costs of suit. That
such judgment was so entered without the know-
ledge or consent of your Orator. or his author-
izing any person to appear & consent for
him otherwise than as appears by the said War-
rant of attorney filed as aforesaid.

And your Orator further shows that
said Plaintiff in the said judgment hath
sued out execution thereon directed to the
Sheriff of Cook County to whom the same
hath been delivered & who is now seeking to
enforce the payment thereof, by a levy upon
the property of your Orator.

And your Orator further shows unto
your honor upon his information and belief.

7
 that the said Rosenfield & Rosenberg at various
 times upon various valuable considerations
 by them received from said Zimmerman,
 agreed with him to extend & aid in fact ex-
 tend the time of the payment of said note
 without the knowledge or consent of your Orator.

And your Orator further shows & submits
 to this Court, that your Orator having signed the
 said note as surety, merely for the said Zimm-
 erman, & without any further consideration
 therefor & the fact that he so signed the said
 note as such surety appearing on the face of
 said note, the said Rosenfield & Rosenberg by
 the several extensions so granted to the said
 Zimmerman of the payment of said note
 after the same fell due for the consideration
 aforesaid, and without the knowledge or
 consent of your Orator, thereby released and
 discharged your Orator from any liability
 thereon - & that said Max St. Meyer

in whose name said judgment
 was entered having acquired said note after
 the same fell due, took the same charged
 with notice of the equities of your Orator &
 his defence to said note.

And your Orator further shows that

He had well hoped that the said defendant to this suit would have ceased to urge the collection of said Judgment & to enforce the collection of said execution out of your orators property and would have discharged him from all liability thereunder as in equity & good conscience they ought to have done.

But now so it is may it please your honor the said Rosenfeld & Rosenberg & Meyer

Combining & confederating with divers persons to your orator's indignation, but whose names when discovered he may possibly insert with proper and apt words & change them herein - how to injure your orator in the premises absolutely refuse so to do, and for excuse thereof allege a variety of unfounded pretences & have instructed the Sheriff of said County to make a demand of and levy upon the property of your orator now said execution.

All of which actings and doings, neglects, pretences and refusals are contrary to equity & good conscience and tend to the manifold wrong injury & prejudice of your orator in the premises.

5
9
I tender consideration whereof. And
in as much as your Orator is remediless in
the premises but after the strict rules of
the Common Law & can only have relief in
a Court of equity where matters of this and
similar nature are properly cognizable and
relievable.

To the end therefore that the said defendants
may without oath answer this bill of Complaint.
Their answer under oath being hereby waived
and that said judgment may be as to your
Orator vacated & set aside, and declared of
no force or effect.

That the said defendants by the extensions
of payment so granted as aforesaid, may
be decreed to have discharged your Orator
from all liability upon the said note, - &
the said Warrant of Attorney as to your Orator
become null and void.

That the said Max H. Meyer, Rosenfield
& Rosenberg be enjoined & restrained by
order of this Court in the meantime, and until
the further order of the Court from the further
prosecution of said judgment & execution &
levying the same upon the property of your

Orator, And that such injunction be made perpetual And may be required by this Court to enter satisfaction upon said judgment as to your Orator. Or for such other or further relief as may be agreeable to equity and good conscience.

May it please your Honor to grant unto your Orator the writ of Subpoena issuing out of and under the seal of this Honorable Court to be directed to the said Levi - Brunfield Jacob Rosenberg. Max H. Meyer Henry H. Zimmerman - Commanding them and each of them by a certain day and under a certain penalty therein to be inserted, to be and appear before this Honorable Court in Chancery and then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

And also writ of injunction, enjoining & restraining said Defendants as herein above prayed for
And your Orator will ever pray &c.
C. D. Farrell.

11
State of Illinois
County of Cook

Charles D. Farwell
of said County being duly sworn, doth
say, that he is the Complainant to the above
entitled Cause, that he has heard the fore-
going bill of Complaint, ^{by him subscribed} and knows
the contents thereof, and that the same is true,
except the matters therein stated upon informa-
tion and belief & as to those matters he believes
it to be true.

Sworn to before me this
29th day of December
A.D. 1888. Walter Kimball Clerk

C. D. Farwell

State of Illinois
County of Cook

Henry J. Zimmerman
of said County being duly sworn doth
say, that he is the person who executed with
the said Charles D. Farwell the note and
power of Attorney mentioned in the foregoing
Bill of Complaint, that he has heard
the said foregoing Bill of Complaint read
that he knows the contents thereof and
that the same is true in substance and in fact

as therein stated. That the facts touching
the extension of the time of payment of
said note, the considerations upon which
the same were made & given & the time when
the same took place have truly stated herein.

Subscribed before me this
29th day of December
A.D. 1858. Walter Kimball Clerk.

H. H. Zimmerman

Let the writ of Injunction issue in conformity
with the prayer in the foregoing Bill of
Complaint. The Complainant filing a Bond
in the penalty of Seventeen hundred Dollars
with Henry Farrell as surety.

To the Clerk of the Court of
Court Room Pleas

John W. Wilson Judge of
the Court of Pleas

Said Thompson, to wit, on the day and year
afore said, there issued out of and under the seal
of said Court the proper writ of Summons, which
said writ with the Sheriff returns thereon entered is
in the words of figures following, to wit

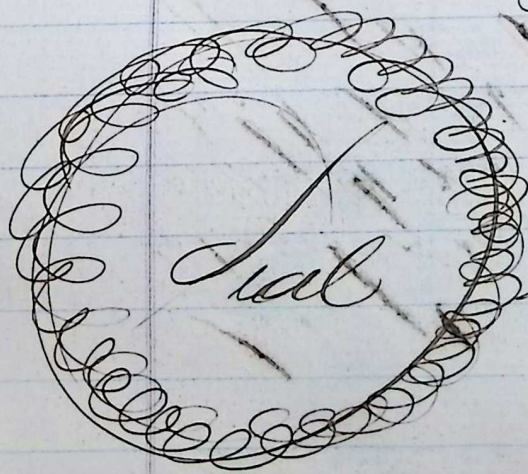
State of Illinois,
County of Cook.

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

We Command you that you summon Levi
Rosenfield, Jacob Rosenberg, Max A. Meyer
& Henry W. Zimmerman if they shall be found
in said County, personally to be and appear before
the Cook County Court of Common Pleas of said
County of Cook, on the first day of the term thereof
to be holden at the Court House in the City of Chi-
cago, in said County, on the first Monday of Febru-
ary next, to answer unto Charles D. Farrell
in his certain Bill of Complaint filed in the
said Court on the Chancery side thereof.

And have you then and there
this writ with your endorsement
thereon in what manner you shall
have it sent to the said.

Witness Walter Kimball Clerk of said
said Court, and the seal thereof
at the City of Chicago, aforesaid, this
Thirtieth day of December A.D. 1858.
Walter Kimball Clerk.



Serve this writ on the within named Levi Rosenfield
Jacob Rosenberg, Max A. Meyer & Henry W. Zimmerman

now by delivering a copy thereof to each of them. the
3rd day of December 1838.

John East Sheriff
by A. Steinhart Deputy.

And afterwards, to wit: on the 17th day of January
in the year of our Lord, one thousand eight hundred
and fifty nine, the said defendants Levi Rosenfield,
Jacob Rosenberg + Mary A. Meyer filed in the
office of the Clerk of said Court, their separate
Answers in the words, figures, following, to wit:

Charles B. Farwell
as
Levi Rosenfield et al. of County Court
vs
Ex Chancery

The several answer of Levi
Rosenfield one of the defendants to the bill of
complaint of Charles B. Farwell against this
defendant and Jacob Rosenberg and Mary
A. Meyer and Henry Zimmerman defendants.
This defendant went and at all times
serving and preserving to himself all advantage

and benefit of Exception to the errors and imperfections contained in the said Bill of Complaint, for Answer thereto, or to so much thereof as he is advised is material for him to make answer unto, the Answering Verdict that the said promissory note offered hundred and fifty dollars, on which the judgment mentioned in said Bill of Complaint was entered in the office of the Clerk of the Cook County Court of Common Pleas. was given in part of tender of a pre-paying note of ten dollars by the said Henry W. Zimmerman.

That the above mentioned note for fifteen hundred dollars was made by said Zimmerman payable to Greenbaum Brothers, from whom the firm of Rosenfield and Rosenberg, of which this respondent is a member bought the same before maturity, and left it with the said Greenbaum Brothers for collection, and that the same was paid in full to said Greenbaum Brothers. That the new note of seven hundred and fifty dollars was purchased from Greenbaum Brothers by the said Rosenfield and Rosenberg. That at the time the note of seven hundred and fifty dollars became due it did not belong to the said Rosenfield and Rosenberg. Nor at any time afterwards. And this respondent Avies that he or the said firm of Rosenfield and Rosenberg has not shown to the

present time had any interest in the same, except for a day or two after they purchased the same which was a day or two after the execution thereof. Subsequently sold the same, making not more than a trifling commission on the transaction.

This respondent has no knowledge of any application for an extension of the time of payment of the said note through the firm of Rosenbaum Brothers, or any member thereof, when the said note became due. This respondent says that the said note was brought to the said firm of Rosenfield and Rosenberg for collection at maturity. That this respondent thereupon applied to said Zimmerman for payment, and also notified the Complainant Charles D. Farrell of the fact of the non payment of the said note. That thereupon said Complainant told this respondent to retain the time for the payment of the note, if the said Zimmerman would pay the interest, and remarked that it made no difference to him the money was loaned provided interest was paid for its use. as he supposed the money was to be loaned to somebody. This Respondent informed both said Zimmerman and said Complainant that the said note was not the property of Rosenfield and Rosenberg and that he was acting for another. That upon such request of said Farrell

This respondent did accept from the said
Zimmerman Forty five dollars and extend the
time of payment of said note for two months.

But that said extension was given merely in
pursuance of the request of the said Darwell.

And this respondent denies that said extension
was given without the knowledge and consent
of the said Complainant. This respondent
further denies that any future or further extensions
were given on said note, but asserts the contrary
to be the fact: That no interest was on any
future occasion paid in advance and that
none was paid at the expiration of the said
two months. That after the expiration of the
said extension of two months, always until the
proceedings alleged in the bill, to enter judgment
under the Warrant of Attorney accompanying
the said note, the same was simply suffered to
lie over but that the right to end thereon, at
any time at the option of the holder was not
sported with nor impaired. And further
this respondent alleges and states the fact
to be, that during all the time when it was
suffered to lie over, it was so done by the
knowledge and consent, and at the request
of the said Complainant. This respondent
admits that from time to time after the giving
of the said note, there have been several amounts

of money paid by said Zimmerman to said Rosenfield & Rosenberg as interest upon the said note, but respondent has no knowledge that thirty dollars have been paid on said note as interest since the first day of May A.D. 1858.

This respondent denies that the firms of Rosenfield and Rosenberg during all the time from the time of the giving of the said note to within a short time before the filing of Complainant's bill, and just before the entering of the judgment in the said bill of Complaint mentioned, were and continued to be the holders and controllers of said note, and that they are now the real owners of the same. but to the contrary of that this respondent states the fact to be that the said firm sold the said note as aforesaid a day or two after they had purchased the same. ~~which was a day~~ which was a day or two after the date of the said note. And that from the time of such sale by them down to the present time, they have not had, and have not any interest whatever in the same. And further that the said respondent did not after such sale. And as he believes his partner did not claim or represent the said firm to be the owner of said note, after such sale by the said firm. This respondent denies that the said judgment stated in said Bill of Complaint was entered

under the direction of himself or his partner the said Jacob Rosenberg, but that he this respondent has no knowledge of the same except by information and that neither the said firm nor either of its members had any power or authority to cause said judgment to be entered.

This respondent states upon information and belief, that as stated in the said bill of complaint the said judgment was entered and the said execution was issued, but that he has no positive knowledge on the subject.

This respondent again denies that the said Zimmerman agreed with this respondent or as to the best of his knowledge and belief, with the firms of Rosenfeld and Rosenberg, for, or did obtain from them an extension of the time of payment of said note, without the knowledge or consent of the said complainant.

This respondent believes that the said complainant did as he states in his said bill of complaint, execute the said note merely as surety and without any beneficial consideration to himself, but of this he has no positive knowledge, except as it appears on the face of the said note. And he denies all combinations, &c.

All which matters and things this defendant is ready to aver, prove and maintain in this honorable Court shall direct, and

particularly as he has no interest in the said
note and said judgment, he prays to be heard
dismissed with his costs and charges, in this
behalf most wrongfully sustained, and that
the said injunction be dissolved.

And he will &c.

Levi Rosenfeld

For Kin Thomas & Roberts
of Counsel.

Charles P. Fawcett
County Court of
Common Pleas.
Jacob Rosenberg et al
vs
In Chancery

In several answer of
Jacob Rosenberg one of the defendants to the
bill of Complaint of Charles P. Fawcett
against Jacob Rosenberg, this defendant and
Henry Zimmerman. Max A. Meyers this defend-
ant.

This defendant now and at all times
saving and reserving to himself all advantage
and benefit of Exceptions to the errors and im-
perfections contained in the said bill of Complaint
for answer thereto, or to so much thereof, as he ad-
vised it is material for him to make answer

into. In answering Denies that either he or the firm of Rosenfield and Rosenberg of which he is a member has any interest or interest in the promissory note on which the bill of Complaint states judgment has been entered in the Cook County Court of Common Pleas, and against which the complainant prays relief, nor in the said judgment nor the execution issued thereon. That he and the firm of Rosenfield and Rosenberg are entire strangers to all the proceedings connected with the entering of such judgment. And that he has no knowledge of the same except from hearsay. This respondent states that the said note was not given in part renewal and extension of another prior note of fifteen hundred dollars. That said 1500 dollar note was left with Greenbaum & Brothers for collection by said Rosenfield and Rosenberg they having purchased the same from said Greenbaum & Brothers and was fully paid at maturity. That the said new note of seven hundred and fifty dollars was purchased from Greenbaum & Brothers by said Rosenfield and Rosenberg. That at the time the said latter note became due it did not belong to the said firm, firm of Rosenfield & Rosenberg, but that they owed the same a day or two after they purchased it from Greenbaum & Brothers, which was a day

or two after its execution, and never after had any interest in the same. This respondent has no knowledge in reference to an agreement for the extension of the time of the payment of said note, nor has he any with reference to the payment of interest except that about the month of July last the said Zimmerman paid thirty dollars. This respondent recalls that he called upon said Complainant on the subject of the payment of the said note in or about the month of June last at his office in the Court House. He the said Complainant immediately sat down and wrote a letter to said Zimmerman, and stated that he presumed that he the said Complainant would have to pay the note yet. This respondent also recalls that in or about the month of July last, on the same day when the Clark Street Bridge broke down he called on said Zimmerman, who said that he would get the last payment of a loan to him in October out of which he would pay the note. Respondent told this to said Complainant, and he said he thought he would not get the loan till October. This respondent states that after they executed the note, it was left with the said firm for collection, for the accommodation of their customer, but that he, this respondent was not the person who gave more particularly

attention to the collection of the note.

All which matters and things this defendant is ready to aver, prove and maintain as this Honorable Court shall direct, and particularly as he has no interest in the said note and said judgment, he prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained: And also that said injunction be dissolved.

And he denies all combination &c.

Teste Jacob Rosenberg
Clerk of Court.
Thomas Roberts
of Counsel

Charles B. Farwell Esq. Clerk of Court
of Common Pleas

May 11th 1881
In Chancery

The several answer of
May A. Myers one of the defendants to the bill
of Complaint of Charles B. Farwell, against
Levi Rosenfeld and Jacob Rosenberg, Henry
Zimmerman and this defendant and respondent.
This defendant now and at all times saving
and reserving to himself all advantage and benefit
of exceptions to the errors and imperfections contained

in said bill of Complaint for answer thereto or to so much thereof as he is advised it is material for him to make answer unto. In answering says that he became the owner of said note of seven hundred and fifty dollars long after the execution thereof, and that he has no knowledge or information as to whether the said note was given in part extension of another note of fifteen hundred dollars as stated in the said bill of Complaint.

This respondent has no knowledge except as it appears upon the face of the note of seven hundred and fifty dollars that the same was executed by said Complainant as security.

This respondent further says that he has no information or knowledge on the subject of the alleged granting of the extension of time for the payment of the said note of seven hundred and fifty dollars, either for the term of two months at the time the same became due, or the granting of any other extension or extensions of time for the payment of the said last mentioned note. And this respondent says if any one or more extensions of time for the payment of the said last mentioned note were given that each and every such extension was given with the knowledge, consent, approbation and request of the said Complainant - and this respondent denying that if such extension or extensions were given at all.

25

that it or they were given without the knowledge and consent and approbation and by the request of the said complainant. He demands proof thereof.

This respondent denies that the said defendants Levi Rosenfeld and Jacob Rosenberg or either of them, or the firm of Rosenfeld & Rosenberg have or had at the time of the entering of the judgment in the office of the Clerk of the Cook County Court of Common Pleas any interest whatever in said note, or at any time since the maturity thereof. But on the other hand this respondent is the owner of said note. And was so at the time the said judgment was entered thereon, and has continued to be ever since he purchased the same, and being such owner the said judgment was entered and the said execution was issued by his authority and in his name.

And this respondent denies all combination

All which matters and things this defendant is ready to aver, prove and maintain as this Honorable Court shall direct. And prays that the injunction granted herein may be dissolved, and that he may be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

For the Thomas & Roberts
of Counsel

Mat. S. Meyer

And after said to wit, on the 5th day of February in the year last aforesaid, the said Complainant filed in the office of the clerk of said Court, his certain Replication in the words & figures following, to wit:

In the Cook County Court of Common Pleas
In Chancery

Charles B. Farrell

vs
Dill

Max A. Myer et al

The replication of Charles B. Farrell Complainant, to each of the several answers of the said Max A. Myer, Levi Rosefield and Jacob Breunberg Defendants:

This replicant saying and avowing to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold inefficiencies of the said several answers and to each of them, for replication hereunto says, that he will ever maintain and prove, his Bill of Complaint to be true, certain, and sufficient, in the law, to be answered unto; and that the said several answers and each of them of the said Defendants are uncertain, untrue and insufficient to be replied unto by this replicant, without this, that any other matter or

27

thing whatsoever, in the said answers and
 each of them contained, material or effectual
 in the law to be replied unto, confessed and avoided
 traversed or denied is true: All of which mat-
 ters and things this repli'ant is and will be ready
 to aver, maintain and prove as this Honorable
 Court shall direct, and humbly prays as in
 and by his said bill he has already prayed

Burgess & Hardley

Solicitors for Complainant.

And afterwards to wit: on the 15th day of the
 month and year last aforesaid, said day being one
 of the days of the February Term of said Court.
 the following among other proceedings were had
 and entered of record in said Court to wit:

Charles B. Farwell

May A. Meyer. Levi Rausfield
 Jacob Rosenberg vs Henry H. Zimmerman

And now at this day
 comes the said Complainant by Burgess & Hardley
 his solicitors, and on motion of defendants leave

is given them to take deposition of Levi Rosenfield
and Jacob Rosenberg two of the defendants to this
suit, to be used in evidence therein.

And afterwards, to wit: on the 12th day of November
in the year aforesaid, there was filed in the office
of the Clerk of ^{The Superior Court of Chicago,} ~~San Francisco,~~ the certain deposition
in the words & figures following, to wit:

In the Superior Court of Chicago

Charles B. Farrell &

Levi Rosenfield et al vs In Chancery

Depositions of witnesses, produced on the part
and behalf of the Complainant in the above en-
titled cause by the consent of the parties thereto, taken
before me, Frank R. Hawley Deputy Clerk of
the Superior Court of Chicago, on the 12th day of November A. D. 1839. When taken to
be used upon the hearing of the said cause sub-
ject to legal exceptions.

Interrogatory 1st What is your name, age, residence & occupation.

Ans My name is Henry W. Zimmerman, age 43. Secretary for a Gas Company, residence Chicago.

Interrog 2^d Are you one of the makers of the note now shown you from the files of this Court in the case of Max St. Meyer Plaintiff and yourself & Charles B. Farrell Defendants.

Ans I am.

Interrog 3. Have you in your possession or will you produce and attach as an exhibit to this your deposition a paper writing purporting to be a release to you dated Oct 21st 1934. & stating that you received the same from whom.

Ans There is a release executed by Charles B. Farrell I received it from him before this examination commenced. The same is marked Exhibit A. & attached to this my deposition.

Interrog 4. Did you at any time make any payments for any purpose connected with the note alluded to in your answer to the second Interrogatory above. If so, when, to whom, for what purpose and amount - has many and the times, state all the facts and circumstances in their order as near as you can.

Ans ³⁰

Also about the time this note became due there was an extension agreed on. Between Messrs Rosenfield & Rosenberg and myself, and I agreed to pay them interest at the rate of three percent a month. I think I did pay them Forty five Dollars for an extension of sixty days. After that sixty days had expired I paid them for one month at the same rate whatever it was I paid them Twenty two Dollars and one half. At the expiration of this thirty days I paid a like sum as interest for a further extension of thirty days. it being understood between Messrs Rosenfield & Rosenberg and myself that there was or would be a general extension of the note so long as I continued to pay the same rate of interest promptly. Then on the thirty days expired and I paid nothing although it was demanded, but some time thereafter I think before the expiration of an additional thirty days I paid them Thirty dollars on account of interest on that note. There was at that time probably two or two months interest due. Since it had run over one month & a larger sum was paid than one months interest I have not the dates so that I cannot exactly tell. After that I think in the month of August in that year I paid an additional sum of Thirty dollars on account of interest due on

Said Note & I do not remember how much was due at that time - I would say also that the demands made on me during the latter part of these transactions was not for interest alone but for the whole note & interest, it being represented to me that the owner of the note desired to realize the money, that is all I have paid, to the best of my knowledge. Sometimes the money was paid to Mr. Greenfield sometimes to Mr. Rosenberg I think more frequently to Mr. Rosenberg. I am not however very clear on this point.

Interrog. 5th Which if any of these payments were paid in advance for an extension of the time of payment of the Note thereafter.

Ans. The third such payments were so made and the fourth in part - the interest in all cases being computed in advance.

Interrog. 6th Did either of the persons receiving such payments produce the note at the time of so receiving.

Ans. At the time of the first payment the note was produced, at the other times I have no recollection of ever seeing it.

Interrog. 7th State what if any memorandum was made upon the note at the time it was produced as you have stated in your last answer.

Ans. I do not remember whether this memorandum

32. was made at that time or not, but I think it was.

Exhib^{8th} What is the memorandum.

Ans Drill quotes it, "Extended to January 18/1858.
Interest paid up to that date."

Cross Interrogatory 1st - Did you not state to Mr Rosenfield yesterday afternoon, on your departure from your examination in this room, either in this room or in some other part of this building or in the Court Square that you had not sworn or deposed that you had paid interest in advance, but only that interest was computed in advance, or something to that effect.

Ans No Sir. I did not make such a statement. I will tell you what was said. As I was going out of the Court House yard. Mr Rosenfield said to me, "Did not you make a mistake in saying that you had paid all that interest in advance". I replied that I had not said so. but had said that all the interest was computed in advance.

Direct examination resumed.

Interrogatory 1st Was Mr Farrell the Complainant present at any time when any of these payments were made. that you have testified about.

Ans He was not.

Interrogatory 2^d Do you mean by your answer to the Cross Interrogatory above to change your statement made in your direct examination that the first three payments were made as interest paid in advance to procure extensions of the kind of payment of the said note or how do you wish to be understood.

Ans I do not wish to change it at all, because I wish it to be distinctly understood that the payments were made in advance, in consideration of the extensions of the note.

This witness wishes to make the following explanation. I stated that after the first extension of the note had expired, that I paid one month's interest in advance, I used the language to be quoted now "Thirty days thereafter a like sum" I did not mean literally thirty days, but one month or thereabouts probably more - the same explanation will apply to like payments mentioned thereafter. I do not exactly remember the dates -

I am of the impression that on one occasion

I paid him another half month's interest but my memory is indistinct on that point.

Interrogatory 3^d. Did the person or persons to whom you paid this money represent themselves at the time to have the note, or to be entitled to receive the money. What if anything was said on the subject to you at those times. Objected to by depts. Counsel as being leading.

Question with drawn.

Interrogatory 4th. What if anything was said to you at the time these payments were made, as to whether or not the person or persons receiving them had possession of the said note, or was entitled to receive them. And by whom was it said. Objected to by depts. Counsel as being leading.

Ans. It was represented to me by Mr Rosenfield or Mr Rosenberg perhaps by both, that the note had passed out of their hands. And that they were acting as agents for the owner. And as to the possession of the note, they sometimes said they had it, and sometimes said they had not it. On one occasion on which I wished to ascertain the amount of interest that had been paid and the balance then due - I was told to call after dinner as they would have to go to the owner and get the note

they then agreeing to bring the note down, so
that I could see the endorsements for myself
which I supposed were on it. The note however
was not produced according to promise, but
a verbal statement of the interest then due was
made to me in lieu thereof.

Subscribed & sworn to before me

this 12th day of November

A.D. 1837.

H. H. Zimmerman

W. R. Hawley

Deputy Clerk

Supr. Ct.

Exhibit (A.)

In the Superior Court of Chicago

vs. Chancery

Charles B. Jewett

Bill

Mar. A. Meyer

Levi Rosenfeld

Isaac Rosenberg

For value received I do hereby release Henry H. Zimmerman a witness to be offered by me at the hearing of this case where deposition is about to be taken, of and from any claim or demand which I now or hereafter may have against him by reason of the determination of this suit or

any matter directly or indirectly brought or be
brought in question in the same suit either for or
against me - And do further release him from
all demands & claims of any name & kind
connected with, depending upon, or growing out
of the subject matter of this suit or any part
thereof, which I now or hereafter may have against
him.

Witness my hand and seal this 22nd
day of October A.D. 1859.
C. D. Farrell Seal

Deposition of Edward P. Ward

Interrogatory 1st Do you know the parties to this suit
or either of them, and which.

Ans I know the Complainant and of the defend-
ants I know Rosenfield and Zimmerman.
I think that I know Rosenberg.

Interrogatory 2^d Do you know where the Complainant was

on the eighteenth day of November A.D. 1837.
and for some days before and after, State
your means of knowledge.

Ans I cannot state absolutely. I shall have
to refer to some memoranda for dates. I pre-
sume he left Chicago, on the twelfth day of
November A.D. 1837. He spent some time in Kenosha
under the treatment of Dr Marsh for sore eyes,
and returned on the twenty third day of the
same month. That is the extent of my knowledge
on that point. That approximates the nearest
to absolute knowledge that I can give. As a
circumstance he was almost blind at the time
with sore eyes, and left with the determination
to give his attention to the matter until he should
be restored. My means of knowledge are that
I am Clerk for Mr Farwell, and was at that
time. We received letters from him while in
Kenosha one of which I procured and attach
to this my deposition marked Exhibit D.
I know that he came home agreeably to the
announcement made in that letter.

Interrogatory 3 How long did he stay at home on that oc-
casion and where did he go.

Objected to answering

Ans He remained at home about two hours I
should think and on the same day he left

with the avowed purpose of going back to Ken-
osha.

Interrog How long was it after that before he returned
to Chicago again.

Ans On the twenty third of the same month.

Interrog That means have you for fixing the date of that
particular day.

Ans He came to the office for the first time after that
return, the next morning after his return, and
qualified under his then recent election, which
was the twenty fourth and the record of that pro-
ceeding was entered on the Journal as of the
day previous, and I know that he returned
to Chicago the evening previous. - I do not re-
member exactly when the car arrived, but
I saw him at about half past seven of the
evening of the 23^d. The usual running time
of those cars are about 11 o'clock A.M. and
about 6 o'clock P.M. Any day and hour as
noted.

How long did he remain at home on
that occasion and upon what day and at what
particular hour did he leave, at all.

Replied he was leaving
He left again on the 24th at about the hour
of two - I guess however it was on the 12th that
he left at mid day from the 24th at any rate.

that he left. I am more inclined to think that on that occasion he left on the first train which to the best of my recollection left at about 9 o'clock A.M.

Interj How long was it after the 24th before he returned to Chicago again & to what place did he go when he left on the 24th?

Ans I could not say from recollection simply. I have no other means at hand now to determine the exact day when he did come home. Next to Keneba however I think he was absent something over two weeks - and went to Keneba on the 24th.

Cross Interrogatory 1st What is that memorandum book to which you refer & which you hold in your hand, and to which you have referred is fixing your dates.

Ans It is a diary of events. I simply referred to it as a calendar - to ascertain on what day of the month a particular day of the week would come out and vice versa. It is my own private book.

~~Cross~~ Interrogatory 2^d. How do you fix the fact that he left again on the 24th as stated in your answer to the 6th direct interrogatory.

Ans All that I can say is, that I remember it distinctly as connected with his coming home. He came home in the evening - was questioned & left again the next day.

~~Cross~~ Interrogatory 3^d. How do you fix the fact as stated by you in your answer to the 2^d interrogatory that he left Chicago on the 12th.

Ans Because I know that he left on the same day he arrived.

~~Cross~~ Interrogatory 4th. How do you fix the time of his arrival on the 12th.

Ans Because I know that he came home in accordance with the announcement made in his letter.

~~Cross~~ Interrogatory 5th. How do you determine the fact that he was absent over two weeks after leaving on the 24th.

Ans I have not determined it. I have only stated it as my best impression. I do not pretend to be exact by referring to memoranda I can confine it to more narrow limits - on Friday the 18th of December I know he was at home.

419

Direct Examination resumed.

Interrog 1. Examine your diary for what day of the month the Wednesday following the date of that letter comes to, & then state what if any memorandum is made in your diary that leaves you to say that Mr Farwell was at home on the 12th of November.

Ans The Wednesday following the date of the letter fell on the 11th. I have a memorandum of pay^{ing} to Mr Farwell money on the 12th.

Subscribed & sworn to before me
this 12th day of November
A.D. 1857.

Edw. P. Ward.

W. R. Hawley
Deputy Clerk
Sup. Ct.

Exhibit (B)

Kewasa Nov 5 1857.

Dear Father

I have had two applications made to my eyes. I am satisfied that March can cure them in time, and shall remain here probably for months. I will be home Tuesday or Wednesday next, and will remain about two hours. (and coming only for clean clothes) Try and collect up those rents, and keep a memorandum of the amounts you receive, and the date, and I will put them up when I return. If you get short of funds get

Where did you live in whose family
in the months of November & December A. D. 1837.

I live in the house No. 155 Washington
St. in the family of my son the Complainant.

Do you recollect whether or not your son
was absent from the city of Chicago during those
months or any part of them

He was absent nearly all of the
month of November & part of the month of
December. I do not recollect exactly how much
of the month of December

Can you state what if any days in
the month of November he was present in Chicago

He left Chicago on the first morning
after the election - I think it was on the 4th
of November - The next week on Wednesday or
Thursday he came home and left again on
the same day - He came home again in a
week from the next Monday & stayed over
night - He left the next morning immediately
after breakfast with his family for Keokuk
as he said. I am sure he was not at home again
the same month.

42
Cross Henry 1st State your means of fixing these dates and
three terms of absence.

Ans The first time he left I know from the fact
that it was the day after the election - The second
time he left, is from a memorandum and an entry
in Journal that I handed his wife some money
on the morning that he left. - The third time
his Commission from Springfield came up.
& he came home for the purpose of qualifying
his deputies - I am one of his deputies and
was qualified at that time - which I believe
is shown by the records in his office. - He
did not come to the office the evening that
he came home. He came to the office
the next morning & qualified his deputies &
left immediately for Knoxville. He had
the papers all made out, & he was there but
a few minutes, but just long enough to
administer the oath. He left to go in the
morning train. I should think it was from
8 to 9 o'clock.

Subscribed & sworn to before
me this 12th day of November
A.D. 1899.

Henry Barwell

W. R. Hadley
Deputy Clerk
Sup Ct

And afterwards, to wit, on the 2^d day of January in the year of our Lord one thousand eight hundred and fifty, there was filed in the office of the Clerk of said Superior Court of Chicago, the deposition of Levi Rosenfeld which said deposition is in the words & figures following, to wit:

In the Court County Court of
Common Pleas and Chancery

Charles S. Farwell

Mar. A. Myers

Levi Rosenfeld &

Isaac Rosenberg

Levi Rosenfeld being
duly sworn, as follows, viz: I solemnly swear
that the testimony I shall give in relation to
the matter in controversy, so far as I may be in-
terrogated shall be the truth the whole truth
& nothing but the truth. So help me God.
Levi Rosenfeld.

Counsel for Plaintiff desired witness to sign
the above oath, but witness objected, on the ground
that, his religious belief prevented him so doing
on Saturday, that is from signing unnecessary papers.
It is informed that the law did not render this
necessary - He being a member of the Hebrew
Nation.

Counsel for Plaintiff Burgess Hawley being
present at the hour of 10 o'clock A.M., at the office
of Thomas & Roberts before Mr. John B. Kelley
S.P. duly commissioned and examination of witness was

as follows, viz -

Q State your name, Residence, age, occupation & whether you are acquainted with the parties to this suit & whether or not you are one of them.

A Levi Rosenfeld, Chicago, forty two or three years, wholesale dry goods dealer, I am acquainted with the parties to this suit, I am one of them.

Q State whether you have knowledge of a promissory note mentioned in the bill of Complaint, for the sum of Seven hundred & fifty Dollars dated about Oct 16 '57. Signed by H. H. Zimmerman & C. B. Farwell.

A I have.

Q State all you know, the occasion of the giving of that note & the consideration for which it was given & to whom it was made payable.

Objected to by Pliffs Counsel

A I bought this note at the office of Greenbaum Bros, it was given payable to Elias Greenbaum endorsed to him without recourse, I believe I do not know the occasion - for sure - I might have supposed, or presumed it was to pay notes or notes with. I do not know what the consideration

of the original note was.

4 Q. State, whether or not you, or Jacob Rosenberg or either of you or your partnership ~~have~~ ^{have} an interest in that note, which of you had an interest in it, at the time it was purchased whether it was a partnership transaction or not.

Objected to Ref. atty

A. The note was purchased for the firm of Rosenfeld & Rosenberg which consists of Levi Rosenfeld & Jacob Rosenberg, of which I am a member. at the time it was purchased Rosenfeld & Rosenberg owned the note, we have no interest now in it.

5 Q. State whether either of you in your individual ~~partnership~~ capacities have an interest in that note at this time.

A. I for myself have not & Mr Rosenberg to my best knowledge & belief has not.

6 Q. State when your interest or the interest of your partnership was parted with in the note, & if the partnership or either of you has any interest in it since, & if you have had any interest, state what interest.

A. It was parted within two or three days after

47

we purchased it, which was about two or three days after the note was dated, we have not. I have not certainly, Mr Rosenberg has not to the best of my knowledge belief. The partnership have not no pecuniary interest whatever.

Q. State whether you know who directed the judgment to be entered under the warrant of attorney in the Cook County Court of Common Pleas, what participation if any you or your partner or your partnership had in the bringing the same. And what interest the partnership or either of you if any, had at any time or have in that judgment, or in the execution issued thereupon.

A. Max A. Meyer directed the judgment to be entered as I understood - neither our firm myself or my said partner to the best of my knowledge belief had any participation in entering the said judgment - neither of us had or have any interest in said judgment, or in the said execution. whatever.

Q. State what interest you have, if any, in the subject matter of the present suit by which you are made a party.

A. I have no interest whatever.

48
Q 2 State whether you had possession of the note after it became due & if so for what purpose.

A Said. I had it for collection.

10 Q 2 State whether you had any intercourse or conversation with Chas P. Farwell the Complainant in this suit, with reference to the payment of this note or if so state the particulars.

A Ans I had about half a dozen or dozen times, the note was not paid when due, & I went to Mr Farwell and told him as Mr Zimmerman neglected to pay the note - that was the first instance of my seeing him relative to the note. that being in the last year or in I told Mr Farwell the note was not mine nor did it belong to the firm. Mr Farwell said, if the man who owns the note gets good interest for his money he will probably let it run on or extend it. I do not know that this was his exact words, but this was the substance, he further said that he better extend it & Zimmerman will satisfy him, or something to that amount, but that an extension of I believe 60 days was granted & written on the back of the note. The note was not paid the second time due - after the extension run out - Farwell was notified by me

of that again - I also asked Mr. Zimmerman by Mr. Farwell's request for the payment of said note. His answer was he had no money. He paid me some small amount of money for interest & small amounts of money at other times on the note on account of interest but it was not endorsed upon the note, the time still running on the note being unpaid. But Mr. Farwell on La Salle St. near Cor. Lake told him this note was still unpaid. He said you hold on. I will write Mr. Zimmerman a line. & probably he will pay it - it was not paid then - I spoke to Mr. Farwell on another occasion at the County Clerk's Office he then said - I am afraid I will have to pay that note yet, this is all my recollection at present.

112 State whether there was any further extension of the note, by which, Messrs Zimmerman & Farwell became entitled to further time for the payment of the same.

Objected to by Ref. Atty
on the ground of its being leading
Question withdrawn.

112 Was anything further done with reference to the extension of that note or if anything what.

A My Zimmerman frequently asked me to do it but there never was an agreement to do so. To the best of my knowledge.

12 Q Had whether there was or was not any extension of time for the payment of said note granted without the knowledge & consent of the complainant, if so when, and what were the circumstances connected with the granting of such extension.

Objected by Opp. Atty.

Ans The first extension was for 60 days of which the Plaintiff was notified & of which I have spoken before. No further binding extension to my knowledge has been given.

The Opp. Atty suggested that the whole question had not been answered when a witness said that the first extension was with the consent & request of Mr. Farrell.

Opp. Atty suggesting to witness, that the portion of the question pertaining to consent had not been answered.

(Opp. Atty asserts that this conversation was addressed to Notary & not to witness, as testified Notary is unable to say or form an opinion.)

When I first saw Mr. Farrell & told him the note was not paid, he remarked then that

it does not make any difference who pays the interest if you extend the matter or let it run on.

It was some time in Nov 1854. the latter part of the month or middle. This conversation I believe was at the County Clerk's office in Chicago. the extension was written on the note of the interest paid. I went to Mr Fairwell & said Mr Zimmerman & Fairwell's note of \$750. was not paid, Mr Fairwell said it ~~was~~ no difference who pays interest, and you may let it run on or extend it. I do not recollect the particular words. I do not know that there is any other particular circumstances connected with the extension.

Q 2 State whether there was more than one extension granted -

A. There has not to my knowledge

Q State whether or not that extension was with or without the knowledge & consent of Mr Fairwell.
Right Resp. Atty.

A. It was with the knowledge he was apprised of it, it was by his request.

Cross examined by Defts Atty

12. Was the extension to which you refer at the time the said note became due & payable, or at what other time.

A. It was at the time the note was after due.

22. How long was it after it was due.

A. I do not recollect but two or three days I cannot say surely - it may be more.

32. Was it ten days after it was due.

A. I could not say.

42. Who is the occupant of this County Clerk's Office

A. Mr. Farrell I believe.

52. What was the consideration for the note of \$500. of which you have spoken, mentioned in Complainant's bill.

A. I do not know.

62. Was not this note given in whole or in part in place of another note.

A I know nothing about it, it was not given to me.

⁵³
7 Q. Were you or not doing business loaning money at the time of the making of said note and previous thereto, through the agency or in the name of Greenbaum Brothers, of this city, or some one of them.

A. I was not loaning money through the agency of Greenbaum Bro., nor any member thereof. I had been doing business with them but I was not loaning money through them.

8 Q. What was the nature and kind of business you were doing with Greenbaum Bro.?

A. I have bought promissory notes of them.

9 Q. Did you not, or the firm of Rumpf & Rosenberg hold prior to the said note mentioned a note of \$1500 or thereabouts against the said Zimmermann & Farwell.

A. We did.

10 Q. Has that note been cancelled or paid.

A. I do not know as the note has been cancelled or have rec'd the money for it.

⁵⁴
11 Q From whom did you receive the money.

A I do not recollect sure but I believe it has been paid at the Merchants Loan & Trust Co. I believe it was paid and credited to us at the Merchants Loan & Trust Co. It might have been paid by Greenbaum Bros & Co.

12 Q Was not said note of \$1500 paid in part by the making of the said note mentioned in bill of Complaint.

A. Not to my Knowledge

13 Q How was the said \$1500 note made payable & what was the consideration therefor.

A. I do not recollect to whom it was made payable I am not aware what the consideration was.

14 Q. It is not the said Greenbaum Bros at that time and at the time of the making of the subsequent note, mentioned in said bill engaged in the brokerage of notes.

A. I believe they were.

15 Q How you what said times doing business with or through them, as such brokers.

29

A.

55

I do not recollect as I was or not except the buying of the \$750 note of them, I believe I was not doing business with them.

16 Q. Was the Firm of Rosenfeld & Rosenberg doing that kind of business with them as such Brokers.

A. I do not recollect except in the case of the \$750 note.

17 Q. Do you not know from your own knowledge or from the statement of Rosenberg, or some one else that said note of \$750 was made & given by Zimmerman & Complainant as part payment or exchange for the said note of \$1500. or some other note.

Obj't to so far as it calls for hearing
by atty for def't

A. I do not know from my own knowledge or from Mr Rosenberg as this note has been given for part payment of the \$1500 note. I do not recollect as I heard any particulars about the matter except of some, I do not recollect who as Zimmerman will have to make a new note to pay the old one.

18 Q. Was or not a new note made to pay in whole or in part, the old one of the said \$1500 note

56
A. I do not know.

19 Q Did you or your Firm Ransfeld & Rosenberg receive the said notes or either of them from Guenbaum Bros as such brokers.

A It received one of them (the said) the \$750. note to my knowledge

Adjourned by Agreement until Monday Feb'y 28th at 9 o'clock A. M.

20 Q At what time of day was the conversation held to which you have referred as being held in the A. Clerk's office at the time you say there was an arrangement made for the extension of said note.

A. I don't not recollect the time, or how often I have been there so often.

21 Q Was said conversation held during business hours of the day, or if so state about what time of the day, as near as you are able.

A. I believe they were held during business hours between 10 A. M. & 3 P. M.

22 Q Who if any one was with you at this conversation & who was present during said conversation in said office

57 A No one, there was some Clerks of the office present but I spoke in private to Mr Forwell, there might have been some stranger there I don't recollect.

23 Q Where were you and Mr Zimmerman at the time you say you made an arrangement with him for the extension of payment of said note.

A I had more than one conversation I believe with Mr Zimmerman, about the extension of said note I do not recollect where the arrangement has been made either at the office of Mr Zimmerman or my store, but I should believe at my store, because I believe my book keeper wrote the extension upon it.

24 Q Who was your book keeper at this time and how you have answered in your answer to the last interrogatory.

A May R. Myers.

25 Q Was the said fragment upon said note, entered in his name.

A I saw that fragment in the bulletin which I read every morning which was the first time that it came to my knowledge, I believe, I believe it was entered in his name, all that I know about it is that I saw it in the bulletin which is all I know about it.

26 Q. Have you had any conversation with the said
 Mat A. Myers about the subject of the said judg-
 ment, if yes when was it & what was it. Where was it.

A. None whatever.

27 Q. When did said Mat A. Myers first become the
 bookkeeper or clerk of Rosenfeld & Rosenberg.

A. Between three or four years ago I believe.

28 Q. How long you bookkeeper at the time of the making
 & maturity of said note & entering judgment before
 the same or either of which.

A. It was during all that time & is now.

29 Q. When was the said note transferred to the said
 Mat A. Myers, & when was it so transferred.

A. I do not know when, I do not know from my
 own knowledge by whom.

30 Q. State the knowledge you had in relation to the
 said transfer of the said note to the said Myers.
 the source of said information, and the time of
 the said transfer as nearly as you are able.
 Question object to by Atty. for Deft.

59 A I have heard that Mr Myers bought that note I have heard it said, Mr R. Sandheim told me he sold that note to Mr Myers, I do not know any more about it. I don't know as I could tell time of transfer, it might have been when he was in N. York. I heard it some time last fall.

31 Q. What disposition did you or your firm make of this note & when did you so dispose of it.

A. I sold it for the Firm within 2, 3 or 4 days after we got it.

32 Q. To whom did you sell it for what consideration.

A. Sold it to R. Sandheim for nearly \$725. Can't not state exactly. I think for \$724 or \$724.92. he knew \$725 & \$727. I believe

33 Q. What did said consideration consist of, at the time you received it, was it bank bills, specie or a check upon a bank or other property

A. It was money, if specie would have been given a premium would have been allowed on it. It was sold for money at currency basis there was no check taken to my knowledge. I believe

60 2 When did this transaction occur?

A At New Store.

35 2 Who employed you to collect said note.

A Mr. Sunchein. Was not paid for doing it. He spoke to me as in the usual way if a man sells a note, to assist in collecting it.

36 2 When were you so engaged

A The note was brought in for collection before due and left for collection, it was unpaid and I arranged the extension - with the consent as thought of Mr Farwell, as Mr Sunchein allowed me to do so. By getting Mr Farwell's consent and getting such interest as money was worth then, which I informed Mr Farwell, that money was worth from 3 to 5 per cent per month it being right in the crisis - and the arrangement for the extension was made, & my engagement continued along, for several months, it might have been continued 6, 8 or 10 months shorter or longer. In which time I kept advising Mr Farwell as well as Mr Zimmerman till Mr Farwell told me he would not pay that note.

37 Q. Who is this Mr. B. Sandheim what is his business
61 where does he reside.

A. He is a man. I do not know much about his business. He has I believe bought & sold notes occasionally on a commission. Resides in the West Division in Chicago.

38 Q. Has he ever been employed by you or your firm.

A. He has not.

39 Q. Did you sell this note to him on condition that you was to collect it or aid in its collection.

A. I did not.

40 Q. What did you charge Mr. Zimmerman and what did you receive from him for attending the payment of the said note as before stated by you.

Right to by Left Atty.

A. I believe it was forty five dollars.

41 Q. When did you receive from him that forty five dollars.

A. I believe some time in Nov 1837, the latter part of Nov.

62
42 Q Was at the time or about the time the said note fell due, & how long after it fell due was it.

A. I believe after this note was due, could not say exactly how long, could not say if it was paid to the firm of Rosenfeld or Rosenberg or which member thereof.

43 Q Who was the owner of said note at the time of this extension.

A. I do not know, because Mr. Smocheim never told me who was the owner thereof. Mr. Smocheim brought a note for collection & I did not ask him who was the owner.

44 Q Who dictated the terms of said extension.

A. I was empowered to make the extension.

45 Q Who empowered you to make said extension.

A. The man who was at that time in possession at that time of the note, & brought it to me.

46 Q Who was in the possession of said note at that time & brought the same to you.

A. B. Smocheim.

47 Q. How long after said extension was it that said B. Suckheim disposed of said note to said Myers.
63

A. I do not know, but I presume it was several months.

48 Q. State the length of time as nearly as you are able.

A. It might have been six or 10 months more or less.

49 Q. What consideration did said Max A. Myers give for said note.

A. Don't know.

50 Q. How long did you continue in any capacity agent or otherwise to hold said note & make efforts collect the same, & when did that agency or effort on your part cease.

A. I don't know as I did hold the note longer than after the latter part of Jan'y 1838. but I have occasionally tried to collect it by request, & it was then by request 6. or 10 months from the time the note first became due 11th Nov 1837. my effort to collect said note ceased between June (last May) & August or September. I could not say exactly.

64
31 Q. When was the first you knew of Mr Myers holding this note state in what month to what year as nearly as you can.

A. I do not know as I knew until I saw the judgment reported in the bulletin.

32 Q. Who was present at your store at the time of the said Extension & the payment by you of the said forty five dollars besides said Max A. Myers.

A. I do not recollect as it has been paid at my store, nor can I recollect who was present, or at what it was paid - I do not know that Max A. Myers was present.

33 Q. Have you record at any time since the payment of the said forty five dollars for said extension of the said Zimmerman or any person for him any money in or on the account of said note.

A. I have received money a few times of Mr Zimmerman, I do not know as I received any of any body else on his acct. or the interest acct of said note.

34 Q. What amount have you so received & was the same record state the time of each payment

to you & the amount of each payment.

65

A. I do not recollect what amount I recd. as I had delivered it up to the owner of the note I did not take any rec^t thereof. I could not tell any exact time.

55 Q. How many times did you receive money of said Zimmerman on said note, or on acct of said note, after the pay^t of the said forty five Dolls.

A. I do not recollect.

56 Q. How much did you receive from him the first time after the said pay^t of the said \$45.

A. I believe \$22⁵⁰ per. I am not sure.

57 Q. How long was this after the payment of the said \$45.

A. I do not recollect it might have been 3 mo more or less.

58 Q. How much did you receive upon said note or on acct of said note the second time after the \$45. pay^t.

A. I could not state. I don't recollect it.

59 Q. State about how much or as near as you remember

A. It was not less than \$22. Nor more than \$30. I believe \$30. being the largest amount ever paid besides the \$45. To the best of my recollection.

60 Q. How long was this after the said payt. of the said \$22⁰⁰ before spoken of -

A. I could not recollect.

61 Q. How much did you receive of the said Zimmerman upon or on acct of said note the third time after the said \$45.

A. I do not recollect if I or Mr Rosenberg received \$22⁰⁰ once -

62 Q. How much did you receive on or on acct of said note the fourth time after the said payt. of \$45.

A. I do not know as there was a fourth time or not so do not recollect.

63 Q. Did you not receive in the mo of Augt 1838. of said Zimmerman upon said note or upon the acct of the same. the sum of \$30.

A. It is not likely. I was not in Chicago last August.

64 Q. Did either of your firm or any one for them receive in the mo of Augt 1838. of said Zimmerman the sum of \$30. or on acct of said note

A. Probably Mr Rosenberg did I do not know.

67 Q. Does your firm keep books of debt & a Cash book or other memoranda in which you enter your business transactions if you state what books you keep.

A. We keep books of debt, single entry, Day Book, Journal, Ledger, Note book, Cash Book Sales book & several small books.

66 Q. Will you present said day book journal, Ledger & Cash book or produce the same to be examined touching the entries in the same of the transactions by you spoken of, in regard to the two said notes and the said General payment spoken of by you on the \$750 note.

A. As said books except the memorandums & Cash book are only kept for our Dry Goods jobbing business & contain nothing appertaining nothing to the note business, I do not think any body has a right to look into them.

67 Q. Will you or not produce said books called for in the last interrogatory to be examined in the course of your further examination of this cause.

A. Will if the Law requires it. The books are at

my store at your service at any time during business hours -

68 Q Will you or not produce the books called for before the examining officer was at this time or at some thereafter as it is practicable for you to do so.

A. I will bring them if the examining officer requires it.

At the request of Defts Counsel & with the consent of the Pft Court adj.^d to Messrs Rosenfeld's Store, for examination of books.

Returned at R & R Store

69 Q Will you produce books of acct in which you enter your money & note transactions.

A. We have produced them.

70 Q Are these the books of account & Cash book pertaining to your dry goods department.

A. Yes Sir.

71 Q Have you any other book or books of account other than these in which you make your entries touching your money transactions outside of your dry goods department if you will you produce them.

A. We have none

Adjourned until 2 o'clock P.M. at Mr Thomas Office.

Resumed at Mr Thomas Office

Q Does this memorandum book now presented by you belong to the firm of Rosenfeld & Rosenberg & if so what entries are made therein & what business does it relate to.

A. This memorandum book belongs to the firm of Rosenfeld & Rosenberg entries of interest received discounts on notes bought, discount on our own payments before maturity it is also kept for exchange account, expense of freight &c.

Q You will please look upon the page now shown to you & tell the figures 6300 on the line & opposite the names Zimmerman & Farwell & state, when that entry was made, on what account or for what purpose.

A. That entry was made 14th August 1837. Discount on \$1500 note purchased against them parties. Accrue entries of this kind are not always made on the day when the business is done, they are sometimes laid over for a few days especially in the busy season.

74 Q. What is the date of this entry as shown by the book.

A. August 14th 1857.

75 Q. What does the figure 6300 stand for as entered in said book.

A. Sixty three dollars.

76 Q. Is that money paid or owed by your firm

A. It stands for a discount & profit of for a note purchased & expected to be paid.

77 Will you look upon the opposite page of said book to the line of the name Jimmerson & Harrell & state what original entry opposite said names was. & also state how said original entry became blotted, by making Cyphus in it's stead & also state what the sum amt of the original entry was.

A. Original entry was \$14⁷⁵ 00 as by the selling of the note the discount which we give was lost nearly, the book keeper thought proper to Cyphus over it as is usual done in memorandum books.

Mr. Penfield being desired to sign the oath books before it being Monday consented. So to do. & did so place his signature thereto.

Direct Examination Resumed

15 Q State when the footing upon this last page was made. in book referred to above.

A. A short time after the 4th Feb'y 1838.

16 Q State whether the footing upon made correct by the adding in of the original entries or as the entries now stand on that page.

A. The footing upon correct as the entries now stand.

17 Q. Look at your Cash book at the pages 142 & 143. which you showed to the Counsel of Complainant at your store this morning, when under examination, and state and describe the entries which you showed him & the meaning & occasion of those entries.

G't by Counsel for R'ff.

A. There appears on page 142. Oct 16th 1837, Credit to Cash \$1500 from note of Zimmerman & Farwell. There appears on page 143. Ch'g to Cash to Greenbaum Pro² \$75⁰⁰ Oct 16th 37. Oct 19th page 142. to Cash Cr^o proceeds from note of Zimmerman & F^r \$727⁵⁰ fifteen hundred dollars was received from note which was against Zimmerman & Farwell \$727⁵⁰ was

paid to Greenbaum Bros for a note against said parties \$707⁵⁰ was realized when that note was sold.

18 Q. State whether this book & these entries were produced & exhibited on the demand of the Counsel for the Complainant as a part of your examination at your store this morning, before the Notary taking the deposition.

A. They were.

19 Q. State on what account the \$45⁰⁰ spoken of by you was paid—

A. It was paid on interest.

The entries made in the Cash book & Memorandum book may be used at the hearing the same as if they were made without subject to legal objection, also that said Receipt may be further examined by either party on notice.

Cross Examination Resumed

20 Q. What was the rate of interest for the said charge by you and record for the extension of 60 days upon said note.

A. I believe Mr. Zimmerman offered forty five dollars without my asking it. the balance of your question figures will show \$750 for body

73

will be 30¢ pr mo.

79

Did you receive from said Zimmerman the said \$45. for the extension of the payment of the said note, for the term of 60 days.

A. I did after I notified Mr. Jewell as I would do so.

Q2 Was the said note due at this time.

A. I believe it was.

Q2 How long had it been due, or about how long.

A. I do not recollect between 30 or 35 days.

Q2 How long was it after the said note became due was it the said \$45 was paid to you.

A. I do not recollect.

Q3 Was this \$45 paid at the time that the extension was granted.

A. I believe some where about the time

Q4 Have you any reason to believe that it was not paid at the time of the extension or if not paid at the time how soon after.

A. I have no reason to believe that it was not paid nor do I know that it has been paid at the time.

Q5 Did you make application for payment at the maturity of the note.

I believe the note was in bank for collection & notice given as is usual but I am not certain.

Did you immediately on hearing that said note was not paid, apply to the maker for payment.

A. I believe I did within due time.

Q. What do you mean by due time.

A. So long as there is no injury by waiting the neglect in bringing it into the first Court if necessary.

Q. How long was it after it became due that you applied to the maker for payment.

A. It was but a few days between 152 days probably the 1st day after due.

Q. Was the arrangement for an extension made at the same time, you made application for the payment of said note on same day.

A. I do not think the arrangement was made the same day.

Q. How soon or how long afterwards.

A. Within one or two weeks I presume.

Leo Rosenfeld.

I, John R. Ackley of the County of Cook and State of Illinois a Notary Public duly appointed, do hereby certify I took the deposition of Levi Rosenfeld the witness and same is subscribed to the foregoing deposition and that previous to the commencement of the examination of the said Levi Rosenfeld as a witness in the suit between the said Charles D. Farrell Complainant, and May A. Myers, Levi Rosenfeld and Jacob Rosenberg Defendants he was duly sworn by me as such Notary Public to testify the truth in relation to the matters in controversy between the said Charles D. Farrell Complainant, and the said May A. Myers Levi Rosenfeld and Jacob Rosenberg Defendants so far as he should be interrogated concerning the same. That the said deposition was taken by me at the office of Perkins Thomas & Roberts in the City of Chicago. County of Cook and State of Illinois on the day of A.D. 1839. and that after said deposition was taken by me as afore said the interrogatories and answers thereto as written down were read over to the said witness and that thereupon the same was signed and sworn to by the said witness Levi Rosenfeld before me the oath being administered by me as such Notary Public

at the place and on the day and year last
aforesaid

Seal

Bro B Ackley
Notary Public.

And afterwards, to wit on the 20th day of
April in the year aforesaid, there was filed
in the office of the Clerk of said Court.
the deposition of Jacob Rosenberg in the
words & figures following, to wit:

Superior Court of the City
of Chicago
Charles B. Farrell
Levi Rosenfeld
Max A. Myer
Jacob Rosenberg
Henry H. Zimmerman
In Chancery

The depositions of Jacob Rosenberg of the City of Chicago, County of Cook and State of Illinois taken upon notice & witness of lawful age, produced, sworn & examined upon his corporal oath on the 22nd day of July 1839, at the office of Gorkin Thomas & Roberts attorneys & Counsellors at Law, in the City of Chicago in the County and State aforesaid, before Elliot Anthony a Notary Public in and for the City of Chicago, in the County of Cook and State of Illinois, a witness in a certain suit and matter in controversy wherein Charles P. Farwell is complainant and Levi Rosenfeld, Max A. Meyer, Jacob Rosenberg, and Henry H. Zimmerman are defendants now pending and undetermined in the said Superior Court of the City of Chicago, in behalf of the said defendants as well upon the interrogatories of said plaintiff as upon the cross interrogatories of the said plaintiff, which were propounded to said witness by the respective parties by their Counsel William C. Burgess appearing for Plaintiff and Gorkin Thomas & Roberts for Defendants. The said Jacob Rosenberg being first duly sworn by me as a witness in said cause previous to the commencement of his examination to testify the truth as well

out the part of the Plaintiff or the defendants in relation to the matter in controversy between said Plaintiff & said defendants so far as he should be interrogated - testified and deposed as follows:

Jacob Rosenberg

Int 1st State what interest you have in the judgment referred to in the bill of Complaint?

Ans None

Int 2nd State whether you had any interest in the note upon which the judgment was entered & if you have no interest state when your interest ceased.

Ans I have no interest in the note & had no interest in more than one or two days.

Int 3 State when you acquired your interest in the note & when your interest ceased & give the entire history of your connection with the note.

Ans I cannot tell when I acquired my interest in the note. I was not in the City at the time when Mr Rosenfeld made the transaction - I was not in the City

when my interest ceased - as much, as much
as I knew Mr Rosenfeld bought the note, of
Greubbaum Brothers and sold it to B. Bond
himself, when I was absent. I was not present
at the transaction - I can give the dates from
our books, by our books I mean the books of
Rosenfeld & Rosenberg of which I am owner.

Q. State whether you ever had any conversa-
tion with Charles B. Farrell the complain-
ant in this suit & his liability upon the note
in question, where & what that conversation
or conversations were.

A. I had a conversation with him. I
told him several times that Zimmerman
don't pay the note. Mr Farrell made
the remark to me once he is afraid that
he would have to pay it yet. He wrote to Mr
Zimmerman a few lines why he don't pay
that note, Mr Farrell asked me, if Zim-
merman is keeping the interest paid on it.
well I told him that he did not. I went
to Mr Zimmerman for the payment of the
note, and he did not pay it. I told Mr
Farrell that he did not pay it. That Zim-
merman spoke to me - that he was making a loan
he will not get the whole sum of it until Oc-
tober. I told Farrell of it - the mind that

it was so. that he don't get the whole of his loan until October. I guess that is all of the conversation which I recollect of having with Mr Farrwell.

Int 5 State as nearly as you can, when Mr Farrwell told you that he was afraid that he would have to pay the note.

Ans I think that it was 1838 in the latter part of July, at the time when Clark Street broke down.

Int 6. You state that you think that it was in July 1838. State whether you are certain or not as to the year and as to the month.

Ans I am certain that it was 1838. the latter part of July or first of August.

Int 7 State when it was. that Mr Farrwell wrote to Mr Zimmerman

Ans It was either in May or June 1838.

Int 8. State which member of the firm of Rosafeto & Rosenberg it was who brought the note & generally transacted the affairs connected with this note

Ans ~~Sam~~ Levi Rosenfeld.

Int 9. State whether you know anything further connected with this affair.

Ans I have not.

Now Interrogatories

William T. Burgess appearing as Counsel for Plaintiff.

Cross Int 1st. When & where did you first see that note.

Ans I have not seen the note at all to my recollection.

C. Int 2. Where was the note in the year 1838. in the month of May or June - when you say that the letter was written by Mr Farwell.

Ans B. Sanborn had the note turned in at the time.

C. Int 3. How do you know that he had it.

Ans. Mr Zimmerman paid interest to Mrs Rosapeto and she paid it over to Mr Sanborn.

C. Int 4. Who is Mr Sanborn?

Ans Mr Sanborn is a man living in the City here. That is all that I know about him - I know nothing about his business.

82
Q. Int 5 What business was he following at that time.

A. None that I know of.

Q. Int 6. Did you ever see that note in Rosenfeld's possession

A. Not that I know of.

Q. Int 7. Was Mr. S. in your room at your place of business at the time when the note was bought.

A. I can't tell I was not in the City myself.

Q. Int 8. Had Rosenfeld & Rosenberg any Clerk or clerks in their employ at that time & if so, who are they. What are their names.

A. We had several Clerks, but can't tell how many at that time - nor what all their names were - I can give the names of some.

Q. Int 9. Give the names of those you recollect with their occupation.

A. Max Meyer, Frank Kuper one of the defendants in this suit - C. L. America Salesman, Charles John Salesman we may have had some others - but their names I can't give.

Q. 10 What consideration did Soudheim pay for this note

A. I cannot tell.

Q. 11 Will you swear that he paid any consideration for the note

A. I can only state by the books that he paid. He has paid a consideration.

Q. 12 What consideration did you then say that he paid.

A. I was not present when the transaction happened. I was absent in New York. The consideration which he paid was in money but I can't give the amount without reference to the books.

Q. 13 Was that entry upon the books when you returned from New York City.

A. It was.

Q. 14 Did you see it there then.

A. I can't tell I saw it there some time or other.

Q. 15 Did you look over the books when you returned from N. Y. City.

A. I don't remember.

Q. 16 When was the first time that you saw that

Entry upon the books.

Ans I cant tell that I ever looked for it.
Counsel repeats the question. —
And same identical Ans I cant tell
that I ever looked for it.

C. Int 17. Do you mean to be understood that you
never saw it there.

Ans Mr Rosenfeld told me this Spring that he
he had to bring the books here or at the store
to have them examined in the affair of
Max Meyer. I dont know that I ever
looked to them then I dont know anything
about the books. I never go to them.

C. Int 18. How did you come to tell Farwell that
Zimmerman didnt pay the note.

Ans Mr Sandhein told me that I should speak
to Farwell about it, as he always looked
to Mr Farwell as the responsible party.

Direct Resumed

Int 1. State whether Mr Sandhein and Max
Meyer are relatives, and if so, what degree
are they relatives.

Ans They are not relatives that I know of -

85

Int 2. State whether it is customary when you sell notes that you have bought, to look after their collection to accommodate the holder -

Objected by defendant on account of its being irrelevant & leading.

Ans This question withdrawn.

Int 3. State what is your custom when you have sold notes that you had previously purchased in regard to looking after their collection for the benefit of your customers.

Same objection renewed

Ans Our custom generally is - when we sell a man a note - that we collect them for him without compensation

Re Cross Interrogatories

R. Cross Int 1. Did you find ever sell my notes to Smokeins before this.

Ans I don't remember that we did before. we sold him some since.

R. Cross Int 2. Do you guarantee the collection of notes that you sell to your customers

86
Ans We do not.

R. Q. 13. Do you know that the various amounts paid by Zimmerman as interest on this note, were paid over to Lordheim.

Ans Mr Zimmerman paid me one thirty dollar as interest on the note which I paid over to Mr Lordheim.

R. Q. 14. How did you pay that interest to Mr Lordheim.

Ans I believe I paid it to him at his house.

R. Q. 15. Are you sure of that.

Ans I will not be positive.

R. Q. 16. Did he produce the note to you at that time.

Ans I can't tell. I can't remember.

R. Q. 16. Is that all the interest money that you ever received upon the note.

Ans I think that is all that I received individually.

R. Q. 17. How long a time did you agree to extend the time of the payment of the note upon the payment of that interest.

Objected to by Plaintiff's Counsel.

Ans I did not ^{give} any extension at all.

20.
R. Q. 8. At what rate per cent was that interest
87 either by the year or by the month.

Ans I didn't make any arrangements at all
with him - he paid me thirty dollars.

R. Q. 9. That was paid by way of interest upon the
note for a space of time after the payment was
made - was it not?

It was not - what I mean is
it was not paid as interest in advance

R. Q. 10. What time was it paid for.

Ans It was paid for interest due upon the note
the note was over due - when he paid the inter-
est.

R. Q. 11. How many payments of interest had been
made before this time.

Mr Rosenfeld received one from
Mr Zimmerman at my knowledge.

R. Q. 12. What time did you get this that was paid you.

Ans The latter part of July 1858. at the time - the
same day that I had the conversation with
Mr Harmell.

R. Q. 13. At what rate - was it understood that interest

was told as upon this note.

Ans. There was now nothing understood at the time of the payment of the thirty dollars. but Sudbourn complained that he had not received any interest for four months - There was no understanding about the rate of interest, at the time when he paid me the thirty dollars, there was no new arrangement.

R. S. M. What had been the arrangement before that?

Ans. I never made any arrangement myself but Mr Zimmerman agreed to pay three per cent per month, with Mr Farwell's consent Mr Farwell knew about it at the time.

R. S. M. How do you know that Mr Farwell knew about it?

Ans. I had a conversation with Mr Farwell about it.

R. S. M. At what time?

Ans. Mr Farwell asked me if Mr Zimmerman kept paying up the interest. I told him he did not. I can't tell that it was between May & July 1838.

R. S. M. Is not this the same conversation that you

allude to in answer to the 4th Direct Interrogatory

Ans Yes, about at the same time.

R. C. 111. What did Zimmerman pay to you when he paid you the thirty dollars.

Ans Mr Zimmerman told me that he made a loan, but that he would not be able to pay that note until the first part of October, when he would get the balance on the loan. he will pay the note then. I told Mr Farwell, what Zimmerman told me Mr Farwell said that was so. this is all that Mr Zimmerman said.

R. C. 112. When Mr Farwell said, that that was so. he alluded to the fact that Zimmerman was about to obtain a loan. did he not?

Ans Mr Zimmerman had made a loan at that time - but was not able to get all his money, that is what Farwell said was so.

Jacob Rosenberg.

Subscribed & sworn to before me
this 22nd day of July 1839.
Elliott Anthony
Notary Public

I Elliott Anthony of the City of Chicago
 County of Cook & State of Illinois a
 Notary Public. in and for the City of Chicago &
 County of Cook, & State of Illinois do hereby
 Certify that in accordance with notice
 previously given on the part of the defendants
 to take the deposition of the witnesses whose
 names is subscribed to the foregoing deposition
 of the witnesses whose names is subscribed to the
 foregoing deposition - that said witnesses did
 on the 22nd day of July 1859 at the office
 of Yorkins Thomas & Roberts appear before
 me. And that previous to the commencement
 of the examination of the said Jacob Rosen-
 berg as a witness in the suit between the said
 Charles B. Farrell Complainant and
 the said Levi Rosenfeld, Max A. Meyer, Jacob
 Rosenberg & Henry H. Zimmerman Defendants
 so far as he should be interrogated concerning
 the same. that the said deposition was
 taken at the office of Yorkins Thomas & Roberts
 in Chicago on the 22nd day of July 1859. And
 that after said deposition was taken by me
 as aforesaid the interrogatories & answers thereto
 as written down & which had been propounded
 & answered by him, were read over
 to the said witnesses, And that thereupon the
 same was signed & sworn to by the said deponent

before me, the oath being administered by me
as such Notary Public at the place and the day
expressed last aforesaid.

Elliott Anthony
Notary Public.

And Afterward, to wit: on the 7th day of
February in the year of our Lord, one thousand
eight hundred and sixty two ~~the~~ said day
being one of the days of the February Term
of said Court the following among other pro-
ceedings now had & entered of record in said
Court, to wit:

Charles B. Farwell

March 21st Final Decree
Mar. Ch. Mayer, Leri Rosenfeld
Jacob Rosenberg vs Henry H. Zimmerman

And now at this day come the parties
by their counsel and the Court having announced
that he should dismiss the bill, the said Court

Plaintiff thereupon asked leave of the Court to file
 an amendment to his bill of Complaint, which the
 Court denied, the defendants objecting to the same,
 and the Complainant excepted thereto, and filed his
 bill of exception. And thereupon the Defendant
 Henry H. Zimmerman came & filed his cross bill
 in this cause and thereafter the said defendant
 moved for a final Decree to be entered, which
 the Complainant and said Zimmerman severally
 object to, until the said Cross bill is disposed
 of. - and the said Zimmerman moves that the
 entry of any Decree in this cause until this cause
 can be heard upon Cross bill be suspended,
 which motion the Court denied and the said
 Complainant and said Zimmerman each except
 and thereupon this cause having heretofore
 been set down for a final hearing upon Bill,
 Answer & replications and depositions and proof
 and the same being fully argued to the Court
 by H. S. Burgess Solicitor and of Counsel for the
 Complainant and Gorkins Thomas & Roberts Soli-
 citor and of Counsel for the Defendants, and
 the Court having taken the case under advisement
 and having fully considered the case and the plead-
 ings and proof therein and being fully advised,
 find that the Complainant has failed to sustain
 his bill, and is of opinion that the same should
 be dismissed with the costs of the Complainant.

It is therefore ordered, adjudged and decreed that the said Complainant ^{Bill of Complaint} be and is hereby dismissed and that the said Complainant pay the costs of this proceeding and that the defendants go hence without day.

And afterwards to wit, on the day and year last aforesaid, there was filed in the office of the Clerk of said Court, a certain Bill of Exceptions in the words of figures following, to wit:

In the Superior Court of Chicago
In Chancery

Charles B. Farrell

vs
Max A. Meyer et al

Amendments to the bill.

After the above this defendant to said note insert as follows. To wit:

And your orator further shows upon his information & belief that the said Rosenfeld, Rosenberg & Mayer sometimes give out & pretend that the said Rosenfeld & Rosenberg soon after the said note was given sold & transferred the same to one, W. Sandheim who thereafter continued to be the owner thereof in fact until the same was transferred to said Max A. Meyer but your orator insists that if such were the case, the said Rosenfeld & Rosenberg were authorized by the said Sandheim to collect the said note, were allowed to hold the same as their own, that they were authorized to extend the time, of the payment thereof, & to receive interest thereon - for such extension & this in fact pay out to said Sandheim the money which they received for such extensions with full knowledge on their part of said Sandheim of the facts charged in this bill touching the same.

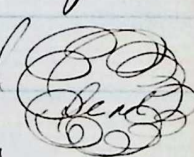
H. J. Burgess.

In the Superior Court of Chicago
In Chancery

Arnold

^{vs}
Meyer et al

Be it remembered that on this 7th day of February A. D. 1862, came in to open Court the parties to this suit by their Counsel & the said Complainant asked leave of the Court before the decree was entered herein to file the annexed amendments to the bill - without opening the case, for further proof unless the defendants should desire it, but the defendants objecting thereto the Court overruled the motion & refused leave to file the same, to which the Complainant then & there accepted & answered his bill of Exceptions in the premises to be signed & sealed by the Court and it is accordingly so done. in open Court. this 7th day of February 1862.

John M. Wilson C. 
Superior Court of Chicago

State of Illinois
County of Cook

I, Thomas P. Carter Clerk
of the Superior Court of Chicago (formerly Cook
County Court of Common Pleas) do hereby certify
that the foregoing is a full, true and complete
transcript of all the papers on file in my office
& proceedings & judgment entered of record in said
Court, together with the Bill of Exceptions in a certain
Cause wherein Charles P. Farwell was Complainant
and Mary W. Meyer et als Defendants.



Witness my hand and seal of
said Superior Court of Chicago
at the City of Chicago, in said County
and State this 22. day of April
A.D. 1862.

Thomas P. Carter Clerk.

And the said Plaintiff in
error by W. J. Myer and C
Mc Hawley his attorneys comes
and says in the Record proce-
dings and deems aforesaid there
is manifest & material error
appearing of record therein in
this

That the court below refused
him to file the amendment to
the title of complaint below -

That the court rendered a decree
dismissing the title whereas it
ought to have granted the relief
prayed

Because the evidence does
not warrant the finding
of the court.

and for other errors in the
said decree —

Wherefore he prays that the
decree rendered above may be
reversed, and decree rendered in
favor of said Plaintiff according
to prayer of bill ~~in~~ and he
requests ~~to~~

W. J. Murphy
C. M. Hanley
for Pffs

Non est erratum

Gottlieb Thomas Roberts
attys for Defs

84
Sup Court

Farwell

vs

May Meyer

et al

Trust in
Receiv & Emis

Filed April 19, 1864
L. Leland
Clerk

W. J. Burpee

C. W. Hawley

Oppa & Sons

Fees \$20.50 paid by

C. B. Farnell. apt 26/62

L. P. Carter Clerk