

12187

No. _____

Supreme Court of Illinois

Cook

vs.

Forrest

Isaac Cook ^{plff in error} ~~appellant~~
" ^{deft in error} Henry L Forest ~~appellee~~

Supreme Court.

June Term 1855.

Abstract.

This ~~was an~~ action ~~on a promissory note~~ ^{was} commenced by the ~~appellee~~ ^{deft in error} against ~~the appellant~~ ^{plff in error} on May 9. 1854 in Cook County Court of Common Pleas. ^{returnable on 1st Monday of June then next} Summons served May 12. 1854. which was returned to the Clerk's office and then filed July 5. 1854.

^{Filed May 9. 1854.} For ~~a copy of note sued upon~~ upon a promissory note, with counts for money, lent & advanced, paid laid out & expended, and had and received and on an account stated, - attached to which was a copy of the note sued upon, and a copy of account sued upon as follows.

Isaac Cook

To Henry L Forest

Dr

To money lent paid out for his use &c

\$5000

" " found due on settlement

5000

On the 9th day of May 1854 Rule entered that deft should plead within ten days after service of copy of declaration, and of the rule, ~~and in default thereof~~, that defts default should be entered for want of a plea and judgment entered against him at the next June Term. On the 13th day of May 1854 an affidavit was filed showing the service of a copy the declaration and rule to plead on the 12th day of May 1854.

On the 5th day of June 1854. the deft filed the plea of general issue, with an affidavit of merits, and a notice of special matter to be given in evidence under general issue.

On the 13th day of June 1854 the plff moved to strike the defts plea & notice from the files, and filed affidavits to show that the plea and notice were not true.

July 5. 1854 one of the days of the July term, the court ordered defts plea and notice to be stricken from the files for the reason that the same were not filed within ten days after service of copy of declaration & rule to plead.

and entered up judgment by default against defendant, also brings the case to this court by writ of error.

The errors assigned are

1- The court erred in entertaining the motion to strike the pleas from the files of the only execution taken no notice of the motion having been given four days before said term as required S & S Supers 1853 P 173 § 2 - The court had no power at a vacation term unless specially given.

2 court erred in striking pleas from the files -

3 The court erred in deciding that Defendant in the Court below was bound to file his pleas - before any evidence had been furnished or filed with the Court that any summons had been served on him

4th. The Court erred in entertaining a default against the Defendant below, when he had filed a plea with an affidavit of merits long before any evidence that process had been served on him had been filed with the Clerk or the Court

5th. The Court erred in deciding that Defendant was bound to appear and plead before any evidence of the service of process upon him had been filed in the Court

6th. The plff below having allowed the Term to pass without making any motion to strike the pleas from the files and for default by such laches waived any irregularity in the filing of the pleas, and was not authorized to make any such motion at the subsequent July Term and the Court erred in entertaining and allowing such motion.

For these and other manifest errors in the record and proceedings aforesaid said Plff saith that said Judgment ought to be reversed, vacated and set aside

Abstract

Isaac Cook

or

Mary L. Forest

Know all men by these presents that we Isaac Cook and Philander Eddy are held and firmly bound unto Henry G. Forrest in the Penal Sum of Six thousand dollars lawful money of the United States for the payment of which well and truly to be made, we bind ourselves our heirs and administrators jointly severally and firmly by these presents.

Witness our hands and seals this day of August A. D. 1854.

The condition of the above obligation is such that whereas the said Henry G. Forrest did at a Term of the Cook County Court of Common Pleas held in and for the County of Cook on the first Monday of July A. D. 1854 recover a Judgement against the said Isaac Cook for claims the sum of Four thousand two hundred dollars sixty two cents damages, and seven dollars & ninety cents costs from which Judgement the said Isaac Cook has prayed a writ of Error.

Whereupon the Hon J. D. Caton one of the Justices of the Supreme Court endorsed upon the record the following order: "Let a Supersedeas issue in the above cause upon the plaintiff in Error filing with the Clk of the Supreme Court a bond in the usual form with the Philander Eddy his security in the penal sum of six thousand dollars."

Attwau Aug 17. 1854.

J D Caton
Just Sup Ct

Now if the said Isaac Cook shall prosecute his said writ of Error with effect, and shall pay whatever Judgement may be rendered by the Court upon said writ of Error, and shall pay all costs and damages and interest

in case the Judgement shall be affirmed, then
the above obligation to be void, otherwise to remain
in full force and effect.

Wm. Hook Esq
Philander Esq

Henry D. Forest
adv.
Isaac Cook

Appeal & Bond

Filed Aug. 19. 1854.
Leland Elk
By J. H. Leland

Isaac Cook plff in error
 vs
 Henry L. Forrest deft in error }
 Supreme Court
 June Term 1855
 Abstract.

This action was commenced by the deft in error against plff in error on May 9. 1854 in Cook County Court of Common Pleas returnable on 1st Monday June then next. Summons served May 12. 1854, which was returned to the Clerk's Office and then filed July 5. 1854.

May 9. 1854 filed was upon a promissory note, with counts for money, lent and advanced, paid laid out and expended, had and received and on an account stated, - attached to which was a copy of the note sued upon, and a copy of account sued upon as follows.

Isaac Cook

To Henry L. Forrest D^t.

To money lent paid out for his use &c	\$5.000
" " found due on settlement	5.000

On the 9th day of May 1854 Rule entered, that deft should plead within ten days after service of copy of declaration and of the rule, and in default thereof, that defts default should be entered for want of a plea and judgment entered against him at the next June Term. On the 13th day of May 1854 an affidavit was filed showing the service of a copy the declaration and a copy rule to plead on the 12th day of May 1854.

On the 5th day of June 1854, the def^t filed the plea of general issue, with an affidavit of merits, and a notice of special matter to be given in evidence under general issue.

On the 13th day of June 1854 the pl^{ff} moved to strike the def^ts plea and notice from the files, and filed affidavits to show that the plea and notice were not true.

July 5. 1854 one of the days of the July term, the court ordered def^ts plea and notice to be stricken from the files for the reason that the same were not filed within ten days after service of copy of declaration and rule to plead and entered up judgment by default against defendant, who brings the case to this Court by writ of error.

The errors assigned are

1st The court erred in entertaining the motion to strike the plea from the files at the July vacation term no notice of the motion having been given four days before said term as required. See Laws 1853 P. 173 S. 2 - The court had no power at a vacation term unless expressly given.

2^d Court erred in striking plea from the files.

3^d The Court erred in deciding that defendant in the Court below was bound to file his pleas - before any evidence had been furnished or filed with the Court that

any summons had been served on him.

4th. The Court erred in entertaining a default against the Defendant below, when he had filed a plea with an affidavit of merits long before any evidence that process had been served on him had been filed with the Clerk or the Court.

5th. The Court erred in deciding that Defendant was bound to appear and plead before any evidence of the service of process upon him had been filed in the Court.

6th. The plff below having allowed the June Term to pass without making any motion to strike the plea from the files and for default by such leaches waived any irregularity in the filing of the plea, and was not authorized to make any such motion at the subsequent July term and the Court erred in entertaining and allowing such motion.

For these and other manifest errors in the record and proceedings aforesaid said plff saith that said Judgment ought to be reversed, vacated and set aside.

Abstract

Isaac Cook

Henry Le Forest

Chicago Aug 18. 1834

J. Samuel Esq
Ch Sup Court.

Please place the
enclosed bond & Record on
file, and issue a subpoena
and Oblige Yours Truly

J. L. & F. Smith

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the ~~Circuit Court for the county of~~ ^{Cook County Court of Common Pleas} Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the ~~circuit~~ court of common Pleas of Cook county, before the Judge thereof, between Henry L. Forrist

plaintiff, and Isaac Cook

defendant, it is said manifest error hath intervened, to the injury of the aforesaid defendant

as we are informed by his complaint, and we being willing that error, should be corrected if any there be in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the county of La Salle, on the 2^d Monday in June - next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law;

WITNESS, the Hon. **SAMUEL H. TREAT**, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 19th day of August in the Year of Our Lord One Thousand Eight Hundred and Fifty- four.

S. Leland Clerk of the Supreme Court.
By P. K. Leland ssg.

Isaac Cook
vs
Henry L. Forst
Writ of error

Filed Aug. 19th 1854
L. Leland Clk
By P. N. Leland dy

This writ of error is to
operate as a supersedeas
as much as to be
served accordingly
by all concerned.
August 19th 1854.

L. Leland Clk.
By P. N. Leland dy

Islehart v. Pelchew

The Service of a rule to plead with a copy served is no part of the record & the court will presume that proof of service was made in the Court below in support of default.

Cook v. Farrest.

A plea filed to vacate term after the expiration of rule to plead & before a motion for a default taken is not in time & may be stricken from the files.

Book & Forest
Ile de la Pile

Filed Feb. 16, 1857
 L. Deland
 Clerk

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Address Remittances to "H. B. HURD, Chicago, Ill."

Office National Kansas Committee,

11 MARINE BANK BUILDING,

Chicago, Feb. 14th 1857.

L Deland Esq
 Clerk of Supreme Court
 Dear Sir:

Yours notifying me of a
 argument being granted in the case
 of Isaac Cook vs. Henry L. Frost
 is at hand.

I am astonished to hear
 that such is the case as I have
 never had a copy of the petition
 for a rehearing & as Cook has
 long ago paid the judgment is
 there not some mistake in the case.
 I understand that Cook is also
 surprised at the information that

a mandamus is granted I
should like to have you inform
me how it is.

I should also be thank-
ful if you would inform me
if the Court has decided the
case off the ~~West~~ ~~Inds~~
Mich Southern R.R. vs Justice
Day jr. The Court took this
case under advisement at
the last June term

Yours &c
H.B. Hund

Henry L. Forrest
advs
Isaac Cook

Supreme Court
Points relied upon By Defendant

As to the 1st alleged Error

* Laws of Ill. 173
The 3^d Section of the Act to regulate the practice in the Circuit Court of Cook County and the Cook County Court of Common Pleas &c. entitled the plaintiff below to a default without the plea filed after the expiration of the ten day being first stricken from the files. The language of the statute is imperative in all cases brought within its provisions. There was therefore no necessity of the motion to strike the plea from the files. The defendant below had no right to have his plea there but ~~that~~ ^{it} being there does not under the statute intend to make any difference with the plaintiff's rights. He had served the deft with process and a copy of the declaration & a rule to plead more than ten days before the sitting of the June term and fifteen days ~~after~~ before the filing of the plea. He had performed the conditions of the statute and a default was consequently his right. It followed of necessity and could not be defeated except by the act of the plaintiff or possibly by the intervention of the discretion of the Court.

The 2nd Sec. of the said act does not apply to this case. This is a case specially contemplated by the third section and is entirely covered by it. But it is submitted whether the defendant having appeared and discussed the ~~the~~ motion will not be considered to have waived a notice or admitted that one had been properly served upon him. There does not seem to have been any objection made on the trial.

of the motion ^{had not} that he ^{had} ~~had~~ notice on the ground
that no notice had been served as required
by the 3^d section. That they were properly brought into
court. *

2nd Alleged Error

If the court did commit an
error in striking the plea from the files it is
not an error that in the least affected the
rights of the defendant below. This certainly
must have been the case if the plaintiff had
a right to a default notwithstanding ~~that~~
the plea was upon the files.

3^d, 4th & 5th Alleged Error.

The necessity on the part of the
defendant to file his plea &c. does not in
the least depend upon the ~~service~~ ^{proof} of
the service of process &c. but upon the fact
of the service. The statute * says. "Any party
having commenced suit in either of said courts shall
be entitled to a default at any vacation term
upon proof of due service of process upon the
defendant and a copy of the declaration with a
rule to plead at least ten days before such
term, unless such defendant &c. shall, before the
expiration of said ten days if the suit be founded
on a contract file a plea to said action"

The meaning of this statute undoubtedly is, that
the plain party having served the defendant with
process & a copy of the declaration & a rule to plead
~~at~~ ^{within} ten days before the term of court when the
process is returnable and the defendant not
having filed his plea within said ten days,
the plaintiff upon proof of such service shall

be entitled to a default. The proof of service of process is to be made at the time default is asked for. It cannot be made till the court sits and till after the time for the defendant to plead has expired. He must plead before the court sits. It is for the information of the court and not for the protection of the defendant who must be in the possession of the most in dubitable evidence of the fact.

The record does not show that the defendant asked the intervention of the clemency of the court in his behalf. Is it ~~set aside~~ the default or allow him to plead. Had he done so or should he now insist that injustice has been done him. I contend that the record shows that such is not the case and would refer the court to the following pages of the record, 15. 16. 17. 18 & 19.

6th Alleged Error.

The law does not compel the plaintiff to take the default at the term to which the process is returnable. If so all his diligence would be lost if the court should happen not to sit ^{as was the case in this suit} and more than this the statute would be defeated in its object by placing the defendant in a condition where he could not withdraw his suit or procure a judgment till the next trial term whether there was a plea or not. The provision is that the default may be taken at any vacation term.

There was no term in June and no proceeding could then have been had. The plaintiff

did not leave anything undone that he could have done nor did he do anything that could have indicated his intention to waive his right to a default. but took the first opportunity to insist upon it. Certainly he could not have waived his right without some act indicating his intention so to do.

It is further insisted that this whole matter was one addressed to the discretion of the court. He having failed to comply with the rule of the court was at its mercy. That the court exercised a sound discretion cannot for a moment be denied.

H. B. Hurd
Dist. atty.

25

Henry L. Forest

ads

Isaac Cook

points relied upon by
defendant.

file this

Filed July 6, 1885
R. Nelson Clk.

State of Illinois }
County of Cook } S.S.

Shas before the Honorable John McMillen
Judge of the Cook County Court of Common
Pleas within and for the County and State aforesaid
at a Vacation term of said Court begun and holden
at the Court House in the City of Chicago in said
County and State on the first Monday being the
third day of July in the Year of Our Lord one
thousand eight hundred and fifty four, and of
the Independence of the United States the
Seventy eighth.

Present the H^{on} John McMillen, J^{udge}
Cyrus P. Bradley, Sheriff
Attest Walter Kimball, Clerk

It is remembered, that herebefore to wit
on the ninth day of May in the year of Our Lord
One thousand eight hundred and fifty four
Henry S. Forrest Plaintiff by his Attorney
H. B. Hunt filed in the office of the Clerk of
the Cook County Court of Common Pleas his pre-
cipe, as follows, to wit.

Henry S. Forrest } Cook County Court of Common
vs } Pleas Term Term 1854
Deae Cook } against Henry S. 5.000
Will the Clerk please give a

2
Summons in this cause returnable at the Same
Term, also please enter a rule to plead in ten
days from the time of Service of Summons and
Copy of Warrant

W. B. Mudd.

Peoff atty.

And thereupon on the said ninth day filing
a Summons issued in said cause in words &
figures as follows, to wit:

State of Illinois }
County of Cook } ss. The People of the State of
Illinois to the Sheriff of said County, Greeting.
We command you that you summon Isaac
Cook if he shall be found in your County, personally,
to be and appear before the Cook County Court of
Common Pleas of said County on the first day of
the next term thereof, to be holden at the Court House
in the City of Chicago in said County, on the first day
Monday of June next, to answer unto Henry
L. Hannest in action of trespass on the case on promises
to the damage of the said plaintiff as he says in the
sum of Three Thousand dollars.

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

Witness My hand Clerk of said Court
and the Seal thereof at the City of Chicago
in said County this 9th day of May A.D. 1854

Walter Kimball Clerk
Which said Summons was afterwards, to wit
on the fifth day of July in the Year aforesaid, re-
turned into the office of the Clerk of said Court, and

was filed by said clerk, with an endorsement thereon as follows, to wit:

"Served by reading to the within named Isaac Cook this May 12th 1854. 1 Ser 50

1 Mile 5¢. 1 Return 10¢ ——— 65 cts

Sending Dec & notice

65

E. P. Bradley Sheriff

By J. N. Norton. Deft

And on the same day to wit the ninth day of May in the year aforesaid, the said plaintiff by his attorney filed in the office of the Clerk of said Court his declaration, copy of note, and account sued upon, in words and figures as follows, to wit:

State of Illinois }
County of Cook. } ss.

The Cook County Court of Common Pleas. Come Term in the year of our Lord one thousand eight hundred and fifty-four.

Henry L. Sonnest, by Harry B. Hunt his attorney complains of Isaac Cook, of a plea of Disputes out the case upon promises; For that, whereas the said defendant on the fourth day of May in the year one thousand eight hundred and fifty-three at Chicago to wit at the County of Cook, aforesaid, made a certain note in writing, commonly called a promissory note, bearing date the day and year last aforesaid, and then and there delivered the said note to Lewis J. Pallock, by which said note the said defendant promised to pay to the said Lewis J. Pallock or order, one year after the date thereof the sum of Three thousand nine hundred and ninety dollars sixty two cents with interest at six per cent. for value received, and then and there delivered the

Said promissory note to the said Lewis S. Pallock,
 And the said Lewis S. Pallock to whom in to whose
 order the payment of the said sum of money in the said
 promissory note specified was to be made after the
 making of the said promissory note before the payment
 of the said sum of money therein specified, to wit, on the
 day and year aforesaid at Chicago in the County of Cook
 aforesaid indorsed the said promissory note by which
 said indorsement he the said Lewis S. Pallock then
 and there ordered and appointed the said sum of
 money in the said promissory note specified to be
 paid to the said plaintiff, and then and there de-
 livered the said promissory note so indorsed as aforesaid
 to the said plaintiff.

By reason whereof and by force of the Statute in such
 case made and provided the said defendant became
 liable to pay to the said plaintiff the said sum of
 money in the said note specified, according to the tenor
 and effect of the said note. And being so liable the
 said defendant in consideration thereof, afterwards, to
 wit, on the same day and year, and at the place aforesaid
 understood and then and there faithfully promised
 the said plaintiff well and truly to pay unto the said
 plaintiff the said sum of money in the said note spe-
 cified, according to the tenor and effect of the said note.
 And whereas also the said defendant afterwards, to
 wit, on the Eighth day of May in the year ^{of our Lord} one thousand
 eight hundred and fifty four at the place aforesaid
 was indebted to the said plaintiff in the sum of
 Nine Thousand Dollars lawful money of the United States
 of America for money before that time lent and advanced
 by the said plaintiff to the said defendant and at the
 special instance and request of the said defendant.

5
And for other money by the said plaintiff before
that time paid, laid out, and expended for the said
defendant and at the like request of the said defendant.
And for other money by the said defendant before
that time had and received to and for the use of
the said plaintiff. And being so indebted, the said
defendant in consideration thereof, afterwards to wit
on the same day and year last aforesaid, and at
the place aforesaid undertook and then and there
faithfully promises the said plaintiff well and
truly to pay unto the said plaintiff the said sum
of money in this Count mentioned, when the said
defendant should be thereunto afterwards requested.

And whereas also the said defendant afterwards
to wit on the same day and year last aforesaid, and
at the place aforesaid accounted together with the
said plaintiff of and concerning divers other sums
of money before that time due and owing from the
said defendant to the said plaintiff and then and
there being in arrear and unpaid and upon such
accounting the said defendant then and there was
found to be in arrear and indebted to the said plaintiff
in the further sum of Five Thousand Dollars of like
lawful money as aforesaid. And being so found in arrear
and indebted to the said plaintiff the said defendant
in consideration thereof afterwards to wit on the same
day and year last aforesaid and at the place aforesaid
undertook and then and there faithfully prom-
ised the said plaintiff well and truly to pay unto
the said plaintiff the said sum of money last men-
tioned, when the said defendant should be thereunto
afterwards requested.

5
Nevertheless the said defendant (although after
2187-147

6
requested H.C. to wit, on the day when the said
note became due and payable according to the tenor
and effect thereof, and often times since, to wit, at
the place aforesaid, has not yet paid the said several
sums of money above mentioned, or any or either
of them or any part thereof, to the said plaintiff
but to pay the same or any part thereof to, the said plain-
tiff. The said Defendant has hitherto altogether refused
and still does refuse to the damage of the said
plaintiff of Nine Thousand dollars and therefore
the said plaintiff being cited &c.

W.B. Ward Plaintiff Attorney

Copy of Note sued upon

\$3990. ^{62 1/2}/₁₀₀

Chicago May 4th 1853

One year after date for value Received
I promise to pay Lewis S. Pollock or order Three Thou-
sand Nine Hundred and Ninety-Dollars Sixty two
cents with interest at six per cent.

Signed. J. Cook

Endorsement L.S. Pollock.

Copy of account sued upon

Isaac Cook

To Henry S. Sonnest	One
To Money lent paid out for his use &c.	\$5000
" Found due on Settlement	5000

And on the same day to wit the Ninth day
of May aforesaid, a Rule was entered in the
Common Rule Book of said Cook County Court
of Common Pleas. in said cause, which said
Rule is in words and figures as follows
to wit

7

Tuesday May 9th A.D. 1854.
 Henry S. Jonnet }
 vs } Springfield
 Isaac Cook.

On reading and filing plaintiffs declaration in this cause, and on motions of H. B. Nord plaintiffs attorney. It is Ordered, that the said defendant plead to said plaintiffs declaration filed in this cause within ten days after service of a copy thereof, and a copy of this Rule on him, or in default thereof his default be entered for want of a plea and Judgment be entered against him at the next June Vacation term of this Court.

And afterwards to wit on the thirteenth day of May in the year Eighteen Hundred and fifty four, an affidavit was made on the declaration of the said plaintiff in said cause as follows. To wit.

State of Illinois }
 Cook County } S.S.

John W. Norton of said County being duly sworn says, that on the twelfth day of May A.D. 1854, he served a copy of the within declaration, and a copy of a Rule to plead in said cause on Isaac Cook defendant, and further saith not.

John W. Norton
 Subscribed & Sworn to
 before me this 13th day of
 May 1854. W. Kimball, Ck

And afterwards, to wit, on the fifth day of June, in the year last aforesaid, the said defendant Isaac Cook by Seth & Trinit his attorneys filed in said Court in the Clerk's office aforesaid, his Plea, Notice, and affidavit, which said Plea, Notice and affidavit are in words and figures as follows to wit,

9 Cook County Court of Common Pleas.

Isaac Cook

vs

Henry L Forrest

And the said defendant by Judd and Frink his attorneys comes and defends the wrong and injury where and says he did not undertake and promise in manner and form as is above thereof alleged against him and of this he puts himself upon the country &c

Judd & Frink

Attorneys for Deft

To the above named Plff

This atty Take notice that under the general issue above pleaded the defendant will give in evidence and insist as a complete defence to the plaintiffs action that the said promissory note in said declaration mentioned was made and executed without consideration And also that the making and execution of said note in the plaintiffs declaration mentioned was obtained by the false and fraudulent misrepresentations following, Namely That Lewis J. Pollock of the City of Chicago on or about the twentieth day of April 1853 was the equitable owner of about sixty four acres of land situate in the County of Cook in the State of Illinois and described as follows namely The east half of the West half of the North East quarter of Section fifteen also that portion of the east half of the west half of the South East quarter of said section which lies north of the centre of the Madison Street road also that portion of the said South East quarter which lies north of the Madison Street road the legal title whereof was in one Wolf Schofer of the City of Chicago who

held the same in secret trust for said Pollock and being so interested in said land as the equitable owner thereof the said Lewis J Pollock falsely and fraudulently caused letters purporting to be written by one Theodore H McNamee of New York City on the twentieth day of April 1853 and mailed at New York aforesaid on or about the day last aforesaid and addressed to said defendant as follows To wit

New York 20 April 1853
Isaac Cook Esq.

Having seen in the Chicago Paper that a Lot of land about 64 acres is to be disposed of described as being situated in the North East quarter and South East quarter of Sec 15 T 39. R 13 fronting nearly $\frac{1}{2}$ a mile on the Barrys point road or rather Madison Street further particulars to be obtained at N^o 7 Clark Street, such is the description of a property. I wish you to purchase for me. Will you be kind enough to call and see upon what terms the same can be bought either on a limited credit part Cash or all Cash I enclose you a draft for \$100. to give weight to this communication which you may deposit as an earnest of my intention to purchase the property if it can be obtained say from \$150 to \$175 per acre.

I beg to refer you to Sledge Douglas your friend for particulars as regards myself I shall rely upon your buying the property on the most reasonable terms you can and whatever further deposit you may find necessary will you please to furnish. I shall be in your city by

11
the first of next month when I will refund you
as well any outlay you may have made as
your commission &c This empowers you to
purchase the property for any sum not exceeding
\$ 175 per acre

I am Sir

Yours Respectfully

Theodore H McNamee

And also that afterwards to wit on or about the
twenty ninth day of April 1853 at New York
aforesaid said Lewis J Pollock falsely and
fraudulently caused another letter purporting to
be written by said Theodore H McNamee of New
York City aforesaid to be mailed at New York
aforesaid on or about the day last aforesaid
and addressed to said defendant as follows to wit

New York April 29th 1853

Hon Isaac Cook P M

Chicago

Dear Sir I in my letter of
the 20th Inst I stated that I will be in your
City on the 1st of May but owing to my ill health
I will not be able to be there until the 10th I will
request you to close the sale of the land I mentioned
in my last letter as it is of great importance to me
very resp Yours Oth Sent

The McNamee

By Solv Samie

which said last mentioned letter was received
heretofore to wit on or about the third day of May
1853

Also that afterwards to wit on or about the third day of May 1853 at New York aforesaid said Lewis J Pollock falsely and fraudulently caused a certain telegraphic dispatch purporting to be signed by S A Douglas to be sent by telegraph from New York aforesaid on or about the day last aforesaid and addressed to said defendant as follows to wit

Chicago May 3rd 1853
By Telegraph from New York May 3rd
To Isaac Cook

I endorse whatever Mr. Mr. Name agrees with you
"Paid" S. A. Douglass "

Which said telegraphic dispatch was received heretofore to wit on or about the third day of May 1853 And the said defendant relying upon and believing said letters and telegraphic dispatch to be true and not false forged and fraudulent purchased from the said Lewis J Pollock the said lands above described on the said third day of May 1853 the said Lewis J Pollock acting and professing to act as Attorney for said Wolf Schofer and received a deed for lands executed by said Wolf Schofer by said Lewis J Pollock as his Attorney Agreeing to pay therefor the sum of one hundred and twenty five dollars per acre And as part and parcel of said purchase price and consideration for said lands said defendant made and executed said promissory note in said declaration mentioned, and said defendant will further prove that said letters and

and telegraphic dispatch were false & forged caused to be written and forged by the said Lewis J Pollock the payee in said note named, And that the said plaintiff never paid any consideration for and is not a bona fide holder of said note, but that the said plaintiff had notice of the facts and fraud above stated and set forth,

Yours &c

Dated June 3 1854

Judd & Trunk

Attys for Def.

State of Illinois

Cook County } ss. Isaac Cook being duly sworn says that he verily believes he has a good defence to said suit above entitled upon the merits
Subscribed & sworn before
me June 3 1854

I Cook

J R Stettings
Notary Public

And afterwards on the thirtieth day of June in the year aforesaid the said Plaintiff by his said attorney filed in said cause, in the office of the Clerk of said Court a Motion, which said Motion is in words and figures as follows, to wit,

Cook County Court of Common Pleas July Term AD 1854

Henry S Forrest
vs
Isaac Cook

And now comes the said plain-

by H. B. Mudd, his Atty and moves the Court to cause the Plea and Notice of the defendant filed in this case to be stricken from the files the same not having been filed in time according to law, and the said notice setting up a supposition and false state of facts.

H. B. Mudd

Plff atty

And on the said thirtieth day of June in the year aforesaid the said Plaintiff filed in said cause in the Clerk's office aforesaid the affidavits of Hannay B. Mudd Thomas L. Forrest and Henry L. Forrest, which said affidavits are as follows to wit:

Henry L. Forrest

Isaac Cook

State of Illinois

Cook County, ss

Cook County Court of
Common Pleas

Daily term AD 1854

Hannay B. Mudd being duly sworn says that he was present at the time the note in question was given, that he drew the note and that Mr Cook signed it in his presence and in the presence of Mr Harding land agent B. F. Sherman Esq and Lemis J. Pollock, that the same was given for a balance coming to said Pollock upon the purchase of some land which said Pollock claimed to own by virtue of a contract from B. F. Sherman or said Sherman and Elijah Smith this deponent does not remember ^{the contract held by said Pollock for said land was given} which that at the time said note was given up and canceled and a new contract was made to Isaac Cook in his own

name and not in the name of any other person. That so far as this Deponent could judge from the transaction and what he saw and heard the same was done in good faith on the part of all parties connected therewith. That this Deponent did not know of any letter having been written to said Cook concerning said land or the purchase thereof, nor did he ever hear that such letter were written or that there was any fraud on the part of Mr Pollock or any other person in regard to the purchase by the said Cook of said land or the giving of said note, but that this Deponent supposed the same was done in good faith until he was informed by Mr Thomas L. Forrest about the time said note fell due that Mr Cook had told him that day that there was some fraud on the part of Mr Pollock in said sale of land and the giving of said note and that he should not pay the same.

That this Deponent believes this was about three days before the note became due. That soon after said note was given by Cook to Pollock the said Pollock took the same to the said Forrest to be discounted. That the said Henry and Thomas L. Forrest spoke to this Deponent about the matter, and asked him if the note was all right and if they had better discount the same. That this Deponent replied that he had attended to the business between Cook & Pollock and knew the note was all right and that there would be no risk in discounting it. They asked him if it was secured and he answered that it was not, but that it was given for Real Estate, and that Mr Cook remarked that

that it would be paid when it became due and repeated some other remarks which Mr Cook had made in regard to his promptness in paying his paper. That the said Note was thereupon discounted by said Forrest, and the money placed to the credit of said Pollock and was drawn out by him at that time or soon after. That this deponent has every reason to believe that neither the said Plaintiff nor any one connected with the Union Bank, or Forrest Bros & Co have had any knowledge of any fraud or collusion on the part of said Pollock or any one for him in regard to the sale of said land or the giving of said Note, except what they learned from the said Coff about the time the said Note became due and some months after they had discounted the same and the avails thereof had been drawn out of their bank by said Pollock.

This deponent further states that he believes the said Cook is fully aware that the said Plaintiff is a bona fide holder of said note and that he knows that he has no defense to the same as against the said Plaintiff, but that the said Plaintiff and Notice are to procure a continuance of this case and prolong the time of payment of said note.

Subscribed & Sworn H. B. Hurd

to this 30 day of June

A D 1854, before me

W. Kimball, Clerk

Henry S. Forrest
vs
Isaac Cook

Cook County Court of
Common Pleas July Term
A D 1854.

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State of Illinois

Cook County } ss, Thomas L Forrest being duly sworn
says that soon after the date of the said note he upon
the same day the same was given Lewis J Pollock came
to the office of Forrest Brothers & Co to have the same
discounted. That seeing the same was in the hand
writing of H B Hurd he enquired of him the said
H B Hurd if the same was all right and if it would
do to discount the same, receiving an answer in the
affirmative the note was discounted by Forrest Brothers
& Co in good faith believing the same to have been given
for a good and valuable consideration and the avails
thereof passed to the Credit of Mr. Pollock and was then
or soon after drawn out of said Banking Office, that
the business of discounting said note was done with
plaintiff as Cashier of said Forrest Brothers & Co that
at the time the same was discounted as aforesaid
neither this defendant nor any one connected with the
said Forrest Brothers & Co knew any thing about the
consideration for which the said note was given except
as they were informed by said Hurd that this note
was given for a balance coming to Pollock upon a
Sale of Land, but what land it was or the terms of
Sale or under what circumstances the same was
made they were never informed until after they
had sent a notice according to the custom of Banking
Houses to Mr. Cook some Eleven Months thereafter that
his note was in their hands and would fall due a
certain time mentioned in said notice that after
the said Cook had been notified by said Forrest
Brothers & Co and a few days before the said note fell
due the deponent saw said Cook and conversed with
him about said note That in said conversations

and subsequently Cook said that the note had been procured by Pollock by fraud, but that he knew that they meaning Forrest Brothers & Co. and a few days before the said note were bona fide holders of the note, that he was sorry that they would have to suffer, but that he would have to contest the same so as to bring Pollock up, but that he would have to pay the note eventually and that they would not lose it. That this deponent really believes that the plea and notice filed in this suit are for the purpose of procuring a delay of the payment of said note.

Geo L Forrest

Subscribed & sworn to
before me this 30th day of
June 1854 W Kimball Clk

Cook County Board of Common Pleas
Henry L Forrest } July Term A D 1854
vs
Isaac Cook }

State of Illinois }
Cook County ss } Henry L Forrest
the plaintiff in this suit being duly sworn says that some time within ten days after the date of the note sued upon in this suit Lewis J Pollock came to the Office of Forrest Brothers & Co and requested this deponent to discount said note, seeing the same was in the handwriting of J. B. Hurd inquiry was made of him whether the note was all right and whether it ^{that he believes answer was given that it was right & that it would do to discount it} would do to discount it. That the note was thereupon discounted and the avails thereof placed to the credit of said Pollock and was then or soon after drawn out of their office by him, that at the time the said note was

discounted this defendant did not know what was the consideration upon which it was given except that he was informed by said Gurd that it was for a balance on a sale of Land, but what land it was on what terms for what purpose or under what circumstances the same given he was not informed. That the said note was so discounted in good faith and without any knowledge or intimation of fraud on the part of any person connected therewith believing the same would be paid at maturity, and that said Pollock has not now nor has he had any interest in said note since the day the same was discounted as aforesaid except as indorser thereof. That after they had given notice to said Cook according to the custom of Banks and a short time before the said note fell due he came to the office of Forrest Brothers & Co and said that the note was obtained by fraud which was the first intimation which this defendant had of that fact and this defendant has reason to believe that that was the first time any person connected with the said Bank had any intimation that there was any claim or pretence that the note was procured by fraud or that there was any fraud or deceit practised upon said Cook in the sale of the land mentioned.

And this defendant further states that he has every reason to believe that the said Plea and notice filed in this case are for the purpose of delay.

Sworn & Subscribed
before me this 20th.

day of June 1854

W. Kimball
clerk

Henry L. Forrest

And afterwards to wit on the fifth day of

Duly in the Year Eighteen Hundred & Fifty Four
the said plaintiff by his said attorney filed
in said Cause a Note, which said Note is in
words and figures as follows to wit

\$3490 ⁶²/₁₀₀ Chicago May 4th 1853
One Year after date For value Received
I promise to pay Lewis S Pollock or order Three
Thousands Nine Hundred and Ninety Dollars sixty
two Cents with interest at six per cent
I Cook
Endorsed: "L S Pollock,"

And thereupon, on the same day to wit the
fifth day of July Eighteen Hundred & Fifty Four
said day being one of the days of the July
vacation term in the Year aforesaid, of said
Cook County Court of Common Pleas, the fol-
lowing proceedings were had in said Cause and
entered of Record in said Court to wit,

Henry S. Jonnest }
vs Isaac Cook. } Assumpsit

And now at this day comes
the said plaintiff by W B. Ward his attorney, and
on his motion it is Ordered that the Plea of the
said defendant filed in this Cause be Stricken
from the files, the same not having been filed
within ten days after Service of a Copy of plain-
tiffs declaration and rule to plead on him,
And on motion of said plaintiffs attorney it is
Ordered that the Default of the said defendant be

taken and extent of record. Wherefore the said plaintiff ought to have and recover of the said Defendant his damages herein sustained by occasion of the premises, and the Court after hearing the proofs and allegations being now fully advised in the premises assesses the said plaintiffs damages to the sum of Four thousand two hundred and seventy dollars and sixty two cents.

Therefore it is considered that the said plaintiff do have and recover of the said Defendant his damages of Four Thousand two hundred and seventy dollars and sixty two cents in form aforesaid by the Court here assessed and also his costs and Charges by him about his suit in this behalf expended and have execution therefor.

And thereupon the said Defendant by Sudd & Smith his attorneys enters his exceptions to the opinion and ruling of the Court herein. And giving judgment, and prays appeal to the Supreme Court of the State of Illinois which is allowed upon his filing appeal bond with security to be approved by the Judge of this Court in the sum of Five thousand dollars. Said bond and Bill of exceptions to be filed within thirty days from this day.

And afterwards to wit on the twentieth day of July in the year aforesaid the said Defendant Isaac Cook filed in the office

of the Clerk of said Court his Bill of Exceptions
in said Cause which said Bill of Exceptions
is in words and figures as follows to wit

17

17

State of Illinois
Cook County

Pleas in the Cook County Court
Henry L Forrest } of Common Pleas
vs
Isaac Cook }

Be it remembered that on the ninth day of May in the year of Our Lord One Thousand Eight Hundred and fifty four the said plaintiff Henry L Forrest by his attorney H. B. Hurd filed in the Clerk's office of said Cook County Court of Common Pleas his petition as follows to wit

Henry L Forrest } Cook County Court of
vs } Common Pleas June Term
Isaac Cook } 1854 Assumpsit Dam \$5,000.

Will the Clerk please issue a summons in this cause returnable at the June Term. Also please enter a rule to plead in ten days from the time of service of summons and copy of same

H B Hurd

Plaintiffs Atty

Thereupon on the said ninth day of May the following summons was issued to wit

State of Illinois }

Cook County } S.S.

The People of Illinois to the Sheriff of said County. Greeting.

We command you that you summon Isaac Cook if he shall be found in your County personally to be and appear before the Cook County Court of Common Pleas of said County, on the first day

of the next term thereof to be holden at the Court House in the City of Chicago in said County, on the first Monday of June next to answer unto Henry L Farrest in a plea of Trespass on the case on promises to the damage of the said plaintiff as he says in the sum of Five Thousand Dollars

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

Witness Walter Kimball Clerk of our said Court, and the seal thereof, at the City of Chicago in the said County this 9th day of May A.D. 1854

Walter Kimball Clerk

And whereas ~~came~~ on the same day the said plaintiff Henry L Farrest by his Attorney Harvey B Hurd ~~filed~~ his Declaration Copy of Note and Amount sued upon, on which Declaration is indorsed the affidavit of service of a copy of said Declaration

COUNTY OF COOK,

THE COOK COUNTY COURT OF COMMON PLEAS, to wit: after

to wit: in the Year of our Lord One Thousand Eight Hundred and Fifty 4

June Term,

Henry S. Forrest by Harry B. Hurd his
attorney, complainant of Isaac Cook

being

of a plea of Trespass on the Case,

upon promises:

For that whereas the said defendant on the fourth day of May in the year one thousand eight hundred and fifty three at Chicago to wit at the County of Cook aforesaid

made a certain note in writing, commonly called a promissory note, bearing date the day and year last aforesaid, and then and there delivered the said note to Lewis S. Pollock By which said note the said defendant promised to pay to the said Lewis S. Pollock or order by the name

one year after the date thereof, the sum of Three Thousand Nine Hundred and ninety Dollars sixty two Cents with interest at six per Cent for value received And then and there delivered the said promissory note to the said Lewis S. Pollock. And the said Lewis S. Pollock to whom or to whose order the payment of the said sum of money in the said promissory note specified was to be made after the making of the said promissory note, before the payment of the said sum of money therein specified to wit, on the day and year aforesaid at Chicago in the County of Cook aforesaid indorsed the said promissory note by which said indorsement he the said Lewis S. Pollock then and there ordered and appointed the said sum of money in the said promissory note specified to be paid to the said Plaintiff and then and there delivered the said promissory note so indorsed as aforesaid to the said Plaintiff.

BY REASON whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay to the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note; and being so liable, the said defendant in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note. AND WHEREAS ALSO, the said defendant afterwards, to wit, on the Eighth day of May in the year of our Lord one thousand eight hundred and fifty four at the place aforesaid, was indebted to the said plaintiff in the sum of Five Thousand dollars lawful money of the United States of America for money before that time lent and advanced by the said plaintiff to the said defendant and at the special instance and request of the said defendant AND for other money by the said plaintiff before that time paid, laid out, and expended for the said defendant and at the like request of the said defendant AND for other money by the said defendant before that time had and received to and for the use of the said plaintiff AND being so indebted, the said defendant in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in this count mentioned, when the said defendant should be thereunto afterwards requested. AND whereas also the said defendant afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear, and indebted to the said plaintiff in the further sum of Five Thousand dollars, of like lawful money, as aforesaid. AND being so found in arrear and indebted to the said plaintiff the said defendant in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

NEVERTHELESS the said defendant (although often requested, &c. to wit, on the day when the said note became due and payable, according to the tenor and effect thereof, and oftentimes since, to wit, at the place aforesaid,) has not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff but to pay the same, or any part thereof, to the said plaintiff the said defendant has hitherto altogether refused, and still does refuse, to the damage of the said plaintiff of Five Thousand dollars, and therefore the said plaintiff bring suit, &c.

H. B. Hurd Plaintiff's Atty

Copy of Note sued upon
Chicago May 4th 1853

\$3990 ^{62/100}

One Year after for value received I promise to
pay Lewis J Pollock or order Three Thousand Nine
Hundred and ninety Dollars sixty two Cents with interest
at six per Cent signed I Cook

Endorsed Lewis J. Pollock

Copy of Amount sued upon

Isaac Cook

To Henry J. Farnest Dr

To money lent paid out for his wife \$5000 —

" " found due on Settlement \$5000 —

State of Illinois {
Cook County {¹⁵

John N Norton of said County being duly
sworn says that on the twelfth day of May A. D. 1854 he
served a Copy of the within declaration, and a Copy of a
rule to plead in said cause, on Isaac Cook defendant
and further, saith not.

John N Norton

Subscribed & Sworn to
before me this 13th day
of May 1854

W. Kimball

clh

And afterwards to wit on the 5th Day of June A D 1854
the said Defendant Isaac Cook by Judd & Frink his
Attorneys filed his plea and notice as follows to wit—

Cook County Court of Common Pleas

Isaac Cook

vs

Henry L Forest

And the said defendant by Judd and
Frink his Attorneys comes and defends
the wrong and injury when &c and says he did not
undertake and promise in manner and form as is above
thereof alledged against him, and of this he puts himself
upon the County &c

Judd & Frink

Attorneys for Deft

To the above named Plff

This Atty

Take notice that under the general issue
above plead the defendant will give in evidence
and insist upon as a complete defence to the plaintiffs
action that the said promissory note in said declaration
mentioned was made and executed without consideration

And also that the making and execution of said
note in the plaintiffs declaration — mentioned, was
obtained by the false and fraudulent misrepresentations
following namely That Lewis I Pollock of the City of
Chicago on or about the twentieth day of April 1853 was
the equitable owner of about sixty four acres of land situate
in the County of Cook in the State of Illinois and described
as follows namely The East half of the West half of the
North East quarter of Section fifteen, also that portion
of the East half of the West half of the South East quarter
of said section which lies North of the ^{center of the} Madison Street

also that portion of the said South East quarter which lies north of the
 road, the legal title whereof was in one Wolf Schofer of
 the City of Chicago who held the same in secret trust
 for said Pollock and being so interested in said land
 as the equitable owner thereof the said Lewis J Pollock
 falsely and fraudulently caused a letter purporting to be
 written by one Theodore G McNamee of New York City
 on the twentieth day of April 1853 and mailed at
 at New York aforesaid on or about the day last aforesaid
 and addressed to said defendant as follows to wit

"New York 20th April 1853

Isaac Cook Esq.

Having seen in the Chicago Paper
 that a lot of land about 64 Acres is to be disposed of
 described as being situated in the North East quarter and
 South East quarter of section 15 T 39. R. 13. fronting
 nearly $\frac{1}{2}$ mile on the Barry point road or rather
 Madison Street. further particulars to be obtained at N^o 7
 Clark Street. such is the description of the property. I
 wish you to purchase for me. Will you be kind enough
 to call and see upon what terms the same can be bought
 either on a limited Credit part Cash or all Cash.
 I enclose you a draft for \$100 to give weight to this
 communication, which you may deposit as an earnest
 of my intention to purchase the property if it can be
 obtained say at from \$150 to \$175 per acre. I beg
 to refer you to Judge Douglass your friend for particulars,
 as regards myself I shall rely on your buying the property
 on the most reasonable terms you can, and whatever
 further deposit you may find necessary will you please
 to furnish. I shall be in your City by the first of next
 month when I will refund you as well any outlay
 you may have made as your commission. This em=
 powers you to purchase the property for any sum not

exceeding \$ 175 per Acre

I am Sir

Yours Respectfully
Thos^r H McNamee "

And also that afterwards to wit on or about the twenty ninth day of April 1853 at New York aforesaid said Lewis I Pollock falsely and fraudulently caused another letter purporting to be written by said Theodore H McNamee of New York City aforesaid, to be mailed at New York aforesaid on or about the day last aforesaid, and addressed to said defendant as follows to wit

"New York April 29 1853

Hon Isaac Cook & Co

Chicago

Dear Sir, In my letter of the 20th Inst. I stated that I would be in your City on the 1st of May but owing to my ill health I will not be able to be there untill the 10th. I will request you to close the sale of the Land I mentioned in my last letter as it is of great importance to me

Very resp your O^b Serv^t

Th. McNamee

By Ed^d Daniel "

which said last mentioned letter was received heretofore to wit on or about the third day of May 1853 also that afterwards to wit on or about the third day of May 1853 at New York aforesaid said Lewis I Pollock falsely and fraudulently caused a certain telegraphic dispatch purporting to be signed by S. A. Douglass to be sent by telegraph from New York aforesaid on or about the day last aforesaid and addressed to said defendant as follows to wit

"Chicago May 3rd 1853

By Telegraph from New York May 3rd
To Isaac Cook

I endorse whatever Mr. McNamee agrees with you
S. A. Douglass"

"Paid

Which said telegraphic dispatch was received heretofore to wit on or about the third day of May 1853 and the said defendant relying upon and believing said letters and telegraphic dispatch to be true and not false forged and fraudulent purchased from the said Lewis J Pollock the said lands above described on the said third day of May 1853. the said Lewis J Pollock acting and professing to act as attorney for said Wolf Schofer and received a deed for lands executed by said Wolf Schofer by said Lewis J Pollock as his Attorney. Agreeing to pay therefor the sum of one Hundred and twenty five Dollars per acre, and as part and parcel of said purchase price and consideration for said lands, said defendant made and executed said promissory note in said declaration mentioned and said defendant will further prove that said letters and telegraphic dispatch were false & forged and caused to be written and forged by the said Lewis J Pollock the payee in said note named, and that the said plaintiff never paid any consideration for and is not a bona fide holder of said note, but that the said plaintiff had notice of the facts and fraud above stated and set forth

Yours &c

Dated June 3rd 1854

Judd & Trunk

Attys for Plffs

State of Illinois
Cook County } ss

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Isaac Cook being duly sworn says
that he verily believes he has a good defence to said suit
entitled upon the merits

Subscribed & Sworn
before me June 3. 1854
H. R. Stibbings

I Cook

And afterwards to wit on the 30th day of June A. D.
1854 Cause the Plaintiff Henry L Forest by Harvey
B Hurd his Attorney and filed the following motion
to wit

Cook County Court of Common Pleas
Henry L Forest } July Term A. D. 1854
vs }

Isaac Cook } And now comes the said Plaintiff
by H. B Hurd his Attorney and moves the Court to
to cause the Plea and notice of the Defendant
filed in this case to be stricken from the files the same
not having been filed in time according to Law and
the said notice setting up a suppositions and false
State of facts

H. B Hurd

Plffs Atty

And afterwards to wit on the 5th day of July A. D. 1854
in the July vacation Term of said Court ~~and notice~~
~~was not to be had and after~~ Whereupon J. N. Norton
Deputy Sheriff at the request of the said Plaintiffs Atty.
and upon payment of his fees produced and filed with
the Clerk of the said Court the summons herein before set
forth as having been issued in said cause with the
following indorsement thereon to wit Scrvoid

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by reading to the within named Isaac Cook this
May 12th 1854

1 Service 50 cents

1 Mile 5 Cents

1 Return 10 65 cts

Sewing dec & Notices 65

C. P. Bradley Sheriff

By J. N. Norton

Deft

upon which the clerk of said Court made the following
endorsement to wit

Filed 5th July 1854

W Kimball

clerk

And the said Court after argument of Council
order that said plea and notice be stricken from the
file the same not having been filed within ten days
after the service of a copy of the declaration and notice
of the rule to plead and that the default of the defendant
for want of plea ~~be entered~~ and further that the said
plaintiff do have and recover from the said defendant
the sum of four Thousand two hundred and Seventy
Dollars and Sixty two Cents for the damages of him
the said plaintiff by him sustained by reason of
the nonperformance of certain promises and
undertakings of him the said defendant also that the
said plaintiff do have and recover his costs in and
about this suit expended To which said order
striking said plea and notice from the file as well as
the order entering final judgement against the said
defendant in favor of the said plaintiff the said
defendant did then and there except and thereupon
the said defendant prayed an appeal to the Supreme
Court.

John M Wilson Judge of the

And afterwards to wit on the Eleventh day of August in the Year aforesaid the said Plaintiff by his said attorney filed in the office of the Clerk of said Court his Precept for Execution in words and figures as follows to wit.

Henry D. Forrest } Cook County Court of
vs } Common Pleas
Isaac Cook }

Will the Clerk please to give an Execution on the judgment in this case directed to the Sheriff of Cook County to execute August 11th 1854.

H B Hurd

Atty for Plff.

And on the same day to wit the Eleventh day of August in the Year aforesaid an Execution was issued out of the office of the Clerk of said Court, in said cause, which said Execution is in words and figures as follows to wit.

State of Illinois }
County of Cook } ss

The People of the State of Illinois to the Sheriff of said County Greeting:
We command you, that of the Lands and Tenements Goods and Chattels of Isaac Cook defendant in your County you cause to be made the sum of Four Thousand Two Hundred and Seventy Dollars and Sixty two Cents, which Henry D. Forrest Plaintiff lately in the Cook County Court of Common Pleas of

Said County, at a term thereof begun and held
 at Chicago in said County, on the first Monday
 of July last past, recovered against the said
 Defendant, and which by the said Court was
 adjudged to the said Plaintiff for his damages.
 And also, the further sum of Seven Dollars
 and Ninety Cents which were adjudged to the said
 Plaintiff for his Costs and Charges in that behalf
 expended, whereof the said Defendant was con-
 victed, as appears to us of Record: And have you
 these monies ready to render to the said Plaintiff
 for his Damages and Costs aforesaid, and make
 release of said writ, with an endorsement thereon in
 what manner you shall have executed the same,
 in Ninety days from the date hereof.

Witness my hand and the seal thereof at Chicago
 in said County this 11th day of August 1854.
 Walter Kimball, Clerk

State of Illinois
County of Cook S.S.

I, Walter Kimball, Clerk of the Cook County Court of Common Pleas within and for the County and State aforesaid do hereby Certify that the foregoing is a full true and correct transcript of all the papers filed in the case of Henry S. Forrest plaintiff and Isaac Cook Defendant and also of the judgment and proceedings had in said cause as appear from the original papers in said cause and the Records of said Court, now on file in my office.

In Testimony whereof I have hereunto Subscribed my name and affixed the seal of said Court at the City of Chicago in said County this 25th day of August A.D. 1854.

Walter Kimball
Clerk



Isaac Cook
Plff in Error
Henry L. Forrest

And now comes the said Plff in Error by Judd & Frink his Attorneys and says that in the Record of proceedings aforesaid and in the proceedings aforesaid there is manifest error in this to wit.

1st The Court erred in entertaining the motion to strike the pleas from the files, at the July Vacation Term, no notice of the motion having been given four days before said term as required.

2nd The Court erred in striking pleas from the files.

3rd The Court erred in deciding that Defendant in the Court below was bound to file his pleas before any evidence had been furnished or filed with the Clerk or the Court that any Summons had been served on him.

4th The Court erred in entertaining a default against the Defendant below, when he had filed a plea with an affidavit of merits long before any evidence that process had been served on him had been filed with the clerk or the Court.

5. The Court erred in deciding that

Defendant was bound to appear and plead before any evidence of the service of process upon him had been filed in the Court.

6th The Plff below having allowed the June Term to pass without making any motion to strike the pleas from the files and for default by such laches waived any irregularity in the filing of the pleas and was not authorized to make any such motion at the subsequent July Term, and the Court erred in entertaining & allowing such motion.

For these & other manifest errors in the record and proceedings aforesaid said Plff prays that said Judgement ought to be reversed, vacated and set aside.

Judd & Sprink
Attys for Plff in Error.

Let a supersedeas issue in the above cause upon the plaintiff in Error filing with the Clerk of the Supreme a bond in the usual form with Nath Philander Eddy his security in the penal sum of ten thousand dollars.

Attorney Aug 17. 1859

J. D. Eaton
Jus sup'rt

And now comes the said defendant and says there is no error in the proceedings in said cause and the record therein and prays that the judgment below may be affirmed with costs and damages.

H. B. French.

Defendants Attys.

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Wm. L. Leland
ads.

Don. Leland.

Record & cross.

Filed Aug. 19th 1854.
L. Leland Clk
By P. K. Leland Depy

Filed Aug. 19th 1854.

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Isaac Cook

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Henry L. Forest

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