

No. 12916

Supreme Court of Illinois

Sidders

VS.

Riley, Admr.

State of Illinois
Rock Island County

ss }

Henry Sedders

vs

Jacob Riley ad-
ministrator of the
estate of Andrew
B. Herme deceased

In the Rock Island
County Circuit Court
of the December Term
A.D. 1857

Page 1

Be it remembered that in
the December Term in the year one thou-
thousand eight hundred and fifty seven
came ~~Henry~~ Sedders by E. R. Bean his
attorney, came into the Rock Island
County Circuit Court in the state of Illinois
before the Judge thereof and impleaded
Jacob Riley administrator of the estate of
Andrew B. Herme deceased, in a certain
plea of trespass on the case upon ^{by his declaration filed in said court on the 13th day of Nov. 1857} ~~promises~~,
on which the said Plaintiff declared
against the said defendant in the words
and figures following to wit;

Henry Sedders Plaintiff in this suit
by E. R. Bean his attorney complains of Jacob
Riley administrator of all and singular the
good, chattels, and effects which were of
Andrew B. Herme deceased, at the time of
his death, who died intestate, defendant
in this suit of a plea of trespass on the case
upon promises.

Courts

For that whereas the said de-
fendant Andrew B. Herme in his life time,
to wit; on the fifteenth day of February
A.D. 1856 at Rock Island to wit, at the

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County of Rock Island and State of Illinois 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 the said plaintiff. By which said note the said Andrew B. Stume promised to pay to the said plaintiff or order one year after date thereof the sum of seven hundred and fifty dollars for value received. And the said Plaintiff avers that the said one year mentioned in said note has long since elapsed.

By reason whereof and by force of the statute in such case made and provided the said Andrew B. Stume then and there became liable to pay to the said Plaintiff the said sum of money in the said promissory note specified according to the terms and effect of the said promissory note, and being so liable, he the said Andrew B. Stume in his lifetime in consideration thereof, of towards twit; 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 promissory note specified according to the tenor and effect of the said promissory note. Yet the said Andrew B. Stume in his lifetime, and the said Jacob Riley administrator as aforesaid since

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the death of the said Andrew B. Home have not, nor hath either of them as yet paid the said sum of money in the said promissory note specified or any part thereof to the said Plaintiff. Although often requested so to do, But to pay the same or any part thereof to the said Plaintiff the said Andrew B. Home in his lifetime wholly refused, and the said Jacob Riley Administrator as aforesaid hath ever since the death of the said Andrew B. Home hitherto wholly refused and still refuses so to do.

Count 2

And whereas also the said Andrew B. Home deceased, in his lifetime, to wit, on the day and year aforesaid, at the place aforesaid, was indebted to the said Plaintiff in the further sum of twelve hundred dollars lawful money, for divers goods, chattel, wares and merchandize by the said Plaintiff before that time sold delivered to the said Andrew B. Home since deceased and at his special instance and request. And also in the further sum of \$1200. of like lawful money for money by the said Plaintiff before that time lent and advanced to, and paid laid out, and expended for the said Andrew B. Home and at his special instance and request, and also in the further sum of \$1200. of like lawful money by the said Andrew B. Home before that time had and received to and for the use of the said Plaintiff. And the said Andrew B. Home since deceased, in his

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liferance being so indebted, and the said several sum of money in this count mentioned, being and remaining wholly due and unpaid, the said Jacob Riley as administrator as aforesaid, in consideration thereof, afterwards and after the death of the said Andrew B. Hume towit, on the tenth day of November 1857 at the place aforesaid undertook and then and there faithfully promised the said Plaintiff to pay him the said sum of money in this count mentioned when he the said Jacob Riley as administrator as aforesaid should be then and there afterwards requested.

Count 3

And whereas also the said Jacob Riley as administrator as aforesaid, afterwards towit, on the day and year last aforesaid at the place aforesaid, accounted with the said Plaintiff of and concerning other sum of money from the said Jacob Riley as administrator as aforesaid, and at the time of the said accounting of the said Plaintiff due and owing and then in arrear and unpaid, and upon that accounting the said Jacob Riley administrator as aforesaid, was found to be in arrear and indebted to the said Plaintiff in the further sum of \$1200, of like lawful money, and being so found in arrear and indebted, he the said Jacob Riley as administrator as aforesaid in consideration thereof, afterwards towit, on the day and year last aforesaid at the place aforesaid undertook and then and there faithfully promised the said Plaintiff

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the said sum of money last mentioned whenever afterwards he the said Jacob Riley as administrator as aforesaid, should be thereto afterwards requested -

Yet the said Jacob Riley as administrator as aforesaid, not regarding his several promises and undertakings so by him in manner and form aforesaid made, has not yet paid the said several sums of money in the said last two counts mentioned or any or either of them or any part thereof to the said Plaintiff (although often requested so to do) but the said Jacob Riley to pay the same or any part thereof hath wholly refused and still doth refuse to the damage of the said Plaintiff of twelve hundred dollars and therefore he bring his suit &c.

Pleas

1 In which said declaration the said ^{defendant} J. B. Holly, Wilkinson & Pleasant his attorneys pleaded in these words: by their pleas filed in said court on the 25th day of March A.D. 1858 And the said defendant by his attorneys comes and defends &c and says that the said Andrew B. Starnes did not in his lifetime, nor did this defendant as his administrator since his decease, undertake and promise in manner and form as the said Plaintiff hath thereof in his declaration complained. And of this the defendant puts himself upon the country

" 2

And for further plea in this behalf the said defendant, by leave of the court for that purpose first had and obtained &c

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says actus non because he says the consideration of the said promissory note in the said Plaintiff's declaration mentioned has wholly failed. That the said note was and executed by the said Andrew B. Hume in his lifetime in part consideration for a certain tract or parcel of land situated in the county of Rock Island and state of Illinois and described as follows viz. The South West quarter of section No twenty one in Township sixteen North Range two West, together with certain farm stock, goods & chattels thereon then being. And while said tract of land the said Plaintiff at the same time of the execution of the said promissory note, conveyed by deed, of himself & wife, to the said Andrew B. Hume, with covenants therein that he was well seized of the said premises as of an estate in fee simple and had good right to sell and convey the same, and that the same in the quiet and peaceable possession of the said Andrew B. Hume, his heirs & assigns against the claims of all persons whomsoever, he the said Plaintiff would forever warrant and defend. And the said defendant avers that the said Plaintiff did not at the time of the execution of said deed have, nor has he at any time since had, any legal title to the said described premises, except on the south half thereof. That the said Plaintiff had only a deed from one Marcus R. Osborn and his wife under and virtue of which he the said Plaintiff claimed title to the said land, which said deed the

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defendant avers conveyed no title to the ^{west} half of said tract, and that the same was made and executed by and through the mistake error and inadvertence of the said parties thereto, and was intended by them as and for a conveyance only of the south half of said tract, and that afterwards, to wit, on the 7th day of March 1856 the said Marcus B. Osborn filed in the Circuit Court of said Rock Island County and State of Illinois, his bill in chancery against the said Plaintiff in this suit and the said Andrew B. Hume as defendant therein to correct the said error and mistake in the said named conveyance, and that afterwards such proceedings were thereupon had in the said court, that the mistake in the said deed of the said Osborn & wife to the said Plaintiff herein was by the order and decree of the said court corrected, and the said deed ordered and decreed to stand for and be taken and held as a conveyance of the south half of the south west quarter of section No. twenty one, in township sixteen North Range two west of the 4th P.M. in the same manner and with like effect as if the words "The south half of" had been and were inserted in the said deed immediately preceding the description of the land as in said deed described. And the said defendant avers that at the time of the execution of the said deed by the said Plaintiff as aforesaid ~~& Hume~~ the said Hume paid to the said Plaintiff the sum of seven hundred and fifty dollars part of the purchase money of

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said tract of land and of the farm stock, goods & chattels aforesaid, and executed the aforesaid promissory note to secure the payment of the residue of said purchase money, and that in proportion to the price which the said Hume was to pay for the whole of said tract, farm stock, goods & chattels the said sum paid by him the said Hume as aforesaid, is the full price and value of the said south half of said tract, and of said goods chattels & farm stock. And so the said defendant says the consideration of the said mentioned promissory note has wholly failed, and this he is ready to verify wherefore he prays Judgment &c.

3

And for a further plea in this behalf the said defendant by leave of the Court &c says actio non except as to the sum of one dollar because he says the consideration of the said promissory note in said declaration mentioned has in part failed to wit; in the sum of seven hundred and forty nine dollars, in this, that the said Plaintiff together with his wife in the lifetime of the said Andrew B. Hume to wit on the 15th day of February, 1856 by his warranty deed conveyed to the said Andrew B. Hume his heirs and assigns a certain tract or parcel of land situated in the County of Rock Island and State of Illinois, and described as follows viz, The South West quarter of Section No twenty

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one in Township sixteen North Range two west of the 4th P.M., with the appurtenances thereto belonging and sold to him said defendant certain farm stock goods & chattels then on said land. To have and to hold to the said Andrew R. Hume his heirs & assigns forever. And did warrant the title thereof to the said Andrew R. Hume his heirs & assigns. And therefore the said Andrew R. Hume paid to the said plaintiff the sum of seven hundred and fifty dollars part of the purchase money of said tract of land, goods, chattels and farm stock and executed the said mentioned promissory note to secure the payment of the residue of the purchase money, and upon no other consideration was the said promissory note executed or given, that at the time of the execution of the said deed the said plaintiff had a deed from one Marcus B. Osborn and his wife under and by virtue of which alone, he the said Plaintiff claimed title to the said land, which said deed the said defendant avers conveyed no title to the North half of the said tract, that the same was made and executed by and through the mistake, error and inadvertence of the said parties thereto, and was intended by them as and for a conveyance only of the South half of said tract, and that afterwards to wit, on the seventh day of March 1886 the said Marcus B. Osborn filed in the Circuit Court of said Rock Island County and State of Illinois his bill in chancery against the said plaintiff in this suit and the

said Andrew B. Hume as defendant, therein to correct the said error and mistake in the said named conveyance, and afterwards such proceedings were thereupon had in the said Court that the said mistake in the said deed from the said Osborn wife to the said Plaintiff herein was by the Order and decree of said Court corrected, and the said deed ordered and decreed to stand for and be taken and held as a conveyance of the south half of the South West quarter of Section No twenty one, in Township Sixteen North Range two west of the 4th P.M., in the same manner and with like effect as if the words "The South half of" had been and were inserted in the said deed immediately preceding the description of the land as in said deed described. And the said defendant avers that the sum paid by the said Hume was and is the full proportion of the price agreed upon for the whole of said tract of land, goods, chattel & farm stock excepting only the sum of one dollar. And so the said defendant says the consideration of the said promissory note has failed except as to the sum of one dollar thereof. and that he is ready to verify. wherefore he prays judgment &c.

4

And for a further plea in this behalf the said defendant by leave &c as aforesaid says ratio non because he says, before and at the time of the commencement of this suit

The said Plaintiff was indebted to the said defendant as administrator &c of the said Andrew B. Hume in the sum of thirteen hundred dollars in this; Before the time of the commencement of said suit, and in the lifetime of the said Andrew B. Hume to wit on the 15 day of February 1886 at the said County of Rock Island, the said Plaintiff, (who was joined by his wife for the releasing of her dower thereby) by his deed of that date in consideration of the sum of fifteen hundred dollars paid by the said Andrew B. Hume the receipt whereof was thereby acknowledged, did grant bargain and sell unto the said Andrew B. Hume his heirs and assigns a certain tract or parcel of land situated in the County of Rock Island and State of Illinois and described as follows to wit, the south west quarter of section No twenty one in Township sixteen North Range two west of the 4th E. W., together with all and singular the hereditaments and appurtenances thereto belonging or in any wise appertaining. To have and to hold unto the said Andrew B. Hume his heirs and assigns forever, and by the same deed did covenant to and with the said Andrew B. Hume his heirs and assigns that he was well seized of the premises therein conveyed as of a good and indefeasible estate in fee simple and had good right to sell and convey the same in the manner and form therein set forth: That the said bargain premises is the free and peaceable possession of the said Andrew B. Hume his heirs and assigns against the claim

of all persons whomsoever he would warrant and forever defend. And the said defendant avers that upon the execution of said deed the said Andrew B. Hume paid to the said plaintiff the sum of seven hundred and fifty dollars part of the purchase money of said tract of land in said deed mentioned, and executed the said promissory note in said declaration mentioned to secure the payment of the residue of said purchase money. And the said defendant avers that the said Plaintiff has not kept his said covenants in the said deed mentioned, but has broken them in this; That the North half of said South west quarter of section 21. Township 16. North Range 2 west of the 4th P.M., was conveyed to said Siddle by one Marcus B. Osborn & his wife by deed through mistake, error and inadvertence nearly, and that by decree in chancery of the Circuit Court of Rock Island County in the State of Illinois made and entered in a certain cause in which the said Osborn was complainant and the said Siddle and this defendant as administrators of said Hume and the unknown heirs of the said Hume were defendants, the said error was corrected, and the conveyance from the said Osborn and wife to said Siddle for the said South west quarter of section twenty one, ordered and decreed to stand for and be taken and held as a conveyance only of the South half of said South west quarter. And the said

defendant avers that he in capacity of administrator of Andrew B. Hume has suffered damage to a large amount to wit, to the sum of thirteen hundred dollars: And the said defendant avers that the said damage arose out of the same contract out of which the damages in said Plaintiff's declaration arose, which said damages exceed in amount the damages in said declaration mentioned and out of which said debt, as adm^r &c as aforesaid is ready and willing to allow said plaintiff the amount of his said damages in his said declaration demanded. according to the Statute in such case made and provided - And that the said defendant adm^r &c is ready to verify, wherefore he prays Judgment &c -

5

And for a further plea in this behalf the said defendant by leave &c payeth set-off except as to the sum of one dollar, because he says that before and at the time of the commencement of this suit the said Plaintiff was indebted to the said defendant as adm^r &c of the said Andrew B. Hume in the sum of eleven hundred and ninety dollars in this to wit, Before the commencement of this suit and in the lifetime of the said Andrew B. Hume to wit, on the 15th day of February 1856 at the said County of Rock Island the said Plaintiff (with his wife who joined him for the releasing of her dower) by his deed of that date in consideration of \$1500. paid to him by said Hume, did grant bargain & sell to the said

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Home his heirs and assigns a certain other tract or parcel of land described as in the 4th plea above set forth, and by the said last mentioned deed did covenant to and with said Home his heirs and assigns in manner and form as in the said 4th plea above set forth. And the said defendant avers that upon the execution of the said deed the said Home paid to the said Plaintiff the sum of \$750, part of the purchase money for said tract of land last above mentioned, and executed the promissory note in the Plaintiff's declaration described to secure the payment of the residue of said purchase money. And the said defendant avers that the said Plaintiff has not kept the covenants of his said last mentioned deed, but has broken them in manner and form as set forth in the said 4th plea above pleaded. Whereby the defendant avers that he as the Administrator of said Adm^r B. Home has sustained damages to a large amount to-wit^t the sum of \$1190, which said damage debt, avers arose out of the same contract out of which the damages in Plaintiff's declaration arose, which said damages the said defendant is ready and willing and hereby offers to allow in set off against so much of the said damages in said Plaintiff's declaration demanded according to the statute in such case made & provided. and thus the said debt, is ready to repay, wherefore &c.

Page 65 To which said several pleas the said Plaintiff by his attorney replied in these words; by replication filed on the 26 day of March 1858

Replications

1 And the said Plaintiff, as to the plea of the said defendant, by him first above pleaded, and whereof he has put himself upon the country does the like.

2

And the said Plaintiff, as to the said plea of the said defendant, by him secondly above pleaded says, precludes now, because he says, that the proportion to the price which the said Hume was to pay for the whole of said tract of land, farm stock, goods and chattels, the said sum of seven hundred and fifty dollars paid by him as in said second plea alleged, was not the full price and value, of the said south half of said tract, and of the said farm stock, goods and chattels as in the said second plea alleged, and the said plaintiff pray may be enquired of by the country &c.

3

And the said Plaintiff, as to the said plea of the said defendant by him thirdly above pleaded says, precludes now, because he says, that the said note was given by the said Hume for the balance due on a sale of the south half of the land mentioned in said plea, and for the farm stock, goods and chattels by this plaintiff sold and delivered to the said Hume, and that no other price or portion of land enters into the consideration of said note in any manner

Page 16 whatever - and this the said Plaintiff prays
may be enquired of by the country &c.

4

And the said Plaintiff as to the
said pleas of the said defendant by him
fourthly and fifthly above pleaded says, pre-
clude now, because he says that he was
not nor is indebted to the said defendant
in the said sums of \$1300. and \$1190. or
any part thereof, in manner and form as
the said defendant has above in his said
fourth and fifth pleas, in that behalf al-
leged, and this the said plaintiff prays
may be enquired of by the country -

And as the said plaintiff in
the above replications put himself upon
the country, so likewise did the defendant.
And thereupon issue was joined between the
said Plaintiff and the said defendant.

X

And afterwards to wit at a Circuit
Court held at the Court house, in and for
the County of Rock Island and State of
Illinois on the 27th day of March in the
year A.D. 1858 before J. Wilson Drury
Judge of the sixth Judicial Circuit in
and for the County of Rock Island aforesaid,
the aforesaid issue so joined be-
tween the said parties as aforesaid, came
on to be tried by a Jury of the County of
Rock Island, aforesaid, for that purpose
duly empannelled, good and lawful men
of the said County.

Page 17 At which day came there as well the said plaintiff, as the said defendant, by their respective attorneys aforesaid, and the jurors of the jury aforesaid empanelled to try the issue, being called, also came, and were then and there in due manner chosen and sworn to try the said issue. And upon the trial of the said issue, the Counsel for the Plaintiff to maintain and prove the said issue on his part offered in evidence a certain promissory note, of which the following is a true copy.

"\$750. One year after date for value received I promise to pay Henry Sedlers or Order seven hundred and fifty dollars at 6 $\frac{1}{4}$ per cent per annum. Rock Island February 15th 1856
A. B. Hume"

Here the said plaintiff rested his case -

And the counsel for the defendant, to maintain ~~it~~ and prove the said issue on his part, offered in evidence a certain deed from John Sedlers wife to Andrew B. Hume the same as referred to in the defendants plea, which said deed was admitted without objection. He also offered in evidence the the Record and papers in a certain chancery suit referred to in his said plea which were also admitted without objection.

The defendant here rested his case -

The said Plaintiff to further maintain and prove the issue on his part, and

Page 18 to rebut the evidence of the said deed
and of the conveyance offered to prove
"that at the time the Plaintiff made the
said deed to the said Hume, he informed
the said Hume that he had no title to
Exceptions the North half of the said quarter sec-
tion." But the counsel for the defendant
1 objected to the evidence and the said
Circuit Judge sustained the objection, to
which opinion the counsel for the Plaintiff
then and there excepted.

The Plaintiff's counsel then offered to
prove that the note in the plaintiff's de-
claration mentioned was given for the south
half of the quarter section mentioned in the
pleas of the said defendant, and for certain
farm stock, goods and chattels at the same
time sold and delivered to the said Hume
and that the north half of the said quarter
2 section was no part of the consideration
for which said note was given. To which
evidence the defendant counsel objected, and
the said judge sustained the objection, and
the Plaintiff's counsel then and there excepted.

The plaintiff's counsel then offered to
prove that the said sum of \$1500, mentioned
in the deed referred to in the defendant's pleas
was the consideration for the South half of the
quarter section mentioned in said deed and
3 for the farm stock, goods and chattels aforesaid
and that no value was put upon, or assigned
to be paid for the North half of said quarter section.

To which evidence the counsel for the defendant objected and the said Judge sustained the objection, and the counsel for the Plaintiff then and there excepted.

4 The counsel for the Plaintiff then offered to prove that after the said deed was signed and sealed, and before the delivery thereof, it was agreed by the parties thereto, as a condition of the delivery, that the grantee should have no recourse right or remedy upon the covenants in the said deed, except so far as they concerned or applied to the South half of the quarter so conveyed. To which evidence the counsel for the defendant objected, and the said Judge sustained the objection, and the counsel for the Plaintiff then & there excepted.

The said issue was then submitted to the jury, on the question of damages, and they found a verdict for the plaintiff, for two hundred and eighty-three $\frac{1}{2}$ / 100 dollars and cost of suit.

And thereupon the said counsel for the Plaintiff entered a motion for a new trial, and the same being argued for the Plaintiff and defendant by their respective counsel, the said Circuit Judge held the same under advisement till the June Term of the said Rock Island County Circuit Court.

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A.D. 1858 and on the 7th day of June of the June Term aforesaid, the said Circuit Judge gave in his opinion and overruled the said Motion for a new trial, to which said ruling of the said Judge the said counsel for the Plaintiff did then and there except.

Exception

5

And on the 12th day of June 1858 of the June Term aforesaid the said Counsel for the Plaintiff entered a motion for an appeal to the Supreme Court of the State of Illinois, which said motion was allowed by the said Judge on condition that the said Plaintiff filed a bond in the sum of one hundred dollars with sixty days from the said 12th day of June 1858 with E. R. Bean as his security -

And because none of the said exceptions, so offered and made to the opinion and decision of the said Circuit Judge do appear upon the record of the said trial, therefore, on the prayer of the said Plaintiff by his counsel, the said Circuit Judge has to this bill of exceptions put his seal, according to the statute in such case made and provided this 6th day of August A.D. 1858

J. W. Denny
Judge

Seal

Bond

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Know all men by these presents that we Henry Sidders and Elbridge R. Bean of the County of Rock Island and State of Illinois are held and firmly bound unto Jacob Riley administrator of the Estate of Andrew B. Stume deceased in the sum of One Hundred dollars, for the payment of which well and truly to be made, we bind ourselves and each of us, our heirs executors and administrators, jointly and severally and firmly by these presents. Sealed with our seals, and dated this 6th day of August A.D. 1858.

The condition of the above obligation is such; that whereas the above bounden Henry Sidders did on the 27th day of March 1858, in Circuit Court within and for the County of Rock Island and State of Illinois obtain a Judgment against the said Jacob Riley administrator as aforesaid, for the sum of two hundred and eighty three ¹²/₁₀₀ dollars and costs of suit, from which Judgment the said Henry Sidders has prayed and obtained an appeal to the Supreme Court of said State.

Now if the said Henry Sidders shall duly prosecute said appeal, and shall moreover pay the amount of the Judgment, costs and damages to be rendered against him the said Henry Sidders in case the Judgment shall be affirmed in the said Supreme Court, then the above obligation to be null & void, else to remain in full force and effect.

Approved by me at my office in }
Rock Island this 6th day of August
A.D. 1858

John Sidders Seal
E. R. Bean Seal

Recd

May 21st 1858

Jacob Riley admr
of the Estate of
Andrew B. Wm
Dec.

Filed Aug 6 1858
Jury M. N. S. etc.
Receipt of Recd
Filed March 2. 1859
L. L. Leland
clerk

State of Illinois }
Rock Island County } I Quincy Merrill
Clerk of the circuit Court of the county
aforesaid do certify that the above and
inclosing is a true copy from the original
papers on file in my office, that I have
compared the same and find it to be a
true and complete Record of the case
above mentioned

Witness my hand and the
Seal of said court this 1st day
of March 1859
Quincy Merrill clerk

State of Illinois. Supreme Court Trans. 3^d Division
April Term 1859.

Henry Siddus

Jacob Riley adm^r of estate } Appeal from
of Andrew B. Hummel } Rock Island
Circuit Court.

Now comes the said appellant by E. R.
Bean & Leland & Leland his attorneys & says
That in the record & proceedings in the above
Cause there is manifest error in this, viz;

- 1st The Court erred in Excluding the Evidence
Offered by plaintiff below.

- 2^d The Court erred in overruling the motion
for a new trial.

- 3^d The verdict & judgment should have
been for the plaintiff below for the whole
amount due on the note.

E. R. Bean & Leland & Leland
for appellant -

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Henry Liddens

vs
Jacob Riley
Adm^r of the Estate
of A B Hume
dec -

Filed Aug. 6 1858

Dunicy McNeil clk
Transcript of Record

Filed March 2 1859

L Leland
clk