No. 14736

Supreme Court of Illinois

Wolford

vs.

Dow

71641

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 157 74

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

Wolford
vs
[redacted]
Lowe

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SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION,
APRIL TERM, A. D. 1864.

RICHARD B. WOOLFORD, impleaded with ALLEN VANE & RENSELEAR STONE, Plaintiff in Error. *v.* GEORGE DOW, Defendant in Error.	Error to Superior Court of Chicago.

ABSTRACT OF RECORD.

Page 1 **Placita.**

2 **Precipœ for Summons.** Security for costs.

2 **Summons,** and Sheriff's Return.

6 " $1000.00 " CHICAGO, Feb'y 9, 1861.

" Six months after date, for value received, we promise to pay Geo. " Dow, or order, one thousand dollars, with ten per cent. interest.

(Signed) " ALLEN VANE & CO.

" R. B. WOOLFORD."

Endorsements upon the Note:

" Received one hundred dollars, being the interest to Feb. 9, 1862.

" GEO. DOW."

" Chicago, March 8, 1862. Received, on the within, one hundred " dollars. GEO. DOW, per Henry Dow."

" Chicago, April 16, 1862. Rec'd, on the within, one hundred dol- " lars. GEO. DOW, per Henry Dow."

And then rested his case.

The defendant, Woolford, by E. G. Asay, his counsel, then introduced, as evidence on his part, the answer of said Stone, to a bill of discovery, filed by said Woolford on the chancery side of said Superior Court, which said answer sets forth and admits:

26 That said Dow commenced said suit on the common law side of said Superior Court, against the defendants therein, said Vane, Stone & Woolford, to recover amount of said promissory note. That said note was made and executed for money loaned by said Dow, to said Vane & Stone, as copartners. That said Dow agreed to loan the same on condition that said Woolford signed said note as surety.

27 That although the name of said Woolford appears on the face of said note, as one of the makers thereof, yet the fact was, that said Woolford signed the same as surety only, as well at the request of said Dow as of said Stone and Vane, for the sole purpose of enabling said Vane and Stone to obtain said loan of said Dow, and that said Woolford received no consideration whatever therefor.

Admits that at the time of the maturity of said note, and for some time thereafter, said Vane & Stone were, and continued to be possessed

of property, money, goods and chattels to a considerable amount, available to the payment of said note, and which could have been reached by legal process, and more than sufficed to have paid the said note in full. That said Dow was well acquainted with the circumstances of said Vane & Stone, he, Dow, being their book-keeper, after maturity of
28 the note. That at the time of the commencement of said suit, to recover the amount of said note, and for some time prior thereto, said Vane & Co. were insolvent, and said copartnership terminated. That at or about the time of the maturity of said note, it then being inconvenient for said Vane & Co. to pay same, it was agreed, between said Dow and said Vane & Co., that if said Vane & Co. would pay interest on said note, at the rate of ten per cent. per annum, he, said Dow, would extend the time of payment of the same. That it was further agreed, by said Dow, that he would receive and take from said Vane & Co., the sum of one hundred dollars per month in liquidation of said note, and interest at ten per cent. per annum until fully paid. That said Dow also agreed to forbear suit, and proceedings at law, against said Woolford and Vane & Co. for the recovery of the amount of note. That said agreement was
29 so made and entered into without the knowledge, privity or consent of said Woolford, and that, in fact, said defendant Stone believed said Woolford supposed said note was paid at maturity thereof. That in pursuance of the terms of the aforesaid agreement, said Vane & Co. actually paid to said Dow one hundred dollars, as and for one year's interest on said note, as extended by said Dow, being at the rate of ten per cent. per annum thereon, as appears by the endorsement thereof on said note. That in further pursuance of said agreement, said Vane & Co. have paid several installments on account of said note, amounting, altogether, with said interest, to the sum of three hundred dollars.

That said Vane & Co. obtained said loan of said Dow to be used by them in their copartnership business; that the same was so used by
30 them, and that said Woolford had no interest therein whatever. That defendant Stone believes said Dow commenced said suit at law for the purpose of enforcing the collection of the balance due on said note from said Woolford, the said Dow well knowing that said Vane & Co. were utterly insolvent, and without property of any kind wherewith to meet the balance due thereon. Denies combination, &c. Sworn to.

32 The said Woolford, by his counsel, then introduced, as evidence, the answer of said Vane to said bill of discovery, which is substantially the same as the hereinbefore abstracted answer of said Stone, duly sworn to, and then rested his case.

38 **Deposition** of Henry Dow, on the part of plaintiff, George Dow (defendant in error).

58 **Bill of Discovery,** requiring answers under oath.

Plaintiff then introduced, in evidence the answer of himself to said bill of discovery, filed by said Woolford.

67 To the introduction of which, as evidence, the said defendant, Woolford, by his counsel, then and there objected, on the ground that it was not competent, and that said plaintiff could not use his own answer in his own behalf, on said trial; which, said objection, was then and there overruled, and said answer then and there admitted as evidence; to which, said ruling and admission of said answer, said defendant, by his counsel, then and there excepted.

68 Said answer of said Dow states:

That on the 9th February, 1861, said Vane & Stone were copartners as commission merchants, in Chicago, and solicited of him, Dow, the
69 loan of $2,000, for the purpose alleged, of extending their business; representing themselves as perfectly solvent, yet that if he, Dow, desired it, they would give security; that, in reply, he said to said Vane & Stone that he had with him but $1,000.00 that he could spare, and that he could not then stay (being a resident of Ohio,) to investigate land titles for security, but that if they, said Vane & Stone, would give him, Dow, personal security, he would loan them the said $1,000.00, with interest at the rate of ten per cent. per annum, and that he would soon have, from collections then maturing, smaller sums which he might thereafter be willing to loan them on the same terms. That said Vane & Stone proposed the name of R. B. Woolford (complainant therein) as a

responsible person, in said city, to join with them in a promissory note at six months, for said $1,000.00, and stated to said Dow that said Woolford was a man whom said Vane had brought out, and aided in establishing in a very successful business in said city. That said Vane & Stone were well acquainted with said Woolford's pecuniary affairs, and
70 that he was then worth, at least, from $6,000 to $8,000, over and above all his liabilities; that they had not asked said Woolford to sign with them, and they were not certain that he would, but that they were then owing him money, but thought that they could arrange it so that he would sign a note with them. That afterwards Woolford came to the store of said Vane & Stone and signed, jointly with them, the said promissory note, and delivered same to him, said Dow.

71 That he, said Dow, delivered said $1,000.00 to Vane & Co., but whether Woolford received any part thereof, or any other consideration, for signing the same, or whether as security only, said Dow had no knowledge, but believes said Woolford did receive a portion thereof in consideration of signing said note.

That after the execution and delivery of said note, said Vane & Stone representing to said Dow, that they were perfectly solvent, and doing a large and profitable business, further solicited him, said Dow, to remit to them, whenever he could, such sums of money as he could spare, at the rate aforesaid, and agreed with him, that as soon as he could arrange his business in Ohio, that he, Dow, should return to Chicago and enter their employ as clerk and book-keeper, at a salary of $54.16 per month, for a period sufficiently long to enable him to examine into and inform himself in regard to their affairs and responsibility, and that they would give him security for any such additional advances. That he, Dow, confiding in such representations, did, between February 9th, 1861, and the 21st June, 1861, remit and loan to said Vane & Stone, at the rate aforesaid, several sums, amounting, in the whole, to $580.00.

73 That on the 17th June, 1861, said Dow did return to Chicago, and entered the office of said Vane & Co., as book-keeper, and did examine into their affairs and financial condition, and thereby became convinced,

long before the maturity of said note, that the said firm of Vane & Stone was individually and collectively insolvent; that they never had any capital, and had carried on their business in a loose and improvident manner.

That about the maturity of said note he, said Dow, stated to said Vane & Stone, as the result of said examination, that if their books and papers contained all the evidence of their responsibility and business property, that they were then, and for a long time previous thereto had been, wholly insolvent; that the concern had not then, nor had it ever had, a
74 dollar's worth of capital; that the said statements, made by them to him, Dow, were wholly false. That said Dow thereupon demanded security for the money he had remitted to them as aforesaid. That said Vane & Stone then admitted to him, Dow, that they were insolvent, and had been doing business without capital, and were unable to give any security; that the real estate in the occupancy of Vane, in Cook county, belongs to his wife, and that he, Vane, would not have it encumbered with his own debts, or those of Allen Vane & Co. That said Vane & Stone offered to said Dow, that if he would remain with them, as book-
76 keeper, they would soon be able to, and would, repay him the amount of said remittances and interest; that Stone was then negotiating with a relative for a sum of money which would make their financial matters all right.

That said Dow continued with said Vane & Stone, chiefly for the purpose of obtaining repayment of said sums of money, or of getting the same secured until the 22d February, 1862; that he had obtained from them the sum of $287.30, to apply on said remittances, and that the balance was still due and unpaid.

That from the time said note became due thitherto said Dow had been anxious to have said note paid, or secured on real estate; that he being satisfied said Vane & Stone were wholly insolvent, and apprehending said Woolford might become insolvent, offered to said Vane & Stone to throw off the whole interest thereon if they would repay him the principal; that they then expressed their inability to pay such principal;

that he afterwards said to said Vane that as Woolford would have to pay the note he, Dow, would be willing to grant any reasonable extension of the note, if Woolford would secure same on real estate, and requested Vane to propose the same to Woolford, which he agreed to do. That some time in the latter part of February, 1862, said Vane informed him, Dow, that he had made said proposal to Woolford, who was willing to give such security for an extension of said note, but that his wife would not consent to it.

That the whole amount of said note, subject to the endorsements thereon, was still due and unpaid.

77 That on the 23d May, 1862, he, Dow, did commence a suit on the common law side of said Superior Court, against said Vane & Stone and Woolford, as makers of said note, to recover the balance thereof; that the same was ready for trial when it was suspended by injunction under said bill of discovery.

78 That long before, and after, maturity of said note, said Vane & Stone
78 were wholly insolvent; that whatever property they had been in posses sion of, during the period aforesaid, was held by them in trust for others; that neither they, nor either of them, during said period, pretended that they had any property that could be reached by execution.

That on or about the 9th August, 1861, the books and papers of said Vane & Co. showed that their liabilities were from $12,000 to $15,000 greater than their assets; that on the 1st February, 1862, their "expense "account" showed a balance to the debit of that account of about $2,999. That Vane's individual account showed a balance against him of about $5,800; that said Stone's individual account showed a balance against him of about $4,000; that their "commission account" showed that they had received, during the whole period of said copartnership, only about $2,950 for commissions on their said business, showing that they had taken out of the same some $15,000 more than their commissions amounted to; that their merchandise account showed, at the same
79 time, a large deficit; that not a dollar's worth of capital had ever been invested in the concern by either of them, said Vane & Stone, to his, said Dow's knowledge, information and belief.

That at no time, before or after the maturity of said note, did he, said Dow, make or enter into an agreement with said Vane & Stone, for an extension of the time of payment of said note, upon the terms and in the manner as alleged and set forth in the several answers of said Vane & Stone, nor did he extend the time of payment of said note, as therein alleged.

80 He denies that he agreed to make such extension upon payment of $100 per month, or that he agreed to forbear proceedings against them for the recovery of said note. Admits the payment of the several
81 amounts endorsed on said note. Admits that Vane once asked him, Dow, if he would agree not to sue said note in case said Vane & Stone would pay $100 a month thereon, but that he replied that he would make no such agreement, and stated, as his reason therefor, that such an agreement would release what he, Dow, regarded as his only security thereon, and that he, Dow, did not consider said Vane & Stone *good for a dollar;* that said Vane then acknowledged to him, Dow, that they had neither of them a dollar that could be reached by execution. Denies that said Vane or Stone, or either of them, at or since the maturity of said note, had property sufficient, in said Cook county, available to payment of said note, or any part thereof. Denies all combination, &c.

Thereupon cause submitted to court; issues found for plaintiff (Dow); damages assessed at $916.05. Exceptions thereto by counsel for defendant Woolford, and then and there filed his motion for a new trial, upon the following grounds:

84 **I.** Because the court admitted improper evidence.

II. Because the court admitted the answer of plaintiff, Dow, in the chancery suit in this court, as evidence in said cause.

III. Because the finding of said court herein is contrary to law.

IV. That it is contrary to the evidence.

Motion overruled, and judgment on finding of court entered.
Exceptions thereto, by Woolford's counsel.
Appeal prayed and allowed.

86 **Appeal Bond.**

E. G. ASAY,
Counsel for Woolford, Pl'ff in Error.

ERRORS ASSIGNED.

The court erred in admitting improper testimony.

The court erred in admitting the answer of plaintiff, Dow, in the chancery suit in this cause, as evidence in said cause, for and on behalf of the plaintiff.

The court erred in overruling the motion, on behalf of Woolford, for a new trial of said cause.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

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

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

Van H. Higgins
Grant Goodrich } Judges.

Joseph Knox Prosecuting Attorney.

David J. Hammond Sheriff of Cook County.

Attest, Thomas B. Carter Clerk.

Be it remembered that heretofore to wit on the Twenty Third day of May in the year of our Lord one thousand Eight Hundred and Sixty two George Dow by A. E. Wolcott his attorney filed in the County Office of the said Superior Court of Chicago, his praecipe for Summons and Bond for costs which are in words and figures following to wit

State of Illinois }
Cook County } ss

Superior Court of Chicago

George Dow

vs

Allen Vane, Rensselaer Stone & Richard B Woolford

In Assumpsit
Damages
$1000.

(2)

Please issue a Summons in the above cause to the Sheriff of Cook County. Returnable at the next Term of the Superior Court of Chicago

To J. B. Carlin. Clerk

A. E. Wolcott, Atty for Pff.

May 23/62.

George Dow. vs Allen Nane. Renselear Stone. Richard B Wolford

Superior Court of Chicago

In assumpsit.

I do hereby enter my self Security for Costs in this cause and acknowledge my self bound to pay all Costs which may accrue in this action either to the opposite party or to any of the Officers of this Court in pursuance of the Laws of this State.

Dated this 23d day of May A.D. 1862.

Henry Cooke

And afterwards to wit on the day and year aforesaid there issued out of the Clerks Office of the said Superior Court of Chicago the Peoples Writ of Summons which with the Sheriffs return endorsed thereon is in words and figures following to wit.

State of Illinois
Cook County } ss

The People of the State of Illinois to the Sheriff of said County - Greeting

We command you that you Summon Allen Vane. Benjamin Stone and Richard B. Woolford. if they shall be found in your County. personally to be and appear before the Superior Court of Chicago of said Cook County. on the first day of the Term thereof to be holden at the Court House in Chicago in said Cook County. on the first Monday of June next. to answer unto George Dow in a plea of trespass on the case upon promises to the damage of the said Plaintiff as it said in the Sum of one thousand dollars. And have you then and there this Writ with an endorsement thereon in what manner you shall have executed the same.

Witness, Thomas B. Carter Clerk of said Court. and the Seal thereof at Chicago aforesaid this 23d. day of May A.D. 1862.

Thomas B Carter Clerk

Seal

(Return of Sheriff endorsed on said Writ)

Served this Writ by reading to the within named defendants. on Allen Vane on the 23d day of

May 1862. and on Renpeler Stone and Richard B Woolford on the 21st day of May 1862.

A C Hesing Sheriff
by Wm Wayman Deputy.

And afterwards to Wit on the day and year aforesaid the said George Dow by A.E. Wolcott his attorney filed in said Clerks office of said Court. his Praecipe. which is in Words and figures following to Wit.

State of Illinois
Cook County } ss Superior Court of Chicago.

George Dow Complains of Allen Vane. Renpelaer Stone & Richard B Woolford in a plea of assumpsit. For that whereas on the ninth day of February A.D. 1861 at Chicago in said County of Cook. the said Allen Vane. & Renpelaer Stone were partners in trade under the firm name and style of Allen Vane & Co. & by and under the name. style description & signature of "Allen Vane & Co" & the said Richard B Woolford in and by the name & signature of R B Woolford. made their certain promissory note in writing & thereby then & there promised to pay the said George Dow or order one thousand dollars in Six

months after the date thereof with interest thereon at the rate of ten per cent. per annum. & then and there delivered the said promissory note to the Plaintiff by means whereof and by force of the statute in such case made and provided the said defendants became liable to pay to the said Plaintiff the said sum of money in said promissory note specified with interest thereon at the rate of ten per cent per annum according to the tenor & effect of said promissory note and being so liable they the said defendants in consideration thereof afterwards to wit on the day and year aforesaid at Chicago in said County of Cook undertook and then & there faithfully promised the said Plaintiff to pay him the said sum of money in said promissory note specified with interest thereon at the rate of ten per cent per annum according to the tenor and effect thereof yet the said defendants have disregarded their said promises & have not paid said sum of money, or any part thereof, nor the aforesaid interest thereon nor any part thereof although often requested so to do. to the damage of the said Plaintiff of one thousand dollars & therefore he brings suit &c

By A E Wolcott his atty

(Copy of the instrument sued on)

" $1000. 00/100 Chicago Feby 9. 1861"
" Six months after date for value re-
" ceived we promise to pay Geo. Dow. or order
" one thousand dollars with ten per cent interest
(Signed) "Allen Vane & Co."
"R. B Woolford"
(Endorsements upon the instrument)
" Received one hundred dollars being the
" interest to Feb. 9 1862. Geo Dow."
" Chicago Mar 8. 1862. Received on the within
" one hundred dollars Geo Dow. per Henry Dow."
" Chicago April 16. 1862. Rec'd on the within one
" hundred dollars. Geo. Dow. per Henry Dow.

And afterwards to wit on the Fourth day of June in the year aforesaid the same being one of the days of June term of said Court the following among other proceedings were had and entered of record in said Court to wit.

George Dow.
vs
Allen Vane.
Renselaer Lowe and
Richard B Woolford

Apl.

This day comes said Allen Vane one of the defendants in above entitled cause by his attorney and on his motion it is ordered that the rule to plead herein be

and is hereby extended to Saturday next. as to said defendant Allen Vane. only

And afterwards to Wit on the 3rd day of July in the year aforesaid. the said Richard B. Woolford by E. G. Asay his attorney filed in said Clerks office of said Superior Court of Chicago his affidavit of Merits. and Pleas. which are in Words and figures following to Wit.

State of Illinois } ss
Cook County }

In the Superior Court of Chicago of the July Term A.D. 1862.

George Dow
vs.
Richard B Woolford impleaded with Allen Vane. and Reuselear Stone

Assumpsit.

Richard B Woolford being duly Sworn deposeth and saith that he is one of the defendants in above entitled Suit. and that he has a good defence to said action on the merits of the case

Subscribed and Sworn to before me this 3rd day of July A.D. 1862

Thos B Carter Clerk

R B Woolford

7

State of Illinois } ss
Cook County }

Supreme Court of Chicago
May Term A.D. 1862

George Dow.
vs
Richard B Woolford impleaded with Allen Wane and Rensselaer Stone } Assumpsit

And the said defendant Richard B. Woolford impleaded &c by Edward G Asay his attorney comes and defends the wrong and injury when &c and says that he together with the said Allen Wane and Rensselaer Stone (the other defendants) did not undertake or promise in manner and form as the said Plaintiff hath above thereof complained against him. And of this he the said defendant the said Richard B Woolford impleaded &c puts himself upon the country and &c

By E. G. Asay
his attorney

And for a further plea in this behalf the said defendant Richard B. Woolford impleaded &c by leave of the Court here for this purpose first had & obtained according to the form of the Statute in such case made and provided says that the said Plaintiff ought not to have or maintain

his opinion and action thereof against him because he says that the note mentioned and described in said Plaintiffs declaration was given for money lent and advanced by said Plaintiff to the said defendants Allen Vane & Rensselaer Stone and for their sole use and benefit and that the said defendant Richard B Woolford impleaded &c executed said note as surety only and without any consideration whatever at the request of said defendants Allen Vane & Rensselaer Stone and with the full knowledge of said Plaintiff and not otherwise. And said defendant Richard B Woolford impleaded &c avers that all of the above facts and circumstances were well known to the said Plaintiff at the time of the making and delivery of said note as alleged in said declaration. And the said defendant Richard B Woolford impleaded &c further avers that at the time of the maturity of the said note in said declaration mentioned and for a long period of time thereafter the said defendants Allen Vane and Rensselaer Stone were and continued to be in solvent circumstances and possessed of property in the County of York aforesaid liable to the payment of said note and more than sufficient to pay and discharge the same in full all of which said defendant impleaded &c avers was well known to the said Plaintiff.

2

And the said Defendant Richard B Woolford impleaded &c further avers that the said plaintiff well knowing the premises aforesaid after the maturity of the said note in said declaration mentioned and without the knowledge Consent or permission of said defendant Woolford impleaded &c at the County of Cook aforesaid made and entered into an agreement with the said defendants Allen Vane & Rensalear Stone that the said Plaintiff for and in consideration of said defendants last named agreeing to pay interest at the rate of ten per cent per annum on the amount of money in said note specified would extend the time for the payment of said note after the maturity thereof, And this defendant avers that the said defendants Allen Vane and Rensalear Stone, did thereupon & there for & agree to pay such interest as last aforesaid for such extension of the time of the payment of said note after the maturity thereof as aforesaid

And the said defendant Richard B. Woolford further avers that for the consideration aforesaid the said Plaintiff at the County of Cook aforesaid after the maturity of the note in the said declaration mentioned and without the knowledge Consent or permission of this defendant the said Richard B. Woolford impleaded &c did extend

the time of payment of said note in said declaration
mentioned in manner aforesaid
And the said Richard B Woolford impleaded
as further avers that the said Plaintiff after maturity
of said note and without the knowledge privity
or consent of the defendant of said County of Cook
did for a certain other valuable consideration agree
with said defendants Allen Vane & Rensselaer
Stone to take of them the said last named defend-
ants in payment and satisfaction of said note in
said declaration mentioned and to extended as
aforesaid the sum of one hundred dollars per
month and interest as aforesaid, and that he
said Plaintiff would thereupon forbear suit or
proceedings against said defendants, for the
recovery of the amount of the note in said declar-
ation mentioned
And the said defendant Richard B Woolford impleaded
as aforesaid further avers that he the said
Plaintiff in pursuance of the agreement entered
into between him and said defendants Allen Vane
& Rensalaer Stone as last aforesaid did receive
of and from the last named defendants several
installments and payments on account thereof
And this the said Defendant Richard B
Woolford impleaded as aforesaid is ready to
verify Wherefore he prays judgment if the
said Plaintiff ought to have or maintain his

dfnes and action thereof against him &c,
By E. G. Gray
his attorney.

And for a further plea in this behalf the said Defendant Richard B Woolford impleaded as aforesaid by leave of the Court here for this purpose first had and obtained according to the form of the Statute in such case made and provided says that the said Plaintiff ought not to have or maintain his aforesaid action thereof against him because he says that the note mentioned and described in said Plaintiffs declaration was given for money loaned by said Plaintiff to the defendant Allen Vane. & Rensalaer Stone, and for their sole use and benefit and that the defendant said Richard B. Woolford impleaded &c executed said note as surety only and without any consideration whatever at the request of said defendants Allen Vane, and Rensalaer Stone all which facts and circumstances the defendant avers were well known to the said Plaintiff at the time of the making and delivery of said note as alleged in said declaration

And the said defendant Richard B Woolford impleaded &c further avers that at the time of the maturity of said note in said declaration

mentioned and for a long period of time there-
after the said defendants Allen Vane and
Renselaer Vane were and continued to be in
solvent circumstances and possessed of property
in the County of Cook aforesaid liable to the
payment of said note, and more than suffi-
cient to pay and discharge the same and
all interest thereon as all which the
defendant was well known to the said
Plaintiff at the time aforesaid. And the
said defendant Richard B Woolford says
that the said Plaintiff well knowing the pre-
mises aforesaid after the maturity of said note
in said declaration mentioned and without the
knowledge Consent or permission of the defendant
at the County of Cook aforesaid made and en-
tered into an agreement with the said defend-
ants Allen Vane & Renselaer Vane that he said
Plaintiff for and in Consideration of said defendants
last named agreeing to pay interest at the
rate of ten per cent per annum on the amount
of money in said note specified would extend
the time for the payment of said note af-
ter the maturity thereof And the defendants
says that the said defendants Allen Vane
and Renselaer Vane did thereupon and there
for agree to pay such interest as last afore-
said for such extension of the time of the

payment of said note after the maturity time of as aforesaid

And the defendant further avers that for the consideration last aforesaid the said Plaintiff at the County of Cook aforesaid after the said note became due and whilst the Mortgage Conveyance of the defendant did extend the time of payment of said note in said declaration mentioned in manner aforesaid. And the said defendant Richard D. Hopkins pleaded &c further avers that the said Plaintiff after the said note in the said declaration mentioned became due and whilst the Mortgage privity & consent of the defendant at said County of Cook did for a certain other valuable consideration agree with the said defendants Allen Paine & Reuben Stone to take and receive of them the said last named defendants in payment and satisfaction of said note in said declaration mentioned and so extended as aforesaid the sum of one hundred dollars per month and interest as aforesaid and that the said Plaintiff would thereupon forbear suit or proceedings against said defendants for the recovery of the amount of the note in said declaration mentioned And this defendant further avers that he the said Plaintiff in pursuance of the agree

ment heretofore entered into between him and the said defendants Allen Vane and Reuben Stone as last aforesaid did receive of and from the last named defendants several installments and payments on account thereof And the said defendant Richard B Woolford impleaded as aforesaid pretends & that by reason of the premises aforesaid he the defendant hath become damnified in a large amount of money to wit the sum of Five Thousand dollars at the County of Cecil aforesaid And this the said defendant Richard B Woolford impleaded &c is ready to verify Wherefore he prays judgment if the said Plaintiff ought to have or maintain his aforesaid action thereof against him &c

By E. G. Gray
his attorney

And for a further plea in this behalf the said defendant Richard B Woolford impleaded &c by like leave of the Court here for this purpose first had and obtained according to the form of the Statute in such case made and provided says that the said Plaintiff ought not to have or maintain his aforesaid action thereof against him because he says that the said defendants Allen

Vane and Rensselaer Stone at the time of the Commencement of this Suit, and for some time prior thereto were, and are now utterly insolvent and without any means whatever to pay or satisfy the amount of principal & interest due on said note and that he the said defendant Richard B Woolford is ready to verify Wherefore he prays Judgment if the said plaintiff ought to have or maintain this aforesaid action thereof against him &c

By E G Leary
his attorney.

And afterwards towit on the Seventeenth day of the month and year aforesaid the same being one of the days of the July Term of said Court the following among other proceedings were had and entered of Record in said Court towit.

George Dow.
vs. Assumpsit.
Allen Vane. Rensselaer Stone.
and Richard B Woolford

This day comes said Plaintiff by A E Wolcott his attorney

and due personal service of process summons
issued in said cause having been had on
the said Allen Vane and Rensaeler Stone two
of the defendants in above entitled cause they
and they being three times solemnly severally
called in open Court. Came not. nor does
any person for them or either of them but herein
they each make default. Which is ordered
for ordered to be taken and is hereby entered
herein of record Thereupon said plaintiff
ought to have and recover of and from said
defendants Allen Vane and Rensaeler Stone
impleaded Pete Richard B Woolford. his
damages herein by reason of the premises
And thereupon reference is had to the Court
to assess damages herein hereafter,

And afterwards to wit on the day and year aforesaid the said George Donly A E Wolcott
his attorney filed in said Clerks office of said Court
his replication which is in words and figures following
to wit

State of Illinois } ss
Cook County }

In the Superior Court of Chicago
July Term 1862

George Donly
vs
Allen Vane

Assumpsit

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Rensselaer Stone, and
Richard B Woolford

And the said plaintiff as to the plea of the said defendant Richard B Woolford by him first above pleaded & whereof he hath put himself upon the Country doth the like
By A. E. Wolcott his atty

And the said Plaintiff as to the second third & fourth pleas of the said defendant Richard B Woolford by him above pleaded says that by reason of anything by the said defendant Richard B Woolford in his said pleas alleged ought not to be barred from having & maintaining his action thereof against the said defendant Richard B Woolford impleaded with the said defendants Allen Paine & Rensselaer Stone because he says that the said defendant Richard B Woolford impleaded &c of his own wrong and without the cause by him in his said second third & fourth pleas alleged. Because he said promises in said declaration mentioned in manner and form as the said Plaintiff hath in his said declaration in that behalf complained against him & this the said plaintiff prays may be inquired of by the Country &c And the said defendant Richard B Woolford impleaded &c doth the like. By A E Wolcott atty for Pff

And afterwards to wit on the Eighteenth day of June in the year of our Lord one Thousand Eight Hundred and and Sixty three the said George Dow and the said Richard B Woolford by their respective attorneys filed in said Clerks Office of said Court their Stipulation which is in words and figures following to wit.

State of Illinois } ss
Cook County }

Superior Court of Chicago
June Term A.D. 1863

George Dow
vs
Richard B Woolford impl.
with Vane & Stone

} Assumpsit.

It is hereby stipulated and agreed that a Jury be waived in this cause and the same submitted to the Court for trial as well upon the facts as the law of the case and that the Court be at liberty to draw such inferences from the facts thereof as a Jury would be entitled to had the same been for trial before a Jury.

Dated Chicago June 17. 1863

A. E. Wolcott Atty for Deft.
E. G. Asay Defts Atty

And afterwards to wit on the Twenty Third day of the month and year aforesaid the same being one of the days of the June Term of said Court

(19)

the following among other proceedings were had, and entered of record in said Court to wit.

George Dow
vs.
Allen Vane.
Renselaer Stone and
Richard B Woolford

} Assumpsit

Now cause ~~being this day~~ called for trial comes said plaintiff by A. E. Wolcott, his attorney and the said Richard B. Woolford one of the defendants in above entitled cause impleaded &c by Edward G Reay his attorney also comes and default of the said Allen Vane and Renselaer Stone the other two defendants in said cause having been heretofore taken and entered herein of record against them, but on the Seventeenth day of July 1862. upon agreement of parties made ~~from~~ here now in open Court this cause is hereby submitted to the Court for trial on the issues joined thereon on plea of the said defendant Richard B Woolford only and the default of said defendants Allen Vane & Renselaer Stone and the Court now here after hearing evidence and arguments of Counsel and being fully advised in the premises finds issues for said plaintiff on the issues joined herein on plea of the said defendant Richard B Woolford and assess plaintiffs

damages herein against all of the said defendants to the sum of. Nine hundred and sixteen dollars and five cents

And thereupon said defendant Richard B Woolford submits his motion herein for a new trial in said cause

And afterwards to wit on the Eighth day of July in the year aforesaid the same being one of the days of the July Term of said Court the following among other proceedings were had and entered of record in said Court to wit.

George Dow.
vs
Allen Vane.
Ringgold Stone and
Richard B Wolford

} Motion for new trial in aft.

And now at this day again comes said plaintiff by A E Wolcott his attorney and the said defendant Richard B Woolford impleaded &c by Edward G Loay his attorney also comes and this cause coming on now to be heard upon the motion of the said defendant Richard B Woolford here to fore submitted herein (to wit on the twenty third day of June 1863.) for a new trial in said cause and counsel being heard thereon. and the Court being fully advised in the premises it is considered by the Court that the motion of said defendant be and is hereby

overruled, and that a new trial be refused to said defendant in said cause

Therefore it is considered that said plaintiff do have and recover of and from said defendants his damages, by him made and sixteen dollars and five cents, in form aforesaid by the Court here assessed and also his costs and charges in this behalf expended. and have execution therefor And thereupon said defendant Richard B Woolford prays an appeal herein to the Supreme Court of this state from the judgment of this Court which is allowed to him on filing bond in penal sum of fifteen hundred dollars with security to be approved by a judge of this Court. and to be filed with his bill of Exceptions on or before the first Monday in the month of September next

$916.05

And afterwards to wit on the Seventh day of September in the year aforesaid the said George Don, and Richard B Woolford by their respective attorneys filed in said Clerks Office of said Court their certain Stipulation herein in words and figures to wit.

In the Superior Court of Chicago
Sept. Term 1863.

George Don.
vs

Allen Vane et al

It is stipulated and + agreed that the time may be extended one Week (to wit to the 14th day of September 1863 for filing bond and Bill of Exceptions in said cause.

A. E. Wolcott Atty for Deff.
E. G. Asay Deft Atty

And Afterwards to wit on the day and year aforesaid the said Richard B. Woolford by Edward G Asay his attorney filed in said Clerks office of said Court his Bill of Exceptions, and Appeal Bond which are in words and figures following to wit

In the Superior Court
of Chicago July Term 1863

George Dow

vs

Richard B Woolford
impleaded with Allen
Vane. Remurrer alone

Be it remembered that on the 23 day of June A.D.
1863 the same being one of days of the July Term
of said Court the cause came on to be heard, before
the Hon Van H Higgins one of the Judges of said Court
and then and there presiding as such Judge on
the said Richard B Woolford defendant impleaded
as aforesaid having waived a Jury and said
cause having by agreement been submitted to
said Court for trial the said Plaintiff by H. E. Wilcox
his attorney gave in evidence to maintain the issue
on his part the note sued on in the suit which
said note is as follows.

$1000.00 Chicago Feb. 9. 1861.

Six months after date for value received we pro
mise to pay George Dow or order one thousand
Dollars with ten per cent interest

(Signed) Allen Vane & Co
R. B. Woolford

(Endorsements upon the instrument)

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Recovd one hundred dollars & interest
to July 9. 1862. Geo Dow.
Chicago Mar. 8 1862. Recd on the within one hun-
dred dollars Geo Dow. per Henry Dow.
Chicago April 16. 1862. Recd on the within one hundred
dollars Geo Dow per Henry Dow.

And Plaintiff then and there rested his cause

And defendant impleaded as above and by
E. G. Esq his Counsel to maintain the issue
on his part then and there introduced as
evidence on his part the answer of his said
Co defendant Ransalear Stone to the Bill of Com-
plaint and discovery filed by said defendant
Richard B Woolford on the Chancery side of
said Superior Court which said answer is as
follows.

State of Illinois }
Cook County } ss In the Superior Court of Chicago
In Chancery

The Answer of Ransalear Stone one of
the defendants to the Bill of Complaint of Richard
B Woolford Complainant

This defendant now and at all times hereafter saving

and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many and manifold uncertainties and other imperfections in said Complainants said Bill of Complaint contained for answer thereunto or unto so much and such parts thereof as the defendant is advised is or are material or necessary for him to make answer unto this defendant answering saith he admits that at or about the time in the said Bill mentioned George Dow one of the defendants hereto commenced a suit in this Honorable Court on the Common Law side thereof against this defendant said Defendant Vane and the said Complainant for the recovery of the amount of a certain promissory note of the date amount and payable in the manner in said Bill alleged and this defendant further answering says that said promissory note was made executed and delivered by this defendant and said Plaintiff and Complainant for money loaned by the said defendant Dow to this defendant and defendant Vane who were then copartners carrying on business in the City of Chicago as commission merchants and which said money amounting to the sum of one thousand dollars the said George Dow agreed to advance and loan to said last named defendants upon the condition that said Plaintiff signed said promissory note as surety and this defendant says that

although true it is, the name of said Complainant appears on the face of said note as one of the makers thereof. yet the fact is that said Complainant signed said note as surety only as well at the request of said Dow. as of the defendant. and said defendant Vane. and for the sole purpose of enabling said the last named defendants to obtain said loan the said Complainant receiving no consideration whatever for so doing

And the defendant further answering admits that at the time of the maturity of said note and for some time thereafter the the defendant. and said Defendant Vane were and continued to be possessed of money goods & chattels to a considerable amount. available to the payment of said note and that could have been reached by legal process and more than sufficient to have paid the same in full and the defendant says. that the said George Dow. was well acquainted with the circumstances of the defendant and said defendant Vane he said Dow. then being the book Keeper of said firm of Vance Dow & Mann as Allen Vance & Co and so continued such book keeper after the maturity of said note

And the defendant further answering admits that the defendant and said defendant Vane at the time of the commencement of said suit

in said complainants said Bill of complaint mentioned and for some time prior thereto were and are now Partners and that said Copartnership firm of Allen Vane & Co has terminated and ceased, as in said Bill alleged.

And this defendant further answering admits that at or about the time of the maturity of said note & then being monies for the defendant and said defendant Vane to meet the same it was arranged & agreed by and between said Don. and this defendant & said defendant Vane. that if said last named defendants would pay interest on said promissory note at the rate of Ten per cent per annum he said Don would extend the time of payment of the same. And defendant says. it was also further agreed by said Don. that he would receive and take from the defendants and said defendant Vane the sum of one hundred dollars per month in liquidation of the amount of said note and interest at ten per cent. per annum until the same should be fully paid and satisfied And said George Don. also agreed to forbear suit and proceedings at law against said complainants this defendant and said defendant Vane for the recovery of the amount for said note. and this defendant further answering says. that such an arrangement and agreement

was made and ~~executed~~ entered into by said George Don and this defendant, and said defendant Vane without the knowledge privity or consent of said Complainant, and in fact defendant says he believes said Complainant supposed said note was paid at maturity.

And defendant further says that in pursuance of the terms of the agreement aforesaid he this defendant and said defendant Vane. ~~without the knowledge~~ as Allen Vane & Co. actually paid to said George Don. the sum of one hundred Dollars as and for one year interest on the amount of said note. at the rate by said Don- ding at the date of the agreement. per annum thereon as will appear by the endorsement thereof on said note. when matured And defendant further says that he this defendant and said defendant Vane. have also in further pursuance of said agreement paid to said Geo. several instalments on account of said note amounting altogether with said interest to the sum of Five Hundred Dollars additional

And this defendant further answering says that this defendant and said defendant Vane. obtained said loan of one thousand dollars from said George Don well and by them in their said business as commission merchants in Chicago aforesaid and that the same was so used and

annied by them and that the said Complainant has no interest therein whatever nor did he receive any Consideration whatever for signing said Promissory Note.

And defendant further says he believes said Geoge Dow. has commenced such suit at law with a view to enforce the collection of the balance due on said promissory note from the said Complainant as alleged in said Bill and says that the said Geoge Dow well knows that he the defendant and said defendant have a wholly misclaim and without property of any kind whereof the said balance due on said note can be made or collected

And the defendant denies all and all manner of unlawful combination and confederacy whereof he is charged in the said Bill charged without this that there is any other matter cause or thing in the said Complainants said Bill of Complaint contained material or necessary for this defendant to make answer unto and not herein and hereby true and sufficiently answered confessed traversed and avoided or denied as true to the knowledge or belief of this defendant all of which matters and things this defendant is ready and willing to aver maintain and prove as this Honorable Court shall direct and humbly pray

to be hence disciplined with his reasonable costs and charges in this behalf most wrongfully sustained

W. C. Johnson
Solr for
Defts. R. Stone

R. Stone

State of Illinois
Cook County } ss Aeneclaes. Stone one of the defendants to the above Bill, deposes & says. being first duly sworn. that he has heard. read. the above his answer thereto that he knows the contents. thereof and that the same is true of. his own knowledge

R Stone.

Subscribed and. sworn.
to. before me. this second
day of. January A.D. 1863
J Lewis Lee
Not. Public.

(Seal)

This defendant to further sustain. said joint answer introduced as evidence the answer of his co-defendant. Allen Vane. to said Bill for. discovery which said answer is as follows.

State of Illinois
Cook County } ss

In the Superior Court of Chicago. In Chancery.

2/

The answer of Allen Vane. one of the de-
fendants to the Bill of. Complainant. of.
Richard B. Woolford. Complainant.

The defendant now and at all times hereafter
saving and reserving unto himself all benefit
and advantage of Exception which can or
may be had or taken to the many en-
-tanglies and other imperfections in said com-
plainants said Bill of Complaint contained for
answer thereunto or unto so much and such
part thereof as the defendant is advised is or
are material or necessary for him to make an-
swer unto the defendant answering. Saith
he admits that on or about the twenty third
day of May in the year of our Lord. one thousand
Eight Hundred and sixty two George Dow one
of the defendants to said Complainants said
Bill of. Complaint did commence his suit in
the Honorable Court against the defendant.
C. Rensselaer Stone and said Complainant
as the makers of a certain promissory note of the
date. amount and payable in the manner as
in said Bill alleged.
And the defendant further answering admits
that said promissory note was made executed
and delivered by the defendant and said
defendant Stone and Complainant for money

loaned by said defendant Dow. to this defend-
ant. and said defendant Stone (who were then
copartners & commission merchants as in said
Bill alleged) and which said monies amount-
ing to the said sum of one thousand dollars. the
said George Dow agreed to advance and loan.
upon the condition that said complainant
signed said promissory note with the defend-
ant. and said defendant Stone as surety
And this defendant avers that although his
it is the name of said complainant appears
on the face of said note as one of the makers
thereof yet the fact is that the said complain-
ant signed said note. as surety only and
without having received any consideration
whatever for so doing as well at the request of
the said Dow. as of this defendant. and said
defendant Stone

And this defendant further answering admits
that at the time of the making of said promissory
note. and for some time thereafter he this de-
fendant. and said defendant Stone were and
continued to be possessed of money goods.
and property. to a considerable amount. more
than. to the payment of said note. & that same
have been reached by legal process. and con-
siderably more than sufficient to pay and
discharge the same. in full. And defendant

aver. that said George Dow. was well ac-
quainted with the circumstances of the de-
fendant. and said defendant Stone he said
Dow being the book Keeper of said firm of Vane
& Stone known as "Allen Vane & Co." and so con-
tinued as. such Book. Keeper. until after the mat-
urity of said note.
And this defendant. further answering ad-
mits that this defendant and said Stone
at the time of the commencement of said
suit in said complaints said Bill of
Complaint mentioned and for some time
prior thereto were and are now insolvent
and that said Co partnership has terminated
and ceased. as in said Bill alleged.
And this defendant further answering admits
that at or about the time of the maturity of
said note. it then being mentioned for
this defendant. and said defendant Stone
to meet the same. it was arranged. and
agreed by and between said Dow. and this
defendant. and said defendant Stone that
if said two last-named defendants would
pay interest on said note at the rate of
Ten per cent per annum he said Dow.
would extend the time of payment of the
same. and defendant says. that in pursuance
thereof it was further agreed by said Dow.

that he would receive and take from this defendant and said defendant Stone the sum of one hundred Dollars per month in liquidation of the amount of said notes and interest at ten per cent per annum until the same should be fully paid and satisfied. And the said George Dow thereupon also agreed to forbear suit and proceedings at law against said Complainant this defendants and said defendant Stone for the recovery of the amount of said notes. And this defendant also denies that such arangement and agreements was made and entered into by said George Dow and this defendant and said defendant Stone without the knowledge privity or consent of the said Complainant and in fact defendants says that he has reason to believe and does believe that said Complainant supposed said notes was paid at maturity

And defendant further says that in accordance with the terms of the agreements last aforesaid he this defendants and said defendant Stone as Allen Vanerbs paid to said George Dow the sum of one hundred dollars for one years interest on the amount of said notes as extended by said Dow being at the rates of Ten per cent per annum there-

on. and also paid to said Dan. several in=
stalments on account of said note. in pursuance
of said agreement as alleged in said Bill amount=
ing in the Whole with said interest to the sum
of three Hundred dollars.
And the defendant further answering says
that the defendant and said defendant state
obtained said loan of one thousand dollars
from said George Dan. to be used by them in
their said business as commission Merchants
in Chicago aforesaid and that the same was
so used and applied by them and that the
said complainant had no interest therein
whatever nor did he receive any consideration
whatever for signing said promissory note.
And defendant further says he believes
the said George Dan. has commenced suit
at law with a view to enforce the col=
lection of the balance due on said promissory
note from the said complainant as alleged
in said Bill and avers that the said George
Dan. well knows that he the defendant and
said defendant Howe are utterly insolvent
and without property of any kind whereof the
said balance due on said note can be
made or collected
And the defendant denies all and all man=
ner of unlawful combination and confederacy +

Wherefore he is by the said Bill charged
Without this that there is any other matter
cause or thing in the said Complainants
said Bill of Complaint Contained materials
or necessary for this defendant to make an=
swer unto and not herein and hereby well
and sufficiently answered confessed traversed
and avoided or denied is true to the knowledge
or belief of this defendant all which matters
and things this defendant is ready and will-
ing to aver maintain and prove as this honorable
Court shall direct and humbly prays to be hence
dismissed with his reasonable Costs and charges
in this behalf most wrongfully sustained

W C Johnson
Sol for Deft.
Vane

Allen Vane.

State of Alabama
Coosa County

Allen Vane one of the defend=
ants to the above Bill being first duly sworn
deposes and says that he has heard read
the above his answer and knows the
the contents thereof and that the same is true
of his own knowledge.

Subscribed & sworn to before this the 5th } Allen Vane
day of January A.D. 1863. Thos B Curtis Clerk. }

said defendant by his said Counsel then and there rested his cause.

Said Plaintiff by his said Counsel then & there to maintain the issue on his part. then and there introduced & examined the deposition of Henry Dow. which is as follows.

1st Interrogatory.

What is your age. and business profession and where have you been doing business for the last two years. if in Chicago State when and why you left and where you now reside. and what is your present Physical health, and condition

Answer to Interrogatory 1st

I am 47 years of age. have of late been engaged in the produce Commission business and for the last two years. have done business in Chicago I left Chicago on the 23d day of January 1863 on account of ill health and in obedience to the Command of my Physician Doctor W. G Dyas. of Chicago. I now reside at Sugarhouse Hollow in the State of Ohio My health at present is very feeble and precarious I am unable to use my knee and am compelled to write out my answers to these interrogatories

2d Interrogatory

Do you know the parties to this suit or either of them if so which and how long have you known them and what business relations have you sustained towards them respectively within the last two years

Answer to Interrogatory 2d.

I know all the parties to this suit have been acquainted with said Vane partially for the last seven or eight years with the said Stone & Wolford. for the last two years. and with the said Dow (my brother) since a boy. of the above named parties I have had business relations within the last two years only with said Vane & Stone I was in their employ. as bookkeeper from about the first of January 1861. to about the 2d day of Nov of the same year 1861. on the 3d day of Jan 1861. I loaned them the said Vane & Stone $500.00 in cash none of the principal or interest of which has ever been paid

3d. Interrogatory

Look upon the promissory note in writing now here shown to you. attached to these interrogatories and marked Exhibit A and state whether or not you were present at the time when the same was executed. and delivered by the makers thereof. to the Plaintiff

5/4

and whether the endorsements thereon or either of them were made by you. and if so which of them and by what authority.

Answer to Interrogatory 3d

I was present when the note attached to these interrogatories and marked Exhibit A." was executed and delivered by the makers thereof to the Plaintiff two of the endorsements thereon were made by me. to wit one of $100.00 dated March 8th 1867 and one of $100.00 " dated April 16th 1867. They were made under the instructions to me of the said Dan. to receive money on the said note and to collect the same as fast as possible and in such manner as I deemed best

4th " Interrogatory,

Were you present at the time said defendants Vane and Stone solicited the loan for which said note was given if so state what if anything was said by said Vane and Stone or by either of them to the Plaintiff in regard to the pecuniary ability of the defendant Woolford and in regard to their ability to make or an object for said Woolford to sign said note with them

Answer to Interrogatory Fourth.

I was present when said Vane and Stone solicited the loan for which the said note

(40)

was given. The said Vane & Stone then
stated to the said Plaintiff that they were
intimately acquainted with the pecuniary
affairs and condition of the defendant Wool-
ford. and that his real estate was good
for at least $60000 to $80000 and could
sell for that under the hammer at that time
and that it was wholly unincumbered and
besides that he (Woolford) owned a very res-
pectable Grocery and Provision establishment
on State Street in Chicago which was pay-
ing well and that he (Woolford) was entirely
free from debt. and all statements with the
exception of some $50.00 to $60.00 which was
due to some other Grocery and Provision estab-
lishment. When the name of Woolford was
proposed as security for said loan. said
Vane remarked that he did not care that
Woolford would sign the note to become
security. but as they said Vane & Stone
were owing said Woolford or had some
dealings with him he (Vane) thought
they Vane & Stone could arrange all toge
ther and get his signature to the note.
Interrogatory

Were you present at the time the
Plaintiff handed over to the defendants the
amount for which said note was given you

do you remember the kind of funds (whether of Coin Currency Checks drafts or otherwise) that the same was composed. if so state and of the same or any part thereof were checks or drafts. State by whom and upon whom the same or either of them were drawn and to whom payable

Answer to the Fifth Interrogatory
I was present when plaintiff handed over to the defendants the amount for which said note was given and the funds handed over were as follows.

One draft at sight drawn by George P. Bates & Co of Akron Ohio on New York in favor of George Dun for $500.00 and one draft at sight drawn by Dime Merchants Nat. Bank at Cuyahoga Falls Ohio on New York in favor of George Dun for $500.00

6th Interrogatory

State if you know in what bank said Kane & Stone made and kept their cash deposits and accounts about the time said loan was made and afterwards during the time that you were doing business for them.

Answer to Interrogatory 6th
I cannot state positively the Banking House where said Kane & Stone kept their

deposits, or transacted their business at the time said loan was made ever & since it was with the Western Marine and Fire Ins. Company Bank. About the time said loan was made I made a deposit myself at that Bank for said Vane & Stone and afterwards I drew money and specie 1861. I accepted and paid drafts drawn by said Vane and Stone in Louisville Ky. with the official signature of W. W. or W. H. Vane Ky. on the back of said drafts

7th Interrogatory

State what you know as well from your personal knowledge of the property, business finances, and business habits and management of said Vane & Stone as from their statements and acts in regard to their pecuniary means to pay their debts and their ability in any manner to meet and satisfy their accruing liabilities at any time between the first of August A.D. 1861 and the Spring of A.D. 1862.

Answer to Interrogatory 7th

I have no personal knowledge of any property or effects of any kind which said Vane & Stone or either of them owned or were in possession of. (Except as consignees only) within the period of time limited in the interrogatory

and as to their finances during the same period
& added from the latter part of July to the 20th
day of November 1861. (at which last date
I ceased to do business for them) I know that
they were often very much troubled to procure
money enough to defray my ordinary and
necessary expenses as their travelling agent.
Soon after my return (on or about the 14th
of July 1861) to Chicago from a tour (as their
travelling agent.) of over four months duration
my brother the Plaintiff stated to me his ap-
prehensions in regard to the character and
solvency of said Allen Vance & Co and said
that he intended to embrace the first opportunity
when he could get them both together with
me to have a plain, clear and full statement
of their matters with them and to demand
of them either the repayment of the cash
that he had remitted to them & security
for the same in accordance with their
assurances and promises as he alleged
they had given him. Accordingly within
a day or two some time in the latter
part of July 1861 I was present at a con-
versation in the office of Allen Vance & Co
by and between the Plaintiff and said
Vance and Stone, the substance and (as
nearly as I can remember) the language

of which was as follows. The Plaintiff Dow. reminded said Kane and Stone of some loans he had made them subsequently to the loan of said $1000 00/100 amounting in all to some $5580.00/100 and then said to them when you solicited from me the loan of the money which I was to remit to you (by letter or otherwise) as might be able to collect it you assured me in the most unqualified terms that you were doing a safe healthy and paying business and that you were of good character entirely responsible for the amount you wished me to loan you. and further more you stated at the same time that after I had examined into your books and financial condition I was not satisfied with your responsibility you would furnish me other securities for said loan to my satisfaction and that your own condition and business associations were such as to enable you to do so. - all of which statements of said Dow. they said Kane and Stone admitted and acknowledged to be correct and true The Plaintiff then said I have examined your books and papers and into your financial condition and I am in no way or by no means satisfied with your responsibility in any respect for I find

that you have no capital, and never had any + that your ways of doing business are reckless and will be ruinous to you in the end. and now I want that other security which you promised me. or the repayment & refunding of the money loaned & which said Vane replied we can do neither our credit is now so poor in Chicago that we can get no one to endorse for us and as to regards our means & ability to pay our indebtedness we are wholly and entirely Bankrupt. and moreover we have neither property nor money. It is true that we had no capital to put into the concern when we commenced and we have not as yet been able to accumulate any and in fact the concern and our condition is much worse now than when we commenced. We have been constantly running behind hand and have in fact used the proceeds of property consigned to us by Country Customers to sell for their account. to a large extent in order to defray our current expenses of which we have not the means or ability to pay a dollar. all of which and probably many other ugly & blind looking things you have already discovered from our Books. Hamilton replied that he had. made such discoveries and added that they (allen Vane

&c &c) were rotten pecuniarily and otherwise to the Core. and as a concern always had been Vane and Stone remained silent and Plaintiff continued. "Well then Gentlemen you admit that you knowingly and wilfully deceived me and misrepresented to me your pecuniary responsibility condition and ability at the start & at the outset"

Said Vane answered "We do" and you can give us a good deal of trouble on that score. if you are so disposed, Said Stone. then + remarked that their affairs were in a very bad state but he hoped they would not be so long, that he or they were negotiating with a relative of his in the Country for a loan of. several thousand dollars with every prospect of success and if the effort was successful the said Plaintiff as well ~~as will~~ as this deponent would be paid in full and without delay and that the concern would be put in good working order. and urged us (Plaintiff and this deponent). to remain with them for a short time at least. and not injure their credit and prospects of obtaining the loan. and otherwise by both of us leaving them at the same time as we had expressed our determination to do when we ascertained the true condition of said

Vane and Stone Plaintiff then asked said Vane and Stone what they had done with his money, or the money he Plaintiff had loaned them to which Vane replied "Some of it has been used in improving the homestead in Evanston." Plaintiff then asked said Vane why he could not secure him Plaintiff on said homestead or place and Vane replied. "that belongs to my wife We have no property liable for debts or subject to execution" during my business connection with said Vane and Stone and particularly from the fifteenth day of July to the latter part of August 1861. (as I was in Chicago most of that time). I have been in their + Vane & Stones office when some of their Consignees from the country were there paying their demands for the proceeds of property sent to said Vane and Stone to sell on Commission and their demands were generally refused by said Vane & Stone on the plea either of them in duty to pay them. & by representing that the property sent to them (Vane & S) by said applicants for pay. was still on hand and unsold. and was stored in some warehouse in a remote part of the city when then Vane & Stones Books showed that the said property had

been sold for a long time and the said Books also showed that the said Vane and Hope had appropriated a good share of the money for which said property was sold to their individual uses Remember on one occasion when such representation had been made by said Vane and Stone and after the party to whom they were made had left the office that said Vane turned to the Plaintiff (then Book Keeper) and said that he wished that he (Vane) could be a "White Man". and not have to lie, and deceive from day to day in order to aid themselves of. dum. and importunities During the time between the first of the 16th of August 1861 and afterwards Several times he asked said Vane and Stone for the money I had loaned them but was always told by them in reply that they had no means to pay it with

8th do " Indirectly

Have you heard any conversation or conversations between the Plaintiff and said Vane and Stone or either of them in regard to the payment of or extension of note about the time it became due or afterwards or in regard to the interest due or in regard to having said note renewed

on real estate or in regard to the payment of installments thereon & so state fully the substance and (as near as you can) the language of such conversation and the time when as near as you can remember

Answer to Interrogatory 8th

I did hear conversations about the time said note became due and afterwards between the Plaintiff and said Vane relative to the payment of said note on or about the day the same became due. Plaintiff asked said Vane what their intention was in regard to paying said note and Vane replied that they (Vane & D) were unable to pay any portion of it at ~~that time~~ that as Plaintiff was aware they (V & D) had no means or anything said Vane further said that they did not want Woolford troubled with the matter or any expense made and that it was wholly unnecessary as he had no doubt they (Vane and Stone) would effect that loan of Stones Relative very soon and that then the said note would be paid and also their other indebtedness Plaintiff then asked said Vane if they could or would pay the six months interest which had accrued

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on said note, and said Vane replied that they could not. I heard various conversations between said Plaintiff and said Vane (done being about from the 6th) about the same time of similar import but in those various conversations (on or about the 9th day of August A.D. 1861) not a single word was said about paying said note by instalments or extending the time of payment of said note for the latter part of July 1862. however I heard a conversation between Plaintiff and said Vane and Stone in reference to the payment of said note during which the proposition was made by said Vane that the Plaintiff should agree not to sue said note if they Vane and Stone would pay on said note $100.00 per month to this proposition Plaintiff replied no never I will make no such agreement I will not tie my hands in that way. but continued Plaintiff I will turn off or give you the interest now due on said note if you or Woolford will now pay the principal of Woolford will secure the said note by mortgage on real estate I will give him ample time to pay it in Plaintiff then urged said Vane to try and effect such an arrangement with said Woolford. and which Vane agreed to do A short time afterwards

(I showed Smith a day or two; Plaintiff and myself met said Vane on the street (Plaintiff had then left then said Vane and Jones employment.) and Plaintiff asked said Vane if he had seen Wolford in reference to securing said note by Mortgage on his (Wolfords) real estate Vane replied that he had and the result was, that Wolford himself was willing to do same. said note but that his (Wolfords) wife would not consent to it. Plaintiff then said to Vane, that something must be done in the matter at once Vane then enquired of Plaintiff, when he was to leave for Ohio Plaintiff replied in a short time or in a day or two Vane, then asked Plaintiff what he was going to do with the said note; Plaintiff replied I leave it with my brother here Smiting to see Vane then enquired of Plaintiff what course he intended to take in regard to the collection of the said note. if he was going to sue it. Plaintiff replied that it depended on my brother Vane remaining that they should Commence paying something on said note. for I thought they would be able to pay at least $100 per month

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9th Interrogatory

At what time and for what purpose did the Plaintiff place said note in your hands and what was said or done between you and said Vane and done or either of them in regard to the payment of said note, while the same was in your possession and how long did you hold the same.

Answer to Interrogatory 9th

The Plaintiff placed said note in my hands on the 27th day of February 1862 with instructions to collect the same by suit at once or otherwise at my discretion I had possession of said note from the 27th day of July 1862 until about the 23rd day of May 1863 when it was put into the hands of an attorney for suit. During that time said Vane paid me on said note $200 00 in part $100 on or about the 8th and $100 00 on the 16th of April 1862 and said Vane also on or about the 23rd day of May 1862 came to my office and offered me $100 00 if I would not have the said note sued.

10th Interrogatory

State whether or not said Vane and Lane or either of them claimed or pretended to you while said note was in your pos-

epsin that they or either of them had made
an agreement with the Plaintiff for an exten-
sion of the time of payment of said note or for
the forbearance of his right to bring suit
thereon against the makers thereof for
any length of time or upon any conditions or
considerations and if so upon what conditions
and considerations and for what length of
time did they or either of them so claim
or pretend the same to have been made.

Answer to Interrogatory 10th
While said note was in my possession neither
said Crane nor Stone ever claimed or pretended
to me that there had been made any agree-
ment between them and said Plaintiff for
an extension of the time of payment of said
note or a forbearance of his right to bring suit
thereon against the makers thereof for any
length of time ~~of time~~ and of course nothing
was said or claimed in reference to con-
siderations for such an agreement.

11th Interrogatory.
Do you know any other matter
or thing material or necessary for the Plain-
tiff on the trial of this cause if so state
the same fully

Answer to Interrogatory 11th
I do not now think of any matter or thing

further material or necessary to the Plaintiff in this cause.

1st "

First Cross Interrogatory.

If in answer to the Fifth and Tenth Interrogatory you say that your brother, the Plaintiff, in the suit, placed the note in question in your hands for collection state the time & when he so placed the same in your hands & whether at that time the said note had matured. State also whether at any time after the said note was so placed in your hands you called upon Crane, and Stone and stated to them or either and which of them that your brother the said Plaintiff, had left Chicago and had placed the said note in question in your hands and that he the Plaintiff had stated to you that he had arranged with Crane & Stone for the payment by them of said note by instalments of one hundred dollars payable every thirty days and whether you did not in pursuance of such arrangement receive from said Crane and Stone several instalments of one hundred dollars and whether you did or not endorse the same on said note at the time of receiving them respectively

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Answer to 6th Interrogatory 1st

My Brother the Plaintiff placed the note in question in my hands on the 27th day of February 1862. and at that time the said note had matured After said note was placed in my hands I did not at any time call on Paine and Stone or either of them and state to them that my Brother the Plaintiff had left Chicago and had placed the said note in my hands and that the Plaintiff had stated to me that he had arranged with Paine and Stone for the payment by them of said note by installments of one hundred dollars pay able every thirty days and I did not in pursuance of such arrangement receive from said Paine and Stone several sums of money on account of said note and I received from said Paine and Stone two payments of $100 each on said note and indorsed the same ~~the same~~ respectively at the time of receiving them.

Lastly Do you know of any other matter or thing concerning the matters aforesaid of benefit or advantage to the said defendants or either the same fully and particularly

Answer to Lastly

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I do not know of any matter or thing + concerning the matter aforesaid of benefit or advantage to the said defendants.

(Exhibit A. see margin) Henry Dow,

Copy of Exhibit A. filed with, and attached to, interrogatories:

$1000 00/100 Chicago Feb. 9. 1861.
Six months after date, for value received we promise to pay Geo. Dow. or order one thousand dollars with ten per cent interest.
Allen Vane & Co.
R. M. Woolford.

(endorsed on note)
1st Received one hundred dollars being interest to Feb. 9. 1862 – Geo Dow.
2d Chicago Mar 8 1862. Received on the within one hundred dollars. Geo Dow. per Henry Dow.
3d Chicago April 16 1862. Recd on the within one hundred dollars. Geo Dow. per Henry Dow –

Said Plaintiff further introduced in evidence the answer of himself said Plaintiff to said Bill of discovery filed as aforesaid by said defendant Woolford, said Bill of discovery filed by said defendant Woolford as aforesaid required an answer from said Plaintiff upon his corporal oath, to all and singular the allegations & interrogatories contained in said Bill of discovery.

Which said Bill of discovery is in words and figures following to wit,

State of Illinois }
Cook County. } ss

To the Honorable the Judges of the Superior Court of Chicago. In Chancery sitting

Humbly complaining sheweth unto your Honors, your Orator Richard B. Woolford of the City of Chicago County of Cook and State of Illinois That on or about the twenty

third day of may in the year of our Lord
one thousand Eight Hundred and sixty
two, one George Dow Commenced a suit
in this Honorable Court on the Common Law
side thereof against Allen Vane. Rensselear.
Stone and your Orator as the makers of a
certain Promissory note for the sum of one thou-
sand dollars, & interest at 10 per cent bearing
date the ninth day of February one thou-
sand Eight Hundred and sixty one and
payable to the order of the said George Dow,
sixty months after the date thereof to recover
against them the amount thereof
And your Orator further shows unto your
Honors that the said above mentioned note,
and upon which said suit was brought, as
aforesaid was made executed and
delivered to the said George Dow for
monies lent and advanced by the said
Dow to the said Allen Vane and Rensse-
lear Stone alone, and for their sole use and benefit
and who were then carrying on business in
the City of Chicago as Commission Merchants
in Copartnership as "Allen Vane & Co".
And your Orator avers that he executed
said note as surety only and without any
Consideration whatever therefor at the re-
quest of the said Allen Vane and Rensselear

Stone. make the full Knowledge of said George Dow. the Plaintiff in said suit. and not. otherwise

And your Orator further shows unto your Honor. that at the time of the maturity of said note. and for a long period of time thereafter the said Allen Vane. and Rensselaer Stone were and continued to be in perfectly solvent circumstances and were possessed of property in the County of Cook aforesaid available for the payment of said note and more than sufficient to have paid and discharged the same in full. all of which facts and circumstances your Orator alleges were well known to the said George Dow the payee and holder of said note. as aforesaid But your Orator shows unto your Honor that the said Allen Vane. and Rensselaer Stone. are now. and were at the time of the commencement of said suit. and for a long space of time thereafter were utterly insolvent and that said co-partnership has terminated & ceased.

And your Orator further shows unto your Honor. that the said George Dow. payee of said note as aforesaid without the Knowledge Consent or permission of your Orator and after the Maturity of said note made and entered into an agreement. with the said

Allen Vane. and Rensselaer Stone. that he the said George Dow. for. and in Consideration of the said Allen Vane. and. Rensselaer Stone & agreeing to pay interest at the rate of ten per Cent per annum on the amount of money in said note specified would extend the time for the payment of said note, after the maturity thereof as aforesaid and thereupon the said George Dow. did accordingly extend the time of payment of the same without the Knowledge. Consent. or permission of your Orator as aforesaid as your Orator is informed and believes and your Orator further shows unto your Honors. as he is informed and believes that the said George Dow did thereafter for certain Considerations but the precise nature of. which your Orator is not informed, further agree. with the said Allen Vane. and Rensselaer Stone, and without the Knowledge. privity or Consent. of your Orator to receive and take from them the said Vane. and Stone in payment and satisfaction of. said note. so extended as aforesaid the sum of one hundred dollars per month and interest and that he the said George Dow. would thereupon forbear. suit or proceedings against them the said Vane. and Stone, your Orator. for recovery of the

ammt. of said Note. And your orator
alleges that as he is informed and believes
the said Dow did in pursuance of said
last mentioned agreement receive of and
from the said Crane and Stone several instal-
ments and payments on account thereof
And your orator will hoped that the said
George Dow having a full knowledge of the
facts and circumstances hereinbefore set forth
would have discontinued the said suit as
against your orator. But now so it is
may it please your Honor the said
George Dow combining and confederating with
Allen Crane and Benjamin Stone and with
divers other persons to your orator unknown
whose names when discovered your orator
prays he may be at liberty to insert herein
with apt words to charge them as parties hereto
defendants and combining how to wrong and
injure your orator in the premises he the said
George Dow absolutely refuses to comply
with such request and he at times, pretends
that your orator signed the said
promissory note as principle and that
he your orator is liable to the payment
of the balance due on said promissory
note, and all interest thereon.
And your orator charges that he has no

other witnesses by whom he can prove the facts and circumstances herein before set forth. other than the said George Dow Allen Vane and Rensselaer Stone and that he cannot safely proceed to trial, without such discovery and also charges that the said George Dow defdt. intends & threatens to proceed on said action to recover the balance due on said promissory Note and all interest due on against your orator unless he shall be restrained therefrom by the order and injunction of this Honorable Court. as your orator charges he ought to be. and he shall have so done In consideration whereof and for as much as your orator is remediless in the premises at Common Law and cannot have a complete discovery of the several matters aforesaid without the aid of a Court of Equity where matters of this sort are properly cognizable

To the end therefore that the said George Dow Allen Vane and Rensselaer Stone and the rest of the confederates when discovered may upon their several and respective corporal oaths full true direct and perfect answer make to all and singular the matters herein before stated and charged as fully and particularly as if the same was hereinafter repeated and

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they thereto distinctly interrogated, and that not only as to the best of their respective knowledge and remembrance but also as to the best of their several and respective information hearsay and belief and more especially that they may answer herein and declare whether your orator and the said Allen Vane and Rensselaer Stone did or not make execute and deliver to said George Dow the promissory note of the date amount and time when payable as hereinbefore mentioned and described and whether or not the said George Dow has commenced suit for the recovery thereof in this Honorable Court against your orator and said Defendants Vane and Stone And whether or not said note was made executed and delivered to said George Dow for money lent and and advanced by said Dow to said Vane & Stone and for their sole use and benefit. And whether or not your orator executed said note as surety only without any consideration therefor at the request of said Vane and & Stone and with the knowledge of said George Dow thereof.

And whether or not at the time of the maturity of said note and for some time thereafter the said defendants Vane & Stone

mine, and continued to be in solvent circumstances and whether or not possessed of property in said County of Cook available to the payment of said note and more than sufficient to have paid the same in full, and whether or not the said George Dow. was moving to evade such and circumstances And whether or not said defendants Vane and Stone at the time of the commencement of said suit at law were then and for some time prior thereto utterly insolvent And whether or not the said George Dow. without the consent knowledge or permission of your Orator and whether or not after the maturity of said note, made and entered into an agreement with the said defendants Vane and Stone, whereby if said last named defendants would pay to the said Dow. interest on said note at the rate of ten per cent per annum. he said Dow. would extend the time of payment of the same. And whether or not the said defendants Vane and Stone agreed to pay such rate of interest, and whether or not the said George Dow. did extend such time of payment of said note; And whether or not the said George Dow for certain and what consideration, further agreements said defendants Vane & Stone and whether or not without the knowledge, privity or consent of your Orator, to receive and take from them

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the said Vane and Stone, in payment and satisfaction of said note, so extended as aforesaid the sum of one hundred dollars per month & interest with the same, should be fully paid and whether or not the said George Dow. did not thereupon agree with said Vane and Stone to forbear suit & proceedings at law against them for the recovery of the amount of said note and whether or not the said George Dow. in pursuance of such last mentioned agreement received several or any & what instalments or monthly payments on account of said note. And that the said defendants may state & set forth what amount is now due for principal and interest on said note.

And whether the said George Dow. has not brought such action against you orator & the said Vane and Stone and for such purpose as herein before mentioned and does not threaten and intend to proceed therein without making any discovery of the several matters aforesaid unless he shall be restrained therefrom as aforesaid or how otherwise

And that the said George Dow. Allen Vane and Reneilleau Stone may make a full and true disclosure and discovery of the several matters as aforesaid to the end that you orator may be the better enabled to defend the said action

at law as aforesaid, and that in the meantime and until the said George Don Allen Vane & Rensselaer Horne shall have made such discovery as aforesaid & that the said George Don may reshained by the order and injunction of this Honorable Court from further proceedings in said action at law, and all further & other proceedings at law, whatsoever against your Orator. touching the several matters aforesaid or any of them

May it please your honor to grant unto your Orator not only the most gracious writ of State of Injunction of the State of Illinois issuing out of and under the seal of this Honorable Court to be directed to the said George Don to restrain him from proceeding at law against your Orator touching any of the matters in question but also the most gracious writ of Subpoena of the State of Illinois to be directed to the said George Don Allen Vane and Rensselaer Horne and the rest of the confederates when discovered thereby commanding them and every of them at a certain day and under a certain pain therein to be specified personally to be and appear before your Honors in this Honorable Court and then and there to answer all and singular the premises, and your Orator shall ever pray &c

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Richard B Woolford

Ely Esqy. of Counsel
for Complainant

State of Illinois
Cook County } ss

Richard B Woolford being
first duly Sworn deposeth and says that he
is the Complainant in the foregoing Bill men-
tioned that he has read the same and knows
the Contents thereof and that the same is true
of his own knowledge, except such matters as are
stated to be upon information and belief and
those he believes to be true

Subscribed and Sworn to } Richard B Woolford
before me this 14th day of
October A.D. 1862
Thomas B Carter Clk

to which said evidence said defendant by
his Counsel then and there excepted, on the
ground that it was not competent and that
said Plaintiff could not use his own answer
in his own behalf. to said time which
said objection was then and there overruled
and said answer then and there admitted
as evidence to which said ruling and ad-
mission of said answer said defendant then

and there by his Counsel objected,
Said answer of said Dow was as follows.

The separate answer of Geage Dow one of the defendants to the Bill of Complaint of Richard. P. Woolford, Complainant.

This defendant Dow and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors & insufficiencies in the Complainants said Bill of Complaint contained for answer thereunto or unto so much & such parts thereof as this defendant is advised & material for him to make answer unto, he answering says

That on the 9th day of Feby 1861. Allen Vane and Rensalear Stone the other defendants mentioned in said Bill of Complaint represented to this Respondent (who was then and there a resident of the State of Ohio and at that time was casually in the City of Chicago &c) that they were Copartners doing a large and profitable business as Commission Merchants in said City under the firm name and Style of Allen Vane & Co and they and there solicited of this respondent the loan of ($2000.00) Two Thousand Dollars for the purpose as they alleged of extending their

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said Thomas Vane & Stone were represented to the respondent, that they were themselves perfectly solvent and responsible for the repayment of such loan. & that if the respondent desired it. they would give him any security for such loan as he would ask. or require and the respondent in reply to said solicitation and representation said to said Vane & Stone that he had not but one thousand dollars that he could spare. and that he then could not stay to investigate but talk for security but that if they said Vane. and Stone, would give the respondent. good personal security he would loan them the one thousand dollars aforesaid to draw interest at the rate of ten per cent per annum and that he should soon have from collections then making small sums which he might thereafter be willing to loan. to them on the same terms Whereupon said Vane and Stone proposed the name of R B Woolford the complainant herein as a responsible person in said city to join with them in a promissory note. of six months for said one thousand dollars and stated to respondent that said Woolford was a man whom said Vane had taught out. and aided in establish

ing in a very successful business in said City and that they said Vane and Stone were well acquainted with said Woolfords pecuniary affairs and that he was then worth at least from six to eight thousand dollars over and above all his liabilities, stating also that they the said Vane & Stone had not asked said Woolford to sign with them, and were not certain that he would but that they were then owing said Woolford some money and that they thought they could arrange the matter with said Woolford so that he would be willing to sign such a note with them, whereupon afterwards upon the day aforesaid Woolford came to the Office of Allen Vane & Co and together with said Allen Vane & Co the promissory note referred to in said complainants Bill of which the following is a true copy Viz

"$1000- Chicago Feby 9. 1861.

Six months after date for value received We promise to pay Geo. Dow. or order. one thousand dollars with ten per cent interest

(Signed) Allen Vane & Co.

do R B Woolford "

and delivered the same to this respondent for the sum of one thousand dollars. in money then and there loaned to them by this

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respondent. This Respondent further answering in their behalf says. that he delivered the said $1000.00 to said Allen Vance & Co in accordance with the aforesaid arangements but whether or not. the said Woolford received any portion of said Thousand dollars. or any other consideration from said Allen Vance & Co for his signing and delivery of said note as aforesaid, or whether or not. he signed the same as security only, and without any consideration therefor this respondent of his own personal knowledge cannot. (otherwise than as above) state but this respondent supposed at the time said note was executed and delivered as aforesaid and he still believes from the best of his information and hearsay, that said Woolford did in fact receive from said Allen Vance & Co. a portion of said $1000.00 as a consideration for his said signing and delivery of said note with them said Allen Vance & Co.

This respondent further answering says. that after the execution and delivery of said note as aforesaid the said Vance & Stone still representing to this respondent that they were perfectly solvent and were doing a large and profitable business as aforesaid still further solicited this respondent to

remit to them whenever he could such sums of money as he could spare at the rate aforesaid and agreed that the respondent, at any time as soon as he could arrange his business in Ohio should return to said Chicago and enter into the employ of said Allen Vane & Co as their Clerk and Book Keeper at a salary of $54.16/100 per month for a period at least sufficiently long to enable him the respondent to examine into and inform himself in regard to the affairs and responsibility of said Allen Vane & Co and that if on such examination he should deem it of them other security for such additional sums of money as he should in the mean time so remit to them they would give him such security therefor as would be to the respondent perfectly satisfactory, And the respondent confiding in said seemingly frank and fair representations and offer of said Vane & Co did between the said Feb. 9th 1861 and the 21st day of June 1861 remit and loan at the rate aforesaid to said Vane & Co, to be secured on the condition aforesaid divers sums of money amounting in the aggregate (with interest thereon at the rate aforesaid to Aug. 11th 1861) to the sum of $580.00 And

the respondent did on the 17th day of June last aforesaid in pursuance of said proposal and agreement of said Vane and Stone, to and with the respondent return to said Chicago and enter upon the duties of Clerk and Book Keeper of said Allen Vane & Co. and as opportunity occurred in connection therewith did examine into the business and financial condition of Allen Vane & Co and the respondent upon such examination (and his knowledge acquired in discharge of his duties as said Clerk and book Keeper) became convinced long before the maturity of said note that said Concern of Allen Vane & Co was insolvently and notoriously wholly insolvent, that said concern never had any Capital and that they said Vane & Stone had conducted and carried on their said business in a loose improvident and reckless manner.

The Respondent further answering in this behalf says that on or about the maturity of said note he stated to said Vane and Stone, as the result of his said examination into their affairs and responsibility that if their books and papers contained all the evidence of their responsibility and business prosperity they were then and for a long time previous had been wholly insolvent that the

orem had not then no had ever had a dollar worth of capital, no had ever paid expenses. but that on the contrary it had from the beginning been constantly running in debt. that their statements and representations to this respondent. (as in herein before stated) had been and were wholly false and this respondent thereupon demanded of said Vane and Stone security for said amount of money which he had upon their said representations and promises and upon the Conditions aforesaid remitted to them as aforesaid and the said Vane and Stone then admitted to this respondent. that they were and had been from the beginning insolvent and had been doing business without capital and that they were in fact utterly unable to give this Respondent any kind of security for said Cash remittances that the Real Estate which said Vane was in the occupancy and possession at Evanston in said Cook County belonged to the Wife of said Vane, and that he Vane would not have it encumbered with his own & said Allen Vane & Co's debts But that they said Vane and Stone proposed and offered to this respondent that if he would remain with them as Clerk or book keeper as aforesaid they would soon be able to and would

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to pay to the respondent the amount of said
Promissory note, with interest thereon at the rate afore=
said, that said Stone was then negotiating with
a relative of his for a sum of money which he
expected to obtain in a short time and which
would make them all right in their financial
matters

The respondent further answering says
that he continued with said Vane & Stone as
said Clerk & Book Keeper chiefly for the purpose
of obtaining repayment of said Moneys loaned
as aforesaid (or of getting the same secured
upon the 22nd day of Feb. 1862. and that
he had been enabled to obtain from said
Vane and Stone, the sum of $287.30/100 dollars
only to apply on said amount of said Promis-
sory note, and that the balance of the loan is still
due and unpaid to the Respondent

The Respondent further answering says that
from the time said note became due hitherto
he has been anxious and urgent to have the
same either paid or secured on Real estate
and being satisfied that said Vane & Stone
were wholly insolvent, and apprehending that
said Bickford might become insolvent also
the respondent offered to said Vane & Stone
when said note became due & afterwards also
to them &c. the whole interest thereon, if they

would repay him the principal thereof, and when they proposed their inability to pay the principal upon those terms as they then did to the respondent, the respondent afterwards said to said Crane that as Woolford would have to pay the note he the respondent would be willing to give any reasonable extension for the payment thereof if said Woolford would secure the same on his real estate. And the respondent requested said Crane to make said proposal to said Woolford which said Crane agreed to do And afterwards sometime in the latter part of the month of July 1862. said Crane informed the respondent that he had made said proposal to said Woolford and that he Woolford was willing to give said security upon his real estate for an extension of the time of payment of said note but that his wife would not consent to it.

The defendant further answering says that the whole amount of said note (only 1 cent being the following payments made by said Allen Crane to the respondent and endorsed thereon at the times following "towit" one payment of $100.00 made and endorsed thereon July 22nd 1862. another payment of $100.00 made and endorsed thereon

March 8th 1862 and another payment of $100.00 made and endorsed thereon (viz 16th 1862) is still due and unpaid to this respondent.

This respondent further answering says that on the 23d day of May 1862. he did commence a suit on the Common Law side of this Court against the said Vane & Stone and said Wolford as the makers of said promissory note to recover against them as said makers the balance that should appear to be due thereon to this respondent as the payee and holder thereof and that said cause was at issue and ripe for trial and judgment therein when the same was suspended by the injunction of this Court in this cause as this respondent is informed and believes

This respondent further answering says that said promissory note was executed and delivered by said makers to this respondent in the manner and for the consideration herein before alleged and stated and not otherwise to the knowledge and remembrance of this respondent. This respondent further answering says that at the time of the maturity of said note and for a long time before and after that period said Vane & Stone were & wholly insolvent, that whatever property they

or either of them were in possession of during the period aforesaid was held by them in trust for others Nor did they or either of them during the period aforesaid pretend that they had any property that could be reached by execution against them but constantly claimed the contrary to be the fact. to the memory and best information knowledge and belief of this respondent

This respondent further answering in this behalf says that on or about the 9th day of Aug. 1861. the books and papers and papers of Dana Allen Vance & Co showed that their liabilities were from $12000.00 to $15000.00 greater than their assets that on the 1st day of Feb. 1862. their "Expense account" showed a balance to the debit of that account of about $6.297.00 Said Vance individual account showed a balance against him of about $5800.00 and that said Vance individual account showed a balance against him of about $4000.00 and their "commission account" showed that they had received during the whole period of their said copartnership only about $2950.00 in the shape of commissions on their said business showing that they had taken out of the concern some $15000.00 more than their commissions amounted to and that their merchandise account showed at the same

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bme a large deficit and that not a dollars worth of Capital had ever been invested in the concern by either of them said Vane & Stone, to the best knowledge and remembrance information belief & belief of this respondent

This respondent further answering says that at no time either before at or after the maturity of said note did this respondent make or enter into any agreement with said Vane & Stone whereby said Vane & Stone would pay this respondent interest on said note at the rate of ten per cent per annum he this respondent would extend the time of payment of the same but that on the contrary this respondent offered to draw off the whole interest on said note & said makers would pay the principal thereof at its maturity nor was any agreement ever made between this respondent & said Vane & Stone in regard to the payment of interest on said note, except what was made at the time of the execution and delivery of the same by the makers thereof & named therein as herein before stated. Nor did this respondent extend the time of payment limited in said note in accordance with said pretended agreement and combination in said complainants Bill of complaint alleged nor in accordance with any agreement or

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consideration whatever, entered into received by this respondent. And the allegations and charges all and singular of said Complainant in his said Bill to the contrary are untrue and false to the certain and positive knowledge and remembrance of this respondent.

This respondent further answering says that he did not for any consideration whatever, at any time agree with said Vance & Stone or either of them to extend the time & form of payment of said note upon the receipt & thereon of $10.00 per month from said Vance & Stone until the whole amount due & should be fully paid, nor was the form or time of payment of said note ever extended & changed by any agreement with, or for any consideration of this Respondent. Nor did this respondent, at any time ever agree with said Vance & Stone for & any consideration whatever to forbear or suspend for a moment his right to sue for and recover the amount due on said note, against all the makers thereof nor has this respondent received any instalments or monthly payments on said note in pursuance of such pretended agreement as is alleged by the Complainant in his said bill & for this respondent therefore admits that said Vance & Stone have paid to this respondent on said note

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the sum of $300 00 in three different instal
ments as therein before specifically stated, but
it is not true and this Respondent therefore po-
sitively and specifically denies that he ever agreed
directly or indirectly with said Vane & Stone or
with either of them in consideration of said pay-
ments or for any consideration whatsoever to ex-
tend the time of payment of said note or to
forbear or postpone for any period of time what-
ever his right to sue for and recover of the makers
thereof all and singular the amount due thereon.
And the allegations and charges all and
singular of said Complainant in his said Bill
to the contrary are untrue and false to the certain
and positive knowledge and remembrance of
this Respondent

This Respondent further answering in this
behalf says that said Vane once asked this
respondent if he would agree not to sue said
note in case they said Vane & Stone would
pay $100 00 on account thereon and this respond
ent quickly replied that he would make
no such agreement with them said Vane
& Stone and stated as his reason therefor
that such an agreement would release what
he this respondent regarded as his only security
thereon and that he this respondent did not
consider said Allen Vane to be good for a dollar

Whereupon said Vane freely acknowledged to this respondent that said Vane and Stone
had neither of them a dollar

that could be reached by an execution against them. This Respondent further answering says that said sum was and done. no action of them had at or since the maturity of said note properly sufficient to be paid said County available to the payment of said note. or of any part thereof. to the best knowledge information hearsay and belief of this Respondent. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said Bill charged without this that there is any matter cause or thing in said complainants said Bill of complaint contained material or necessary for this defendant to make answer unto & not herein & hereby well and sufficiently answered confessed traversed & avoided or denied is true to the knowledge or belief of this defendant; all which matters & things this defendant is ready & willing to aver maintain and prove as this Honorable Court shall direct & respectfully prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

George Dow.

A E Wolcott of Counsel for defendant.

State of Ohio }
Summit County } ss

George Dow being first duly sworn deposes and says that he is the defendant in the foregoing answer mentioned that he has read the same and knows the contents thereof and that the same is true of his own knowledge except such matters as are stated to be upon information & belief & those he believes to be true

Subscribed & sworn to before me this 9th day of December A.D. 1862.

William A. Lawson
Justice of the Peace

State of Ohio }
Summit County } I John A Means Clerk of the Court of Common Pleas within and for the County of Summit and State of Ohio do hereby certify that William A Lawson Esquire before whom the foregoing and annexed affidavit & oath were taken, and subscribed was at the time of taking the same a Justice of the Peace in and for said County duly commissioned and sworn and to all his official acts as such full faith and credit are due and that the foregoing signature purporting to

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be his a genuine as I believe
Witness my signature and the seal of
said Court at the Court House in Knox
this 9th day of December A.D. 1862

Seal

John A Means Clerk
By N. A. Means Dep. Clerk

Internal Revenue stamp 10 cts

said cause was then and there submitted
to said Court. who then and there found
for said Plaintiff and assessed his damages
at $ 916.05. to which said finding then
and there excepted. and filed his motion in
writing for a new trial in said cause. which
said motion is as follows

George D.
vs.
Allen Vane.
Ransdean Stone
Richard B. Woolford

In Superior Court of
Chicago June Ter. 1863

now comes said defend
ant Woolford by E. G.
Asay his attorney & moves the Court for a new
trial in said cause on the ground that the
Court 1st admitted improper evidence 2nd
that the Court admitted the answer of said
Plaintiff in the Chancery suit in this Court.
as evidence in said cause. 3rd Because
the finding of said Court herein is contrary

to law. IV. That it is contrary to the evidence

E. G. Keay.
Atty for Defts Woolford

Which said motion was afterwards to wit on the 10th day of July A.D. 1863 being one of the days of the July Term of said Court overruled by said Court and judgment was then and there by said Court rendered in favor of said Plaintiff, and against said defendant for the sum of $916.05, and cost of suit. to which said overruling of said Motion and entering of said judgment said defendant by his said Counsel then and there excepted & then and there prayed an appeal to the Supreme Court, which said appeal was then and there by said Court allowed upon condition that said defendant file an appeal bond in the penal sum of $1500, to be approved by said Court. and his Bill of exceptions on or before the first Monday of the September term of said Court. And these are all the proceedings and all the evidence in said Cause before said Court. therefore on the prayer of said defendant. Richard B. Woolford the Hon Wm P. Diggins the said presiding Judge of said Court hath to this Bill of Exceptions set his seal according to the

statute in that case made and provided this
seventh day of September A.D. 1863.

Wm H Higgins Seal
Judge,

Know all Men by these presents, That we
Richard B. Woolford and Thomas H
Eckardt of the County of Cook and State
of Illinois are held and firmly bound unto
George Dow of Summit County and State
of Ohio in the penal sum of fifteen hun-
dred dollars lawful money of the United
States for the payment of which well and
truly to be made we bind ourselves our heirs ex-
ecutors and administrators jointly severally
and firmly by these presents.
Witness our hands and seals this seventh day
of September A.D. 1863.
The Condition of the above obligation is
such that whereas the said George Dow
did on the Seventh day of July A.D. 1863 in
the Superior Court of Chicago in and for
the County of Cook and State aforesaid and
of the July Term thereof A.D. 1863 recover a
judgment against the above bounden Richard
B Woolford impleaded with Allen Pope and
Ransalear Stone for the sum of Three hundred

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and sixteen Dollars and five cents besides costs of suit from which said judgment of the said Superior Court of Chicago the said Richard B Woolford has prayed for and obtained an appeal to the Supreme Court of said State,

Now therefore if the said Richard B. Woolford shall prosecute his said appeal with effect and moreover pay the amount of the judgment costs interest and damages rendered and to be rendered against him in case the said judgment shall be affirmed in said Supreme Court then the above obligation to be void otherwise to remain in full force and virtue.

Taken and entered into before me at my office in Chicago this Seventh day of September A.D. 1868.

Wm H Higgins
Judge,

R. B. Woolford [Seal]
Rob. Eckhardt [Seal]

State of Illinois }
Cook County } ss

I, Thomas D Carter Clerk of the Superior Court of Chicago within and for the County and State aforesaid do hereby certify that the above and foregoing is a true and perfect transcript of all the papers now on file in my office, together with all the order and judgment made and entered of record in said Court in a certain Cause lately pending in said Court on the Common Law side thereof wherein, George Dow was Plaintiff and Allen Vane Benedict, Stone and Richard D Wolford were Defendants,

In Witness Whereof I have hereunto set my hand and affixed the seal of said Court at Chicago this Tenth day of March A.D. 1864

Thomas D Carter

Clerk





Supreme Court of Illinois
Third Grand Division
April Term A.D. 1864

Richard B Woolford
Impleaded with Allen
Vand Randall an Stone
Appellants
vs
Gray Thom
Appellee

Appeal from Superior Court
of Chicago

Now comes the said Appellants Richard B Woolford by R.R. Wilson & G.H. Gray his attys and says that in the record in this cause there is error in this that the court below erred in admitting in evidence testimony Secondly in admitting the answer of Plaintiff filed in the Chancery suit in said Court as evidence in this cause in the Court below as evidence in his own behalf This the Court erred in overruling motion for a new trial in said cause And the said Richard B Woolford Impleaded prays that the judgment aforesaid for the error aforesaid and for other

in the said record and proceedings being may be
reversed annulled and altogether holden for
nought and that he may be restored to all things
which he hath lost by occasion of said judgment &c

Robt. Wilson
Elisha
attys for Appellants

State of Illinois } In the Supreme Court
Third Grand Division } of the April Term 1864

George Dow
vs
R. D. Wolfe
Impleaded &c } Plaintiff in Error,

And the said George Dow
defendant in Error, now comes and says that there
is no Error, either in the Record Proceedings afore
said or in giving Judgment aforesaid, in manner
form as above assigned, And therefore he
prays that the said Judgment may be affirm-
ed, with his costs and damages to him
in this behalf

By A. M. Wood atty
for Deft. in Error

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Richd. B. Woolford

vs

George Dow

Read & Enos —

Filed Apl. 18. 1864.

L. Leland

Clk.

$20.55 Fees

Pd. W. B. Carter

Clerk

State of Illinois } Supreme Court
3rd Grand Division } April Term 1869.

George Dow - appellee
vs.
N. B. Woolfred - appellant
Impleaded &c

Appeal from the Superior Court of Chicago

Argument for Appellee -

This Cause was tried below upon a stipulation. (see Record page 19) that the Law, as well as the facts in the Case should be Submitted to the Court for Consideration & judgment in the premises. Consequently when the Appellant, at the

the trial of the Cause below, offered in Evidence the Answers of Mann & Stone (his Co defendants) to his Bill for discovery, the appellee (pltff. below) did not object thereto, (as he well might & would have done, but for said Stipulation) because he supposed that said Bill for discovery, as well as Each & all of the Answers thereto, were embraced among the facts & the Law in the Case as then Submitted to the Court, & he

was perfectly willing that the Court should decide upon the Competency as well as the Credibility & effect of all the Evidence offered in the Case.

It is true that the party who resorts to a Bill in Chancery for the discovery of Evidence in aid of a suit at Law, may himself alone decide whether or not such Evidence when discovered shall be used on the trial at Law & it is equally true that, if he offer

any part of it, he cannot rightfully object to the balance of such discovery, at least, to such parts of it, as are Responsive to the Bill, & relate, in any way, to those parts of it offered by himself.

It is very doubtful whether or not the appellant could (& according to the best authorities upon the subject it is quite certain that he could not) rightfully call upon his co-defendants below, either by Bill for

discovery or as witness upon the stand, to give Evidence in his behalf. But waiving the Certainty to the Contrary & Conceeding the possibility of the Right as Exercised in this Case, yet it is respectfully submitted, that, having offered those parts of his discovery which are at least of doubtful Competency he is thereby Estopped from objecting to the balance, & in fact the only Competent part of his said discovery; to wit,

the Answer of ~~the~~ plff below.
Otherwise the equitable provision
for obtaining evidence by Bill for
discovery in aid of a Suit at
Law, would become an instrument
of the greatest partiality & injustice,
by enabling a party to secure
the evidence of his Co partry in
interest, as well as in the suit,
to the entire exclusion of the oppo
site parties, And by falsely charg
ging others with Combination &
Confederation to wrong & injure
him to practice with impunity

himself, & in secret with his legal counsel, the most reprehensible collusion, falsehood, & fraud against the opposite party, without even so much as the restraining & purifying influence of a cross-examination of the witness upon the stand.

"Whoever asks the aid of Equity for the discovery of Evidence is bound by the principles of Equity in the use & application of such Evidence, when discovered."

But, suppose the Court ever

in admitting said Answer as claimed by the appellant, still the other evidence in the case, was clearly sufficient to sustain the finding & judgment of the Court below, without reference to said answer of the pltff below.

The clear & circumstantial & positive testimony of the witness Henry Dow, in his deposition, (see Record page 38) shows the most reprehensible dishonesty & falsehood on the part of said Deweese & Stone, in their business affairs

& statements during the period of time from the date of said Note to the time suit was brot thereon, & stamps their several answers to said Bill for discovery, (in regard to their said knowg & that they had means in their hands that could be reached by Execution, (without specifying the sums far exceeding the amount due on said Note, at the time it became due, with intent & to keep said false knowl (see the answer in said deposition to the 7th Int. negatively)

Nor is it Reasonable to suppose that if there had ever been an agreement between them & said payee, for the extension of the time & Manner of payment of said Note, as they allege in their said Answers, they would have failed to mention & insist upon it to said witness Henry Dow when he threatened to put said Note in suit unless it was promptly paid Nor would they have offered said witness $111. to take a suit thereon if there had been such an

agreement, before made by them with said payee, as they allege in their said answers.

Nor is it Reasonable to suppose that, if there has been such an agreement, it would not have been mentioned by some of the parties thereto, in the several conversations which were had between them, (in the presence & hearing of said witness, Henry Dow) in regard to the payment of said Note, (see the answers to the 8th & 9th Interrogatories in said Deposition)

These "indicia" of falsehood,
on the part of said Lewis
Stone, taken in connexion with
the vague, loose & stereotyped
features of their said Answer
to said Bill for discovery, are
quite sufficient to render them
wholly unworthy of credit in
the Mind of any honest & in-
telligent Judge or Jury, & to leave
the special defence of said
appellant without credible (as
well as without competent) Evidence
for support.

The Legislature of the State of Illinois has prescribed the conditions & precep upon, by which the testimony of parties to a suit at Law may be obtained on the trial thereof. (see Gen. acts, pr 1861 p. 89) Consequently the "authorities," upon that point, to which the Court is referred, in the appellants "brief of points & Authorities," are believed to be Not Strictly in point, in this case, pr, by that "act", it would seem. that the Legislature of this

State, intended to establish (& at the same time to simplify & facilitate) the old & well approved principles of Equity, in Bills for Discovery, in Aid of Suits at Law wherever the testimony of the parties thereto is sought to be obtained as the trial thereof; & consequently, that the same Rules should prevail in Regard to the Rights & liabilities of such parties to be called upon to testify as witness upon the Stand, as prevails in the old process for obtaining

the same evidence by "Bill for discovery"

By A. W. Roberts for appellee

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5e - grand civil

Supreme Court

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George Dow

ats.

P. B. Shalfoo

impleaded &c

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on appeal

Judgment

for

appellee

Filed Dec 11. 1874

J. Sellers Clk

Whitaker

atty.