

No. 13578

# Supreme Court of Illinois

Barnes

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vs.

Simmons

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71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 39

Barnes

v

Simmons

13578

1862

Replevin

State of Illinois, ss.

Supreme Court, Third Division.

George O. Barnes }  
vs. } Error to  
George Simmons. } Marshall.

40 Barnes on oath doth depose and say, that he is acquainted with Levi G. Barnes, who is a resident of Marshall County, in the State aforesaid, and that, ~~as~~ ~~affiant~~ the said Levi G. Barnes owns property, consisting mostly of improved real estate, ~~is~~ ~~the~~ of the value of two thousand five hundred dollars, as this affiant believes; and that the debts and liabilities of the said Levi G. Barnes do not exceed the sum of

two hundred and fifty dollars,  
as this affiant believes.

G. O. Barnes  
" "

State of Illinois, }  
Marshall County, } ss. Subscribed

and sworn to  
before me, a  
notary public for the town of Sa-  
con, in the said county, this  
day of May, A. D. 1860.

Witness my hand and  
notarial seal, the day  
aforesaid.

G. L. Fort, N. P.

39 ~~422~~ 103  
Barnes 53  
v  
Simmons

Affidavit of  
justification of bail.

Filed May 31. 1860  
L. Deland  
Clk.

# SUPREME COURT

OF THE

## STATE OF ILLINOIS.

FOR THE

THIRD GRAND DIVISION.

APRIL TERM, 1860.

**GEORGE O. BARNES, Appellant, vs. GEORGE SIMMONS, Appellee.**

*Appeal from Marshall Circuit Court.*

### POINTS, AND AUTHORITIES AND ARGUMENT FOR APPELLANT.

The court erred in permitting the testimony of the witness Crane to go to the jury. He recollected nothing of the conversation and knew nothing of the matters testified to except from the books—did not even pretend to have kept the books himself, or to know that they had been properly kept.

The court erred in permitting the book account of Barnes to go to the jury—there was no foundation laid for their introduction. Page 30.

The court erred in admitting the checks drawn by Barnes, and certificates of bank deposit in favor of Simmons.

The court erred in admitting record of trust deed, dated Dec., 1857, from Barnes to Simmons. There was no foundation laid even for a certified copy. Pages 31-2.

The court erred in refusing to exclude Crane's evidence from the jury, together with books, checks and certificates of deposit offered by Simmons. Page 38.

The second and fourth instructions given for Simmons are not the law. Page 43.

There is no evidence to support the 5th, 6th and 8th instructions, and they were calculated to mislead the jury.

The court improperly qualified the 10th instruction asked by Barnes—*Brices* 226.

The verdict is against the evidence.

Maxwell testified that he heard conversation between the parties about May 11th, 1858. (Page 25.) Barnes stated that he had a few days before given his note for money of Simmons, and had not got it; that Simmons knew Barnes could not get the money. Simmons would not give up the note, but agreed to do what was right about it. Wilcox testified to same thing.

Crane says that Barnes appears from the books to have drawn out all the money—he does not know that he (Barnes) ever received any of the money—(page 29) he only thinks so from the books of the bank and checks.

One of these checks of \$217 Barnes never received a cent on. Crane says it was for a certificate of deposit, No 1663, payable to N. H. Purple—and he thinks that was paid. Page 39.

G. L. Fort swears directly that it was not paid. Page 41.

Crane says the bank was in condition to pay. Pages 39-40.

Def't. proved by W. F. Palmer, that during winter of '57-8, the bank of Crane & Co. paid nothing, or but little, except Nebraska currency. Pages 41-2. And G. L. Fort testified that Crane, about Feb. 1, 1858, told Barnes "he had nothing in his bank but Nebraska currency and had not had for a long time."

Crane says Nebraska currency was current at Lacon in winter of '57-8 nearly or quite all the time, and also at Chicago and Peoria. Pages 40-1.

Barnes proved by W. F. Palmer, Maxwell and Wilcox, "that Nebraska currency was not current here (in Lacon) during the last half of Dec. 1857 and winter of 1858 at any time."

G. O. BARNES,

*Per Se.*

Brief <sup>39 50</sup>

Barnes vs Simmons

Filed Apr 29 1862

J. Delmonico  
Clerk

SUPREME COURT

OFFICE OF THE CLERK

STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Marshall Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Courts of Marshall County, before the Judge thereof, between George Simmons

plaintiff, and George O. Barnes

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

as we are informed by his complaints and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of rights ought to be done according to law.

Witness, The Hon. John D. Caten, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 20<sup>th</sup> day of June in the Year of Our Lord One Thousand Eight Hundred and Sixty.....

L Leland

Clerk of the Supreme Court.

by J. B. Rice Deputy

George O Barnes

No. 422

vs.

George Simmons

WRIT OF ERROR.

This Writ of Error is made a  
Supersedeas, and as such is to be  
obeyed by all concerned.

L. Leland

Clerk.

Wm B Rice

FILED

June 20th

A. D. 1860

L. Leland

Clerk.



50  
1860  
George Simmons

Know all Men by these Presents, That George O. Barnes,

as principal, and Levi G. Barnes,

Barnes, as security, are held and firmly bound unto George Simmons,

in the penal sum of six hundred dollars good and lawful money of the United States, for the payment of which, well and truly to be made, the said George O. Barnes and Levi G. Barnes

bind themselves, their heirs, executors and administrators, jointly, severally and firmly by these Presents.

Witness, the hands and seals of the said George O. Barnes and Levi G. Barnes,

this \_\_\_\_\_ day of June, A. D. 1860.

The Condition of the above Obligation is such, That, whereas the above named George Simmons

did, at the May Term of the Circuit Court held in and for the County of Marshall, in the State of Illinois, A. D. 1859 recover a judgment against the above bounden George O. Barnes,

for the sum of four hundred and nineteen dollars, and costs of suit, to reverse which said judgment, the said George O. Barnes

has sued out a Writ of Error from the Supreme Court, within and for the Third Grand Division of said State, which Writ of Error is made a Supersedes. Now if the said George O. Barnes

shall duly prosecute said Writ of Error, and pay, or cause to be paid, the amount of said judgment, and all judgments, costs, interest and damages which the said Supreme Court shall adjudge against the said George O. Barnes, in case the said judgment shall be affirmed, and abide the order and judgment of said Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

Witness; 5 written over 6  
before signing  
R. C. Barnes

George O. Barnes [SEAL.]

Levi G. Barnes [SEAL.]

[SEAL.]

[SEAL.]

38 150

No. 422 103

SUPREME COURT,

THIRD GRAND DIVISION.

*George O. Barnes*

vs.

*George Simmons*

SUPERSEDEAS BOND.

Filed June 20<sup>th</sup> 1860

*L. Leland* Clerk.

1  
Heads before the Circuit Court of Marshall County in  
the State of Illinois at a Term thereof began and held  
at the Court House in the City of Lacon in said Coun-  
ty on Monday the fourth day of October in the year of  
Our Lord one thousand eight hundred and fifty six,  
1856. Present, the Hon. M. Ballou judge of the 23<sup>d</sup> judicial  
Circuit in the State of Illinois presiding. George W. Stepp  
States attorney for said judicial Circuit Henry L. Crane  
Sheriff of said Marshall County, & James Wescott  
Clerk of said Circuit Court

Be it remembered that heretofore, to wit: on the fifteenth  
day of September A. D. 1858 a Summons was issued  
out of said Circuit Court in the cause of George  
Simmons against George O. Barnes which Summons  
is in words and figures as follows to wit:

The People of the State of Illinois

Summons

To the Sheriff of Marshall County - Greeting:  
We command you to summon George O. Barnes to appear  
as before our Circuit Court, on the first day of the next  
term thereof, to be held at Lacon, within and for the  
said county of Marshall, on the first Monday of Octo-  
ber next A. D. 1858, then and there in our said Court  
to answer George Simmons in a plea of assumpsit in  
damages at the sum of five hundred dollars as he says.  
Hereof fail not, and make due return of your doings  
hereon. Witness, James Wescott Clerk of our said

L.S.

Court, and the seal thereof, at Lareon  
this fifteenth day of September in the  
year of our Lord one thousand eight  
hundred and fifty eight.

James Wescott Clerk

Return

I have served this writ by reading the same to the  
within named George C. Barnes on this, the 16th  
day of September A. D. 1858, as within commanded.

Sheriff's Fees: H. L. Crane  
 Service, \$ .50 Sheriff of Marshall Co. Ills.  
 miles travel, 5  
 Return of this writ, 10 )  
 .65

Declaration

State of Illinois  
Marshall County, and Circuit Court thereof  
to the October Term A. D. 1858

George Simmons the plaintiff in this suit by Rich-  
mond & Burns his attorneys, complains of George  
C. Barnes the defendant in this suit, who has been  
summoned to answer the said plaintiff, of a plea  
of assumpsit: For that whereas the said defendant  
on the twenty second day of March in the year of  
our Lord one thousand Eight hundred and fifty  
Eight, at Lareon, to wit at the County of Marshall  
in the State of Illinois, made his promissory note

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in writing and delivered the same to the said plain-  
tiff and thereby, by the name and style of J. O. Barnes  
promised to pay to the order of the said plaintiff  
the sum of two hundred and ninety dollars in cur-  
rency, and one hundred and ten dollars in gold  
with ten per cent interest from the date of the said  
note - for value received - on or before the first day  
of September then next ensuing which period has  
now elapsed, and the said defendant then and  
there in consideration of the premises promised to pay  
the amount of the said note according to the tenor  
and effect thereof. And whereas also the said defen-  
dant on the third day of September in the year of our  
Lord Eighteen hundred and fifty eight at the County  
of Marshall and State of Illinois aforesaid was ind-  
ebted to the said plaintiff in the sum of five hundred  
dollars for money then & there lent by the plaintiff  
to the defendant at his request. And in five  
hundred Dollars for money then & there paid by the  
said plaintiff for the use of the defendant at his re-  
quest. And in five hundred dollars for money  
then & there received by the said defendant for the  
use of the plaintiff. And in five hundred dollars  
for money found to be due from the said defendant  
to the said plaintiff on an account then & there stated  
between them. And whereas the said defendant  
afterwards <sup>on the day and year last aforesaid</sup> in consideration of the premises respectively  
then and there promised to pay the said last men-  
tioned

#  
 1. oned several monies respectively to the said plaintiff,  
 2. iff on request. Yet he hath disregarded his prom-  
 3. ises and hath not paid any of the monies in this  
 declaration mentioned nor either of them nor any  
 part thereof, to the plaintiffs damages of five hund-  
 red Dollars and thereupon he brings suit vs.  
 Richmond & Barnes  
 Atty for plff "

" Copy of the note sued on  
 \$400. Lacon March 22<sup>d</sup> 1858

On or before the first day of September next I  
 promise to pay to the order of George Simmons two  
 hundred and ninety Dollars currency and one  
 hundred and ten Dollars Gold at 10 per cent. interest  
 from date for value Received

G. C. Barnes "

Copy of the account sued on  
 George C. Barnes

		To George Simmons	Dr.
1858	Sept 3	To money lent	\$500.00
"	"	" " rec <sup>d</sup> by Deft. for use of plff	\$500.00
"	"	" " paid by plff for use of Deft	\$500.00
"	"	" " found to be due <sup>plff</sup> on acct. stated	\$500.00

Endorsed, Filed September 15, 1858.

James Wescott Clerk "

Tuesday October 5th. A.D. 1858

George Simmons  
vs.  
George O. Barnes

Assumpsit

This day came the Plaintiff by Richmond & Burns his attorneys and on their motion a Rule is entered by the court requiring the defendant to plead herein by Friday morning.

Rule to Plead

Geo. Simmons  
vs.  
G. O. Barnes

In Ct. Ct. of Marshall Co. and of the October Term A.D. 1858  
Assumpsit

Demurres to 1st count in Declaration

And now comes the said Defendant and defends the wrong and injury when he and says that the matters and things contained in the said Piffs. Declaration as therein set forth are not sufficient in Law for the said Piff. to have or maintain his said action thereof against him, and this he is ready to verify, wherefore he prays Judgment &c

G. O. Barnes for Deft.

And the said Deft. shows to the Court the following special causes of Demurrer

- 1 The said Declaration does not allege a special assumpsit. J. O. B.
- 2 The said Declaration does not show to whom Deft. promised to pay the said note. J. O. B.

Endorsed "Filed October 6<sup>th</sup> 1858

James Wescott Clerk"

Thursday October 7<sup>th</sup> A.D. 1858.

Order overruling  
Demurrer

"George Simmons  
vs.  
George O. Barnes

} Assumpsit

This day this cause come on to be heard upon the demurrer of the defendant to the declaration of the plaintiff filed here, and was argued by counsel, and the court being fully advised in the premises doth order that said demurrer be and the same is hereby overruled. Whereupon on motion of the plaintiff the defendant is ruled to plead by to morrow morning."

Pleas

"Geo. Simmons  
vs.  
Geo. O. Barnes

} In the Circuit Court of Mars.  
"hall County and October Term  
A.D. 1858.  
Assumpsit.

And now comes the said Defendant and defends the wrong and injury when &c and says that he did not undertake or promise in manner and form as the said Plff. hath in his said Declaration thereof complained against him, and of this he puts himself upon the country &c.

By Gibbons & Miller  
his attys. "

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" Messrs. Richmond & Burns, attys. for Plff.

Take notice  
that the above named defendant on the trial of this  
cause will give in evidence, and insist that the above  
named Plaintiff before and at the time of the comm<sup>o</sup>,  
"Encement) of this suit was and still is indebted to  
the said defendant in the sum of seven hundred Doll<sup>rs</sup>,  
"ars lawful money of the United States for the use  
and occupation of a certain dwelling house, buildings  
and land, with the appurtenances of the said Plff. by  
the said Deft. and at his special instances and req<sup>u</sup>,  
"uest), and by the sufferance and permission of the said  
Deft. of the said Deft. for a long time then elapsed,  
had. held, used, occupied, possessed and enjoyed;  
and also in the like sum of seven hundred Dollars  
for the work, care, labour, diligence and attention  
and attendance of the said Deft. by him the said  
Deft. and his servants, before that time done, per<sup>o</sup>,  
"formed and bestowed, in and about the business of  
\* the said Plff. and for the said Plff. and at his re<sup>q</sup>,  
"quest), and for divers materials and other necessary  
things by the said Deft. before that time found and  
provided, and used and applied in and about the  
said work and labour for the said Plff. at his like  
request; and also for divers goods, wares, and mer<sup>ch</sup>,  
"chandizes, sold and delivered by the said Deft. to the  
said Plff. at his like request; and for the money by  
the said Deft. before that time lent and advanced

to, and paid, laid out, and expended for the said Plff. at his like request; and for other money by the said Plff. before that time had and received to and for the use of the said Deft. and for other money due and owing from the said Plff. to the said Deft. for interest upon and for the forbearance of divers large sums of money due and owing from the said Plff. to the said Deft. and by the said Deft. forbore to the said Plff. for divers long spaces of time before then elapsed, at the like special instance and request of the said Plff; and for other money due and owing from the said Plff. to the said Deft. upon an account stated between them; and said Deft. will insist and prove upon the trial of this cause, that the said note in the said Plffs. Declaration mentioned was given in consideration of four hundred Dollars ordered and appointed by the Plff. to be paid to this Deft. by W. L. Crane & Co. on or about the 22<sup>d</sup> day of March A. D. 1858, at the County of Marshall and State of Illinois, and that this Deft. duly demanded of said W. L. Crane & Co. the said sum of money on the 23<sup>d</sup> day of March A. D. 1858 and at the place aforesaid, and that the said W. L. Crane & Co. neglected and refused to pay to this Deft. the said sum of money or any part thereof, of which the said Plff. on the day and year and at the place aforesaid had notice: and that the said Plff in consideration of the premises then and there and at the time and place last aforesaid released this

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 Deft. from the several promises in the said note in the  
 said Declaration of the said Plff. mentioned, and then  
 and there instructed this Deft. and requested this Deft.  
 to try to obtain said money from said W. L. Crane & Co  
 and that he said Plff. would only require of this Deft.  
 a just and fair account of the moneys, credits, or effe-  
 cts that this Deft might obtain from said W. L. Crane  
 & Co, and that in consideration of the reported failing  
 circumstances of the said W. L. Crane & Co the said  
 Plff. authorized this Deft. to use the discretion of this  
 Deft. as to the course that should be taken to try to  
 obtain the said money of the said W. L. Crane & Co,  
 and authorized this Deft to change at discretion the  
 nature or security or form of the liability of said W. L.  
 Crane & Co and this Defendant avers that he has  
 never obtained of said W. L. Crane & Co or in any way  
 received any of said money except the sum of One  
 hundred Dollars; and that this Deft will set off  
 and allow to the said Plff on the said trial, so much  
 of the said sum of seven hundred Dollars, so due and  
 owing from the said Plff to the said Deft. against the  
 said sum of One hundred Dollars so obtained of W. L.  
 Crane & Co, and against any demand of the said  
 Plff to be proved on the said trial, as will be sufficient  
 to satisfy and discharge such demand, according to  
 the form of the statute in such case made and provided,  
 Dated this 7th. day of October A. D. 1858.

By Gibbons & Miller his attys.

This Plea Withdrawn

"And for a further Plea in this behalf by leave of the court first had and obtained &c. to the first count in the said Pffs. Declaration mentioned, the said Deft. says actis non because he says that after the making of the note in the said count mentioned and before the commencement of this suit, to wit, on or about the 20<sup>th</sup> day of March A. D. 1858. at the County of Marshall aforesaid the said Pff. did remise release and forever quit claim unto the said Deft the said several promises and undertakings in the said note mentioned, and this the said Deft. is ready to verify, wherefore he prays judgment if the said Pff. ought to have or maintain his aforesaid action thereof against him &c.

By Gibbons & Miller his attys "

Endorsed " Filed Oct. 8<sup>th</sup> 1858

James Wescott Clerk "

Saturday, October 9<sup>th</sup> A. D. 1858

George Simmons

vs.

George O. Barnes

Assumpsit

This day again came the plaintiff by Richmond and Burns his attorneys and entered a motion to strike from the files the notice of set off and special plea of the defendant, whereupon came the defendant and entered a <sup>cross</sup> motion to withdraw special plea.

Hears before the Circuit Court of Marshall County in the State of Illinois at a Term thereof began and held at the Court House in the City of Lacon in said County on Monday the 24th day of January in the year of Our Lord one thousand eight hundred and fifty nine. Present the Hon M. Ballou judge of the 23<sup>rd</sup> Judicial Circuit of the State of Illinois presiding, George W. Stipp, States attorney for said judicial Circuit. Thomas Ellis, Sheriff of said Marshall County and James Mescott Clerk of said Circuit Court.

Wednesday February, 9th. A. D. 1859

Order for continuance  
George Simmons }  
                          as }  
George O. Barnes }

Assumpsit.

This day came the plaintiff by Richmond & Burns his attorneys and on their motion it is ordered by the court that this cause be continued but at the plaintiffs costs. Therefore it is considered that the said defendant recover of the plaintiff his costs occasioned by this continuance and that he have execution therefor.

Hears before the Circuit Court of Marshall County in the State of Illinois at a Term thereof began and held at the Court House in the City of Lacon in said County on Monday the second day of May in the year of Our Lord. One thousand eight hundred and fifty

present Hon. Mark Bangs judge of the 23<sup>d</sup> judicial Circuit of the State of Illinois presiding, Henry Miller, States attorney for said judicial Circuit, Thomas Ellis, Sheriff of said Marshall County and James Mosco, the Clerk of said Circuit Court.

Monday, May, 2<sup>d</sup> A. D. 1859

George Simmons }  
vs. } Assumpsit  
George O. Barnes }

This day came the defendant in person and by leave of the court for this purpose first had and obtained withdrawn his special plea filed herein.

Tuesday May, 3<sup>d</sup> A. D. 1859

George Simmons }  
vs. } Assumpsit.  
George O. Barnes }

This day again comes the plaintiff by Richmond O. Barnes his attorney and the defendant comes in his own proper person and the issues being joined herein whereupon it is ordered by the court that a jury be called to try the issues in this cause and thereupon a jury being called came to wit: Joshua J. Myers, George W. Mead, F. E. Towns, end, James Carey, Jeremiah Gibbs, Joseph M. Taylor, Walter Baxter, Abram Gardner, Samuel Haynes, Rich

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ard Hunt, Hiram Dronenburg & Daniel Ketchum  
 true good and lawful men who were duly Empannell'd,  
 Ed and sworn well and truly to try the issues in this  
 cause and a true verdict render according to the Evidence  
 and after the defendant had introduced the evidence of  
 Richard Maxwell & Alfred R. Wilcox the plaintiff by  
 his counsel moved the court to exclude the same from  
 the jury and the court having considered the motion and  
 being sufficiently advised in the premises doth order that  
 the same be sustained and that the evidence of said  
 Maxwell & Wilcox be excluded - and the jury after  
 hearing the remarks of counsel and the instructions  
 of the court retire to consider of their verdict and upon  
 coming into court say we the jury find the issues fo-  
 rmed in favor of the plaintiff and assess his damage at  
 the sum of four hundred and twenty nine dollars and  
 sixty six cents. Whereupon came the defendant and ent-  
 ered a motion for a new trial herein.

Saturday May 7 A. D. 1859

George Simmons }  
 vs. } Assumpsit  
 George O. Barnes }

This day came the parties  
 and this cause come on to be heard  
 upon the motion of the defendant for a new trial here-  
 in and was argued by counsel and the court being  
 now fully advised in the premises doth order that

said motion be sustained, and that a new trial be granted said defendant upon the payment of the costs taxed herein at this term and that said trial be had at this Term if the Plaintiff desires. Therefore it is considered that the said Plaintiff recover of the said defendant his costs taxed herein at this Term and that execution issue therefor.

Monday May 9<sup>th</sup>. A. D. 1859

Motion to plead over	George Simmons	} Assumpsit.	This day again came the defendant in person and en- tered a motion for leave to plead over.
	vs George O. Barnes		

Tuesday May 10<sup>th</sup> A. D. 1859

Leave to with- draw plea & notice	George Simmons	} Assumpsit.	This day again came the defendant and by leave of the court for that purpose first had and obtained with- draws his plea of the general issue and notice.
	vs George O. Barnes		

State of Illinois }  
Marshall County } ss

Plead

George Simmons } In the Circuit Court of Neas.,  
vs } "hall County + May Term A. D.  
George O. Barnes } 1859 - Ass.

G. O. Barnes

the said defendand comes in his own proper person and by leave of the court first had + obtained thereto defends the wrong and injury when &c and says that he did not undertake or promise in manner and form as the said George Simmons hath in his declar<sup>ation</sup> complained, and of this he puts himself upon the country &c

G. O. Barnes per se

2. And for farther Plea in this behalf by leave of the Court first had &c. the said Deft says as to the first count in Plffs declaration mentioned actio now because he says that after the making of the said Note in the first count of the said Plffs declaration mentioned and on or about the 20<sup>th</sup> day of March A. D. 1858, at the County of Marshall aforesaid the said Plff. in consideration of four hundred Dollars which the said Plff. then + there<sup>to wit at the time + place aforesaid</sup> released to the said Plff. did remise, release and forever quit claim unto the said Deft. the said several promises and undertakings in the said first count mentioned +

this he is ready to verify, wherefore he prays judgment  
 if the said Plff ought to have or maintain his  
 aforesaid action thereof against him &c.

G. O. Barnes per se

3 And for further plea in this behalf, by leave  
 of the Court &c as to first count in Plffs dec. menti-  
 oned Deft says actio non because he says that the  
 said note in the said count mentioned was given  
 without any good & valuable consideration, because  
 he says that the said note was given for four hundred  
 dollars which the said Plff agreed to pay to Deft. on  
 the day of the date of the said note and which money  
 the said Plff did not pay to this deft and has not yet  
 paid to this Deft, except the sum of one hundred and  
 Eighteen dollars and ninety cents Paid this Deft by Mr.  
 L. Crane & Co agents of Plff. and therefore the said  
 Deft. says that the consideration as to the other \$ 281.10  
 of said note has failed, & this he is ready to verify  
 wherefore he prays judgment &c

G. O. Barnes per se

4 For further plea, by leave &c as to first count  
 in Plffs declaration mentioned, Deft says actio non  
 because he says that the said note in first count of  
 Plffs declaration mentioned was given in consideration  
 Plff would procure and cause Mr. L. Crane & Co  
 Bankers at the said County of Marshall to pay to Deft.

Plff. paid to this Deft. by Mrs L. Crane & Co his agent, and Deft says that Plff. well knew at the time of making said representations & receiving of said note that the said money could not be obtained of said Mrs L. Crane & Co and that Plff. would not pay same to Deft. wherefore said Deft says that the said note was fraudulently obtained & this he is ready to verify wherefore he prays judgment &c.

G. C. Barnes pro se

6. And for further plea by leave &c the said Deft. says actis non because he says that before and at the time of the commencement of this suit to wit at the said County of Marshall, said Plff. was and still is indebted to the said Deft in a large sum of money to wit the sum of four hundred doll., as for work and labor, care diligence & attendance of the said Deft. by him the said Deft. & his servants, before that time done, performed & bestowed in & about the business of the said Plff. & for the said Plff. & at his request & for divers materials & for other necessary things by the said Deft. before that time found & provided & used & applied in & about the said work & labor for the said Plff. at his like request, & also for money by the said Plff. before that time had & received to & for the use of the said Deft. and for other money due & owing from the said Plff. to the said Deft & by the said Deft. forborne to the said

Plff. for divers long spaces of time before then elapsed at the like special &c. & for other money due & owing from the said Plff. to the said Deft upon an account stated between them. & this he is ready to verify when & where & wherefore he prays judgment &c

G. O. Barnes per se

Endorsed "Filed May 10. 1859.  
James Wescott Clerk"

George Simmons } Marshall County Circuit Court  
vs } of the May Term A.D. 1859.

Replication  
to 6<sup>th</sup> plea

Geo. O. Barnes }  
And now comes the said plaintiff  
By Richmond & Burns, his attys. and for Replication  
to the plea by the said defendant sixthly above pleaded.  
said says precludi non because he says that at the time  
when & he was not and now is not indebted to the  
said defendant in manner and form as he hath above  
thereof in said sixth plea alledged and and this he  
prays may be enquired of by the Country &c.  
Richmond & Burns for plff.

Demures to  
2<sup>d</sup> 3<sup>d</sup> 4<sup>th</sup> & 5<sup>th</sup>  
Pleas

And as to the 2<sup>d</sup> 3<sup>d</sup> 4<sup>th</sup> & 5<sup>th</sup> pleas by the said defendant  
above pleaded the said plaintiff says that they the said  
pleas are each separately and severally (not jointly)  
insufficient in law and that he is not bound by law  
to answer the same and this he is ready to verify when



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the consideration of the note in the first count of the plaintiff's declaration mentioned has not partly failed in manner and form as the said defendant hath in said plea alledged and this the said plaintiff prays may be Enquired of by the Country &c.

Deft doth the like  
Barnes

Richmond & Burns  
for Plff

And for replication to the plea by the said defendant fifthly above pleaded the said plaintiff says precludi now because he says that at the time when &c he did not and that at any other time he did not make the said supposed fraudulent representations nor any nor either of them as is in the said plea alledged and this he prays may be Enquired of by the Country &c.

Deft doth the like  
Barnes

Richmond & Burns  
attys for plaintiff.

And for a further replication to the plea by the said defendant fifthly above pleaded, by the leave of the court for that purpose first had and obtained, the said plaintiff says precludi now because he says that the said defendant did procure from the said William L. Crane & Co all of the said sum of four hundred, Except the said sum of one hundred and eighteen Dollars and ninety cents as is in the said plea alledged, and this the said plaintiff prays may Enquired of

by the Country &c  
Deft doth the like  
Barnes

Richmond & Burns  
for plaintiff

Endorsed Filed May 11<sup>th</sup> 1859.

James Westcott Clerk

Wednesday, May 11<sup>th</sup> A. D. 1859

George Simmons

vs.

George O. Barnes.

Assumpsit.

Order Sustaining

Demurrer as to

2<sup>d</sup> & 3<sup>d</sup> Pleas

+ Overruled as to

4<sup>th</sup> & 5<sup>th</sup> Pleas

Leave to withdraw

Demurrer as to 4<sup>th</sup> & 5<sup>th</sup>

Pleas + to Reply

Double

This day this cause came on to be heard upon the demurrer of the Plaintiff to the Second, third, fourth and fifth pleas of the defendant filed herein, and was argued by counsel, and the court, being now fully advised in the premises, doth order that said demurrer be sustained as to the second and third pleas, and overruled as to the fourth and fifth pleas. Whereupon on motion of the Plaintiff by his attorneys leave is granted him to withdraw his demurrer as to said fourth and fifth pleas and to reply by double to said fourth and fifth pleas. And the issues being joined herein whereupon it was ordered by the Court that a jury be called to try said issues and thereupon a jury being called came to wit: Daniel S. Green, Isaac Camery, David Adams, Samuel Freeman, James Case, Abram Gardner, James W. S. E. Thompson, E. L. Perry, A. Cunningham, James Stratton & Henry Scott twelve good and lawful men who were duly empannelled and sworn well and truly to try the issues in this cause and a true verdict render according to the evidence, and the hour of adjournment having arrived the further trial of this

cause is postponed until to morrow morning.

Thursday May 12<sup>th</sup> A. D. 1859

George Simmons

vs

George O. Barnes

Assumpsit.

Verdict +  
Motions for new trial

This day again came the parties and conclude the evidence after the hearing of which, the arguments of counsel and the instructions of the Court the jury retire to consider of their verdict and upon coming into court say we the jury find the issues for the plaintiff and assess his damages at the sum of four hundred and nineteen doll. " and, whereupon came the Defendant and Entered a mo- " tion for a new trial herein.

Friday May 13<sup>th</sup> A. D. 1859

George Simmons

vs

George O. Barnes

Assumpsit

Order overruling Motion  
for new trial +  
Judgm ent

This day this cause come on to be heard upon the motion of the Defendant for a new trial herein and was argued by counsel and the court being fully advised in the premises doth order that said motion be and the same is hereby overruled. It is therefore considered by the Court that the said George Simmons have and recover of the said George O. Barnes the said sum of four hundred and

nineteen dollars his damages assessed by the jury aforesaid, and also his costs and charges in and about his suit in this behalf expended, and it is ordered that execution issue therefor.

Monday May 16<sup>th</sup> A. D. 1857

George Simmons

vs

George O. Barnes

Accompit.

Prayer for an Appeal

This day again came the defendant and prayed an appeal to the Supreme Court of this State which appeal is allowed upon the Defendants filing a bond in the sum of One thousand dollars conditioned according to law with Silas Ramsey or G. L. Fort as security within thirty days

G. Simmons

vs

G. O. Barnes

In Circuit Court of Marshall County

+ May Term A. D. 1857

Accompit.

Bill of Exceptions

As it remembered that on the trial of this cause the Plff. to maintain the issues on his part offered in evidence a note which having been lost is admitted to be as follows:

\$400.

Doon. March 22<sup>d</sup> 1858

Or as before the first day of September next I promise to pay to the order of George Simmons Two hundred and ninety Dollars Currency and one hundred and

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ten dollars Gold at ten per cent interest for value received  
(Signed) G. O. Barnes,

which said Copy was admitted in evidence without objection.

Plff here rested.

Defendant then called Richard H. Maxwell who after being sworn testified that about a year ago he heard a conversation between Plff & Def. that he knew the parties to this case. Def said he had borrowed of \$400. of Plff. and had given him a note for it but that he, Def. had not got the money; that Plffs money was in the Bank of Wm L. Crane & Co & Def. feared it would be impossible to get the money out of the Bank as he believed it was insolvent; that Def had been unable to get the money out; that he had so informed Plff. before that time and Def wanted Plff to give up the note which had been given; that Plff said nothing denying the statements of Def. but refused to give up the note, but told Def to get all money or effects he could, do the best he could to get the money out of the Bank of Crane & Co & Plff. would do what was right about it.

Def. then called Alfred P. Wilson who after being sworn testified to the same conversation and substantially as testified to by Maxwell; but says he cannot recollect whether Plff said he would do what was right

about it. (if Deft did not get all the money out of the Bank of Crane & Co) or whether he said he would only require of Deft. a fair account of the money or effects Deft. might obtain of Crane & Co, he did say the one or the other substantially.

Deft rested his defence

Plff then called one Henry Crane who was sworn, while Crane was being sworn Plff gave Deft following notice.

Geo Simmons  
 vs  
 Geo. O. Barnes

To Geo. O. Barnes the above named defendant. Take notice that you are required to produce a certain note & deed of Trust made by you to Geo Simmons on the 18th. Dec 1857 for \$400. the note being described in said deed of Trust which deed is recorded in Book I of the Records in the Recorder's office of said County at <sup>Pages</sup> 641 & 642  
 May 11<sup>th</sup> 1859

Richmond & Burns  
 Plffs attys.

& testified that he was Clerk in the Bank of Wm L. Crane & Co during the fall of 1857 & winter of 1858 that on the 18<sup>th</sup> day of Decr 1857 Plff & Deft came to the said Bank & that Plff & Deft & Wm L. Crane had some conversation; that he cannot recollect any

of it; that the Books of the Bank show that Jeff  
gave up his certificates of Deposit No.  
& that on same day deft. is credited with an amount  
equal to these certificates of Deposit; that the Books  
of the Bank show that Deft has drawn out all the  
money from the Bank;

"Witness here produced the following Certificates of  
Deposit and Checks"

"Certificate of Deposit"

No. 1562

Exchange Bank  
W. L. Crane & Co

Lacon, Ill. 16 Nov. 1857

Geo Simmons has deposited in this office One  
Hundred & Eleven Dollars specie to the credit  
of himself payable in like funds on the return of  
this Certificate properly endorsed.  
\$111.00 Specie to draw out if left 30 days W. L. Crane & Co

Endorsed "George Simmons"

"Certificate of Deposit"

No. 1561

Exchange Bank  
W. L. Crane & Co

Lacon Ill. 16 Nov 1857

Geo. Simmonds has deposited in this office Two Hun-  
dred & Seventy nine Dollars Cy. to the credit of himself  
payable in like funds on the return of this certificate pro-  
perly endorsed. W. L. Crane & Co

\$279.00 to draw out if left 30 days

Endorsed "George Simmons"

\$390.75

No.

Lacon Ill. Dec. 19 1857

Exchange Bank

W. L. Crane & Co

In currency pay Robt Weaver or bearer Nineteen Doll.

" and

\$19.00

G. O. Barnes "

"

No.

Lacon Ill. Dec. 21 1857

Exchange Bank

W. L. Crane & Co

In specie pay \_\_\_\_\_ or bearer One Hundred & Dollars

\$100.

G. O. Barnes "

"

No.

Lacon Ill. Dec 21 1857

Exchange Bank

W. L. Crane & Co

In currency pay \_\_\_\_\_ or bearer five Dn Dollars

\$5.00

G. O. Barnes "

"

No.

Lacon, Ill. Dec 21. 1857

Exchange Bank

W. L. Crane & Co

In currency pay \_\_\_\_\_ or bearer Two Hundred & Seven

"teen Dollars.

\$217

G. O. Barnes "

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"  
No.

Lacon Dec<sup>r</sup>. 23<sup>d</sup> 1857  
Exchange Bank  
W. L. Crane & Co.

Pay in currency Ges. Woodburn or bearer five <sup>100</sup> Dollars  
G. O. Barnes "

"  
No.

Lacon, Ill. Jan<sup>y</sup> 9<sup>th</sup> 1858  
Exchange Bank  
W. L. Crane & Co.

In currency pay John Doe or bearer Three Dollars  
\$ 3<sup>00</sup>  
G. O. Barnes "

"  
No.

Lacon, Ill. Jan<sup>y</sup> 13<sup>th</sup> 1858  
Exchange Bank  
W. L. Crane & Co.

In currency pay John Pipet or bearer Twelve <sup>50</sup> Dollars  
\$ 12<sup>50</sup>  
G. O. Barnes "

"  
No.

Lacon, Ill. 27 Jan<sup>y</sup> 1858  
Exchange Bank  
W. L. Crane & Co.

In currency pay Myself or bearer Thirty Two <sup>77</sup> Dollars  
\$ 32<sup>77</sup>  
G. O. Barnes "

\$ 394.27

"Witness states that he has no knowledge of his own that Deft ever received any of the money on the checks that he supposes as from the Books and the possession of the Checks by the Bank, and from these only; that

the Books of the Bank show that Deft has drawn out all the money from the Bank: that the checks appended to have been drawn by Deft & paid by the Bank in the Course of regular business,

Plff here offered in evidence that part of the Books of the Bank of Crane & Co, proven by said witness to be the Books of said Bank, containing the account of Deft, which account in said Books was as follows,

"G. O. Barnes"

1857				Dr	Cr
Dec	18	By	Cy		394 24
"	19	To	Cy	19	
"	21	"	Specie	100	
"	"	"	Cy	222	5. 217
1858	23	"	"	5	
Jan	9	"	"	3	
"	13	"	"	12 50	
"	24	"	"	32 74	
				\$ 394. 24	\$ 394. 24

and also offered in evidence the certificates No. in favor of George Simmons and also offered in evidence the checks drawn upon the Bank by said Deft to all of which, to wit, to the introduction of that part of the Books of the Bank containing the account of Deft, and to the introduction of the certificates No. in favor of Plff and to the introduction of each and every one of the said checks, the Deft then and there in open Court objected,

which objection being overruled by the Court the Deft  
then and there in open Court excepted to the opinion  
of the Court. Plff. here produced affidavit of  
showing a certain deed of Trust to be  
in possession of Deft. as follows:

State of Illinois }  
Marshall County }

George Simmons }

vs

George O. Barnes }

John Burns being first duly  
sworn deposes & says that he is  
informed & verily believes that the deed of Trust made  
by the defendant to the plaintiff describing the note  
herein sued on & said note aforesaid made the 18<sup>th</sup> Dec.  
1857 are in the possession & under the control of the defen-  
dant Barnes that the same were on or about the 22 day  
of March A.D. 1858 delivered by the plaintiff herein to  
said defendant as he believes and that he said defendant  
has had due notice to produce the said deed & note  
on the trial of this cause to be used in evidence on the  
11<sup>th</sup> day of May A.D. 1859

Subscribed and sworn to  
before me this 12 day of May  
A.D. 1859

James Wescott Clerk.

John Burns

Plff then offered in evidence a Book purporting to

contains a Trust deed dated on the \_\_\_\_\_ day of Decr 1857  
 Executed by said Deft to Plff as follows.

"This Indenture, made this Eighteenth day of Decemr.  
 Filed Dec 19 1857 at 9 A.M. and fifty seven between George O. Barnes of the County  
 James Wescott of Marshall and State of Illinois - of the first part, and  
 Clerk George Simmons of the same place of the second part,

Witnesseth, that the said party of the first part is just-  
 ly indebted unto the said party of the second part - in the  
 sum of Four hundred Dollars (Two hundred and ninety  
 currency) secured by one certain promissory Note of even  
 date herewith payable on the 1<sup>st</sup> day of March A.D. 1858  
 Now, therefore, these presents witness, that the said party  
 of the first part, in order to secure the prompt and punctu-  
 al payment of the said sum of money herein before spec-  
 ified, according to the tenor and effect, and in consid-  
 eration of One dollar to the said party of the first part pa-  
 id, the receipt whereof is hereby confessed, does hereby  
 grant, bargain, sell and convey unto the said party of the  
 second part, and to his heirs and assigns, all the following  
 described premises, situate, lying and being in the County  
 of Marshall and State of Illinois "To Wit,"

The East half of the South East quarter of section No.  
 thirty (30), in Township No Twenty nine (29), North of  
 Range No One (1) West of the third principal merid-  
 ian in Marshall County Illinois, and containing Eight-  
 ty acres more or less in trust. Together with, all and

singular, the tenements, hereditaments and appurtenances  
 thereunto belonging or in anywise appertaining  
 To Have and to Hold, the above described premises  
 unto the said party of the second part, and to his heirs  
 or assigns, in Trust, nevertheless, for the following purposes,  
 to wit. In Trust, in case default shall be made by the  
 said party of the first part, his heirs executors or adminis-  
 trators, to pay the said note above mentioned, according  
 to the tenor and effect thereof, then on application of  
 the said party of the second part or the legal holder or  
 holders of said note, and having first given fifteen days  
 notice, by publishing the same in a public Newspaper  
 printed in the County where said premises are situated  
 then it shall and may be lawful for the said party of the  
 second part or his executors, administrators or attorney  
 duly authorized to sell the same, or any part thereof, at  
 Public Sale, at such hour and place as The said party  
 of the second part, his executors, administrators or att-  
 orney may appoint, or to adjourn said sale from time  
 to time, and upon making sale as aforesaid, to make  
 and deliver to the purchaser or purchasers thereof a good  
 and sufficient Deed or Deeds of Conveyance, in the Law  
 for the same in fee simple, and out of money arising  
 from such sale after first paying all reasonable Expenses  
 growing out of the Execution of the trusts aforesaid, and  
 all taxes and assessments levied on the premises aforesaid  
 or on such part thereof as may be sold for the purpose  
 aforesaid to pay the said George Simmons or representatives

Executors or administrators, or the legal holder or holders  
 thereof, the amount which may then be due on said notes  
 above mentioned for principal and interest, rendering the  
 surplus of the proceeds of such sale (if any there should  
 be) unto the said party of the first part, or his heirs, Ex-  
 ecutors or administrators. In case no default is made  
 in the payment of the aforesaid notes ~~then~~ then this convey-  
 ance shall be null and void. In case the aforesaid notes and  
 all costs and reasonable expenses of the said Trust shall  
 be satisfied, by the sale of part of the premises aforesaid  
 then the title to and the right of entry in the unsold resi-  
 due of the premises aforesaid shall vest absolutely in  
 the party of the first part, and the said unsold residue  
 shall be fully discharged from all liens created by the  
 trust aforesaid, and the said George O. Barnes party of  
 the first part for himself and heirs, Executors and admin-  
 istrators, does hereby covenant to and with the said party  
 of the second part and his Executors or administrators  
 and to and with the purchaser or purchasers at the sale  
 aforesaid, that at the time of the encumbering and delivery  
 of these presents he is well seized of the premises above  
 conveyed as of an indefeasible estate of inheritance in the  
 law, in fee simple, and that the same are free from all  
 incumbrance, of what nature soever, and against all and  
 every person or persons lawfully claiming or to claim the  
 whole or any part thereof will For Ever Warrant and Defe-  
 nde, and that he will during the continuance of these  
 presents, pay all taxes and assessments levied on the

above described premises or any part thereof, before any advertisement or charges accrue against the said premises  
In Witness Whereof the said party of the first part has hereunto set his hand and seal the day and year first above written -

Signed Sealed and Delivered in presence of George O. Barnes (Seal)

State of Illinois }  
Marshall County } I, Silas Ramsey Notary Public for said County do certify that on this day personally appeared before me George O. Barnes whose name appears subscribed to the foregoing Deed of Trust as having executed the same, who is personally known to me to be the real person who and in whose name the acknowledgment is proposed to be made, and acknowledged the Execution thereof as his voluntary act and deed, for the uses and purposes therein expressed.

(S.S.)

Given under my hand and seal of office, at Lacon, this 18th day of December A.D. 1857  
Silas Ramsey Notary Public

I, George Simmons to whom the annexed deed of Trust was executed by George O. Barnes do in consideration of full payment thereof this day made to me, acknowledge full payment thereof and fully and forever discharge the same. Lacon March 22<sup>d</sup> A.D. 1858.

Witness  
Lewis P. Sutton George Simmons (Seal)

To the introduction of which evidence the Deft. then & there objected, which objection the Court overruled and the evidence was admitted. To which overruling of the objection by the Court & letting in of the evidence the Deft. then & there in open Court excepted.

Plff. then offered in evidence a paper purporting to be a Mortgage dated            day of March 1858 made by Deft. to Plff. & in the following words & figures to wit:

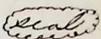
"This Indenture made this twenty Second day of March in the year of our Lord one thousand eight hundred and fifty eight. between George O. Barnes of Marsh, all County State of Illinois of the first part, and George Simmons of same place of the second part. Whereas the said party of the first part is justly indebted to the said party of the second part in the sum of Two hundred and ninety Dollars in currency and one hundred and ten Dollars in Gold secured to be paid by one certain promissory Note of even date herewith, and falling due on or before the first day of September next, drawing interest at ten per cent. Now Therefore. This Indenture Witnesseth, That the said party of the first part, for the better securing of the payment of the money aforesaid, with interest thereon, according to the tenor and effect of the said Note above mentioned, and also in consideration of the further sum of One Dollar to him in hand paid by the said party of the second part. the receipt whereof is hereby acknowledged. has granted, bargained, sold and conveyed

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and by these presents does grant, bargain sell and convey unto the said party of the second part, his heirs and assigns forever, all of the West half of the South East quarter of Section No. Thirty in Township No. Twenty nine North of Range No. One West in Marshall County and State of Illinois, and containing Eighty acres more or less. Together With, all and singular, the tenements, hereditaments and appurtenances thereunto belonging, and all the estate, right title, interest, property, possession claim and demand whatsoever, as well in law as in Equity, of the said party of the first part, of, in and to the above described premises and every part and parcel thereof, with the appurtenances, To Have and to Hold, all and singular, the above described premises, together with the appurtenances unto the said party of the second part, and to his heirs and assigns forever. Provided Always, and these presents are upon this Express Condition; that if the said party of the first part, his heirs, Executors <sup>or</sup> administrators shall well and truly pay, or cause to be paid to the said party of the second part his heirs, Executors, administrators or assigns, the aforesaid sum of money, with the interest thereon, in the manner specified in the above mentioned note according to the true intent and meaning thereof, then and in that case, these presents shall be void, otherwise to remain in full force. In Witness Whereof the said party of the first part has hereunto set his hand and seal the day and year first

above written,

Signed Sealed and Delivered in presence of }

George O. Barnes 

State of Illinois

Marshall County

I, James Weccatt Clerk of the Civ. Court within and for said County do certify that on this day personally appeared before me George O. Barnes whose name appears subscribed to the foregoing Mortgage as having executed the same, who is personally known to me to be the real person who and in whose name the acknowledgment is proposed to be made and acknowledged the execution thereof as his voluntary act and deed, for the uses and purposes therein expressed.



Given under my hand and seal of office  
at Sacon this 22<sup>d</sup> day of March AD 1858  
James Weccatt Clerk "

To the introduction of which evidence the Deft then and there objected, but the Court overruled the objection of the Deft. & let in the evidence, to which ruling of the Court the Deft then & there in open Court excepted, Plff. again rested.

Deft. then moved the Court to exclude from the consideration of the jury the evidence of the witness Crane, and the Books purporting to contain the trust deed dated day of Dec. 1857 and the certificates of Deposit

in favor of Plff. No. and the checks offered  
 in evidence and the part of the Bank's Books contain-  
 ing the account of Deft. and the Mortgage dated  
 day of March 1858 executed by Deft to  
 Plff. — which motion was overruled by the Court  
 and the Deft then and there in open Court excepted  
 to the ruling.

On cross examination Deft asked witness Crane  
 whether or not the Check for \$217 dated 21 Decr 1857  
 was not drawn for certificate of Deposit payable to  
 N. H. Purple and bearing number 1663. witness said  
 it was: Deft then asked if that certificate of Deposit  
 had ever been paid: Witness said he supposed it had  
 that he recollected nothing about it, but the Books  
 showed it was returned to the Bank on 1 Feb. 1858  
 & he supposes from that fact & from the certificate  
 of Deposit being in the custody of the Bank endor-  
 sed by Purple & Deft that it had been paid: Deft  
 asked witness to produce the certificate in favor of Pur-  
 ple No. 1663 for \$217 which was done — Deft asked  
 witness if Bank was in condition to pay depositors  
 at this time, answered it was, Ques: was it in  
 condition to pay depositors during last half of Decr  
 '57 & Jan'y & Feb'y '58? Ans: it was: Ques: had  
 the Bank other money to pay than Nebraska Currency?  
 Ans: it had. Ques: what amount of money had  
 Bank on hand Feb. 1, 1858? Ans \$3599.<sup>16</sup> Ques.

What kind of money was it? Ans: Do not recall,  
 "etc - cannot tell if it was all gold or all silver, or  
 all Nebraska Currency or what it was, Ques.

Do you know whether the Bank was embarrassed  
 during Dec'r 1857 + Jan'y + Feb'y 1858? Ans: No.

Ques: Do you not know that the Bank paid out  
 little or nothing during that time except Nebraska  
 currency? Ans: I do not. Ques: When did the

Bank become embarrassed to your knowledge?

Ans: in the Spring of 1858. Ques: you think this

Purple certificate for \$217 was paid? Ans: I do.

Ques: what makes you think so? Ans: the Books  
 show it returned + charged to certificate account  
 + the fact of its possession by the Bank. Ques:

Did the Bank about that time pay to any one man  
 at one time as large a sum as \$217 in anything  
 but Nebraska currency? Ans: It did, often. Ques:

Will you tell who to? Ans: I do not recollect.

Ques: cant you recollect one person? Ans: I cannot.

Ques: Will you look at your Books + see? Ans:

I cannot tell by them. Ques: Was Nebraska curren-

cy current here during the winter of 1858 and last  
 half of December 1857? Ans: There was a few days

sometime between April 1856 and the spring of 1858  
 when the Nebraska Currency was discredited, I

cannot tell when it was, but Nebraska Currency  
 was current nearly or quite all that time in this

community. Ques: Was Nebraska currency curr-

41 ent at Chicago and Peoria during the same time?  
Ans: It was. Deft. then put in evidence the certificate of Deposit in favor of Purple for \$217

Deft. then called G. L. Fort who was sworn & testified that in the latter part of Jan'y 1858 or early in Feb'y 1858 he saw Deft take to Bank of W<sup>m</sup> L. Crane & Co the Certificate of Deposit in favor of N. H. Purple No 1663 & that Deft tried to get the money on it: Deft. told Crane that Purple had returned to deft. the Certificate saying it was worthless to him (Purple): that Crane said to Deft that he had nothing in his Bank but Nebraska Currency and had not had for a long time: that he could pay nothing on it then except Nebraska Currency: that he would take the certificate of Deposits & give credit on the Books again and when he got good currency he would pay it that he expected to be in funds soon: that Deft. left certificate with Crane in this way and got no money or anything else therefor at that time. The certificate No 1663 for \$217 to Purple was here shown to witness Fort who identified the same as the one concerning which he had testified.

Deft Proved by Witness Maxwell, Wilson & M. F. Palmer that Nebraska currency was not current here during the last part of Decr 1857 & winter of 1858 at anytime - Deft Proved by witness Palmer that during winter of 1857-8 the Bank of Crane & Co paid

nothing but St Chacka out of the Bank, or but little else & that little or nothing else could be obtained of said Bank.

This was all the evidence in the case except some evidence as to value of legal services rendered by Deft. to Plff. proved to have been worth from fifteen to thirty dollars.

On the Part of the Plff. the Court instructed the jury.

George Simmons }  
                          vs }  
George C Barnes }

The Court instructs the jury on part of the plaintiff as follows.

Direct.

1<sup>st</sup> The Note read to the jury is evidence of indebtedness by the defendant to the plaintiff to the amount of the note & interest and unless the jury believe from the evidence that said note has been paid or discharged in some way, or that the consideration thereof has in part failed the jury should find for the plaintiff the amount of said note & interest thereon at ten per cent - unless the jury believe from the evidence that said Defendant is entitled to a set off respecting other matters about which evidence has been given.

2<sup>d</sup> If the jury believe from the evidence that the note offered in evidence was given by the defendant

to the plaintiff for money which the plaintiff had in the bank of Crane & Co and that after the giving of the note the plaintiff told the defendant to collect the money of Crane & Co or take what he could get of the bank & do the best he could in getting the money & he the plaintiff would do what was right, and also believe that the defendant received of Crane & Co any money property or other thing of value in full satisfaction or payment of the money in the Bank of Crane & Co then he the defendant is not entitled to any deduction from the amount of said note, unless the jury believe said Debt is entitled to a set off as to other matters in evidence.

3<sup>d</sup> The Checks in the possession of the Bank drawn by Barnes & signed by him are prima facie evidence of the payment of the amount thereof by Crane & Co to Barnes or to some person by his order.

4<sup>th</sup> The Books of accounts in connection with the checks and certificates read to the jury by plaintiff & in connection with the evidence of Henry Crane the Clerk of William L. Crane & Co are evidence to be taken into consideration by the jury in determining whether the defendant received the account due him in the bank.

5<sup>th</sup> If the jury believe from the evidence that the note sued on in this case was given for four hundred

died Dallas, to be got at the bank of W. L. Crane & Co  
 and that Simmons and Barnes went to-gather to the  
 bank and that Simmons gave up to the bank his  
 certificate of deposits for the money, for which the  
 said note was given, and that the money due upon  
 the certificates was then placed by the Bank to the  
 credit of Barnes with the knowledge and consent  
 of Barnes, and if the jury further believe from the  
 evidence, that it was agreed by Simmons and Barnes  
 that Barnes was to take the Bank for the said  
 money then the jury will find for the plaintiff the  
 full amount of the note, and if these are the facts  
 then it does not matter how Barnes afterwards got  
 his money, or whether he ever got it. The jury how-  
 ever will deduct from the amount due on the  
 note whatever amount the jury believe from the  
 evidence. Barnes is entitled to for any services  
 he may have rendered for Simmons.

X.

6<sup>th</sup> If the jury believe from the evidence that the defen-  
 dant received from William L. Crane & Co payment of his  
 account against the Bank in Nebraska currency and  
 if they believe the defendant received it as such payment it  
 is to be taken as payment although uncurrent at the time,  
 unless returned to said Crane & Co within a reasonable  
 time after it was so received, and the burden of proof  
 devolves upon the defendant to show that he has not recei-  
 ved his money and to show that he is not now liable to

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pay said notes.

Given

7<sup>th</sup> If the jury believe from the evidence that the defendant had received the money due from Crane & Co before he gave the note offered in evidence and that after the making of the note he represented to the plaintiff that he had not received the money of Crane & Co thereby led the plaintiff to believe that he had not received the money & that the plaintiff induced by said misrepresentations of the defendant agreed to reimburse said Barnes for any loss which he had sustained or might sustain by his transactions with Crane & Co such agreement would not be binding on Simmons

x Am

Given

8<sup>th</sup> If the jury believe from the evidence that Simmons made any arrangement with Barnes to bear any loss which Barnes had or might sustain in his transactions with Crane & Co such arrangement would not be binding on Simmons if there was no consideration received by Simmons for his promises or agreement even if the jury believe that Barnes may have sustained a loss by Crane & Co in his transactions with the Bank of Crane & Co "

to the giving of which instructions the Dept then and there objected which objection the Court overruled & gave the the same to the jury.

The Deft. then asked the Court to instruct the jury on the part of Deft. as follows:

1. The jury will not allow the Plff. the full amount of the note offered in evidence if they believe from the evidence in the case that the consideration of said note partly failed.

2. If the jury believe from the evidence that the consideration of said note partly failed and that Deft. received some advantage for said note, then the jury will find for Plff. on account of said note such sum only as the jury find from the evidence that the Deft. was benefitted by the giving of said note.

3. If the jury believe from the evidence that the Plff. was guilty of fraud in obtaining said note then the Plff. cannot recover upon said note.

4. If the jury believe from the evidence that Plff. represented to Deft. that he had four hundred Dollars in the Bank of Crane & Co which Plff. would pay to Deft. or cause to be paid to Deft. if Deft. would give to Plff. the note offered in evidence, and if the jury believe from the evidence that the Plff. knew at that time he could not get the money of Crane & Co. and if the jury believe from the evidence

that the Deft gave the said note relying upon the representations of Plff. then the jury are instructed that all of such facts & circumstances are for their consideration in determining whether plaintiff is guilty of fraud upon the Deft.

5. If the jury believe from the evidence that at any time within five years prior to the commencement of this suit the Plff owed to Deft \$400 or any other sum, then the jury will allow Deft such sum unless the jury believe from the evidence that such sum has been paid to Deft.

6. When a debt is shown to be due the law presumes in the absence of proof it is still unpaid, until a period of years, transpires which bars it by the statute of limitations and the jury are instructed that the statute of limitations has nothing to do in this case.

7. That if the jury believe from the evidence that Barnes never received the money for the checks offered in evidence by the plaintiff - then the possession of the checks by W. L. Crane & Co is not conclusive evidence that Barnes had received the money for them, but is only such evidence as may be impeached or contradicted.

8<sup>th</sup> If the jury believe from the evidence that the check dated Dec. 21, 1857 for \$217. - was drawn for and given to W. L. Crane & Co for the certificate of deposit of same date for \$217. to St. H. Suple, and that afterwards Barnes returned said certificate endorsed by Suple to Crane & Co on or about the 1<sup>st</sup> of Feb. 1858 & that Barnes got no money or other valuable thing for said Suple certificate, then the jury will not charge Defendant with said check of \$217 as offered in evidence - provided the jury further believe from the evidence that the arrangement was between the Plaintiff and Defendant, that the Defendant should be required to account for only what money he actually received - from W. L. Crane & Co.

Given

9. Although Simmons might have surrendered to the Bank his evidences of credit, still this would not release Simmons from paying to Barnes any money he owed to him unless Barnes agreed to take the Bank instead of Simmons.

Given

10. The jury are instructed that a new note is not evidence of a settlement of prior accounts

x The court refused to give the tenth instruction of the Deft. as asked by Deft and instead thereof gave the following.

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Given

" 10 The jury are instructed that a new note is not conclusive evidence of a settlement of prior accounts. "

To which refusal to give 10<sup>th</sup> Instruction and qualify-  
ing the same the Dept then and there in open Court  
objected & Excepted. "

The jury then retired to consider of  
their verdict and after considering of the same came  
into Court and rendered the following verdict:

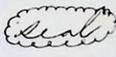
"We the jury find the issues for the plaintiff  
and assess his damages at the sum of four hundred  
and nineteen dollars. "

The Dept then moved the Court  
to set aside the verdict and grant the Dept. a new  
trial for the following reasons.

- 1 The court admitted improper testimony for  
the Plff.
  - 2 The Court gave improper instructions for  
Dept.
  3. The court improperly qualified instruction  
asked by Dept.
  - 4 The verdict is against the law
  - 5 The verdict is against the Evidence. "
- G. O. Barnes  
for himself. "

The Court overruled the motion of Dept for new trial

and rendered judgment on the verdict in favor of  
 Plff. to which ruling of the Court in refusing to set  
 aside the verdict and in rendering judgment thereon  
 the Deft then & there in open court excepted and  
 prayed an appeal to the supreme court of the State of  
 Illinois which appeal was granted and the Court signs  
 this bill of exceptions for Deft this April 7. 1860

Mark Bangs 

Endorsed "Filed April 7, 1860"

James Wescott Clerk

Appeal Bond

Know all men by these presents that we George O  
 Barnes as principal and Silas Ramsey as security  
 are held and firmly bound unto George Simmons  
 his heirs executors, administrators and assigns in the  
 special sum of One thousand Dollars lawful money,  
 for the payment of which well and truly to be made we  
 bind ourselves, our heirs, executors and administrators  
 jointly severally and firmly by these presents. Signed  
 with our hands and sealed with our seals and dated  
 at Lacey this First day of June A. D. 1859.

The condition of this obligation is such that whereas  
 the above named George Simmons did at the May  
 Term A. D. 1859 of the Circuit Court of Marshall  
 County in the State of Illinois on the 13<sup>th</sup> day of said  
 May A. D. 1859, by the consideration of said Court

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recovers a judgment against the above bounden George O. Barnes for the sum of Four hundred and nineteen Dollars damages and costs of suit, from which judgment the said George O. Barnes has prayed an appeal to the supreme Court of the State of Illinois, and which appeal has been allowed: Now if the said George O. Barnes shall prosecute his appeal with effect and without delay, and shall well and truly pay or cause to be paid the judgments, costs, interest and damages in case the judgment shall be affirmed in the said Supreme Court, and shall abide by and perform whatever judgment or order may be rendered or made in the premises by the said Supreme Court upon the trial or dismissal of said appeal, then this obligation to be void, otherwise to be and remain in full force and virtue  
 Done at Lacon, June 7<sup>th</sup> 1859

George O. Barnes Seal  
 Silas Ramsey Seal

Endorsed

"Filed June 7. 1859 James Weccatt Clerk"

State of Illinois }  
 Marshall County }  
 I, James Weccatt Clerk of the Circuit Court in and for said County and State do certify that the foregoing is a correct transcript of the proceedings had and the

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papers on file in said Circuit Court in the suit  
of George Simmons against George O. Barnes  
as the same appears of record and on file in my  
office

In Witness Whereof, I hereunto set  
my hand and the seal of said Court  
at my office in Lacon in said County  
this 13<sup>th</sup> day of April A.D. 1860

James Wescott  
Clerk

Clerks fee for Transcript \$11.91

" " " Certificate 2.25

Paid by Geo O Barnes \$12.16

6161

State of Illinois, vs.

Supreme Court, Third Grand Division.

George O. Barnes

vs.

George Simmons.

Error to Marshall.

Afterwards, at the April Term, A. D. 1860, of the said Supreme Court, comes the said plaintiff in error, by Dickey & Wallace, his attorneys, and says, that in the record and process aforesaid it is manifestly error, to wit:

1st. The court below erred in sustaining the demurrer to defendant's 2nd and 3rd pleas.

2nd. The court below admitted improper evidence for the plaintiff below.

3rd. The court below gave improper instructions to the jury on the part of the plaintiff below.

4th. The court below refused the 10th instruction asked by the defendant below.

5th. The court below improperly qualified the 10th instruction on the part of the defendant below, and gave the same, so qualified, to the jury.

6th. The court below refused to set aside the said verdict, and grant a new trial.

7th. The court below gave judgment for the plaintiff below, when by the law of the land judgment should have been given for the defendant below.

And thus the said plaintiff in error is ready to verify; wherefore he prays that the judgment aforesaid may be reversed, and altogether for naught holden.

Dickey & Wallace,  
for plff in error.

Let supersedeas issue Bail \$600. Secured  
by Barnes surety

J. H. Eaton

~~452~~ 103-39

George O. Barnes  
vs. 50

George Simmons.

Transcript of Record  
and  
Assignment of Errors.

Filed May 21. 1860  
L. Deland  
Clk.