

No. 12867

Supreme Court of Illinois

Merrill

vs.

Randall

71641  7

162

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James G. Merrill
vs

Est Roy D. Randall

162

12667

1859

Prepared

1
Be it remembered, that on the 18th day of
January A. D. 1858, there was filed in the Clerk's of-
fice of the County Court of Peoria County, Illinois,
a Bond for costs, a Declaration and a Precept, which
in words and figures are as follows. To Wit;

" County Court of Peoria County,
February Term A. D. 1858.
" Leroy D. Randall } Assumpsit
" James L. Merrill }
" vs.
" James L. Merrill }

" We do hereby enter ourselves
" security for costs in this cause, and acknowledge our-
" selves bound to pay or cause to be paid, 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 at Peoria, this 18th day of January
" A. D. 1858.

" Purple & Prall "

" County Court, Peoria County,
" February Term A. D. 1858.
" State of Illinois, }
" Peoria County }
" 3rd.

" Leroy D. Randall the
" Plaintiff in this suit complains of James
" L. Merrill the Defendant in this suit of a
" plea of trespass on the case on premises For
" that whereas heretofore to wit on the 20th day

" of June A. D. 1857, at Pionia to wit, at the
" County aforesaid the said Defendant made his
" certain promissory note in writing and delivered
" the same to one Gilman Merrill and thereby then
" and there by the name and style of Jas. G. Merrill
" promised to pay to said Gilman Merrill, Two
" Hundred Dollars for value received with Interest
" at ten per cent it being for money loaned Forty
" days after ^{the} date thereof which period has now
" elapsed and the said Gilman Merrill then and
" there endorsed assigned and delivered the said
" promissory note to the Plaintiff of which the
" Defendant then and there had notice and in
" consideration of the premises then and there
" promised to pay the said sum of money in the said
" promissory note specified to the Plaintiff according
" to the tenor and effect of the said promissory note
" and of the said endorsement thereof,

" And also For that whereas afterwards to wit
" on the Twenty Ninth day of June A. D. 1857,
" at Pionia to wit at the County aforesaid the
" said defendant made his certain other promissory
" note in writing and delivered the same to one
" Gilman Merrill and thereby then and there by
" the name and style of "Jas. G. Merrill" promised
" to pay to the order of said Gilman Merrill, Nine
" Hundred Dollars value received with Interest
" at ten per cent it being for money loaned
" Ninety days after the date thereof which period has
" now elapsed and the said Gilman Merrill then
" and there endorsed assigned and delivered the
" said promissory note to the Plaintiff of which

1 the Defendant then and there had notice and in con-
2 sideration of the premises then and there promised to
3 pay the said sum of money in said promissory note
4 specified to the Plaintiff according to the tenor and
5 effect of said note and of the said endorsement
6 thereof

7 And also for that whereas afterwards to wit
8 on the Twenty Ninth day of June A.D. 1857, at
9 Perma to Wit at the County aforesaid the said
10 Defendant made his certain other promissory note
11 in writing and delivered the same to one Gilman
12 Merrill and thereby then and there by the name
13 and style of Jas. G. Merrill promised to pay to the
14 order of said Gilman: Merrill Five Hundred
15 and Sixty three Dollars and six cents with
16 Interest at ten per cent it being for money
17 loaned six months after the date thereof which
18 period has now elapsed and the said Gilman
19 Merrill then and there endorsed assigned and
20 delivered the said promissory ^{note} to the Plaintiff of
21 which the Defendant then and there had no-
22 tice and in consideration thereof then and
23 there promised to pay the said sum of money in
24 said promissory note specified to the Plaintiff
25 according to the tenor and effect of said
26 note and of the said endorsement thereof.

27 And also for that whereas afterwards to wit
28 on the Fifteenth day of January A.D. 1858
29 at the County aforesaid the said Defendant was
30 indebted unto the Plaintiff in the sum of
31 Five Thousand Dollars for money then and
32 there loaned by the Plaintiff to the Defendant

" at his request - and in the sum of Five Thousand
" Dollars for money then and there paid by the
" Plaintiff for the use of the Defendant at his
" request - and in the sum of Five Thousand
" Dollars for money then and there received by the
" Defendant for the use of the Plaintiff and in the
" sum of Five Thousand Dollars for money then
" and there found to be due from the Defendant to
" the Plaintiff on an account then and there stated
" between them - and therefore afterwards to wit on
" the day and year and at the County last afore-
" said the said Defendant in consideration of the
" said premises respectively then and there respect-
" ively promised to pay the said several last men-
" tioned sums of money respectively to the Plaintiff
" on request

" Yet though often requested so to do
" the Defendant has not paid the said several
" sums of money in the several count of this
" declaration mentioned nor any nor either of
" them nor any part thereof to the Plaintiff to
" his Damage Five Thousand Dollars and
" therefore he sues

Purple & Pratt
Plffs. Atty.

" Copy of Notes sued on & endorsement.

" \$200. Provia June 29th 1857
" Forty days after date I promise to pay to the
" order of Silman Merrill Two Hundred Dol-
" lars value received with interest at ten per

ant
" it being for money loaned
" J. G. Merrill
" Endorsed on back
" "Pay to Leroy D. Randall or order.
" Gilman Merrill"

" \$900.00 Peoria June 29th 1857.
" Ninety days after date I promise to pay
" to the order of Gilman Merrill Nine
" Hundred Dollars value received with interest
" at 10 per cent it being for money loaned,
" J. G. Merrill."
" Endorsed on back.
" "Pay to Leroy D. Randall or order.
" Gilman Merrill"

" \$63.00 Peoria June 29th 1857.
" Six months after date I promise to pay to the
" order of Gilman Merrill Nine Hundred and
" Sixty three ⁰⁶/₁₀₀ Dollars value received with
" Interest at ten per cent it being for money
" loaned J. G. Merrill."
" Endorsed on back
" "Pay to Leroy D. Randall or order.
" Gilman Merrill."

" Copy of account sued on
" James G. Merrill
" To Leroy D. Randall Dr.
" To Money paid \$5000.
" " Money lent 5000.
" " Money recd by you 5000.
" " Money due on settlement 5000.

George D. Randall 2 County Court 4
vs. 2 of Peoria County
James G. Merrill 2 Freeman Term
A.D. 1858.

Assumpsit
Damages \$5000.
Issue Summons to Sheriff of Peoria
County & oblige
Purcell & Prall.
Plffs atlys.

Endorsed on the back
George D. Randall
vs. James G. Merrill
Declaration
Filed January 18
1858.
Charles Kellogg clk.
per Geo. H. Kellogg atty.

And afterwards To Wit. on the same day,
there was issued from the Clerk's Office of said
Court, Summons, which in words and figures
is as follows, To Wit;
State of Illinois, ss.
Peoria County,
The People of the State of Illinois,
to the Sheriff of Peoria County - Saying:
We command you that you summon
James G. Merrill if he shall be found in your
County, personally to be and appear before the Court
by Court of said Peoria County on the first day of

the next Term thereof, to be holden at the Court
House in Peoria, in said Peoria County, on the first
Monday of February next 1858, to answer unto
Levy D. Randall in a plea of Trespass on the
case on promises, to the damage of the said Plaintiff
as he says in the sum of Five Thousand Dollars.

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

Witness, Charles Kettelle, Clerk of our said
Court, and the Seal thereof, at Peoria, afore-
said, this 18th day of January A.D. 1858.
Charles Kettelle Clerk,
per Geo H Kettelle dty.

Endorsed on the back

County Court Summons,
Peoria County Court,

Randall

vs
Merrill

State of Illinois,
Peoria County.)

Whereby served the writ, by reading
the same to two within named James G.

Merrill as above therein commanded;

January 20. 1858, J. H. Smith Sheriff.

Service	.50
Mileage	1.00
Returns	1.10
	1.60

Filed in County Court this 1st day of
February 1858,

C. Kettelle clerk

Purple & Chasl Attorney

And afterwards, to wit on the 30th day of
March A.D. 1858, there was filed in the Clerk's
office of said Court, "Plea" which in words and
figures are as follows, To wit.

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V. " State of Illinois. 3rd. Peoria County Court.
" Peoria County. 3rd. April Term 1858.

" Leroy D. Randall 3

" vs. 3
" James G. Merrill 3

" And now comes the
" said defendant by his attorneys and defends
" the wrong and injury when he and says that he
" did not undertake and promise in manner and
" form as the said Plaintiff hath above com-
" plained against him and of this he puts him-
" self upon the Country.

" And the said Plaintiff 3 Lindsay & Lander.
" doth the like. 2 for Deft.

" Pratt v Bonney
" for Plff.

" 2 And for a further plea in this behalf the
" Defendant says actio non because he says that
" the cause and causes of action in said declara-
" tion mentioned are one and the same and that
" the only cause and causes of action is and are
" the said several promissory notes and not
" other or different and that there was no con-
" sideration for the said notes nor either of them
" in this. Before the time of making said several
" promissory notes by defendant he the defendant
" purchased from Caleb Whittmore and Sand-
" ford Moon doing business under the firm name
" and style of Caleb Whittmore & Co. in the City
" of Peoria in said Co. State a certain

" Printing Establishment known as the Peoria
" Daily & Weekly Transcript Office and paid
" therefor a valuable consideration; and at the
" time of such purchase defendant further agreed
" with said Whittlemore & Co. that he would as-
" sume and pay off the debts then justly due
" from said Whittlemore & Co. on account of said
" Printing Establishment to various persons
" then owing.

" That said Defendant at the time
" of making the said purchase knew nothing
" in regard to the amount of indebtedness owing
" by said Whittlemore & Co. nor the persons to
" whom such indebtedness was due, and was
" forced to rely upon the information that he
" could obtain from the said Whittlemore & Co.
" relative to such indebtedness. That one
" James R. Murphy had been for a long time
" and was at the time of said said sale and
" purchase the Book Keeper of said Whittlemore & Co.

" That defendant was referred to said Mur-
" phy as such Book Keeper for information rela-
" tive to the indebtedness of said firm of Whit-
" temore & Co. That said James R. Murphy
" to whom defendant was referred as aforesaid
" then and there stated and represented to said
" defendant that said Whittlemore & Co. were in-
" debted to him said Murphy as Book Keeper
" aforesaid for services rendered as such Book
" Keeper in the amount of the said several prom-
" issory notes in said declaration described
" & sued on in this action, which statement
" representation defendant then believed to be

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" true, and relied upon the same and thereupon did
" execute the said several promissory notes to se-
" cure the said supposed indebtedness in the
" following manner. That is said Murphy
" stated to defendant that he was & had been
" for a long time indebted to various persons in
" large amounts of money then residing East
" and that he Murphy wanted to take the
" notes as aforesaid and make the same paya-
" ble to one Gilman Merrill and then have
" the same indorsed & assigned by said Gilman
" Merrill to the Plaintiff who was & is the
" brother in law of said Murphy all of which
" he Murphy desired to be done for the expressed
" purpose of delaying hindering and avoiding his
" said Murphy's Creditors.

" That defendant did then and there
" execute said several notes and make the
" same payable to said Gilman Merrill at the
" request of said Murphy and then & there deliv-
" ered said notes to said Murphy. That said
" Murphy then & there obtained the indorsement
" & assignment of said Gilman Merrill on the
" back of said notes but never delivered said
" notes to the Plaintiff but caused this suit
" to be brought in the name of said Plaintiff
" merely to carry out his said fraudulent pur-
" poses against his said Murphys Creditors
" and further to compel defendant to pay said
" notes on the ground that the same were in
" the hands of a bona fide holder before
" maturity.

Defendant states and avers that the State-
ments and representations of said Murphy in
regard to the indebtedness to pay which said
several notes were given, were wholly false
and untrue and that in truth & in fact
said Whittemore & Co. did not at the time of
making said several notes owe him said
Murphy one cent. That said false
statements were so made to defendant for the
purpose of obtaining said notes as aforesaid
and that defendant did wholly and entirely
rely upon said statements being true and
executed said several notes as aforesaid upon
the sole faith that said statements were true,
and said supposed indebtedness then honest-
ly and bona fide existed.

Defendant further avers that there
never was any consideration of any description
passed between this defendant & said Silman
Merrill, nor between said Murphy & Sil-
man Merrill, nor between the Plaintiff
and Silman Merrill relative to the transac-
tion of giving, endorsing & assigning said
several notes nor either of them.

That said Plaintiff had not at the
time of commencing this suit & has no beneficial
interest in said notes nor either of them nor had
he ever any such interest, but on the contrary
was & is & ever has been a mere nominal plain-
tiff & holder of said several notes to aid said
Murphy in his said Murphy's fraudulent
purposes aforesaid, that said notes are & ever
have been the sole & exclusive property of said

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" Murphy and that said several notes and each
" of them were assigned to Plaintiff, as aforesaid
" long after they and each of them became due
" and payable and were taken by the Plaintiff
" with full notice & knowledge of all the matters
" aforesaid wherefore defendant says that that
" there never was any consideration for said notes
" nor either of them and this he is ready to verify
" wherefore he prays judgement &c.

" Lindsay & Lander
" for Deft.

" 3 And for a further plea in this behalf defendant
" says actio non because he says that there never
" was any consideration for said notes in said
" declaration mentioned nor either of them Ex-
" cepting as to the sum of Twelve hundred &
" Seventy eight dollars and six cents in this.
" That before the making of said several promis-
" sory notes defendant purchased from Caleb
" Whittemore & Sanford Mecon doing business
" under the stile of C. Whittemore & Co. a certain
" Printing Establishment known as the Peoria
" Weekly & Daily Transcript Office in the City of
" Peoria in said County and paid therefor a valuable
" consideration, that at the time of such purchase
" defendant further assumed and agreed with said
" C. Whittemore & Co. to pay all the just debts owing
" from said Whittemore & Co. to various purposes contrac-
" ed on account of said Printing Establishment.
" That at the time of such agreement defend-
" ant knew nothing in regard to the amount
" nor nature of the indebtedness of said Whittemore

" Ed Co. nor the persons to whom such debts were due
" and for that reason was forced to rely on the State-
" ments made to him by one James K. Murphy who
" had been and then was the book keeper of
" said Whittemore and Co.

" That said Murphy on inquiry for
" that purpose made agreed and undertook to
" inform defendant in regard to such indebted-
" edness and did then and there state and rep-
" resent to defendant that said Whittemore & Co,
" were then owing him said Murphy for ser-
" vices rendered as book keeper the sum of
" Money mentioned in all of said several notes
" which sum was a just debt against them
" said Whittemore & Co. and then and there re-
" quested defendant to settle the same by giving
" his several promissory notes to one Gilman
" Merrill assigning as a reason for making said
" notes payable to said Gilman Merrill that
" he said Murphy was then largely indebted
" to various creditors and that he wanted the
" notes taken and made payable to said Gilman
" Merrill to avoid his said creditors.

" That defendant wholly relying upon the
" representations of said Murphy & believing the
" said indebtedness to be due from said Whitte-
" more & Co. to him said Murphy as represented
" did execute his said several promissory notes
" in said declaration described for the purpose
" of liquidating said supposed indebtedness,
" and made said notes payable to said Gilman
" Merrill at the request of said Murphy, that
" said Gilman Merrill then indorsed in

" blank said notes and delivered the same to said
" Murphy.

" Defendant avers that the statements
" and representations of said Murphy in regard to
" the indebtedness due from said ¹⁰Whittemore & Co.
" to him were wholly false fraudulent and untrue
" and that in fact and in truth said Whitter-
" more & Co. did not owe him said Murphy
" said sum or any part thereof excepting the
" said sum of Twelve hundred and Seventy
" eight Dollars and six cents on any account
" whatever.

" That defendant executed said several
" notes upon the faith & consideration that the
" statements so made by said Murphy were
" true and upon none other.

" Defendant further avers that no consid-
" eration of any description ever passed between
" defendant & said Gilman & Merrill, nor be-
" ^{between Murphy and} ^{nor between said Gilman & Merrill} tween said Gilman & Merrill and the Plaintiff
" nor between the defendant & plaintiff in and
" about the transaction of making and endors-
" ing said several notes nor either of them.

" Defendant further avers that the said
" Plaintiff never had nor has he now any
" beneficial interest in said notes said on nor
" either of them but always was and is now a mere
" nominal holder thereof and nominal plaintiff to
" enable said Murphy to collect said notes &
" to carry out the said Murphy's fraudulent
" intent against his said creditors and that said
" notes & each of them are the sole property of said

" Murphy and ever have been.

" He further avers that said note each
" of them were assigned and transferred to said
" plaintiff long after the same and each of them
" became due and payable and that said plaintiff
" took the same and each of them with full notice
" of all and singular the matters and things
" aforesaid.

" He further avers that all and singular the
" several causes of action in said declaration mention-
" ed are one and the same and not different and
" that the sole and only causes of action therein
" is the said several promissory notes wherefore
" he says that there never was any consideration
" for said notes nor either of them excepting as
" to the said sum of twelve hundred seventy eight
" & 06/100 Dollars and this he is ready to verify
" wherefore he prays judgement &c.

" Lindsay Lander.
" for Deft.

" 4. And for a further plea in this behalf defendant
" says actio non because he says that said sever-
" al promissory notes are the sole and only cause
" and causes of action in said declaration men-
" tioned and that said several notes were given
" upon the following consideration defendant pur-
" chased from Caleb Whittemore and Sanford
" Moorn doing business under the firm name of
" C. Whittemore & Co. a certain Printing Establish-
" ment with type fixtures &c. and paid therefor a
" valuable consideration at the time of which
" purchase defendant agreed with said Whittemore &c.

9
to pay the just debts of said Whittlemore & Co. con-
-tracted on account of said Printing Establishment
That defendant in said purchase also bought
all the notes, bills, and accounts and money
in hand and money due said Whittlemore & Co, that
in any wise belonged to said Whittlemore & Co.

That one James R. Murphy had been for
a long time before & was at the time of such
purchase the acting Book Keeper of said Whittle-
more & Co. and so continued to act as book
keeper for defendant for a long time after said
sale & purchase.

That said notes were given by said
defendant to liquidate and pay certain
supposed indebtedness from said Whittlemore
& Co. to said Murphy for supposed services
rendered said Whittlemore & Co. as Book Keeper
that at the request of said Murphy said
notes were made payable to Silman Merrill
for the purpose and with the expressed design
as stated by said Murphy to delay and avoid
the creditors of said Murphy and for the purpose
of having the notes collected in the name of said
Silman Merrill to keep the process out of the
reach of said Murphy's creditors.

That said notes were so given and then
indorsed in Blank by said Silman Merrill
and delivered to said Murphy and that said
Murphy ^{then} caused this suit to be brought in the name
of plaintiff to avoid his creditors and for no
other purpose that neither the said Silman Merrill
nor the Plaintiff ever had nor had they or either

of them at the time of commencing this suit nor
since that time any beneficial interest whatever
in said notes issued on or either of them but the
same in truth & in fact ever has & still does
wholly belong to the said Murphy and to no other
person or persons.

That said notes were all indorsed
by said Gilman Merrill long after the
same became due and payable, that before
and at the time of commencing this suit the said
Murphy was justly indebted to defendant in
the sum of three thousand dollars & still is so
indebted, for and on account of certain mon-
ey which the said Murphy had collected from
various persons who were owing said Whittemore & Co,
& this defendant after his purchase aforesaid on
account of said Printing Establishment, while
said Murphy was acting as the agent and
Book Keeper of said Whittemore & Co, & this de-
fendant after his said purchase which said sum
the said Murphy agreed and was bound by
the nature of said transaction to pay over and ac-
count to defendant whenever requested.

That said defendant before the commence-
ment of this suit often requested said Mur-
phy to pay over said sum of money to defendant
whereby the same was, is now and long before
the commencement of this suit indebted to defend-
ant as aforesaid, which sum so due to defend-
ant exceeds the said sum mentioned in said
notes & exceeds the supposed damages in Plffs
declaration mentioned, out of which said sum
so due defendant from said Murphy, defendant

is willing and ready & hereby offers to set off and
allow to the said Murphy and to the Plaintiff
for the use of said Murphy the full amount of
said supposed damages according to the
Statute in such case made and provided

And this defendant is ready to verify
wherefore he prays Judgment &c.

" Lindsey & Sander
" for Dept, "

Endorsed on the back

" " " " "
" L.D. Randall
vs.
Merrill
Deed

Filed March 30. 1858.
C. Little & Co.
per Geo. H. Little
Clk.

on the 7th day of April A. D. 1858.
And afterwards, To Wit., there was filed in
the Clerk's office of said county Court of Pima County,
a "1st Demurrer to Pleas", in words and figures follow-
ing, To Wit,

" State of Illinois }
" County of Peoria }
" } In the County Court,
" } Of the April Term A. D. 1858.
" Leroy D. Randall } In Assumpsit.
" } vs. } Demurrer to 2d & 3d
" James S. Merrill } & 4th Pleas.

And the said plaintiff as to the said pleas
of the said defendant by him 2^dly. 3^dly. and
4thly above pleaded, and severally as to each of the

" said plea, says that the same and the matters there-
" in contained, in manner and form as the same are
" above pleaded and set forth, are not sufficient
" in law to bar or preclude him the said plaintiff
" from having or maintaining his aforesaid action
" thereof against the said defendant; and that he
" the said plaintiff is not bound by law to answer the
" same. And this he the said plaintiff is ready to
" verify; wherefore by reason of the insufficiency of the
" said plea and each of them in this behalf, the said
" plaintiff prays judgment and his damages, by
" reason of the not performing of the said several
" promises and undertakings in the said declaration
" mentioned to be adjudged to him &c.

" And the said plaintiff states and shows to
" the Court here the following special causes of demur-
" rer to the said pleas respectively, that is to say:

" The said pleas and each of them are otherwise
" uncertain, informal and insufficient &c.

" Pratt & Bonney,

" Attorney for Plaintiff.

Endorsed on the back.

" 1st Demurres to Pleas.

" In the County Court.

" Leroy D. Kendall

" vs
" James G. Merrill.

" Demurres to Pleas.

" Filed April 7th 1858.

" C. C. Kettle clerk

" per Geo. W. Kettle
" Atty.

" Pratt & Bonney
" Attorneys for Plaintiff.

And afterwards. To Wit. on the 9th day of
April A.D. 1858, there was filed in the Clerk's
office of said Court, an "Additional Pled"
in words and figures following to wit,

" State of Illinois } Peoria County Court
" Peoria County } April Term 1858.

" Leroy D. Randall }

" vs. }

" James G. Merrill }

" 5th And the said defendant
" comes and by leave of the Court for that purpose
" first had and obtained files herein his
" Additional plea and says actio non because
" he says that the said several notes are the sole
" and only cause and causes of action in this
" cause and that several notes and each of them
" were given by defendant to the said Gilman
" Merrill under the following circumstances &
" upon the following consideration and none other
" that is to say the defendant purchased from
" one Caleb Whittemore and Sanford Moon
" doing business under the name and style of
" C. Whittemore & Co, a certain Printing Estab-
" -lishment with Type fixtures &c. and paid
" therefor a valuable consideration that at
" the time of such purchase the said defendant
" further agreed with said Whittemore & Co, to
" pay off and liquidate the just indebtedness
" of said Whittemore & Co, then honestly & justly
" owing to various persons on account of

1 said Printing Establishment then represented
2 to defendant not to be a very large amount.
3 That at the time of such purchase
4 defendant was ignorant & unadvised as to
5 the amount of indebtedness due from said
6 Whittemore & Co. to their creditors on account
7 of said Printing Establishment and for
8 that reason was forced to rely upon the
9 statements of others professing to know the
10 condition of said Establishment and with the view
11 of ascertaining the facts was by said Whittemore & Co. refer-
12 red to one James K. Murphy who had been for a long
13 time before & was then the acting book keeper of said
14 Whittemore & Co. and continued to act as the book keeper
15 of this defendant long after this defendant's purchase as
16 aforesaid. That on making inquiry of said Murphy
17 this defendant was informed by said Murphy that
18 said Whittemore & Co. were justly indebted to him
19 said Murphy for services rendered them as Book
20 Keeper aforesaid in the sum of the amount of said
21 notes which indebtedness was then due and was
22 under the arrangement aforesaid to be paid by defens-
23 -dant

24 That defendant then believing said Mur-
25 phy's statements in regard to such indebtedness
26 to be true did for the purpose of liquidating said
27 supposed indebtedness execute the said notes
28 to said Silman Merrill under the following
29 arrangement with said Murphy that is said
30 Murphy stated and requested that said notes
31 should be made payable to said Silman Merrill
32 in the manner they were so made - for the use and
33 benefit of him said Murphy for the reasons

12

as stated at the time by said Murphy that he
Murphy desired the notes made payable to said
Gilman Merrill to place them out of the reach of
his Murphy's creditors. That defendant did
so execute said notes to said Gilman Merrill
& delivered the same to said Murphy.

That said Murphy afterwards obtained
the assignment & endorsement of the said Gilman
Merrill on the back of said notes as shown
by the copies attached and filed with plaintiff's
declaration. That at the time of said purchase
by defendant there was also included in the same
all the Book accounts notes bills bonds choses
in action and effects of every description belonging
to said Whittmore & Co. made accrued or contracted
on account of said printing establishment and then
owing from various persons to said Whittmore & Co.
and held by said Whittmore & Co. the amount of
which and the persons so owing defendant never
knew with any certainty & can not state.

That it was further agreed by and between
said Murphy and defendant after the execution
of said notes that said Murphy should act
Book Keeper of this defendant collect from the
various persons then owing defendant & owing the
said firm of Whittmore & Co. such sums as were
due. and that he Murphy should apply a cer-
tain amount so to be collected (not to exceed
the amount of said notes) as a payment on said
notes all of which was agreed to between the parties
to said notes.

Defendant avers that long prior to the

commencement of this suit the said Murphy did
as such book keeper under the arrangement afore-
said collect of various persons the sum of Twenty
Six hundred and fifty Dollars, money at the
time owing from various persons to the said firm of
Whittemore & Co. & this defendant on account of said
printing establishment which sum should in right
have been applied as a payment on said notes
under the agreement aforesaid but that said Murphy
neglected and refused to endorse & credit the said
amount so collected on said notes.

Defendant further avers that the amount
so collected was and is a full payment of said
notes.

He further avers that the said plaintiff in
this suit has no beneficial interest whatever in
this suit, that said notes were transferred to said
Plff. at the request of said Murphy for the purposes
of collection and nothing else.

That said notes and each of them were so
transferred to said plaintiff long after the same
became due & payable & were taken by the plain-
tiff with full knowledge of all the matters afore-
said.

He further avers that there never was ^{any} ~~and~~ con-
sideration of any description passed or moved be-
tween the said defendant and said Silman Merrill
& said nor between the said Silman Merrill &
said Murphy nor between said Silman Mer-
rill and the plaintiff nor between the said defen-
dant & Plaintiff in any manner concerning the
making or endorsing of said notes nor either of
them.

He further avers that said Murphy ever has
been & is now the sole and only beneficial holder
& owner of said notes & the proceeds thereof and
that the same were given to said Gilman Merrill
& by said Gilman Merrill transferred to the
Plaintiff and by the plaintiff sued in this ac-
tion for the sole use and benefit of the said
James K. Murphy and for no other persons
person wherefore he says that said notes are fully
paid and this he is ready to verify. wherefore he
prays judgment &c.

Lindsay Lander
for Deft."

Endorsed on the back.

"
" *Randall*
" *vs.*
" *Merrill.*
" *Additional Plea*
" *Filed April 9, 1858.*
" *Charles H. Wells clk.*
" *per Geo. H. Rutledge*
" *Deft.*"

And afterwards To Wit. on the 10th day of
April A.D. 1858. there was filed in the Clerk's
Office of said Court, a "2^d Demurrer to Plea", in
words and figures as follows. To wit.

" *State of Illinois. 1st*
" *County of Pioria. 2^d*

In the County Court.
of the April Term. A.D. 1858.

7
 Leroy D. Randall } An Assumpsit
 vs. } Demurrer to — Pleas.
 James S. Merrill }

And the said plaintiff as to the
 said pleas of the said defendant by him above pleaded,
 except the said plea of the general issue, and severally
 as to each of the said pleas, says that the same and
 the matters therein contained, in manner and form
 as the same are above pleaded and set forth, are not
 sufficient in law to bar or preclude him the said
 plaintiff from having or maintaining his aforesaid action
 thereof against the said defendant; and that he the
 said plaintiff is not bound by law to answer the same.

And this he the said plaintiff is ready to verify;
 wherefore by reason of the insufficiency of the said pleas
 and each of them in this behalf, the said plaintiff may
 judgment and his damages by reason of the not per-
 forming of the said several promises and undertakings
 in the said declaration mentioned to be adjudged to
 him &c.

And the said plaintiff state and show to the
 Court here the following special causes of demurrer to
 the said pleas respectively, that is to say: —

The said pleas and each of them
 are otherwise uncertain, informal and insufficient.

Pratt, Manning & Bonney,
 Attorneys for Plaintiff.

Endorsed on the back.

Demurrer to Pleas

Leroy D. Randall

vs.

James S. Merrill

Demurrer to Pleas.

Filed Oct. 10. 1858.

Chas. Merrill cl.

vs. Geo. Westcott

Appl.

Pratt, Manning & Bonney,

Attorneys for Plaintiff.

And afterwards, To Wit, on the 7th day of June 14
A.D. 1858, there was filed in the Clerk's Office of
said Court, a Bill of exceptions in words and
figure as follows, To Wit:

Randall vs. Merrill
Pepria County Court.
June Term 1858.

Be it remembered that on the trial of this cause the Plaintiff offered in evidence to sustain the issues on his part. the three several promissory notes in the words and figures, To, Wit.
\$200. Peoria, June 29th 1857.

Forty days after date I promise to pay
to the Order of Silman Merrill Two Hundred
Dollars value received with interest at ten per
cent it being for money loaned.

Endorsed on the back,
"Pay to Leroy D. Randall or order
Silman Merrill."
"\$900.⁰⁰ Peoria June 29th 1857.

Ninety days after date I promise to Pay
to the Order of Silvanus Merrill Nine Hun-
dred Dollars Value received with interest at
10 per cent it being for money loaned
Jas. S. Merrill

Entered on the back.
"Pay to Leroy I. Randall or order,
"Gillian Merrill."
"\$963.⁰⁶
"Peoria, June 29th 1857"

" \$903.⁰⁶ Peoria, June 29th 1857
Six months after date I promise to Pay

to the Order of Silman Merrill Nine Hundred
& Sixty three ⁰⁶/₁₀₀ Dollars Value received with
interest at ten per cent it being for money loaned.
Jas. S. Merrill "

Endorsed on the back.

"Pay to Perry D. Randall or order.

Silman Merrill."

to the introduction of which in evidence defendant
objected the Court overruled the objections and
allowed the notes to be read in evidence to which
ruling of the Court deft. then and there excepted
the above was all the evidence introduced in this
cause. The Court rendered judgment against
defts for the sum of \$ 2,258, to the rendering
of which judgment the defendant objected at
the time.

The defendant made a motion for a
new trial for the following reasons.

Randall }
vs. } Motion for a new trial
Merrill }

Defendant comes and moves the
Court for a new trial in this cause for the
following reasons.

1st ~~Because the Court Erred in allowing the
notes to be read in evidence.~~

2^d ~~Because Court~~

1st Because the Court Erred in sustaining
Plaintiff's demurrer to Def's. pleas herein.

2. Because Court Erred in allowing the
notes to be read in evidence.

3 The Court erred in rendering Judg-
ment against defendant.

4. The Judgment was rendered for too ¹⁵
much damages.

Lindsay & Lander
Atty's for Defendant."

which motion was overruled by the Court and
defendant then and there excepted & prayed the
Court to sign & seal this Bill of Exceptions
which is done. this 7th day of June 1858.

H. Loucks, County Judge Feb

Endorsed on the back.

Randall

Ud

Merrill

Filed June 7, 1888,

C. Kettelle Cdr.

Vol. 2.

"Proceedings of the County Court of Peoria County, State of Illinois. began and held at the Court House in the City of Peoria in said County on Monday, February 1st 1858. for Judicial and other business. Present, Hon. Wellington Louch Judge, Charles Keltie, Clerk and Francis W. Smith Sheriff.

Friday, February 8th 1855.

LeRoy D. Randall

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Assumpt

James G. Merrill

By agreement of parties

" This cause is ordered to be continued untill March Term."

"Proceedings of the County Court. Peoria
County. State of Illinois. Began and held at the
city of Peoria in said county on Monday, April
5th 1858. being the first Monday of said month,
for Judicial and other business. Present, Hon.
Nelson L. Louche, Judge, Charles L. Lelle, Clerk, and
Francis H. Smith, Sheriff

Saturday, April 10.^d 1858.

" Perry D. Randall

James G. Merrill vs. Assumpsit.

This day came the said Plaintiff by L. S. Pratt his attorney and the said defendant by Lindsay and Sander his attorney and this cause came on to be heard on the demurrer of the said Plaintiff to the 2^d 3^d and 4th pleas of the said defendant. The Court being fully advised in the premises doth sustain the said demurrer, on default motion leave is given him to plead again.

Leroy P. Randall

of
James S. Merrill

It is agreed by the parties in
this suit that the Judge shall decide the demurrer
in this cause in vacation and that this cause shall
be continued, "

Proceedings of the County Court, Peoria County
State of Illinois, began and held at the Court
House in the City of Peoria in said County on

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Monday May 3^d 1858, under its Extended juris-
-diction for judicial and other business.
Present Hon. Wellington Loucks Judge, Charles
Kittelle Clerk, and Francis W. Smith Sheriff.

Seroy D. Randall

vs. Assumpsit
James T. Merrill

This day came the said plain-
-tiff by Charles C. Bonney and L. G. Pratt his attys. and
the said defdt by Lindsay and Lander his attys. and
this cause came on to be heard on the demurrer of the
Plffs to additional pleas filed by ^{said} defdt. The Court
being fully advised in the premises, doth sustain the
said demurrer. Thereupon the said Defdt. abides by
his pleas and this cause is ordered to be continued
until June Term."

"Proceedings of the County Court of the Peoria
County, State of Illinois, began and held at the
Court House in the City of Peoria in said County
on Monday, June 7th 1858, under its Extended
jurisdiction for judicial and other business.
Present Hon. Wellington Loucks, Judge, Charles
Kittelle, Clerk, and Francis W. Smith, Sheriff.

Seroy D. Randall

vs. Assumpsit,
James T. Merrill

This day came the said Plff.
by Purple and Pratt his attorneys and the said
defendant by Lindsay and Lander his attorney.

" and both parties waive a Trial by Jury and agree
" that all matters of law and fact arising in this
" case should be tried by the Court. The Court being
" fully advised in the premises doth find for the
" Plaintiff and assess his damages at the sum of
" (\$2258.00) Two Thousand Two hundred and Fifty Eight
" Dollars. Thereupon the said defendant came by his
" attorney and entered his motion for a new trial.
" The Court being fully advised in the premises doth
" overrule the motion. Therefore it is considered by the
" Court that the said L. D. Randall do have and
" recover of and from the said James S. Merrill, the sum
" of (\$2258.00) Two Thousand Two Hundred and Fifty
" Eight Dollars, his damages in form aforesaid assessed
" and also his costs and charges by him about this
" suit in his behalf expended and that he have
" Execution therefore. Thereupon the said defendant
" by his attys. prays an appeal of this cause to the
" Supreme Court of this State, which is allowed on his
" entering into Bonds in the penal sum of Three
" Thousand Dollars, with Isaac Moore as security
" within Twenty days,"

And afterwards, To Wit: on the 26th day of
June A. D. 1858, there was filed in the Clerk's
Office of said Court, an "Appeal Bonds" in words
and figures as follows. To Wit:

" I know all men by these presents that we James
" S. Merrill as Principal and Isaac Moore
" as Surety are held and firmly bound unto
" Lemuel D. Randall in the penal sum of Three
" Thousand Dollars lawful money of the United

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" States of America for the payment of which well
" and truly to be made we bind ourselves, our
" heirs, Executors and Administrators jointly and
" severally and firmly by these presents Witness our
" hands and seals this 8th day of June A.D. 1858.

" The condition of the above obligation is
" such that whereas the above mentioned Leroy
" D. Randall did at the June Term of the County
" Court of Perry County in the State of Illinois A.D.
" 1858. to wit. on the 7th day of June 1858. recover
" before said Court a judgment against the above
" bound James S. Merrill for the sum of Two
" Thousand Two Hundred fifty eight Dollars dam-
" -ages & also costs of suit; from which said judg-
" -ment the said James S. Merrill has prayed and
" obtained an appeal to the Supreme Court of the
" State of Illinois to the third Grand Division.
" thereof. Now if the said James S. Merrill shall
" prosecute his said appeal with effect and shall
" pay or cause to be paid to the said Leroy D. Ran-
" -dall his heirs Executors or Administrators what-
" -ever judgment, Costs, interest and damages may
" be rendered, recovered or awarded against him
" said James S. Merrill by said Supreme Court
" in case said judgment so appealed from shall
" be affirmed, then this obligation to be void, other-
" -wise to be and remain in full force and effect
" J. S. Merrill Seal
" Isaac Moore Seal

Endorsed on the back

Randall

vs

Merrill

Official Bond

Filed June 26. 1858,

C. Kettelle, Clerk.

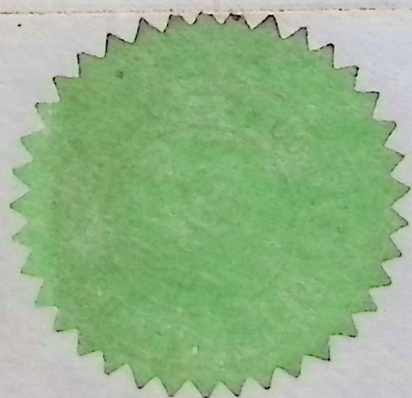
per Geo. H. Kettelle
clerk.

State of Illinois.
County of Peoria.

I, Charles Kettelle Clerk of
the County Court of Peoria County in the
State of Illinois do hereby certify that the
foregoing is a full true and perfect Trans-
cript from the files and Records of my office
in a certain cause in said Court wherein
Leroy O. Randall is Plaintiff and James
G. Merrill is Defendant.

In witness whereof I have hereunto
set my hand and the seal of said
Court at Peoria, this 9th day
of January A.D. 1859.

Chas Kettelle clerk
per Geo. H. Kettelle sdy.



Leroy D. Randall

vs

James H. Merrill

State of Illinois
Supreme Court
Third Grand Division
April Term, A.D. 1859

And now comes the said James H. Merrill, by John D. Lindsay, and says that in the records, and proceedings of said County Court, there are manifest, and manifold errors, and assigns for errors.

1st The Court erred in sustaining plaintiff's demurrer to defendant's pleas herein.

2^d The Court erred in sustaining plaintiff's demurrer as to 2^d plea herein filed by defendant.

3^d The Court erred in sustaining plaintiff's demurrer, as to 3^d plea herein filed by defendant.

4th The Court erred in sustaining plaintiff's demurrer as to 4th plea herein filed by defendant.

5th The Court erred in sustaining plaintiff's demurrer as to 5th plea herein filed by defendant.

6th The Court erred in rendering judgment against defendant.

7th The Court erred in allowing said notes to be read in evidence.

8th The judgment was rendered for too much damages.

9th The said Court erred in not granting defendant a new trial.

10th The Court erred in overruling the motion of defendant for a new trial, for the reasons stated in said motion.

Wherefore, for the errors aforesaid, the said James G. Merrill prays that the said judgment and decree of said County Court may be reversed, set aside and for naught had, held and esteemed

John P. Lindsay
for Appellant

Whereupon comes the said Leroy D. Randall by Charles C. Bonney his attorney and says that there is no error, either in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid, and prays that the said Supreme Court now here, may proceed to examine as well the record and proceedings aforesaid as the matter aforesaid above assigned for error and that the judgment aforesaid, in form aforesaid given may be in all

things affirmed &c -

Charles C. Bonney
attorney for defendants
in error -

In the Supreme Court-

James G. Merrill

vs
Leroy D. Randall

Appeal from
~~Error~~ to Scoria County Court-

Record
Errors &
Finders

Verdict for Appellant

Bonus for Appellee

Filed April 2, 1852

L. Leland
Clerk

STATE OF ILLINOIS, SS. . . . IN THE SUPREME COURT AT OTTAWA.

OF THE APRIL TERM, A. D. 1859.

JAMES G. MERRILL,
vs.
LEROY D. RANDALL.

} APPEAL FROM PEORIA COUNTY COURT.

BRIEF OF APPELLEE.

There is no error in the record. Tho rulings of the court below are sustained by the law, and the judgment should be affirmed.

1. The demurrer to the second plea was properly sustained. This is a plea of NO CONSIDERATION: yet it manifestly appears therein that said James G. Merrill made and delivered the notes sued on, in *part payment* for the *printing establishment* which he bought of Whittemore & Co. *This printing establishment was the consideration of the notes*, and so this plea is clearly bad. And it may not be improper to add that it is not anywise shown that the printing establishment was not worth all that the maker of the notes undertook to pay therefor, nor does it even appear that he made a hard bargain.

2. The demurrer to the third plea was properly sustained. This is a plea of *no consideration except as to \$1278.06*, or in other words, a plea of *mere inadequacy of consideration*. This cannot be pleaded in bar of the action; but it manifestly appears thereby that the appellant made and delivered said promissory notes, *in part payment* for said printing establishment; and it is *not* anywise shown that the same was not even worth more than he undertook to give therefor. Whether Whittemore & Co. owed James K. Murphy or not, is entirely immaterial. It is enough that by their consent the appellant gave the notes in question for a part of the purchase price of said printing establishment. And whether the appellee has any "beneficial interest" in the notes is equally immaterial. If the plea be true, it constitutes no defence to said promissory notes, or any or either of them, or any part thereof.

3. The demurrer to the fourth plea was properly sustained. This is a plea of *set-off*, to wit: that *James K. Murphy* is indebted to James G. Merrill, the defendant below, and that the notes in suit *equitably* belong to said Murphy, &c. But James K. Murphy is *an utter stranger to the notes and to the action*. His name nowhere appears until introduced by the pleas. The indebtedness sought to be set off is *not* between the parties to the action, or even between any of the parties to the subject matter thereof. And the proposition is *not* to set off and allow to *Leroy D. Randall*, the plaintiff below, but to said *James K. Murphy*, the amount of said promissory notes. Why the appellant does not sue Murphy for the amount of the indebtedness here set up, is not anywise shown. This plea violates every principle of the law of set-off, and even in a court of equity the averments thereof would be held insufficient to entitle the party to any relief.

4. The demurrer to the fifth plea was properly sustained. This is a plea of *payment*, to wit: that the plaintiff below, in whom *the legal title* to the notes in question is vested, is not the *equitable* owner of the same, but said notes *belong to James K. Murphy*; that said Murphy collected as *the book-keeper of the defendant below* the sum of \$2650, "which should in right have been applied as a payment on said notes," wherefore said defendant says that said notes are fully paid, &c. Although *called* a plea of *payment*, it is simply an offer to *set off* the amount of alleged collections for the account of said defendant by said Murphy, a stranger to the action and to the notes, against the demand of Leroy D. Randall, the plaintiff in the action, and the legal holder of the notes. But Murphy made such collections *as the book-keeper of said defendant*, and *in that capacity*, if in any, received the money and is accountable for it. It is not even alleged that defendant has not an ample remedy by action against Murphy. Suppose James G. Merrill had sued James K. Murphy at law for such collections, could Murphy plead *these notes*, made to Gilman Merrill, and indorsed to Leroy D. Randall, as a *set off* to or *payment* of moneys so collected by him? Would a *legal liability of James G. Merrill to Leroy D. Randall*, however pleaded, bar an action at law by said Merrill against James K. Murphy? It is presumed that these questions will be answered in the negative, and that it will hardly be seriously contended, after an examination of this plea, that it is sufficient.

5. Generally: the said second, third, fourth and fifth pleas are manifestly irrelevant, repugnant, uncertain and absurd. Indeed, it would require something more than ordinary skill to draw four pleas surpassing these in their "sacriligious violation" of *the established rules of pleading*. It seems unnecessary to notice further the several errors assigned. The judgment below should be affirmed.

AUTHORITIES.

- Statute of Negotiable Instruments, Sec. 10.
- 1 Parsons on Contracts, Bk. 2, Ch. 1, Sec. 3, and cases cited.
- Gregg v. James and al., Breese R. 107.
- Hinckley and al. v. West, 4 Gil. R. 132.
- Burgwin and al. v. Babcock and al., 11 Ill. R. 28.
- Chadsey, admr., v. Lewis, 1 Gil. R. 158.
- Bryant and al. v. Dana, 3 Gil. R. 349.
- Ayres v. McConnell, 15 Ill. R. 230.

CHARLES C. BONNEY,
Attorney for Appellee.

In the ¹⁵⁴Supreme Court.
162
James L. Merrill

^{or}
Leroy D. Randall

Appeal from Poria County Court.

Brief of Appellee

Filed April 20. 1867

L. Randall
Clerk

STATE OF ILLINOIS, SS. . . . IN THE SUPREME COURT AT OTTAWA.

OF THE APRIL TERM, A. D. 1859.

JAMES G. MERRILL,
vs.
LEROY D. RANDALL.

} APPEAL FROM PEORIA COUNTY COURT.

BRIEF OF APPELLEE.

There is no error in the record. The rulings of the court below are sustained by the law, and the judgment should be affirmed.

1. The demurrer to the second plea was properly sustained. This is a plea of *no consideration*: yet it manifestly appears therein that said James G. Merrill made and delivered the notes sued on, in *part payment for the printing establishment* which he bought of Whittemore & Co. *This printing establishment was the consideration of the notes*, and so this plea is clearly bad. And it may not be improper to add that it is not anywhere shown that the printing establishment was not worth all that the maker of the notes undertook to pay therefor, nor does it even appear that he made a hard bargain.

see minutes of argument 1.

2. The demurrer to the third plea was properly sustained. This is a plea of *no consideration except as to \$1278.06*, or in other words, a plea of *mere inadequacy of consideration*. This cannot be pleaded in bar of the action, but it manifestly appears thereby that the appellant made and delivered said promissory notes, in *part payment* for said printing establishment; and it is *not* anywhere shown that the same was not even worth more than he undertook to give therefor. Whether Whittemore & Co. owed James K. Murphy or not, is entirely immaterial. It is enough that by their consent the appellant gave the notes in question for a part of the purchase price of said printing establishment. And whether the appellee has any "beneficial interest" in the notes is equally immaterial. If the plea be true, it constitutes no defence to said promissory notes, or any or either of them, or any part thereof.

see minutes of argument 2.

3. The demurrer to the fourth plea was properly sustained. This is a plea of *set-off*, to wit: that *James K. Murphy* is indebted to *James G. Merrill*, the defendant below, and that the notes in suit *equitably* belong to said Murphy, &c. But *James K. Murphy* is *an utter stranger to the notes and to the action*. His name nowhere appears until introduced by the pleas. The indebtedness sought to be set off is *not* between the parties to the action, or even between any of the parties to the subject matter thereof. And the proposition is *not* to set off and allow to *Leroy D. Randall*, the plaintiff below, but to said *James K. Murphy*, the amount of said promissory notes. Why the appellant does not sue *Murphy* for the amount of the indebtedness here set up, is not anywhere shown. This plea violates every principle of the law of set-off, and even in a court of equity the averments thereof would be held insufficient to entitle the party to any relief.

see minutes of argument 3.

4. The demurrer to the fifth plea was properly sustained. This is a plea of *payment*, to wit: that the plaintiff below, in whom *the legal title* to the notes in question is vested, is not the *equitable* owner of the same, but said notes *belong to James K. Murphy*; that said Murphy collected as *the book-keeper of the defendant* below the sum of \$2650, "which should in right have been applied as a payment on said notes," wherefore said defendant says that said notes are fully paid, &c. Although *called* a plea of *payment*, it is simply an offer to *set off* the amount of alleged collections for the account of said defendant by said Murphy, a stranger to the action and to the notes, against the demand of Leroy D. Randall, the plaintiff in the action, and the legal holder of the notes. But Murphy made such collections as *the book-keeper of said defendant*, and *in that capacity*, if in any, received the money and is accountable for it. It is not even alleged that defendant has not an ample remedy by action against Murphy. Suppose James G. Merrill had sued James K. Murphy at law for such collections, could Murphy plead *these notes*, made to Gilman Merrill, and indorsed to Leroy D. Randall, as a *set off* to or *payment* of moneys so collected by him? Would a *legal liability of James G. Merrill to Leroy D. Randall*, however pleaded, bar an action at law by said Merrill against James K. Murphy? It is presumed that these questions will be answered in the negative, and that it will hardly be seriously contended, after an examination of this plea, that it is sufficient.

See minutes of argument 4.

5. Generally: the said second, third, fourth and fifth pleas are manifestly irrelevant, repugnant, uncertain and absurd. Indeed, it would require something more than ordinary skill to draw four pleas surpassing these in their "sacrilegious violation" of *the established rules of pleading*. It seems unnecessary to notice further the several errors assigned. The judgment below should be affirmed.

See minutes of argument 5, 6.

AUTHORITIES.

- Statute of Negotiable Instruments, Sec. 10.
- 1 Parsons on Contracts, Bk. 2, Ch. 1, Sec. 3, and cases cited.
- Gregg v. James and al., Breese R. 107.
- Hinckley and al. v. West, 4 Gil. R. 132.
- Burgwin and al. v. Babcock and al., 11 Ill. R. 28.
- Chadsey, admr., v. Lewis, 1 Gil. R. 158.
- Bryant and al. v. Dana, 3 Gil. R. 349.
- Ayres v. McConnell, 15 Ill. R. 230.

CHARLES C. BONNEY,
Attorney for Appellee.

In the Supreme Court
James G. Merrill

5-
Leroy D. Randall

typical from Peoria County Court

Brief of Appellee

State of Illinois }
In the Supreme Court at Ottawa.
Of the April Term A.D. 1857.
James G. Merrill }
v } Appeal from Peoria County Court
Leroy D. Randall }

Minutes of Argument for Appellee

In addition to the points made in his printed brief, the Appellee makes the following suggestions -

1. In ~~the~~ answer to the points made by the appellant in his printed brief, on the second plea, it is sufficient to say,
 1. That this court has again and again decided that the objection that "the plaintiff was a mere nominal plaintiff", cannot be allowed in an action on a negotiable instrument.
 2. That the maker of the notes under-
= took to pay the amount of Murphy's demand, in consideration of the terms on which he got the printing establishment and as a part of the price thereof.

2 Upon the points made by the appellant on his third plea, the appellee suggests:

1. That there is no averment in the plea that the consideration or any part thereof has failed. The plea simply alleges inadequacy of consideration - yet the inadequacy set up would not entitle the party to the least relief, even in a court of equity.

2. It is enough that the appellant executed the notes for value received. It does not lie in his mouth to object that there was no consideration between the indorser and the indorsee.

3. The idea that mere equities between the maker of the notes, and the stranger Murphy, can be tried and adjusted in an action at law brought by the indorsee against the maker, ought to be preserved as one of the "curiosities of pleading and practice!"

3 In his points on the fourth plea, the appellant, with an amusing gravity, insists that the stranger Murphy is the owner of the notes!

It is not denied that the notes were payable to Gilman Merrill, and were indorsed by him to Leroy D. Randall the plaintiff below. It is not pretended that Murphy's name anywhere appears upon the notes, or in the action till introduced by the pleas. Upon this state of facts the law conclusively holds Randall to be the owner of the notes, and alone entitled to bring suit thereon.

In reply to the proposition to set off and allow to the stranger Murphy, the amount of the notes sued on, the appellee simply suggests that it seems to him that it would be in some degree disrespectful to the court, to say more than he has already done, against a proposition so extraordinary and absurd.

- 4 In his points on the fifth plea, the appellant insists that he has paid the notes. Yet the plea itself states distinctly that the notes were not paid; and in the plea, the appellant claims the right to defeat the action of

4

the plaintiff below, by showing that James K. Murphy as the bookkeeper of the maker of the notes, collected certain moneys, which should in right have been applied as a payment on said notes, but which, he the maker, alleges, said Murphy neglected and refused to endorse and credit on said notes.

It is not pretended that any payment or any agreement or arrangement therefor, was ever made to or with any person who ever had any legal title to the notes. Nor is it even averred that any legal owner of the notes, ever gave Murphy any authority over them, or consented to be bound by his acts concerning them.

- 5 In the course of his argument, the appellant said he claimed "the right to make the same defence as though Murphy sued". It is hardly necessary to remark that if the appellant had understood his own case, he would

not have made such a claim. The appellant in every one of his special pleas, admits that the legal title to the notes is in Leroy D. Randall.

The appellant in the course of the argument said that he "bought the establishment for better or for worse". Why then this defence? He does not show that his bargain was not a good one. He also admitted on the argument that "Murphy's fraud cuts no figure in the case"; and that if there was any payment, it could have been proved under the general issue upon the trial in the court below.

6 The case in 13. Alabama does not help the appellant. The maker of the note in that case did not get a printing establishment. But the appellee requests the attention of the court to the opinion cited, for that it is in point against the ~~the~~ attempt of the appellant to perpetuate the memory of his late unfortunate bookkeeper in the record of the case

at bar.

The case in 5. Watts & Sergeant is still further from any point in controversy. There the note in suit was made by a wife, and the main question was whether she had authority to make it.

In the case in 2. Metcalf the court say "The defence is, that the note was paid by the maker to the payee, before it was negotiated to the plaintiff's". But there is no such ~~thing~~ question in the present case.

The case in 2. New Hampshire, simply decides that the maker of a note, payable to a fictitious person, shall not be permitted to avoid payment when he has received a full and fair consideration, but that the real payee may recover under the money or other appropriate counts.

But there is no pretence that either Calvin Merrill the payee, or Leroy D. Randall the indorsee of the notes in suit was a fictitious person, or anywise incapacitated to sue and be sued, plead and be impleaded in all courts, whether of law or of equity."

James G. Merrill

v

Leroy D. Randall

Minutes of
Argument for
Appellee

Filed May 4. 1857
L. Leland
Clerk

Bonney-

The appellee freely admits that
a great multitude of cases, equally
inapplicable to any of the questions
now under discussion, might
easily have been cited by the appellant.

The judgment below should be
affirmed -

Charles C. Bonney
Attorney for
appellee