

No. 13612

Supreme Court of Illinois

E
~~Barl~~

vs.

Young

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 93

1862

~~1862~~

1862

Carle

vs

Young

18612

Reference

State of Illinois 300,

Supreme Court, Third Grand
Division, April term, A.D., 1862

Wells W Young
Addison H Abbe
& Benjamin P Paves
Plaintiffs in Error
vs
Charles C Earle
Def't in Error

To Benjamin P Paves one of
the above named Plaintiffs in
Error!

I am notice that I shall at
the April term, A.D., 1862, of the
Supreme Court of the State of
Illinois for the Third Grand
Division to be holden at Ottawa
in said State on the 22nd day of
April instant, on the first day of
said term, enter my appearance
in the above entitled cause now
depending in said Court on a
Writ of Error, and have the
said cause proceed to a hearing
at said term.

Dated this 12th day of April A.D.
1862.

Charles C Earle
Def't in Error
Per Wheaton & Brown
his attys.

Wells & Young
et als. Pless the
Error

^{vs}
Charles Le Conte
Pless in Error

Notice of appearance

I accept service
of the within
notice this 12th day
of April, A.D. 1862

one of Pless's
error

93

Filed April 22^d 1862

L. Deland
Clerk

I regard myself as only a
formal party - in the
matter stated in the within
and so far as I am concerned
personally I accept -
in the within
Assess April B H Pugh
12th 1862

in due form of law to the truth
of the foregoing affidavit by him
subscribed. Witness my hand
and official seal on the same day
and year last above written

J. Johnston
Clerk

23 93
Charles H. Spreng & Co

Plaintiffs in error

vs

Charles H. Carter

Defendant in error

Affidavit justifying

bail

Filed July 18, 1861

L. Leland Clerk

Know all men by these presents
that we Charles W Young Addison
H Albee and Benjamin H Parks
as principals and Edward R
Allen as surety are held and
firmly bound unto Charles L
Earle in the penal sum of
one thousand dollars lawful
money of the United States, for the
payment of which well and
truly to be made, we bind
ourselves, our heirs, Executors
and administrators jointly, sever-
ally and firmly by these presents.

Witness our hands and seals
this 17th day of July A. D. 1861.

The condition of the above
obligation is such, whereas, the
said Charles L Earle did in the
Circuit Court within and for
the county of Kane in the State
of Illinois at the Spring
Term thereof A. D. 1861, recover
a judgment for the sum of six
hundred and ninety eight dollars
and eighty five cents for his
damages and three dollars and
fifty cents costs against the said
Charles W Young, Addison H Albee

and Benjamin H Parks in a
certain action of assumpsit,
and whereas the said Charles W Young
Addison H Albee and Benja-
-min H Parks have sued out
of the Supreme Court of the
State of Illinois in the Third
Grand Division thereof in
vacation after the April Term
A. D. 1861, a writ of error upon
the said judgment, and whereas
also upon due application
to the Honorable John C.
Leaton one of the Justices of the
said Supreme Court at Chambersburg
in vacation after said April
Term the said writ of error
has been made by the order
of said Justice a ^{Suspensio}
now. Therefore, if the said
Charles W Young Addison H
Albee and Benjamin H
Parks shall duly prosecute the
said writ of error and shall also
pay the judgment costs interest
and damages in case the said
judgment shall be affirmed,
then the above obligation

to be void, or otherwise to re-
-main in full force and effect

Delos W. Young

Seal

A. H. Allen

Seal

B. F. Pugh

Seal

E. R. Allen

Seal

Orlos W. Greene & Co.
Plumbers in error

1881

Charles C. Cook
dependent in error

Superintendent Bond

Filed July 18, 1881
L. Deland 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 Kane 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 Kane County, before the Judge thereof, between Charles C. Carl

plaintiff, and Delos W. Young, Addison H. Albee and Benjamin F. Parks

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

as we are informed by their complainants 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 plaints 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 right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 18th day of July in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Leland

Clerk of the Supreme Court.
by J. D. Rice Deputy

Delog W. Young et al

No.

vs.

Charles C. Earl

WRIT OF ERROR.

This writ of is made a
supercedens and as such
should be obeyed by all courts
and

L. Leland Clerk
4 J. B. Rice Deputy

FILED July 18th A. D. 1861

L. Leland

Clerk.



State of Illinois

Supreme Court, Third Grand
Division, April Term, A.D., 1862.

Delos W. Young
Addison H. Albee
& Benjamin F. Pauls
Plaintiffs in Error
vs
Charles C. Earle
Defendant in Error

To Delos W. Young, Addison H.
Albee & Benjamin F. Pauls, plaintiffs
in Error above named or to
Montgomery & Seales their Attorneys:

Take notice that I shall at
the April term, A.D., 1862, of the
Supreme Court of the State of
Illinois for the Third Grand Division
to be holden at Ottawa in said
State on the 22^d day of April, ~~instant~~,
on the first day of said term,
enter my appearance in the above
entitled Cause now depending in
said Court on a writ of Error,
and have the said Cause
proceed to a hearing at said
term.

Dated this 12th day April, A.D., 1862
Charles C. Earle
Defendant in Error
per Wheaton & Brown
his attys.

Served personally on Albee April 12/62

State of Illinois }
Frank County } ss. Charles Wheaton
City of Aurora } being first duly sworn
on his oath says, that on the 12th day
of April, a.d., 1862, he delivered to
Addison H. Albee, one of the within
named Plaintiffs in Error, a copy of the
within notice. And this affiant further
states that Delos W. Young, one of the within
named Plaintiffs in Error, is absent from
this State, and has been absent from this
State, as this affiant is informed and believes,
ever since the Month of September last,
in the Military service of the United States
as Surgeon. Charles Wheaton.

Subscribed & sworn to before
me this 21st day of April, a.d., 1862

Charles F. Johnston

Clerk of the Court of Common
Pleas of the City of Aurora

Delos W. Young
et als. Pliffs in
Error.
Chas H. Eardle
vs et in Error
Notice of appearance

We accept service
of the within notice
this 12th day of April
a.d. 1862.
Montgomery & Co
Attys for
in Error.

Filed April 22 1862.

L. L. W. a
Clerk

United States of America
State of Illinois Kane County

Pleas before the Honorable
Isaac G. Wilson Judge of the 13th
Judicial Circuit of the State of Illinois
and Presiding Judge of the Circuit
Court of Kane County in the State afore-
-said at a regular Term of said Court
begun and held at the Court House in
Geneva in said County on the third Wed-
-nesday (being the twentieth day) of May in
the Year of our Lord One thousand
Eight Hundred and sixty one and of the
Independence of the United States the Eighty fifth

Present The Honorable Isaac G. Wilson Judge
Amos B. Coon State Attorney
Demarous Clark Sheriff
Attest J. W. Moore
Clerk

Be it Remembered that heretofore to wit: on the
6th day of March a. d. 1861 there was filed in the
Office of the Clerk of the aforesaid Circuit Court
a Declaration which is in the words and figures following
to wit:

State of Illinois } The Circuit Court of Kane
Kane County } County February Term a. d. 1861

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Charles C. Carls of Aurora Kane
County Illinois plaintiff in this suit by S. W. Brown
his attorney complains of D. W. Young Addison
H. Albee & Benjamin F. Parks of the same place
defendants in a plea of trespass on the case: on prom-
ises: For that whereas the said defendants heretofore
to wit on the thirteenth day of January in the Year of our
Lord One thousand eight hundred and sixty at
Aurora in said Kane County to wit at said County of
Kane made their certain promissory note in writing
bearing date on the day and year aforesaid and then and
there delivered the same to certain persons doing busi-
ness under the name & style of firm of Albert Jenks & Co
in and by which said note said defendants by the
name style and description of D. W. Young H. Albee
and B. F. Parks one year from date promised to pay to the
order of the said firm of Albert Jenks & Co by the name
& style of Albert Jenks & Co the sum of six hundred &
twelve & $\frac{5}{100}$ dollars with interest at the rate of ten per
cent per annum for value received. And the said
firm of Albert Jenks & Co by the style of Albert Jenks
& Co to whom or to whose order said note was payable after-
wards to wit: on the day and year aforesaid at Aurora
in said Kane County to wit in the County of Kane aforesaid
endorsed said note in writing by which said endorsement
the said Albert Jenks & Co then and there ordered
and appointed the said sum of money in said note men-
tioned to be paid to said plaintiff and then and there

delivered said note so endorsed to ^{the} said Plaintiff 3
By means whereof and by force of the statute in such
case made and provided the said defendants became
liable to pay said Plaintiff said sum of money mentioned
in said note and being so liable in consideration thereof
then and there understood and promised to pay the same
to the said Plaintiff according to the tenor and effect and
intent and meaning of the said note and of the endorse-
ment aforesaid to wit at the place aforesaid

Yet the defendants although often requested etc
have not yet paid the said sum of money or any
part thereof to the Plaintiff but so to do have hitherto
wholly refused and will do refuse to the damage of the
Plaintiff of one thousand dollars and therefore
he brings suit etc

D W Brown

Plaintiff's atty

Said March 6 1861 J. W. Moore Clerk
And afterwards to wit on the day and year last aforesaid
there was filed in the said Office a cognovit
which is in the words and figures following to wit:

The Circuit Court of Kane County
February Term AD 1861

Delos W Young Addition
vs
Alber & Benjamin F
Cards

Cognovit

ads
Charles C Earle

And the said Delos W.

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Young, Addison H. Albee & Benjamin F. Park defendants in the above entitled suit by Wheaton their attorney came and defended the wrong and injury when etc and waive service of process and say that they cannot deny the action of the said plaintiff nor but the plaintiff has sustained damages on occasion of the non performance of the several promises and undertakings in said declaration mentioned including the sum of twenty dollars for his reasonable attorney fees for entering up this judgment and over and above his other costs and charges by him about this suit ~~exp~~ ~~and~~ in this behalf expended to the sum of six hundred and ninety eight dollars and eighty five cents, and the said defendants further agreed that no writ of error or appeal shall be prosecuted on the judgment entered by virtue hereof nor any bill in equity filed to interfere in any manner with the operation of said judgment and that they hereby release all errors that may intervene in entering up the same or opening the execution thereon and consent to immediate execution upon such judgment

Wm Wheaton

Defendants Atty

which said Cognovit is endorsed as follows:

Filed March 1861

J W Moore Clerk

And afterwards to wit: on the day and year last aforesaid

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1 1 1 1
the same being one of the days of the February Term⁵
of said Court in said year 1861 the following
among other proceedings in said Court was had
and entered of record therein as follows to wit:

Charles B. Carlo

7766

Delos W. Young

Addison H. Allen ^{and}

Benjamin S. Parks

} Plaintiff

This day comes the plain-
-tiff by S. M. Brown his
attorney and files his declaration in an
action of assumpsit against the defendants herein.

Thereupon come the defendants by Charles
Wheaton their attorney in fact duly authorized by virtue of
a warrant of attorney filed herein the execution of which by
said defendants is duly proven waive service of process and
enter their appearance herein and admitting the plain-
-tiffs cause of action ^{herein} and that the said Plaintiff has
sustained damages on account of the non performance
by said defendants of their several undertakings and
promises as alleged by the Plaintiff in his said declara-
-tion to the amount of six hundred and ninety eight dollars
and eighty five cents including twenty dollars as attorneys fees
besides his costs in this behalf expended, confess a judgment
for said amount in favor of the Plaintiff and consent to the
immediate issuing of execution thereon.

It is therefore considered by the Court that the
Plaintiff have and recover of the defendants the sum of
Six Hundred and ninety eight dollars and eighty five
cents damages and also his costs in this behalf expended

and have execution therefor forthwith.

And afterwards to wit: on the 11th day of June AD 1861 the same being one of the days of the May Term of said Court in the year last aforesaid the following among other proceedings in said Court was had and entered of record therein to wit:

Charles C. Carbe	} A Summuit
v	
Delos W. Young Addison	
H. Albee & Benjamin F. Parks	

Now at this day come the defendants by Montgomery & Seales their attorneys and file their motion to vacate the judgment and for leave to plead therein, after hearing the argument of counsel the Court being fully advised overrules said motion, And it is further ordered that the former order of stay of execution be vacated, And thereupon the defendants by their attorneys pray an appeal to the Supreme Court which is denied to which denial the defendants except, And it is ordered by the Court that the defendants file their bill of exceptions by the first day of July next

And it is further considered by the Court that the Plaintiff have and recover of the defendants his costs in and about this motion expended & have execution therefor.

And afterwards to wit: on the 20th day of June AD 1871 there was filed in said Clerk's Office a bill of exceptions which is in the words and figures following to wit:

State of Illinois }
County of Name }

The Circuit Court
of the County of Name at the
May Term thereof AD 1871.

Charles C. Carter
v
Delos H. Young
Addison H. Hite
Benjamin F. Parks

1st Motion to vacate judg-
-ment
2nd To open judgment &
allow defendants to plead to
the declaration

Be it remembered that on the first day of June AD 1871 the same being one of the Court days of the said term, the said motions came on to be heard and the said defendants in support of the said motions read in evidence the following judgment note and the affidavits thereon written and the filing thereof and the following petition and affidavits:

Note

612⁰⁰ Aurora Ill January 30 1860

One year after date for value received we or either of us promise to pay to Albert Jenks Co or order Six Hundred twelve & ⁵⁰/₁₀₀ Dollars with interest at the rate of ten per cent per annum

D. H. Young
B. F. Parks
Attest

Enclosure
Pay the within to Charles Carter
without recourse to us
Albert Jenks Co.

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Know all Men by these presents that we
D. W. Young A. H. Albee & B. F. Parks
are justly indebted to Albert Jinks & Co upon a certain
promissory note bearing even date herewith for the sum of
Six thousand twelve & 50/100 dollars with interest at the
rate of ten percent per annum and due one year after
date. Now therefore in consideration of the premises
we or either of us do hereby make constitute and appoint
C. Wheaton or any attorney of any Court of record
to be our true and lawful attorney in and for us
and in our names places and stead to appear in any
Court of records in term time or vacation or before any
Justice of the Peace in any of the States or Territories of
the United States at any time from and after date hereof
to waive the service of process and confess a judgment in favor
of said Albert Jinks & Co or their assigns or assignees
upon the said note for the above sum or for as much as
appears to be due according to the tenor and effect of
said note and interest thereon to the day of entry of such
judgment together with all costs and twenty dollars
attorneys fees and also to file a cognovit for the amount
that may be due with an agreement therein that no writ
of error or appeal shall be prosecuted upon the judgment
entered by virtue thereof nor any bill in Equity filed to
interfere in any manner with the operation of said judgment
and to release all errors that may intervene in the enter-
-ing up of said judgment or in giving the execution thereon
and also consent to immediate execution upon such judgment.

Hereby ratifying and confirming all that our said attorney may do by virtue hereof.

Witness our hands and seals the thirteenth day of January 1860

In the presence of D.W. Young (seal)
B. F. Parks (seal)
A. N. Albee (seal)

Filed March 6 1861 T. W. Moore clerk

State of Illinois }
Kane County }

Sewell W. Brown of Aurora in said Kane County being first duly sworn doth say that he is acquainted with the handwriting of Benjamin F. Parks & Delos W. Young from seeing them write and that the signatures of D.W. Young and B. F. Parks to the within note & warrant of attorney are the true and proper signatures of the said Benjamin F. Parks and Delos W. Young as thus affiant verily believes.

Sworn & subscribed before me this 2nd day of March 1861 } Sewell W. Brown
D. N. Fitch J. P. }

State of Illinois }
Kane County }

Jerse Brady being first duly sworn doth ~~deposed~~ say that he is acquainted with the handwriting of Addison N. Albee from seeing him write and that the signature of A. N. Albee to the within note and warrant of attorney is the true & proper signature of the said Addison N.

Albee as this affiant believes
 Sworn & subscribed before me
 this 6th day of March 1861
 J. E. Barr J. C. } Jesse Brady

Filed March 6 1861

T. W. Moore etc

Petition

State of Illinois }
 County of Kane }
 vs

Charles C. Carlo
 vs
 Delos W. Young
 Addison W. Albee
 Benjamin F. Parks

The Circuit Court of
 Kane County in Vacation
 after the February Term
 thereof adjourned to wit May
 3rd 1861

To the Honorable Isaac H.
 Wilson Judge of the Circuit Court of Kane
 County.

The Petition of Delos W. Young
 one of the defendants in the above entitled suit humbly
 sheweth unto your Honor that on the first day of Au-
 gust AD 1839 at the City of Aurora in said County
 of Kane it was corruptly agreed by & between Albert
 Jenks Levi Jenks & Edward A. Brady partners as
 Bankers at said city of Aurora doing business under the
 name & firm of Albert Jenks & Co and the said Delos
 W. Young that the said Albert Jenks & Co should lend

to the said DeLos N Young the sum of Three hundred dollars and that the said Albert Jenks & Co should forbear and give time of payment on said sum for the term of ninety days from said first day of August 1859 and that for the forbearing & giving time of payment on said sum of three hundred dollars for the said term of ninety days the said DeLos N Young should give and pay to the said Albert Jenks & Co the sum of \$50.67 and also ten percent interest upon said sum of \$300.00 and \$50.67 from said 1st day of August AD 1859 for and during said term of ninety days and that the said DeLos N Young in order to secure the repayment of the said ^{\$300.00 of the said sum} sum to be paid by said DeLos N Young for the forbearing and giving day of payment as aforesaid he the said DeLos N Young should execute to the said Albert Jenks & Co a note commonly called a judgment note for the sum of \$350⁶⁷ payable in ninety days from the date thereof and to bear date on the said first day of August AD 1859 and to draw interest at the rate of ten per cent per annum and to be signed by the said DeLos N Young together ^{with} B. F. Parks & J. R. Vaughn as sureties. And your petitioner further says that afterwards on the said first day of August 1859 at the place aforesaid in pursuance of the said corrupt agreement the said Albert Jenks & Co did lend and advance to the said DeLos N Young the said sum of Three hundred dollars for the term of time aforesaid and upon the terms aforesaid and the said DeLos N Young did also in pursuance of said corrupt

agreement and for the purpose aforesaid execute and deliver to the said Albert Jenks & Co what is commonly called a Judgment note for the said sum of \$350.00 bearing date the 1st day of August ad 1859 and payable in ninety days after date with interest at the rate of ten per cent per annum and which judgment note was signed by the said Delos W Young and B F Parks and J. R. Vaughan and the said Petitioner says that the sum so by him corruptly agreed to be paid for the giving time of payment as aforesaid exceeds the legal rate of interest contrary to the Statute in such case provided

And your Petitioner further sheweth to your Honor that when the said judgment note becomes due and payable the said Delos W. Young paid to the said Albert Jenks & Co the sum of \$59.72 as for the amount of interest for the forbearing & giving time of payment upon said sum of \$300.00 as aforesaid and that it was then and there further corruptly agreed by and between the said Albert Jenks & Co and the said Delos W Young, that the said Albert Jenks & Co should extend the time & give a further day of payment of said \$300.00 of ninety days from the first day of November ad 1859 and that the said Delos W. Young should give and pay to the said Albert Jenks & Co for such further extension of ninety days the further sum of \$59.72 and interest at the rate of ten per cent per annum upon the said sum of \$300.00 and \$59.72 and that to

secure the said sum of \$300.00 together with the ~~sum~~ of interest so to be paid as aforesaid for the foregoing & giving further time of payment as last aforesaid he the said Deless W. Young should execute and deliver to the said Albert Jenks & Co one other note commonly called a judgment note for the sum of \$359.72 to be dated the 1st day of November ~~1859~~ 1859 payable in ninety days from the date thereof with interest at the rate of ten percent per annum and to be signed by the said Deless W. Young & B. F. Parks & J. R. Vaughn. And your petitioner further says that in pursuance of said last mentioned contract agreement and for the purpose last aforesaid he did execute and deliver what is commonly called a judgment note to the said Albert Jenks & Co for the said sum of \$359.72 payable ninety days after the date thereof & bearing date the 1st day of November 1859 with interest at the rate of ten percent per annum and signed by him the said Deless W. Young and B. F. Parks & J. R. Vaughn which said sum of \$359.72 together with the interest upon that sum & the said \$300. exceeds the legal rate of interest contrary to the statute in such case provided.

And your petitioner further sheweth that on the 20th day of September A.D. 1859 at the said City of Aurora in said Kane County it was further contractly agreed by & between the said Albert Jenks & Co and the said Deless W. Young that the said Albert Jenks & Co should lend & advance to the said Deless W. Young

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the further sum of \$200.00. and that the said Albert Jenks Co should forbear & give time of payment thereon for the term of ninety days from said 20th day of September 1859 and that the said Delos W. Young should pay to the said Albert Jenks Co for such last mentioned loan of \$200.00 for the said term of ninety days the sum of \$12.50 together with interest at the rate of ten per cent ~~per annum~~ upon the said \$200.00 and the said sum of \$12.50 and that the said Delos W. Young to secure the said sum of \$200.00 & the sum to be paid as interest for the forbearance & giving time of payment as last aforesaid of the same should execute and deliver to the said Albert Jenks Co what is commonly called a judgment note for the sum of \$212.50 to bear date the said 20th day of September 1859 and to be payable ninety days after date with interest at the rate of ten per cent per annum and to be signed by the said Delos W. Young and A. H. Albee. And the said petitioner further says that afterwards on the said 20th day of September AD 1859 the said Albert Jenks Co did in pursuance of said last mentioned corrupt agreement lend & advance to the said Delos W. Young the said further sum of \$200.00 at the rate & for the time last aforesaid, and the said Delos W. Young further says that in pursuance of the said last mentioned corrupt agreement he did execute & deliver to the said Albert Jenks Co a note commonly called a judgment note for said sum of \$212.50 dated the 20th day of

September 1839 payable ninety days after date with interest at the rate of ten per cent per annum and which note was signed by the said Delos W. Young and A. H. Albee. And the said Petitioner says that the sum so paid as aforesaid for the forbearance of the said sum of \$201.00 as aforesaid exceeds the legal rate of interest contrary to the Statute in that behalf made & provided. And your Petitioner further says that when the said last mentioned judgment note became due the same was not paid but remained unpaid until the 2^d day of January 1860 at which time the said Delos W. Young paid the said Albert Jenks & Co the sum of \$21.00 which was paid by the said Delos W. Young and received by the said Albert Jenks & Co in payment of the usurious interest of said last mentioned sum of \$200. from the said 20th day of September 1839 (the date of the said judgment note given as aforesaid) to the said 2^d day of January 1860. And your Petitioner further says that on the 2^d day of January 1860 it was further corruptly agreed by and between the said Albert Jenks & Co and the said Delos W. Young that the said Albert Jenks & Co should forbear & give further time of payment upon said sum of \$200.00 for the term of sixty days from & to 2^d day of January 1860 and for thus giving further time of payment as last aforesaid he the said Delos W. Young should give & pay to the said Albert Jenks & Co the sum of \$13.50 & also interest at the rate of ten per cent per annum upon said sum of

\$10.50 and said sum of \$200.00 and that the said
 Delos W. Young should execute and deliver to the said
 Albert Jenks & Co a judgment note commonly so called
 for the said sum of \$210.50 payable sixty days after
 date and to be dated the 2^d day of January 1860 with
 interest at the rate of ten per cent per annum and to
 be signed by the said Delos W. Young and A. W. Albee

And your petitioner further says that in pursuance
 of said last mentioned corrupt agreement he did on said
 2^d day of January 1860 execute & deliver to the said
 Albert Jenks & Co a judgment note commonly so called
 for the said sum of \$219.50 dated 2^d 2^o day of January
 1860 payable sixty days after date with interest at ten
 per cent per annum as afo^r and which note was signed
 by the said Delos W. Young and A. W. Albee

And your petitioner further says that the amount
 given by the said Young for the giving said last
 mentioned time of payment of said \$200.00 as afo^r ex-
 ceeded the legal rate of interest contrary to the statute in
 such case made & provided. And the said

petitioner further says that on the 18th day of February 1860
 it was further corruptly agreed by & between the said Al-
 bert Jenks & Co and the said petitioner that the said
 Albert Jenks & Co should extend and give further day of
 payment to the said petitioner upon the aforesaid amounts
 of money embraced in the before described judgment note
 for \$359.72 dated Nov 1st 1859 & payable in 90 days
 from the date thereof and signed by Delos W. Young B. F.

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Parks & J. R. Vaughn and which was then paid due
and also the amount embraced in the before mentioned
judgment note for \$210.50 dated January 2^d 1860
payable 60 days after date and signed by Deles M.
Young & A. H. Albee and which said last named note
was not then due in the following manner to wit:
that interest should be computed upon the said \$359.72
note up to said 18th day of February 1860 and that interest
should be computed upon the said \$210.50 note up to the
time it would mature according to its terms and that
these two amounts should be added together and that
such a rate of advanced interest upon this amount should
be added thereto from the 30th day of January 1860
to one year from that date as that the whole should amount
to the sum of \$612.50 and that the said Albert Jenks
H. should forbear & give time of payment upon said
amount of \$612.50 one year from said 30th day of January
1860. And that the said Deles M. Young should
execute & deliver to the said Albert Jenks H. a judg-
ment note commonly so called for the said amount of
\$612.50 to be dated the said 30th day of January 1860
and to be payable one year after the date thereof
with interest at the rate of ten per cent per annum and
to be signed by the said Deles M. Young B. F. Parks
and A. H. Albee. And in pursuance of the said
last mentioned corrupt agreement to wit: on the 18th day
of February 1860 said notes were computed as before
mentioned and their amounts were added and put
together with such an amount of advanced interest

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thereon for one year from 3^d 30th day of January 1860
as amounted in all to the sum of \$612.50. And
that the said Debs W. Young did in pursuance of said
last named corrupt agreement to wit on the 18th day of
February 1860 execute and delivered a judgment note
commonly so called to the said Albert Jencks to bearing
date the 30th day of January 1860 payable one year after
date and for the said sum of \$612.50 with interest at the
rate of ten per cent per annum which said note was
signed by the said Debs W. Young B. F. Parks and
A. N. Albee. And the said Debs W. Young
further says that the rates of computation of the said
\$359.72 judgment note and of the said \$210.50 judgment
note and of the \$612.50 note as aforesaid exceeded the
legal rate of interest contrary to the statute in such case
made & provided. And the said petitioner further
says that the said last mentioned judgment note for \$612.50
dated the 30th day of January 1860 and signed by the said
Debs W. Young B. F. Parks and A. N. Albee is the judg-
ment note upon which judgment was entered in the above
entitled suit. And your petitioner further says
that at the February Term A. D. 1861 of the same Circuit
Court a judgment was entered up upon the said judgment
note of \$612.50 in the name of one Charles C. Carter
against the signers thereto. And your petitioner
further says that on the back of the said judgment note
of \$612.50 there is written an assignment or indorsement
without date in the words following to wit:

Pay the within to Charles Earle without recourse to us
 (Signed) Albert Jencks & Co "

But at what time the said indorsement was so placed upon the back of said note your petitioner cannot state but from circumstances and from conversation with the said Charles E. Earle your petitioner verily believes and so charges the fact to be that the said judgment note of \$612.50 was transferred or pretended to be transferred to the said Charles E. Earle for the only real purpose of preventing your petitioner from interposing the defence of usury thereto.

And your petitioner further says that about the time when the said \$612.50 note became due he had a conversation with the said Charles E. Earle at the place of business of the said Earle in the City of Aurora (your petitioner having previously received a line from the said Earle informing him that the said Earle held the said note) as follows to wit: Your petitioner remarked to the said Charles E. Earle that he had received a line from him (Earle) informing him that he held said note, and that the said Earle replied Yes I have such a note in my hands - and the said Earle further then told your petitioner that last summer he had some money that he did not then want to use but intending to use it about this time and that the bank wanted it and he let them have it and that the Bank wanted him to take the said note which he did. And your petitioner further says that some time after the said judgment note became due and before the judgment afo^o was entered up he had a second conversation with the said Earle at the office of the petitioner

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in the City of Aurora as follows in substance to wit:
The said Carlo then and there said to petitioner that he had then lately returned from Chicago that he had bought or was about to buy a large quantity of pig iron at a good bargain and that he thought he would call & see what my prospects were of getting the money from my insurance matter. Petitioner then said to him that he had rec^d a letter from the insurance Company and that the prospects were that he should have to have a suit with them and that Carlo then said he had got to have his money and that the Bank agreed to pay it to him if it was not paid when the said note became due and that he was not going to have any trouble with or oppress a man after he was burned up and that he Carlo then started to go to the Bank and since which time no further conversation was had between petitioner & the said Carlo in reference to the matter whatever

And your petitioner further says that from the general reputation in the vicinity where they reside he verily believes the said Albert James & Co are worth not less than \$50,000. And your petitioner further says that as he is informed by Justus D. Andrus a Deputy Sheriff of Kane County an execution has been issued upon the said judgment and which said execution is now in the hands of the said Justus D. Andrus for collection and that as your petitioner believes the said deputy is intending to levy & collect of your petitioner the same.

And your petitioner further says that all persons who

signed and executed the aforesaid judgment notes with him mentioned and set forth in this petition except your petitioner was but surety for and with your petitioner and having no other interest in the same and that your petitioner was the principal and the only one really interested therein.

And your petitioner further says that he is well acquainted with the handwriting of Edward A. Bradley one of the 2^d firm of Albert Jinks & Co aforesaid and the principal acting member of said firm from seeing the said Bradley write and that he verily believes and so charges the fact to be that the line he rec^d purporting to come from the said Chas. W. Earle as aforesaid was in the handwriting of him the said Edward A. Bradley

And your petitioner therefore humbly prays that your Honor will upon this his petition grant an order or certificate thereby certifying that there is probable cause for staying said execution & all further proceedings in said cause until the further order of the Court on the motion of the said Petitioner to set aside & quash the said execution & to open the said judgment so as that the said Petitioner may have his day in Court & avail himself of his defence of usury and any other defence he may have to the said demand

D. W. Young

State of Illinois
County of Knox
City of Aurora

On the 3rd day of May A.D.
1871 D. W. Young personally
came before me Henry W. Earle a Justice of the Peace

in & for said County & State aforesaid who being duly sworn says he has read the foregoing ^{Petition} and knows the contents thereof and that the same is true of his own knowledge & belief as to the matters which are stated to be an information or belief and as to those matters he believes it to be true

Signed & sworn to before me the 3^d day of May A.D. 1861

Henry A. Clarke
Justice of the Peace

D. W. Young

State of Illinois }
Kane County }

I do hereby certify that there is probable cause for staying the execution mentioned in the foregoing petition and the same is hereby ordered to be stayed until the further order of the Court in the premises

Isaac S. Adams

Judge 13th Circuit

To the Sheriff }
of Kane County }

Dated this 4th day of May A.D. 1861

Endorsed

Filed June 1 1861 T. C. Moore Clerk
Affidavit of A. H. Albee

Charles S. Curle
vs
Deos W. Young Benjamin
J. Parks Addison St. Albee

Kane County Circuit
Court after the February
Term AD 1861
In Vacation

Application to stay execution & open judgment

Addison St Albee of the County of Kendall & State of Illinois first being duly sworn on oath says that he is one of the defendants in the above entitled cause and that he is acquainted with all the parties thereto He says that in September 1860 the said plaintiff told deponent that he talked of buying a note that is the judgment note on which judgment was rendered in this case and he enquired of this deponent if it was all right, this deponent replied that he had better go and see Doctor Young one of the above defendants, He told deponent that he would do so. This deponent further says that after the judgment note became due and before judgment was entered thereon the plaintiff told this deponent that he must have his money but was not going to have any fuss with him deponent soon after this conversation with the plaintiff this deponent had a conversation with Edwards A. Bradley one of the firm of Albert Jones & Co in which the said Bradley told him if the said Young did not pay that judgment note that they would have to do it and if this deponent would give his note due in four months they Albert Jones & Co would take it and give up the judgment note aforesaid. Deponent told him Bradley he would not do it. Deponent then told him

that he had better hold on. Bradley replied that he would go on & take judgment, for it would forward the thing sixty or ninety days, and afterwards the plaintiff met this deponent & said to him "Is it going to make you mad if I take judgment against you." Deponent replied that it would not but that he the plaintiff had better go & see Young first & Carlo said he would.

And this deponent further says that on the second day of May 1861 he called at the place of business of said Carlo in the city of Toronto to see him about the matter of said judgment and did not find him in at that time & this deponent inquired of the business partner of said Carlo as to where he Carlo was. The said partner replied that he was down town, and this deponent ^{inquired} of said partner "Has Carlo got in pay" meaning on the said judgment, and he replied "I supposed so" meaning that Carlo had got his pay of the said Albert Jones & Co as this deponent understood him. And this deponent further says that he has reason to believe & does believe & so charges the fact to be that the said judgment note was transferred to him Carlo by Albert Jones & Co for the purpose of preventing the ^{said} defendants interposing the plea of usury and that the said Carlo took the same for that purpose, and this deponent says that he knows the handwriting of Edward A. Bradley and that a notice as to when the said judgment note would become due purporting to come from the said plaintiff was sent to this deponent and as he verily believes it was in the handwriting of the said Edward A. Bradley and not in the handwriting of said

plaintiffs, and this deponent further says that the said Edward A Bradley is the active business partner of the firm of Albert Jones & Co and that the said Bradley before & up to the time of entering up the judgment aforesaid has frequently spoken to this deponent as to when the said judgment note was going to be paid & when Young was going to get his insurance money

Subscribed & sworn to before me

this 3^d day of May 1861

Henry A Seaver
Justice of the Peace

Indorsed

Dated June 1 1861

A. H. Albee

J. C. Moore Clerk

Affidavit of H B Peiro

Charles L Carlo

Clerk of Court

Delos W. Young

Benjamin F Parks

Admission A Albee

The Circuit Court of the
County of Kane & State of
Illinois

May Term A D 1861

This deponent first being duly sworn on oath says that he is & was March 6th 1861 & has been since a deputy clerk of the said court & there was no other affidavits or proofs taken in entering up the judgment in this cause than those written upon the back of the judgment note filed March 6th 1861 according to the best of his knowledge & recollection and belief and if there had been this deponent would have known it for he says that he

entered up the judgment as such Clerk and was present when the judgment was taken as this deponent recollects

Subscribed & sworn to before me
this 1st day of June A.D. 1861
John Green Clerk

Henry B. Peirce

Endorsed

Filed June 1861

T. W. Moore Clerk

On the part of the plaintiff in the above cause his counsel read in evidence for the purpose of resisting the said motions the following affidavits

Affidavit of Edward A. Bradley

State of Illinois }
Kane County }

Kane County Circuit Court
May Term A.D. 1861

Charles C. Carlo

vs
Delos W. Young
Benj. F. Parks
& Addison St. Albis

Kane County to wit

Edward A. Bradley being
just duly sworn on his oath says that he is one of the
firm of Albert Jones & Co the payees of the note upon
which the judgment in the above entitled suit was rendered
and to whom the said note was originally given & executed
by the said defendants the makers thereof and that on

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the 20th day of August A.D. 1856 the said firm of Albert Jenks & Co sold and assigned and endorsed the said note to Charles C. Carlo the plaintiff in the above entitled suit in good faith and for a good and valuable consideration and in the usual course of trade that the said firm of Albert Jenks & Co sold assigned and endorsed the said note to the said Charles C. Carlo on the said 20th day of August A.D. 1856 for the sum of six hundred and forty five dollars (\$645.25) which was paid by the said Charles C. Carlo to the said Albert Jenks & Co in money on the said 20th day of August A.D. 1856 which said sum of \$645.25 was the full amount of principal and interest at 10 per cent due on said note at said time and upon the payment at said time of the said sum of \$645.25 by the said Carlo as aforesaid the said Albert Jenks & Co at said time to wit on the 20th day of August A.D. 1856 sold assigned and endorsed the said note for the said consideration of \$645.25 by and under the name of Albert Jenks & Co in writing on the back of said note to the said Charles C. Carlo. And this affiant states that he on the behalf of said firm of Albert Jenks & Co sold assigned & transferred said note at said time to said Charles C. Carlo and this affiant knows all the facts and transactions connected with said transfer of said note and this affiant on his oath positively and expressly states that the said sale transfer and assignment of said note as aforesaid by said Albert Jenks & Co to said Carlo was in good

faith in the usual course of trade and for a good and valuable consideration and that the said Albert Jinks Co actually received for said note and the said Charles C. Carlo paid to said Albert Jinks Co for the said note on the said 20th day of August A.D. 1875 the sum of \$200.00 in money which was the amount then due on the same for principal & interest, and that the said sale and transfer of said note as aforesaid was not made for the purpose of preventing the makers of said note neither of them from setting up the defence of usury or any other defence thereto and the said Charles C. Carlo had no notice or knowledge to the best of the knowledge information and belief of this affiant of any usurious interest being included in said note or of any defence of usury thereto or of any other defence legal or equitable thereto, but the said Carlo took the said note in the usual course of trade as a fair and honest business transaction and for the consideration aforesaid without notice or knowledge of any claim against or defect to the same or of any defence legal or equitable to the same or of any usurious interest included in the same to the best of this affiant's knowledge & belief and not for the purpose of preventing the makers setting up any defence thereto.

And this affiant further states that since the sale and transfer of said note to the said Charles C. Carlo on the 20th day of August A.D. 1875 as aforesaid the said Albert Jinks Co neither of them have not had nor now have any interest whatever in or claim to said note and no

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control whatever over the same but the said note ever since
the said 20th day of August A.D. 1870 has wholly belonged
to and been controlled by the said Charles C. Earle

And this affiant further states that he has
read the affidavit of Addison A. Albee one of the above
named defendants filed herein and this affiant states
that the conversation therein stated to have been had between
this affiant and the said Albee about the said note is
not correctly stated therein and this affiant says that
he did not at said time or at any other time state to
said Albee that if Young did not pay the note that
they the said Albert Jenks & Co would have to pay it
or that this affiant would "go on and take judgment"
on said note, but this affiant states that at the time
referred to by the said Albee in said affidavit there
was a conversation between this affiant & said Albee
about the said note in which said Albee enquired
about said note and this affiant told him that
the said Earle owned the note and that they
(the said Albert Jenks & Co) had no control over it
but that if he the said Albee wanted to hire the money
to pay the note that they (the said Albert Jenks & Co)
would loan it to him the said Albee and take his note
for the same and then he could pay Earle the money
due on the note & the said Albee said he would do
it but Young wouldn't let him. And this affiant
did not state and never stated that Albert Jenks & Co
would take said Albee's note due in four months and
give up the judgment note involved in this suit

but all the conversation on that point with said Albee was as above stated. And this affiant further states that he has never written or sent any notice to either of the makers of said note about said note purporting to come from or to be signed by the said Charles C Earle.

Sworn & subscribed to before me
this 22^d day of May 1861
Ira N. Fitch J.P.

Edw. M. Bradley

Endorsed

Filed June 1, 1861

T. W. Moore Clerk

Affidavit of Charles C. Earle

State of Illinois

Frank County

Frank County Circuit Court

May Term A.D. 1861

Charles C. Earle

vs

Deos W. Young

Benj. F. Parks &

Addein N. Albee

Frank County to wit:

Charles C. Earle being first duly sworn on his oath says that at the February Term A.D. 1861 of the said Frank County Circuit Court he recovered judgment in the above entitled cause against the above named defendants for the sum of six hundred & ninety eight dollars and eighty five cents besides costs of suit on a judgment note made and executed by the said

dependents to Albert Jenks & Co and by the said Albert Jenks & Co assigned and endorsed to this affiant. And this affiant states that on the 20th day of August A.D. 1880 this affiant purchased the said note upon which said judgment was rendered of the said Albert Jenks & Co the payee thereof in good faith and in the usual course of trade and paid to the said Albert Jenks & Co for the same the sum of six hundred & forty five dollars & seventy five cents in money being the amount of principal and interest due on said note at that time and the said Albert Jenks & Co at said time assigned and endorsed the said note to this affiant by writing on the back of the same the words "Albert Jenks & Co"

And this affiant further states that he purchased said note in good faith supposing and believing the same to be good and that he actually paid therefor to the said Albert Jenks & Co in money the said sum of \$645.75 - this affiant then & at that time having the said amount of money on hand lying idle & being desirous of investing the same in a good note or notes at 10, per cent interest and the said Albert Jenks & Co wanting said money he purchased the said note of the said Albert Jenks & Co believing the same to be good and paid the sum therefor in good faith and as a fair and honest business transaction. And this affiant further states that when he purchased the said note as aforesaid he had no notice or knowledge whatsoever of any usury or usurious interest being included in connected with or arising from said note nor of any other

defence legal or equitable thereto and this affiant had
 no notice of any usurious interest being included in
 or connected with said note or any other defence ~~connected~~
 thereto until the filing of the petition herein to open the
 said judgment and the said note was not transferred
 to this affiant for the purpose of preventing the said de-
 fendants or either of them setting up the defence of usury
 but the said note was purchased by this affiant without
 notice or knowledge of such defence or any other defence
 thereto and in good faith and for the valuable consideration
 aforesaid. And this affiant further states that about the
 time that he purchased the said note to wit: about the
 said 20th day of August A.D. 1860 & before the actual
 purchase thereof this affiant saw Addison H. Albee one
 of the makers of said note and told said Albee that this
 affiant was about to purchase the same and enquired of
 said Albee if the note was all right and said Albee
 then said it was, this affiant then asked him if Young
 had secured him for signing the note with him and said
 Albee said no but he had promised to do so and he Albee
 was going to him to have him do so which this affiant
 states was the conversation first referred to by the said
 Albee in his affidavit filed herein and this affiant states
 that said Albee told this affiant that said note was all
 right, and he did not tell this affiant "that he had better go
 and see Dr Young" as said Albee states in his said
 affidavit but said Albee said that he the said Albee
 would see or was going to see said Young to get security

for signing said note. And this affiant further states that the said Albert Jenks & Co neither of them have not had any interest in or control over said note at any time since the said 20th day of August AD 1860 the time the same was sold and assigned to this affiant as aforesaid but this affiant has been the sole and absolute owner and the bona fide holder of said note ever since said transfer of the same to him as aforesaid and now is the sole and bona fide owner of the judgment rendered upon the same as aforesaid and this affiant has not received any pay from said Albert Jenks & Co upon said note or judgment as intimated in the said affidavit of said Albert. And this affi-

-ant states that there is in equity and good conscience and justly due to this affiant from the above named defendants the full amount of said judgment and costs

And this affiant further states that he has heard read the petition of Delos W. Young to open said judgment filed herein and this affiant states that the conversation referred to by said Young in said petition as the second conversation had with this affiant and had at the office of the said Young is not correctly stated by said Young in said affidavit and this affiant did not state at said time nor any other time to said Young "that the bank agreed to pay it (the note) to him if it was not paid when the said note became due"; and did not then or at any other time state to said Young "that he was not going to have any trouble with or oppress a man after he was turned up" but this affiant then stated to said Young that he this affiant must have the money due on said note and

Made a demand of said Young for the same
And this affiant further states that the notices
referred to by the said Young & Albee in their affidavits,
filed herein of the time when said note became due
were written by this affiant and not by Edward A.
Bradley and were sent to said Young & Albee

Your affiant therefore prays this Honor-
-able Court that the motion of the said defendants to
open or vacate said judgment be overruled & the order
staying the execution thereof be set aside and
your affiant be permitted to collect the full amount of
said judgment & costs which this affiant states is
justly & equitably due to your affiant as aforesaid

Subscribed & sworn to before me } Charles C. Carle
this 24th day of May A.D. 1871 }
J. S. Barr J.P. New York

Endorsed

Filed June 1871

T. C. Moore Clerk

The foregoing was all the evidence introduced by either
party on the hearing of the said motions, and the Court
after hearing the argument of counsel for the respective
parties overruled the said motions. To which decision
of the Court the said defendants then and there excepted
and inasmuch as the foregoing matters and things do
not otherwise appear of record the said defendants pray
the Court to sign and send this their bill of exceptions
which is done. Isaac G. Alden
Judge

which said bill of exceptions is endorsed as follows

Filed June 20 1861

T. C. Moore Clerk

State of Illinois }
 Kane County } I, Thomas C. Moore
 Clerk of the Circuit Court in
 and for said County in the State aforesaid do hereby
 certify that the foregoing is a complete record in the
 case lately pending in said Court, wherein Charles
 C. Corle was plaintiff and Deles W. Young Benjamin
 F. Parks & Addison W. Albee were defendants in
 an action of assumpsit, comprising the pleadings
 & bills of exceptions filed & all orders of Court entered of
 record therein.

Witness my hand and the seal of
 said Court at Geneva in said County
 this 21st day of June A.D. 1861
 T. C. Moore
 Clerk

Deles W. Young }
 Addison W. Albee }
 Benjamin F. Parks }
 Plaintiffs in error }
 Charles C. Corle }
 Defendant in error }

Supreme Court of the State of
 Illinois. Third General division. April
 Term thereof. A.D. 1862.

Error To Kane.

After merits. to wit: on the first day of the said Term. before the Justices of the Supreme Court aforesaid Come the said Jos W Young, Addison W Albee, Benjamin F Parks. by Montony & Seales their Attorneys. and say that there is manifest Error in the foregoing record, in this. that is to say:

First - The Court Erred in overruling the motion of the Defendants below to vacate the said Judgment.

Secondly - The Court Erred in overruling the motion of the Defendants below to open said Judgment and allow them to plead to the merits of the case.

Thirdly - The Court Erred in rendering Judgment on the note mentioned in the declaration by virtue of the Warrant of Attorney set forth above. which they are ready to verify:

Wherefore they pray that the said Cause be reversed and the Judgment below be vacated and held for naught. or that they be allowed to plead to the merits of the case of the Plaintiffs below. &c

Montony & Seales
Attys. for Plffs in Error.

Let a supersedeas issue on the above record Bail \$1000. Edward R Allen
Security
J D Burton

Charles C. Carl
Defendant in Error
vs
Delos W. Farny
Addison H. Albee
Benjamin H. Parks
Plaintiffs in Error

Supreme Court of the
State of Illinois Third
Grand Division April
Term thereof A.D. 1862

Error To Have

Afterwards tried on the second
day of the said Term before the Justice
of the Supreme Court of said State
the said Charles C. Carl Defendant
in error by Wheaton and Bosson his
attorneys and says that there are no
such errors in the said Record and
proceedings in manner and form as
the said Plaintiffs in error have
thereof alleged - wherefore he prays
the said Cause and the Judgment
thereon be in all things affirmed.

Wheaton & Bosson
Atty. for Def. in Error

Charles ^{9th} C. Carter

vs

Delos W. Young
Benj. F. Parks ^{vs}
Addison H. Allen

Record

Filed July 18, 1861
L. L. and
C. M.