

No. 13527

Supreme Court of Illinois

Schwarz

vs.

Herrenkind.

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 245.

*Swarz
vs
Fenn*

1861

13527

SUPREME COURT OF ILLINOIS,

April Term, A. D. 1861.

JOHN J. SCHWARZ

vs.

CHARLES HERRENKIND.

POINTS FOR APPELLANT.

1. The verdict upon which the judgment was rendered, was given without any evidence upon which to base the same.

2. The note was never endorsed to Plaintiff below, and the Court erred in overruling the objection to its introduction on that ground.

Scates' Statutes, page 291, "*Negotiable Instruments*," § 4.
14 *Illinois*, 49, *Ryan v. May*.

3. The objection to the note, on the ground that it had a seal attached, should have been determined by the Court.

19 *Illinois*, 29, *Riley v. Dickens*.

7 *Barb., Sup. Court.* 564

4. The Plaintiff below claimed and introduced evidence tending to show that the note in question had been altered after execution and delivery, and the alteration being a material one, and no explanation thereof given or offered by the Plaintiff below, the note was therefore void.

20 *Illinois*, 437, *Hodge v. Gilman et al.*

5 *Gil.*, 252, *Walters v. Short*.

32 *Eng. Law & Eq.*, 162, *Gardner v. Walsh*.

32 *Penn. State R.*, (8 *Casey*) 432, *Heffner v. Wenrich et al.*

20 *Penn.*, (8 *Harris*) 12, *Getty v. Shearer*.

5. The Court erred in letting the Defendant below in to plead, after the lapse of the term at which the original judgment was rendered.

24 *Illinois*, 298, *Cook v. Wood*.

6 *Howard (U. S.)* 31, *U. S. Bank v. Moss*.

2 *Scam.*, 219.

1 *Eng.*, 282 & 92.

6. There are two final judgments in this case against the Defendant below, covering the same cause of action.

1 *A. K. Marshall*, 52 *Fletcher v. Andrews*.

7. The first judgment was erroneous.

It was entered up on a warrant of attorney, which does not describe the note sued on.

21 *Ill.*, 85, *Spangler v. Pugh*.

and for other reasons enumerated among the errors assigned.

MELVILLE W. FULLER,

Appellant's Attorney.

Supreme Court
245
John J. Schwan

Chas. Kewenau

Prouty Per Appellante

Filed April 30. 1861
L. Leland
Clerk

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13527

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MELVILLE W. FULLER,

Appellant's Attorney.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable George Manierre Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the Third Monday, (being the Nineteenth day) of November in the year of our Lord one thousand eight hundred and Sixty-fifth and of the Independence of the said United States the Eighty-fifth

Present, Honorable George Manierre Judge of the 7th Judicial Circuit of the State of Illinois.

Charles Haven States Attorney.

John Gray Sheriff of Cook County.

Attest, Wm. L. Church Clerk.

Be it remembered that heretofore to wit on the 12th day of October in the year of Our Lord One Thousand Eight Hundred and Fifty Eight, Charles Haven-kind, Plaintiff by Swin and Adams his Attorneys filed in the Court aforesaid a certain Declaration, Note and Warrant of Attorney in the words and figures following to wit

Declaration

State of Illinois } of Circuit Court of Cook County
Cook County } In Vacation October Term A.D. 1858.

Charles Haven-kind, Plaintiff in this suit by Swin and Adams his Attorneys complains of John J. Schwarz Defendant in a plea of trespass on the case on promises: For that whereas the said Defendant heretofore to wit on the twenty eighth day of July

in the year of our Lord One Thousand Eight Hundred and Fifty Eight at Chicago to wit, at said County of Cook made his certain promissory Note in writing bearing date the day and year aforesaid and then and there delivered the same to Michael Hambrecht in and by which said Note said Defendant by the name style and description of J. J. Schwarz promised to pay to the order of the said Michael Hambrecht Sixty days after date Two Hundred Dollars with interest at ten per cent per annum after due for value received And the said Michael Hambrecht to whom or to whose order said Note was payable afterwards to wit on the day and year aforesaid at Chicago to wit in the County of Cook aforesaid endorsed said Note in writing by which said endorsement the said Michael Hambrecht then and there ordered and appointed the said sum of money in said Note mentioned to be paid to said Plaintiff and then and there delivered said Note so endorsed to the said Plaintiff. By means whereof and by force of the Statute in such case made and provided the said Defendant became liable to pay said plaintiff said sum of money mentioned in said Note and being so liable in consideration thereof then and there undertook and promised to pay the same to the said Plaintiff according to the tenor and effect true intent and meaning of the said Note and of the endorsement aforesaid to wit at the place aforesaid

Yet the Defendant, although often requested to

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hath not yet paid the said sum of money or any part thereof to the Plaintiff but so to do hath hitherto wholly refused and still doth refuse to the damage of the Plaintiff of Two Hundred and Fifty Dollars and therefore he brings suit &c.

Irvin & Adams, Plaintiffs Attorney.

Note & Warrant of Attorney.

\$200.

Chicago July 28. 1858.

Sixty days after date for
Value received I, J. J. Schwarz promise to pay to
Michael Hambrecht or order the sum of Two
Hundred Dollars with interest at 10 % p. C. p. annum
after due.

J. J. Schwarz (seal)

Know all men by these presents that whereas the
subscriber J. J. Schwarz is justly indebted to Mich.
Hambrecht upon a certain promissory Note bearing even date
herewith for the sum of Two Hundred Dollars and —
cents made payable to the said M. Hambrecht or order
and due on the first of October next Now therefore
in consideration of the premises and of the sum of one
dollar to J. J. Schwarz in hand paid by the said M.
Hambrecht the receipt whereof is hereby acknowledged I
do hereby make constitute and appoint M. Windett or
any Attorney in any Court of Record to be my true and
lawful Attorney irrevocably for me and in my name place

and stand to appear in any Court of Record in term time
or vacation in any of the States or Territories of the
United States after due hereof to waive service or process
and confess a judgment in favor of the said M. Hambrecht
or his or their assignee 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 with
interest thereon together with costs, also for Ten Dollars
usual Attorneys fees to be added to the amount due on
entering up judgment also to file a cognovit for the amount
that may be so due with an agreement therein that no
writ or error or appeal shall be prosecuted upon the
judgment entered by virtue hereof nor any bill in equity
filed to interfere in any manner with the operation
of such judgment and to release all errors that may
intervene in the entering up of such judgment or
issuing the execution thereon and also to consent to
immediate execution upon such judgment. Hereby
ratifying and confirming all that my said Attorney
may do by virtue hereof.

Witness my hand and seal this twenty eighth day
of July A.D. 1858.

In presence of
Chas Heun Kind }

J. J. Schwarz (Sine)

On the back of the above Note appears the following

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affidavit and indorsement:

State of Illinois } Charles Hemenkind first being
Cook County } Jp. duly sworn on his oath says
he saw the within named Schwarz sign within Note
and that his signature thereto is genuine.

Subscribed and sworn to } Charles Hemenkind
before me this 12th Oct. 1858 }
Jpm^r Church Ck.

Say within Note to Charles Hemenkind.

M. Hambrecht.

And afterwards to wit: on the day and year aforesaid
said to wit: October 12th A. D. 1858 John J. Schwarz
Defendant by L. H. Davis his Attorney filed in the
Court aforesaid a certain Cognovit in words and
figures following to wit:

Circuit Court of Cook County.

In Vacation October Term A. D. 1858.

John J. Schwarz

ads.

Charles Hemenkind

} Cognovit

And the said John J. Schwarz
Defendant in the above entitled suit by Lewis H. Davis
his Attorney came and defend the wrong and injury where
of. and waive service of Process and say that he cannot

deny the action of the said Plaintiff nor but that the said Plaintiff hath sustained damages on occasion of the nonperformance of the several promises and undertakings in the said declaration mentioned including the sum of Ten Dollars for his reasonable Attorneys fees for entering up this judgment over and above his other costs and charges by him about said suit in this behalf expended to Two Hundred and Ten Dollars and Sixty Six cents and the said Defendant further agree 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 he hereby release all errors that may intervene in entering up the same or issuing the execution thereon and consent to immediate execution upon such judgment.

Lewis H. Davis, Defendants Attorney

And afterwards to wit at the October Term of said Court to wit: on the 12th day of October A.D. 1858. the following proceedings among others were had and entered of record in said Court to wit:

15330 Charles Herunkind }
vs } Confession
John J. Schwarz }

This day comes the said

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Plaintiff by Swin and Adams his Attorneys and
files herein his certain declaration on a plea of trespass
on the case upon promises. And thereupon comes also
the said Defendant by Samuel H. Davis his Attorney
in fact who files herein his warrant of Attorney the
execution of which being duly proved and also his
cognovit confessing the action of said plaintiff against
him and that he has sustained damages herein to
the sum of Two hundred and Ten Dollars and
sixty ^{six} cents.

Therefore it is considered that said plaintiff
do have and recover of the said Defendant his damages
of Two hundred and ten dollars and sixty six
\$210.66 cents in form as aforesaid confessed, together with
his costs and charges by him about his suit in
this behalf expended and have execution therefor.

And afterwards to wit: at the June Term of said
Court to wit: on the 27th day of June A. D. 1859
the following proceedings were had and entered of
record therein to wit:

Charles Hemenkind

vs.

J. J. Schwarz

} Mo. to set aside judgment
by Confession.

This day comes the said defendant
by Matthew Meare his Attorney and submits his motion

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to the Court founded upon Affidavit to set aside the judgment heretofore entered against him in this cause.

And afterwards to wit at the same term of said Court last aforesaid to wit: on the 29th day of June in the year last aforesaid the following proceedings were had and entered of record therein to wit:

Charles Heumenkind	}	Mo. to set aside judgment by Confession.
vs		
John J. Schwarz		

This day again comes the said Defendant by Mathew Mave his Attorney and on his motion and affidavit filed it is ordered that all further proceedings on the judgment heretofore entered of record in this cause to wit: on the 12th day of October last past, be and the same hereby are stayed until the further order of this Court.

And afterwards to wit at the same term of said Court last aforesaid, to wit: on the 6th day of July in the year last aforesaid the following proceedings were had and entered of record therein, to wit:

Charles Heumenkind	}	Mo. to set aside judgment by Confession.
vs		
John J. Schwarz		

This day again come as well the said Plaintiff by Swin and Adams his Attorney

as the said Defendant by Mathew Maue his Attorney and the Court being fully advised on the motion of the said Defendant heretofore submitted, to set aside the judgment in this cause, now orders that the Sheriff of Cook County return into Court the execution issued on the judgment in this cause and that said judgment be ^{the same} and hereby is opened and that said Defendant have leave to plead to said plaintiffs declaration herein by Monday morning next and that said judgment stand as security to said plaintiff for any sum which he may hereafter recover against said Defendant.

And afterwards to wit: on the Eleventh day of July in the year last aforesaid the said Defendant by his said Attorney filed in the Court aforesaid his certain Plea in said cause in words and figures following to wit:

J. J. Schwarz

ads

Charles Heuentkind

In the Circuit Court of
Cook County.

And the said J. J. Schwarz by Maue & Ennis his Attorneys comes and defends the wrong and injury &c. and saith that he did not undertake or promise in manner and form as the said Charles Heuentkind hath above thereof complained against him and of this he puts himself upon the Country
Maue & Ennis, Defts Attys.

And afterwards to wit: at the July Term of said Court
to wit: on the 12th day of July in the year last aforesaid
said the following proceedings were had and entered
on record therein to wit:

Charles Heinenkind
vs.
John J. Schwarz

} Mo. to set aside judgment by Confession

This day again came the said
parties by their respective Attorneys and on motion it is
ordered that said Defendant have leave to plead
specially herein by Monday next.

And afterwards to wit on the 16th day of July in the
year last aforesaid the said Defendant filed in the
Court aforesaid his certain special plea in said cause in
words and figures following to wit:

In the Circuit Court of Cook County

Of the July Term A.D. 1859.

John J. Schwarz

ads.

} Charles Heinenkind

And for a further plea in this
behalf the said John J. Schwarz by leave of the Court
for this purpose first had and obtained according to the
Statute &c. says that the said Charles Heinenkind ought
not to have or maintain his aforesaid action thereof

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against him because he says that the said promissory Note and power of Attorney thereto annexed in the said Plaintiffs Declaration mentioned was obtained by the said Michael Hambrecht and by the said Plaintiff by fraud and misrepresentations and that there was no consideration given for the same And that the consideration or condition upon which said Note was made and delivered to said Hambrecht was never received or performed And the said Defendant further says that the said Plaintiff came into possession of said Note and power of Attorney under the following circumstances and in the manner hereinafter mentioned and described:

The said Michael Hambrecht on or about the day of April A. D. 1859 recovered a judgment in this Court in his favor and against this defendant John J. Schwarz for the Sum of Three thousand Dollars and shortly after the recovery of said judgment said Hambrecht sold assigned and transferred all his right title and interest in and to the said judgment unto one Stupp of the City of Chicago County of Cook and State of Illinois and of which sale the said Stupp duly notified this Defendant and threatened this Defendant that he (the said Stupp) would immediately enforce the collection of said judgment And the said Defendant being at that time in embarrassed circumstances and not able to pay said

judgment or satisfy the demand of said Stupp and at the solicitation and request of said Hambrecht and in the presence and hearing of said Heerenkind consented and agreed with said Hambrecht that in case he the said Hambrecht would rebuy said judgment which said Hambrecht previously recovered against this defendant and assigned the same to said Heerenkind as aforesaid and would then make and carry into effect a certain settlement of the said judgment then made and agreed upon, he would pay the said Hambrecht the Sum of Two Hundred Dollars and in pursuance of said agreement and at the time and place aforesaid and in the presence of said Heerenkind the said Defendant then and there executed a certain promissory Note with power of Attorney to confess judgment thereon, the unto annexed and upon which said promissory Note this suit is brought and which said promissory Note was given upon the aforesaid agreement and for and to secure the aforesaid Sum of Two hundred Dollars so agreed to be paid by the said Defendant to the said Hambrecht upon his rebuying and settling said judgment and for no other consideration whatsoever and that it was expressly understood and agreed at the time of the making and delivering of said Note and power of Attorney between this Defendant and said Hambrecht and in the presence and hearing of said

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Pff. Herentkind that if the buying of the said judgment and the settlement of the same as aforesaid could not be effected and carried out, that the said Note and power of Attorney should be null and void and be redelivered to said defendant or destroyed. And this Defendant further says that said Hambrecht has not performed his part of said contract for which said Note was given but to do the same has hitherto wholly neglected and refused. And that he has neither bought the said judgment nor procured a settlement of the same nor done any act whatsoever in connection therewith although often requested so to do by the said Defendant. And the said Defendant further says that the said Plaintiff Herentkind at and before the time of the endorsing by said Hambrecht and the receiving of said Note & power of Atty. by him, had knowledge and was cognizant of all the facts and circumstances hereinbefore alleged and was cognizant that said Defendant never received any consideration from said Hambrecht for said Note or Power of Attorney.

And this he the said John J. Schwarz is ready to verify, wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid Action thereof against him.

Marx & Ennis, Defts. Atty.

And afterwards to wit: on the 4th day of September

A. D. 1860. the said Plaintiff by his said Attorney filed in the Court aforesaid in said cause his certain Replication and Demurrer in words and figures following to wit:

Replication

Charles Hennenkind
vs
John J. Schwarz }

In the Circuit Court of Cook
County of Sept. T. 1860.

And now comes the said plaintiff and as to the plea secondly above pleaded by the said Defendant, he says precludi non Because he says the said promissory Note in said plea mentioned was not obtained by fraud, covin or misrepresentation nor was the same given without consideration nor had the consideration wholly or in part failed, nor had Plaintiff any Notice of facts stated in said plea. And this he prays may be inquired of by the Country.

J. A. Irwin

Atty. for Plff.

Demurrer

Charles Hennenkind
vs
John J. Schwarz }

In the Circuit Court of
Cook County of Sept. T. 1860.

And the said Plaintiff as to the said second plea of said Defendant saith that the same and the matters therein contained in the 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 said Defendant and that he the said Plaintiff is not bound by law to answer the same and this he the said Plff. is ready to verify. Wherefore by the reason of the insufficiency of said plea in this behalf said Plff. prays &c.

And the said Plff. according to the form of the Statute in such case made and provided states and shows to the Court here the following causes of demurrer to said second plea that is to say

1. That said Defendant has plead in said 2^d. plea fraud and want of consideration and failure of consideration.
2. That said second plea is double
- 3 And also that said 2^d plea is in other respects uncertain, informal and insufficient &c.

J. A. Swin, atty for Plff.

And afterwards to wit at the September Term of said Court to wit on the 4th day of September A.D. 1860 the following proceedings among others were had and entered of record therein in said cause to wit:

Charles Herrentkind
vs
John J. Schwarz } Mo. to set aside judgment by
Confession.

This day comes the said plaintiff by Sprin and Adams his Attorney and the said Defendant by Matthew Mowse his Attorney also comes and the Plaintiff by leave of the Court now withdraws his demurrer to the special pleas of the Defendants herein pleaded and to try the issue joined herein between the said parties, it is ordered that a jury come, whereupon come the jurors of a jury of good and lawful men to wit: John King jr. Edward Alexander, Robert McBlair, James Campbell, John Lloyd, Raymond Nias Thomas H. Moakley, D. Sinclair, M. J. Meyers, Walter N. Mills, C. F. Bonckey and A. Forkildson, who being duly elected, tried and sworn, well and truly to try the issue joined aforesaid and true verdict render according to law and the evidence and after hearing a part of the evidence, the hour of adjournment having arrived it is ordered that said jury have leave to separate, to meet the Court on the coming in thereof to morrow morning at nine O'clock.

And afterwards to wit at the same term of said Court last aforesaid to wit: on the 5th day of September in the year last aforesaid the following further

proceedings were had and entered of record therein to wit:

Charles Herrentkind	} Motion to set aside judgment by
vs	
John J. Schwarz	Confession.

This day again come the said parties by their Attorneys and the jurors of the jury aforesaid also come and having now heard all the evidence offered in said cause, the arguments of Counsel as well on the part of the plaintiff as of the defendant and instruction from the Court, retire to consider of their verdict and afterwards return into Court and say: "We the jury find the issues for the Plaintiff and assess his damages to the sum of Two hundred and Twenty five Dollars"

Whereupon the Defendant by his Counsel moves the Court for a new trial of said cause and in arrest of judgment. And on motion of plaintiffs Counsel it is ordered: that Defendant be and hereby is ruled to file grounds for a new trial herein by Friday morning next.

And afterwards to wit: at the November term of said Court to wit: on the 29th day of December in the year last aforesaid the following further proceedings were had and entered of record therein to wit:

Charles Herentkind
vs
John J. Schwarz } Mo. to set aside Judgment by Confession.

This day again come the said parties by their Attorneys, and the Court having heard counsel as well on support of the motion of the Defendant heretofore entered for a new trial of said cause and in arrest of judgment, as in opposition thereto and being now fully advised in the premises, doth order that said motions be and they each are hereby overruled, to which ruling of the Court in overruling said motions for new trial and in arrest of judgment the Defendant now here accepts.

Therefore it is considered by the Court that said Plaintiff do have and recover of the said Defendant his damages of Two hundred and twenty five Dollars in form as aforesaid by the jury aforesaid assessed, together with his costs and charges by him about his suit in the behalf expended and have execution therefor.

Whereupon the said Defendant by his counsel accepts and prays an appeal to the Supreme Court of the State of Illinois, which is granted by the Court upon condition that the Defendant shall within Twenty days from this date execute and file with the Clerk of this Court his appeal bond herein in the penal sum of Five Hundred Dollars conditioned according to law with Chauncey J. Bowen as surety thereto.

And afterwards to wit: on the 17th day of January
A. D. 1861 said Defendant filed in the Court aforesaid
in said cause his certain Bill of Exceptions in words
and figures following to wit:

State of Illinois
Cook County }
Charles Herrentkind

In Circuit Court of
Cook County.

vs
John S. Schway }

Be it remembered that on the fourth day September A. D. 1860 the same being one of the days of the Term A. D. 1860 of said Court a Jury being called to try the issues joined, the Plaintiff to maintain and prove the issues on his part offered in evidence a Note in words and figures following to wit:

\$200.

Chicago July 28. 1858

Sixty days after date for value received S. J. J. Schwarz promise to pay to Michael Hambrecht or order the sum of Two hundred Dollars with interest at 10 p. c. p. annum after due.

J. J. Schwarz *seal*
attached to which said Note was a power of attorney & on which was written near the edge of the paper the words "M. Hambrecht" and forasmuch as an inspection of the original paper is necessary in order to a correct understanding of the place where said words "M. Hambrecht" are written

thereon it is ordered by the Court below that the original paper be annexed to & transmitted with and as a part of this the Defendants Bill of Exceptions To the introduction of which said Note in evidence the Defendant by his Counsel then and there objected on two grounds, first that said Note was under seal and this action and the declaration was in assumpsit. Second that there was no endorsement of said Note to the Plaintiff. —

As to the second of which said objections the Court overruled the objection and directed the Plaintiff to write over the words "Mc. Hambrecht" an order to pay said Note to the Plaintiff to which decision and ruling of the Court in overruling said second objection the said Defendant by his Attorney then and there duly excepted. Which note was then endorsed as follows:

Pay within Note to Charles Heeren Kind
Mc. Hambrecht.

And as to the first objection by the Defendant made to the admission of said Note in evidence the said Plaintiff offered to show by evidence to the jury that the seal thereon was attached thereto since the suit was commenced to which the Defendant by his Counsel then and there objected but the Court overruled the objection and allowed

the testimony to go to the jury and the Dft. by his Counsel then and there excepted.

The Plaintiff then called as a witness W. W. Drummond who being duly sworn on oath testified under objection as follows:

I know the Defendant & the Plaintiff. I have seen the Note offered in evidence and think it was filled up in my office. The Plaintiff was present and I think he filled out the Note. The Note was handed to me to see whether it was properly filled up. I think Heerenkind wrote the Note but don't know that I have ever seen him write other than that. I have no doubt he filled it up. I don't think the seal was there when it was handed to me. I think Schwarz signed the Note there and some other papers. Were present when Note was executed Col. Davis, Plaintiff, Defendant and myself. The scrawl and word seal written in it are in different ink from the other part of the Note. It is not in my handwriting nor is it Davis' the Plaintiff's or Defendant's or Hambrecht's. I had but one kind of black copying ink in my office at the time. I generally bought it myself. The ink in which the scrawl is made and the word 'seal' is written, is not the same as the body of the note. On cross examination the witness stated. I can

not swear, the seal was not there at the time the Note was executed but I don't think it was. The Plaintiff then called as witness James Ennis who being duly sworn testified as follows: I am an Attorney. I have seen this Note before. First saw it when the motion was made to set aside the judgment. The affidavits filed for that purpose are in the handwriting of my then partner Mr. Marx. I think I first saw the Note in June or July 1859. I have no independent recollection about the papers but believe I examined them all. I did not see that scrawl then, I think I should have noticed it.

On Cross Examination the Witness said. I have no independent recollection about the matter. Could not say I looked at the scroll. It might have been there and I not see it. I did not put the scroll there and have not seen the papers since then until yesterday.

On reexamination the witness said, I drew the special plea, but don't know whether I had the Note at that time or a mere memorandum.

Wm. H. Davis was then called as a witness and being sworn, testified:

I am an Attorney at law. I think I have seen the Note in question. It was filled out in the

Office of Drummond & Davis, think the Plaintiff Herenkind filled it out. Think Schwarz signed it then. Have no recollection and can not form any judgment about the scrawl. I did not put it there.

W. W. Drummond being recalled testified:

I think the signature is in Schwarz's handwriting. The scrawl, that is the word "seal" is not in his handwriting. Not a word or figure on the note is in my handwriting.

The Plaintiff then called as a witness Mathew Marx who being sworn testified.

I am an Attorney at law. Mr. Schwarz was a client of mine. Never saw Hambrecht write. Have seen the Note and Power of Attorney. I saw them when I drew the Affidavit to set aside judgment in this case. Don't know in whose hands writing the body of the Note is. I think the scrawl was not there when the judgment was set aside but don't know. I was an Attorney in a trial of a case against Hessing in which these papers in this case were used. The papers have been before Justice De Wolf.

On Cross Examination the witness stated. I did not put this scrawl on the note. The trial against Hessing and the time when the papers were

before De Wolf is since January 1860. I did not have the Note before me when I drew the affidavit. Had a copy. Don't know who has the copy.

Chas Von Soden was then called as a witness and testified being sworn as follows:

I know Hambrecht and his handwriting. The seal is not in his handwriting, nor is it in Schwarz's handwriting.

All of which before mentioned evidence was taken under objection by the Defendant which the Court overruled and allowed the same to go to the jury to which ruling and decision of the Court the Defendant by his Counsel then and there excepted.

The Plaintiff here rested his case and the Defendant recalled as a witness

James Ennis who having been previously sworn testified as follows. The time when the papers in this cause were at De Wolf's was within a few weeks and in the year 1860.

The Defendant then called as a witness

J. M. Mathieu who being sworn testified.

I was employed in Mr. Blackwelder's office in September 1859, and at the time copied for him the Note & Power of Attorney in this case. He was retained by Schwarz to defend him at

this time. The seal was on the original Note at this time and appears in my copy then made and which I have here.

On cross examination the witness stated, I made the copy of the Note and Power of Attorney in September 1859. The seal was there then. I remember the time from the fact that it was then that Blackwell was employed and I copied the papers immediately after he was retained. This was all the testimony offered in said cause and the Court then gave the following instruction on behalf of the Plaintiff to the jury.

By the Court.

1st If the jury find from the evidence that the seal was attached to the Note after it was made and delivered without the knowledge ^{and consent} of the Plaintiff *Given* then the objection to the Note that it is a sealed instrument should be wholly disregarded by the jury and a verdict should be found for the Plaintiff.

To the giving of which instruction on the part of the Pff. by the Court the Defendant by his counsel then and there duly excepted.

And the Court gave the following instructions on behalf of the Defendant to the jury.

1st The burden of proof is upon the Plaintiff in this case and unless the jury are satisfied from the evidence that the seal in question was added to the Note since its execution without the knowledge and consent of the parties thereto, then they should find for the Defendant.

2^d If the jury believe from the evidence that the seal to the Note in question was attached thereto at the time of the commencement of this case and the execution of the same, then the jury will find for the Defendant.

3^d If the jury believe from the evidence that the seal was attached to the Note in question before the commencement of this case by the Plaintiff without the knowledge or consent of the Defendant, then the Defendant is entitled to a verdict and the jury should find accordingly.

4th The law imposes upon the party offering a paper in evidence the explanation of any alterations which may appear thereon and therefore if the jury believe from the evidence that any alteration has been made in the Note in question the burden of proof is upon the Plaintiff to explain the same and unless the jury believe from the evidence that such alteration has been explained by the Plff. the presumption of the law is, that

it was made by the Plaintiff and the jury should find for the Defendant.

Gavin

5th It is of no consequence who attached the seal to the Note in question if it was done with the knowledge and consent of the parties to the Note before it came into the possession of the Plaintiff.

6th If the jury believe from the evidence that the seal was appended to the Note in question after its execution and before the commencement of this suit by and with the consent of the parties thereto, then the Plaintiff is not entitled to recover and the jury should find for the Defendant.

The jury found a verdict for the Plaintiff and assessed his damage at Two hundred and twenty five Dollars and the Defendant thereupon entered his motion for a new trial of said cause and in arrest of judgment therein in the words and figures following to wit:

State of Illinois
Cook County Jp.

In Circuit Court
of Cook County
September T. 1860.

Charles Herunkind
vs.
John J. Schwarz }

And now

comes the said Defendant by M. W. Fuller
his Attorney and moves the Court that the verdict
hereinbefore this day rendered be set aside and a
new trial granted in said cause for the following
reasons to wit.

1st Because the said verdict is against the evidence
and the weight of evidence.

2^d. Because the verdict is against the law.

3^d Because the Court erred in admitting testimony
as to the seal after the Note was offered
in evidence and objection made thereto.

4th Because the Court erred in overruling the
Def't's objection to the introduction of the Note
on the ground that it had not been endorsed
to the Plaintiff.

5th Because said Note was never endorsed to
Plaintiff.

5^{1/2}. Because the Note should have been excluded
by the Court on the evidence.

6th Because the Note was under seal and could
not be introduced against the Defendants
objection.

6^{1/2} Because if the Note was altered by Plf. after
execution and delivering the same was thereby
rendered void.

7th Because the Court refused to continue said

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cause, when moved thereto by Dft. upon the withdrawal of the Dmt. to the special plea but allowed the Plf. to withdraw said Dmt. and reply on this same day.

7th Because the evidence showed the alteration of the Note, if any, took place, after the commencement of the suit and no explanation being made thereof, the law presumes the alteration to have been made by Plf. and the Note was therefor void.

8th Because the Court erred in giving the instructions given for the Plaintiff "By the Court" and marked given "by the Court"

9th Because the Defendant is entitled to a trial of the issues joined in the case, the verdict now returned having simply determined the fact that the seal was added to the Note after the execution thereof or commencement of this suit.

10th Because the issue tried was a forged issue and had no reference to the merits of the suit.

11th Because when objection is made to the introduction of a paper the Court cannot dispose of that question by ordering the jury to determine an issue of facts thereon or if so, to determine the other issues in the case.

11th. Because the Note if altered was shown to have been so after execution and delivery and thereupon

should have been excluded by the Court as void,
the law presuming the alteration to have been by the Plf.
12th Because the Deft. was taken by surprise as
proved by affidavits to be hereafter filed.

M. W. Fuller

Atty for Deft.

State of Illinois
Cook County J.

In Circuit Court of
Cook County.

Charles Harenkind

September 5. 1860.

vs.

John J. Schwarz }

And now comes the said
Defendant by M. W. Fuller his Attorney and
moves the Court to arrest judgment before the
verdict hereinbefore rendered for the following reasons
to wit:

1st Because the Note upon which the verdict was
returned was not endorsed to the Plaintiff.

2^d Because the Plf cannot recover in this form of
action, the Note being under seal.

2^{1/2} Because the Note was altered and in the absence
of explanation was void.

3^d For other reasons.

M. W. Fuller

Dfto Atty.

And filed in support of said motion the

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Affidavits of M. W. Fuller, J. M. Mathieu
J. J. Schwarz and Sarah M. Donald in words
and figures following, to wit:

Affidavit of M. W. Fuller.

State of Illinois	In Circuit Court of
Cook County	Cook County.
Charles Hummkind	
vs	
John J. Schwarz	

Personally comes
M. W. Fuller and being duly sworn says, that
he is the Attorney of the Defendant in the above
entitled cause and acted as such in the trial
thereof on the 4th & 5th days of September 1860
This Affiant further says that he was retained
by said Defendant in two certain other cases
of said Schwarz in the Circuit Court of Cook
County on or about the 30th of May last to act
in conjunction with R. J. Blackwell Esq. who
was, as this affiant understood, the counsel then
engaged on behalf of said Schwarz in said
causes last referred to. This affiant further
says that on or about the 30th day of June
1860 said Schwarz spoke to this affiant in

regard to the above entitled cause and as this
affiant understood him desired to retain him
to act in connection with R. L. Blackwell Esq.
in said cause in the way of keeping track of the
case on the docket and not allowing a default
in said Schwarz therein. This Affiant further
says that said Schwarz either on the same
day last mentioned or soon after came to this
affiant and notified him, there was no further need
of attention to the case at that time as it would
go over to the fall of the year as indeed was the
fact. This affiant further says that on the 3^d of
September 1860 this affiant, although he had received
no further advice from said Schwarz, looked for
the papers in said case and was unable to find
the same but on the morning of the 4th accidentally
noticed Mr. Chwin the Attorney of the Plaintiff
submitting a demurrer to the special plea in the
case, to this Court and thereupon obtained the papers
of the Court and examined the same. This affiant
further says, that upon an examination of the papers
and discovering the defence set up which this
affiant had been totally unacquainted with up
to that time, this affiant went at once to Mr.
Schwarz's place of residence to inquire after
the testimony on his behalf. This affiant found

said Schwary in bed confined there by rheumatism as said Schwary stated. This affiant further says that as far as he could at that time ascertain the defense that this affiant supposed that although said Schwary could prove the failure of the consideration of said Note, that he would be unable to prove the consideration itself. This affiant further says that while he was endeavoring to ascertain the facts of the wife of said Schwary one J. N. Mathieu came into the Store & residence of said Schwary (said Schwary's residence is in the rear of said store) with a bill of discovery by him prepared for the purpose of eliciting from the Plaintiff in this case and the payee of the Note sued on, one Hambrecht in answer to said bill of discovery the true consideration of said Note. This affiant upon inquiry then found that Mr. Blackwell would or could not attend to the trial of said cause and that said Mathieu was engaged in said Blackwells office and had upon examination of the case determined that the filing of a bill of discovery was the proper course to pursue in the case. This affiant further says that judging from his own, at that time, want of success in ascertaining the witnesses by whom the facts could be proved and from the statements

of said Mathieu he acceded to said Mathieu's views as to the propriety of a bill of discovery. This affiant further says that this was in the forenoon of said 4th day of September 1860 and that in the afternoon and before said Mathieu was able to get bonds for the purpose of depriving the Plaintiff from the further prosecution of this suit until answers had been made to the bill of discovery proposed to be filed, the cause was called for trial. This affiant further says that when the case was so called for trial, this affiant in again looking over the papers perceived that the Note in question was under seal and therefore was inadmissible in the case. This affiant thereupon supposed that no further anxiety need be felt in the case and went to trial. This affiant further says that when the suggestion was made by the Plif's Attorney that the seal had been attached to said Note after the rendition of the original judgment by confusion thereof, he this affiant entertained no idea that any proof could be offered on that subject and supposed that by calling Mr. Marx or Mr. Ennis of counsel for said Schway in the summer of 1859 when said original judgment was set aside, one or the other of them

would know and would testify to the existence of the seal at that time. This affiant however requested Mr. Mathieu to see Mr. Mave and ascertain how the fact was and this affiant did himself inquire of Mr. Emnis, who said he did not know whether the seal was there or not. This affiant further says that Mr. Mathieu informed this affiant afterwards that he had seen Mr. Mave and said Mave declared that he believed the seal was there at the time of the opening of the judgment. This affiant further says that the case was allowed to stand over from the afternoon of the 4th to the forenoon of the 5th September. This affiant further says that on the 5th of September Mr. Mave was called by the Plaintiff's Attorney with other witnesses and to the astonishment of this affiant testified that he believed the seal was not on the Note when the judgment was set aside instead of giving the testimony expected by this affiant. This affiant further says, that he was entirely taken by surprise by this testimony, that although he had not personally interrogated said Mave, yet he had expressly requested Mr. Mathieu to do so and suppose and still suppose that said Mathieu did attend to this duty as this affiant was informed by said

Mathieu to that effect as hereinbefore set forth.

This affiant further says, that at the trial of said cause he relied upon the recclusion of said Note as the only means then open for the preservation of the interest of his client, that he had had no proper opportunity to examine into and prepare the defence upon the merits, that this affiant was guilty of no negligence in the premises as he was not the regular Attorney of the Defendant in the case and supposed that Mr. Blackwell was as he still understands was the fact and therefore this affiant had not prepared the defence as aforesaid. That on the morning of the 4th inst. this affiant did make ~~an~~ effort to get up the testimony for the Defence as he has hereinbefore set forth, because he saw that the case would be called for trial and Mr. Blackwell was not present but at that time as far as this affiant could then ascertain, said Defendant could not establish the real consideration of the Note. This affiant further says that he has since the trial of said cause made ~~made~~ as careful examination of the merits of the Defence as time and other business engagements would allow. That as this affiant perceived that the cross affidavits filed on behalf of the Plaintiff, on Defendants motion to set aside the judgment

originally rendered, set up the consideration of the Note to have been a settlement between Hambrecht and Schwarz of certain Carpenter work done for said Schwarz by said Hambrecht or something of that character. This affiant having ascertained that Hambrecht did perform such work directed Schwarz to investigate his books and look over the receipts he holds of said Hambrecht for Carpenter work to ascertain how the account between them stood at the time of the execution of said Note. This affiant has since said direction was given to said Schwarz examined the results of his investigation - That so far as this affiant can judge from said inspection Hambrecht had been at that time overpaid for the Carpenter work in question and for proof of this, this affiant refers to the affidavits hereinafter filed. This affiant has further ascertained from one Sarah M^cDonald that she heard said Hambrecht acknowledge to said Schwarz that the consideration of the Note was some arrangement in regard to the settlement of a judgment of \$3000 recovered by Hambrecht against said Schwarz before the execution and delivery of said Note. That this affiant knew of this witness at the time of trial but had never examined

her, did not know that she could testify as above stated, as Mr. Mathews stated that he had inquired of her and considered that her evidence would be of no avail. This affiant further says that said Sarah also stated that she recollected and would testify that on one occasion Hambrecht came into Mr. Schwarz store and while there Mr. Schwarz asked him why the Note had not been destroyed (or words to that effect) and that Hambrecht then said it should be torn up and started for Mr. Herunkind the Plf. who was across the street, with the declaration that he would make Herunkind tear the Note up. This affiant further says that he believes he can show by said Sarah and other witnesses such intimate connection in the management of Hambrechts business between said Hambrecht and Mr. Herunkind as will sufficiently connect said Herunkind with a knowledge of the true consideration of said Note as to admit the testimony as to Hambrechts declarations aforesaid.

This affiant further says that he has as yet not had the time or opportunity to examine as to other witnesses but that the aforementioned facts induce the conviction on his part that the said

Schwarz has a good defence to said action on the merits and that the same is susceptible of proof. This affiant further says that he has examined since the trial of said cause, the files of a chancery cause in the Superior Court wherein said Hambrecht is Compl. and Lazarus Silberman is Dft. and found there certified copies of the assignment of the \$3000 judgment by Hambrecht to a third party and the reassignment and transfer of said judgment to Silberman. That this affiant believes ~~and~~ said original transfers are to be found on the files of this Court in the case of Schwarz vs. Silberman, but the papers in said cause are off the file.

M. W. Fuller

Sworn to and subscribed
before me this 11th day of
September 1860.

Wm L Church Clk

Affidavit of John J. Schwarz

State of Illinois

Cook County

Charles Heinrikind

vs.

J. J. Schwarz

S. Cu. Ct. of Cook County

Personally comes

John J. Schwarz and being duly sworn on oath declares and says that he is the Defendant in the above entitled cause - that Robert L. Blackwell Esq. of Chicago was the regularly retained Attorney of this Defendant in said cause and the person upon whom this affiant relied for the trial of said cause. This affiant further says that sometime in the summer of 1860. This affiant having retained M. W. Fuller in certain other cases of this affiant in this Court mentioned the above case to said Fuller and wished him to see that no default was taken against this affiant therein but this affiant did not request said Fuller to try said cause or to take charge of the same generally as this affiant relied therefor on Mr. Blackwell - This affiant further says that on the 4th of September 1860 and for three days preceding this affiant was confined to his bed by rheumatism and that on said 4th day of September in the forenoon Mr Fuller came in and informed this affiant that said cause would be called for trial soon and that he wished to find the witnesses as there appeared ^{to be} nobody attending to the case. This affiant further says that one J. N. Mathieu who was in the office of said Blackwell had informed this affiant that a bill for discovery must be filed to obtain the

answers of Hambrecht the payee of the Note in this
 cause & Herenkind this Plaintiff as to the actual
 consideration of said Note and represented to this
 affiant that this affiant upon what he had stated
 to said Mathieu he could prove, could not establish
 the consideration of said Note and must file the
 bill of discovery aforesaid and this affiant assented
 to that course upon the advice to that effect of said
 Mathieu coming as this affiant supposed and as
 Mathieu stated ^{to him} from said Blackwell. This
 affiant further says that while Mr. Fuller was
 endeavoring to ascertain the testimony and witnesses
 said Mathieu came in with said bill of discovery
 and thereupon said Fuller and said Mathieu
 upon consultation agreed to the filing of the bill
 and went out together. This affiant further
 says that he was afterwards on the afternoon
 of the 4th of September informed while still
 confined to his bed as aforesaid that said cause
 was on trial and on the morning of the 5th of
 September this affiant succeeded in getting to
 the Court House and was present at the conclusion
 of the trial of the case. This affiant further
 says that as to the seal on said Note he remembers
 nothing. That he did not see said Note from the
 time of the entry of the original judgment to

the 5th of Sept. 1860 and never altered or changed
said Note in any particular or heard that the same
was altered or changed until on the ^{5th September 1860} trial of said cause.
And that he never procured any alteration of or change in
said Note. This affiant further says that the sole & only
consideration of the Note was that said Hambrecht agreed
in consideration thereof to rebury of one Stupp a certain
judgment for \$ 3000 against this affiant & hold the
same and give time to this affiant thereon. That sometime
after said Note was executed and delivered this affiant
ascertained that said judgment had been retransferred
to said Hambrecht and by him to Mr. Silvermann
and that it was impossible for Hambrecht to comply
with said agreement in regard thereto. This affiant
further says that he thereupon went to see Hambrecht
and to get the Note torn up and said Hambrecht
stated that he had destroyed the same. This affiant
further says that he did not think any thing more
about the Note supposing it was torn up, when it
was one day in the fall of 1858 presented to this
affiant by Herunkind the Plaintiff. This affiant
further says that Herunkind the Plaintiff here
was the witness to the Note, was intimately connected
with helping Hambrecht carrying on his business in
the way of translating for him into English and
speaking for Hambrecht and was fully acquainted

with the consideration of said Note. This affiant further says that he is informed that Hambrecht and Herenkind one or both of them made affidavit in this case, that the consideration of the Note was certain carpenter work done by Hambrecht for this affiant. This affiant further says that the above allegation of said Hambrecht and Herenkind is untrue and that as additional testimony thereto since the trial of this cause at the instance of Mr. Fuller this affiant and his wife have examined the receipts of said Hambrecht for money paid him for carpenter work for this affiant and find that this affiant had upon the execution and delivering of said Note already overpaid said Hambrecht for all carpenter work done by him for this affiant. And this affiant further says that he was not very careful about the last payments he made Hambrecht as to its exceeding the amount due, because of the judgment which Hambrecht had and held as aforesaid and upon which this affiant supposed Hambrecht would allow any excess of payments he might make. This affiant further says that he can establish the consideration of said Note by said Hambrecht's declarations made in the presence of one Sarah M. Donald and that he believes he can establish Herenkind's

connection with said declarations in such a manner as to place it beyond doubt, that he knew the exact consideration. This affiant further says that as to the failure of the consideration, that that is susceptible of positive proof after the actual consideration is established. This affiant further says that he expected Mr. Blackwell to defend said case, that said Blackwell had been thoroughly informed of the defence and declared to this affiant that there was no doubt of success and that he said Blackwell would attend to it and since the same, that this affiant had not explained the defence to Mr. Fuller as he relied on Mr. Blackwell and on the 4th of September this affiant was sick in bed and through delay and misunderstanding and the difficulty of explaining the case to Mr. Fuller and the proof and the difficulty of understanding the statements of Mr. Fuller as to the necessary proof under the law this affiant being a foreigner there was no opportunity or sufficient time to have this Defendants defence made out. This affiant further says that he is guilty of no lack in the matter ~~in~~ ^{the matter} but that through the absence of Mr. Blackwell he was prevented as before set forth from having his case tried upon the merits which he desired and designed to have done.

This affiant further says that he believes he can make out his entire case by witnesses and that injustice will be done in the premises if he is not allowed so to do. This affiant further says, that he understands that the Attorneys for himself were taken by surprise by the testimony of one Mear as to the seal. That as far as this affiant was concerned he wished the case tried upon its merits and did not know or care at the time of the trial what bearing the seal had upon the case one way or the other, but this affiant was obliged to submit to the course pursued as the trial was going on and there was no chance for explanation in the premises.

Subscribed and sworn to

before me Sept. 11. 1860

Wm L Church CLK

J. J. Schurz.

Affidavit of Sarah McDonald.

State of Illinois }
Cook County } J.

Charles Hewitt

vs.

John J. Schurz

In Civ. Ct. Cook County.

Personally comes

Sarah M^c Donald and being duly sworn, on oath declares and says, that she knows the parties to the above entitled cause and is in the employ of the wife of said Defendant - That in the Fall of 1858 she remembers a conversation between one Michael Hambrecht and said Schwarz in regard to a Note for Two hundred Dollars which Schwarz had given to Hambrecht, that said Hambrecht was charged by some one who came in with him with having stated that the consideration of the Note was carpenter's work done for said Schwarz and said Hambrecht denied that it was carpenter work but stated that the Note was given in arrangement in some way of a judgment of \$3000 against said Schwarz. This affidavit ^{ant} further says that about that time the Plaintiff Herunkind presented a Note to said Schwarz and said Schwarz ordered him out of the Store. This affidavit further says, that subsequently to the last mentioned incident Hambrecht came again into Mr. Schwarz's store and Mr. Schwarz asked him why he had not destroyed that Note, to which Hambrecht replied, that it should have been done and said he would go to Herunkind and make him tear it and started across

the street where Heinenkind was, for that purpose as this affiant supposed. This affiant further says that long before this and in the Spring of 1858 as near as she can recollect, Hambrecht was frequently in Schwarz' store and speaking about a \$3000 judgment and settling it and that Heinenkind almost invariably accompanied said Hambrecht and conversed on said Hambrecht's business, explaining and translating for said Hambrecht.

Sworn to and subscribed
before me this 11. day of } Sarah M. Donald.
September 1860.

Wm L Church CLK

And the Plaintiffs Counsel offered and read on said motion for new trial the affidavits of Mc. Hambrecht and Chas. Heinenkind, filed herein on the previous motion to set aside judgment as follows to wit:

Affidavit of Charles Heinenkind.
Charles Heinenkind } In Circuit Court of
vs } Cook County.
John J. Schwarz }
State of Illinois } July 5. 1859.
Cook County Sp. Charles Heinenkind the

Plff. in the above cause, first being duly sworn on his oath says that he has heard the affidavits of Dft. Schwarz, filed herein, read and says that it is true as therein alleged that this Deponent drew up and witnessed the judgment Note sued on in this case, that he did so at the request of both Hambrecht & Schwarz and had then no interest in the matter and that as this Deponent understood from the parties at the time of drawing and executing said Note it was given by Dft. Schwarz to Hambrecht on a settlement between them and for carpenter work and materials furnished by Hambrecht to Schwarz before that time, the settlement was made by themselves, this deponent having nothing to do therewith further than learn from them what it was and to draw said judgt. Note at their request. And Deponent on oath says that he is not aware that said Note was procured by fraud or threats and denies all knowledge that the \$3000 judgment figured in the settlement leading to the giving of said Note or that any part of the consideration thereof was for delay in enforcing the \$3000 judgment. That the statements of the said Schwarz in reference thereto so far as Deponent has any knowledge in the premises is untrue, that said

Note was indorsed to said Deponent before due for a valuable consideration and without any knowledge of the existence of any such facts as alleged by said Schwarz in his affidavits - that said Schwarz knew of judgment being rendered within a few days thereafter - demands were frequently made on the execution issued herein and this Deponent had frequent conversations with him about settling this judgment, in all of which occasions he promised to pay or settle the matter and never once intimating the Note had been procured as he now alleges - his only excuse being, that he had not the money to pay it and never until after he was arrested herein on a Ca. Sa. did he pretend to this Deponent's knowledge that any fraud had been practised upon him or anything of the kind.

Subscribed and sworn
before me this 11th day of
July 1859.

Wm L Church Clk.

Charles Hemenkind

Affidavit of M. Hambrecht

Charles Hemenkind } In Circuit Court of
John J. Schwarz } Cook County, July 5, 1859.
State of Illinois
Cook County Jo. Michael Hambrecht

first being duly sworn, on his oath deposes sayth, that he is acquainted with the parties to the above entitled suit and that he is the person referred to in affidavits filed therein by the Defendant and that the said judgment Note ^{on which judgment} was heretofore entered in this cause, was not given under the circumstances detailed in the said Defendants affidavits filed herein, that while it is true this Deponent did recover a judgment for \$3000 as alleged in his said Defendants affidavits and although there has been much delay and trouble in endeavoring to collect said judgment, yet the giving of said judgment Note was in no way connected therewith. And Deponent further says that he is a carpenter and joiner by trade and that in that capacity he had done work and furnished materials for the said defendant before the making of said judgment Note and that there was due and owing to this Deponent thereon a balance of some Two hundred Dollars and that the same was settled by the said Defendant Schiratz giving to this deponent his said judgment Note for \$200 dated July 28th 1858 & due in 60 days which is the same judgment Note on which judgment was entered in this case this Deponent having endorsed the same to the said Herunkind the Plaintiff and that the foregoing is the bona fide and only consideration for said

Note and that the statements of the said Schwarz that said Note was obtained by fraud or by threats to enforce the said \$3000 judgment in any way is untrue.

Subscribed and sworn before me
this 11th day of July A. D. 1859. } W. Hambrecht.
Wm Church Clk.

And the Court thereafterwards having heard argument thereon and examined and considered the same overruled said motion and entered judgment on the verdict in said cause and in overruling the motion for new trial, the Court remarked that the entry of that motion waived the motion in arrest, when the Defendants counsel replied that he did not rely upon said motion in arrest, To which decision and overruling of the Court in overruling said motions and entering judgment upon the verdict, the Defendant by his Counsel then and there duly excepted - and prayed an appeal therefrom, which was granted. And forasmuch as the matters and things hereinbefore set forth do not otherwise appear, the said Defendant prays that this his Bill of Exceptions may be signed and sealed and made a part of the record of this cause which is done.

George Maniere
Judge of 7th Judicial Circuit
Ill.

And thereupon on the 16th day of January A.D. 1861 the said Defendant filed in the Court aforesaid his certain Appeal Bond in said cause in the words and figures following to wit:

Know all men by these Presents that we John J. Schvay of the City of Chicago, County of Cook and State of Illinois and Chancey T. Bowen of the County of Cook and State of Illinois are held and firmly bound unto Charles Heunkeind also of the same County and State in the penal sum of Five Hundred 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 severally and firmly by these presents.

Witness our hands and seals this 15th day of January A.D. 1861.

The condition of the above obligation is such, that whereas the said Charles Heunkeind did on the 29th day of December A.D. 1860 in the Circuit Court in and for the County of Cook and State aforesaid and of the November Term thereof A.D. 1860 receive a judgment against the above bound John J. Schvay for the sum of Two hundred & twenty five Dollars and — cents besides costs

of rent from which said independent of the

Chicago July 28 1858.

Value Received, *I, J. J. Schwartz* promises to pay
to *Michael Hambrecht* or order,
the sum of *Two hundred* Dollars,
with interest *at 10% p. a. for arrears after due*
J. J. Schwartz *Seal*

Know all Men by these Presents, That whereas the subscriber, *J. J. Schwartz*
is justly indebted to *Michael Hambrecht* upon a certain
promissory note bearing even date herewith, for the sum of *Two hundred Dollars*
dollars and *00* cents; made payable to the said *Michael Hambrecht*
or order, and due *on the first of October next*

Now, therefore, in consideration of the premises, and of the sum of one dollar to *J. J. Schwartz* in
hand paid by the said *Michael Hambrecht*, the receipt whereof is hereby
acknowledged, I do hereby make, constitute and appoint *Michael Hambrecht*
or any attorney in any Court of Record, to be *my* true and lawful attorney, irrevocably for *me* and
in *my* name place and stand, to appear in any Court of Record, in term time or vacation, in any of the
States or Territories of the United States, at any time after the date hereof, to waive service of process, and con-
fess a judgment in favor of the said *Michael Hambrecht*
or his or their assignee 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, with
interest thereon; together with costs; also for *Two Dollars* usual attorney's fees to be added
to the amount due on entering up judgment; also, to file a cognovit for the amount that may be so due, with an
agreement therein that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof,
nor any bill in equity filed to interfere in any manner with the operation of such judgment, and to release all errors
that may intervene in the entering up of such judgment, or issuing the execution thereon, and also to consent to
immediate execution upon such judgment. Hereby ratifying and confirming all that *my* said
attorney may do by virtue hereof.

WITNESS *my* hand and seal this *twenty eight* day of *July* A. D. 1858.

IN PRESENCE OF

Ph = Heinrich Kind

J. J. Schwartz (SEAL)
(SEAL)

State of Illinois, of Charles Herrink and further
last known, duly sworn on his oath says
he saw the within named Schuyler

sign within note & that his signature
is genuine

Subscribed & sworn to }
before me this 12th October 1858 }
Charles Herrink

Wm Church clly

shall duly
payed for
account of
shall duly
payed for
account of
shall duly
payed for
account of

...sint, from which said judgment of the said
Circuit Court the said John J. Schwarz has
prayed for and obtained an Appeal to the Supreme
Court of said State.

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

Taken and entered into before me } J. J. Schwarz (seal)
at my Office this 16th day } Channcy T. Downes
of }

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the
State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and
complete copy of ^{original note referred to therein} Pleadings, Bill of Exceptions, Appeal Bond & proceedings
of record — in a certain cause Lutty pending in said Court
on the Common Law side thereof, wherein Charles
Greenberg was Plaintiff — and John
J. Schwarz was Defendant.

In Witness Whereof, I have hereunto set my hand,
and affixed the Seal of said Court at Chicago, this
twentieth Second day of March
A. D. 1861,

Wm L. Church Clerk.
Fees for Record \$13.50

Circuit Court of Cook Co

Charles Herenkind

John J. Schwarz

Complete Record

In Supreme Court of the State
of Illinois
Third Grand Division
John J. Schwarz
appellant

Charles Henckins
appellee

Afterward, writ on the first
Tuesday ^{after the first Monday} of April, A.D., 1861, at
this same term before the Judges
of the Supreme Court of the State
of Illinois, comes the said John
J. Schwarz appellant by M.W. Felt
his Attorney says that in the
record & proceedings aforesaid and
in the rendering of the judgment
aforesaid, there is manifest
error in this, to wit,

1st That the verdict upon
which said judgment was
rendered as aforesaid, was given
without any evidence upon
which to base the same

2nd That the note declared
on was never indorsed to the
Plaintiff below by the party there

3rd That the note declared
on was under seal and the

action of the Plaintiff below
and the said declaration was
in assumpsit and said note
could not be introduced in
evidence in said Cause -

4th That the Court erred in
permitting the evidence given
by the witnesses ~~of~~ for the Plaintiff
below in regard to the deal
attached to said note to be
so given and to go to the jury
and in overruling the objection
of said Defendant below to the
introduction of said testimony
before the jury -

5th That the Court erred in
sustaining the objection of
the Defendant below to the introduction
of said note in evidence on the
ground that it was under
deal and in not deciding
that question one way or
the other

6th That the Court erred in
overruling the objection of
the Defendant below to the

introduction of the note in question in evidence on the ground that it had not been endorsed to the Plaintiff below

7th That the Court erred in leaving the question of the admissibility of evidence to the Jury

8th That the verdict should only have found the facts whether or not the seal was appended to the note after the commencement of the Suit whereas it was a verdict for damages -

9th That the verdict did in fact, only determine that the note was admissible in evidence

10th That the judgment was rendered without a trial of the issues joined but upon a perjured issue made by the Court upon the admissibility of certain testimony

11th That the evidence of the witnesses tended to show a material alteration of the

note in question after execution
and in the absence of explanation
the presumption was that the
note was altered by the Plaintiff
below it was therefore said
12th That the Plaintiff below claimed
that the note had been altered
and offered no explanation of
the alteration which was a
material one -

13th That the Court erred in
giving the instruction by the
Court given on behalf of
the Plaintiff -

14th That the verdict was
against the evidence and the
law

15th That the Court erred in
overruling the motions of
Defendant below for a new
trial and in arrest of judgment

16th That the said judgment
was rendered in said cause while
there was a final judgment
already therein, not reversed,
annulled or otherwise duly vacated

17th That the Court erred in

opening the judgment rendered
in said cause Dec. 12th 1858,
and all the subsequent proceedings
in said cause were irregular,
invalid and void -

18th That the record aforesaid
discloses ^{three} judgments for
damages upon the same cause
of action against the ~~said~~
defendant in this cause,
neither of them reversed, annulled
or otherwise vacated -

19th That the declaration aforesaid
and the matters ~~therein~~ therein
contained are not sufficient
in law for the Plaintiff below
to have or maintain his
aforesaid action thereagainst
the said Defendant below

20th That the original judgment
in said cause was erroneous
in that it was rendered by
Confession upon a warrant
of Attorney which describes
another & different note from
the note upon which said

judgment was rendered; ^{and} in that
it was rendered without due proof
of the execution of said Warrant
of Attorney - and in that the
Cognovit in said Cause is
signed by one Lewis H. Davis
as the Defendant's Attorney
whereas said judgment recites
the appearance of said Defendant
& the confession of said judgment
as by Samuel H. Davis, said
Defendant's Attorney; and in
that said note is under
seal and the declaration
and action of said Plaintiff
below are in Assumpsit;
and in that said note is not
and was not endorsed by
the Judge thereof to the
said Plaintiff below

And the said Plaintiff ^{appellant} in
error by his said Attorney
prays that ~~the~~ the judgment
aforesaid for the errors
aforesaid doth the same in
the record and proceedings
aforesaid maybe reversed

annulled & altogether held
for nothing & that he may
be restored all things which
he has lost by occasion
of said judgment &c

Melick W. Fuller

Atty. Gen. Ref. in Error

~~Robert D. Appin~~ In the Supreme Court
of the State of Missouri
The J. M. J. Appin
vs. Appellant

Charles Remondet
Respondent

And now the said Respondent Charles Remondet
by Attorney W. W. Widdett his Attorney
says that in said Record & Record
of Proceedings and judgment in the
Court below there is no error.
and that said judgment
ought to be affirmed

Attest April 15. 1861.

W. W. Widdett
Respondent

Supreme Court
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John J. Schuyler
Appellant
~~Off. in error~~

Charles Heyenkind
Appeller
~~Off. in error~~

Record and assignt.
of error

Filed April 17, 1861
L. Leland
Clerk