

13504

No. _____

Supreme Court of Illinois

Stratton.

vs.

Henderson.

71641  7

12-11
STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 181

Stratton

vs
Henderson

13504

Indorsed under
affidavit and filed

Monday
November 11, 1884

Attest
J. H. [illegible]

STATE OF ILLINOIS, SS.)

Supreme Court, Third Grand Division, at Ottawa: }

The People of the State of Illinois,

To the Clerk of the Supreme

Court of Chicago Cook County: }

GREETING.

WHEREAS, in a certain plea between

Charles M. Henderson survivor
of *Charles M. Henderson*

plaintiff and *Oscar Stratton, Anson S. Potter, L.B. Seymour*
Julius G. Lombard

defendants, lately depending in the said *Superior Court of Chicago* Court of said
County, wherein judgment was rendered for the said *Charles M. Henderson*

and against the said *defendants*

and the said *Oscar Stratton* having duly sent out a writ of *error* to review

the judgment of said *Superior* Court, rendered against *the said defendants* & in favor of
said Charles M. Henderson

as aforesaid, to the Supreme Court, held at Ottawa, on the first Tuesday after the first Monday in April,
and in pursuance of the said *writ of error* a transcript of the record and the proceedings
in the plea aforesaid was transmitted. And, also, whereas it hath been suggested, on the part of said *Charles*
M. Henderson

that the said record has been diminished, inasmuch as *the suggestion of the death of*
the said Charles M. Henderson on the records of said
Superior Court

hath not been sent up; and forasmuch as the said Supreme Court are not satisfied that there is a sufficient
record sent in the plea aforesaid, but in the record there is a diminution: YOU ARE, THEREFORE, HEREBY
COMMANDED, That, without delay, the said *record* therein you cause to be
transmitted to the Supreme Court, to be held at Ottawa, on the *now in session at Ottawa*
instant next, without any diminution or addition whatsoever,
to the end that speedy justice may be done in the premises, according to law; whereof you are in no wise to
fail; and send you then there this writ.

Witness The Hon. JOHN D. CATON, Chief Justice of said Court,
and the seal thereof, at Ottawa, this *18th* day of *April*
in the year of our Lord one thousand eight hundred and *fifty six* & one

L. Leland

Clerk of the Supreme Court.

L. B. Rice Deputy

Record

S. 419

Oscar^{1st} Stratton

27

Charles M. Henderson

Went of Berkeley

Filed April. 20th

1861 W. Humboldt

Filed April 23. 1861
L. L. L.

State of Illinois

Supreme Court of Illinois
April Term A.D. 1861

Oscar Satter impudae } Court & Superior
as } Court of Chicago
Charles M. Henderson }
Survivor }

It stands being
duly sworn deposes and says that the
transcript of the record and proceeding
in the above entitled cause is
erroneous defective and imperfect in
not stating the suggestion of the
death of Charles M. Henderson one of the
plaintiffs in the Court below and
moves the Court for a writ of certiorari
to the said Superior Court. It sent up
a perfect transcript of the record accom-
panying in said the said cause and
further says not

G. A. Stanley.

Subscribed & sworn to before
me this 16th day of April 1861

Amazo delmon Ch. Superior Court
of Adelman Depy

166
Oscar Strathmore

ring 100

Charles M. Henderson

Sumner

~~~~~

Filed April 18 1861  
L. Leland

State of Illinois  
In the Supreme Court  
at Ottawa -

No. 116.

Oscar Stratton  
impleaded &c.

April Term A.D. 1861.

v.  
Error to Superior  
Charles M. Henderson Court of Chicago.  
Survivor of Charles  
N. Henderson.

Suggestions against motion  
to strike out Bill of Exceptions  
and abstracts.

1. The words "the city" in the title of the Court, may be rejected as surplusage -
2. The motion is mainly upon the ground that in the abstract and Bill of Exceptions, Charles M. Henderson is not named as survivor of Charles N. Henderson. But the record shows - pages and - that the trial and judgment are distinctly between the defendants

below, and said Charles M. as  
survivor of Charles N. Henderson.  
The question now, is not whether  
the death of the coplaintiff is  
properly entered, or whether  
the form of the trial and judgment  
is sufficient, but whether it  
sufficiently appears that the  
Bill of exceptions was filed in  
this cause.

The statute of Amendments and  
Joinders covers the whole matter  
a hundred fold — first, the  
objections themselves are destroyed  
by force of the statute, and second,  
if the objections had any force,  
the error would, by the statute,  
be curable by amendment  
here before this court.

Amendments and Joinders

Sec. 3. 4. 13. et seq.

3. The plaintiff in error prays  
leave to make any amendment  
which the court here may think  
needful. It seems that  
the abstract should be amended

to conform to the record. This  
abstract is still in manuscript  
and the amendment can be  
made without trouble or delay.  
And the abstract then be printed  
before the case will be reached  
on the second call -

Borrey  
for the  
Pff in Exron



116-

Stallon & c

v

Henderson & c

Suggestions  
against Mo.  
to strike out  
Bill Expro & ~~the~~  
Abstracts -

Filed Apr. 23<sup>rd</sup> 1861

L. Ireland

Clerk



Oscar Stratton

<sup>vs</sup>  
Charles M. Henderson  
Plaintiff v. e.

Supreme Court of  
Illinois

April Term A. D., 1861

Court to Superintendent  
of Chicago

And now comes the said Defendant  
and moves the Court to strike from  
the files the Bill of Exceptions and  
Abstracts here filed for the reason that  
they are not proper in this cause

The Bill of Exceptions is entitled as  
follows viz,

Charles M. Henderson v. Superintendent of  
the City of Chicago

<sup>vs</sup>  
Anson S. Potter

October Term A. D., 1859

Julius G. Lambert

L. B. Seymour &

Oscar Stratton

See Transcript page 21  
1st Obj

The Cause mentioned in the entitling  
of said Bill of Exceptions is not the  
cause in which the writ of error issued  
from this Court

2d The Court mentioned in the en-  
titling of said Bill of Exceptions is not the Court in which the

not of error issued

The writ of error filed in this  
case. See transcript page 16

36 The Abstracts on file are not  
entitled in this cause

Hehn & Clark

for Sept. in error

Supreme Court

Oscar Stratton

impulse

as

Charles H. Henderson

Sumner &c

Matson & Straker

at Detroit

Bill of exchange

from Wells

Hehn & Clark

STATE OF ILLINOIS,  
SUPREME COURT,

The People of the State of Illinois,

To the Clerk of the Supreme <sup>of Chicago</sup> Court for the County of Cook Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Superior Court of Chicago Cook County, before the Judge thereof, between Charles M. Henderson survivor of Charles M. Henderson

plaintiff, and Anson S. Potter J. G. Lumbard, L. B. Seymour, & Oscar Stratton

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

as we are informed by his complainant 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 judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plea 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 23<sup>d</sup> day of November in the Year of Our Lord One Thousand Eight Hundred and Sixty.....

L. Leland

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

L. S.

Oscar Shatto

No.

vs.

Charles M. Henderson

WRIT OF ERROR.

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

L. Leland

Clerk.

FILED

Nov. 20<sup>th</sup>

A. D. 1860

L. Leland

Clerk.

Know all men by these presents that  
we Oscar Stratton and James T.  
Hosford of Chicago Illinois are held  
and firmly bound unto Charles  
M. Henderson & Charles T. Henderson in  
the penal sum of Twenty five thousand  
Dollars. for the payment of which  
well and truly to be made to the  
said Charles M. Henderson and  
Charles T. Henderson. their heirs, and  
assigns we bind ourselves our  
heirs Executors & Administrators  
jointly & severally firmly by these  
presents.

Witness our hands and seals  
this 23<sup>rd</sup> day of November A.D. 1860

The Condition of the above ob-  
ligation is such. That whereas the  
above named Charles M. Henderson  
& Charles T. Henderson did on the  
26<sup>th</sup> day of November A.D. 1859 in  
the Superior Court of Chicago, in the  
State of Illinois receive a judgment  
against the above bounden Oscar  
Stratton impleaded with Susan S.  
Pattis, J. C. Lombard and L. B.  
Seymour, for the sum of two thou-  
sand dollars (\$2000.) Debt. and  
five hundred and two dollars, and  
sixty one cents Damages (\$910.<sup>61</sup>/<sub>100</sub>).  
together with Costs of suit - And whereas  
further the above bounden Oscar  
Stratton, has on the day of the  
date hereof sued out of the Superior

Court of the State of Illinois. a  
Writ of Error upon said judgment.  
Now if the said Oscar Strattan  
shall well and truly pay or cause  
to be paid the said judgment, Costs  
<sup>interest</sup> and damages in case the same  
shall be affirmed; and shall  
also duly prosecute said writ of  
Error, then this Obligation shall  
be null and void; Otherwise to  
remain in full force and Effect.

Witness

J. Madry

Oscar Strattan  
by James Hoyt his  
Attorney in fact

James Hoyt

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Superior Court  
Oscar Strattan  
vs  
Charles W. Henderson  
et al  
Bond

Filed November 23 1920  
L. Leland  
Clerk

Oscar Stratton

<sup>vs</sup>  
Charles M. Henderson

} Court to Superior  
Court of Chicago

And the said appellee  
comes and moves the Court for a rule  
on Defendant to file a new and sufficient  
bond for the following reasons viz  
1st The Bond runs to Charles M. Henderson  
and Charles M. Henderson

The judgment in the  
The Transcript from the Court  
below shows a judgment in favor of  
Charles M. Henderson versus &c.

The condition of the Bond re-  
lates a judgment recovered by Charles M.  
Henderson & Charles M. Henderson in the  
Court below

The Bond recites that  
whereas the said Oscar Stratton has  
sued a writ of error out of the Superior  
Court of Illinois, the writ of error in this  
case was from the Superior Court of  
Chicago

Wm. J. Clark  
for appellee



Cesar Stratton  
impud

<sup>as</sup>  
Charles M. Henderson  
Sumner

~~~~~  
Matron

Helm & Clark

Supreme Court of the
State of Illinois

Oscar Stratton
impleaded with
Anderson S. Potter
Julius G. Lombard
& L. B. Seymour
Plaintiffs in Error

Charles M. Henderson
& Charles M. Henderson
Defendants in Error.

Error to
Superior Court
of Chicago.

Abstract of the Record, and
Bill of Exceptions.

1. This was an action of debt on
personal Bond for, Debt \$2,000. -
Damages \$2,000. -
Commenced by Defendants in Error
against Plaintiffs in Error in the Cook
County Court of Common Pleas (now
Superior Court of Chicago) July 10. 1858.
(See praecipe, p. 2. Served on O. Stratton
& J. G. Lombard Aug. 21. 1858. Served on
Potter & Seymour Sept. 3. 1858.)
2. Declaration filed Sept. 3. 1858. (See
narrative, p. 5 of Record)
3. Sept. 20. 1858. Defendants moved to strike
Plaintiffs declaration from the files,
on the ground of a variance between the

amount of damages therein stated and the amount in the writ (see page 14 of the Record).

3. Leave given to the plaintiffs to amend their writ (p. 15). The amount of damage stated in the writ was \$500. It was amended to \$2000.
4. Defendants plead general issue and notice of payment. Sept 24. 1859. (p. 15.)
5. Issue joined and Cause tried, October 27. 1859 before the Hon Van H. Higgins and a jury. Verdict for plaintiffs for \$2000 debt, and \$910.⁶⁴ damages.
Defendants entered a motion for a new trial (p. 16.)
6. October 29. 1859. Defendants filed their motion for a new trial. (p. 17.)
7. Motion for a new trial overruled by the Court, and judgement rendered for the plaintiffs on the verdict, November 26. 1859. (p. 19.)
8. Bill of Exceptions. (page 20)

On the trial the plaintiffs below offered in evidence to support their cause of action a certain Bond executed by the defendants, a copy of which is set out in the Bill of

Exceptions at page 21. et seq:

To the reading of which in evidence the defendants objected on the ground of variance from the copy of the instrument sued upon, filed with the plaintiffs declaration (see Bill of Exceptions page 24). see copy p. 25.

The plaintiffs therefore asked leave to amend the copy filed with their declaration, so as to correspond with the writing obligatory offered in evidence. (see page 29. Bill of Exceptions).

Leave to amend was granted. The defendants excepted (p. 30).

The amendment was made and the writing obligatory read in evidence, to which the defendants objected. Objection overruled by the Court. Defendants excepted, and assign as error,

1st That the Court erred in permitting the plaintiffs to read in evidence the instrument offered (the same being the foundation of the plaintiffs action) because no copy was filed with the declaration as required by Statute.

For point more fully, see accompanying Brief; also Bill of Exceptions, page 30.

2^d The amendment was material, and although the "Copy" was no part of the declaration, it amounted to a permission to file a copy

instantly, which entitled defendants to a continuance.

9. The plaintiffs then read in evidence a certain execution issued upon the judgment in the Circuit Court against Potter, and returned before the execution of the Bond sued upon for the purpose of shewing the amount due to plaintiffs on the same from A. S. Potter. (see Bill of Exceptions p. 31.)

Plaintiffs then rested their Case.

Defense.

10. The defendants then offered as a witness one A. H. Potter, who testified that in the month of September 1858 deft. A. S. Potter paid to plaintiffs \$700. to apply on the judgment in Circuit Court against him, referred to in the Bond. (see p. 33.)

11. The defendants then asked said witness if he was acquainted with the pecuniary circumstances and responsibility of the said Deft A. S. Potter on the 25th day of June 1858, and from that time to the present?

Question objected to by Plaintiffs Counsel as irrelevant. The objection was sustained by the Court. The

defendants excepted. (see Bill of Exceptions. p. 33.)

12. The defendants then offered to prove by said witness, that said debt A.S. Potter had been ever since the execution of said Bond the owner of sufficient real & personal property subject to the lien of the said judgment in the Circuit Court, to pay the same, by due process of law. See proposition in full page 34, Bill of Exceptions.

Testimony objected to by Plaintiffs. Objection sustained by the Court. defendants excepted. See page 35 & 36 of Bill of Exceptions. also brief.

13. H. J. Helms on the part of plaintiffs testified that he had computed interest on the judgment at 10 per Cent, and offered to state the amount to the jury. objected to by defendants. objection overruled by the Court, and testimony allowed. Exceptions taken. (see p. 37. Bill of Exceptions)

The same being all the testimony the jury rendered their verdict as before stated.

The defendants moved for a new trial and arrest of judgment, for the several causes stated in

the Bill of Exceptions at pages
38, 39, 40, & 41.

Which motion was overruled
by the Court. The defendants excepted,
and the Judge signed Bill of
Exceptions. (see page 41.)

The Plaintiff in Error cites
the Court to the Cases and points
made in the accompanying Brief
in support of the Exceptions taken
to the ruling of the Court, and
assigns as error each and every
one of the rulings of the Court, To
which Exception was taken by the
defendants on the trial below, as
shewn by the Record and Bill of
Exceptions.

J. T. Hoyt

Attorney for

O. Stratton.

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Supreme Court of
the State of Illinois

Oscar Stratton

Plff in Error

vs.

C. H. Henderson et al

defts in Error

Abstract of the
Record, & Bill of
Exceptions.

J. T. Hughes

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Bf

Scott & Co., Printers, corner Clark and South Water Sts., Chicago.

SUPREME COURT
OF THE
STATE OF ILLINOIS.
THIRD GRAND DIVISION.

APRIL TERM, 1861.

OSCAR STRATTON, impleaded with ANSON S.
POTTER, JULIUS G. LUMBARD, and L. B. SEYMOUR,
Plaintiff in Error,

VS.

CHARLES N. HENDERSON, and
CHARLES M. HENDERSON,
Defendants in Error.

BRIEF.

From the Record in this case, it appears that the defendants in error, had obtained a judgment in the court below against Potter, for about \$1,500, and said Potter having been arrested, in Chicago, on execution issued on said judgment, gave the bond, in the penalty of \$2,000, which is set out in the record, conditioned, among other things, that the said Potter should, before a given time, deliver to said Hendersons, promissory notes of a certain quality, to the amount of \$1,800, and failing so to do, the bond in question was sued, and judgment recovered against the makers of said bond; and afterwards, the action was brought to this court on writ of error.

The main question upon which the plaintiff in error relies, is the ruling of the court below, in excluding certain evidence offered by plaintiff at the trial of the cause, to wit: Evidence offered by defendants below to show that the original judgment against Potter was good and collectable; and the further ruling of the court as to the measure of damage in the case.

I.

It is claimed by plaintiff in error, that the court below erred in excluding the evidence offered by defendants below to show that the defendant, A. Potter, had a large amount of unincumbered property, (personal and real,) out of which the judgment against A. Potter could have been made, and thereby to have shown, that the plaintiffs below had been damnified only in a nominal sum, by the non-compliance with the conditions of the bond in question. *Vide* printed Abstract, p. 9.

The condition of the bond was to the effect, that one of the defendants below (A. Potter) would, on or before the 25th of June, 1858, deposit with plaintiffs below, \$1,800 in amount, of promissory notes, which were to be held either as a collateral security for the payment of the judgment against A. Potter, or, if said judgment was not paid at a time specified in the bond, the notes were to be taken in payment of said judgment, in full. Now it is contended, the first view to take of the case is, to see whether the parties agreed upon the *amount of damages in the bond itself, as liquidated damages*, and if so, the ruling of the court was correct; if not, then the question of damages is for the jury to fix, and in that event, it is insisted that the evidence offered is proper—for the jury, in that way, could only ascertain the actual damage.

When the parties have not, by the contract itself, fixed the amount of damages, it is the province of a jury to do so, with reference to all the circumstances of the case.

Vide Sedgwick on Damages, 396, 412, *et seq.*

Chitty on Contracts, 873.

Hodges v. King, 7 Metc. 583.

In the latter case, the S. C. of Massachusetts, says: "That the true construction of the agreement was to be adduced from all the circumstances of the case. The form of the bond is not conclusive."

Vide Hoag v. McGinnis, 22 Wend. 165.

Shute v. Taylor, 5 Met. 66.

Kellogg v. Curtis, 9 Pick. 534.

In the latter case the court held: Where the party had released security, by reason of the bond being given, the obligor in the bond was entitled to give proof of the amount of the security.

Vide Hard v. Bowers, 23 Pick. 455.
Pierce v. Fuller, 8 Mass. 223.
Perkins v. Lyman, 11 Mass. 76.
Mervill v. Mervill, 15 id. 488.
Stearns v. Bartlett, 1 Pick. 443.
Dyer v. Dorsey 1 Gill. & John. 440.
Martin v. Taylors, 1 Wash. C. C. R. 1.
Clark v. Jones, 1 Denio, 516.

II.

It will not be contended, that, in the case before the court, liquidated damages had been agreed upon by the parties to the bond, and those damages were the amount of the judgment recovered against A. Potter. Then the jury must assess the actual damage from proof, and how can the jury fix any amount of damages, without knowing whether the judgment had been lost by reason of the notes specified in the bond not being turned out? Hence it becomes material to show the character of the judgment in question, and in that view the court erred in excluding evidence as to the character of the judgment.

The court erred in excluding the evidence offered by the plaintiff in error, to the effect that the judgment could have been collected at any time.

Supposing the judgment had been collected in full, *before the time* agreed upon in the bond, then, by the very terms of the bond, the plaintiff could have no interest in the notes called for in the bond, and that the judgment was not collected, was the fault of the plaintiff below.

Vide Churchill v. Hunt, 3 Denio, 326.
Port v. Jackson, 17 I. R. 239.
Thomas v. Allen, 1 Hill, 145.
In matter of Negus, 7 Wend. 499.
Douglas v. Clark, 14 I. R. 177.
 6 Hill, 324.

III.

It could not have been the intention of the parties to give to the Hendersons the right to obtain two judgments of \$1400, or thereabouts, against them, viz., the old judgment against Potter, referred to in the bond, and another judgment of same amount, if the notes were not turned out, as called for in the bond; "such is not the condition of the bond," and Shylock himself could not have claimed it.

The real difference between this bond and Shylock's, is, that in Shylock's, the penalty was agreed upon by the parties—it was to be a pound of flesh any how. Here, the parties leave the jury to say whether it shall be one pound or less than a pound, as the proof may show what the actual value of the damages may be.

Hence it is contended, by the plaintiff in error, that the court erred in charging the jury that the measure of damages was the amount of the judgment recovered against A. Potter, and interest at ten per cent. from the date of the judgment, notwithstanding the judgment was collectable, as vide printed Abstract, pages 9 and 10.

Vide Pardee v. Robinson, 6 Hill, 550.

Stephens et al. v. Rowe, Sheriff 3 Denio, 327.

In the latter case the sheriff was allowed, though he was *prima facie* liable for the debt where he had neglected to return execution, nevertheless, to mitigate the damages, by showing *inter alia* that the judgment debtors are *solvent*, and that the judgment is still collectable.

IV.

The court below erred in allowing the bond in question to be read in evidence, since there is a material variance between the bond set out in the declaration before the same was amended, as shown on pages 24 and 25 of Abstract, and the original bond,—a variance consisting in names of parties, and in amount called for by the same.

Vide Brooks et al. v. The Town of Jacksonville, 1 Scam. 568.

Breese. R. 58.

Prather v. Vinyard, 4 Gilm. 48.

Stickney et al. v. Cassell, 1 Gilm. 421.

Gillilan v. Guy et al. 13 Ill. R. 705.

V.

The court below erred in charging the jury that the rule of damages was the amount of the original judgment, and ten per cent. interest thereon, less the amount that may have been paid on said judgment. *Vide* printed Abstract, p. 9. And also, in allowing the plaintiff's attorney, (Helmn), to compute the interest on said judgment at ten per cent., and give his computation of amount to jury; *vide* Abstract, p. 10.

E. W. EVANS,
Attorney for Plaintiff.

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Stratton

Henderson

Pf. Prip

Filed April 30, 1861
J. Veland
Ch.

Scott & Co., Printers, corner Clark and South Water Sts., Chicago.

SUPREME COURT
OF THE
STATE OF ILLINOIS.
THIRD GRAND DIVISION.

APRIL TERM, 1861.

OSCAR STRATTON, impleaded with ANSON S. POTTER, JULIUS G. LUMBARD and L. B. SEYMOUR, <i>Plaintiff in Error,</i>	} <i>Error to the Superior Court of Chicago.</i>
VS. CHARLES N. HENDERSON, and CHARLES M. HENDERSON, <i>Defendants in Error.</i>	

ABSTRACT OF RECORD.

RECORD
PAGE.

2 This was an action of debt on a penal bond, for \$2,000, commenced by the defendants in error against the plaintiff in error, in the Cook County Court of Common Pleas, (now the Superior Court of Chicago,) on the 10th of July, 1858. The writ of summons claimed \$500 for damages.

6 The plaintiffs' declaration was filed on the 3rd of September, 1858. It was as follows:

COOK COUNTY COURT OF COMMON PLEAS,
September Term, A. D. 1858.

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

Charles N. Henderson and Charles M. Henderson, plaintiffs in this suit, by Helm & Clark, their attorneys, complain of Anson S. Potter, Julius G. Lumbard, L. B. Seymour and O. Stratton, defendants,

of a plea that they, the said defendants, render unto the said plaintiffs the sum of two thousand dollars, which they owe to and unjustly detain from the said plaintiffs.

For that whereas the said defendants heretofore, to wit, on the 10th day of June, A. D. 1858, at Chicago, to wit, at said county of Cook, by their certain writing obligatory, sealed with their respective seals and now here shown to the court, the date whereof is a certain day and year above named, to wit, the day and year aforesaid, acknowledged themselves to be held and firmly bound unto the said plaintiffs in the sum of \$2,000, part of the said sum above demanded to be paid to the said plaintiffs: Yet the said defendants, although often requested so to do, have not as yet paid the said sum of \$2,000 above demanded, or any part thereof, to the said plaintiffs, but have hitherto wholly neglected and refused so to do.

2nd Count. And whereas, also, the said defendants afterwards, to wit, on the day and year first aforesaid, at the place aforesaid, by their certain other writing obligatory, sealed with their respective seals, and now here shown to the court, the date whereof is a certain day and year therein mentioned, to wit, the day and year first aforesaid, acknowledged themselves to be held and firmly bound unto the plaintiffs in the sum of \$2,000, other part of the said sum above demanded to be paid by the said defendants to the said plaintiffs; which said writing obligatory was and is subject to a certain condition thereunder written, whereby, after reciting to the effect following, to wit, that whereas the said defendant, Anson S. Potter, was indebted to the said plaintiffs upon a certain judgment in the Circuit Court of Cook county, State of Illinois, for the sum of \$1,462.03, and costs rendered in said court on the 4th day of May, A. D. 1858, and that the said Potter had agreed to place in the hands of the said plaintiffs, notes on good and responsible parties, of the value and amount of \$1,800, to be held by the said plaintiffs as a collateral security, to secure the said debt then in judgment, with the costs thereon, and interest at ten per cent. per annum until paid, with a further sum of not exceeding twelve dollars, to defray the expenses of sending to Maquon for the said notes, it was conditioned that if, therefore, the said defendant, Potter, should, on or before the 25th day of June, A. D. 1858, deliver to the said plaintiffs, or their agent, the notes of the kind and to the amount aforesaid, then that obligation should be void, otherwise of force, as by the said writing obligatory and the condition thereof will more fully and at large appear. Yet the said defendant, Potter, did not, nor did any one for him, on or before the 25th day of June, A. D. 1858, or at any time since, deliver to the said plaintiffs or to their agent, the said notes of the kind and to the amount aforesaid, or any of the same or any part thereof, but the said defendant hath hitherto wholly neglected and refused, and still neglects and refuses so to do, to wit, at

the time and place last aforesaid. By reason of which said breach, the said writing obligatory became forfeited, and an action hath accrued to the said plaintiffs to demand and have of and from the said defendants the said sum of money, other part of the said sum above demanded.

3rd Count. And whereas, also, the said defendants afterwards, to wit, on the day and year first aforesaid, at the place aforesaid, by their certain other writing obligatory, sealed with their seals and now here shown to the court, the date whereof is a certain day and year therein named, to wit, the day and year first aforesaid, acknowledged themselves to be held and firmly bound unto the plaintiffs in the sum of \$2,000, other part of the said sum above demanded, to be paid by the said defendants to the said plaintiffs, which said writing obligatory was and is subject to a certain condition thereunder written, whereby, after reciting to the effect following, to wit, that whereas the said defendant, Anson S. Potter, was indebted to the said plaintiffs upon a certain judgment in the Circuit Court of Cook county, State of Illinois, for the sum of \$1,462.03, and costs, rendered in said court on the 4th day of May, A. D. 1858, and that the said Potter had agreed to place in the hands of the said plaintiffs, notes on good and responsible parties, of the value and to the amount of \$1,800, to be held by the said plaintiffs as a collateral security to secure the said debt then in judgment, with the costs thereon, and interest at ten per cent. per annum until paid, with a further sum of not exceeding twelve dollars to defray the expenses of sending to Maquon for the said notes, with this further agreement, that the said notes should be placed in the hands of some responsible party for collection, by suit or otherwise, and the proceeds of such collections applied in payment of said claim or demand of the said plaintiffs; that the said Potter should pay one-half ($\frac{1}{2}$) of the amount of the said demand within three months from the 20th day of June, A. D. 1858, and the remainder thereof within four months from said 20th day of June. And that the said Potter further agreed thereby, that if he should fail to pay the said demand in the manner and at the times aforesaid, promptly and punctually, then and in that case the whole of the said notes so to be surrendered and deposited as aforesaid, should at once and absolutely become the property of the said plaintiffs, upon this condition, that they should elect to take the same in full payment of the whole of the said judgment, and if they should then decline to take the said notes in satisfaction of the said judgment, then the same should be held merely as a collateral security to the said demand, to be returned to said Potter, when the whole of the same should be paid in full, it being understood that said Potter should surrender such notes as would be approved by A. M. Maple, on the part of the said plaintiffs; it was conditioned that if, therefore, the said defendant, Potter, should, on or before the 25th day of June, A. D. 1858, deliver to the said plaintiffs, or their agent,

the notes of the kind and to the amount aforesaid, then that obligation should be void, otherwise of force, as by the said writing obligatory and the condition thereof will more fully and at large appear. Yet the said defendant, Potter, did not, nor did any one for him, on or before the said 25th day of June, A. D. 1858, or at any time since, deliver to the said plaintiffs, or to their agent, the said notes of the kind and to the amount aforesaid, or any of the same, or any part thereof, but the said defendant hath hitherto wholly neglected and refused, and still neglects and refuses so to do, to wit, at the time and place last aforesaid. By reason of which said breach the said writing obligatory became forfeited, and an action hath accrued to the said plaintiffs to demand and have of and from the said defendants the said sum of money, other part of the said sum above demanded.

Yet the said defendants have not yet paid to the said plaintiffs the said several sums of money above demanded, or any or either of them, or any part thereof, but so to do have hitherto wholly neglected and refused; to the damage of the said plaintiffs of \$2,000, and therefore they bring suit, etc.

HELM & CLARK,
Plaintiffs' Attorneys.

Annexed to the declaration is the following:

"Copy of the Bond sued upon."

"Know all Men by these Presents, That we, Anson S. Potter, J. G. Lumbard, L. B. Seymour, O. B. Stratton, are held and firmly bound unto Charles N. Henderson and Charles M. Henderson, in the sum of two thousand dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs and executors, firmly by these presents. Signed, sealed and dated at Chicago, this tenth day of June, A. D. 1858.

The condition of the above obligation is such, that whereas, the said Anson S. Potter is indebted to the said Charles N. Henderson and Charles M. Henderson, upon a certain judgment in the Circuit Court of Cook county, State of Illinois, for the sum of fourteen hundred and eighty-two dollars and three cents, and costs, rendered in said court on the fourth day of May, A. D. 1858. And whereas, the said Potter has agreed to place in the hands of the said Hendersons, notes on good and responsible parties, of the value and amount of eighteen hundred dollars, to be held by the said Hendersons as a collateral security to secure the said debt now in judgment, with the costs thereon, and interest at ten per cent. per annum until paid, with a further sum of not exceeding twelve dollars, to defray the expenses of sending to Morgan for the said notes, with this further agreement, that the said notes shall be placed in the hands of some responsible party for collection, by suit or otherwise,

and the proceeds of such collection applied in payment of said claim or demand of said Henderson; that the said Potter shall pay one-half ($\frac{1}{2}$) of the amount of said demand within three months from the twentieth (20th) day of June, A. D. 1858, and the remainder thereof within four (4) months from said 20th day of June. And the said Potter does further hereby agree, that if he shall fail to pay the said demand in the manner and at the times aforesaid, promptly and punctually, then and in that case the whole of the said notes so to be surrendered and deposited as aforesaid, shall at once and absolutely become the property of the said Henderson, upon this condition, that they elect to take the same in full payment of the whole of said judgment, and if they shall then decline to take the same in satisfaction of said judgment, then the same shall be held merely as a collateral security to the said demand, to be returned to the said Potter when the whole of the same is paid in full, it being understood that said Potter shall surrender such notes as will be approved by A. M. Maple, on the part of said Henderson.

Now, therefore, the condition of this obligation is such, that if the said Potter shall, on or before the twenty-fifth day of June, A. D. 1858, deliver to the said Hendersons, or to their agents, the notes of the kind and to the amount aforesaid, then this obligation shall be null and void, otherwise to remain in full force and entire.

	[SEAL.]
A. S. POTTER.	[SEAL.]
J. G. LUMBARD.	[SEAL.]
L. B. SEYMOUR.	[SEAL.]
O. STRATTON.	[SEAL.]

- 14 And afterwards, to wit, on, etc., the defendants moved to strike the plaintiffs' declaration from the files of the court, on the ground of a variance between the amount of damages therein stated, and the amount claimed in the writ of summons. Leave was given to the plaintiffs to
- 15 amend their writ, and the amount of damages claimed in the writ was thereupon altered to "Two Thousand Dollars."

And afterwards, to wit, on the 24th of September, 1859, the defendants filed their plea of the general issue, and gave notice that the "defendants paid to the said plaintiffs, before and since the commencement of this suit, the sum of \$2,000, in discharge of the said sum in the said supposed writing obligatory mentioned; and that the said plaintiff received the same from said defendants in discharge of the said supposed writing obligatory."

Whereupon issue was joined, and the cause was tried before the Hon. Van H. Higgins and a jury, on the 27th day of October, 1859, and a

verdict was returned for the plaintiffs, for \$2,000 debt, and \$910.61 damages.

16 And afterwards, to wit, on the same day of the trial of said cause, a
motion for a new trial was entered by the defendants, the terms of
which are stated at length hereafter, (p. 10,) and on the 29th day of
19 October, 1859, the motion was overruled by the court, and judgment
rendered for the plaintiffs on the verdict.

20 The defendants filed their Bill of Exceptions on the 29th day of
November, 1859, which states as follows:

That at the trial, the counsel for the plaintiffs produced and offered to
give and read in evidence to the jury a certain bond, which is in the
words and figures following, to wit:

Copy of the Original Bond.

"Know all Men by these Presents, That we, Anson S. Potter, J. G. Lumbard, L. B. Seymour, O. Stratton, are held and firmly bound unto Charles N. Henderson and Charles M. Henderson, in the sum of two thousand dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs and executors, firmly by these presents. Signed, sealed and dated at Chicago, this tenth day of June, A. D. 1858.

The condition of the above obligation is such, that whereas, the said Anson S. Potter is indebted to the said Charles N. Henderson and Charles M. Henderson, upon a certain judgment in the Circuit Court of Cook county, State of Illinois, for the sum of fourteen hundred and sixty-two dollars and three cents, and costs, rendered in said court on the fourth day of May, A. D. 1858. And whereas, the said Potter has agreed to place in the hands of the said Hendersons, notes on good and responsible parties, of the value and amount of eighteen hundred dollars, to be held by the said Hendersons as a collateral security to secure the said debt now in judgment, with the costs thereon, and interest at ten per cent. per annum until paid, with a further sum of not exceeding twelve dollars, to defray the expenses of sending to *Maquon* for the said notes, with this further agreement, that the said notes shall be placed in the hands of some responsible party for collection, by suit or otherwise, and the proceeds of such collection applied in payment of said claim or demand of said Hendersons; that the said Potter shall pay one-half ($\frac{1}{2}$) of the amount of said demand within three months from the twentieth (20th) day of June, A. D. 1858, and the remainder thereof within four (4) months from said 20th day of June. And the said Potter does further hereby agree, that if he shall fail to pay the said demand in the manner and at the times aforesaid, promptly and punctually, then and in that case the whole of the said notes so to be surrendered and deposited

as aforesaid, shall at once and absolutely become the property of the said Hendersons, upon this condition, that they elect to take the same in full payment of the whole of said judgment, and if they shall then decline to take the same in satisfaction of said judgment, then the same shall be held merely as a collateral security to the said demand, to be returned to the said Potter when the whole of the same is paid in full, it being understood that said Potter shall surrender such notes as will be approved by A. M. Maple, on the part of said Hendersons.

Now, therefore, the condition of this obligation is such, that if the said Potter shall, on or before the twenty-fifth day of June, A. D. 1858, deliver to the said Hendersons, or to their agents, the notes of the kind and to the amount aforesaid, then this obligation shall be null and void, otherwise to remain in full force and virtue.

A. S. POTTER.	[SEAL.]
J. G. LUMBARD.	[SEAL.]
L. B. SEYMOUR.	[SEAL.]
O. STRATTON.	[SEAL.]

24 But to the introduction and reading of said bond in evidence, on the part of the plaintiffs, the defendants' counsel objected, and insisted that it was not competent for the plaintiffs to read said bond to the jury, because it varies from the copy of the instrument of writing on which this action is brought, which is annexed to the plaintiffs' declaration, and filed with it; and is not the foundation of the plaintiffs' action, or the instrument declared on.

That the bond so offered in evidence by the plaintiffs, varies from the copy of the instrument of writing on which the action is brought, in this: 1st, The copy in the body of the bond recites that it is made by Anson S. Potter, J. G. Lumbard, L. B. Seymour and *O. B. Stratton*, whereas the instrument offered in evidence recites that it is made by Anson S. Potter, J. G. Lumbard, L. B. Seymour and *O. Stratton*. 2nd, The copy also recites in the condition, as part of the inducement for the obligation, as follows: "Whereas, the said Anson S. Potter is indebted to the said Charles N. Henderson and Charles M. Henderson, upon a certain judgment in the Circuit Court of Cook county, State of Illinois, for the sum of fourteen hundred and *eighty*-two dollars and three cents, and costs," whereas the instrument offered in evidence recites, in setting out the inducement, as follows: "Whereas the said Anson S. Potter is indebted to the said Charles N. Henderson and Charles M. Henderson, upon a certain judgment in the Circuit Court of Cook county, State of Illinois, for the sum of fourteen hundred and *sixty*-two dollars and three cents, and costs. 3rd, That the word *Morgan* is used in said copy, where the word *Maquon* is used in the instrument offered in evidence;

and that there are other variances apparent from the inspection of the instrument and copy.

29 Whereupon the plaintiffs prayed leave to amend the said copy so as to
correspond with the bond offered in evidence, and the court allowed the
30 plaintiffs to so amend said copy, which they then and there did, to which
the defendants excepted.

The plaintiffs then offered to give and read said bond in evidence, to which the defendants objected, on the ground that the instrument offered was not the foundation of the plaintiffs' cause of action, as appeared by the copy of the instrument on which said action is brought, filed with the declaration, and because it varied from said copy, and because no copy of said instrument was filed with the declaration, as required by law, and because the court erred in permitting the plaintiffs to amend said copy; which objections the court overruled, and allowed the said instrument to be read in evidence on the part of the plaintiffs, which was done; to which the defendants excepted.

31 The plaintiffs then read in evidence an execution issued to the sheriff of Knox county, on the judgment referred to in the bond, which execution is in the ordinary form of *fi. fa.* execution; and on the back thereof is endorsed, in the handwriting of the clerk of said court, a direction to the sheriff to collect interest on the amount of said execution, (to wit, \$1,462.03,) from the 4th May, 1858. And afterwards is endorsed thereon the return of the sheriff, as follows, to wit:

"I hereby certify that on the 27th day of May, A. D. 1858, I made a demand of defendant for property to satisfy the within execution, and he stated that he had no property he could turn out on the same, but would pay what he could on the same, and thought he could pay four or five hundred dollars in the lifetime of same.

G. W. EICKE, Sheriff."

The plaintiffs here rested their case, whereupon the defendants offered as a witness on their behalf, one

33 A. H. Potter, who testified that in September, 1858, the defendant, Anson S. Potter, paid to the plaintiffs \$700, to apply on the judgment rendered in the Circuit Court of Cook county, Illinois, on the 4th of May, 1858, against said defendant, Potter, and in favor of said plaintiffs, and mentioned in said bond. The defendants then asked the witness, "if he was acquainted with the pecuniary circumstances and responsibility of the defendant in execution, Anson S. Potter, on the 25th of June, 1858, and from that time to the present," but the plaintiffs' counsel objected to the question, and insisted that the question was irrelevant and immaterial; whereupon the defendant's counsel insisted that the question was material and proper for the purpose of laying the

foundation for showing that said Potter had, ever since the 25th of June, 1858, been possessed and the owner of sufficient property liable to execution to satisfy said judgment so recovered by the plaintiffs against him in the Circuit Court, and the court decided that the question was irrelevant, and sustained the objection of the plaintiffs' counsel thereto, and refused to allow the question to be put; to which the defendants excepted.

34 The defendant's counsel then offered to give in evidence, and prove by the witness, A. H. Potter, that the defendant, Anson S. Potter, has been, ever since the 10th of June, 1858, the owner of a large amount of unencumbered real and personal property subject to execution, and within the jurisdiction of said Circuit Court, more than sufficient to make the amount of said judgment, and that said judgment has, ever since the 10th of June, 1858, been, and is now, a lien on unencumbered real and personal property of the defendant, Anson S. Potter, being in the county of Cook and State of Illinois, which property is all liable to be taken and subject to execution issued on said judgment, and is in value more than sufficient to make the amount of, and satisfy said judgment, by due course of law. But the plaintiffs' counsel objected to the introduction of said testimony, and insisted that it was irrelevant and immaterial to the issue; whereupon the defendant's counsel insisted that said testimony was competent and proper for the purpose of being considered *by the jury in determining the AMOUNT OF DAMAGES* the plaintiffs had *sustained* by reason of the alleged breach in the condition of the bond, as charged in the declaration, in not delivering the notes as collateral security for said judgment as obligated in said bond, and for the purpose of showing that the plaintiffs suffered no loss on said judgment by reason of their so extending the time of the payment of the same for the time mentioned in said obligation, or by reason of the failure of the defendant, Anson S. Potter, to deliver said collaterals, as the defendants by said bond obligated he should do.

But the court here decided that the measure of damages in this cause, is the amount of the judgment recovered by the plaintiffs against the defendant, Anson S. Potter, in said Circuit Court, and interest thereon at ten per cent. per annum, less the amount that may have been paid on said judgment; and that the plaintiffs in this action are entitled to recover whatever amount may now be due upon said judgment, with interest at ten per cent. from the time of the rendition of the same, notwithstanding that said judgment may have been collectable by the issuance of an execution thereon, at any time since the execution of said bond, and notwithstanding that the plaintiffs may have suffered no loss or damage on said judgment, or in the collection of the same, by reason of the failure of the defendant, Potter, to deliver said collaterals, and that the said testimony offered by the defendants was incompetent and

immaterial, and sustained the objection and excluded the same from the consideration of the jury; to which the defendants excepted.

37

H. T. Helm, counsel for the plaintiffs, being sworn, then offered to testify on behalf of the plaintiffs, that he had computed the interest on said judgment at ten per cent., and offered to state the amount to the jury, to which the defendants' counsel objected, which objection was overruled by the court; to which the defendants excepted.

Mr. Helm then testified that he had cast the interest on said judgment from the time of the rendition of the same, at the rate of ten per cent. per annum, and that the amount then due upon said judgment for principal and interest, after deducting payments, was \$910.61.

The defendants' counsel then moved to exclude Helm's testimony from the consideration of the jury, which motion the court overruled; to which the defendants excepted.

The above being all the testimony in the case, the jury rendered their verdict for the plaintiffs. Debt, \$2,000; damages, \$910.61.

38

Thereupon, the defendants' counsel moved for a new trial and arrest of judgment, and assigned the following causes therefor:

1st. Because the court erred in permitting the giving in evidence to the jury, on the part of the plaintiffs, of the bond offered by them, because no copy of the same had been filed with said plaintiffs' declaration, and because it was not the foundation of said plaintiffs' action, or the instrument declared on, as appears by the copy annexed to said plaintiffs' declaration, and because it varied substantially from said copy.

2nd. Because the court erred in allowing said plaintiffs to amend their said copy of the instrument sued on, on the trial of the cause.

3rd. Because the court erred in sustaining the objection of said plaintiffs to the question of the defendants' counsel, put to the witness, Potter, respecting his knowledge of the responsibility of said defendant, Potter.

4th. Because the court erred in rejecting the testimony offered by said defendants, for the purpose of showing that the defendant, Potter, has, ever since the execution of said bond, possessed sufficient property subject to the lien of the judgment of said plaintiffs, mentioned in said bond, to pay and discharge the same.

5th. Because the court erred in deciding that the amount of the judgment recovered by the plaintiffs, against the said defendant, Potter, in the Circuit Court of Cook county, Illinois, which is referred to in

said bond, with interest thereon at ten per cent., less the amount paid, thereon, is the measure of damages in this case.

6th. Because the court erred in deciding that it was immaterial, in fixing the damages of said plaintiffs, whether said judgment could have been collected by due course of law or not, or whether said plaintiffs suffered any loss on said judgment by reason of the non-delivery by the defendant, Potter, of the collateral security for the same, as stipulated in said bond, and erred in rejecting the testimony offered by the said defendants for the purpose of showing these facts.

7th. Because the court erred in allowing the interest on said judgment to be computed at ten per cent.

8th. Because said verdict of the jury is contrary to the evidence.

9th. Because said verdict is contrary to law.

10th. Because said verdict is contrary to the law and the evidence.

41 And the court overruled the motion; to which the defendants excepted, and prayed the court to sign the said certificates, and that the same may be made a part of the record in said cause, which is done.

E. W. EVANS,

Attorney for Plaintiffs in Error.

Oscar Stratton

vs

C. M. Henderson et al

Abstract

Filed Apr 16. 1861

d. Adams
Clerk

United States of America }
State of Illinois - Cook County } ss.

Plead before the Honorable the Judges of Superior Court of Chicago within and for the County of Cook and State of Illinois at a regular term of said Superior Court of Chicago begun and holden at the Court House in the City of Chicago in said County and State on the first Monday being the ~~seventh~~ day of ~~November~~ ^{November} in the year of our Lord one thousand eight hundred and ~~seventy~~ ^{fifty nine} of the Independence of the United States of America the Eighty fourth.

Present The Hon; John Mc. Wilson . . . Chief Justice
of Superior Court of Chicago—

Wm H. Higgins & Grant Goodrich . . . Judges

Charles Havens . . . Prosecuting Attorney

John Gray . . . Sheriff of Cook County

Attest

Walter Kimball Clerk.

Be it remembered that heretofore to wit on the tenth day of July A. D. Eighteen hundred and fifty eight, came J. N. Henderson et al, Plaintiffs by their Attorneys and filed in the Office of the Clerk of the Cook County Court of Common Pleas (now the Superior Court of Chicago) their certain Precept for Summons, in words and figures following, to wit:—

" Charles M. Henderson
and Charles M. Henderson

Cook Co: Court of Common Pleas
Of the September Term A. D. 1858

Chas. S. Potter, C. L.

Lumber, C. B. Sumner

and C. Stratton

Debts \$2000

Damages \$2000.

And the Clerk please issue Summons to Cook and these Counties.

Much obliged Yrs

John Clark.

And thereupon accordingly on the said tenth day of July A. D. Eighteen hundred and fifty eight there issued out of and under the Seal of said Court Precept Writs of Summons to said several Counties; And said two several Summons, with the Sheriffs Returns thereon returned, are in words and figures following, to wit:—

" State of Illinois

County of Cook

vs. The People of the State of Illinois

To the Sheriff of said County, Greeting,

We command you that you summon Aaron J. Foster & Lumbard, L. B. Seymour & O. Stratton if they shall be found in your County, personally to be and appear before the Cook County Court of Common Pleas of said County on the first day of the next term thereof to be holden at the Court House in the City of Chicago, in said County on the second Monday of September next to answer unto Charles M. Henderson, & Charles M. Henderson in a plea that they tender unto the said Plaintiffs their debt in the sum of Two Thousand dollars which they owe and unlawfully detain from the said Charles M. Henderson and Charles M. Henderson to the damage of said Plaintiffs as they pay in the sum of Two Thousand dollars.

Thus have you thus and there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness Walter Kimball, Clerk of our said Court, and the Seal thereof, at the City of Chicago in said County this 10th day of July A. D. 1858.

Walter Kimball. Clerk."

"Served by reaching to the within named O. Stratton and A. L. Lumbard August 21st 1858 - The others not found in my County.

John L. Wilson. Sheriff

By Seth Taylor. Deputy."

"State of Illinois

County of Cook

ss. The People of the State of Illinois
To the Sheriff of County, greeting.

We command you that you summon Aaron, S. Potter, A. L. Lumbard, L. B. Seymour & C. Stratton if they shall be found in your County, personally to be and appear before the Cook County Court of Common Pleas of said County, on the first day of the next term thereof, to be holden at the Court House in the City of Chicago, in said County on the second Monday of September next to answer unto Charles N. Henderson and Charles M. Henderson in a plea that they render unto the said Plaintiffs their debt in the sum of Two thousand dollars which they owe and unlawfully detain from the said Charles N. Henderson and Charles M. Henderson to the damage of said Plaintiffs as they pay in the sum of Two thousand dollars.

And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness Walter Kimball, Clerk of our said Court and the Seal thereof at the City of Chicago, in said County this 10th day of July A.D. 1858.

Walter Kimball - Clerk.

(Endorsed)

" I have served this writ by reading to the within named Aaron, S. Potter & Levi B. Seymour this 3rd day of September A.D. 1858.

L. W. Enloe

Sheriff Cook County

Illinois."

And thereafter to wit on the third day of September A. D. Eighteen hundred and fifty eight the said Plaintiffs by their said Attorneys filed in the Office of the Clerk of said Court their Declaration in said cause in words and figures following to wit

"Cook County Court of Common Pleas.

September Term A. D. 1858.

State of Illinois }
Cook County } *PC*

Charles N. Henderson and Charles M. Henderson
Plaintiffs in this suit by their Clerk their Attorneys complain of
Anson S. Potter, John H. Lumbard, L. B. Seymour & O. Stratton
Defendants of a Plea that they the said Defendants render unto the
said Plaintiffs the sum of Two thousand dollars which they owe to
and unjustly detain from the said Plaintiffs For that whereas the
said Defendants heretofore to wit on the tenth day of June A. D.
Eighteen hundred and fifty eight at Chicago, to wit, at said County
of Cook, by their certain writing obligatory sealed with their respective
Seals, and now here shown to the Court the date whereof is a
certain day and year above named to wit, the day and year
aforesaid, acknowledged themselves to be held and firmly bound
unto the said Plaintiffs in the sum of Two thousand dollars part
of the said sum above demanded to be paid to the said Plaintiffs
Yet the said Defendants although often requested so to do, have not
as yet paid the said sum of Two thousand dollars above demanded,
or any part thereof to the said Plaintiffs but have hitherto wholly
neglected and refused so to do.

And whereas also the said Defendants afterwards to wit on

the day and year aforesaid, at the place aforesaid, by their certain
other writing obligatory sealed with their respective seals and now
here shown to the Court, the date whereof is a certain day and
year therein mentioned, to wit the day and year first-aforesaid
acknowledged themselves to be held and firmly bound unto the
Plaintiffs in the sum of Two thousand dollars other part of the
said sum above demanded to be paid by the said Defendants to
the said Plaintiffs. Which said writing obligatory was and is a
subject to a certain condition hereunder written, whereby after
reading to the effect following to wit; that whereas the said
Defendant Otton, S. Potter was indebted to the said Plaintiffs
upon a certain judgment in the Circuit Court of Cook County in
State of Illinois, for the sum of Fourteen hundred and sixty two
dollars and three cents, and costs rendered in said Court on the
fourth day of May A. D. 1858, and that the said Potter had
agreed to place in the hands of the said Plaintiffs Notes on good
and responsible parties of the value and amount of Eighteen
hundred dollars, to be held by the said Plaintiffs as a collateral
Security, to secure the said debt then in judgment with the
costs thereon, and interest at Five per Cent per annum until paid
with a further sum of not exceeding Twelve dollars to defray the
expenses of sending to Madison for the said Notes, it was
conditioned, that if therefore, the said Defendant Potter should on or
before the Twenty fifth day of June A. D. 1858 deliver to the said
Plaintiffs, or their Agent, the Notes of the kind and to the amount
aforesaid, then that obligation should be void, otherwise if not,
as by the said writing obligatory and the condition thereof will
more fully and at large appear. And the said Defendant Potter did

but nor did any one for him on or before the said Tenthly fifth day of June A. D. 1858 or at any time since deliver to the said Plaintiffs, or to their agent, the said notes, of the said sum and to the amount aforesaid, or any of the same, or any part thereof - but the said defendant hath hitherto wholly neglected and refused, and still neglects and refuses so to do, to wit, at the time and place last aforesaid, by virtue ^{reason} of which said breach the said writing or obligatory became forfeited, and an action hath accrued to the said Plaintiffs to demand and have of and from the said Defendants the said sum of money other part of the said sum above demanded.

And whereas also the said Defendants afterwards to wit on the day and year first aforesaid, at the place aforesaid, by their certain other writing obligatory, sealed with their seals, and now here shown to the Court, the date whereof is on certain day and year therein named, to wit, the day and year first aforesaid ~~and~~ acknowledged themselves to be held and firmly bound unto the said Plaintiffs in the sum of Two thousand dollars other part of the said sum above demanded to be paid by the said Defendants to the said Plaintiffs which said writing obligatory was and is subject to a certain condition hereunder written Which after reciting to the effect following, to wit, that whereas the said Defendant Abram S. Potter was indebted to the said Plaintiffs upon a certain promissory note the Circuit Court of Cook County, State of Illinois for the sum of Fourteen hundred and sixty two dollars and three Cents and costs rendered in said Court, on the fourth day of May A. D. 1858 and that the said Potter had agreed to place in the hands of the said Plaintiffs: notes or goods and responsible parties, of the value and to the amount of Eighteen hundred dollars, to be held by the

paid Plaintiffs as a collateral security to secure the said debt therein
judgment with the costs thereon and interest at ten per cent per
annum until paid with a further sum of not exceeding Twelve dollars
to defray the expenses of sending to Niagara for the said Notes,
with this further agreement that the said Notes should be placed
in the hands of some responsible party for collection by suit or
otherwise, and the proceeds of such collection applied in payment of
said claim or demand of the said Plaintiffs. That the said Potter
should pay one half ($\frac{1}{2}$) of the amount of the said demand to
within three months from the Twentieth (20) day of June A.D. 1888
and the remainder thereof within four (4) months from said
20th day of June and that the said Potter further agreed hereby,
that if he should fail to pay the said demand in the manner and
at the times aforesaid promptly and punctually then and in that
case the whole of the said Notes so to be surrendered & deposited
as aforesaid should at once and absolutely become the property of
the said Plaintiffs, upon this condition, that they should elect to
take the same in full payment of the whole of the said judgment
and if they should then decline to take the said Notes in satisfaction
of the said judgment, then the same should be held merely as a
collateral security to the said demand, to be returned to said
Potter, when the whole of the same should be paid in full, it
being understood that said Potter should surrender such Notes as
would be approved by A. M. Maple on the part of the said
Plaintiffs. It was concluded that if therefore the said defendant
Potter should on or before the Twenty fifth day of June A.D.
1888, deliver to the said Plaintiffs or their Agent the Notes of the

kind and to the amount aforesaid, then that obligation should be void, otherwise of force. as by the said writing obligatory and the condition thereof will more fully and at large appear.

Yet the said Defendant Potter did not, nor did any one for him on or before the said Twenty fifth day of June A.D. 1858 or at any time since deliver to the said Plaintiffs or to their agent the said Notes of the kind and to the amount aforesaid or any of the same, or any part thereof, but the said Defendant hath hitherto wholly neglected and refused and still neglects and refuses to do to wit, at the time and place last aforesaid, by reason of which said breach the said writing obligatory became forfeited and an action hath accrued to the said Plaintiffs to demand and have of and from the said Defendants the said sum of money with part of the said sum above demanded.

Yet the said Defendants have not yet paid to the said Plaintiffs the said several sums of money above demanded, or any or either of them, or any part thereof, but so to do have hitherto wholly neglected and refused to the damage of the said Plaintiffs of Two thousand dollars, and therefore they bring suit &c

Attest & Clerk

Defts Attys."

(Copy of the Bond given upon)

"Know all Men by these Presents That we Aaron S. Potter, A. G. Lumbard, L. B. Seymour, G. Stratton are and jointly bound unto Charles M. Henderson & Charles M. Henderson in the sum of Two thousand dollars, for the payment of which

well and truly to be made we bind ourselves our heirs and assigns,
jointly by these presents.

Signed sealed and dated at Chicago this tenth day of June
A.D. 1858.

The Condition of the above obligation is such that whereas
the said Thos. S. Potter, is indebted to the said Charles M.
Henderson and Charles M. Henderson upon a certain judgment in
the Circuit Court of Cook County, State of Illinois, for the sum
of Fourteen hundred and sixty two dollars and three cents and
costs rendered in said Court on the fourth day of May A.D. 1858
and whereas the said Potter has agreed to place in the hands of
the said Hendersons Notes on good and responsible parties of the
value and amount of Eighteen hundred dollars to be held by the
said Hendersons as a collateral security to secure the said debt
now in judgment with the costs thereon and interest at law per-
cent per annum until paid with a further sum of not ~~more~~
exceeding Twelve dollars to defray the expenses of pending the
Mortgage for the said Notes with this further agreement that the
said Notes shall be placed in the hands of some responsible party
for collection by suit, or otherwise, and the proceeds of such
collection applied in payment of said claim or claims of said
Henderson, that the said Potter shall pay one half ($\frac{1}{2}$) of the
amount of said demand within three months from the Twentieth
(20th) day of June A.D. 1858 and the remainder thereof within
four (4) months from said 20th day of June, and the said
Potter does further hereby agree that if he shall fail to pay the
said demand in the manner and at the times aforesaid promptly
and punctually, then and in that case the whole of the said Notes

So to be surrendered and defined as aforesaid shall at once and absolutely become the property of the said Hendersons upon this condition that they elect to take the same in full payment of the whole of said judgment, and if they shall then elect to take the same in satisfaction of said judgment then the same shall be held merely as a collateral security to the said demands to be returned to the said Potter when the whole of the same is paid in full, it being understood that said Potter shall surrender such notes as will be approved by A. M. Innes on the part of said Hendersons.

Now therefore the condition of this obligation is such that if the said Potter shall on or before the twenty fifth day of June A. D. 1858, deliver to the said Henderson or to their Agents the notes of the Bank and to the amount aforesaid, then this obligation shall be null and void otherwise to remain in full force and virtue,

A. S. Potter	(Seal)
A. L. Sumner	(Seal)
S. B. Seymour	(Seal)
C. Stratton	(Seal)

And afterwards to wit on the Twentieth day of September A. D. Eighteen hundred and fifty eight came A. L. Sumner one of said Defendants and filed in the Office of the Clerk of said Court, his Certain Affidavit of Merits in said cause, in words and figures following to wit—

Book Bond; Pleas

<u>Amos, L. Potter Et al</u> vs <u>Huacerson et al</u>	}	September Term A. D. 1858. State of Illinois Cook County. } ss.
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Julius H. Lombard being only person on oath
 swears that he is one of the above named Defendants and that
 he has a good defence to said action upon the merits which is
 assumed and believed.

Subscribed and sworn to before me this 20 th day of September A. D. 1858.	J. H. Lombard
--	---------------

W. Thibault, Clerk

Ona thereafter to wit on the ninth day of September A. D.
 Eighteen hundred and fifty nine came J. T. Hoyt, Attorney for
 Deft Stratton, filed in the Office of the Clerk of said Court, his
 certain Affidavit in said cause, in words and figures following
 to wit:

<u>"Charles M. Huacerson Et al</u> vs <u>Amos, L. Potter Et al</u>	}	Superior Court State of Illinois Cook County. } ss.
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James T. Hoyt being only person who deposes and says
 that he is the Attorney of Oscar Stratton one of the Defendants in
 this case and that he has been advised by his Client that he
 has a defence to this action on the merits - His client is not
 sufficiently acquainted with the facts to state his belief respecting

the power.

Deponent further says that he has recently been informed in this case that on investigation of the papers for inquiry of Mr. Guibard the City for the other Defs he learned that a Motion was pending and undisposed of in this cause to strike the Declaration from the files for variance between that and the Strickland understanding and believing that the issues in said case was not made up he advised his Client the said Stratton that it was not necessary to prepare for his defense. This Deponent believing that if the Plaintiffs were allowed to amend it would be such a substantive amendment as would work a continuance of the cause. That said Stratton is now absent from the City in the State of Iowa and that this Deponent cannot prepare his defense or safely proceed to trial of this cause at the present term of this Court for the reasons above stated.

Deponent further states on information and belief that one of the Defs the said Potter has paid about Seven hundred dollars to the Plaintiffs price paid was brought in account of this claim which is the foundation of Plaintiffs action.

Subscribed and sworn to
before me this 9th day of
Sept. 1859

Geo. J. Story,

J. H. Kimball. Clerk.

And hereafter to wit on the Twentieth day of September A. D. eighteen hundred and fifty eight came the said Defendants by their Attorneys and filed in the Office of the Clerk of said Court their certain Motion in words and figures as follows, to wit:)

"Book how True."

September Term 1858.

Thos. S. Potter et al

vs

James M. Henderson et al

And now comes the said Defendants by Eastman, Bueriage & Sumard their Attorneys and moves the Court to strike the Declaration filed in this cause from the file for Variation in amount of Damages claimed by the said and Declaration

Eastman, Bueriage & Sumard

Defts Atty's.

And afterwards to wit on the second day of October (being one of the days of the September Term of said Court) in the year of our Lord one thousand eight hundred and fifty eight, the following among other proceedings were had and entered of record in said Court, to wit

"Charles M. Henderson and

Charles M. Henderson . . .

vs

Defts,

Thos. S. Potter, et al. Sumard

L.B. Sumard & C. Stratton,

This day comes said Plaintiffs by Nelson & Clark their Attorneys and on their Motion leave is given said Plaintiffs to amend their writ and cause is ordered to be continued.

And also to wit on the Twenty fourth day of September
A.D. Eighteen hundred and fifty nine the said Defendants filed
in the Office of the Clerk of said Court, their Plea & Notice in said
cases, in words and figures following, to wit—

" State of Illinois }
Book Binding .. } p.

Amos S. Potter, Julius
H. Lombard, G. B. Seymour } In the Superior Court of
and G. Stratton } Chicago
— ups —

Charles M. Henderson and
Charles M. Henderson . . . }

And the said Defendants by Evans &
Hoyt their Attorneys come and defend the wrong & injury where
they and as to all the Counts of the said Declaration say that the
said supposed writing obligatory therein mentioned is not their Plea
and upon this they put themselves upon the Country &c.

Evans & Hoyt

Defendants Attorneys."

" To the above named Plaintiffs
and to Messrs John Clark
their Attorneys. }

Take Notice that the above named
Defendants on the trial of this cause will give in Evidence and
insist that the above named Defendants paid to the said Plaintiffs
before and prior the commencement of this suit the sum of Two
thousand dollars in discharge of the said sum in the said supposed

including obligatory provisions, and that the said Plaintiffs received the same from said Defendants in discharge of the said supposed obligatory obligation.

Dated the Twenty fourth day of September 1859

Guo. & Atty.

Defto Atty.

And afterwards to wit on the twenty seventh day of October (being one of the days of the October term of said Court) in the year of our Lord one thousand eight hundred and fifty nine, the following proceedings were had in said cause and entered of record in said Court, to wit

"Charles M. Henderson pursuer
of Charles M. Henderson

(in)

Thos. S. Potter, Chas. Lumbard
G. B. Seymour & Co. Stratton

Debt.

This day came said Plaintiff by
Helen Clark his Attorney, and said Defendants by Lumbard P
Hoyt their Attorneys also come and where being joined herein it is
Ordered that a Jury come whereupon comes the Jury of good and
lawful Men to wit S. S. Lansing, J. M. Hunt, C. D. French
John Maynard, Caleb Thron, James McBarney, A. L. Ruby, S. A
Yuseth, A. Y. Mayo, W. Howarth, Peter Keeler and A. B. Carey
who being duly elected read and sworn to by comes joined afresand
after hearing evidence, arguments of counsel and instructions of the
Court retire to consider of their Verdict and afterwards come into

Court and pay me the Jury fees issues for said Plaintiff and find Defendants to owe and be indebted to said Plaintiff as in his declaration alleged to the sum of Two thousand dollars debt and assess his damages to the sum of Nine hundred and two dollars and fifty one cent.

And thereupon said Defendants permit their Motion herein for a New trial in this cause.

And thereafter to wit on the twenty ninth day of October A. D. eighteen hundred and fifty nine the said Defendants by their said Attorneys filed in the Office of the Clerk of said Court their Motion for New trial in words and figures following, to wit:

Charles N. Henderson and
Charles M. Henderson ..

Superior Court.

City of Chicago

vs
Aron S. Foster, Julius H.
Lumbard, L. B. Seymour
and C. Stratton ..

Mo for a New Trial.

Now comes the said Defendants by Evans & Hoyt their Attorneys and moves the Court for a New Trial in this cause and in arrest of the Plaintiffs judgment

1st Because the Court erred in permitting the giving in evidence to the Jury on the part of the Plaintiffs of the Bond offered by them, because no copy of the same had been filed with said Plaintiffs Declaration, and because it was not the foundation of said Plaintiffs action, or the instrument declared on as appears by the copy annexed to said Plaintiffs declaration and because it varied substantially from said Copy

2nd Because the Court erred in allowing said Plaintiffs to amend their said copy of the instrument put on, on the trial of said cause.

3rd Because the Court erred in sustaining the objection of said Plaintiffs to the question of the Defendants Counsel put to the witness Potter respecting his knowledge of the responsibility of said Defendant Potter.

4th Because the Court erred in rejecting the testimony offered by said Defendants for the purpose of showing that the Defendant Potter has ever since the execution of said Bond possessed sufficient property, subject to the lien of the judgment of said Plaintiffs as mentioned in said Bond to pay and discharge the same.

5th Because the Court erred in deciding that the amount of the judgment rendered by the Plaintiffs against said Defendant Potter in the Circuit Court of Cook Co. Illinois, which is referred to in said Bond, with interest thereon at ten per Cent less the amount paid thereon is the measure of damages in this cause.

6th Because the Court erred in deciding that it was immaterial in fixing the damages of said Plaintiffs whether said judgment could have been collected by due course of law or not, or whether said Plaintiffs suffered any loss on said judgment by reason of the non delivery by the Defendant Potter of the collateral security for the same as stipulated in said Bond and erred in rejecting the testimony offered by the said Defendants for the purpose of showing these facts.

7th Because the Court erred in allowing the interest on said judgment to be computed at ten per Cent.

8th Because said Verdict of the Jury is contrary to the evidence.

18 9th Because said Verdict is contrary to law.

10th Picard said Verdict is contrary to the law and
the evidence.

Oband & Co
Atty for Defts.

And afterwards to wit on the twenty sixth day of November in the year aforesaid. said day being one of the days of the November term of said Court, the following among other proceedings were had & entered of record in said Court. to wit:

Charly M. Henderson Survivor
of Charles W. Henderson

as
Amos S. Potts. J. G. Sumner
L. B. Seymour & Ostrander

Debt

And now as and come the parties to this cause by their respective attorneys as aforesaid, and counsel being now heard on defendants motion heretofore submitted herein for a new trial in this cause and the Court being fully advised in the premises overrules defendants said motion for a new trial.

Whereupon Defendants enter their exceptions herein to the ruling and decision of the Court

Wherefore said plaintiffs ought to have judgment
on Verdict of the Jury rendered.

Wherefore it is considered said Plaintiff,
Survivor of Charles W. Henderson, do have
and recover of said Defendants his Right of
debt of \$2000.00 Five thousand dollars, and also his damages of
damages of \$116.61 Nine hundred and two dollars and sixty one cents
in form aforesaid by the Jury law found
and assessed, together with his costs and
charges in this behalf expended, and have
execution therefor, and that said debt be
discharged on payment of the damages interest
and costs.

And whereupon said Defendants having
entered their Exceptions, prayed an appeal
herein to the Supreme Court, which is allowed
upon filing their appeal Bond in the penalty
of Fifty thousand dollars with security who
approved by a Judge of this Court in Twenty
days with their Bill of Exceptions.

And thereupon afterwards to wit, on the 24th
day of November in the year aforesaid. The
said Defendants filed in the office of said
Clerk. their certain Bill of Exceptions, in the words
of figures following, to wit.

Charles W. Hammond Esq. Superior Court
Charles W. Hammond Esq. of the City of Chicago

Amos E. Potter
Julius G. Lyubard
L. B. Seymour &
C. Hutton

October Term
A. D. 1859.

Be it remembered that on the
24th day of October A. D. 1859. the said
being one of the days of the said October
Term of said Superior Court before the
Honorable Wm. H. Higgins one of the
judges of said Court comes the said Plaintiff
vs. the H. S. Hobbs their attorney and the
said defendants by Evans & Hart their attorneys
and the jurors being called likewise also
come, and after being selected, tried and
sworn to try the several issues within joined.
the Counsel for the said Plaintiff produced
and offered to give and read in evidence
to the said jury in support of the issues on
their part in this action - a certain writ-
ing obligatory, which is in the words
and figures following, to wit:

Know all men by these Presents, that

we, Anson S. Potter, J. S. Lombard, L.
B. Symonds, C. Stratton are law and
firmly bound unto Charles S. Henderson
and Charles W. Henderson in the sum
of two thousand dollars, for the pay ment
of which well and truly to be made, we
bind ourselves, our heirs and executors,
firmly by these presents—
Signed, sealed and dated at Chicago
this tenth day of June A. D. 1858.

The Condition of the above obligation
is such that whereas the said Anson S.
Potter is indebted to the said Charles
S. Henderson and Charles W. Henderson
upon a certain judgment in the Circuit
Court of Cook County State of Illinois
for the sum of four hundred and
sixty two dollars and three cents and
cents, rendered in said Court, on the fourth
day of May A. D. 1858. And whereas the
said Potter has agreed to place in the
hands of the said Hendersons, notes on
good and responsible parties of the value
and amount of Eight hundred dollars
to be taken by the said Hendersons, as a col-
lateral security, to secure the said debt now
in judgment, with the costs, disbursements, and interest

at ten per cent per annum until paid, with a
further sum of not exceeding twelve dollars,
to defray the expenses of sending to Mayerson
for the said Notes, with this further agreement
that the said Notes shall be placed in the
hands of some responsible party for collection
by suit or otherwise; and the proceeds of such
collections applied in payment of said claim
or demand of said Henderson, that the
said Potter shall pay One half ($\frac{1}{2}$) of the
Amount of said demand, within three
months from the 26th day of June A.D. 1838.
And the Remainder thereof within four ($\frac{1}{4}$)
months from said 26th day of June, and
the said Potter does further hereby agree,
that if he shall fail to pay the said
demand in the manner and at the
times aforesaid promptly and punctually
then and in that case the whole of
the said notes to be surrendered and
deposited as aforesaid shall at once
and absolutely become the property of
the said Henderson upon this condition
that they elect to take the same in
full payment of the whole of said
judgment and if they shall then de-
cline to take the same in satisfaction
of said judgment then the same shall

be held merely as a collateral security.
to the said demand to be returned to said
Potter when the whole of the sum is paid
in full, it being understood that said
Potter shall surrender such notes, as
will be approved by A. M. Maple
on the part of said Henderson.

Now therefore the condition of this
obligation is such that if the said Potter
shall on or before the twenty fifth day
of June A.D. 1857. deliver to the said
Henderson or to their agent the Notes of
the kind and to the amount aforesaid
then this obligation shall be null and
void otherwise to remain in full force
and virtue.

A. S. Potter *Per*
J. G. Lombard *Per*
L. B. Symons *Per*
O. Shotton *Per*

But to the introduction and reading of
said writing obligating to the jury in evi-
dence on the part of said Plaintiff, the
said defendants by their said Counsel, did
then and there object and insisted that
it was not competent for the said Plaintiff

offs to read said writing obligatory to the jury, because it varies from the copy of the instrument of writing, on which this action is brought, which is annexed to the said plaintiffs' declaration and filed with it: and is not the foundation of said plaintiffs' action, or the instrument declared on, as appears by the said copy, so filed with said declaration, which copy is in the words and figures following to wit:

Know all men by these presents that we, Arthur J. Potter, J. G. Lumbard, L. B. Symour, C. B. Stratton, one held and firmly bound unto Charles W. Henderson, and Charles M. Harrison, in the sum of Six thousand dollars for the payment of which well and truly to be made, we bind ourselves, our heirs, and executors, firmly by these presents. Signed Sealed and dated at Chicago this tenth day of June A.D. 1838.

The Condition of the above obligation is such that Whereas the said Arthur J. Potter is indebted to the said Charles W. Henderson and Charles M. Harrison

upon a certain judgment in the Circuit Court
of Cook County, State of Illinois for
the sum of Seventy hundred and Eighty
two Dollars and three cents and costs
rendered in said Court on the fourth
day of May A.D. 1858. And whereas the
said Patton has agreed to place in the
hands of the said Henderson Notes on
good and responsible parties of the value
and amount of Eighty hundred Dollars,
to be held by the said Henderson as a
collateral security to secure the said debt
now in judgment with the costs thereon,
and interest at two per cent per annum
until paid, with a further sum of not
exceeding twenty dollars to defray the ex-
penses of sending to Morgan for the said
Notes, with that further agreement, that the
said Notes shall be placed in the hands of
some responsible party for collection by
suit or otherwise, and the proceeds of
such collections applied in payment
of said claim or demand of said Henderson
that the said Patton shall pay One half
(1/2) of the amount of said demand within
three months from the twentieth (20th) day
of June A.D. 1858. And the remainder the
of within ~~the~~ four (4) months from said

26th day of June. And the said Potter does
further hereby agree that if he shall fail
to pay the said demand in the manner and
at the times aforesaid promptly and punct-
ually, then and in that case the whole
of the said notes so to be surrendered
and deposited as aforesaid shall at once
and absolutely become the property of
the said Henderson, upon this condition,
that they elect to take the same in full pay-
ment of the whole of said judgment, and
if they shall then decline to take the same
in satisfaction of said judgment then the
same shall be held merely as a collateral
security to the said demand, to be re-
turned to the said Potter when the whole
of the sum is paid in full, it being under-
stood that said Potter shall surrender
such notes as will be approved by A.
H. Maple on the part of said Henderson.

Now therefore the condition of
his obligation is such, that if the said
Potter shall on or before the twenty-
fifth day of June A.D. 1838. deliver
to the said Henderson, or to their agents
the notes of the kind and to the amount
aforesaid, then this obligation shall

be null and void, otherwise to remain in
full force and entire

A. S. Potter	Perly
J. H. Lombard	Perly
L. B. Symon	Perly
C. Stratton	Perly

That said writing obligatory is offered
in evidence by said Plaintiff because
the said copy of the instrument in writing
on which the action is brought in this case
is to say, the said copy in the body of
the said recites that it is made by
Anson S. Potter, J. H. Lombard, L. B.
Symon & C. B. Stratton, whereas the
instrument offered in evidence recites
that it is made by Anson S. Potter,
J. H. Lombard, L. B. Symon & C.
Stratton. The said copy also recites in
the condition, as part of the inducement
for the obligation as follows "whereas
the said Anson S. Potter is indebted to the
said Charles H. Henderson and Charles W.
Henderson upon a certain judgment of
the Circuit Court of Cook County State
of Illinois for the sum of fourteen
hundred and eighty two dollars and three

Cents and Costs" Wherein the instrument offered in evidence recites in setting out the instrument, as follows.

"Wherein the said Aaron E. Potter is indebted to the said Charles H. Henderson and Charles H. Henderson upon a certain judgment in the Circuit Court of Cook County State of Illinois for the sum of fourteen hundred and fifty two dollars and two cents and costs"

That the word Morgan is used in said copy when the word Haggren is used in the instrument offered in evidence and that there are other variances, apparent from the inspection of the said instrument and copy.

Whereupon the said plaintiff by his said Counsel then prayed leave to amend the said copy so as to correspond with the said writing obligatory so offered in evidence They said. And the said Judge then and there decided to allow. And did allow the said plaintiff to so amend said copy, which said plaintiff then and there did. to which said opinion and decision of the said Judge in allowing said amendment the said defendants by their said Counsel

did then and there except.

Said plaintiffs by their said Counsel then did offer to give and read said writing obligatory in evidence to the said jury & to which said defendants by their said Counsel objected. on the ground that the instrument offered was not the foundation of said plaintiffs Cause of action, as appeared by the copy of the instrument on which the said action is brought; filed with the said Declaration, and because it varied from said Copy: And because no copy of said instrument was filed with said plaintiffs Declaration as required by law. And because the Court erred in permitting said plaintiffs to annex said Copy. Which objections the said judge decided to overrule, and did overrule, and then and there allowed the said instrument to be read in evidence on the part of said plaintiff which was done to which said ruling and decision of said judge the said defendants by their said Counsel did then and there except.

Then offered in evidence an Execution issued on the said judgment referred to

in the which execution is in the words
figures following. to wit:

State of Illinois
County of Cook ^{County} p. The People of the State
of Illinois to the Sheriff of Knox County, Indiana.

We command you that of the Lands and
Instruments, Goods and Chattels of A. S. Potter
Defendant in your County, you cause to
be made the sum of One Thousand four
Hundred sixty two Dollars and three
cents, which Charles H. Henderson &
Charles H. Henderson Plaintiffs lately
in the Circuit Court of Cook County,
at a term thereof begun and held at
Chicago, in said County on the second
Monday of April last past, recovered
against the said A. S. Potter Defendant
for their damages. And also the further
sum of Seven Dollars and Seventy five
cents which was adjudged to the said
Plaintiffs for their costs and charges
in that behalf expended, whereof the said
Defendant is convicted, as appears to
us of Record. And have you three mon-
ey ready to render to the said plaintiffs

for this damage and costs aforesaid.
And make return of this writ with an
endorsement hereon in what manner
you shall have ascertained the same. in
writ by day from the date hereof.

Sent

Witness William L. Church
Clerk of our said Court
and the seal thereof, at Chicago
in said County, this 6th
day of May A.D. 1858.
Wm L. Church Clerk

State of Illinois
Knox County ^{County} Rec^d this Execution
this 8th day of May A.D. 1858. at 10 o'clock
A.M.

I hereby certify that on the 27th day
of May A.D. 1858. I made a demand of
Defendant for property to satisfy the
within Execution, and he stated that he
had no property he could turn out on
the same - but would pay what he could
on the same & thought he could pay Ten
or Five Hundred Dollars in the life time of
same.

G. H. Conkey
Sheriff

The said Plaintiff has stated his case, and the said Defendants offered as a witness on their behalf One — A. H. Potter, who being duly sworn testified that in the month of September A.D. 1858. the said defendant Andrew S. Potter, paid to said plaintiff seven hundred dollars to apply on the judgment rendered in the Circuit Court of Clark County, ^{Illinois} on the 4th day of May ^{A.D.} 1858. against the said defendant Potter, and in favor of said Plaintiff mentioned in said Bond.

The said defendants by their said Counsel then and there asked said witness "If he was acquainted with the pecuniary circumstances and responsibility of the said defendant Andrew S. Potter on the 25th day of June A.D. 1858. and from that time to the present, but to the said question the said plaintiff by their said Counsel did then and there object, and insisted that said question was irrelevant and immaterial. Whereupon the said defendants by their said Counsel did insist that said question was material and proper for the purpose of laying the foundation for showing that said Potter had ever since the 25th day of June A.D. 1858.

been procured and the owner of sufficient property
liable to execution to satisfy said judgment
sorecovered by said plaintiffs against him
in the said Circuit Court. and the said judge
did then and there give his opinion, and
decide, that said question was irrelevant
and did sustain the said objection of said
plaintiffs counsel thereto, & refused to allow
said question to be put. to which opinion
and decision, the said defendants by
their said Counsel did then and there
except.

The said defendants by their said
Counsel did then & there offer to give in
evidence, and prove by said Witness
A. S. Potts on behalf of said defendants.
that the said defendant Anson S. Potts
has been ever since the said 10th day of
June A.D. 1858. the owner of a large amount
of encumbered real and personal property
subject to execution, and within the juris-
diction of said Circuit Court more than
sufficient to make the amount of said
judgment: and that said judgment
has ever since the said 10th day of June A.D.
1858 been, and is now a lien on encum-
bered real and personal property of the
said defendant Anson S. Potts, being

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in^{int} the said County of Cook and State of Illinois, which said property is all liable to be taken and subject to execution upon said judgment, and is in value more than sufficient to make the amount of and satisfy said judgment by due course of law. But to the introduction of said testimony the said plaintiffs by their said Counsel do then and there object and insist, that said testimony was irrelevant and immaterial to the issues in said cause. Whereupon the said Defendants by their said Counsel do insist, that said testimony was competent and proper for the purpose of being considered by the jury in determining the amount of damages the said plaintiffs had sustained by reason of the alleged breach in the conditions of said Bond as charged in said Plaintiffs Declaration, in not delivering the notes as collateral security to said judgment as obligated in said Bond, and for the purpose of showing that the said Plaintiffs suffered no loss on said judgment by reason of their not extending the time of the payment of the same for the time mentioned in said obligation, or by reason of the failure of said Defendant

Andrew B. Potter to deliver said Collaterals
as the defendants, by said Bond obligated
he should do. That the said Judge of
said Superior Court did then and there
give his opinion and decide that the
measure of damages in this case, is the amount
of the said judgment recovered by the said
plaintiffs against the said defendant
Andrew B. Potter in said Circuit Court, and
interest thereon at ten per cent per annum,
less the amount that may have been paid
on said judgment; and that the said
plaintiffs in this action are entitled to
recover whatever amount may now be due
upon said judgment, with interest at ten
per cent from the time of the rendition of
the same. Notwithstanding that said
judgment may have been collectable
by the issuance of an Execution thereon,
at any time since the execution of said
Bond, and notwithstanding that the
said plaintiffs may have suffered no
loss or damage on said judgment or
in the collection of the same, by reason
of the failure of said defendant Potter
to deliver said Collaterals as aforesaid.
And that the said testimony offered
by said defendants was incompetent

and immaterial, and did then and there
sustain said objection and exclude the
same from the consideration of the jury,
to which opinion and decision of said
Judge the said defendants by their said
Counsel did then and there except.

The said H. S. Nelson Counsel for
said Plaintiffs being duly sworn, then
offered to testify on behalf of said Plaint-
iffs that he had computed the interest
on said judgment at two per cent. and
offered to state the amount of the same
to the jury, to which the Counsel for said
defendants, then and there objected, which
objection was overruled by said Judge to
which decision in overruling said objec-
tion the said defendants by their said
Counsel then and there excepted.

The said Nelson then testified that he had
cash the interest on said judgment from
the time of the rendition of the same at
the rate of two per cent per annum, and
that the amount then due upon said
judgment for principal and interest
after deducting payments was Nine
hundred and two dollars and sixty one
Cents. said defendants by their said

Counsel, then moved to exclude the testimony of said Holm from the consideration of the Jury, which motion the said Judge then and there overruled, to which decision in overruling said motion said defendants by their said Counsel did then and there Except.

The above being all the testimony in the case the Jury retired to consider of their verdict; And having determined the same: returned into Court, and by their foreman delivered the following Verdict.

"We the Jury find for the plaintiff debt \$2000, and Damages \$910 ⁶/₁₀₀" which was duly entered.

Thereupon the said defendants by their said Counsel move for a new trial and correct of judgment in said Cause for the following Causes.

First Because the Court erred in permitting the giving in evidence to the Jury on the part of the plaintiff, of the Bond offered by them, because no copy of the same had been filed with said plaintiff's declaration. And because it was not the funda-

tion of said plaintiffs action, or the instrument declared on, as appears by the copy annexed to said plaintiffs declaration and because it varies substantially from said copy.

2nd Because the Court erred in allowing said plaintiff to amend their said copy, of the instrument sued on, on the trial of the cause.

3rd Because the Court erred in sustaining the objection of said plaintiffs to the questions of the defendants Counsel put to the witness Potter respecting his knowledge of the responsibility of said defendant Potter.

4th Because the Court erred in rejecting the testimony offered by said defendants for the purpose of showing that the defendant Potter has ever since the execution of said Bond possessed sufficient property subject to the lien of the judgment of said plaintiffs mentioned in said Bond to pay and discharge the same.

5th Because the Court erred in deciding that the amount of the judgment recovered by the plaintiffs against the said defendant

Potto in the Circuit Court of Cook County Illinois, which is referred to in said Bond with interest thereon at ten per cent less the amount paid thereon, is the measure of damages in this case.

6th Because the Court erred in deciding that it was immaterial in fixing the damages of said plaintiffs, whether said judgment could have been collected by due course of law or not, or whether said plaintiffs suffered any loss on said judgment by reason of the non delivery by the defendant Potto of the collateral security for the same as stipulated in said Bond, and erred in rejecting the testimony offered by the said defendants for the purpose of showing those facts.

7th Because the Court erred in allowing the interest on said judgment to be computed at ten per cent.

8th Because said Verdict of the jury is contrary to the evidence.

9th Because said Verdict is contrary to law.

10th Because said Verdict is contrary to the Law
and the evidence.

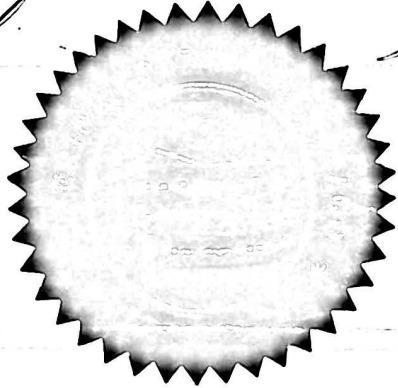
Which said Motion the said Judge did
then and there overrule.

So which said decision and ruling of
said Court the said defendant by his said
Counsel did then and there Except.

And because none of the said Excep-
tions proffered and made, to the opinions
and decisions of the said Judge, appear
upon the Record of the said Trial; there-
fore on the prayer of the said defendants
by his said Counsel, the said Judge of
said Court hath to this bill of Exceptions
set his seal according to the Statute in
that case made and provided this 24th
day of October A.D. 1859.

Wm H. Higgins 
Judge

State of Illinois
Cook County J. Walter Kimball
Clerk of the Superior Court of Chicago,
within and for the County of Cook and State
of Illinois, do hereby certify the foregoing
to be a full, true and complete transcript
of all the papers on file in my office, the
orders & judgment entered of Record in said
Court. together with the Bill of Exceptions
in a certain Cause wherein Charles M.
Henderson Survivor of Charles M. Henderson
was Plaintiff and Aaron S. Potter, J. J. Lem-
bank, L. B. Symons, and O. Stratton
Defendants



Witness my hand and the
Seal of said Court at the
City of Chicago in said County
This 2nd day of November
A.D. 1866.

Walter Kimball Clerk

Let the writ of Error be made a supersedeas
Bonds twenty five hundred dollars - James T. Hays
Security

J. D. Cretton

And the said Pff in error by Evans
his atty comes & says that in the foregoing record
of the orders & proceedings of the Court herein & on the rendition
of the judgment ^(in manner of) aforesaid there is manifest error in this

To-wit: 1st Because the Court allowed the Bond
offered by Pff below to be read in evidence =

2^d Because the Court allowed the Dft to amend the
copy of Bond or instrument used on, on trial of the case

3^d Because the Court below excluded the evidence
offered by the Dfts below of the responsibility of Dft
Below

4th Because the Court ruled that the measure
of damages was the amount of the profit recovered
by Dft agst said Pffs, & not shown at Pffs

5th Because the Court ruled that the interest
on said profit be computed at Ten per cent from
date of Profit

6th Because the Court erred in allowing
Pff below atty to compute the interest on said
profit -

7th Because profit was returned on the
verdict of the jury in favor of Pffs ^{Coll. Pffs}
survivors of which Pffs the death of Miss Corbett
being suggested of Record &c

E. W. Evans

Pffs atty

Assignment of Errors

Filed Apr. 16th 1861

L. Leland

Clerk

Charles C. Boney
of counsel }

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Chas W. Henderson

Deputy

Ans S. Potter

et al
Complaint

Filed November 23^d 1860

Lo. Clerk
Clerk

Fees \$12.00 paid

Chas W. Henderson

In Supreme Court of Illinois
A. S. Potter vs
Plf. in Error
C. M. Henderson &c
Def. in Error
This Term
April 7, 1861

And now comes said Def. in Error
by Helen Black, ^{this appeal} to say in answer to
motion & say that said judgment
may be in all things affirmed to
Helen Black
Att. for Def. in Error

La Supremie Court

} Apt of
Errors.

Oscar Stanton

represented with

Anson S. Potter, Julius

G. Humbard & L. P. Symmes

vs.

Pub. in Error

Charles H. Henderson &

Charles H. Henderson

And the said Refin
Error by E. W. Evans, his atty comes
& says that in the foregoing record
of the order and proceedings of the
Court herein, the the rendition
of the judgment aforesaid there
is manifest error in this, to-wit
That - - - I

The Court erred in allowing the bond
offered by Refin to be read in evidence

II

Because the Court allowed the Refin
to introduce the copy of bond, or inst-
rument filed on - on trial of the case

(III)

The Court erred in excluding the

The evidence offered by Ref. at the trial
below of the responsibility of Deft Potter.

IV

Because the court ruled that
the measure of damages was the
amount of the profit received by
Def. against the said Potter
+ interest thereon at two per cent.

V.

Because the court ruled that
the interest on said profit should
be computed at two per cent.

VI

~~Because the court ruled that~~
~~Ref. action~~

E. W. Evans

Ref. atty

Superior Court

Alan Shattam
imprisoned

17
Hudson on stairs

Apigman entry
Errors

Filed Apr. 16th 1861

L. Leland

Clerk

State of Illinois
Cook County .. ss.

Pleas before the Honorable John M. Nelson
sole Judge of the Cook County Court of
Common Pleas within and for the County
of Cook and State of Illinois at a Vacation
Term of said Cook County Court of Common
Pleas begun and holden at the Court House
in the City of Chicago on the first Monday
being the third day of January in the year
of our Lord One thousand eight hundred and
fifty nine and of the Independence of the
United States of America the eighty third.

Present - Hon; John M. Nelson ... Judge
Attest
Walter Kimball .. Clerk.

Be it remembered that heretofore to wit on the
seventh day of January in the year of our Lord one
thousand eight hundred and fifty nine (being one of
the days of the said Vacation Term of said Court) the

following proceedings were had in the undermentioned
cases and index of record in said Court-to wit

" Charles M. Henderson
and Charles M. Henderson
vs

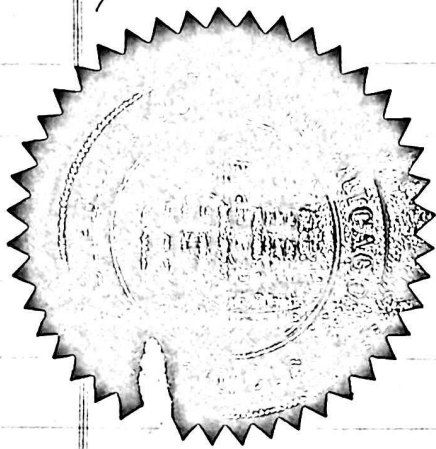
Thos. S. Potter, Ch. J. Lumber Debt,
S. B. Seymour & O. Stratton

This day came in open
Court, Messrs Helen H. Clark Attorneys for the said
Plaintiffs in the above intitled case, and suggest to
the Court the death of Charles M. Henderson one of
the Plaintiffs herein.

State of Illinois,
Cook County ... S.

I Walter Kimbale Clerk of the
Superior Court of Chicago (formerly the Cook County
Court of Common Pleas) within and for the County
of Cook in the State of Illinois Do hereby certify
the above and foregoing to be a true and perfect
transcript from the records of said Court of the
entry of the suggestion of the death of Charles M.
Henderson one of the Plaintiffs in the above

entitled cause.



In testimony whereof I have hereunto
set my hand and affixed the seal
of said Superior Court at Chicago
in said County this twentieth day
of April A. D. 1861.

Walter Kimball Clerk

116
State of Illinois
Cook County

Charles N. Henderson
et al

vs

Anson S. Potter et al

Transcript
Entry suggestion of death
of Mansuff

Filed April 23. 1861
L. Leland
Clerk

\$1.00 Paid
McKinstry