No. 14497

Supreme Court of Illinois

Gillilan

vs.

Myers

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 257.

Myers

vs

Ford

1897

SUPREME COURT.

APRIL TERM, 1863.

SAMUEL MYERS,
Defendant in Error.
ADS.
JOHN GILLILAN,
Plaintiff in Error.

Points for Defendant in Error.

I.

It is difficult to conceive upon what grounds the plaintiff in error expects to reverse the judgment of the Court below. *No objection was made to the introduction of any of the evidence, neither was there any exception taken to the giving or refusing to give any instruction by the Court to the jury.*

The record shows that the only exception taken in the cause was an exception to the decision of the Court, refusing a new trial to the defendant below, which exception is found on page 30 of the record.

The abstract of the record, made by the counsel for the plaintiff in error, *erroneously* states, (see last line of page 2, and seventh line of page 3, of Abstract,) that the "counsel for defendant excepted" to the refusal of the Court to give the instructions asked for by the defendant below, and that "defendant's counsel excepted" to the giving by the Court of the instruction given. Neither of which exceptions appears in the record.

As the evidence appearing in the record is short, and as the abstract does not contain material portions thereof, which we think it should contain, we here insert all the evidence appearing in the record of this cause.

"ALGONQUIN, June 8th, 1857.

MR. MYERS: SIR—You will please take up my note payable to Samuel Smith for two hundred and two dollars, with ten per cent. interest from the first of April, and it will be right as we talked.

(Signed) JOHN GILLILAN."

And endorsed thereon was the following:

"$205.87 Received, Chicago, June 9th, 1857, from Samuel Myers, two hundred and five dollars and eighty-seven cents, being in full for my note and interest, dated March 16th, 1857, against John Gillilan.

(Signed) S. J. SMITH."

"ALGONQUIN, March 16th, 1857.

Due Samuel Smith, two hundred and two dollars, for corn delivered to this date.

(Signed) JOHN GILLILAN."

"Defendant's counsel admitted the signatures of the defendant, and of S. J. Smith, to the instruments in writing, of which the above are copies, to be the genuine signatures of the defendant and of said S. J. Smith, and consented that they be read in evidence, and admitted that the said defendant sent the letter, above copied, directed to Mr. Myers, to the plaintiff, and that the plaintiff on the ninth day of June, 1857, at the request of the defendant, took up the note made by said defendant as requested, and paid the sum of two hundred and five dollars and eighty-seven cents, in taking up the said note, which was the amount of the principal and interest then due upon said note."

The defendant then introduced one S. J. Smith, as a witness, on his part, who testified as follows:

"I can't say that I ever saw this paper before," (referring to the letter sent by defendant to plaintiff, requesting plaintiff to take up his, defendant's, note.) "That is my name signed to the receipt on the back of it. I don't know whether I did sign it or not. I don't remember. I can't tell certainly whether I signed it or not. That's a good while ago. That's my name, I know. I guess it is my signature, I can't tell exactly about it. I can't say that I ever saw it before; but I guess I signed it. I think it is my signature, but I have forgotten. I brought such a paper, and saw Myers here in Chicago, and I gave the paper to Myers, and he took up the note and paid the amount he was requested by Gillilan to pay. I think this is the paper. Myers first said, as near as I can remember. I don't know about this. He turned to some one in the store, and I think he said, 'Has any arrangement been made?' I think some one said it had. Myers paid the money; I think the amount stated in my receipt."

On his cross-examination, the witness further testified:

"I do not pretend to give the language used by Myers, nor the other man; I don't know what it related to; I know I got the money of Myers, and that is all I cared for. I delivered the paper to Myers and he paid the money. I have no doubt that Myers paid $205.87, to take up Gillilan's note at Gillilan's request. I know he did, and that was done June 9th, 1857. My memory is not good; very poor. The letter was written at Algonquin, and sent by defendant to the plaintiff at Chicago."

See Record pages 24, 25, 26, and 27.

The evidence shows, and the counsel for the defendant below admitted on the trial of the cause, (see Record, page 25,) "*that the plaintiff on the ninth day of June*, 1857, *at the request of the defendant, took up the note made by said defendant as requested, and paid the sum of two hundred and five dollars and eighty-seven cents, in taking up the said note, which was the amount of the principal and interest then due upon said note.*" Nothing more could be required of the plaintiff below, to enable him to recover. Myers paid $205.87 to and for the use of Gillilan, at the request of Gillilan.

The instruction given by the Court covered the whole ground, and the counsel for the defendant below was satisfied with the giving of that instruction *alone*, in the place of the other instructions which were refused, as no exception was taken to the giving of that one, nor to the refusal to give any of others which were refused. The instruction given was as follows: "If the jury believe from the evidence that Myers paid the order for the accommodation of the defendant, and had no funds in his hands belonging to the defendant, and that there was no consideration outside of the request in the draft for the payment thereof, then the plaintiff should recover; *otherwise not.*"

This instruction allowed Myers to recover *only* on the several united conditions that he paid the money for the accommodation of Gillilan, *and* that Myers had no funds in his hands belonging to Gillilan, and that there was no consideration outside of Gillilan's request for the payment thereof. Without the concurrence of all these conditions, the Court instructed the jury that Myers was not entitled to recover.

This Court, in the case of *Warren* v. *Dickson*, 27 Ill. R., 118, held, that if an instruction given puts the whole case fairly before the jury, that is sufficient, and that the judgment will not be reversed by the giving or refusing to give other instructions.

The instruction given, in the case at bar, complied with that decision, even if the instructions refused had been proper to have been given, and even if Gillilan's counsel had taken any exception to the refusal to give them.

II.

The counsel for the plaintiff in error erroneously assumed, in the Court below, to treat Gillilan's request to Myers to take up his (Gillilan's) note, as a bill of exchange.

In the case of *Cook* v. *Satterlee*, 6 Cowen's R. 108, 109, the Court held, that an instrument in writing, by which A directs B to pay C, or bearer, four hundred dollars, and take up A's note of that amount, though the instrument be accepted by B, is *not* a bill of exchange. The Court in that case, by Chief Justice Savage, says, "The essential qualities of a bill or note, are first, that it be payable at all events; not dependent on any contingency, nor payable out of a particular fund; and second, that it be for the payment of money only, and not for the performance of some other act, or in the alternative."

The Court in that case held that the instrument was payable upon a contingency; and that it was the same as if it had read," pay W. C. $400 on his giving up our note," etc.

Myers could not take up the note until it was presented, nor was he bound to pay the money till the holder of the note was ready and offered to enable him to take it up. The payment of the money and the taking up the note must be simultaneous acts.

Gillilan's request was not for the payment of money absolutely, but only on the contingency that the holder of the note should present it to Myers for payment, which he might or might not do, and in the event of its being presented to Myers for payment, Myers was not only required to pay the money, but to do a farther act, the computing the interest due and the taking up the note.

The law recognizes instruments of writing for the payment of money only, as coming under the denomination of bills of exchange. A request to take up a note does not come under this denomination.

Nor are the rules governing the rights and obligations of parties to bills of exchange applicable to such an instrument as the request of Gillilan to Myers to take up his (Gillilan's) note.

Bradley vs. *Morris*, 3 Scam. R. 183.

It must be stated in every bill of exchange *to whom, absolutely and certainly*, and not alternately, the bill is to be paid.

Story on Bills of Exchange, § 54.

In the request of Gillilan to Myers, to take up his (Gillilan's) note, no person is named to whom the money should be paid, nor is the name of the holder of the note stated. It simply, by way of describing the note, states that the note is "payable to Samuel Smith;" neither is it payable to bearer.

See Record, page 24.

An instrument which is not payable by its terms to some person, or (in some of the States) to bearer, is not negotiable, neither is it a note or bill.

Smith v. *Bridges*, Breese, R. 18.
Mayo v. *Chenoweth*, Breese, R. 200.
Walters v. *Short*, 5 Gilman R. 259.
Musselman v. *Oakes*, 19 Ill. R. 81.

Lord Ch. Baron Eyre, in the case of *Gibson* v. *Minet*, 1 H. Black, says: "If I direct another to pay £500 at some day after date, for value received, and not say to whom, it is waste paper."

The Court, in case of *Douglas* v. *Wilkeson*, 6 Wend. R. 644, says, "it is supererogation to fortify with authorities the position that an instrument, without being payable by its terms to some person, or to the bearer thereof, cannot be negotiable paper. The position as Bayley states it, is this: 'Where a bill or note is payable otherwise than to the bearer, it must contain the name of the payee.' Bayley on Bills, 22."

There was no error committed by the Court below against the defendant below.

The judgment of the Court below is abundantly sustained by the law and the evidence.

KING & SCOTT,
Attorneys for Defendant in Error.

157 257

Supreme Court

Samuel Myers

vs.

John Gilliland

Points for defendant

in error

Filed May 14, 1863

S Leland Clk

Mr. Justice Breese delivered the opinion of the Court.

This was an action of assumpsit brought by the appellee against the appellant in the Superior Court of Chicago. The declaration contained a count for goods, wares and merchandize sold and delivered, and the usual Counts. Issues were made up on a trial by jury was had, and a verdict for the appellee.

It is not material to examine the pleadings in the cause, as no question is made upon them. Exceptions were taken to the instructions, and the only question presented is, should the Court have granted a new trial?

This depends upon the evidence. To maintain the issue on the part of the plaintiff he introduced the following evidence:

Chicago June 8. 1857

Mr. Myers: Sir, You will please take up my note payable to Samuel Smith for two hundred and two dollars with ten per cent interest from the first of April, and it will be right as we talked. John Gilliland.

Endorsed on this writing was the following

June 9. 57. Received Chicago June 9. 1857 from Samuel Myers two hundred and five dollars and eighty seven cts being in full for my note and interest dated March 16. 1857 against John Gilliland. S. J. Smith.

The defendants Counsel admitted the signatures of the defendant and of L. J. Smith to the instruments in writing, to be genuine Signatures and consented that they be read in evidence, and admitted that the defendant sent the letter above described directed to the plaintiff, and that the plaintiff on the ninth day of June 1887, at the request of the defendant took up the note made by the defendant as requested, and paid the sum of two hundred and five dollars and eighty seven cents in taking up the note, which was the amount of principal and interest then due upon the note.

Smith who was called as a witness for the defendant, stated that he brought such a paper, as the above, and Law Meyers in Chicago and gave the paper to him and he took up the note and paid the amount he was requested by Gilbert Cain to pay - thinks this is the paper - Meyers first said "I don't know about this." turned to someone in the store and said "Has any arrangement been made"? - Some one said it had, Meyers paid the money - thinks the amount stated in his receipt - does not pretend to give the Language used by Meyers nor the other

Bar — don't know what it relates to — Barnes he got the money of Myers, and that is all he cared for — he delivered the paper to Myers and he paid the money — has no doubt that Myers paid two hundred and five 00/100 dollars, to take up Gilchrist's note at Gilchrist's request.

This is all the material portion of the evidence and on it, the defendant makes the joint motion, that the writing sent by him to Myers, was, substantially, a bill of exchange, and the presumption of law is, that he had, at the time of drawing the bill, funds in Myers's hands. It is the doctrine, as we believe, that a bill of exchange is presumed to be drawn on funds, with the understanding between the drawer and drawee, that it is an appropriation of the funds of the former in the hands of the latter, and acceptance is an admission, that it was so drawn, and of such a relation between the parties. 1 Parsons on Notes and bills 323; Robey vs. Peyton, 2 Wheaton 385; Hortsman vs. Henshaw, 11 How and (U.S.) 177. Is this a bill of exchange?

The essential qualities of such an instrument are said to be, that it must

be payable at all events, not depen=
dent on any contingency, not payable
out of a particular fund; and that
it be for the payment of money only,
and not for the performance of
any other act, or in the alternative.
1 Parsons on bills and notes 50. 52

White

This writing is made payable
on the contingency that Smith presents
the note which he may never do, and
is like the case of Kelly vs. Benningway,
13 M. 604. The writing has few of
the qualities of a bill of exchange, but
is a mere letter of request to take up
a certain note if it is presented.

The case cited in 6 Cowen 108, Cook
vs. Sattelee is directly in point. There
the plaintiff declared in assumpsit
that on the 25th of July 1825 defendants
W. F. and E. Clarke according to the usage
and customs of merchants to make their
certain bills of exchange in writing
on that day directed to the defendants
by which they requested the defendants
ninety days after date, to pay to the
plaintiff or bearer four hundred dollars
and take up their note given to William

and Henry B. Cook for that amount dated April 19. 1825 which bill the defendant on the same day accepted &. There was a demurrer to the declaration and judgment thereon for the defendant.

The Court, after defining the essentials of a bill of exchange, say is not the instrument declared on payable upon a contingency? From the face of the instrument itself it appears the drawers had on the 19th of April preceding it date given their note for four hundred dollars to Wm & H. B. Cook and the object of drawing the instrument in question, was to take up that note. The engagement of the acceptors must be construed according to what is supposed of them by the drawers. The note was supposed to be in possession of the holders of the bill, and the payment of the money and taking up the note of the drawers, must be simultaneous act. The acceptors could not take up the note until it was presented, nor were they bound to pay the money until the plaintiff was ready, and offered to enable them to take up

the note. [illegible]

It was held by the court that the instrument was payable on a contingency, and is the same as if it had said, "Pay P. C. Jones Hundred dollars on his giving up our note &c"

The case as disposed is principle between that case and this. The instrument here was drawn on Myers for the purpose of taking up Drawers note in the hands of Smith. Myers accepted the request with that understanding, and he could only pay the money when the note was presented and delivered up.

We [illegible], are of opinion that this request was not a bill of exchange, and therefore, the presumption did not exist that the writer or drawer had funds in the hands of Myers the drawee, and that his acceptance and payment, was an admission thereof.

A new trial was properly refused and the judgment must be affirmed.

Judgment affirmed.

Supreme Court of Illinois.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

JOHN GILLILAN, *Appellant.*
vs.
SAMUEL MYERS, *Appellee.*
} Appeal from Superior Court, Chicago.

ABSTRACT OF RECORD.

PAGE
1. PLACITA.

2. SUMMONS.—Issued June 4, 1862. Served June 9, 1862.

3. DECLARATION.—Filed July 25, 1862. In Assumpsit. 1st Count for goods, wares and merchandise sold by defendant in error to plaintiff in error, and promise to pay therefor the sum of $400. 2d Count—goods sold and delivered, *quantum meruit.* 3d Count—money lent and advanced, had and received, &c. 4th Count—account stated.

6. PLEA.—Filed September 1, 1862. 1. Non assumpsit. 2. That in consideration that the defendant would deliver to one Charles Ayres & Co., a large amount of corn, malt, rye and wood, of the value of $205.87, the plaintiff would pay a certain promissory note of the defendant to one Samuel J. Smith of $205.87; that defendant delivered corn, &c., and plaintiff paid note which is same matter counted on in declaration. 3. That in consideration that defendant would deliver to Charles Ayres & Co., corn, rye, malt, &c., of the value of $400, plaintiff agreed to pay like sum for defendant and did in taking up note to Smith. Corn, &c., was delivered.

8. AFFIDAVIT OF MERITS.

9. REPLICATION.

10. TRIAL and VERDICT for Plaintiff. Damages assessed at $272.78.

11. MOTION FOR NEW TRIAL. Over-ruled and judgment on the verdict.

12. BILL OF EXCEPTIONS.

PLAINTIFF'S PROOF.

The following instruments in writing were introduced by the plaintiff, and read to the jury.

"ALGONQUIN, June 8, 1857.

"MR. MYERS, *Sir:*

"You will please take up my note payable to Samuel J. Smith, for two "hundred and two dollars, with ten per cent. interest from the first of April, "and it will be all right as we talked.

(Signed) "JOHN GILLILAN."

And endorsed thereon was the following:

"$205.87. Received, Chicago, June 9th, 1857, from Samuel Myers, "two hundred and five $\frac{87}{100}$ dollars, being in full for my note and interest, "dated March 16th, 1857, against John Gillilan.

"S. J. SMITH."

Note as follows:

"ALGONQUIN, March 16, 1857.

"Due Samuel J. Smith two hundred and two dollars, for corn delivered "to this date.

"JOHN GILLILAN."

It was admitted that above order was sent to plaintiff by defendant, and amount due on said note being $205.87, was paid by plaintiff.

DEFENDANT'S PROOF.

13. S. J. SMITH, testified—I brought such a paper as the order shown me (order above given) to Myers, in Chicago, and gave the paper to him; he took up the note and paid the amount he was requested by Gillilan to pay. Myers first said, as near as I can remember, "I don't know about this;" he turned to some one in the store, and I think he said, "Has any arrangement been made?" I think some one said it had. Myers paid the money.

CROSS-EXAMINATION.—I do not pretend to give the language used by Myers, nor the other man; I don't know what it related to; I know I got the money of Myers, and that is all I cared for.

PAGE 14. INSTRUCTIONS REFUSED.—The defendant's counsel therupon requested the Court to give to the jury the following instructions:

If the jury believe from the evidence in the case, that the sum of two hundred and five dollars and eighty-seven cents, paid by the plaintiff to Smith, on the order offered in proof, was paid under an arrangement previously made between the plaintiff and the defendant, it is incumbent upon the plaintiff to show what that arrangement was, otherwise the defendant will be entitled to recover.

The jury are instructed as a matter of law, that the paper offered in evidence in this cause, and upon which the money was paid by the plaintiff to Smith, is a draft or order for the payment of money; and that the presumption of law is, in the absence of proof to the contrary, that the defendant had funds in the hands of the plaintiff with which to pay it.

If the jury believe from the evidence, that previous arrangements had been entered into between the parties, for the payment of the note in question; and, in accordance with such arrangement, the order was given, in the absence of other testimony explaining such arrangement, the plaintiff is not entitled to recover.

If the jury believe from the evidence, that this action is brought upon an order from the defendant upon the plaintiff, to pay a certain sum of money, it is a presumption of law that it is so drawn upon funds in the hands of the plaintiff, belonging to the defendant.

If the jury believe from the evidence, that the order in this action was paid out of funds in the hands of the plaintiff, belonging to the defendant, the plaintiff is not entitled to recover.

Which instructions the Court refused to give, and counsel for defendant excepted.

INSTRUCTIONS GIVEN.—The Court instructed the jury as follows:

If the jury believe from the evidence, that Myers paid the order for the accommodation of the defendant, and had no funds in his hands belonging to the defendant, and that there was no consideration outside of the request in the draft for the payment thereof, then the plaintiff should recover; otherwise not.

To the giving of which instruction the defendant's counsel excepted.

Motion for new trial made and over-ruled, and prayer for appeal allowed, &c.

16. CERTIFICATE of Clerk.

ASSIGNMENT OF ERRORS.—1. The Court erred, in refusing to give the instructions requested on the trial, by the appellant.

2. The Court erred, in giving the instructions that were given.

3. The Court erred, in over-ruling the motion for a new trial.

4. The verdict is against law and evidence.

5. The judgment is against law and evidence.

CHASE & MUNSON, *Att'ys for Appellant.*

157 257

John Gilliam
appt

vs

Samuel Myers
appellee

Abstract

Filed May 8. 1863
S. Sleeper
Clk

Supreme Court of Illinois
Third Grand Division

John Gillilan
Appellant
"
Samuel Myers
Appellee

State of Illinois
La Salle County } ss. Hiram M. Chase being duly sworn says that he is one of the attorneys for the appellant in the above entitled action and resides at Chicago. That Myers King & Scott attorneys for appellee also reside in the City of Chicago. That the Record in this case was made out prior to the first day of this present term of this court. Deponent further says that on the third day of this term deponent intended to be present at this court & have said Record filed or send same for that purpose by E Van Buren of Chicago. with whom deponent had conversation in relation to attending to the filing of said Record on said 3d day of Term. & who had the day previous informed deponent he was to leave in the morning train 23 C&A for Ottawa to attend this court & would take whatever deponent had to send. That deponent concluded not to go on

the morning of said 23d ult. but to
said by said Van Buren - that on
the morning of said this day of
Term before the departure of the
train deponent went to the Office
of said Van Buren was informed
that he left the night before - it
was then too late for deponent to get
ready & have by said morning Term
or send the said record by mail
Deponent thereupon went to the
Attorneys for the appellee requested
them to Stipulate and they did
Stipulate (which Stipulation is on
file) that the said Record might
be filed as of the first day of
the Term. Deponent thereupon took
the next first train thereafter
for Ottawa & arrived here about
12.30 A.M. 24th ult & as soon as the
Clerks Office was opened deponent went to have
the said Record filed & paid the
fees thereon.

Deponent further says that the Record
would have been filed on said 23d ult
had not deponent relied on sending
same by said Van Buren for that purpose

Deponent further says that both
parties are desirous that the Cause

should be submitted at this present time of Court.

The case is very short but little testimony & only involving two questions & the parties are desirous that the same be placed on the hearing docket that the decree may be submitted at this time.

Sworn to before me this 5th day of May 1863. L. Leland Clk.

W. M. Chase

151 257

John Gillilan
Appellee

vs

Samuel Myers
Appellee

"

Affidavit on Motion

To docket for hearing

Filed May 5th 1863
L. Leland
Clerk

Chas Emerson
for Appellee

Supreme Court

John Gillilan

Plaintiff in Error

vs

Samuel Myers

Defendant in error

It is stipulated and agreed that the record in this cause may be filed with the clerk of this court at Ottawa as of the first day of the term of said court now in session at Ottawa.

April 24th 1863.

Chas. Mason

Attys. for Plaintiff in Error.

King & Scott. Attys. for

Defendant in Error.

15 2567

Gilliland
vs
Myers

Stipulation

Filed May 1st 1873
Leland Clerk

SUPREME COURT.

APRIL TERM, 1863.

SAMUEL MYERS,
Defendant in Error.
ADS.
JOHN GILLILAN,
Plaintiff in Error.

Points for Defendant in Error.

I.

It is difficult to conceive upon what grounds the plaintiff in error expects to reverse the judgment of the Court below. *No objection was made to the introduction of any of the evidence, neither was there any exception taken to the giving or refusing to give any instruction by the Court to the jury.*

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(Signed) S. J. SMITH."

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"Defendant's counsel admitted the signatures of the defendant, and of S. J. Smith, to the instruments in writing, of which the above are copies, to be the genuine signatures of the defendant and of said S. J. Smith, and consented that they be read in evidence, and admitted that the said defendant sent the letter, above copied, directed to Mr. Myers, to the plaintiff, and that the plaintiff on the ninth day of June, 1857, at the request of the defendant, took up the note made by said defendant as requested, and paid the sum of two hundred and five dollars and eighty-seven cents, in taking up the said note, which was the amount of the principal and interest then due upon said note."

The defendant then introduced one S. J. Smith, as a witness, on his part, who testified as follows:

"I can't say that I ever saw this paper before," (referring to the letter sent by defendant to plaintiff, requesting plaintiff to take up his, defendant's, note.) "That is my name signed to the receipt on the back of it. I don't know whether I did sign it or not. I don't remember. I can't tell certainly whether I signed it or not. That's a good while ago. That's my name, I know. I guess it is my signature, I can't tell exactly about it. I can't say that I ever saw it before; but I guess I signed it. I think it is my signature, but I have forgotten. I brought such a paper, and saw Myers here in Chicago, and I gave the paper to Myers, and he took up the note and paid the amount he was requested by Gillilan to pay. I think this is the paper. Myers first said, as near as I can remember. I don't know about this. He turned to some one in the store, and I think he said, 'Has any arrangement been made?' I think some one said it had. Myers paid the money; I think the amount stated in my receipt."

On his cross-examination, the witness further testified:

"I do not pretend to give the language used by Myers, nor the other man; I don't know what it related to; I know I got the money of Myers, and that is all I cared for. I delivered the paper to Myers and he paid the money. I have no doubt that Myers paid $205.87, to take up Gillilan's note at Gillilan's request. I know he did, and that was done June 9th, 1857. My memory is not good; very poor. The letter was written at Algonquin, and sent by defendant to the plaintiff at Chicago."

See Record pages 24, 25, 26, and 27.

The evidence shows, and the counsel for the defendant below admitted on the trial of the cause, (see Record, page 25,) "*that the plaintiff on the ninth day of June*, 1857, *at the request of the defendant, took up the note made by said defendant as requested, and paid the sum of two hundred and five dollars and eighty-seven cents, in taking up the said note, which was the amount of the principal and interest then due upon said note.*" Nothing more could be required of the plaintiff below, to enable him to recover. Myers paid $205.87 to and for the use of Gillilan, at the request of Gillilan.

The instruction given by the Court covered the whole ground, and the counsel for the defendant below was satisfied with the giving of that instruction *alone*, in the place of the other instructions which were refused, as no exception was taken to the giving of that one, nor to the refusal to give any of others which were refused. The instruction given was as follows: "If the jury believe from the evidence that Myers paid the order for the accommodation of the defendant, and had no funds in his hands belonging to the defendant, and that there was no consideration outside of the request in the draft for the payment thereof, then the plaintiff should recover; *otherwise not.*"

This instruction allowed Myers to recover *only* on the several united conditions that he paid the money for the accommodation of Gillilan, *and* that Myers had no funds in his hands belonging to Gillilan, and that there was no consideration outside of Gillilan's request for the payment thereof. Without the concurrence of all these conditions, the Court instructed the jury that Myers was not entitled to recover.

This Court, in the case of *Warren* v. *Dickson*, 27 Ill. R., 118, held, that if an instruction given puts the whole case fairly before the jury, that is sufficient, and that the judgment will not be reversed by the giving or refusing to give other instructions.

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II.

The counsel for the plaintiff in error erroneously assumed, in the Court below, to treat Gillilan's request to Myers to take up his (Gillilan's) note, as a bill of exchange.

In the case of *Cook* v. *Satterlee*, 6 Cowen's R. 108, 109, the Court held, that an instrument in writing, by which A directs B to pay C, or bearer, four hundred dollars, and take up A's note of that amount, though the instrument be accepted by B, is *not* a bill of exchange. The Court in that case, by Chief Justice Savage, says, "The essential qualities of a bill or note, are first, that it be payable at all events; not dependent on any contingency, nor payable out of a particular fund; and second, that it be for the payment of money only, and not for the performance of some other act, or in the alternative."

The Court in that case held that the instrument was payable upon a contingency; and that it was the same as if it had read," pay W. C. $400 on his giving up our note," etc.

Myers could not take up the note until it was presented, nor was he bound to pay the money till the holder of the note was ready and offered to enable him to take it up. The payment of the money and the taking up the note must be simultaneous acts.

Gillilan's request was not for the payment of money absolutely, but only on the contingency that the holder of the note should present it to Myers for payment, which he might or might not do, and in the event of its being presented to Myers for payment, Myers was not only required to pay the money, but to do a farther act, the computing the interest due and the taking up the note.

The law recognizes instruments of writing for the payment of money only, as coming under the denomination of bills of exchange. A request to take up a note does not come under this denomination.

Nor are the rules governing the rights and obligations of parties to bills of exchange applicable to such an instrument as the request of Gillilan to Myers to take up his (Gillilan's) note.

Bradley vs. *Morris*, 3 Scam. R. 183.

It must be stated in every bill of exchange *to whom, absolutely and certainly*, and not alternately, the bill is to be paid.

Story on Bills of Exchange, § 54.

In the request of Gillilan to Myers, to take up his (Gillilan's) note, no person is named to whom the money should be paid, nor is the name of the holder of the note stated. It simply, by way of describing the note, states that the note is "payable to Samuel Smith;" neither is it payable to bearer.

See Record, page 24.

An instrument which is not payable by its terms to some person, or (in some of the States) to bearer, is not negotiable, neither is it a note or bill.

Smith v. *Bridges*, Breese, R. 18.
Mayo v. *Chenoweth*, Breese, R. 200.
Walters v. *Short*, 5 Gilman R. 259.
Musselman v. *Oakes*, 19 Ill. R. 81.

Lord Ch. Baron Eyre, in the case of *Gibson* v. *Minet*, 1 H. Black, says: "If I direct another to pay £500 at some day after date, for value received, and not say to whom, it is waste paper."

The Court, in case of *Douglas* v. *Wilkeson*, 6 Wend. R. 644, says, "it is supererogation to fortify with authorities the position that an instrument, without being payable by its terms to some person, or to the bearer thereof, cannot be negotiable paper. The position as Bayley states it, is this: 'Where a bill or note is payable otherwise than to the bearer, it must contain the name of the payee.' Bayley on Bills, 22."

There was no error committed by the Court below against the defendant below.

The judgment of the Court below is abundantly sustained by the law and the evidence.

KING & SCOTT,
Attorneys for Defendant in Error.

1571 257

Supreme Court

Brunck Myers

adv.

John Gilliban

Points for defendant

in Error.

Filed May 14. 1863

L Leland

Clk

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the 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 Third day of November in the year of our Lord One Thousand Eight Hundred and Sixty Two and of the Independence of the United States of America the Eighty Seventh

Present, The Honorable John M. Wilson Chief Justice of the Superior Court of Chicago.

Van H. Higgins
Grant Goodrich } Judges.

Joseph Knox Prosecuting Attorney.

Anthony C. Hesing Sheriff of Cook County.

Attest, Thomas B. Carter Clerk.

Be it remembered that heretofore to wit on the Fourth day of June in the Year of Our Lord One Thousand Eight Hundred and Sixty Two. There issued out of the Office of the Clerk of the Superior Court of Chicago the People's Writ of Summons which said writ with the Sheriff's return thereon indorsed are in words and figures following

2. State of Illinois }
County of Cook } ss

The People of the State of Illinois to the Sheriff of McHenry County Greeting:—

We command you that you summon John Gillilan if he shall be found in your County, personally to be and appear before the Superior Court of Chicago of said Cook County on the first day of the term thereof to be holden at the court house in Chicago in said Cook County on the first Monday of July next to answer unto Samuel Myers in a plea of Trespass on the case upon promises to the damage of the said Plaintiff as is said in the sum of Four Hundred dollars And have you there this writ with an endorsement thereon in what manner you shall have executed the same

Witness Thomas B Carter Clerk of our said Court and the seal thereof at Chicago aforesaid this 4th day of June A D. 1862.

Thos B Carter
Clerk

Executed by reading the within summons to the within named John Gillilan this 9th day of June A D 1862. Lewis Elsworth Sheriff
By B. F. Church. deputy.

And afterwards to wit on the Twenty fifth day of July in the Year aforesaid, the Plaintiff herein by King and Scott his attorneys filed in the office of the Clerk aforesaid, his Custom Declaration in words and figures following to wit:

Superior Court of Chicago
Of the July Term A D 1862.

State of Illinois }
County of Cook } ss.

Samuel Myers a resident of the county of Cook aforesaid, Plaintiff in this suit by King and Scott his Attorneys complains of John Gillilan Defendant in this suit, of a plea of trespass on the case on promises:

(3) For that whereas the said defendant heretofore to wit, on the fifteenth day of May in the year of our Lord One Thousand Eight hundred and sixty two, at Chicago in said County became and indebted to the said plaintiff in the sum of four hundred dollars of lawful money of the United States of America for divers goods wares and uu merchandise by the said plaintiff before that time sold and delivered to the said defendant and at the special instance and request of the said defendant: And being so indebted to the said plaintiff the said defendant in consideration thereof afterwards to wit; on the same day and year and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money last mentioned uu when the said defendant should be

thereunto afterwards requested.

And whereas also the said defendant afterwards to wit on the same day and year and at the place aforesaid in consideration that the said plaintiff had before that time at the like special instance and request of the said defendant sold and delivered to the said defendant divers other goods wares and merchandise of the said plaintiff the said defendant then and there undertook and faithfully promised the said plaintiff to pay to the said plaintiff so much money as the last aforesaid goods wares and merchandise at the time of the sale and delivery thereof were reasonably worth when the said defendant should be thereunto afterwards requested. And the said plaintiff avers that the said goods wares and merchandise last mentioned at the time of the sale and delivery thereof were reasonably worth the further sum of four hundred dollars of like lawful money as aforesaid to wit at the place aforesaid whereof the said defendant afterwards on the same day and year and at the place aforesaid had notice.

And whereas also the said defendant afterwards to wit on the same day and

year, and at the place aforesaid was and
indebted to the said plaintiff in the further
sum of four hundred dollars of like law-
ful money as aforesaid for money before
that time lent and advanced by the
said plaintiff to the said defendant and
at the like request of the said defendant—
And in the like sum for other money
by the said plaintiff before that time paid,
laid out and expended for the said defendant
and at the like request of the said defendant
4 And in the like sum for other money
by the said defendant before that time
had and received to and for the use of the
said plaintiff. And in the like sum for
other money before that time and then
due and owing the said plaintiff for
interest upon and for the forbearance of
divers other sums of money before that time
and then due and owing from said defen-
dant to said plaintiff. And in the like
sum for the price and value of work
then done and material for the same
provided by the plaintiff for the defendant
and at the like request of the defendant.
And being so indebted the said defendant
in consideration thereof afterwards to wit on
the same day and year and at the place

aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the several sums of money in this count mentioned when the said defendant should be thereunto afterwards requested.

And whereas also, the said defendant afterwards to wit, on the same day and year and at the place aforesaid accounted together with the said plaintiff of and concerning divers other sums of money, before that time due owing from the said defendant to the said plaintiff and then and there being in arrear and unpaid and upon such accounting the said defendant was then and there found to be in arrear and indebted to the said plaintiff in the further sum of four hundred dollars of like lawful money as aforesaid. And being so found in arrear and indebted to the said plaintiff the said defendant in consideration thereof afterwards to wit on the same day and year and at the place aforesaid undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said defendant

should be thereunto afterwards requested.

And the said plaintiff avers that he is and was at the time of the commencement of this suit and at the time the several sum causes of action hereinbefore mentioned accrued a resident of the County of Cook aforesaid and that the several contracts upon which this action is brought were actually made in the said county of Cook and that the said plaintiff did reside in the said County of Cook at the time and times when the said contracts were actually made as aforesaid.

5

Nevertheless, the said defendant (although often requested so to do) has not yet paid the several sums of money above mentioned or any or either of them or any part thereof to the said plaintiff, but to pay the same or any part thereof to the said plaintiff the said defendant has hitherto altogether refused and still does refuse, to the damage of the said plaintiff of four hundred dollars and therefore the said plaintiff brings suit &c.

King and Scott
Plaintiff Attys.

Copy of the account sued on.

John Gillilan

To Samuel Myers Dr.

June 9th 1857	To money lent and advanced	$400.00
" " "	To money paid laid out and expended	$400.00
June 1857	" " " " " " "	$205.87
" " "	To money had and received to and for the use of said plaintiff	$400.00
" " "	To goods wares, and merchandise sold and delivered	$400.00
" " "	To labor and services	$400.00
" " "	To balance due on account stated	$400.00
" " "	To interest	$200.00

And afterwards to wit on the First day of September in the Year aforesaid, the Defendant herein by Chase Stone & Munsell his Attorneys filed in the Cause his Certain Pleas and Affidavit of Merits in words and figures following to wit: —

In Superior Court
Chicago Illinois

John Gillilan
ads
Samuel Myers

And now comes the said defendant John Gillilan by Chase Stores and Munson his Attorneys and defends the wrong and injury when &c and says that he did not undertake and promise in manner and form as the said Plaintiff hath complained and of this he puts himself upon the country &c

Chase, Stores, and Munson
Defendants Attorneys

And the said defendant for a further plea in this behalf leave of Court having been obtained, says actio non because he says that at the time when &c he the said Plaintiff in consideration that this defendant would sell and deliver to one Charles Ayers & Co at their distillery in the town of Algonquin McHenry County Illinois a large amount of Corn, Malt, Rye and Wood of great value to wit of the value of Two Hundred and five 87/100 dollars he the said Plaintiff would pay a certain promissory note of this defendant, to one Samuel Smith of Two Hundred and five 87/100 dollars in

amount. And this defendant avers that at the time when &c this defendant did sell and deliver unto the said Charles Ayers & Co at their said distillery in ~~the~~ Algonquin McHenry County Illinois said large amount of Corn Malt Rye and Wood of great value to wit of the value of Two Hundred and Five $\frac{87}{100}$ ~~the~~ dollars whereby and by force of the Statute in such case made and provided the said plaintiff became and was liable to pay to one Samuel Smith the certain promissory note of this defendant to said Smith amounting to the sum of Two Hundred and five $\frac{87}{100}$ dollars and being so liable undertook, and faithfully promised to pay the same when he should be ~~the~~ thereunto afterwards requested that this defendant in consideration thereof at the time when &c by his written order as the said Plaintiff hath above thereof of him complained requested said plaintiff to pay the said sum of money to said Smith which he the said Plaintiff in consideration of his aforesaid promise and undertaking to this defendant at the time when &c did pay to said Smith and this the said defendant is ready to verify &c

Chase Stores and Munson
Defendants Attorneys.

And this defendant for a further plea in this behalf leave of Court first having been obtained says actio non because he says that at the time when &c he the said plaintiff in consideration that this defendant would sell and deliver to one Charles Ayers & Co at their distillery in Algonquin McHenry County Illinois a certain large quantity of Corn Malt
(7) Rye and Wood of great value to wit, of the value of Four Hundred dollars he the said plaintiff would pay into and refund to and for the use and benefit of this defendant a like large sum of money to wit, the sum of Four Hundred dollars to one Samuel Smith And this defendant avers that at the time when &c and in consideration of said several promises and undertakings on the part of said plaintiff, he the said defendant did sell and deliver unto said Charles Ayers & Co at their distillery in Algonquin McHenry Co Illinois the said certain large quantity of Corn, Malt, Rye and Wood of great value to wit of the value of Fourhundred dollars whereby and by force of the Statute

in such case made and provided he the said plaintiff became and was liable to lay out and expend to and for the use of this defendant a large sum of money to wit the sum of Four Hundred dollars upon one Samuel Smith and being so liable undertook and faithfully promised to lay out and expend the same wherever he should be thereunto afterwards requested. that this defendant in consideration thereof at the time when &c by his written order directed to said Plaintiff requested the said Plaintiff to pay to said Samuel Smith said sum of Four Hundred dollars as the said Plaintiff hath above thereof of him complained which he the said plaintiff at the time when &c did pay unto said Smith as the said Plaintiff hath above complained. And this the said defendant is ready to verify. &c

Chase, Stores, and Munson,
Defendant's Attorney's.

aff Mer.

In Superior Court
Chicago Illinois

Samuel Myers
vs
John Gilliland

State of Illinois
McHenry County } ss.

John Gilliland being first duly sworn doth depose and say that he is defendant in the above entitled action that he has fully and fairly stated his defence therein to Henry S. Munson of the firm of Chase Stores and Munson his Counsel and is advised by him and verily believes that he has a good defence to said action upon its merits

John Gilliland

Subscribed and sworn to
before me this 29th day
of August 1862.

I. S. Klinck
Justice of the Peace.

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And afterwards to wit on the Nineteenth day of September in the Year aforesaid the Plaintiff in this Suit by Reid and Scott his Attorneys filed herein his Certain Replication in words and figures following to wit:—

Superior Court of Chicago

Samuel Myers
vs
John Gillilan

And the said plaintiff as to the said plea of the said defendant by him first above pleaded and whereof he has put himself upon the country doth the like

King and Scott Plffs Attys

And the said plaintiff as to the said plea of the said defendant by him secondly above pleaded says that the said plaintiff by reason of anything by the said defendant in that plea alleged ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant because he says that he this plaintiff did not nor undertake promise or agree that in consideration that said defendant would sell and deliver to one Charles Ayers & Co at their distillery in the town of Algonquin McHenry County Illinois a large amount of corn malt rye and wood of great value to wit of the value of two hundred and five 87/100 dollars he this plaintiff would pay a certain promissory note of the said defendant to

one Samuel Smith of two hundred and five 87/100 dollars in amount neither did this plaintiff in any way become liable to pay the said promissory note or the said sum of two hundred and five 87/100 dollars or any part thereof in manner and form as the said defendant has in his said plea secondly above pleaded alledged And this the said plaintiff prays may be enquired of by the country &c

King and Scott Plffs Attys.

And the said plaintiff as to the said plea of the said defendant by him thirdly above pleaded says that the said plaintiff by reason of anything by the said defendant in that plea alledged ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant because he says that he this plaintiff did not undertake promise or agree that in consideration that said defendant would sell and deliver to me Charles Ayers and Co at their distillery in Algonquin N.C. Henry County Illinois a certain large quantity of Corn Malt Rye and wood of great value to wit of the value of four hundred dollars he this plaintiff would pay unto and

expend to and for the use and benefit of said defendant a like large sum of money to wit, the sum of four hundred dollars to one Samuel Smith neither did this plaintiff in any way become liable to lay out and expend to and for the use of said defendant a large sum of money to wit: the sum of four hundred dollars or any part thereof in manner and form as the said defendant has in his plea thirdly above pleaded alledged. And this the said Plaintiff also prays may be enquired of by the country &c

10

King and Scott Plffs. Attys.

And afterwards to wit on the 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 was had in said Court and entered of record to wit:

Samuel Myers

vs Assumpsit

John Gillilan

This cause being this day called for trial and comes said plaintiff by King and Scott his Attorneys and said defendant by Chase and Stores and Munson his Attorneys also comes and issues being joined herein it is ordered that a jury come, whereupon comes the jury of good and lawful men to wit, E F. Root, William Sierne, Eli Timerman, D. W Clark, D. Sinclair, Edward Bergen, G. V. Drake, A L. Amberg, Robert Russell, Michael Laiver, & E. Warner, and Peter Mooney, who being duly elected tried and sworn to try the issues joined herein as aforesaid after hearing evidence and arguments of Counsel and instructions of the Court retire to consider of their verdict, and afterwards return into Court submit their verdict and say, We the jury find issues for said plaintiff and assess his damages herein against said defendant to the sum of Two hundred and seventy two dollars and seventy eight cents. And thereupon said defendant submits his motion herein for a new trial in said cause,

And afterward to wit on the Twenty Fifth

day of November at the Year aforesaid Said day being one of the days of the November Term of Said Court the following among other proceedings was had in Said Court and entered of Record Viz't—

Samuel Myers

vs No. for new trial in Appt

John Gillilan

This day again comes said plaintiff by King and Scott his Attorneys and said defendant by Chase, Storrs, and Munson his attorneys, also comes and this cause coming on now to be heard upon the motion of the said defendant heretofore submitted herein at the present Term of this Court for a new trial in said cause and counsel being heard thereon and the Court being fully advised in the premises it is considered by the Court that the motion of said defendant be and is hereby overruled and that a new trial be refused to said defendant.

Wherefore said plaintiff ought to have judgement for his damages upon the verdict of the jury rendered herein as aforesaid.

Therefore it is considered that said plaintiff do have and recover of and from said defendant his damages of two hundred and seventy two dollars and seventy eight cents in

form aforesaid by the jury here found and in assessed and also his costs and charges in this behalf expended and have execution therefore And thereupon said defendant prays an appeal herein to the Supreme Court of the State of Illinois from the judgment of this Court which is allowed to him on condition that he execute a bond in penalty of Four hundred dollars in thirty days with security to be approved by a Judge of this Court in conditioned according to law and that sixty days time is also given him in which to in file his bill of exceptions.

And afterwards to wit on the Twenty Third day of January in the Year of Our Lord One Thousand Eight Hundred and Sixty Three the Defendant herein by his Attorneys filed in the office of the Clerk aforesaid his Certain Bill of Exceptions in words and figures following to wit

Eq 1

In the Superior Court of
Chicago Cook County Illinois.

John Gillilan
ads
Samuel Myers

Afterwards to wit at a term of the said Superior Court of Chicago held at the Court House in the City of Chicago Cook County State of Illinois on the day of November in
12. the year one thousand eight hundred and sixty two before Hon. Grant Gooderich one of the Judges elected to hold the said Court according to the form of the Statute in such case made and provided, the aforesaid issue so joined between the said parties as aforesaid came on to be tried by a Jury of the County of Cook aforesaid for that purpose duly empanelled good and lawful men of the said County. At which day came there as well the said Plaintiff as the said defendant by their respective Attorneys aforesaid; and the jurors of the Jury aforesaid empanelled to try the said issue being called also came and were then and there in due manner chosen and sworn to try the same issues. And to try the said issues and upon the trial thereof the counsel for the said plaintiff to maintain and prove the said issue

on his part gave in evidence three instruments in writing in the words and figures following to wit:

"Algonquin June 8th 1857.

Mr. Myers,

Sir,

You will please take up my note payable to Samuel Smith for two hundred and two dollars with ten per cent interest from the first of April, and it will all be right as we talked

John Gillilan."

And endorsed thereon was the following

"$ 205.87. Received Chicago June 9th 1857 from Samuel Myers two hundred and five 87/100 dollars being in full for my note and interest dated March 16th 1857 against John Gillilan

S. J. Smith."

"Algonquin March 16th 1857.

Due Samuel Smith Two hundred and two dollars for corn delivered to this date

John Gillilan."

Defendant's counsel admitted the signatures of the defendant and of S. J Smith to the

instruments in writing of which the above are copies, to be the genuine signatures of the defendant and of said S. J. Smith and consented that they be read in evidence, and admitted that the said defendant sent the letter above copied directed to Mr. Myers, to the plaintiff and that the plaintiff on the ninth day of June 1857 at the request of the defendant took up the note made by said defendant as requested and paid the sum
13. of two hundred and five $\frac{87}{100}$ dollars in taking up the said note which was the amount of the principal and interest then due upon said note

The defendant then introduced one S. J. Smith as a witness on his part who testified as follows

" I can't say that I ever saw this paper before" (referring to the letter sent by defendant requesting plaintiff to take up his defendant's note)

"That is my name signed to the receipt on the back of it."

"

I don't know whether I did sign it or not, I don't remember"

"I cannot tell certainly whether I signed it or not that's a good while ago that's my name I know"

"I guess it is my signature. I can't tell exactly about it"

"I can't say that I ever saw it before but I guess I signed it "I think it is my signature but I have forgotten"

"I brought such a paper and I saw Myers here in Chicago and I gave the paper to Myers and he took up the note and paid the amount he was requested by Gillilan to pay"

"I think this is the paper"

"Myers first said as near as I can remember, I don't know about this. he turned to some one in the store and I think he said has any arrangement been made. I think some one said it had

Myers paid the money. I think the amount stated in my receipt.

On his cross examination the witness farther testified

"I do not pretend to give the language used by Myers nor the other man I don't know what it related to. I know I got the money of Myers and that is all I cared for. I delivered the paper to Myers and he paid the money. I have no doubt that Myers paid $ 205.

1862

-87 to take up Gilliland's note at Gilliland's request— I know he did, and that was done June 9th 1867. My memory is not good— very poor. The letter was written at Algonquin and sent by Defendant to the Plaintiff at Chicago.

The defendant's counsel thereupon requested the court to give to the jury the following instructions——

14. "If the Jury believe from the evidence in the case that the sum of Two hundred and five dollars and Eightyseven cents paid by the plaintiff to Smith on the order offered in proof was paid under an arrangement X. previously made between the plaintiff and the defendant it is incumbent upon the plaintiff to show what that arrangement was otherwise the defendant will be entitled to recover."

"The Jury are instructed a matter of law that the paper offered in evidence in this cause and upon which the money was paid by the plaintiff to Smith is a draft or order for the payment of money and that the presumption of law is in the absence of proof to the contrary that the defendant had funds in the hands of the plaintiff with which to pay it."

"If the Jury believe from the evidence that previous arrangements had been entered into between the parties for the payment of the note in question and in accordance with such arrangemens the order was given in the absence of other testimony explaining such arrangement the Plaintiff is not entitled to recover."

"If the Jury believe from the evidence that this action is brought upon an order from the defendant upon the Plaintiff to pay a certain sum of money it is a presumption of law that it is so drawn upon funds in the hands of the Plaintiff belonging to the Defendant

"If the Jury believe from the evidence that the order in this action was paid out of funds in the hands of the Plaintiff belonging to the defendant the Plaintiff is not entitled to recover."

Which the Court refused to give—

The Court did instruct the Jury as follows:—

"If the Jury believe from the evidence that Myers paid the order for the accomadation of the defendant and had no funds in his hands belonging

to the defendant and that there was no consideration outside of the request in the draft for the payment thereof then the plaintiff should recover, otherwise not."

And the Jury retired in charge of an officer and after due deliberation returned their verdict into Court finding the issues for the plaintiff and assessing
15 his damages at two hundred and one seventy two 70/100 dollars.

And afterwards to wit at the said Court on the 25th day of November of said year the said defendant by his said Counsel made a motion for a new trial of said cause before the said Judge and Hon John M. Wilson and Hon. Van H. Higgins Judges of the said Superior Court and assigned as causes and reasons thereof the following

"First" The Court erred in instructing the Jury.
"Second" The Court erred in refusing the instructions asked by defendants Attorneys
"Third" The verdict of the Jury is contrary to the law and the evidence of the case."

And the said Judges upon full argument and consideration thereof

then and there overruled the said motion and refused a new trial of the said cause and entered judgment on said verdict to which overruling and refusa said defendant by his said counsel then and there excepted And inasmuch as the said several matters so produced and given in evidence in the trial of said cause and the said motion for a new trial and the said exceptions so made and taken by the said defendant by his said Counsel do not appear by the record of the said Verdict aforesaid the said counsel for the said defendant did then and there propose their aforesaid exceptions to the opinion of the said Judges and requested them to put their seals to this Bill of Exceptions

And thereupon the said Judges at the request of the said counsel for the said defendant did put their seals to this Bill of exceptions pursuant to the Statute in such case made and provided on the 23rd day of January in the year of our Lord one thousand eight hundred and sixty three

Van H. Higgins (Seal)
Judge.

State of Illinois }
County of Cook }

I Thomas B Carter clerk of the Superior Court of Chicago within and for the County and State aforesaid do hereby Certify that the foregoing is a full true and Complete transcript of all the Pleadings on file in my office, the orders and judgment entered of record in said Court together with the Bill of Exceptions

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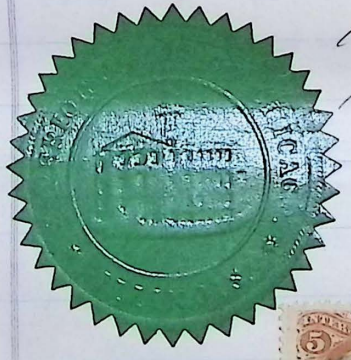
filed in a Certain Cause wherein Samuel Myers was Plaintiff and Wm Gilliland was Defendant

In testimony whereof, I have hereunto my hand, and the Seal of said Court hereto affixed, at the City of Chicago in the County and State aforesaid this Sixteenth day of April A D 1863

Thomas B Carter Clerk



Supreme Court — Third Grand Division.

Samuel Myers,
defendant in Error,
&c &c.
John Gillibam,
Plaintiff in Error.

Of the April Term 1863.

And thereupon afterwards, to wit: on the 21st day of April A.D. 1863, before the Judges of the Supreme Court of the State of Illinois, at Ottawa, comes the said Samuel Myers by King & Scott his Attorneys, and says, that there is no Error, either in the record and proceedings aforesaid, or in giving the judgment aforesaid; And he prays that the Court now here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error; And that the judgment aforesaid given may be in all things affirmed, &c.

King & Scott
Attorneys for defendant in Error.

151 257

Myers v Gillham

$6.50

Myers

v

Gillham

Record

Filed April 21st 1863

by stipulation of parties

L. Leland Clk

$11.00/100 paid Clerk

Fees.

$6.50 paid

T. B Carter

Clerk