

No. 13254

Supreme Court of Illinois

Case ^T~~X~~

vs.

Roff, Admr.

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 164.

1861

Repaired

1861

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Grays Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Grays County, before the Judge thereof, between Asa B. Roff administrator of the estate of Amos M. Robinson deceased

plaintiff, and Aquillo C. East

defendant....., it is said manifest error hath intervened, to the injury of the aforesaid Aquillo C. East

as we are informed by her —

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 plaint 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 5th day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty and

Lorenzo Samuel
Clerk of the Supreme Court.
By J. H. Samuel Deputy



164

Ara B. Buffadine

No. *ads.*

Aquilla L. Coast

WRIT OF ERROR.

FILED

Apr. 5th

A. D. 1861

L. Leland

Clerk.



STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of

Drummond

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of *Drummond* County, before the Judge thereof, between

Asa B. Roff administrator of the estate of *James M. Robinson* deceased
plaintiff; and *Agrella C. East*

defendant....., it is said that manifest error hath intervened, to the injury of the said *Agrella C. East*

as we are informed by *her*
complaint..... the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law. Therefore, We Command You, That by good and lawful men of your County, you give notice to the said *Asa B. Roff* administrator of the estate of *James M. Robinson* deceased

that *he*..... be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if *he*..... shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Asa B. Roff*

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *5th* day of *April*..... in the Year of Our Lord One Thousand Eight Hundred and Sixty one

Lorenzo Deland

Clerk of the Supreme Court.

By J. Deland

Depty

164

vs *Wm. D. Hoff, Administrator*

No. *922* *ago*,

Spencer Co. Court.

SCIRE FACIAS.

FILED *April 16* A. D. 1861

A. Delmuel

Wm. D. Hoff
Spencer Co.

I accept service of the within writ
by reading this 6th day of April 1861
at *Wm. D. Hoff* adminr
of *J. M. Robinson* ad



IN THE SUPREME COURT,

AQUILLA C. CAST,
Plaintiff in Error,
vs.
ASA B. ROFF, Administrator
of the Estate of
JAMES M. ROBINSON, dec'd.) Writ of Error to Iroquois Co. Circuit Court.

Rec. p. 2 Placita of June vacation. Term 1859.

3 November 5th, 1859. Declaration filed.

4 First Count. Common Count for the price and value of divers oxen, cattle, goods and chattels, sold and delivered by James M. Robinson to defendant.

5 Second Count. Common Count for divers notes, goods and chattels sold by James M. Robinson, in his life time, to defendant, Cast, and at his request.

6 Third Common Count. For money had and received by Cast to the use of Robinson, profest of letters of administration, promise to pay, and breach.

9 Feb. 23d, 1860. Pleas filed.

10 1st Plea. General issue.

10 2nd Plea. Payment in full to Robinson in his life time; concluding with a verification.

11 3d Plea. Settlement between Robinson in his life time and Cast; payment and receipt executed by Robinson to Cast in full of all demands; concluding with a verification.

11 23d February, 1860. Replication to second Plea filed.

Similiter to first Plea.

- 13 Demurrer to third Plea. Filed 23d February, 1860.
- 14 23d February, 1860. Replication to third Plea filed.
- 16 23d February, 1860. Demurrer to third Plea overruled.
- 17 Affidavit of defendant filed 25th May, 1860, for the purpose of taking a deposition.
- 18 Motion to suppress deposition. Same overruled.
- 19-26 Deposition of Ruth Alexander. Same as incorporated in Bill of Exceptions.
- 27 14th June, 1860. Cause submitted to Jury.
- 28 Verdict of Jury 14th of June, 1860, for plaintiff, \$615.00. Motion for a new trial.
- 29 26th November, 1860. Motion for a new trial overruled. Final judgment for plaintiff on verdict. November Term, 1860.
- 30

BILL OF EXCEPTIONS.

- 31 Sets forth that James H. Majors was sworn by plaintiff and testified in substance as follows:

I was acquainted with James M. Robinson in his life time. He resided at Attica, Indiana. He died there a year ago last February. The defendant is brother-in-law to James M. Robinson. The father's name is William D. Robinson. After the father's death there was a partition of his property. After the partition was made, Cast, the defendant, told me that he had sold Robinson some land; couldn't state the amount. It was to be I think twenty dollars an acre. I was at Mr. Cast's house afterwards, and he told me that he had taken a plow and four or five yoke of cattle on the land. The plow referred to was a breaking plow, and stood near the house. Cast told me that the team was counted in at four hundred and seventy-five dollars in the trade.—Cast told me that he had taken the cattle a short time before he moved to Attica.

- 32 Jackson Marlow, another witness for plaintiff called and sworn, stated that he resides in the town of Attica. Was acquainted with James M. Robinson, and he resided at Cast's house, in the summer and fall of 1858, and part of the winter of 1859. That he sold Cast's wife a house and lot in the town of Attica, in 1856. In 1858 he took Cast

33 for paymaster, and took a note from him for three hundred and twenty-five dollars, which had been given to him by Robinson. There were two other notes on the same piece of paper, from which he tore the one he gave to witness, and of like amounts. At Robinson's death he didn't know where all his papers were, but judged they were in Cast's hands. Cast stated in a conversation at witness' house, that there was an article of agreement between them. In that agreement the land was to be twenty-five dollars an acre—there was supposed to be 440 acres altogether, of which, in the partition among the heirs, Cast had 80 or 90 acres when the notes were given, and for which the notes were given. Knew the notes were given for real estate, from the fact that they were described in the article of agreement. The real estate fell short some \$500—and some of those notes were to be refunded, and some four or five hundred dollars of them were refunded. Saw some other papers, in Robinson's possession. In the latter part of 1858, saw him have a note signed by Seely Hetfield, for about \$1400. Also, several receipts from Cast and his wife. Don't know what became of the Hetfield note, nor of the receipts. There were fifteen or twenty in all, amounting to \$2000 or \$2500. Cast told me he had about a hundred dollars to apply on a note I held against the estate. He never paid anything on it. Robinson
34 went to Attica to Cast's in June, 1858. He staid there till his death. Was to pay two dollars a week for board. Don't know whether it was ever paid or not. Saw the agreement six weeks or two months before Robinson died. The other two notes which I said were torn off from mine, I don't know what became of them. This note transaction occurred in October, '57. Cast was then in Attica, and I lived there.—Cast had taken to Attica three yoke of oxen, that he traded to me, that he said he had got on his wife's interest in the land.

Defendant then moved to exclude Marlow's testimony from the jury, on the ground of his interest, and because the testimony was irrelevant under the pleadings.

Motion overruled and defendant excepted.

DEFENDANT'S TESTIMONY.

35 Deposition of Ruth Alexander. Sets forth that witness, about a month and a half before James M. Robinson died, had a conversation with him at Attica, in which Robinson stated that he was owing Aquilla (meaning Cast), considerable, but said he was not prepared to pay it now, as he had got behind. He named over several who had ill treated him, and worked him out of his property.

36 Knew of Cast getting two yoke of cattle of Robinson when they

lived together on Spring Creek, three years ago. Robinson left his plow there when he went to Indiana, and it is now undisposed of.

40 Ephraim S. Cast, sworn on the part of defendant, testified that James Robinson died, he thought, a year ago last February. He was there in Attica several days. They both told me that they had had a settlement, and that Mr. Robinson had not given a receipt, and Cast asked him for a receipt then, and they passed receipts in my presence.
41 They were both square they said then. My brother, Aquilla Cast, took two yoke of cattle to Attica. Both told witness that Cast had got three or four yoke from Robinson. Don't know whether any was ever returned. Both Cast and Robinson told me that they had had a settlement. Cast wrote out a receipt, and Robinson signed it.

42 Isaac Cast, sworn and testified that Aquilla Cast got two or three yoke of cattle and brought them to Alexander's place. He got them on a trade, of my brother's wife's share of some land up the Creek.

Mr. Majors recalled, and testified that he had seen Robinson write, and that a note presented to him favored his hand writing, and looked like it. Which note was assigned to Aquilla Cast by James M. Robinson, for value received, November 7th, 1858, and put in evidence as tending to show a settlement up to that time. Cast also filed and read an affidavit showing the loss of the receipt from Robinson to him—which was all the evidence in the case.

The court gave them this instruction for the defendant. The making or assignment of a promissory note imports in law a value received for it by the maker or assignor. And if the Jury believe that Robinson executed certain promissory notes to Cast, or that he assigned notes made by other parties to Cast, the burden of proof is on the plaintiff to show that Robinson received no value for the making or assignment of said notes. The plaintiff cannot recover in this action the amount of any notes Robinson may have executed to Cast. And the Court, of its own motion, added "which have not been paid." To which the defendant excepted, as nullifying the previous part of the instructions.

The defendant also asked the following instruction :

44 If the plaintiff claims money or property in the hands of the defendant, belonging to Robinson at the time of his decease, he must first make and prove a demand for the money and property thus in the hands of the defendant, and the plaintiff's remedy in such case, would be in another form of action.

The Court refused to give the same, and the defendant excepted.

ERRORS ASSIGNED.

The Court erred in refusing to exclude the testimony of Jackson Marlow.

The Court erred in overruling a motion for a new trial.

First, because the verdict is unsupported by the evidence.

Second, It is contrary to the instructions of the Court, and contrary to law.

The Court erred in rendering judgment for the plaintiffs.

The Court erred in modifying defendant's first instruction.

The Court erred in refusing defendant's last instruction.

The verdict is against law and evidence.

164-98
N. C. Cast
Deft. in Error
vs

N. B. Roff Admr.
Deft in Error

Abstracts

Filed Apr. 25-1861

Louisa Leland
(Clerk)

Aquilla C. Cast
Plaintiff in Error
vs.
Asa B. Roff
Def't. in Error

In Supreme Court
April Term 1861

Argument for Plaintiff

The first question I make upon this record is the legality of refusing to exclude the testimony of Jackson Marlow - The Plaintiffs' declaration only contains the common counts - The testimony of Marlow goes to show, that Cast if he got any personal property from Robinson, he got it in payment for land which he had sold to him - The plaintiff introduced no evidence whether the land matter had been fixed up, or whether if it had been, that there was anything due to Robinson - The evidence did not tend to prove the issue, it only tended to show that there had been a special contract between Cast and Robinson in his life time - Whereas the issue was whether cast had had any goods

and chattles or choses in action
from Robinson for which he had
not accounted. It is a well
settled rule of law that where
there is a subsisting unexecuted
agreement indebitatus assumpsit will
not lie, but the plaintiff must
declare specially.

It was held in *Charles vs Dana*
2 Shepley 387 that "if the obligor
in a bond conditioned to convey
land, refuses to fulfil the condition,
and sells to another, assumpsit by
the obligee, for the money received,
cannot be sustained, without con-
founding legal remedies, and
unsettling the principles of the
common law. In this case
Marlow swears that there was
an agreement between the parties
for the conveyance of land. The
case of *Hall vs Blake Wright*, Ohio
Reports 489 is in principle similar
to this. There the court say "the
declaration contains only the common
counts - the contract was special,
and had been part performed.
No step had been taken to abandon
or put an end to it, and recover

back the money paid; so far from it, the plaintiff held on to the contract, and the suit was to recover damages for its non performance - It was in fact a suit on the contract, which was a subsisting one, and conferred no right to recover on the common counts."

In *Stallings vs Sappington & Missouri* 119 the Court say: "It is well settled that a plaintiff cannot recover in general indebitatus assumpsit, where there is an express contract not rescinded or executed - Where there is an open and subsisting agreement, a party is not at liberty to waive his contract, or convert it into a general indebitatus assumpsit."

And in the case of *Chambers vs Kings & Tunstall & Missouri* 319 the court decide that where there is a special contract a party cannot proceed on a quantum meruit."

It is believed that these cases make it clear that the plaintiff by his proof here is not entitled to recover -

Your Honors will observe that the only testimony on the part

of the Plaintiff is that of Majors and Marlow - Majors testifies about Cast having cattle from Robinson, but expressly says that they were counted in at 475 Dollars in the land trade - And also that the land was to be twenty dollars an acre - Now to turn round and charge Cast for those cattle, can be designated by no milder epithet than an outrage - The testimony of Marlow contains nothing but some further details about this land contract, It does not show even inferentially that Cast owed Robinson any thing - And here we might also stop and say upon their own showing they have not only not made out a case, but that the testimony they have adduced, is totally irrelevant - We rely upon the Case of Moss vs Johnson 22 Ills 640 upon that point - But we go further and show by Ruth Alexander that Robinson stated to her but a short time before his death that he was owing Cast - We also show by Ephraim

s. Cast a settlement shortly before Robinson's death and subsequently account for the loss of the receipt
s. that upon the whole evidence there was really no shadow of ground to support the finding and the verdict should have been set aside -

Now the first instruction modified by the court on the part of the defendant nullifies the whole of the instruction as asked for -

The proposition that "the plaintiff cannot recover in this action the amount of any notes Robinson may have executed to Cast," is one that it seems to me it needs only common sense to support. The Plaintiff here stands in Robinson's shoes - If Robinson made notes to Cast, Robinson is to pay them not Cast - Suppose Robinson does pay them, to Cast, can Robinson or his Administrator turn round and sue Cast to recover back the money so paid in the absence of fraud - The giving of the notes to Cast give him a right to collect the money - when the notes are paid is his right to keep it destroyed

because of the mere fact that it
has been paid? And yet that
is the foolish proposition of the
court by the modification, for
he thereby instructed the jury
that the plaintiff could recover
in this action the amount of any
notes which Robinson may have
executed to East, provided Robinson
had paid them - If that be
the law, a man better pay all
the notes he owes before he
dies, and then his administrator
will be able to get the money
paid all back again!

The errors are so palpable on
the face of this record that
I forbear arguing it at greater
length -

Charles H. Wood
for Pltff. in Error

164
Aguilla C. Cast
Plaintiff in Error
vs

Asa B. Poff Admr.
Deft. in Error

Argument for Pctff.

Filed Apr. 26-1861

L. Leland
Clerk

IN THE SUPREME COURT.

AQUILLA C. CAST,
PLAINTIFF IN ERROR,
vs.
ASA B. ROFF, ADMINISTRATOR, &C.
DEFENDANT IN ERROR.

POINTS FOR PLAINTIFF IN ERROR.

1st. The Court erred in refusing to exclude the testimony of Jackson Marlow.

Indebitatus assumpsit lies on an executed contract, but not on an executory one.

1 *Chitty's Pleading*, (last ed.,) pages 339, 340, notes and cases cited.

8 *Missouri* 119, 517 ~ *Wright's Ohio Rep.* 489. 2 *Shepley* 387

The Plaintiff has declared, as on an executed contract. Marlow's testimony only goes to show an executory one.

The evidence must correspond with the allegations and be confined to the point at issue. 1 *Greenleaf's Ev.*, sec. 50. The testimony of Marlow does neither.

2d. The Court erred in overruling the motion for a new trial.

The evidence makes out a case of a sale of land, on the part of Cast, and a sale of notes and stock, on the part of Robinson, in payment for the same. Fairly construed, it shows nothing else; while the case made by the pleadings shows that the defendant had from Robinson these notes, stock, &c., under an express or an implied contract to pay for them, without having already done so—thus clearly violating the principle, that the *allegata* and *probata* must agree.

“It is a rule in pleading, subject to no exception, that a party must recover, if at all, on, and according to, the case he has made for himself in his declaration. He is not permitted to make one case by his allegations, and recover on a different case made by the proof.”

Judge Breese, in *Moss vs. Johnson*, 22 Illinois, 640.

/ *Mason* 123

If the evidence in the case shows anything, it is, that land was sold by one party, and paid for by the other in stock and notes. To say now, that the administrator under the common counts can recover by this evidence for those notes and stock, seems too preposterous for argument.

3d. Upon the instructions given by the Court, the verdict should have been for the defendant.

4th. The Court erred in modifying defendant's first instruction.

By it, the Court instructs the jury in effect, that the plaintiff in this action can recover the amount of any notes Robinson may have executed to Cast, which have been paid; which modification not only neutralizes the preceding part of the instruction, but, to a common mind, conveys the idea, that, if a man pays a note, which he may have executed in his life time, his administrator after his death can turn round and collect the amount paid, from the payee—an idea not only absurd, but unheard of in the law.

5th. The Court erred in refusing defendant's last instruction.

The evidence shows, that Robinson was living, and died at Cast's house. Whatever effects, therefore, Robinson left, were lawfully in the possession of Cast, and he is not to be held liable in a suit at law, until some lawful authority appears to claim them.

For these reasons, the judgment should be reversed.

CHAS. H. WOOD,
For Plaintiff in Error.

¹⁶⁴
Vignell C. Cast
Pltff. in Error
no

Asa B. Roff, Admr.
Deft in Error

Points of
Pltff. in Error

Filed Apr 16. 1861
A. Deland
clerk

IN THE SUPREME COURT.

AQUILLA C. CAST,
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CHAS. H. WOOD,
For Plaintiff in Error.

N. C. ¹⁶⁴ East
Pltff. in Error
vs
A. B. Ross Admr.
Deft in Error

Points of
Pltff. in Error

Filed Apr 16. 1861
A. V. V. V.
Clerk

IN THE SUPREME COURT.

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PLAINTIFF IN ERROR,
vs.
ASA B. ROFF, ADMINISTRATOR, &C.
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For Plaintiff in Error.

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Nymilla C. Cust
Pltff. in Error
vs
N. B. Buff Admr.
Deft. in Error

Points of
Pltff. in Error

Filed April 16. 1861
H. A. Leland
Clerk

IN THE SUPREME COURT,

AQUILLA C. CAST,

Plaintiff in Error,

vs.

ASA B. ROFF, Administrator
of the Estate of

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Defendant then moved to exclude Marlow's testimony from the jury, on the ground of his interest, and because the testimony was irrelevant under the pleadings.

Motion overruled and defendant excepted.

DEFENDANT'S TESTIMONY.

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lived together on Spring Creek, three years ago. Robinson left his plow there when he went to Indiana, and it is now undisposed of.

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The court gave them this instruction for the defendant. The making or assignment of a promissory note imports in law a value received for it by the maker or assignor. And if the Jury believe that Robinson executed certain promissory notes to Cast, or that he assigned notes made by other parties to Cast, the burden of proof is on the plaintiff to show that Robinson received no value for the making or assignment of said notes. The plaintiff cannot recover in this action the amount of any notes Robinson may have executed to Cast. And the Court, of its own motion, added "which have not been paid." To which the defendant excepted, as nullifying the previous part of the instructions.

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The Court refused to give the same, and the defendant excepted.

ERRORS ASSIGNED.

The Court erred in refusing to exclude the testimony of Jackson Marlow.

The Court erred in overruling a motion for a new trial.

First, because the verdict is unsupported by the evidence.

Second, It is contrary to the instructions of the Court, and contrary to law.

The Court erred in rendering judgment for the plaintiffs.

The Court erred in modifying defendant's first instruction.

The Court erred in refusing defendant's last instruction.

The verdict is against law and evidence.

164

Aquilla C. Cast
Pltff. in Error

N. B. Roff, Admr.
Deft in Error

Abstracts

Filed Apr. 25-1861

Lorence Leland
Clerk

IN THE SUPREME COURT,

AQUILLA C. CAST,
Plaintiff in Error,
vs.
ASA B. ROFF, Administrator
of the Estate of
JAMES M. ROBINSON, dec'd.

} Writ of Error to Iroquois Co. Circuit Court.

- Rec. p. 2 Placita of June vacation. Term 1859.
- 3 November 5th, 1859. Declaration filed.
- 4 First Count. Common Count for the price and value of divers oxen, cattle, goods and chattels, sold and delivered by James M. Robinson to defendant.
- 5 Second Count. Common Count for divers notes, goods and chattels sold by James M. Robinson, in his life time, to defendant, Cast, and at his request.
- 6 Third Common Count. For money had and received by Cast to the use of Robinson, profest of letters of administration, promise to pay, and breach.
- 9 Feb. 23d, 1860. Pleas filed.
- 10 1st Plea. General issue.
- 10 2nd Plea. Payment in full to Robinson in his life time; concluding with a verification.
- 11 3d Plea. Settlement between Robinson in his life time and Cast; payment and receipt executed by Robinson to Cast in full of all demands; concluding with a verification.
- 11 23d February, 1860. Replication to second Plea filed.
- Similiter to first Plea.

- 13 Demurrer to third Plea. Filed 23d February, 1860.
- 14 23d February, 1860. Replication to third Plea filed.
- 16 23d February, 1860. Demurrer to third Plea overruled.
- 17 Affidavit of defendant filed 25th May, 1860, for the purpose of taking a deposition.
- 18 Motion to suppress deposition. Same overruled.
- 19-26 Deposition of Ruth Alexander. Same as incorporated in Bill of Exceptions.
- 27 14th June, 1860. Cause submitted to Jury.
- 28 Verdict of Jury 14th of June, 1860, for plaintiff, \$615.00. Motion for a new trial.
- 29 26th November, 1860. Motion for a new trial overruled. Final
- 30 judgment for plaintiff on verdict. November Term, 1860.

BILL OF EXCEPTIONS.

- 31 Sets forth that James H. Majors was sworn by plaintiff and testified in substance as follows:

I was acquainted with James M. Robinson in his life time. He resided at Attica, Indiana. He died there a year ago last February. The defendant is brother-in-law to James M. Robinson. The father's name is William D. Robinson. After the father's death there was a partition of his property. After the partition was made, Cast, the defendant, told me that he had sold Robinson some land; couldn't state the amount. It was to be I think twenty dollars an acre. I was at Mr. Cast's house afterwards, and he told me that he had taken a plow and four or five yoke of cattle on the land. The plow referred to was a breaking plow, and stood near the house. Cast told me that the team was counted in at four hundred and seventy-five dollars in the trade.—Cast told me that he had taken the cattle a short time before he moved to Attica.

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Defendant then moved to exclude Marlow's testimony from the jury, on the ground of his interest, and because the testimony was irrelevant under the pleadings.

Motion overruled and defendant excepted.

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The court gave them this instruction for the defendant. The making or assignment of a promissory note imports in law a value received for it by the maker or assignor. And if the Jury believe that Robinson executed certain promissory notes to Cast, or that he assigned notes made by other parties to Cast, the burden of proof is on the plaintiff to show that Robinson received no value for the making or assignment of said notes. The plaintiff cannot recover in this action the amount of any notes Robinson may have executed to Cast. And the Court, of its own motion, added "which have not been paid." To which the defendant excepted, as nullifying the previous part of the instructions.

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164
N. C. Cast
Dettf. in Error
us

N. B. Proff, Admr.
Deft in Error

Abstracts

Filed Apr. 24 25-1861

L. Leland
Clerk

IN THE SUPREME COURT,

AQUILLA C. CAST,

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or assignment of said notes. The plaintiff cannot recover in this action
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structions.

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The Court erred in modifying defendant's first instruction.

The Court erred in refusing defendant's last instruction.

The verdict is against law and evidence.

164
N. C. Cast
Deft. in Error

vs
A. B. Ruff
Admr. & c.

Deft in Error

Abstracts

Filed Apr. 25-1861

L. Leland
Clerk

The People of the State of Illinois

Know Ye That we having caused to be inspected the Records and proceedings now remaining in the office of the Clerk of the Circuit Court of Proquois County do find there contain Records and proceedings in the words and figures following To wit

" United States of America

" State of Illinois

" Proquois County ss.

" Thus before the Honorable
" Charles A. Starr Judge of the Twentieth Judicial cir-
" cuit and Presiding Judge of the Proquois County Cir-
" cuit Court in the State of Illinois at a term of
" said Court begun and held at the Court House in
" Middleport in said County and State aforesaid
" on the third Tuesday The same being the fifteenth day,
" in the month of November 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 fourth.

" Present

" Hon. Charles A. Starr Presiding Judge of the
" Twentieth Judicial circuit
" Charles J. Reutter State Attorney
" Theodore Tyre Sheriff of Proquois County
" Thomas Vismum Clerk of the Circuit Court

Be it remembered that on the 21st day of October A.D. 1859 there was filed in the office of the Clerk of the Circuit Court a certain precept for Summons which reads in the words and figures following To-wit:

" State of Illinois Roguor's County Circuit Court
" Roguor's County ss. Of the November Term 1859.

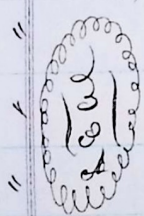
" A. R. Hoff administrator of *Plaintiff*
" the estate of James M. Robinson *vs.*
" deceased *Defendant*
" Aquilla do, doct Damages of \$5000.00
" "The Clerk of said Court
" will please issue a Summons in the above entitled suit
" in a plea of trespass on the case on promises to the
" damage of the said plaintiff of Five thousand,
" Dollars and make the same returnable accordingly to
" A. R. Hoff Admr."

And afterward To-wit: on the 21st day of ~~November~~^{October} A.D. 1859 there was issued out of the office of the Clerk of the Circuit Court a writ of Summons which reads in the words and figures following To-wit:

" State of Illinois Roguor's County ss.
" of Illinois to the Sheriff of said County. Greeting:
" The people of the State

Vol. 3

" We Command you that you Summon Aquilla C. Cast if
" to be found in your County personally to be and appear before
" the Circuit Court of said County on the first day of the
" next term thereof to be holden at the Court House in
" the town of Middleport on the 15 day of November next
" to answer Asa R. Hoff administrator of the estate of James
" W. Robinson deceased in a plea of trespass on the case
" on promises to the damage of him the said plaintiff
" as it is said in the Sum of Two Thousand Dollars and
" have you then and then this writ



" Clerk Thomas Vennum Clerk of our said Court and
" the Seal thereof at Middleport this 21 day of
" October A.D. 1859

- Thomas Vennum Clerk

And which said Summons is endorsed as follows To-wit,
(Endorsement,

" State of Illinois Allegany County ss

" I served by reading to
" the within named defendant Aquilla C. Cast this 21st
" day of October A.D. 1859 - J. Hayes Sheriff

" By R. H. Hayes Deputy Sheriff

" For Service \$ 50
" mileage 240
" Return 100 \$ 1.00

- Fletcher J. J. Attorney

And afterwards To-wit on the 15th day of
November A.D. 1859 there was filed in the office of the clerk
of the Circuit Court a declaration which reads in the words

and figures following *Termin*

" State of Illinois

" Proquois County vs Proquois County Circuit Court
" of the November Term 1859

" Asa R. Hoff Administrator of the
" Estate of James M. Robinson deceased

" vs

" Aquilla C. East

Amount

Affidavit

Damages \$5000.00

" Proquois County Term

" Asa R. Hoff Administrator of the Estate of James M.
" Robinson deceased complains of Aquilla C. East being
" in Custody & of a plea of Trespass on the case upon
" promises

" For that whereas the said defendant heretofore ^{and}
" in the life time of the said James M. Robinson Termin
" on the nineteenth day of February in the year of our
" Lord One thousand eight hundred and fifty nine
" at Proquois County aforesaid was indebted to the said
" James M. Robinson in the sum of Five hundred dollars
" lawful money of the United States for the price and
" value of diverse Oxen, Cattle, Goods and Chattels
" by the said James M. Robinson before that time
" sold and delivered to the said defendant and
" at his special instance and request and being so
" indebted to the said defendant in consideration thereof
" afterwards and in the life time of the said James M.
" Robinson Termin on the day and year aforesaid at

5

" Oregon County aforesaid undertook and then and
 " there faithfully promised the said James M. Robinson
 " to pay him the said sum of money when he the said
 " defendant should be thereunto afterwards requested.

" And whereas also the said defendant afterwards
 " and in the life time of the said James M. Robinson
 " to wit on the day and year last aforesaid at Oregon
 " County aforesaid was indebted to the said James M.
 " Robinson in the further sum of Two thousand Six
 " hundred and fifty dollars like lawful money for
 " devise stock goods and chattels the property of the said
 " James M. Robinson then in full life but since deceased
 " by the said James M. Robinson and in his lifetime
 " before that time sold and delivered to the said
 " Defendant and at his special instance and request
 " and being so indebted he the said defendant in
 " consideration thereof afterwards and in the lifetime
 " of the said James M. Robinson to wit on the day
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 " defendant should be thereunto afterwards requested.

" And whereas also the said defendant
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 " M. Robinson to wit on the day and year last
 " aforesaid at Oregon County aforesaid has
 " indebted to the said James M. Robinson in the

6. " further Sum of One thousand eight hundred ^{and}
" fifty dollars of like lawful money for so much
" money by the said defendant before that time
" had and received to and for the use of the said
" James M. Robinson And being the said ^{indebted},
" he the said defendant in consideration thereof
" afterwards and in the life time of the said
" James M. Robinson to wit on the day and year
" last aforesaid at Brognovis County aforesaid,
" undertook and then and there faithfully
" promised the said James M. Robinson to pay him
" the said last mentioned Sum of money when he
" the said defendant should be thereunto afterwards
" requested

" Not the said defendant not regarding his
" said several promises and undertakings but con-
" triving and fraudulently intending craftily
" and subtly to deceive and defraud the said
" James M. Robinson in his lifetime and the said
" plaintiff as administrator as aforesaid after
" the death of the said James M. Robinson to
" which said plaintiff after the death of the
" said James M. Robinson to wit on the fifth
" day of May A.D. 1837 at Brognovis County aforesaid
" administration of all and singular the
" goods chattels and credits which were of the
" said James M. Robinson deceased at the time
" of his death who died intestate by John

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" Chamberlain Judge of the County Court in and
 " for the County of Prognis aforesaid in due form of
 " Law was granted in this behalf hath not as yet
 " paid the said Sum of Money or any part thereof to
 " the said James M. Robinson in his life time or to
 " the said plaintiff Since the death of the said
 " James M. Robinson although often requested so to
 " do but he so to do hath hitherto wholly refused ^{and}
 " Still refuses to pay the same or any part thereof
 " to the said plaintiff to the damage of the said
 " plaintiff as administrator as aforesaid of Three
 " thousand dollars, and therefore he brings his Suit
 " And the said plaintiff brings into Court here the
 " letters of administration of the said John
 " Chamberlain Judge of the County Court as afore-
 " said which give sufficient evidence to the said
 " Court here of the grant of administration to
 " the said plaintiff as aforesaid the date whereof
 " is a certain day ^{and year} and therein mentioned Territory
 " the day and year in that behalf above mentioned to

" Ketcher & Bay "

" Atty for Plff. "

" Aquilla B. Cash

" To Wm R. Hoff Administrator of
 " the Estate of James M. Robinson deceased Dr.

" February 19th AD 1839 To Byoki of J. W. Mackinac and Byoki & Charles \$500-
 " " " To mortgage on J. W. Fisher & Sally Betfield
 " with interest about \$1400-

"	8	"	To Our Note with interest of J. H. Thisted	
"		"	1 Sully Hittfield about	\$2.50
"		"	To Sunday Notes on divided persons	\$10.00
"	"	"	To Money had and Recd	\$1850
				\$5000

And afterwards Term On the 15th day of November A D 1859 the same being one of the regular days of the 2nd November Term of the Progreive County Circuit Court for the year 1859 the said Court being then duly organized and sitting in open court for the transaction of judicial business the following ^{certain} proceedings were had and entered of Record by said Court in the words and figures following to wit

" Asa R. Hoff Administrator
 " of James W. Robinson deceased
 " 134 " vs "
 " Aquilla C. East

Summit

Summit

" This day comes the
 " Defendant by M. D. Fiske and Wood his attorneys and
 " enters his motion for a continuance of this cause

And afterwards Term On the 26th day of November A D 1859 it also being one of the Regular days of the November Term of said Court for said year 1859 the said Court being then duly

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organized as aforesaid certain other proceedings
were had and entered of Record by said Court
in the Words and figures following to-wit:

" Asa B. Hoff Administrator
" of James M. Robinson deceased

= 184

" vs
" Squilla Co. Court

Exempt

" This day comes
" the Defendant by Whitman & McHenry his attorney
" On whose motion it is ordered by the Court that
" this Cause be continued till next term."

And afterwards To-wit: On the 23d
day of February A.D. 1860 there was filed in the
office of the Clerk of the Circuit Court certain
Plas which read in the Words and figures fol-
lowing To-wit:

" State of Illinois
" McHenry County vs McHenry Circuit Court
" Of the Feb. Term 1860

" Asa B. Hoff Adminr of
" the Estate of James
" M. Robinson deceased

" vs
" Squilla Co. Court

Exempt

Plas

" And the said defendant,

"and the said Plaintiff
"saith that he doth
"the like
"Plutche & Kay & Roff
"are of the
" "

"by Wood & M. Tupper his Attorneys comes and
"defends the wrong and injury when & and
"saith that he did not undertake or promise in manner
"and form as the said plaintiff hath above thereof
"complained against him and of this he puts
"himself upon the Country &c

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"And for a further
"plea in this behalf by leave of the Court & the
"said defendant says actio non because he says
"that after the furnishing of the said cattle &c
"goods & chattels notes and money to the said
"defendant in the said declaration mentioned
"in the life time of the said James M. Robinson
"and before the commencement of this suit he well
"and truly paid to the said James M. Robinson
"all and every the sums of money which had
"at any time before then become due and owing
"from the said Defendant to the said James M.
"Robinson for the said goods & chattels cattle
"own notes money &c in the said declaration
"mentioned & writ on the 23rd day of January
"A.D. 1839 in the Town of Mew in the State of
"Indiana And this the said Defendant is ready
"to verify wherefore he prays Judgment &c

"And
"for a further plea in this behalf by like leave
"of the Court & the said defendant says actio
"non because he says that after the making

of the Said promises and undertakings and
 after the delivery of the property in the said
 declaration mentioned in the life time of the
 Said Robinson and before the commencement
 of this Suit Torrit on the 25th day of January
 A.D. 1859 at Utica in the State of Indiana
 an account was had and stated by and
 between the Said James M. Robinson and
 the Said Defendant and upon that accounting
 the Said Robinson was found indebted to the
 Said Defendant which was then and there paid
 and the Said Robinson then and there executed
 a receipt to this defendant acknowledging
 a payment from him in full of all demands
 Torrit at the day and year aforesaid and
 at the place aforesaid and this the Said
 defendant is ready to verify wherefore
 he prays judgment.

"Wood & McHenry
 Attys for Defs

And afterwards Torrit, on the
 23d day of February A.D. 1860 there was
 filed with the Clerk of the Circuit Court
 a "^{Repetition} ~~Statement~~" to Said 2d Plea which
 Reads in the words and figures following
 Torrit

" New R. Roff Admt of
 " Est of Jas. Robinson

"
 " Aquila C. East

And the said

" Plaintiff as to the matters & things contained
 " in the second plea of the said defendant
 " by him secondly above pleaded says
 " Recludi non because he says that the said
 " defendant did not in manner and form
 " as mentioned and pleaded in his said
 " second plea pay to the said James M.
 " Robinson all or any part of the said
 " Sum of Money which had become due
 " as charged in said declaration for the
 " said goods and chattels in said declaration
 " mentioned or any part thereof & of this he
 " puts himself upon the Country &c —

" Hitched & Capt. Roff.
 " Atty for deft.

" And the defendant
 " doth the like

" Wood & H. Dunge for deft.

Endorsement,

" Lm. to 3d. Plea"

"Filed & Returned 23d 1860"

"Thomas Vennum clk"

And afterwards Comt on the
23^d day of February A D 1860 there was
filed with the clerk of the Circuit Court
a "Summons" which reads in words & figures
following Comt.

" State of Illinois	
" Stoguen County	\$s Proquis Circuit Court
	" of the 2 ^d Term A D 1860
" Asa P. Hoff Adm. of the	Σ
" Est. of James H. Robinson dec.	Σ "Summed"
"	Σ "To 3 ^d Plea"
" vs	Σ
" Aquilla East	Σ

" And the
" Said plaintiff as to the Said third plea
" of the Said defendant by him above pleaded
" Saith that the Same and the matters there-
" in contained in manner and form
" as the Same are above pleaded and set
" forth are not sufficient in law to bar or
" preclude him the Said plaintiff from
" having or maintaining his aforesaid
" action thereof against the Said defendant
" and that he the Said plaintiff is not
" bound by law to answer the Same and
" this he the Said plaintiff is ready to
" verify Wherefore by reason of the insuffi-
" ciency of the Said plea in this behalf

14 " the Said plaintiff prays judgment and
" his damages by reason of the not performing
" of the Said Several promises and undertak-
" ings in the Said declaration mentioned
" to be adjudged to him &c.
" Fletcher Kay & Hoff.
" Attorneys for Plaintiff

And afterwards Torrey on the
23d day of February A D 1860 There was
filed with the Clerk of the Circuit Court
a "Replication" which reads in words
& figures following Torrey

" Asa B. Hoff Admr of E
" Estate of Jas. M. Robinson dec'd E
" vs E
" Aquilla O. Cast E

" And the
" Said plaintiff as to the Said plea of
" the Said plaintiff defendant thirdly
" by him above pleaded Says Preclude
" now because he Says that an account was
" not had and stated by and between
" the Said defendant James M. Robinson
" and the Said defendant and the Said
" Robinson was not found indebted to the
" Said defendant and the said Robinson

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" did not execute the Said Receipt to
" the Said defendant in manner and form
" as the Said defendant has in Said plea
" alleged & of this the Said plaintiff puts
" himself upon the country &c

" Roff Fletcher Bay

" Atty for Pff.

" And the defendant

" doth the like

" Wood & S. Dingle for deft.

Endorsement

" Rep. to S. Plea

" Filed February 23d 1860

" Thomas Vennard "

" clerc

And afterwards Comity on
the 23d day of February A.D 1860 the
Same being one of the regular days of the
February Term of the Superior Court
Court for the year 1860 the Said Court being
duly organized and sitting in open Court
for the transactions of judicial business certain
other proceedings were had and entered of
Records by said Court in the words and
figures following Comity

" New R. Roff Administrator
 " of the Estate of James M. Robinson deceased

" 56 vs
 " Aquilla D. Coast

{ Assumpsit
 " James

" now the plaintiff by Fletcher & Bay and
 " Roff his attorney and files a demurrer
 " to the third plea of the defendant and
 " the Court after hearing the arguments
 " on said demurrer ordered that the same
 " be overruled"

And afterwards term on
 the 29th day in the month of February
 A D 1860 it also being one of the regular
 days of said Court for said year 1860
 the said Court being then duly organized
 as aforesaid certain other proceedings
 were had and entered of Record by said
 Court in the words and figures following to wit

" New R. Roff Administrator of
 " the Estate of James M. Robinson deceased

" 56 vs
 " Aquilla D. Coast

{ Assumpsit
 " And now

" come the parties to this cause the Plaintiff
 " in person and the defendant in person and

" by Wood his Attorney and by agreement
 " of parties this cause is continued till next term

*

And afterwards to wit on the
 25th day of May A D 1860 there was
 filed in the office of the Clerk of the Circuit
 Court an "Affidavit" which reads as follows to wit.

" State of Illinois
 " Joquios County ss.

" Asa R. Koffman administrator of the Estate of James M. Robinson deceased
 " vs
 " Aquilla C. East
 " Joquios Circuit Court of the June term 1860

" Aquilla C. East the
 " defendant in the above entitled cause being duly
 " sworn on his oath says that Ruth Alex-
 " ander is a material witness for him on the
 " trial of the above cause and that she is
 " afflicted with bodily infirmity and sickness
 " so that she is unable to travel and will not
 " be able to attend at the June term of this Court
 " as deponent is ~~in~~ informed and believes he there-
 " fore requires her deposition in the said cause.

Subscribed and sworn to before me
 this 19th day of May A D 1860
 " Seal " A. C. East
 " Chas. H. Wood A. P.

And the Said Notice and
Deposition Reads in words and figures
following To wit

" State of Illinois In Droquois Circuit
" Droquois County ss. Court of the June term 1860

" New R. Roff Administrator of the
" Estate of James M. Robinson
" vs
" Aquilla do. do. et

" Do the above
" named New R Roff or to Fletcher & Bay
" his attorneys
" G. S. Gutterman,
" (You will please

" to take notice that on Monday the 11th the
" day of June A.D. 1860 Between the Hours
" of 9 o'clock in the forenoon and 5 o'clock
" in the afternoon of the same day the above
" named defendant will by himself or his
" attorney appear at and before William
" McCormick a Justice of the Peace at the
" House of Henry Alexander on Spring Creek
" in the Said County and they will then and
" there before the Said Justice at the place
" aforesaid and between the Hours aforesaid
" proceed according to the Statute in such

"Justice Court"

" New R. Hoff Administrator
" of James M. Robinson

" vs
" Aquilla Coast

"
" Kford
" New M. McCormick
" J.P.
" Deposition of

" Ruth Alexander aged about fifty years a
" Witness in the above entitled Suit taken by
" Mr. McCormick a Justice of the Peace of the
" County of Proquois on the 4th day of June
" 1860 at the Residence of Said Witness in Said
" County in the presence of Said plaintiff and
" defendant on the part of Said defendant, the
" aforesaid Ruth Alexander being duly sworn
" deposes and says as follows.

" Question 1. State your name age and place
" of Residence

" Answer 1. Ruth Alexander. Spring Creek -
" Proquois County. Age 42.

" Question 2. Are you acquainted with the
" parties to this Suit and were you acquainted
" with James M. Robinson deceased?

" Answer 2. Yes.

" Question 3. State what you know of anything
" in reference to the dealing between James M.
" Robinson deceased and Aquilla C. Coast,

James Robinson

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Answer 3. Ask him, how the children were getting along on, that is Aquilla. Said he was owing him considerable, but said he was not prepared to pay it now as he had got behind. He named over several who had ill treated him and worked him out of his property.

Question 4. Where was you when you had this conversation with Robinson and how long was it before his Robinson death.

Answer 4. in his stay at Attica Indiana about a month and a half before his death.

Question 5. Where was Aquilla East living at that time.

Answer 5. Attica Indiana. Question 6. State what you know if anything of Aquilla East getting cattle at any time of Robinson and if so how many yoke of cattle did he have.

Answer 6th I know of his getting two yoke of him.

Question 7th When did East get them and where was East and Robinson living at that time.

Answer 7. Three years ago on Spring creek. Mr Robinson living with Mr East. Question 8th

How long did Mr Robinson live or board with East to your knowledge. Answer 8th about two years.

Question 9th what do you know if anything about a breaking floor owned by Robinson.

Answer 9th. Yes I know about a breaking floor he left here on the farm.

Question 10th When did she leave it here and
 State if it remains here and whether he ever
 disposed of it to anyone to your knowledge
 Answer 10th left her about three years ago
 and not yet disposed of all the foregoing
 questions & answers objected on the part of the
 Plaintiff Question what year and
 what time in the year did the conversation ref-
 erred to in your direct examination with James
 M. Robinson deceased at Attica take place
 Answer in December 1859 Question Had you
 seen Aquilla East at Attica before you had
 the said conversation with Robinson Answer No Sir,
 he was away at work Question had you seen the
 wife of the said Aquilla East before you had
 the conversation with said Robinson Answer Yes.
 Quest. How came you then to ask the said
 Robinson the question as to the welfare of the
 children instead of asking said question of
 Mr East's wife Answer. it came up in con-
 versation and I merely asked him Quest. How
 long had you been in Attica before the said con-
 versation was had between you and the said
 Robinson Answer He had been there but a
 short time the same day Quest. What was
 your business in Attica at that time Answer
 Went down on purpose to see my children -
 Quest. Please to name your children Answer

" My Son an Daughter Aquilla and Jane, Ques.
 " do you Mean by your Son and daughter the defendants
 " and his wife in this Suit. Answer. I do Quest.
 " What time of day was it you had this conversation
 " with said Robinson Answer. I did not notice
 " the clock but it was on Monday afternoon
 " Question. What day of the Month was it said
 " conversation occurred. Answer. Cannot say exactly
 " Question Who owns the farm on which the
 " Breaking plow Spoke of now is Answer. if it
 " is where it was when I saw it last it is on Mr.
 " Alexanders farm Quest. Who used said Plow
 " after it was brought on Alex^{rs} farm. Answer
 " Never knew any one to use it Question Do
 " you know who was the cause of said plow
 " being brought to said farm Answer. Do not
 " know. Quest. Do you not know that Aquilla
 " East bought said plow of said Robinson
 " Answer. Do not know Quest. What was
 " the Value of said plow, Ans. do not know, Ques.
 " Was said plow at the time the plow was brought
 " on the farm a good plow Answer. do not
 " consider Myself Judge of Plows, Quest. Where was
 " Aquilla East living at the time said plow
 " was brought where it is now, Ans. he was
 " living on the new place near here Quest. Was
 " not said plow taken to Aquilla East before
 " it was brought where it is now

Answer, I cant say I know very little
 about such things Quest. That land was
 Aquilla East working when said place
 was first brought into the neighbourhood
 Answer. Has not working any that summer
 Question What was the two yoke of cattle
 worth spoken of in your direct examination
 Ans. Could not say certain, Quest. Were
 they a fair average two yoke of cattle, Ans.
 I think they were, Quest. did not Aquilla
 East Mary the Sister of James Robinson^{deceased}
 and how long have they been married, Ans.
 He did and three years the first of Jan last
 Quest. did not Aquilla East board with you
 previous to his marriage, Ans. He did not
 about 6 month before his marriage —
 Re-examined Question. Where did Aquilla
 East live this last winter Ans. Where he is
 living now in Iroquois County Quest.
 Where did he live 2 year ago this last
 winter Ans. in Attica Quest. When did
 Aquilla East move from Attica to this county
 Ans. last September Quest. did you go to
 Attica to see him last September December
 Ans. No Sir, Quest. When did you go
 Ans. One year ago last December Quest.
 Was that the time you had the conversation
 with Robinson to what you have testified

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" Mr. Mr Sir. Quest. in Reply to a question
 " by Mr. Fletcher you Stated this conversation to
 " be in 1859 and you now say that the conversation
 " took place a year ago last December now state
 " what year that was in and whether you
 " has not mistaken in your answer to Mr.
 " Fletcher question. Ans. when I said /59 I
 " has mistaken it was in '58.

" Ruth Alexander

" State of Illinois
 " Joquios County I the Subscribes a Justice
 " of the Peace of Joquios County
 " do certify that the above deposition was
 " taken by me at the time and place
 " mentioned in the caption thereof that the
 " said witness was duly sworn and that
 " the said deposition was carefully read
 " to the witness and signed by her Dated
 " this 4th day of June A.D. 1860
 " Wm. B. Cornick J.P. Seal

And afterwards Tervit on the 13th
 day of June A.D. 1860 it also being one of the
 regular days of the June term of said Court
 for said year 1860 the said Court being then
 duly organized as aforesaid certain other
 proceedings were had and entered of Record by said
 Court in the words and figures following To wit

" Asa R. Koff Administrator of the
 " Estate of James B. Robinson deceased

" 29

vs
 Aquilla W. West

" J. A. Sumpster

" And now come
 " the parties to this cause the Plaintiff in person
 " and by Fletcher & Kay his attorneys and the
 " defendant in person and by Wood and McIntyre
 " his attorneys and by agreement the Jurors of
 " a jury came to wit John Astell, Alfred Fletcher
 " Philip Lutz, Daniel Lawrence, George H. Russell
 " Joseph Gleason, E. S. Hamilton, C. H. Dodson, Robert
 " Caldwell, Foreman Moore, John Fagan and
 " C. J. Lake twelve good and lawful men who
 " were duly empanelled and sworn to well
 " and truly try the issue joined Between the
 " parties according to the evidence"

And afterward to wit, On the
 1st day of June A D 1868 it also being one of
 the regular days of the June term of said Court
 for said year 1868 the said Court being then
 duly organized as aforesaid certain other
 proceedings were had and entered of Record
 by said Court in the words and figures
 following to wit,

28

" 29

" Asas R. Koff Administrator of the
" Estate of James M. Robinson deceased

" vs
" Aquilla de Court

" Appellant

" The Jury

" heretofore empaneled in this cause having heard
" the evidence adduced on the trial the arguments of
" Counsel and the instructions of the Court and
" having retired in charge of an officer to consider of
" a verdict return into Court with the following
" verdict, ~~say~~, "The the Jury find for the Plaintiff
" Six Hundred and fifteen dollars"

" And now comes the defendant by
" Word his Attorney and enters his motion for a
" new trial in this cause"

And afterwards to wit On the
22d day of November A D 1860 the same being
one of the regular days of the November term of the
Juguois County Circuit Court for the year
1860 The said Court being then duly organized
and sitting in open Court for the transaction of
judicial business the following proceedings
were had and entered of Record by said Court
in the words and figures following to wit)

29 " Wm. R. Hoff Administrator of the
" Estate of James M. Robinson deceased

= 15'

Aquilella do. do. act.

Assumpt

"And now comes

" Jacob H. Whitman and with draws his appear-
" ance as attorney for the defendant " in this cause "

And afterwards to wit On
the 26th day of November A. D. 1860 it also
being one of the Regular days of the November
term of Said Court for the year 1860 the Said
Court being then duly organized as aforesaid
certain other proceedings were had and entered
of Record in the words and figures following to wit

" Use B Koff Administrator of the
" Estate of James M. Robinson decd

"15"

April 20, 1881

Abumpeit

"And now comes

" the parties to this cause by their Attorneys And
" the motion for a new trial entered by the def-
" endant at the last term of this Court coming
" up for argument and the Court having heard
" the arguments of counsel and duly considered
" the matter ordered that the motion for a
" new Trial be and it is overruled

acquainted with James M. Robinson in
 his life time I knew him down to within
 two years of his death during which latter period
 he resided at Utica Indiana - He died there.
 I think a year ago last February - the defendant
 is the brother-in-law of the said James M.
 Robinson - the defendant's wife is the sister of
 James M. Robinson and their father's name was
 William D. Robinson - after the father's death
 there was a partition of his property - In the
 partition suit I acted as guardian for the
 younger minor heirs - The record of the decree
 in the partition case was then shown whereupon
 the witness read the names and said: That is
 the case in which I acted as guardian - After
 this partition was made last, the defendant
 told me that he had sold Robinson's some land
 couldn't state the amount - It was to be -
 I think twenty dollars an acre - I was at
 Mr East's house afterwards and he told me
 he had taken a plow and four or five
 yokes of cattle on the land - This was since
 Mr East has been living in his new house -
 The plot referred to was a breaking plow and
 stood near the house
 Examination - The last conversation was introduced
 by a remark about the Plow - East told me that
 the team was counted in, at Four hundred and

"Twenty five dollars in the trade The first conversation
 "occurred I think at a time when East and
 "Robinson came to my house - East told me
 "that he had taken the battle a short time
 "before he moved to Attica - The exact time
 "he moved to Attica - I can't tell - This conversation
 "Must have been some three years ago -
 "Jackson Warlow called and sworn: I reside in the
 "town of Attica Indiana - Was acquainted
 "with James M. Robinson He resided at East's
 "house in the summer and fall of 1858 and
 "part of the winter of 1859 - I was acquainted
 "with some of the dealings between East and
 "Robinson - I resided three or four hundred
 "yards from East's house Robinson died at
 "East's house on the 19th of Feb. 1859 - In the
 "year 1856 I sold Mr East's wife a house and lot
 "in the town of Attica - She failed to make
 "payment and in 1858 I took East for payment
 "and he let me have a note which had been
 "given to him by Robinson for three hundred and
 "twenty five dollars - There were two other notes
 "on the same piece of paper. From which he
 "took the one he gave me and I think of
 "like amounts Mine fell due in 1859 and
 "the other I think in one and two years from
 "that time - In the fall of 1858 Robinson
 "had some difficulty - at the time of

Crop. &c.

Robinson's death. I don't know where all his papers were but I judged they were in East's hands - East stated in a conversation at his house that there was an article of Agreement between them - In that agreement the land was to be twenty five dollars an acre - there was supposed to be 1110 acres altogether of which in the partition among the heirs ^{East} had 80 or 90 acres when the notes were given - and for which the notes were given - I know these notes were given for Real Estate from the fact that they were described in the article of Agreement - The Real Estate fell short some \$500. and some of those notes were to be refunded and some four or five hundred dollars of them were refunded - I saw some other papers in Robinson's possession - In the latter part of 1858 I saw him have a note signed by Sally Hatfield for about \$1400. - Also several receipts from East and his wife - I don't know what became of the Hatfield note nor of the Receipts - There were fifteen or twenty in all - Amounting to \$2000. or \$2500 - East told me that he had about about a hundred dollars to apply on a note I held against the Estate - He never pay paid anything on it - Robinson went to Allen

to casts in June 1858. He stayed there till his death. Has to pay two dollars a week for board, Don't know whether it was ever paid or not. Six Weeks or two Months before Robinson died I saw the Agreement - The two other notes which I said were torn off from mine I don't know what became of them - This Note Transaction occurred in October '57 East was then in Altica and I lived there - I was in the habit of going to casts frequently - I stayed with Robinson all night two nights before he died I was never called upon to witness any Transaction between them - East had taken to Altica three yoke of Oxen that he traded to me that he said he had got on his wife's interest in the land -

Defendant then moved to exclude Marlboro's Testimony from the jury on the ground of his interest and because his evidence showed that there was a land contract which was irrelevant under the pleadings - Motion overruled and defendant excepted - The Plaintiff resting the defendant then proceeded to put in evidence the deposition of Ruth Alexander which reads in the words and figures following To wit,

Question 1. State your Name, age, ^{and} place of residence
 Answer 1. Ruth Alexander Springbrook Inguis

35 County age 42.

Question 2. Are you acquainted with the parties to this suit and were you acquainted with James M. Robinson deceased?

Answer 2. Yes.

Question 3. State what you know if anything in reference to the dealings between James M. Robinson deceased and Aquilla C. East?

Answer 3. As to him. James M. Robinson told the children were getting on, that is Aquilla. Said he was owing him considerable, but said he was not prepared to pay it now as he had got behind. He named over several who had ill treated him and worked him out of his property.

Question 4. When was you when you had this conversation with Robinson and how long was it before his Robinson's death?

Answer 4. In his stay at Attica Indiana about a month and a half before his death.

Question 5. When was Aquilla East living at that time?

Answer 5. Attica Indiana

Question 6. State what you know if anything of Aquilla East getting cattle at any time of Robinson and if so how many yoke of cattle did he have?

Answer 6. I know of his getting two yoke of him

Question 7 When did East get them and where was East and Robinson living at that time?

Ans. 7 Three years ago, on Spring Creek Mr Robinson living with Mr East

Question 8 How long did Robinson live or Board with East to your knowledge?

Ans. 8 About two years -

Question 9 What do you know if anything about a breaking floor owned by Robinson?

Answer 9 Yes I know about a breaking floor he left here on this farm

Question 10 When did he leave it here and state if it remains here and whether he ever disposed of it to any one to your knowledge?

Answer 10 Left here about three years ago and not yet disposed of -

All the foregoing questions and answers objected to on the part of the above named Plaintiff

Depos. Ex Question 1. What year and what time in the year did the conversation referred to in your direct examination with James H. Robinson deceased at Altica take place?

Answer 1 In December 1859.

Question 2. Had you seen Uquillo East at Altica before you had the said conversation with Robinson?

Answer - No Sir He was away at work

Question 3 Had you seen the wife of the said

" Aquella East before you had the conversation
" with said Robinson?

" Answer - Yes -

" Question - How came you then to ask the said
" Robinson the question as to the welfare of
" the Children instead of asking said question
" of Mr East's wife?

" Answer - It came up in conversation and I merely
" asked him -

" Quest. - How long had you been in Attica before
" the said conversation was had between you
" and the said Robinson?

" Answer - We had been there but a short time, the
" same day

" Quest - What ~~is~~ was your business in Attica at that
" time?

" Ans - Went down on purpose to see my children -

" Quest - Please to name your children?

" Ans - My Son and Daughter Aquella ^{and Jane}

" Quest - Do you mean by your Son and daughter
" the defendant and his wife in this Suit?

" Ans - I do -

" Quest - What time of day was it you had this
" conversation with said Robinson?

" Answer - I did not notice the clock but it was
" on Monday afternoon

" Quest - What day of the month was it said
" conversation occurred?

- " Ans - - Cannot say exactly
- " Question - - Where was the farm on which the Breaking
" Plow Spoken of was?
- " Ans - - If it is where it was when I saw it
" last it is on Mr Alexander's Farm
- " Question - - Who used said plow after it was brought
" on Alexander's farm?
- " Ans. - - Never knew anyone to use it -
- " Question - - Do you know who was the cause of said plow
" being brought to said farm?
- " Ans - - Do not know -
- " Question - - Do you not know that Agnella East
" bought said plow of said Robinson?
- " Ans - - Do not know -
- " Question - - What was the value of said plow?
- " Ans. - - Do not know -
- " Question - - Was said plow at the time the plow was
" brought on the farm a good plow?
- " Ans. - - Do not consider myself judge of plows
- " Question - - Where was Agnella East living at the
" time said plow was brought where it is now?
- " Ans. - - He was living on the next place near
" here
- " Question - - Was not said plow taken to Agnella
" East before it was brought where it
" is now?
- " Ans - - I can't say. I know very little
" about such things -

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- Ques. - What land was Aquilla East working when said place was first brought into the neighbourhood?
- Ans. - Was not working any that Summer -
- Ques. - What was the time of the battle north spoken of in your direct examination?
- Ans. - Could not say certain -
- Ques. - Were they a fair average two yoke of cattle?
- Ans. - I think they were -
- Ques. - Did not Aquilla East marry the sister of James Robinson deceased? And how long have they been married?
- Ans. - He did and three years the first of Jan last -
- Ques. - Did not Aquilla East Board with you previous to his marriage?
- Ans. - He did until about six months before his marriage
- Re-examination Question - Where did Aquilla East live this last winter?
- Ans. - Where he is living now in Inoguois County.
- Ques. - Where did he live two years ago this last winter?
- Ans. - In Allen -
- Ques. - When did Aquilla East move from Allen to this County?
- Ans. - Last September -

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Ques. - Did you go to Allen? to see him last
December?

Ans. Yes Sir -

Ques. When did you go?

Ans. - One year ago last December -

Ques. - Was that the time you had the conver-
sation with Robinson to which you have
testified

Ans. Yes Sir

Ques. - In Reply to a Question by Mr Fletcher
you stated this conversation to be in 1859
and you now say that the conversation took
place a year ago last December. Now state
what year that was in and whether you
were not mistaken in your answer to
Mr Fletcher's question -

Ans. - When I said 59 I was mistaken it was
in '58 -

The Defendant then called
Ephraim S. East who testified as follows:
James Robinson died I think a year ago last
February - I was then in Allen several days
They both told me that they had had a
Settlement and that Mr Robinson had not
given a receipt and East asked for a
receipt then and they paid receipt in
my presence. They were both square
they said then - My Brother Aquilla

41 " East took two yoke of bullocks to Attica -
" One yoke was Black - He got the Black
" bullock of Mr Little and another yoke of
" from a man on Spring Creek - He took
" no more from here to Attica - East told
" me and Robinson too that East had
" got three or four yoke from Robinson
" dont know whether any was returned
" They were never returned to Attica to
" my knowledge

" I dont think Harlow ever got
" any of those bullocks - I think they were
" sold in Ingham's County - Both East and
" Robinson told me that they had had
" a Settlement - East wrote out a receipt
" and Robinson signed it - I left & got
" home three or four days before Robinson
" died

" And on Cross Examination the said
" Ephraim East stated that his reason
" for returning home so soon was that he
" wanted to sow wheat & plant corn
" which was about four days before
" Robinson died that Robinson died on
" or about the 19th day of February -

" Isaac East sworn and
" testified as follows: "

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" Agnew East got two or three yokes of bullocks
 " and brought them to Alexander's place -
 " He got them in a trade of my Brother's
 " wife's Share of some land up the Creek.
 " One yoke of the bullocks was taken to Attica
 " Indiana -

" Mr Majors Recalled A note
 " was shown him - He testified that he
 " had seen Robinson write, that the note
 " presented favored his hand-writing - it
 " looked like it - The note then which
 " was assigned to Agnew East for Value
 " Received and bearing date Nov 7th 1858
 " and Signed James M. Robinson was put
 " in evidence as tending to show a settle-
 " ment up to that time - East the
 " Plaintiff also filed and read an
 " affidavit, showing the loss of the
 " receipt before referred to which was
 " all the evidence in the case -
 " The Court then on motion gave the fol-
 " lowing instruction to the jury on the
 " part of the defendant

" The Making or
 " assignment of a promissory note in law
 " a Value received for it by the maker
 " or assignor, And if the Jury believe
 " that Robinson executed certain promissory

" Notes to East or that the assigned Notes made
 " by other parties to East the burden of proof
 " is on the plaintiff to show that Robinson
 " received no value for the making or assignment
 " of said notes - The Plaintiff cannot
 " recover in this action the amount of any notes
 " Robinson may have executed to East" And
 " the Court of its own motion added "which
 " have not been paid" - To which the defend-
 " ant excepted as nullifying the previous
 " part of the instruction - The Court also
 " gave the following instruction

" If the Jury
 " believe from the evidence that the defendant
 " received the property or any part thereof
 " described in the declaration from James
 " M. Robinson deceased as payment in whole
 " or in part for land contracted to be sold
 " by defendant to Robinson the plaintiff in
 " this action cannot recover for the property
 " so delivered without first proving that the
 " contract for the sale of the land had been
 " rescinded by the parties, or that defendant
 " had failed and refused to comply with
 " his part of the contract in making a deed
 " after Robinson had fully complied upon
 " his part in making the payments
 " The Court likewise gave the following instruction

" If the jury believe that in the Winter of
 " 1858, Robinson and East had a Settlement
 " of their accounts and that they were then
 " liquidated on both Sides the Plaintiff
 " cannot now recover for any property Robinson
 " may have let East have prior to that time
 " without showing some mistake or fraud in
 " the settlement which would justify the jury
 " in disregarding it

" The following instructions was
 " asked by the defendant and refused to
 " which he then and there excepted

" If the plaintiff claims
 " property or money in the hands of the
 " defendant belonging to Robinson at the time
 " of his decease he must first make and
 " prove a demand for the money and property
 " thus in the hands of the defendant and
 " the plaintiff's remedy in such case would
 " be in another form of action
 " Which was all the instructions offered in
 " the case

" W. A. Starr 
 " Judge of the 2nd Judicial Circuit
 " of the State of Illinois

Endorsement,
 " Bill of Exceptions "

" Filed December 2, 1860 "

" Thomas A. Munn clerk "

State of Illinois
Inquisition County
I Thomas Vennum clerk
of the Circuit Court in and for
said County in the State aforesaid do hereby ^{certify}
that the above and foregoing is a true complete
and perfect Transcript of the Record of the
proceedings of the Inquisition County Circuit Court
in the said cause wherein Asa H. Hoff Admr. of
James M. Robinson decd. is Plaintiff and Aquilla
C. Cast is defendant and also a full and com-
plete copy of all the original papers on file
in this Court pertaining to or forming any
part of the Record of this Court in said cause.

In Attestation of which I haveunto Sub-
scribe my name and affix the Seal
of said Circuit Court at office in
Middleport in said County this 10th
day of January A.D. 1861

Thomas Vennum Clerk
By H. H. Taylor Dep.

And now comes the said defendant
Aquilla C. Cast by Wood his Attorney
and says that there is manifest
error in the foregoing record in this
to wit:

1 The Court erred in refusing to exclude

the testimony of Jackson Marlow -

- 2 The court erred in overruling the motion for a new trial

1st Because the verdict is unsupported by the evidence

2nd It is contrary to the instructions of the court and contrary to law -

- 3 The court erred in rendering judgment for the plaintiff -

- 4 The court erred in modifying defendants first instruction -

- 5 The court erred in refusing defendants last instruction -

- 6 The verdict is against both law and evidence

Charles H. Wood
for Pltff. in Error

Forfeiter in Error

W. B. Proff
for Defendant in Error

Asa B. Hoff Adm
of J. M. Robinson decd
164th - 98
Aquila do. East

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Record

Filed April 5th 1861

A. Deland
Clerk

\$10. Cui. Chs. fus -