

No. 13491

Supreme Court of Illinois

Warner.

vs.

Campbell.

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 132.

Warner
vs
Campbell

13.49

100

Approved

State of Illinois }
Third Grand Division } ss.

In the Supreme Court in
and for said Division at the App.
Nov. Term A.D. 1861-

John Warner and
Benjamin J. Cobb, Rps in Error }
4
John Campbell Opt in Error }

To the Clerk of said Court
Please issue the proper process
in above entitled suit returnable
as above -

L. L. Beardsley -
Atty for Rps in Error

Please enclose the summons to me at
Rock Island, and herewith fine \$5. for
fines
L. L. B.

132
E. J. W. Warner & Co.

by
John Campbell

Prin

Filed February 14 1881

BRIEF.

In The Supreme Court at Ottawa,

APRIL TERM, A. D., 1861

JOHN WARNER & BENJ. J. COBB,	} Plaintiffs in Error.
vs.	
JOHN CAMPBELL.	} Defendant in Error.

ERROR FROM ROCK ISLAND COUNTY.

J. J. BEARDSLEY, Attorney for Plt'ff.

From the record in this case it appears that the Defendant in error instituted this suit to recover judgment on a promissory note of the following tenor:

"\$5000.

Rock Island, Ill., June 26th, 1857.

Twelve months after date, for value received, we, Lemuel Andrews as principal, and John Warner and B. J. Cobb as sureties, jointly and severally promise to pay to the order of John Campbell, five thousand dollars, at the Windham County Bank, Brattleboro, Vermont.

LEMUEL ANDREWS,
JOHN WARNER,
B. J. COBB."

The declaration in due form counts upon this note, and non-assumpsit is the plea. After reading the above note in evidence, and proving by a witness that Lemuel Andrews deceased in the month of April, A. D., 1858, the plaintiff, below, rested.

The defendants below then called, as a witness in their behalf, John M. Gould, who swore that he was joint executor with Mrs. Jane Andrews of the estate of Lemuel Andrews, deceased; that he had learned from papers and memoranda in the hand-writing of Lemuel Andrews, and pertaining to the estate of said Andrews, that said Andrews, as principal, was owing the plaintiff (below) a note of five thousand dollars, and had owed him another small note, which he, Andrews, had taken up.

The Witness, Gould, further stated that, about the 28th day of June, A. D., 1858, he sent by mail a letter addressed to the plaintiff below, at Putney, Vermont, inclosing two drafts drawn by Gould, Dimock & Co., on New York, payable to said plaintiff; one of said drafts for the sum of \$300, and the other for \$100, which drafts were duly honored and paid, and afterwards taken up by said Gould Dimock & Co.

The Witness, Gould, was here requested to state what directions he gave in said letter inclosing said drafts as to how the same should be applied, and upon what indebtedness.

To this the plaintiff below objected, and the Court sustained the objection, whereupon defendants below excepted.—See page 2, of Abstract.

In this decision we claim the Court below erred. The direction as to the application of the money represented by the drafts, was a fact that could be proved in the manner sought, without violating the distinction between the best and secondary evidence. Suppose the direction had been sent by telegraph? Must the original dispatch, as written at one end of the telegraph route, and as reproduced at the other, be brought into Court, in order to prove the directions thereby sent? We insist not; and yet this seems to be an analagous case. Again, suppose the message instead of being written in the first instance, had been dictated to the operator, how, then, should directions, thus sent, be proven? We think not necessarily by the written production of the operator at the place where the message is sent, but that it may be proven by paral

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The record also shows a notice, served on the plaintiff's attorneys some two days previous to the trial, to produce, at the trial, all letters written by said Witness, Gould, to the plaintiff, since April, A. D., 1858. Had the plaintiff been a resident, this notice would probably have been deemed sufficient to authorize the admission of paral proof of the contents of these letters, upon the non-production of the originals; and we submit that the non-residence of the plaintiff does not entitle him to longer notice, or any special forbearance or consideration of any kind. He ought not, by reason of his non-residence, to render the defense more onerous and difficult.

For aught that appears, these letters were in the hands of the plaintiff's attorneys at the trial, and we insist that the notice was sufficient to put the plaintiff upon a showing that, under the circumstances, the letters could not be produced.

After proving the notice aforesaid, the bill of exceptions shows (see Abstract, page 3,) that the enquiry as to what directions were given in the letter, by said Witness, Gould, was renewed in the following form:

"Did you direct in the letter inclosing said drafts to the plaintiff, that they be applied on a note held by said plaintiff against said Andrew's estate?"

This enquiry was objected to, and the objection sustained. It is only a reproduction of the same question above considered.

The following letter, addressed to said Witness, Gould, and proven to be in the hand-writing of the plaintiff, was next read by defendants below, to the jury without objection.—See Abstract, page 3.

"PUTNEY, July 13th, 1858.

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\$300 and one for \$100—for interest, &c., on L. Andrews' and others note, as surities, six months from 26th June last. The note is in Windham County Bank, with my name indorsed, and it has given me considerable trouble, it not having been paid at maturity. I have made arrangements to have it continued on terms as at present the full year, if you wish.

Respectfully yours,

JOHN CAMPBELL."

The defendants below then offered in evidence a copy of a letter, sworn by said Witness, Gould, to be a correct copy of his letter inclosing said drafts, copied into a letter book belonging to said Witness and his partner, Dimock. Said copy is as follows :

"MOLINE, Ill., June 28th, 1858.

Dr. JOHN CAMPBELL, Putney, Vt. :

I inclose Gould, Dimock & Co.'s draft on New York, for interest on Lemuel Andrews' note for \$5,000, for six months from June 26th, say \$300. We also inclose another draft on New York, for additional percentage, for extension of time—having been informed by Judge Lynde that you required 4 per cent. additional if the note was not paid at maturity, which we cannot do—shall probably be obliged to keep it another year, and will send you same amount at end of 6 months. Please indorse the three hundred dollars on note, for interest, and send a receipt for same, and one for the \$100, separate, as I need the receipts for vouchers to file in court.

I am told there was a note given for last six months' interest which has not been witnessed. Please send same to me.

Respectfully yours,

J. M. GOULD,

Executor of the Estate of L. Andrews."

The plaintiff below objected to this copy of letter being read in evidence, and his objection was sustained by the Court, to which the defendants below excepted.

Was there error in this decision?

It was a sworn copy, proven so by the witness, who wrote the original. In fact, it was the impress of the original, a perfect fac-simile in the copy book of the witness—a duplicate, rather than a copy.

We insist this duplicate of said letter should have been permitted to be read in evidence to the Jury.

Had this been done, it would have tended to establish the fact that the payment of the note in suit, after its maturity, had been extended on a good consideration, and that the defendants below, being sureties, were thereby discharged, the record disclosing no evidence that the defendants had any knowledge of, or in any way acquiesced, in this delay of payment.

In another point of view the proof would have been pertinent.

It would have established the fact of partial payment of the note in suit, and this was proper showing under the general issue. As it was, the plaintiff below recovered the full amount of the note, with interest, after maturity to the time of verdict, without any deduction whatever.

We insist, also, the Court erred in ruling out of the case all the evidence of said witness, Gould, relating to what he learned from the papers and memoranda of Andrews, (whose executor he was,) relative to his indebtedness to the plaintiff below.

This evidence had a tendency to identify the note in suit, as the one upon which the witness made payments, by way of drafts, remitted to plaintiff.

We also insist the Court erred in refusing instructions asked by the defendants, numbered 1 and 2.

The first instruction assumes this position: that if, from the evidence, the Jury believe that the plaintiff, after the note in suit became due, received six months' interest thereon, from maturity, in advance, then the legal intendment from this transaction is that the payment of the note was thereby extended upon a good consideration, and if such extension was without the consent of the sureties on said note, then the defendants were thereby discharged.

We think this instruction, when properly interpreted, embodies a sound legal proposition, applicable to the case, and warranted by the evidence before the jury. There is a sufficient difference between a given sum of money paid in advance for the use of money, and the same sum to be paid for its use, after the money has been used, to render it a good consideration for any agreement based thereon.

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If this is so, the defendants, being sureties, have a right to claim that they were thereby discharged from all liability on said note.

For the reasons already considered, we think the Court erred in refusing the defendants below a new trial.

Prize 132

Warner & Cobb

^r
John Campbell

Filed April 16, 1861

A. Deland
Clerk

BRIEF.

In The Supreme Court at Ottawa,

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The declaration in due form counts upon this note, and non-assumpsit is the plea. After reading the above note in evidence, and proving by a witness that Lemuel Andrews deceased in the month of April, A. D., 1858, the plaintiff, below, rested.

The defendants below then called, as a witness in their behalf, John M. Gould, who swore that he was joint executor with Mrs. Jane Andrews of the estate of Lemuel Andrews, deceased; that he had learned from papers and memoranda in the hand-writing of Lemuel Andrews, and pertaining to the estate of said Andrews, that said Andrews, as principal, was owing the plaintiff (below) a note of five thousand dollars, and had owed him another small note, which he, Andrews, had taken up.

The Witness, Gould, further stated that, about the 28th day of June, A. D., 1858, he sent by mail a letter addressed to the plaintiff below, at Putney, Vermont, inclosing two drafts drawn by Gould, Dimock & Co., on New York, payable to said plaintiff; one of said drafts for the sum of \$300, and the other for \$100, which drafts were duly honored and paid, and afterwards taken up by said Gould Dimock & Co.

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N Brief 132
Warner & Cobb
vs

John Campbell

Set Court Apr 1861

Filed April 16, 1861

A. Deland
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J. J. HEARDLEY, Attorney for the

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John Campbell

Filed April 16. 1861
L. Deland
Clerk

Abstract

BRIEF.

Abstract of Record from Rock Island County.

1 **JOHN CAMPBELL**

VS

**JOHN WARNER
AND BENJ. J. COBB.**

Assumpsit.

Pleas before Hon. J. H. Howe, &c., at a term of the Circuit Court in and for the County of Rock Island and state of Illinois, on the Second Monday of May, A. D., 1860.

Summons to Def'ts prayed out 1st day of May, A. D., 1860.

Copy of Summons.

Bond for costs filed 1st May, A. D., 1860.

Service of summons on both Def'ts by Sheriff in due form May 1st, A. D., 1860.

Plaintiffs declaration in due form filed May 1st, A. D., 1860, in trespass on the case on promises: alledging that Def'ts and one Lemuel Andrews, now deceased, heretofore to-wit: on the 26th day of June, A. D., 1857, at &c., made their certain promissory note of that date and delivered the same to Plt'f, by which said note, said Lemuel Andrews, as principal, and the said Def'ts as surities, jointly and severally promised to pay, twelve months after date of said note, to the order of the Plaintiff, Five Thousand Dollars, at the Windham County Bank, Brattleboro, Vermont.

Declaration concludes in usual form and without the common counts. Copy of note declared on—

\$5,000.

ROCK ISLAND, ILLS., June 26th, 1857.

Twelve Months after date, for value received, we, Lemuel Andrews as principal, and John Warner and B. J. Cobb as surities, jointly and severally promise to pay to the order of John Campbell, Five Thousand Dollars, at the Windham County Bank, Brattleboro, Vermont.

[SIGNED]

LEMUEL ANDREWS,
JOHN WARNER,
B. J. COBB.

May 22d, A. D., 1860, Defendants filed their plea of non-assumpsit, and issue is joined.

Trial by Jury: issue found for Plt'f, and his damages assessed at \$5,598.

Def'ts interpose and file their motion for a new trial. Overruled,—judgment for Plt'f \$5,598 and costs; Def'ts except to said judgment.

Def'ts have leave to file Bill of Exceptions in thirty days.

Reasons assigned by Def'ts for new trial:

1. Because the verdict of the Jury is against law and the evidence.
2. Because the Court excluded from the consideration of the Jury who tried said cause, evidence offered in behalf of said Def'ts, which the Court should have admitted.

3. Because the Court refused instructions to the Jury asked by Def'ts at the trial.

June 25th, A. D., 1860, Def'ts file their Bill of Exceptions, in substance as follows:

To maintain the issues on his part, Plt'f offered and read in evidence at the trial, without objection, the promissory note heretofore copied.

The Plt'f then called one Geo. Mixter as a witness, who being sworn, stated that, Lemuel Andrews, one of the makers of said note, departed this life two years ago last April, whereupon said Plt'f rested.

And said Def'ts to maintain the issues on their part, thereupon called as a witness in their behalf, John M. Gould, who being sworn, testified that, he was joint executor with Mrs. Jane Andrews, of the estate of Lemuel Andrews, deceased; that he had learned from papers and memoranda in the hand-writing of Lemuel Andrews and pertaining to the estate of said Andrews, that he, said Andrews, as principal, was owing the Plt'f in this suit, a note of Five Thousand Dollars; that he also owed said Plt'f another and smaller note, but that he (Andrews) had taken up this last mentioned note.

Said Plt'f by his counsel objected to said testimony, but it was admitted by the Court.

14

Said witness, Gould, further stated that, about the 28th June, 1858, he sent by mail, a letter addressed to said Plt'f at Putney, Vermont, enclosing two drafts drawn by Gould, Dimock & Co., on New York, payable to said Plt'f; one of said drafts for the sum of Three Hundred Dollars, and the other of said drafts for the sum of One Hundred Dollars, which drafts were duly honored and paid, and afterwards taken up by said Gould, Dimock & Co.

Witness was here requested by Def'ts' Counsel to state what directions he gave in said letter enclosing said drafts as to how the same should be applied, and upon what indebtedness.

To which enquiry, addressed to said witness by said Def'ts' Counsel, the said Plt'f then and there objected, and thereupon said Court sustained said objection, and refused to permit said enquiry to be put to and answered by said witness, to which decision of said Court the said Def'ts then and there, and at the time thereof, excepted.

15

Said Def'ts then exhibited and read to the Court a notice, of which the following is a copy—

“STATE OF ILLINOIS, }
ROCK ISLAND COUNTY. } ss.

Of the May Term, A. D., 1860, of the Circuit Court of said County.

JOHN CAMPBELL, }
vs }
BENJ. J. COBB, }
AND JOHN WARNER. }

TO THE PLT'F OR HIS ATT'YS.

You are hereby notified to produce, at the trial of the above cause, all the letters which have been written since April 1st, 1858, by John M. Gould to Plt'f in above suit.

KNOX, REED, & WEBSTER,

Def'ts' Att'ys.”

16

It was admitted that this notice was served on said Plt'f's Att'ys, Wilkinson & Pleasants, some two days before this trial, and it was stated to the Court by said Def'ts' Counsel that the object of the notice was, unless the letter of said witness, Gould, to said Plt'f, was produced at the trial, that said Def'ts be permitted to prove, by said witness, the directions contained in, and the contents of said letter, so sent by said witness to said Plt'f.

But the Plt'f, by his Counsel (he not being personally present at the trial, and admitted by Def'ts to be a resident of the State of Vermont, ever since and long before the bringing of this suit,) objected to the sufficiency of said notice, for the purpose stated, inasmuch as the Plt'f was a non-resident, and the Court sustained said objection, and decided said notice to be insufficient; whereupon said Def'ts then and there, and at the time thereof, excepted to the last mentioned decision of said Court.

Said Def'ts, by their Counsel, then asked said witness, Gould, as follows—

17

“Did you, as the Executor of the Estate of Lemuel Andrews, deceased, ascertain that said Andrews, in his life time, was indebted to the Plt'f in this suit?”

To which enquiry said witness answered—“I did from his papers.”

Said Def'ts' Counsel then asked said witness as follows:

“State in what way said indebtedness was evidenced?”

To which witness answered—"By note, as I supposed from his (Andrew's) papers."

Said Def'ts then asked the witness the following question :

"Did you direct, in the letter enclosing said drafts to said Plt'f, that they be applied on a note held by said Plt'f against said Andrew's Estate?"

18

To which question last aforesaid, said Plt'f by his Counsel objected, and the Court sustained such objection, whereupon said Def'ts then and there, and at the time of said decision of said Court, excepted.

Cornelius Lynde, Jr., a witness in behalf of said Def'ts, being here called and sworn, stated that he had never seen the Plt'f write, that he was well acquainted with him, and that he had had a great deal of correspondence by letters with him, backwards and forwards, and in that way was familiar with his handwriting.

Here a letter, purporting to be written by said Plt'f, and addressed to said witness, Gould, (hereinafter copied,) was shown said witness, Lynde, who stated that, from his knowledge of Plt'f's handwriting, obtained as stated, he believed said letter to be in the handwriting of Plaintiff.

19

The witness, Gould, was here recalled by said Def'ts, and testified that the said letter, so shown to said witness, Lynde, and addressed by the plaintiff to him, the witness, was received by him in due course of mail, in reply to his, the witness's letter, enclosing said drafts, addressed to said plaintiff.

Here said letter was read to the jury without objection, and is in the words and figures following—

"PUTNEY, July 13th, 1858.

Hon. J. GOULD, Rock Island, Ill.

DEAR SIR: Yours, of the 28th ult. was received, enclosing drafts of Gould, Dimick & Co on New York—one for \$300 and one for \$100—for interest, &c., on L. Andrews' and others' notes, as sureties, six months from 26th June last. The note is in Windham County Bank with my name endorsed, and it has given me considerable trouble, it not having been paid at maturity. I have made arrangements to have it continued on terms as at present the full year, if you wish.

Respectfully Yours,

JOHN CAMPBELL."

Said witness, Gould, was then asked by Defendants' Counsel as follows:

20

"Did you, as the Executor of the Estate of Lemuel Andrews, deceased, accept, by letter addressed to said Plaintiff at his residence, the delay of payment of the note mentioned in Plaintiff's said letter, and pay the considerations therein mentioned for such delay?"

To which witness answered that he had never written to said Plaintiff after the receipt of said letter.

21

Said Defendants here recalled said witness, Lynde, who testified that he had known the Plaintiff twenty years last past, and more, that he, Plaintiff, during this period of time, resided and still resides at Putney, Windsor County, Vermont. Said Lynde further states that in the case of Plaintiff loaning money to Lemuel Andrews, he, witness, transacted the business of said Plaintiff; that the note on which this suit is brought (the body of it) is in the handwriting of witness, and that it was given for money loaned. Said witness, Lynde, further states that he never knew of Plaintiff's being at Rock Island; that when the note in suit was given, Andrews also gave the Plaintiff another note—a small one—which was afterwards taken up. Witness further states that he never knew of any other notes or indebtedness from said Andrews, or said Andrews or others to said Plaintiff.

Said Defendants here recalled said witness, Gould, and exhibited to him a copy of a letter, copied into a letter book belonging to witness and his partner Dimock, and was asked if the copy then shown him was a

true copy of the letter written by him to Plt'f inclosing said two drafts. To which witness answered that it was a true copy of said letter.

The copy of said letter so shown to said witness, Gould, is in the words and figures following:

"MOLINE, ILL., June 28th, 1858.

DR. JOHN CAMPBELL, Putney, Vt.,

I enclose Gould, Dimock & Co.'s draft on New York, for interest on Lemuel Andrews' note for \$5,000, for six months from June 26th, say \$300. We also inclose another draft on New York, for additional percentage, for extension of time,—having been informed by Judge Lynde that you required 4 per cent additional if the note was not paid at maturity, which we cannot do—shall probably be obliged to keep it another year, and will send you same amount at end of 6 months. Please endorse the Three Hundred Dollars on note, for interest, and send a receipt for same, and one for the \$100, separate, as I need the receipts for vouchers to file in Court.

I am told there was a note given for last six months' interest, which has not been returned. Please send same to me.

Respectfully Yours,

J. M. GOULD,

Executor of Est. of L. Andrews."

Said Def'ts then offered in evidence said copy of said letter so sworn to by said witness, Gould, to which the said Plt'f, by his counsel, objected, and the Court sustained his said objection last aforesaid and decided that the copy of said letter should not be read in evidence to the jury.

To which said last mentioned decision of said Court, the said Def'ts then and there and at the time thereof, excepted.

Here said Plt'f moved the Court to rule out of the case and from the consideration of the jury, all of the evidence of said witness, Gould, relating to what he learned from the papers and memoranda of said Andrews, in relation to his indebtedness to said Plt'f, which motion of said Plt'f the Court sustained, and excluded so much of said witness's testimony as said motion sought to exclude.

To which last mentioned decision of said Court, said Def'ts then and there and at the time thereof, excepted.

And in behalf of said Def'ts the Court was asked to instruct the jury as follows:

1. If the jury believe from the evidence that the Plt'f in this suit, received a payment of six months interest on the note in question, which was for interest six months after the note became due, without the knowledge or consent of the Def'ts, then the time of payment of said note was extended by a valid agreement and the surities discharged, and the jury will find for Def'ts.

2. The burden of proving that the surities had notice of the extending of the time of payment of said note (if they believe it was so extended) is upon the Plt'f, after the Def'ts have shown that the time was extended.

3. If the jury believe from the evidence that the Plt'f in this suit extended the time for the payment of the note in question, for a definite period after it became due, upon a good and valid consideration, without the consent of Def'ts, and that the Def'ts signed said note, as surities, then they should find for the Def'ts.

And for refusing instructions numbered 1 and 2, Def'ts then and there, excepted.

The jury rendered a verdict for Plt'f for \$5,598.

And after verdict, Def'ts filed their written motion for a new trial, for the following reasons:

1. Because the verdict of the jury is against law and the evidence adduced at the trial.

2. Because the Court excluded from the consideration of the jury who

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Refused.

Given I refused.

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tried said cause, evidence offered in behalf of said Defts, which the Court should have admitted.

3. Because the Court refused instructions to the jury asked by said Defts at the trial hereof.

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Motion for new trial overruled ; Defts at same time except.

Handwritten notes:
The Court
Hear & see
Mention

Abstract 132

Warner & Cobb

9

John Campbell

Filed April 16, 1861

A. Deland
Clerk

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STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the circuit Court for the County of Rock Island Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the circuit Courts of Rock Island County, before the Judge thereof, between John Campbell

plaintiff, and John Warner & Benjamin L. Cobb

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

as we are informed by their complainant.s. 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 plaints aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 14th day of February in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Leland

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

John Warner and

Benjamin J. Cobb

No.

vs.

John Campbell

WRIT OF ERROR.

FILED February 14th A. D. 1866

L. Leland

Clerk

STATE OF ILLINOIS,
SUPREME COURT,

The People of the State of Illinois,

To the Sheriff of the County of

Rock Island

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Rock Island County, before the Judge thereof, between John Campbell

plaintiff, and John Warner and Benjamin J. Cobb

defendant, it is said that manifest error hath intervened, to the injury of the said ~~plaintiff~~ Defendants

as we are informed by their complaints the record and proceedings of which said judgments 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 John Campbell

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 John Campbell

notice, together with this writ.

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 14th day of February in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Leland

Clerk of the Supreme Court.
J. B. Rice

I hereby accept service of this process
of Scire Facias and agree that the same
shall be effectual as though served by a
proper officer - Rock Island Feb 20th 1861-

John Campbell
by Wilkinson & Pleasant
his atty

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John Warner and
Benjamin L. Cobb
No.

John Campbell

SCIRE FACIAS.

FILED

March 27

A. D. 1861

A. L. C. and

Plath.



Abstract

BRIEF

Abstract of Record from Rock Island County.

1 JOHN CAMPBELL

VS

JOHN WARNER
AND BENJ. J. COBB.

Assumpsit.

Pleas before Hon. J. H. Howe, &c., at a term of the Circuit Court in and for the County of Rock Island and state of Illinois, on the Second Monday of May, A. D., 1860.

Summons to Def'ts prayed out 1st day of May, A. D., 1860.

Copy of Summons.

Bond for costs filed 1st May, A. D., 1860.

Service of summons on both Def'ts by Sheriff in due form May 1st, A. D., 1860.

Plaintiffs declaration in due form filed May 1st, A. D., 1860, in trespass on the case on promises: alledging that Def'ts and one Lemuel Andrews, now deceased, heretofore to-wit: on the 26th day of June, A. D., 1857, at &c., made their certain promissory note of that date and delivered the same to Plt'f, by which said note, said Lemuel Andrews, as principal, and the said Def'ts as surities, jointly and severally promised to pay, twelve months after date of said note, to the order of the Plaintiff, Five Thousand Dollars, at the Windham County Bank, Brattleboro, Vermont.

Declaration concludes in usual form and without the common counts.

Copy of note declared on—

\$5,000.

ROCK ISLAND, ILLS., June 26th, 1857.

Twelve Months after date, for value received, we, Lemuel Andrews as principal, and John Warner and B. J. Cobb as surities, jointly and severally promise to pay to the order of John Campbell, Five Thousand Dollars, at the Windham County Bank, Brattleboro, Vermont.

[SIGNED]

LEMUEL ANDREWS,
JOHN WARNER,
B. J. COBB.

May 22d, A. D., 1860, Defendants filed their plea of non-assumpsit, and issue is joined.

Trial by Jury: issue found for Plt'f, and his damages assessed at \$5,598.

Def'ts interpose and file their motion for a new trial. Overruled,—judgment for Plt'f \$5,598 and costs; Def'ts except to said judgment.

Def'ts have leave to file Bill of Exceptions in thirty days.

Reasons assigned by Def'ts for new trial:

1. Because the verdict of the Jury is against law and the evidence.
2. Because the Court excluded from the consideration of the Jury who tried said cause, evidence offered in behalf of said Def'ts, which the Court should have admitted.

3. Because the Court refused instructions to the Jury asked by Def'ts at the trial.

June 25th, A. D., 1860, Def'ts file their Bill of Exceptions, in substance as follows:

To maintain the issues on his part, Plt'f offered and read in evidence at the trial, without objection, the promissory note heretofore copied.

The Plt'f then called one Geo. Mixer as a witness, who being sworn, stated that, Lemuel Andrews, one of the makers of said note, departed this life two years ago last April, whereupon said Plt'f rested.

And said Def'ts to maintain the issues on their part, thereupon called as a witness in their behalf, John M. Gould, who being sworn, testified that, he was joint executor with Mrs. Jane Andrews, of the estate of Lemuel Andrews, deceased; that he had learned from papers and memoranda in the hand-writing of Lemuel Andrews and pertaining to the estate of said Andrews, that he, said Andrews, as principal, was owing the Plt'f in this suit, a note of Five Thousand Dollars; that he also owed said Plt'f another and smaller note, but that he (Andrews) had taken up this last mentioned note.

Said Plt'f by his counsel objected to said testimony, but it was admitted by the Court.

14

Said witness, Gould, further stated that, about the 28th June, 1858, he sent by mail, a letter addressed to said Plt'f at Putney, Vermont, enclosing two drafts drawn by Gould, Dimock & Co., on New York, payable to said Plt'f; one of said drafts for the sum of Three Hundred Dollars, and the other of said drafts for the sum of One Hundred Dollars, which drafts were duly honored and paid, and afterwards taken up by said Gould, Dimock & Co.

Witness was here requested by Def'ts' Counsel to state what directions he gave in said letter enclosing said drafts as to how the same should be applied, and upon what indebtedness.

To which enquiry, addressed to said witness by said Def'ts' Counsel, the said Plt'f then and there objected, and thereupon said Court sustained said objection, and refused to permit said enquiry to be put to and answered by said witness, to which decision of said Court the said Def'ts then and there, and at the time thereof, excepted.

15

Said Def'ts then exhibited and read to the Court a notice, of which the following is a copy—

“STATE OF ILLINOIS, }
ROCK ISLAND COUNTY. } ss.

Of the May Term, A. D., 1860, of the Circuit Court of said County.

JOHN CAMPBELL, }
vs }
BENJ. J. COBB, }
AND JOHN WARNER. }

TO THE PLT'F OR HIS ATT'YS.

You are hereby notified to produce, at the trial of the above cause, all the letters which have been written since April 1st, 1858, by John M. Gould to Plt'f in above suit.

KNOX, REED, & WEBSTER,

Def'ts' Att'ys.”

16

It was admitted that this notice was served on said Plt'f's Att'ys, Wilkinson & Pleasants, some two days before this trial, and it was stated to the Court by said Def'ts' Counsel that the object of the notice was, unless the letter of said witness, Gould, to said Plt'f, was produced at the trial, that said Def'ts be permitted to prove; by said witness, the directions contained in, and the contents of said letter, so sent by said witness to said Plt'f.

But the Plt'f, by his Counsel (he not being personally present at the trial, and admitted by Def'ts to be a resident of the State of Vermont, ever since and long before the bringing of this suit,) objected to the sufficiency of said notice, for the purpose stated, inasmuch as the Plt'f was a non-resident, and the Court sustained said objection, and decided said notice to be insufficient; whereupon said Def'ts then and there, and at the time thereof, excepted to the last mentioned decision of said Court.

Said Def'ts, by their Counsel, then asked said witness, Gould, as follows—

17

“Did you, as the Executor of the Estate of Lemuel Andrews, deceased, ascertain that said Andrews, in his life time, was indebted to the Plt'f in this suit?”

To which enquiry said witness answered—“I did from his papers.”

Said Def'ts' Counsel then asked said witness as follows:

“State in what way said indebtedness was evidenced?”

To which witness answered—"By note, as I supposed from his (Andrew's) papers."

Said Def'ts then asked the witness the following question :

"Did you direct, in the letter enclosing said drafts to said Plt'f, that they be applied on a note held by said Plt'f against said Andrew's Estate?"

18 To which question last aforesaid, said Plt'f by his Counsel objected, and the Court sustained such objection, whereupon said Def'ts then and there, and at the time of said decision of said Court, excepted.

Cornelius Lynde, Jr., a witness in behalf of said Def'ts, being here called and sworn, stated that he had never seen the Plt'f write, that he was well acquainted with him, and that he had had a great deal of correspondence by letters with him, backwards and forwards, and in that way was familiar with his handwriting.

Here a letter, purporting to be written by said Plt'f, and addressed to said witness, Gould, (hereinafter copied,) was shown said witness, Lynde, who stated that, from his knowledge of Plt'f's handwriting, obtained as stated, he believed said letter to be in the handwriting of Plaintiff.

19 The witness, Gould, was here recalled by said Def'ts, and testified that the said letter, so shown to said witness, Lynde, and addressed by the plaintiff to him, the witness, was received by him in due course of mail, in reply to his, the witness's letter, enclosing said drafts, addressed to said plaintiff.

Here said letter was read to the jury without objection, and is in the words and figures following—

"PUTNEY, July 13th, 1858.

Hon. J. GOULD, Rock Island, Ill.

DEAR SIR: Yours, of the 28th ult. was received, enclosing drafts of Gould, Dimick & Co on New York—one for \$300 and one for \$100—for interest, &c., on L. Andrews' and others' notes, as sureties, six months from 26th June last. The note is in Windham County Bank with my name endorsed, and it has given me considerable trouble, it not having been paid at maturity. I have made arrangements to have it continued on terms as at present the full year, if you wish.

Respectfully Yours,

JOHN CAMPBELL."

Said witness, Gould, was then asked by Defendants' Counsel as follows:

20 "Did you, as the Executor of the Estate of Lemuel Andrews, deceased, accept, by letter addressed to said Plaintiff at his residence, the delay of payment of the note mentioned in Plaintiff's said letter, and pay the considerations therein mentioned for such delay?"

To which witness answered that he had never written to said Plaintiff after the receipt of said letter.

21 Said Defendants here recalled said witness, Lynde, who testified that he had known the Plaintiff twenty years last past, and more, that he, Plaintiff, during this period of time, resided and still resides at Putney, Windsor County, Vermont. Said Lynde further states that in the case of Plaintiff loaning money to Lemuel Andrews, he, witness, transacted the business of said Plaintiff; that the note on which this suit is brought (the body of it) is in the handwriting of witness, and that it was given for money loaned. Said witness, Lynde, further states that he never knew of Plaintiff's being at Rock Island; that when the note in suit was given, Andrews also gave the Plaintiff another note—a small one—which was afterwards taken up. Witness further states that he never knew of any other notes or indebtedness from said Andrews, or said Andrews or others to said Plaintiff.

Said Defendants here recalled said witness, Gould, and exhibited to him a copy of a letter, copied into a letter book belonging to witness and his partner Dimock, and was asked if the copy then shown him was a

true copy of the letter written by him to Plt'f inclosing said two drafts. To which witness answered that it was a true copy of said letter.

The copy of said letter so shown to said witness, Gould, is in the words and figures following:

"MOLINE, ILL., June 28th, 1858.

DR. JOHN CAMPBELL, Putney, Vt.,

I enclose Gould, Dimock & Co.'s draft on New York, for interest on Lemuel Andrews' note for \$5,000, for six months from June 26th, say \$300. We also inclose another draft on New York, for additional percentage, for extension of time,—having been informed by Judge Lynde that you required 4 per cent additional if the note was not paid at maturity, which we cannot do—shall probably be obliged to keep it another year, and will send you same amount at end of 6 months. Please endorse the Three Hundred Dollars on note, for interest, and send a receipt for same, and one for the \$100, seprate, as I need the receipts for vouchers to file in Court.

I am told there was a note given for last six months' interest, which has not been returned. Please send same to me.

Respectfully Yours,

J. M. GOULD,

Executor of Est. of L. Andrews."

Said Def'ts then offered in evidence said copy of said letter so sworn to by said witness, Gould, to which the said Plt'f, by his counsel, objected, and the Court sustained his said objection last aforesaid and decided that the copy of said letter should not be read in evidence to the jury.

To which said last mentioned decision of said Court, the said Def'ts then and there and at the time thereof, excepted.

Here said Plt'f moved the Court to rule out of the case and from the consideration of the jury, all of the evidence of said witness, Gould, relating to what he learned from the papers and memoranda of said Andrews, in relation to his indebtedness to said Plt'f, which motion of said Plt'f the Court sustained, and excluded so much of said witness's testimony as said motion sought to exclude.

To which last mentioned decision of said Court, said Def'ts then and there and at the time thereof, excepted.

And in behalf of said Def'ts the Court was asked to instruct the jury as follows:

1. If the jury believe from the evidence that the Plt'f in this suit, received a payment of six months interest on the note in question, which was for interest six months after the note became due, without the knowledge or consent of the Def'ts, then the time of payment of said note was extended by a valid agreement and the surities discharged, and the jury will find for Def'ts.

2. The burden of proving that the surities had notice of the extending of the time of payment of said note (if they believe it was so extended) is upon the Plt'f, after the Def'ts have shown that the time was extended.

3. If the jury believe from the evidence that the Plt'f in this suit extended the time for the payment of the note in question, for a definite period after it became due, upon a good and valid consideration, without the consent of Def'ts, and that the Def'ts signed said note, as surities, then they should find for the Def'ts.

And for refusing instructions numbered 1 and 2, Def'ts then and there, excepted.

The jury rendered a verdict for Plt'f for \$5,598.

And after verdict, Def'ts filed their written motion for a new trial, for the following reasons:

1. Because the verdict of the jury is against law and the evidence adduced at the trial.

2. Because the Court excluded from the consideration of the jury who

22

23

24

Refused.

Refused.

Given

25

tried said cause, evidence offered in behalf of said Defts, which the Court should have admitted.

3. Because the Court refused instructions to the jury asked by said Defts at the trial hereof.

27

Motion for new trial overruled; Defts at same time except.

James Cook
James Cook
James Cook

Abstract 132

Warner & Cobb

9

John Campbell

Filed April 16. 1861

A. Deland
Clerk

132-137
John Warner &
Benjamin L. Cobb
vs

John Campbell

Transcript of
Record of Evers

Filed February 14 1866
L. Leland
Clerk

John Campbell
vs
John Warner &
Benj. L. Cobb

~~~~~

Record



Page 1

Plas before the Honorable  
John H. Howe Judge of the Sixth  
Judicial District of the State of  
Illinois, at a term of the Circuit  
Court begun and held at the Court  
House within and for the County of  
Rock Island and State aforesaid,  
on the Second Monday, the Four-  
teenth day of May in the year of  
our Lord one thousand Eight Hun-  
dred and Sixty.

Present Hon. John H. Howe Judge  
Moses S. Merrill Shift  
Quincy McNeil Clerk

John Campbell

vs

John Warner &

Benjamin J. Cobb



Assumpsit.

Be it remembered, that  
envelope, to wit: on the first day  
of May A. D. 1860 the plaintiff in  
the above entitled suit by Willam-  
son & Pleasant, his attorneys sued  
out of the Clerk's office of the Ci-  
cuit Court aforesaid, his certain  
writ of summons in assumpsit,  
which is in the words and figures

following, to wit:-

State of Illinois }  
 Rock Island County } ss The People  
 of the State of Illinois,  
 to the Sheriff of Rock Island County, Quincy:

We command you to  
 summon John Warner and Ben-  
 jamin J. Cobb if to be found in your  
 County, personally, to be and appear  
 before the Circuit Court of said County  
 of Rock Island on the first day of  
 the next term thereof, to be holden at  
 the Court House in Rock Island, on  
 the second Monday of May, instant,  
 then and there to answer unto  
 John Campbell of a plea of trespass  
 on the case upon promises, to his  
 damage in the sum of seven thou-  
 sand Dollars, as he says: and have  
 you then and there this writ, and  
 make due return thereon in what  
 manner you execute the same.

Witness, Quincy McNeil Clerk  
 of our Circuit Court, and the  
 Seal } seal thereof affixed at Rock  
 Island, this first day of  
 May in the year of our



3 Lord one thousand eight hundred  
sixty.

Quincy McNeil Clerk "

And at the same time, to wit:  
on the first day of May A. D. 1860, the  
said Plaintiff filed in the Clerk's office  
of the Circuit Court aforesaid, his  
certain bond or security for costs, which  
is as follows, to wit:—

" State of Illinois }  
Rock Island County } ss

Rock Island County—Circuit Court  
of May Term A. D. 1860

John Campbell }  
vs }  
John Warner, and }  
Benjamin J. Cobb }

We do hereby enter  
ourselves security for costs in this  
case and acknowledge ourselves  
bound to pay or cause to be paid, all  
costs which may accrue in this  
action, either to the opposite party or to  
any of the officers of this Court, in pur-  
suance of the laws of this State.

— A. D. 1860 Wilkinson & Pleasant "

4

And afterwards, to wit on the first day of May A.D. 1860 the said writ of summon was returned by the Sheriff of the County of Rock Island aforesaid, into the Clerk's office of the Circuit Court aforesaid, with his endorsement of service thereon written, which said endorsement of service is as follows, to wit:-

"  
" I have served the within writ by reading the same to the within named Defendant, John Warner & Benjamin J. Cobb, this day, May 1<sup>st</sup>, 1860  
Moses D. Merrill

Sheriff of Rock Island County, Ill.  
"

And afterwards, to wit:- on the first day of May A.D. 1860 the said Plaintiff by his attorneys filed in the Clerk's office of the Circuit Court aforesaid, his certain declaration, which is as follows, to wit:-

" State of Illinois }  
Rock Island County } ss

Rock Island County Circuit Court



5

of May Term A. D. 1860

John Campbell plaintiff in  
this suit by Wilkinson & Pleasant, his  
attorneys, complainants of John Warner  
and Benjamin J. Cobb defendants  
in this suit, summoned &c of a plea  
of Verdict on the Case on promises:-

For that whereas the said defen-  
dants, and one Samuel Andrews  
then living but since deceased, and  
whom the said defendants have  
survived, heretofore, to wit on the  
twenty sixth day of June in the Year  
of our Lord one thousand Eight hun-  
dred and fifty seven, at Rock Island,  
Ill. to wit at the County and State  
aforesaid, made their certain prom-  
issory note of that date and then  
and there delivered the same to the  
said plaintiff, by which said note  
the said Samuel Andrews as prin-  
cipal and and the said defendants  
by their respective names of "John  
Warner" and "B. J. Cobb" as sureties,  
jointly and severally, promised to pay  
twelve months after the date of  
said note to the order of the said  
plaintiff Five thousand dollars, at  
the Windham County Bank, ~

8 Brattleboro', Vermont, yet though often requested the said defendants and the said Lemuel Andrews, or either of them, in the lifetime of the said Lemuel Andrews, or the said defendants since the death of said Lemuel Andrews, never paid said to the said plaintiff the said sum of money in the said note mentioned or any part thereof but wholly neglected and refused, and the said defendants still neglect and refuse so to do, to the damage of the said plaintiff of Seven Thousand dollars and therefore he sues &c.

Withinson & Pleasant  
Atty for plaintiff.

The cause of action above declared on is a promissory note of which the following is a copy.

" \$5000. Rock Island, Ill. June 26th 1857

One month after date for value received, we Lemuel Andrews as principal and John Warner and B. J. Cobb as Sureties jointly and severally promise to pay to the order of



4  
} John Campbell Five Thousand  
dollars, at the Windham County  
Bank, Brattleboro Vermont.

Lemuel Andrews  
John Warner  
B. J. Cobb "

And afterwards, to wit: on the  
Twenty Second day of May A. D. 1860  
the said defendant, by Messrs. Reed &  
Webster his attorneys, filed in the  
Clerk's office of the Circuit Court aforesaid,  
their certain plea, which is  
in the words and figures, following, to  
wit:

" State of Illinois  
Rock Island County,

of the May Term A. D. 1860 of the  
Circuit Court of said County.

John Warner &  
Benjamin J. Cobb  
vs  
John Campbell

And now come the  
defendants by their attys. in the above  
cause & defend t<sup>e</sup> when t<sup>e</sup> and say  
that they did not promise in —

9 who were each and severally sworn  
to well and truly try the issue  
joined; and the jury having heard  
the evidence and the arguments  
of counsel thereon, return their  
verdict into Court, which is as  
follows. To wit: "We the jury find  
for the plaintiff and assess the  
damages at Five Thousand, Five  
Hundred and Ninety Eight dollars"  
whereupon the said defendants enter  
their motion for a new trial. And the  
defendants having filed their said  
motion, and the same now com-  
ing on to be heard, and the Court  
having heard the arguments of  
counsel thereon and being suffi-  
ciently advised in the premises, the  
same is overruled. It is therefore  
ordered by the Court that the plain-  
tiff have and recover of the said  
defendants, the sum of Five Thousand  
and Five Hundred and Ninety Eight  
dollars damages, together with his  
costs in this behalf expended, and  
that he have execution therefor.  
Whereupon said defendants by their  
counsel excepted to the entering of  
the judgment and the awarding of



40 execution herein. And thereupon  
the defendants prayed an appeal  
to the Supreme Court, which is  
granted upon condition that the  
defendants file their Bill of Except-  
ions within thirty days from this date.

And the <sup>said</sup> motion for a  
new trial so filed in the Circuit, Sec-  
ond day of June A.D. 1860, in the  
Court aforesaid, is in the words and  
figures following, to wit:-

State of Illinois  
Rock Island County

In the Circuit Court of said  
County at the City of Rock Island  
A.D. 1860

John Campbell  
vs  
Benj. J. Cobb,  
John Warner, et al.

And now comes the  
said defendants in the above en-  
titled cause and after verdict &c  
more said court to grant a new  
trial herein, because:-

1. The verdict of the jury is against

6  
11, law & evidence adduced at the trial.

2. Because the Court excluded from the consideration of the jury, who tried said cause evidence offered in behalf of said Heft which the Court should have admitted.

3. Because the Court refused instructions to the jury asked by said defendants at the trial heretofore.

Beardsley, Webster et al.  
attys for Heft. "

And afterwards, to wit, on the twenty fifth day of June A.D. 1860 the said defendants by their said attorneys filed in the Clerk's office of the Circuit Court aforesaid their certain Bill of Exceptions, which is as follows, to wit:-

State of Illinois }  
Rock Island County } ss

In the Circuit Court of said County, at the May Term thereof  
A.D. 1860

3

3



\$2

John Campbell

vs.

Benjamin J. Cobb

John Warner



Be it remembered  
at the above mentioned Term of said  
Court the above entitled cause  
coming on to be heard before a jury,  
the said Plf. Warrantain the issue  
on his part offered and read in  
evidence, without objection, a prom-  
issory note in the words and figures  
following, to wit:-

"\$5000. Rock Island, Ill. June 26<sup>th</sup> 1857

Twelve months after date for value  
received, we Lemuel Andrews as  
principal and John Warner and  
B. J. Cobb as sureties, jointly and  
severally, promise to pay to the order  
of John Campbell Five Thousand  
Dollars, at the Windham County Bank  
Brattleboro', Vermont.

Lemuel Andrews

John Warner

B. J. Cobb.

Said Plf then called as a

13 witness in his behalf George Myster who being sworn testified that Lemuel Andrews one of the makers of said note, departed this life two years ago last April -

Whereupon said Plff. ret'd.

And the said Defendants to maintain the issue on their part thereupon called as a witness, in their behalf, John M. Gould, who being sworn testified, that he was a joint executor with Mrs. Jane Andrews of the estate of Lemuel Andrews, deceased; that he had learned from papers and memoranda, in the handwriting of Lemuel Andrews, and pertaining to the estate of said Andrews, that he, as principal, was owing the Plff. in this suit a note of five thousand and dollars; that he also owed said Plff. another and smaller note, but that he had taken up this last mentioned note -

The said Plff. by his Counsel then and there objected to said testimony - but it was there admitted by the Court -



14

Witness further states that about the 28<sup>th</sup> of June A.D. 1858 he sent by mail a letter addressed to said Plff. at Putney, Vermont, enclosing two drafts drawn by Gould, Dimech & Co on New York, payable to said Plff. one of said drafts for the sum of three hundred dollars, and the other of said drafts for the sum of one hundred dollars, which drafts were duly honored and paid and afterwards taken up by said Gould, Dimech & Co.

Witness was here requested to state what directions he gave in said letter enclosing said drafts as to how the same should be applied and upon what indebtedness.

To which inquiry addressed to said witness by said defendants' Counsel, the said Plff. then & there objected, and thereupon said Court sustained said objection and refused to permit said inquiry to be put to & answered by said Witness, to which decision of said Court the said defendants then & there at the

8  
15 time thereof excepted.-

Said defendants then exhibited and read to the Court the notice of which the following is a copy.

" State of Illinois  
Rock Island County ss

Of the May Term A.D. 1860

of the Circuit Court of said County.

John Campbell

vs

Benjamin J. Cobb &

John Warner

Is the Plff. & his attys

You are hereby notified to produce upon the trial of the above cause all the letters which have been written since April 1<sup>st</sup> 1858 by John M. Gould to the Plff in above suit.

Brook, Reed & Webster  
Defts-attys.

It was admitted that said notice was served on said Plff's attys Wilkinson & Pleasant some two days before this trial, and it was stated to the Court by said Defts.



16 Counsel that the object of the notice was, unless the letter of said witness should be produced at the trial, that said defendant be permitted to prove by said witness the directions contained in and the contents of said letter, as sent <sup>by said witness</sup> to said Plff. &

But the Plff. by his counsel (he not being personally present at the trial and admitted by the defendants to be a resident of the State of Vermont ever since and long before the bringing of this suit) objected to the sufficiency of said notice, for the purpose stated, inasmuch as the said Plaintiff was a non-resident and the Court sustained such objection, and decided said notice to be insufficient, whereupon said Plff. then & there & at the time thereof excepted to the last mentioned decision of said Court

Said defendants by their Counsel then asked said witness should, as follows:—

"Did you as Executor of the

9  
17 "Estate of Lemuel Andrews, deceased  
ascertain that said Andrews in his  
life time was indebted to the plaintiff  
in this suit?"

So which inquiring said witness  
answered "I did - from his papers"

Said Left<sup>th</sup> counsel counsel then  
asked said witness, as follows:-

"State in what way this indebted-  
ness was evidenced?"

So which witness answered:-

"By note as I supposed from his  
(Andrews) papers":-

Both which questions and an-  
swers were objected to by plff<sup>th</sup> counsel  
but admitted by the Court.

Said Left<sup>th</sup> then asked the wit-  
ness the following question:-

"Did you direct in the letter  
enclosing said drafts to said Plff  
that they be applied on a note held  
by said Plff on said Andrews' Estate?"

So which question last after  
said said Plff. by his counsel object-  
ed, and the Court sustained such  
objection, whereupon said Left<sup>th</sup>,



18 then & there at the time of such decision of said Court, excepted.

Cornelius Lynde Jr. a witness in behalf of said Defs being here called and sworn, stated that he had never seen the Plf. write, that he was well acquainted with him, but that he had had a great deal of correspondence by letter with him, backwards & forwards, and in that way was familiar with his hand writing.

Then a letter purporting to be written by said Plf. and addressed to said witness Gould (and hereinafter copied) was shown said witness Lynde, who stated that from his knowledge of plaintiffs handwriting, acquired as stated, he believed said letter to be in the hand writing of Plf.

The witness John M. Gould was here recalled by said Defs and testified that the said letter so shown to said witness Lynde & addressed by the Plf. to him the witness, was received by him in course of mail, in reply to

19 his, the witness' letter, enclosing said draft, addressed to said Ref.

The said letter was read to the jury without objection, and is in the words and figures, following. -

Putney July 13<sup>th</sup> '58

Hon J. Gould  
Rock Island, Ill.

Dear Sir

Yours of 28<sup>th</sup> ult was received, enclosing dfts of Gould & Dimmock on New York - One for \$300 & one for \$100. - for interest &c on L. Andrews and others note, as securities, six months from 26<sup>th</sup> June last - The note is in Windham County Bank with my name endorsed, & it has given me considerable trouble it not having been paid at maturity - I have made arrangements when it continued on terms as at present the full year if you wish.

Respectfully Yours

John Campbell "

Said witness Gould was there asked by dfts counsel, as follows: -



21. further says, that he never knew of Pelf being at Rock Island - that when the note in suit was given, Andrews also gave Pelf. another note - a small one - which was afterwards taken up. Witness further says that he never knew of any other notes or indebtedness from said Andrews & or Andrews and others, to said Pelf.

Said Deft here recalled said witness Gould, and exhibited to him a copy of a letter, copied into a letter book belonging to witness & his partner Dimock, and was asked if the copy then shown him was a true copy of the letter written by him (witness) to Pelf. enclosing said two drafts:

To which witness answered that it was a true copy of said letter.

The copy of said letter so shown said witness Gould is in the words & figures, following, to wit: -

"Copy

"Moine Ill. June 28 1858

Dr. Jas. Campbell

Putney, Vt

Enclose Gould,

Dimock & Co. depts in New York for

22 interest on Samuel Andrews note  
for \$500. for 6 months from June 26<sup>th</sup>  
say \$300. - We also enclose another  
draft on New York for \$100. for additional  
percentage for extension of time: having  
been informed by Judge Lynde that  
you required 4% additional if the  
note was not paid at maturity,  
which we could not do. - Shall prob-  
ably be obliged to keep it another year  
and will send you same amount  
at end of 6 months.

Please enclose the three hun-  
dred dollars on note for interest, and  
send a receipt for same and one for  
the \$100 separate, as I need the receipts  
as vouchers to file in Court.

I am told there was a note  
given for last 6 mo. - interest  
which has not been returned - Please  
send same soon.

Respy Br.  
(Cobm) J. M. Gould  
Executor of Est. of S. Andrews

Said drafts then offered in evidence  
said copy of said letter as sworn to by  
said witness Gould to which the said



23. Plf. by his counsel objected, and the court sustained his said objection last aforesaid and decided that the said copy of said letter should not be read in evidence to the jury; to which decision of said Court the said Defts then & there & at the time thereof excepted.

Then said Plf. moved the Court to rule out of this case and from the consideration of the jury all of the evidence of said witness Gould relating to what he learned from the papers and memoranda of said Andrews in relation to his indebtedness to said Plf. which motion of said Plf. the court sustained and excluded so much of said witness' testimony, as said motion sought to exclude - to which decision of said Court said defts then & there at the time thereof excepted.

The foregoing is all the all the testimony and evidence offered at the trial of said cause -

And on behalf of said defts the Court was requested to instruct the jury, as follows: -

"Deft Instructions"

Refused

1. If the jury believe from the evidence that the plff. in this suit received a payment of six months interest on the note in question, which was for interest for six months after the note in question became due, without the knowledge or consent of the defts then the time of payment in said note was extended by a valid agreement & the securities are discharged & the jury will find for the Deft.

Refused

2. The burden of proving that the securities had notice of the extending of the time of said payment (if they believe it was so extended) is upon the plff. after the Deft. has shown that the time was extended.

Given

3. If the jury believe from the evidence that the Plaintiff in this suit extended the time for the payment of the note in question for a definite period after it became due upon a good & valid consideration without the consent of Defendants & and



25. that the defendants signed said note as sureties - then they should find for the defendant. "

And for refusing to instruct the jury as asked by said depts. the said depts. then & there at the time thereof excepted

And after argument the jury retired to consider of the verdict - and afterwards came into court and returned the following verdict:-

" We the jury find for the Plaintiff and assess the damages at Five Thousand, Five Hundred and ninety Eight dollars (\$5,598)

S. B. Reed

Foreman. "

Whereupon said depts. interposed and filed their motion in writing herein for a new trial of said cause and which is in the words & figures following, to wit:-

State of Illinois }  
Rock Island Canal }  
In the Circuit  
Court of said County at the  
Apl. term thereof A. D. 1860

26, John Campbell  
" "  
Bray J. Cott  
John Warner  
+ al.

And now comes the  
said defendants in the above entitled  
cause and after verdict &c. move  
said Court to grant a new trial  
herein because:—

1. The verdict of the jury is against law  
and evidence adduced at the trial.
2. Because the Court excluded  
from the consideration of the jury  
what was said concerning evidence offered  
in behalf of said Defts. which the  
Court should have admitted.
3. Because the Court refused  
instructions to the jury asked by  
said Defts. at the trial herof.

Prudely, Webster & al  
Atty's for Defts. "

And afterwards said motion  
for a new trial herein coming on to  
be heard, the Court overruled the same



27. and decided that said depts<sup>t</sup> should not have a new trial of said cause - to which decision of said Court, the said depts<sup>t</sup> then & there at the time thereof excepted.

And forasmuch as the matters aforesaid do not appear of record herein, said depts<sup>t</sup> ask that this their Bill of Exceptions be approved, allowed signed & sealed & made part of the record herein:

All which is done in open Court at the term thereof aforesaid.

J. H. Howe  
Judge &c

L. B.

State of Illinois  
Rock Island County <sup>3<sup>rd</sup></sup> I Quincy  
McNeil Clerk of the Circuit  
Court in and for said County, do  
hereby certify that the foregoing is a  
complete & full record of all writs,  
pleadings, motions, orders and  
judgments in the above entitled  
cause, as appears of Record in my  
office.

Witness Quincy McNeil  
Clerk of the said Court, and  
the seal thereof affixed at  
Rock Island, this Sixth

day of December  
in the year of our Lord  
one thousand, Eight hundred  
and fifty-

Quincy McKid

Chick

State of Illinois } In the Supreme Court in and  
Third Grand Division } for said Grand Division at  
the April Term thereof A.D. 1861-

John Warner &  
Benjamin J. Cobb }  
Plfs in Error }  
4  
John Campbell }  
Dft in Error }

And now comes the said  
Plaintiffs in error (Deft below) in the  
above entitled cause, and say that  
in the records and proceedings and  
in the rendition of ~~the~~ judgment  
in said cause, there is manifest  
error in this to-wit:

- 1<sup>st</sup> The Circuit Court erred in excluding  
evidence offered at the trial by the  
defendants below
- 2 The Circuit Court erred in ruling  
out of the case evidence that had  
been admitted at the trial in behalf of



Dependants below upon the motion  
of Plaintiff below

- 3<sup>d</sup> Because the Court said in  
refusing to give instructions  
numbered one (1) and two (2)  
to the jury <sup>at the trial</sup> asked by said Defendants  
below, and now plea in this Court  
4<sup>th</sup> Because the Circuit Court refused  
to give the dependants below a new  
trial of said cause

5 Because the Circuit Court erred  
in rendering judgment for said  
Plaintiffs in the said cause

6 Because the Judge is for more than the cost  
of the notes & interest -

For these and other manifest  
errors the said Plaintiffs in error  
(Depts in the Circuit Court) pray that  
the judgment of said Circuit Court  
may be reversed and a new  
trial granted herein -

J. J. Beardsley  
Atty for Plaintiff  
A. Webster  
atty for Cobb -

In the Supreme Court of the State of Illinois  
of the April Term thereof A.D. 1861.

|                           |   |                      |
|---------------------------|---|----------------------|
| John Campbell             | } | Deft in Error        |
| ad.                       |   | Error to Rock Island |
| John Warner &             |   | County               |
| Benj <sup>n</sup> J. Cobb |   | Plffs in Error.      |

And now comes the  
said John Campbell defendant in Error  
by Wilkinson & Pleasant his attorneys  
and says that in record, judgments  
and proceedings, there is no such  
error as the said plaintiffs in Error  
have alleged, and this he submits  
to this Honorable Court, and asks that  
the said judgments and proceedings  
may in all things be affirmed.

April 18<sup>th</sup> 1861.

Wilkinson & Pleasant.  
attys for deft in Error



10 ( )

In the ~~land~~ Court

