

No. 14606

Supreme Court of Illinois

Bostwick

vs.

Williams

STATE OF ILL. DIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 72

J. W. Middleton & Co., Stationers, 196 Lake St.

~~1863~~

Bostwick

Hammer

Petty

~~1864~~

~~460~~

Be it Remembered that on the 12th day of August A.D. 1862 a precept was filed in the office of the Clerk of the Circuit Court of Warren County Illinois. And thereupon a Summons issued out of said Office which is in the words and figures following to wit.

State of Illinois } ss. The People of the
Warren County } State of Illinois. To The
Sheriff of Warren County
Greeting We Command you to Summon
George L. Portwick if to be found in
your County personally to be and appear
before the Circuit Court of the County of
Warren on the first day of the next term
thereof to be holden at the Court House
in Mornmouth on the fourth Monday in
the month of October next to answer
the Complaint of Archibald Williams
& John H. Williams by the name & style of
A & J H Williams who sue for the use of
Solomon Stranes. of a plea of trespass
on the case on promises to his damage
the sum of One Thousand Dollars as
he says, and have you then and there
this Writ and make return thereon in
what manner you execute the same.
Witness My hand & Seal of our said
Circuit Court and the seal thereof at

2
Mormouth this 12th day of August in the
year of our Lord one Thousand eight
Hundred and sixty two.

(Seal) H^m Laferty clerk

Sheriffs Return

I did on the 12th day of August 1862
serve this writ by reading the same
to the within named George L Postwick
Dated this 12th day of August 1862.

David Turnbull Sheriff
of Warren County

By H Straw Deputy.

Filed Oct 24th 1862 }

H^m Laferty clerk }

Copy of Declaration

State of Illinois } ss. October Term 1862
Warren County } of the Warren County
Circuit Court.

Archibald Williams & John H Williams by
the Name & style of A & J H Williams Plaintiffs
who sue for the use of Solomon Strauss
by Chas Jamison their atty. complain of
George L Postwick Defendant who was
summoned to answer of a plea of tres
pass on the case upon promises. For
that whereas the said Defendant here
tofore took on the twenty seventh day
of December in the year of our Lord

One Thousand Eight Hundred and fifty six at the County of Warren and State of Illinois made his certain Note in writing Commonly called a promissory Note bearing date a certain day and year therein mentioned to wit the day and year last aforesaid and then and there delivered the said Note to said Plaintiffs by which said Note the said defendant by the name and style of Geo L Bortwick then and there promised to pay said Plaintiffs under the name and style of A & J H Williams or bearer on or before the first day of January ad 1859 the sum of five hundred and thirty three dollars and thirty three cents with six per cent Interest from date for value Received. By Reason Whereof and by force of the Statute in such cases made and provided the said defendant then and there became liable to pay the said Plaintiffs the said sum of money in the said Note specified according to the tenor and effect of the said Note and being so liable the said Defendant in consideration thereof. Afterwards to wit on the same day and year and at the place aforesaid undertook and then and there faithfully promised the

11
said plaintiffs well and truly to pay unto
the said Plaintiffs the said sum of mon-
ey in the said Note specified according
to the tenor and effect of the said note.
~~And for that the said defendant hereto~~
~~fore to wit on the day of~~
~~By Reason whereof and by force of the Sta-~~
~~tute in such cases made and provided~~
~~the said defendant there and there become~~
~~liable to pay the said plaintiff the said~~
~~sum of money in the said note specified~~
~~according to the tenor and effect of the~~
~~said note and being so liable the said~~
~~defendant in consideration thereof~~
~~afterwards to wit on the same day and~~
~~year and at the place aforesaid~~
~~entered and there and there faithfully~~
~~promised the said plaintiff well and~~
~~truly to pay unto the said plaintiff~~
~~the said sum of money in the said~~
~~note specified according to the tenor~~
~~and effect of the said note. And whereas~~
also the said defendant afterwards
to wit on the Ninth day of August in
the year of our Lord One Thousand
Eight Hundred and sixty two, at the
place aforesaid was indebted to the
said plaintiffs in the sum of One thousand

Dollars lawful money of the United States of America for money before that time lent and advanced by the said plaintiffs to the said defendant and at the special instance and request of the said defendant. And for other money by the said plaintiffs before that time paid laid out and expended for the said defendant and at the like request of said defendant. And for other money by the said defendant before that time had and received to and for the use of said plaintiffs, and being so indebted the said defendant in consideration thereof afterwards to wit on the same day and year last aforesaid and at the ~~times~~ place aforesaid undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this Count mentioned when the said defendant should be therunto afterwards requested. And whereas also the said defendant afterwards to wit on the same day and year last aforesaid, and at the place aforesaid accounted together with the said plaintiffs of and concerning divers other sums of money before that time

due and owing from the said defendant to the said plaintiffs and then and there being in arrears and unpaid such accounting the said defendant then and there was found to be in arrears and indebted to the said plaintiffs in the further sum of One Thousand Dollars of like lawful money as aforesaid. And being so found in arrears and indebted to said plaintiffs the said defendant in consideration thereof afterwards to wit on the same day and year last aforesaid and at the place aforesaid undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned when the said defendant should be thereunto afterwards requested. Nevertheless the said defendant (although after requested, &c to wit on the day when the said note became due and payable according to the tenor and effect thereof and after time since to wit at the place aforesaid) hath not yet paid the several sums of money above mentioned or any or either of them or any part thereof to the said

plaintiff but to pay the same or any part thereof to the said plaintiff the said defendant hath hitherto altogether refused and still does refuse to the damage of the said plaintiffs of One Thousand Dollars and therefore the said plaintiffs bring suit &c.

Chas Jameson
atly for Plffs.

Copy of Note sued on
\$533. $\frac{33}{100}$ On or before the first day of January 1859 I promise to pay A & J Williams or bearer the sum of five hundred and thirty three dollars and $\frac{33}{100}$ hundredths with six per cent interest from date for value received this 27 day of December 1856.

Geo L Bostrick D.

On the back of said note is the following. "For value Received I assign the within note to Solomon Strauss.

October 13. 1857

W C Gowdy

George L Bostrick D

To A & J H Williams for the use of Solomon Strauss.

Aug 9th 1862. To Money lent and advanced \$1000.

" " " To Money paid, lent and
and expended

\$1000.

" " " To money had and received \$1000.
 " " " To money an account stated \$1000.
 Filed Aug 25th 1862 }
 Wm Laferty clk }

State of Illinois } sct.
 Macon County }

Pleas before the Honorable
 Charles B Lawrence Judge of
 the tenth Judicial Circuit
 of the State of Illinois, at
 a Circuit Court began
 and held at the Court
 House in the City of Monmouth
 in Macon County in the
 State of Illinois on the
 fourth Monday in the month
 of October in the year of
 our Lord One Thousand
 Eight Hundred and sixty
 Two, It being the 27th day
 of said month.

Present the Hon Charles B Lawrence Judge
 James H Stewart States attorney
 David Ironbull Sheriff
 William Laferty clerk

115 A & J H Williams nec of }
 Solomon Strauss. }
 vs } Assaumpit.
 George L Boetwrick

Copy of 1st Plea
 State of Illinois } In Circuit Court
 Hancock County } October Term A.D. 1862

Archibald Williams et al }
 nec of vs }
 George L Boetwrick } And the said
 defendant comes
 and defends the wrong and injury
 whereof and says that he did
 not undertake and promise in
 manner and form as the said plaintiffs
 have in their said Declaration complain-
 ed of him and of this he puts himself
 on the Country &c.

Reed & Strain
 And the Plaintiffs Attys for Deft.
 doth the like

Chas Jameson P A
 Filed Oct 27th 1862 }
 Wm Lafaty c R }

2^d Plea

State of Illinois } In Circuit Court.
 Hancock County } October Term A.D. 1862

Archibald Williams et al }
 vs } And for a further
 George L Botwick } Plea in this beh

alf the said
 defendant to the first Count of said plain-
 tiffs declaration says a ction now &c
 because he says that simultaneously
 with the making and delivering to the
 said plaintiffs by the said defendant
 of the said promissory note in the said
 first Count of said Declaration mentioned
 to wit on the 27th day of December A D
 1856 at the County aforesaid the said
 plaintiffs by the name & style of A & J H
 Williams executed and delivered to the
 said defendant their certain contract
 in writing the date whereof is the day
 and year aforesaid, and which is in
 words and figures as follows. "Whereas
 " V H Marshall as agent for A & J H Williams
 " did agree to sell to George L Botwick
 " the N E 1/4 of sec 27, Township 9 N Range
 " One West for the sum of six ten hundred
 " red dollars. Three dollars of which is
 " paid in hand and said Botwick
 " gave his three several promissory notes
 " One payable April 1st 1857 for the sum
 " of five hundred and thirty three 33/100
 " Dollars. Another payable on the 1st day

" of January 1858 for \$533.³³/₁₀₀ and the
" third payable on the 1st day of January
" 1859 for the \$533.³³/₁₀₀ all payable to V H
" Marshall and drawing interest at the
" rate of six per cent per annum, and
" whereas the said gave his ind
" ividual bond for a deed upon the pay
" ment of the said notes. Therefore this
" Instrument Witnesseth that said Bond
" & and notes are to be cancelled and
" other notes given to the A & J H Williams
" of the same import by the said Bortwick
" And upon the payment to said A & J H
" Williams of said notes with all the
" interest, the said A & J H Williams hereby
" agree to make execute and deliver
" to the said George L Bortwick a good
" and sufficient deed of General Warr
" anty for said premises. It being the
" understanding that said Bortwick
" is to pay all taxes on said premises for
" the year 1856 and all subsequent taxes
" and he is also to take immediate
" possession of the premises. In Witness
" Whereof we have hereunto our hands
" this 27th day of December A.D. 1856.
" A & J H Williams
" Geo L Bortwick "

And the said defendant avers that said note in said Declaration mentioned was made and given by the said defendant for a part of the purchase price of said land in said Contract described, and is the last mentioned note therein and in Consideration of the said agreement of the said plaintiffs by their said Contract to convey the same as aforesaid to the said defendant and for no other purpose intent or Consideration what soever. And the said defendant further avers that he has fully paid the first two notes which were given by him to said plaintiffs as described in said Contract and the said defendant further avers that he did pay the taxes upon said land for the year 1856 and all and subsequent taxes and that he took immediate possession of said land according to the terms of said Contract. And the said defendant further avers that afterwards to wit on the first day of January A.D. 1859 at the County aforesaid he the said defendant was ready and willing to pay said note and ever since the same became due has been willing to pay said note to said

plaintiffs when the said plaintiffs should make execute and deliver to said defendant a good and sufficient deed of said land with Covenants of General Warranty according to the terms of said Contract. Yet the plaintiffs did not nor would execute and deliver and hath not executed and delivered or offered to deliver to the said defendant a good and sufficient deed with Covenants of General Warranty nor any kind of a deed of said land but hath neglected so to do and this the said defendant is ready to verify. Wherefore he prays judgment &c of so much of said declaration as relates to said first Count.

Reed & Strain

Filed Oct 27th 1862 } Defts attys.
 Wm Laferty ckn }

3^d Plea

State of Illinois } ss. In Circuit Court
 Hancock County } October Term A.D. 1862

Archibald Williams et al } and for a further
 use of Solomon Strains } plea in this beh
 or } of the said
 George L Bostwick } defendant by Reed
 and Strain his attorn
 -eys

says action Non est because he says that the said promissory note in the first Count of said plaintiffs declaration mentioned and described was given for the sole and only consideration of the sale by the said plaintiffs to the defendant of the following described land to wit. The North East quarter of section twenty seven in Township Nine North of Range One West of the fourth principal meridian and that at the time of said sale of said land and the making of the said Note in said declaration mentioned the said plaintiffs by the name and style of A & J H Williams made their certain agreement in writing to and with the said defendant a copy of which is hereto attached and marked Exhibit (A) and by which agreement the said plaintiffs by the name and style aforesaid did promise and bind themselves to make execute and deliver to the said defendant a good and sufficient deed of general Warranty for the said premises above described upon the payment to the plaintiffs of said promissory note in the said first Count in Declaration mentioned and two other certain promissory notes in said agreement described. One for the sum of five hundred and thirty three & 33/100 dollars payable

January 1st 1858 with six per cent Interest
per annum, and one for the sum of five
hundred and thirty three (\$331.00) Dollars pay-
able on the first day of April 1857 with
interest at six per cent per annum. Provid-
ed said defendant would pay all taxes
on said premises for the year 1856 and
all subsequent taxes and take immediate
possession of said premises. And the said
defendant avers that he has long
before the Commencement of this suit
paid the two last mentioned notes and
the interest thereon, and said defendant
further avers that he did take immediate
possession of said premises. And the said
defendant further avers that he did before
the Commencement of this suit and before
the said note in said declaration mentioned
became due pay all the taxes upon the said
land for the year 1856 and all subsequent taxes
on said land. And the said defendant
further avers that the said note in the
said Declaration mentioned in the said
first Count thereof, is the only indebtedness
coming from the said defendant to the
said Plaintiffs and is the promises and
undertakings in the other Counts in the
said declaration mentioned.

And the said defendant further avers that

the said plaintiffs have not at any time either before at the time of the Execution of said note and the making of said agreement or at any time since made Executed and Delivered or offered to deliver to the said defendant (although after requested so to do by the said defendant) a good and sufficient deed of said land with Covenants of General Warranty and so the said defendant avers that the said Note in said declaration mentioned does not become due and payable until a good and sufficient deed of General Warranty is Executed and delivered to the said defendant by said plaintiffs for the premises according to the tenor of said agreement. And this he is ready to verify &c. Wherefore he prays Judgment &c.

Reed & Strain
Defts atty.

Exhibit (A)

- " Whereas V H Marshall as agent for A of H
 " Williams did agree to sell to George L Britrick
 " the N E 1/4 of sec 27. Township 9 N Range 20
 " West for the sum of sixteen hundred dollars
 " three dollars of which is paid in hand
 " and said Britrick gave his three several

" Promissory notes. One payable April 1st 1857 for
 " the sum of five hundred and thirty ~~three~~
 " 33/100 dollars. another payable on the 1st day
 " of January 1858 for \$553 ³³/₁₀₀ and the
 " third payable on the 1st day of Janry
 " 1859 for \$533. ³³/₁₀₀ all payable to V H
 " Marshall and drawing interest at the
 " rate of six per cent per annum and
 " Whereas the said gave his indir
 " idual bond for a deed upon payment of
 " the said notes. Therefore this Instrument
 " Witnesseth that the said bond and notes
 " are to be cancelled and other notes
 " given to the said A & J H Williams of
 " the same import by said Bostwick and
 " upon the said payment to the said
 " A & J H Williams of the said notes with all
 " the interest. the said A & J H Williams
 " hereby agree to make execute and
 " deliver unto the said George L Bostwick
 " a good and sufficient deed of General
 " Warranty for the said premises. It being
 " the understanding that said George L
 " Bostwick is to pay all taxes on said
 " premises for the year 1856 and all subse
 " quent taxes. and he is to take immediate
 " possession of the premises. In Witness Whereof
 " We have hereunto our hands this 27th
 " day of December 1856. A & J H Williams
 " George L Bostwick"

(4th Plea)

State of Illinois } In Circuit Court
 Waukegan County } October Term A.D. 1862

A & J H Williams use of } And for a further
 Solomon Stranes } Plea in this behalf
 vs } the said defendant
 George L Bostwick } By Reed & Strain his
 attorney says action now re become
 he says that the said note in the
 1st count of said plaintiffs declaration
 described is the sole and only cause of
 action therein and that all the other
 causes of action therein are the same
 and no other and that the sole and only
 consideration for said note was the said
 Contract of said A & J H Williams which is
 fully and at large set out in the defend
 ants plea by him secondly above plead
 ed and to which reference is hereby
 made for greater certainty. And the said
 defendants avers that he has long
 before the commencement of this suit
 paid the two first notes mentioned in
 said agreement and the interest thereon
 and said defendant further avers that
 he did take immediate possession of said
 premises, and the said defendant further
 avers that he did before the commencement

of this writ and before said note in
said declaration mentioned became
due pay all taxes upon the said land
for the year 1856, and all subsequent
taxes on said land, and said defend-
ant further avers that said note in
said declaration mentioned in the said
first Count thereof is the only indebted-
ness coming from said defendant to
said plaintiffs, and is the promises
and undertakings in the other Counts
in the said Declaration mentioned,
and the said defendant further avers
that the said plaintiffs at the time of the
Execution of said note by the said def-
endant as aforesaid in said declaration
mentioned in the first Count thereof has
not then nor had they at the time the
said note in said Count in said declar-
ation mentioned become due and pay-
able any title to said land, and they could
(not?) make execute and deliver a good
and sufficient deed, with covenants of
General Warranty according to the terms
of said agreement of said plaintiffs
to said defendant, and therefore the
Consideration of said note in said Dec-
laration mentioned in the said first
Count thereof hath wholly failed, and

~~that~~ the said defendant is ready to
verify. and therefore he prays Judge
ment, &c.

Reed and Strain
Filed Oct 27th 1862 } Defts attys
Am Laferty clk }

5th Plea

State of Illinois } In Circuit Court.
Macon County } October Term A.D. 1862

A & J H Williams use } and for a further
of Solomon Strauss } Plea in this behalf
vs } the said defendant
George L Bostrick } by Reed & Strain his
attorneys says Action
Now, &c because he says that the note
in the said 1st Count of said plaintiffs
declaration described is the sole and
only cause of action therein, and that
the other cause of action therein are
the same and no other, and that the
sole and only consideration for said
note was the said Contract of said
A & J H Williams which is fully and at
large set out in the defendants plea
by him secondly above pleaded and
to which reference is hereby made for

greater certainty. And the said defendant
 avers that he has long before the Com-
 mencement of this Suit, paid the two
 first notes in said agreement mentioned
 and the interest thereon. And said def-
 endant further avers that he did
 take immediate possession of said
 premises, and said defendant further
 avers that he did before the Commen-
 cement of this and before the said
 note in said declaration mentioned
 became due, pay all taxes upon the
 said land for the year 1856 and all
 subsequent taxes on said land, and
 said defendant further avers that said
 note in said declaration mentioned
 in the first Count thereof is the only
 indebtedness coming from said def-
 endant to said plaintiffs and is
 the promises and undertakings in all
 the other Counts in said Declaration
 mentioned. And the said defendant
 further avers that said plaintiffs at the
 time of the Execution of said note by
 the said Defendant in said Declaration
 mentioned in said first Count thereof had
 not then nor had they at the time the
 said note in said first Count of said decl-
 aration mentioned become due and pay-
 able

by the said defendant to the said plaintiffs. Nor have they ever had, nor at any time since the same become due and payable any title to said land that they the said plaintiffs could make execute and deliver to the said defendant a good and sufficient deed, with Covenants of General Warranty, to the said defendant nor make any kind of a deed of said premises, and therefore the consideration of said Note in said Declaration mentioned in the first Count thereof, hath wholly failed and this the said defendant is ready to verify. And therefore he prays Judgment &c.

Reed & Strain

Filed Oct 27th 1862 } Defts attys.
Wm Laforty atty }

Replication to Pleas.

State of Illinois } ss. In Circuit Court &
Hansen County } of the October Term AD 1862

Archibald Williams et al }
vs of Solomon Stranes }
George L Bostrick } Assumpsit
And the said Plaintiffs }

by the said defendant to the said plaintiffs. Nor have they ever had, nor at any time since the same become due and payable any title to said land that they the said plaintiffs could make execute and deliver to the said defendant a good and sufficient deed, with Covenants of General Warranty, to the said defendant nor make any kind of a deed of said premises, and therefore the consideration of said Note in said Declaration mentioned in the first Count thereof, hath wholly failed and this the said defendant is ready to verify. And therefore he prays Judgment &c.

Reed & Strain

Filed Oct 27th 1862

Depts attys.

Wm Laforty atty

Replication to Pleas.

State of Illinois } ss. In Circuit Court
Hansen County } of the October Term AD 1862

Archibald Williams et al
vs
of Solomon Stranes

George L Bostrick

} Assumpsit

And the said Plaintiffs

as to the said pleas Secondly by the said Defendant above pleaded say Precludi Non Because they say that the said note in the said Declaration mentioned was not given for part of the purchase price of the said land described in said plea. And of this they put themselves upon the Country &c.

Chas Jameson P A
And the said Defendant doth the like

Reed & Strain D A
And the said Plaintiffs as to the said plea of the said Defendant by him thirdly above pleaded says precludi Non because they say that the said note in the said Declaration mentioned was not given for the sale & only consideration of the sale of said land in said plea mentioned And of this they put themselves upon the Country &c

Chas Jameson P A
And the said defendant doth the like

Reed & Strain D A
And the said Plaintiffs for further Replikation to said second & third pleas say precludi Non because they say that before the Commencement of this suit, they did make and execute, and offered to deliver to said Defendant a good and

sufficient deed to said land in said pleas described, with Covenants of General Warranty. And of this they put themselves upon the Country &c.

Chas Jameson

PA

And the said Defendant doth the like.

Reed & Strain DA

The above Replications

Filed Nov 10th 1862

Wm Laferty CLK }
}

And the said plaintiffs for Replication to said fourth & fifth pleas above pleaded say Procludi Non: because they say that the consideration of the said promissory Note mentioned in said first Count of said Declaration, has not failed as is in said pleas alleged. And of this they put themselves upon the Country &c.

Chas. Jameson PA

And the said Defendant doth the like.

Reed & Strain.

Filed Nov 10th 1862 3

Wm Laferty CLK }
}

And afterwards to wit on the 10th day of November A.D. 1862 the following order was entered upon the Records of

said Court. which is in the words and figures following to wit.

Archibald Williams & John H Williams
by name & style of A & J H Williams
who sue for the use of Solomon Strauss

115

vs

} Assumpit.

George L Boetwick

This day came Plaintiff
by attorney and on his motion leave is
given him to reply double to defendants
pleas herein. Thereupon came the parties
by their attorneys and upon being joined
they waive a jury and for trial submit
this case to the Court. And after hearing
the evidence the Court for the present
takes the case under advisement.

And afterwards to wit on the 14th day
of November A D 1862 the following
Order was entered upon the Records
of said Court. which is in the words
and figures following to wit.

Archibald Williams & John H Williams
by name & style of A & J H Williams, who
sue for the use of Solomon Strauss.

115

vs

} Assumpit

George L Boetwick.

25-

Now on this day again

Came on this case, the Court having heretofore taken the same under advisement, and being now sufficiently advised in the premises, finds for the plaintiffs the sum of (\$721.50) Seven hundred and twenty one Dollars and fifty cents being the amount of Plaintiffs note and the interest thereon. It is therefore considered and ordered by the Court that the said plaintiff have and recover of the said defendant the aforesaid sum of Seven Hundred and twenty one Dollars and fifty cents, the amount so found by the Court aforesaid together with his costs by him in this suit made and may have Execution therefor. And by Consent of the parties the defendant has leave to file Bill of Exceptions herein within thirty days from this date.

"Bill of Exceptions"

State of Illinois } Circuit Court.
 Warren County } October Term AD 1862

Archibald Williams & John H. Williams
 for the use of Solomon Strauss.

vs } assumpsit.
 George L. Bostwick

Be it Remembered that on the trial of the above entitled cause, the plaintiff's to maintain the issues on their part gave in evidence a promissory note in the words and figures following to wit, \$533.33/100. On or before the first day of January 1859 I promise to pay A & J H Williams, or bearer the sum of Five Hundred and thirty three dollars and 33/100 hundredths, with six per cent interest from date for value Received, this 27 day of December 1856.

Geo L Postwick.
On the back of which is the following Endorsement to wit,
"For value Received I assign the within Note to Solomon Strauss, October 13th 1857
W L Goudy

To the reading of which note the defendant by his attorney then and there objected, but the court then and there overruled the said objection and permitted said note to be read in evidence to which ruling of the Court the defendant then and there excepted.

Be it further remembered that on the trial of said cause the defendant to maintain the issues on his part, read in evidence to the Court, which

tried said Cause, a paper writing in
 the Words and figures following to wit.
 "Whereas V H Marshall as agent for A & J
 H ^{Williams} ~~Marshall~~ did agree to sell to George
 L Bostrick the N E 1/4 of sec 27, Township
 9 N. Range One West for the sum of
 sixteen hundred dollars, three dollars of
 which is paid in hand, and said Bos-
 trick gave his three several promissory
 Notes, one payable April 1st 1857 for the
 sum of five hundred and thirty & 33/100
 Dols. Another payable on the 1st day of
 Jan'y 1858 for \$533.³³/100 and the third
 payable on the 1st day of Jan'y 1859 for
 \$533.³³/100 all payable to V H Marshall
 & drawing Interest at the rate of six
 per cent per annum, and whereas the
 said gave his individual bond
 for a Deed upon the payment of the
 said Notes, therefore this Instrument
 Witnesseth that said bond and Notes
 are to be cancelled and other Notes
 given to the said A & J H Williams
 of the same import by the said Bos-
 trick, and upon the payment to the
 said A & J H Williams of said Notes with
 all the Interest, the said A & J H Williams
 hereby agree to make execute & deliver
 unto the said George L Bostrick a good

and sufficient deed of General Warranty for the said premises. It being the understanding that said George L Bostrick is to pay all taxes on said premises for the year 1856, and all subsequent taxes, and he is also to take immediate possession of the premises. In Witness whereof We have hereunto our hands this 27th day of December A.D. 1856,

A & J H Williams
 Geo L Bostrick.

Be it further remembered that the plaintiffs further to maintain the issues on their part offered to read in evidence the following deed, to wit.

This Indenture made this twenty seventh day of December in the year of our Lord One Thousand Eight Hundred and fifty six. Between Archibald Williams and John H Williams parties of the first part and George L Bostrick party of the second part Witnesseth. That the said parties of the first part in consideration of the sum of Sixteen Hundred Dollars paid by the said party of the second part. The Receipt whereof is hereby acknowledged have granted

Bargained and sold and by these presents do Grant Bargain Sell Convey and Confirm unto the said party of the second part his heirs and assigns forever a certain tract of land situated in the County of Warren State of Illinois and described as follows viz. The North East quarter of Section twenty seven (27) in Township Nine (9) North and Range One (1) West of the fourth principal meridian. To Have and To Hold the said premises with all the appurtenances thereto belonging or in anywise appertaining to the only proper use benefit and behoof of the said party of the second part his heirs and assigns forever. And the said parties of the first part Covenant with the said party of the second part his heirs and assigns that they are lawfully seized in fee of the said premises, and have good right to convey the same. That they are free from all incumbrance Except the taxes for the year 1856. And that for the consideration above named the title thereto of to the said party of the second part his heirs and assigns against all lawful claims whatsoever will forever warrant and defend. In Witness whereof the said parties of the first part have hereunto set their hands and seals the day and year

first above written.

Archibald Williams (seal)

John H Williams (seal)

Signed Sealed and Delivered
in presence of the Words "Except the taxes
for the year 1856 in the 4th line from
the bottom were interlined before
signing."

State of Illinois } ss.

Adams County } Be it Remembered that
on this first day of

July in the year one thousand eight
hundred and sixty five. Before me came
personally Archibald Williams & John H
Williams who are both personally known
to the undersigned a Notary Public of
the City of Quincy in said County to be
the identical persons who executed and
whose names are subscribed to the foreg-
ing Deed of Conveyance as having
executed the same and acknowledged
the same to be their voluntary act and
deed for the purposes therein expressed.
And I further certify that the words
"Except the taxes for the year 1856 were in-
terlined in said deed at the time it was
brought before me to be acknowledged.
In Testimony whereof I have hereunto set
my hand and affixed my Notarial seal

at my office at Quincy the day and year
first above written.

Henry Asbury
Notary Public

(Seal)

To the Reading of which, the defendant
by his attorneys then and there objected.
Which Objection was by the Court then
and there overruled, and said deed
was then and there read to the Court,
by the plaintiffs atty to which ruling
of the Court. The defendant by his attor-
ney then and there excepted.

Be it further remembered that
the plaintiffs further to maintain the
issues on their part called as a Witness
Charles Jameson, who being duly sworn
testified in substance as follows to wit
That on the day of the Commencement
of this suit, and before said suit was
Commenced he met said defendant
Boothrick in Monmouth Warren County
Illinois. And as the attorney of the plain-
tiffs tendered to him the aforesaid
deed from A & J H Williams, and that he
also presented the aforesaid notorizing
the one upon which suit is brought
in this cause, and demanded payment
of the same, that said Boothrick

replied that he had not the money with which to pay said note, and was therefore unable to pay the same, unless the plff would take property, but made no objection to the deed tendered. Witness further testified that said deed was tendered before and at the time payment of said note was demanded; that said Bostrick went with said Witness to the office of the Clerk of the above entitled Court and remained there until Witness procured a Summons, and had the same served by the Sheriff upon said Bostrick. Be it further Remembered that the defendant further to maintain the issues on his part called as a Witness Newton Barr, who being duly sworn testified in substance that he was acquainted personally with the said Archibald Williams and John H Williams, that they and each of them were reputed to be and he believed were, married men on the 1st day of July A.D 1862 and for some time previous thereto.

Be it further Remembered that the plaintiffs further to maintain the issues on their part again called the said Witness Charles Jamieson who

further testified that at the time when he tendered said deed to said defendant Bostrick he defendant read the said deed but made no objection thereto on account of the wives of said Archibald & John H Williams not having released their dower in the deed in the premises described therein. That he defendant, said nothing on the subject, except in substance that he was unable to pay said note, to which testimony the defendant then and there objected but the objection was overruled by the Court, and the defendant then and there excepted to said ruling.

And here both parties rested, and no other or further evidence was given in the cause, and thereupon the Court found the issues aforesaid for the plaintiffs & gave judgement in favor of the plaintiff for the use aforesaid, against the defendant for the amount of said note and interest and costs of suit to be taxed, to which the defendant then and there excepted Archibald Williams & John H Williams by name & style of A & J H Williams who sue for the use of Solomon Strauss,

115. George L Bostwick, Assumpit

Now on this day again
came on this cause, the Court having
heretofore taken the same under advis-
ment, and being now sufficiently advis-
ed in the premises, find for the plaintiffs
the sum of (\$721.50) Seven Hundred and twenty
one Dollars and fifty cents, being the amount
of plaintiffs Note and the interest thereon.
It is therefore considered and ordered by
the Court that the said plaintiff have
and recover of the said defendant the
aforesaid sum of Seven Hundred and
twenty one Dollars and fifty cents, the am-
ount so found by the Court aforesaid, to-
gether with his costs by him in this suit
made, and may have Execution therefor.
And by Consent of the parties the defend-
ant has leave to file bill of Exceptions
herein, within thirty days from this
date.

Be it further Remembered that the def-
endant then and there entered a Motion
in arrest of Judgment, and for a new
trial of said cause, which motions
were then and there overruled by the
Court, to which ruling of the Court the
defendant then and there excepted, and

39
prayed for ~~thirty~~ days within which to
prepare and present his bill of Exceptions
to the Hon^{ble} B Lawrence Judge of said Court,
for signature. which is allowed.

And now on this 8th day of
December A.D 1862 the defendant
presents this his Bill of Exceptions to
the said Judge of said Court, and prays
that the same may be signed and
sealed by the said Judge. which
is done accordingly.

B B Lawrence (Jus)

Filed Dec 11th 1862 }
Wm Laferty clk }

State of Illinois
Warren County

I Wm Laferty Clerk of the
Circuit Court in and for said County do
hereby Certify that the above and foregoing is
a true Copy of the record and proceedings in
the foregoing case as the same appears from
the files and records of my office.

In Testimony whereof I have hereunto
set my hand and affixed the Seal of
our said Circuit Court at my office in
Morrison this 15th day of December A.
1862

Wm Laferty Clerk

Fee \$7²⁰ paid by deft,

And now the said defendant comes,
and signs upon the foregoing record
the following errors:

- 1st That the Court gave judgment for
the plaintiffs when the judgment
ought by law to have been for
the defendant;
- 2nd The Court erred in permitting the
plffs. to read the note sued on,
in evidence;
- 3rd The Court erred in permitting
the plaintiffs to read in evidence
said deed from A & J. B. Williams
to the defendant;
- 4th The Court erred in permitting said
Witness J. J. J. to testify as set
forth in said Record;
- 5th The Court erred in overru-
ling the defendants motion for a
new trial, and in granting judgment
with ~~costs~~ ^{for the} ~~defendant~~ ^{plaintiff},
Plad & Strain
Defts, Attys.

257 72-1461
George L. Postwick
Plaintiff in Error

vs.
Archibald Williams

et al. for use of
Solomon Strauss
Error to Warner County

Record

Filed May 1. 1867.
J. H. Leland
Clerk.

James Strauss
vs. C. F. Warner

Plf. at 252

And the said Defendants in
Error come and say there is no
such errors as above assigned
and this they pray may be enquired
of by the Court re

W. C. Gandy &
Charles Jameson
attys for Defs in Error

257 72-1461
George L. Postwick
Plaintiff in Error

vs.
Archibald Williams

et al. for use of
Solomon Strauss
Error to Warner County

Record

Filed May 1. 1867.
J. H. Leland
clerk.

James Strauss
C. F. Wheeler

Att. at 252

And the said Defendants in
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such errors as above assigned
and this they pray may be enquired
of by the Court re

W. C. Gandy &
Charles Jameson
attys for Defs in Error

State of Illinois
Warren County } ss

On this 25th day of
April A.D., 1863, personally appeared
before me the undersigned a Notary
Public in and for said County -
Jesse Riggs, who being duly ^{sworn} on oath
says that he is acquainted with the
pecuniary circumstances of Cleme-
ent Pierce, the security on the writ
of error bond in the case of So-
loman Strauf & Archibald Williams
& John R. Williams who sue for the
use of Soloman Strauf vs. George
L. Bostwick, in the Warren County
Circuit Court, Illinois, and that
the said Clement Pierce is worth
above all indebtedness and expen-
ses at least the sum of four
thousand dollars as affiant veri-
ly believes.

Jesse Riggs
Subscribed and sworn
to this 25th day of April
A.D., 1863,

James Strain
Notary Public,



257 72 146
Lieut. L. Bartwick
Off. in error
vs.

Arch. & Williams et al.

Off. in error

Off. justification of
Security

Filed May 4th 1883
L. Leland
Clerk



State of Illinois & Circuit Court
Warren County, ss. October Term 1862.

Archibald Williams & John H.
Williams for the use of
Solomon Stramp

vs. $\frac{1}{2}$ Assumpsit,
George L. Bastwick.

Brief and argument
submitted by Reed & Strain on
the part of the Defendant.

This is an
action of assumpsit brought by
the plaintiffs to recover upon
a promissory note given by the
Defendant to the plaintiffs.

The pleas set
up, amongst other things, that
the note was given by the defend-
ant, for a part of the purchase
price of land sold by the plain-
tiffs to the defendant, and that
the plaintiffs had executed to
the defendant a bond conditioned
for the making of a ^{conveyance} ~~deed~~ upon
the payment of the purchase price
"by a good and sufficient deed
of general warranty," and aver
that the plaintiffs will not execute

nor tender to the defendant any such deed, before bringing suit. Ifue was joined on the plea, and on the trial, it appeared in evidence that, before the suit was commenced, a deed was tendered by the plaintiffs to the defendant, but which contained no release of power by the wives of the plaintiffs; the defendant having proved that each of them had wives at the date of the deed and time of its tender.

For the purpose of obviating this objection to the deed the plaintiffs proved by the witness Jameson that he made the tender of the deed as the attorney of the plaintiffs, and that the defendant made no objection to the deed on that account; that he said nothing whatever on that point, but simply said he was unable to pay the note unless the plaintiffs would take property in payment.

And the points that we make are as follows—

1st
"

A deed executed by the plaintiff alone, without any release of power by their wives, would not satisfy the terms of their contract, for "a good and sufficient deed of general warranty,

2nd
" The silence of the defendant, at the time of the tender of the deed, did not amount to a waiver of the objection to the deed on that account,

3rd
"

It it should be held, that such silence did amount to a waiver, it would be neither more nor less than a subsequent, implied, parol agreement, dispensing with one of the beneficial terms of the written, sealed contract, in regard to real estate, and so void under "the Statute of Frauds,"

4th
"

If such subsequent parol waiver, were otherwise unobjectionable, it would be void for want of a sufficient consideration to

Support it, and would be only a
medium spectrum.
5th
"

The bond for a deed, being
a sealed, executory contract, could
not, by the rule of the common
law, and independently of the
Statute of Frauds, be varied by a
parol executory contract.

In support of the first propo-
sition, we cite from an almost
uniform current of authorities
the following: Prescott v. Trimmer
41 Mass. 129, in which the Court
say "every right to, or interest in
"the land granted, to the diminution
"than of the value of the land,
"but consistent with the passing
"of the fee of it by the convey-
"ance, must be deemed in law,
"an incumbrance. Of this na-
"ture is a claim for dower."
Also Shearer v. Ranger 22 Pick.
447, where the same doctrine is
unqualifiedly reaffirmed; also
Porter v. Noyes, 2 Greenl. 26.
Jones v. Gardner 10 Johns, 266, and

cases, cited in foot note (a)
Ritner v Brangh, 1 Jones (8a) 137,
Folk v. Sampster, 3 Strobbart 81,
Clark v. ~~Leirer~~ Seirer, 7 Watts, 110,
Hawel on cov. for Title, 136, 7, 8, 9
Hilliard on Vendors, note (a) p. 44
2 vol.

In the case of *Pomeroy* or
Bury 14 Barb. 418 cited in the
above note, the Court say "after
" our elaborate and careful ex-
" amination of the authorities
" we arrive at the conclusion
" that when a man buys a
" piece of land, and contracts
" for a conveyance in general
" terms, the presumption is that
" he expects the title, and the
" grantor should be required
" to give him a perfect title".
We take it to be the law then
that the tender of a deed in this
case containing no release of
dower, was not a compliance
with the terms of the bond, and
was a performance of that which,
by the bringing of a suit, became
a condition precedent on the
part of the plaintiff.

On the second point, it would seem to be almost useless to cite authorities. The argument in favor of such silence amounting to a waiver of the objection to the deed, reduced to words is simply this: Although the defendant by the terms of his contract was entitled to a good and sufficient deed of general warranty, containing, of course a proper relinquishment of power, yet by his silence when the deed was tendered to him, but not accepted by him, the law implies, that he then and there for a sufficient consideration agreed to such a change of the contract, under seal, as that a tender of the deed offered him, would satisfy the terms of the contract. Now the tender of such a deed as that tendered, would not satisfy the original contract, unless changed to the extent above indicated.

The change of the contract would be none the less a change because it was

implied, instead of being express.

The objections to such a position, are 1st

There appears to be no consideration for the ^{implied} parol agreement to change the writing under seal,

2nd. At common law, the contract could not rest partly in writing and partly in parol.

3rd

An executory contract in writing under seal, cannot be varied by a parol executory contract, and this, at common law, and independently of the Statute of Frauds,

13, Wend, 76, 1 Sugden on Vendors, 11.

4th Such a parol change would be in direct contravention of the provision of the Statute of Frauds requiring all contracts in regard to real estate to be in writing, 15 Johnston 200,

Lord Hardwick in Camteps of Rutland case 5 C. 234 said that "an agreement to waive a purchase contract is as much

An agreement concerning lands
as the original contract"

And in Sug-
den on Vendors, vol 1, Marginal
Page 171, it is said "A waiver is
An agreement ~~concerning lands~~
~~as much as the original contract~~
made upon a contract or sale
of lands viz; an agreement to
relinquish the benefit of such
an agreement,"

In 1 Hilliard on Vendors p,
175, & cases there cited, it is held
that a purchaser who in his
written contract stipulates for
a good title, cannot be requir-
ed to complete the purchase
upon a defective title, on the
ground of a verbal waiver of
such stipulation.

We take it then
to settle upon authority &
principle, that the silence
of the defendant was not
amount to a legal waiver; and
that the Court erred in receiv-
ing proof of such implied
verbal waiver,

255-72-146
George L. Postwick
Plff in error
OS:

Archibald Williams

Et al. for use of
Solomon Straus

Error to Warren Court

Argument on motion
for Supersedeas

Filed May 4th 1863
L. Leland
Clerk

Jayus Strain
~~and G. H. Bull~~
~~Plffs in error~~
Atty Plff in error

State of Illinois 2³⁸
Supreme Court & Third Grand
division April
Term A.D. 1864 -

George L. Bostwick
Plff. in error

vs.
Archibald Williams & Co.
Defts in error

Error & Warren

E. F. Bull being

duly sworn on oath says he is informed
and believes Arch^d Williams one of the
defts in error departed this life since the
last term of this Court for said division
Subscribed & sworn to before me

this 20th day of April 1864
L. Leland Clerk
J. W. Rice Deputy

E. F. Bull

Suggestions vs: mo. for rule on
Plffs in error to file abstracts -
1st Said mo. ought not to prevail until
appearance admits or heirs of deceased
has been entered

2nd If such app. is now entered it makes
new parties to the record and carries
the case over this term of Court

Bull & Nash

for Plff in Error

No. 72 146

Geo. L. Bostwick
Pff in error

Archibald Williams
et al. dfts in error

Aff. & suggestion
apt. no. for rule to
file abstr

Filed April 20. 1884
L. Leland
Clerk

Bull & Nash
for Pff in Error

Know all Men by these Presents, THAT WE, *George L. Post-
wick and Clement Pierce*

are held and firmly bound unto *Archibald Williams & John H.
Williams who sue for the use of Solomon Straup,*
in the penal sum of *one Thousand dollars,*

for the payment of which, well and truly to be made, we
bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents.
Witness our hands and seals, this *29th* day of *January* Anno Domini,
one thousand eight hundred and *fifty Three*

The Condition of the above Obligation is such: THAT WHEREAS, *Archibald Will-
iams & John H. Williams who sue for the use of Solomon
Straup*

did, on the *fourteenth* day of *November*, 18*62*, in the Circuit Court,
within and for the County of *Warren* and State of Illinois, recover a Judgment against
the above bounden *George L. Postwick*
for the sum of *seven hundred and twenty one dollars
and fifty cents,*

taxes at \$6.85-
and costs of suit, from which judgment of said Circuit Court, the said *George L.
Postwick*

has ~~prayed for and obtained an appeal~~ *a writ of error* to the Supreme Court of said State. *operating
as a supersedeas*

Now if the said *George L. Postwick*

shall duly prosecute *his* *writ of error* said ~~appeal~~ with effect, and shall moreover pay the amount of
the judgment, costs, interest and damages, rendered and to be rendered against *him*
in case the said judgment shall be affirmed in the said Supreme Court, then the above obligation to be null
and void, otherwise to remain in full force and virtue.

Geo. L. Postwick



Clement Pierce



^{256 72 146}
D. & J. A. Williams
for use &c

^{at}
George L. Postwick

Went of error Bond

^{256 72 146}
Geo. L. Postwick
Pff. in error

^{vs:}
Archd. Williams, et al
Went in error

Superior Bond

Filed May 4th 1863

L. Leland
clerk

State of Illinois Circuit Court
Warren County, October Term thereof
A.D., 1862.

Archibald Williams & John W. Williams
vs who sue for the use of
Solomon Trump,

vs ^{as} ^{of} ^{the} ^{firm} ^{of} ^{the} ^{city} ^{of} ^{St. Louis,}
George L. Postwick.

Abstract of ~~Bill of~~
~~of copy~~ ^{Record} -

Page 1, Receipts, dated Aug 12, 1862.

Page 2, Summons, dated Aug 12, 1862

Page 2, Sheriff's return, dated Aug 12
1862, "Served by reading" &c,

Pages 2, 3, 4,
& 5 Declaration; Special Count on
Promissory note, by debt to the
Williams

Pages 5, 6, 7, Common counts,
& copy of note,

Page 8, Narr. filed
Aug 25, 1862, and Placita.

Page 9, 1st
Plea, general issue,

Page, 10, 11, 12, 13.
2nd " Plea, that the only consideration
for the note sued on, was land sold

by A. & J. H. Williams to deft. & agreement to convey by good and sufficient deed, & that said A. & J. H. Williams have not conveyed nor offered to convey,

Pages 13, 14, 15, 16

3rd Plea, Same as above; setting out copy of contract between A. & J. H. Williams & deft., & that they have not conveyed, nor offered to convey, and aver that the note was not to become due until they had conveyed, or offered to convey,

Pages 16, 17. Exhibit (A)

copy of contract, between A. & J. H. Williams & deft.,

Pages 18, 19, 20,

4th Plea, Same as above, & that the said A. & J. H. Williams could not make a good deed, & so the consideration has wholly failed,

Pages 21, 22, 23, 3rd

Plea, the same as above & that said A. & J. H. Williams never had any title, & could not convey, & so the consideration has wholly failed,

Page 23.4 Replication to 2nd Plea,
that note was not given for
price of land,

Page 24. Replication
to 3rd Plea, that the note was
and only consideration of the
note, was not the sale of land,

Page 24. further rep-
lication to 3rd & 4th Pleas, Tender
of deed before suit brought,

Page 24. Replication
to 5th Plea, that consideration
of note had not failed,

Page 25. leave
to reply double: trial,

Page 26. judg-
ment for Plff. of \$721.50 & costs,

Pages 26. to 36,
inclusive. Bill of exceptions,
in which, on page 26, is a copy of
the note sued on, on page 27, 28
copy of contract between A. & J. R.
Williams & deft; on page 29, 30 & 31,
a deed from A. & J. R. Williams to
deft; page 32, 3. testimony of Charles
Jameson plff's witness, to prove a
tender of the deed; 33. testimony of
Newton Barr deft's, to prove that
A. & J. R. Williams were each

146
A. D. Williams
for use of Solomon
Strunk at
George L. Bostwick

Abstract of
Record.

Filed May 4th 1823
L. Leland

George L. Bostwick
Plaintiff in error
vs;
Archibald Williams

State for use of
Solomon Strunk
Error & Warm Court
Abstract of Record

James
~~Strunk~~
18th Bull
Atty. for P. & in error

married men at the date of the
execution of the deed tendered;
page 24. That deft. made no
objection to the deed, on account
of the want of the signatures of
the wives of A & J. Williams,
page 25; Motion in arrest, & for
new trial, overruled.

STATE OF ILLINOIS,
SUPREME COURT,

ss.

The People of the State of Illinois,

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

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Court of Warren County, before the Judge thereof, between Archibald Williams and John H. Williams for the use of Solomon Strauss

plaintiffs and George L. Bostwick

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

..... as we are informed by his complaint..... 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 judgments 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 4th day of May in the Year of Our Lord One Thousand Eight Hundred and Sixty Three

L. Leland
Clerk of the Supreme Court.
J. M. Rice Deputy

72 1416
George L. Bostonick

No.

vs.

Archibald Williams

WRIT OF ERROR.

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

L. Leland

Clerk.

W. D. M. Deputy

FILED

May 4th

A. D. 1863

L. Leland

Clerk.

George L. Bastwick
vs
Archibald Williams } Error to
John H. Williams for } Warren.
use of Solomon Strauss }

Motion for rule on Off in Error
to file Abstracts.

Points for Defendants.

1. Rule X requires the plff in error
within twenty days after the record
is filed, to file an abstract.

In this case the record was
filed in May '03.

It is the duty of the plff to file
the abstract with regard to the
fact of service of Sci. fa.

The plff is now in default
& a short rule should be en-
tered.

It is suggested in answer to
the motion that Archibald Wil-
liams has died since the last
term & the death suggested on
the 19th inst. From these premi-
ses it is insisted that the legal

representatives shall be made parties & the case continued to obtain service; and further that under Rule VI the appearance cannot be entered so as to compel the plff to file abstracts & proceed to a hearing.

The suit was brought in the Court below ^{in the name of} Archibald & John H. Williams for the use of Solomon Strauss, on a note executed by plff in Error to A. & J. H. Williams.

§9 Chap Actement, Rev Laws 1845, provides "if there are two or more defendants in any action and one or more of them die before final judgment, such action shall not be abated thereby, but x x such death shall be suggested on the record, and the action may proceed ^{against} ~~at~~ the ~~suit of~~ the surviving defendant or defendants as the case may require, in all respects as if such persons had been originally sole parties to the suit."

But independent of the Statute, where a note is made to A. & B. and B dies, the suit must be brought in the name of A, the Survivor, and he cannot be joined with the Administrator of B.

As if a note is executed by A. & B. and B. dies, the survivor cannot be joined with the administrator as defendants.

From these rules we conclude that this suit is to proceed as if the suit below had been commenced in the name of John H. Williams for the use of Solomon Strauss.

§ 13 Chap 8 Statute provides for a case where one of the nominal plaintiff dies & allows the suit to proceed in the ~~part~~ name of the party for whose use the suit was brought.

W. C. Condy
for Defts.

George L. Bastwick

my

Archibald Williams
& John H. Williams

Points for Depts
on Mo. to file
Abstract