

12428

No. _____

Supreme Court of Illinois

Baldwin

vs.

Hut^c~~x~~inson et al

71641  7

1
LaSalle County June Term 1857
State of Illinois
LaSalle County

These proceedings and judgment
were and taken in and before the LaSalle County Court
in the State of Illinois at the Court House in Ottawa,
in said County of LaSalle of June Term thereof to wit,
of the first day of June A.D. 1857. And of the Independence
of the United States of America, the Eighty first

It is remembered that herefore to wit on the 29th
day of May 1857 a summons was issued out of the
Clerks office of the said Court in the words and
figures following viz

The People of the State of Illinois
To our Sheriff of our County of LaSalle Greeting
We Command you that you summon

Werran Radwin if we
shall be found in your County. personally to be and
appear in our LaSalle County Court before our Judge
thereof on the first day of the next Term of said
Court to be held at the Court House in Ottawa, on
the first Monday in June next at Ten O'Clock in
the forenoon then and there to answer unto George
C. Banks and William^{sr} Hutchinson partners
under style of Banks and Hutchinson, in a
plea of trespass in the case upon promises to his
damage of Firs Shumard, Dollars — And have
you then show this writ and the manner in which
You shall have executed the same

In witness Whereof We have caused the Seal of
our said Court to be hereunto affixed and attested
by Amos W. Raymond, our Clerk thereof at
Ottawa 29th day of May 1857

Amos W. Raymond Clerk
C. S. Denick Secy.

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Which summons was returned with the following
Enclosure thereon

Viewed by reading to the within named
Herman Palawin, May 21st 1857
G. S. Williams Sheriff

Filed May 23rd 1857

M. Raymond Clerk
District Court

And on the said 21st day of May A.D. 1857 a declaration
was filed with the Clerk of said Court which was
in the words and figures following to wit

State of Illinois
La Salle County Court Term of June Term 1857

George O. Banks and William M. Hutchinson
partners by the firm name and style of "Banks and
Hutchinson" Plaintiffs in this suit by Chas. Blanchard
their Attorney, Complain of Herman Palawin Def-
endant in this suit in a plea of Assumpsit. For
that whereas the said Defendant ow to wit the
~~twentieth~~^{thirtieth} day of May A.D. 1856, at to wit LaSalle
in the County of LaSalle and State of Illinois, made
his certain promissory Note in writing and delivered
the same to one Henry J. Miller and thereby prom-
ised to pay to the said Henry J. Miller by the
name of H. J. Miller or order three Hundred and
Twenty four Dollars twelve months after the date
thereof at the Office of Defendant with six per cent
interest, which period hath now elapsed, and the
said Henry J. Miller, then and there endorsed
the said note to the Plaintiffs, whereof the Defendant
then and there had notice and there in consideration
of the promises promised the Plaintiffs by the names
of their firm of "Banks & Hutchinson" to pay them
the amount of said note. And whereas also the

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defendant on to wit the seventeenth day of May
A.D. 1857 at to wit the County and State aforesaid
was indebted to the Plaintiffs in the sum of Five
Hundred Dollars for the price and value of Goods
wares and Merchandise, before that time purchased
sold and delivered by the Plaintiffs to the defen-
dant at his request. And in the sum of Five
hundred dollars for money then and there paid by
the Plaintiffs for the use of the defendant at his request
And the defendants afterwards to wit on the day
and Year last aforesaid at the County aforesaid in
consideration of the promises respectively promised
the Plaintiffs to pay them the several Moneys herein
above mentioned on request. Yet the defendant
hath disregarded his last mentioned promises and
hath paid any of the said money or any part thereof
to the damage of the Plaintiffs of Five Hundred
Dollars - Therefore they bring their suit.

Chas. Blanchard
Sff. Atty.

Copy of note sued on
#324⁰⁰

LaSalle Mo May 13th 1856

Twelve months after date I promise to pay
to H. J. Miller or Order Three Hundred & twenty
four Dollars at my Office in LaSalle with interest
at six per cent - Value received

(Signed)

Norman Baldwin

Endorsed "Pay to the order of"

Banks & Hutchinson

Henry J. Miller

Afterwards to wit on the 2nd day of June 1857 the
same being one of the days of said June Term of said
County Court the following Pleas were filed with
the Clerk Viz

4 v Norman Baldwin
 as
 George O. Banks &
 Wm. M. Hutchinson

In the LaSalle County Court
 At the June Term thereof
 A.D. 1857

And the said Norman Baldwin by his Attorneys
 Jenkins & Blanchard comes and defends &c. and
 says that he did not promise the said George O. Banks
 and William M. Hutchinson as in their declaration
 alleged - And of this he puts himself upon the
 Country

By Jenkins & Blanchard
 Deft. Attys.

And Plaintiff with the like
 Chas. Blanchard Plff. Atty.

And for a further plea in his behalf the said Defendant
 says that all of the said supposed sums of money men-
 tioned in said Plaintiffs declaration has reference to
 and is in fact only one supposed sum of money - and
 that is the same sum of Money mentioned in
 said supposed promissory note declared on in
 the first Count of said Plaintiffs declaration
 And the said Defendant says that if any such
 promissory note as declared on in said first
 Count in said declaration was executed and
 delivered by him as is charged against him
 that it was so executed and delivered to the
 said Henry P. Miller for the consideration and
 the sole and only consideration. That he the
 said Henry P. Miller would then and there
 convey by deed and indefeasible title in fee
 simple to him the said Defendant the following
 described Real Estate to wit: The South fractional
 half of Section number twenty three in Township
 number thirty three North Range Number one
 West of the third principal Meridian

Also the South East Quarter of Section number
Twenty Two in the same Township and Range
Containing Fifty Eight acres more or Less and
being in the County of Tipton in the State
of Illinois, Also the South East fractional Quarter
of Section number Six and South West fractional
Quarter Section No. 2, in Township No. 15
North Range No. 11, East of the fourth Pri-
ncipal Meridian. Also the North East quarter
of Section number five in same Township and
Range Except thirty seven acres in the South East
Corner of the last mentioned tract being in
the County of Bureau in said State, Containing
in all One Hundred and Seventy three Acres and
nineteen hundredths of an acre more or Less,
And Timber and Wood sufficient to make
Twenty four Thousand Cords of Wood, the
said Henry J. Miller then and there repre-
senting to the said Defendant that the Timber
and Wood was then and there to be found on
said Tract of Land herebefore described
And the said Defendant now claiming turn
on or sell such Land or wood, which fact
was then and there well known to the said
Henry J. Miller and he the said Defendant
relying wholly upon the good faith of the
said Henry J. Miller and the representations
made by him as aforesaid as being true
did then and there execute and deliver said note
if any such note was so executed and delivered
to the said Henry J. Miller, And the said Def-
endant avers that he gave said note if any
such was given to the said Henry J. Miller
by reason of the representations aforesaid made
to him by the said Miller, And which said
representations the said Defendant avers were
not true in this - that there was not then nor has
there been at any time since Timber and wood

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sufficient to make twenty four hundred Cordas of
Wood - but on the Contrary all the Timber and
Wood on said Tracts of Land at that time or
at any time since was not sufficient to make one
hundred hundred Cordas of Wood, And the defendant
says that the representations so made to him by
the said Henry J. Miller as to the amount or
Quantity of Timber and wood on said Tract of
Land were false and fraudulently made to deceive this
defendant And that this defendant has been
deceived and defrauded by them and that there
was no consideration for the giving of said
Promissory note declared on if any such note
was so given. And said defendant says that at
the time when said supposed note was transpired
by the said Henry J. Miller to the Plaintiffs in this
suit they had notice of the facts hereunto set forth
And all of these several matters the said defendant
is ready to verify wherefore he prays judgement
for his costs - And for a further plea in this behalf
The said defendant by leave of the Court first took
and obtained a writ and says that all of the
several sums of Money claimed in the Plaintiffs
declaration as being due and owing by this de-
fendant to the Plaintiffs has reference to but one
sum of Money and is the same mentioned
in the said supposed promissory note
declared on in the first Count of said Plaintiffs
declaration and not other and different sums
And as to the supposed sum of Money mentioned
in the said supposed promissory note aforesaid
and as to said supposed promissory note
defendant says that if any such note was so
executed and delivered by him to the said
Henry J. Miller as alleged it was so executed
and delivered to the said Henry J. Miller
in consideration that he the said Henry J. Miller

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moved them and there conveyed by good Title
unto this defendant Real Estate, which should
have Timber enough thereon to make when
cut and piled up Twenty four Hundred
Cords of Wood. And defendant says that
said Henry J. Miller did not then and there
nor has he at any time thereafter up to the time
of this suit being commenced conveyed unto
this defendant Real Estate which had Timber
enough thereon to make when cut and piled
up Twenty four Hundred Cords of Wood but
on the contrary the said defendant says that
all the Timber on all the Land conveyed by
the said Henry J. Miller to this defendant would
not exceed when cut and piled up fifteen
Hundred Cords of all which the said plaintiff
at the time when said supposed note was so
assigned or delivered to them had notice all
of which the said defendant is ready to verify

And for a further plea in his behalf, the said defendant for a further plea in this behalf comes and
says that ^{all} of the several sums of money claimed
in the several Counts of the said Plaintiffs declaration has reference to and is in fact only
one supposed indebtedness and is the same
sum of money claimed to be due as is mentioned
in the supposed promissory Note declared
on in the first Count of said Plaintiffs declaration
And as to said supposed promissory Note
the said defendant says that if any such Note
was so executed and delivered to the said Henry
J. Miller as is declared on in said Plaintiffs
declaration - it was so executed and delivered
by this defendant to the said Henry J. Miller
Under the following circumstances

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On or about the thirtieth day of May A.D. Eighteen
Hundred and fifty six the said Henry J. Miller
came to this defendant at the City of La Salle
in the County of La Salle in the State of Illinois
and requested this defendant to purchase of
him the said Miller certain Real Estate which
he the said Miller then and there represented
to this defendant had on it Timber and Wood
sufficient to make whin cut and piled up
Twenty four Hundred Cords - And the de-
fendant avers that he was wholly unacquainted
with the said Real Estate and the
Timber and Wood thereon which facts the
said Miller then and there well knew and
the said defendant avers that the said Miller
was then and there well acquainted with the
said Land and the Timber and Wood thereon
And relying upon the representations aforesaid
made by the said Miller as being true - he the
said defendant did then and there purchase
of the said Miller the Real Estate aforesaid
and the Timber and Wood thereon for which
he agreed to pay to the said Miller Henry J.
Miller the sum of Eighteen Hundred and
forty Eight Dollars on the terms following to
wit - The said Miller was to take certain Notes
for the payment of One thousand Dollars of
the above sum - he the said Coates being then
and there indebted to this Defendant in an
amount greater than the said sum of One
thousand Dollars and this Defendant then
and there paid to the said Miller the sum
of Two Hundred Dollars in Cash - leaving
Six Hundred and forty Eight Dollars
to be paid which said last mentioned sum
it was agreed this defendant should give

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his two Promissory Notes for - Each being for
Three Hundred and twenty four Dollars
and made payable one in Six and the
other in twelve Months after date - payable
to the said Henry J. Miller or Order at the
Office of this Defendant. And this Defendant
avows that all of the said Sum of Eighteen
Hundred and forty eight Dollars has
been paid and discharged by this Defendant
Except the said promissory note last above
mentioned which was to become due twelve
Months after date - And this Defendant
avows that if the said Plaintiffs have any such
Note as declared on in the first Count in
their said declaration it is the said Note
given by this Defendant to the said Miller
due twelve Months after date as aforesaid
And this Defendant says that the representation
aforesaid made by the said Miller as to the
Quantity of Timber and Wood on said Land
were not true in this that there was not
Timber and Wood sufficient on said Land
to amount to more than Eighteen Hundred
Cords when cut and piled up - And that
this Defendant was induced by said mis-
representations and not by other ~~considerations~~
considerations moving him to execute
and deliver unto the said Miller the said note
And this Defendant avows that that at the time
and place when and where the said Note was
on was endorsed by the said Miller to the Plaintiffs
in this Suit they the said Plaintiffs had notice of all
the foregoing facts - All of which the said
Defendant is ready to verify

John P. H. H. H.
Attorney for Def.

10 Afterwards to wit on the 5th day of June 1857
a return was filed in the words and figures
following to wit:

George O. Pauls &
William W. Hutchinson

vs
Norman Paulson

In LaSalle County Court
June Term thereof A.D. 1857

And the said Plaintiffs as to the said second -
third - and fourth pleas of the said defendant
by him above pleaded, say that the same and
the matters and things therein contained in
manner and form as the same are above pleaded
and set forth are not sufficient in Law to bar
or preclude them the said Plaintiffs from
pursuing or maintaining their aforesaid
action thereof against the said Defendant
and that the said Plaintiffs are not bound
by Law to answer the same

And for causes of
Dismissal Defendant shows
1st That it is uncertain from said second plea
whether the Land therein mentioned was
conveyed or not by Henry J. Miller to
Defendant

2nd That the said third and fourth pleas
are defective in not describing with certainty
the exact Estate therein conveyed to - And
that all of said pleas are in other respects
uncertain and insufficient

Chas. Hancock
Atty for Plaintiff

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Afterwards to wit on the 8th day of June
1857 a rejoinder in demurrer was filed in
the records and figures following

Norman Baldwin
and
George O. Pankes &
William Hutchinson
In the District Court
at the June Term
A.D. 1857

And now comes the said defendant Norman
Baldwin by his Attorneys J. P. Pankes & Blanchard
and says that the said several pleas pleaded
by the said defendant in this cause and the
matters therein contained in manner and
form as stated are sufficient in Law and
that the several Counts in said Plaintiffs
declaration are not sufficient in Law
And this he is ready to verify wherefore
he prays judgement for his Costs
J. P. Pankes & Blanchard
Atty's for Deft.

Afterwards to wit on the 8th day of June 1857
being one the days of said June Term of said
County Court the following proceedings
were had and entered of record to wit

George O. Pankes &
William N. Hutchinson partners &c.
vs
Norman Baldwin
Assumpsit

This day comes the
Plaintiffs by O. Blanchard their Attorneys
and Defendant by J. P. Pankes and Blanchard
his Attorneys whereupon the defendants by
their said Attorneys file a demurrer to the

Second third and fourth Pleas of Defendants
 filed herein which demurrer after hearing
 the arguments of Counsel is sustained by
 the Court whereupon the defendant by
 his Attorneys files a demurrer to the Dec-
 laration of Plaintiffs filed herein.
 Whereupon the said ^{said} Plaintiffs by their
 Attorneys withdraw the Common Count
 in said Declaration. Whereupon by agree-
 ment of parties a Jury is waived and the
 Cause submitted to the Court for trial.
 And after hearing the evidence and
 argument of Counsel the Court finds
 the issues herein for the Plaintiffs and
 assess their damages at Three Thousand
 and Twenty five Dollars. Whereupon
 the defendant by his said Attorneys
 enters his motion herein for a new trial
 which motion after hearing the argument
 of Counsel is denied by the Court to
 which ruling of the Court the defendant
 by his said Attorneys then and then excepted.
 It is therefore considered by the Court
 that said Plaintiffs have and recover of
 said defendant the said sum of
 Three Thousand and Twenty five
 dollars for their damages and also
 their costs and charges by them herein
 expended and that they have execution
 therefor. Whereupon the defendant
 by his Attorneys prays an Apprais-
 ement which is allowed on his entering
 into a Bond in the sum of Five Thou-
 sand Dollars with H. B. Chapman
 as security and by agreement of parties
 the said Bond is to be filed within thirty
 days from the adjournment of Court

Afterwards to wit on the 11th day of June
1857 the same being one of the days of the
June Term of said Court a Bill of Exceptions
was filed with the Clerk of said Court in
the words and figures following to wit

Norman Baldwin }
ad } Trial had in the
George O. Paul & } Tazewell County Court
William Hutchinson } Term of A.D. 1857

It is remembered that on this Eighth
day of June A.D. Eighteen Hundred and
fifty seven this cause being called and
it appearing to the Court that the Plaintiff
had filed a Demurer to the second third
and fourth Pleas of the defendant and
a joinder in demurer by Defendant the
Court proceeded to hear said cause on
the said demurer and after hearing
heard the Attorney for the Plaintiff and
defendant the Court did then and there
decide to sustain the said demurer
to the said second third and fourth
pleas of the defendant. And thereupon
the plaintiff by leave of the Court with-
drew the common Count, in said Plaintiff
declaration to which decision of the
said Court in sustaining said dem-
urer to the said second third and
fourth pleas the said defendant by
his Attorneys then and there excepted
And the said defendant Electing to
abide by his pleas aforesaid the Court
by Consent of parties Plaintiff and
Defendant proceeded then and there
to hear said cause on the special
count in said declaration and the

14 the plea of the general issue being the first plea
found by the defendant. Whereupon the Plaintiffs
to maintain the issue upon their part offered
in Evidence a promissory Note in the words &
figures following viz.

Sa. Sale. Tex. May 15th 1856

\$324.⁰⁰

Three months after date I promise to pay
to W. J. Miller or Order. Three Hundred and
Twenty four Dollars at my office in Sa. Sale
with Interest at six per cent. Value received

Signed Herman Kalamien
Endorsed

Pay to the order of
Banker & Hutchinson
Henry J. Miller

Without proving or
offering or attempting to prove or to introduce
any Testimony tending to prove the handwriting
of the Endorsers or assignors of said Note or in
any manner the genuineness of the Endorsement
on the back of said note to the introduction of
which note in evidence as aforesaid the said
defendant by his Attorneys then and there
Objected. The Court then and there overruled
the objection and admitted said note in
evidence, to which decision of the said Court
in receiving and admitting said note in
evidence the said defendant by his Attorneys
did then and there except, And the foregoing
being all the evidence offered in said cause
The Court did then and there adjudge and
consider the case and did then and there
find in favor of the said Plaintiffs in the
sum of Three Hundred and twenty five
Dollars and costs to which finding of the

Court the finding said Defendant by his
 Attorneys did then and there except the said
 Defendant did then and there enter a
 motion for a New Trial for the reasons following
 to wit. That the Court erred in sustaining
 Plaintiffs Demur, to the said second third
 and fourth pleas of the defendant. That
 the Court Erred in not sustaining the said
 Demur to the first count in said Plaintiffs
 declaration for the reasons that there is no
 breach of promise alleged to or in said first
 Count, and being in other respects defe-
 ctive in substance and in form. The Court
 Erred in admitting the Note aforesaid in
 Evidence on the Trial without any proof
 or evidence as to the handwriting or gen-
 uineness of the endorsement or assignment
 on the back of said Note and for other
 reasons, And the Court after hearing and
 considering said Motion did overrule said
 Motion to which decision of the Court
 the said defendant by his Attorneys ^{said} then
 and there except. The said Defendant
 did then and there enter a Motion in
 arrest of Judgement for the reasons follow-
 ing to wit. That the said first Count in
 said Plaintiffs declaration is defective
 in substance in this that it does not show
 that there had been any Breach of the promise
 by the defendant to pay the money sued for
 And that it does not show but what it has
 been paid And for other reasons apparent upon
 the face of the Record, And the Court after
 considering said Motion did then and there
 overrule said Motion and render a final
 Judgement against the Defendant for the

the said sum of Three Hundred Dollars and Twenty five Cents and Cost To which decision of the Court in overruling said motion and reversing the judgment aforesaid the said defendant by his Attorneys did then and there except And prayed an Appeal to the Supreme Court And this his Bill of Exceptions may be approved signed sealed and Granted to be made a part of the Record in this Cause Which is done this 11th day of June A.D. 1857

J. C. Chapman Clerk
Judge of the Supreme Court

Afterwards to wit on the 15th day of June 1857 An Appeal Bond was filed with the Clerk of said Court in the words and figures following to wit

Know all men by these presents that we Hernan Baldwin and Henry R. Chapman are held and firmly bound unto George O. Banks and William Hutchinson in the penal sum of Five Hundred Dollars lawful money of the United States for the payment of which well and truly to make we bind ourselves our Heirs and Administrators jointly severally and firmly by these presents

Witness our hands and seals this 15th day of June A.D. 1857 The consideration of the above obligation is such that Whereas the said George O. Banks and William Hutchinson did on the Eighth day of June A.D. Eighteen Hundred and fifty seven before the Judge

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County Court recover a judgement against
the above named Herman Baldwin
for the sum of Three Hundred And twenty
five dollars and Costs to be taxed from
which judgement the said Herman
Baldwin has taken an Appeal to the
Supreme of the State of Illinois. Now
if the said Herman Baldwin shall prosecute
his Appeal with Effect and shall pay
whatever judgement may be rendered by
the Court upon dismissal or trial of
said Appeal then the above obligation
to be void otherwise to remain in full
force and Effect

Herman Baldwin, Plaintiff
V. P. Chapman, Defendant

State of Illinois
Lancaster County

O Philo Linnell, Clerk
of the County Court in & for said County
do hereby Certify that the above and
forgoing is a true and complete
copy of all the pleadings and orders
of Court in said Cause as the same
appears of record and on file in
my office

Witness my hand and
the Seal of said Court at
Mound this 7 day of
April 1858
Philo Linnell, Clerk

ems fus

49 folio 4.90

Griff Seal 35

\$5.25 = Pd. of Jenkins & Blanchard

Thomas Baldwin Appellant

vs

- George O Bunkers &

William A Hutchinson appellees

And The said appellant comes now &c and says there are sundry and diverse manifest errors and insufficiencies in the foregoing record - And among the many the said appellant assigns the following specially

1st That the Court below erred in sustaining Plaintiffs demurrer to the said second, third, and fourth pleas of the defendant - and in not sustaining said demurrer to said Plaintiffs Declaration -

2^d The said Court Erred in ~~refusing to grant a new trial~~ admitting the said note in evidence on the ground of variance in date from the one described in the Declaration & for other reasons apparent on the face of the record

3^d ~~That~~

3^d The Court Erred in refusing to grant a new trial on account of the errors heretofore assigned and for other reasons apparent upon the face of the Record

And the said Appellant ~~prays~~ asks the Court to reverse the Judgement rendered and

remains the cause for further proceed-
ings

By Jenkins & Blanchard
his attys

And now comes the Appelles of John
Blanchard their counsel and say that there
is not error in the proceedings in the above
entitled cause and this they pray may be
inquired of by the Court

John Blanchard
Counsel for Appelles

Henry Baldwin
Appellant
vs 248

Barker & Hutchinson
Appellors

Filed April 22, 1858
in Clerk's
Office

Jenkins & Blanchard
Appellants Attys

STATE OF ILLINOIS—SUPREME COURT.
THIRD GRAND DIVISION.

Page 1 HEMAN BALDWIN, *Appellant*,
vs.
GEORGE O. BANKS and
WILLIAM N. HUTCHINSON, *Appellees*. } *Appeal from LaSalle
County Court.*

ABSTRACT.

This was an action of assumpsit, brought at the June term of the LaSalle county court, on a promissory note made by Baldwin and payable to one Henry J. Miller, and by Miller assigned to Banks and Hutchinson, (plaintiffs below,) before due.

Summons issued May, 1857, returnable to June term, A. D. 1857, LaSalle county court. Served, by reading to defendant, on 21st May, 1857.

Declaration filed on the 20th May, A. D. 1857, as follows, to wit:

[3]

STATE OF ILLINOIS, }
LaSALLE COUNTY, } Court thereof, June Term, 1857.

Page 2 “George O. Banks and William N. Hutchinson, partners, by the firm, name and style of ‘Banks & Hutchinson,’ plaintiffs in this suit, by Chas. Blanchard, their attorney, complain of Heman Baldwin, defendant in this suit, in a plea of assumpsit: For that, whereas, the said defendant on, to wit, the twentieth day of May, 1856, at, to wit, LaSalle, in the county of LaSalle and state of Illinois, made his certain promissory note in writing, and delivered the same to one Henry J. Miller, and thereby promised to pay to the said Henry J. Miller, by the name of H. J. Miller, or order, three hundred and twenty-four dollars, twelve months after the date thereof, at the office of defendant, with six per cent. interest, which period hath now elapsed; and the said Henry J. Miller then and there endorsed the said note to the plaintiffs, whereof the defendant then and there had notice, and there, in consideration of the premises, promised the plaintiffs, by the names of their firm of ‘Banks & Hutchinson,’ to pay them the amount of said note.

Page 3 “And whereas, also, the defendant on, to wit, the seventeenth day of May, A. D. 1857, at, to wit, the county and state aforesaid, was indebted to the plaintiffs in the sum of five hundred dollars, for the price and value

of goods, wares and merchandize before that time bargained, sold and delivered by the plaintiffs to the defendant at his request, and in the sum of five hundred dollars for money then and there paid by the plaintiffs, for the use of the defendant, at his request.

"And the defendant, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, in consideration of the premises, respectfully promised the plaintiffs to pay them the several money herein above mentioned, on request. Yet the defendant hath disregarded his last mentioned promises, and hath paid any of the said money, or any part thereof, to the damage of the plaintiffs, of five hundred dollars. Therefore they bring this suit.

CHA'S BLANCHARD, *Plffs Att'y.*"

[4]

Copy of the note sued on.

\$324.00

LaSALLE, ILL., May 13th, 1856.

Twelve months after date I promise to pay to H. J. Miller, or order, three hundred and twenty-four dollars, at my office in LaSalle, with interest at six per cent., value received.

Signed:

HEMAN BALDWIN.

End: "Pay to the order of Banks & Hutchinson.

"HENRY J. MILLER."

[5]

On the 2d June, and during the June term aforesaid, the defendant pleaded the general issue, and three special pleas; the special pleas being as follows, to wit:

[6]

And for a further plea in his behalf, the said defendant says that all of the said supposed sums of money mentioned in said plaintiffs' declaration, has reference to, and is in fact, only one supposed sum of money, and that is the same sum of money mentioned in said supposed promissory note, declared on in the first count of said plaintiffs' declaration; and the said defendant says that if any such promissory note as declared on in said first count in said declaration, was executed and delivered by him as is charged against him, that it was so executed and delivered to the said Henry J. Miller for the consideration, and the sole and only consideration, that he, the said Henry J. Miller, would then and there convey, by a good and indefeasible title in fee simple, to him, the said defendant, the following described real estate, to wit: The south fractional half of section number twenty-three, in township number thirty-three north, range number one west of the third principal meridian; also, the southeast quarter of section number twenty-two, in the same township and range, containing fifty-eight acres, more or less, and being in the county of Putnam, in the state of Illinois; also the southeast fractional quarter of section number two, and southwest fractional quarter section number two, in township No. 15 north, range No. 11 east of the fourth principal meridian; also, the northeast quarter of section number five, in same township and range, except thirty-seven acres in the southeast corner of the last mentioned tract, being in the county of Bureau, in said state, containing in all one hundred and seventy-three acres and nineteen hundredths of an acre, more or less, and timber and wood sufficient to make twenty-four hundred cords of wood; he, the said Henry J. Miller then and there representing

to the said defendant that the timber and wood were then and there to be found on said tracts of land heretofore described. And the said defendant never having been on or seen such land or wood — which fact was then and there well known to the said Henry J. Miller — and he, the said defendant, relying wholly upon the good faith of the said Henry J. Miller, and the representations made by him as aforesaid as being true, did then and there execute and deliver said note, if any such note was so executed and delivered, to the said Henry J. Miller. And the said defendant avers, that he gave the said note, if any such note was given, to the said Henry J. Miller, by reason of the representations aforesaid, made to him by the said Miller; and which said representations the said defendant avers were not true in this: that there was not then, nor has there been at any time since, timber and wood sufficient to make twenty-four hundred cords of wood, but on the contrary, all the timber and wood on said tracts of land at that time, or at any time since, was not sufficient to make over sixteen hundred cords of wood. And the defendant says that the representations so made to him by the said Henry J. Miller, as to the amount or quantity of timber and wood on said tract of land, were false, and fraudulently made to deceive this defendant, and that this defendant has been deceived and defrauded by them, and that there never was any consideration for the giving of said promissory note declared on, if any such note was so given. And said defendant says, that at the time when said supposed note was transferred by the said Henry J. Miller to the plaintiffs in this suit, they had notice of the facts hereabove set forth. And all of these several matters said defendant is ready to verify. Wherefore he prays judgment for his costs.

And for a further plea in this behalf, the said defendant, by leave of the court first had and obtained, comes and says, that all of the several sums of money claimed in the plaintiffs' declaration, as being due and owing by this defendant to the plaintiffs, has reference to but one sum of money, and is the sum mentioned in the said supposed promissory note declared on in the first count of said plaintiffs' declaration, and not other and different sums. And as to the supposed sum of money mentioned in the said supposed promissory note aforesaid, and as to said supposed promissory note, defendant says, that if any such note was so executed and delivered by him to the said Henry J. Miller, as alleged, it was so executed and delivered to the said Henry J. Miller in consideration that he, the said Henry J. Miller, would then and there convey, by good title, unto this defendant, real estate which should have timber enough thereon to make, when cut and piled up, twenty-four hundred cords of wood. And defendant says, that said Henry J. Miller did not then and there, nor has he at any time thereafter up to the time of this suit being commenced, conveyed unto this defendant real estate which had timber enough thereon to make, when cut and piled up, twenty-four hundred cords of wood; but, on the contrary, the said defendant says, that all the timber on all the land conveyed by the said Henry J. Miller to this defendant, would not exceed, when cut and piled up, sixteen hundred cords; of all which the said plaintiffs, at the time when said supposed note was so assigned or endorsed to them, had notice. All of which the said defendant is ready to verify.

And for a further plea in his behalf, the said defendant, for a further plea in this behalf, comes and says, that all of the several sums of money claimed in the several counts of the said plaintiffs' declaration, has refer-

ence to, and is in fact, only one supposed indebtedness, and is the same sum of money claimed to be due as is mentioned in the supposed promissory note declared on in the first count of said plaintiffs' declaration; and as to said supposed promissory note, the said defendant says, that if any such note was so executed and delivered to the said Henry J. Miller, as is declared on in said plaintiffs' declaration, it was so executed and delivered by this defendant to the said Henry J. Miller, under the following circumstances:

page 8 On or about the thirteenth day of May, A. D. 1856, the said Henry J. Miller came to this defendant at the city of LaSalle, in the state of Illinois, and requested this defendant to purchase of him, the said Miller, certain real estate which he, the said Miller, then and there represented to this defendant had on it timber and wood sufficient to make, when cut and piled up, twenty-four hundred cords. And the defendant avers that he was wholly unacquainted with the said real estate, and the timber and wood thereon, which facts the said Miller then and there well knew. And the said defendant avers that the said Miller was, then and there, well acquainted with the said land and the timber and wood thereon; and relying upon the representations aforesaid, made by the said Miller, as being true, he, the said defendant, did then and there purchase of the said Miller the real estate aforesaid, and the timber and wood thereon, for which he agreed to pay to the said Henry J. Miller, the sum of eighteen hundred and forty-eight dollars, on the terms following, to wit: The said Miller was to take one John L. Coates for the payment of one thousand dollars of the above sum, he, the said Coates, being then and there indebted to this defendant in an amount greater than the said sum of one thousand dollars, and this defendant then and there paid to the said Miller the sum of two hundred dollars in cash, leaving six hundred and forty-eight dollars to be paid, which said last mentioned sum it was agreed this defendant page 9 should give his two promissory notes for, each being for three hundred and twenty-four dollars, and made payable one in six and the other in twelve months after date, payable to the said Henry J. Miller, or order, at the office of this defendant. And this defendant avers that all of said sum of eighteen hundred and forty-eight dollars has been paid and discharged by this defendant, except the said promissory note last above mentioned, which was to become due twelve months after date. And this defendant avers that if the said plaintiffs have any such note as declared on in the first count of their said declaration, it is the said note given by this defendant to the said Miller, due twelve months after date as aforesaid. And this defendant says, that the representations aforesaid, made by the said Miller, as to the quantity of timber and wood on said land, were not true in this, that there was not timber and wood sufficient on said land to amount to more than sixteen hundred cords when cut and piled up; and that this defendant was induced by said misrepresentations, and not by other considerations moving him thereto, to execute and deliver unto the said Miller the said note. And this defendant avers, that at the time and place when and where the said note sued on was endorsed by the said Miller to the plaintiffs in this suit, they, the said plaintiffs, had notice of all the foregoing facts. All of which the said defendant is ready to verify.

JENKINS & BLANCHARD,
Att'ys for Defendant.

On the 5th June during the term aforesaid, a demurrer was filed by

plaintiff's attorney to the second, third and fourth special pleas, as follows, to wit:

[7]

GEORGE O. BANKS and
WILLIAM N. HUTCHINSON,
vs.
HEMAN BALDWIN.

} In La Salle county Court,
June Term thereof, A. D. 1857.

1) And the said plaintiffs as to the said second, third and fourth pleas of the said defendant by him above pleaded, say that the same and the matters and things therein contained in manner and form as the same on above pleaded and set forth are not sufficient in law to bar or preclude them the said plaintiffs from having or maintaining their aforesaid action thereof against the said defendant and that the said plaintiffs are not bound by law to answer the same.

And for cause of demurrer defendant shows:

1st. That it is uncertain from said second plea whether the land therein mentioned was conveyed or not by Henry J. Miller, defendant.

2d. That the said third and fourth pleas are defective in not describing with certainty the real estate therein referred to, and that all of said pleas are in other respects uncertain and insufficient.

CHARLES BLANCHARD, Att'y for Plaintiff.

[8]

On the 8th of June during the term aforesaid, a joinder in demurrer was filed as follows, to wit:

[9]

HEMAN BALDWIN
ads
GEORGE O. BANKS and
WILLIAM N. HUTCHINSON.

} In the La Salle county Court,
At the June Term, A. D. 1857,

11 And now comes the said defendant Heman Baldwin, by his Attorneys, Jenkins & Blanchard and says that the said several pleas pleaded by the said defendant in this cause and the matters therein contained in manner and form as stated are sufficient in law, and that the several counts in said plaintiffs declaration are not sufficient in law and this he is ready to verify wherefore he prays judgment for his costs.

JENKINS & BLANCHARD, Att'ys for Defendant.

[10]

11 And afterwards and on the same eighth day of June a trial was had on the demur filed by plaintiff to the second third and fourth pleas of defendant, which resulted in sustaining the said demur to all of said pleas and plaintiffs had leave of the court to withdraw the common counts in his declaration—which he did, and the said defendant electing to abide by his 12 pleas as aforesaid, the Court by consent of parties (a jury being waived) proceeded to try the cause on the special count in the declaration and the general issue filed thereto as aforesaid. And the plaintiffs at said trial offered in evidence the said note declared on in their said declaration, to the introduction of which note the defendant objected. The Court overruled said objection and admitted said note to be read in evidence. And afterwards on the said eighth day of June the Court did find on the issue

Page 12

aforesaid in favor of the plaintiffs in the sum of three hundred and twenty-five dollars and costs. And afterwards on the same day last aforesaid the defendant entered a motion for a new trial which motion was overruled by the Court, and afterwards on the same day last aforesaid the defendant entered a motion in arrest of judgment which motion was overruled by the Court and final judgment against the defendant was rendered by the Court in the said sum of three hundred and twenty-five dollars and costs.

Page 12

And on the said eighth day of June, the said defendant prayed an appeal to the supreme court.

Page 13

The defendant filed his bill of exceptions on the 11th day of June, 1858, the same being one of the days of said term.

JENKINS & BLANCHARD, for Appellant.

CHA'S BLANCHARD, for Appellees.

Page 13

On the 8 day of June aforesaid the Court (below) Sustained the Demurrer to the 2^d & 4th Pleas.

Page 13

The Appellee withdrew his common counts. In the said decision of the Court (below) the Appellant then and there excepted.

Page 14

The Appellant elected to abide by his pleas and a trial was had by the Court (below) - a jury being waived on the special count of the Declaration and the plea of the general issue thereto.

Page 14

The Appellee offered a note in evidence which was objected to by Appellant - Objection overruled by the Court (below) & the Appellant then and there excepted.

Page 14

The Court (below) found for the appellees in the sum of \$325. To which finding of the Court (below) the Appellant then and there excepted.

Page 14

The Appellant entered a motion for a new trial which motion was overruled by the Court (below) and the Appellant then and there excepted.

Page 14

The Appellant entered a motion in arrest of judgment which was overruled by the Court (below) and the Appellant then and there excepted. And final judgment was rendered by the Court (below).

Page 15

The Appellant prayed an appeal to the Supreme Court on said 8th day of June 1857.

Page 15

Appellant filed his appeal bond June 15 1857.

Jenkins & Blanchard
for Appellant
Chas Blanchard
for Appellees

Errors Assigned

102 That the Court below erred in sustaining Plaintiffs demurs to the said second Third & fourth Pleas of the defendant and in not sustaining said demurs to said Plaintiffs declaration

2^d The Court erred in refusing to grant a new trial on account of the errors ~~heretofore~~ assigned and for other reasons apparent upon the face of the record

СЛУЖЪ ВЪИШНОВАДЪ' ДОК. ВЪИШНОВАДЪ'
ТЕЖИНА ВЪ ВЪИШНОВАДЪ' ДОК. ВЪИШНОВАДЪ'

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Filed May 14 1838
L. Lockwood
Clerk

L. Beckwith

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Herman Balchman
 vs 248
 Banks & Hutchinson

State of Illinois Supreme Court

Herman Baldwin }
vs } Appellant
Banks & Hutchinson }
County Court
Appellees }

Argument submitted by the Appellant

This is an action of Assumpsit, ^{brought} by Banks & Hutchinson on a promissory note made by Herman Baldwin and payable to W. F. Miller and by Miller assigned to Banks & Hutchinson

To the declaration Baldwin filed first a Plea of General issue & second three special pleas.

The special pleas no. two three & four set up a defence of a failure of consideration of the note. A demurrer to said special pleas was sustained by the Court below. And the Defendant Baldwin abided by his Pleas. A trial was then had by the Court upon the special count in the declaration and the general issue filed thereto. Motions for a new trial & in arrest of judgment were severally made and overruled.

The principal error relied on in this case is the sustaining by the Court of the Demurrer to the 2^d & 4th Pleas of Baldwin.

All of these pleas allege notice, to Banks & Hutchinson the assignees of said note at the time of the transfer of the same to them, of all the facts alleged in the pleas.

Consequently the Defendant under our Statute could set up the same defence against the payment of said note on an action brought by Banks & Hutchinson ~~assignees~~, as he could have done had the action been brought by Miller himself as the original payee of the note Banks & Hutchinson being endorseees with notice no matter at what period the said note was assigned to Banks & Hutchinson.

The question then is does either of the 2^d 3^d or 4th Pleas contain a good ground of Defence?

But before determining that question another must be considered to wit the sufficiency of the declaration

The law is well settled that a demurrer opens up the whole record and extends back to the first defect in pleading consequently if the declaration is bad the Court below erred in sustaining the demurrer to said pleas. The declaration contains no sufficient breach. It says "the defendant hath disregarded his last mentioned promises and hath paid any of the said money or any part thereof" &c. Now since the plaintiff with drew his common counts leaving only one special count of the declaration. the words "the defendant hath disregarded his last mentioned promises" which refer exclusively to the common counts necessarily were withdrawn or are simply unmeaning & form no part of the breach of said declaration.

Hence the words of the breach are "the defendant hath paid any of the said money or any part thereof" which cannot amount to a breach of the debt's promise.

The Breach is an essential part of the cause of action and it should be assigned in the words of the

~~of the~~ contract, either negatively or affirmatively, or in words which are co-extensively with the import and effect of it.

1 Chitty Pleas. 332. Borden vs Manning
2 N Hamp. 289

In the second place even admitting the declaration to be good the second third and fourth Pleas though ^{perhaps} not technically drawn come directly within the provisions of the Revised Statutes of 1845 chapter 73 § 10 and the spirit and meaning of the decisions ^{of this} court from its earliest organization and particularly in Tyler vs Young et al 2 Seem. 447 and in Owings vs Thompson 3 Seem. 502

In these cases the principle is recognized and maintained that a failure of consideration is a proper defence to an action on a note given for the purchase of land where fraudulent representations meant to deceive were

made as to the quantity or quality of the land at the time the note was given

The language of this Court after reviewing the cases of Snyder vs Tompkins 13 Bruce 268, and of Miller vs Howell 1 Seam. 489 and Pickland vs Lat et al 2 Seam 13, & Myers vs Aiken 2 Seam 452, is "The principle clearly deducible from this uniform train of decisions of this Court, from its first organization to the present time is, that it is not a sufficient defence to a note or bond that it was given for the purchase of land, and that the purchaser acquired no title or that there was a defect or misrepresentation as to the quantity quality or location. It is no matter what representations were made at the time of purchase, so they were made in good faith and the transaction was not tainted with fraud, where there is no express agreement on the subject, And this is in perfect accordance with most of the decisions in England and our Sister States"

The Second ~~Third~~ ~~Plan~~ ~~to~~ alleges that fraudulent representation as to the land and timber were made at the time they were purchased that said representations

were meant to deceive and, ^{that} the defendant
Baldwin, ^{was} deceived and defrauded thereby
And that the plaintiffs had notice &c.
Which brings the defence directly within the
statute 1845 Ch. 73 § 10 and the
principle laid down in *Owings vs Thompson*
& *Mulford vs Shepherd* 1 Scam 583.

The Second and Third, ^{fourth} Pleas allege ~~that~~
in effect that an agreement was made
for the purchase, ^{of} a quantity of land and
timber for 2400 cords of wood, for which the note
was given, and that the wood never passed
hence a failure of consideration &c.

The case of *Tyler vs Young* 2 Scam 414
is similar to this except ~~that~~ the defence
then set up was a failure of title
to the land.

For what was this note given?

For a quantity of land with timber sufficient
for 2400 cords of wood. The moving consideration
was the land with 2400 cords of wood thereon.
The land was received; it passed. The timber
was not received and timber for 800 cords
of wood failed to pass. The delivery was
not made, ^{although fraudulently represented to have been} Hence the promise was a naked
one & without consideration, ^{as to this note} The real
consideration was the wood and ~~not~~
the land to be conveyed at the time of the making
of the note and not

an agreement to convey. Davis vs M'Vickers
11 Ell. 387 The promise was not made
for a promise but for the land and
timber. As to the timber a large portion
of it failed. It was incumbent on the holder
of the note with notice to supply the full
quantity of timber sufficient to make
2400 Cords of wood, before demanding
payment of said note. It was a mutual
and dependent contract, by which Boldwin
was to pay the full consideration in case
the property bargained for, ~~at~~ ^{had} passed.
The holder of the note must have ~~made~~
performed his part of the contract by
delivering the full quantity of timber before
he could demand payment.
Tay vs Hunt 5 Pickering 888

It has never been denied that where there was
fraud in the contract itself, at the time of the
execution of a note it is a good defence
to an action on the note brought by the
payee or an endorsee with notice when a
failure of consideration ensued.
The principle was distinctly recognized in
Mulford vs Shepherd 1 Scam 583. The 2^d
8^o Pleas. both allege fraud in the contract
itself which constitutes a good bar to the
action

Can it be said that a vendor ~~can~~ ^{of land} at the time
of a sale, can make fraudulent representations
as to its quality or value with a view to deceive
& defraud the purchaser and knowing the
purchaser to be ignorant of the facts and yet
that the purchaser has no redress? Baldwin
had a right to rely upon the statements
of Miller as to the quantity of timber on
the land purchased and if said statements
were made in good faith then the doctrine
of Caveat emptor applies; But when fraudu-
lently made for the purpose of defrauding Baldwin
then Baldwin has a right to interpose the plea
of fraud against any action to recover the
purchase price; if the timber on the
land purchased was deficient in quantity
and a failure of consideration had ensued
which defence is set up in the second
and third pleas.

Hence we conclude that the Court erred
in sustaining the demurrer to the said pleas
and thereby deprive Baldwin of his defence

Jenkins & Blanchard
for appellant

248-182
German & Baldwin

Banks & Hutchinson

Filed June 11 1878
Jenkins & Blanchard
for appellant

248 = 182

182

Hermann Ball

vs

Sutcher & Her

april

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1858

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Present

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