

14408

No. \_\_\_\_\_

# Supreme Court of Illinois

Dietrich

---

vs.

Barnard

---

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division

17  
No. 66

Dietrich  
vs  
Barnard

1863

14408

Bloomington Ills  
April 27 63

Ireland Esq  
Ck. H. Attama.  
Dear Sir

66 The case of Dutrich vs  
A S of Barnard. has been  
settled and the case is  
to be dismissed at  
Dutrich's cost. I handed  
Mr Scott a statement from  
Dutrich to that effect. but  
he may not send it up.  
Please have this done  
I believe yours &  
D. D. Davis

The judgment below was  
against Dutrich Scott & myself  
& Scott & myself did not appeal  
This is right Let the case be  
dismissed  
C H Moon p d

66  
Detroit &  
&  
Barward  
apt. to dep.

Filed May 4, 1867,  
Beland  
Ch.

Bloomington - May 13/62

My dear Sir;

I enclose you a Bond so as to be ready for a Supersedeas upon a Record which I sent to Judge Caton & which he may hand you. = in the Case of Dietrich vs. Barnard -

If you have not rec<sup>d</sup>. the Record will you please call the attention of the Judge to it. - If the Supersedeas is allowed, please file this Bond, telegraph me the fact and I will forward you fees.

Yours truly

W. W. Orme

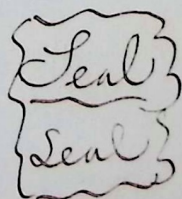
L. Leland Esq  
Clerk

Know all men by these presents That we John Dietrich and Hiram D. Keays of McLean County Illinois are held and firmly bound unto Amos Barnard and Osborn Barnard in the penal sum of Twenty Eight hundred dollars for the payment of which well and truly to be made, we do hereby bind ourselves, our heirs Executors and administrators jointly and severally firmly by these presents - Sealed with ~~our~~ seals and dated this day of May A.D. 1862 -

The condition of the above obligation is such that whereas the above bounden John Dietrich has applied for and obtained a Writ of Supersedeas from the Supreme Court of Illinois upon a judgment rendered in the Circuit Court of McLean County Illinois in favor of said Amos Barnard and Osborn Barnard and against the said John Dietrich, and David Davis and John M. Scott impleaded with him - Now therefore if the said John Dietrich shall well and truly pay the said judgment in case the same be affirmed and and all interest and costs and damages, and shall duly prosecute his <sup>Writ of Error</sup> appeal, then this obligation to be void - otherwise of full force and virtue -

Executed in presence of  
W. W. Orme -

John Dietrich  
H. D. Keays



350 66

Dutchess

↙

Barnard st

Supr Bond

Filed May 16. 1862  
L. Nelson  
Clerk

State of Illinois }  
McLean County } ss.

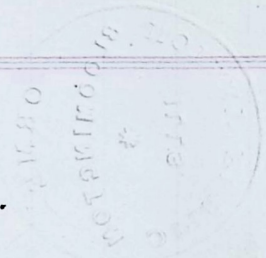
Hiram D. Reays being first duly sworn says and swears that he is a resident of said County and State. That he is engaged in business in Bloomington in said County, and has been so engaged there for the past seven years. That he owns real estate in said City and County of the value at least of \$4000. =

That he is worth at least amount \$5000. over and above all his debts, liabilities or contracts of any sort whatever. And further says not.

Subscribed and sworn to before me this 9<sup>th</sup> day of May 1862 }  
William W. Orme } H. D. Reays  
Notary Public }  
for Bloomington Illinois - }

Dietrich vs. Barnard

Affidavit of  
Hiram D. Keys -  
proposed Security on  
Supersedeas Bond -



Filed May 13. 1882  
L. Leland  
Clerk



have been sustained by the Court; and at least not entirely disregarded  
11-12 - The notice will be found on p. 11-12 of the Record, setting up the  
usury. =

7 and 15 The note sued on was made Sept. 8 1856; See Record p. 7, & 15.  
16 it was for borrowed money - p. 16 = and the rate of interest  
17 agreed on was 15 per cent - p. 17. =

Upon this state of facts it is insisted that the 4<sup>th</sup>  
Sec. of Rev. Statutes of 1845 Chap. 44 p. 295 applies. -

The law of 1849, Laws of '49 p. 98 did not  
repeal this Section of Rev. Stat. - Seegar vs. Seegar. 19 Ill. 121

The party had a right to the  $\frac{1}{3}$  of the ~~3<sup>rd</sup>~~ of the  
three-fold amount of interest - a vested right  
which he could enforce when an action was brought  
on the usurious contract against him -

The party defendant also had a right to recover  
his full costs whenever sued. -

These same positions are maintained in Kinsey vs.  
Nisley 23<sup>d</sup> Ill. p. 505 -

The question presented is, Does the law of 1857  
absolutely direct the maker of a note of the rights  
(or benefits, if preferred) which vested in (or ensued  
to) him under the Laws of 1845 and 1849? -

The reasoning of the Court in Seegar vs. Seegar  
would answer the question in the negative. -

I should like to present a fuller argument  
on this question than I feel warranted in doing  
upon this application for a supersedeas -

W. W. Orme  
att'y -

John Dietrich, implent.

vs.

A. + O. Barnard

---

Brief of points

---

Filed May 13. 1852

L. Leland  
CLK

Supreme Court - of Illinois  
Error to McLean -

John Dietrich, impleaded &c. Plaintiff in Error  
vs.

Amos & Osborn Barnard - Defendants in Error

Abstract of Record

Page of Record =

This was an action of assumpsit upon a promissory note, brought by Amos & Osborn Barnard, vs. John Dietrich as principal with others as sureties. -

8-9. Summons issued & served; formally and proper.

1-8 - A declaration of three special Counts and the Common Counts was filed. - The declaration is formal and proper and no question arises upon it in any way.

10-11 Defendant Dietrich filed his plea & notice; the general issue with notice of payment and usury.

11 The notice sets up that the note sued on was for money borrowed by Dietrich of the Barnards; that it was agreed at the time the money was loaned that Dietrich should pay

11 15 per cent on the amount of the note as long as he retained

12 the money; that the note sued on was drawn at ten per cent and Dietrich gave a note for \$75. - the additional 5 per cent on the \$1500. - That the \$75. note was paid by Dietrich to the Barnards. -

13 The cause was continued to the March Term 1862

13 at the March Term a trial was had, verdict and judgment for the Barnards for \$1328.95

13-14 Motion for new trial and in arrest made & overruled

15 The Bill of Exceptions shows all the evidence to be this:

15 The Barnards offered in evidence their note on Dietrich and his

Page of Record =

15 notes, of date Sept. 8<sup>th</sup> 1856 payable in one year for \$1500.  
16 with interest at ten per cent =

on the back of s<sup>d</sup>. note were these credits:

16 \$200. Mar. 23 /57 = \$200. April 9/57 = \$5. June 11/57

16 \$100. Jan. 9 /58 = \$50. April 17/58 = \$34.99 Jan. 2<sup>d</sup> /60 -

\$33.<sup>54</sup> Feb. 14 /59 = \$41.10 Mar. 1<sup>st</sup> /59 = 34.61 Feb. 27 /61

16 \$20. - April 26/59 = \$75. Sept. 6/56 = \_\_\_\_\_

and plaintiffs rested their case. -

16 It was then agreed between the parties, that the note was  
for money loaned by the Barnards to Detrick; that before  
the execution of the note pl<sup>ffs</sup>. agreed to loan Detrick \$1500.

17. for one year at 15 per cent interest; that Detrick should give  
a note at ten per cent interest for the principal, and a sep-  
-arate note for the additional 5 per cent. - This was done;  
and the note sued on is the note for the principal; and the  
\$75. note, for the additional 5 per cent, has been paid by Det-

17- trick. - This was all the evidence in the case -

The verdict was for \$1328.95 -

17- Motion for new trial made & overruled, and exception  
taken -

---

John Dietrich, impleaded &  
pltf. in Error  
vs.

Amos & Osborn Barnard  
defts in Error

---

Abstract of Record

---

Filed May 13. 1872  
L. Leland  
Clerk

Page =  
1

Process continued and held at the Court House  
in Bloomington in and for the County of McLean  
in the State of Illinois before the Hon. David  
Davis Judge of the Circuit Court of the Eighth  
Judicial Circuit of said State, in a certain  
cause wherein Amos Barnard & Osborn Barnard  
of the firm of A & O. Barnard were plaintiffs and  
John Dietrich, John Mc Scott & David Davis  
were Defendants:

State of Illinois } De it remembered that here,  
McLean County } before to wit: on the 23<sup>d</sup> day of  
August A. D. 1861, came Amos Barnard & Co,  
Osborn Barnard by Wickizer & Benjamin their at,  
torneys, and filed in the office of the Clerk of  
the Circuit Court of said County their Declaration  
& a copy of a Note sued on, which said Declaration  
& copy of Note were in words and figures as follows,  
to wit:

State of Illinois } In the McLean County Circuit Court  
McLean County } of the September Term A. D. 1861.

Amos Barnard and Osborn Barnard  
partners of the firm of A & O. Barnard, by Wick  
izer & Benjamin, their Attorneys, complain of John  
Dietrich John Mc Scott and David Davis in  
a plea of Assumpsit, — For that, whereas the

said defendants heretofore, to wit: on the Eighth day of September in the year of our Lord One thousand eight hundred and fifty six at Bloomington, Illinois, that is to say, at the said County of McLean and State of Illinois, by the names and description of John Dietrich, Jno. M. Scott, David Davis, made their certain promissory Note in writing, bearing date a certain day and year therein mentioned, to wit: the day and year aforesaid, and thereby then and there, the said Dietrich as principal and the said Scott and Davis as surety, promised to pay, one year after the date thereof to the said plaintiffs by the names and description of Messrs A & C. Barnard or order, fifteen Hundred Dollars with ten per cent. interest, and then and there delivered the said promissory Note to the said plaintiffs, by means whereof and by force of the statute in such case made and provided, the said defendants then and there became liable to pay to the said plaintiffs the said sum of money in the said promissory note specified, according to the tenor and effect of the said promissory note; and being so liable, they, the said defendants, in consideration thereof, af

terwards, to wit: on the day and year aforesaid, at the County and State aforesaid undertook, and then and there faithfully promised the said plaintiffs to pay them the said sum of money in the said promissory note specified, according to the tenor and effect thereof.

And whereas also, the defendants on the Eighth day of September A. D. eighteen hundred and fifty six, at Bloomington, Illinois, to wit: at the County and State aforesaid, by the names of John Dietrich, Jno. M. Scott, David Davis, made their certain other promissory Note in writing, and delivered the same to the plaintiffs, and thereby then and there promised to pay to the plaintiffs, by the description of Messrs. A. & C. Barnard or order one year after the date thereof, (which period hath now elapsed) Fifteen Hundred Dollars with ten per Cent interest.

And whereas also, the said defendants on the eighth day of September A. D. Eighteen hundred and fifty six, at Bloomington, Illinois, to wit: at the County and State aforesaid made and delivered to the said plaintiffs, their certain other promissory Note in writing, in substance as followeth: - Bloomington, Illinois, Sept. 8. 1856, \$1500. One year after date, we, the undersigned

the first as principal & the others as surety pro-  
mise to pay to Messrs A. & C. Barnard, or  
order: Fifteen Hundred Dollars with ten per  
cent interest; "John Dietrich"

"Jno. M. Scott:"

"David Davis"

And the said de-  
fendants, afterwards on the day and year last  
aforesaid, at the County & State aforesaid, in  
consideration of the premises, promised to said  
plaintiffs to pay them the amount of the said  
last-mentioned note, according to the tenor and  
effect thereof;

And, whereas, also, the said De-  
fendants heretofore to wit: on the Eighth day of  
September, in the year of our Lord Eighteen Hund-  
red and Fifty six at Bloomington, Illinois,  
to wit: at the County and State aforesaid, by  
the names and description of John Dietrich,  
Jno. M. Scott, David Davis, made their certain  
other promissory note in writing, bearing date  
the day and year last aforesaid, and then  
and there delivered the same to said plaintiffs,  
and, thereby, then and there promised to pay  
to the said plaintiffs by the description of Messrs

3

A. & W. Barnard or order, one year after the date thereof, (which period had elapsed before the commencement of this suit, Fifteen Hundred Dollars, with interest thereon at the rate of ten per Cent. per annum.

By reason whereof and by force of the statute in such case made and provided, the said defendants then and there became liable to pay the said plaintiffs the said sum of money in said last mentioned promissory note specified, according to the tenor and effect thereof; and being so liable the said defendants in consideration thereof then and there undertook and promised plaintiffs to pay said sum of money in said last mentioned note, specified according to the tenor and effect thereof.

And, whereas, also the said Defendants on the twentieth day of August in the year of our Lord Eighteen Hundred and sixty one at the County and State aforesaid, were indebted to the said Plaintiffs in the sum of Twenty five hundred Dollars for the price and value of goods, then and there bargained and sold by the plaintiffs to the defendants at their request. And in the sum of twenty five Dollars for the price and value of work then and there done, and

materials provided by the plaintiffs for defendants at their request. And in the sum of twenty five hundred Dollars for so much money then and there lent by the plaintiffs to defendants at their request. And in the sum of twenty five hundred Dollars for money then and there paid by plaintiffs for the use of defendants at their request. And in the sum of twenty five hundred Dollars for money then and there received by the defendants for the use of the plaintiffs. And in the sum of twenty five hundred Dollars for interest due from said defendants to the said plaintiffs, for and in respect of said plaintiffs having forbore and given day of payment of money due from the defendants to the plaintiffs at the defendants request for a long time then elapsed. And in the sum of twenty five hundred Dollars for money found to be due from defendants to plaintiffs on account then and there stated between them. And the defendants afterwards, to wit: on the day and year last aforesaid, at the County and State aforesaid, in consideration of the premises respectively, then and there promised to pay the last mentioned several monies

7  
respectively to the Plaintiffs in request. Yet  
the defendants have disregarded their promises,  
and have not, nor has either of them paid any  
of the said monies or any part thereof, although  
often requested so to do, to the plaintiffs damage  
of Twenty five hundred Dollars, and therefore  
they bring suit, &c.

Wickizer & Benjamin, Plffs attys.

Copy of said promissory Note given on  
Bloomington, Illinois Sept. 8<sup>th</sup> 1856,  
\$1500. One year after date, viz, the under-  
signed, the first as principal & the others as  
surety, promise to pay to Messrs A. & C. Barn-  
nard or order Fifteen Hundred Dollars with  
ten per cent interest.

Sept Dietrich  
Jno. M. Scott  
David Davis

Indorsements on said Note.

\$ 200.<sup>00</sup> Recd on the within note Two Hund-  
red Dollars, March 23<sup>d</sup> 1857.

\$ 200.<sup>00</sup> Recd. on the within Note Two Hundred  
Dollars April 9<sup>th</sup> 1857.

\$ 5. Recd on the within Five Dollars June 11. 1857

\$ 100. Recd. in the within One Hundred Dollars

January 9<sup>th</sup> 1858.

Rec<sup>d</sup> on the within Fifty Dollars, April 17<sup>th</sup> 1858.

Rec<sup>d</sup> on the within Thirty Four <sup>29</sup>/<sub>100</sub>. January 2<sup>nd</sup> 1860.

And thereupon there issued out of said Clerk's office a writ of Summons in words & figures as follows, to wit:

State of Illinois }  
 McLean County. } s. The People of the State  
 of Illinois,  
 To the Sheriff of said County, Greeting:

We command you to summon John Dietrich, John Mc Scott, David Davis

If found in your County, personally to appear before the Circuit Court of said county of McLean, on the first day of the next term thereof to be holden at the Court House in Bloomington, on the first Monday in the month of September next, to answer unto Amos Barnard & Osborn Barnard, partners of the firm of A. & O. Barnard, in a plea of assumpsit to their damage Twenty five Hundred Dollars, as they say.

And have you then and there this writ,

and make return thereon in what manner you execute the same,

L.S.

Witness, Wm McCullough, Clerk of said Circuit Court, and the seal thereof hereunto affixed, at Bloomington, this 23<sup>d</sup> day of August A.D. 1861,  
Wm McCullough, Clerk,  
By L. Burr, Deputy.

Which summons was returned into said Clerk's office endorsed as follows, to wit:

Executed this writ by reading it to the within named John Dutrich, John M. Scott, David Davis. Done on this 23<sup>d</sup> day of Aug. A.D. 1861.

John L. Rount { Fees & Ret. 1.00.  
Sheriff. { Mileage 20.  
1.80.

And afterwards, at the September term of said Court to wit: on the 5<sup>th</sup> day of October A.D. 1861, the following proceedings were had in this cause as appears of Record, to wit:

A. & C. Barnard }  
vs. } In Assumpsit.  
John Dutrich et al. } And now at this day come the parties hereto by their attorneys, and

and make return thereon in what manner you execute the same,

Witness, Wm McCullough, Clerk of said  
 Circuit Court, and the seal thereof  
 hereto affixed, at Bloomington this  
 23<sup>d</sup> day of August A. D. 1861,  
 Wm McCullough, Clerk,  
 By L. Burr, Deputy.

{  
 L. S.  
 }

Which summons was returned into said Clerk's office endorsed as follows, to wit:

Executed this writ by reading it to the within named John Dutrich, John M. Scott, David Davis Done on this 23<sup>d</sup> day of Aug. A. D. 1861.

John L. Rount { Fees & Ret. 1.60.  
 Sheriff. { Mileage .20.  
 1.80.

And afterwards, at the September term of said Court to wit: on the 5<sup>th</sup> day of October A. D. 1861, the following proceedings were had in this cause as appears of Record, to wit:

A. & C. Bainard }  
 vs. } In Assumpsit.  
 John Dutrich et al. } And now at this day  
 came the parties hereto by their attorneys, and



11  
take and promise in manner & form &c as  
1<sup>st</sup> plaintiffs have above thereof complained,  
and of this he puts himself on the country &c.  
Crone - atty.

And plffs doth the like.

Wick. & Perry. Plffs attys.

The plaintiffs will take notice that on the  
trial of this cause defendant Dietrich will  
offer in evidence and insist upon the following  
facts as a defence to said suit:

1<sup>st</sup> That said defendants have paid to said  
plaintiffs a large amount of money on the  
note sued on before the commencement of this  
suit to wit: the sum of \$ 1500. -

2<sup>d</sup> That the defendant Dietrich will offer in  
evidences and insist <sup>- was given for money -</sup> that the note sued on  
borrowed by him of plaintiffs, and that his  
co-defendants are only securities, that at the  
time of the borrowing of the money by said  
defendant Dietrich from said plaintiffs and  
at the time of the execution of said note  
it was then and there unlawfully, corruptly  
and usuriously agreed by and between said  
plaintiffs and said defendant Dietrich that  
said defendant Dietrich should pay fifteen  
per Cent per annum interest on said sum of

money in said note specified so long as defendant should retain the same; and that thereupon said note sued on was drawn payable with ten per cent interest on its face, and said defendant Dietrich executed and delivered to said plaintiffs his note for \$75. being the additional 5 per cent on said sum of money in said note sued on specified.

And that said defendant Dietrich paid said note of \$75. long before the expiration of the time in which said note sued on had to run - and the defendant Dietrich has continued to pay to said plaintiffs said rate of 15 per cent per annum interest on said sum of money borrowed until the commencement of this suit.

And defendant Dietrich will set up and rely upon the Statutes of this State against usury. =

Orme, Atty.

And afterwards at the December term of said Court, to wit: on the 30<sup>th</sup> day of December A. D. 1861, the following order was made in this cause to wit:

#  
13

A. + O. Barnard }  
vs } In Assumpsit  
John Dietrich et al. }

And now at this day comes the said Defendant John Dietrich by his attorney, and moves the Court to continue this cause, and files herein his affidavit in this behalf, and the said plaintiff not admitting the matters and things in said affidavit set forth, and the Court being fully advised doth order that this cause be continued at the costs of said Defendants.

And afterwards at the March Term of said Court, to wit: on the 2<sup>d</sup> day of April A. D. 1862.

Present: Hon. David Davis Presiding  
Wm. McCullough, Clerk  
Geo. L. Rutt, Sheriff

final judgment was rendered in this cause as appears of record in words and figures as follows, to wit:

Amos Barnard + Osborn Barnard }  
partners of the firm of A. + O. Barnard } In Assumpsit  
vs }  
John Dietrich, John M. Scott + }  
David Davis. } And now

at this day come the parties hereto by their attorneys, and the said Defendants John M. Scott & David Davis having failed to plead, answer or demur to said plaintiffs' Declaration, and now saying nothing in bar or preclusion of said plaintiffs' action against them. It is thereupon adjudged by the Court that said plaintiffs have sustained damages as against said John M. Scott & David Davis, by reason of the non-performance of certain promises in their Declaration mentioned. And the said John Dietrich having filed herein his plea, and issue being joined thereon, by consent of the parties this cause is submitted to the Court for trial without the intervention of a Jury. And the Court having heard the evidence produced, and being fully advised in the premises doth find the issue for the plaintiffs, and doth assess their damages as well against the said John Dietrich as against the said David Davis & John M. Scott - at Thirteen Hundred and Twenty Eight Dollars and Ninety five Cents. It is therefore considered by the Court that said plaintiffs recover of and from said John Dietrich, John M. Scott & David Davis the sum of Thirteen Hundred

and Twenty Eight Dollars and ninety five Cents, their damages so assessed as aforesaid, and also their costs by them in this behalf expended, and that they have execution therefor.

And afterwards at said March Term, to wit: on the 3<sup>d</sup> day of April 1862, came said Defendant John Dietrich, and filed herein his Bill of exceptions, which Bill of exceptions was signed and sealed, by the Court, and was in words and figures as follows, to wit:

Wear Circuit Court of Illinois  
March Term A. D. 1862.

Ames and Osborn Barnard

vs  
John Dietrich & others.

In Assumpsit.

Be it remembered that on this 31<sup>st</sup> day of March A. D. 1862 during the regular term of said Court this cause came on to be tried - by the Judge without the intervention of a jury. -

And the plaintiff offered in evidence a note in words and figures as follows:

Bloomington, Illinois Sept. 8<sup>th</sup> 1854.  
\$1500. One year after date we the undersigned the first as principal and the others

and Twenty Eight Dollars and ninety five Cents, their damages so assessed as aforesaid, and also their costs by them in this behalf expended, and that they have execution therefor.

And afterwards at said March Term, to wit: on the 3<sup>d</sup> day of April 1862, came said Defendant John Dietrich, and filed herein his Bill of exceptions, which Bill of exceptions was signed and sealed, by the Court, and was in words and figures as follows, to wit:

Wear Circuit Court of Illinois  
March Term A. D. 1862.

Ames and Osborn Barnard

vs  
John Dietrich & others.

In Assumpsit.

Be it remembered that on this 31<sup>st</sup> day of March A. D. 1862 during the regular term of said Court this cause came on to be tried - by the Judge without the intervention of a jury. -

And the plaintiff offered in evidence a note in words and figures as follows:

Bloomington, Illinois Sept. 8<sup>th</sup> 1854.  
\$1500. One year after date we the undersigned the first as principal and the others

16

as surety promise to pay to Messrs A & Q. Barnard or order fifteen hundred dollars with ten per cent interest.

John Dietrich.

Jno. M. Scott,

David Davis.

On the back of which note are the following endorsements: \$ 200. Recd. on the within note two hundred dollars, March 23<sup>d</sup>, 1857. - \$ 200: Recd. on the within note two hundred dollars April 9<sup>th</sup>, 1857. - Recd on the within note \$5. June 11<sup>th</sup>, 1857. - Recd. on the within one hundred dollars January 9<sup>th</sup>, 1858. - Recd. on the within \$ 50. April 17<sup>th</sup>, 1858. Recd. on the within \$ 34.99. Jan'y 2. 1860. 14<sup>th</sup> Feby /59. Cr By \$33.54. - 15<sup>th</sup> March /59 Cr. \$41.10. 27 Febr. 1861. Cr. by \$34.61. - 26<sup>th</sup> April 1859 Cr. by \$ 20. Sept 6, 1856 Cr. By \$ 75. =

And the plaintiffs then rested their case, It was then agreed between the parties as evidence that the note offered in evidence was for money loaned to defendant Dietrich, that before the Execution of said note plaintiffs agreed to loan said defendant \$ 1500. for one

5  
127  
year at fifteen per Cent interest. that defendant should execute a note for \$1500, with interest at ten per Cent and a separate note for \$75, making the difference in interest, all of which was done, and the note sued on is the \$1500. note executed under said agreement, and the \$75. note has been paid by defendant Ditrick - And this was all the evidence offered on either side - Whereupon the Court found a verdict for \$1328.95, in favor of plaintiffs. The defendant Ditrick then entered his motion for a new trial which motion was by the Court overruled and the defendant then and there excepted.

Defendant then entered his motion in arrest of judgment which motion was overruled and the defendant then and there excepted. And tendered this his Bill of exceptions & prayed that the same might be signed & sealed and made a part of the Record, which is done.

D. Davis, (Seal)

And on said 3<sup>d</sup> day of April 1862 further order was made by said Court in this cause, to wit:

5  
17  
year at fifteen per Cent interest. that defendant should execute a note for \$1500, with interest at ten per Cent and a separate note for \$75, making the difference in interest, all of which was done, and the note sued on is the \$1500. note executed under said agreement, and the \$75. note has been paid by defendant Ditrick - And this was all the evidence offered on either side - Thereupon the Court found a verdict for \$1328.95, in favor of plaintiffs. The defendant Ditrick then entered his motion for a new trial which motion was by the Court overruled and the defendant then and there excepted.

Defendant then entered his motion in arrest of judgment which motion was overruled and the defendant then and there excepted. And tendered this his Bill of exceptions & prayed that the same might be signed & sealed and made a part of the Record, which is done.

D. Davis, (Seal)

And on said 3<sup>d</sup> day of April 1862 further order was made by said Court in this cause, to wit:

Amos Barnard &amp; Osborn Barnard

vs.

John Dietrich &amp; others.

In Assumps

And now at this day comes the said Defendant John Dietrich by his attorneys, and prays an appeal to the Supreme Court of this State in this cause. And the same is granted upon said Defendant, giving Bond in the penalty of Three Thousand Dollars conditioned as the law directs. And by consent of the plaintiffs said Defendant is allowed Twenty days from the adjournment of this Court to file his appeal Bond with security to be approved by the Clerks,

State of Illinois } sp.

McLean County. }

I, Wm. McCullough, Clerk, of the Circuit Court in and for said County do hereby certify that the foregoing is a true and complete transcript of the records and files of my office pertaining to a certain cause wherein Amos Barnard & Osborn Barnard were plaintiffs and John Dietrich, John M. Scott & David Davis were Defendants.

Given under my hand and



4<sup>th</sup> " The Court erred in overruling motion for a new trial -

5<sup>th</sup> " The Court erred in rendering judgment for defendants in Error -

6<sup>th</sup> " The judgment of the Court should have been for the plaintiff in error - at least for the costs -

7<sup>th</sup> " The judgment of the Court is for too large an amount under the evidence in the case -

Wherefore and by reason of the errors aforesaid the said plaintiff prays that said judgment may be set aside & wholly held for naught &c. -

W. W. Orme - Atty  
for plff in error -

And the said defendants by C H Moore Coun:  
Say that there is no ~~error~~ Error in this record  
to the injury of the plaintiff C H Moore  
p d



John Dietrich, impleaded  
to  
plff in Error  
vs.

Amos Barnard & Osborn Barnard

Transcript of Record -  
Error to WLean

Filed May 13. 1882  
L. Leland  
Clerk

\$3.75 cost of this Transcript.  
pct. by Atty of Eno. Dietrich. W. W. Carr.