

12758

No. _____

Supreme Court of Illinois

Day, Impl

vs.

Gelston

71641  7

180 76

Lucius L. Day imp. &c

us

Hugh Gelston

12758

1859

Lucius Le Day
Impleaded with Larkin
B Day et al
vs
Hugh Gelston

Appeal from the County
Court of Boone County
In the Supreme Court
April Term 1857

And the said

Appellant comes and says that
in the record and proceedings and
in the rendition of judgment in this case
there manifestly appears both
intemperance to his prejudice and for
assignment of errors shows the following
1. The Court below erred in over-
ruling the motion for a continuance
2 The Court below erred in rendering
Judgment against appellant without
taking a default or assuming the case
as to Larkin B Day & Robinson
Robinson

3 The Judgment was for too much.

4 The Court below erred in overruling the
motion for a new trial

5 The Court below erred in the sus-
taining the demurrer to 1st Plea of L B
Day & Robinson.

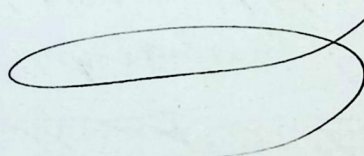
6 The Court below erred in rendering Judge-
ment in L B Day & Robinson

7. The Court below erred in not extending the
demurrer back to the 1st Plea
over

for which errors the said appellant prays that
said Judgment may be reversed annulled
set aside wholly for nought entered

Yours
his attorney

And now comes the said defendant
in error by Mead his attorney says
that no such errors hath intervened as
the said plaintiff hath above complained
of and that he prays never be re-
quired of by the Court

By A M Mead
his attorney


1
Be it remembered, that heretofore To Wit.
on the 19th day of April in the year of our Lord
one thousand eight hundred and fifty eight,
there was issued from the Clerk's office of the
County Court of Peoria County. State of Illinois.
a "Summons." which is in words and figures
as follows, To Wit:

" State of Illinois, To Wit.
" Peoria County

" The People of the State of Illinois.
" to the Sheriff of Peoria County - Greeting;
" We command you that you summon
" Larkin B. Day. Lucius L. Day and James
" T. Robinson if they shall be found in your
" County, personally to be and appear before the
" County Court of said Peoria County on the first
" day of the next Term thereof, to be holden at
" the Court House in Peoria, in said Peoria County,
" on the first Monday of May next 1858, to
" answer unto Hugh Gelston in a plea of
" Trespass on Case upon Promises to the dam-
" ages of the said plaintiff as he says in the sum
" of One Thousand Dollars. And have you
" then and there this Writ with an endorsement
" thereon in what manner you shall have executed
" the same.

Witness Charles Kettler, Clerk of our
said Court and the Seal thereof, at
Peoria, aforesaid, this 19th day of
April A.D. 1858.

Seal

Charles Kelle
per Geo. W. KelleClerk,
Dpty.,

Endorsed on the back,

County Court Summons

Peoria County Court

Gelston

vs.

Day & Co. ab

State of Illinois

County

I have duly served the within
by reading the same to the within
named Lucius L. Day & the coverts
for the others April 21st 1838.
as I am therein commanded,

F. W. Smith Sheriff

Fees. Service 2.00

Mileage 20

Return 10

2.30

Wm. & Wm. & Wm. & Wm.

And afterwards, To Wit: on the 19th day of
April A. D. 1838, there was filed in the
Clerk's office of said Court, a "Declaration"
which is in words and figures as follows

To Wit:

" State of Illinois,
" Peoria County ss

Hugh Gelston

vs.

Larkin B. Day &
Lucius L. Day &
James T. Robinson

partners under the name
style of Day &
company.

In the Peoria
County Court,
May Term A. D.
1838,

Hugh Gelston plaintiff complains

of Larkin & Day. Lucius L. Day &
 James T. Robinson partners under the
 name & style of Day & Company defend-
 ants in a plea of trespass on the case
 on promises for that whereas heretofore to
 wit on the 25th day of November A.D.
 1856, at & within the County of Peoria
 aforesaid the said defendants by the
 name & style of Day & Company made
 their note in writing commonly called
 a promissory note by which they then &
 there promised the said plaintiff to pay to
 his order the sum of Twelve Hundred
 Eighty one ⁹⁰/₁₀₀ dths dollars (meaning
 Twelve Hundred & Eighty one dollars &
 ninety cents) Twelve months after ^{the} date
 of said note payable at the Office of W.B.
 Curtis & Co. Peoria Illinois, for value
 received & then & there delivered said note
 to the said plaintiff.

Yet although the
 time specified in said note for the payment
 thereof (& the sum of money therein named)
 hath long since elapsed the said defend-
 ants hath not paid the same nor any
 part thereof.

To the damage of the said
 plaintiff. One thousand dollars wherefore
 he brings suit.

By Head & Williamson
 his Attorneys

" Copy of note sued on

" \$1281. ⁹⁰/₁₀₀ Peoria Ill. Nov. 26, 1856

" Twelve months after date We
 " promise to pay to the order of Hugh Gel-
 " ston Twelve Hundred Eighty one
 " ⁹⁰/₁₀₀ dollars payable at the office of
 " C. B. Curtis & Co. Peoria Ill. Value
 " received

" Day & Company,
 " etc. — Due Nov. 25/57 "

" Hugh Gelston J

" vs. Trespass on the Case
 " Day & Company J on promises

" Damages \$1000.00

" The Clerk of the County Court
 " will issue a summons in the above cause
 " returnable at the May Term

" Mead & Williamson
 " for plffs "

Endorsed on the back.

" Hugh Gelston
 " vs.
 " Day & Company

" Declaration
 " Mead & Williamson
 " for plffs

" Filed April 16, 1858
 " Charles Kettle alk.
 " per M. L. J."

And afterwards, To Wit. on the 7th day
of May A.D. 1858, there were filed
in the Clerk's office of the said Court,
"Pleas" which are in words and figures
as follows. To Wit.

"Lucius L. Day 2 In Peoria County
"Impleaded. &c. 2 County Court
" at 2 May Term A.D. 1858
" Hugh Gelston 2

And the defendant
" Lucius L. Day comes & defends &c &
" for plea says that he did not undertake
" & promise as the said plaintiff hath in
" his declaration complained against him
" & of this he puts himself upon the Country,
" And plaintiff doth the like. By Groves his atty,
" Head & Williamson his attys.

And for further plea the defendant
" says actio non - because he says that after
" making ^{the} said promises in plaintiffs declara-
" tion mentioned & before the commencement
" of this suit. To Wit. on the 1st day of
" January A.D. 1858, at the County of Peoria
" & State of Illinois he settled with & fully
" paid the said several promises & sums of
" money in plaintiffs declaration mentioned
" & this he is ready to verify & wherefore
" he prays Judgment &c.
" By Groves his attys

And for further Plea the de-
 fendant says actio non because he says
 that the only cause of action the said
 Plaintiff has or ought to have against the
 defendant is to recover the amount of money
 mentioned in and secured by the promissory
 note of the defendant set out in the first
 Count in Plaintiff's declaration mentioned
 and the defendant avers that said promissory
 note was executed by the defendant to the
 Plaintiff in payment for divers large quan-
 tities of Carpeting sold and delivered by
 the Plaintiff to the defendant at the
 prices in the quantity prices & numbers as
 follows,

" Messrs Day & Company

Bot of Hugh Gelston

✓	743	1 ps.	Super Carpet	101		
✓	177	1 "	" "	103		
✓	540	1 "	" "	103		
✓	853	1 "	" "	104		
✓	825	1 "	" "	102	513 80	410 40
✓	367	1 ps	Extra fine Carpt	105		
✓	275	1 "	" " "	106		
	263	1 "	" " "	107		
	634	1 "	" " "	102		
	666	1 "	" " "	103		
✕	704	1 "	" " "	102		
	706	1 "	" " "	102		
✓	835	1 "	" " "	104		
✓	844	1 "	" " "	105		
✓	852	1 "	" " "	105	104. 62	650 63

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10 ps 4/4	Winter	6062 ^c	37	50
1 p 3/4	"	101	50	50
1 " 4/4	twill	102	75	76
1 " 3/4	"	103	62 ^c	64
1 " 5/8	"	104	50	52
			1341	90
			60	00
			1281	90

Less Freight

Rec Payment by note at 12 mos.

Hough Gelston

By John Durham Jr.

And the defendant avers that at and before the time of the sale and delivery of said several pieces of carpeting by the Plaintiff to the defendant the said plaintiff for the purpose of inducing and procuring the defendant to purchase said Carpeting then & there represented and warranted said several pieces of Carpeting to be sound and in good order and condition and in good merchantable order & condition and perfect in style & Pattern. And the defendant avers that relying on the warranty & representations of the plaintiff he was induced thereby to purchase the said Carpetings of the said Plaintiff and the defendant did then & there purchase the said Carpeting of the Plaintiff at & for the prices above mentioned and then and there to wit on the day of the date of said note at the County of Peoria aforesaid the defendant executed to the plaintiff the said promissory

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" note in said first Count mentioned in
 " payment of said Carpetings which said
 " Carpetings were in fact the sole and only
 " consideration of said note. And the
 " defendant avers that said representation
 " & warranty were in fact false & untrue and
 " said Carpetings and each and every of
 " them at the time of the sale & delivery
 " thereof by the plaintiff to the defendant
 " were not sound and in good order &
 " condition and were not ~~in~~ in good mer-
 " chantable order & condition and were not
 " perfect in pattern & style but on the
 " contrary said Carpets then & there were
 " rotten damaged torn soiled injured
 " greasy oiled imperfect in style & pattern
 " ^{injured} damaged & destroyed by reason of which
 " the defendant was & is injured & damaged
 " to the amount of one thousand dollars
 " which sum of money exceeds the amount of
 " damages in Piffs. declaration mentioned
 " & which damages the defendant unto offset
 " & allow to the Plaintiff on the trial of this
 " cause according to the form of the Statute in
 " such case made and provided. and this
 " he is ready to verify wherefore he prays
 " Judgment &c.

" by Grove his atty.

" Endorsed on the back,

" " John
 " vs. Day Bros.

" Filed May
 " 24th 1858,
 " Clerk of the Court

9.

And afterwards. To Wit: on the 7th
day of July A.D. 1858, there was filed
in the Clerks office of the said Court,
a "Replication" which in words and
figures is as follows. To Wit:

"Hugh Selston
vs. County Court
Lucius L. Day of Peoria Co,
Impleaded &c, July Term 1858,

And now comes the said
plaintiff by his attys Head & William-
son & for replication to the defendants
second plea says precludia non because
he says that the said defendant did
not on the 1st day of January 1858, or at
any other time settle & pay the said several
sums of money in said declaration mention-
ed nor any part thereof and of this he puts
himself upon the Country &c,

By Head & Williamson
And the deft, doth his attys
the like

By Grove his Atty.

And for replication to the defendants
third plea by him above pleaded the plaintiff
says precludia non because he says that
the plaintiff did not neither by himself
agent attorney nor other person whomsoever
make any false fraudulent or deceitful rep-
resentations to the defendant in his said
third plea mentioned & did not represent

1 I warrant the said Carpeting in said plea
1 mentioned nor any piece nor part thereof
1 to be sound & in good order & condition or
1 in good merchantable order & condition or
1 perfect in style & pattern and of this he
1 puts himself upon the Country &c.

1 By Mad & Williamson
1 And the deft doth his attys.
1 the like by Groves his Atty.

1 And for further replication to the de-
1 fendants third plea by him above pleaded
1 the plaintiff says precludia non because
1 he says that to wit on the twenty sixth
1 day of November 1856 the said defendant
1 settled compromised & adjusted all and
1 singular the matters & things in difference
1 between the said plaintiff and said defendant
1 for and on account of the said quality quan-
1 tity & kind of said Carpeting in said
1 third plea mentioned and the said plaintiff
1 then & there paid and allowed the said
1 defendant a certain sum of money to wit
1 the sum of dollars on account
1 of the inferiority in quality quantity &
1 kind of said Carpeting aforesaid and
1 which said sum of money last aforesaid
1 was then & there received by the plaintiff
1 in full satisfaction of the said inferiority
1 in quantity quality & kind of said car-
1 peting as aforesaid all of which the
1 plaintiff is ready to verify wherefore

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Proceedings of the County Court of Peoria County,
State of Illinois. began and held at the Court House in
the City of Peoria in said County on

Monday June 7th 1858 under
its Extended jurisdiction for judicial and other business.
Present Hon Wellington Loucks Judge. Charles
Kittelle Clerk and Francis W. Smith, Sheriff

Hugh Gelstone
vs: Assumpsit
Larkin B Day.
Lucius L Day. *John Day & Co.*
Jas: T Robinson

This Cause, as per agreement of parties
to this Suit, on file, is Ordered to be continued untill
the July Term 1858 at the Costs of the Defendant.

Proceedings of the County Court of Peoria County
State of Illinois began and held at the Court House.
in the City of Peoria in said County and State on.
Monday. July the 5th AD 1858 for judicial
and other business

Present Hon Wellington Loucks Judge
" Charles Kittelle Clerk and
" Francis W Smith Sheriff

Wednesday July 7th 1858.

Hugh Gelston

vs.

assumpsit

Larkin B. Day.

Lucius L. Day.

James T. Robinson

This day came the said Plaintiff by Head and Williamson his Attorneys and the said Defendant Larkin B. Day by Henry Grove his Attorney and this cause came on to be heard on the Motion of the said defendant to continue this cause and files his affidavit in support of said motion The Court being fully advised in the premises doth overrule the said motion

Thursday July 8th 1858

Hugh Gelston

vs.

assumpsit

Lucius L. Day

Larkin B. Day and

James T. Robinson

This day came the said Plaintiff by Head and Williamson his Attorneys and the said Defendant Lucius L. Day by Henry Grove his Attorney and leave was given the Plaintiff to withdraw his 2^d Replication to 3^d plea of said defendant. Thereupon this cause came on to be heard on the Motion of the aforesaid defendant for the Continuance of this cause

The Court being fully advised in the Premises doth overrule the said motion. On Motion of said defendant leave was given him to withdraw plea of offsets and damages Thereupon both parties waive a Trial by jury and agree that all matters both of Law and fact arising in this case should be tried by the court. The Court having heard the Evidence in the case and being fully advised in the premises, doth find for the Plaintiff and doth assess his damages at the sum of. (\$ 551.75) Five Hundred and Fifty one and $\frac{75}{100}$ Dollars. Thereupon the said Defendant entered his motion for a new Trial of this cause. The Court being fully advised in the premises doth overrule the said motion. Therefore it is considered by the Court that the said Hugh Gelston do have and recover of and from the said Lucius L. Day, the sum of. (\$ 551.75) Five Hundred and Fifty one and $\frac{75}{100}$ Dollars, his damages as aforesaid and also his costs and charges by him about his suit in this behalf expended and that he have Execution therefor Thereupon came the said Defendant Lucius L. Day and pray an appeal of this cause to the Supreme Court of this State, which is allowed on his entering into Bonds in the Total sum of one Thousand Dollars conditional according to Law, within Thirty days. Security by agreement of Parties to be approved by the Court.

Proceedings of the County Court of Peoria County State of Illinois began and held at the Court House in the City of Peoria in said County on
 Monday August 2^d 1858
 for judicial and other business. Present Hon Wellington Loucks Judge
 " Charles Little Clerk and
 " Francis W Smith Sheriff.

Hugh Pelston
 vs.
 Larkin B Day
 James T Robinson
 impleaded with Lucius L Day

Assumpsit and Sci Fac to
 L B Day and
 J T Robinson

By Agreement of Parties to this
 Suit, this cause is Continued until the Sept. Term AD 1858.

Proceedings of the County Court of Peoria County, State
 of Illinois, began and held at the Court House in the
 City of Peoria in said County for judicial and other bus-
 iness, on

Monday September 6th 1858
 Present Hon Wellington Loucks Judge
 " Charles Pettelle Clerk and
 " Francis W. Smith Sheriff

Thursday September 9th 1858.
 Hugh Pelston
 vs.
 Larkin B Day James T Robinson
 impleaded with Lucius L Day

Assumpsit Sci Fac, to Defendants.

This day and the said plaintiff by
 Wm Head his attorney and the said defendant by Henry Groves their attorney and this cause came on to
 be heard on the demurrer of the plaintiff to the 1st plea of the defendants, The Court, being fully advised
 in the premises, sustained the said demurrer, Thereupon both parties waived a jury and agreed that all matters
 both of law and fact arising in this case should be tried by the Court, The Court being fully advised
 in the premises doth find for the Plaintiff and it is considered by the Court, that the said Larkin
 B Day and James T Robinson be made party to the judgment, heretofore To Wit July 5th 1858 rendered
 in favor of said plaintiff against the said Lucius L Day, and the said Plaintiff have been
 executed against the said Larkin B Day and James T Robinson for the damages and costs
 above said according to the force, form and effects of the said recovery, and also their costs and charges
 by him in this behalf expended and that he have Execution therefor

17.

Be it remembered That on the 7th of July A.D. 1858, in the
Clerks Office of Peoria County aforesaid, the following
Bill of Exceptions.

To Wit.

Hugh Gelston

vs.
L. B. Day

implicated with

Lucius L. Day, James Robinson.

In the County Court of Peoria County.

Be it remembered that on this day this cause came on to be heard
upon defendants motion for a continuance of this cause untill
the next Term of this Court, whereupon the Defendants read
to the Court his Affidavit in support of his Motion for a
continuance in words and figures following.

"H. Gelston

vs.

Day et al.

In County Court of Peoria County

L. B. Day on oath says that he cannot
safely proceed to trial at this term of Court on acct of ab-
sence of H. C. Willard who is a material Witness for him
That he expects to prove by said Witness that the Carpets men-
tioned in the pleas were not perfect in pattern & were not in good
order & condition at the time of the purchase as stated in the pleas
& that deponent sustained damages to amt of one hundred dollars
by reason thereof. He further States that he has other witness-
es to prove the representations & warranty by said Gelston
by his Agent. He further States said witness is a re-
sident of this city & promised deponent to attend this Court
as a witness & deponent relied on said promise & did not
cause him to be summoned. That he has no other wit-
ness by which he can so fully prove the same fact.
That some few days since said Witness left the City
of Peoria unexpectedly to Deponent, & before deponent had
any knowledge of such intention on the part of said witness

it before deponent had a summons issued that Depo-
nent is informed and believes said Witness is only temp-
orarily absent & will return in time to attend at next term
of this court at which time deponent expects to procure
abound his attendance as a Witness & prove the foregoing
facts that this Application is not made for delay but
for the furtherance of Justice

Subscribed and Sworn to

L B Day

Before me this 7 day July 1858.

Charles Kellett Clerk per Geo W Kellett Dpty.

On consideration Whereof the Court overruled said motion
and refused to continue the Cause.

To which Decision of the Court. overruling said motion
and in refusing to continue said Cause, the defendant then
and there at the time objected and excepted and prayed the
Court. to sign & seal this his bill of exceptions I make
the same a part of the record in this Cause which is
done.

Wellington. Loucks. Judge (Seal)

And also on... there was filed in said
Clerks office aforesaid. The following Bill of Exceptions
To wit.

Hugh Gheleton }
vs. } Bill of Exceptions
Lucius Day }

Be it remembered that on this day
this cause was called for trial The defendant ob-
jected to the trial of the Cause at this term
But the Court overruled the objections and the defendant
then & there excepted.

The Parties thereupon waived a jury.
The Plff then offered in evidence the following note.

\$1281⁹⁰/₁₀₀ Peoria Ill November 25th 1856
Twelve Months after date We promise to pay
to the Order of Hugh Gelston
Twelve Hundred Eighty One ⁹⁰/₁₀₀ Dollars
Payable at the Office of N. B. Curtis & Co Peoria Ill.
Value received
No Due Nov 25/57 Day & Company

On which are the following Endorsements

\$300 Decr 11/57 Rec^d on the within note Three hundred Dollars.
J Durham Jr.

\$100 Jan, 9/58 Rec^d on the within One Hundred Dollar.

Jan, 20/58 Rec^d on the within Two Hundred Dollars \$200.

March 15th Rec^d on the within note fifty six ²⁵/₁₀₀ Dollars.

Apr 2nd 58. Rec^d on the within one hundred ⁵⁵/₁₀₀ dollr \$100 ⁵⁵/₁₀₀

(Endorsed) Durham & Gelston

To which the Aft objected But the Court overruled the
Objection and admitted the Note in evidence

To which the Defendant then & there at the time objected
& excepted

The Court found for the Plaintiffs

The Defendant entered a Motion for a new trial for
the following reasons. 1.

- 1 The Court erred in refusing to continue the cause
- 2 The Court erred in admitting the Note in evidence
- 3 The Court erred in compelling the Aft to go to trial
at this time.

But the Court overruled said Motion
refused to grant a new trial
To which decision of the Court in overruling said
Motion and in refusing to grant a new trial

the Defendant. then and there at the time objected & excepted & prayed that this his bill of exceptions should be signed & sealed & made part of the record in this cause which is done.

Wellington Louches  Judge.

And afterwards. To Wit on the 31st July A.D. 1858. in the Office of the Clerk aforesaid. there was filed an Appeal Bond, in the words and figures following To Wit;

I know all men by these presents that we Lucius L Day and Charles B Day & J. P. Bowman & W. A. Wellman are held and stand firmly bound unto Hugh Gelston in the sum of one Thousand Dollars to the payment of which well and truly to be made we bind ourselves our heirs executors Administrators and assigns jointly and severally and firmly by these presents Sealed with our Seals and dated at Peoria this Ninth day of July A.D. 1858 The Condition of this obligation is such that Whereas. at the July Term A.D. 1858. of the County Court of Peoria County in the State of Illinois The above named Hugh Gelston recovered judgment in said County Court against the above bounden Lucius L Day. for the sum of five hundred and fifty one dollars and seventy five cents and costs of Suit in a certain Suit wherein this said Hugh Gelston was Plaintiff and said Lucius L Day impleaded with Leaskin B Day and James J Robinson was defendant. from which judgment. the said Lucius L Day has prayed an appeal to the Supreme Court of the State of Illinois which has

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allowed. Now if the said Lucius L Day shall duly
 prosecute his appeal and shall pay the judgment interest
 and all costs and damages in case said judgment shall
 be affirmed Then this obligation to be void
 otherwise to remain in full force and effect.

Lucius L Day *LB*

Chas B Day *LB*

J F Bowman *LB*

W A Williard *LB*

Chetow

Day

Appeal Bond

Approved July 30/58

Jr Conner

Clerk

LC

Be it remembered, that on the 30th day of July
 A.D. 1858, there was filed in the Clerk's office of
 the said Court, a "Scire Facias" in the
 above cause, which is in words and figures
 as follows. To Wit:

23
State of Illinois,ss. To the Sheriff of said County, Greeting:

Peoria County.

WHEREAS.

Hugh Gelstonon the 19th day of April A. D. 1858, sued out of our County Courtof Peoria County, a certain writ of Summons against Learkin B. DayLucius L. Day and James F. Robinsonin an action of Assumpsit which said writ ofSummons was afterwards, to-wit: on the 21st day of AprilA. D. 1858, returned by the Sheriff of ^{said} the County of Endorsed as follows: To WitI have duly served the within by reading the same to the within named
as to the said Lucius L. Day and he accepts for the others. April 21st 1858,
as I am therein commanded. F. W. Smith Sheriff

and

as to the said

and whereas afterwards, to wit: on the 19th day of April A. D. 1858the said Hugh Gelston
filed in our said County Court, ^{of said County} the Declaration against the said Learkin B. Day, LuciusL. Day and James F. Robinsonand thereupon such proceedings were afterwards had that on the 8th day of JulyA. D. 1858, the said Hugh Gelstonrecovered a judgment against the said Lucius L. Dayfor the sum of Seven Hundred and fifty one ⁷⁵/₁₀₀Dollars and Fifteen Cents, Damages andFifty Five Cents, Costs as appears to us of Record; which said judgment still remains un-satisfied as we are informed by the said Hugh Gelston We therefore command you, thatyou make known to the said Learkin B. Day and James F. Robinsonthat they be before our said County Court of Peoria County, on the first day of the nextTerm to be held at the Court House in Peoria, ^{Peoria County, ss} on the Monday of AugustA. D. 1858, to show cause if any there be have why they should not be madeparties defendant to the judgment aforesaid and why Execution should not issue against them and each of

for the amount thereof agreeably to the statute in such case made and provided, and further to do and re-

ceive what our said court shall then and there consider of them in this behalf, and have you there and then

this writ.

Witness

Charles Russell

CLERK of our said Court

and the Seal thereof at Peoria, this

day of

July1858Charles Russell Clerk
per Geo. H. Russell sctyWhich said writ of Scire Facias is Endorsed
as follows;

WHOLE No.

Scire Facias.

.....COUNTY COURT,

.....TERM, 185..

Judgment \$ 551.75
costs 18.55

.....*Celebron*.....

vs.

.....*Larkin B. Day and*
.....*James S. Robinson*.....

STATE OF ILLINOIS,

.....*Peoria*.....COUNTY. } ss.

I have duly served the within by reading the same on

to the within named ...*Larkin B. Day*.....

and James S. Robinson by rea-

ding to them this writ.....

.....*Peoria July 29th 1858*.....

thisday of185..

.....*F. V. Smith*..... Sheriff.

FEES—Service,*1.20*..... *per J. F. Dawson spt.*

Mileage,*20*.....

Return,*20*.....

.....*\$ 1.60*.....
Filed in County Court this.....*30th*.....day of

.....*July*.....185*8*.....

.....*Charles Hall*..... Clerk.

.....Attorney.

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And afterwards To Wit on the 9th
day of September A. D. 1858 there was filed in the ^{clerk's}
office of the County Court the following Plea, etc.

"	Hugh Gelston		In the County Court
"	vs		of Peoria County
"	Larkin B. Day		Sci. Fa.
"	& James F. Robinson		

" And the said Larkin B. Daynd
" James F. Robinson comend say that they ought not
" to be made parties defendants to said judgement against
" Lucius L. Day because they say that said judgement
" has been appealed tond is now pending in the Supreme
" Court of the State of Illinoisnd that they are ready
" to verify wherefore he prays judgt^{re}.

" By Grove the atty.
" And for further plea they say Actio. non because they
" say that they are not in anyway indebted to said
" Hugh Gelston & of this they put themselves upon the
" country
" by Grove the atty.

" As to 1st plea I demur for Peff. as to 2^d plea
" Plaintiff doth the like.

" By Wead his atty.

And on the same day To wit the 9th
day of September A.D. 1859 there was filed in the ^{said}
court a Bill of Exceptions (which in wordsnd fig-
ures is as follows To Wit.

"	Hugh Gelston		on Sci. Fa
"	vs		
"	L. B. Day		
"	& James F. Robinson		

Be it remembered that on this day this cause came on to be heard upon the demurrer of the P^lff to the d^{ft}s first plea & the Court ^{thereupon} sustained said demurrer & the defendants then & there at the time objected & Excepted to the decision of the Court.

And this cause coming on for trial the parties waived a jury & consented to try the cause by the Court. The Plaintiff then offered the Record of the judge in Evidence in favor of P^lff vs Lucius L. Day in words and figures following
Thursday July 8th 1858.

Hugh Gelston
VS

Lucius L. Day
Leah B. Day and
James F. Robinson

Assumpsit

This day came the said Plaintiff by Wead and Williamson his Attorney and the said Defendant Lucius L. Day by Henry Grove his Attorney and leave was given the P^lff to withdraw his 2^d Replication to 3^d plea of said defendant. Thereupon came this cause on to be heard on the motion of the aforesaid defendant for the continuance of this cause. The Court being fully advised in the premises doth overule the said motion. On Motion of said defendant leave was given him to ^{withdraw} plea of offsets and damages. Thereupon both parties ^{waives} a trial by ^{jury and} agree that all matters both of law and fact arising in this case should be tried by the Court. The Court having heard the Evidence in the case and being fully advised in the premises doth find for the Plaintiff and doth assess his damages at the sum of (\$ 551,75)
Five Hundred and Fifty one and 75/100 Dollars.

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Thereupon the said defendant Entered his motion for a new trial of this cause. The Court being fully advised in the premises doth overrule the said motion. Therefore it is considered by the Court that the said Hugh Gelston do have And Recover of And from the said Lucius S. Day the sum of (\$551.75) Five Hundred And Fifty one And 75/100 Dollars, his damages aforesaid, And also his costs And charges by him, about his Suit in this behalf Expended And that he have Execution therefor. Thereupon came the said defendant Lucius S. Day And prays an appeal of this cause to the Supreme Court of this State, which is allowed on his Entering into bonds on the penal sum of One Thousand Dollars conditional according to law, within Thirty days. Security by agreement of parties to be approved by the Court.

And the defendant objected, but the Court overruled said objection & admitted the record of said judgement in Evidence. To which decision of the Court overruling said objection And in admitting said record the defendant then & there at the time objected And Excepted.

The Plaintiff ^{then} offered the following Note in Evidence

" \$1281 ⁰⁰/₁₀₀

Peoria Ill November 25th 1856

" Twelve months after date We promise to pay to the Order of Hugh Gelston Twelve Hundred Eighty One ⁰⁰/₁₀₀ Dollars, payable at the office of A. B. Curtis & Co. Peoria Ill.

" Value Received,

" No Due Nov 25/57 Day & Company

on which are the following Endorsements,

" \$300

" Decr 11/57 Rec'd on the Within ^{note} Three Hundred Dollars
 of J. Durham, jr

" \$100 Jan'y 9th/58 Rec'd on the Within one Hundred Dollars.

" Jan'y 20th/58. Rec'd on the Within Two Hundred Dollars. \$200.-

" March 15th. Rec'd on the within note fifty Six ^{29/100} Dollars.

" April 2^d/58. Rec'd on the Within one hundred ^{50/100} Dollars \$100 ^{50/100}

" (Endorsed) Durham & Gelston

To which the defendant objected, but the
 Court overuled the objection & admitted the note in Evidence.
 To which decision of the Court overuling said objection
 & in admitting said note in Evidence, the defendants then
 and there at the time objected & Excepted.

This was all the
 Evidence in the case. The Court thereupon adjudged And
 determined, that the defendants be made parties to said
 judgement, & the defendant objected & excepted And
 prayed that this ^{thrift} bill of Exceptions might be signed
 & sealed, which is done.

(Wellington Seouers Seal)
 County judge

State of Illinois. 3^d d.
Peoria County. 3^d d.

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I Charles Kettelle, Clerk
of the County Court of Peoria County,
in the State of Illinois, do hereby certify
that the foregoing is a full, true and
perfect Transcript from the files and records
of my office, in a certain cause in said
Court wherein Hugh Gelston is Plaintiff,
and Lucius L. Day, Larkin B. Day and
James T. Robinson are defendants.

In witness whereof I have here-
unto affixed my name and the
seal of said Court, at Peoria, this
18th day of April A.D. 1859.

Charles Kettelle Chk.

per Geo. H. Kettelle

Spty Clerk

Cost Transcript \$10.35 paid by dist
atty H. Grove. Charles Kettelle Chk.

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Lucius L. Day inpts &c
nd

Hugh Galster

Recd

Filed Apl. 18. 1859.
Ideland Ch.