

No. 11957

Supreme Court of Illinois

Carroll,

vs.

Weld.

71641  7

Cook Co.
William Carroll
vs.
John G. Weldance

47

11957
1852

Prepared

Supreme Court of the State of Illinois
Jan. Term A.D. 1852.

Williams Canoll Plaintiff in Error	}	<u>Error & Cor'd</u>
^{vs} John G. Wells use of John W. Chickering Defendant in Error		

Afterwards, writ, or
c. in this same term before the said Supreme
Court at Ottawa, comes the said Williams
Canoll by John C. Dillon his Attorney,
& says that in the record & proceedings aforesaid
& also in giving the judgment aforesaid, there is
manifest error in this writ:— That the
Court below was in giving each of the
instructions asked for on the part of the Plaintiff,
That the Court was in refusing each of
the instructions asked for on the part of
the Defendant, That the verdict of the jury
is against the law & the Evidence, That the
Court was in denying a New Trial:— Therefore
in these there is manifest error: wherefore
he prays that the judgment aforesaid for the
for the error aforesaid, may be reversed, annulled
& altogether held for nothing, & that he may be
restored all things which he hath lost by
occasion of the judgment aforesaid &c.

John C. Dillon
Atty. for Plff in Error

Under the seal in error
consequently there are
no errors in such record
I purp for an opinion
of said judgment
J. R. Arnold
Atty for seal in
Error

Cook Co.

Mr. Carroll

as
John G. Weld use of
John W. Chickering

appt. of errors

Filed May 14, 1852.
L. Ireland Clk.

United States of America
State of Illinois
Cook County

Shew before the
Honorable Mark Skinner Judge of the Cook County
Court of Common Pleas, within and for the County
of Cook & State of Illinois, at a regular term of
said Court begun and holden at the Court House in the
City of Chicago, in said County and State on the first
Monday being the second day of February in the year of our
Lord One thousand Eight hundred and fifty two, and of
the Independence of the United States the Seventy Sixth

Present the Honorable Mark Skinner Judge
Daniel Meehof Prosecuting Attorney
William L. Church Sheriff
Abner Walker
Walter Kimball Clerk

Be it remembered that Jonathan
Smith on the fifth day of September in the year of
our Lord One thousand eight hundred and fifty one,
came before S. Weld who came for the use of John
W. Chickering; by Chickering and Sull his attorneys
and filed in the Office of the Clerk of the Cook Coun-
ty Court of Common Pleas, within and for the County
of Cook and State of Illinois, an Affidavit and
Precept, which said Affidavit and precept are in
words and figures as follows: to wit,

State of Illinois }
Cook County }

N B Young of Chicago in said
County being duly sworn says that he is agent for John I
Wild who is about to commence a suit for the use of John
W Chickering against William Carroll who (the said
William Carroll) is indebted to the said John I Wild
for the use of the said John W Chickering on a certain
Promissory Note for the sum of Three Hundred and forty two
and 25/100 dollars being for principal and interest on the
same to date one and above all payments, and this depo-
nent further swears that the same will be in danger of being
lost, and that whatever judgment may be obtained
will be in danger unless the said Defendant be held to bail.

Done before me this 5th day

of September AD 1851

Walter Kimball, Clerk

N B Young

Cong. Pls Cook Co. Sept Special Term AD 1851

John I Wild an of
John W Chickering
William Carroll

Appraiser Gas Co. &c

Captain ad respondendum in above entitled suit
direct to Sheriff of Cook Co.

Dated Sept 3 1851

And Oblige

Chickering & Galt

PLM: 111

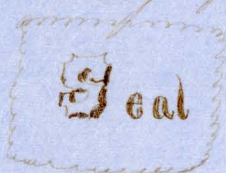
And afterwards, to wit, on the 29th day of September A D 1851, there was issued out of the Office of the Clerk of said Court, a Capias ad. respondendum, in said Court, which said Capias, with the Sheriff's return in the back thereof as in words and figures as follows to wit:

State of Illinois }
County of Cook }

The people of the State of Illinois, to the Sheriff of said County. Greeting. We Command you, that you take the body of William Carrall if he shall be found in your County, and safely him keep, so that he be and appear before the Court County Court of Common Pleas of said County on the first day of next ^{term} Special ^{term} thereof, to be holden at the Court House in Chicago in said County, on the fourth Monday of October next, to answer unto John E. Weld for the use of John W. Chickering in a plea of trespass on the case upon promises to the damage of the said Plaintiff as he says in the sum of Six Hundred Dollars.

And have you then and there this writ, with an endorsement thereon in what manner you shall have exhibited the same, Witness Walter Kimball Clerk of our said Court and the Seal thereof, at Chicago, in said County, this 29th day of September A D 1851.

Walter Kimball
Clerk



"The Sheriff will hold the Defendant to said in the sum of Three Hundred and Forty Two dollars and Twenty One Cents.
Walter Kimball, Clerk

" Executed by accepting the within named William Carroll and for want ^{of bail} he delivered to the Sheriff of Cook County October 11, 1851

William L Church Sheriff
by R I Wood Deputy

" The within named William Carroll having executed the annexed Bond, he discharged from arrest and Custody of the within writ October 14, 1851

William L Church Sheriff
by Daniel J Wood Deputy

And afterwards, to wit on the 12th day of September A.D. 1851 a Declaration and a copy of Note and account declared on, was filed in said Cause, which said Declaration - Copy of Note - and account - are in words and figures as follows, to wit:

X

State of Illinois }
Cook County }

Cook County Court of
Common Pleas
of October Special Term A.D. 1851

John G. Wild who sues for the use of John W. Chickering, Plaintiff in this suit by Chickering and his attorneys complains of William Carroll Defendant of a plea of trespass on the case on premises.

For that whereas David Sacket & Henry Harkins before and at the time of making ^{the} of the premises and

X

undebating of the said Defendant herein, after mentioned
 were indebted to the said Plaintiff in a certain sum of mon-
 ey, to wit, the sum of Four hundred and Sixteen Dollars
 of lawful money of the United States, to wit at Chicago
 in the County of Cook, And whereas the said Plaintiff then
 and there at the special instance and request of the said
 Defendants agreed to give time to the said David Pickett
 and Henry Warrins, and in pursuance of said agree-
 ment did take their promissory note for said sum of Four
 hundred and Sixteen Dollars, signed by said David
 Pickett and said Henry Warrins, and bearing date on
 the thirteenth day of January, in the year of One Thou-
 sand Eight hundred and Fifty One, the said Defendants
 then and there promised the said Plaintiff to guarantee
 the payment of the said promissory note, which said
 note the said Defendant then and there guaranteed by af-
 fixing his name upon the back of the same, by means whereof
 he the said Defendant became liable to pay the said sum
 of money, in said promissory note mentioned accordi-
 ng to the tenor and effect of the said promissory note, &
 in consideration of such liability he the said Defenda-
 nt then and there faithfully promised
 the said Plaintiff to pay him the said sum of Four hundred
 and Sixteen Dollars in six months from and after the
 date of said note as above mentioned, and the said plain-
 tiff avers that he confiding in the said promise of the said
 Defendant so made as aforesaid, did forbear and give
 time to the said David Pickett and Henry Warrins for
 the payment of the said sum of money until the said
 Space of six months after the date of said note as above
 mentioned to wit at Chicago, to wit at the County Court
 of Cook, but that the said David Pickett & Henry
 Warrins, although afterwards to wit on the first day of

September in the year One thousand Eight hundred and
fifty one at Chicago, to wit, in the County of Cook and
ad requested by the said Plaintiff so to do have not as
yet paid the said sum of money, nor any part thereof to
the said Plaintiff but have hitherto wholly neglected and
refused so to do, whereas the said defendant afterwards
to wit, on the day and year last then aforesaid then had
notice and thereby and according to the tenor and effe
ct of his said promise and undertaking to the said
Defendant became liable to pay the said Plaintiff
the said sum of money on and after the expiration
of the said six months from the date of the said prom
isory note, to wit at Chicago in the County of Cook and
Ill.
And the said Plaintiff avers that within the
said David Puckett and Henry Hawkins nor the said
Defendant nor any other person for them or either of
them has paid the said sum of money nor any part
thereof in consideration of the agreement as a fore
paid so due, but to pay the same have hitherto wholly
neglected and refused although after request so
to do to the great damage of this Plaintiff to wit
to his damage of Six hundred Dollars.

I ^{that} whereas also the said defendant on the thirteenth
day of January in the year One thousand Eight hundred
and fifty one made a certain note or writing, com
monly called a promissory note, bearing date the day and
year last aforesaid, and then and there delivered the said
note to the said Plaintiff, By which said note the said
defendant promised jointly ^{and severally} to pay to the said Plaintiff
by the name of John S. Mill or Order six months after date
the sum of four hundred and Sixty dollars for value
received, By reason whereof, and by force of the Statute

in such case made and provided, the said defendant became liable to pay to the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note, and being so liable, the said defendant in consideration thereof, afterwards to wit, on the same day and year, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in the said note specified according to the tenor and effect of the said note, And whereas also, the said defendant, afterwards, to wit, on the first day of September in the year of Our Lord One thousand eight hundred and fifty One, at the place aforesaid was indebted to the said plaintiff in the sum of Six Hundred dollars two full moneys of the United States of America for money before that time lent and advanced by the said plaintiff to the said defendant, and at the special instance and request of the said defendant, And for other money by the said plaintiff before that time paid laid out, and expended, for the said defendant and at the like request of the said defendant, And for other money by the said Defendant before that time had and received to and for the use of the said plaintiff, And being so indebted, the said defendant in consideration thereof afterwards to wit, on the same day and year last aforesaid and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in this count mentioned, when the said defendant should be thereunto afterwards requested, And whereas also the said defendant afterwards to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiff

of and concerning, divers other sums of money before that time
due and owing from the said defendant, to the said plaintiff
and then and there being in arrears and unpaid, and up
on such accounting to the said defendant then and there
was found to be in arrears, and indebted to the said pla-
intiff in the further sum of six hundred dollars of law-
ful money, as aforesaid, And being so found in arrears
and indebted to the said plaintiff the said defendant
in consideration thereof, afterwards to wit, on the
same day and year last aforesaid, and at the place afo-
said, undertook, and then and there faithfully prom-
ised the said the said plaintiff well and truly to pay
to the said plaintiff, the said sum of money last men-
tioned, when the said defendant should be thereunto
afterwards requested. Nevertheless the said defend-
ant (although often requested &c. to wit, on the day when
the said note became due and payable, according to
to the tenor and effect thereof, and oftentimes since
to wit, at the place aforesaid) hath not yet paid the
said several sums of money above mentioned, or any either
of them, or any part thereof, to the said plaintiff but
to pay the same or any part thereof, to the said plaintiff
if the said defendant hath hitherto altogether refused, and
will doth refuse, to the damage of the said plaintiff
of six hundred dollars, and therefore the said plaintiff
brings suit &c

Chickering & Full Plffs Attorneys

By John E. Dillon his attorney comes and defends the
 wrong and injury where &c, and says that he did not
 promise in manner and form as the said Plaintiff
 hath complained against him and of this he the said
 defendant puts himself upon the country &c
 and the Plff likewise
 Chieftain for Plff } John E. Dillon
 Depts Atty

To the above named Plaintiff,

Take notice that the
 defendant in this suit intends to rely for his defence
 on the following Special Matters: viz,

That he had no con-
 sideration in inducing said note; That his indorse-
 ment was obtained through fraud, and that the
 subscribing witness did not see him indorse said
 note, but witnessed it without any knowledge
 of the same

John E. Dillon
 Depts Atty

And afterwards; he wit on the 24th day of Febru-
 ary A.D. 1852 the said day being one of the days of the
 February Term of said Court for the year aforesaid the
 following proceedings were had and entered of Record
 to wit;

John G. Weld for the
 use of John W. Chickering
 vs
 William Carroll

Aft

And now at this day came
the said Parties by their Attorneys, and issue being joined
therein, it is Ordered that a jury come, and therefore
come the Jurors of a Jury of good and lawfull men
to wit

David Day	W Jones	J O Connor
J O Connor	Geo C Dexter	J McNeil
A S Cobb	C Voice	W H Howard
Robert Taylor	Jacob Sauter	and W S Wells

who being duly elected tried and sworn well and truly
to try the issue joined as aforesaid, After hearing
the evidence adduced, argument of Counsel, and
instructions of the Court, retired under charge of
an Officer of the Court to consider of their verdict,
and the hour of adjournment having then expired
and by agreement of Parties it is Ordered that
when the jury shall have agreed upon a verdict,
they may reduce the same to writing, Sign and Seal
the same, and afterwards be permitted to Sepa-
rate, and to meet the Court at the opening thereof
tomorrow morning -

And afterwards to wit on the 28th day of
February A D 1852 the said day being one of the days
of the February Term of said Court for the year aforesaid
and the following proceedings were had and entered of
record, to wit

John S Weld for use of John W Chickering	} Attest
William Carroll	

And now again come the
Said Parties by their attorneys and the jury impaneled
in the Cause on yesterday also come, and say see the
jury find the issue for the Plaintiff and assess his dam-
ages to the Sum of Three Hundred and Fifty doll-
ars and twenty five Cents, And thereupon the said
defendant enters his motion herein for a new
trial in this Cause.

And afterwards, to wit on the 24th day of
March A.D. 1852 the said day being one of the days
of the February Term of said Court for the year afore-
said the following proceedings were had in said Court
and entered of Record, to wit

John G. Weld former of }
John W. Chickering }
as } Plaintiff
William Carroll }
vs }
Defendant

And now at this day
came the said Parties by their attorneys aforesaid, and
after argument heard on the said defendants Motion
for a new trial in this Cause the Court being now
fully advised in the premises Overrules said mot-
ion; to which decision the said Defendant
excepts - Therefore it is considered that the
Said Plaintiff for the use aforesaid do have and
recover of the said Defendant his damages of Three
Hundred and Fifty Dollars and twenty five Cents
in favor aforesaid assessed and also his costs and char-
ges by him in this behalf expended and have execution therefor,

And afterwards, to wit, on the 16th day of April
A.D. 1852, the said day being one of the days of the February
Term of said Court for the year aforesaid, a Bill
of Exceptions was filed which Bill of Exceptions is as
follows to wit:-

X

William Carroll
vs
John S. Weld and
John W. Chickering

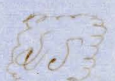
Cook County Court of
Common Pleas, February
Term A.D. 1852

Be it remembered that
on the 24th day of February on the trial of the above enti-
tled cause the Plaintiff by his Counsel gave in evidence
a certain promissory note being in number and
form as follows, to wit:-

\$416.00

Chicago January 13 1851

Six months after date one forthly and
severally promise to pay John S. Weld or Order the
Sum of Four hundred and Sixteen Dollars for
value received

Signed David Puckett 
" Hannaford 

Upon which and on the back thereof near the top is
written the following

William Carroll
Witness, S. W. Merrill

Said Plaintiff by his Counsel also gave in and read the Depositions of one S H Durnell being in manner and form as follows, to wit,

Deposition of

Samuel H Durnell of the County of Cook and State of Illinois taken on the 20th day of November 1851 between the hours of ten in the morning and seven in the evening of said day, at the office of J N Boyer Esq pursuant to the enclosed notice to be read as evidenced in a case pending in the Cook County Court of Common Pleas, of Cook County between John S Weld for use of John W Chickering Plaintiff and William Carroll Defendant, as follows the said Samuel H Durnell doth depose and say 1st Quest do you know John S Weld and and William Carroll, Ans I know Mr Weld very well, and I have seen William Carroll two or three times I think - Do you know of William Carroll having signed his name to any note made by David Puckett & Henry Hawkins payable to said John S Weld. I Weld if so state as fully as you can a description to of said note, when where & why said Carroll so signed said note) I Ans, Yes; I do know of his having signed such a note, the note was for one hundred and Eighteen Dollars payable six months after date & dated Jan 13, 1851 - Payable to John S Weld on Order Signed by David Puckett & Henry Hawkins, William signed said note on the same day it was drawn up - in Chicago because Mr Weld did not think the other was safe against Security & because Mr Weld said he would not sell them the goods, on time unless William Carroll sign the note with them.

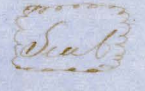
Cross Interrogatories

1 Ques: where do you reside. Ans I reside in Chicago.
2 Ques: What is your business, ^{Ans} a wholesale liquor Dealer.
3 Ques: were you present when this note was made. Ans I did not see the note drawn up, 4th Ques: Did you see Tackett or Hamlin sign the note, 4th Ans, I did not, 5th Ques: Did you see Mr Carroll sign the note Ans, Yes Sir; I saw him make his cross
6th Ques: who wrote his name to said note, Ans 6, Mr Meld, 7th Ques: where was this note executed Ans 7 in the Saloon of Mr Meld, 8th Ques: Did Mr Meld send for you to witness this note. Ans 8, He did not I happened in at the time, 9th Ques: Did you ever at any time state that you were not present when Carroll signed that note. Ans 9 No Sir, 10th Ques: Did you not see your own Stone tell John E Dillon that you were not present when Carroll signed the note; Ans 10, I don't know the man 11th Ques: Did you ever know of one John E Dillon calling on you at your Stone and asking you about the execution of this note, Ans 11, I recollect of your to the best of my knowledge calling at my Stone, and asking me about the execution of this note, 12th Ques: Did you not then tell me that you did not see Carroll sign said note, Ans 12 I did not, 13th Ques: was this note executed in the day time or in the evening, Ans 13 It was executed in the day time at about the hour of eleven in the forenoon, I would make the positive, 14th Ques: Did you see Carroll drink any in that Saloon, Ans 14 I did not, 15th Ques: Do you believe Mr Carroll had been drinking previous to his signing said note, Ans 15, No, 16th Ques: Did you drink any at Melds Saloon at that time Ans 16, No Sir,

Ques 17. what did you say to Mr Carroll at
the time of writing his Carrolls Signature to said
note; Ans 17 I asked Mr Carroll if he knew what he
was signing, if it was all right, his answer was, it is.
Ques 18 Did you subscribe your name without further
conversations on the matter, Ans 18 I did. Ques 19
Did you read the note to Carroll before he signed it
Ans 19, I did not, Ques 20. Do you believe said Car-
roll was free from intoxication at the time of his
signing said note, Ans 20 I think he was sober at
the time he signed said note, Ques 21 Have had
any conversation with Mess Chieftaining and Gull about
this testimony Ans 21, No Sir
S H Turrill

Shake of Illinois
Cook County

I, V A Boyer a Justice of
the Peace in and for said County do hereby Certify
that Samuel H Turrill was by me duly sworn to
testify the truth the whole truth and nothing but the
truth, as a witness in the above named cause and that
the foregoing Deposition by him subscribed was reduced
to writing by me and taken at the time and place
in the enclosed notice specified

Given under my hand
and Seal this 20 day of November A D 1851
V A Boyer 
Justice of the Peace

Both Parties by their Counsel having here met

and the foregoing being all the evidence given on the said trial the Plaintiff by his Counsel asked the Court to instruct the jury as follows, to wit

1st The court are requested to instruct the jury that the copy of the note sued on and which is filed with the Declaration is no part of the Declaration and that the jury will pay no attention to such Copy.

2^o If the jury believe from the evidence that the Plaintiff hath substantiated by testimony the allegations in the first or second Count of his Declaration, he is intitled to recover a verdict in this Suit.

3^d That if the jury believe from the evidence that the Plaintiff refused to accept the note sued on or give time to Hawkins & Sackett unless the Defendant Carrall would put his name upon the note sued upon, & that the said Defendant put his name upon the said note to induce the Plaintiff to so accept such note and so give time, then the law is for the Plaintiff.

The Court gave the jury the foregoing instructions asked for on behalf of the Plaintiff as aforesaid, and to the giving of which said last mentioned instructions viz - instructions number two and three, the Defendant by his Counsel did then and there except

The foregoing being all the instructions asked for on the part of the Plaintiff, The Defendant by

by his Counsel asked the Court to instruct the jury in
1st manner and form as follows, to wit, 1st If the ju-
ry believe from the evidence that the defendant endorsed the note
meaning only to incur the liabilities of such then the Law is for the defendant
2nd If the Jury believe from the evidence that no
guarantee has been given, it being incumbent
on the Plaintiff to prove the same, then the Law is for the
Defendant.

3rd If the Jury believe from the evidence that the defend-
ant had no consideration in endorsing said note then the
Law is for the defendant.

4th If the Jury believe from the evidence that no suffi-
cient consideration has been given, it being incum-
bent on the Plaintiff to prove the same then the
Law is for the Defendant.

The Court gave instructions numbered one in an
amended form as follows, to wit

If the Jury believe from the evidence that the
defendant endorsed the note meaning only to incur
the liabilities of an ordinary indorser and that the
Plaintiff accepted the endorsement in that view
only, then the Law is for the Defendant.

To which amendment the defendant by his
Counsel Did then and there except and to the giving of
which as amended the Defendant by his Counsel Did
then and there Except.

The Court refused to give the jury instructions
numbered two, three and four as set for on the part of

the Defendant, To which refusal the Defendant by
his Counsel. Did then and there except -

The cause having
thus gone to the jury and said Jury having return-
ed a verdict in favor of the Plaintiff, The
Defendant by his Counsel filed his motion for a
new Trial. Said motion being in manner and
form as follows to wit: Now the said Defendan-
t by his Counsel moves for a new trial because
he says that the Court erred in refusing each of the
Instructions asked for on the part of the Defendan-
t viz: Instructions numbered, two, three, and four,
That Instructions numbered two and three, given to
the Jury on the part of the Plaintiff ought not to
have been given, That the verdict of the Jury is
against the law and the evidence.

Said motion for a new trial having been argu-
d by Counsel on behalf of both parties. The Court
after due deliberation therein ^{denied} a new Trial. To which
said denial the Defendant by his Counsel, Did then
and there except, and prays the Court to Sign and Seal
this his bill of Exceptions.

Mark Skinner
Judge

State of Illinois }
County of Cook } p.

I Walter Kimball Clerk
of the Cook County Court of Common Pleas,
within and for the County and State aforesaid, do
hereby certify, that the foregoing is a true and
correct copy and Transcript from the Records
of said Court and also of the Papers and Bill
of Exceptions filed in the case of John E
Weld for the use of John W. Chickering Plaintiff
and William Carrall Defendant, now on
file in my office.

In testimony Whereof I have here-
unto set my hand and the Seal
of said Court at the City of Chicago
in said County, this 5th day of May
A D 1852.

Walter Kimball
Clerk

Cook Co.

John S. Mallin
of John W. Chickering

24

William Connell

Transcript.

Filed May 14, 1852
L. A. Leland
Ck

Fee Trans'ed of 7.45

Paid by W. L. L.

STATE OF ILLINOIS, }
Supreme Court.

The People of the State of Illinois,

To the Sheriff of the County of *Cook* - Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the ~~state~~ *Cook County* court of *Common Pleas of Cook* - county, before the Judge thereof, between *John G. Weld use of John W. Chickering, plaintiff* - and *William Canoll*

Defendant, it is said that manifest error hath intervened, to the injury of the said *Defendant*

as we are informed by *his* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *John G. Weld use of John W. Chickering*

that *he* be and appear before the justices of our said supreme court, at the next term of said court, to be holden at Ottawa, in said state, on the *second Monday* in *June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* - shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said *John G. Weld use of John W. Chickering* notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *14th* day of *May* - in the year of our Lord one thousand eight hundred and fifty *two* -

J. Leland Clerk of the Supreme Court.

206
Cook County
William Canale

John G. Welder of
John W. Chickering

Sci. Ia.

To June Term 1852.

Served by reading to John
W. Chickering, 17 May
1852. ~~John G. Welder~~

also served by reading
to W. B. Young, who
acknowledges himself the
Agent of John G. Weld
this 21st day of May 1852.

Fees 2 Services 1.00
2 miles - 1.0
1 Return 1.0

Wm. L. Col. \$1.20
L. Church - 1.00
\$2.20. Ck. in this case by
1852. in error -

Filed May 22-1852
Melancthon

Supreme Court of the State of Illinois
 June Term A.D. 1852

William Carroll
 or
 John G. Welles
 John W. Chetling

} Affirmant
 of Error

giving That the Court
 erred in ~~refusing~~ each of the instructions
 asked for on the part of the plaintiff;
 That the Court erred in refusing each
 of the instructions asked for on the part
 of the Defendant: That the verdict
 of the jury is against the law & the
 evidence: That the Court erred in —
 denying us a new trial: —

Cite in support Seabury v. Hungerford
 2^d Hill R. P. 80 - Hall v. Newcomb
 3^d " " " 233 - "
 7th " " " 416 - — —

Supreme Court

William Canole

John G. Wells
and John W. Chickering

Abstract

Filed June 29th 1852.

John C. Dillon
Clerk

Sup Court: June Term 1852.
 John G. West use
 of
 John H. Chickering }
 William Canoll }

The signature of a third party on the back of a promissory note in blank is prima facie evidence of a liability in the capacity of a guarantor -

Creson v. Dubois. 13. Johnson 175.

Cushman v. Dement 3 Scam 497.

Campbell v. Putter 14 Johns 349.

Cariden v. McCoy 3. Scam 437.

This is a legal presumption liable to be rebutted by proof, but evidence that the endorser wrote his name for the purpose of becoming liable as security that the maker should be responsible for the payment of the note does not rebut it.

Cushman v. Dement 3 Scam 497.

There was no necessity at the trial of above case at the Court below for the Pltff to produce record of Indgt against the maker, or to prove their insolvency. *Wheaton v. Hulburt* 489 - as the endorser chose ^{expressly} to modify his ordinary liability so as to assume that of a Guarantor. and according to Smith & Finch 2^d Scam 321. The statute in relation to the liability of the assignor of a promissory note is not applicable to a case where a guarantee accompanies the assignment.

The endorser of a promissory note may enlarge or restrict his ordinary liability by parol agreement at time of endorsing, Story Prom notes §.147.

where a promissory note is endorsed in blank it is competent for the Plaintiff to fill up the endorsement at the trial in any manner not inconsistent with the intention of the Parties. *Smith v Finch* 2^d Scam 321.

Welson v Dubois 8 Johns 175.
- - 345.

- - 39
4 East 29.

But its resting in parol would not alter the right to recover. a parol promise collateral to a written agreement is binding *Smith v Finch* 2^d Scam 325. 4 East 29.

In the case before the Court the declaration contains two counts - one against the defendant as maker of the note and one against him as guarantor - From consideration of ~~his liability~~ authorities above referred to there is no doubt of his liability as guarantor - nor from decisions in *Sumner v Gay* 4 Pick 311. & in *Baker v Briggs* 1 Pick 122. or of his liability as maker of the note.

It will be urged by the ^{Plffs} ~~Defts~~ in error that the decisions of our state construing the legal effect of an endorsement of third party in blank are based upon the decisions of Massachusetts & New York & that the decisions of the latter States on which those of our State are based have been repealed. but these decisions ^{it is presumed} have done no more than to determine ^{* establish} a legal presumption in the absence of any express agreement. But

where a party has chosen to expressly determine,
his own liability there is no room for the exercise
of a legal presumption and the express intention
of the parties must prevail over a legal pre-
sumption which without such express intention
might exist -

O R M Lullie
Att'y for Defts in error

for West
Carroll

O. E. M. Lullis
Sole Prop-

Supreme Court of the State of Illinois
 Term Term 1852

William Carroll }
 vs } Assignment of
 John G. Welles } Error
 John W. Chickering }

That the Court
 erred in giving each of the instructions
 asked for on the part of the plaintiff

That the Court erred in refusing
 each of the instructions asked for on
 the part of the Defendant. That the
 verdict of the jury is against the Law
 & the Evidence. That the Court erred
 in denying a New Trial:—Therefore
 in these there is manifest error:—

Cite in support Seabury vs Humphreys
 2^d Hill's R. P. & O. Hall vs Newcomb
 3^d " " " 233. " "
 7^d " " " 416. — —

Supreme Court

William Canoll

John G. Welles

John W. Chickering

Abstract

Filed June 29th 1852.

John C. Dillond
Plffs Atty. —

State of Illinois, sct.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
Cook County Court of Common Pleas
To the Clerk of the ~~Circuit Court~~ *Cook* for the County of *Cook* GREETING :

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the *Said* Court of *Cook* county, before the Judge thereof, between *John*

G. Wild vs *John W. Chickering*

_____ plaintiff and *William Canoll*

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

as we are informed by *his* complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our justices aforesaid at Ottawa, in the county of La Salle, on the *2^d Monday of June* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *14th* day of *May* in the year of our Lord one thousand eight hundred and fifty *two*

L. Leland Clerk of the Supreme Court.

Cook Co.
William Carroll
John G. Weld ^{vs} exec.

Mist of Error

To June Term 1852,

Filed May 14. 1852,
S. Ireland Clerk

Supreme Court of the State of Illinois
June Term A.D. 1852.

William Canoll Plaintiff in Error	}	<u>Error & Costs.</u>
^{vs} John G. Welles of John W. Chickering Defendant in Error		

To The Clerk of said Court, Please
issue *sub Facias* in the above entitled
case, directed to the Sheriff of Cook County
returnable on the first day of the Term —
+ Oblige Yours &c,
John E. Dillon
Atty. for Pff. in Error.

Cook.
Supreme Court
William Canole
Plff. vs Euro

vs
John G. Welles
John W. Chickering
Defendant vs Euro

Princip

Filed May 14, 1852
A. Deland Clk.

John E. Dillens
Atty for Plff vs Euro