

No. 13051

Supreme Court of Illinois

Mason

vs.

Johnson

71641  7

STATE OF ILL.

SUPREME COURT,

Third Grand Division.

No. 161.

1860

Mason
vs.

Johnson

Mason
vs.

Johnson
13051

Charles Mason Esqr { In the Supreme
of the State { Court of Illinois
Joseph H. Gibson { April Term 1860
Appeal from Marshall
In this case it is agreed
that the record for the plaintiff in
error will furnish to the counsel
for defendant in error sufficient
authority from Charles Mason to Silas
Ramsey to sign his name to the appeal
Bond in this case, or a recognition of
such signature by said Mason
before the case is called for argument
and in case of neglect to furnish
such authority or recognition before
that time the appeal is to be dis-
missed without. It is agreed for the
appellee that the Appellee
prosecution of a
writ of error

It is agreed for appellee
J. B. Pugh for Appellant

April 25, 1860

16
Charles Mason

Recorder

142

Joseph H. Johnson

Agent

Mrs. Deane

Know all men by these presents
that I Charles Mason Executor
of the Last Will & Testament of
Jerse L Smith deceased do by
these presents constitute & appoint
Silas Ramsey of Marshall County
Illinois my true and lawful
attorney for me and in my name
and stand to sign my name
as such Executor to any appeal
Bond or other paper which may
be necessary to appear to the
Supreme Court of the State
of Illinois the suit of Joseph
H Johnson against me as the
Executor of Jerse L Smiths debt
trial in the Circuit Court
of said Marshall County Illinois
highly ratifying and confirming
what my said Attorney may
do in the premises bearing
my hand and seal this 1st
day of November A.D. 1859

Charles Mason
Executor

151 69

Mason
vs
Johnston

Power of atty

Filed May 7. 1860
L. Leland
Clerk

Placed in
the
file

Mason } I Refer the Court to the
 } Case of Propst. v. Meadows
Johnson } 13th Ill 167.

Subject Presentation of Claims &c
This case decides that a
Claim will be considered withdrawn,
unless allowed at some proper time,
or some Order continuing the case
is made

Respect for Oppellant

No 161
Mason as Johnson

New Authority

Propst. v. Meadows,
13th Ill. 167,

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, 1860.

CHARLES MASON, Ex'r. of }
JESSE C. SMITH, } *Appeal From Marshall.*
vs.
JOSEPH H. JOHNSTON. }

BRIEF OF APPELLEE.

1. The defendant's demurrer to plaintiff's replication to defendant's second plea was properly overruled.

32 *Emp. Law*
+ *Foot R*

It is insisted that the term "beyond seas," as used in our Statute of Wills, does not mean simply without the jurisdiction of the State. The term is copied from the Statute of 21 James I, Chapter 16, and in adopting it, we received it with the construction that had been given to it by the Courts of the country from which it came. In the case of *King vs. Walker*, 1 W. Blackstone R. page 287, it was held to mean, that "beyond seas" was without the jurisdiction of the Courts of the Country. So, also, in this Country, where that term has occurred in statutes, it has been held to have a similar meaning.

Murray vs. Baker, 3 Wheaton R. 541.

Shelby vs. Guy, 11 Wheaton R. 361.

Faw vs. Roberdeau, 3 Cranch, (1 Cond. R. 433.) 174.

Stephenson vs. Doe, 8 Blackford R. 515.

Bank of Alexandria vs. Dyer, 14 Peters R. 145.

Brent vs. Tusker, 1 Har. & McHen. R. 89.

Forbes vs. Foot, 2 McCord (S. C.) R. 331.

White vs. Bailey, 3 Mass. R. 271.

Byrne vs. Crowninshield, 1 Pick. R. 263.

2. The demurrer to the defendant's 4th rejoinder to plaintiff's replication to defendant's second plea was well taken and was properly sustained. It did not answer the replication, and set up no matter that, if true, would destroy the force of, or be any answer to it. The fact that the plaintiff withdrew the note from the files of the County Court of itself proves nothing, and could not defeat his right to recover in the Circuit Court. He had a right to do *that* for the purpose of instituting his suit elsewhere.

3. The demurrer to defendant's fifth plea was properly sustained. The Statute of limitations of five years applies to the action of *assumpsit*, and not to the action of *debt*. This was an action of *debt*, and, therefore, the plea was no answer to the declaration.

Purple's Statute, pages 729, 732.

Rebell vs. Janney, 4 Gil. 297.

4. The fourth objection is disposed of in our answer to the objection to the pleading as to the meaning of the term "beyond seas."

5. The fifth instruction was correct; it was proper for the Court to instruct the jury as to what presumption of law would arise from a given state of facts.

6. The sixth instruction asked by the plaintiff was proper; it only instructed the jury as to what would avoid the payment of the note if they believed it had been executed by Smith.

7. The 7th, 8th, 9th, 10th, 11th, 12th, 13th and 14th instructions given on the part of the plaintiff clearly present the law that must govern this case, as will be shown on the argument.

8. The third instruction asked by the defendant was properly refused. There was nothing in the evidence to raise a presumption that the note was given "without any good or valuable consideration." While there may be evidence tending to show an *inadequacy* of consideration, there is nothing to induce a belief that it was wholly without consideration. Unless instructions are based upon the evidence in the case, they are properly refused, and their refusal may not be assigned for error.

Humphreys vs. Collier, 1 Scam. 53.

Hill vs. Ward, 2 Gil. 202.

Vandandingham vs. Huston, 4 Gil. R. 127.

Sherman vs. Dutch, 16 Ill. R. 283.

Coughlin vs. The People, 18 Ill. R. 266.

Chicago, Burlington & Quincy R. R. Co. vs. George, 19 Ill. 510.

Hoseley vs. Brooks et al., 20 Ill. R. 115.

9. The objections urged against the third instruction asked by defendant apply with equal force to the 2d, 4th, 6th, 9th, 10th, 12th, 13th and *unnumbered* instructions asked by defendant, and they were properly refused.

10. It was not erroneous for the Court to send out the jury to reconsider their verdict when they had found an *informal* one! Neither of the verdicts, (except the last,) found by the jury were sufficient to determine the rights of the parties, and the Court clearly had a right to refuse their verdicts for informalities, and to re-instruct them that they might decide the case intelligently.

Flinn vs. Barlow, 16 Ill. R. 40.

Lec vs. Quirk, 20 Ill. R. 395.

11. The objections to the exclusion of evidence are not well taken; the fact that the plaintiff withdrew his note from the files of the Probate Court, if it were true, proves nothing, and could not determine the rights of the parties, and it was, therefore, properly excluded.

12. The receipts offered in evidence were proper for the consideration of the jury; so of the certificate of purchase from Simpson. The books of account, offered in evidence, only shows the state of the *store* accounts between the parties, and the evidence was proper as tending to show that there were other transactions between the parties that remained *unsettled at the time* the books were balanced.

13. We can perceive no errors in the record, and it seems that substantial justice between the parties has been done; and where this is apparent this Court will not reverse the judgment.

Gillett vs. Sweat, 1 Gil. R. 475.

Smith vs. Shultz, 1 Scam. R. 491.

Newkirk vs. Cone, 18 Ill. R. 454.

Dishon et al. vs. Schorr, 19 Ill. R. 59.

French vs. Lowry, 19 Ill. R. 138.

We insist, therefore, that the judgment below should be affirmed.

H. M. & J. J. WEAD.

Attorneys for Appellee.

161-69
Mass 84². 66
by
Johnston
Appellus brief

Fid May 1, 1860
L. Kelam
Ch.

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

JOSEPH K. JOHNSON, Appellee, }
vs. }
CHARLES MASON, Executor of } *Appeal from Marshall.*
JESSE C. SMITH, deceased, Appellant. }

ABSTRACT OF THE RECORD.

Page of Rec. Johnson commenced suit against Mason, executor of Smith, in the Marshall Circuit Court on the 8th October, A. D. 1858.

The declaration states that Smith in his life time executed and delivered to Johnson his note, which is as follows :

"\$2,893 62.

"LACON, April 10th, 1840.

6 "For value received, five years from date I promise to pay J. H. Johnson or order, the sum of two thousand eight hundred and ninety (2100 dollars in goods, or such merchandize as he, said Johnson or bearer may select, and if not paid when due, to be cash on interest from date. JESSE C. SMITH."

26 The declaration contains two counts on this note, and avers that Johnson was ready to receive the goods, but Smith did not have them to deliver. It states that Smith died on the 31st July, 1850; and that Mason was appointed his executor and letters testamentary were issued to him by the county court of Marshall county, on the 9th day of September, A. D. 1850.

9 The defendant pleaded *nil debit*, and verified his plea by affidavit, denying the execution of the note by Smith.

Issue taken on this plea to the country.

10 *2nd Plea.* That as to property inventoried and accounted for, &c., the plaintiff's claim was not filed in the proper court, nor presented to the executor, Jesse C. Smith, till after two years from the time of the granting of letters testamentary, &c.

13 Plaintiff replied that at the time of the granting the letters testamentary, &c., plaintiff was beyond seas, to wit: in the state of California. and that he filed his claim within two years after his return from beyond seas, &c.

Demurrer to this replication overruled and exception taken by defendant.

Defendant rejoined,

24, 25 1st. That plaintiff was not beyond sea but was in the state of California, one of the United States of America,

Issue to the country.

- Page of Rec.* 2nd. That at the time when &c., plaintiff was not beyond seas, &c.
 25 Issue to the country.
- 25 3rd. That plaintiff did not, ~~within two years~~ after his return from beyond seas, file his claim with the proper court.
 Issue to the country.
- 26 4th. That within two years after his return from beyond seas, plaintiff took his claim off the files of the court, and withdrew and abandoned his claim.
 Surrejoinders to 4th rejoinder to replication to second plea.
- 28 1st. Plaintiff did, within two years after his return, &c., to wit: on the 3d Nov., 1852, present his note to Mason, the executor, for allowance against Smith's estate and requested him to allow the same, which he refused.
 Demurrer by defendant.
- 30 Sustained to the 4th rejoinder to said replication.
- 28 2d. That plaintiff did not abandon the prosecution of his claim against Smith as alleged.
 Issue to the country.
- 29 3d. That plaintiff did not withdraw his note from the files as alleged.
 Issue to the country.
- 4th. That plaintiff, on the 3d Nov., 1852, presented his claim for allowance. Judge refused to allow the claim. Ramsey was Judge, and attorney for Mason, and he could not get a fair hearing before him.
- 29 31 Demurrer sustained to 4th rejoinder, &c.
- 29, 30 5th. That plaintiff did not abandon his claim, but withdrew his note to bring suit thereon, and prosecuted the same in the circuit court.
- 31 Demurrer sustained to 4th rejoinder,
- Defendant's 3d Plea.*
- 10, 11 Neither Smith in his lifetime, nor Mason, executor, since his death within sixteen years, agreed to pay said note.
- Replication,*
- 14 That Jesse C. Smith did agree to pay within sixteen years.
 Issue to the country.
- Defendant's 4th Plea.*
- 11 That the cause of action did not accrue to the plaintiff within sixteen years before the commencement of the suit.
- Replication.*
- 14 That the cause of action did accrue within sixteen years, &c.
 Issue to the country.
- Defendant's 5th Plea.*
- 11 That cause of action did not accrue to plaintiff within five years before the commencement of the suit.

Page of Rec.

18 Demurrer sustained.

Defendant abides by his demurrer.

Defendant's 6th Plea.

11, 12 Payment by Smith in his lifetime, to wit: May 1st, 1845.

Replication.

Did not pay, &c.

Issue to the country.

Defendant's 7th Plea as amended.

The note was made without any good or valuable consideration, &c.

Replication.

16 Note not made without a good and valuable consideration, &c.

Issue to the country.

Defendant's 8th Plea as amended.

16 That the making and executing the note by Smith in his lifetime was obtained through fraud and circumvention.

18 Demurrer sustained. Defendant excepted and abided by this demurrer.

The cause was tried by jury, which found plaintiff's debt \$2,743 62 and damages \$2,866 54.

35, 36 The bill of exceptions shews that the first verdict found by the jury was: "We, the jury, find for the plaintiff—" This verdict the court refused to enter up, and sent the jury out. They came in again with the following verdict: "We, the jury, find for the plaintiff indebtedness to the amount of \$2,743 62, and damages to the amount of \$2,866 54, and that the note was not filed in accordance with law," which verdict also the court refused to receive, and the jury were again directed to retire. They did so and returned again with the following verdict: "We, the jury, find for the plaintiff indebtedness to the amount of \$2,743 62, and damages to the amount of \$2,866 54." Whereupon, without request of the jury, and against objections made by the defendants, and at the plaintiff's request, the court instructed the jury that—

"The jury will find whether the note was presented to the probate or county court, within two years after Johnson returned from California; if he was in California.

36, 37 "The presentation of the note is sufficient if it was marked filed by the clerk of the county court, and was left among the files in his office for several weeks; and if the note was afterwards taken from the files by the plaintiff or his attorney, this did not annul the previous presentation, if it had been presented by being marked filed by the judge and left with the files by him."

Defendant objected to these instructions, and requested the court to hear argument and suggestions in relation to the same and to the propriety of their being given, which the court refused to hear, and again sent out the jury to consider of their verdict. The jury brought in the following verdict: "We, the jury, find for the plaintiff indebtedness to the amount of \$2,743 62, and damages to the amount of \$2,866 54, and that the plaintiff filed the note in question within two years after

Page of Rec. his return from California." Which verdict the court directed to be
 37 entered, and the defendant excepted.

The evidence incorporated into the bill of exceptions tends to show
 38-46 that the note was executed by Smith; that Johnson went to California
 in the spring of 1849, and returned in the spring or summer of 1852;
 and that the note was filed and sworn to before the clerk of the county
 court, Nov. 3d, 1852; that Smith and Johnson were not on good terms
 from 1838 to 1842; that they did no business as a firm after April,
 1837. Johnson was in moderate circumstances; had lots and land worth
 47 about \$1000, which, except one lot, he has yet; and was worth from
 \$1,500 to \$2,000 besides.

The account books of Smith and Johnson are introduced in evidence,
 48-73 shewing that Smith was in no manner indebted to Johnson on their
 partnership accounts, except in the sum of \$197 50. Smith & Johnson
 74, 75 had difficulties: they commenced in 1838; Smith sued Johnson and got
 judgment against him.

Smith had no goods, and neither of them were merchandizing in 1840.
 75, 76 From the books and accounts given in evidence, the accounts of Smith
 and Johnson appear to have been settled up to April 5th, 1840.

Defendant upon the trial in the court below offered to prove the
 following:

76 "That within two months after the note was marked filed by the clerk
 of the county court, and before any hearing was had thereon, it was
 withdrawn by the plaintiff and never re-filed or put upon the files of
 the county court, or insisted upon as a claim against the estate of said
 Smith."

Defendant produced the books and records of the county court, which
 were identified and proved, and offered the same in evidence to shew
 the claims allowed against the estate, and that the note sued on was not
 80 one of them, and was not allowed; also, that there had been no note or
 other claim of Johnson against the estate of Jesse C. Smith, in said
 county court since April, 1853.

Defendant offered in evidence sundry letters, 17 in number, proved to
 85 have been written and signed by Smith, not papers in this case.

To all this evidence the plaintiff objected, and the court sustained the
 objection and excluded the evidence.

Plaintiff offered a receipt which was proved to be in the hand-writing
 90, 91 of J. S. Simpson, who was then sheriff of Putnam county, which is as
 follows:

"Received, Hennepin, August 25th, 1857, of J. H. Johnson, four hun-
 dred dollars, to be applied on an execution in favor of McClelland &
 York against J. C. Smith. J. S. SIMPSON."

Objected to by the defendant but admitted by the court.

Plaintiff offered in evidence two receipts signed by E. Swan; also
 95 orders of Smith on Johnson, and orders of Smith on Strong & Johnson,
 the several signatures being proved, and which are as follows:

Page of Rec. Rec'd of J. H. Johnson \$18 00 on J. C. Smith's account with E. Swan
95 as per bill annexed:

Feb'y 14, 1835, to cash paid Samuel Warren,	\$10 00
December 29, 1834, to cash paid H. K. Cassell,	4 30
Feb'y 11, 1835, to cash lent J. C. Smith,	2 00
to cash paid Lancaster,	1 50
	\$18 00

April 21st, 1835, credit on book. E. SWAN.

96 Received of E. Swan the sum of ten dollars, in full payment for a month's work at chopping and scouring for J. C. Smith.
Columbia, Ill., February 14th, 1835. SAMUEL WARREN.

Columbia, 21ts, 1835
96 Rec'd by the hands of J. H. Johnson the within amount, ten dollars.
\$10 00. E. SWAN.

\$10 25 100. Columbia, Ill., Jan'y 15th, 1836.
Rec'd of J. H. Johnson ten dollars and twenty five cents, in full of all accounts up to this date. E. SWAN.

Give the the bearer fifty bbls. flour. J. C. SMITH.

October 9th, 1838.

Mr. Johnson, give the bearer 100 lbs. mix. J. C. SMITH.

\$46 68.

Nov'r 12th, 1838.

97 Mr. J. H. Johnson, Sir:—Pleas to pay to the bearer or order the sum of forty-six dollars and 68-100 in flour out of the mill whenever its convenient. J. C. SMITH.

Noveml er 17th, 1838.

Let the bearer, Wm. Hadley, have one flour. J. C. SMITH.

Nov'r 28th, 1838.

97 Mr. J. H. Johnson, I want you to pay a note Snyder holds given Redick, likewise the acc't of James Johuson of twenty \$20 dollars, the balance of Dennings' acc't \$10 00 and some cents, Mr. Cope acc't \$9 87 cents. J. C. SMITH.

Nov. 3d, 1838.

Due J. P. Garrigus on settlement seven dollors and 40-100

J. C. SMITH.

Messrs. Strong & Johnson, pay the above in flour March 20th, 1839.

J. C. SMITH.

98 Endorsed April 25, 1839. Paid on within 50 lbs. flour.	\$2 00
Paid 50 lbs. flour,	2 00
85 lbs. flour,	3 40
	\$7 40

Charged to J. C. Smith at May 14, 1839.

Nov. 26th, 1838.

Messrs. Strong & Johnson: Pay H. K. Cassell six dollars and 54 cents in flour. J. C. SMITH.

Endorsed December 15th, 1838. Paid on the within 56 lbs.	
flour. 3	\$1 68
65 lbs. flour, 4	2 60

Page of Rec. Messrs. Strong & Johnson: Please pay the bearer, Mr. Dunlap, two
 65 dollars and 20-100 in flour.
 Nov'r. 26, 1838.

J. C. SMITH.

Nov'r. 26, 1838.

Messrs. Strong & Johnson: Pay the bearer, Benjamin C. Modler or
 order, nine dollars and 86-100 in flour.

J. C. SMITH.

98 Endorsed November 30th, 1838. Paid on the within 171 lbs.
 flour, at four cents,

\$6 84

To the introduction of which defendants objected, which objection was
 overruled by the court, and to the said ruling of the court the defendants
 then and there excepted.

Plaintiff here, by way of rebutting testimony, offered in evidence a
 paper purporting to be a copy of a certificate of purchase made by the
 sheriff of Putnam county, to the introduction of which the defendants
 99 objected, which objection was overruled by the court and the paper
 permitted to go to the jury, to which ruling of the court in admitting
 said paper the defendants then and there excepted, which paper is as
 follows:

(Copy.)

STATE OF ILLINOIS, }
 Putnam County. } sct. I, J. S. Simpson, sheriff of said
 county, do hereby certify that by virtue of a writ of execution to me
 directed from the circuit court, I did on the 2d day of January, A. D.
 1838, expose to public sale certain property, to wit: Three undivided
 eighths of the steam saw mill, and three undivided eighths of lot No —,
 in B. 30, on which said mill stands, in the town of Webster, in the county
 and state aforesaid, and that Joseph H. Johnson, of the firm of J. C.
 Smith & Co., bid the sum of two hundred thirty-three dollars nine cents
 therefor, which being the highest and best bid, the said property was
 struck off to him, the said Johnson. And that the said Johnson will be
 entitled to a deed for said premises so sold to him within fifteen months
 100 from the date hereof, unless the same be redeemed according to law.

Given under my hand and seal at Hennepin, this 2d day of January,
 A. D. 1838.

J. S. SIMPSON, } SEAL. }
 Sheriff of Putnam Co., Ill.

Plaintiff then asked the court to instruct the jury as follows:

STATE OF ILLINOIS, }
 County of Marshall. } ss.

In the Circuit Court of said County, and of the October T., A. D. 1839.

JOSEPH H. JOHNSON }
 vs. }
 CHARLES MASON, executor } Debt.
 of the estate of Jesse C. Smith. }

The plaintiff asks the court to instruct the jury as follows:

101 1st. Under the issues of this cause there is no question of fraud.
 Given. Fraud in obtaining the note must be specially pleaded by plea, and it is
 not pleaded in this cause.

2d. Mere delay to bring an action on the note is no defence unless
 Given. the delay was sixteen years after the note became due.

Page og Rec. 3d. If Johnson was in California when the letters testamentary were issued by the county court of Marshall county on the 9th day of September, A. D. 1850, to Mason, as executor of said Smith, and ~~Johnson~~, presented the said note in question to the probate court or county court

Given. within two years after his return to Illinois, that is a sufficient presentation; and if the jury further believe from the evidence that the said note was signed by Smith and has not been paid, they will find for the plaintiff.

101, 102 4th. If Johnson was in California when the letters were granted to
Given. Mason then he, Johnson, was *beyond seas* within the meaning of the law.

Given. 5th. The settlement proves nothing but the settlement of the account named in the books, and no presumption arises from such settlement that a note was *not* afterwards given by Smith to the plaintiff, Johnson.

Given. 6th. If Smith made the note sued on, then it can only be avoided by a payment or release or neglect to prosecute the collection for sixteen years after it became due.

Given. 7th. Mere suspicion of something wrong is no defence to this action; if any defence exists it should be pleaded and proved to the satisfaction of the jury, and the jury have no right to reject the plaintiff's claim upon mere conjecture or guess or impression.

Given. 8th. It is not necessary for the plaintiff to prove any consideration for the note; the note itself is sufficient evidence of a consideration, and it is for the defendant to prove that there was no consideration.

103 9th. It is not necessary for the plaintiff to prove anything about the
Given. consideration of the note, or the situation of the parties or their dealings or which paid the most money; if the note was given it is for the defendant to prove its payment or any other defence which may exist.

Given. 11th. There is no presumption of law that payment of the note has been made from any lapse of time alone short of sixteen years, and the defendant is bound to prove payment when he relies on such payment as a defence.

Given. 12th. The settlement of the accounts of the parties is evidence only of settlement of such accounts as are specified as being settled, and furnishes no evidence of settlement of any other accounts existing between the parties, and the party relying upon final settlement must prove that there was a settlement of all accounts between the parties.

Given. 13th. That Johnson could not have introduced the note upon which this suit is brought in defence to the suit mentioned in the evidence of Jesse C. Smith against Joseph H. Johnson, which was commenced and ended in 1842 for the reason that the said note in question in this suit was not then due.

104 14th. The books offered in evidence are not conclusive proof of the
Given. exact state of the accounts between Johnson & Smith, unless the jury believe from the evidence that said books are the books kept by or for the parties, and contain and show all their business transactions together and that they are all the books so kept, showing their said accounts and transactions.

104 Which instructions were given by the court, to the giving of which instructions the defendant then and there excepted.

Page of Rec. The defendant then asked the court to instruct the jury as follows:

Given. 1st. If the jury believe from the evidence that the signature to the note given in evidence is not genuine and in the hand-writing of Smith, the jury will find for the defendant; and for the purpose of determining the question of genuineness the jury will take into consideration all the facts and circumstances proved in the case.

Refused. 2d. If the jury believe from the evidence that the signature to the note given in evidence is in the proper hand-writing of Smith and genuine; still, should the jury further believe that the signature was written by Smith upon a blank piece of paper, and that afterwards, without his consent, the note was written over it, then the jury will find for the defendant.

Refused. 3d. If the jury believe from the evidence that the note given in evidence was made or given without any good or valuable consideration, then the jury will find for the defendant.

Refused. 4th. If the jury believe from the evidence that the note in question was procured by the plaintiff from Smith fraudulently, and that the plaintiff used fraud and circumvention in obtaining the making and executing of said note, then the jury will find for the defendant.

Given. 5th. If the jury believe from the evidence that the note was honestly made and for a good and valuable consideration, but that after the making of said note the same was by any arrangement between the parties settled for and paid, then the jury will find for the defendant; and for the purpose of determining the question of payment as well as all the questions at issue in this cause the jury may take into consideration all the facts and circumstances proved in this cause.

Refused. 6th. If the jury believe from the evidence that on the 5th day of April, 1840, the plaintiff and Smith settled all their accounts together, and at that time there was but \$197 51 due the plaintiff; and if the jury further believe from the evidence that after the said 5th day of April, A. D. 1840, the plaintiff and Smith had no dealings whatever with each other, but on the contrary they were personal enemies to each other; and if the jury further believe that said note was never presented to Smith in his lifetime for payment, and that after Smith's death the presentation of it was delayed for a long time without reasonable cause, all of these facts and circumstances may be considered by the jury as tending to prove that the note is not an honest claim against the estate of Smith.

Given. 7th. If the jury believe from the evidence that the note in question is a valid note but that the note was not filed in the probate or county court of Marshall county, within two years after the granting of letters testamentary upon the estate of Smith, the jury will in that case find for the plaintiff, but also state and specify in their verdict that the note was not filed within two years after letters testamentary upon the estate of Smith were granted to the defendant, provided the jury shall believe from the evidence that Johnson was not out of the state of Illinois at the date of the granting of said letters testamentary.

Given. 8th. If the jury believe from the evidence that the note in question was not filed in the county court of Marshall county within two years after the plaintiff's return from California, then the jury will so find and state in their verdict.

Page of Rec. And the jury are further instructed that if they believe from the evidence that Johnson only procured the filing of the county clerk upon the back of the note but did not leave the note in the office of the county clerk for the adjudication of the county court upon the same, but withdrew the same and never afterwards re-filed it or in any manner insisted upon it as a claim against the estate, that this does not amount to a filing of the claim against the estate within the meaning of the law, and the jury will so find.

Refused.

107-8

Refused.

9th. If the jury believe from the evidence that the plaintiff, Johnson, left Marshall county in the year 1849, and went to California, but at the time of leaving said Marshall county and from that time until his return to said county in 1852, Johnson only designed remaining only for a time temporarily in California, intending to return to Marshall county to reside, and that he did not at any time intend to settle and live in California as his home, but during all that time of his absence esteemed Marshall county his residence and home, then the jury are instructed that such an absence would not sustain the plaintiff's replication that he was beyond sea.

108-9

10th. The jury are instructed that California being one of the United States of America, is not in contemplation of law "beyond sea," and if the jury believe from the evidence that Johnson, during all the time of his absence from Marshall county, was only in California, then the jury will not find for the plaintiff on the issue upon his said replication.

Given.

11th. If the jury find the issue upon the replication of "beyond sea" in favor of the defendant, namely, that the plaintiff was not "beyond sea," as stated in his replication, then if the jury believe the note in question was not filed within two years after the granting of letters testamentary upon the estate of Smith, the jury will so find and state in their verdict.

Refused.

12th. If the jury believe from the evidence that Smith and Johnson were partners in trade, and as such partners at the time of their closing or stopping their business had debts due them from their customers, which debts were afterwards paid; and if there is no evidence tending to show which of the parties received the money in liquidation of such debts, in that case, in the absence of evidence, the presumption of law is that each of the partners received the proportion of the debts to which he was legally entitled, and in such case no presumption of indebtedness from one partner to the other arises.

109-10

Refused.

13th. If the jury believe from the evidence that Smith and Johnson, on the 5th day of April, A. D. 1840, had a general settlement of accounts, the presumption of law is that all matters of account between the parties at that time were settled and adjusted; and if Johnson claims that any items of indebtedness from Smith to him were omitted in such settlement, then, in that case, the burden of proof in showing such omission is upon Johnson, and he must prove it.

Which instructions were refused to be given except No. To the refusal to give which instructions the defendant excepted, and to the giving of said defendant's instructions No. the plaintiff excepts, and the said defendant asks the court to sign this, his bill of exceptions, which is done November 19, 1859.

MARK BANGS, Judge
of the 23d Judicial District, Illinois.

Errors Assigned.

Page of Rec. 1st. The court erred in overruling the defendant's demurrer to the plaintiff's replication to the defendant's second plea

2d. In overruling defendant's demurrer to the plaintiff's first, fourth and fifth surrejoinders to defendant's fourth rejoinder to plaintiff's replication to defendant's second plea, and sustaining said demurrer to said fourth rejoinder.

3d. In sustaining plaintiff's demurrer to defendant's 5th and 8th pleas.

4th. In rejecting evidence offered by the defendant.

113-14 5th. In admitting improper evidence offered by the plaintiff and objected to by the defendant.

6th. In giving the instructions asked by the plaintiff.

7th. In refusing the instructions asked by the defendant.

8th. In instructing the jury after they had once retired to consider of their verdict.

9th. In sending the jury out several times after they had agreed upon their verdict.

10th. In giving judgment for the plaintiff.

114 For these and other reasons in said record, appellant prays that said judgment may be reversed, set aside, and for nothing esteemed.

N. H. PURPLE,

April 14, 1860.

Att'y for Appellant.

POINTS, &c.

1st. The term "beyond seas," as used in the Statute of Wills, does not mean simply out of the state.

Purple's Stat. p. 1216, sec. 115.

26 2d. The defendant's 4th rejoinder to plaintiff's replication to defendant's second plea was a good rejoinder, and the demurrer thereto should not have been sustained.

The rejoinder is, that within two years after his return from beyond seas, plaintiff took his claim off the file of the court, and withdrew and abandoned his claim.

11 3d. The defendant's 5th plea of the Statute of Limitations of 5 years, is a full defence to the plaintiff's action from 1827 to April 13th 1849, when the act of February 10th, 1849, (Purple's Stat. p. 730, s. 1,) became a law; the limitation of the action of debt upon promissory notes was 16 years.

This act limits all suits upon promissory notes to five years.

Gustin v. Brattle Kirby Com. R. 299 -
Whitlock v. Walton & Murphy N. C. R. 23. Earle v. McDowell 1 Nov. 10
Huerston v. Fisher 9 S. R. 288. Smith v. Newby 13 Mid. 159. 217
Fackler v. Fackler 14 Mid. 431. Darling v. Meacham 2 Green (3000) 602
Buckmalo v. Mottichund 32 Eng. C. R. 84. 2 C. R. 84

Woods v. Hollander & Co. 217

Page of Rec. The limitation as against the plaintiffs' note commenced running, therefore, on the 13th April, 1849, and five years from that time the plaintiff's claim was barred.

161-2 4th. The 3d and 4th instructions given for plaintiff present the same question as is made in the pleading, as to the meaning of the term "beyond seas."

102 5th. The 5th instruction is not law, and necessarily tended to mislead the jury.

It was for the jury, and not the court, to determine what presumption should arise from the settlement of the book account.

The settlement was on the 5th April, 1840, and the note purports to have been dated on the 10th of the same month.

102-3 6th. The 6th and several of the other instructions given at plaintiff's request are erroneous, as will be shewn on the argument.

104 to 110 7th. The 2d, 3d, 4th, 6th, 9th, 10th, 12th and 13th, and *unnumbered instruction* embraced in brackets were law and ought to have been given by the court, as asked by the defendant.

35-7 8th. The court had no right to instruct the jury or to send them out after they had found at least two verdicts, which were substantially legal and proper verdicts.

9th. The instructions themselves were erroneous and improper.

76 10th. The defendant's offer to prove that the plaintiff had abandoned his claim and withdrawn it from the files, was improperly overruled by the court. The evidence offered was pertinent.

80 So also, of his offer to shew by the books of the county court that the claim of plaintiff had not been on the files since 1853, and had never been allowed as a claim against the estate.

19-1 11th. Simpson's receipt of August 25, 1837, was improperly admitted in evidence. It is not shown that Simpson had any execution or other authority to receive the money. The evidence is a mere statement of a third person, and is entirely inadmissible.

96 The receipt signed by *Swan* and others are of the same species of testimony, and ought to have been excluded.

99 12th. Simpson's certificate of purchase to the plaintiff of the 2d January, 1838, was also improperly admitted in evidence.

161-69
Johnson vs. Mason
No 161 Abstract &
Brief

Filed April 21, 1880
L. Leland
clerk

Charles C. Smith, Executor
of Jesse C. Smith.

In the Supreme
Court, Third Land
Division April Term 1866.

And now comes the Appellee
and enters his motion to dismiss the
appeal here, because the con-
dition of the Appeal Bond is not
such as is required by law.

N. M. & J. Mead,

Attorneys for Appellee

Charles Mason Exche

No 161

Joseph R. Johnston,

Filed Apr 25. 1840

Admitted
Clerk

Charles Mason

vs

Joseph W Johnson

Sept 5, 1860

Motion to Dismiss Appeal

The appellee asks that the appeal be dismissed in this case for want of a sufficient appeal bond.

The condition of the Bond filed is, "That the said Charles Mason shall pay the debt in due course of administration."

The Statute does not authorize any such condition.

The 47th Section of the Practice Act allows appeals upon the condition upon which the appeal is taken and that is, a bond shall be filed for the payment of the judgment with all cost damages and interest in case, the judgment shall be affirmed.

It is only by virtue of the Statute that an appeal can be taken. It is not a common law right and the conditions upon which the appeal will be granted, must be complied with.

The Appellee is entitled to a Bond
with a Condition to pay the debt
in case the judgment is affirmed.

The Court has no power to alter
the Statute; and that is plain, direct
positive & certain.

It may be said that Exe-
cutors ought to be required to give
Bond — if so, the very purpose
of the Statute would be defeated.

The object of requiring a Bond is
to secure the payment of the judg-
ment — to make that certain, which
before was uncertain. As well might
a poor man insist that his securities
should be bound to pay only as he
would pay, or that he should insist
that he shall give security to pay
only "in due course of administration".

The appeal is taken by the
Executor to subvert his own pur-
poses; not to preserve the estate.

If it becomes necessary to
litigate further, as that of course is the
proper, & constitutional remedy, and
not an Appeal. That of Error
is a right & cannot be denied.

No security is required; but it
would be folly to permit an Execu-
tor to appeal without giving se-
curity to pay the debt.

We must then, that this
appeal shall be dismissed on a
new & sufficient Appeal Bond
filed.

Let us inquire further. What
does a right of appeal assume on
this Bond? Have we are to collect
our judgment, and what sort
of a breach of the Bond could
we allege in our declaration?

The answer to these questions
shows the impropriety of the condition.

All which is respectfully submitted
by
J. M. T. Reed
for the appellee.

Chas. Mason Dyer
v2

Joseph H. Poperson

Ptts suggestions
on Motion to
Dismiss Appeal

Charles Mason } Appeal from Marshall
 Esq. & John C. Smith } Motion to dismiss
 Joseph H. Johnson } appeal

The Court for the Appellee in-
 sist that the appeal should be dismissed
 because the Bond is not conditional
 for the Payment of the debt.

This is not required by the Statute
 The Only Condition of the Statute is
 that the Appellant shall "pay the Judg-
ment costs interest and Damages"
 in case the Judgment shall be affirmed;
 No. What was the Judgment appealed
 from? It was against the Appellant
 to be paid in the due course of adminis-
 tration; This & this only is the Judg-
 ment to secure the payment of which
 according to its terms, the bond
 for an Appeal is to be given

These persons would become Executors
 or administrators of Estates, if when
 their duty required them to appeal a
 case from an inferior tribunal they
 would be compelled to become personally
 liable in case they failed in their suit
 The People for Appellant

Apr 25th 1860

161
Madon Exrs of
Smith
n

Johnson

Motion to dis-
miss Appeals -

Appellants
Suggestions

Joseph A. Johnson } served in the
 vs } Circuit Court of
 Charles Menon } Marshall County
 Ex. of Jesse } and appealed to the
 Dwyer } Supreme Court of the
 State of Illinois

To the April Term 1860,
Lilias Ramsey being first duly
sworn depose and say that
he signed the name of Charles
Mason Exr to the appeal
Bond as his attorney in fact
that at the time of signing the
same he had a power of
attorney signed and sealed
by David Mason authorizing
affiant to sign his name as
Exr to all Bonds & papers
that might be necessary to
appeal any suit upon the date
upon which this suit was founded
that said power of attorney
was given to affiant before
the commencement of the suit
in the Circuit Court of Marshall
County and was by affiant
filed away in his office that
affiant has seen David

power of attorney frequently since
the same was made to him and
as he truly believes not more
than four or five months ago that
affiant this day for the first
time heard that the attorneys
of ~~James Messcott~~ were intending
to make a motion to dismiss
said appeal for the want of
authority being asked to authorize
affiant to sign the appeal
Bond and that said said
time affiant has made diligent
search among his papers for
the said power of attorney
but has been unable to find
the same. Silas Ramsey
 sworn to & Subscribed
 before me this 26th
 day of April 1860 as Witness
 my hand and Seal of
 Office at Sacou.

James Messcott, clerk of the
Circuit Court of Marshall County,
Illinois

161
Mason vs Godfrey

Filed May 22^d 1860
J. L. Delaney
Clerk

1 "Hears before the Circuit Court of Marshall County in the State of Illinois at a Term thereof begun and held at the Court House in the City of Lacon in said County on Monday the 24th day of January in the year of our Lord one thousand eight hundred and fifty nine. Present the Hon. M. Ballou Judge of the 23rd Judicial Circuit of the State of Illinois presiding. George W. Stepp States attorney of said Judicial Circuit. Thomas Ellis Sheriff of said Marshall County and James Wescott Clerk of said Circuit Court."

Be it remembered that hereafter
he wit on the 8th day of ~~October~~ ^{January} 1859 a Summons
was issued out of said Court in the Suit of Joseph H. Johnson against Charles Mason Executor of Jesse C. Smith deceased which Summons is in words and figures as follows to wit:

Summons "The People of the State of Illinois,
To the Sheriff of Marshall County - Greeting:
We command you to summon Charles Mason Executor of Jesse C. Smith deceased, to appear before our Circuit Court, on the first day of the next term thereof, to be held at Lacon, within and for the said county of Marshall on the fourth Monday of January A.D. 1859 then and there, in our said Court, to answer Joseph H. Johnson in a plea of Debt in the sum of Seven thousand dollars & in damages to the sum of Seven thousand dollars as

he says. Hereof fail not, and make due return of your doings hereon.



Witness, James Wescott, Clerk of our said court, and the seal thereof, at Lacon, this Eighth day of October in the year of our Lord one thousand eight hundred and fifty eight

James Wescott Clerk "

Sheriff's return "I cannot find the within named Charles Mason in my County, Lacon, Ills, Dec 1 A. D. 1858.

Sheriff's Fee:

H. L. Crane Sheriff of Marshall Co. Ill.

Return of this writ, 10

Declaration State of Illinois }
Marshall County } ss.

And Circuit Court thereof.

To the January Term A. D. 1859

Joseph H. Johnson, Plaintiff in this suit by G. L. Fort his attorney complains of Charles Mason Executor of the last will and Testament of Jesse C. Smith, defendant, summoned &c, of a plea of Debt. for that whereas the said Jesse C. Smith in his life time, heretofore to wit on the ^{tenth} day of April in the year of our Lord one thousand eight hundred and forty (A. D. 1840) at Lacon to

5
wit at the County of Marshall aforesaid, for value received,
executed and delivered to the said Plaintiff his (said
Smiths), promissory note in writing by which he under-
took and agreed to pay the said Plaintiff by the name
of J. H. Johnson five years from the date of said note
which period has now elapsed, Two Thousand eight
Hundred Ninety three & $\frac{62}{100}$ Dollars in goods or such
merchandise as said Plaintiff or the bearer of said
note might select and if not paid when due to be cash
on interest from date, Whereby said Smith then and
there became liable to pay to said Plaintiff the sum
in said note specified, according to the tenor of said
note. And the said Plaintiff avers that afterwards
to wit on the thirty first day of July A. D. 1850 said
Jesse C. Smith died, and afterwards to wit on the 9th
day of September A. D. 1850 letters testamentary of
the last will and testament of the said Jesse C. Smith
were duly granted to the said defendant Charles Mason
by the County Court of said Marshall County, and the
said defendant then and there became, was, and still
is Executor of the last will and testament and of all
and singular the goods and chattels rights and credits
which were of the said Jesse C. Smith; duly appoint-
ed and qualified — And the said Plaintiff avers
that though often requested the said Smith in his life
time did not pay said note nor any part thereof
nor hath said defendant since the death of said Smith
tho ever paid the said note to said Plaintiff but ne-

glected and still doth neglect and refuse so to do.

And for that one Jesse C. Smith heretofore
to wit on the tenth day of April A. D. 1840, at Law,
To wit at the County of Marshall aforesaid for value
received, executed and delivered to the said Plaintiff
his (said Smiths) promissory note in writing by
which he undertook and agreed to pay to the plain-
tiff by the name of J. H. Johnson five years after the
date of said note (which period has now elapsed)
Two Thousand Eight hundred ninety three & ⁶²/₁₀₀ Cts.
as in goods or such merchandise as said Plaintiff
or the bearer of said note might select, and if not
paid when due to be each on interest from date, whereby
said Smith, then and there became liable to pay to
said plaintiff the sum in said note specified, accor-
ding to the tenor of said note, And the said Plaintiff
aff avers that when said note became due he was re-
dy & willing to have received the goods and the mer-
chandise mentioned in said note and to have selected the
goods and merchandise mentioned in said note to pay
the same, but that said Smith did not have goods or
merchandise to pay said note out of which Plaintiff
might have selected goods or merchandise for the pay-
ment of said note, and that after said note became
due, to wit on the tenth day of April A. D. 1845, and
on every day thereafter, to wit at the County aforesaid
Plaintiff demanded of said Smith payment of the
said note according to the tenor and effect of the

5 same, but said Smith then and there neglected and refused to pay the same. And said Plaintiff avers that afterwards to wit on the 31st day of July A.D. 1850 said Jesse C. Smith died, and afterwards to wit on the 9th day of September A.D. 1850 letters testamentary of the last will and testament of said Jesse C. Smith were duly granted to said defendant by the County Court of said Marshall County, and said Charles Mason by means whereof then and there became and was, and still is Executor of the said Jesse C. Smith, and of all and singular the goods and Chattels rights & Credits which were of the said Smith, duly appointed and qualified. And the Plaintiff avers that though often requested, said Smith, in his life time did not pay said note or any part thereof, nor hath said defendant since the death of said Smith, though often requested, ever paid the said note to Plaintiff or any part thereof, but refuses and neglects so to do. And for that whereas one Jesse C. Smith was in his life time indebted to the Plaintiff to wit, on the 10th day of April A.D. 1845 in the sum of Six Thousand Dollars for so much money before that time had and received by said Smith to and for the use of said Plaintiff. And in this further sum of Six Thousand dollars then and there found to be due from said Smith to Plaintiff upon an accounting then and there had between said Smith and Plaintiff to be paid to Plaintiff

on demand. And Plaintiff avers that said Jesse C. Smith died afterwards to wit on the 31st day of July A. D. 1850, and that the said defendant afterwards to wit on the 9th day of September A. D. 1850, became and was, and still is the Executor of said Smith, and of all and singular the goods and Chattels, rights and credits, which were of the said Jesse C. Smith,

yet neither the said Smith in his life time though often requested, nor said defendant, though often requested since the death of said Smith has ever paid said sum of money or any part thereof, nor hath any or either of them, but so to do hath and still doth wholly neglect and refuse, though often requested to pay the same, whereby and by reason of the said several sums remaining unpaid, an action hath accrued to the Plaintiff to have a demand of and from said defendant the sum of ~~Seven~~ ^{Eight} Thousands dollars which he unjustly detains from the Plaintiff to Plaintiffs damage. Seven Thousands dollars; And therefore he brings his suit &c.

By G. L. Fort, his Attorney

Copy of Note said upon

Lacon April 10th. 1840

" \$ 2893 ^{62/100}

" For Value received five years from
" date I promise to pay J. H. Johnson or order the sum
" of Two thousand eight Hundred and ninety three and
" ^{62/100} Dollars in goods or such merchandize as he s'd

7 "Johnson or bearer may select, and if not paid when
" due, to be cash or interest from date

Jesse C. Smith "

Copy of Acct. sued on

" Jesse C. Smith	Dr
" To money had and received	\$ 7000.00
" " Balance of Acct named & stated	7000.00 "

Endorsed "Filed December 29. 1858

James Wescott Clerk "

" Friday, February 11th. A. D. 1859

Appearance	Joseph H. Johnson	}	Debt
Entered of	vs		
Defendants	Charles Mason Executor of Jesse C. Smith deceased		

This day came Henry Hill,
or one of the attorneys of this Court and entered the
appearance of the defendant herein and waived the
issue and service of process, and by agreement this
cause is continued.

" Pleas before the Circuit Court of Marshall County
in the State of Illinois at a Term thereof began and

held at the Court House in the City of Lacon in
 said County on Monday the second day of May in the
 year of Our Lord One thousand eight hundred and
 fifty nine. Present Hon. Mark Rango judge of the
 23^d Judicial Circuit of the State of Illinois presiding
 Henry Miller State attorney for said judicial Cir-
 cuit, Thomas Ellis, Sheriff of said Marshall Coun-
 ty and James Wescott Clerk of said Circuit Court."

"Monday May 2^d A. D. 1859"

"Joseph H. Johnson

vs.

Charles Mason executor of } Debt.
 Jesse C. Smith deceased }

This day came the Plaintiff
 by Fort his attorney and on his motion the defend-
 ant is ruled to plead by Wednesday morning next."

"Wednesday May 4th A. D. 1859"

"Joseph H. Johnson

vs.

Charles Mason executor of } Debt.
 Jesse C. Smith deceased }

This day came the defend-

9 and by his counsel and on their motion the rule requiring the Defendant to plead herein by Wednesday morning is extended until Thursday morning. "

Pleas.
Joseph H. Johnson
vs.
Charles Mason Executor
of Jesse C. Smith

In the Circuit Court of
Marshall County.
To May Term A. D. 1859.

And now comes the said Defendant and says that neither the said Jesse C. Smith in his lifetime nor the said Defendant since the death of the said Jesse C. Smith ever owed or do now owe the said sum of money in said plaintiffs Declaration mentioned or any part thereof, and of this the said Defendant puts himself upon the Country &

Silas Ramsey &
H. H. Purple Defts attys. "

State of
County } ss. Charles Mason Executor of
Jesse C. Smith being duly
sworn according to Law. Says that to the best of
his knowledge, information and belief the foregoing
plea by him pleaded is true, and that to the best of
his said knowledge information and belief the said

Jesse C. Smith never signed, made or executed the
 supposed promissory note or instrument in writing in
 the said plaintiffs declaration set forth nor author-
 ized any one to make or execute the same for him,
 and that to the best of his knowledge information and
 belief the same is a forgery, and further saith not
 Charles Mason

Subscribed and Sworn to before me this
 12th day of April A.D. 1858. Witness my hand and
 Official Seal at Burlington this 12th day of April
 A.D. 1858.

C. B. Harrington
 Notary Public



"2nd — And for further plea in this behalf the said
 defendant says as to all of the property of the said
 Jesse C. Smith inventoried and accounted for by the
 said Defendant he says Actis now because he
 says that the said plaintiffs Claim was not filed wi-
 th the proper Court nor presented to the Executor of
 the said Jesse C. Smith until after the expiration of
 two years from the time of the granting of letters tes-
 tamentary by said Court to the said defendant and
 this the said Defendant is ready to verify
 Ramsey & Purple
 for Deft.

"3rd — And for further plea in this behalf the said

11

defendant says actio non because he says that never the said Jesse C. Smith in his life time nor said Defendant since the death of the said Jesse C. Smith agreed to pay the said sum of money in said declaration mentioned within sixteen years next preceding the commencement of this Suit. And this he is ready to verify

Ramsay & Purple for Deft

4th And for further plea in this behalf the said defendant says that the said plaintiffs cause of action in his declaration mentioned did not accrue to the said plaintiff within sixteen years next preceding the commencement of this Suit and this the said defendant is ready to verify, wherefore he prays judgment &c

Ramsay & Purple for Deft

5th And for further plea in this behalf the said Defendant says that the said plaintiffs cause of action did not accrue to the said plaintiff within five years next preceding the commencement of this Suit and this he is ready to verify wherefore he prays judgment &c

Ramsay & Purple for Deft.

6th And for further plea in this behalf the said defendant says that the said Jesse C. Smith in his

life time after the making said note in the Declara-
 "tion mentioned. To wit on the 1st day of May 1845
 at the County of Marshall aforesaid paid to the said
 Joseph H. Johnson all and Every the sums of money
 which had at any time before then become due and
 "owing upon or by virtue of the said note in the said
 plaintiffs declaration mentioned, and this the said
 Defendant is ready to verify wherefore he prays Judg.
 "ment &c

Ramsey for Deft.

7- And for further plea in this behalf the said
 Defendant says that at the time when the said note
 in the plaintiffs declaration mentioned was made
 to wit on the 10th day of April 1840 at Marshall
 County aforesaid no consideration was given for
 making the same whatever. And this the said
 "Defendant is ready to verify wherefore he prays Judgm.
 "ent &c

8 - And for further plea in this behalf the said
 defendant says that the said note in the plaintiffs
 declaration mentioned was fraudulently obtained from
 said defendant and this he is ready to verify where-
 "fore he prays judgment &c

J. Ramsey for Deft.

Endorsed" Filed May 5th 1859 James Wescott Clerk

13

Joseph H. Johnson

vs.

Charles Mason Executor
of Jesse C. Smith deceased

In the Marshall Circuit
Court
May Term A. D. 1859

Rep to
1st Plea

Replication

And now comes the said Plaintiff by Fisk & Weed his
attornies, and for replication to defendants first plea by
him above pleaded and says that he doth the like

By Fisk & Weed his attornies

Rep to
2^d Plea

And for replication to the 2^d Plea by defendant
pleaded the said Plaintiff says precludes
as he says, that at the time when the letters testa-
mentary were granted to the said Charles Mason as execu-
tor aforesaid the said plaintiff was in parts beyond
the sea to wit at & within the State of California one
of the United States of America and that he the said
plaintiff afterwards to wit on the 3^d day of November
A. D. 1852. returned from the said parts beyond the
seas, into this State and which return of the said
plaintiff was his first return into this State from
the said parts beyond the seas after the granting of
the said letters testamentary and that the said plain-
tiff did file his claim aforesaid with the proper Court
to wit the Probate Court of Marshall County in the
State of Illinois within two years next after his the

said plaintiff's return from beyond seas, and this he is ready to verify, wherefore he prays judgment &
 By Tat & Weed his attorneys

Repto 3^d Plea And for replication to the 3^d Plea by defendants above pleaded the said plaintiff says precludi non because he says that the said Jesse C. Smith did agree to pay said sum of money within sixteen years next before the commencement of this suit and this he prays may be enquired of by the Country
 By Tat & Weed his atty.

Repto 4th Plea And for replication to defendants 4th plea, the said plaintiff says precludi non because he says that the cause of action mentioned in his death did accrue within sixteen years next preceding commencement of this suit & this he prays may be enquired of by the Country
 By Tat & Weed his attorneys

Repto 5th Plea And for replication to said defendants 5th Plea the said plaintiff says precludi non because he says that the matters & things therein alledged are insuff. & is in law to bar the plaintiff's action and this he is ready to verify, wherefore he prays judgment &
 By Tat & Weed his attorneys

Rep to 6th Plea

"

And for replication to defendants 6th Plea the plain-
tiff says precludi now because he says that the
said Jesse C. Smith did not in his life time pay
to the said Plaintiff the sum of money due upon said
note declared on, & this he prays may be Enquired
of by the Country

By Fort & Weed his atty. "

Replication
to
7th & 8th Pleas

" And for replication to defendants 7th & 8th pleas by
him above pleaded, the said plaintiff says precludi
now, because he says that the matters & things in
said pleas contained, & in each of them are

3 Scam 34
2 do 76
" do 422

ciently in law to bar the plaintiff's recovery &
bound further to answer said pleas or either of them
And this he is ready to verify wherefore for want of
sufficient pleas in this behalf, he prays judgment &
By Fort & Weed his attorneys "

Endorsed "Filed May 10. 1859

James Wescott Clerk"

"Tuesday, May 10th A. D. 1859"

" Joseph H. Johnson

vs.

Charles Mason Executor
of Jesse C. Smith dec'd

} Debt

This day this cause

come on to be heard upon the Demurrer of the Plaintiff,
 "iff to the 5th of 1st & 8th pleas of the defendant filed
 herein and was argued by counsel and the Court being
 fully advised in the premises doth order that said Demur-
 "rer be and the same is hereby sustained, and now
 this cause again come on to be heard upon the demur-
 "rer of the Plaintiff to the 8th amended plea of
 the defendant, and the same was argued by counsel
 and the Court being fully advised in the premises
 doth order that said Demurrer be and is hereby sus-
 "tained. "

7th Amend. And for further plea in this behalf the said defend-
 ed Plea "ant says Actis now because he says that the
 said note in the said plaintiffs declaration
 "ed was made without any good or valuable con-
 "eration whatever for the making, executing and
 delivering said note and this the said defendant
 is ready to verify. wherefore he prays judgment.
 for

Pratt & Ramsey for Deft.

8th Amended And for further plea in this behalf the said defend-
 ed Plea "ant says Actis now because he says that the
 making and executing said note in the said pl-
 "aintiffs declaration was obtained from the said
 Jesse C. Smith in his life time by and through

17

the fraud and circumvention of the said plaintiff
and this the said defendant is ready to verify,
wherefore he prays judgment to
Pratt & Ramsey for Deft. "

Endorsed Filed May 10, 1859

James Wescott Clerk "

" Joseph H. Johnson }
vs. }
Chas Macon Exr }

In the Marshall C. C.
May 11, 1859

Rep to Defts
7th & 8th amen.
ded Pleas

Replication to defendants 7th & 8th amended Pleas
And now comes the said plaintiff by
his attorney and for plea to defendants 7th amended
Plea above and says precludi now, because he
says that said note was not made without a good
and valuable consideration and and this he prays
may be Enquired of by the Country
By Fort his Atty "

" And as to defendants 8th amended Plea by him
above pleaded plaintiff says precludi now be-
" cause he says that the matters & things therein all-
" edged are insufficient in law to bar the plaintiffs
action & this he is ready to verify. wherefore he prays
judgment to
By Fort his Atty "

Endorsed "Filed May 10 1859

James Wescott Clerk"

"Joseph H. Johnson

Bill of
Exceptions

vs.

Charles Mason Exr
of Jesse C. Smith

And now on this day this
cause coming on to be heard upon the Demurrer
of the Plaintiff to the 5th Plea and Eighth amend-
ed pleas of the Deft and the Court being fully ad-
vised in the premises sustained the said demurrer
to which decision of the Court the Deft by his
counsel then and there at the time and in open
Court objected and excepted - and abided by the
said Plea. And prays that this his Bill of Excep-
tions may be signed and sealed which is done
Mark Bangs *seal*

Endorsed "Filed May 10, 1859

James Wescott Clerk"

Joseph H. Johnson

vs

Demurrer

to Replication

to 2^d Plea

Charles Mason Exr.

of J. C. Smith Dec'd

And now at this term

comes the said Defendant by Pratt & Ramsey his attorneys and as to the said plaintiffs replication to Defendants second plea says the Matters and things therein set forth are not sufficiently answer in Law to said second plea and this he is ready to verify. wherefore he prays judgment &c

Pratt & Ramsey
for Deft. "

Endorsed

"Filed May 10. 1859 James Wescott Clerk"

Tuesday May 10th A. D. 1859

"Joseph H. Johnson

Order overru-
ling demurrer

vs.

Charles Mason Executor
of Jesse C. Smith dec'd

Debt.

And now again this
day this cause come

on to be heard upon the demurrer of the defendant to the Replication of the Plaintiff to the second plea of the defendant filed herein, and was argued by counsel and the court being now fully advised in the premises doth order that said demurrer be and the same is hereby overruled. "

"Joseph H. Johnson

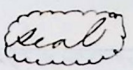
vs.

Charles Mason Ex.
of Jesse C. Smith

Bill of
Exceptions

And now on this day this

cause coming on to be heard upon the Demurrer of the said Defendant to the replication of the Plff to the Defendants 2nd plea and the Court after hearing one argument being fully advised in the premises overruled the said demurrer to which decision of the Court in overruling said demurrer the defendant by his Counsel in open Court at the time objected and excepted and prays the Court to sign and seal this his bill of exception which is done the defendant abiding by his demurrer

Mark Bangs  "

Endorsed "Filed May 11, 1859

James Wescott Clerk "

Petition for Change of Venue	" Joseph H. Johnson vs Charles Mason Ex ^r of Jesse C. Smith de. ^{ce}	} Circuit Court of Marshall County May Term A. D. 1859
---------------------------------	---	--

To the Hon. the said Circuit Court now in session
 Your petitioner Charles Mason Executor of the Estate of Jesse C. Smith de^{ce} defendant in the above entitled cause most respectfully represent to the said Court. That he fears he shall not receive a fair and impartial trial of the said cause in

21

the Circuit Court of Marshall County in which the same is now pending for the reason that the opposite party to wit the said Plaintiff has an undue influence over the the Judge of said Court and that thereby the said Judge has become and is prejudiced against the defendant your petitioner so that he cannot receive a fair and impartial trial in said cause in said Court where the same is now pending. Your petitioner further shows to the Court that the fact of such influence and prejudice first became known to petitioner within the last twenty four hours. He therefore prays for a change of venue of said cause to some Circuit Court of some State where such cause does not exist.

Charles Mason

Executor of Jesse C. Smith

de^{ce} By Lorin Grant Pratt
his atty

"State of Illinois
Marshall County }"

Silas Ramsey being first duly sworn doth depose and say that he is the acting agent and attorney for the above named Charles Mason defendant in this Cause and has been so acting as agent and attorney for said Mason for a long period of time and ever since long before the commencement of this suit - that deponent has had the control and charge of this cause for said Mason, that

by his counsel and filed his petition for a change of venue. "

Wednesday May 11th A. D. 1859

Joseph H. Johnson

vs.

Charles Mason Executor of
Jesse C. Smith deceased

Debt.

This day again came the parties by their counsel and agreed that the application for a change of venue is withdrawn and that this suit be set for trial on Tuesday of the second week of the next Term of this Court before Judge holding Court in place of the present Judge of this circuit, it is also understood that the said defendant is to have the privilege of asking leave of the Court to file additional pleas. —

"
Pleas before the Circuit Court of Marshall County in the State of Illinois at a Term thereof begun and held at the Court House in the City of Lacon in said County on Monday the third day of October in the year of our Lord one thousand eight hundred and fifty nine. Present the Hon. Mark Range Judge of the 20th Jud.

icial Circuit of the State of Illinois presiding.
 Henry Miller States attorney for said Judicial Circuit
 Thomas Ellis Sheriff of said County of Marshall &
 James Wescott Clerk of said Circuit Court. "

"Wednesday October 12th A.D. 1859"

"Joseph H. Johnson
 vs.
 Charles Mason Executor of
 Jesse C. Smith deceased } Debt.

On this day came the parties
 by their counsel and by agreement leave is granted the
 Defendant to file several rejoinders to the Plaintiff's
 allegations and thereupon on motion of the Plaintiff
 his counsel leave is granted him by the court
 several surrejoinders to Defendant's several rejoinders.

Rejoinders
 "Joseph H. Johnson
 vs.
 Charles Mason Executor
 of Jesse C. Smith } Marshall Circuit Court
 Oct. Term A.D. 1859.

And now comes the Defendant
 1 and for rejoinder to the replication of the Plaintiff to
 defendant's 2nd Plea says Actio non because he says

25

that at the time when the letters Testamentary were granted to the said Charles Mason as executor aforesaid the said Plaintiff was not in parts beyond the sea, but that on the contrary the said Plaintiff from the time of the granting of letters testamentary as aforesaid until the said 3^d day of November A.D. 1852 was at and within the State of California one of the United States of America and not beyond the seas as by said Plaintiff's replication as above supposed and of this the deft. puts himself upon the Country.

Pratt for Deft.

2 And for further rejoinder to Plaintiff's said 1st to defendant's 2nd plea Defendant says Actio non because he says that at the time when the Plaintiff was not in parts beyond the seas as by said Replication is above supposed, and of this deft. puts himself upon the Country

Pratt for Deft.

3 And for further rejoinder to said Replication to the said 2nd plea. Deft. says Actio non because he says the said Defendant did not within two years next after his said return from beyond seas to wit the said state of California file his said claim with the proper Court to wit the said Probate Court of Marshall County Illinois as by said replication is above supposed and of this Deft. puts himself upon the

Country &c

Tratt for Deft. "

"

4 And for further rejoinder to Plaintiffs replication to Defts 2nd plea Defendant says Actis now because he says that after the filing of said Plaintiffs claim in the proper Court to wit the Probate Court of Marshall County Illinois as stated in said replication to wit on the day of A.D 1852 at the County of Marshall after the said Plaintiffs return from beyond sea and before the expiration of Two years after his said return, the said ^{Plaintiff} voluntarily and of his own accord withdrew the said claim from the said Court and took the said note off the files of said Court and abandoned the prosecution thereof and claims against the Estate of said Jesse C. Smith and that the said Plaintiff did not within after his said supposed return from beyond sea, nor within two years next after his withdrawing said Note as aforesaid again file the said claim in said Court to wit the Probate Court of Marshall County or in any manner insist upon the same as a claim against the said Estate of Jesse C. Smith dec^d all of which the Deft is ready to verify Wherefore he prays Judgment &c

Tratt for Deft. "

"State of Illinois
Marshall County

} ss. Lorin Grant Pratt being first
duly sworn says he is counsel
and attorney in this cause for Deft. that he verily be-
lieves it is necessary for the attainment of Justice
herein that the Defendant should have leave of the
Court to file all of the foregoing rejoinders to the Pl.
aintiffs replication to Defts 2nd Plea.

Sworn to before me this

Lorin Grant Pratt."

11th day of Oct 1859

James Wescott Clerk

Endorsed "Filed October 12. 1859 James Wescott"

Surrejoinder Joseph H. Johnson

vs

Charles Mason Executor
of Jesse C. Smith.

In the Marshall Circuit
Court Oct. T. 1859

Surrejoinder to defendants rejoinder to the
plaintiffs replication to defendants 2^d Plea.

And now comes the said plaintiff & for surrejoinder to
defendants first rejoinder to plaintiffs replication to
defendants 2^d Plea and says that he doth the like

By Fort his atty

And for surrejoinder to defendants second rejoinder

above plaintiff doth the like.

By Fort his atty.

And for surrejoinder to defendants 3^d rejoinder above the said plaintiff doth the like.

By Fort his atty

- 1 And for surrejoinder to defendants 4th rejoinder by him above plead, the said plaintiff says precludi^o now because he says that he did within two years next after his return from California as aforesaid present said note to the said Charles Mason Esq. & sent it to wit, at & within the County of Marsh, all in the State of Illinois, on the 3^d day of March, A.D. 1852 for allowance as a claim against the estate of the said Jesse C. Smith, & said Mason to allow the same, which he refused to do & neglected & denied said claim and he is ready to verify wherefore he prays Judgment &c.

By Fort his atty

- 2 And for further surrejoinder to defendants 4th rejoinder by him above pleaded said plaintiff says precludi^o now, because he says that he did not abandon the prosecution of his said claim against the estate of the said Jesse C. Smith as is alledged in said 4th rejoinder & this he prays may be Enquired of by the Country

By Fort his atty.

29

3 And for further surrejoinder to defendants 4th re,
joinder above pleaded the said plaintiff says precludi
now, because he says that he did not withdraw said
note from the files of the Probate Court as is above
alleged & this he prays may be Enquired of by the
Country

By Fort his atty

4 And for further surrejoinder to defendants 4th rejoinder
above pleaded the said plaintiff says precludi
now, because he says that heretofore to wit, on the
3^d day of November A.D. 1852, he presented
claim for allowance to the Probate Court of
County Illinois & made oath that the same was
just & due, & requested said judge to allow the same
as a claim against the Estate of said Jesse C. Smith
which said judge refused to do — that at that time
& for a long time thereafter to wit for three years there,
after Silas Ramsey Esq was the presiding & sole
judge of said , & was at the same time & still
the attorney of said Mosson & was employed by said
Mosson to defend against the plaintiff's claim afore.
said & therefore the plaintiff could not have a fair
trial before said judge & this he is ready to verify
wherefore he prays judgment &c

By Fort his atty

5 And for further surrejoinder to defendants 4th re,

joined by him above pleaded said plaintiff says
 precludi now, because he says that time it is he
 withdrew his claim from the files of the Probate
 Court of Marshall County but he did so for the
 purpose of prosecuting his said claim in the Circuit
 Court of Marshall County, and at the time of such
 withdrawal he had employed one Ira S. Fenn an
 attorney at Law of said County to bring suit on said
 note & directed him to commence suit on said
 note forthwith, and that he withdrew said note for
 no other or different purpose, and therefore he says
 he did not abandon his said claim & this he is
 ready to verify wherefore he prays judgment.

By Fort his atty

Endorsed Filed October 12 1857

James Wescott Clerk

Demurred to
 1st 4th & 5th
 Surrejoinder

Johnson
 vs
 Mason

Circuit Court Marshall Co.
 Oct. Term 1857

And now comes the Deft. and as to the 1st 4th & 5th
 surrejoinders to defts. 4th rejoinder to Plaintiffs replica-
 tion to defts 2nd plea says the same are not now is
 either of them sufficient in law Deft therefore de-
 mures to said surrejoinders and each of them several-
 ly and separately

Pratt for Deft

Endorsed Filed October 12 1857 James Wescott Clerk

Wednesday October 12th A.D. 1859

Joseph H. Johnson

vs

Debt.

Charles Mason executor
of Jesse C. Smith deceased

On this day again comes the Defendant by Pratt & Ramsey his Counsel and files a Demurrer to the first, fourth and fifth surrejoinders to defendants fourth rejoinder to Plaintiffs replication to Defendants second plea, and the same was argued by counsel and the court being now fully advised in the premises doth order that said demurrer be sustained to defendants fourth rejoinder, and the being joined herein whereupon it was ordered by the Court that a jury be called to try the issues in this cause and thereupon a jury being called came John C. Townsend, James McKoff, James Sharp, Henry Lyon, Abram DeLong, William Myers, James Shank, Lin, J. H. Bond, Horace Spencer, Levi Vincent, Henry Snell & B. L. Lombard twelve good and lawful men who were duly empaneled and sworn well and truly to try the issues in this cause and a true verdict render according to the evidence, and the hour of adjournment having arrived the further trial of this cause is postponed until to morrow morning -

Wednesday October 12th A.D. 1859

Joseph H. Johnson

vs

Debt.

Charles Mason executor
of Jesse C. Smith deceased

On this day again comes the Defendant by Pratt & Ramsey his Counsel and files a Demurrer to the first, fourth and fifth surrejoinders to defendants fourth rejoinder to Plaintiffs replication to Defendants second plea, and the same was argued by counsel and the court being now fully advised in the premises doth order that said demurrer be sustained to defendants fourth rejoinder, and the being joined herein whereupon it was ordered by the Court that a jury be called to try the issues in this cause and thereupon a jury being called came John C. Townsend, James McKoff, James Sharp, Henry Lyon, Abram DeLong, William Myers, James Shank, Lin, J. H. Bond, Horace Spencer, Levi Vincent, Henry Snell & B. L. Lombard twelve good and lawful men who were duly empaneled and sworn well and truly to try the issues in this cause and a true verdict render according to the evidence, and the hour of adjournment having arrived the further trial of this cause is postponed until to morrow morning -

Johnson
vs
Mason

Circuit Court, Marshall County
Oct. Term A.D. 1859

Be it remembered that this day this cause came on to be heard upon the demurrer of the Defendant to the 1st 4 + 5th Surrejoinders of the Plaintiff to the Defendants 4th rejoinder to the Plaintiffs Replication to the Defendants 2nd plea and after argument of Counsel the Court being fully advised in the premises sustained said Demurrer to the said 4th Rejoinder of the Defendant - to which decision of the Court the Deft. then and there in open Court objected and excepted and prays that this his Bill of Exceptions may be signed and sealed which is done Oct. 12th/59

Marko Bangs
Judge

Endorsed "Filed October 12 1859

James Wescott Clerk"

"Thursday October 13th 1859"

Joseph H. Johnson

vs.

Charles Mason Executor
of Jesse C. Smith deceased

Debt.

On this day again come

~~One~~ the parties and the jury who were empaneled yesterday and the parties proceed with the trial of this cause, and not concluding the same, the further trial was adjourned until to morrow morning. "

"Friday, October 14th 1859."

Joseph H. Johnson

vs

Charles Macon Executor
of Jesse C. Smith deceased

} Debt.

On this day again the parties and continue and conclude the trial cause and the jury having heard the evidence, arguments of counsel and the instructions of the Court, retire to consider of their verdict and after deliberation, on return into the Court with a verdict which the Defendant by his counsel moved the Court to put in form and enter judgment thereon, and the Court having considered said motion and being fully advised in the premises doth order that said motion be and the same is hereby overruled, and the jury were by the Court directed to retire further to consider of their verdict.

Saturday, October, 15th A.D. 1859

" Joseph H. Johnson

vs.

Charles Mason Executor
of Jesse C. Smith deceased

} Debt.

On this day again come the parties by their Counsel and the jury who retired yesterday come into Court and for a verdict say "we the jury find for the Plaintiff indebtedness to the amount of \$ 2743. 62 and damages to the amount of 2866. 54 and that the Plaintiff filed the note in question within two years after his return from California" Whereupon comes the defendant by his counsel and entered a motion for a new trial herein and the court has considered said motion and being fully advised in the premises doth order that said motion be overruled.

And now again comes the Defendant and entered a motion in arrest of judgment, and the Court being fully advised in the premises doth order that said motion be overruled. Therefore it is considered by the Court that the said Joseph H. Johnson have and recover of the said Charles Mason Executor of Jesse C. Smith deceased the said Sum of Two thousand seven hundred and forty three dollars and sixty two cents for his debt as found by the jury as aforesaid, and the sum of two thousand eight hundred and sixty six dollars and fifty four cents for his damages assessed by the jury

as aforesaid also his costs herein expended, and that the same be paid by the said Charles Mason executor of Jesse C. Smith deceased in due course of administration. And on motion of the Plaintiff it is further ordered that said judgment be certified to the County Court of Marshall County. And now again comes the Defendant by his Counsel and prays an appeal to the Supreme Court of this State, which appeal is allowed upon the Defendants entering into bond in the sum of Seven thousand dollars within sixty days, and by agreement of the parties the securities on said bond are to be approved by the Judge of the County Court.

Joseph H. Johnson

vs

Charles Mason Exr

of Jesse C. Smith dec'd

Be it remembered that after the trial of this cause the jury retired to consider of their verdict and afterwards come in to Court and presented to the Court the following verdict. "We the jury find for the plaintiff" which verdict the Court refused to receive, the Court directed the jury to retire and further consider of their said verdict - afterwards the jury come into Court with the following verdict "We the jury find for the

plaintiff indebtedness to the amount of \$2743.62 and damages to the amount of \$2866.54. and find that the note was not filed in accordance with law, which verdict the Court refused to receive, the jury were again directed to retire, the jury then afterwards returned into Court the following verdict "We the jury for the plaintiff indebtedness to the amount of \$2743.62 and damages to the amount of \$2866.54 thereupon at the request of the Plaintiff, and without any request of the Jury and against the objection of the defendant then and there made, the Court then and there gave to the jury the following Instructions

Given

"The jury will find whether the note was presented to the Probate or County Court within two years after Johnson returned from California - if he is a California."

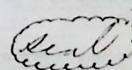
Given

"The presentation of the note is sufficient, if it was marked 'filed' by the Clerk of the County Court & was left among the files in his office for several weeks, and if the note was afterwards taken from the files by the plaintiff or his attorney, this did not annul the previous presentation, if it had been presented by being marked filed by the Clerk & left with the files by him."

And directed the jury again to retire and consider of their verdict. Before the giving of said Instructions the counsel for Defendant objected and

37

asked to be heard in argument upon them but the Court refused to hear the suggestions or arguments of Defts Counsel upon said Instructions or upon the propriety of giving them to the jury, to which said last ruling of the Court and to all of the aforesaid several rulings, acts and doings, of the Court the Defendant at the time and in open Court objected and excepted. The jury then retired and afterwards the jury come into Court with the following verdict, "We the jury find for the Plaintiff indebtedness to the amount of \$2743.62 and damages to the amount of \$2866.54 and that the Plaintiff filed the question within two years after his return informed" Which verdict on motion of Plaintiff's Counsel the Court received and against the objection of Defendant then and there made the Court put into form and discharged said jury to which rulings of the Court the Defendant at the time in open Court objected & Excepted and prays this his Bill of Exceptions to be signed and sealed which is done.

Mark Bangs. 
Judge of 23^d Judicial
Circuit Ills.

Endorsed "Filed October 15. 1857

James Wescott Clerk"

"Saturday, October 22^d A.D. 1859"

"Joseph H. Johnson.

vs.

Charles Mason Executor } Debt.
of Jesse C. Smith deceased.

On this day again came the parties, and by agreement the Bill of Exceptions in this cause is to be filed by the 20th day of November, ^{or} next."

Bill of
Exceptions

"State of Illinois

Marshall County and Circuit Court
October term A.D. 1859

"Joseph H. Johnson

vs.

Charles Mason Exr. } Debt.
of the Estate of
Jesse C. Smith, dec'd

As it remembered that this day this cause coming on for trial, the plaintiff in order to maintain the issues in his part, called as witness. Heggiah T. Crane, who testified that he had resided in Marshall County for about twenty three years. Was acquainted with Jesse C. Smith in

his life time, Smith was here when I came here. He was in the Mill Business and had a small store. He went to Iowa three or four years before he died. Have done business with him. Have seen him write. For some time before he left here, I was acting as Probate Justice. Think I should know his signature almost any where. The plaintiff then showed witness the note sued on. Witness said he should have no hesitation in saying that the signature to the note is Smith's handwriting - He sometimes wrote his name "J. C." and sometimes "Jesse C.". Upon cross Examination witness said he did not know the hand writing of the body of the note. Don't know Johnson's writing. Smith and Johnson were both in the Mill.

John Burns testified he had resided in this County twenty four years. Knew Smith in his life time - Knew him and Johnson when they were in the Mill. Was not much acquainted with Smith until I came to town about 15 years ago, when I became well acquainted with him. Have seen him write frequently - Have seen him sign deeds notes and other instruments. I think I could tell his handwriting anywhere. (Note was here shown to witness) Think this signature is his hand writing. I have no doubt of it.

Upon cross Examination Witness stated that there was a strong resemblance in all of

Smith's signatures - He was a nervous kind of man; scratched off his name in a careless kind of way. He didn't take pains in writing - was not a swift writer - think this signature was written with a quill, think I have seen him write with steel & gold pens.

William Fisher, testified he had resided in this neighborhood since the fall of 1836. Have been chiefly in the Mercantile business since. Was acquainted with Smith in his life time. Have done business with him - nothing very extensive - Have seen him write, think I would know his signature. (State shown to witness) I think this is his signature.

Isa J. Tenn. Have resided here twenty three years. Have practiced law greater portion of the time - Knew Jesse C. Smith in his life time - Knew him since the fall of 1835 - he resided here untill 1847 or 1848 have done business with him - have seen him write - but not very often. think I am acquainted with his hand writing, think I know his signature as well as that of any other man (State shown to witness) It is my opinion it is his signature upon Crap Examination witness stated that he had examined hand writing considerably, the tail of the f looks as though the pen had failed to shed the ink the first time, think the pen passed over the second time think the

41

connection with the pen was broken. plaintiffs then asked the witness, Have you now any doubt as to whether the signature to the note is the signature of Jesse C. Smith, (Witness having examined the signature with magnifying glass and compared same with other signatures, which glass signatures were shown witness by depts Counsel) Defendants objected and objection overruled and defendant then and there excepted, Witness stated I have no more doubt about it than I had before, it is still my opinion that it is his signature.

Abram S. Fishburn stated that he knew Jesse C. Smith since about 1837 he left in 1840 and came back in 1847. have dealt with him, have received several letters from him when in Iowa - saw him after I received the letters and talked with him about the contents and and in that way learned they were his signatures from my knowledge I would think I would know his signature, he left word sent some orders on me wrote to him and got an answer (Note shown to witness) think the signature is Smiths hand writing.

John Straun testified, have lived in what is now Marshall County 31 years, was acquainted with Jesse C. Smith in his life time. he went into the business of Mill building he and Johnson as I understood, think Smith remained

here in business some 13 or 14 years more or less
 think he came here in 1834 or 1835 have seen him
 write frequently, has given me notes, am acquain-
 ted with his hand writing think I would know
 his signature (Note shown to witness)
 this looks exactly like his signature I believe
 it to be his hand writing, on Cross Examination
 witness said, I can't be sure that I know of Johns-
 on and Smith having an arbitration.

Washington E. Cook testified that he was
 acquainted with Smith in his life time, think I
 first saw him in 1844, don't recollect of seeing
 him write his name but two or three times
 not well acquainted with hand writing, was Clerk
 of the County Court - not Probate Court
 Court does the probate business. Witness was
 asked to state if that paper (handing him the
 note) was filed in the County Court, objected
 to by Deft. for the reason that the filing cannot
 be proved by parol, Witness was then asked if
 the name on the back was his signature and
 answered it is my signature as Clerk of the
 County Court of Marshall County, which was objec-
 ted to by Defendants and objection overruled defen-
 dants then and there excepted, the affidavit on
 the back of the note was sworn to before me as Clerk
 of the County Court. plaintiff then offered the note
 (which was in the words and figures as follows

"
\$ 2893. $\frac{62}{100}$

Lacon, April 10th 1840

For value received, five years from date, I promise to pay J. H. Johnson or order the sum of two thousand Eight hundred and ninety three and $\frac{62}{100}$ dollars in goods or such merchandise as he $\frac{d}{s}$ Johnson or bearer may select and if not paid when due to be cash on Interest from date.

Jesse C. Smith "

" Rec'd on the within

July 10th 1845. \$ 30.00

— 1845 75. —

Decr. 20. 1848 45. —
\$ 150.

J. H. Johnson "

Filed November 3^d 1852

W. E. Cooke Clerk "

" State of Illinois

Marshall County

} Joseph H. Johnson being duly sworn
deposith and says that the within
note is just and unpaid except the credits endorsed
Sworn to and subscribed before J. H. Johnson
me this 3^d day of Nov. 1852

W. E. Cooke Clerk

County Court "

" Filed October 13. 1859 James Wescott Clerk "

in Evidence, Defendants then and there objected which objection was overruled by the Court and the note permitted to go to the jury, the defendant then and there excepted, plaintiff then offered the filing and affidavit on the back of the note in Evidence, Defendant objects on the ground that it is not filed in the Court mentioned in plaintiff's replication, which objection is overruled by the Court and the filing & affidavit permitted to go to the jury. Deft and the Defendant then and there excepts

William H. Hunter testified that he had resided near here about 21 or 22 years, had very slight acquaintance with Smith, first knew him about 14 or 15 years ago, Johnson resided here, he left here in 1849 about the 20th. Went to California I went with him across I left California in Sept 1851, at that time Johnson was still there he came home in the summer of 1852, I saw Johnson in the street in Lacaw I think the day after he arrived, he took me up to his room, cut open his belt and showed me his specimens of gold - dust, coin, slugs &c. I resided in this section of Country untill Johnson came back heard nothing of Johnson - think it was in the summer or spring he came home, Can't fix it exactly I got home about the 14th day of January 1852. On Cross examination witness stated, that I think we started for California on the 20th

45

of March 1849. think it was warm weather when I saw Johnson at Lacon Ills on his return from California, that route is taken all parts of the year I was with Johnson in California, got two letters, out of about eight that were said to have been sent to me - I think Johnson told me in California that Smith was dead - he told me I think he wanted me to call and see him before I went away that he wanted to send some news to Silas Ramsey about the Estate of Jesse O. Smith, that was a week or two before I left, he was living in Sacramento City, I lived 30 miles from there. John said he would come home with me if I came until spring, that he had some business and not leave at that time, he did not send anything by me to Ramsey - sent no papers - think there was something said about a letter to Ramsey, but I told him I might get it destroyed or something, he had nothing ready it was only 5 or 6 hours by mail from Sacramento to San Francisco, 35 or 40 days from San Francisco to New York 3 1/2 or 4 days from New York to Lacon. I made the trip home in 54 days from Sacramento City, when Johnson and I went to California we both designed to remain there a short time and then come back here.

William T. Cemens testified that he resided in Marshall County before I went to California came to the County in 1857. Since that time have

been 3 years in California, went in the Spring of 1850. Saw Johnson there I think in April 1851 then in June, then in October, that is the last time I remember seeing him. I don't know certainly when Johnson left California, in the Spring of 1852. I came down from upper Sacramento Valley and was told by persons intimate with him that he had gone to the States I think Johnson had no family there at the time - married. after he came back as I learned when I saw him he had a shop and was repairing Wagons.

Here Plaintiff rested

The Defendant to maintain the issues introduced Elias Ramsey who testified acquainted with plaintiff - knew Jesse C. Smith in his life time - came to Lacon in 1836. Smith and Johnson were here then - they were both young, as then now - Smith might have been old enough to have been Johnsons father - should think Smith was 15 to 20 years older than Johnson - both of them were attending to the business - the business was done in the name of Jesse C. Smith & Co - the Mill stopped in 1834 and the store was closed I think in 1834. after that they done no business as a firm Smith had some means - most of the time was in debt was frequently sued for indebtedness of

J. C. Smith and Co - Smith and Johnson were both living here in April 1840, they had no connection in business at that time - prior to 1840 Johnson Rented the Mill and run it I think for a year the Mill then remained idle Smith claiming to own it before and after 1840 and having it in possession - Johnson had at that time 1840 five lots and two ten acre lots of Land South of and adjoining Town - at that time it was not all worth over \$1000 would not have sold for more - he had 40 acres of timber also worth \$2⁰⁰ or \$2¹/₂ per acre - think I knew his circumstances at that time he had some lots in Racine in addition to Town those Lots in Town he was worth from \$1500 to \$2000 - think he has all yet except one I knew that he had property worth \$3000 that he traded at that time - if he had traded that amount of property at that time I should have known it I think Smith & Holbrook owned 40 acres of Land in Town on the North Johnson claimed no ownership in the Mill or 40 Acres - don't know of Johnson & Smith owning any property in partnership - knew of partnership between Smith and Johnson in Mill & Store untill 1837, Johnson kept the Books the most of the entries are in Johnson's hand writing don't know of Johnson & Smith transacting business in 1840 to the amount of \$2000 or \$3000 was Sheriff of the County at that time prop.

relation of Lacey was 2 to 300. I took the United States Census in 1840 - should have known if any trade to that amount had been made (the Books of Jesse C. Smith & Co. are shown to witness) they are the Books of Jesse C. Smith & Co.

Johnson informed witness that the Books were very familiar to him at one time when we were expecting trial in this cause. (The following accounts and entries were shown to witness)

Columbia, 30th Janry. 1835

Containing an Inventory of our affects and subjects in daily trade &

with J. H. Johnson for his one half

do J. C. Smith ~ ~ ~ ~

do

Cash of J. H. Johnson

\$ 111.33

April 10 Amt. Goods Nathan Hastings

" " as per Invoice Book or Bill

171 71

" " do of E. Stevens

204 59

" 14 do Shillite Burnet & Tullan

1219 90

" " do Vaillette Bates & Co.

146.50

" 22 do Wm A. Clark

24 47

" " do Thom Lawson

24.60

" " do G. & J. H. Schoenberger

520.60

" " do James & Robt. Mc Gregor

442 15

" " do Mcleman & York

462 73

49	"	23	do Newport Manufacturing Co	128.21
	"	28	do Van Thal & Mc Gill	26.00
				<u>\$ 3282 79</u>

April	10th.	We owe as follows		
	bea	to Nathan Hastings		171 71
"	1	" J. H. Johnson	Cash	111 33
"	"	" E. Stevens		204 59
"	14	" Shillits, Burnet & Sullivan		1219.90
"	"	" Vahette Bates & Co		146 50
"	22	" Wm A. Clark		24.47
"	"	" Thomas Lawson		
"	"	" G & J. H. Schoenberger		
"	"	" James & Robt. Mc Gregor		
"	"	" Mcleman & York		
"	23	" Newport Manfg & Co		
"	28	" Van Thal & Mc Gill		26.00
				<u>\$ 3171 46</u>
and omitted above				<u>111 33</u>
				3282 79

1835	Merchandise				Dr.	
April	10	To Stock			1	3171 46
June	9	" Jasheway Ballman	15	6		1.50
"	15	" Jesse Sawyer	18	7		14 00
"	16	" J. H. Johnson	"	8		2.21
"	17	do do	19	8		1.72
"	27	do Mcill	26	10		3 95
"	"	do J. H. Johnson	25	10		14 35

1835.

Merchandise

Dr

"	29	do	Joseph Martin	28	11	.	63
July	2	do	J. H. Johnson	"	"	2	25
"	4	do	Alex ^r Black	30	12	1	50
"	6	do	J. H. Johnson	31	"	3	75
"	7	do	Joseph Antrim	33	13	1	13
"	"	do	Edward Harris	33	13	1	05
"	10	do	J. H. Johnson	36	14	4	38
"	13	do	Forsythe & Co	37	15	7	87
"	17	do	Robt. Antrim	40	16	.	38
"	18	do	Wm Rags	41	16	2	24
"	"	do	Wm Forbes	41	16	5	76
Omission	13 & 14	do	Cash	42	17	1	7
"	21	do	Joseph Martin	43	"	3	21
"	28	do	Armstrong & Whiteman	48	10	.	30
Augst	1	do	Cash	50	20	1	00
"	3	do	R. J. Burlingame	50	"	1	20
"	16	do	Profit & Loss.	58	23	10	20
"	27	do	Philip McQuinn	62	24	10	60
"	29	do	Wm Burns	63	25	2	00
Oct'r	11	do	do		30	71	74
"	16	do	Wm Rags	80	32	1	00
"	"	do	E. Swan	"	"	1	87
Nov'r	16	do	Francis Blake	84	35	10	29
"	17	do	Andrew Jackson	88	35	.	75
"	23	do	Cash	90	36	6	75
"	26	do	Joseph Martin	92	37	50	00
Dec'r	11	do	Jonathan Stout	95	39	2	00

1835		Merchandise			Dr
"	16	do P. McGuire	96	"	14 60
"	21	do Cash	98	40	4 37
1836	24	do D. H. Richards	99	41	2 09
Jan'y	29	do F. W. Graves	106	44	6 56
"	"	do Latt Bullman	"	"	7 48
Feb'y	20	do Wm E. Larkins	111	47	50. 00
March	27	do Latt Bullman	123	53	4 16
April	1	" { on Commission to			
"	"	" E. H. Williamson }	126	53	66 47
"	"	" Robt Antrim	"	"	62
"	9	" C. J. Richards	130	56	2 00
"	10	" Robt. Bird Jr	"	"	
"	18	" Wm Burns	133	58	
"	29	" Wm M. Stewart	137	60	
May	15	" F. W. Graves	141	61	
June	4	" Cash pd freight	146	65	24. 00
"	"	" " "	"	"	38. 72
"	5	" Sundries	64	64	1284 81
"	17	" Latt Bullman	161	68	" 48
"	27	" do do	165	70	1. 12
July	13	" Robt. Wanhob	171	72	3 50
"	17	" John Ridgway	173	73	1. 28
"	28	" Robt Wanhob	175	74	1. 60
Augst	4	" " "	177	"	80
"	6	" Sundries	178	75	2. 06
"	7	" Robt Wanhob	180	"	9 62
"	10	" Sundries	181	76	153. 30

Merchandise

Dr

"	17	"	Bill Payable C.S.R	182	77	142	00
"	22	"	John Wiles	185	78	7	47
"	"	"	Joseph Morley	"	79	1	50
"	26	"	Sundries	187	"	4	70
"	28	"	F.W. Graves	189	80	1	50
Sept	6	"	Warburton & King	192	81	200	79
"	7	"	Jackman Foster	192	82	"	50
"	27	"	Widow Raidia	200	86	"	75
"	29	"	Sundries	201	87	31	00
Oct	6	"	Fenn & Howe	202	"	"	50
"	7	"	M ^{rs} Gallagher	204	88	7	12
"	10	"	Fenn & Howe	202	89	9	24
"	21	"	Cash 21st ult.	209	91		
"	25	"	Polly Deever	211			
Nov	16	"	J. A. Brownson	215	93		
Dec	1	"	Sundries	217	94		
"	2	"	M ^{rs} Lathrop	218	"	30	00
"	22	"	Thomas Jones	219	95	60	66
"	"	"	Cash			6	40
1837	"	"	Benj Babb	221	96	33	70
Jan	10	"	Robt. Antreum	224	98	1	00
"	14	"	M ^{rs} Burt	225	99	"	70
"	20	"	J. C. Smith	227	100	13	20
"	24	"	Cash 1st Jan		103	10	00
"	"	"	Cash on a/c		"	25	00
Feby	18	"	M ^{rs} Burns	232	105	1	50
"	24	"	M ^{rs} Webb	234	106	2	25

Merchandise

Dr.

March	7	"	Elenor Babb	236	107	1	50
"	15	"	B. Hulbert	238	108		44
"	22	"	Wm Burns	240	109		87
April	1	"	Lott Bullman	243	112	5	25
"	4	"	Sundries	245	113	37	25
"	12	"	Forsythe & Co	249	116	6	10
"	"	"	Cash			6	75
"	"	"	do pd on Horse			20	00
"	15	"	J. Cane	250	118	1	60
May	1	"	J. Cane	252	119	1	70
"	28	"	B. Burt	260	123	5	62
June	6	"	Robt. Crow	262	124		
"	7	"	F. W. Graves	264	125		
"	19	"	Jerse Titus	268	127		
July	20	"	Paul Walton	276	136	12	00
Augst	26	"	E. H. Williamson	278	137	1	00
"	29	"	Geo. Raidig	280	"	1	12
Octv.	26	to	Sundries	281	138	4	00
Decr	1	"	J. Reeder	282	139	5	75
"	30	"	Cash pd. Nowick		144	30	00
			Amt from folis		3		
			do " "		58	3691	41
			do " "		96	2076	32
			do " "		139	98	01
						\$	5895.74

1835		Contra		Cr.	
May	7	By Sundries		1	7.98
"	8	do		"	9.71
"	10	do Wilson & Co		"	35.02
"	12	do Sundries		"	3.06
"	13	do	"	1	3.02
"	14	do	"	"	55
"	16	do	"	"	2.60
"	20	do	"	2	63.54
"	"	do	"	3	2.83
"	27	do	"	"	12.65
June	2	do	"	4	99.92
"	6	do	"	5	
"	"	do Cash		"	
"	9	do	"	6	
"	15	do Sundries		7	
"	20	do do		8	4
"	26	do do		9	87.79
"	27	do do		10	41.77
"	"	do Cash $\frac{10}{9.93}$ $\frac{10}{23.63}$	26	10	33.56
July	2	do Sundries		11	102.06
"	6	do do		12	36.00
"	14	do Cash	31	"	20.25
"	8	do Sundries		13	52.94
"	11	do do	36	14	23.64
"	"	do Cash	36	14	14.50
"	17	do Sundries	"	15	51.12
"	18	do do	"	16	62.15

Contra

Cr

"	20	do	do	"	17	31	18
"	25	do	do	"	18	24	54
"	"	do	Cash	46	18	21	25
Amition	18	do	do	"	17	8	25
July	29	do	Sundries	"	19	41	03
Augst	1	do	do	"	20	19	78
"	"	do	Cash	"	"	6	75
"	8	do	Sundries	"	21	23	87
"	"	do	Cash	"	"	14	50
"	12	do	do	"	22	6	87
"	"	do	Sundries	"	"	52	52
"	21	do	do	"	23	52	52
"	28	do	do	"	24	52	52
Septo.	2	do	do	"	25	52	52
"	2	do	Cash do	"	"	11	52
"	12	do	Sundries	"	26	41	43
"	24	do	do	"	27	38	56
"	30	do	do	"	28	57	46
Octo.	9	do	Sundries	"	29	52	34
"	10	do	do	"	30	71	74
"	11	do	Cash	"	"	28	00
"	16	do	Sundries	"	31	14	53
"	22	do	do	"	32	47	43
"	29	do	do	"	33	64	02
Novr	14	do	do	"	34	51	47
"	20	do	do	"	35	35	36
"	"	do	P. L. Armstrong	"	"	19	39

Contra

Cr

"	23	do	Cash		36	75 00
"	26	do	Sundries		34	22 40
"	"	do	do	94	38	56. 31
Dec'r	19	do	do	95	39	30 76
"	21	do	do	97	40	11. 98
1836	"	do	Cash	98	-	33 09
"	"	do	Sundries		41	23. 53
Jan'y	16	do	do		42	102. 92
"	22	do	do		43	35 82
Feb'y	1	"	"		44	36. 96
"	13	"	"		45	100 58
"	"	"	"		46	16. 54
"	"	"	Cash	110	46	22. 50
"	20	"	Sundries		47	23. 50
"	"	"	Cash	112	48	24. 50
March	1	"	Sundries	113	49	25. 50
"	6	"	do	118	50	111 71
"	18	"	do	120	51	32 73
"	24	"	do		52	32 62
"	"	"	"	123	53	50. 54
April	4	"	"		54	30 12
"	9	"	"		55	16. 48
"	10	"	"		56	11 35
"	12	"	"		57	26 53
"	18	"	"		58	12 82
"	25	"	"		59	44 06
May	11	"	"		60	55. 65

57

Contra

Dr

June	3	"	"		61	53.89
"	4	"	"		62	83.07
"	"	"	Cash		64	4.00
"	"	"	H. R. Dever		65	1.00
June	10	By	Sundries		67	104.50
"	17	"	"	161	68	50.14
"	"	"	Lott Bullman Ex		"	"
"	24	By	Sundries		69	70.06
"	24	"	"		70	55.56
July	13	"	"		71	42.82
"	17	"	"		72	31.31
"	28	"	"		73	
Augst.	4	"	"		74	
"	7	"	"		75	
"	17	"	"		76	
"	18	"	"		77	8.60
"	"	"	Cash 2.28/66.87/	183	"	69.15
"	22	"	Sundries		78	18.86
"	25	"	"		79	16.94
"	26	"	Wm. Guthrey	188	80	" 68
"	30	"	Sundries		"	30.11
Sept	5	"	do		81	19.94
"	9	"	"		82	24.71
"	14	"	"		83	31.31
"	"	"	Wheat	195	83	6.32
"	17	"	Sundries		84	8.38

Contra

Dr

"	19	"	"	80	25. 60
"	17	"	Cash	"	43. 00
"	21	"	A. Winay	199 86	2 50
"	28	"	Sundries	201 "	24 98
Oct'r	7	"	"	84	60. 15
"	8	"	"	88	14 32
"	"	"	M. Bart.	"	4. 80
"	16	"	Sundries	89	40 24
"	29	"	"	90	13. 32
"	21	"	Cash	"	58. 32
"	25	"	Sundries	94	28. 22
Nov'r.	10	"	do	92	63. 22
"	3	"	Robt. Crow	"	
"	26	"	Sundries	95	
"	"	"	Wheat	"	
Dec'r	1	"	Sundries	94	29 75
"	23	"	"	95	30. 12
1837	"	"	"	96	24. 31
Jan'y	1	"	"	97	9. 26
"	10	"	"	98	37. 77
"	18	"	"	99	50. 24
"	29	"	"	100	5. 99
"	24	"	Sundries	102	23. 60
"	28	"	Cash	103	103 92
Feb'y	3	"	Sundries	104	33 79
"	22	"	"	105	28. 15
"	"	"	Wheat	106	20. 00

Contra

Cr

March	3	n	Sundries	n	20	30
"	8	n	"	107	20	61
"	15	n	"	108	15	84
"	"	n	Wheat	"	1	50
"	22	n	Sundries	109	31	78
"	26	n	do	110	35	77
"	"	n	Cash	111	51	92
"	28	n	{ apc of Sach see }	"	"	"
"	"	n	{ Ledger folio }	19	4	80
"	"	n	Geo H. Shaw	29	1	33
April	4	n	Sundries	113	11	85
"	7	n	do	114		
"	11	n	do	115		
"	12	n	do	117		
"	24	n	do	118		
May	1	"	do	119	18	89
"	12	"	do	120	25	73
"	16	"	do	121	35	03
"	24	"	do	123	40	52
June	2	"	do	124	37	91
"	"	"	Bills Payable	262	"	16.52
"	7	"	Sundries	264	125	32.26
"	"	"	Rabb. Crow	"	"	50
"	13	"	Sundries	266	126	9.64
"	19	"	"	127	16	79
"	25	"	"	128	5	90
"	"	"	Cash	130	94	06

Contra

Dr

"	"	"	do	131	25	00
July	7	"	Sundries	133	29	61
"	14	"	"	134	18	83
"	24	"	"	135	94	55
"	"	"	"	136	1	88
August	29	"	"	137	77	96
"	"	"	"	138	5	31
Sept 18	18	"	"	-	1059	65
Oct 26	26	"	do	138	32	51
Nov 20	20	"	J. P. Careguis	287	140	2 37
Dec 7	7	"	Sundries	288	141	3 62
"	30	"	Allen Gray	289	140	
"	"	"	J. H. Johnson	294	140	
			Ant from folio			
			do " "			
			do " "	96	1377	0
			do " "	139	2176	97
					\$ 6584	12

J. H. Johnson

Dr

1835

June	2	to Merchandise	10	4	50
"	9	do do	15	6	3 00
"	27	do do	25	10	6 62
July	9	do do	36	14	62
"	20	do do	42	17	1 00

61

J. H. Johnson

Dn.

Augst	1	do	do	50	20	"	77
Sept	13	do	do	68	27	1	00
Oct	16	do	Doct. Efner	80	32	20	00
Nov	12	do	Merchandise	87	34	3	62
"	23	do	Cash	90	36	1	62
"	26	do	Mrs Babb	92	38	3	00
Dec	6	do	J. Stout	93	"		75
"	8	do	Merchandise	94	"	8	37
"	21	"	Cash	98	40	2	00
1836 Jan	16	"	Sundries		43	10	25
Feb	13	"	Cash	110	46		15
"	22	"	Merchandise	113			
March	18	"	Doct. Efner	120	51		
April	4	"	Cash	128	50		
"	"	"	do	"	"		
"	18	"	do	145	64	23	00
1836						100	37
July	22	to	Cash	183	78	15	81
Oct	13	"	Merchandise	206	89	4	00
"	21	"	Cash	209	91	3	00
"	"	"	20.00 / 10.00	"	"	30	00
Nov	21	"	Cash		96	50	00
1837 Jan	3	"	Merchandise	223	98	4	06
"	24	"	John Wiers	228	102	9	55
"	"	"	Merchandise	"	"	8	75
"	"	"	Cash 1 st Jan	103		20	25
"	"	"	do	"	"	8	65

J. B. Johnson

Dr

March	3	"	Merchandise	235	107	4.00
"	8	"	W. B. Plato	237	"	1.31
April	1	"	Lath Bullman	243	112	2.00
"	2	"	Merchandise	244	113	3.25
						264.80
May	23	"	A. Chapman	259	123	1.75
"	28	"	Merchandise	260	124	3.00
June	11	"	"	266	126	1.75
"	"	"	Cash 7th May	130		53.00
July	20	"	J. C. Smith	270	135	66.00
August	9	"	Merchandise	278	137	3.50
"	26	"	do	279	"	
Sept.	18	"	do	280	138	3.00
Oct.	26	"	do	281	138	
Nov.	8	"	Wheat a/c for flour	287	139	
"	19	"	do 60¢ - 1.12	"	140	
"	20	"	do	288	"	5.24
Dec.	7	"	do	"	"	1.92
"	11 & 27th	"	1.57 / 5.94 /	289	141	7.51
						464.98
Decr	30	"	Cash the 6th ult.	142		2.50
"	"	"	do 70. Dec'r	"		2.25
"	"	"	do 28 "	"		3.00
"	"	"	do 2 Augst	144		45.00
"	"	"	do 26 "	"		200.00
"	"	"	Merchandise	277		6.00

J. H. Johnson

Dr

				1023	73
		Page 162 Hous		682	77
1840		To Smiths Bill for		1706	50
		Our family		116	39
		To due to settle		197	51
		April 5 th . 1840		2020	40

Contra

Cr

1835

April	10	By Stock				
June	2	do Mill	10			
"	16	do Merchandise	18			
"	17	do do	19	8		
"	27	do Merchandise	25	10	14	35
July	2	do do	28	11	2	25
"	6	do Merchandise	31	12	3	75
"	10	do do Wheat	36	14	4	38
"	13	do Mill for Wheat	37	15	2	19
Sept ^r	24	do do	70	28	3	34
Oct ^r	26	do Geo. Snyder	82	33	4	50
Nov ^r	23	do Cash	90	36	17	75
"	"	do do	"	"	24	00
1836					185	75
Jan ^y	15	do Cash	110	46	8	75
Feb ^y	20	do	112	48	2	00

Contra

Dr.

						13. 50
						4 00
						10. 00
April	11	"	Doct ^r . Efner	131	56	1 44
"	16	"	W ^m . Guthrie	133	57	10. 00
June	4	"	Cash	145	64	67. 72
Oct ^r	8	"	W ^m . Burt	205	88	20. 00
Dec ^r	23	"	Mill 1 tool Ches	220	96	82 00
"	"	"	J. C. Smith	221	"	40 00
1837						445. 16
May	12	By	Colin. Kilgore	255	120	4 00
Dec ^r	28	"	Salary allowed		144	10
		"	Key af omitted	290		
"	"	"	Boards af to			
"	"	"	Mending Boating Cloth			
					"	
			April 5th. 1840			

Stock

Dr.

1835

April	10	to	Sundries	1	3282	79.
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Contra

Dr.

1835

Janry	30	{ By Sundries }				
April	10					
				1	3282.	79

65

1835

J. C. Smith

Dr

June	5	to Merchandise	12	5	4.12
"	9	do do	15	6	3.00
"	24	do do	23	9	.63
"	27	do Cash	26	10	.37
July	8	do Merchandise	34	14	.50
"	15	do do	38	15	2.37
"	17	do do	40	16	6.38
"	25	do Cash cutting coat	46	18	.50
August	21	do Merchandise	43	17	1.12
Sept.	26	do do	62	24	4.49
Sept.	10	do do	66	26	.5
Oct.	8	do do	75		
"	"	do do	76		
"	9	do Cash	78	31	
"	30	do Merchandise	84	33	
Nov.	26	do do	92	37	.62
Dec.	6	do do	93	38	13.12
"	21	do Cash	98	40	4.25
"	"	do do	"	"	75
"	22	do Merchandise	"	41	1.95
					62.15
1836					
Jan.	20	do Merchandise	104	43	2.37
"	"	do do	"	"	2.00
Feb.	20	do Old Lady Wears	112	47	.50
"	"	do Cash	"	48	4.50
March	15	do R. Kilbourne	119	51	6.37
"	18	do Merchandise	120	"	75

J. O. Smith

Dr

"	23	"	"	122	52	"	63
"	27	"	"	123	53	"	87
April	4	"	"	128	55	6.	25
"	29	"	"	137	60	4.	50
June	8	"	"			99	89
"	8	"	Merchandise New apc	156	67	1	88
"	17	"	"	162	69	2.	50
"	30	"	"	164	70	6	04
August	1	"	"	176	74	4	57
"	5	"	"	178	75	1	00
Sept.	12	"	"	194	83	5	00
"	21	"	"	200	86		
Oct.	7	"	"	203	81		
"	16	"	10 th 20 th	207			
"	"	"	Cash	209			
Dec.	23	"	J. H. Johnson	221	90		
1857							
Jan	3	"	Merchandise	223	98	4.	55
"	18	"	"	226	99	18.	00
"	20	"	John Wires Cash	228	100	50.	00
"	24	"	Tenn & Howe	"	102	2.	83
"	26	"	H. Hastings	229	102	6.	50
"	"	"	Cash 1 st Jan		103	12	75
"	"	"	do		"	100.	00
"	"	"	do 24		"	5.	00
Feby	26	"	"	234	106	4.	00
March 20 + 22 nd	"	"	Plato				
"	"	"	9.37 9.50	240	109	18.	87
"	"	"	Cash 8 th March		111	3.	00

J. C. Smith

Dr

April	1	"	Latt Bullman	243	112	3	50
"	12	"	Forsythe & Co	249	116	48	50
						500	85
"	24	"	Merchandise	250	118	39	00
"	28	"	A. M. Switzer	252	119	16	00
May	16	"	W. Webb	256	121	2	00
"	"	"	Merchandise	"	"	5	50
"	"	"	Or do Ex.	257		0	00
"	28	"	do	260	124	3	97
June	9	"	March	265	126	1	62
"	"	"	Rest. Somroy	"	"	10	00
"	22 & 24 th	"	Cash 4.09 20.00				
July	14	"	Merchandise	274			
"	20	"	Cambell & Crook	276			
"	"	"	Paul & Cotton	"	"		
"	"	"	do do	"	"	1	75
Augst.	26	"	Merchandise	279	137	1	25
"	"	"	Cash	"	142	401	00
Nov ^r	6	"	do	"	"	42	00
Dec ^r	7 & 28	"	do 3.00 9.00			12	00
"	28	"	{ Cash p.d. the 16 th .			1250	23
"	"	"	{ July	146		35	00
"	"	"	{ Cash 19 th Augst	"		19	00
						1284	23

1835		Contra				Dr	
June	6	By Cash	13	5	10	51	
"	27	do Geo. Snyder freight	26	10	2	00	
July	11	do Cash	36	15	27	00	
1836					39	51	
Sept ^r	14	" Mill	195	13	2077	51	
	16	" New Thal and McFee			26	00	
1837							
Jan ^y	26	" Mill	227	100	226	40	
"	"	" Sundries			547	48	
"	"	" Mill			20	00	
"	"	" Bills payable	227	100	24	60	
"	"	" John Wires mare	248		65	00	
April	7	" Wm Webb	245	110			
"	"	" Jacob Reeder	247	110			
May	16	By Robt. Wankat	207	110			
July	20	" J. H. Johnson	245	100			
						3153	56

1836		Johnson House				Dr.	
June	8	to Merchandise	107	67	5	50	
Agst	26	" Jacob Reeder	107	79	5	92	
"	31	" Daniel Chapemin	190	81	1	20	
Sept	1	" Merchandise			13		

1837

Johnson House

Dr.

June	11	to Geo Sweet	266	126	4 00
"	"	Cash pd 26th May	131		8. 00
"	"	Do 3 June	"		10. 00
"	"	Do 9 "	132		9 00
"	22	" "	"		25
"	25	H. Jones	270	133	3. 20
"	"	E. Powell	271	"	16. 00
July	20	Paul & Cotton	276	136	12 25
"	27	H. K. Cassel	277	"	9 25
"	"	Bills Receivable	"	"	33. 31
Oct ^r	26	Wm Hadley	281	138	32. 62
"	"	C. Barrows	"	"	
Dec ^r	1	J. Lindsey	282	139	
"	1	J. Reeder	"		
"	"	H. L. Crane	"		
"	30	Cash 24th ult.	144		
					604 77
"	"	do pd 4th July	144		3. 00
"	"	" 16 "	"		5 00
"	"	" 26 Augst.	"		20 00
					632. 77
Dec ^r	30	Jenn & Howe a/c			6. 62
"	"	J. Fracto a/c			43. 38
					682. 77

71

1837		Contra		Cr	
May	4	By C. Barrows	253 120	40.	74

1835		Walter Plato		Crown P.		Dr	
June	22	to Merchandise	21	9	23.	00	
"	28	do do	27	11	34	29	
July	2	do D. H. Hatfield as per	29	11	" "		
		order del'd in goods					
"	8	do Merchandise	34	13	2.	00	
"	14	do do	38	15	16	81	
"	24	do do	45				
"	28	do David Hatfield as per order	47				
"	"	do Merchandise	47				
August	14	do do	54	23			
Sept ^r	9 & 12	do 5.00 of do 10.00	66	26			
"	22	do - -	70	28	3.	50	
"	28	do do	72	28	5	88	
Oct ^r	16	do	79	32	5.	81	
"	19	do D. H. Hatfield	80	"	13.	00	
"	"	do Merchandise	81	32	3.	41.	
Nov ^r	24	do do	91	37	3.	09	
1836							
January	8	" "	101	42	10.	09	
Feb ^r	10	" "	109	40	4.	21	
"	16	" "	111	47	3	88	
					172	61	
March	18	" Merchandise	121	52	"	50	

72

Walter Plato

Dr

April	1	to Merchandise	125	53	9	43
		amt. of a/c Rendered			182	54

Contra

Cr.

1836

June	30	By Bills Receivable at 1 day from 26th June 1836 @ 12 per ct. Into	166	70	182	55
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Walter Plato

Henry

Dr

1836

Sept	9	to Merchandise	194			
"	29	"	201			
Octr	14	"	207	89		00
					8	50

Contra

Cr.

1836

Octr	21	By Cash	209	90	4	50
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73

" Amount due J. H. Johnson for salary
fifteen hundred dollars allowed by J. C. Smith 1500.00

My account	4.74	
" " for Boarding &c	62.50	
" " Mending Boating Cloths	4.00	71.24
April 5th. 1840 "		

They are in the Books of J. C. Smith & Co, all these accounts and entries are in the hand writing of J. H. Johnson, think these are all the but do not know, they are a day Book I don't know whether or no they kept a Cash Book or Journal don't know as these are all the they kept (defendants) then offered to introduce the above amounts & entries on Books to which are admitted) Johnson built a house about that time, also built one about 1836, Smith and Johnson had a difficulty (objected to by plaintiff and objection overruled & plff. Excepts) they closed business in 1837 their personal difficulties commenced in 1838 did not know of their entering upon any new enterprises after they closed their business in 1838 - think I should have known it if they had I knew of their having a law suit, it was appealed to the Circuit Court of Marshall

County at the April Term 1842, Record of
Judgment & Judgment docket containing entry
also account on which suit brought and ass.
"ignment of Judgment to Silas Ramsey intro,
"duced and admitted to Jury.

"April Term 1842."

Jesse C. Smith

vs

Joseph H. Johnson

} Appeal

Appellant

This day came the parties
by consent this cause is submitted to the Court
for trial, and the Court having heard the parties
is of opinion that the Judgment below is proper.
"med for the sum of ninety five dollars and Eighty
three cents, It is therefore considered by the Court
that the plaintiff recover of the defendant the app.
"lant the sum of ninety five dollars and Eighty three
cents and likewise his costs and Charges by him
about his suit in this behalf expended as well
in this Court as in the Court below and that he
have execution therefor. "

75

Jesse C. Smith	date	amount	Record	Fee Book
vs	30	\$ 95.83	135	223
Joseph H. Johnson				

Execution Issued May 6th 1842 put into the hands of the Sheriff of Marshall County to execute.

Execution Returned August 2nd 1842 Endorsed not levied by order of the plaintiff.

Alias Ex issued November 1st 1842

Received the above Judgment in full, Nov^r 23rd 1842

Silas Ramsey
assignee of J. C. Smith "

"
Jo H. Johnson

To J. C. Smith

To ballance due on contract for Lumber
five & eight in Block six in Town of Lacon
January 4th 1842. "

Endorsed "Filed 5th Jan'y 1842 sums, issued same day,
H. T. Crane J. J. P. "

"don't recollect of any arbitration between the parties from 1838 till 1842, they were not on good terms or friendly in April 1840. Smith had no store of goods here. neither of them were merch^{ants}.
"andising in April 1840 - before that time Johnson took some goods out of the store to sell

and sold them. I knew it from Smith and John,
 son, both, I was County Judge in 1852 Johnson
 returned from California in the Summer of 1852
 when he went to California he allowed to return
 here again he went in 1849 and returned in 1852
 Smith died in 1850. Defendant proposes to ask
 the witness if within 2 months after the note was
 marked filed by the Clerk of the County Court
 and before any hearing was had thereon it was
 not withdrawn by the plaintiff and never refiled
 or put upon the files of said County Court or
 inserted upon as a claim against the Estate of
 said Smith in that Court (objected to by the
 plaintiff and the objection sustained by the Court)
 the sustaining which the defendant desires.
 Defendant now offered to prove that said note
 was withdrawn from the files of the County Court,
 it immediately after a defence was interposed
 in said County Court for the purpose of proving
 that said note was forged or a fraud, to the
 answering of which plaintiff objected and the
 objection was sustained by the Court, to which
 decision of the Court the defendant excepted,
 witness attended to some of the business of John,
 son & Vinecore some while he was in Californi-
 a, my impression is that I first saw the note
 on the day of the filing in the County Court of
 Marshall County. On the Cross examination

77

"Witness said, the suit Smith vs Johnson was determined in 1842, note in controversy not due untill 1845, think I did hear from Johnson that he had a claim against the Estate of Smith before he got home from California, think he wrote to me before he came home that he had a claim, when he came home I was acting as County Judge, acted as such from 1849 to 1853, dont think I got up the papers for the sale of the real Estate of Smith was Elected County Judge in Nov. 1849 my Term Expired in November 1853 from the time Chas. Mason was appointed Exr of Smiths Estate to the present time self or Samuel L. Fleming
 Mason attended to the business of the estate (plaintiff asked witness if he had refused to act for Johnson as counsel, and did you Johnson that you would not or could not pers., "ecute his note) Witness said I told Johnson I could not attend to that matter as Attorney for any person as I was the County Judge and would have to act upon it in my official capacity which question & answer was objected to by Defendant and objection overruled by the Court, to which ruling the Defendant excepted, at the time of that conversation the note was not withdrawn from the files of the County Court, but was withdrawn after that conversa

Washington E. Cook recalled by the Defendant and testified that he was County Clerk & was in 1850 that he was elected in November 1849 and has been ever since, which was objected to by the plaintiff which objection was sustained by the Court & the testimony excluded from the jury & the Defendant then & there excepted, the Letters testamentary to Mason were introduced without objection.

Letters Testamentary

"State of Illinois Marshall County, ss.

The People of the State of Illinois

To all to whom these Presents may come,

Know Ye that whereas Jesse C. Smith late of the County of Des Moines, and State of Iowa, died, on or about the 31st day of July, A.D. 1850, as it is said after having duly made and published his last will and testament, a copy whereof is herunto annexed, leaving at the time of his death, property in this State, which may be lost, destroyed, or diminished in value, if speedy care be not taken of the same, and inasmuch as it appears Charles Mason has been appointed executor in and by the said last will and testament, to execute the same; and to the end that said property may be preserved for

those who shall appear to have a legal right or interest, and that the said will may be executed according to the request of the said testator, the County Court do hereby authorize him the said Charles Mason, as such executor, to collect all and secure all and singular the goods and chattels, rights and credits, which were of the said Jesse C. Smith at the time of his decease, in whosever hands or possession the same may be found in this state, and well and truly to perform and fulfil such duties as may be enjoined upon him by the said will, so far as there shall be property and the law charge him; and in general to do and perform all other acts which now are required of him by law.

L. S.

Witness, Washington E. Cooke Clerk
of the County Court and the
thereof at my office in Lacon this
9th day of September A. D. 1850
Washington E. Cooke Clerk

Judge Mason the Exr I think knew that the note was on file in County Clerk's office, objected to by Deft & objection overruled and defendant Excepto. Judge Mason had the papers & Claims filed against Smith's estate while the note of John, son was on the files and before it was withdrawn (to the admission of which the Defendant Excepto)

Books records of the County Court are presented by witnesses who testify that they are the Books and records of the County Court, also the claims filed and allowed in the County Court against the estate of Jesse C. Smith Dec'd, Defendant then offers the record to shew the claims allowed against the said estate and that the note sued on is not one of them, and that the same was not allowed to the introduction of which the plaintiff objected, which objection was sustained by the Court; to which ruling of the Court the defendant then and there excepted, defendant then asked the witness Cook how long it has been since the note sued on has been on file of the County Court to the answering of which the plaintiff objected, objection overruled, per says the note has not been on file in said Court since March or April or it may have been January 1853. Defendant then offered to prove by Cook, Clerk and by the records and papers of said Court that there has been no note or other claim of Johnson against the Estate of Jesse C. Smith in said Court since April 1853 which was objected to by the plaintiff and the objection sustained by the Court to which ruling of the Court the Defendants excepted.

81

"Lunsford Broadus Testified that he knew Smith and Johnson that they were in business together in 1836 & 1837. their business operations ceased about 1837 or 1838. never knew of any business transactions between them after that date I was personally acquainted with the parties. I possibly might not have known of any business, they were not men who made known their business, Smith was particularly close about telling of his business, I was not particularly a confidant of either party, Smith was pretty slow to pay, he owed me, I took it traded Horses &c don't know what Johnson was in 1840, on Crop Examination he said here before I did, I came in & saw him & he was the main man Smith or Johnson had done the business, knew but little about it, \$20 of them don't know which paid it, closed about 1838, can't say they had no business together after that time don't know whether they did a cash or credit business can't say how much business they did the store was a small one "

Robert Bond Testified, says he was acquainted with Jesse C. Smith has been here 24 years came here after Smith died, when I came he was engaged in erecting a Mill Johnson was with him, name of the firm according to the best of my recollection was Smith & Johnson, may have been Smith & Co don't know

^{doing business together don't know whether before 1840}
^{don't know when they quit}
 when they quit, Keeping store they kept a store 2
 or 3 years after I came, the population about that
 time I should think was 200 about, I know
 nothing of my own knowledge about the property
 of Smith and Johnson they both had property at
 that time in 1840 I can't tell what Johnson was
 worth don't know of his selling any property about
 that time to the amount of \$2000 or \$3000 think
 he has kept most of the property he had at that
 time I knew of his having a quarter section on
 the other side of the River, he has it now, he was a
 young man in 1840 Smith was an older man
 Knew Smith after I came here till his death
 16 or 18 years he had property here that was
 to be his, I suppose in one case he was
 to be responsible and in another
 I suppose money could be made off him
 of an Execution, he left property at his death here,
 Smith and Johnson had a difficulty 3 or 4 years
 after I came here, were not good friends, about
 the time they settled, don't know they had a suit
 knew the current opinion was that they had a
 difficulty don't know what the nature of it was,
 Our Crop Examination Witness said, great many of
 Smith's debts he did not pay without suit, the gen-
 eral impression was that it was difficult to get a
 debt out of him, when Smith & Johnson were together
 Johnson paid me two claims, don't recollect the

amounts, one was for Guthrie & the other was
 Morey they were for professional services against
 those men who were in the employ of them at the
 time I was about to leave with no intention of return-
 ing here, Johnson came and paid me at the boat,
 when I came here in 1836 I received the impression
 that Johnson had the most money & Smith the most
 skill and business talent, those payments spoken
 of were made in fall of 1836. don't remember the
 amounts or any thing near, don't know whether
 I have my books of that date or not, my impression
 when I came was, that Johnson had the money & Smith
 the skill and experience, did not cho-
 se impression, rather thought I should go
 for Johnson and get the money, I have a
 vague impression that that was the fact, I saw
 a Mill in the Town of Webster, I remember
 having something to do together about it, that
 was before 1840, think they claimed to own it,
 Webster is not in Existence was a mile or two above
 Henry, don't know who got the mill, I think it
 was owned by McAllister, don't know whether or
 not he built it, don't know any thing about the
 se persons, know there was a store and mill there,
 don't remember of Johnson paying any other claims
 but those two, don't know whether Johnson brought
 money here when he came & Smith did not, only
 have that impression, perhaps 20 years certainly 15

years between the ages of Smith & Johnson, Johnson must have been between 20 and 25 years of age in 1836. It was a mere impression I had about the money belonging to Johnson don't know that either had any particular duty such as Keeping Books, don't think I know Johnsons writing, was in their place of business sometimes had transactions with one & sometimes with the other I know of Johnsons building a store north of the Marshall House, think it was not built prior to 1840. It has been built a number of years, I have not a distinct recollection about it, it was built between 1840 & 1845, was for a good store, think it was subsequently used as such, have heard Smith and Johnson one another prior to and after 1840, don't think their having any business together after their mill was closed, don't know that they ever closed their business, don't know that they were doing business when I came here.

Silas Ramsey recalled & testified that A. L. Deming paid for the mill at Webster, Smith bid it off. J. M. Shannon was the Commissioner who made the sale I was boarding at Shannons house, Smith could not raise the money, Shannon said he would wait some time if Smith would get Deming to go his security Deming went his security & paid for the

85

mill \$ 125. — On Cross Examination he said I know that Deming paid the money dont know that Johnson bid it off at any time, this sale was after this County was organized that was in Apl. or March 1839, the mill was worth nothing except the old Iron and Engine, Smith took out the Engine and took it to Fort Madison Iowa and put it into a mill there, dont know that Johnson bid it off at a sale on Execution no Plats that sale to Smith was after him & Johnson quit business together, defend, ants here offered in Evidence sundry letters and notes written & signed by Jesse C. Smith numb 1 to 17 inclusive, which were p hand writing of Smith not p to the admitting of ~~competency~~ objection was sustained by the Court to which 1st 10 1st the dependant excepted.

Theodore Perry testified that he came here 11th Mar. Ch 1839 was acquainted with Smith & Johnson at that time they were not selling goods in 1839 & 40 I was a Merchant, should have known it if they had been in buisness. Smith was in no Constant buisness as I recollect, in 1839 or immediately after Strong & Johnson were running the Mill dont think Smith & Johnson were doing buisness together, if they had been I should have known it population of Lacon at that time was from 2 to 300, Johnson was laterally well

Smith's papers.

John Kier testified have lived here 27 years, Knew Smith from 1820 untill a few weeks before he died he came from Virginia here. Johnson came same time Smith came Knew them in 1840, cant tell when they closed up their business, they came in 1835 & were together some 3 years was always intimate with them dont know of their having any new business together certainly not after Smith sued Johnson and recovered something like a hundred dollars from him never knew of any business between them after they wound up their Store & Mill, never knew that they had friends untill Smith made a demand for about \$100. Extra on a balance due to him. I spoke about it to Johnson & he said he would pay it in April 1840 if they had been together for a term of about \$3000. I might & might not have known it, I always supposed Johnson had some money when he came here he kept it very close at the time I lived on my farm where I now live they were with me a great deal I was friendly to both. On Cross Examination witness said I never knew that they were in partnership, when they first came here Johnson appeared to have some money & paid some out, I knew Smith in Virginia he built a Steam Mill & Carding Machine with an other man & ran them, I think he may have owed about

\$50. when he left Va. which was paid for him by an old friend, five of us worked in One Shop as apprentices. Smith sometimes came to me to borrow money did not loan him much, he came for all kinds of sums, small & Large, he borrowed some to pay me once & I came near having it to pay, he got a watch once at my house & took it to St. Louis I never got it, worth \$5.00 \$10.00 have lent him small sums \$5 or \$10- to get rid of him, he came once & got five when his wife was sick. he did not pay much Except at the end of a Law Suit never heard but what Johnson paid. Smith & Johnson had property Johnson occasionally paid some of the Smiths & Johnson. the Mill Johnson kept on Examination by Dept. witness said Smith & Johnson were in partnership they told me they were. Johnson was a young man at that time 20 or 25 years. I knew about a patent right that Smith sold in Cincinnati. Johnson said Smith had means to carry him through that he got for the patent right some \$10,000, that watch did not belong to Smith or me, on Corp. Examination witness said he Smith got & brought with him an Engine 2 Mill stones & the fixtures for mill he got from sale of patent right. he also got Engine & Machinery for an other Mill afterwards Johnson must have come here in Oct 1835 dont

89

Know how long they did business together, they run the mill for a year or so then Johnson & Strong Run it. Smith & Johnson went right to building the mill the fall they came here. Strong & Johnson must have run the Mill in 1839. Strong & Johnson perhaps run it together in 1838. don't think they sold goods on Credit all the rest did. think they might have sold some on credit wheat at that time was as high as \$17 Bushel, Johnson never said any thing about being in partnership with Smith.

Norman Fenn testified that came here Spring of 1836 resided here since then. Johnson cannot tell when they closed up within 3 or 4 years after they began, think they done no business in 1840, they were both here in 1840 never knew them doing business together after 1840 think I should have known it if they did.

On Cross Examination witness said don't know any thing about notes or trades they made, my opinion is we were all selling on credit at that time don't don't remember what they did do paid \$12 per Barrel for flour in 1837 & 1838 at that mill. don't remember the price in 1840. don't remember price from 1840 to 1842. in fall of 1842 wheat as low as 25 cents per Bushel. Johnson was the Book Keeper of the Concern It was supposed there was not much

money in that concern or any other in those days

Abram A. Fitchburn (recalled by plaintiff) testified I came here in 1837 & remained until 1839 went to Magnolia 16 miles East of here Johnson & Smith were here at that time on Corp Examination witness said, had a Counterfeit Counterfeit Bill which came from Johnson & Smith - Smith said Johnson must take it back as he had paid it out, don't know whether or no they done a business

Ira J. Fenn testified that he had been in business with Johnson & Smith in Spring of 1836 and until they closed their business when they stopped business together, don't know of any transactions between them after they closed, had a claim against Smith from Cincinnati got judgment on it at May Term of Putnam Circuit Court for about \$500 - Johnson paid same to Sheriff Putnam County - Smith was away at that time think it was about 1837 Smith & Johnson were in business together. Shown receipt says receipt is in hand writing of J. S. Simpson who was Sheriff of Putnam County at that time, receipt admitted to jury after objections by defend
(ant)

"Rec'd Wernepin August 25th 1834 of J. H. Joh-
 "son four hundred dollars to be applied on an
 Execution in favor of McClelland & York against
 J. C. Smith

J. S. Simpson "

to the admitting of which receipt of J. S. Simpson
 to the jury the defendant excepts.

It is dated August 1834. I had a claim some years
 later against Smith for \$300 or \$400 - that was
 paid. I think Johnson did not pay it, had a claim
 of Richards against Smith & Johnson
 "ment & levied on Smith & Johnson
 redeemed, Smith & Johnson
 had means to pay his debt.

"David Wernay testified knew Smith & Johnson
 did business for them, helped them get out timber,
 "her for the Mill first winter I was here Defendant
 objects to same which objection was overruled by
 the Court & testimony admitted to jury and defen-
 "dant excepts. Johnson paid me the money for
 the work, it was when they first came in 1834 or
 1835. they had 3 hands besides myself, don't
 know that Johnson paid the other hands, when
 they got up the mill they bought some wheat of
 me it was about 120 Bushel. Johnson paid me

for it that was in 1836.

On Cross Examination witness said I supposed Smith & Johnson were in partnership, Johnson kept the Books he hewed timber that winter I went to Smith for the money he said he had none & if Johnson had would pay it. cant tell when they closed business dont know of any transactions between them after they closed. they used to credit me suppose they did others dont know whether Smith settled up the debts. Smith was not very fond of me no how.

John Burns recalled testified that dont know certainly who had Books of the account but he knows the real estate that the firm was interested in was bid off under judgments against the firm. & the judgments. this fell into the hands of Smith dont know of any judgment in their favour except the Webster affair. dont know any thing about property being bid off at sheriff sale in favour of Smith & Johnson dont know any thing except from the records.

John Strawn recalled testified - Knew Smith in 1839 seen him at my cabin he came to me with Johnson to buy Lots of me, he bought 8, never got any thing for them, paid \$400 - to get out of the scrape perhaps four times that, he prosecuted

93

me in a Court of Chancery & took me from one
Court to another, I had 18 Lawyers employed &
one of them sued me for \$1200 - or more, Smith
borrowed money of me & never returned it, Smith
told me Johnson had considerable money & ingenu-
ity and and bragged a good deal on him he bor-
rowed money frequently and never returned it, I
asked him for some of it once or twice & then dec-
lined, sold them wheat & got part of the pay fr-
om Johnson & part I never got, Smith & Johnson
were at my house they said Johnson was a favour-
ite & had money - and was able to pay a
that was necessary, th. me
yes Ballance was with
nt of writing. But
Land near Lacon, but
had any part of it don't know whose names
the writing my recollection is that they were part-
ners I should say I was in the habit of bringing
wheat frequently to their mill, got my money from
Johnson don't remember of ever receiving any mon-
ey from Smith in the world to the amount of a
three cent piece, whenever I got any money I
got it from Johnson, sold wheat to them at
\$1 1/2 some of that I never got. Smith & me
lived together by the year & then we lived
with one another, never knew that either of them
had any capital. Smith bragged on Johnson

for years, Johnson appeared to be Commander in Chief, was very attentive to business, don't know when they quit business.

Mrs. Gilpha Swan testified, I knew Smith & Johnson when they were partners, Smith never told me whether he had money or not, he kept that to himself, I think knew Halbrooke he had some trouble or difficulty with Smith remember a conversation between them did not hear Smith say he had no money. my husband wanted to go into partnership with Smith in the mill I opposed to it they were at each other since I heard the conversation. Smith was going Halbrooke wanted his pay, this was the first time it came here, was a large sum some thousands of dollars, Smith did not pay the claim, was an old claim, was passing back and forth did not hear all the conversation Smith said he had nothing to pay with, that if successful in Business would pay, he told Halbrooke he could not make him pay it, don't know how old the claim was, my husband's name was Elisha says the signatures to papers shewn to her are his signatures, knows his hand writing, some of the hands engaged in building the mill boarded with us Johnson did all the settling so far as I know. don't know whether John.

95

son paid those orders or not. I believe he did. Johnson
son paid the claims, he had money, don't know whose
money, don't know how plenty. so far as I know
they were paid by Johnson. I knew Casell, he worked
for them. I knew something about a note but don't
know who paid it, am not certain but that Swan
paid it. If he did not Johnson did. Swan had
paid off hands that worked for Smith when he
thought of going into partnership with him I think
two or three hundred dollars - Johnson paid this to
Mr. Swan. On Crap Examination witness said
those claims & money for work was paid when Smith
& Johnson were together Johnson was the owner of
the Books so far as I know. The books
was 6 months or a year after they came to the
books came it was before the Smiths came to
them untill ^{when they} 1840 don't know whether they
together or not after they quit business, never heard
of it.

Plaintiffs offer in evidence two receipts signed by
Swan also orders of Smith on Johnson and also or-
ders on Strong & Johnson signatures proved.

Rec^d of J. H. Johnson \$ 1800 on J. C. Smiths account
with E. Swan as per Bill annexed
Feb 14th 1835 to Cash paid Samuel Warren \$ 10.00
December 29 1834 " " " H. K. Casell 4.50

96

Feb'y 11th 1835

" Lent J. C. Smith

2.00

" " "

" paid Lancaster

1.50

\$18.00

April 21st. 1835 C on Bail

E. Swan

"Received of E. Swan the sum of ten Dollars in full
payment for a months work at Chaping and sec.
reing for J. C. Smith.

Columbia Mo. February 14th 1835

Samuel Warren "

"
Rec^d by the hand of J. H. Johnson the within
amount ten Dollars
\$10.00

"
\$10.²⁵/₁₀₀

Columbia Mo. Jan'y 15th 1836

Rec^d of J. H. Johnson ten Dollars & twenty five
cents in full all accts up to this date

E. Swan "

"
Give the the beaver fifty th floss

J. C. Smith "

"
Mr Johnson

Oct. 9th. 1838

Give the beaver 100 th Mid-

J. C. Smith "

97

\$ 46.68

Nov^r 12th. 1838.

Mr. J. H. Johnson - Sir

Please to pay the bearer or order the
sum of forty six dollars & $\frac{68}{100}$ in flour out of the
mill whenever its convenient

J. C. Smith "

November 17th 1838.

Let the bearer W^m Hadley have one-ound flour
J. C. Smith "

Nov^r 28th. 1838

Mr Jo. H. Johnson

I am pleased to inform you that
holds given Redick Johnson of twenty \$ 20 Dollars in the bill
of Remings of 1000 & some cents The Cape
1st 87 Cts.

J. C. Smith "

Nov^r 3rd 1838

Due J. P. Garrigue on Settlement Seven dollars &
 $\frac{40}{100}$

J. C. Smith.

Mrs Strong & Johnson - pay the above in flour

March 20th 1839

J. C. Smith "

Endorsed " April 20th 1839 Paid on the within 50 lbs

flour	\$ 2.00
paid 50 th flour	2.00
85 th flour	3.40
	<u>7.40</u>

Charged to J. C.

Smith at May 14th 1839 "

" Nov^r. 26th 1838.
 Mrs Strong + Johnson

Pay the H. K. Caswell six doll^{rs}.
 " and 54 cents in flour

J. C. Smith "

Endorsed " December 15th 1838 paid on the within
 56th flour 3 — 1.68
 65th flour 4 — 2.72

" Mrs Strong + Johnson

Please pay the bearer
 " half two dollars + 20/100 in flour

J. C. Smith "

Nov^r 26th 1838

"

Nov^r. 26th. 1838M^{rs} Strong + Johnson

Pay the bearer Benjamin C.
 Moeller or order nine dollars + 86/100 in flour
 J. C. Smith "

" Endorsed " November 30th 1838 paid on the within
 171th flour at four cents 6.84 "

to the introduction of which defendants objected which objection was overruled by the Court, and to the said ruling of the Court the Defts then and there excepted ")

William J. Orr testified that he knew the parties the last year they were in the mill. I had dealings with Smith, got Smith's note, tried for a year or two to get the money, could not get it, said he had not the money, cut and hauled wood for him claim was about \$100 - sold it for about \$50 - Johnson always paid me when he agreed to.

() plaintiff here by way of rebuttal in evidence a paper of certificate of purchase of land in Putnam County, to the introduction of which the defendants objected which objection was overruled by the Court and the paper permitted to go to the jury to which ruling of the Court is admitting said paper the Defendant then and there excepted which paper is as follows.

" Copy
 " State of Illinois }
 " Putnam County } Sec. J. F. S. Simpson Sheriff of said
 " County. As hereby certify that
 " by virtue of a writ of Execution to me directed
 " from the Circuit Court, I did on the 2^d day of Jan,

" many A. D. 1838 express to public sale certain
 " property To wit. Three undivided Eighths of the
 " Steam Saw mill and three undivided Eighths of
 " Lot No — in B. 30 on which said Mill
 " stands in the Town of Webster in the County and
 " State aforesaid, and that Joseph H. Johnson of the
 " firm of J. C. Smith & Co bid the sum of Two hun.
 " dred thirty three dollars nine cents therefor which
 " being the highest and best bid the said property was
 " struck off to him the said Johnson, and that the
 " said Johnson will be entitled to a deed for a
 " premises so sold to him with all appurtenances
 " the date hereof unless the same be redeemed
 " ding to law. Given under my hand and seal of
 " Hennepin this 25th day

J. C.
 Sheriff of Putnam Co Ills))

This was all the evidence

((Plaintiff then asked the Court to instruct the jury
 as follows.

State of Illinois

County of Marshall }^{ss}

In the Circuit Court of said
 County and of the October T.

A. D. 1859

"Joseph H. Johnson

vs.

Charles Mason Exr.

of the Estate of Jesse C. Smith

Debt.

The Plaintiff asks the Court to instruct the jury, as follows.

1st - Under the issues in this cause, there is no question of fraud. Fraud in obtaining the note must be specially pleaded by plea, and it is not pleaded in this cause.

2^d - Mere delay to bring on no defence, unless it is after the note became due.

3^d - If Johnson was in California when the said Testamentary were issued by the County Court of Marshall County on the ninth day of September A. D. 1850. to Mason as Executor of said Smith, and he Johnson presented the said note in question to the Probate Court or County Court within two years after his return to Illinois, that is a sufficient presentation, and if the jury further believe from the evidence that the said note was signed by Smith, and has not been paid, they will find for the Plaintiff.

Given

4th If Johnson was in California when the letters were granted to Mason, then he Johnson was "beyond seas" within the meaning of the law.

Given

5th The Settlement proves nothing but the settlement of the account named in the books, and no presumption arises from such settlement that a note was not afterwards given by Smith to the Plaintiff, Johnson.

Given

6th If Smith made the note sued on, then it can only be avoided by a payment or release to prosecute the collection of the same, if it became due.

Given

7th Mere suspicion, or so-called defence to this action, If any defence is to be pleaded and proved to the satisfaction of the jury. And the jury have no right to reject the Plaintiff's claim upon mere conjecture or guess or impression.

Given

8th It is not necessary for the Plaintiff to prove any consideration for the note. The note itself is sufficient evidence of a consideration. And it is for the defendant to prove there was no consideration.

9th It is not necessary for the Plaintiff to prove any thing about the consideration of the note, or the situation of the parties, or their dealings, or which paid the most money, if the note was given, it is for the defendant to prove its payment or any other defence which may exist.

11th There is no presumption of law that payment of the note has been made from any lapse of time alone short of sixteen years and the defendant is bound to prove payment when he relies on such payment as a defense.

12th The settlement of accounts is evidence only of settlement of accounts as specified as being settled and accounted for. Evidence of settlement of accounts between the parties, and the party relying on final settlement must prove that there was a settlement of all accounts between the parties.

State of Illinois
County of Marshall

In the Circuit Court of said
County and of the October T.

1859

Joseph H. Johnson

vs.

Charles Mason Ex of the Estate
of Jesse C. Smith Deceased

Debt.

"The Plaintiff asks the Court to instruct the jury,

"

13th That Johnson could not have introduced the note, upon which this suit is brought, in defence to the suit mentioned in the evidence of Jesse C. Smith against Joseph H. Johnson which was commenced and ended in 1842, for the reason that the said note in question in this suit was not then due.

Given

14th The Books offered in evidence are not a true and correct proof of the actual state of the accounts between Johnson and Smith, as the jury learn from the evidence that the said books were kept by, or for the party, who were not the parties to all their business transactions, they are all the books so kept, showing their said accounts and transactions. "

Given

Endorsed "Filed October 14 1850

James Wescott Clerk "

which instructions were given by the Court to the giving of which instructions the Defendants then and there excepted. "

The Defendants then asked the Court to instruct the jury as follows

105-

"
Joseph H. Johnson
as
Charles Mason Executor
of Jesse C. Smith dec'd

Instructions for
Defendants

Given

1st. If the jury believe from the Evidence that the signature to the note given in evidence is not genuine and in the hand writing of Smith - the jury will find for the defendant and for the purpose of determining the question of genuineness the jury will take into consideration all the facts and circumstances proved in the case.

Refused

2nd If the jury believe from the evidence that the signature to the note given in evidence is the proper hand writing of Smith and genuine - still should the jury believe that the signature was written by Smith upon a blank piece of paper, and that afterwards without his consent the note was written over it then the jury will find for the Defendant.

Refused

3rd If the jury believe from the evidence that the note given in evidence was made or given without any good or valuable consideration then the jury will find for the Defendant

Refused

4th. If the jury believe from the Evidence that the note in question was procured by the Plaintiff from Smith fraudulently and that the Plaintiff used fraud and circumvention in obtaining the making and executing of said note - then the jury will find for the Defendant.

Consent

5th If the jury believe from the Evidence that the Note was honestly made and for a good and valuable consideration - but that after the making of said note the same was by any arrangement between the parties settled for and paid - then the jury will find for the Defendant and for the purpose of determining the amount of payment made as all the questions arising therefrom may take into consideration all the facts and circumstances proved in this cause

Refused

6th If the jury believe from the Evidence that on the 5th day of April A.D. 1840 - the Plaintiff and Smith, settled all their accounts together and that at that time there was but \$197.⁵¹ due the Plaintiff - and if the jury further believe from the evidence that after the said 5th day of April A.D. 1840 the Plaintiff and Smith had no dealings whatever with each other - but that on the contrary they were personal enemies to each other and if the jury further believe that said note

Refused

was never presented to Smith in his life time for payment - and that after Smith's death the presentation of it was delayed for a long time without reasonable cause - all of these facts and circumstances may be considered by the jury as tending to prove that the note is not an honest claim against the Estate of Smith -

Given

7th If the jury believe from the evidence that the note in question is a valid note - but that the Note was not filed in the Probate or County Court of Marshall County within two years after the granting of Letters Testamentary upon the Estate of Smith - the jury shall find for the Plaintiff, but otherwise they shall find in their verdict that the Note was not a valid claim against the Estate of Smith and that the same was not a valid claim against the Estate of Smith provided the jury shall believe from the evidence, or, that Johnson was not out of the State of Illinois at the date of the granting of said Letters testamentary.

Given

8th If the jury believe from the Evidence that the note in question was not filed in the County Court of Marshall County within two years after the Plaintiff's return from California then the jury will so find and state in their verdict.

Refused

And the jury are further instructed that if they believe from the evidence that Johnson only procured the filing of the County Clerk upon the back of the note - but did not leave the note in the office of the County Clerk for the adjudication of the County Court upon the same but withdrew the same - and never afterwards re-filed it or in any manner insisted upon it as a claim against the Estate - that this does not amount to a filing of the claim against the Estate within the meaning of the law - and the jury will so find -

Refused

9 - If the jury believe from the evidence that the Plaintiff Johnson left Marshall County in the year 1849, and went to California, and that at the time of leaving said Marshall County, and from that time until his return to said County in 1852 Johnson only designed remaining only for a time temporarily in California - intending to return to Marshall County to reside - and that he did not at any time intend to settle and live in California as his home - but during all that time of his absence, we esteemed Marshall County his residence and home - then the jury are instructed that such an absence would not sustain the Plaintiff's Replication that he was "beyond sea"

109

Refused

10th The Jury are Instructed that California being one of the United States of America is not in Contemplation of law "Beyond Sea" and if the Jury believe from the Evidence that Johnson during all the time of his absence from Marshall County was only in California then the Jury will not find for the Plaintiff on the Issue upon his said replication.

Given.

11th If the Jury find the issue upon the Replication of "beyond sea" in favor of the defendant, namely that the Plaintiff was not "beyond sea" as stated in his replicate the Jury believe the matter within two years after the death of the Plaintiff as stated in his replicate and so find and state.

Refused to

12th If the Jury believe from the evidence that Smith and Johnson were partners in trade and as such Partners at the time of their closing or stopping their business had debts due them from their customers which debts were afterwards paid - and if there is no evidence tending to show which of the partners received the money in liquidation of such debts in that case in the absence of evidence - the presumption of law is that each of the partners received the proportion of the debts to

which he was legally entitled - and in such case no presumption of indebtedness from one Partner to the other arises -

13th If the jury believe from the evidence that Smith and Johnson on the 5th day of April A.D. 1849 had a general settlement of accounts - the presumption of law is that all matters of account between the parties at that time were settled and adjusted - And if Johnson claims that any items of indebtedness from Smith to him were omitted in such settlement then the burden of proof is upon Johnson, and he must prove it.

Endorsed "Filed October 14, 1857"

James Wescott Clerk

Which instructions were refused to be given except to the refusal to give which instructions the Defendants excepted, and to the giving of said Defendants instructions No. the plaintiffs excepts, and the said defendant asks the Court to sign and seal this his bill of exceptions which is done
November 19, 1857

Mark Bangs

Judge of the 23rd judicial district Illinois

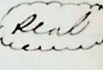
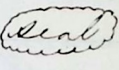
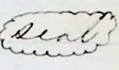
Endorsed "Filed Nov. 19, 1857 James Wescott Clerk"

"Know all men by these presents that We Charles
 Mason Executor of Jesse C. Smith deceased and
 Silas Ramsey & William B. Green are held and
 firmly bound unto Joseph H. Johnson in the penal
 sum of Seven thousand dollars for the payment of
 which well and truly to be made we and each of
 us bind ourselves, our heirs Executors and Admin-
 istrators firmly by these presents, signed sealed
 and dated at Lacon this thirteenth day of Decem-
 ber A. D. 1857.

The condition of the above bond is such that
 whereas at the October Term A. D. 1857 of the Cir-
 cuit Court of Marshall County Illinois the
 named Joseph H. Johnson was
 against the above named Charles Mason
 of Jesse C. Smith deceased the Circuit Court
 A. D. 1857 of the Circuit Court of Marshall County
 Illinois for the sum of Seven thousand
 forty three & $\frac{64}{100}$ dollars debt and the sum of
 Twenty Eight hundred & sixty six & $\frac{54}{100}$ dollars
 damages and whereas the said Charles Mason
 Executor as aforesaid has prayed an appeal to
 the Supreme Court of the State of Illinois which
 appeal has been granted now if the said Charles
 Mason shall pay whatever judgment interest costs
 and damages that may be rendered against him
 on the trial or dismissal of the said appeal
 by the Supreme Court in the due course of admin-

"initiation and shall prosecute his appeal with effect and without delay then this obligation to be null and void, otherwise to be and remain in full force and effect.

Signed Sealed and
approved before me
this 14th day of
December A.D. 1859
Mark Rango Judge of
the 23^d Judicial district
Illinois "

Charles Mason Exr of 
Jesse C. Smith dec
By Silas Ramsey his atty in fact
Silas Ramsey 
William B. Green 
"

Endorsed "Filed December 14, 1859"

State of Illinois }
Marshall County } ss. J. James Wescott

do hereby certify that the foregoing is a correct transcript of the proceedings
had and the papers on file in said Circuit Court in the
suit of Joseph H. Johnson against Charles Mason Executor of
Jesse C. Smith dec^d as the same appears of record and on
file in my office.

In Witness Whereof I hereto set my hand
and the seal of said Court at my office
in Lacon in said County this 23^d day
of March A.D. 1860

James Wescott
clerk

Clerks fees \$25.30 paid
by Deft per S Ramsey Esq

113

Joseph W. Johnson

m

Charles Mason

Executor of Jesse C. Smith

The Supreme
Court April
Term A.D. 1869

Appeals from Marshall

And now comes the appellant and
says that in the Record and proceedings
and in the rendition of the Judgment
aforesaid there is error in this to wit:

1st. The Circuit Court having
~~in the Plaintiffs~~
~~Replication~~

1st. The Court ends in Overruling the Defen-
dants demurs to the Plaintiffs Replica-
tion to the Defendants Second Plea -

And in Overruling Defendants Demurs
to the Plaintiffs first fourth & fifth
Joinders to ^{Defendants} Plaintiffs Joinder to
to Plaintiffs Replication to Defendants
Second Plea & Sustaining said demur
to said fourth Joinder

3rd In sustaining Plaintiff's Demure
to Defendants 5th & 8. Read.

4th In rejecting Evidence offered by
the Defendant -

5th In admitting improper Evidence
offered by Plaintiff & Objected to by
the defendant.

6. In Giving the instructions asked
by the Plaintiff

7 In refusing the instructions asked
by the Defendant -

8. In instructing the Jury after they
had once retired to consider of their
Verdict

9th In Sending the Jury out several
times after they had agreed
upon their Verdict

10 In giving Judgment for the
Plaintiff

For these and other errors in
said Record, Appellant prays
that said Judgment may be
reversed set aside & for nothing
Estimated

M. D. Phipps

April 14th 1860

Atty for Appellant

Whereupon comes the said Joseph
H. Johnston, by H. M. & J. I. Mead, his
Attorneys and says that there is no error
either in the record and proceedings
aforesaid or in the rendition of the
judgment aforesaid, and prays that
the said Supreme Court here, may
proceed to examine, as well the record &
and proceedings aforesaid, as well
as the matters above assigned for
error, and that the judgment aforesaid
in form aforesaid may be in
all things affirmed &c.

H. M. Mead &
J. I. Mead

Atty for Appellant

1861
Charles Mason
Executor

William Godfrey

Filed April 16, 1860
L. Deland.
Clerk

Wm Godfrey
Dec 1/1860