

14549

No. 14549

# Supreme Court of Illinois

Bell

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vs.

Thompson

STATE OF ILLINOIS,  
SUPREME COURT,  
THIRD GRAND DIVISION.

*1864*  
No. 141

J. V. Middleton & Co., Stationers, 196 Lake St.

*Bele*

*vs*

*1864*

*Thompson*

14549

1211  
**Supreme Court of Illinois:**  
**THIRD GRAND DIVISION.**

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*APRIL TERM, A. D. 1864.*

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JAMES C. BELL and  
CHAS. H. BELL, impleaded  
with BENJ. F. THOMP-  
SON Pltffs. in Error,  
vs.  
JAMES S. THOMPSON,  
Defendants in Error,

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**ARGUMENT FOR PLAINTIFFS IN ERROR,**

**BY**

**LELAND & BLANCHARD.**

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**STATEMENT OF THE CASE.**

This was an action brought by Defendant in Error against the Plaintiffs in Error, describing them as partners upon a promissory note, a copy of which is given at the commencement of the Abstracts.

Service of process was made first upon Thompson and James C. Bell.

April 20, 1863, James C. Bell filed a plea in abatement, deny-

*Filed April 30, 1864*  
*of Leland & Blanchard*

ing the partnership, and the cause was continued on motion of James C. Bell, at his and Thompson's costs. Subsequently service of process was made upon Charles H. Bell, who plead the general issue. Default was entered against Thompson.

The cause was tried upon the issues made upon the general issue plead by Chas. H. Bell, and the plea in abatement of James C. Bell, and verdict was rendered for plttf. below. A motion for a new trial was made by plttfs. in error, and overruled by the court, and judgment rendered upon the verdict. The plaintiff below to maintain the issue on the plea in abatement, made affidavit "that he is *informed and believes* that defendants *were* "partners under the firm name of Bell & Thompson, [Record 20 "Ab. 2], that said fact is material to the issue, and he knows of "no witness by whom he can prove the fact, except the defendant "Thompson." Under this affidavit Thompson was allowed to testify, which we think was error.

The statute of 1861, allowing parties to testify in certain cases, is in derogation of the Common Law and must be strictly construed.

The affidavit of Thompson, plaintiff below, was insufficient under the statute. The issue was whether the defendants were partners Dec. 1st, 1859, when the note was executed, or at the time when the original note was given, and not whether they were partners at the time of trial, or at any time subsequent to the execution of the note. Now the affidavit does not state that they were partners prior, or at the time of the execution of the note, but the allegation is indefinite upon information and belief that they *were* partners. When were they partners?

A party in court, wishing to avail himself of the benefits of the statute, must set forth in his affidavit by positive averment the existence of facts material to the issue, and that the party cannot prove such fact, except by the testimony of the parties to said suit, not that the party believes or is informed that certain facts exist which are material.

This affidavit states that the fact believed to exist, cannot be



proved, *except by the testimony of Thompson*, one of the defendants. It should be except by the testimony of the *parties*.

Session Laws of 1861, page 17.

If the affidavit is sufficient, then if Thompson had refused to testify, the plaintiff could have testified himself, notwithstanding there were two other defendants not called upon, nor opportunity given them to testify, now a party to a suit can testify in his own behalf, under the statute, only upon condition that the opposite party fails or refuses to testify. Who is the opposite party in the case at bar? Benjamin F. Thompson, James C. Bell, and Charles H. Bell. Had the plaintiff the right to select one of the three defendants, to represent the opposite party, and in case he failed or refused to testify, become a witness for himself, without calling or offering to call either of the other defendants as witnesses. A statement of the proposition is sufficient to show its falsity. No opportunity was given for the other defendants to testify in the case at bar. The same objection exists as to a subsequent affidavit made by plaintiff Thompson, to the effect that the note in controversy was given by Bell & Thompson, in renewal of a note given by them before dissolution, which fact can be proved only by Thompson. [Abstract 3].

We say again, if the affidavit of plaintiff below was sufficient, then it ought to follow necessarily, that if Thompson failed or refused to testify, the plaintiff, without calling the other co-defts. could have testified himself. But the third section of the act provides, that the party making affidavit, shall not be allowed to become a witness, "unless all the defendants have been first subpoenaed, or, if present in court, called upon to testify as to said fact, and shall have failed or refused to testify, or denied knowledge of such fact.

The finding on the plea in abatement is manifestly against the weight of evidence. There is really no direct evidence that Chas. H. Bell was a member of the firm of Bell & Thompson. Even the defendant Benjamin F. Thompson, does not swear that Charles was a partner, but the evidence upon this point is brief, and we submit this part of the case without argument.

If we are right in the position that the court erred in allowing Benjamin F. Thompson to testify, at the instance of plaintiff, the third instruction given for plaintiff was error, for there was no other evidence of the execution of the note, and the record does not show that the note was offered in evidence under the Common Counts.

The fourth instruction for plaintiff is unquestionably wrong. This court has decided that a defense by one of several co-partners is good for all.

25 Ill. 613.

Judgment must be against all served or ~~more~~ *more*

*Gribbin v. Thompson* 28 Ill. 61.

We desire to present another question. It appears from the testimony of the defendant, Thompson, that the note in controversy was made by him in the partnership name after the dissolution thereof. This he had no authority for doing. After the dissolution each member of the firm may receive and release debts due the partnership, and apply the assets to the liquidation of the firm debts. The pre-existing rights of their persons remain unaffected by the dissolution, but the power to bind the several members of the dissolved firm, by the creation of new liabilities, and obligations, falls with the partnership. Therefore the testimony of one of the several co-partners, relative to the transaction of business in the partnership name after the dissolution, which

he was not authorized to do, is incompetent to charge other members of the firm.

*Miller v. Neimerick et al* 19 Ill. 172 and authorities there cited.

"After a dissolution of a partnership, no partner can cause or create an action against the other partners, except by a new authority communicated to him for that purpose.

*Bell v. Morrison*, 1, Peters, 351.

Upon this view of the law the court erred in refusing the 5th instruction, asked by defendants below. [Abstract, page 7.]

If this judgment is affirmed, great injustice will result to the plaintiffs in error, for the testimony of the defendant Thompson, shows that when the firm of Bell & Thompson dissolved, Thompson took the accounts and notes of the firm, under a mutual agreement that he was to pay and discharge all the liabilities of the firm. Instead of paying the debt due plaintiff below, out of the firm assets received by him, as per his agreement, he settles the debt by executing a note in the firm name, and endeavors to swear to a state of facts that will make his co-partners liable, it was for his interest that plaintiff [below] should have a judgment against all the members of the firm, and this was probably the reason why plaintiff [below] knew of no witness by whom he could prove that said Chas. H. Bell was a partner, except the defendant Thompson.



# Supreme Court of Illinois.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

JAMES C. BELL,

vs.

JAMES S. THOMPSON, ET AL.

ERROR TO MERCER.

## Points for Defendants in Error.

I.

The first objection made to the ruling of the Court is, in allowing the testimony of Thompson, one of the parties, to be received. It is insisted that the affidavit of Bell, filed in the cause, was not sufficient to call upon the other party to testify. The affidavit is questioned first, because Bell swears that defendants *were* partners under the name and stple of Bell & Thompson, as he is *informed and believes*.

It is said the issue was whether the defts were partners Dec. 1st, 1859, when the note was executed, or at the time when the original note was given, and not whether they were partners at the time of trial, or at any time subsequent to the execution of the note.

141  
Given May 18, 1864  
J. C. Clark



The question was a material one whether they were partners at all under the name and style of Bell & Thompson; fairly considered, the amount is that the firm of Bell & Thompson was composed of these defendants.

Bell had a right to prove by this witness any fact which it would have been competent for him to prove by any witness; and it will hardly be contended that he might not have proven by any witness that defendants were partners under the name and style of Bell & Thompson at any time; this would be evidence tending to sustain the action in the words of the act, if they were partners before the note was made, and the note was given to settle up a partnership debt.

In relation to the 2d objection, that the affidavit states that defendants were partners as he is *informed and believes*. This is sufficient under the statute. The law requires that the affidavit should state only that the party is unable to prove any fact material to sustain the action, &c. This is fully stated in this affidavit.

Besides, these objections to the affidavit ought not now to be taken for the first time here. Nothing in the record shows that the deft claimed that the affidavit was insufficient in the court below.

He objected to the testimony of Thompson and gives his reasons, among which he did not urge the objections to the affidavit, which he now makes for the first time; if he had, a new affidavit might have been filed,

## II.

It is claimed that if the affidavit is sufficient, still Benj. F. Thompson was not a competent witness.

The statute says expressly, that the plaintiff may call on *either* or all of defendants. He did call upon Thompson as he had a right to. But counsel say if this position be correct, if Thompson had failed to testify then plaintiff might, and the two other defendants have been cut off entirely. This is not so, for the simple reason that he must under the statute, first have called upon all the defendants to testify; if they had failed or refused, any of them, then the plaintiff might have testified, and also such of the defendants as were willing to testify. What injury could arise to any one from this? Plaintiff had a right to call upon either of defendants, and when he had done so, and the party called on had testified, that was precisely in pursuance of the statute.

We do not care to argue the 4th instruction, as no question can arise upon it in this case. The instruction was law; as there was a default as to Thompson, it was for the jury to assess the damages; if, indeed, the verdict was in favor of the other defendants, no judgment could be rendered against Thompson; but the question does not arise at all, for they found a verdict against all the defendants.

It is said that, admitting that all the defendants were members of the firm of Bell & Thompson, yet after the dissolution of the partnership Thompson had no right to give the note in question. Now this depends wholly upon the fact whether the note was indicative of a new contract binding the partnership to a new undertaking, or whether it was executed for the purpose of making good outstanding engagements of the partnership.

The proof shows that this note was executed in 1859, by Benjamin Thompson, in the name of the firm, for a note given by



Bell & Thompson to plaintiff during the existence of the partnership, and this, we insist, comes within the law, as it is not the creation of any new contract or indebtedness, but an arrangement of an old engagement.

Collyer on Partnership, Sec. 546.

Story on Partnership, Sec. 328.

*Darling v. March*, 22 Maine, 184.

*Morse v. Bellows*, 7 N. H. 568.

### III.

But the Declaration in this case contained the common counts, and if the court should be of opinion that the 2d note was executed without authority by one of the partners after dissolution, still the plaintiff was entitled to recover on the common counts, as the note offered in evidence was shown to have been given in renewal of prior note held by the plaintiff against the firm, so that the indebtedness of the firm to the plaintiff was sufficiently proven.

GLOVER, COOK & CAMPBELL,

FOR DEF'T IN ERROR.



# SUPREME COURT OF ILLINOIS:

THIRD GRAND DIVISION.

**April Term, A. D. 1864.**

JAMES C. BELL AND CHARLES  
H. BELL, impleaded with BENJAMIN F.  
THOMPSON

*vs.*  
JAMES S. THOMPSON.

PL'FFS IN ERROR,

DEF'T IN ERROR.

## ABSTRACT OF RECORD.

Action of Assumpsit upon this note.

\$3033.76.

New Boston, Illinois, Dec. 1st, 1859.

One day after date we promise to pay James S. Thompson or order,  
three thousand and thirty-three and 76-100 dollars for value received, with  
ten per cent interest from date.

BELL & THOMPSON.

- 3 Summons served only upon James C. Bell and Benjamin F. Thompson.  
Charles H. Bell not found.
- 3 Declaration contains special counts upon the note and usual common
- 5 counts against defendants as partners.
- 6 April 20th, 1863, James Bell filed his several plea in abatement deny-  
ing the partnership, verified by affidavit.
- 7—8 Continued on motion of James C. Bell.
- 9 Judgment for costs of continuance against James C. Bell and Benjamin  
F. Thompson.
- 12 Def't in Error joined issue upon this plea, April 21, 1863.
- 11 Charles H. Bell, one of the defendants below, filed his several plea of  
the general issue.

- 14 The defendant, (below,) Benjamin F. Thompson, pleads not to the declaration but made default.

Trial upon the issues made upon the plea in abatement of said James H. Bell and the general issue plead by said Charles C. Bell.

17 BILL OF EXCEPTIONS.

Note read in evidence.

- 18 GEORGE SPITZNOGLE, witness for pl'ff, testified that he went to the store of Bell & Thompson. Charles H. Bell showed him some suspenders and said the pair was one of three pair sent as a present to each member of the firm. That they were partnership suspenders. Thinks this was some four or five years ago.

JOHN FRANCE, for plaintiff testified, some 5 or 6 years ago was laying brick for Bell & Thompson, in a warehouse. Charles H. Bell complained to him that the work was not properly done. He told him it was none of his business. Informed James H. Bell that Charles had been giving directions. James remarked that Charles has as much interest with the

- 19 work as any of them.

JOHN M. GILMORE, for plaintiff, had dealt with Bell & Thompson for several years; generally seen Charles in store and bought goods of him. Held a note against Bell & Thompson, after they dissolved. He made a bill with Bell & Brother, composed of James C. and Charles H. Bell; desired Charles H. Bell to give him a credit on books of Bell & Brother and take Bell & Thompson for it. Charles objected, saying he would be willing if James could make the arrangement to pay Bell & Brother the amount. On seeing Charles a second time he agreed to do it and take Bell & Thompson for it.

*Cross Examination.* Had dealt largely with Bell & Thompson; sold grain and pork to them. Always made his contracts with James C. Bell or Thompson, but never with Charles H. Bell. Other clerks in store of Bell & Thompson. Saw no difference between them and Charles H. Bell. James C. Bell and Benjamin F. Thompson were reputed to be the firm of Bell & Thompson.

- 20 Affidavit of James S. Thompson (plaintiff below) to the court. James C. Bell, Charles H. Bell and Benjamin F. Thompson were partners, doing business under the name of Bell & Thompson, as he is informed and believes; that said fact is material to the issue on trial. Does not know of any witness by whom he can prove same except the defendant. *Thompson*



Said Thompson testified at instance of plaintiff, to which defendants objected and excepted.

21 Said Thompson testified that he was one of the firm of Bell & Thompson; that James C. Bell came from Ohio in 1853, and commenced merchandising in New Boston. He, Thompson, came out a few months thereafter. James C. Bell proposed and did take him in as a partner, and said when Charles H. Bell came out they would take him in, if he desired, as a partner. They commenced business in the name of Bell & Thompson. Charles came to New Boston a few months after, when James C. Bell and witness informed Charles what they had done, and that they had proposed to take him in as a partner if he saw proper, to which Charles remarked that he was willing to do any way.

Bell & Thompson continued in business till April, 1858, when witness proposed to James C. Bell to sell out. Witness asked James C. Bell if Charles considered himself a partner. James said he did. This was in the store, and Charles was back in the counting room. James C. Bell then agreed to purchase witness's interest. They looked over the goods and estimated them at \$2400. Charles was with them in looking over the goods and fixing their value. James C. Bell and Charles H. Bell then gave witness their note for ~~joint~~ \$800. The interest of witness in the goods was valued at \$800, on the ground that the goods were worth \$2400, and that witness share should be one-third, if Charles H. Bell was to be considered as having been a partner in the firm. Charles H. Bell assisted in the valuation of the goods, but the terms of the trade were arranged between Thompson and James C. Bell.

22 During the continuance of the firm of Bell & Thompson they purchased some real estate and built a warehouse for the use of the firm.

Here a second affidavit of James S. Thompson (plaintiff below) was read to the court as follows: That the note read on in this case was executed by Bell & Thompson as a renewal of a pre-existing indebtedness of the same amount accruing during the existence of the firm of Bell & Thompson and before the settlement between the parties to said firm, and that he knows of no other person by whom he can prove said facts except by Benjamin F. Thompson, one of the defendants.

Said Thompson was permitted to testify under said affidavit, to which defendants (below) objected and excepted.

Witness said that the note read in evidence was executed by him in the name of Bell & Thompson after the dissolution of said firm; that it was given for a note made and given to plaintiff by the firm of Bell & Thompson before the dissolution. The note in evidence included the principal in the former note and interest accrued thereon; that note was given up and this one executed in its place.



- 23 When firm dissolved he supposed that notes and accounts of the firm would pay the debts, and by agreement he took the books and notes and was to settle up the business of the firm.

*Cross Examination.* Charles H. Bell made no other remark in relation to becoming a member of the firm of Bell & Thompson than the reply stated in his examination in chief, namely, "I am willing to do any way." No other conversation was ever had with him about becoming a partner.

The deeds for real estate were made to James C. Bell and Benjamin F. Thompson.

No change was made in the manner of conducting business after the conversation with Charles H. Bell. That plaintiff *et al.* after said conversation executed a deed to the firm of Bell & Thompson, in which it was recited that the firm was composed of James C. Bell and Benjamin F. Thompson. That the note for which the one in evidence was given recited that said James C. Bell and said Thompson composed the firm.

Many suits had been brought by Bell & Thompson in the names of James C. Bell and Benjamin F. Thompson, and that Charles H. Bell was frequently called as a witness by them.

Witness consulted James C. Bell alone about selling out. Charles was not present.

- 24 *Re-examined.* The note in evidence was given by witness to plaintiff, for a note given by Bell & Thompson to plaintiff during the existence of the firm. In settling up the business of the firm in 1859, he took up the former note and gave the latter. The warehouse that pl'ff gave deed to Bell & Thompson for was the one on which France was to work when the conversation took place as related by France in his testimony. Accounts were kept on the books of Bell & Thompson with Charles H. Bell as it was with James C. Bell and witness.

GEORGE W. WARNER called by defendants, (below.) Resided in New Boston 11 years. Well acquainted with parties. James C. Bell and Thompson managed business of firm. A Justice of the Peace for several years. Many suits instituted before him by Bell & Thompson in which the firm was described as composed of James C. Bell and Benjamin F. Thompson.

CHARLES H. BELL testified as a witness for Bell & Thompson on two or three occasions and took his deposition to be read in evidence in a suit they had at St. Louis.

*Cross examined.* One suit was commenced in the name of the two Bells and Thompson. Afterwards plaintiff (below) receipted the docket.

- 25 THOMAS H. DOUGHTY for defendants. When Charles H. Bell came to New Boston, James C. Bell and Benjamin F. Thompson was doing business in the name of Bell & Thompson. Saw no change after Charles came.

Horace Bigelow was Editor of the Aledo Record, a weekly newspaper published at Aledo, Ill. April 27, 1858, the following notice was published:

#### NOTICE.

The partnership heretofore existing between James C. Bell and Benjamin F. Thompson is this day dissolved by mutual consent. The books and notes are in the hands of Benjamin F. Thompson who is alone authorized to settle the same. \* \* \* \* \*

JAMES C. BELL.

BENJAMIN F. THOMPSON.

Thompson was a subscriber to said paper, and copy containing said notice was mailed to him. Notice read in evidence.

This was all the evidence.

#### INSTRUCTIONS.

For plaintiff (below) given.

The jury are instructed that as far as creditors are concerned it is immaterial what the style of the firm may be. Creditors have a right to look through the name and style under which men do business to all the parties in interest, whether their names are known or unknown to the public; and if from the evidence the jury believe that Charles H. Bell had an interest in the firm of Bell & Thompson, when the indebtedness of plaintiff accrued as a partner in interest, then the jury must find the issue on the plea in abatement for the plaintiff, notwithstanding they may further believe from the evidence that said Charles H. Bell's name was not publicly known as a member of said firm.

- 28 2d. The jury is instructed that although the note sued was made on the first day of December, 1859, and after the dissolution of the firm of Bell & Thompson, yet if the jury find from the evidence that the note sued on was given in renewal of a note made by said firm before the dissolution of said firm, they will give the note sued on the same force and effect as if it had been executed during the time the firm of Bell & Thompson existed; if they also believe from the evidence that said renewal was executed by some members of the firm in the due and necessary liquidation of the liabilities of said firm.
- 3d. That if the jury believe from the evidence that James C. Bell, Benjamin F. Thompson and Charles H. Bell constituted the firm of Bell & Thompson; were indebted to plaintiff in the amount of said note herein



introduced as evidence of indebtedness or any part thereof, they will find the issue for the plaintiff in such amount as they may believe from the evidence to be the amount of such indebtedness under the common counts, although they may also believe the execution of said note to be unauthorized by all the members of said firm.

4th. When the jury retire, they will, so far as Benjamin F. Thompson is concerned, assess the amount of damages against him which is the amount of the note and interest less proper credits. That if the jury find the issue for the plaintiff on the plea which puts in issue the fact that Charles H. Bell was a member of the firm of Bell & Thompson, they will render verdict against all the defendants, if they also find for plaintiff on the plea which puts in issue the existence of the debt sued on. If they find either of said pleas for defendants James C. Bell or Charles H. Bell, they will simply assess the damages against Benjamin F. Thompson and find for the other defendants.

26 To the giving of all said instructions def'ts then and there objected and excepted.

28 No. 6 of the defendants as asked was as follows :

The filing of the plea of general issue by Charles H. Bell is not an admission of the partnership, and is not testimony ; and the jury are to disregard the same in making up their verdict on the plea of James C. Bell.

The court modified said instruction by inserting in the blank space these words, "except as against himself," and read same to jury.

No. 7 as asked was as follows :

The plea of one of the defendants denying the partnership is as effectual in this case as if all the defendants had filed such a plea.

29 The court modified the same by inserting in blank space these words, "in making proof of the partnership necessary," and gave the same.

The court refused No. 2, 3 and 5.

No. 2. The jury are instructed that if they find from the evidence that Charles H. Bell was not a member of the firm of Bell & Thompson at the time the note offered in evidence was made and executed, they must find the issues for the defendant.

No. 3. The jury are instructed that the declarations of James C. Bell, made in the absence of Charles H. Bell, does not bind Charles H. Bell and are to be disregarded and excluded by the jury in making up their verdict unless the jury find from other evidences that Charles H. Bell was a partner



of the firm of Bell & Thompson, in which case the jury may take the declaration of J. C. Bell into consideration as proof against said J. C. Bell.

No. 5. The jury are instructed that if they believe from the evidence that the firm of Bell & Thompson had dissolved partnership before the promissory note sued on was executed, and that B. F. Thompson, one of the defendants, made and executed said note to the plaintiff after the dissolution of said firm of Bell & Thompson, they will find for the defendant, if they further find from the evidence that the plaintiff had notice of the dissolution.

27 Defendants duly objected and excepted to the modification of said 6 and 7 and the refusal to give said 2, 3 and 5 instructions.

15--29 Verdict for plaintiff, \$1946 04.

Motion by def'ts for new trial.

17--30 Overruled and exception.

17 Judgment against all defendants upon verdict.

#### ERRORS ASSIGNED.

1. Admitted improper testimony.
2. Rejected proper testimony.
3. Gave improper instructions.
4. Refused proper instructions.
5. Overruling motion for new trial.
6. Giving judgment for plaintiff.
7. Judgment is against law and evidence.

LELAND & BLANCHARD,  
J. R. & I. N. BASSETT,  
*For Plffs in Error.*

Bell et al  
vs  
Thompson

Abstract

Filed Apr 15, 1864  
J. Leland Mc



1  
State of Illinois, Mercer Circuit Court  
Mercer County, April Term 1863

Pleas before the Honorable Charles B. Lawrence Judge of  
the Tenth Judicial Circuit of the State of Illinois are Court  
began and held at the Court House in the Town ofledo in  
said County on the third Monday in the month of April in the  
year of our Lord one thousand eight hundred and sixty three  
it being the twentieth day of said Month in said year.

Present Hon Charles B. Lawrence Judge &  
James B. Stewart States Attorney  
Oliver A. Bridgford Sheriff  
James M. Maunon Clerk

Be it known that heretofore to wit: on the 7<sup>th</sup> day of April AD  
1863 came Charles M. Ray an attorney at this bar and filed  
in the clerks office of said Circuit Court a Precept for Summons  
in the case stated in the words and figures following to wit:

"State of Illinois, Mercer Circuit Court  
Mercer County, April Term AD 1863.

James S. Thompson

vs  
Thompson on the cause of  
Promiss

James B. Bell, Benjamin S. Thompson & Charles A. Bell  
late partners trading & doing business under the name  
& style of Bell & Thompson

Damage \$3000

Clerk will issue Summons in the above cause to Defs directed to  
Sheriff of said County returnable to said term of Court  
April 7<sup>th</sup> / 63

C. M. Ray  
Atty for Plaintiff

and afterward to wit on the same day and year



last aforesaid came the said Plaintiff and filed in said office the following affidavit to wit:

"State of Illinois of Mercer Circuit Court  
Mercer County April Term A.D. 1863  
James S. Thompson

vs  
James C. Bell, Benjamin F. Thompson & Charles H. Bell  
Partners doing business under the firm name of Bell & Thompson  
Plaintiff }  
Promissory Damages }  
3

On this day personally came James S. Thompson the Plaintiff in this suit and who after being by me first duly sworn according to law doth depose and say that James C. Bell Benjamin F. Thompson and Charles H. Bell were Partners trading and doing business under the firm name of Bell & Thompson the defendants in this suit as he is informed and believes and this affidavit further states that said fact is material to the issue in the trial of the above cause and this affidavit further states that he does not know of any person by whom he can prove fact except by Benjamin F. Thompson one of the defendants in this case and further this affidavit says not James S. Thompson  
Subscribed & Sworn to before me this 7<sup>th</sup> April 1863

J. M. Mannion Clerk

By N. P. Brown Dep "

Upon the filing of which Precept Summons issued herein in the form following to wit:

"State of Illinois: The People of the State of Illinois  
Mercer County To the Sheriff of said County Greeting:

We command you to Summon James C. Bell Benjamin F. Thompson & Charles H. Bell late partners trading



and doing business under the name of B. Style of Bell & Thompson if to be found in your County, personally to be and appear before the Circuit Court of said County on the first day of the next term thereof, to be held at the Court House in Beloit on the third Monday of April 1863 there and there to answer unto James S. Thompson a plea of Disputes on this case upon Promises to his damages in the sum of Three thousand (\$3000) Dollars as he says and have you then there this writ and make return thereon in what manner you execute the same. Witness James M. Marron Clerk of our Circuit Court, and the seal thereof attested this 7th day of April in the year of our Lord one thousand eight hundred and ~~Eighty~~ Sixty three J. M. Marron Clerk  
 Excise Stamp 50 cts By A. P. Brown Deputy

Upon the back of which summons there appear the following endorsement to wit:

"I have served the within summons by reading the same to the within named James C. Bell and Benjamin F. Thompson this 9 day of April AD 1863 O. A. Bridgford Sheriff

I cannot in my County find the within named Charles H. Bell April 10<sup>th</sup> 1863 O. A. Bridgford Sheriff

Filed 13<sup>th</sup> April 1863 J. M. Marron Clerk

By A. P. Brown Depy

and afterwards to wit on the 10<sup>th</sup> day of April 1863 came the said Plaintiff by his attorney and filed his Declaration herein as follows to wit:

"State of Illinois In the Mercer Circuit Court of April Term AD 1863  
 Mercer County

James S. Thompson the Plaintiff in this suit, by Charles M. Key his Attorney complains of James C. Bell, Benjamin F. Thompson and



Charles H. Bell late partner trading and doing business under the firm name & Style of Bell & Thompson the defendants in this suit who were summoned etc. in a plea of trespass on the case upon promises: For that whereas the said Defendants heretofore to wit: on the first day of December in the year of our Lord one thousand eight hundred and fifty nine at New Boston Illinois at the said County of Mercer made their certain Promissory note in writing of that date and then and there delivered the same to the said Plaintiff in and by which said note said defendants by the name, style and description of Bell & Thompson jointly promised to pay to the order of the said Plaintiff, by the name, style and description aforesaid the sum of three thousand thirty three dollars and seventy six cents on day after date thereof with interest thereon from date at the rate of ten percent for value received. By means whereof and by force of the Statute in such case made and provided the said Defendants became liable to pay said Plaintiff said sum of money mentioned in said note, and being so liable, in consideration thereof, then and there understood and promised to pay the same to the said Plaintiff according to the tenor and effect thereof, true intent and meaning of the said note to wit: at the place aforesaid. And for that whereas the said Defendants afterwards to wit: on the day and year last aforesaid at the place aforesaid made their certain other promissory note in writing and then and there delivered said last mentioned note to the said Plaintiff by which said last mentioned note the said defendants by the name & style of Bell & Thompson promised to pay to the said Plaintiff or his order by the name and style aforesaid one day after the date thereof the sum of three thousand thirty three dollars & seventy six cents together with ten percent from date for value received by means whereof and by force of the Statute in such



case made and provided the said defendants became liable to pay said plaintiff said sum of money in said last mentioned note specified according to the tenor and effect thereof, and being so liable in consideration thereof they then faithfully promised to pay the same to the said plaintiff according to the tenor and effect thereof to wit: at the place aforesaid.

And whereas also the said defendants after ward to wit, on the 2<sup>d</sup>. day of December in the year of our Lord one thousand eight hundred and fifty nine to wit, at the place aforesaid became and were indebted unto the Plaintiff in a large sum of money to wit: the sum of Three thousand dollars, for money before that time lent and advanced to and paid, laid out and expended for said defendants by said Plaintiff at said defendants request; and for money before that time had and received by said defendants to and for the use of said Plaintiff and also in like sum for goods, wares and Merchandises, before that time sold and delivered by said Plaintiff to said defendants at their like special instances and request; and also in the like sum for the labor, care and diligence of said Plaintiff before that time done and performed by said Plaintiff for said defendants and at the like instances and request of said defendants; and also in like sum then and there found due and owing said Plaintiff on an account stated between them, and being so indebted said defendants, in consideration thereof, then and there undertook and promised to pay said plaintiff said several sums of money above mentioned when thereunto afterwards requested.

Yet the said defendants, not regarding their said several promises and undertakings, but contriving etc, although often requested so to do, have not paid said plaintiff either of said sums of money above mentioned, or any part thereof, but so to do, have hitherto wholly



case made and provided the said defendants became liable to pay said plaintiff said sum of money in said last mentioned note specified according to the tenor and effect thereof, and being so liable in consideration thereof they then faithfully promised to pay the same to the said plaintiff according to the tenor and effect thereof to wit: at the place aforesaid.

And whereas also the said defendant afterword to wit, on the 2<sup>d</sup>. day of December in the year of our Lord one thousand eight hundred and fifty nine to wit, at the place aforesaid became and were indebted unto the Plaintiff in a large sum of money to wit: the sum of Three thousand dollars, for money before that time lent and advanced to and paid, laid out and expended for said Defendants by said Plaintiff at said Defendants request; and for money before that time had and received by said defendants to and for the use of said Plaintiff and also in like sum for goods, wares and Merchandises, before that time sold and delivered by said Plaintiff to said Defendants at their like special instances and request; and also in the like sum for the labor, care and diligence of said Plaintiff before that time done and performed by said Plaintiff for said Defendants, and at the like instances and request of said defendants; and also in like sum then and there found due and owing said Plaintiff on an account stated between them; and being so indebted said defendants, in consideration thereof, then and there undertook and promised to pay said plaintiff said several sums of money above mentioned when thereunto afterwards requested.

Yet the said Defendants, not regarding their said several promises and undertakings, but contriving etc, although often requested so to do, have not paid said plaintiff either of said sums of money above mentioned, or any part thereof, but so to do have hitherto wholly



4  
neglected and refused, and still do neglect and refuse, to  
the damage of said plaintiff of three thousand dollars and therefore  
he brings this suit etc by C. M. Ray his attorney "

Copy of Instrument and account sued upon  
#30337<sup>00</sup> New Boston Illinois December 14 1859

One day after date we promise to pay James S. Thompson or  
Order three thousand and thirty three & 70/100 Dollars for value received  
with ten per cent interest from date. Bell & Thompson  
Jas. C. Bell, B. A. Thompson & Charles H. Bell

To James S. Thompson Dr

|                                    |           |
|------------------------------------|-----------|
| To money lent and advanced         | \$3000.   |
| To money expended and paid out for | \$3000.   |
| To money received for use of       | \$3000.   |
| To Goods, Ware and Merchandise     | \$3000.   |
| To Labor and Services              | \$3000.   |
| To balance on account stated       | \$3000. " |

and afterwards to wit: on the 20<sup>th</sup> day of April 1863  
came James C. Bell one of said defendants and filed his  
plea therein as follows to wit:

"State of Illinois for the Mercer Circuit Court  
Mercer County & April Term 1863

James S. Thompson Plaintiff  
vs  
James C. Bell, Benjamin A. Thompson and Charles H. Bell Defendants  
Participants trading & doing business under the names  
style of Bell & Thompson

James C. Bell one of the defendants in the above en-  
titled cause in his own proper person comes and defends the

7  
wrong and injury when &c and says that the firm of Bell and Thompson  
was always and ever composed of two of the defendants above named  
namely James B. Bell and Benjamin T. Thompson and that Charles H.  
Bell was not, is not and never was a member composing the  
firm of Bell & Thompson as is alleged by plaintiff in his declaration  
and writ and this the said James B. Bell is ready to deny whereon he  
prays judgment of the said writ and declaration and that the same  
may be quashed &c.

James B. Bell

Subscribed and sworn to before me this 20 day of April 1863, J. M. Mammock  
ck  
By N. P. Brown Dep.

And afterward to wit on the 2<sup>d</sup> day and  
year last aforesaid came the said defendant James  
B. Bell by his attorney and filed the following affidavit  
to wit:

State of Illinois In the Circuit Court  
Mercer County of the Spring Term AD 1863  
James S. Thompson

vs  
James B. Bell, Benjamin T. Thompson &  
Impleaded with Charles H. Bell under the firm  
name of Bell & Thompson

Assumpsit  
James B. Bell one of the defendants in this cause  
being first duly sworn says, that he cannot safely go to trial in this  
case on account of the absence of Joseph Knight  
and William R. Van Pel who are material witnesses  
for the defendants in this cause. Said affiant says that he  
expects to prove by said witnesses that Charles H. Bell  
was not a member of said firm of Bell & Thompson as alleged



6 in said plaintiffs declaration, but that this affiant and Benjamin S. Thompson were the only members of said firm, this affiant further states that he knows of no other witnesses by whom said facts can be proven.

Affiant states further that Joseph Reigh and William R. Van Pelt both reside in Washington, Fayette County State of Ohio. That there has not been time sufficient since filing the declaration in this cause for the defendants to take the depositions of said witnesses, affiant expects to be able to take the depositions of said witnesses to use in this cause, at the next term of this Court, and that this affidavit is not made for delay but that justice may be done

James C. Bell

Subscribed & Sworn to before me this 20<sup>th</sup> day of April 1863

J. M. Mannon clk

By H. P. Brown Dep

And afterwards to wit on the 21<sup>st</sup> day of April 1863 being one of the days of the said April Term 1863 of said Court the following proceedings were had in said cause to wit:

James S. Thompson

vs

James C. Bell & Benjamin S. Thompson

Charles H. Bell late pastor vs re

Style of Bell & Thompson

Assumpsit

3

This day came defendants by attorney and entered their motion for a continuance which the Court allowed and orders that this case be



9 continued at defendants costs, and that an alias  
Summons issue herein against Charles N. Bell  
It is therefore ordered by the Court the plaintiff recover of  
defendants James B. Bell & Benjamin P. Thompson his costs  
herein at this term of Court made and may have execution  
therefor.

And afterwards to wit: on the 11<sup>th</sup> day of  
June 1863 under the above Order the following  
alias Summons issued herein to wit:

State of Illinois The People of the State of Illinois  
Mercer County & To the Sheriff of Mercer County ~~County~~  
Greeting:

We command you again to Summon Charles  
N. Bell who is impleaded with James B. Bell & Benjamin  
P. Thompson if to be found in your County personally  
to come and appear before the Circuit Court of said  
Mercer County on the first day of the next term thereof  
to be held at the Court House in Mado on the first  
Monday of September next then and then to answer  
unto James S. Thompson of a plea of Trespass on  
the case upon promises to his damages in the sum  
of Three thousand (3000) Dollars as he says and have you  
then return this writ, and make return thereon in  
what manner you execute the same

Witness James M. Mannon Clerk of our Circuit  
Court, and the seal thereof at Mado this 11<sup>th</sup> day of June  
in the year of our Lord one thousand eight hundred  
and sixty three

J. M. Mannon Clerk  
By A. P. Brown Deputy  
over the back



of which Summons are the following endorsement  
to wit:

I have served the within Summons by reading  
the same to the within named Charles N. Bell  
this 20<sup>th</sup> day of June AD 1863

O. A. Bridgford Sheriff

Filed 22 June 1863

J. M. Mannon clerk

By N. C. Brown Dep.

and afterwards to wit: on the 1<sup>st</sup> day  
of September AD 1863 came the said  
Charles N. Bell by his \_\_\_\_\_

11

attorneys and filed his plea herein as follows to wit:  
 State of Illinois In the Circuit Court  
 Mercer County of the September Term 1863  
 Charles H. Bell vs. James H. Bell &  
 Benjamin F. Thompson under the firm name of Bell & Thompson

at  
 James S. Thompson

And the said defendant Charles H. Bell by J. R. & S. A. Bassett his attorneys comes and defends the wrong and injury above  
 and says that the said plaintiff ought not to have and maintain his  
 aforesaid action thereof against the said defendant because he says  
 that he did not undertake and promise in manner and form  
 as the said plaintiff hath above thereof complained against him  
 and of this he puts himself upon the country &c

J. R. & S. A. Bassett

Attys for Defendant

And the plaintiff doth the like by Ray & Stewart his attys.

And afterward to wit: on the 8th day of September  
 1863 came the said Plaintiff by his attorneys and filed his exceptions  
 to defendant's depositions as follows to wit:

James S. Thompson

2 Sept Term Mercer Circuit Court

vs

24 1863

J. H. Bell, B. F. Thompson & C. H. Bell

3

And now upon the opening of the depositions of Joseph  
 R. Cabot comes James S. Thompson Plaintiff and excepts to the answer  
 to Interrogation 5th because it contains nothing but the declaration  
 of Benjamin F. Thompson one of the Defendants and to that portion  
 of the answer to Interrogatory 6 as states that Cabot & partner under-  
 stood that the firm of Bell & Thompson was composed of James H. Bell



and Benjamin F. Thompson

Kay Stewart for Peff,

and afterwards to wit on the same day and year last  
aforesaid and being one of the days of the September Term  
1863 of said Court the following Order was in said cause by  
said Court made to wit:

James S. Thompson

66

James B. Bell, Benjamin F. Thompson  
& Charles W. Bell late partners  
of Bell & Thompson

Assumpsit  
}

Now comes plaintiff by his attorney and excepted  
to the answer to Interrogatory No. five, and to a part of the answer  
to Interrogatory No. six in the Deposition of Joseph L. Cabot.  
And the Court after being advised in the premises sustains  
said exceptions

and afterwards to wit: on the 7th day of September 1863  
came the said Plaintiff by his attorneys and filed his Application  
to defendants plea herein as follows to wit:

James S. Thompson

Sept Term Next Circuit Court  
1863.

James B. Bell, Benjamin F. Thompson & Charles W. Bell  
late partners trading & doing business under the  
name & style of Bell & Thompson

And the said plaintiff comes & says that his said  
verdict and declaration by reason of any thing by the said defendants James  
B. Bell in his said plea above pleaded ought not to be reached because  
he says the said firm of Bell & Thompson was at the time of the making  
of the note in said Plaintiff's Declaration mentioned and sued

on composed of James C. Bell, Benjamin R. Thompson and Charles  
H. Bell and that Charles H. Bell was at the time of the making of said  
note, ~~now~~ <sup>now is for the purpose of this suit and always was</sup> a member of the said firm of Bell & Thompson  
as is alleged by said Plaintiff in his said Declaration and of  
this he puts himself up on the County Kay & Stewart

Attys for Pff

And the said defendants doth the like &c

J. R & J. N. Bassett attys for Defendants

and afterwards to wit: on the same day done & as last  
aforesaid, the following proceedings were had in said court in  
said cause to wit:

James S. Thompson

60

vs

Assumpsit

James C. Bell et al

On motion of Plaintiff's attorney It is  
Ordered by the Court that an attachment issue here in  
against John France a defaulting witness returnable instant  
and also the following to wit:

James S. Thompson

60

vs

Assumpsit

James C. Bell, Benjamin R. Thompson & Charles H. Bell,  
also partners & style of Bell & Thompson

This day came Plaintiff by Attorney and entered  
his motion to strike defendant James C. Bell's Plea from the files  
which motion the Court overrules.

and afterwards to wit:  
on the 11th day of September 1863 the following



14

Order was made in said cause to wit:

James S. Thompson

60

Assumpair

James C. Bell & Benjamin R. Thompson & Charles H.

Bell late partners & Sty of Bell & Thompson

On motion of plaintiff's attorney, It is ordered by the Court that leave be given to amend the Replication to the plea in abatement filed herein

and afterwards on the same day and year last aforesaid came plaintiff by his attorney and refiled his Replication as amended with the following note at the bottom to wit:

The Defendant is notified that his Replication is amended at the Star between the 4<sup>th</sup> & 5<sup>th</sup> lines from the bottom

Ray & Stewart for Poff

and afterwards to wit on the same day and year last aforesaid, being one of the days of the said September Term 1863 of said Court the following proceedings were had in said cause to wit:

James S. Thompson

Assumpair

James C. Bell, Benjamin R. Thompson & Charles H. Bell

late partners & Sty of Bell & Thompson

This day came plaintiff and his attorney and defendants James C. Bell and Charles H. Bell by their attorney Defendant Benjamin R. Thompson not appearing is ordered to be called and having been three times solemnly called came not, nor any person for him to defend his suit but he is in default thereupon it is considered by the Court that plaintiffs have

60



15 Judgment against defendant Benjamin F. Thompson for his damages. And the issues being now joined as between plaintiff and James C. Bell on a plea of abatement and between plaintiff and defendant Charles H. Bell on a plea of general issue the parties between whom the issues are joined for trial put themselves upon the country. Thereupon came a jury of twelve good and lawful men to wit: John Main, Charles Duncan, William Emerson, Paul Sheriff, George Noble, Aaron Patterson, Cyrus Ballard, Sylvester Markham, Peter Stephens, Barnett Umangot, E. G. Goodrich and Augustus Tyler who being duly impaneled and sworn to well and truly try the issues joined herein as well as to assess the damages against the said defendant Benjamin F. Thompson after hearing the evidence and the arguments of counsel and receiving the instructions of the Court, retired to consider of their verdict.

And afterward to wit: on the 12<sup>th</sup> day of September 1863 also one of the days of said September Term 1863 of said Court the following proceedings were had to wit:

James S. Thompson  
vs  
James C. Bell, Benjamin F. Thompson & Charles H. Bell  
late partners Style of Bell & Thompson

This day again came the parties herein by their attorneys, and also came the jury impaneled herein to try the case and returned into Court their verdict to wit: "That the jury find the issue herein for plaintiff, and assess his damages at the sum of nineteen hundred and forty six dollars and four cents." Whereupon came defendant James C. Bell & Charles H. Bell by their attorneys and entered their motion for a



new trial

Which motion is in these words and figures to wit:

State of Illinois, Mercer Circuit Court  
Mercer County & Sept Term 1863.

James S. Thompson

James C. Bell, Benjamin F. Thompson & Charles H. Bell,  
partners under the style of Bell & Thompson

Now comes the defendant Charles H. Bell by his counsel and moves the Court for a new trial in this cause for the following reasons viz:

- 1 The Court erred in giving to the jury the instructions prayed for by Plaintiff.
- 2 The Court erred in refusing to give instructions 2, 3 & 8 asked for by defendant.
- 3 The Court erred in modifying defendant's 6<sup>th</sup> & 7<sup>th</sup> instructions.
- 4 The Court erred in admitting improper evidence on the part of Plaintiff.
- 5 The finding of the jury is against the evidence.
- 6 The finding of the jury is against the law.
- 7 The Court erred in stating verbally in the hearing of the jury that the plea by Charles H. Bell of general issue was an admission that he was a partner of the firm of Bell & Thompson.

J. R. & J. Bassett Atty for Deft.  
and afterwards on the 16<sup>th</sup> day of September 1863 being also one of the days of said term of said Court the following proceedings were had in said cause to wit.

James S. Thompson

James C. Bell, Benjamin F. Thompson & Charles H. Bell,  
late partners of the firm of Bell & Thompson



17

This day again came the parties by their attorneys and this cause now coming on to be heard on defendants motion for a new trial. The Court overruled said motion and Order that judgment be rendered on the verdict of the jury. It is therefore considered by the Court the plaintiff recover of defendants this sum of \$1746.04 thirteen hundred and forty six dollars and four cents the damages so found by the jury aforesaid together with his costs therein and may have execution therefor. And the said defendants having excepted to the ruling of the Court in overruling the motion for a new trial and rendering judgment on the verdict of the jury, and prayed an appeal to the Supreme Court, the Court grants the appeal on condition that said defendants file a good and sufficient appeal bond in the penal sum of Twenty five hundred dollars with security to be approved by the Clerk by consent, within ten days from the date hereof and that they file their bill of exceptions within sixty days from this date by consent of the parties hereto.

And afterwards to wit: on the 7<sup>th</sup> day of November 1863 came the said defendants by their Solicitors and filed their bill of exceptions herein in the words and figures following to wit:

State of Illinois,      Mercer Circuit Court  
Mercer County<sup>ss</sup>      September Term 1863

James S. Thompson

vs

J. Acersumpis

James C. Bell, Benjamin F. Thompson and Charles

H. Bell late firm of Bell & Thompson

Be it Remembered that on the trial of this cause at the September Term of the Mercer Circuit Court A.D. 1863 the



said Plaintiff James S. Thompson to maintain the issue on his part gave in evidence certain promissory note of which the following is a copy viz:

\$3033<sup>76</sup>/<sub>100</sub> New Boston, Illinois, December 1<sup>st</sup> 1857

One day after date we promise to pay James S. Thompson or order three thousand and thirty three <sup>76</sup>/<sub>100</sub> dollars for value received with ten per cent. interest from date

Bell & Thompson

### Endorsements

February 7<sup>th</sup> 1862 by cash of B. S. Thompson collected from J. Story a \$150.<sup>00</sup>/<sub>100</sub>

July 20<sup>th</sup> 1862 by auct. part of note as interest as balance to date \$795<sup>76</sup>/<sub>100</sub>

also by balance notes to this date \$1085.<sup>27</sup>/<sub>100</sub>

March 24 1863 by note paid on M. Sanders \$58.<sup>00</sup>/<sub>100</sub>

George Spitznuglo being called by plaintiff testified that he went to the Store of Bell & Thompson in New Boston and wished Charles H. Bell to sell him a pair of Suspenders he showed witness a pair and stated the price. Witness objected to the price when Charles H. Bell remarked that the pair offered to witness, was one of three pair sent as a present to the firm a pair to each of us, that they were fasten with Suspenders. Witness declined to purchase them but did purchase a pair from said Charles H. Bell out of another lot. Witness does not recollect the time, think some four or five years ago.

Plaintiff then called John France who testified that some four or six years ago he was engaged by Bell & Thompson in laying brick in a Ware House for Bell & Thompson when Charles H. Bell complained to witness that the work was not being properly done, witness told him that it was none of his business. Witness informed James S. Bell that Charles H. Bell had been giving some directions about the work and that he had told him that it was none of his business. Thereupon James S. Bell remarked to witness that Charles H. Bell



17 had as much interest in the work as any of them.

4 An cross examination witness stated that when he had this conversation with James C. Bell that Charles H. Bell was not present, and that nothing was said about a partnership.

Plaintiff then called John M. Gilmore who testified that he for several years had dealt with Bell & Thompson, that he had generally seen Charles H. Bell in the store, <sup>and that he had bought goods of him</sup> witness held a note against the firm of Bell & Thompson, and after said firm had dissolved he made a bill with Bell & Brother of a firm composed of the said James C. Bell & Charles H. Bell, witness desired Charles H. Bell to give him a credit on the Book of Bell & Brother and take Bell & Thompson for it to which Charles H. Bell objected: saying that he would be willing to do so if his brother James C. Bell could make arrangements to pay Bell & Brother the account, on seeing Charles H. Bell a second time he agreed to give witness the desired credit & to take Bell & Thompson for the account.

5 An cross examination witness stated that he had dealt largely with Bell & Thompson from the time they commenced business till they dissolved, that he had sold grain and Pork to them and in making his contracts had always made the same with James C. Bell or Benjamin F. Thompson, but never with Charles H. Bell.

6 Had seen other Clerks in the store of Bell & Thompson and saw no difference between them and Charles H. Bell in conducting the business of the Store. James C. Bell & Benjamin F. Thompson were reputed to be the persons composing the firm of Bell & Thompson.

Plaintiff then presented the following affidavit viz:

State of Illinois ss. Meers & Meers Circuit Court April Term 1863  
Meers County ss. James S. Thompson,

James C. Bell, Benjamin F. Thompson, Charles H. Bell, Partners, doing business under the firm name of Bell & Thompson, or his day personally



James S. Thompson the Plaintiff in this suit and who after being by me first duly sworn according to law doth depose and say that James C. Bell, Benjamin F. Thompson and Charles H. Bell were partners trading and doing business under the firm name of Bell & Thompson the Defendants in this suit as he is informed and believes, and this affidavit further states that said fact is material to the issue in the trial of the above cause and this affidavit further states that he does not know of any person by whom he can prove said fact except by Benjamin F. Thompson one of the Defendants in this cause and further this affidavit says just,

James S. Thompson

Subscribed & sworn to before me this 7<sup>th</sup> April 1863

J. M. Marnon Clerk

By A. P. Brown Depy,

and proposed to call Benjamin F. Thompson one of the Defendants as a witness, to which James C. Bell and Charles H. Bell by their attorneys objected 1<sup>st</sup> Because plaintiff had called witnesses to prove the fact stated in the said affidavit.

2<sup>nd</sup> Because said Benjamin F. Thompson was interested in having judgment go against the defendants Charles H. Bell who would be compelled to pay one third of the judgment.

which objection was overruled by the court and said Thompson allowed to be sworn and to testify, To which ruling of the court the said defendants by their attorneys excepted and still excepted.

7 Said Benjamin F. Thompson then testified that he was a member of the firm of Bell & Thompson, that James C. Bell came from Ohio to Illinois in 1853. and purchased a stock of goods of Wm. Drury and commenced merchandising in New Boston, Illinois and in a few months thereafter, that James C. Bell told witness



21

what he had done and that he expected to do a good business  
 and that he would take Witness in as a partner as he (Witness)  
 had not been paid for services rendered to said James C. Bell  
 in Ohio when he had failed in business. That when Charles H.  
 Bell who had clerked for said James C. Bell in Ohio came out they  
 would admit him as a partner if he should think proper, that Witness  
 did accept said proposition and it was agreed that the firm name  
 should be styled Bell & Thompson and they commenced business  
 in that name. That in a few months after this Charles H.  
 Bell came to New Boston when James C. Bell and Witness informed  
 him of what they had done and that they had proposed to take him  
 in as a partner if he saw proper, to which he remarked that he was  
 willing to do almost any way. The firm of Bell & Thompson  
 continued in business till April 1858 when Witness became  
 dissatisfied as the business was a failure and proposed to James C.  
 Bell to sell out, Witness asked James C. Bell if Charles H. Bell considered  
 himself a partner James C. Bell said he did, this was in the Store and  
 Charles H. Bell was then back in the counting room, James C. Bell  
 then agreed to purchase Witness's interest in the goods or house.  
 Witness and James C. Bell then looked over the goods and estimated them to  
 be worth \$2400. Charles H. Bell was with them in looking over the goods and fixing  
 their value, A note was then drawn up payable to Witness for eight  
 hundred dollars and signed by James C. Bell and Charles H. Bell as  
 joint makers and delivered to Witness. The interest of Witness in the  
 goods was valued at \$800 on the ground that the goods were worth \$2400  
 and that Witness's share would be one third, if Charles H. Bell was to be con-  
 sidered as having been a partner in the firm, Charles H. Bell assisted  
 in the valuation of the goods but the terms of the trade were arranged between  
 Thompson and James C. Bell. During the continuance of



The firm of Bell & Thompson they purchased some real estate and built a Ware House for the use of the firm. Here plaintiff filed a second affidavit as follows viz:

James S. Thompson

James S. Thompson being first duly sworn deposes and says that the note and order in this case so was executed by Bell & Thompson as a renewal of preexisting indebtedness of the same account occurring during the existence of the firm of Bell & Thompson before the settlement between the parties to said firm and that he knows of no other person by whom he can prove said facts except by Benjamin F. Thompson one of the Defendants further say nor.

James S. Thompson

Subscribed & sworn to before me this 11<sup>th</sup> Sept. 1863. J. M. Munson Clerk

Excise Stamp set By N. P. Brown Df

and proposed to interrogate said witness as to the facts therein stated to which the said defendants objected

1 Because it is not proper to allow more than one affidavit of this character in the cause. 2 - Because of incompetency of the witness who has an interest in the result of the suit adversely to Charles H. Bell.

But said objections were overruled by the Court and the witness allowed to testify to which ruling of the Court the defendants Charles H. Bell by his Attorney then and there excepted and still excepts.

Witness then testified that the note offered and read in evidence was executed by witness in the firm name of Bell & Thompson after the dissolution of said firm, that it was given for a note made and given to plaintiff by the firm of Bell & Thompson before the dissolution of said firm, this note in evidence included the principal in the former note and the interest that had accrued thereon, that note given up and this one executed in its place.



said witness further testified that when they dissolved, that he supposed that the notes and accounts of the firm on hand would pay the debts of the firm and leave the goods <sup>the surplus</sup> on hand. And by agreement he took the books and notes and was to settle up the business of the firm.

On cross examination this witness stated that Charles H. Bell made no other remark in relation to becoming a member of the firm of Bell & Thompson than the reply stated in his examination in chief "I am willing to do any way." No other conversation was ever had with him about becoming a partner. In the purchased real estate the deeds were made to James C. Bell & Benjamin F. Thompson no change was made in the manner of conducting the business after his conversation with Charles H. Bell, that plaintiff with others executed a deed to the firm of Bell & Thompson after said conversation with Charles H. Bell which recited that the firm of Bell & Thompson was composed of James C. Bell and Benjamin F. Thompson, that the note for which he was in evidence was given recited that the firm of Bell & Thompson consisted of James C. Bell & Benjamin F. Thompson, that portion of the note reciting that the firm consisted of James C. Bell & Benjamin F. Thompson was a printed form which they had formerly used in their business, that many suits had been brought by Bell & Thompson in all of which the firm was represented to consist of James C. Bell & Benjamin F. Thompson and that Charles H. Bell was frequently called by said firm as a witness for them and testified

that witness consulted James C. Bell alone about selling out his interest in the store, that Charles H. Bell was not present, when he inquired if Charles H. Bell considered himself a partner. On re-examination witness stated that the note in evidence was given by witness to the plaintiff for a note made and given



to plaintiff by Bell & Thompson during the existence of the firm that in settling up the business of the firm in 1857, he took up the former note and gave the latter, the Ware House that plaintiff gave deed to Bell & Thompson for was the one on which Bruce was at work on when the conversation took place as related by Bruce in his testimony. Accounts were kept on the books of Bell & Thompson with Charles H. Bell as it was with James C. Bell & witness, the accounts were kept with all three, each being charged on the books with what he got, witness generally kept the books.

12

The defendants James C. Bell & Charles H. Bell then called George H. Harris who testified that he had resided in New Boston for about eleven years and was well acquainted with the defendants & plaintiff, that James C. Bell and Benjamin J. Thompson managed the business of the firm of Bell & Thompson, that he was a Justice of the Peace for several years, that a great many suits had been instituted in his court by Bell & Thompson in all of which the firm was described to be composed of James C. Bell & Benjamin J. Thompson, that on two or three occasions Charles H. Bell was called as a witness by said firm and testified in their behalf, that Bell & Thompson took the deposition of Charles H. Bell to be read in evidence in a suit that had at St. Louis.

On cross examination this witness stated that one suit had been instituted before him in which the firm of Bell & Thompson had been described as being composed of James C. Bell, Benjamin J. Thompson & Charles H. Bell, that afterwards the plaintiff came in and recaptured the Docket.

13

Thomas H. Doughty was then called by the said defendants who testified that he had been acquainted with all the parties for several years, that James C. Bell came to New Boston first



that Benjamin R. Thompson came next and some time thereafter Charles H. Bell came, that when Charles H. Bell came, James C. Bell & Benjamin R. Thompson were doing business in the firm name of Bell & Thompson, saw no change in the management of the business after Charles H. Bell came out, James C. Bell & Benjamin R. Thompson manage the business.

Said Defendants then called Horace Bigelow who testified that he was one of the proprietors of the Illinois Record a weekly newspaper published at Illinois, that in the issue of said paper published on the 27<sup>th</sup> day April 1858 the following notice was published viz:

### Notice

The Partnership heretofore existing between James C. Bell, and Benjamin R. Thompson is this day dissolved by mutual consent. The Books and notes are in the hands of Benjamin R. Thompson who is alone authorized to settle the same. All persons who are indebted to us either by note or book account will please come forward and settle the same without delay.  
Office in the East end of the Ware rooms.

New Boston Ills. April 17, 1858.

James C. Bell  
Benjamin R. Thompson

That James S. Thompson the plaintiff was a subscriber to said paper and that a copy of the paper containing said notice was mailed to him. said notice was then read in evidence.

This was all the evidence offered in the cause by either party, the defendants Bell having withdrawn their depositions herein taken and not offering them in evidence, The jury then asked the Court to instruct the jury as follows viz:

The jury are instructed that as far as creditors are concerned it is immaterial what the style of a firm may be: Creditors have a right to look through the name & style under which a firm does business to all the



26

parties in interest whether their names are known or unknown to the Public, And if from the evidence the jury believe that Charles H. Bell had an interest in the firm of Bell & Thompson when the said business of Plaintiff accrued as a partner in interest then the jury must find the said <sup>the</sup> plea in abatement for the plaintiff notwithstanding they may further believe from the evidence that said Charles H. Bell was or was not publicly known as a member of said firm.

2. The jury is instructed that although the note sued on was ~~given~~ made on the 1<sup>st</sup> day of December 1857 and after the dissolution of the firm of Bell & Thompson yet if the jury find from the evidence that the note sued on was given in renewal of a note made by said firm before the dissolution of said firm they will give the note sued on the same force & effect as if it had been executed during the time the firm of Bell & Thompson existed, if they also believe from the evidence that said renewal was executed by some member of the firm in due and necessary liquidation of the liabilities of said firm.

3. That if the jury believe from the evidence that James C. Bell, Benjamin H. Thompson and Charles H. Bell constituted the firm of Bell & Thompson and were indebted to Plaintiff in the amount of said note then in such case evidence of indebtedness on every part thereof they will find the same for the plaintiff in such amount as they may believe from the evidence to be the amount of such indebtedness as exists, however in some cases although they may also believe the execution of said note to be authorized by all the members of said firm.

4. When the jury believe they will so far as Benjamin H. Thompson is concerned assess the amount of damages against him which is the amount of the note reduced less proper credits.



that if the jury find the issue for the plaintiff on this Plea, which puts in issue the fact that Charles H. Bell was a member of the firm of Bell & Thompson they will render a verdict against all the defendants, if they also find for Plaintiff on the Plea which puts in issue the existence of the debt sued on, If they find either of said pleas for Defendants, James C. Bell or Charles H. Bell they will simply assess the damages against Benjamin Thompson & find for the other Defendants.

which instructions were given. To the giving of said instructions the defendants James C. Bell and Charles H. Bell by their attorneys excepted and still except

The said defendants prayed the Court to instruct the jury as follows viz:

1 The jury are instructed, that the burden of proof on the plea in abatement is on the plaintiff, and unless the plaintiff's proof shows to the satisfaction of the jury that the defendant Charles H. Bell was one of the partners composing the firm of Bell & Thompson they will find for the defendants on all the issues.

2 The jury are instructed that if they find from the evidence that Charles H. Bell was not a member of the firm of Bell & Thompson at the time the note offered in evidence was made and executed they must find the issues for the defendant

3 The jury are instructed that the Declaration of James C. Bell made in the absence of Charles H. Bell does not bind Charles H. Bell and are to be disregarded and excluded by the jury in making up their verdict unless the jury find from other evidence that Charles H. Bell was a partner of the firm of Bell & Thompson in which case the jury may take the Declaration of J. C. Bell into consideration as proof against



said J. C. Bell,

4 The Jury are instructed, that where a contract is indefinite and uncertain, the conduct of the parties to the contract is the best evidence to show what the contract was, or that the same was or was not consummated, and if the jury should believe that a partnership was agreed to be entered into between the defendants in 1854, yet if it was not acted upon by the defendants it was an abandonment of the agreement and there could be no liability against the defendants under the same.

5 The jury are instructed that if they believe from the evidence that the firm of Bell & Thompson had dissolved partnership before the promissory note sued on was executed, and that C. H. Thompson one of the defendants made and executed said note to the plaintiff after the dissolution of said firm of Bell & Thompson they will find for the defendant, or if they further find from the evidence that the plaintiff had notice of the dissolution.

6 The filing of the plea of general issue by Charles H. Bell is not an admission of the partnership ~~except as against himself~~, and is not testimony and the jury are to disregard the same in making up their verdict on the plea of James C. Bell.

7 The Plea of one of the defendants denying the partnership is as effectual in this case as if all the defendants had filed such a plea.

The Court gave instructions 1 and 4 as asked and modified No. 6 & 7 as follows viz:

6 The filing of the Plea of general issue by Charles H. Bell is not an admission of the partnership except as against himself, and is not testimony and the jury are to disregard the same in



29

making up their verdict on the plea of James B. Bell

7 The Plea of one of the defendants denying the partnership is as effectual in this case in making proof of the partnership necessary as if all the defendants had filed such a plea.

And the giving of instructions numbers 2, 3 & 5 the Court refused.

To the ruling of the Court in modifying instructions 6 & 7 and refusing instructions 2, 3 & 5 the said defendants by their Counsel excepted and still except.

And thereupon the jury retired for consultation and returned into Court the following verdict

We the jury find the issues herein for the Plaintiff and assess his damages at the sum of Nineteen Hundred and forty six dollars & four cents.

The defendant then entered his motion for a new trial for the following reasons viz:

State of Illinois      Mercer Circuit Court  
Mercer County      Sept Term 1865.  
James S. Thompson

James B. Bell, Benjamin F. Thompson & Charles N. Bell partners under the style of Bell & Thompson,

Now come the defendant Charles N. Bell by his counsel, and moves the Court for a new trial in this case for the following reasons viz:

- 1 The Court erred in giving to the jury the instruction prayed for by Plaintiff.
- 2 The Court erred in refusing to give instructions 2, 3 & 5 asked for by defendant.
- 3 The Court erred in modifying defendant's 6<sup>th</sup> & 7<sup>th</sup> instructions.
- 4 The Court erred in admitting improper evidence on the part of Plaintiff.



- 30 5 The finding of the jury is against the evidence  
6 The finding of the jury is against the law.  
7 The Court erred in stating verbally in the hearing of the jury that the plea by Charles H. Bell of general issue was an admission that he was a partner of the firm of Bell & Thompson

J. R. & A. H. Baesett atty for defrs,

which motion the Court overruled, to which ruling the said defendants by their attorneys excepted and still excepts.

Whereupon the Council of the said Charles H. Bell & James C. Bell inasmuch as the matter and things aforesaid do not appear of record in said cause prayed that the said Judge would set his hand and seal to this Bill of Exceptions containing the several matters so proven and given in evidence as aforesaid which was done

C. B. Lawrence

State of Illinois

Merces County & J. James M. Morrison Clerk of the Circuit

Court of said County hereby certify that the foregoing is a true full and perfect copy of the convening order of Court of said Court at the April Term 1863; of the Process for summons and affidavit filed in the cause stated, of the summons issued thereon and the return of the Sheriff, of the Declaration, of the plea in abatement filed by defendant James C. Bell, of affidavit filed by James C. Bell, of the order of Court granting continuance and alias summons, of the alias summons issued thereon with endorsements, of the Plea filed by Defendant Charles H. Bell and of the exceptions by plaintiff to Defendants' dispositions, of the order of Court thereon, of the Replication filed by plaintiff, of the motion for new trial by defendant, of the bill of



Exceptions filed by Defendants Bell and of all the record made in said cause and including a full true and perfect copy of all the record and files of said cause as the same now appears to me from the books and files of my office.

In Testimony of which I hereto set my hand and affix the seal of our said Circuit Court at my office in Aledo this 9th day of December AD 1863.

J. M. Marron Clerk  
By A. P. Brown Deputy



James C. Bell Charles  
H Bell impleaded with  
Benjamin F Thompson  
Plaintiffs in Error

Comes from  
Mercer County

James S. Thompson  
Defendants in Error

And now comes said Plaintiff in Error by  
Isaac S. Marshall their attorney and say that  
in the second preceding judgment aforesaid  
there is manifest Error for which they pray a  
reversal of said judgment, and assigns the  
following errors

- 1st The Court erred in admitting improper testimony
- 2 " " " " Rejecting proper "
- 3 " " " " Giving improper instructions



James C. Bell &  
Charles H. Bell

Wikipedia &c

vs

James S. Thompson

Record

~~Allegations~~ Error says there is no such  
error as above alleged

Worm Cook Haulphes

for Bule's in Error

11 " " " " repairing paper instructions  
5 " " " " burning motion for new land  
6 " " " " giving preference for Haulphes  
by the Haulphes. Besides does against the Haulphes

de land of Haulphes

for Haulphes in Error

141

James Co. Bell

Charles H. Bell

impleaded vs.

vs

James S. Thompson

Rec'd & Enos

Filed Apr. 12, 1864.

L. Seland

clk.