

14691

No. _____

Supreme Court of Illinois

Stafford

vs.

Fargo.

71641  7

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 8564

J. W. Middleton & Co., Stationers, 190 Lake St.

76-
1908

Stifford
1878

Fury

146

Know all Men by these Presents, That we, John F. Stafford
Bennett Peterson and Silas Pratt and

of the County of Cook and State of Illinois,
are held and firmly bound unto Orange Fargo

also of the same County and State,
in the penal sum of One Thousand Dollars,
lawful money of the United States, for the payment of which, well and truly to be made, we
bind ourselves, our heirs, executors and administrators, jointly, severally and firmly, by these
presents.

Witness our hands and seals, this 17th day of July A. D. 1863.

The Condition of the above Obligation is such, That whereas, the said Orange
Fargo did, on the 7th day of January A. D. 1863 in the Superior Court
of Chicago, in and for the County of Cook, and State aforesaid, and of the January
Term thereof, A. D. 1863 recover a judgment against the above bounden John F. Stafford,

for the sum of One Hundred seventy nine 2/100 Dollars
and no cents, besides costs of suit; from which said judgment of the said
Superior Court of Chicago, the said John F. Stafford ^{to the Supreme Court of said State}
has prayed for, and obtained an appeal ^{a subsequent} to the Supreme Court of said State.

Now, Therefore, if the said John F. Stafford
shall duly prosecute his said appeal with effect, and moreover, pay the amount of the judgment,
costs, interest and damages rendered, and to be rendered, against him in case the said
judgment shall be affirmed in said Supreme Court, then the above obligations to be void, otherwise
to remain in full force and virtue.

These signatures acknowledged before me
Taken and entered into before me, at my office,
in Chicago, this 17th day
of July A. D. 1863
Law J. Stratton

Notary Public
City of Chicago

John F. Stafford
Bennett Peterson

Silas Pratt

SEAL

SEAL

SEAL

SEAL

State of Illinois } ss
Cook County

Bennett Peters and Silas Pratt
being first duly sworn upon oath say that
the said John F. Stafford,

~~resides~~ the said obligor
in the aforesaid County, to which this affidavit is
attached, are each respectively worth the sum
of Two Thousand Dollars in property real and
personal in the said County of Cook accessible,
liable to, and not exempt from, levy and sale
upon execution, under the laws of this State,
and further they say not.

Silas Pratt
Bennett Peters

Sworn and subscribed to before me this 17th day of
July A.D. 1863.

Saml J. Stewart
Notary Public
City of Chicago.

John H. Stafford⁷⁶
is
Orange Hango
Super. bond & affd.

Filed July 25, 1863.
L. Seland
Clerk.



STATE OF ILLINOIS, }
SUPREME COURT, }

ss. The People of the State of Illinois,

To the Clerk of the Superior Court for the County of Chicago — Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Superior Court of Chicago County, before the Judge thereof, between

Orange Fargo

Complainant, and

John H. Stafford

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

Stafford

as we are informed by his

complaint..... and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the complaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 25th day of July in the Year of Our Lord One Thousand Eight Hundred and Sixty Three.



S. Seland
Clerk of the Supreme Court.

John F. Stafford

No.

vs.

Orange Fargo

WRIT OF ERROR.

*This Writ of Error is made a
Supersedeas, and as such is to be
obeyed by all concerned.*

L. Veland

Clerk.

FILED

July 25 A. D. 1863

L. Veland

Clerk.



76

STATE OF ILLINOIS, SUPREME COURT.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

JOHN F. STAFFORD,

Plaintiff in Error.

vs.

ORANGE FARGO,

Defendant in Error.

ROBERT RAE,
LEWIS UMLAUF,

Attys for Plaintiff in Error.

*Filed April 27 1864
J. L. L. 1864*

STATE OF ILLINOIS, SUPREME COURT.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

Pays of Record
2

JOHN F. STAFFORD, }
vs. } ERROR TO COOK COUNTY.
ORANGE FARGO. }

ABSTRACT OF RECORD.

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

The People of the State of Illinois to the Sheriff of said County, GREETING:

We command you that you summon John F. Stafford, if he shall be found in your county, personally to be and appear before the Superior Court of Chicago, of said Cook county, on the first day of the next term thereof, to be holden at the court-house in Chicago, in said Cook county, on the first Monday of August next, to answer unto Orange Fargo, in a plea of trespass on the case upon promises, to the damage of the said plaintiff as is said in the sum of one thousand dollars. And have you there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness, Walter Kimball, Clerk of our said Court, and the seal thereof, at Chicago aforesaid, this 26th day of July, A. D. 1861.

[SEAL.]

WALTER KIMBALL, *Clerk.*

Endorsed—"Served by reading the within writ to the within named defendant, the 31st day of July, 1861.

Fees 1 serv. 50

2 miles, 10

1 return, 10

70c., paid by plaintiff's attorney.

NATHAN C. HESSING, *Sheriff.*
By JOHN A. NELSON, *Deputy.*

Pays of Record
3

Record Page
3

And afterwards, to wit, on the twenty-sixth day of July, in the year last aforesaid, said plaintiff, by his attorney, filed his certain declaration in words and figures following:

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

SUPERIOR COURT OF CHICAGO,
Of the July Term, A. D. 1861.

Orange Fargo, plaintiff in this suit, by H. H. Haaff, his attorney, complains of John F. Stafford, defendant, who was summoned, &c., of a plea of trespass on the case on promises; for that whereas the said defendant heretofore, to wit, on the twenty-second day of April, in the year of our Lord one thousand eight hundred and sixty, at Chicago, to wit, at said county of Cook, made his certain promissory note in the writing bearing date the day and year aforesaid, and then and there delivered the same to Henrietta N. Lyon, then and there and still being the wife of one Addison P. Lyon, and for the use and benefit of said Addison P. Lyon, in and by which note said defendant, by the name, style and description of John F. Stafford, promised to pay the order of the said Henrietta A. Lyon, so then being the wife of the said Addison P. Lyon, five hundred and thirty-three and 1/8 dollars on demand, for value received.

Record Page
4

And the said Henrietta A. Lyon, so then being the wife of said Addison P. Lyon, to whom or to whose order said note was payable, and also the said Addison P. Lyon, husband of the said Henrietta A. Lyon, afterwards, to wit, on the day and year aforesaid, at Chicago, that is to say, at the county of Cook aforesaid, indorsed said note in writing, by which said indorsement the said Henrietta A. Lyon, so then being the wife of said Addison P. Lyon, and said Addison P. Lyon, her husband, then and there ordered and appointed the said sum of money in said note mentioned to be paid to said plaintiff, and then and there delivered said note so indorsed to the said plaintiff.

By means whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay said plaintiff said sum of money mentioned in said note, according to the tenor and effect of the said note and of the indorsement so thereon made as aforesaid, and being so liable, the said defendant, in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff, according to the tenor and effect of the said note and of the indorsement aforesaid, to wit, at the place aforesaid.

Record Page
5

And whereas, also, the said defendant, afterwards, to wit, on the twenty-first day of June, in the year of our Lord one thousand eight hundred and sixty-one, to wit, at said county, became and was indebted to the plaintiff in a large sum of money, to wit, one thousand dollars, for money before that time lent and advanced to said defendant by said plaintiff, at said defendant's request; and also in the like sum for money before that time paid, laid out and expended for said defendant, by the said plaintiff, at the like special request of said defendant, and in the like sum for money before that time had and received by said defendant, to and for the use of

said plaintiff, and in the like sum for interest money, and also in the like sum for goods, wares and merchandise before that time sold and delivered by said plaintiff to said defendant, at the like special instance and request; and also in the like sum for the labor, care and diligence of the said plaintiff before that time done and performed by said plaintiff, for said defendant, and at the like instance and request of said defendant; and being so indebted, said defendant, in consideration thereof, then and there undertook and promised to pay said plaintiff said several sums of money above mentioned, when thereunto afterwards requested.

And whereas, also, the said defendant, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiff, of and concerning divers other sums of money before that time due and owing, from the said defendant to the said plaintiff, and then and there being in arrear and unpaid; and upon such accounting the said defendant has found to be in arrear and indebted to said plaintiff in the further sum of one thousand dollars. And being so found in arrear and indebted to said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff to pay unto the said plaintiff the said sum of money last above mentioned, when he, the said defendant should be thereunto afterwards requested.

Yet the said defendant, not regarding his said promises and undertakings, but contriving, &c., although often requested so to do, has not paid said plaintiff either of said sums of money above mentioned, or any part thereof, but so to do has hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of said plaintiff of one thousand dollars, and therefore he brings this suit, &c.

H. H. HAAFF, *Plaintiff's Attorney.*

Copy of the instrument and account sued on:

"\$533¹⁸/₁₀₀

Chicago, Sept. 22, 1860.

Due Henrietta A. Lyon, or order, five hundred and thirty-three ¹⁸/₁₀₀ dollars, on demand, for value received.

[Signed,]

JOHN F. STAFFORD.

Endorsed—HENRIETTA A. LYON.

Also, ADDISON P. LYON."

"JOHN F. STAFFORD,

To ORANGE FARGO, Dr.

June 21, 1861.	To money lent and advanced,	\$1,000
"	" To money paid, laid out and expended,	1,000
"	" To money had and received to and for the use of said plaintiff,	1,000
"	" To goods, wares and merchandise, sold and delivered,	1,000
"	" To labor and services,	1,000
"	" To balance due on account stated,	1,000"

Record Page
6

Record Page
7

*Record Page
8*

JOHN F. STAFFORD, }
 ats.
ORANGE FARGO. }

SUPERIOR COURT OF CHICAGO,
Term A. D. 1861.

STATE OF ILLINOIS, COOK COUNTY, ss.

*Record Page
9*

And the said defendant, by Robert Rae, his attorney, comes and defends the wrong and injury, when, &c., and saith that he did not undertake or promise in manner and form as the said plaintiff hath above complained against him, of this he puts himself upon the country, &c.

*Record Page
10*

And for a further plea in this behalf the said defendant, by leave of the court here for this purpose, first had and obtained, according to the form of the statute in such cases made and provided, says that the said plaintiffs ought not to have or maintain his aforesaid action thereof against him, because, he says, that the said note mentioned in said plaintiff's declaration was made and delivered by said defendant, to one Henrietta A. Lyon, the payee of said note, and that at the time of the making and delivery of said note by the said defendant to said Henrietta A. Lyon, said Henrietta A. Lyon was married to one Addison P. Lyon, and at the time of the indorsement of said note mentioned in said plaintiff's declaration, and at the time of the commencement of this suit, said Henrietta A. Lyon was still married to said Addison P. Lyon, then and yet her husband, who is still living, to wit, at the county of Cook, and this the said defendant is ready to verify; wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

And for a further plea in this behalf the said defendant, by like leave of the court, here for this purpose had and obtained, according to the form of the statute in such cases made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because, he says, the said note mentioned in said plaintiff's declaration was made and delivered to one Henrietta A. Lyon, the payee of said note, without any consideration whatever, and at the time of the indorsement of said note mentioned in said plaintiff's declaration, and at the time of the commencement of this suit, said defendant never received any consideration whatever for the making and delivery of said note mentioned in said plaintiff's declaration as aforesaid; all of which said plaintiff then and there had notice, to wit, at the county of Cook, and of this said defendant is ready to verify; wherefore he prays judgment of the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

ROBERT RAE, *Attorney for Defendant.*

*Record Page
11*

STATE OF ILLINOIS, }
COOK COUNTY, } ss.

John F. Stafford, the above named defendant, maketh oath and saith that the above pleas are true in substance and in fact.

JOHN F. STAFFORD.

Record Page
13

Sworn and subscribed before me this day of August, A. D. 1861.

And afterwards, to wit, on the twenty-third day of January, in the year last aforesaid, said plaintiff, by his said attorney, filed in the office of the clerk of said court, his certain amended declaration, in the words and figures following, to wit:

Record Page
14

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

SUPERIOR COURT OF CHICAGO,
Of the July Term, A. D. 1861.

Orange Fargo, plaintiff in this suit, by H. H. Haoft, his attorney, complains of John F. Stafford, defendant, who was summoned, &c., of a plea of trespass on the case on promises; for that whereas the said defendant heretofore, to wit, on the twenty-second day of April in the year of our Lord one thousand eight hundred and sixty, at Chicago, to wit, at said county of Cook, made his certain promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the same to one Henrietta A. Lyon, then and there and still being the wife of one Addison P. Lyon, and for the use and benefit of said Addison P. Lyon, in and by which said note said defendant by the name, style and description of John F. Stafford promised to pay the order of the said Henrietta A. Lyon so then being the wife of the said Addison P. Lyon, five hundred and thirty-three and $\frac{1}{2}$ dollars on demand, for value received.

Record Page
15

And the said Henrietta A. Lyon so then being the wife of the said Addison P. Lyon, to whom and to whose order said note was payable, and also the said Addison P. Lyon, husband of said Henrietta A. Lyon, afterwards, to wit, on the day and year aforesaid, at Chicago, that is to say at the county of Cook aforesaid, endorsed said note in writing, by which said endorsement the said Henrietta A. Lyon, so then being the wife, as aforesaid, of said Addison P. Lyon, and the said Addison P. Lyon, her said husband, as aforesaid, then and there ordered and appointed the said sum of money in said note mentioned, to be paid to said plaintiff; then and there delivered said note so endorsed to the said plaintiff.

By means whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay said plaintiff said sum of money mentioned in said note according to the tenor and effect of the said note, and of the endorsement so thereon made, as aforesaid, and being so liable the said defendant in consideration thereof then and there undertook and promised to pay the same to the said plaintiff according to the tenor and effect of the said note and of the endorsement aforesaid, to wit, at the place aforesaid.

Record Page
16

And whereas also the said defendant afterwards, to wit, on the twenty-first day of June, in the year of our Lord one thousand eight hundred and sixty-one, to wit, at the said county, became and was indebted to the plaintiff in a large sum of money, to wit, one thousand dollars, for money before that time lent and advanced to said defendant by said plaintiff at

said defendant's request; and also in the like sum for money before that time paid, laid out and expended for said defendant by the said plaintiff, at the like special request of said defendant, and in the like sum for money before that time had and received by said defendant to and for the use of said plaintiff, and in the like sum for interest money for the use of divers sums of money; and also in the like sum for goods, wares and merchandise before that time sold and delivered by said plaintiff to said defendant, at the like special instance and request; and also in the like sum for the labor, care and diligence of the said plaintiff before that time done and performed by said plaintiff for said defendant, and at the like instance and request of said defendant; and being so indebted said defendant in consideration thereof then and there undertook and promised to pay said plaintiff said several sums of money above mentioned, when thereunto afterwards requested.

And whereas, also, the said defendant, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiff, of and concerning divers other sums of money before that time due and owing, from the said defendant to the said plaintiff, and then and there being in arrear and unpaid; and upon such accounting the said defendant was found to be in arrear and indebted to said plaintiff in the further sum of one thousand dollars. And being so found in arrear and indebted to said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff to pay unto the said plaintiff the said sum of money last above mentioned, when he, the said defendant should be thereunto afterwards requested.

Yet the said defendant, not regarding his said promises and undertakings, but contriving, &c., although often requested so to do, has not paid said plaintiff either of said sums of money above mentioned, or any part thereof, but so to do has hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of said plaintiff of one thousand dollars, and therefore he brings this suit, &c.

H. H. HAATF, *Plaintiff's Attorney.*

Copy of the instrument and account sued on:

"\$533.33

Chicago, Sept. 22, 1860.

Due HENRIETTA A. LYON, or order, five hundred and thirty-three 1/3 dollars, on demand, for value received.

[Signed,]

JOHN F. STAFFORD.

Endorsed—HENRIETTA A. LYON.

Also, ADDISON P. LYON."

Record Page
17

Record Page
18

"JOHN F. STAFFORD,

To ORANGE FARGO, Dr.

June 21, 1861.	To money lent and advanced,	\$1,000
" "	To money paid, laid out and expended,	1,000
" "	To money had and received to and for the use of said plaintiff,	1,000
" "	To goods, wares and merchandise, sold and delivered,	1,000
" "	To labor and services,	1,000
" "	To balance due on account stated,	1,000"

And thereupon, afterwards, to wit, on the tenth day of February, in the year last aforesaid, said defendant, by his counsel, refiled in the office of the clerk of said court, his pleas as amended, which pleas refiled as amended are in the words and figures following, to wit:

JOHN F. STAFFORD, }
ats. }
ORANGE FARGO. }

SUPERIOR COURT OF CHICAGO,
Term A. D. 1861.

STATE OF ILLINOIS, COOK COUNTY, ss.

And the said defendant, by Robert Rae, his attorney, comes and defends the wrong and injury, when, &c., and saith that he did not undertake or promise in manner and form as the said plaintiff hath above complained against him, of this he puts himself upon the country, &c.

And for a further plea in this behalf the said defendant, by leave of the court here for this purpose, first had and obtained, according to the form of the statute in such cases made and provided, says that the said plaintiffs ought not to have or maintain his aforesaid action thereof against him, because, he says, that the said note mentioned in said plaintiff's declaration was made and delivered by said defendant, to one Henrietta A. Lyon, the payee of said note, and that at the time of the making and delivery of said note by the said defendant to said Henrietta A. Lyon, said Henrietta A. Lyon was married to one Addison P. Lyon, and at the time of the indorsement of said note mentioned in said plaintiff's declaration, and at the time of the commencement of this suit, said Henrietta A. Lyon was still married to said Addison P. Lyon, then and yet her husband, who is still living, to wit, at the county of Cook, and this the said defendant is ready to verify; wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

And for a further plea in this behalf the said defendant, by like leave of the court, here for this purpose had and obtained, according to the form of the statute in such cases made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because, he says, the said note mentioned in said plaintiff's declaration was made and delivered to one Henrietta A. Lyon, the payee of said

Record Page
18

Record Page
19

Record Page
20

Record Page
21

STATE OF ILLINOIS, }
COOK COUNTY, } ss.

JOHN F. STAFFORD.

And thereupon on the said tenth day of March, in the year last aforesaid, said plaintiff filed in the office of the clerk of said court, his certain demurrer, which is in the words and figures following, to wit.

ORANGE FARGO, }
vs. }
 JOHN F. STAFFORD. } SUPERIOR COURT OF CHICAGO.

And the said plaintiff as to said pleas of defendant by him secondly above pleaded, says that the same is not sufficient in law to bar him, plaintiff, from having and maintaining his aforesaid action thereof against defendant, and he is not bound by law to answer the same. This plaintiff is ready to verify wherefore he prays judgment, and his damages by reason of non-performing of said promises and undertakings in said declaration mentioned, to be adjudged to him, &c.

Plaintiff shows the following reasons for demurrer, among others, to wit: Said 2d plea avers that said payee is a married woman, that one Addison P. Lyon, is and was her husband, and said amended declaration shows that said Addison P. Lyon endorsed said note with said payee Henrietta A. Lyon.

And thereupon, afterwards, to wit, on the fourteenth day of March, in the year last aforesaid, said day being one of the days of the March Term of said court, the following, amongst other proceedings, were had and entered opened in said court, to wit.

Record Page
24

ORANGE FARGO, }
vs. } ASSUMPSIT.
JOHN F. STAFFORD. }

This day again comes the parties to this cause, by their attorneys, and counsel being heard upon the plaintiff's demurrer to second plea of said defendant. The court overrules the demurrer, whereupon defendant withdraws his plea, and it is thereupon ordered that plaintiffs have leave to reply double to defendant's third plea, by Tuesday next.

Record Page
25

And thereupon afterwards, to wit, on the seventeenth day of March, in the year last aforesaid, said plaintiff filed in the office of the clerk of said court, his certain replications to defendant's, 1st and 3d pleas, in the words and figures following, to wit :

ORANGE FARGO, }
vs. } SUPERIOR COURT OF CHICAGO.
JOHN F. STAFFORD. }

And said plaintiff as to said first plea of said defendant, wherein defendant hath put himself upon the country, doth the like, &c.

And said plaintiff as to said plea of said defendant by him thirdly above pleaded to plaintiff's declaration, by leave of the court here for that purpose first had and obtained, saith that the said note in said plaintiff's declaration mentioned, was not made and delivered to the said payee thereof, the said Henrietta A. Lyon, without any consideration whatever, as is by said defendant's said third plea alleged, but on the contrary thereof said plaintiff saith that said defendant did receive a valuable consideration for the making and delivery of said note in said plaintiff's declaration mentioned, at the time of the delivery thereof by said defendant to said Henrietta A. Lyon, and this plaintiff prays may be enquired of by the country, &c.

Record Page
26

And defendant doth the like, &c.

And for a further replication to said defendant's third plea, by like leave of the court, for that purpose first had and obtained, plaintiff saith that plaintiff, by reason of anything in that plea alleged, ought to be bound, &c., because he says that said plaintiff, neither at the time and places in said third plea mentioned, nor at any other time or place, had notice that said note, in said declaration mentioned, was made or delivered to the said payee thereof, the said Henrietta A. Lyon, or to any other person without consideration therefor, as is by said defendant in said plea alleged, and this plaintiff prays may be enquired of by the country, &c.

H. H. HAAFF, *Plaintiff's Attorney.*

And defendant doth the like.

Record Page
32

And afterwards, to wit, on the 6th day of January, in the year eighteen hundred and sixty-three, said day being one of the days of the January term of said court, 1863, the following amongst other proceedings were had and entered of record in said court, to wit:

ORANGE FARGO, }
vs. } ASSUMPSIT.
JOHN F. STAFFORD. }

Record Page
33

This cause being this day called for trial, comes said plaintiff, by H. H. Haaff, his attorney, and said defendant, by Robert Rae, his attorney, also comes, and issues being joined herein, it is ordered that a jury come; whereupon comes the jury of good and lawful men, to wit, John Lessendea, Henry Mills, Benj. Hall, A. Sutherland. Augustine Porter, H. Everson, Konrad Popp, Joel Wood, Stephen Elisher, J. Clears, Henry Hatch and James Littlewood, who being duly elected, tried and sworn to try the issues joined herein as aforesaid, after hearing evidence, arguments of counsel and the instructions of the court, retired to consider of their verdict, and the hour of adjournment having arrived, it is ordered, upon agreement of parties, that when the jury shall have agreed upon a verdict they shall reduce the same to writing, sign and seal the same, and afterwards separate and meet the court to-morrow morning.

Record Page
34

And afterwards, to wit, on the seventh day of January, in the year last aforesaid, said day being still of the January term, 1863, of said court, the following amongst other proceedings were had and entered of record in said court, to wit:

ORANGE FARGO, }
vs. } ASSUMPSIT.
JOHN F. STAFFORD. }

This day come again the parties to this cause, by their attorneys, and the jury empaneled herein on yesterday for the trial of said cause also come and submit their verdict and say, We, the jury, find issues for said plaintiff, and we assess plaintiff's damages herein against said defendant to the sum of six hundred and six dollars and forty-nine cents.

And thereupon said plaintiff remits the sum of twenty-seven dollars and twenty-eight cents, upon said verdict of the jury.

And thereupon said defendant submits his motion herein for a new trial in said cause.

And afterwards, to wit, on the ninth day of January, 1863, said defendant filed in the office of the clerk of said court his reasons for a new trial in said cause in words and figures following to wit:

Record Page
35

STATE OF ILLINOIS, }
Cook County, } ss.

SUPERIOR COURT OF CHICAGO,
January Term, 1863.

ORANGE FARGO, }
vs. }
JOHN F. STAFFORD. }

PLAINTIFF'S GROUNDS FOR NEW TRIAL IN THE CAUSE.

1. The verdict in this cause is contrary to evidence.
2. Because for variance between the note declared on and the one offered in evidence at the trial hereof.
3. Because the court erred in overruling defendant's objection entered to exclude the note produced and offered in evidence at the trial hereof.
4. The court erred in permitting plaintiff's witness, Addison P. Lyon, called by defendant, and rendered competent for a limited and specific purpose, to wit, to prove the time of indorsement of said note to plaintiff to be cross-examined by plaintiff generally.
5. The court erred in excluding defendant's 2nd, 3rd and 4th instructions, and in not permitting the same to be read or go to the jury.
6. The court erred in instructing and allowing the jury, after they had found their verdict, and after their said verdict had been opened and published in open court, to again return and find another and different verdict in form and substance.

ROBERT RAE, *Defendant's Attorney.*

And thereupon afterwards to wit, on the twenty-fourth day of January, in the year last aforesaid, said day being still one of the days of the January term of said court, 1863, the following amongst other proceedings were had and entered of record in said court, to wit:

ORANGE FARGO, }
vs. } MOTION FOR NEW TRIAL IN ASSUMPSIT.
JOHN F. STAFFORD. }

And now, at this day, again comes said plaintiff, by H. H. Haaff, his attorney, and the said defendant, by Robert Rae, his attorney, also comes, and this cause coming on now to be heard, upon the motion of said defendant, heretofore submitted herein, on the seventh day of January, A. D. 1863, for a new trial in said cause, and counsel being heard thereon, and the court being fully advised in the premises, it is considered by the court that the motion of said defendant for a new trial be and is hereby overruled, and that a new trial be refused to said defendant in said cause, and thereupon the said defendant moves the court in arrest of judgment on the verdict rendered by the jury herein as aforesaid, and counsel be-

Record Page
36

Record Page
37

ing heard thereon, and the court being fully advised in the premises, it is considered by the court, that the motion of said defendant in arrest of judgment on said verdict be and is hereby overruled; to which ruling of the court, in overruling his said motion for a new trial, and to the ruling of the court in overruling his said motion in arrest of judgment, the said defendant then and there excepted, and thereupon enters his exceptions.

Wherefore said plaintiff ought now to have judgment entered herein against said defendant for his damages rendered by the jury herein as aforesaid, less the sum of twenty-seven dollars and twenty-eight cents, remitted by him upon the verdict as aforesaid, being the sum of five hundred and seventy-nine dollars and twenty-one cents.

Therefore it is considered that said plaintiff do have and recover of and from the said defendant his damages of five hundred and seventy-nine dollars and twenty-one cents, in form aforesaid, by the jury here found and assessed, together with his costs and charges in this behalf expended and have execution therefor.

And thereupon said defendant having entered his exceptions prays an appeal herein to the Supreme Court of the State of Illinois, which is allowed to him upon the conditions that he file his bond in thirty days in the penalty of one thousand dollars, with security to be approved by one of the judges of this court, and that he file his bill of exceptions within the like term of thirty days.

And thereupon, to wit, on the seventeenth day of February, A. D. 1863, said defendant filed in the office of the clerk of said Superior Court of Chicago, his bill of exceptions, in the words and figures following, to wit:

Be it remembered that on the sixth day of the month of January, in the year of our Lord one thousand eight hundred and sixty-three, the same being a day of jurisdiction of the said court, and one of the term days of the general term for the month of January, A. D. 1863, in open court, before his honor, Van H. Higgins, and in presence of the officers of the said court, and a jury then and there empaneled, to try the issues in this cause then and there pending, between the said Orange Fargo, the then plaintiff, and the said John F. Stafford, the then defendant, for trial, the said plaintiff, by his counsel, to maintain the issue on his, plaintiff's, part, then and there produced and offered to read in evidence, at said trial, a certain note or instrument of writing, which was and is in words and figures substantially as follows, to wit:

Record Page
38

Record Page
39

Record Page
40

On the back of said note or instrument were written the following endorsements, to wit:

[Signed,]

"HENRIETTA A LYON."

[Signed,]

"ADDISON P. LYON."

To the reading and receiving in evidence in said cause, of the said note or instrument, the defendant by his counsel then and there objected, on the ground, 1, for variance of the said note or instrument from the declaration herein; 2, because the note when made, was made and given to the said Henrietta A. Lyon, (the said Henrietta A. Lyon, at the making and delivery of the said note to her was and still is the wife of the said Addison P. Lyon, *femme coverte*,) for the use and benefit of, and in trust for, said Addison P. Lyon, her said husband, and therefore not assignable by the said Henrietta A. Lyon, *femme coverte* and trustee of the said note for the said Addison P. Lyon, her said husband, and not assignable by said Addison P. Lyon, being "*cestui que trust*," the legal title of said note not being vested in him, the said Addison P. Lyon; which objection of defendant's counsel the court then and there overruled, and received the said note in evidence, and permitted the same to be read to the said jury, which was accordingly done. To the decision and overruling by the said court of defendant's said objection, and to the permitting the said note or instrument to be read in evidence in said cause, to said jury, the defendant, by his counsel, then and there duly excepted. Whereupon, plaintiff's counsel read the said instrument of writing to said jury, as aforesaid, and rested the issue on his part.

Receivd Page
411

Thereupon defendant's counsel, to maintain the issue on his part, called as witness, the said Addison P. Lyon, for the single purpose of proving by said Lyon that said note or instrument was endorsed by him, the said Lyon, after the commencement of this suit herein.

Defendant thereupon called *H. H. Haaff*, plaintiff's attorney in said cause, as his witness, and asked him the following question: State on oath to court and jury whether you did not add the name of Addison P. Lyon to the fac-simile of this note, appended to the original declaration in this cause after I had put in my pleas? Witness replied: The papers on file will show for themselves. Whereupon defendant's counsel said to witness: Answer my question, sir. Witness replied: I will not answer it. Whereupon the court required witness to answer the question put; and witness thereupon replied: I have no recollection that I have.

Robert Rae, counsel for defendant, then testified as follows: This is the first declaration filed in this cause, (showing it) to which is attached a fac-simile of this note, (showing the note in question) and I know the name of Addison P. Lyon was not put to the fac-simile of this note attached to this declaration at the time the same was filed. The name of Addison P. Lyon was put to it (the fac-simile) after this suit was commenced, and after plaintiff obtained leave of court to amend this declaration.

Bennett Pieters was thereupon called by defendant, who testified: Was present at a conversation between Addison P. Lyon and John F. Stafford; their interview and conversation was in reference to their entering into business together; Stafford and Lyon were going in the liquor business;

Revised Page
43

Record Page 45

ford; Lyon owes Stafford about fourteen hundred dollars, being Lyon's share of the losses in and on said partnership business; Lyon left the concern before suit was brought on said note; on the evening of the day after Lyon left the concern I was present at a conversation between said Stafford and Lyon, Lyon acknowledged a loss in debt to Stafford by reason of losses in said partnership business to the amount of that note; Lyon left June 10, 1861; this conversation was the evening following.

Record Page 46

Witness was then cross-examined by the plaintiff's counsel and testified: Addison P. Lyon was a member of the firm of Bennett Pieters & Co. Lyon proposed to go into the liquor business. Stafford took securities or collaterals to indemnify himself against loss from Lyon. The note was given afterwards, probably two months after; I never saw this note; Lyon acknowledged the note; there was only one note, and that was made to Henrietta A. Lyon (the wife of said Lyon); Lyon was a member of the firm; I also was a member of the same firm; the firm consisted of John F. Stafford, Addison P. Lyon and myself. I am not interested in the event of this suit; if suit goes against Stafford he was to pay it himself; the arrangement was a private one between Stafford and Lyon; it did not affect me any; I was not to be benefited or prejudiced by it.

Plaintiff's counsel here produced a circular of the firm of Bennett Pieters & Co., in which circular said Lyon was held out to the public as the agent of the firm, and reads it to the jury; a copy of which circular is hereto annexed, marked A.; produces also a copy of the Chicago Tribune, which contains a notice, a copy of which said notice is hereto annexed, marked B.; as also a card, a copy of which card is hereto annexed, marked C.; notice of the dissolution of the relation of agent and principal, and a revocation of authority of the said firm in which Lyon appears as agent of said firm, and reads it to the jury. Witness stated that these cards and circulars were the cards and circulars of the firm.

Witness was then examined by court and testified as follows: Our stock amounted to twenty-five thousand dollars; Lyon was in the company about eleven months; we lost about seventeen hundred dollars during said eleven months.

Witness, then cross-examined by plaintiff's counsel, testified: There was a dissolution of the partnership June 10, 1861.

Record Page 47

Witness was then again examined by court and testified as follows: Lyon drew out seven hundred dollars in cash more than he was entitled to; Lyon received no salary; our books showed that Lyon was to receive sixty dollars a month salary as agent, which entry was made to protect Lyon against his creditors, and at his own request.

Here defendant closed his case and rested.

Thereupon, in his argument to the jury, plaintiff's counsel asked the

jury to give him a verdict for the amount of said note, with interest thereon at six per cent. from the commencement of said suit.

After arguments of counsels to the jury, the defendant, by his counsel, then and there asked the court to give and have read to said jury the several instructions following, to wit :

1. If the jury believe from the evidence that the note sued on in this case was not indorsed by Addison P. Lyon before the commencement of this suit, though so indorsed afterwards, the verdict must be for defendant.

2. If the jury believe from the evidence that the note in this case sued on was, with Addison P. Lyon's indorsement, assigned to the plaintiff with notice to the plaintiff of the equities existing between said Henrietta A. Lyon and said Addison P. Lyon, her husband, and the defendant, and if the jury believe that these equities are sufficient to defeat a recovery on the note by said Henrietta A. Lyon and her husband against the defendant, then their verdict must be for defendant.

3. If the jury believe from the evidence that the note in this case sued on was given by said Stafford to said Henrietta A. Lyon, for the use and benefit of the said Addison P. Lyon, and for no other use, and that defendant bound himself to pay only Henrietta A. Lyon, for the use and benefit of her said husband, then the plaintiff in this case cannot recover, if he, said plaintiff, had notice of these facts at the time of the indorsement to him of this note, then their verdict must be for defendant.

The first of which said instructions the court gave and read to the jury, but refused to give and read or have read to the jury the second, third and fourth of the aforesaid instructions. To the opinion and ruling of the court, in not giving and allowing to go to the jury the said second, third and fourth instructions, defendant, by his counsel, then and there duly excepted.

Record Page
48

Record Page
49

And thereupon, it being now late in the afternoon of said term day, the court, with the consent of counsel on both sides, instructed the jury that they might find their verdict, sign and seal the same, and return it in court the next day then following. Whereupon the said jury retired to deliberate upon their verdict, and did, on the same day, in the evening of said day, find their verdict, did sign and seal the same, and thereupon they the said jury separated.

On the following day, that is to say, on the seventh day of January, A. D. 1863, the said jury being present in open court, the court requested the clerk of said court to open and publish the said verdict by said jury in said cause found.

And thereupon the said clerk opened the said verdict, read and published the same in open court, which was as follows: "We, the jury, find for the plaintiff the amount of the note with interest thereon from the commencement of the suit." Which said verdict was duly signed by said jurors.

And thereupon, after the said verdict had been so opened and published at the order of the said court, in open court, the court upon his own suggestion instructed the said jury further in substance as follows: The jury will find their verdict for the amount of said note in dollars and cents, with interest thereon from its date, and assess his damages at the amount so found due. Defendant, by his counsel, excepted to the said instruction of the said court for the reason that plaintiff's counsel had only asked the jury for interest from the commencement of the suit. The court thereupon withdrew his said instruction.

And thereupon the said jury retired for a second time to find their said verdict, and shortly thereafter returned into court and announced that they had agreed upon their verdict. Whereupon the court ordered the said clerk to receive, open and publish their said verdict, which was done. The verdict then being, We, the jury, find for the plaintiff, and assess his damages at \$606⁴⁰/₁₀₀. Plaintiff's attorney thereupon entered a remittitur of \$27²⁰/₁₀₀ damages, being the amount of interest by said jury found from the date of said note to the commencement of said suit.

And this being all the evidence and proceedings in said cause that were offered and transpired at the said trial thereof that were material to the issues of said cause, this defendant prays this honorable court that this bill, with all its exceptions therein noted, may be by said court signed and sealed; which is accordingly done.

VAN H. HIGGINS, [SEAL.]
Judge.

And afterwards, to wit, on the thirteenth day of April, in the year eighteen hundred and sixty-three, the said defendant filed in the office of

Record Page
50

Record Page
51

Record Page
52

the clerk of said Superior Court of Chicago, his certain appeal bond, in the words and figures following, to wit :

Know all men by these Presents, That we, John Stafford and Richard McCleavy, of the City of Chicago, and of the county of Cook and State of Illinois, are held and firmly bound unto Orange Fargo, also of the same county and State, in the penal sum of one thousand dollars, lawful money of the United States, for the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents. Witness our hands and seals, this 25th day of February, A. D. 1863.

The condition of the above obligation is such, that whereas the said Orange Fargo did, on the 7th day of January, A. D. 1863, in the Superior Court of Chicago, in and for the county of Cook and State aforesaid, and of the January term thereof, A. D. 1863, recover a judgment against the above bounden John F. Stafford, for the sum of five hundred seventy-nine ~~two~~ dollars, besides costs of suit, from which said judgment of the said Superior Court of Chicago, the said John F. Stafford has prayed for and obtained an appeal to the Supreme Court of said State.

Now therefore, if the said John F. Stafford shall duly prosecute his said appeal with effect, and moreover pay the amount of the judgment, costs, interest and damages rendered and to be rendered against him in case the said judgment shall be affirmed in said Supreme Court, then the above obligations to be void, otherwise to remain in full force and virtue.

JOHN F. STAFFORD. [SEAL.]

RICH'D McCLEAVEY. [SEAL.]

Approved by me, this 13th day of April, A. D. 1863.

VAN H. HIGGINS, *Judge.*

Record Page
52 - 53.

SUPREME COURT OF ILLINOIS, THIRD GRAND DIVISION.

APRIL TERM, 1864.

JOHN F. STAFFORD,
Plaintiff in Error.
vs.
 ORANGE FARGO,
Defendant in Error.

And now comes the said John F. Stafford, plaintiff in error, and says that in the record and proceedings aforesaid, there is manifest error, and assigns to the court here the following errors therein :

1. The court below erred in admitting the note herein to be received as evidence under the special count.
2. The court below erred in permitting plaintiff's witness, Addison P. Lyon, called by defendant, and rendered competent only for a limited and specific purpose, to wit, to prove the time of endorsement of said note to plaintiff, to be cross-examined by plaintiff generally.
3. The court below erred in excluding defendant's 2nd, 3rd and 4th instructions from being read to the jury.
4. The court below erred in instructing and allowing the jury, after they had found their verdict and separated, and after their said verdict had been opened and published in court, to again retire and find another and different verdict in form and substance.
5. The court below erred in overruling defendant's motion for a new trial.
6. The court below erred in overruling defendant's motion in arrest of judgment.
7. The verdict is contrary to law and evidence.
8. For other material errors in the record of this cause.

ROBERT RAE,
 LEWIS UMLAUF,
Attorneys for Plaintiff in Error.

STATE OF ILLINOIS, SUPREME COURT.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

JOHN F. STAFFORD, }
vs. } ERROR TO COOK COUNTY.
ORANGE FARGO. }

Page of Record
2.

ABSTRACT OF RECORD.

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

The People of the State of Illinois to the Sheriff of said County, GREETING:

We command you that you summon John F. Stafford, if he shall be found in your county, personally to be and appear before the Superior Court of Chicago, of said Cook county, on the first day of the next term thereof, to be holden at the court-house in Chicago, in said Cook county, on the first Monday of August next, to answer unto Orange Fargo, in a plea of trespass on the case upon promises, to the damage of the said plaintiff as is said in the sum of one thousand dollars. And have you there this writ with an endorsement thereon in what manner you shall have executed the same.

Witness, Walter Kimball, Clerk of our said Court, and the seal thereof, at Chicago aforesaid, this 26th day of July, A. D. 1861.

[SEAL.]

WALTER KIMBALL, *Clerk.*

Endorsed—"Served by reading the within writ to the within named defendant, the 31st day of July, 1861.

Fees 1 serv. 50

2 miles, 10

1 return, 10

NATHAN C. HESSING, *Sheriff.*
By JOHN A. NELSON, *Deputy.*

70c., paid by plaintiff's attorney.

Page of Record
3.

Record Page
3.

And afterwards, to wit, on the twenty-sixth day of July, in the year last aforesaid, said plaintiff, by his attorney, filed his certain declaration in words and figures following:

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

SUPERIOR COURT OF CHICAGO,
Of the July Term, A. D. 1861.

Orange Fargo, plaintiff in this suit, by H. H. Haaff, his attorney, complains of John F. Stafford, defendant, who was summoned, &c., of a plea of trespass on the case on promises; for that whereas the said defendant heretofore, to wit, on the twenty-second day of April, in the year of our Lord one thousand eight hundred and sixty, at Chicago, to wit, at said county of Cook, made his certain promissory note in the writing bearing date the day and year aforesaid, and then and there delivered the same to Henrietta N. Lyon, then and there and still being the wife of one Addison P. Lyon, and for the use and benefit of said Addison P. Lyon, in and by which note said defendant, by the name, style and description of John F. Stafford, promised to pay the order of the said Henrietta A. Lyon, so then being the wife of the said Addison P. Lyon, five hundred and thirty-three and $1\frac{3}{4}$ dollars on demand, for value received.

Record Page 4.

And the said Henrietta A. Lyon, so then being the wife of said Addison P. Lyon, to whom or to whose order said note was payable, and also the said Addison P. Lyon, husband of the said Henrietta A. Lyon, afterwards, to wit, on the day and year aforesaid, at Chicago, that is to say, at the county of Cook aforesaid, indorsed said note in writing, by which said indorsement the said Henrietta A. Lyon, so then being the wife of said Addison P. Lyon, and said Addison P. Lyon, her husband, then and there ordered and appointed the said sum of money in said note mentioned to be paid to said plaintiff, and then and there delivered said note so indorsed to the said plaintiff.

By means whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay said plaintiff said sum of money mentioned in said note, according to the tenor and effect of the said note and of the indorsement so thereon made as aforesaid, and being so liable, the said defendant, in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff, according to the tenor and effect of the said note and of the indorsement aforesaid, to wit, at the place aforesaid.

Record Page 5.

And whereas, also, the said defendant, afterwards, to wit, on the twenty-first day of June, in the year of our Lord one thousand eight hundred and sixty-one, to wit, at said county, became and was indebted to the plaintiff in a large sum of money, to wit, one thousand dollars, for money before that time lent and advanced to said defendant by said plaintiff, at said defendant's request; and also in the like sum for money before that time paid, laid out and expended for said defendant, by the said plaintiff, at the like special request of said defendant, and in the like sum for money before that time had and received by said defendant, to and for the use of

Record Page 6.

said plaintiff, and in the like sum for interest money, and also in the like sum for goods, wares and merchandise before that time sold and delivered by said plaintiff to said defendant, at the like special instance and request; and also in the like sum for the labor, care and diligence of the said plaintiff before that time done and performed by said plaintiff, for said defendant, and at the like instance and request of said defendant; and being so indebted, said defendant, in consideration thereof, then and there undertook and promised to pay said plaintiff said several sums of money above mentioned, when thereunto afterwards requested.

And whereas, also, the said defendant, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiff, of and concerning divers other sums of money before that time due and owing, from the said defendant to the said plaintiff, and then and there being in arrear and unpaid; and upon such accounting the said defendant has found to be in arrear and indebted to said plaintiff in the further sum of one thousand dollars. And being so found in arrear and indebted to said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff to pay unto the said plaintiff the said sum of money last above mentioned, when he, the said defendant should be thereunto afterwards requested.

Record Page 7.

Yet the said defendant, not regarding his said promises and undertakings, but contriving, &c., although often requested so to do, has not paid said plaintiff either of said sums of money above mentioned, or any part thereof, but so to do has hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of said plaintiff of one thousand dollars, and therefore he brings this suit, &c.

H. H. HAAFF, *Plaintiff's Attorney.*

Copy of the instrument and account sued on:

"\$533¹⁸/₁₀₀

Chicago, Sept. 22, 1860.

Due Henrietta A. Lyon, or order, five hundred and thirty-three ¹⁸/₁₀₀ dollars, on demand, for value received.

[Signed,]

JOHN F. STAFFORD.

Endorsed—HENRIETTA A. LYON.

Also, ADDISON P. LYON."

"JOHN F. STAFFORD,

To ORANGE FARGO, Dr.

June 21, 1861.	To money lent and advanced,	\$1,000
"	" To money paid, laid out and expended,	1,000
"	" To money had and received to and for the use of said plaintiff,	1,000
"	" To goods, wares and merchandise, sold and delivered,	1,000
"	" To labor and services,	1,000
"	" To balance due on account stated,	1,000"

Record Page 8.

JOHN F. STAFFORD, }
 ats.
 ORANGE FARGO. }

SUPERIOR COURT OF CHICAGO,
 Term A. D. 1861.

STATE OF ILLINOIS, COOK COUNTY, ss.

Record Page 9.

And the said defendant, by Robert Rae, his attorney, comes and defends the wrong and injury, when, &c., and saith that he did not undertake or promise in manner and form as the said plaintiff hath above complained against him, of this he puts himself upon the country, &c.

Record Page 10.

And for a further plea in this behalf the said defendant, by leave of the court here for this purpose, first had and obtained, according to the form of the statute in such cases made and provided, says that the said plaintiffs ought not to have or maintain his aforesaid action thereof against him, because, he says, that the said note mentioned in said plaintiff's declaration was made and delivered by said defendant, to one Henrietta A. Lyon, the payee of said note, and that at the time of the making and delivery of said note by the said defendant to said Henrietta A. Lyon, said Henrietta A. Lyon was married to one Addison P. Lyon, and at the time of the indorsement of said note mentioned in said plaintiff's declaration, and at the time of the commencement of this suit, said Henrietta A. Lyon was still married to said Addison P. Lyon, then and yet her husband, who is still living, to wit, at the county of Cook, and this the said defendant is ready to verify; wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

And for a further plea in this behalf the said defendant, by like leave of the court, here for this purpose had and obtained, according to the form of the statute in such cases made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because, he says, the said note mentioned in said plaintiff's declaration was made and delivered to one Henrietta A. Lyon, the payee of said note, without any consideration whatever, and at the time of the indorsement of said note mentioned in said plaintiff's declaration, and at the time of the commencement of this suit, said defendant never received any consideration whatever for the making and delivery of said note mentioned in said plaintiff's declaration as aforesaid; all of which said plaintiff then and there had notice, to wit, at the county of Cook, and of this said defendant is ready to verify; wherefore he prays judgment of the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

ROBERT RAE, *Attorney for Defendant.*

Record Page 11.

STATE OF ILLINOIS, }
 COOK COUNTY, } ss.

John F. Stafford, the above named defendant, maketh oath and saith that the above pleas are true in substance and in fact.

JOHN F. STAFFORD.

Sworn and subscribed before me this day of August, A. D. 1861.

Record Page 13.

And afterwards, to wit, on the twenty-third day of January, in the year last aforesaid, said plaintiff, by his said attorney, filed in the office of the clerk of said court, his certain amended declaration, in the words and figures following, to wit:

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

SUPERIOR COURT OF CHICAGO,
Of the July Term, A. D. 1861.

Orange Fargo, plaintiff in this suit, by H. H. Haoff, his attorney, complains of John F. Stafford, defendant, who was summoned, &c., of a plea of trespass on the case on promises; for that whereas the said defendant heretofore, to wit, on the twenty-second day of April in the year of our Lord one thousand eight hundred and sixty, at Chicago, to wit, at said county of Cook, made his certain promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the same to one Henrietta A. Lyon, then and there and still being the wife of one Addison P. Lyon, and for the use and benefit of said Addison P. Lyon, in and by which said note said defendant by the name, style and description of John F. Stafford promised to pay the order of the said Henrietta A. Lyon so then being the wife of the said Addison P. Lyon, five hundred and thirty-three and $\frac{1}{2}$ dollars on demand, for value received.

Record Page 14.

And the said Henrietta A. Lyon so then being the wife of the said Addison P. Lyon, to whom and to whose order said note was payable, and also the said Addison P. Lyon, husband of said Henrietta A. Lyon, afterwards, to wit, on the day and year aforesaid, at Chicago, that is to say at the county of Cook aforesaid, endorsed said note in writing, by which said endorsement the said Henrietta A. Lyon, so then being the wife, as aforesaid, of said Addison P. Lyon, and the said Addison P. Lyon, her said husband, as aforesaid, then and there ordered and appointed the said sum of money in said note mentioned, to be paid to said plaintiff; then and there delivered said note so endorsed to the said plaintiff.

By means whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay said plaintiff said sum of money mentioned in said note according to the tenor and effect of the said note, and of the endorsement so thereon made, as aforesaid, and being so liable the said defendant in consideration thereof then and there undertook and promised to pay the same to the said plaintiff according to the tenor and effect of the said note and of the endorsement aforesaid, to wit, at the place aforesaid.

Record Page 15.

And whereas also the said defendant afterwards, to wit, on the twenty-first day of June, in the year of our Lord one thousand eight hundred and sixty-one, to wit, at the said county, became and was indebted to the plaintiff in a large sum of money, to wit, one thousand dollars, for money before that time lent and advanced to said defendant by said plaintiff at

said defendant's request; and also in the like sum for money before that time paid, laid out and expended for said defendant by the said plaintiff, at the like special request of said defendant, and in the like sum for money before that time had and received by said defendant to and for the use of said plaintiff, and in the like sum for interest money for the use of divers sums of money; and also in the like sum for goods, wares and merchandise before that time sold and delivered by said plaintiff to said defendant, at the like special instance and request; and also in the like sum for the labor, care and diligence of the said plaintiff before that time done and performed by said plaintiff for said defendant, and at the like instance and request of said defendant; and being so indebted said defendant in consideration thereof then and there undertook and promised to pay said plaintiff said several sums of money above mentioned, when thereunto afterwards requested.

Record Page 17.

And whereas, also, the said defendant, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiff, of and concerning divers other sums of money before that time due and owing, from the said defendant to the said plaintiff, and then and there being in arrear and unpaid; and upon such accounting the said defendant was found to be in arrear and indebted to said plaintiff in the further sum of one thousand dollars. And being so found in arrear and indebted to said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff to pay unto the said plaintiff the said sum of money last above mentioned, when he, the said defendant should be thereunto afterwards requested.

Yet the said defendant, not regarding his said promises and undertakings, but contriving, &c., although often requested so to do, has not paid said plaintiff either of said sums of money above mentioned, or any part thereof, but so to do has hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of said plaintiff of one thousand dollars, and therefore he brings this suit, &c.

H. H. HAAFF, *Plaintiff's Attorney.*

Record Page 18.

Copy of the instrument and account sued on:

"\$533¹⁰⁰/₁₀₀

Chicago, Sept. 22, 1860.

Due Henrietta A. Lyon, or order, five hundred and thirty-three ¹⁰⁰/₁₀₀ dollars, on demand, for value received.

[Signed,]

JOHN F. STAFFORD.

Endorsed—HENRIETTA A. LYON.

Also, ADDISON P. LYON."

Record Page 18.

"JOHN F. STAFFORD,

To ORANGE FARGO, Dr.

June 21, 1861.	To money lent and advanced,	\$1,000
"	" To money paid, laid out and expended,	1,000
"	" To money had and received to and for the use of said plaintiff,	1,000
"	" To goods, wares and merchandise, sold and delivered,	1,000
"	" To labor and services,	1,000
"	" To balance due on account stated,	1,000"

Record Page 19.

And thereupon, afterwards, to wit, on the tenth day of February, in the year last aforesaid, said defendant, by his counsel, refiled in the office of the clerk of said court, his pleas as amended, which pleas refiled as amended are in the words and figures following, to wit:

JOHN F. STAFFORD, }
ats.
 ORANGE FARGO. }

SUPERIOR COURT OF CHICAGO,
 Term A. D. 1861.

STATE OF ILLINOIS, COOK COUNTY, ss.

Record Page 20.

And the said defendant, by Robert Rae, his attorney, comes and defends the wrong and injury, when, &c., and saith that he did not undertake or promise in manner and form as the said plaintiff hath above complained against him, of this he puts himself upon the country, &c.

And for a further plea in this behalf the said defendant, by leave of the court here for this purpose, first had and obtained, according to the form of the statute in such cases made and provided, says that the said plaintiffs ought not to have or maintain his aforesaid action thereof against him, because, he says, that the said note mentioned in said plaintiff's declaration was made and delivered by said defendant, to one Henrietta A. Lyon, the payee of said note, and that at the time of the making and delivery of said note by the said defendant to said Henrietta A. Lyon, said Henrietta A. Lyon was married to one Addison P. Lyon, and at the time of the indorsement of said note mentioned in said plaintiff's declaration, and at the time of the commencement of this suit, said Henrietta A. Lyon was still married to said Addison P. Lyon, then and yet her husband, who is still living, to wit, at the county of Cook, and this the said defendant is ready to verify; wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

Record Page 21.

And for a further plea in this behalf the said defendant, by like leave of the court, here for this purpose had and obtained, according to the form of the statute in such cases made and provided, says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because, he says, the said note mentioned in said plaintiff's declaration was made and delivered to one Henrietta A. Lyon, the payee of said

note, without any consideration whatever, and at the time of the indorsement of said note mentioned in said plaintiff's declaration, and at the time of the commencement of this suit, said defendant never received any consideration whatever for the making and delivery of said note mentioned in said plaintiff's declaration as aforesaid; all of which said plaintiff then and there had notice, to wit, at the county of Cook, and of this said defendant is ready to verify; wherefore he prays judgment of the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

ROBERT RAE, *Attorney for Defendant.*

Record Page 22.

STATE OF ILLINOIS, } ss.
COOK COUNTY, }

John F. Stafford, the above named defendant, maketh oath and saith that the above pleas are true in substance and in fact.

JOHN F. STAFFORD.

Sworn and subscribed before me this day of August, A. D. 1861.

And thereupon on the said tenth day of March, in the year last aforesaid, said plaintiff filed in the office of the clerk of said court, his certain demurrer, which is in the words and figures following, to wit.

ORANGE FARGO, }
vs. }
JOHN F. STAFFORD. }

SUPERIOR COURT OF CHICAGO.

And the said plaintiff as to said pleas of defendant by him secondly above pleaded, says that the same is not sufficient in law to bar him, plaintiff, from having and maintaining his aforesaid action thereof against defendant, and he is not bound by law to answer the same. This plaintiff is ready to verify wherefore he prays judgment, and his damages by reason of non-performing of said promises and undertakings in said declaration mentioned, to be adjudged to him, &c.

H. H. HAAFF, *Plaintiff's Attorney.*

Plaintiff shows the following reasons for demurrer, among others, to wit: Said 2d plea avers that said payee is a married woman, that one Addison P. Lyon, is and was her husband, and said amended declaration shows that said Addison P. Lyon endorsed said note with said payee Henrietta A. Lyon.

H. H. HAAFF, *Plaintiff's Attorney.*

And thereupon, afterwards, to wit, on the fourteenth day of March, in the year last aforesaid, said day being one of the days of the March Term of said court, the following, amongst other proceedings, were had and entered opened in said court, to wit.

Record Page 23.

Record Page 24.

ORANGE FARGO, }
 vs.
 JOHN F. STAFFORD. } ASSUMPSIT.

This day again comes the parties to this cause, by their attorneys, and counsel being heard upon the plaintiff's demurrer to second plea of said defendant. The court overrules the demurrer, whereupon defendant withdraws his plea, and it is thereupon ordered that plaintiffs have leave to reply double to defendant's third plea, by Tuesday next.

Record Page 25.

And thereupon afterwards, to wit, on the seventeenth day of March, in the year last aforesaid, said plaintiff filed in the office of the clerk of said court, his certain replications to defendant's, 1st and 3d pleas, in the words and figures following, to wit :

ORANGE FARGO, }
 vs.
 JOHN F. STAFFORD. } SUPERIOR COURT OF CHICAGO.

And said plaintiff as to said first plea of said defendant, wherein defendant hath put himself upon the country, doth the like, &c.

And said plaintiff as to said plea of said defendant by him thirdly above pleaded to plaintiff's declaration, by leave of the court here for that purpose first had and obtained, saith that the said note in said plaintiff's declaration mentioned, was not made and delivered to the said payee thereof, the said Henrietta A. Lyon, without any consideration whatever, as is by said defendant's said third plea alleged, but on the contrary thereof said plaintiff saith that said defendant did receive a valuable consideration for the making and delivery of said note in said plaintiff's declaration mentioned, at the time of the delivery thereof by said defendant to said Henrietta A. Lyon, and this plaintiff prays may be enquired of by the country, &c.

Record Page 26.

And defendant doth the like, &c.

And for a further replication to said defendant's third plea, by like leave of the court, for that purpose first had and obtained, plaintiff saith that plaintiff, by reason of anything in that plea alleged, ought to be bound, &c., because he says that said plaintiff, neither at the time and places in said third plea mentioned, nor at any other time or place, had notice that said note, in said declaration mentioned, was made or delivered to the said payee thereof, the said Henrietta A. Lyon, or to any other person without consideration therefor, as is by said defendant in said plea alleged, and this plaintiff prays may be enquired of by the country, &c.

H. H. HAAFF, *Plaintiff's Attorney.*

And defendant doth the like.

Record Page 32.

And afterwards, to wit, on the 6th day of January, in the year eighteen hundred and sixty-three, said day being one of the days of the January term of said court, 1863, the following amongst other proceedings were had and entered of record in said court, to wit:

ORANGE FARGO, }
 vs. } ASSUMPSIT.
 JOHN F. STAFFORD. }

This cause being this day called for trial, comes said plaintiff, by H. H. Haaff, his attorney, and said defendant, by Robert Rae, his attorney, also comes, and issues being joined herein, it is ordered that a jury come; whereupon comes the jury of good and lawful men, to wit, John Lessendea, Henry Mills, Benj. Hall, A. Sutherland. Augustine Porter, H. Everson, Konrad Popp, Joel Wood, Stephen Elisher, J. Clears, Henry Hatch and James Littlewood, who being duly elected, tried and sworn to try the issues joined herein as aforesaid, after hearing evidence, arguments of counsel and the instructions of the court, retired to consider of their verdict, and the hour of adjournment having arrived, it is ordered, upon agreement of parties, that when the jury shall have agreed upon a verdict they shall reduce the same to writing, sign and seal the same, and afterwards separate and meet the court to-morrow morning.

Record Page 34.

And afterwards, to wit, on the seventh day of January, in the year last aforesaid, said day being still of the January term, 1863, of said court, the following amongst other proceedings were had and entered of record in said court, to wit:

ORANGE FARGO, }
 vs. } ASSUMPSIT.
 JOHN F. STAFFORD. }

This day come again the parties to this cause, by their attorneys, and the jury empaneled herein on yesterday for the trial of said cause also come and submit their verdict and say, We, the jury, find issues for said plaintiff, and we assess plaintiff's damages herein against said defendant to the sum of six hundred and six dollars and forty-nine cents.

And thereupon said plaintiff remits the sum of twenty-seven dollars and twenty-eight cents, upon said verdict of the jury.

And thereupon said defendant submits his motion herein for a new trial in said cause.

And afterwards, to wit, on the ninth day of January, 1863, said defendant filed in the office of the clerk of said court his reasons for a new trial in said cause in words and figures following to wit:

Recall Page 35.

STATE OF ILLINOIS, }
Cook County, } ss.

SUPERIOR COURT OF CHICAGO,
January Term, 1863.

ORANGE FARGO, }
vs. }
JOHN F. STAFFORD. }

PLAINTIFF'S GROUNDS FOR NEW TRIAL IN THE CAUSE.

1. The verdict in this cause is contrary to evidence.
2. Because for variance between the note declared on and the one offered in evidence at the trial hereof.
3. Because the court erred in overruling defendant's objection entered to exclude the note produced and offered in evidence at the trial hereof.
4. The court erred in permitting plaintiff's witness, Addison P. Lyon, called by defendant, and rendered competent for a limited and specific purpose, to wit, to prove the time of indorsement of said note to plaintiff to be cross-examined by plaintiff generally.
5. The court erred in excluding defendant's 2nd, 3rd and 4th instructions, and in not permitting the same to be read or go to the jury.
6. The court erred in instructing and allowing the jury, after they had found their verdict, and after their said verdict had been opened and published in open court, to again return and find another and different verdict in form and substance.

ROBERT RAE, *Defendant's Attorney.*

And thereupon afterwards to wit, on the twenty-fourth day of January, in the year last aforesaid, said day being still one of the days of the January term of said court, 1863, the following amongst other proceedings were had and entered of record in said court, to wit:

ORANGE FARGO, }
vs. } MOTION FOR NEW TRIAL IN ASSUMPSIT.
JOHN F. STAFFORD. }

And now, at this day, again comes said plaintiff, by H. H. Haaff, his attorney, and the said defendant, by Robert Rae, his attorney, also comes, and this cause coming on now to be heard, upon the motion of said defendant, heretofore submitted herein, on the seventh day of January, A. D. 1863, for a new trial in said cause, and counsel being heard thereon, and the court being fully advised in the premises, it is considered by the court that the motion of said defendant for a new trial be and is hereby overruled, and that a new trial be refused to said defendant in said cause, and thereupon the said defendant moves the court in arrest of judgment on the verdict rendered by the jury herein as aforesaid, and counsel be-

Recall Page 37.

ing heard thereon, and the court being fully advised in the premises, it is considered by the court, that the motion of said defendant in arrest of judgment on said verdict be and is hereby overruled; to which ruling of the court, in overruling his said motion for a new trial, and to the ruling of the court in overruling his said motion in arrest of judgment, the said defendant then and there excepted, and thereupon enters his exceptions.

Wherefore said plaintiff ought now to have judgment entered herein against said defendant for his damages rendered by the jury herein as aforesaid, less the sum of twenty-seven dollars and twenty-eight cents, remitted by him upon the verdict as aforesaid, being the sum of five hundred and seventy-nine dollars and twenty-one cents.

Record Page 38.

Therefore it is considered that said plaintiff do have and recover of and from the said defendant his damages of five hundred and seventy-nine dollars and twenty-one cents, in form aforesaid, by the jury here found and assessed, together with his costs and charges in this behalf expended and have execution therefor.

And thereupon said defendant having entered his exceptions prays an appeal herein to the Supreme Court of the State of Illinois, which is allowed to him upon the conditions that he file his bond in thirty days in the penalty of one thousand dollars, with security to be approved by one of the judges of this court, and that he file his bill of exceptions within the like term of thirty days.

Record Page 39.

And thereupon, to wit, on the seventeenth day of February, A. D. 1863, said defendant filed in the office of the clerk of said Superior Court of Chicago, his bill of exceptions, in the words and figures following, to wit:

Be it remembered that on the sixth day of the month of January, in the year of our Lord one thousand eight hundred and sixty-three, the same being a day of jurisdiction of the said court, and one of the term days of the general term for the month of January, A. D. 1863, in open court, before his honor, Van H. Higgins, and in presence of the officers of the said court, and a jury then and there empaneled, to try the issues in this cause then and there pending, between the said Orange Fargo, the then plaintiff, and the said John F. Stafford, the then defendant, for trial, the said plaintiff, by his counsel, to maintain the issue on his, plaintiff's, part, then and there produced and offered to read in evidence, at said trial, a certain note or instrument of writing, which was and is in words and figures substantially as follows, to wit:

"\$533¹⁵/₁₀₀

Chicago, Sept. 22, 1860.

Due Henrietta A. Lyon or order, five hundred and thirty-three ¹⁵/₁₀₀ dollars, on demand, for value received.

[Signed,]

JOHN F. STAFFORD."

Record Page 40.

On the back of said note or instrument were written the following endorsements, to wit:

[Signed,]

"HENRIETTA A LYON."

[Signed,]

"ADDISON P. LYON."

To the reading and receiving in evidence in said cause, of the said note or instrument, the defendant by his counsel then and there objected, on the ground, 1, for variance of the said note or instrument from the declaration herein; 2, because the note when made, was made and given to the said Henrietta A. Lyon, (the said Henrietta A. Lyon, at the making and delivery of the said note to her was and still is the wife of the said Addison P. Lyon, *femme coverte*,) for the use and benefit of, and in trust for, said Addison P. Lyon, her said husband, and therefore not assignable by the said Henrietta A. Lyon, *femme coverte* and trustee of the said note for the said Addison P. Lyon, her said husband, and not assignable by said Addison P. Lyon, being "*cestui que trust*," the legal title of said note not being vested in him, the said Addison P. Lyon; which objection of defendant's counsel the court then and there overruled, and received the said note in evidence, and permitted the same to be read to the said jury, which was accordingly done. To the decision and overruling by the said court of defendant's said objection, and to the permitting the said note or instrument to be read in evidence in said cause, to said jury, the defendant, by his counsel, then and there duly excepted. Whereupon, plaintiff's counsel read the said instrument of writing to said jury, as aforesaid, and rested the issue on his part.

Record Page 41.

Record Page 42.

Defendant thereupon called *H. H. Haaff*, plaintiff's attorney in said cause, as his witness, and asked him the following question: State on oath to court and jury whether you did not add the name of Addison P. Lyon to the fac-simile of this note, appended to the original declaration in this cause after I had put in my pleas? Witness replied: The papers on file will show for themselves. Whereupon defendant's counsel said to witness: Answer my question, sir. Witness replied: I will not answer it. Whereupon the court required witness to answer the question put; and witness thereupon replied: I have no recollection that I have.

Robert Rae, counsel for defendant, then testified as follows: This is the first declaration filed in this cause, (showing it) to which is attached a fac-simile of this note, (showing the note in question) and I know the name of Addison P. Lyon was not put to the fac-simile of this note attached to this declaration at the time the same was filed. The name of Addison P. Lyon was put to it (the fac-simile) after this suit was commenced, and after plaintiff obtained leave of court to amend this declaration.

Bennett Pieters was thereupon called by defendant, who testified: Was present at a conversation between Addison P. Lyon and John F. Stafford; their interview and conversation was in reference to their entering into business together; Stafford and Lyon were going in the liquor business; Stafford put in all the money, Lyon none. Lyon was insolvent at that time; and in debt so that he could not hold any property in his own name. Lyon became Stafford's partner, but was known publicly as agent for their firm. Lyon was to be known as agent on account of his insolvency, for his own security, and at his own request. Stafford required of Lyon that he should put some collaterals into his, Stafford's, hands to secure him against loss in the said business, as against Addison P. Lyon. Lyon agreed to that and placed some chattels into Stafford's possession, of the value of about five hundred dollars. Lyon desired to have some evidence of the receipt of the collaterals placed in Stafford's possession, and requested Stafford to give his, Stafford's, note to Henrietta A. Lyon, said Lyon's wife, to protect him, said Lyon, against his creditors; as he, Lyon, could not hold any property. The said collaterals, or the proceeds thereof, of which the said note was evidence, were only to be paid to said Henrietta A. Lyon for the use of her said husband, at the dissolution of their partnership, if no losses to that extent had been sustained by said Stafford by reason of said Lyon not making good his share to said Stafford of the general partnership loss. No money passed between said Stafford and Lyon when this note was given; the note has never been presented to Stafford for payment, and no demand has ever been made of said note on said Staf-

Record Page 43.

Record Page 44.

Record Page 45.

ford; Lyon owes Stafford about fourteen hundred dollars, being Lyon's share of the losses in and on said partnership business; Lyon left the concern before suit was brought on said note; on the evening of the day after Lyon left the concern I was present at a conversation between said Stafford and Lyon, Lyon acknowledged a loss in debt to Stafford by reason of losses in said partnership business to the amount of that note; Lyon left June 10, 1861; this conversation was the evening following.

Record Page 46.

Witness was then cross-examined by the plaintiff's counsel and testified: Addison P. Lyon was a member of the firm of Bennett Pieters & Co. Lyon proposed to go into the liquor business. Stafford took securities or collaterals to indemnify himself against loss from Lyon. The note was given afterwards, probably two months after; I never saw this note; Lyon acknowledged the note; there was only one note, and that was made to Henrietta A. Lyon (the wife of said Lyon); Lyon was a member of the firm; I also was a member of the same firm; the firm consisted of John F. Stafford, Addison P. Lyon and myself. I am not interested in the event of this suit; if suit goes against Stafford he was to pay it himself; the arrangement was a private one between Stafford and Lyon; it did not affect me any; I was not to be benefited or prejudiced by it.

Plaintiff's counsel here produced a circular of the firm of Bennett Pieters & Co., in which circular said Lyon was held out to the public as the agent of the firm, and reads it to the jury; a copy of which circular is hereto annexed, marked A.; produces also a copy of the Chicago Tribune, which contains a notice, a copy of which said notice is hereto annexed, marked B.; as also a card, a copy of which card is hereto annexed, marked C.; notice of the dissolution of the relation of agent and principal, and a revocation of authority of the said firm in which Lyon appears as agent of said firm, and reads it to the jury. Witness stated that these cards and circulars were the cards and circulars of the firm.

Witness was then examined by court and testified as follows: Our stock amounted to twenty-five thousand dollars; Lyon was in the company about eleven months; we lost about seventeen hundred dollars during said eleven months.

Witness, then cross-examined by plaintiff's counsel, testified: There was a dissolution of the partnership June 10, 1861.

Record Page 47.

Witness was then again examined by court and testified as follows: Lyon drew out seven hundred dollars in cash more than he was entitled to; Lyon received no salary; our books showed that Lyon was to receive sixty dollars a month salary as agent, which entry was made to protect Lyon against his creditors, and at his own request.

Here defendant closed his case and rested.

Thereupon, in his argument to the jury, plaintiff's counsel asked the

jury to give him a verdict for the amount of said note, with interest thereon at six per cent. from the commencement of said suit.

After arguments of counsels to the jury, the defendant, by his counsel, then and there asked the court to give and have read to said jury the several instructions following, to wit :

1. If the jury believe from the evidence that the note sued on in this case was not indorsed by Addison P. Lyon before the commencement of this suit, though so indorsed afterwards, the verdict must be for defendant.

Record Page H8.

Record Page H9.

The first of which said instructions the court gave and read to the jury, but refused to give and read or have read to the jury the second, third and fourth of the aforesaid instructions. To the opinion and ruling of the court, in not giving and allowing to go to the jury the said second, third and fourth instructions, defendant, by his counsel, then and there duly excepted.

And thereupon, it being now late in the afternoon of said term day, the court, with the consent of counsel on both sides, instructed the jury that they might find their verdict, sign and seal the same, and return it in court the next day then following. Whereupon the said jury retired to deliberate upon their verdict, and did, on the same day, in the evening of said day, find their verdict, did sign and seal the same, and thereupon they the said jury separated.

On the following day, that is to say, on the seventh day of January, A. D. 1863, the said jury being present in open court, the court requested the clerk of said court to open and publish the said verdict by said jury in said cause found.

And thereupon the said clerk opened the said verdict, read and published the same in open court, which was as follows: "We, the jury, find for the plaintiff the amount of the note with interest thereon from the commencement of the suit." Which said verdict was duly signed by said jurors.

And thereupon, after the said verdict had been so opened and published at the order of the said court, in open court, the court upon his own suggestion instructed the said jury further in substance as follows: The jury will find their verdict for the amount of said note in dollars and cents, with interest thereon from its date, and assess his damages at the amount so found due. Defendant, by his counsel, excepted to the said instruction of the said court for the reason that plaintiff's counsel had only asked the jury for interest from the commencement of the suit. The court thereupon withdrew his said instruction.

And thereupon the said jury retired for a second time to find their said verdict, and shortly thereafter returned into court and announced that they had agreed upon their verdict. Whereupon the court ordered the said clerk to receive, open and publish their said verdict, which was done. The verdict then being, We, the jury, find for the plaintiff, and assess his damages at \$606¹/₂%. Plaintiff's attorney thereupon entered a remittitur of \$27¹/₂% damages, being the amount of interest by said jury found from the date of said note to the commencement of said suit.

And this being all the evidence and proceedings in said cause that were offered and transpired at the said trial thereof that were material to the issues of said cause, this defendant prays this honorable court that this bill, with all its exceptions therein noted, may be by said court signed and sealed; which is accordingly done.

VAN H. HIGGINS, [SEAL.]
Judge.

And afterwards, to wit, on the thirteenth day of April, in the year eighteen hundred and sixty-three, the said defendant filed in the office of

Revised Page 50.

Revised Page 51.

Revised Page 52.

the clerk of said Superior Court of Chicago, his certain appeal bond, in the words and figures following, to wit :

Know all men by these Presents, That we, John Stafford and Richard McCleavy, of the City of Chicago, and of the county of Cook and State of Illinois, are held and firmly bound unto Orange Fargo, also of the same county and State, in the penal sum of one thousand dollars, lawful money of the United States, for the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents. Witness our hands and seals, this 25th day of February, A. D. 1863.

The condition of the above obligation is such, that whereas the said Orange Fargo did, on the 7th day of January, A. D. 1863, in the Superior Court of Chicago, in and for the county of Cook and State aforesaid, and of the January term thereof, A. D. 1863, recover a judgment against the above bounden John F. Stafford, for the sum of five hundred seventy-nine $\frac{1}{2}$ dollars, besides costs of suit, from which said judgment of the said Superior Court of Chicago, the said John F. Stafford has prayed for and obtained an appeal to the Supreme Court of said State.

Now therefore, if the said John F. Stafford shall duly prosecute his said appeal with effect, and moreover pay the amount of the judgment, costs, interest and damages rendered and to be rendered against him in case the said judgment shall be affirmed in said Supreme Court, then the above obligations to be void, otherwise to remain in full force and virtue.

JOHN F. STAFFORD. [SEAL.]
RICH'D McCLEAVEY. [SEAL.]

Approved by me, this 13th day of April, A. D. 1863.

VAN H. HIGGINS, *Judge.*

Revised Page 52.53

SUPREME COURT OF ILLINOIS, THIRD GRAND DIVISION.

APRIL TERM, 1864.

JOHN F. STAFFORD,
Plaintiff in Error.
vs.
 ORANGE FARGO,
Defendant in Error.

And now comes the said John F. Stafford, plaintiff in error, and says that in the record and proceedings aforesaid, there is manifest error, and assigns to the court here the following errors therein :

1. The court below erred in admitting the note herein to be received as evidence under the special count.
2. The court below erred in permitting plaintiff's witness, Addison P. Lyon, called by defendant, and rendered competent only for a limited and specific purpose, to wit, to prove the time of endorsement of said note to plaintiff, to be cross-examined by plaintiff generally.
3. The court below erred in excluding defendant's 2nd, 3rd and 4th instructions from being read to the jury.
4. The court below erred in instructing and allowing the jury, after they had found their verdict and separated, and after their said verdict had been opened and published in court, to again retire and find another and different verdict in form and substance.
5. The court below erred in overruling defendant's motion for a new trial.
6. The court below erred in overruling defendant's motion in arrest of judgment.
7. The verdict is contrary to law and evidence.
8. For other material errors in the record of this cause.

ROBERT RAE,
 LEWIS UMLAUF,
Attorneys for Plaintiff in Error.

76

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Record &
Abstract

Jul 22. 1864

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SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1864. }

Orange Fargo,	}
<i>ads.</i>	
John F. Stafford,	
	Defendant in Error.
	Plaintiff in Error.

POINTS FOR DEFENDANT IN ERROR.

I.

THERE was no error in the court admitting the promissory note declared on, in evidence, 1st. Because there was no variance; 2nd. Because the wife cannot, either in law or equity, be trustee of her husband.

II.

There was no error in the court permitting the plaintiff below to cross-examine the witness Lyon. Such cross-examination related to matters pertinent to the issue, and was therefore proper.

1 Phil. Ev., 273 ;
Fulton Bank v. Stafford, 2 Wend. R., 483 ;
Jackson ex. dem. v. Varick, 7 Cow. R., 283 ;
16 Serg. & R., 77 ;
Webster v. Lee, 5 Mass. R., 334.

III.

The evidence, instead of showing a want of consideration of the note sued on, disclosed a valuable consideration for same, to wit., the putting collaterals into the hands of Stafford by Lyon, and Lyon entering into copartnership with Stafford ; and no failure of consideration was shown by the proof.

IV.

The court very properly refused to give the second, third, and fourth instructions asked on behalf of defendant below.

1st. The second instruction, instead of embodying a correct legal proposition, is sheer nonsense. It submits to the jury the consideration of equities between Lyon and his wife, and for them to determine the question of law, as to whether those equities are sufficient to defeat a recovery on this note. It will suffice to say, that it is the province of the jury to determine *facts*—of the court, the law.

2nd. The third instruction is equally incorrect. A promissory note given to a married woman can only be transferred by the endorsement of her husband, and the defendant below had nothing to do with any equities between Lyon and his wife. He was party to a scheme to defraud the creditors of Lyon, by his own showing. But that scheme affords him no shield in court.

3rd. The fourth instruction was properly refused, because it involved an inquiry by the jury into equities arising out of the partnership relations between Lyon, the payee, and the defendant.

Any defence based upon the want or failure of consideration of the note in suit, would be admissible only upon the ground that the plaintiff below was not the *bona fide* holder of the note, and that therefore the note was subject to the same defences to which it would have been if

Lyon had brought the suit. Now, if Lyon had sued on this note instead of Fargo, could the matters supposed in this fourth instruction, have been urged as a defence in a court of law? We say not, because they involved inquiry into the state of accounts between co-partners.

“ A court of equity has exclusive jurisdiction of accounts between partners, and a plea in bar of an action on a promissory note, which sought to open partnership accounts, for the purpose of showing that there was a mistake in the note, and *that its consideration had failed*, was adjudged to be bad on demurrer.”

Rogers v. Rogers, 1 Hall's R., 391.

It is manifest that the jury could not comply with the hypothesis of this instruction, without going into the state of the partnership accounts to determine what loss the defendant had sustained.

W. K. McALLISTER,

H. H. HAAF,

Att'ys for Def't in Error.

⁷⁶
Supreme Court ⁶³

John F. Stafford

v
Orange Sta Frango

defendants Poente

Filed April 23. 1864
J. L. Lawrence

76-63

SUPREME COURT,

APRIL TERM, 1864.

JOHN F. STAFFORD, }
vs. } *Appeal from Cook.*
ORANGE FARGO. }

BRIEF FOR APPELLANT;

BY

ROBERT RAE.

J. S. Thompson, Printer, 86 and 88 Dearborn St., Chicago.

Filed April 22 1864
Sheldon clerk

State of Illinois—Supreme Court,

THIRD GRAND DIVISION.

FARGO, }
vs. } *Error to Cook County.*
STAFFORD, }

ABSTRACT AND POINTS.

PLAINTIFF IN ERROR.

Orange Fargo, in the declaration filed in the suit at bar, asserts his claim against John F. Stafford, for the sum of \$533.18, due upon a promissory note made by said Stafford, and delivered to one Henrietta A. Lyon, "for the use and benefit of her husband, Addison P. Lyon," which said note said Stafford promised to pay to said Henrietta, or her order, upon demand. The note, as declared on, was made to bear date on 22d day of April, A. D. 1860, without interest; its true date, however, was 22d day of ~~April~~ ^{Sept}, A. D. 1860.

On the 31st day of July, 1861, ten months and eleven days after the note was made and delivered in trust as aforesaid, demand for payment is, for the first time, made by the service of the summons in this case upon the defendant.

The order of the pleadings is as follows :

Original declaration filed 26th day of July, 1861.

Pleas to same filed August, 1861.

Amended declaration filed January 23d, 1862.

Pleas refiled February 10th, 1862.

Demurrer to second plea, filed February 10th, 1862.

Demurrer overruled, February 14th, 1862.

Second plea withdrawn, February 14th, 1862.

Replication first and third pleas, March 17, 1862.

The plaintiff, upon filing his original declaration, furnished, annexed to the declaration, a copy of the instrument sued on, which omitted the name of Addison P. Lyon as an indorser. This instrument is dated, both in the original and amended declaration, as being made on the 22d September, 1860, although in the counts it is declared on as being made and bearing date on the 22d day of April, 1860.

The defendant's second plea was filed to reach the defect in the original declaration, *i. e.*, the want of Addison P. Lyon's indorsement upon the notes, &c.

The plaintiff, confessing the defect, amended his declaration.

Through the careless and improper practice of amending the original papers without memorandum being made at the time as to where, how and when the amendment was made, the record does

not distinctly show this amendment, and leaves a very important question to other and imperfect testimony to establish what the record, untampered with, would have indisputably shown.

The record, in this case, might or might not have been thus manipulated *ex industria*, for the purpose of securing a standing in court, when the law and practice required that the proceedings should have begun *de nova*.

The amended declaration and the original are exact counterparts of each other, and no amendments appear to have been made, either in the counts themselves, or in the copy of the instrument sued on.

The second plea, and the reason assigned to the plaintiff's demurrer to this plea, show that the original declaration required this amendment.

The first plea is the general issue, and the third plea pleads want of consideration at the time of giving the note, at the time of the indorsement of the note, and at the time of commencement of the suit, all of which the plaintiff then and there had notice. The replication to the third plea is that the note was not made without consideration, but with consideration; and the second replication pleads that the plaintiff had no notice that said note was given without consideration. There is no traverse that, at the time of the indorsement of the note to him, and at the time of the commencement of the suit, he had notice of such want of consideration. These facts must stand, if material, as admitted by the plaintiff.

Is this allegation material?

The pleadings show that the note was a *demand note without interest*, and it was, as the plaintiff's proof showed, not endorsed

over to plaintiff until about the time of the commencement of the suit; indeed, so near the commencement of the suit that the witnesses *dare* not swear positively whether it was *before* or *after* the commencement of the suit, and the documentary evidence shows very *strongly* that it was *after* the commencement of the suit; but for this purpose we will say it was before the commencement of the suit, and the note was indorsed to the plaintiff ten months after it was given.

I. POINT.—That a note payable on demand, without interest, allowed to run ten months before endorsement, the endorsee takes it subject to the equities existing between the maker and payee.—2 *Metcalf*, 288; 24 *N. Y. Court of Appeals*, 28.

If this point is well taken then the Court erred in refusing to give the 2d, 3d and 4th instructions, as asked by defendant's counsel.—*Hamlin vs. Kingley*, 12 *Ills.*, 342.

At the trial of the cause the plaintiff, to maintain the issue on his part, read the notes dated Sept. 22, 1860 (see Record, p. 12, fol. 40), the defendant, by his counsel, objecting on the ground, 1st, for variance of the said note or instrument from the declaration.

The declaration averred the note was made and *was dated* on the 22d day of April, 1860, and the note produced and proposed to be read in evidence, was dated the 22d day of *September*, 1860.

This objection was overruled by the Court, and the note went to the jury—the defendant excepting.

If offered under the common counts, and the record does not show this was done, then it could only be used as a contract, and the plaintiff was bound to show the consideration necessary to support it. The money counts are choses in action not assignable, and

and it is questionable, under our statutes made in respect to such instruments, whether the assignee of such a note could use it as evidence against the maker that the maker had at any time an account, stated, &c., with the assignee. If he sues it, not as a promissory note but as a mere contract, then *query* whether it would not be subject to all the equities which any other contract is subject, and it is only when he sues on it as a negotiable instrument that he claims the benefit of the exception. Under our practice the rule is first to offer the note under the special counts, and if objected to for variance or other good cause arising on the special counts and objection sustained by the Court, then to offer it under the common counts, when this can properly be done.

This note was offered under the special counts, and objected to be so used under the special counts, which objection was overruled by the Court, and assignment of error made, therefore the note was not given under the common counts but under the special counts.

II. POINT.—That the date of a note under the averment in the declaration is a material allegation, and when the note is of a different date from that declared on in the declaration, the variance is fatal, and the note could not be used in evidence upon the special counts.

The second objection to the admission of the note was, that although it was not necessary to state a trust in the declaration, yet when the trust was so stated the parties would be bound by the law of the trust.

The creation of the trust had ordered that the money mentioned in the note was for the use and benefit of Addison P. Lyon, the *cestui que* trust. The plaintiff of course had notice of all this, for he so alleges in his declaration.

Stafford had a right to make this note so, and the *cestui que* trust could not by any act of his deprive the creator of the trust of the power of compelling the execution of the trust, in accordance with its terms, and the trustee has no right, as a *feme covert*, to assign said note without her husband, and he had no right to assign, because the money was not by act and operation of law to be paid to him, nor was he by virtue of his marital rights the legal holder of it, for that would defeat the trust, therefore the plaintiff, with full knowledge of all these equities, could take nothing by either her or his endorsement.

The defendant's counsel, to maintain the issue on his part, called Addison P. Lyon, for the single purpose of proving the time when said Lyon endorsed said note; the plaintiff insisted upon the right to use said Addison P. Lyon as a witness for all purposes, and as such cross-examined him, although defendant's counsel objected to said proceeding, the Court overruling said objection, and defendant excepting.

III. POINT.—That a party has no right to cross-examine any witness except as to facts and circumstances connected with the matter stated in his direct examination, and that if he wishes to examine him as to other matters, he must do so by making the witness his own, and calling him as such, in the subsequent progress of the cause.

1 *Greenleaf on Evidence*, § 445.

Philadelphia & Trenton R. R. Co. *vs.* Simpson, 14 *Peters' R.*, 448-461.

Floyd *vs.* Bevard, 6 *Watts and Sarg.*, 76.

IV. POINT.—The Court below erred in instructing and allowing the jury, after they had found their verdict *and separated*, and

after said verdict had been opened and published in Court, to again retire and find another and different verdict in form and substance.

The evidence for the defence conclusively shows that Lyon was, at the time of the pretended assignment of the note, indebted to Stafford in the sum of \$1400, and that although the note was given subject to this indebtedness, yet Lyon assigned it to a *nulius persona*, to defraud Stafford.

ROBERT RAE,

LEWIS UMLAUF,

Att'ys for Pl'ff in Error.