

14281

No. \_\_\_\_\_

# Supreme Court of Illinois


Roberts

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vs.

Thompson

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71641  7

STATE OF ILLINOIS

SUPREME COURT.

Third Grand Division.

No. 181.

Roberts

vs  
Thompson

STATE OF ILLINOIS.  
IN THE  
SUPREME COURT

OTTAWA TERM, A. D. 1862.

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PORTEUS. B. ROBERTS, Impleaded with F. T. SHERMAN,

v.

JAMES THOMSON and JOHN ALSTON,

*Appeal from Superior Court of Chicago.*

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BRIEF OF CHARLES C. BONNEY  
FOR APPELLANT.

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CHICAGO, ILL :  
G. B. MAIGNE & CO., BOOK AND JOB PRINTERS.  
1862.

STATE OF ILLINOIS. ss.

{ IN THE SUPREME COURT AT OTTAWA,  
{ OF THE APRIL TERM, A. D 1862.

PORTEUS B. ROBERTS, }

*Inpleaded with*

FRANCIS T. SHERMAN, }

*v.*

JAMES THOMSON,

JOHN ALSTON. }

*Appeal from Superior Court*

*of Chicago.*

BRIEF OF CHARLES C. BONNEY,

FOR APPELLANT.

This was an action of assumpsit, upon a promissory note, brought by the appellees as indorsees against the appellant and his co-defendant as makers. The defendant Sherman was not served—the appellant Roberts, being duly served appeared and expressed his willingness to defend the action. So much of the subsequent proceedings as has been deemed essential to an understanding of the questions raised, is given under the several assignments of error which are set forth below.

ERROR I.

1. The appellees, plaintiffs below, did not file any sufficient copy of the indorsement by which they claimed title to the promissory note sued on, nevertheless the said Superior Court

denied the motion of said defendant to continue said action for want of such copy.

*Points and Authorities.*

1. The statute requires a "copy" and gives an absolute right to a continuance for want of it. The appellees filed only a copy of the note, with the names of the payees written across the back of it "*in blank.*"

Practice Act, Sec. 9.

2. A "copy" is a true transcript of an original writing.

Bon. Law Dic. "Copy."

3. An indorsement or assignment of a negotiable instrument is an order and direction by which the payee, under the authority of the statute, transfers his title to the instrument to some other person, and authorizes the maker to pay the money therein specified to such person.

4. Under our statute of negotiable instruments, the title to such instrument cannot be transferred, except by assignment.

Statute and cases under it.

5. It is self evident that there can be no obligation, without an obligee.

Smith v Bridges, Bre. R, 2.

Mayo v. Chenowith, Bre. R, 155.

6. An indorsement in blank, does not pass the *legal title* to the instrument, but only gives the holder a *power of appointing* the payee — a power which, so to speak, runs with the instrument. The equitable title passes by mere delivery, and the possession of the instrument is a protection against intermediate equities.

1 Salkeld, 130.

1 Campbell, 442.

Camden *et al.* v. McKoy, 3 Scam 437.

Cushman v. Derment, 3 Scam 499.

Carroll v. Weld, 13 Ill. 683.

Hance v. Miller, 21 Ill. 686.

Sappington v. Pulliam, 3 S. 385.

7. An instrument with blanks in it, cannot be a copy of an instrument with the blanks filled up.

8. Indorsements may be general, qualified, restrictive, conditional, or the like. Hence, merely saying that the payee indorsed a note to the plaintiff is no more than saying the defendant made his note to the payee—a statement that the payee indorsed, etc. *in blank*, if in a declaration, would hardly find an apologist.

9. The statute requires a *copy*. It does not say, a substantial statement of the contents of the instrument; and when the language is plain there can be no construction to fritter away the legislative meaning.

#### ERROR II.

The appellant filed a good and sufficient plea of his privilege to be sued in Peoria county, etc., in abatement, in apt time, yet the Court on motion of the plaintiffs, struck said plea from the files.

#### *Points and Authorities.*

1. The Plea in abatement was drawn under the act of 1861, and is as follows; "And the said Porteus B. Roberts, in his own proper person, comes and says that this Court ought not to have or take cognizance of this action, because he says that within the meaning of the statute in such case made and provided, he, the said Porteus B. Roberts, at the time of the commencement of this action, resided and might have been found, and thence hitherto has resided, and could have been found and still does reside and may be found in the county of Peoria, in said State of Illinois, and was found therein and not in said county of Cook, and that the Circuit Court within and for the county of Peoria, may take cognizance of all and singular the causes of action in the plaintiffs' declaration specified; and that said plaintiffs are not residents of said county of Cook, but reside in the county of Peoria aforesaid, and that the contracts upon which this suit is brought were not, neither were any nor was either of them made, nor did the causes of action declared on, nor any or either of them, accrue in said county of Cook, but the same were and each of them was made and did accrue in the county of Peoria in said State, and this the said Porteus B. Roberts is ready to verify. Wherefore he prays judgment that the court aforesaid, cannot nor will take cognizance of this action, etc."

Upon the denial of the motion to continue the cause, the ap-

pellant had leave to plead by a day named within the same term, and filed this plea within the time allowed.

2. The established order of pleading rests on this rule; that a party shall not at one stage of the case, make a defence which is inconsistent with his preceding action therein. Thus a defendant may interpose several dilatory defences, provided only, that he interpose them in the order which the rules of pleading require.

Gould's Pleading. c. 5 Sec. 1. 2.

3. In this State, at least, only a plea "in chief," or "to the merits" waives the right to plead a personal privilege to be sued elsewhere, in abatement.

Cobb v. Ingalls, Bre. R, 180.  
Shepard v Ogden, 2 Scam. 260.  
Walker et al v. Welsh et al, 14. Ill. 277.  
And other cases.

4. A motion for a more specific disclosure of the causes of action, is not inconsistent with a subsequent plea that the defendant ought to be sued elsewhere upon the same causes of action. After an amendment of a declaration, a defendant may even have a continuance on his motion, and *at the next term*, file such plea in abatement.

Sheppard v. Ogden, 2 Scam. 260.

5. A defendant has the same time to plead, after a bill of particulars—or after oyer, as at the return of the summons. He should not plead till after declaration—meaning, of course, a sufficient declaration.

3 Chitty Gen. Pr. 703.  
Kerford v. Edpards, 12 Jur. 440.  
Douglass a. Green, 2 Chitty R, 7.

5. The court proceeded to try the *sufficiency* of the plea on *motion*. The *propriety* of the plea, only, is so triable—whether the plea be sufficient in law, must in the first instance be tried upon demurrer. If this distinction be abolished, demurrers may become obsolete, and plaintiffs shield themselves from the sometimes serious consequences of a judgment on demurrer in favor of a defendant. But it seems hardly supposable that this action of the court below will be seriously defended.

7. But the plea was sufficient. It is drawn in the very

words of the statute, a sufficient way of pleading even in indictments. The objection made is, that the plea does not deny that the action was commenced by attachment. If it was so commenced, the plea was improperly filed and the objection goes, not to the *sufficiency* of the plea, but to its *propriety*, and the remedy is by motion to strike out the plea, without regard to its contents, as if in an action of trover, non assumpsit should be pleaded. The plea might be good, but not receivable in this action. The court must be presumed to know the kind of action before it, whether *ex delicto* or *ex contractu*, *in personam* or *in rem*.

8. But this exception of attachment cases, is in a subsequent section of the statute; and it is not referred to and engrafted on the enacting clause, and perhaps need not be negatived in pleading. If proper matter of plea, it should be replied. It is conceded, however, that the rule requiring a plea to the jurisdiction to be certain to every intent in particular, appears at first blush to apply with force.

Sedgwick, Stat. & Con. Law 62, 223.  
1 Chitty Pl., 223.

### ERROR III.

The appellant, in due time filed in said cause, his plea of the general issue, and put himself upon the country for trial, nevertheless the court, on motion of the appellee struck said plea from the files, and denied said appellant a trial by jury, for no other reason than that said appellant would not file an "affidavit of merits" with said plea.

#### *Points and Authorities :*

Constitution Art. 13, S, 6, 8, 19.  
Sedgwick S. & C. L, 542, 612, and cases.  
1 Bow. Inst. 7, No. 5.  
Ross *v.* Irving, 14 Il. R. 171.  
Act of 1853, Sec. 3, 14.  
Following cases on "affidavit of merits."  
McDonald *v.* Olwell, 17 Ill. 375.  
Castle *et al v.* Judson, *Ibd.* 381.  
McDonnell *v.* Murphy, *et al*, 20 Ill. 346.  
Corbin *v.* Turrill, *et al*, *Ibd.* 516.  
Hurd *et al v.* Burr *et al*, 22 Ill. 29.  
Whitney *et al v.* Fuller, *et al*, *Ibd.* 33.  
Anthony &c. *v.* Ward, *Ibd.* 180.

1. The point now made does *not* appear to have been raised in any previous case.

2. The Constitution declares that the right to trial by jury shall be inviolate in *all* cases. This act attempts to prohibit it in *all* cases *ex contractu*, except upon the condition that an affidavit of defence be filed.

3. The right to trial by jury does not depend on guilt or innocence, defence, or no defence. *The defendant has the right to take the judgment of twelve jurors, instead of one Judge*, upon the EVIDENCE against him, whether he has any defence or not.

4. The object of the constitutional guaranty was not so much to guard against open and bold attempts to take away the trial by jury, as to protect the citizen against just such plausible innovations as this. If such an affidavit may be required, the legislature may go further, require a sworn admission of the amount due, and declare such admission evidence before the court or jury, and thus sweep away a trial by jury in ninety-nine cases in every hundred.

5. This act seeks to compel a defendant under the pains and penalties of perjury, to admit his adversary's right to recover, waive a jury, abandon defence, and submit to the opinion of the judge upon the evidence against him.

6. The "law's delay" is absolutely no reason for looking with any degree of favor upon such an act. The true remedy is, an increase of Judges.

7. It must be a refreshing consolation to the citizens of Chicago, to reflect that the legislature has endeavored to establish a presumption of law, that they owe everybody who may choose to amuse himself or gratify his malice by an action against one of them.

8. As one of the officers of this court I enter my solemn protest against all such legislation, whereby extraordinary privileges are given to, or burdens imposed upon the inhabitants of particular localities in this State. I never have believed, and trust I never shall believe, that such acts deserve the dignity or name of laws, or are within the proper province of the legislature.

#### ERROR IV.

The appellant in due time filed in said cause a notice, in manner and form as required by law, of his claim and demand against the appellee, greatly exceeding the amount claimed in and by said declaration, but the court, without any sufficient cause, on motion of said appellee, struck said notice from the files, and denied the appellant an assessment of the balance which he claimed to be his due, etc.

#### *Points and Authorities.*

Practice Act, Sec. 19.

1. The intention of the statute is to put parties having claims against each other on an equal footing, no matter which commences suit. The object of the law is, to prevent the multiplication of actions, and unnecessary costs.

2. The defendants claim is to be regarded as a counter declaration, which the plaintiff is required to defend; and every intendment and advantage which the plaintiff has as to his demand, ought also to be allowed to the defendant as to his claim.

3. The statute, being remedial—working no injury—and contravening no superior law, ought to be liberally construed. The appellant moved a default and assessment of the balance his due, unless appellee should file an affidavit of merits, etc. not that the appellant “believed in affidavits of merits,” but to show how absurd must be the attempt to apply such an act. The court by this motion were required to extend the rule to the defendant’s claim, and give him the advantages that would follow, or to deny one of the parties to an action, whom the general law endeavored to make equal, a very large privilege vigorously enforced for the other. The court took the latter alternative, and denied the motion.

#### ERROR V.

There was a material variance between the instrument of which a copy was attached to the declaration, and the one given in evidence, nevertheless, the court denied the motion of the appellant to exclude the same, but received the same in evidence and assessed damages thereon, and refused to set aside such assessment.

*Points and Authorities.*

1. This is a renewal of the point that the name of the payee, in blank on the back of the promissory note, was not a "copy" of a special indorsement to the plaintiffs.
2. Such a variance is fatal, and the proper time to make the objection is when the evidence is offered.

Morris v. Badger, 6 Cowen, 449.  
 Gilpen v. Howell, 5 Barr. 41.

ERROR VI.

The said Superior Court erred in overruling the appellants motion in arrest of judgment, etc. as is shown in and by the errors above assigned, and the points made and authorities cited in support thereof.

GENERALLY VII.

Said record and the proceedings, pleadings, evidence and judgment are otherwise manifestly irregular, insufficient, and contrary to law.

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In the Supreme Court

Roberts vs

vs

Thomson et al

Appellants Brief

Filed Apr. 21/62

L. Lorland

Clark

Charles Bonney

STATE OF ILLINOIS, ss.

{ In the Supreme Court at Ottawa,  
Of the April Term, A. D. 1862.

PORTEUS B. ROBERTS,  
Impleaded with  
FRANCIS T. SHERMAN,  
v.  
JAMES THOMSON & JOHN ALSTON. } *Appeal from Superior  
Court of Chicago.*

ABSTRACT OF THE RECORD.

Page of  
Record.

**1.—2.** Summons and service on defendant Roberts only.  
Assumpsit for \$1000. Issued and served December 26th, 1861.

**3.** Declaration filed December 27th, 1861, special count  
and usual common counts—with notice that the only cause  
**6.** of action is a promissory note of which the following is a  
copy, to wit:

\$450.

CHICAGO, Aug. 19th, 1861.

Four months after date we promise to pay to the order  
of Jevne & Almini, Four Hundred and Fifty Dollars, at  
the Sherman House, Chicago, Illinois, value received.

(Signed)

ROBERTS & SHERMAN.

Indorsed, JEVNE & ALMINI.

**7.** Motion, filed January 7th, 1862, to continue for want  
of such copy of indorsement as the law requires.

**8.** January 9th, 1862, said motion overruled, exception by  
defendant, time to plead by Monday then next.

**9.** Pleas of privilege to be sued in Peoria County, filed

**12.** January 11th, 1862, first and second pleas withdrawn,

third set out at large on page 3 of appellant's brief. The plea is by the defendant in person and is signed by counsel.

**11.** Motion January 13th, 1862, to strike plea of privilege &c. from the files.

**12.** Motion heard January 14th, 1862, and sustained against exception of defendant, ordered that defendant plead or demur by to-morrow morning.

**13.** Plea of general issue and notice of set-off and account thereunder for \$2000, filed January 15th, 1862.

**16.** Motion filed same day by defendant for judgment and an assessment of his damages, &c., unless plaintiffs file affidavit of meritorious defence to set-off on or before next regular rule day to plead.

**17.** Plaintiffs motion filed same day to strike defendant's plea and notice from the files.

**19.** January 16th, 1862, defendant's motion for judgment

**20.** nisi affidavit overruled and exception by him—plaintiffs motion to strike plea of general issue and notice of set-off from the files sustained and exception by defendant—rule on defendant to plead or demur forthwith, failure, default, assessment by court of \$451 13 damages, motion in arrest of judgment.

**21.** January 25th, 1862, motion heard reasons assigned, considered insufficient and motion overruled.

**22.** Final judgment for \$451 13, and award of execution, *Scire facias* to other defendant—appeal prayed by defendant Roberts and allowed on bond in \$800, with security to be approved by the court in 20 days, same time given to file bill of exceptions.

Bill of exceptions filed February 7th, 1862, containing:

**23.** A. Copy of note and indorsement in blank as above, with stipulation that same is only cause of action.

**24.** B. Motion to continue and reasons.

C. The only evidence on assessment of damages was the following:

\$450.

CHICAGO, Aug. 19th, 1861.

Four months after date we promise to pay to the order of Jevne & Almini Four Hundred and Fifty Dollars at the Sherman House. Chicago, Illinois, value received.

ROBERTS & SHERMAN.

Indorsed. "Pay to James Thomson and John Alston or order.

JEVNE & ALMINI."

**25.** Motion in arrest of judgment and to set aside assessment of damages &c.

REASONS IN SUPPORT OF SAID MOTION.

1. The plaintiffs did not file any sufficient copy of the contract of indorsement declared on, nevertheless the court denied the defendant's motion to continue this cause for want of such **26.** copy.
2. The defendant filed herein in apt time a good and sufficient plea of his privilege &c. in abatement, yet the court on motion of the plaintiffs struck said plea from the files.
3. The defendant in good time filed a good and sufficient plea in bar, of said action, nevertheless the court on motion of the plaintiffs struck said plea from the files and denied said defendant a trial by jury according to the course of the common law.
4. The defendant in due time filed herein a notice in manner and form, as required by law, of his claim and demand against the plaintiffs, greatly exceeding the amount claimed in and by their said declaration, but the court without any sufficient cause, on motion of said plaintiffs, struck said notice from the files and denied the defendant an assessment of the balance which he claimed to be his due.
5. The defendant filed herein in apt time his motion for judgment by default against said plaintiffs, unless they should

file an affidavit of meritorious defence to his said claim and demand, nevertheless the court denied said motion and held that the plaintiffs could require the defendant to deny their **27.** demand on oath, but could not be required by said defendant to make the like denial of his demand.

6. The court improperly entered a default of the said defendant and thereupon proceeded, without his consent, to assess the plaintiffs alleged damages.

7. The assessment of damages made by the court, is excessive, unjust and oppressive, as manifestly appears from and by an inspection of the same, and the pleadings in this case.

8. The record, pleadings and proceedings in this case are otherwise manifestly irregular, insufficient and contrary to law.

Appeal bond in \$800, surety approved by the court, filed 7th February, 1862.

Errors, to wit:

- 1 Denying appellant's motion for continuance.
2. Striking plea in abatement from files.
3. Denying appellant a trial by jury.
4. Denying judgment on set-off and striking same from files.
5. Denying appellant's motion to exclude evidence on assessment.
6. Overruling motion in arrest of judgment.
7. Other errors.

CHARLES C. BONNEY.

*For appellant.*

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In the Supreme Court

Roberts vs

vs

Thomson et al

Abstract

Filed April 21, 1872

J. L. Linn

Clerk

Charles F. Bonney  
atty for appellant

STATE OF ILLINOIS, ss.

} In the Supreme Court at Ottawa,  
Of the April Term, A. D. 1862.

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Impleaded with  
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REASONS IN SUPPORT OF SAID MOTION.

1. The plaintiffs did not file any sufficient copy of the contract of indorsement declared on, nevertheless the court denied the defendant's motion to continue this cause for want of such **26.** copy.

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3. The defendant in good time filed a good and sufficient plea in bar, of said action, nevertheless the court on motion of the plaintiffs struck said plea from the files and denied said defendant a trial by jury according to the course of the common law.

4. The defendant in due time filed herein a notice in manner and form, as required by law, of his claim and demand against the plaintiffs, greatly exceeding the amount claimed in and by their said declaration, but the court without any sufficient cause, on motion of said plaintiffs, struck said notice from the files and denied the defendant an assessment of the balance which he claimed to be his due.

5. The defendant filed herein in apt time his motion for judgment by default against said plaintiffs, unless they should

file an affidavit of meritorious defence to his said claim and demand, nevertheless the court denied said motion and held that the plaintiffs could require the defendant to deny their **27**. demand on oath, but could not be required by said defendant to make the like denial of his demand.

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7. The assessment of damages made by the court, is excessive, unjust and oppressive, as manifestly appears from and by an inspection of the same, and the pleadings in this case.

8. The record, pleadings and proceedings in this case are otherwise manifestly irregular, insufficient and contrary to law.

Appeal bond in \$800, surety approved by the court, filed 7th February, 1862.

Errors, to wit:

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3. Denying appellant a trial by jury.
4. Denying judgment on set-off and striking same from files.
5. Denying appellant's motion to exclude evidence on assessment.
6. Overruling motion in arrest of judgment.
7. Other errors.

CHARLES C. BONNEY.

*For appellant.*

181

In the Supreme Court

Roberts vs

vs

Thomson et al

Abstract

Filed April 21, 1862

J. Leland

Clerk

Charles Ronney  
atty for appellant.

181

Roberts  
vs  
Thompson

Defts/Plaints

Filed Apr. 24-1861  
L. Leland  
Clerk

SUPREME COURT OF ILLINOIS

II



## III.

The third error assigned by the appellant seems to involve the question whether the right of trial by jury can be regulated by law, and whether the legislature can compel a party to say, in advance, that he has got a defence to an action brought against him, before he can claim his right to a trial by a jury.

In other words, has not the legislature power to say, that a man shall have *something to try* before he tries it.

This Court having repeatedly recognised the validity of the statute referred to, as appears from the appellant's brief, it will be necessary for the appellant to convince the Court, by a course of reasoning, that the law in question is unconstitutional and void. In view of this, we submit this point without argument.

## IV.

The defendant, in the Court below, having refused to comply with the statute, his plea of general issue at set-off were stricken from the files and a default entered against him. He could not, therefore, avail himself of his set-off, if he had one; and unless the Court becomes convinced that the law requiring an affidavit of merits is unconstitutional, there is no error whatever in this case in any way or manner, from its commencement to its conclusion.

HERVEY, ANTHONY & GALT,  
*Attorneys for Appellee.*

United States of America  
State of Illinois Cook County ss

Now before the  
Honorable the Judge of the Superior Court of Chicago  
within and for the County of Cook and State of Illinois  
at a regular Term of said Superior Court of Chicago  
begun and holden at the Court House in the City of  
Chicago in said County and State on the first  
Monday being the Sixth day of January 1862  
year of our Lord Eighteen hundred and sixty two  
and of the Independence of the United States of  
America the Eighty Sixth,

Present the Honorable John W. Wilson Chief  
Justice of the Superior Court of Chicago  
Jas. Higgins and Grant Goodrich Judges  
Charles Hans Prosecuting Attorney  
Attest Anthony C. Kepling Sheriff of Cook County  
Hiram B. Carter  
Clerk,

Be it remembered that heretofore to wit on the  
twenty sixth day of December in the year of our  
Lord One thousand eight hundred and sixty one  
was issued out of the Office of the Clerk of said  
Superior Court of Chicago the Peoples writ of summons  
which said writ with the Sheriff's return thereon  
endorsed is in the words and figures following to wit

State of Illinois  
County of Cook ss

To the Sheriff of said County greeting.  
We Command you that you summon Horatio  
H. Roberts and Francis Sherman if they shall

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 the City of Chicago in said Cook County on the first Monday of January next to answer unto Susan Howard and John Alston in defence of trespass on the case on premises to the damage of said plaintiffs as they say in the sum of One thousand Dollars and have you then and there their writ with an adjournment thereon in what manner you shall have executed the same,

Witness Thomas B. Carter Clerk of said Court and the Seal thereof at the City of Chicago in said County this 26<sup>th</sup> day of December A.D. 1864  
 Thos B Carter Clerk

Which writ was afterwards returned with the following endorsement,

Served by reading this writ to the within named Defendants Porteous B Roberts this 26<sup>th</sup> day of December 1864 the other Defendant not found.

See Anthony C. Stepien Sheriff  
 By John A. Nelson Deputy  
 1 set 50  
 2 miles 10  
 1 set 10 - 70<sup>cts</sup> pd by plaintiff's atty.

And afterwards to wit on the twenty seventh day of December in the year aforesaid was filed in the Office of the Clerk of said Court, the plaintiffs Declaration which is in the words and figures following to wit,

The Superior Court of Chicago  
Of the January Term A.D. 1862

State of Illinois  
County of Cook <sup>25</sup>

James Thomson and John Weston Copartners  
in business under the name style of Thomson &  
Weston Plaintiffs in this suit by Henry B. Anthony  
Esq. their Attorney complain of Herbert B. Roberts  
and Isaac Sherman former Copartners in business  
under the name style of Roberts & Sherman Defendants  
who are summoned & do not plead or answer the case  
as promised, And that whereas the said Defendants  
were Copartners heretofore to wit, On the nineteenth  
day of August in the year of our Lord One thousand  
eight hundred and sixty one at Chicago in the  
County of Cook made their certain promissory  
note in writing bearing date the day and year  
aforesaid, and then and there delivered the same  
to certain persons doing business under the name  
style of Lewis & Almaine and by which said  
note said Defendants were Copartners by the  
name style and description of Roberts & Sherman prom-  
ised to pay to the order of the said Lewis & Almaine  
four months after the date thereof (which term  
had long since elapsed) the sum of Four hundred  
and fifty dollars at the Sherman House Chicago  
Illinois for value received, And the said Lewis  
& Almaine to whom it is to whose order said note was  
payable 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  
of which said endorsement the said Lewis & Almaine

and there ordered and appointed the said sum  
 of money in said note mentioned to be paid to said  
 Plaintiffs as such Copartners and otherwise there  
 delivered said note as endorsed to the said Plaintiffs  
 and such Copartners. By means whereof and by  
 force of the statute in such case made and provided  
 the said Defendants became liable to pay said  
 Plaintiffs as such Copartners 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 Defendants did consideration thereof  
 then and there undertook and promised to pay the  
 same to the said Plaintiffs as such Copartners  
 according to the tenor and effect of the said  
 note and of the indorsement aforesaid to wit at the  
 place aforesaid;

And whereas also the said Defendants as such  
 Copartners afterwards to wit on the twenty fourth  
 day of December in the year of our Lord One thousand  
 eight hundred and sixty one to wit, at said County  
 became and were indebted to the Plaintiffs as such  
 Copartners in a large sum of money to wit, the sum  
 of One thousand Dollars for money before that time  
 lent and advanced to said Defendants as such Copar-  
 tners, by said Plaintiffs as such Copartners at said  
 Defendants request; and also in the like sum for  
 money before that time paid laid out and expended  
 for said Defendants as such Copartners by the said  
 Plaintiffs as such Copartners at the like special  
 request of said Defendants; and in the like sum for  
 money before that time had and received by said  
 Defendants as such Copartners to wit for the sum of

said plaintiffs as such Copartners; and also in the  
like sum for goods wares and Merchandises before that  
time sold and delivered by said plaintiffs as such  
Copartners to said Defendants as such Copartners as  
the like special instance and request; and also in  
the like sum for the labor and hire and wages of the  
said plaintiffs as such Copartners before that time  
done and performed by said plaintiffs as such Copart-  
ners for said Defendants as such Copartners and  
in the like instance and request of said Defendants  
as such Copartners and being so indebted said  
Defendants as such Copartners in consideration  
thereof other and there undertook and promised  
to pay said plaintiffs as such Copartners said  
several sums of money above mentioned when  
thereunto afterwards requested;

And whereas also the said Defendants as such  
Copartners afterwards to wit on the Sunday and year  
last aforesaid at the place aforesaid, accounted to-  
gether with the said plaintiffs as such Copartners and  
concerning divers other sums of money before that time  
done and owing from the said Defendants as such  
Copartners to the said plaintiffs as such Copartners  
and then and there being in arrears and unpaid; and  
upon such accounting the said Defendants as such  
Copartners were found to be in arrears and indebted to  
said plaintiffs as such Copartners in the further sum  
of one thousand Dollars. And being so found  
in arrears and indebted to said plaintiffs as such  
Copartners the said Defendants as such Copartners  
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 plaintiffs as such Copartners

to pay unto the said Plaintiffs at such Copartners  
the said sum of money last above mentioned when  
they the said Defendants at such Copartners should  
be thereunto afterwards requested,  
Yet the said Defendants at such Copartners now  
regarding their said promises and undertakings  
but Contrary & although often requested do  
do have not paid said Plaintiffs either of said  
sums of money above mentioned or any part thereof  
but so do have hitherto wholly neglected and  
refused and still do neglect and refuse to the damage  
of said Plaintiffs at such Copartners of One thousand  
Dollars and therefore they bring this suit etc  
Henry Anthony Galb  
Plaintiffs Attorney

Copy of Instrument sued on

\$450,

Chicago Aug 19th 1861

Four Months after date was promised to pay to the  
order of Lewis & Almini Four hundred & fifty  
Dollars at the Sherman House Chicago Illinois  
Value received

(Signed) Roberts & Sherman

Edmond

Lewis & Almini

Wm Roberts & Sherman  
Depts

Please take notice that the  
Note sued on, of which this above is a copy, is the Plaintiffs  
only cause of action in this suit

Henry Anthony Galb  
att'y for Plaintiffs

Super Roberts & Sherman

To Thompson & Alston 15-

To money lent and advanced	\$1000-
To money paid laid out and expended	\$1000-
To money had and received to and for use of said Plaintiffs	\$1000-
To goods wares and Merchandise sold and delivered	\$1000-
To labor and service	\$1000-
To balance due on account stated.	\$1000-

And afterwards to wit on the seventh day of January in the year of our Lord our thousand eight hundred and sixty two was filed in the Office of the Clerk of said Court the Defendants Motion for Continuance which said Motion is in the words and figures following to wit,

State of Illinois  
County of Cook to

In the Superior Court of Chicago  
Of the January Term 1862

Robert A Roberts  
Impleaded with Francis Sherman  
vs  
James Thomson and John Alston

Answered

Motion to Continue

The Defendant moved this Court to continue this cause to the next term thereof in course for that the plaintiffs have not filed herein any such copy of the Contract of Indorsement declared on as the law requires &c

Charles C. Boussey  
Attorney for Defendants

8  
And afterwards to wit on the ninth day of  
January in the year of our Lord One thousand  
Eight hundred and sixty two said day  
being one of the days of the January Term  
of said Superior Court of Chicago the following  
among other proceedings was had and entered of  
record in said Court, as appears of record to wit

James Thomas and  
John Hester

of Applicant  
Porter B Roberts and  
Francis Sherman

This day comes said Plaintiffs by Henry Mattingly  
Esq their Attorney and the said defendant Porter  
B Roberts defended by Charles C Rosney Esq Attorney  
also comes and submits his motion for Continuance  
herein for want of a copy of instrument sued upon  
which motion of said defendant is hereby overruled  
Plaintiffs having stipulated to give nothing in  
evidence on the trial of said cause but the  
instrument declared on a copy of which was filed  
with declaration, to which ruling of the Court  
said defendant excepts and enters his  
exceptions herein to ruling of the Court  
in overruling his said motion for Continuance  
and it is ordered that said defendant have  
time to plead to Plaintiffs declaration as  
aforesaid, which is extended hereby becoming  
in of the Court on Monday next the  
thirteenth day of January Instant,

And afterwards to wit on the eleventh day of

January in the year last aforesaid the said  
Defendant Porteus B Roberts do hereby filed in the  
Office of the Clerk of said Court, his certain several  
pleas which said several pleas numbered 1275  
are in the words and figures following to wit,

State of Illinois }  
County of Cook } &

In the Superior Court of  
Chicago After January 15 1852

Porteus B Roberts  
Impleaded with Plaintiff Sherman  
vs  
James Thomson and John Nelson  
Plaintiff

1<sup>st</sup> Plea

And the said Porteus B Roberts in his own proper  
person comes and says that this Court ought not  
to hear or take cognizance of this action because  
he says that for all the purposes of this action  
within the meaning of the Statute in such case  
made and provided, he the said Porteus B Roberts  
resides and may be found in the County of Peoria  
in said State of Illinois, and not in said County of  
Cook, and that he the said Porteus B Roberts is  
ready to verify wherefore he prays judgment of  
Charles Bonney  
of Counsel vs  
P B Roberts

2<sup>nd</sup> Plea

And for a further plea in the same behalf  
the said Porteus B Roberts in his own proper person  
comes and says that this Court ought not to hear  
or take cognizance of this action because he says that  
for all the purposes of this action, within the



take Cognizance of all and singular the Causes of Action  
in the Plaintiffs Declaration specified; and that said  
Plaintiffs are not residents of the said County of Cook  
but reside in the County of Merion aforesaid; and that  
the Contracts upon which this suit is brought were not  
neither were any part was either of them actually made  
nor did the Causes of Action declared in nor any or  
either of them accrue in said County of Cook but the  
same were and each of them was made, and did  
accrue in the County of Merion in said State of Illinois  
and that the said Portent B Roberts is ready to verify  
Wherefore he prays judgement that the Court  
aforesaid cannot nor will take Cognizance of this  
Action &c

Charles C. Bonney  
of Counsel &c

P B Roberts

And afterwards to wit on the thirteenth day  
of January in the year aforesaid, said day being  
Ours of the days of the January Term of said Court  
the following among other proceedings were had and  
entered of record in said Court as follows to wit

Samuel Thomson and  
John Altton

vs  
Assumpsit

Portent B Roberts and  
Francis S Sherman

This day again comes the parties to this Cause by  
their respective Attorneys as aforesaid, and Defendant  
Portent B Roberts having filed his plea in abatement  
Plaintiffs by their Attorney submit their motion  
to strike said plea of said Defendant from the files of this Cause

And afterwards to wit on the fourteenth day of January in the year aforesaid said day being one of the days of the January Term of said Court the following among other proceedings were had and entered of record in said Court, which proceedings are in the words and figures following to wit

James Thomson <sup>and</sup>  
John Astor

of <sup>the</sup> Plaintiff  
Porter B Roberts <sup>and</sup>  
Francis Sherman

This day again comes said plaintiffs by Henry Anthony & all their attorneys and others and Porter B Roberts and of said defendants in above entitled cause by Charles C. Boney their attorney also comes and withdraws his first and second pleas herein pleaded, supplemented, with said defendant Francis Sherman whereupon plaintiffs moved to strike plea to jurisdiction of said defendant from the files, which is sustained, and it is ordered that plea to jurisdiction <sup>be</sup> hereby struck from the files and it is further ordered that said defendant plead or demur to plaintiffs declaration by coming in of the Court tomorrow morning and that said defendant there and there accepted,

And afterwards to wit on the seventh day of January in the year aforesaid was filed in the Office of the Clerk of said Court the certain plea of general issue and notice of set off of the said defendant Porter B Roberts, Supplement to which said plea and notice are in the

Under and figures following to wit,

State of Illinois  
County of Cook

In the Superior Court of Chicago  
October Term AD 1862

Arthur B Roberts  
Respondent with  
Francis Sherman

vs In Assumpsit  
James Thomson and  
John Alston Plea General issue

And the said defendant  
by Charles Bouney his attorney comes  
and defends the wrong and injury then  
or hereinafter that he did not undertake  
or promise in manner and form as the  
said plaintiffs have above therein com-  
plained against him and of this he puts  
himself upon the country &c

Charles Bouney  
Attorney for defendant

### Notice of set off

To Messrs. Perry, Anthony & Galt  
Attorneys for the above named  
Plaintiffs

Take notice that the above named  
defendant out of trial of this cause will give  
in evidence and insist that the above named  
plaintiffs before and at the time of the  
commencement of this suit were and still

and indebted to the said defendant and  
 said Francis Sherman, in the sum of Two  
 Thousand Dollars for the board lodging and  
 maintenance of divers persons by the said  
 Robert B Roberts and the said Francis  
 Sherman at the special instance and request  
 of the said plaintiffs, and for the work and  
 labor done and diligence and attendance of the  
 said defendant and said Sherman by the said  
 defendant and said Sherman and their servants  
 before that time done performed and bestowed  
 in and about the business of the said plaintiffs  
 and at their request; and for divers materials  
 and other necessary things by the said defendant  
 and said Sherman before that time found and  
 provided and used and applied in and about  
 the said work and labor for the said plaintiffs  
 at their like request; and for divers goods  
 wares and merchandises sold and delivered by  
 the said defendant and said Francis Sherman  
 to the said plaintiffs and at their like request  
 for money by the said defendant and said Sherman  
 before that time lent and advanced to and  
 paid laid out and expended for the said  
 plaintiffs and at their like request; and for  
 money by the said plaintiffs before that time  
 had and received to and for the use of the said  
 defendant and said Sherman, and for money  
 due and owing from the said plaintiffs to the  
 said defendant and said Sherman for interest  
 upon; and for the forbearance of divers large  
 sums of money due and owing from the said  
 plaintiffs to the said defendant and said  
 Sherman, and by the said defendant and said

Sherman foreborne to the said plaintiffs for divers long spaces of time before they claimed and for money due and owing from the said plaintiffs to the said defendant and said Sherman upon an account stated between them;

And that the said defendant will set off and allow to the plaintiffs on the said trial as much of the said sum of \$2000<sup>00</sup> as due and owing from the said plaintiffs to the said defendant against any demand of the said plaintiffs to be proved on the said trial as will be sufficient to satisfy and discharge such demand and will demand judgement for the balance which shall be found his due pursuant to the statute &c

Charles C. Boney  
Attorney for Defendant

Defendants Account under  
Notice of Set off  
James Thomson and John Martin

To Porten B Roberts and  
James Sherman vs

Amount of Board Lodging &c	\$2000-00
" Goods sold and Merchandise	2000-00
" Work Labor & Materials	2000-00
" Money lent &c	2000-00
" " paid &c	2000-00
" " Received &c	2000-00
" " due on account stated	2000-00

And afterwards to wit on the said day and year last aforesaid, the said defendant Porten B Roberts, Deponent &c filed with the office of the Clerk

of said Court, her certain motion for judgment  
on her said plea nisi affiant, where said  
motion is in the words and figures following to wit,

State of Illinois  
County of Cook

In the Superior Court of Chicago  
After January Term A.D. 1862

Mortimer Roberts  
Impleaded with  
Gavin Sherman

vs  
James Thomson and  
John Martin Assumpsit

Motion for judgment for defendant  
by default unless plaintiffs file affidavit  
of defence to set off or

before filing her motion  
claim and demand of set off against the cause  
of action declared on in this case the said  
defendant moved the Court to give judgment  
herein for her and against said plaintiffs  
upon the set off aforesaid, and thereupon for  
an adjustment of the balance due to said defendant  
and for final judgment thereon unless the said  
plaintiffs shall on or before the next regular  
rule day for pleading file herein their affidavit  
that they believe they have a good defence in this  
matter to the said set off or

Charles C. Bourne  
Attorney for Defendant  
Roberts,

And thereupon to wit on this day and year  
last aforesaid the said plaintiffs file their  
Certain Motion to strike said defendants plea and  
Notice from files supported by affidavit which said  
Motion and Affidavit are in the words and  
figures following to wit,

The Superior Court of Chicago  
Of the January Term 1862

James Thurman and  
John Alston

of

Robert W Roberts  
Impleaded with  
Francis Sherman Deft

And now come the said plaintiffs by  
Henry Anthony & Co their attorney and move  
the Court to strike the plea of Geo issue and  
Notice of the said defendants from the files  
for want of an affidavit of merits

Henry Anthony & Co  
Attys for Plaintiffs

~~And the affidavits~~

To the Superior Court of Chicago

James Thurman and  
John Alston Plaintiffs

of

Robert W Roberts  
Impleaded with Francis Sherman Defendants

State of Illinois  
Cook County ss

Robert Hervey of the City of Chicago within said County being first duly sworn maketh oath and saith that he is one of the Attorneys for the above named plaintiffs within and

That he verily believes that Porteus & Roberts the above named Defendant resides in Cook County and did so reside at the time of the Commencement of this suit, and that he has resided since that time up to the day of the making of this affidavit. That the said Porteus & Roberts is the landlord of the Sherman House a Hotel carried on in Chicago and conducts the same as the landlord and that he conducted the said Hotel since the time of the Commencement of this suit and does now conduct and carry out the same.

And this deponent further saith that this actor brought out a promissory note made by the said Defendant and Porteus & Roberts and the said Francis Sherman, who were then Copartners under the firm of Roberts & Sherman payable to certain persons using the style and firm of Lewis & Alkins and endorsed by said Lewis and Alkins to the said plaintiffs.

That said note was made at Chicago and was made payable at the said Sherman House in Chicago, and was signed by said Porteus & Roberts & Sherman at Chicago and was given to the said Lewis and Alkins for certain work done by them and materials for same provided in the painting of certain parts of the said Sherman House for the

The affidavit of Robert Hervey  
inserted in this document by mistake  
The Court Clerk

~~said Roberts & Sherman who were then the  
landlords of the said Sherman House  
subscribed and sworn to Robt Hervey  
before me at Chicago  
affirmed this 15<sup>th</sup> day  
of January A.D. 1862  
L Broadfoot Jr  
Notary Public~~

And afterwards to wit on the Sixteenth  
day of January in the year aforesaid said day  
being one of the days of the January Term  
of said Court, the following among other proceed-  
ings were had and entered of record in said Court  
which proceedings of record are in the words and  
figures following to wit,

James Thomson and  
John Nelson

of Appellant  
vs  
Robert B Roberts and  
Francis Sherman

This day again comes the said plaintiffs by Hervey  
Attorney & Galt their attorney and the said Robert B  
Roberts, One of said defendants in above captioned cause  
impleaded by Charles C Bounney his attorney also  
comes and submits her motion for judgement for them  
and against said plaintiffs upon his plea of set off  
by default unless plaintiffs shall file herein their  
affidavit of defence on the merits of the said set off;  
And thereupon plaintiffs move the Court to strike plea  
and notice of set off of the said defendant from the files  
of this cause and the Court being fully advised in the

Motions are fully set forth in the bill of exceptions  
in this case,

And afterwards took on the twenty fifth  
day of January in the year aforesaid said day  
being one of the days of the Januarys term of said  
Court, the following among other proceedings were had  
and entered of record in said Court, which proceedings  
in this cause are in the words and figures following  
to wit:

James Thomson and  
John Weston

vs  
Applicant  
Norton B Roberts and  
Francis Sherman

This day again comes said  
plaintiffs by Henry Anthony Dealt their attorney  
and the said Norton B Roberts one of said  
defendants pleaded with Francis Sherman  
by Charles C Roney his attorney also comes and  
the cause coming on now to be heard before the  
full Court, upon the motion of said defendant  
Norton B Roberts pleaded as aforesaid heretofore  
submitted herein at the present term of this Court  
in arrest of judgment, and Counsel, being heard  
and the Court being fully advised in the premises  
are of the opinion that the reasons filed by said  
defendant in support of his said motion are not  
sufficient to maintain the same, the motion of  
said defendant in arrest of judgment is therefore  
hereby overruled.

Therefore it is concluded that said plaintiffs  
do have and receive of and from said

22  
451-13

Defendant Norton & Roberts Impleaded with Francis  
T Sherman their damages of Four hundred and fifty  
and no dollars and, the shew costs, in form affirmed  
by the Court here offered an. Value their costs  
and charges in the behalf of Defendant and have  
execution therefor.

And it is further ordered that this cause be continued  
with Scritfacias against said Francis T Sherman  
returnable to the next term of this Court requiring  
him to appear thereat, and shew cause if any he  
have why he should not be made a party defendant  
to the judgement entered herein as affirmed

And thereupon said defendant Norton &  
Roberts may appeal herein to the Supreme  
Court of this state, from the judgement of this  
Court which is allowed to him upon filing his  
bond with the penalty of Eight hundred dollars  
with security to be approved by 5 Judges of this  
Court, and to be filed with his bill of exceptions  
within twenty days from this day,

And afterwards being on the seventh day of  
February in the year aforesaid was filed in the  
Office of the Clerk of said Court the said Defendants  
Bill of exceptions and appeal Bond, which  
Bill of exceptions and appeal Bond are such in  
dollars and figures following to wit,

State of Illinois County of Cook do

In the Superior Court of Chicago  
Of the January Term A D 1862

Porteus B Roberts  
Impleaded with Grant & Sherman  
vs  
James Thompson & John Martin Assumpsit

Defendants Bill of Exceptions

Be it remembered that the plaintiffs filed with their declaration as a copy of the cause of action to be proved by them under their declaration the following bill:

Copy of Instrument sent on

\$400.

Chicago Aug 19<sup>th</sup> 1861

Four months after date I do promise to pay to the order of Lewis & Almini Four hundred & Fifty dollars at the Sherman House Chicago Illinois value received.

(Signed) Roberts & Sherman

Endorsed

Lewis & Almini

Supers Roberts & Sherman Defts.

Please take notice that the note sent on of which the above is a copy is the plaintiffs only cause of action within suit

Henry Anthony & Galt

Atty. for Plaintiff

The defendant Porteus B Roberts filed and entered his motion to continue this cause for want of sufficient copy & in the words and

Figures following to wit,

State of Illinois County of Cook ss

In the Superior Court of Chicago  
Of the January Term AD 1862

Robert B Roberts

Impleaded with

Francis Sherman

vs

Applicant

Samuel Thomson and

John Alston

Motion to Continue

The defendant moves the Court to  
Continue this case to the next term thereof in  
Court for that the plaintiffs have not filed  
hereto any such copy of the Contract of  
Indorsement declared on as the law requires &c

Charles C. Conway

Attorney for Defendant

The Court overruled said motion where to the  
said Defendant there and there excepted.

The only evidence offered upon the judgment  
of the plaintiffs alleged damages was the  
following to wit

\$450

Chicago Aug 19<sup>th</sup> 1861

Four months after date we promise to pay  
to the order of Lewis & Almon Four Hundred &  
Fifty Dollars at the Sherman House Chicago  
Illinois value received.

Roberts & Thomson

Endorsed  
by Jts James Thomson and John Alston  
in order

Leone & Almini

The Court received said note and indorsement  
in evidence on behalf of the plaintiffs and  
assessed their damages at the sum of Four  
Hundred and fifty one dollars and thirteen cents

And thereupon the said defendant entered  
her motion to arrest judgment set aside  
said assessment & an D filed in support thereof  
the following reasons to wit,

State of Illinois, County of Cook ss

In the Superior Court of Chicago

Of the January Term A D 1862

Porteus B Roberts

Impleaded with Francis Sherman

vs

Assumpsit

James Thomson and John Alston

Motion to arrest of judgment

The said defendant in support of her motion in  
arrest of judgment & heretofore entered herein  
assigns the following among other reasons  
to wit,

1 The plaintiffs did not file any sufficient  
copy of the Contract or Contracts of indorsement  
reclaimed. Nevertheless the Court denied the  
defendants motion to continue the cause for

part of an old copy

2. The defendant filed herein in apt time a good and sufficient plea of his privilege & in abatement, yet the Court on motion of the plaintiffs struck said plea from the files,
3. The defendant in due time filed a good and sufficient plea in bar of said action nevertheless the Court on motion of the plaintiffs struck said plea from the files, and denied the said defendant a trial by jury according to the Course of the Common Law,
4. The defendant in due time filed herein a notice in manner and form as required by law, of his claim and demand against the plaintiffs, greatly exceeding the amount claimed in and by their said declaration, but the Court without any sufficient cause, on motion of the plaintiffs struck said notice from the files and denied the defendant an adjournment of the balance which he claimed to be his due,
5. The defendant filed herein in apt time his motion for judgment by default against said plaintiffs unless they should file an affidavit of meritorious defence to his said claim and demand; nevertheless the Court denied said motion and held that the plaintiffs could require the defendant to

deny their demand on oath; but could not  
be required by said defendant to make the  
like denial of his demand;

6. The Court improperly entered a default  
of the said defendant, and thereupon proceeded  
without his consent to assess the plaintiffs  
alleged damages;

7. The assessment of damages made  
by the Court, is excessive, unjust and  
oppressive as manifestly appears from and  
by an inspection of the same, and other pleadings  
in this case;

8. The record, pleadings and proceedings  
in this case are otherwise manifestly  
irregular, insufficient and contrary to law &c

Charles C. Rooney

Attorney for Defendant Roberts

but the Court overruled said motion and gave  
judgment on said assessment in favor of the  
said plaintiffs, whereunto the said defendant  
then and there objected, and prayed the  
Court to sign and seal this bill of exceptions  
which is accordingly done &c

Grant Goodrich (Seal)

Know all men by these presents, that we  
Porter & Roberts as principal and William  
J. Hughes as surety are held and firmly  
bound unto James Thomson and John Weston

in the penal sum of Eight Thousand Dollars  
for the payment whereof well and truly to be  
made, we bind ourselves our heirs, executors  
and administrators, jointly and severally, firmly  
by these presents, Witness Our hands and seals  
at Chicago this 6<sup>th</sup> day of February AD 1862,

The Condition of the foregoing obligation is  
such that whereas the above named James Thomas  
and John Alston did at the January Term AD 1862  
of the Superior Court of Chicago within and for the  
County of Cook in the State of Illinois, recover by  
the Consideration of said Court, or judgement against  
the above bounden Porteus B Roberts impleaded with  
Our Francis Sherman for the sum of Four Thousand  
and Fifty One & 1/4<sup>00</sup> Dollars besides Costs of suit  
from which said judgement the said Porteus B  
Roberts has taken an appeal to the Supreme  
Court of said State of Illinois, now if the  
said Porteus B Roberts shall duly prosecute  
his said appeal, and shall well and truly pay  
the judgement affirmed and all Costs, interests  
and Damages in Law the said judgement shall be  
affirmed by the said Supreme Court, then this  
obligation shall be void, otherwise to remain in full  
force and effect.

Porteus B Roberts      Seal  
William S Hughes      Seal

And on the Sunday to wit on the seventh day  
of February 18 Eighteen hundred & sixty three  
the following order of approval & Confirmation  
of the foregoing appeal bond, was made and  
entered of record in said Court, to wit,

James Thomson and  
John Alston

or Appellant  
Porteus B Roberts and  
Jesse W Sherman

Monday Comes said Porteus B  
Roberts One of the Defendants in above entitled  
Cause by Charles Brown his Attorney and Files  
herein his certain appeal bond, on appeal  
to the Supreme Court with William F. Hughes as  
surety, and on reading and filing of the same  
it is ordered that this Appeal Bond as aforesaid  
be and is hereby approved and Confirmed,

State of Illinois  
Cook County of

I Tho B Custer Clerk  
of the Superior Court of Chicago, <sup>in and out of the</sup> <sup>and</sup> <sup>thereby</sup>  
Certify that the within and foregoing <sup>are</sup>  
<sup>of fact and complete</sup> transcripts of all the pleadings on file in said  
Cause together with a copy of the order of  
judgment and proceedings <sup>of record with the</sup> bill of exceptions  
and appeal bond on file in my Office

In testimony whereof I have  
herein set my hand and affixed  
the seal of said Court, at Chicago  
this Eighth day of March  
A D 1862

Thomas B Custer  
Clerk

State of Illinois  $\$ 55$

in the Supreme Court at Ottawa

Of the April Term A D 1862

Porteus B. Roberts  
<sup>in pleadings with</sup>  
Francis T. Sherman

vs  
James Thomson <sup>and</sup>  
John Alston

Appeal from  
Superior Court of Chicago

## Assignment of errors -

1. The appellees, plaintiffs below did not file any sufficient copy of the indorsement by which they claimed title to the promissory note sued on, nevertheless the said Superior Court denied the motion of said defendant to continue said action for want of such copy.
2. The appellant filed a good and sufficient plea of his privilege to be sued in Peoria County etc, in abatement, in apt time, yet the Court on motion of the plaintiffs struck said plea from the files.
3. The appellant, in due time filed in said cause, his plea of the general issue, and put himself upon the <sup>Country</sup> for trial, nevertheless the Court on motion of the appellee struck said plea from the files, and denied said appellant a trial by jury, for no other reason than that said appellant would not file an affidavit of merits with said plea.
4. The appellant in due time filed in said cause, a notice, in manner and form as required by law of his claim and demand against the appellee greatly exceeding the amount claimed in and by said declaration, but the Court without any sufficient cause, on motion of said appellee struck said notice from the files, and denied the appellant an assessment of the balance which he claimed to be his due &c,

5. There was a material variance between the instrument of which a copy was attached to the declaration; and the one given in evidence, nevertheless the court denied the motion of the appellants to exclude the same, but received same in evidence and assessed damages thereon, and refused to set aside such assessment.
6. Said Superior Court erred in overruling the appellants motion in arrest of judgment etc, as is shown in and by the errors above assigned, and the points made and authorities cited in support thereof.
7. Said record and the proceedings, pleadings, evidence and judgment are otherwise manifestly irregular, insufficient and contrary to law.

Charles L. Bowney  
attorney for  
appellant.

And the said appellee says  
that in the records & proceedings  
heretofore there is no  
error.

Henry Anthony & Galt  
Atty for appellee

87 1861

In the Supreme Court

Roberts vs

vs

Thomson et al

Transcript and assignment  
of errors

Filed April 21, 1862 -

L. Leland  
Clerk

\$9.00

Charles Bonney  
atty for appellants