

No. 13107

Supreme Court of Illinois

Ray

vs.

Bell

71641  7

1703
STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

No. 98.

Richard
Ray
vs
Beel

Jesse Ray
 vs
 Eddie S. Bell

The Term of the Court at which this
 Cause was tried closed
 Feb 9th see stipulation

The plaintiff in error had six days
 to prepare & tender a bill of exceptions
 Record page 18

The bill of exceptions was not signed
 & filed until March 24th Record page
 18.

The argument or admission
 which is found on the bill of excep-
 tions proves nothing. The risk of the
 Judge not being at home when
 the 6 days expiration was upon
 the plaintiff, the did not place himself
 in position to compel the Judge to sign
 or the clerk to file his bill of exceptions
 at all

B. C. Cook

Supreme Court - Apr 2. 1860

Lessee. Remy

vs

Edie Bell

} Error to LaSalle

Mo to shuttle bill of excep
tions out of the record —

For the purposes of this motion
it is admitted & agreed upon
1st That the motion for new trial
in the Court below was overruled
on Monday the 5th of March 1860
and that it was on that day that
the Circuit Court of LaSalle allowed
six days for the preparation &
tendering of the bill of Exceptions -
& that the statement in the record
that said proceedings were had
on the 3^d of March is erroneous
as regards the time when they were
had -

2nd That the term at which the
judgment in this cause ^{was rendered} ended
by the adjournment of said court
on Friday — the ninth day
of March A.D. 1860

3^d - That the bill of exceptions in the case was ~~pre~~ the 10th of March 1860 (Saturday) ready in Ottawa to be tendered to Judge Madison E. Hollister & that Judge Hollister was ~~at that time~~ absent from the County of LaSalle on that day & that on that day at about five o'clock in the afternoon - the said bill of Exceptions was ^{left at the office} ~~delivered~~ of Glover, Cook & Campbell (the attys for said Bell) at ~~their office~~ in Ottawa to be by them handed to the Judge as soon as he should return to Ottawa -

4th - That Ottawa is the place of residence of Judge Hollister & of the attorneys of defendant -

5th - That on Monday Morning the 12th of March 1860 - the said bill of exceptions was tendered to Judge Hollister to be by him signed & that he (at the request of Mr Campbell one of defendant's attorneys) before signing - the same left the same with Mr Campbell for examination - & that Mr Campbell kept the same until about the 17th day of March 1860 - & then handed the same

to J. Lyle Dickey the attorney of plaintiff
with written suggestions in behalf of
defendant Bell as to the modification
thereof in several particulars - &
that same were early in the next week
sent to Judge Hollister at Princeton
& there delivered to him on the 21st
day of March 1860 -

6th - That from the 12th to the 21st of March
1860 - Judge Hollister was holding
Court at Princeton forty miles from
Ottawa

7th - That the Judges Minutes of the
proceedings in this case show
that it was on the 5th of March
sent on the 3rd - That the order was
made allowing 6 days to tender
bill of exceptions -

Glover Cook &
Campbell
Atty for Daniel
Bell -

J. Lyle Dickey atty for
Ray

Supreme Court
Ray vs Bell

Admission of
certain facts

Supreme Court - Ray vs Bell
Error to Tusculum

J. Lyle Dickey being duly sworn says
that on sunday the 5th of March 1860 -
in open court. he as the attorney of Ray
asked the court to make an order allow-
ing ten days to prepare & tender a bill
of exceptions ^{in this case} - ~~to which~~ ^{where} Judge Hollister
^{suggested} ~~replied~~ from the bench, "that ~~on the 12th~~
~~after Monday~~ "next week" he would
not be at home but would
be holding Court at Princeton - ~~suggested~~
~~that it would be better~~ and ~~upon~~ that
suggestion the order was made for
six days instead of ten days -
~~Affiant further states that he had~~
~~no knowledge or idea that Judge~~
~~Hollister intended to go away from~~
~~home until he would start to the~~
~~Bureau Court (on Monday the 12th of~~
~~March - 1860) until after he had gone~~
~~that the bill of exceptions in this~~
~~Case was finished & made ready to be~~
~~tendered to the Judge in the forenoon~~
~~of Friday the 9th of March 1860 - and that~~
~~immediately after noon affiant took~~
~~said bill of exceptions & started in~~

search of Judge Hollister (for the purpose of tendering the same for his signature) - & Called at the office of Glover Cook & Campbell - & there learned from E. Hollister - (a young man, a son of Judge Hollister & a clerk and student in the office of Glover Cook & Campbell) that the Judge had left town on the noon train of that day - going west. & had gone to Geneseo - (about seventy miles) and was expected ^{on that Friday night} to return on the noon train going East on the next day (which would be Saturday)

Affiant further states he had no information or intimation that the Judge expected to leave Ottawa as above stated until after he was gone - but confidently supposed that he would remain at Ottawa until Monday the 12th - when he would leave for Princeton Court.

Affiant waited the return of Judge Hollister until after the arrival of the noon train from the west on Saturday the 10th - that by the then rail road regulations - the then next passenger train would not arrive at Ottawa until about midnight Saturday night - & after the arrival of the noon train going East on Saturday there was no train going west - until the Sunday night following so

that it was impossible to go that day
in search of Judge Hollister at Genesee
or at any point west on the railroad
~~Saturday night~~ - & that under those
circumstances affiant sent the bill of
Exceptions to the office of Glover & Cook
& Campbell - & caused the same to
be left there with ~~the~~ clerk in their
office for them -

Affiant further states that he waited
in person at the depot in Ottawa on
the night of Saturday the 10th March
last - until the arrival of the passenger
train that night from the west &
that the train did not come till after
midnight & Judge Hollister did not
come on it - Affiant has been
informed ^{& believes} that Judge Hollister did
arrive at Ottawa on his return
from Genesee late Saturday night
on a freight train - but affiant
had no knowledge of his return until
the morning of the 12th of March
1860 - & on that morning affiant
caused the bill of exceptions to
be tendered to him for his signa-
ture -

J. Lyle Dickey

Supreme Court
Ray vs Bell

Appellant of
L. Doyle D. Ray

Ray vs Bell

The plaintiff in error assigns the following reasons why his bill of exceptions should not be stricken from the record

1st - The Circuit ^{Court} has exclusive original jurisdiction over its own record & this bill of exceptions is now by order of that Court a part of the record - ~~and~~ and the Defendant in error cannot allege error unless he brings error - The true practice on this subject is & should be - for the party (who complains that a bill is improperly in the record) to apply to the Circuit Court to amend the record by striking out the bill - & have that question determined by that Court - & then if that Court decides erroneously that decision could be reviewed in this Court - under its appellate Jurisdiction - This Court has no original jurisdiction on this subject - & the practice which has grown up is wrong and unconstitutional

2nd - The bill of exceptions purports to have been ~~signed~~ ~~renew~~ tendered at the trial & then & then sealed and made part of the record & so the record states See page 57. The last clause of the bill of Exceptions signed by the Judge - & this statement in the record ~~is~~ imports verity & can not be contradicted outside the record - The statute does not require a bill of exceptions to be filed at all - (See R. S. 1845 page 416 - Sec 21) - & therefore the statement of the record on page 18 - That the Judge placed upon the files this bill of exceptions after term cuts no figure in the case - for the record shows (see last clause of the bill of exceptions) that the bill was tendered immediately after the overruling of the motion for a new trial - & it was no fault of the plaintiff that it was not then filed. Nor was it material - it was as much the record in the hands of the Judge as in the hands of the Clerk.

3⁰ But if we are allowed to look beyond the record & by affidavits & admissions in pais to enquire into the actual facts - then by the admissions ~~that~~ the order of court made on Monday the 5th of March is in these words - viz
"that plaintiffs have six days to prepare and tender to the court a bill of exceptions" See page, 18 of record & the admissions filed

This means six working days & does not embrace Sunday -

The six days were given expressly for plaintiff to work in - & therefore it means six working days -

The date of the tendering is not limited - It is not that ~~it~~ the bill may be tendered within six days from that date - but the order is that plaintiff shall have six days for the business of preparing & tendering the bill & surely the Circuit Court did not require him to work on Sunday & if not then he would have only five days to work in - unless he embraced Monday the 12th - which is the day

on which the bill was tendered to
The Judge —

4th — ~~Lastly~~ & Concludingly — Even if the
six days expired Saturday night
at midnight — Still the facts ad-
mitted & the facts in the affida-
vit — show that the plaintiff was
guilty of no negligence & did
every thing which was required
of him by the rules — to have the
bill signed within the time —

Unless this is so — a circuit Judge
who is reluctant about signing
a bill — for which time has been
given — can always defeat the
party by going for a few days
to parts unknown — unless the
party expecting shall employ
a branch of the detective police
& "shadow" the Circuit Judge
day & night until the bill is ten-
dered —

5-12 The defendant's attorney by examining the bill after it was tendered to the Judge & making suggestions touching its form, & phraseology - waived his right to find fault with the tenor of signing of the bill

J. Lyle Dickey
atty for plff
in error

Reay

vs

Bell

~~Cook's points~~
Dickey's points
fact &c

on motion
to strike out
bill of Exceptions

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

RAY, }
vs. } 98.
BELL. }

Brief and Authorities of Plaintiff in Error.

1st. The Court ought to have permitted plaintiff on cross examination, to have asked Crane the question excluded on page 27 of the record—page 3. of Abstract. It tended to show the degree of wickedness of witness, and the degree of his unwillingness to testify, and was important on the question of his credibility.

1 Starkie's Ev., 24-186.
" " " 190. [11]

2d. The enquiry, (page 4 of Abstract,) as to the reason why witness did not attend court at the May term, was pertinent as touching the credibility of the witness, Crane.

3d. It was proper for plaintiff to prove by Fort, that Crane did at a former trial swear that "he kept no memorandum of the draft." (See Abstract, page 6.)

It is not the law, that to admit such testimony, the witness must positively deny having used the words attributed him. It is enough if he says that does not remember having said so.— See Abstract, pages 3 and 4.

1 Starkie's ev. 213; 6 Eng. Com. Law Reps. 112.

4th. The record of the cause ought to have been admitted to show that the witness, Crane, avoided swearing in this case, and this went to his credit. Our theory is, that Crane used the money received from Bell, and to cover his dishonesty, invented the story that he had bought the draft, and was afraid to give

the name of the man of whom he bought, lest he might be taken for perjury, and from that motive shunned the court, until he invented the story that he had forgotten the name. (Abs. p. 6.)

5th. The second instruction given for defendant is not law.— It is not the law that the admission of a party made in conversation, is *conclusive* of the fact admitted.

1 *Greenleaf's Ev.*, Sec. 209-212.

1 *Phil. Ev.*, 462.

" " " " 204, on page 259.

Hardin (Ky.), 549.

2 *Starkie's Ev.*, part 1, page 22.

6th. The 3d instruction contains two errors. A party may have the legal custody of a note, yet not be *entitled* to receive payment, and enter credit thereon, and it does not follow that if "credits are endorsed on a note to the full amount thereof," that the note has been paid.

7th. The 5th instruction is not the law, unless it was proved that the draft was actually bought, and that condition is not in the instruction.

8th. There was no proof in the case to base the 7th instruction on, nor the 10th, nor the 11th. They assume as fact that which ought to have been left to the jury.

9th. The verdict was against the proof, and ought to have been set aside. Crane's testimony does not, even if true, sustain the verdict. Rumsey's shows clearly, that \$700 payment ought not to have been allowed, and even if all the payments claimed were proved, they fall short of the amount of the note, and in any event plaintiff was entitled to a verdict for the balance, about \$16 or \$17.

JAS. ST. C. BOAL,

For Plaintiff in Error.

Ray vs. Bell

Plffs. Brief

2306.10

655

1651.10

~~1245.05~~

1666.23

~~1245.05~~

421.18

~~545.05~~ 379

700

1245.05 424.97

407.50

1747

210

19.57

Filed Apr 28. 1860

L. Deland

Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

JESSIE RAY }
vs.
EDIE S. BELL. }

POINTS FOR DEFENDANT IN ERROR.

THE Court properly excluded the questions found on pages 3, 4, and 6 of Abstract severally, which were sought to be put by plaintiff below, and also in excluding the record of previous trials in Marshall County, sought to be read in evidence by plaintiff below. The only tendency of this evidence would have been to show what the conduct of witness had been on a former occasion, and it was only competent to show what the feelings of the witness toward the plaintiff were at the time he was testifying, and not at some previous time; and the rule is well settled that his credit could not be impeached in that way.

1 Green. Ev., § 461, page 575.

2. It was not competent to prove by witness, Fort, that Crane did, at a former trial, swear that "he kept no memorandum of the draft," for Crane did not deny but that he might have said so; he only said "I don't think that I did;" and also further qualified that by saying "there was something said about a memorandum of the draft, but it referred to the books, in my understanding."

See Abstract, pages 3 and 4.

3. The second instruction was proper, for the admission of Bell that the \$735 was received as a payment of \$700 upon the note, is evidence that it was the intention of the parties at the time of such payment to receive it as such, and no subsequent action on the part of Bell could in any way affect this agreement so as to prevent the allowance of a credit of \$700 on the note.

Duffield vs. Cross, 12 Ill. 398.
2 Scam, 64.

4. The 3d instruction is law. The person having the *legal* custody of a note at the place where it is made payable, is entitled to receive payments on it and credit them upon the note, and such credits, if for the full amount of the note, show the note to have been paid.

Story on Promissory Notes, § 243, page 310, and cases cited in note.

5. The 5th instruction is the law. It is simply an affirmation of the proposition that if the money was paid to plaintiff's authorized agent, it must be allowed as a credit, whether this agent executed all the acts of his agency properly or not.

1 Chitty's Pl. 356.
1 Term R. 133.
4 Gilm. 602.
12 Ill. 240.
5 Johns. 85.
4 Gilm. 85.

The 7th, 10th, and 11th instructions were law, and intended to call the attention of the jury to significant facts proven in the case.

See Abstract, pages 4 and 5:

GLOVER, COOK & CAMPBELL,
Attorneys for Defendant in Error.

98-105
Hay

or
Burr

Find May 7. 1860
L. Leland
Cluck

STATE OF ILLINOIS, }
SUPREME COURT,

ss. The People of the State of Illinois,

To the Sheriff of the County of

~~La Salle~~ Marshall Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of La Salle County, before the Judge thereof, between

Jesse Ray

plaintiff, and Eddie S. Bell

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

Jesse Ray

as we are informed by his complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Eddie S. Bell

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Eddie S. Bell

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice
of our said Court, and the Seal thereof, at Ottawa,
this 12th day of March in the
Year of Our Lord One Thousand Eight Hundred
and Fifty-Sixty

L. Leland
Clerk of the Supreme Court.
L. J. B. Rice Deputy

I have served this writ by reading the same to the named
Eddie S Bell on this the 28th day of March A.D. 1860 as
as within commanded

Thomas Ellis Sheriff of
Marshall County Ill.

by J C Gore Deput

serving 50 cts
10 miles travel 50
return 10
\$1.10

Fried Spring 4. 1860

L. Deland
Bell

Eddie S. Bell
See fee

See fee

38 Ray's Bill

By the permission of Judge ~~Condy~~
I refer the court to his suggestions in
support of a motion to strike out
the of exceptions in case 179, which
case I think he argues ^{the other side} better than
he does this,

In that case the bill was
tendered in open court in this
case the bill was not tendered
until after the time fixed by the
rule, leaving it in our office with
a clerk after office hours containing
amounts to nothing. It was left
at 5 p M on Saturday and it is man-
ifest that none of us saw them
for he shows it was left with a clerk
a part of the stipulation as originally
prepared is stricken out, but the
ink is paler and the court may
not observe that it is stricken
out unless attention is called
to it,

If the Bill of Exceptions
had been left at the House of
the Judges at the time it was
left at the Office of Glover, Lordy
& Campbell, it would have

been received by Seisel Judge
on his arrival home in the
evening, but he could not be
expected to call at the office
of either of the attorneys for it

Cooks points
on striking line
of Exception?
from the files

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

JESSE RAY
vs.
EDIE S. BELL. } *Error to La Salle.*

ABSTRACT OF THE RECORD.

Page of Rec.

- 10 This was an action of *assumpsit*, brought by Ray against Bell
in the Marshall Circuit Court; summons to May term, 1858.—
- 11 The declaration contained a count on a promissory note herein-
after set out, (in the evidence,) and the common counts. At
- 14 and 15 the same term defendant pleaded *non assumpsit* and payment,
2 and 3 and on these pleas issues were formed, and the cause was tried;
3 to 9 but the jury, being unable to agree, was discharged without a
9 verdict. The cause was afterwards continued from term to term,
at the instance of defendant, until the October term, 1859, when
the venue was changed to La Salle.
- 17 At the February term, 1860, of the La Salle Circuit Court, the
18 cause was again tried, and the jury rendered a verdict for defen-
dant.
- Bill of exception taken at the trial.
- 19 Plaintiff read in evidence a promissory note, and a memoran-
dum on the face of it, as follows:
- \$2,300. Lacon, Oct. 28, 1856.
On or before the twenty-first day of October next I promise
to pay Jesse Ray or order the sum of twenty-three hundred
dollars at the Banking House of Fenn, Crane & Co.
EDIE S. BELL.
\$700 of this in St. Louis Ex. or gold.
- And also read endorsements of three credits on the back of
the note, as follows:
- Recd Lacon Nov 6/57 on the within note six hundred & fifty
five dollars.
- Rec on the within five hundred & forty five 05-100 dollars.
- \$407.50 Received on the within note Feb 25th 1858 four
hundred & seven 50-100 dollars.
- Here plaintiff rested his case.

Page of Rec. 19 to 32 *Wm. L. Crane*, a witness for defendant, testified: I lived in Lacon—was member of firm of Fenn, Crane & Co. We had the note for collection; got it from the plaintiff soon after it was drawn, and had it some months. It was in our hands till about the day of the last credit. The indorsment of the first two credits are in my hand writing. I don't remember whether I received the money of those credits, or whether Ray directed me to credit them.

When I last saw the note, there was an indorsement in pencil for \$700, now partially rubbed out. It was written by me or my book-keeper, late in 1857, or early in 1858; and after the first two credits were entered, and before the last credit of \$407.50 now on the note. When that pencil credit was entered, about \$735 was paid. It was paid in a kind of family way.—Something was said between Ray and Bell about back payments. \$35 was paid for exchange. The pencil entry was made a few days after. The note was in my possession in the meantime.—At that time the name of our House was Wm. L. Crane & Co.—Judge Ramsey was present when that \$700 payment was made. The money was received for the benefit of Ray to buy a draft, and was to be a payment on the note.

On cross examination, the witness testified:

I have no recollection how the note came to our Banking House. Fenn, Crane & Co. dissolved partnership in Spring of 1857. At one time, just before one of the payments, this note was taken away by Ray for a short time, and then brought back; but I don't remember whether that was at the \$700 credit entered in pencil or not.

I have no recollection of receiving any money on the note except the \$735. I think I had the note at that time. Ray may have brought the note in at that time, but I don't remember.

I gave my deposition last Summer in this cause, and then swore, that some time before the \$700 payment Ray took the note away, and returned with the day of that payment.

Witness, on further cross examination, said:

On the day of that payment, Bell brought into the Bank a package of currency, (received by express,) of over \$1000.—Bell and Ray had talk about the payment. I did not hear it all. Bell wanted Ray to take the \$700 in currency, but Ray refused. One or both of them said something to me about exchange.—They wanted to know what a draft could be bought for. I said five per cent.

One of them asked me if I could buy one at that price. I said I could, and I was paid \$735 for that purpose. There was some other conversation, but I don't now recall what it was. I

Page of Rec.
19 to 32

do not remember that, immediately after this money was received by me, Bell paid Ray in currency the \$545 which is the second credit now on the note, and that I then and there credited the same as it now appears on the note. That payment and credit may have been at that time, but I don't remember it. I don't remember whether it was Ray or Bell who asked me to buy the draft. Ray told me that when the draft was bought I should credit it on the note; that is my impression now.— Something was said between Ray and Bell about specie, but I cannot remember what. I do not remember that Ray told Bell that he must have gold or something which Moore, Morton & Co. would accept. Something of that sort was said. Ray told me when the draft was purchased to forward it to Moore, Morton & Co., and credit it on the note, and that is all I remember. Think Ramsey and Bell were both there at that time; it was soon after the money was paid. I can't remember who gave me the money. On the day I received the \$735, I paid that money out for a draft in Peoria. I don't remember the name of the man of whom I bought the draft. I bought it at the Hotel, and had seen the man two or three times before.

I took a memorandum of his name, and of the draft, and have used it once or twice since. It is now among my papers, either in Pittsfield, where I live, or at Lacon, where I did live. I saw it last after the former trial in this cause. At that trial I was a witness for defendant. I then remembered the name of the man of whom I bought that draft; and I then refused in giving my testimony, to give that man's name, for several reasons; one was, that there was anything but friendly feelings between Ray and myself, and as I was not his agent, I thought he might find out his own business without my help.

This refusal to give the name of the person of whom I bought the draft, was after the court had directed me to give the name.

27 Here plaintiff asked witness the question:

"Did the Court again direct you to answer on that point, and did you refuse to answer, in disobedience to the order of the Court?" To this question defendant objected, and insisted that the contumacy of this witness on a former trial, and the merits of the controversy between witness and the then Judge of the Marshall Circuit Court, could not be gone into on this trial.— The Court sustained said objection, and would not permit said question to be answered, and plaintiff excepted.

Witness further testified: At that time I recollected the man's name. I last saw the memorandum of name and draft in Lacon, after former trial. I never showed it to any body. At former trial, something was said about a memorandum of the draft, but it referred to the books, in my understanding.

§ 3332

*Standing as this meeting and
ought not a searching & exam
been allowed & was this refusal
error?*

*Crow was hostile to Peff. Then
his refusal to attend & testify
was not to help him by refusing
to testify. What could
have been the reason?*

Page of Rec. Plaintiff asked witness, "Did you on the former trial swear
 28 that you kept no copy or memorandum of the draft, and that
 you would have done so in doing a banking business?" Witness
 answered, "I don't think I did."

Witness further testified: My deposition was taken in this
 case last Summer, and I was then asked of whom I bought the
 draft, and refused to answer. At former trial I was ordered to
 jail for not answering. I was afterwards in jail, but whether for
 this, or for not attending as a witness, I don't know. The Judge
 at Lacon refused to hear a petition from me, and I was after-
 wards taken to Peoria on *habeas corpus*.

I never did any other business with the man of whom I bought
 the draft, and don't know what became of him. The amount of
 the draft was exactly \$700. Don't remember by whom the
 draft was drawn; but think by some Wisconsin bank. Don't re-
 member to whose order the draft was payable on its face.

Examined by defendant: Ray afterwards asked me if I had
 heard anything from Moore, Morton & Co. of the receipt of the
 draft by them. I told him I would not hear; that he would.—
 I advised him to write to them, which he did, and got an answer
 "that they had not received the draft," and telling him "to ap-
 ply to me for a duplicate." I did procure a duplicate from the
 party of whom I got the draft, and returned it to the same par-
 ty by return mail, and I think on the same day. This was short-
 ly after Ray and I had a difficulty. We have never spoken
 since.

The reason why I did not attend court, was because of sick-
 ness and death in my family. I returned to Lacon at that term,
 and was arrested. I sent in my sworn petition to be discharged,
 setting up these facts. The Judge refused to hear it read, and
 fixed my bail at \$500. I was afterwards taken on *habeas corpus*
 31 to Peoria, and bailed at \$50.

32 Cross examined. It was at January Term, 1859, that the
 Judge refused to hear my petition.

Plaintiff then asked witness whether it was sickness in his fam-
 ily that prevented him from attending May term of Marshall
 Circuit Court. This question defendant objected to, that the
 subject of inquiry was irrelevant; the court sustained objection,
 and plaintiff excepted.

32 D. G. Warner, a witness for defendant, testified: Ray, in a
 conversation in the Clerk's office in Lacon, spoke of some trans-
 actions between him and Bell, and inquired of Cook if he could
 33 not tell him how to get money out of Crane. Ray said Bell had
 paid the money into Crane's for him, and Crane claimed to have
 bought a draft with it, and sent it to Quincy, but Ray said he
 did not believe he had. I can't remember exactly what was said,

Page of Rec.

33

but Ray expressed a fear he would lose the debt; he feared he could not get it of Bell, or something like it. The amount of \$700 was mentioned, and Ray said \$35 were paid to buy a draft with.

On cross examination, witness said that this was before the date of last credit on note.

34

E. S. Erskine, a witness for defendant, testified: In summer of 1858, I was riding from town with Ray, and he told me he believed the difficulty between him and Bell would soon be settled; that the Odd Fellows had taken it up, and several of them had asked him about it, and that he had told them Bell was an honest man, that Bell came to the Bank with the money, and finally agreed to pay the extra 5 per cent. to settle the trouble, and that if he could have got Bell to join with him, he could have got the money out of Crane, but Bell said he had nothing to do with Crane from first to last. Ray said he could not sue Crane himself; that if he had sued him, Crane would have "unsuited" him (Ray.)

35

Silas Ramsey, a witness for plaintiff, testified: I was present in Crane's bank when the second credit (\$545.05) was indorsed on this note; it was sometime in fall of 1857, after first credit, dated Nov. 6, 1857, was made. Had before that been informed that Ray had bought land of Moore, Morton & Co., and had a payment to make to them, and that Bell was expected to pay Ray some money at the bank that day. I had occasionally done business for Moore, Morton & Co., and that day went to Crane's bank; found Ray and Crane there. Bell soon came in with a package of currency, and wanted to make a payment to Ray.— A controversy arose between them about taking currency. Ray said he had a payment to make to Moore, Morton & Co. on his land, and that he must have \$700 in specie; the rest he was willing to take in currency. I suggested that a draft would probably answer Moore, Morton & Co. as well as specie. Ray contended that he would receive nothing but gold. Bell then asked Crane what he would ask for a draft. Crane said he had none to sell, but that he was going to Peoria, and would agree to get him a \$700 draft for \$35. Bell then paid to Crane \$735 in currency, and then turned to Ray, and paid him in currency \$500, and over. Crane then spoke of crediting the whole sum on the note, but Ray said no, that the currency which he had received might be credited, but that the \$700 must not be credited until Moore, Morton & Co. had accepted the draft. Crane thereupon credited on the note the \$545 paid to Bell in person. Bell and Ray then left the office together, and the note, I think, was left in the bank. Bell made no objection to the manner of entering the credits as directed by Ray.

37

Plaintiff introduced several witnesses whose testimony tended to show that the witness Wm. L. Crane's reputation for truth was bad.

37

Page of Rec. Plaintiff also read in evidence the deposition of Francis C.
32 and 40 Moore, of Quincy, tending to show that no such draft as Wm. L. Crane claimed to have sent, had been received by him.

40 G. L. Fort, a witness for plaintiff, testified: I heard the testimony of witness, Wm. L. Crane, on former trial of this cause in Marshall Circuit Court.

Plaintiff then asked witness the following question: "In the testimony of said Crane upon that former trial, did he, or did he not, swear that he kept no copy or memorandum of the draft, and that he would have done so in doing a banking business, or words to that effect?" Defendant objected to this question, that the witness, Crane, in his testimony here does not positively deny having given such testimony. The court sustained the objection, and plaintiff excepted.

Plaintiff here offered to read in evidence from the certified
41 transcript, the proceedings of Marshall Circuit Court at January
42 term, 1859, which was excluded by the court, and plaintiff excepted; also proceedings at May term, 1859, and also proceedings at October term, 1859; to each of which defendant objected, and the court sustained the objections, and excluded the
43, 45 testimony, and plaintiff excepted. The record of January term shows that witness, Wm. L. Crane, neglected to attend that term, and the court ordered an attachment for him to next term, with bail at \$500. The record of May term shows that the cause was continued at that term by defendant, on account of the absence of said Crane, and that another attachment was ordered for him to next term, with \$500 bail. And the record of October term shows the cause continued on defendant's motion, on account of said Crane's absence, and that another attachment was ordered, with like bail.

Defendant here recalled witness Warner, who gave testimony
45 tending to sustain the character of witness Crane for truth.

(The bill of exceptions contain all the evidence given in the case, and this abstract contains all the evidence having any bearing on any question raised in this court.)

At the instance of defendant, the court gave to the jury the following instructions, to the giving of each of which plaintiff excepted:

Defendant's Instructions:

2. If the jury believe from the evidence that said plaintiff Ray
48 has, subsequent to the time of the payment of the \$735 to Crane, if such payment were made, acknowledged that this was a payment of \$700 to him, the plaintiff, and that the \$35 was paid by Bell in the lieu of the gold, such payment ought to be allowed as a credit on the note. - Was this acknowledgment conclusive?

3. If the jury believe from the evidence that the note in question is and was by its terms made payable at the Banking House of "Fenn, Crane & Co.," then Bell was authorized to pay said note at said banking house, and said bankers or either of them were entitled to receive payment of the same, if, at the time of payment, if any were made, they had the legal custody of the note, and to credit the payments on said note. And if the jury further believe that upon said note there are now endorsed credits to full amount due upon the note, they must find for the defendant.

Substantive X

5. If the jury believe from the evidence that the witness W. L. Crane, as the agent of the plaintiff, received from the defendant seven hundred and thirty-five dollars, for the purpose of buying a draft, and that it was agreed when the money was paid (between the plaintiff and the defendant) that when said Crane should buy the draft he should credit seven hundred dollars upon the note, and that in receiving said money and buying the draft, said Crane acted as the authorized agent of the plaintiff, then the jury ought to allow defendant a credit on said note for seven hundred dollars. - *Does this take the question of the actual purchase of the draft from the jury & make that material?*

7. It makes no difference whether the amount of the money, that is, the seven hundred dollars, or the amount of the draft, was indorsed upon the note in pencil, or whether it was indorsed at all. If the money or the draft was received by the plaintiff, or his authorized agent, as part payment of the note sued on in this cause, then the jury should allow a credit upon the note of the amount of the draft or money so received by plaintiff.

10. If the jury believe from the evidence that said plaintiff accepted said sum of \$735 as a payment of the sum of \$700 on said note, any subsequent directions given by said plaintiff to said Crane, as to how and when such payment should be credited upon the note, can not change the fact of payment, and if the credit never was made, or ordered to be made, still the payment would be good, and should be allowed upon the note. - *50*

11. If the jury believe from the evidence that the plaintiff inquired of Cook, in the presence of the witness Warner, if he knew of any property of Craine's out of which he could make his debt, it is a circumstance which the jury have a right to consider in determining the question whether it was Crane or Bell that owed him (Ray) this debt.

After verdict, and before judgment, plaintiff moved the court to set aside the verdict, and grant a new trial; which motion the court overruled, and plaintiff excepted.

98-105

Ray vs Bell

Abstract

Filed Apr 19, 1860

A. L. Leland
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

JESSIE RAY }
 ^{vs.}
EDIE S. BELL. }

POINTS FOR DEFENDANT IN ERROR.

THE Court properly excluded the questions found on pages 3, 4, and 6 of Abstract severally, which were sought to be put by plaintiff below, and also in excluding the record of previous trials in Marshall County; sought to be read in evidence by plaintiff below. The only tendency of this evidence would have been to show what the conduct of witness had been on a former occasion, and it was only competent to show what the feelings of the witness toward the plaintiff were at the time he was testifying, and not at some previous time; and the rule is well settled that his credit could not be impeached in that way.

1 Green. Ev., § 461, page 575.

2. It was not competent to prove by witness, Fort, that Crane did, at a former trial, swear that "he kept no memorandum of the draft," for Crane did not deny but that he might have said so; he only said "I don't think that I did;" and also further qualified that by saying "there was something said about a memorandum of the draft, but it referred to the books, in my understanding."

See Abstract, pages 3 and 4.

3. The second instruction was proper, for the admission of Bell that the \$735 was received as a payment of \$700 upon the note, is evidence that it was the intention of the parties at the time of such payment to receive it as such, and no subsequent action on the part of Bell could in any way affect this agreement so as to prevent the allowance of a credit of \$700 on the note.

Duffield vs. Cross, 12 Ill. 398.
2 Scam, 64.

4. The 3d instruction is law. The person having the *legal* custody of a note at the place where it is made payable, is entitled to receive payments on it and credit them upon the note, and such credits, if for the full amount of the note, show the note to have been paid.

Story on Promissory Notes, § 243, page 310, and cases cited in note.

5. The 5th instruction is the law. It is simply an affirmation of the proposition that if the money was paid to plaintiff's authorized agent, it must be allowed as a credit, whether this agent executed all the acts of his agency properly or not.

1 Chitty's Pl. 356,
1 Term R. 133.
4 Gilm. 602.
12 Ill. 240.
5 Johns. 85.
4 Gilm. 85,

The 7th, 10th, and 11th instructions were law, and intended to call the attention of the jury to significant facts proven in the case.

See Abstract, pages 4 and 5:

GLOVER, COOK & CAMPBELL,
Attorneys for Defendant in Error.

98
Ray

Bill

Dyer Points

Filed May 7. 1860
L. Leland
clerk

Dickens - written argument -

This was an action by Ray vs Bell on a promissory note for ~~\$2300~~ due ~~Oct~~ & tried on pleas of general issue & payment -

The note was made ^{at Lacom} in Oct 1856 - & fell due Oct 21st 1857 - & was for \$2300 - & payable "at the Banking House of Fenn Crane & Co" &c

Besides the note plaintiff read in evidence three credits entered ^{in the following order} on the back of the note
1st \$655 - dated Nov 6. 1857 -
2nd \$545 $\frac{5}{100}$ - not dated -
3rd \$407. $\frac{50}{100}$ dated Feb 25th 1858 -
& here rested - (1)

The verdict was rendered on March 3rd 1860 -

Defendant claimed an additional payment of \$700 - to have been made "late in 1857 or early in 1858" (2) & there is no other evidence tending to fix its date -

The only evidence as to the time of the 2nd payment is that of Judge Ramsey who says he was present at the entry of the credit & that it occurred at the same time of the transaction on account of which debt

claims the credit of \$700 - & as said before the only evidence of that date is the statement of Crane that it was "late in 1857 or early in 1858" I therefore fix that date at Dec 31-1857- In that allowing then all the facts which defendants allege - The case would stand thus -

Debt - \$2300 - amt of note due Oct 21-1857-
 Credits
 1st \$655. Nov 6th 1857 - entered -
 2nd \$545 $\frac{50}{100}$ pd & credited Dec 31-1857 -
 Next - \$700 - (entered in pencil Dec 31-1857 -
 Last 3rd 407. $\frac{50}{100}$ - Feb 25-1858 -

And a careful computation of interest shows that following the \$700 payment (which is the bone of contention in the case) still, there was at the time of the verdict March 3rd 1860 - a balance unpaid on the note of \$19.58 - i.e. \$19.58
 Thus

Prin due Oct 21-1857 -	\$2300
Int to Nov 6 - (16 days) at 6 per ct. -	6.11
Prin & int Nov 6-1857 -	\$2306.11
Deduct amt -	655.
Balance Nov 6-1857 -	1651.11
Int 1m & 25 days to Dec 31 -	15.13
Prin & int Dec 31-1857 -	\$1666.24
Deduct total claimed pd. $\left. \begin{matrix} \$545.05 \\ \$700.00 \end{matrix} \right\}$	1245.05
Bal left Dec 31-1857	\$421.19

Bal brought over	\$421.19
Int 1 mo, 25 th to Feb 25, 1858	3.79
Paid & In. Feb 25-1858-	\$424.98
Deduct last paid	407.50
Bal Feb 25-1858-	\$17.48
Int to March 3 rd 1860 (247d)	2.10
Due at date of verdict	\$19.58

There was therefore no pretence - or ground for pretence that we were not entitled to a verdict for that amount \$19.58 in any event - The great Controversy & the only controversy in the Court below related to the allowing of the credit, claimed, of \$700 - said & have been endorsed in pencil by Crane -

It is ~~true~~ ~~warned~~ a witness for ~~Defendant~~ says We were therefore entitled to a new trial - in any event for taking all the evidence against us as true & allowing all the inferences that could be deduced from the evidence to be drawn against us. Still the verdict was not supported by the evidence -

II II

Who testify ~~in~~ ~~on~~ the ~~sworn~~ -
- that is - was L. Crane a witness for the Defendant below - and

1857 or early in 1858" I therefore fix that date at Dec 31-1857- In that

Allowing then all the facts which depend on a member of the Firm of Fern Crane & Co ~~that this note was in their banking house from shortly after it was made - until shortly before the last Credit (which bears date Feb 25th 1858) - that the firm of Fern Crane & Co was dissolved in the Spring of 1857 - (6 months before the maturity of the note) and after that the witness carried on the banking business at the same place until in the winter of 1857 & 1858 - when he failed -~~

~~That this note (with the exception of a short time just before one of the payments) was at that banking house from shortly after it was made until shortly before the last Credit dated in Feb 1858 - That shortly before one of the payments Reay took the note away and then brought it back again - Witness says "we held it for collection" but on cross examination says he has no recollection how the note came there (2) and altho the first two credits are in his handwriting - yet he has no recollection that the payments~~

It was insisted on the oral argument - that the fact - that Warner at the time of the last credit on the note - computed the interest & struck a balance - shows that at that time Bill intended to pay all the ~~undisputed~~ balance on the note

That was probably - but Warner evidently made some error in the computation of the amount - & the fact that he made such a mistake - does not affect the right of Rey - to have the note fully paid - It would only prove that it was a mistake which Rey has a right to have corrected (This testimony of Warner is pages 33 & 34 of record - & this part not being deemed material by us is not in the abstract)

II

As to the pencil credit of \$200 said to have been put on the note by the witness Crane - & which was the great bone of contention in this case - there are but two witnesses who testify directly on the subject - that is - Wm L. Crane a witness for the defendant below - and

Judge Remrey - a witness for plaintiff
& two witnesses who speak of Ray's
declarations afterwards -

I propose to discuss the question
of the instructions in the first place
touching this question -

One of the instructions given
by the Court below & to which exception
was taken was as follows

Defendant's Instructions:

2. If the jury believe from the evidence that said plaintiff Ray
48 has, subsequent to the time of the payment of the \$735 to Crane,
if such payment were made, acknowledged that this was a pay-
ment of \$700 to him, the plaintiff, and that the \$35 was paid by
Bell in the lieu of the gold, such payment ought to be allowed
as a credit on the note.

This instruction was very material
to the controversy & is clearly erroneous
on its face - - or as we say in
our printed points -

5th. The second instruction given for defendant is not law. -
It is not the law that the admission of a party made in conversa-
tion, is conclusive of the fact admitted.

1 *Greenleaf's Ev.*, sec. 209-212.

1 *Phil. Ev.*, 462.

" " " " 204, on page 259.

Hardin, (Ky.), 549.

2 *Starkie's Ev.*, part 1, page 22.

The instruction is if the plaintiff
made the admission supposed - The payment
to Crane ought to be allowed as a credit

Suppose we had proved - that
Bell after the transaction - had
acknowledged - That the payment

to Crane was a payment to Ray - then if such acknowledgements were conclusive - both parties would be concluded - & the jury would be bound by both - We did prove substantially an acknowledgment by Bell after the money was handed to Ray - that it was not to operate as a payment on this note until Ray should be credited that amount by Moore Morton & Co - by the fact that Ray so declared to Crane in the presence & hearing of Bell & he ^(Bell) made no objections to the statement - & ~~declared~~ the testimony of Ramsey in full was as follows -

36 Silas Ramsey, a witness for plaintiff, testified: I was present in Crane's bank when the second credit (\$545.05) was indorsed on this note; it was sometime in fall of 1857, after first credit, dated Nov. 6, 1857, was made. Had before that been informed that Ray had bought land of Moore, Morton & Co., and had a payment to make to them, and that Bell was expected to pay Ray some money at the bank that day. I had occasionally done business for Moore, Morton & Co., and that day went to Crane's bank; found Ray and Crane there. Bell soon came in with a package of currency, and wanted to make a payment to Ray. - A controversy arose between them about taking currency. Ray said he had a payment to make to Moore, Morton & Co. on his land, and that he must have \$700 in specie; the rest he was willing to take in currency. I suggested that a draft would probably answer Moore, Morton & Co. as well as specie. Ray contended that he would receive nothing but gold. Bell then asked Crane what he would ask for a draft. Crane said he had none to sell, but that he was going to Peoria, and would agree to get him a \$700 draft for \$35. Bell then paid to Crane \$735 in currency, and then turned to Ray, and paid him in currency \$500, and over. Crane then spoke of crediting the whole sum on the note, but Ray said no, that the currency which he had received might be credited, but that the \$700 must not be credited until Moore, Morton & Co. had accepted the draft. Crane

37

thereupon credited on the note the \$545 paid to Bell in person. Bell and Ray then left the office together, and the note, I think, was left in the bank. Bell made no objection to the manner of entering the credits as directed by Ray.

This transaction is surely as good evidence that Bell acknowledged that the payment to Crane was not accepted as a payment to Ray as any evidence they had that Ray had made the acknowledgment supposed.

What right had the Court to say that the jury should reject this acknowledgment by Bell - if they believed Ray had acknowledged that it was to operate as payment on the note - then the jury should be governed by such acknowledgment of Ray whether true or false - correct in point of fact - or incorrect.

But there was no such acknowledgment made as supposed in the instruction - & no evidence from which it could be inferred - The only witnesses who spoke of conversations with Ray afterwards are Warner & Erskine

32 D. G. Warner, a witness for defendant, testified: Ray, in a conversation in the Clerk's office in Lacon, spoke of some transactions between him and Bell, and inquired of Cook if he could not tell him how to get money out of Crane. Ray said Bell had
33 paid the money into Crane's for him, and Crane claimed to have bought a draft with it, and sent it to Quincy, but Ray said he did not believe he had. I can't remember exactly what was said,

Rec. but Ray expressed a fear he would lose the debt; he feared he
33 could not get it of Bell, or something like it. The amount of \$700 was mentioned, and Ray said \$35 were paid to buy a draft with.

34 E. S. Erskine, a witness for defendant, testified: In summer of 1858, I was riding from town with Ray, and he told me he believed the difficulty between him and Bell would soon be settled; that the Odd Fellows had taken it up, and several of them had asked him about it, and that he had told them Bell was an honest man, that Bell came to the Bank with the money, and finally agreed to pay the extra 5 per cent. to settle the trouble, and that if he could have got Bell to join with him, he could have got the money out of Crane, but Bell said he had nothing
35 to do with Crane from first to last. Ray said he could not sue Crane himself; that if he had sued him, Crane would have "unsuited" him (Ray.)

We look in vain here for evidence that Ray "acknowledged that this" (the payment of \$735 to Crane if made) "was a" "payment of \$700 to him" (Ray). The instruction ought to have been rejected because it suggested that there was proof tending to prove that proposition - when in fact there was none.

The next instruction to which we except is the 3^d given for defendant below but to discuss it properly — we must notice the testimony of Witness Crane — which was

c. Wm. L. Crane, a witness for defendant, testified: I lived in Lacon—was member of firm of Fenn, Crane & Co. We had the note for collection; got it from the plaintiff soon after it was drawn, and had it some months. It was in our hands till about the day of the last credit. The indorsement of the first two credits are in my hand writing. I don't remember whether I received the money of those credits, or whether Ray directed me to credit them.

When I last saw the note, there was an indorsement in pencil for \$700, now partially rubbed out. It was written by me or my book-keeper, late in 1857, or early in 1858; and after the first two credits were entered, and before the last credit of \$407.50 now on the note. When that pencil credit was entered, about \$735 was paid. It was paid in a kind of family way.—Something was said between Ray and Bell about back payments. \$35 was paid for exchange. The pencil entry was made a few days after. The note was in my possession in the meantime.—At that time the name of our House was Wm. L. Crane & Co.—Judge Ramsey was present when that \$700 payment was made. The money was received for the benefit of Ray to buy a draft, and was to be a payment on the note.

On the day I received the \$735, I paid that money out for a draft in Peoria. I don't remember the name of the man of whom I bought the draft. I bought it at the Hotel, and had seen the man two or three times before.

Examined by defendant: Ray afterwards asked me if I had heard anything from Moore, Morton & Co. of the receipt of the draft by them. I told him I would not hear; that he would.—I advised him to write to them, which he did, and got an answer "that they had not received the draft," and telling him "to apply to me for a duplicate." I did procure a duplicate from the party of whom I got the draft, and returned it to the same party by return mail, and I think on the same day. This was shortly after Ray and I had a difficulty. We have never spoken since.

I have no recollection how the note came to our Banking House. Fenn, Crane & Co. dissolved partnership in Spring of 1857. At one time, just before one of the payments, this note was taken away by Ray for a short time, and then brought back; but I don't remember whether that was at the \$700 credit entered in pencil or not.

I have no recollection of receiving any money on the note except the \$735. I think I had the note at that time. Ray may have brought the note in at that time, but I don't remember.

On the day of that payment, Bell brought into the Bank a package of currency, (received by express,) of over \$1000.— Bell and Ray had talk about the payment. I did not hear it all. Bell wanted Ray to take the \$700 in currency, but Ray refused. One or both of them said something to me about exchange.— They wanted to know what a draft could be bought for. I said five per cent.

One of them asked me if I could buy one at that price. I said I could, and I was paid \$735 for that purpose. There was some other conversation, but I don't now recall what it was. I

Rec.
32

do not remember that, immediately after this money was received by me, Bell paid Ray in currency the \$545 which is the second credit now on the note, and that I then and there credited the same as it now appears on the note. That payment and credit may have been at that time, but I don't remember it. I don't remember whether it was Ray or Bell who asked me to buy the draft. Ray told me that when the draft was bought I should credit it on the note; that is my impression now.— Something was said between Ray and Bell about specie, but I cannot remember what. I do not remember that Ray told Bell that he must have gold or something which Moore, Morton & Co. would accept. Something of that sort was said. Ray told me when the draft was purchased to forward it to Moore, Morton & Co., and credit it on the note, and that is all I remember. Think Ramsey and Bell were both there at that time; it was soon the money was paid. * I can't remember who gave me the

The above is all of Cranes testimony touching the transaction of the payment of the \$ 735 & the entry of the pencil credit of \$ 700 — & with Ramseys testimony is all on that subject in the case & with Wanners testimony is all relating to the state of the credit on the notes — The court instructed as follows

3. If the jury believe from the evidence that the note in question is and was by its terms made payable at the Banking House of "Fenn, Crane & Co.," then Bell was authorized to pay said note at said banking house, and said bankers or either of them were entitled to receive payment of the same, if, at the time of payment, if any were made, they had the legal custody of the note, and to credit the payments on said note. And if the jury further believe that upon said note there are now endorsed credits to full amount due upon the note, they must find for the defendant

Let us analyze this instruction & strip it of its surplusage - The note on its face was payable at the banking house of Fern. Crane & Co - That "if" may be left out - ~~stripped of~~ There was a payment of money made to Crane at this banking house - having reference to this note as both sides agree - so that if may be left out - And the naked instruction stands thus -

"Bell was authorized to pay this note at that Banking house - & if (at the time of the payment made to Crane of the \$135) ~~Exchange~~ ~~was~~ was one of said bankers) & had the legal custody of the note then he was entitled to receive payment on the note & credit it."

~~And if there now are credits it do so to the full am~~

Is that the law - No doubt Bell had the right on the day of maturity to pay that note at that bank - that is the place of payment - but that had nothing to do with the person to whom he had the right to pay it - But this note was not paid at maturity & therefore the privilege of paying at the bank was gone - & the duty of Bell

hunt up Ray or the legal owner of the note - & pay it to him -

Again the facts probably were that on that day Ray brought in the note & handed it to Crane for safe keeping so that he had the legal custody of the note - ~~& Bill and Ray agreed that if Bill~~ - & money relating to this note was paid over to Crane under the arrangement stated by Ramsey - & if these facts were so - according to the instructions - (notwithstanding the agreement parties to the contrary) Crane was entitled to receive the payment of the note & credit such payment - & if he did actually do it - though in direct violation of the agreement of the parties, still the credit would be good -

The last part of the instructions conveys the idea - that the jury were bound to allow all the credits which were actually on the note at the trial (embracing the one in pencil) no matter whether such credits were properly put on or not -

The 5th instruction was wrong -

49 5. If the jury believe from the evidence that the witness W. L. Crane, as the agent of the plaintiff, received from the defendant seven hundred and thirty-five dollars, for the purpose of buying a draft, and that it was agreed when the money was paid (between the plaintiff and the defendant) that when said Crane should buy the draft he should credit seven hundred dollars upon the note, and that in receiving said money and buying the draft, said Crane acted as the authorized agent of the plaintiff, then the jury ought to allow defendant a credit on said note for seven hundred dollars.

It implies that - if Crane acted "as the authorized agent of Ray" - ~~that~~ the jury are to assume that he was such agent in fact & that his acts were within the scope of his authority

Again it rules - that if it was agreed by Ray & Bell - that the amount of the draft when bought should be credited on the note - then they ought to allow the \$700 credit - whether the draft was ever bought or not
This is wrong -

III

The verdict was against the weight of the evidence so palpably that the Court ought to have granted a new trial - Aside from the evidence touching the credibility

of the witness Crane - All the evidence in the case is stated in this argument

Ramsay's account of the affair is not contradicted by Crane in any one particular & if it had been Crane is shown to have been unworthy of belief -

He simply says - that on that day Bell & Ray came to his bank - Bell brought a package of currency - & ~~Ray~~ ^{Ray} may have brought the note - That Bell & Ray talked on the subject of payment - part of which he did not hear -

That Bell wanted Ray to take the \$700 in question in currency & Ray refused - One of them asked Crane about exchange - & wanted to know ^{what} ~~whether~~ ~~he could~~ a draft could be bought for Crane answered 5 per cent - One of them asked him if he could buy a draft for that & Crane said he could - \$735 - was their "paid to Crane" for that purpose - \$35 for the exchange - but he does not say by whom

The money he says was received "for the benefit of Ray to buy a draft" and "was to be a payment on the note" (this is mere opinion & not the statement of any fact) & that after he rec^d the money & before the parties separated - Ray told him to forward the draft, when bought, to Moore Morton & Co of Quincy & his impression is that Ray told Crane to credit the draft when bought, on the note - & that something of this sort was said - that "Ray ~~would accept nothing~~ must have something Moore Morton & Co would accept" -

Bill he must have something
Moore Morton & Co would accept - Some
thing of that sort was said. Reay
told me when the draft was bought
to forward it to Moore Morton & Co
& credit it on the note - That is all I
remember. This was while Remsey
& Bell were both there soon after
the money was paid.

The above is all of Crane's testimony
touching the occurrences at the bank
at that time - Let it be observed - that
he no where says that this money
was paid to Reay - or that Reay agreed
it should operate as a payment -
or that Reay had any thing to do
with the payment of the \$735 to him.

He simply says - that on that day Bell & Ray
came to his bank - Bell brought a package
of currency - & ~~Bell~~ ^{Ray} may have brought the note
- that Bell & Ray talked on the subject of
..... - but which he did not hear -

(Crane) or that Ray hired him to
buy a draft - The only thing, he
says ~~that~~ Ray did, was to instruct
him to forward it to Moore Morton
& Company & also that he should
credit the seven hundred dollars
when the draft should be bought
& of that he says merely that this
is his impression. He no where says
that - Bell & Ray agreed that this money
was received by Ray as in payment
- he no where says any thing from
which it can be inferred - that
"plaintiff accepted said \$735 as a"
"payment of \$700"

#11

On cross examination Beane
said he had forgotten the name
of the man of whom he bought
the shaft - That on a former
last summer before his deposition
in this cause & he then recollected
the name but refused to answer
as to who it was - - That at the
former trial of this cause in
1855 - he was a witness in the
cause & refused then to answer
as to the name of the man of
whom he claimed to have bought the
shaft - & that he so refused
(over)

~~while testifying~~ for several seasons
one was my feelings towards Key
were unfriendly & as I was not his
agent - I thought he might find out
without my help - This refusal was
after the Court had ordered me to answer
At that time I recollected the name -
I have never showed the memorandum
to any body - I gave my deposition last
summer in this cause - I then refused
to answer as to the name of the man of
whom I bought I never had any other
business with the man & don't know
what became of him - Don't remember
by whom the draft was drawn nor to
whose order it was payable

~~(Here insert it)~~

In the course of this cross examination
of witness ^{Crum} plaintiff asked witness - whether, after he
refused to answer on the former trial
as to the name of the man (of whom
he claimed he bought the draft) - whether
the Court did not again order him to
answer the question & whether he did not
again refuse in disobedience to the Court?
(See abstract page 3 near bottom)

This the Court disallowed & we insist
erroneously - No objection was made to the

form of the question - but the ruling was that the subject matter was irrelevant -

It was competent to show the degree of the hatred of witness towards Ray - that he would defy the Court rather than give Ray information which might be useful to him -

It was competent that the jury might judge of the conduct of the witness & of his motives & determine whether it was not probable that he was lying about having bought a draft at all - & whether he did not defy the Court because he feared that if he gave a name - it might lead to the exposure of his falsehood -

& this was more especially proper when on this trial he professes to have forgotten

Prayer and Authorities of Plaintiff in Error.

1st. The Court ought to have permitted plaintiff on cross examination, to have asked Crane the question excluded on page 27 of the record - page 3 of Abstract. It tended to show the degree of wickedness of witness, and the degree of his unwillingness to testify, and was important on the question of his credibility.

1 Starkie's Ev., 24 - 186.

" " " 190.

2d. The enquiry, (page 4 of Abstract,) as to the reason why witness did not attend court at the May term, was pertinent as touching the credibility of the witness, Crane.

Thom
d been
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not
that
same

We had shown to the jury that Crane was absent from the Lucas Court & defendants called out a statement from the witness that his absence was caused by sickness in his family.

was caused by sickness in his family - this was to rebut the suggestion (arising from the facts -) that this witness (after he found at the trial in May 1858 that if he went on to the stand against Ray was liable to be perjured by questions as to the man of whom he said he bought the draft) was afraid to swear again & therefore kept out of the way - until he invented the story that he had forgotten the name - To answer this testimony that his family had been sick - we asked him if it was sickness that kept him away from the Court at the May term 1849 - This question the Court refused to allow - Its fitness is already explained - & we insist the Court erred in excluding it -

The Court erred in refusing to allow us to prove by Fort - that Crane had sworn - "that he kept no copy or memorandum of the draft" - (See abstract page 6)

The foundation for this contradiction was well laid - in the cross examination of Crane (see page 4 of abstract at top) where Crane answered to the same question - "I think not"

It is not the law - as supposed by our Circuit Judge - that a witness must deny positively before he can be contradicted - If so you could never contradict a crafty witness

The only object of the preliminary examination as to his former testimony is to give him a chance to explain - if he admits the words attributed to him -

Crane had sworn on this trial that he did keep a memorandum of the draft - - He had sworn that on the former trial of the cause - ~~that he testified~~ he was a witness - but he now thinks that on that trial he did not swear that he kept no memorandum of the draft & now we propose to prove that he did at the former trial so swear -

3d. It was proper for plaintiff to prove by Fort, that Crane did at a former trial swear that "he kept no memorandum of the draft." (See Abstract, page 6.)

It is not the law, that to admit such testimony, the witness must positively deny having used the words attributed him. It is enough if he says that does not remember having said so.— See Abstract, pages 3 and 4.

1 Starkie's ev. 213 ; 6 Eng. Com. Law Reps. 112.

For these reasons it is respectfully
submitted - this judgment should be reversed
& the cause remanded -

To Lytle Dickey
for plaintiff in error

98 -
Written Argument
by J. L. Dickey
for plaintiff

Ray
vs
Bell

State of Illinois }
La Salle County } ss. Pleas before the
Honorable Madison E.
Hollister the Judge of the Ninth Judicial
district of the State of Illinois, and the
Presiding Judge of the La Salle County
Circuit Court, at term of said Court com-
menced and held at the Court House in
Ottawa in said County on the first Monday
in the month of February, the same being
the sixth day of February, in the year of
our Lord one thousand eight hundred and
sixty, and of the Independence of the United
States of America the Eighty fourth.

Present,

The Honorable Madison E. Hollister

Presiding Judge.
John F. Nash Clerk.
Washington Bushnell State attorney
Francis Warner Sheriff.

Be it remembered, that on the 6th day of February,
A.D. 1860, a certain transcript from the records
of the proceedings in the Circuit Court of Marshall
County in a certain cause of Jesse Roy against Edw
S. Bell, was filed with the Clerk of the said
LaSalle County Circuit Court, in the words and
figures, following, to wit;

2. " Pleas before the Circuit Court of Marshall County
in the State of Illinois at a term thereof begun and held
at the Court House in the City of Lacon in said County
on Monday the third day of May in the year of our
Lord one thousand eight hundred and fifty eight.

Present the Hon. M. Ballou Judge of the 23^d Judicial
Circuit of the State of Illinois presiding, George
W. Stiff, State's attorney for said Judicial Circuit,
Henry L. Crane Sheriff of said County and James
Wescott clerk of said Circuit Court.

Thursday May 6th A.D. 1858.

" Jesse Ray

vs

Edw. S. Bell

} assumed,

This day came the parties,
the plaintiff by Fort & Ramsey his attorneys
and the defendant came by Richmond & Burns his attor-
neys and issue being joined herein a jury came to
try the same to wit: John Noyes, William S. Walker,
Thomas A. Chace, William Chambers, Samuel Hamill-
ton, Aaron Sweager, Thomas Walker, Joseph F. Lowe,
J. V. Vail, John Perkins, John E. Ward & James
Marshall, twelve good and lawful men, who were
duly empanelled and sworn to well and truly try this
Cause and a true verdict render according to the
evidence, and after hearing the evidence, the arguments
of Counsel and the instructions of the Court retired
to consider of their verdict."

3.

And afterwards to wit on the Seventh day of May
A.D. 1858. the same being one of the days of the term
as aforesaid, and the Court being then judicially sitting
further proceedings were had in said cause of Jesse
Ray vs Edie S. Bell and entered of record, to wit;

" Jesse Ray
vs
Edie S. Bell }

assumpsit

This day came the
parties again & the jury who were
empannelled and retired yesterday, came into Court
and say we the jury are unable to agree upon a
Verdict in this cause; and it appearing to the Court
that there was no probability of an agreement by the
jury, it was ordered that they be discharged from the
further consideration hereof, and that this cause be
continued."

Pleas before the Circuit Court of Marshall County
in the State of Illinois at a Term thereof began and
held at the Court House in the City of Lacon in
said County on Monday the fourth day of October
in the year of our Lord one thousand eight hundred
and fifty eight. Present the Hon. M. Ballou
Judge of the 28^d Judicial Circuit in the State of
Illinois, presiding. George W. Stipp States attorn.
for said Judicial Circuit, Henry L. Crane Shuff
said Marshall County. & James Wescott clerk of said Circuit Court

4.

Jesse Ray

vs

Eddie S. Bell

Assumpsit.

This day came the defendant by
Richmonds & Burns his attorneys and
entered a motion to suppress the deposition of Francis
C. Moore filed in this cause

Wednesday October 6th A.D. 1858.

Jesse Ray

vs

Eddie S. Bell

Assumpsit.

This day this cause came
on to be heard upon the motion of
the defendant to suppress the deposition taken on
behalf of the plaintiff in this cause and the same
was argued by counsel, and the Court being fully
advised in the premises doth order that said motion
be sustained, and that said deposition of Francis C.
Moore be suppressed. And on motion of the de-
fendant, it is ordered by the Court that this cause
be continued at the costs of the defendant. Therefore
it is considered that the said Jesse Ray recover of
the said Eddie S. Bell his costs occasioned by this
continuance, and that he have execution therefor.

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

5.

Held at the Court House in the City of Lacon
in said County, on Monday the 24th day of Janu-
ary in the year of Our Lords one thousands eight
hundred and fifty nine. Present the Hon^{ble}.
Dallow judge of the 2³^d Judicial Circuit of the
State of Illinois presiding.

George W. Slipp States attorney for said Judicial Circuit
Thomas Ellis Sheriff of said Marshall County and
James Wesco^t Clerk of said Circuit Court."

Wednesday January 26th A.D. 1859.

"
Dese Ray

vs

} assumpsit

Eddie S. Bell

This day came the defendant
by Richards & Burns his attorneys and
Entered a motion accompanied with an affidavit to con-
tinue this cause and the Court having considered said
motion and being fully advised in the premises doth
order that said motion be sustained, and that this
cause be continued but at the costs of the defendant.

And now again comes the defendant by his counsel
and enters a motion for an attachment against William
L. Crane, a witness on behalf of the said defend-
ant in this cause, and the Court being fully advised
in the premises doth order that said motion be sustained
and that an attachment issue for said William L.
Crane, returnable to the first day of the next term of

this Court, and it is further ordered that the Clerk endorse on said attachment an order to the Sheriff to take Bail in the sum of five hundred dollars."

"Held before the Circuit Court of Marshall County in the State of Illinois at a Term thereof began and held at the Court House in the City of Lacon, in said County on Monday the second day of May, in the year of our Lords one thousand eight hundred and fifty nine, Present Hon. Mansb. Daugs, Judge of the 23^d Judicial Circuit of the State of Illinois presiding, Henry Miller State attorney for said Judicial Circuit, Thomas Ellis Sheriff of said Marshall County and James Wescott Clerk of said Circuit Court;"

Friday May 6th A.D. 1859. The Hon. E. H. Powell Judge of the 16th Judicial Circuit of the State of Illinois, presiding.

Esse Ray

v6

Edw. S. Bell

assumpsit

This day came the Defendant by Richmond & Deans his attorneys and entered a motion to continue this Cause, and the Court having considered said motion and being fully advised in the premises doth order that said motion be sustained and that this cause

7.

be continued until the next Term of this Court;
 And it is further ordered by the Court that this
 Cause be tried at the next Term of this Court.
 Whether the witness William L. Brane is in attendance
 or not, and that an attachment issue against
 the Said William L. Brane, returnable to the
 next term of this Court, and that the Clerk en-
 -dorse on said Attachment a direction to the Sheriff
 to take Bail in the sum of five hundred dollars.
 And it is further ordered that the plaintiff
 recover of the Defendant his costs occasioned by
 this continuance, and that he have execution therefor."

"Pleas before the Circuit Court of Marshall County
 in the State of Illinois at a Term thereof began and
 held at the Court house in the City of Lacon in said
 County on Monday the third day of October in the
 year of Our Lord One Thousand eight hundred
 and fifty nine, Present the Hon. Mark Bangs,
 Judge of the 23^d Judicial Circuit of the State of
 the State of Illinois, presiding.

Henry Miller States Attorney for said Judicial
 Circuit, Thomas Ellis Sheriff of said County
 of Marshall, James Wescott Clerk of said Circuit
 Court."

Tuesday October 4th A.D. 1859

8.
Pesse Ray } assumptit.
vs } This day came the Plaintiff by
Edu S. Bell } G. L. Fort his attorney and entered
a motion to Suppress the deposition
of William L. Crane filed herein."

Friday October 14th A.D. 1859.
Now E. M. Powell Judge of the 16th Judicial
Circuit of the State of Illinois presiding.

"Pesse Ray } assumptit.
vs } On this day this cause come
Edu S. Bell } on to be heard upon the motion of
the Plaintiff to Suppress the dep-
osition of William L. Crane filed in this cause
And after argument of Counsel the Court being
fully advised in the premises doth order that said
motion be and the Same is hereby Sustained
And said deposition be Suppressed, Whereupon
on motion of the Defendant by his counsel it
is ordered by the Court that this cause be continued
but at the costs of the Defendant, and that an
Alias attachment issue against the Witness William
L. Crane returnable to the next term of this Court
and that the Clerk endorse on said attachment
a direction to the Sheriff to take bail in the Sum
of five hundred dollars. It is therefore considered

9. by the Court that the Plaintiff recover of the Defendant his costs occasioned by this continuance and that he have execution therefor."

Monday October 14th A.D. 1859.

Jesse Ray } Assumpsit
vs } The Judge of this
Eddie S. Bell } Court having been of Counsel for
the Plaintiff herein it is ordered
that the venue in this cause be changed to the
County of La Salle in this State; and it is further
ordered that the Clerk of this Court transmit to the
Clerk of the Circuit Court of said La Salle County
a Transcript from the record of the proceedings
in this Court, and the papers in this Cause
duly Certified according to law.

State of Illinois } J. James Wescott Clerk of the Circuit Court
Marshall County } ss. of the County of Marshall and State of Illinois
do hereby certify that the foregoing is
a correct Transcript from the record of the proceedings
in said Court, in a certain Cause of Jesse Ray ^{against}
Eddie S. Bell and that the accompanying papers
marked, (1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12) (13) (14) (15) (16) (17)
(18) (19) (20) (21) (22) (23) (24) (25) (26) (27) (28) (29) (30) (31) & (32) are
all the papers in said Cause filed in my office
In Witness whereof I hereto set my hand
(Seal)

and affix the Seal of Said Court at my office in
Lacaw this Sixteenth day of January A.D. 1860.

James Wescott Clerk.

And at the same time of the filing of the foregoing trans-
cript) there were also filed with the said Clerk
of the Circuit Court of La Salle Co, accompanying papers
in said certificate mentioned and
(sent from the files of the Marshall County Circuit
Court) and numbered from 1 to 32 inclusive, among
which were the summons, & sheriff's return thereon,
the declaration, defendants' pleas & the replica-
tion thereto, which last named papers constitutes the
record in said Cause, and are set out as follows, to wit;

(Summons)

" The People of the State of Illinois,

To the Sheriff of Marshall County, - Greeting;

We command you to Summon Edie
S. Bell to appear before our Circuit Court, on
the first day of the next term thereof, to be held
at Lacaw, within and for the said county of
Marshall, on the first Monday of May next
(A.D. 1858) then and there in our said Court,
to answer Jesse Roy in a plea of trespass on
the case upon promises in damages at the
sum of two thousands dollars as he says.

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

Witness, James Wescott, Clerk of our said Court
and the Seal thereof at Lacaw, this thirteenth day of

11.

March in the year of our Lords one thousand
Eight hundred and fifty-eight.



James Wescott Clerk.

(Endorsement on back of summons)

"I have served this writ by reading the same
to the within named Edie S. Bell on this
22^d day of April A.D. 1858. as within commanded.

Sheriffs fees. Service \$.50
10 miles travel 50
Return of this writ 10
\$ 1.10

W. L. Graue

Sheriff of Marshall Co. Ills.

(Declaration)

"In the Circuit Court of Marshall County.
Of the May Term A.D. 1858.

State of Illinois }
Marshall County }

Peres Ray, Plaintiff in this
suit, by G. L. Fort his attorney
Complains of Edie S. Bell Defendant, who was
summoned, &c in a plea of trespass on the case as
promises: For that whereas the said Defendant,
heretofore to wit; on the Twenty Eighth day of October
in the year of our Lords One thousand Eight hun-
dred and fifty six (1856) at Lacon, to wit; at said
County of Marshall, made his certain promissory
Note, and then and there delivered the same to
said Plaintiff, in and by which said note, said
Defendant, by the name, style and description of
Edie S. Bell promised to pay to the order of
said Plaintiff, by the name, style and description

of Jesse Ray. on or before the twenty first day of October next thereafter, the Sum of twenty three hundred dollars (at the Banking house of Fenn, Brown & Co) to wit at the County of Marshall aforesaid for value received. 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, and being so liable, in consideration thereof, then and there undertook and promised to pay the same to the said Plaintiff according to the tenor and effect, true intent and meaning of the said note, to wit at the place aforesaid.

And whereas, also; the Said Defendant, afterwards, to wit, on the first day of January in the year of our Lords One Thousand Eight Hundred and fifty Eight, to wit, at Lacaw in Said County, became and was indebted unto the Plaintiff - in a large Sum of money, to wit Three thousand dollars, for money before that time lent and advanced to, and paid, laid out, and expended for Said Defendant by Said Plaintiff at said Defendant request; and for money before that time had and received by Said defendant to and for the use of Said Plaintiff; and also in like Sum for goods, wares, and merchandize before that time sold and delivered by Said plaintiff to Said Defendant at like special instances

13.

and request; and also in like sum for the labor, care, and diligence of 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 last mentioned sum of money, when thereunto afterwards requested.

Yet the said Defendant, not regarding his said promises and undertakings, but contriving &c although often requested to do hath not paid said Plaintiff either of said sums of money, or any part thereof, but so to do hath hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of said Plaintiff of Ten Thousand dollars, and therefore he brings this suit, &c.

G. L. Fort atty for Plaintiff

Copy of instrument and account sued on.

\$2300

Lancaster Oct 28. 1856.

"On or before the first day of October next
I promise to pay Jesse Ray or order the sum
of twenty three hundred dollars at the banking
house of Fenw, Crane & Co.

on which is paid \$500. 00

Eddie S. Bell

Edu S. Bell,

To Jesse Ray

Dr

To money lent and advanced	\$ 3000.
To money expended and paid out for	\$ 3000.
To money received for use of	\$ 3000.
To Goods, wares & Merchandise	\$ 3000.
To labor and Services	\$ 3000.
To balance on account stated	\$ 3000.

(Defendants Pleas)

Jesse Ray

vs

Edu S. Bell

 } Marshall County Circuit Court
 of the May Term 1858.

And now comes the said defendant by Richmond & Burns his attys and defenders, and says that he did ^{not} undertake a promise in manner & form as the said plaintiff hath above thereof complained against him, and of this he puts himself upon the country &c
 And says doth the like } Richmond & Burns
 by G. L. Fort his atty. for deft.

And for a further plea in this behalf the said defendant says actio non because he says that on the first day of March A.D. 1858. and prior to the Commencement of this Suit, he fully paid and discharged the several sums of money in the plaintiffs declaration.

15.

ration mentioned And this he is ready to verify
Wherefore he prays judgment

Richmonds & Burns
for deft. "

(Replication)

Jesse Ray

vs

Eddie S. Bell

} Marshall County Circuit Court
May Term A.D. 1858, and now comes
the plff by G. L. Fort his attorney

And as to the said defendant's second plea by him
above pleaded says precludi non because he says
that on the first day of March A.D. 1858. and
prior to the Commencement of this suit the said
defendant did not fully pay and discharge
the several sums of money in the plaintiff's
declaration mentioned, and of this he puts himself
upon the Country &c

And Deft doth the like

G. L. Fort for plff

Richmonds & Burns, defts atty.

All of which papers were placed on file in the
office of the Clerk of the Circuit Court of La Salle
County, and the Cause was placed on the docket
for the February Term 1860, of said Circuit Court
at which term the following proceedings
were had, to wit;

State of Illinois }
 La Salle County }²⁰ Pleas before the Honorable
 Madison E. Hollister, the
 judge of the Ninth Judicial
 district of the State of Illinois and the pres-
 iding judge of the La Salle County Circuit Court
 at a term of said Court commenced and held
 at the Court House in Ottawa in said County
 on the first Monday in the month of February
 the same being the sixth day of February in the
 year of our Lords one thousand eight hundred
 and sixty and of the Independence of the United
 States of America, the Eighty fourth.

Present

The Honorable Madison E. Hollister

Presiding Judge

John F. Nash Clerk

Washington Bushnell State attorney

Francis Warner Sheriff.

Be it remembered, that on Friday March 2^d 1860
 the same being one of the days of the February
 term of said Court for said year, an order was entered
 of record in said cause, in the words and figures fol-
 lowing, to wit;

Esse Ray

vs

Eddie S. Beale

assumpsit.

This day the plaintiff comes

17.

by Dickey & Fort his attorneys and the defend-
-ant by Richmond & Glover his attorneys, and
thereupon came the following jurors of a jury,
to wit; James Spencer, Thomas Houdley, Enoch
Kagenbach, John Morrill, O. R. Poyas, Robert
Wade, John Greenleaf, Josiah Stebbins, Charles
Brown, O. H. Pratt, John W. Ailes and Oran
P. Dutton who are duly elected, tried and
sworn, to well and truly try the issues herein
according to the evidence, and after hearing
the evidence in part, the further hearing of
this cause is postponed until the coming in of
the Court tomorrow morning,

And afterwards, on the day following, to wit, on
Saturday, March 3^d 1860 the same being one of
the days of the February Term of said Court, for
said year, a further and final order was entered
of record in said Cause, in the words and figures
following, to wit;

Jesse Ray
vs

Edie S. Bell

} assumption

This day the parties hereto
again came by their attorneys
together with the jury sworn herein and after
hearing the balance of the testimony and the
arguments of Counsel, the jury retire to consider

of their verdict; and after due deliberation thereon had return into Court the following verdict to wit; "We the jury find the issues joined in favor of the defendant."

Plaintiff Counsel move the Court for a new trial which motion is overruled by the Court.

It is therefore considered by the Court that the defendant have and recover of the plaintiff, his costs and Charges by him herein expended, and that he have execution therefor.

And now on motion of plaintiff attorneys it is ordered by the Court that They have Six days to prepare and tender to the Court a bill of exceptions in this cause."

On The 24th day of March A.D. 1860. The Hon Madison E. Hollister Judge of Said Court placed on file a bill of exceptions signed by him in the words & figures following, to wit;

"Circuit Court of La Salle County, at the Feb Term A.D. 1860.

Jesse Ray	}	assumpsit
vs		Change of Venue from
Eddie S. Bell		Marshall Co.

Be it remembered that on the trial of this

19.

cause - the plaintiff read in Evidence to the jury a promissory note & a memorandum on the face of it as follows, viz;

"\$2300" "Lacaw Oct 28, 1856" "
"On or before the twenty first day of "
"October next I promise to pay Jesse Ray,"
"or order the Sum of twenty three hundred "
"dollars at the Banking House of Ferns,"
"Crane & Co. "Eddie S. Bell"

"\$700 of this in St Louis Ex or Gold"

And also reads in Evidence the endorsements of three Credits which were written on the back of the note as follows, viz;

Rec'd Lacaw Nov 6/57
on the within note Six hundred & fifty five dollars.

Rec'd on the within five hundred & forty five
05/100 dollars.

\$407.50 Received on the within note Feb 25th
1858 four hundred & seven 5/100 dollars.

The defendant then called as a witness William L. Crane who testified that he had seen the note before - there is some of my hands writing on it - I lived in Lacaw - Member

of Finn Few, Crane & Co. - We had the note for collections - We got it from plaintiff soon after it was drawn & had it some months - It was not paid at maturity - We had it when & after it fell due. - It was not all paid at maturity - It was in our hands till about the day of the last endorsement. -

Dont remember who took it away - Endorsements of first two credits were written by me - Dont remember whether I received the money when these endorsements were entered, or whether Ray directed me to write them.

When I last saw the note there was an endorsement for \$700. in pencil which is now partially rubbed out. It was written by me I think - Either by me or my Book Keeper late in the fall of 1857, or early in 1858.

The two endorsements one for \$655. & the one for \$543.05. were made before the \$700 credit in pencil - The credit of \$407.50. dated Feb 23. 1858. - which is now on the note was not on when the credit in pencil was made.

When the \$700 credit in pencil was made about \$735 was paid - It was paid in a kind of family way - Something was said between Ray & Bell about back payment - It was to settle this difficulty for which this memorandum on the face of the note was made (Witnessed)

21.

here referred to a memorandum on the face of the note in writing in these words: "\$700. of this in St Louis 'Ex or Gold') - That memorandum was made when we first took the note. - Exchange that fall was high. \$55. was paid for exchange - The endorsement was made a very few days after the payment was made - The note was in my possession in the meantime - At that time the name of our House was Wm L. Crane & Co. successors to Fenn, Crane & Co. Judge Ramsey was present when that \$700 payment was made & I think Cook and some one else was there - Bell was there - The money was received for the benefit of Ray for the purchase of a draft & was to be a payment on this note -

On cross examination the witness said; I am not acquainted with the handwriting of "Ray". Don't know whether the words "Jesse Ray" on the top of note, are in his handwriting or not - They were not written by me or my clerk - Those words were on the note when witness had the note (Where J. L. Dickey attorney for plaintiff in the presence of the Court & the jury struck out the words "Jesse Ray" by drawing a line across the same with ink - against this the defendants attorney protested - and moved the Court to exclude the note from the jury, which motion the Court refused)

22.
(our)

This note and another were at the Banking House of Fern Crane and Co. I have no recollection how they came there - They were in our safe a long time - Fern, Crane & Co dissolved partnership in the winter of '56 and '57. These notes were there all the time after first left, until the payment of the \$735. except a few days before one of ^{the} payments. It was ^{then} taken out a few days, and then brought back again.

I don't know whether that was just before the \$735. was paid or not. The first & second credits on the note of \$655. & of \$545.05; are in my hand writing. I have no particular recollection when these payments were made or who made them. I have some recollection of Ray having money in the Bank & checking it out.

I don't remember receiving any money on the note except the \$735. - I think I had the note when the \$735. was paid - Ray and Bell were then together. I don't remember that Ray brought the note with him - but there was a time when Ray had this note a few days, and brought it back, and it may have been at this time but I don't recollect - Last Summer I gave my deposition in this cause, and I then swore that some little time before the \$735. was paid, Ray came and got the note, and returned with it the day that money was paid. My recollection

was better then than now. Witness was here asked to relate in order all that passed at the time the \$735. was paid & said:

Bell brought in a package of currency - I think it was over \$1000. Bell & Ray had some talk about the payment. I did not hear it all. Bell wished Ray to take the \$700 in currency, - Ray did not want to do it. One or both of them said something to me about exchange - I told them I had none of that amount - that I was not dealing in exchange except what I made by transient drafts -

They wanted to know what a draft could be bought for - I told them I supposed for about five per cent - I was asked by one of them if I could purchase any at that price. I told them that I could and I was paid the \$735. for that purpose. - I don't remember which one of them paid it. There was some other conversation but I don't remember any thing more in particular - I might remember it if any thing was suggested. Being further cross examined witness testified. The amount of currency Bell brought in might have been as much as \$1300. I have no recollection that when the \$735. was paid to me that Bell at the same time or just after paid \$545. in

currency to Ray in my presence, & I don't remember that the \$545. was then endorsed by me on the note as the Second endorsement that now appears on it. That payment may have been at that time, but I don't recollect - I don't know whether Bell & Ray came in to the door together or not -

I don't remember whether the note was produced then by Ray or by me. - I think it was produced there, but have no recollection by whom -

I don't remember which it was, Ray or Bell who asked me to buy the draft. Ray told me when the draft was purchased to credit it on the note; that is my impression now. This did not occur to me when I was asked a little while ago - to tell all I remembered as happening there - Something was said between Ray and Bell about specie but I cannot tell you the substance of that conversation now. I do not remember that Ray told Bell that he must have gold or something which Moore Morton & Co. would accept. Something of that sort was said. I don't remember that Ray told Bell in my hearing that he would not take a draft until it was accepted by Moore Morton & Co. I do not remember that the arrangement was that Bell should furnish me \$755. to buy a draft

for \$700. and send it to Moore, Morton Co. and when they accepted it I should credit it on the note - The \$735- was paid to me for the purpose of buying a draft - Ray told me when the draft was purchased to forward it to Moore Morton Co. and credit it on the note, that is all I remember - I think Judge Ramsey and Bell were both present at that time and this was pretty soon after the money was paid, and we were in the front room - I can't remember particularly how the consultation came up. when Ray directed me to credit the note, Bell had the money in his hands. I can't remember who gave me the money, nor which of them, or whether it was both of them whom I told I would buy a draft for \$735;- Either Ray or Bell or Both of them wanted me to get the draft - I can't remember whether I made a special agreement to get the draft for that amount or not I do not remember that Bell at the same time I received the \$735. to buy the draft paid to Ray \$545. in currency, or any other amount, I cannot remember whether more was paid at that time or not - It might have been so - And I might have seen it - I cannot remember. - I cannot remember that at that time I was about to make a credit upon the note, and that Ray said, that the \$545-

which had been paid to him might be credited on the note - but that the \$700 must not be credited until the draft was accepted, and that I accordingly endorsed the \$545; at that time in the presence of the parties - That credit of \$545; is in my handwriting - but I have no recollection of making the endorsement or of the circumstances under which it was made.

On the same day the \$785; was paid to me (or very soon thereafter) I paid out that money in Peoria for a draft - I don't remember the man's name of whom I bought the draft, I bought the draft at the Peoria House - I had seen him only two or three times before - I was introduced to him by Mr Elwood Johnson to this trip. I found him in the Peoria House and there bought the draft of him. I can't remember his name - I took a Memorandum of his name and of the draft - and have had occasion to use it once or twice since. That memorandum is either in Pittsfield or Lacrosse, among my papers, - I last saw it in Lacrosse - I think it was after the former trial in this case at Lacrosse, I gave testimony in behalf of defendant at the May term of the Marshall Circuit Court. I then remembered the name of the person of whom I purchased that draft - and then refused to give

(x)

it in my testimony for several reasons - one was, because there was anything but friendly feelings existing between Ray and me, - I was not his agent, and I thought he might find out his own business without my aid - This refusal to give the name of the person of whom I bought the draft was after the Court had directed me to give the name.

When the plaintiff asked the witness the following question: Did the Court again direct you to answer on that point, and did you refuse to answer, in disobedience to the order of the Court?

To this question the defendant objected, and insisted that the contumacy of this witness on a former trial, and the merits of the controversy between witness and the then Judge of the Marshall County Circuit Court could not be gone into at this trial.

The Court sustained said objections of said defendant, and would not permit said question to be answered, by the witness; - to which ruling of the Court, the plaintiff then and there excepted

exception

Witness further testified as follows;

At that time I recollect the man's name, - I had corresponded with him at Peoria, - I last saw the memorandum spoken of in Lacon after former trial - Nobody else ever saw it that I know of - I don't remember that Mr G. L. Fort asked me

for information about the draft or the name of the person I bought it of, before the former trial - On the former trial something was said about the keeping a copy of the letter or a memorandum of the draft, but it referred to the books, in my understanding - Plaintiff asked Witness this question: Did you, on the former trial swear that you kept no copy of the letter and no memorandum of the letter or draft - and that you would have done so if you had been doing banking business? To which Witness answered; I don't think I did, I may have said so in relation to the letter. My deposition was taken last summer in Pike County in this case, and I was then asked of whom I bought this draft, and I refused to answer the question.

At the former trial I was ordered to jail for not answering, was ordered to give bail but nobody took me, I was afterwards in jail for a contempt, but whether for this or for not attending as a witness, I don't know - I sent in my petition to the Judge, but he would not read it, and I was afterwards taken to Peoria in Habeas Corpus.

I never did any other business with the man of whom I bought that draft.

I have met him three or four times. Saw him afterwards in Peoria - don't know what became of him - my recollections about transactions may

have differed at different times - I think I have a tolerable memory. My memory of faces and names is not very good. My memory of conversation is better. The amount of the draft I bought of that man was exactly \$700.

I don't know whether he had any other drafts at that time or not - I don't remember by whom the draft was drawn - but I think it was drawn by some bank in Wisconsin, and on the "First Bank, New York" I think - I don't remember to whose order it was payable on its face - there were several endorses on the draft - I can't remember the names. I think one was ^{named} Jonathan Fay. That name was written in a peculiar handwriting - I think all the endorsements were made in blank, except the one I made, and that was to Moore, Morton & Co.

On the former trial of this case I think I did not swear that I bought this draft as the sole agent of Bell - I never considered myself his agent - Upon examination by the defendant, ^{interview} testified as follows: I endorsed the draft "pay to the order of Moore, Morton & Co." or Moore and signed it "Jerse Ray per W. L. Crane".

Witness further testified in answer to defendant as follows: I afterwards had a conversation with Ray about the receipt of the draft by Moore, Morton & Co. Ray asked me if I had received

information about the draft. I told him I should not hear from it, but that he would, - I advised him to write to them, which he did, and got an answer saying that they had not received the draft, and to apply to me for a duplicate - I don't ~~know~~ remember whether I told Ray how I endorsed the draft. Ray made no objections in this conversation about the draft. I can't say whether Ray requested me to procure a duplicate - but the conversation we had led me to procure a duplicate - And I did procure it, ^{I got it} by the noon mail, and I returned it to the party of whom I got it, I think on the same day. When I returned it, it was just after the difficulty I had with Ray;

We have never spoken since - This note was in my office, after the payment of the \$735. I think Ray left it there, but am not certain - it was there when I put on, in pencil the Endorsement of \$700. The reason why I didn't attend Court was because of sickness and death in my family - I returned to Lucas at that time and was afterwards arrested - I applied to be discharged and sent in my petition to setting up these facts, and the Judge refused to hear it read, and fixed my bail at four or five hundred dollars - I was afterwards

Taken on Hales's Circumstances before Judge Powell at Fernia and my bail was fixed at \$50 and I got out.

On cross-examination, witness said that he received the duplicate within two or three months from the time he sent the draft enclosed in a letter from the man of whom he bought the original, and sent back the duplicate in another letter to the same man, and that he had never shown either the duplicate or the letter in which it was received to anybody in Lacon or anywhere else, and that he may have that letter now in his possession, but does not know.

I had a difficulty with Ray on the day of the last endorsement of credit on the note & this was shortly before I received & returned that duplicate draft. As to the difficulty, Ray & Bell & several others, Burns & Cook came into the office & Cook began to count some gold to Ray as a tender to apply on this note - When the tender was made Ray got very mad and said something about my swindling about the draft - I did not notice it at first - but he repeated it & then I drew a pistol on him but did not fire - Don't know whether Ray received the tender or not - The business was interrupted by my difficulty.

with Ray - It was at the January Term 1859. that Judge Ballou refused to hear my petition. It was at that time my family was Sick - Plaintiff's attorney then asked whether it was sickness in his family that prevented him from attending the May Term of the Marshall Circuit Court - This question was objected to by defendant on the ground that the subject of enquiry was irrelevant, but the Court excluded both of said questions and Plaintiff then & there excepted to that ruling.

Left then called D. G. Warner, as a witness who testified as follows: I think I know the hand writing of the Plaintiff. I think the name on the top of the note which is now crossed out, is in his hand writing.

I heard a conversation in the Clerk's office in Lacaw about some money. Ray spoke of some transactions between him and Bell and inquired of Cook if he could not put him on some track by which he could get money out of Crane. I don't exactly remember Cook's reply; it was in substance that he did not know of any way. Cook had security on everything of Crane's. Ray said Bell had paid the money into Crane's

for him, and Crane claimed that he had bought a draft with it and sent it to Quincy, but Ray said he did not believe he had.

Something was said, I can't remember exactly what, but Ray expressed a fear he would lose the debt he feared he could not get it of Bell, or something like it.

The amount of Seven hundred dollars was mentioned, and Ray said 35 dollars was paid to buy a draft with. Witness further stated that Bell was a man of property, and abundantly responsible.

On Cross Examination, Witness stated that the above conversation occurred sometime before the last endorsement of \$487.50. was made on the note. That that last endorsement was made by the witness, and was in his hand writing. Bell paid the money to Ray in the Bank office. I counted the gold and reckoned the interest and handed the note to Bell. This Mr. Ray objected to, saying there was Seven hundred dollars on it not yet paid. Bell put the note in his pocket. Ray said it was a Snatch game, and finally Ray Bell surrendered the note to Ray. At that time there was an endorsement of \$700. in pencil on the back of the note, and the endorsement

written by me was written below the pencil endorsement. In Counting the interest, Witness took the \$700. endorsement in pencil into account, when he Computed the interest but there was nothing Said between Ray & me, at the time about the Mode of Computing the interest & Ray did not examine my calculation.

Deft. then Called as a witness, C. S. Erskine who testified:

Shortly after Harvest in the Summer of 1858. I was riding from town with Ray and he told me that he believed the difficulty between him and Bell would soon be settled; that the Odd Fellows had taken the matter up and several of them had inquired of him about it, and he had told them that Bell was an honest man. That Bell came to the Bank with the money and finally agreed to pay the extra five per cent to settle the trouble. That if he could have got Bell to have joined with him he could have got the money out of Crane, but that Bell told him he had nothing to do with Crane from first to last. I asked Ray why he did not sue Crane himself. Ray said he could not

that if he had said Crane, Crane would have insisted him. I don't remember Ray's words, but he said in substance that Bell paid the five per cent rather than have any bother about.

Henry Crane, a witness for Plaintiff, testified that he was in the Banking house of Fenn, Crane & Co. and afterwards in the house of W. L. Crane & Co. That the note in question was in the bank in the Spring of 1857, and thence through the Summer of 1857. There was also another note in the bank with this one which Bell paid to the witness, and witness passed the money to the Credit of Ray, and Ray afterwards got it. And here defendant rested his case.

Silas Ramsey, a witness for Plaintiff, testified, that he had resided in Marshall County 24 years, had been Sheriff, had been County Judge and at one time Clerk of the County Court. And that he was present in Crane's bank when the second Credit (\$545.05) was endorsed upon this note; it was sometime in the fall 1857, after the first credit (of \$655) ~~dated~~ dated Nov 6th 1857 was endorsed upon the note.

Witness had before that been informed that Ray had bought land of Moore, Morton & Co.

and had a payment to make to them, and that Bell was expected to pay Ray some money at the bank that day. That Witness had been in the habit of doing business occasionally for Moore, Morton & Co. and that day went down to Craue's banking office, found Ray and Craue there, Bell soon came in with a package of currency and wanted to make a payment to Ray. A controversy arose between them about taking currency. Ray said he had a payment to make to Moore, Morton and Co. on his land and that he must have \$400. in specie, the rest he was willing to take in currency.

The Witness suggested that a draft would probably answer Moore, Morton & Co. as well as the specie.

Ray contended that he would receive nothing but gold. Bell then asked Craue what he would ask for a draft. Craue said he had none to sell but that he was going to Peoria, and would agree to get him a \$700 draft for thirty five dollars. Bell then paid to Craue \$735. in currency, and then turned to Ray and paid him \$400. in currency \$500. and over.

Craue then spoke of crediting the whole sum on the note, but Ray said no. that the currency which he had received might be credited, but that the \$400 must not be credited until Moore, Morton and Co. had accepted the

37.

The draft. Crane thereupon credited on the note the \$545. paid to Bell in person. Bell and Ray then left the office together, and the note as witness thinks was left in the bank. Bell made no objection to the manner of entering the credits as directed by Ray.

The Plaintiff then introduced as witnesses G. C. Barnes, S. L. Fleming, C. M. Bonham, William F. Palmer, James R. Chapman, Edward Jones, John C. Gore and Henry L. Crane, who testified severally that they were acquainted with the witness William L. Crane, and knew his general reputation for truth and veracity, and that that reputation was bad.

Plaintiff also reads in Evidence the deposition of Francis C. Moore of Quincy:
Deposition of Francis C. Moore.

The said Francis C. Moore being duly sworn doth depose and say in answer to the several interrogatories, as follows, to wit:

Interrogatory 1st What is your age, name, business and place of residence, and what is the name of the firm, if any, in which you do business - and how long have you been so engaged?

Answer: Quincy, Illinois, my age is 62 years, my business is that of Land agent.

Interrogatory 2nd Are you acquainted with the Plaintiff and

defendant, in this suit, and if you, how long have you known them or either of them?

Answer -

I am acquainted with the Plaintiff only, by Sale of land to him on the 8th day of November 1856. And I am not acquainted with defendant.

Interrogatory 3rd

Did you while acting as agent of some other person or persons or in any capacity whatever sell to the Plaintiff a tract of land in Marshall County - If you, ^{State} what land, and at what time, and when the payments were to be made and the amount of the same?

Answer

As Agent for the Estate of Silas Wood dec^d I sold to Jesse Ray on the 8th day of November 1856. the SE qr. of Sec 35. T. 13. N. R. 8. E of the 4th Mb. and payment of \$600. Amount due November 8th 1857 with one years interest - on \$1800. due at Quincy Mo.

Interrogatory 4th

Did you at any time before said payment became due, or at anytime afterwards receive from Jesse Ray or Jesse Ray by Wm. L. Crane, or Wm. L. Crane & Co. or from Wm. L. Crane or any other person a draft on New York drawn by some bank or Concern in Wisconsin for the Amount of any payment on said land, or any balance due thereon or any draft whatever to be applied upon any payment or payments for said Jesse

39.

Answer.

Ray or other person on said lands, or said contract, or sale or for any other purpose. If you, State fully and particularly all about it. No payment has been made since the 8th day of November 1856. The payment due on the 8th day of November 1857 remains due and totally unpaid. I received no draft on New York from any person or for any amount on said sale, except the first payment as above stated although we urged payment.

Interrogatory 5th Did you ever at any time receive any letter written by W^m L. Crane or W^m L. Crane & Co, or any letter from Jesse Ray per said Crane, or said W^m L. Crane & Co. about said payment or concerning any draft sent or lost, or any of the business between you and said Jesse Ray, if you please attach a copy thereof as an exhibit to your answer, here to?

Answer

I never received any letter from W^m L. Crane or W^m L. Crane & Co. in behalf of Jesse Ray, or on any other account, relating to the indebtedness of Jesse Ray, or concerning any draft sent or lost.

Interrogatory 6th State if you know any other matter or thing of benefit to either party the same as if particularly interrogated thereto?

Answer.

I know of nothing further to state in the matter.

Francis C. Moore.

Plaintiff then called G. L. Fort, who testified that he heard the testimony of the witness Wm L. Crane, in the former trial of this cause, in the Marshall County Circuit Court, and that said witness then testified that at the time when said \$735. were paid to him to buy a draft with, the note in question was in the possession of Ray; that said witness at said trial further swore that in buying said draft he acted as the agent of Bell, and that said draft was payable on its face to the order of Jonathan Fay.

Plaintiff here asked the witness whether said Wm. L. Crane, in his testimony upon the former trial, did or did not swear that he kept no copy of the letter, or memorandum of said letter or draft, and that he would have done so, if he had been doing a regular banking business, or acted to that effect.

To this question the defendant by his Counsel, objected, upon the ground that said witness Crane, in his testimony here did not positively deny having given such

testimony; and the Court sustained said objections, and refused to permit the witness to answer said question; to which decisions of the Court the plaintiff, by his counsel, then and there excepted.

Plaintiff here offered to read in evidence from the certified transcript ^{of the record in this cause the} of the records of the proceedings in the Marshall Circuit Court at the January Term 1857. (to wit:)

Jesse Ray }
 vs } assumptit
 Edie S. Bell }

This day came the defendant by Richmond & Burns his attorneys and entered a motion accompanied with an affidavit to continue this cause and the Court having considered said motion and being fully advised in the premises doth order that said motion be sustained, and that this cause be continued, but at the costs of the defendant; And now again comes the defendant by his counsel and enters a motion for an attachment against William L. Crane, a witness on behalf of the said defendant in this cause, and the Court being fully advised in the premises doth order that said motion be sustained, and that an attachment issue for said William L. Crane returnable to the first day of the next Term of this Court, and it is further ordered that the Clerk endorse on said

attachment an order to the Sheriff to take bail in the sum of five hundred dollars."

to which the defendant by his Counsel objected; and the Court sustained said objection, and excluded said evidence; to which ruling of the Court the Plaintiff, by his counsel, then and there excepted.

Plaintiff then offered to read in Evidence from the Certified transcript of the records in this cause, the records of the proceedings in the Marshall Circuit Court at the May Term 1859. (to wit:)

"Jesse Ray

vs

Eddie S. Bell

assumpsit.

This day came the Defendant by Richmond & Burns his attorneys and entered a motion to continue this cause, and the Court having considered said motion and being fully advised in the premises, doth order that said motion be sustained, and that this cause be continued until the next Term of this Court; And it is further ordered by the Court that this cause be tried at the next term of this Court whether the witness, William L. Crane is in attendance or not, and that an attachment issue against the said William L. Crane re-

Turnable to the next term of this Court; and that the Clerk issue as said attachment a direction to the Sheriff to take bail in the sum of five hundred dollars. And it is further ordered that the plaintiff recover of the defendant his costs occasioned by this continuance, and that he have execution therefor.

Ex. to which the defendant by his counsel, objected, and the Court sustained said objection, and excluded said evidence; to which ruling of the Court the plaintiff, by his counsel then and there accepted.

Plaintiff then offered to read in evidence from the certified transcript of the records in this Cause, the records of the proceedings in the Marshall Circuit Court at the October Term 1859. (to wit;)

(Tuesday October 4th AD 1859)

Jesse Ray

vs

Edw. S. Bell

assumpsit

This day came the Plaintiff by G. L. Fort his attorney and entered a motion to suppress the deposition of William L. Crane, filed herein.

Jerse Ray } assumpsit.

vs
Edw S. Bell

On this day this cause came on to be heard upon the motion of the Plaintiff to suppress the deposition of William L. Crane filed in this cause and after argument of Counsel the Court being fully advised in the premises doth order that Said motion be and the same is hereby sustained and said deposition be suppressed. Whereupon on motion of the defendant by his counsel it is ordered by the Court that this cause be continued, but at the costs of the Defendant, and that an alias attachment issue against the return of William L. Crane returnable to the next term of this Court, and that the Clerk endorse on said attachment a direction to the Sheriff, to take bail in the sum of five hundred dollars.

It is therefore considered by the Court that the Plaintiff recover of the defendant his costs occasioned by this continuance and that he have execution therefor.

(Monday October 17th 1859)

Jerse Ray

vs
Edw S. Bell

assumpsit.

The Judge of this Court having

45.

been of Counsel for the plaintiff herein it is ordered that the venue in this cause be changed to the County of La Salle in this State; it is further ordered that the Clerk of this Court transmit to the Clerk of the Circuit Court of said La Salle County, a transcript from the record of the proceedings in this Court, and the papers in this Cause duly certified according to law."

to which

the defendant, by his Counsel, objected; and the Court sustained said objection, and excluded said evidence; to which ruling of the Court the plaintiff, by his counsel, then and there excepted.

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Here plaintiff rested his case again; and thereupon defendant recalled W. Crane & E. S. Erskine, who each testified, that he knew the handwriting of plaintiff & that the words "Jesse Ray," (which were struck out by J. L. Dickey on the back of the note at the top as above stated) were in the handwriting of plaintiff.

Defendant recalled the witness D. S. Warner, who testified that he had been acquainted with Lacaw for six or six years; that he had been engaged two years in the Clerk's office; that he knew Crane, and his general reputation for truth and veracity; and that said reputa-

him was good until he failed, and after that men who had lost by him said a great many things, but witness would take his testimony sooner than he would that of Gore, Bonham, Barnes, and several others of the witnesses who testified against him.

Here defendant rested his case.
The above contains all the evidence given in the case, on both sides.

After the evidence was closed, the Court, at the request of the plaintiff gave to the jury the following instructions, to wit;

1 If Ray refused to accept anything for this \$700. - except gold, or a draft which should be satisfactory to Moore, Morton & Co. - & never did accept or authorize any body else for him to accept anything else - then unless the proof shows that that \$700 has been paid in specie or that the draft had been accepted by Moore Morton & Co. - the Credit for \$700. ought not to be allowed

2 That the credit in pencil if made by Cram is no evidence of payment unless the proof shows that it was made in accordance with Ray's direction, or by his authority & if made in violation of his order & without authority

47.

He had a perfect right to rub it out.

3 That the giving of a draft or a note for a part of a debt already secured by note does not operate as payment unless it is expressly agreed by the parties that it is accepted as payment, until the draft or note is paid.

Given

4 That the fact that the note is payable "at the Banking House of Fern, Crane & Co" does not make Crane an agent to collect the note.

Given

5 That the pencil endorsement of any there be put on the note by Crane of "Rec'd on the within Seven hundred dollars" is not evidence tending to prove payment, unless the jury believe that it was put there by the authority of Ray.

Given

6 Even if the jury believe that the words "Jesse Ray" on the back of the note was written by Ray. Yet if he never sold the note and was the owner & holder when this suit was begun then Mr Ray had the right to strike out that endorsement of his name on the trial and such endorsement does not in any way affect his right to recover unless the jury believe that the note was fully paid.

Given

The defendant Thompson asked the Court to give to the jury the following instructions to wit;

2^d If the Jury believe from the evidence that said Plaintiff Ray has, subsequent to the time of the payment of the \$735.^{to Crane}, if such payment were made acknowledged that this was a payment of \$700. to him, the Plaintiff, and that the \$35. was paid by Bell in lieu of the gold. Such payment ought to be allowed as a credit on the note.

3^d If the Jury believe from the evidence that the note in question is and was by its terms made payable at the Banking House of "Hew. Crane & Co." then Bell was authorized to pay said note at said Banking House, and said Bankers or either of them were entitled to receive payment of the same, if at the time of payment, if any were made, they had the legal custody of the note, and to credit the payments on said note. And if the Jury further believe, that upon said note there are now endorsed credits to the full amount due upon the note they must find for the Defendant.

5 If the Jury believe from the evidence, that the witness W. L. Crane, as the agent of the Plaintiff

49.

Given

received from the defendant Seven hundred and thirty five dollars for the purpose of buying a draft and that it was agreed when the money was paid (between the plaintiff and the defendant) that when said Crane should buy the draft he should credit Seven hundred Dollars upon the note, and that in receiving said money and buying the draft said Crane acted as the authorized agent of the plaintiff then the jury ought to allow defendant a credit on said note for Seven hundred Dollars.

6th If the Jury believe the facts stated in the foregoing instructions to be true and that said Seven hundred Dollars, together with the other undrawn credits upon said note fully paid and satisfied the note then the Jury ought to find for the defendant.

Given.

7th It makes no difference whether the amount of the money - that is the Seven hundred Dollars - or the amount of the draft was indorsed upon the note in pencil or whether it was indorsed at all. If the money or the draft was received by the plaintiff or by his authorized agent as part payment of the note sued on in this cause then the Jury should allow a credit upon the note of the amount of the ^{draft} or money so received by plaintiff.

Given

9th The Jury are the Judges of the Weight or credit that is ~~due~~ to be given to all the witnesses & even if they believe from the Evidence that the witness W. L. Crane had not a good Character for truth and veracity, yet the Jury are not bound for that reason, to disbelieve him, but if he is corroborated by other testimony and other facts known, they can give as much credit to the Evidence of said Crane as they may consider it entitled to.

10th If the Jury believe from the evidence that said Plaintiff accepted said Sum of \$735. as a payment of the Sum of \$700. on said note, any subsequent directions given by said Plaintiff to said Crane, as to how and when such payment should be credited upon the note can not Change the fact of payment, and if the credit never was made or ordered to be made, still the payment would be good and should be allowed upon the note.

11th If the Jury believe from the Evidence that the Plaintiff engaged of Coors in the presence of the witness Warner, if he knew of any property of Crane's out of which he could make his debt, it is a circumstance which the Jury have a right to consider in determining the question whether it was

Craze or Bell that owed him (Ray) this debt."

To the giving of each of which said instructions so asked by defendant, the plaintiff, by his counsel, objected; but the Court overruled said objections, and gave each of said instructions to the jury, and marked the same "Given" in the margin thereof; to each of which decisions of the Court in giving each of said instructions the plaintiff, by his counsel then and there excepted. After the verdict in the cause was rendered, and before judgment thereon, the plaintiff, by his counsel, moved the Court to set aside the said verdict, and to grant a new trial herein, but the Court overruled said motion; to which decision of the Court the plaintiff, by his counsel, then and there excepted, and prayed that this his bill of exceptions might be signed and sealed, and made a part of the record which is done.

M. E. Hollister 
Judge &c.

It is agreed that this bill of exceptions was prepared and ready to be tendered on Saturday the 10th day of March 1860. That Judge Hollister was absent from the County of La Salle on that day & that on that day at about 5 o'clock P.M. the same was left at the office of Glover & Cook in Ottawa.

Glover, Cook & Campbell.

State of Illinois }
La Salle County } ss I John F. Nash Clerk
of the Circuit Court in and for said County, in said State, do hereby certify that the above and foregoing, is a true, full and complete record in a certain cause wherein Jesse Ray was plaintiff and Edie S. Bell was defendant, as appear from the records and files of my office.

Witness my hand and the Seal of said Court at Ottawa this 3^d day of April A.D. 1860.

John F. Nash Clerk

C. H. Hook Deputy

State of Illinois -

Supreme Court thereof in the 3rd Grand
Division sitting - April Term
1860

Lessee Ray plaintiff in error

vs
Eddie S. Bell deft
in error

} Error to Cir. Ct of LaSalle

And now comes the said Lessee
Ray plaintiff in error - by James St
Cair Boal - his attorney - and says
that in the record ^{Judgment} and proceedings
aforesaid - there is error and ~~that~~
prays that the same may be reversed
set aside & for naught held & that the
cause be remanded to said Circuit
Court for another trial - and for a special
statement of the points of error the
plaintiff in error shows unto the Court
the following - viz -

1st The court erred in excluding testimony
which ought to have been admitted -

2nd The court erred in admitting evidence which
ought to have been rejected

3rd. The Court erred in giving each one of the instructions given at the request of the defendant ~~plaintiff~~ in error in this C.

4th. The Court erred in giving instructions to the jury -

5. The Court erred in refusing the motion for a new trial. -

James St. C. Boal
~~atty for plaintiff~~
~~in error~~

6th. The court erred in giving judgment for defendant in error, when by the law of the land judgment ought to have been given for plaintiff.

James St. C. Boal,
Atty. for plaintiff in error.

And now comes the since Bill defendant in error by Glover, Cook and Campbell his Atty's and says that in the record, judgment proceedings after since then is no error as by since plaintiff answered. Wherefore he prays judgment

Glover Cook
& Campbell Atty's
for since deft

founder in error ~~filed~~
Filed April 2^d 1860
L. Lehand
Clerk

Certified copy of the Record
in the case of 98

Jesse Ray

vs

Eddie S. Bell

—H—

Transcript of Record,
and

Assignment of Errors.

Filed April 12. 1860

L. Leland

Clerk.

File

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