

No. 13113

Supreme Court of Illinois

Swannell

vs.

Flanders et al

71641  7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 24.

Swannell
vs
Funders

1860

Supreme Court of the
State of Illinois

William G. Swannell
Plaintiff in error

vs
George W. Flandus & al
Defendant in error -

To the Honorable, Judges of the
supreme Court of Illinois -

The Petition of William
G. Swannell Plaintiff in error,
shows to your Honors that since
the argument of the above case
and the affirmance of the
Judgment of the Recorder's Court
of the City of Chicago, the Council
for your Petitioner have discovered
reasons for believing the said
decision of your Honors in
affirming the said judgment
to be erroneous, and your
Petitioner would respectfully
ask your Honors for a re-
hearing of the said case,
and submit to your Honors
the following grounds for
the same -

The said Judgment was rendered by the Records Court of the City of Chicago, and was a Judgment by default, no appearance of the Defendant below having been entered in said Court.

That the said Defendant below was served with process of Summons in the County of Kaukaun, by the Sheriff of said County, the said writ of Summons having been issued said County of Kaukaun, when the said Defendant below resides.

That no writ of Summons or other process issued in the said Cause, was ever served upon said Defendant within the territorial limits of the City of Chicago.

That for the reasons above set forth, the said Records Court of the City of Chicago now acquired jurisdiction over the person of the said Defendant, and the said Judgment, was clearly

void for want of jurisdiction
in the Court rendering the
said judgment -

The Statute organizing
the said Court, conferred its
jurisdiction to the territorial
limits of the City of Chicago.
It is an "inferior Court" per Cook's
Statute - Page 661 - Sec 1 -

This Court has already decided
that it was not competent
for the legislature to create
Recorder Courts for the Cities, which
were not conferred to their
territorial limits -

People v Evans - 18 Ill. Rep 361 -
The Case of the Local & Police Court,

For the above reasons your
Petitioner shows that as he is advised
the said judgment is erroneous
and should be reversed -
and your Petitioner respectfully
prays for an order staying
further proceedings in the said
Case until the same can
be argued - All which is
respectfully submitted -

Wm. Swannell Esq

Att. Gen. Ill.

Supreme Court

Wm. G. Swannell

vs
Geo. W. Flannery
et al

Petition for
writ of

Filed Nov. 12, 1889

L. Leland
Clerk

Let further proceedings
upon the judgment
entered in this cause
by this court be stayed
till the application
for a rehearing be
heard or till the further
order of the court

J. B. Mason
Ch. J.

Wm. L. Clark

Superior Court of the State of Illinois
William G. Swannell
vs. Plt in rem
George W. Flanders et al
 Defs in rem

Sum to the Record's
Clerk of the City of Chicago - now pending
a return -

It is stipulated in the above case
that the sum may, at the next Term of said
Superior Court, be reinstated and the judg-
ment of the said Record's Court, may be reversed
and the said decision as the costs of the
said Defendants in rem. George W. Flanders et al.

It is further stipulated that the said
Defendants in rem George W. Flanders et al
have been to withdraw the Preliminary notes
upon which the said judgment was rendered
and that ^{neither the said judgment nor} the present pendency of the above
suit in the Superior Court, shall ~~not~~ con-
stitute any Bar, or grounds of objection to
the institution and prosecution of another
action upon the said notes at any time
hereafter -

Seals McAllister & Smith
Attys for Defs in rem -

Stipulations

11

Filed Apr. 18. 1860
L. Deland Clerk.

Wm. H. Deland
Clerk of the Court

Supreme Court of the State of Illinois.

THIRD GRAND DIVISION.

APRIL TERM, 1859.

GEORGE W. FLANDERS, et al.,
Defendants in Error,
 ADS.
 WILLIAM G. SWANNELL,
Plaintiff in Error.

DEFENDANT'S POINTS.

1. The general rule is, that it is not error for the court to refuse to set aside a default.

The application is addressed to the sound discretion of the court, and no writ of error will lie to correct its exercise.

1 Scam. 131, 145.

5 Gil. 457.

In *Greenleaf v Roe*, 17 Ill., it is said: "Motions to set aside defaults are addressed to the sound discretion of the court, and it must be a very gross and flagrant abuse of that discretion that will warrant the revision and interposition of the Supreme Court, IF AT ALL." The Supreme Court will not interfere where the affidavits are conflicting. The question is, whether there *is* a gross and flagrant abuse of that discretion. The Supreme Court cannot undertake to say there was such an abuse, when it appears from the affidavits filed in the case that there might have been great doubts in the mind of the court below whether the facts set forth by the defendant below were true; and it is presumed that the court exercised sound discretion and judgment in overruling the motion.

The notes were made by John Swannell, payable to the order of Geo. W. Flanders & Co. Wm. G. Swannell writes his name on the back of them.

Suit is brought against John, as maker, and another against William, as guarantor.

Default as to William, who moves to set aside the default, and attempts to show by his affidavits that he had an agreement with Sedgwick whereby he was to be bound as an *endorsee*, simply; that

after suit brought, Sedgwick agreed to dismiss it; that suit *was not* dismissed, but judgment was rendered; that John was solvent and the money could have been collected of him.

To rebut this the affidavits of Sedgwick, Smith and others were filed in substance as follows:

SEDGWICK states, that John Swannell, being indebted to the firm of Geo. W. Flanders & Co., of which said Sedgwick was a member, he called upon him for payment; that said John answered, he was unable to pay but would give a note for the indebtedness, and procure the signature of Wm. G. Swannell to the same, if deponent would give him time; that the proposition was accepted; that John signed judgment notes; that then John gave deponent a letter to his brother, Wm. G., in which he requested Wm. G. to sign the said notes in consideration of certain land before that time sold by him, John, to Wm. G., and stating that Sedgwick would not take the notes unless Wm. G. would sign them, and that he feared Geo. W. Flanders & Co. would sue if he did not comply; that he took the notes (the same as sued on) and letter immediately to Wm. G.; he objected to them because they were judgment notes; that deponent thereupon tore off the power of attorney, then requested Wm. G. to sign them on the face; but after insisting upon the power of attorney being destroyed, said Wm. G. wrote his name on the back, remarking that "he would guarantee their payment," and handing them to S., requested that they would endeavor to collect them of John *before* troubling him, and to give him, Wm. G., no trouble, if possible; that after the first note became due, he and the other members of the firm did all in their power to get John to pay the notes; that John was then considered worthless that his land had been conveyed to Wm. G.; that Wm. G.'s sign was then on the store where John did business; that John was reputed to be bankrupt; that suit was commenced against John as maker and against Wm. G. as guarantor. On the 25th Sept., and after commencement of suit Wm. G. called upon deponent and asked to have the suit dismissed as to him, and to proceed against John; that deponent agreed to do so if Wm. G. would obtain from John his signature to a paper authorizing judgment to be entered against John at the October term (summons not having been served on John in time). No judgment was taken, but time was given him to get the power of attorney from John; and he was to do his best to get John to pay up; *these* were the conditions on which the agreement to dismiss was made. Neither of them was complied with; but on the contrary, Wm. G. induced Barclay Brothers to obtain a confession of judgment from John, and to make a levy on all the goods in the store occupied by John. No judgment could have been obtained against John until the November term, when judgment was obtained. Ex. issued

immediately to Vermillion County. That Sedgwick took the execution to Catline, where John lived, and he *then* offered, for the first time, to sign the power of attorney to confess judgment; that S. told him it was too late—judgment was already entered. The execution was delivered to the sheriff, who stated that John had no property. Sedgwick then telegraphed to Chicago to have judgment entered against Wm. G., which judgment was not rendered till then, (Nov. 11,) when it was found that the debt could not be made out of John.

The affidavit of JAMES SMITH states he had a conversation with Wm. G. in relation to his said Swannell's guaranty on the notes made by John,—that he, Wm. G., stated that he knew he was liable to pay the notes, and was willing, as he held lands of the said John for that purpose, which John had conveyed to him to indemnify him against said guaranty; that he would have paid them when he was first sued, only he did not want to take money out of his business.

The affidavits of GEO. W. FLANDERS and B. L. HONORE show that John was insolvent.

These affidavits are sufficient to show that the court below exercised a sound discretion in overruling the motion to set aside the default.

Suffering judgment to go by default is an admission of the defendant's contract, and of the whole cause of action. Default admits the liability, and that the notes were due.

1 Strange, 612.

1 Doug. 315.

1 Esp. 157.

17 Ill. 308.

A defendant, by suffering judgment to go by default, is out of court, and has no right to except to testimony.

1 Scam. 213.

A mistake or error of the court in assessing damages, cannot be corrected upon writ of error, unless an exception to the assessment is made, and a bill of exceptions taken at the time the judgment is rendered, or the assessment is made.

3 Scam. 411

2. The notes were due when suit was brought. They were dated June 10th, due in three months from date, viz: Sept. 10th. Suit brought Sept. 11th.

13 John. 470.

3 Wend. 456.

3. There are no days of grace on promissory notes in Illinois.

By the common law, days of grace were not allowed on inland bills, nor promissory notes; and it was not necessary to protest them. Only foreign bills were entitled to grace.

Viner Abridg. Vol. 4, 242.

The statute of William, 3, c. 17, provides for protest and days of grace on *inland* bills.

Days of grace were not allowed on promissory notes until the statute of Anne. That statute placed promissory notes on the same footing as bills of exchange.

Com. Dig. Vol. 4, 295.

B. & P. 80.

Wille's R. 395, 399.

5 T. R. 486.

2 Burr, 669.

Neither of these statutes is in force in Illinois. The common law of England adopted in this country, does not come down as late as William or Anne.

Under the statute of Illinois in relation to promissory notes, it is unnecessary to give notice of the non-payment of a note in order to charge the assignor or indorser.

The rule is different from that applicable to bills of exchange.

STATE BANK v. HAWLEY, 1 Scam. 580.

Where a note is payable "on the first day of November," suit may be brought on the second day of November.

WALTER v. KIRK ET AL., 14 Ill. 57.

The case of COOK v. RENICK, 19 Ill. 598, was decided on the hypothesis that the bill was a foreign bill, and that *as to foreign* bills the law merchant applies so far as it was the common law of England.

The bill in this case was drawn by a person residing in St. Louis, Missouri, on parties in Chicago, Ill.

A bill drawn by a person residing in one State of the Union, upon a person residing in another State, is a foreign bill.

2 Peter's, 586.

4 Wash. C. C., 87, 153.

1 Hill, 44.

12 Pick. 483.

15 Wend. 527.

Submitted by

JAMES P. ROOT,

Attorney for Defendant in Error.

24 204
104 + 16

Supreme Court.

Third Grand Division.

GEO. W. FLANDERS ET AL.,
Defendants in Error.
ADS.

WM. G. SWANNELL,
Plaintiff in Error.

and
~~ABSTRACT OF BRIEF.~~

By JAMES P. ROOT,
Att'y for Defendant in Error.

Filed April 25, 1857
L. Leland
Clk

Supreme Court of the State of Illinois.

THIRD GRAND DIVISION.

APRIL TERM, 1859.

GEORGE W. FLANDERS, et al.,	} Defendants in Error,
ADS.	
WILLIAM G. SWANNELL,	

DEFENDANT'S POINTS.

1. The general rule is, that it is not error for the court to refuse to set aside a default.

The application is addressed to the sound discretion of the court, and no writ of error will lie to correct its exercise.

1 Scam. 131, 145.

5 Gil. 457.

In *Greenleaf v Roe*, 17 Ill., it is said: "Motions to set aside defaults are addressed to the sound discretion of the court, and it must be a very gross and flagrant abuse of that discretion that will warrant the revision and interposition of the Supreme Court, IF AT ALL." The Supreme Court will not interfere where the affidavits are conflicting. The question is, whether there *is* a gross and flagrant abuse of that discretion. The Supreme Court cannot undertake to say there was such an abuse, when it appears from the affidavits filed in the case that there might have been great doubts in the mind of the court below whether the facts set forth by the defendant below were true; and it is presumed that the court exercised sound discretion and judgment in overruling the motion.

The notes were made by John Swannell, payable to the order of Geo. W. Flanders & Co. Wm. G. Swannell writes his name on the back of them.

Suit is brought against John, as maker, and another against William, as guarantor.

Default as to William, who moves to set aside the default, and attempts to show by his affidavits that he had an agreement with Sedgwick whereby he was to be bound as an *endorsee*, simply; that

after suit brought, Sedgwick agreed to dismiss it; that suit *was not* dismissed, but judgment was rendered; that John was solvent and the money could have been collected of him.

To rebut this the affidavits of Sedgwick, Smith and others were filed in substance as follows:

SEDGWICK states, that John Swannell, being indebted to the firm of Geo. W. Flanders & Co., of which said Sedgwick was a member, he called upon him for payment; that said John answered, he was unable to pay but would give a note for the indebtedness, and procure the signature of Wm. G. Swannell to the same, if deponent would give him time; that the proposition was accepted; that John signed judgment notes; that then John gave deponent a letter to his brother, Wm. G., in which he requested Wm. G. to sign the said notes in consideration of certain land before that time sold by him, John, to Wm. G., and stating that Sedgwick would not take the notes unless Wm. G. would sign them, and that he feared Geo. W. Flanders & Co. would sue if he did not comply; that he took the notes (the same as sued on) and letter immediately to Wm. G.; he objected to them because they were judgment notes; that deponent thereupon tore off the power of attorney, then requested Wm. G. to sign them on the face; but after insisting upon the power of attorney being destroyed, said Wm. G. wrote his name on the back, remarking that "he would guarantee their payment," and handing them to S., requested that they would endeavor to collect them of John *before* troubling him, and to give him, Wm. G., no trouble, if possible; that after the first note became due, he and the other members of the firm did all in their power to get John to pay the notes; that John was then considered worthless that his land had been conveyed to Wm. G.; that Wm. G.'s sign was then on the store where John did business; that John was reputed to be bankrupt; that suit was commenced against John as maker and against Wm. G. as guarantor. On the 25th Sept., and after commencement of suit Wm. G. called upon deponent and asked to have the suit dismissed as to him, and to proceed against John; that deponent agreed to do so if Wm. G. would obtain from John his signature to a paper authorizing judgment to be entered against John at the October term (summons not having been served on John in time). No judgment was taken, but time was given him to get the power of attorney from John; and he was to do his best to get John to pay up; *these* were the conditions on which the agreement to dismiss was made. Neither of them was complied with; but on the contrary, Wm. G. induced Barclay Brothers to obtain a confession of judgment from John, and to make a levy on all the goods in the store occupied by John. No judgment could have been obtained against John until the November term, when judgment was obtained. Ex. issued

immediately to Vermillion County. That Sedgwick took the execution to Catline, where John lived, and he *then* offered, for the first time, to sign the power of attorney to confess judgment; that S. told him it was too late—judgment was already entered. The execution was delivered to the sheriff, who stated that John had no property. Sedgwick then telegraphed to Chicago to have judgment entered against Wm. G., which judgment was not rendered till then, (Nov. 11,) when it was found that the debt could not be made out of John.

The affidavit of JAMES SMITH states he had a conversation with Wm. G. in relation to his said Swannell's guaranty on the notes made by John,—that he, Wm. G., stated that he knew he was liable to pay the notes, and was willing, as he held lands of the said John for that purpose, which John had conveyed to him to indemnify him against said guaranty; that he would have paid them when he was first sued, only he did not want to take money out of his business.

The affidavits of GEO. W. FLANDERS and B. L. HONORE show that John was insolvent.

These affidavits are sufficient to show that the court below exercised a sound discretion in overruling the motion to set aside the default.

Suffering judgment to go by default is an admission of the defendant's contract, and of the whole cause of action. Default admits the liability, and that the notes were due.

1 Strange, 612.

1 Doug. 315.

1 Esp. 157.

17 Ill. 308.

A defendant, by suffering judgment to go by default, is out of court, and has no right to except to testimony.

1 Scam. 213.

A mistake or error of the court in assessing damages, cannot be corrected upon writ of error, unless an exception to the assessment is made, and a bill of exceptions taken at the time the judgment is rendered, or the assessment is made.

3 Scam. 411

2. The notes were due when suit was brought. They were dated June 10th, due in three months from date, viz: Sept. 10th. Suit brought Sept. 11th.

13 John. 470.

3 Wend. 456.

3. There are no days of grace on promissory notes in Illinois.

By the common law, days of grace were not allowed on inland bills, nor promissory notes; and it was not necessary to protest them. Only foreign bills were entitled to grace.

Viner Abridg. Vol. 4, 242.

The statute of William, 3, c. 17, provides for protest and days of grace on *inland* bills.

Days of grace were not allowed on promissory notes until the statute of Anne. That statute placed promissory notes on the same footing as bills of exchange.

Com. Dig. Vol. 4, 295.

B. & P. 80.

Wille's R. 395, 399.

5 T. R. 486.

2 Burr, 669.

Neither of these statutes is in force in Illinois. The common law of England adopted in this country, does not come down as late as William or Anne.

Under the statute of Illinois in relation to promissory notes, it is unnecessary to give notice of the non-payment of a note in order to charge the assignor or indorser.

The rule is different from that applicable to bills of exchange.

STATE BANK v. HAWLEY, 1 Scam. 580.

Where a note is payable "on the first day of November," suit may be brought on the second day of November.

WALTER v. KIRK ET AL., 14 Ill. 57.

The case of COOK v. RENICK, 19 Ill. 598, was decided on the hypothesis that the bill was a foreign bill, and that *as to foreign* bills the law merchant applies so far as it was the common law of England.

The bill in this case was drawn by a person residing in St. Louis, Missouri, on parties in Chicago, Ill.

A bill drawn by a person residing in one State of the Union, upon a person residing in another State, is a foreign bill.

2 Peter's, 586.

4 Wash. C. C., 87, 153.

1 Hill, 44.

12 Pick. 483.

15 Wend. 527.

Submitted by

JAMES P. ROOT,

Attorney for Defendant in Error.

24 205 184 46

Supreme Court.

Third Grand Division.

GEO. W. FLANDERS ET AL.,
Defendants in Error.
ADS.

WM. G. SWANNELL,
Plaintiff in Error.

and
ABSTRACT ~~OF~~ BRIEF.

By JAMES P. ROOT,
Att'y for Defendant in Error.

Filed April 25, 1859
L. Leland
Clerk

Supreme Court of the State of Illinois.

WILLIAM G. SWANNELL,

vs.

GEORGE W. FLANDERS,
THEODORE SEDGEWICK,
ELIJAH S. ALEXANDER.

} ERROR TO RECORDER'S COURT
OF THE CITY OF CHICAGO.

1 Suit below was brought on the 11th day of September, 1857, against William G. Swannell, on three promissory notes, dated June 10th, 1857,

11 and 12 The 1st for \$200 due one month after date ;
The 2d for \$200 due two months after date ;
The 3d for \$273.50 due three months after date ;

Each signed by John Swannell, and endorsed by William G. Swannell, payable to order of Geo. W. Flanders & Co.

13 Nov. 11. Judgment by default for \$595.88.

14 Nov. 24. Defendant below files motion to set aside judgment, and
20 to 25 then files two affidavits in support of said motion.

26 to 31 On the 11th of February, 1858, defendant files his own affidavit and that of John Swannell, maker of the notes.

32 to 40 On the 8th of June, defendant files the affidavits of S. R. N. Hall and Henry Swannell.

40 to 51 On the same day, the plaintiffs below, Flanders & Co., file the affidavits of Sedgwick, Flanders, Smith, and Honore, in opposition to the motion.

53 to 60 The Defendant below also produced Records of a suit in the same Court, in case of Flanders et al. v. John Swannell.

60 61 It is admitted that the endorsement of defendant below, was in blank, and filled up by attorney of Flanders & Co., without the knowledge of defendant.

61 62 On the 11th day of August, the Court overrules the motion, and the defendant makes and files Bill of Exceptions, setting forth the affidavits and the records of the other suit.

20 The affidavits of plaintiff in error show that Sedgewick called upon
him at Kankakee, with notes of John Swannell two or three days after
the execution of them, and requested the signature of plaintiff; that he
25 declined, but finally agreed to endorse the notes, upon the express agree-
ment and condition that every effort should be made to collect the money
of the maker, and that he was not to be liable as joint maker; that after-
wards, when suit was brought against him, upon the notes, plaintiff in
error came to Chicago to defend the suit, but saw Sedgewick and remind-
ed him of the condition upon which he had obtained the endorsement,
and that he had two witnesses to prove it; that Sedgewick then agreed
to dismiss the suit, and assured the plaintiff in error that it was not neces-
sary to obtain counsel to defend it; that it should be dismissed abso-
lutely; that at the request of Sedgewick, plaintiff in error, at that time,
agreed to send a warrant of attorney to John Swannell and obtain his
signature, if it could be done; that he sent it as agreed, and urged
26 Flanders & Co. to make the money out of John, that John was good
then, and had a stock of goods and other property, that the same was
clear and that the plaintiff in error had no claim upon it. The affidavit
of John Swannell shows that he received the warrant of attorney, and
was about to execute it, when Sedgewick called and told him not to
do so.

32 The affidavits of Hall and H. Swannell also show the same agreement
40 or condition upon which the endorsements were procured; that of H.
Swannell also, shows that after plaintiff in error was in Chicago, he sent
affiant to see if the suit was dismissed; that he inquired of some member
of the firm of Flanders & Co., where the suit had been instituted, and
he went to the place and was told no such suit was pending; that he
was also told by the same party that Sedgewick had done as he agreed.

ERRORS ASSIGNED.

Plaintiff in Error assigns for Error,

1. The entering of default of defendant below;
2. Giving judgment in favor of Plaintiff below;
3. The insufficiency of declaration;
4. The insufficiency of the notes and other proofs offered in evidence by plaintiffs below to support judgment.
5. Error in assessment of damages;
6. Error in overruling motion to set aside judgment;
7. Error in giving final decision and judgment against the plaintiff in error, instead of the defendant in error.

HELM & CLARK,

For Pl^{ff} in Error.

The plaintiff in error submits that, by his affidavits filed in the Court below, [21, 23, 24 and 25,] it is shown that the endorsements upon which he was sued were made two or three days after the execution and delivery of the notes, at the request of the defendants in error, and not that of the maker—hence no consideration. They were given also on the explicit agreement and understanding that he was not to be liable as joint promisor, and was only to be liable after the defendants in error had failed, in the exercise of due diligence in collecting the money of John Swannell, the maker of the notes. While a blank endorsement of one who is not otherwise a party to a note is prima facie evidence of a guaranty, this may be rebutted by proof of a contrary intention of the parties. While a blank endorsement of one who is not otherwise a party to a note, is prima facie evidence of a guaranty, this may be rebutted by proof of a contrary intention of the parties.—*Cushman v. Dement*, 3 *Scam.* 499. It further appears by the affidavits that after he was sued he went to Chicago, and had an interview with defendants in error, in which they dissuaded him from employing counsel to defend, agreeing to dismiss the suit. [27, 28, 29 and 30.]

These facts are clearly shown by the affidavits of the plaintiff in error, and of Hall, and H. Swannell, and they further show that the obtaining the signature of Wm. G. Swannell, and the entering judgment against him in said suit, was a gross fraud and breach of faith—that it was a scheme on the part of said Sedgwick to render plaintiff in error liable for the debt of another party, without his consent, fairly obtained.

The same is shown by the affidavit of John Swannell, maker of the notes.

To meet this, the plaintiffs below filed affidavits of Sedgwick, Flanders, Smith and Honore, which abound in contradictions, and in no way excuse or justify the breach of faith established by plaintiff in error.

These contradictions are further proved by the transcript of suit in same Court against John Swannell, embodied in the bill of exceptions.

The notes sued upon bear date June 10th, 1857, one of them payable three months after date. Suit was commenced September 11, 1857, before the note became due, the judgment is therefore erroneous on that ground.

In this state the Law Merchant allowing days of grace has been adopted.—*Cook v. Renick*, 19 *Illinois*, 598.

When a note or bill is payable at a month or months after date, the computation is by calendar and not by lunar months, and the days of grace are added. *Story on Notes*, S. 217, and note.

The time is calculated exclusive of the day of the date.—*Ibid*, *Story on Bills* 325, and *Notes*.

HELM & CLARK,
For Plff in Error.

No ~~104~~ 1625
Wm^r G. Swannell
or
Geo. W. Flannery et al.
abstract.

Filed Apr. 20, 1859
Shelton
Ct.

STATE OF ILLINOIS, }
SUPREME COURT,

To the Clerk of the Recorder's

ss. The People of the State of Illinois,

City of Chicago
Court for the County of Cook

Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Recorder's Court of City of Chicago Court of Cook County, before the Judge thereof, between George W. Planders, Theodore Sedgwick, Elijah D. Alexander ————
plaintiff, and William J. Savannell ————

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

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

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this eighteenth day of October in the Year of Our Lord one thousand eight hundred and fifty-eight.
L. Leland

Clerk of the Supreme Court.
by J. B. Rice Deputy

²⁴
George W. Flanders et al
vs

William J. Swannell

Writ of Error

This writ of Error is made
a Superedeas and as such
should be obeyed by all
concerned.

L. Leland Clerk
by J. B. Rice Deputy

Filed Oct. 18. 1858
L. Leland
Clerk

Supreme Court of Illinois
April Term A.D. 1858.

William G. Swannick Pl. - In Error
vs
George W. Flanders,
Theodore Sedgwick &
Elijah S. Alexander Defs. } From the
County of }
the City of }
Chicago.

With the Clerk of the Supreme
Court issue a writ of error to
Cork & and a Supersedeas to the
Sheriff of Kaskaskia Co. in the
above cases & oblige

Yours
John & Clark.

The undersigned Secretary - for
costs in the above cases, and agree
to pay all cost in the said cases
either to the officers of this Court
or to the officers of the party which the
said Plaintiffs in error shall
at any time be adjudged to pay
and consent that execution may
issue against me for the same -

Sept 24, 1858. John & Clark.

²⁴
Supreme Court.

Mr G. Swannell

vs
Mr N. Flanders
Atty

Principals

Filed Oct. 18 1888
L. Keland Clerk

Witnesses

Supreme Court of the State of Illinois.

WILLIAM G. SWANNELL,
vs.
GEORGE W. FLANDERS,
THEODORE SEDGEWICK,
ELIJAH S. ALEXANDER. } ERROR TO RECORDER'S COURT
OF THE CITY OF CHICAGO.

1 Suit below was brought on the 11th day of September, 1857, against William G. Swannell, on three promissory notes, dated June 10th, 1857,

11 and 12 The 1st for \$200 due one month after date;
The 2d for \$200 due two months after date;
The 3d for \$273.50 due three months after date;

Each signed by John Swannell, and endorsed by William G. Swannell, payable to order of Geo. W. Flanders & Co.

13 Nov. 11. Judgment by default for \$595.88.

14 Nov. 24. Defendant below files motion to set aside judgment, and
20 to 25 then files two affidavits in support of said motion.

26 to 31 On the 11th of February, 1858, defendant files his own affidavit and that of John Swannell, maker of the notes.

32 to 40 On the 8th of June, defendant files the affidavits of S. R. N. Hall and Henry Swannell.

40 to 51 On the same day, the plaintiffs below, Flanders & Co., file the affidavits of Sedgwick, Flanders, Smith, and Honore, in opposition to the motion.

53 to 60 The Defendant below also produced Records of a suit in the same Court, in case of Flanders et al. v. John Swannell.

60, 61 It is admitted that the endorsement of defendant below, was in blank, and filled up by attorney of Flanders & Co., without the knowledge of defendant.

61, 62 On the 11th day of August, the Court overrules the motion, and the defendant makes and files Bill of Exceptions, setting forth the affidavits and the records of the other suit.

20 The affidavits of plaintiff in error show that Sedgewick called upon
him at Kankakee, with notes of John Swannell two or three days after
the execution of them, and requested the signature of plaintiff; that he
25 declined, but finally agreed to endorse the notes, upon the express agree-
ment and condition that every effort should be made to collect the money
of the maker, and that he was not to be liable as joint maker; that after-
wards, when suit was brought against him, upon the notes, plaintiff in
error came to Chicago to defend the suit, but saw Sedgewick and remind-
ed him of the condition upon which he had obtained the endorsement,
and that he had two witnesses to prove it; that Sedgewick then agreed
to dismiss the suit, and assured the plaintiff in error that it was not neces-
sary to obtain counsel to defend it; that it should be dismissed abso-
lutely; that at the request of Sedgewick, plaintiff in error, at that time,
agreed to send a warrant of attorney to John Swannell and obtain his
signature, if it could be done; that he sent it as agreed, and urged
26 Flanders & Co. to make the money out of John, that John was good
then, and had a stock of goods and other property, that the same was
clear and that the plaintiff in error had no claim upon it. The affidavit
of John Swannell shows that he received the warrant of attorney, and
was about to execute it, when Sedgewick called and told him not to
do so.

32 The affidavits of Hall and H. Swannell also show the same agreement
or condition upon which the endorsements were procured; that of H.
40 Swannell also, shows that after plaintiff in error was in Chicago, he sent
affiant to see if the suit was dismissed; that he inquired of some member
of the firm of Flanders & Co., where the suit had been instituted, and
he went to the place and was told no such suit was pending; that he
was also told by the same party that Sedgewick had done as he agreed.

ERRORS ASSIGNED.

Plaintiff in Error assigns for Error,

1. The entering of default of defendant below ;
2. Giving judgment in favor of Plaintiff below ;
3. The insufficiency of declaration ;
4. The insufficiency of the notes and other proofs offered in evidence by plaintiffs below to support judgment.
5. Error in assessment of damages ;
6. Error in overruling motion to set aside judgment ;
7. Error in giving final decision and judgment against the plaintiff in error, instead of the defendant in error.

HELM & CLARK,

For Pl^{ff} in Error.

The plaintiff in error submits that, by his affidavits filed in the Court below, [21, 23, 24 and 25,] it is shown that the endorsements upon which he was sued were made two or three days after the execution and delivery of the notes, at the request of the defendants in error, and not that of the maker—hence no consideration. They were given also on the explicit agreement and understanding that he was not to be liable as joint promisor, and was only to be liable after the defendants in error had failed, in the exercise of due diligence in collecting the money of John Swannell, the maker of the notes. While a blank endorsement of one who is not otherwise a party to a note is prima facie evidence of a guaranty, this may be rebutted by proof of a contrary intention of the parties. While a blank endorsement of one who is not otherwise a party to a note, is prima facie evidence of a guaranty, this may be rebutted by proof of a contrary intention of the parties.—*Cushman v. Dement*, 3 *Scam.* 499. It further appears by the affidavits that after he was sued he went to Chicago, and had an interview with defendants in error, in which they dissuaded him from employing counsel to defend, agreeing to dismiss the suit. [27, 28, 29 and 30.]

These facts are clearly shown by the affidavits of the plaintiff in error, and of Hall, and H. Swannell, and they further show that the obtaining the signature of Wm. G. Swannell, and the entering judgment against him in said suit, was a gross fraud and breach of faith—that it was a scheme on the part of said Sedgwick to render plaintiff in error liable for the debt of another party, without his consent, fairly obtained.

The same is shown by the affidavit of John Swannell, maker of the notes.

To meet this, the plaintiffs below filed affidavits of Sedgwick, Flanders, Smith and Honore, which abound in contradictions, and in no way excuse or justify the breach of faith established by plaintiff in error.

These contradictions are further proved by the transcript of suit in same Court against John Swannell, embodied in the bill of exceptions.

The notes sued upon bear date June 10th, 1857, one of them payable three months after date. Suit was commenced September 11, 1857, before the note became due, the judgment is therefore erroneous on that ground.

In this state the Law Merchant allowing days of grace has been adopted.—*Cook v. Renick*, 19 *Illinois*, 598.

When a note or bill is payable at a month or months after date, the computation is by calendar and not by lunar months, and the days of grace are added. *Story on Notes*, S. 217, and note.

The time is calculated exclusive of the day of the date.—*Ibid*, *Story on Bills* 325, and *Notes*.

HELM & CLARK,
For Plff in Error.

27 1846

Swainell

7

Holland's Nat.

Abstract

File M. 20. 18. 19
Schmidt

Supreme Court of Illinois
April Term A.D. 1859.

William G. Swannell Plaintiff in error

vs
George W. Flandus et al Defendants in error.
Error to Recordus Court of
the City of Chicago

The Plaintiff in error respectfully submits
the following considerations, -

An examination of the Record
will show that he comes into this Court
to reverse the decision of the Court below
in overruling a motion to set aside a
judgment by default.

The rule that this Court will not
interpose in such a case unless when
the Court below has grossly abused the
discretion allowed it - is well known, - and
the Defendants in error seek to entrench
themselves behind that rule - but being
of the opinion that this case is one in
which they are not entitled to the benefit
of that position we respectfully ask the
consideration by the Court, of the Record and
the suggestions herein contained.

We think this a case which comes within
the exception.

Record du Jun 1857 Sedgewick one of the Plaintiffs
Page ^{below} obtained from John Swannum these notes &
11 + 12. two or three days afterwards presented them

23. to Wm G. Sedgewick, Plaintiff in error and
obtained his ^{blank} endorsement. —————

The claim that there was no consideration
for this - The credit had already been given
to John, & Wm G. gave his endorsement at
the request of Sedgewick; - this or there
is the correct statement of the case
notwithstanding John wrote a letter to Wm G.
requesting him to do so. —————

27 to 30 ² Next we claim that Sedgewick obtained
the endorsement of Wm G. with the fraudulent
intention of compelling him to pay the
money - without making any effort to get the
money of the maker. —————

3. The claim that it is clearly shown
by the affidavits - 23, 27, 32, 33, 34,
36, 37, 38. that the endorsement was
obtained upon the express condition
that Wm G. was not to be liable as
guarantor - and not in any event,
until proper efforts had been made to
obtain payment of John the Maker -
and he had been exhausted - and that
Flanders & Co were repeatedly urged by Wm G.
to make their money out of John, and agreed
to do so.

1, 4. On the 11th of September 1857. Flanders &
commenced ~~two~~⁽²⁾ suits in same Court, one
53. against John Swannell as maker of
the notes, and one against Wm G. the
Plaintiff in error, as guarantor and
so declare against him - they also
declare against him as joint & several
11. 12. maker - & set forth copies of notes signed
by him and John, but none such were
shown in evidence - The Plaintiff in
24 error came to Chicago to defend the
25; 27. suit, but Sedgewick in the interview
28. which followed, agreed, absolutely and
unequivocally to dismiss the suit -
He, ^{Plf in error} at then against agreed to and
did send Power of Attorney to John, but one
of the Defs in error, Sedgewick, saw John
29. soon after and told him not to sign
30. 31. it - particular attention is called to this

39. Plf in error about a week after sent
H. Swannell his nephew to Chicago to
see if suit was dismissed - Defs in error
gave him to understand that it was
and, tried to deceive him, by sending
him (widely) to the wrong Court -
when he was told no such suit was
29. 30. pending - Sedgewick carries the deception
35. further - he goes to Kansas & in conversation

Record du Jun 1857 Sedgewick one of the Plaintiffs

29.30 with Plf in error. still conveys the idea that
357 the suit is dismissed - but at same visit
had brought an execution vs Plf in error
which he delivered to Sheriff before leaving
Court -

Now we ask, after such an utter
piece of dishonesty and fraud as they
in a condition to fortify themselves behind
the "discretion" of the Judge of the
Recorder's Court. Are they entitled to
ask anything at the discretion of any
Court of Justice -

5. But to excuse this unmitigated and
inexcusable fraud they file affidavits
none of which deny the fraud, but
attempt to excuse it -

Do not say the Court will not interfere
"if the affidavits are contradictory" -

Sedgewick does not dare to contradict
the affidavits of Plf in error - H. Swannell
and Hall, as to the agreement or condition
upon which Plf in error gave his name
on the notes - He does assert that
his agreement to dismiss was upon
condition that Plf in error should obtain
signature of John to Power of Atty - even
if this was true, he was guilty of a fraud
in preventing John from signing it -

Particular attention is called to the affidavit of Plf in error Page 26. as to the explicit and unconditional agreement to dismiss the suit -

He also invites attention to the condition or agreement upon which the endorsement were given - as detailed with great minuteness in the affidavits of Hall and H. Swannell, two witnesses who can present and state the facts clearly - Pages 32. to 40. -

These witnesses are disinterested and their statements are entitled to great weight in the case -

He claims that the Plaintiff in error was sued upon a cause of action that never existed - upon a contract which he never made - that the contract upon which they sued is as false and unfounded as if it was a forgery of the notes themselves - They sue upon a guaranty of John Swannell's notes - They wrote over the blank endorsement of Plf in error - but it was not authorized by him and was contrary to his express agreement, and as wrong as, against him as if it was a forgery of the signature

The case of *Cushman v. Dement*
3 Scam. 499, decides that such an
indorsement is not a guaranty
unless it was the agreement of
the parties at the time it was given
and that this may be shown by
parol evidence -

We claim that they have sued
& obtained judgment upon a
cause of action - a guaranty -
which never existed - Therefore the
filling up the blank with such
an agreement was a fraud - This
cause of action was fraudulent and
by a gross fraud they obtained their
default, behind which they now
seek to shelter themselves -

A. Default to afford such a barrier
of defense, must be fairly obtained

This Court will not give them the
full benefit of their own fraud -

They cannot take advantage of
their own wrong - As to the discretion
of the Court below, we say nothing -

Our motion was pending from Nov 24.th
until Aug. 11. The Court would now hear

or read the affidavits - only statements of
course as to their contents & finally to get
it disposed of - at our suggestion he overruled
our motion - He wished to bring it when it could
be decided -

The affidavits filed by Defts in error allege
the insolvency of John Swanner - that is
not avowed in their declaration.

It does appear that he had property - when
the notes became due, and that Defts in
error were repeatedly notified by Plf in
error of that fact - They also pretend
that Mrs G's name was on the door of
Johns Store - It is shown that he told
them he had no claim on Johns store -
that it was clear & liable to execution

Smith a clerk of Flanders & Co swears
that Mrs G. admitted to him that he
was liable on those notes - We can only
speak in the language of Plf in error,
that we should like an opportunity to
cross-examine him on that point -

46. 47. Sedgwick swears that he took execution vs.
John to Shingo of Vermillion Co. & advised it
was told John had no property - he then
telegraphed to Chicago & Indgt was
intended vs Mrs G. - That judgment
13. was entered on the 11th Nov. - but by the
return of Shingo of Vermillion it seems
that execution vs John did not come
60. into hands until the 14th - This shows
how much credit is due to the veracity of a
man who will perpetrate such a fraud.

Many of the allegations contained in their affidavits are not denied by Plf in error - not because they were true, but for the reason that they were outside of the case - not pertinent to the issues - and we would not encumber the record with them - or others denying their truth -

6. When they delayed seeing John, as the notes matured, they were eager to see Mrs. G. and did see him before the maturity of the last note. It was dated Jan 10th due "three months" after date. The computation should be by calendar months - and days of grace added, Sept 14th was the first day suit could have been brought -

Story on Notes § 217 - & 224 - and notes - But says drift in error there are no days of grace in Illinois. In reply we cite Cook v. Runkle 19 Ill. 598 - a recent and able decision of this Court that must authoritatively settle that question.

Again they say it does not apply to notes - only to Bills - The books of authority on that question are alike as to notes and bills - so when can we find any distinction Story on Notes § 224 -

But they say that by our Default
we admit the notes were due - To
that we reply the Record shows they
were not - Besides it is going rather
far to say that a default obtained
as that was admits so much -

Drifts in error cited

1 Strange 612 -

1 Douglass 315 -

1 Esp. 157

17 Ill 308 - Not one

of which say any such thing -

We think they must have erred in
their citations -

The Bill of exceptions sets forth
the notes, copies of which were filed with
the Declaration - and they are a part
of the record - which shows that one of
them was not due when suit was
brought, yet judgment was rendered
on the whole -

For which reasons we submit
the Judgment in this case ought
to be reversed -

Attest & Clerk
For Plf in error

Supreme Court
3rd Grand Division

¹⁰⁴
William G. Swannell
vs Plaintiff
Geo W. Flannery & Co
Deft in error

Argument of Plf in error

Filed April 26/1859
L. Deland
clerk

Deland & Co

State of Illinois }
County of Cook } S.S.
City of Chicago }

Plas before the
Honorable Robert S. Wilson, Recorder
of the City of Chicago, and Presiding
Judge of the Recorders Court of said City
at a term thereof, begun and held at the
Court House in the City of Chicago, in
the County and State aforesaid, on the
first Monday of it being the Second
day of November in the year of our
Lord One Thousand Eight Hundred and
Fifty Seven and of the Independence of
the United States the Eighty Second

Present. Hon. Robert S. Wilson Recorder of the City of Chicago
Carlos Haven States Attorney
John L. Wilson Sheriff of Cook County
Attest Philip A. Hoyme Clerk of said Court.

Be It Remembered, that on the Eleventh
day of September A.D. 1857 there was
filed in the Office of the Clerk of the
Recorder's Court of the City of Chicago
a Precept in words and figures as follows
to wit: -

George W Flanders
 Elijah S. Alexander
 Theodore Sedgwick
 vs
 William G Swannell } Assumpsit
 Damages \$1000.

Clerk

Please issue
 summons in the above cause, directed
 to the Sheriff of Kane County and
 returnable to the next Term of this Court
 Root and Young
 Atty for Plff.

and in accordance with said Precept, a
 summons was issued as follows, to wit:
 State of Illinois }
 County of Cook } S.
 City of Chicago }

The People of the
 State of Illinois, to the Sheriff of
 Kane County: - Greeting

We
 command you that you summon
 William G Swannell, if he shall be
 found in your County, personally, to appear
 before the Recorder's Court of the City of
 Chicago, in said County, on the first day
 of the next Term thereof, to be holden at the

Court House, in the City of Chicago, in said County on the first Monday of October next P. to answer unto George W. Flanders Elijah S. Alexander and Theodore Sedgwick in a plea of trespass on the case upon promises to the damage of the said plaintiff as they say, in the sum of One Thousand Dollars

And have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same



Witness Philip A. Hoynes, Clerk
of our said Court and the Seal thereof
at the City of Chicago, in said County
this Eleventh day of September A.D. 1857.

Philip A. Hoynes

Clerk

Endorsed

Served this writ by reading to
Wm. G. Swannell this 21st day of Sept.
1857.

J. Sequin Sheriff
By J. A. Byrnes
Dept.

And afterwards, to wit, on the Nineteenth day
of September A.D. 1857. there was filed in
the Office of the said Clerk of the Recorder

4
Court of the City of Chicago, a
Declaration in said cause, in words and
figures following, to wit: -

Recorders Court of the City of Chicago
Of the October Term A.D. 1837.
State of Illinois }
City of Chicago } S.
County of Cook }

George W. Flanders, Elijah
S. Alexander & Theodore Sedgwick who
are partners in trade doing business under
and by the firm name and style of Geo.
W. Flanders & Co. Plaintiffs in this suit
by Root & Young their Attorneys, complain
of William G. Swanell Defendant
who was summoned &c, in a plea of trespass
on the case on promises. For that whereas
the said Defendant heretofore, to wit: on
the tenth day of June in the year of our
Lord One Thousand Eight Hundred and
Fifty Seven, to wit, at Chicago, in said County
of Cook, made his certain promisory note
in writing bearing date, the day and year
aforesaid, in and by which said note, said
Defendant by the name, style and descrip-
-tion of Wm G. Swanell, promised to pay
to the order of the said plaintiffs by the
firm, name and style of Geo W Flanders

& Co. Three months after the date thereof, for value received, the sum of two Hundred and Seventy three dollars and fifty cents: -

And also on the day and year aforesaid at the place aforesaid made his other certain promissory note in writing, bearing date the day and year aforesaid, whereby in & by said last mentioned note he promised to pay under his said name and style of Wm G. Swannell, Two months after the date thereof, for value received, to the said plaintiffs by their said firm, name & style of Geo W. Flanders & Co. or order, the sum of Two Hundred Dollars. And also on the day and year aforesaid at the place aforesaid made his other certain promissory note in writing bearing date the day and year aforesaid, in and by which said last mentioned, said defendant by the said description of Wm G. Swannell promised to pay to promisee & to pay to said plaintiffs under and by their said firm name of Geo W. Flanders & Co. or order, one month after the date thereof the sum of Two Hundred Dollars, for value received, and then and there delivered the said notes to the said Plaintiffs.

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 notes, and being so liable, in consideration thereof, then and there undertook and promised to pay the same to the said Plaintiffs according to the tenor and effect, true intent and meaning of the said notes to wit at the place aforesaid.

And for that whereas also one John Swannell before and at the time of the making of the promissory notes hereinafter mentioned, was indebted to the said Plaintiffs in various sums of money, to wit in the sums respectively specified in the promissory notes hereinafter ~~mentioned~~ particularly, described, to wit at Chicago in the County of Cook and State of Illinois: And thereupon, to wit at Chicago aforesaid, to wit at the time last aforesaid, in consideration of the premises and that the said plaintiffs at the special instance and request of the said Defendants would forbear and give time to the said John Swannell for the payment of said sums of money and take therefore three promissory notes (other than the notes mentioned in the first count of this declaration) of the said John Swannell, all bearing date

the tenth day of June in the year Eighteen Hundred and fifty Seven.

By one of which said notes said John Swannell by the name & style of Jno Swannell promised to pay three months after the date thereof, to the said plaintiffs under the firm, name, and style of Geo. W. Flanders & Co. or order, for value received the sum of two hundred & Seventy three dollars and fifty cents. By another of which said notes said John Swannell under the style of Jno Swannell, promised to pay two months after the date thereof for value received, to the said plaintiffs under the firm name of Geo W Flanders & Co. or to their order the sum of Two Hundred dollars. And also by another of which said notes, said John Swannell under the style of Jno Swannell promised to pay one month after the date thereof for value received, to the said plaintiffs under their said firm name of Geo W. Flanders & Co. or to their order, the sum of two hundred dollars. He the said defendant undertook and then and there faithfully promised the said plaintiffs to guarantee the payment of the said three notes mentioned in this Court which said last mentioned notes

8
said Defendant guaranteed by writing
his name on the backs thereof, and thereby
and according to the tenor and effect of his
said promises and undertaking and of
his said guarantee he the said Defendant
became liable to pay to said plaintiffs
the said sums of money mentioned in
said last mentioned notes according to
the tenor and effect thereof and being so
liable, he the said Defendant in considera-
tion thereof, afterwards to wit, on the
day and year last aforesaid, to wit, at
Chicago aforesaid undertook and then and
there faithfully promised to pay the same
to the said plaintiffs, according to the
tenor and effect of said notes and of his
guarantee of the same

And whereas also the said Defendant
afterwards, to wit, on the tenth day of
September in the year of our Lord one
Thousand Eight Hundred and ~~fifty~~ Seven
to wit, at Chicago in said County
became and was indebted into the
Plaintiffs in a large sum of money, to wit,
in the sum of one thousand dollars, for
money before that time lent and advanced
to, and paid, laid out and expended for
said Defendant by said Plaintiffs

at said Defendant's request; and for money before that time had and received by said Defendant to and for the use of said Plaintiffs; and also in the like sum, for goods, wares, and merchandise, before that time sold and delivered by said Plaintiffs to said Defendant at the like special instance and request of the said Defendant; and also in the like sum for the labor care and diligence of said Plaintiffs before that time done and performed by said Plaintiffs for said Defendant; and at the like instance and request of said Defendant; and also in like sum, then and there found due and owing said Plaintiffs on an account stated between them, and being so indebted said Defendant in consideration thereof, then and there undertook and promised to pay said Plaintiffs, said last mentioned sum of money, when thereunto afterwards requested

And the said Plaintiffs aver that the said cause of action accrued in the City of Chicago in the County of Cook aforesaid, the City and County of the plaintiffs in which City and County the plaintiffs reside and did reside when said cause of

action accrued

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

Root & Young
Atty for Plff

Copy of Instruments and account
sued on

\$273.⁵⁰/₁₀₀

Chicago June 10th 1837

Three months after date for value received, I promise to pay to Geo W. Flanders &c or order the sum of Two hundred Seventy three ⁵⁰/₁₀₀ dollars

(Signed) Jno Swannell
Jm L. Swannell

\$200 ⁰⁰/₁₀₀Chicago June 10th 1857

Two months after date, for
value received, I promise to pay to Geo
W Flanders & Co, or order, the sum of
Two Hundred ⁰⁰/₁₀₀ Dollars

Signed Jno Swannell
Wm L Swannell

200 ⁰⁰/₁₀₀Chicago June 10th 1857

One month after date for value
received, I promise to pay to Geo W.
Flanders & Co, or order the sum of Two
Hundred ⁰⁰/₁₀₀ Dollars

Signed Jno Swannell
Wm L Swannell

X

\$273 ⁵⁰/₁₀₀Chicago June 10th 1857

Three months after date for
value received, I promise to pay to
George W. Flanders & Co or order the sum
of Two Hundred Seventy-three ⁵⁰/₁₀₀ Dollars

Endorsed

Signed Jno Swannell

I guarantee the punctual
payment of the within note at the
maturity thereof

Wm L Swannell

\$200⁰⁰Chicago June 10th 1857

Two months after date for value received, I promise to pay to Geo W Flanders & Co or order the sum of Two hundred dollars

Signed Jno Swannell

Endorsed

I guarantee the punctual payment of the within note at the maturity thereof
Wm L Swannell

\$200⁰⁰Chicago June 10th 1857

One month after date, for value received I promise to pay to Geo W. Flanders & Co or order the sum of Two hundred ⁰⁰ Dollars

Signed Jno Swannell

Endorsed

I guarantee the punctual payment of the within note at the maturity thereof
Wm L Swannell

Wm L Swannell

To Geo W Flanders & Co. Dr.

To money lent and advanced	\$1000.00
To money expended and paid out	\$1000.00
To money received for use	\$1000.00
To Goods Wares & Merchandise	\$1000.00
To Labor and Services	\$1000.00
To balance on account stated	\$1000.00

4)
13
And afterwards, Court, on the Eleventh
day of November in the year aforesaid
it being one of the days of the November
Term of the Court aforesaid, the following
among the proceedings were had and entered
of Record in said Court, which proceedings
are in the words and figures following, to wit,

Geo W Flanders
Th Sedgwick &
Elijah S Alexander

54 vs Assumpsit
William G Swannell

This day come the
said Plaintiffs by Root and Young
their Attorneys, and it appearing to the
Court that the said Defendant William
G Swannell has been duly served with
process of summons, and he being now
here three times solemnly called comes
not nor any one for him, but he in fails
and makes default, which is ordered by
the Court to be entered of Record. Where-
fore the said Plaintiffs ought to
recover their damages of the Defendant
but because those damages are unknown
to the Court and the same rest in com-
putation merely, it is referred to the
Clerk to assess the same, and the

Clerk having computed the damages reports the same at the sum of Five Hundred and Ninety five Dollars and eighty Eight cents

Therefore It is ordered and considered by the Court that the said Plaintiffs do have and recover of the said Defendant William G. Swannell their damages of Five Hundred and Ninety five Dollars and Eighty eight cents together with all the charges and costs by them herein expended and have execution therefore.

And afterwards to wit, on the Twenty fourth day of November in the year aforesaid, it being one of the days of the November Term of the Court aforesaid, the following among the proceedings were had and entered of Record in said Court, which proceedings are in the words and figures following, to wit:

Geo W. Flanders

Theod Sedgwick

Clyde S. Alexander

54

vs

Assumpsit

William G. Swannell

And now comes the said Defendant by Helme & Clark.

his Attorneys and moves the Court to set aside the Judgment in the above entitled cause and to quash the execution herein which is taken under advisement

And afterwards, Court, on the Eleventh day of August in the year of our Lord one thousand Eight hundred and fifty eight, the said day being one of the days of the August Term of the Court aforesaid the following among the proceedings were had and entered of Record in said Court which proceedings are in the words and figures following, to wit:-

Geo H Flanders
Elijah S. Alexander
Thos Sedgwick

57 vs Assumpsit
William L Swannell

This day come the said Plaintiffs by Root and Young their Attorneys and the said Defendant by Helm and Clark his Attorneys also comes, and the Court being now fully advised in the premises doth overrule the motion heretofore made in this cause to set aside the judgment and to quash

16.

the execution herein, to which ruling and
decision of the Court the said Defendant
doth enter his exception

And afterwards, to wit, on the Twelfth day of August in the year last aforesaid it being of the Term of Court aforesaid there was filed in the Clerk's office of said Court a Bill of Exceptions in words and figures following, to wit:

Recorder's Court of the City of Chicago

William G. Swannell }
 as
 George W. Flanders }
 C. S. Alexander }
 Theodore Sedgwick }

State of Illinois }
 Cook County }
 City of Chicago } p.

Be it

Remembered that on the Eleventh day of November A.D. 1857, it being one of the days of the November Term of said Court for said year, default of the defendants in the above cause having been entered by the Court, upon the assessment of the damages of the Plaintiffs in the said cause, the three promissory notes which follow in these words and figures to wit:

\$273⁵⁰/₁₀₀ Chicago June 10th 1857

Three months after date, for
value received I promise to pay to
George W. Flanders & Co or order
the sum of Two Hundred Seventy three
 $\frac{50}{100}$ Dollars

Wm. Swannell

\$200 $\frac{50}{100}$

Chicago June 10th 1858
Two months after date
for value received I promise to
pay to Geo W. Flanders & Co or order
the sum of Two hundred $\frac{50}{100}$ Dollars
Wm Swannell

\$200 $\frac{50}{100}$

Chicago June 10th 1857
One Month after date for
value received I promise to pay to
Geo W Flanders & Co. or order the
sum of Two hundred $\frac{50}{100}$ Dollars
Wm Swannell

with the endorsements respectively
which follow, to wit:

I guarantee the punctual payment
of the within note at the maturity thereof
Wm G Swannell

I guarantee the punctual payment of
the within note at the maturity thereof
Wm G Swannell

19
I guarantee the punctual payment
of the within note at the maturity
thereof

Wm. L. Swannell

were offered in evidence by the said
Plaintiffs, and the said Plaintiffs
proved that the name Wm. L. Swannell
written on the back of the said notes was
the signature and ~~was~~ in the hand
writing of the said Defendant Wm.
L. Swannell, and this was all the evi-
dence offered in the said cause, and there-
upon the Court assesses the damages
of the said Plaintiffs at the sum of Five
Hundred and Ninety five Dollars and
Eighty eight cents

And afterwards to wit, on the
Twenty fourth day of November A.D. 1857, said
day being one of the days of the said November
term of said Court, the said Defendant Wm.
L. Swannell filed the following motion in said
cause, to wit,

State of Illinois }
Cook County, Ill. }

William L. Swannell }
as }
George W. Flanders }
Elijah S. Alexander }
Theodore Sedgwick }
Recorders Court of
the City of Chicago
Of the November Term
A.D. 1857.

And now comes the said defendant, William L. Swannell by Helm & Clark his Attorneys, and moves this Honorable Court to set aside the judgment in the above entitled suit and to quash the execution issued thereon

Helm & Clark
Defts Attys

And the said defendant in support of the said motion at the same time filed the affidavits which follow, viz:

State of Illinois }
Cook County 3d.

Recorders Court of the
City of Chicago, Of the November Term A.D. 1837
William L. Swannell }

as } Trespass on the
George W. Flanders } case upon promises
Elijah S. Alexander }
Theodore Sedgwick }

William L. Swannell

being duly sworn deposes and saith that after the summons was issued & served in this cause, he went to Chicago to prepare to defend the same, that he was about employing ^{legal} assistance, when Theodore Sedgwick of the said plaintiffs and a member of the firm of G. W.

Flanders & Co. agreed with and promised this deponent to stop and withdraw said suit, and that the said plaintiffs would stop all further proceedings therein and advised this deponent that it was not necessary to pay any further attention to the said suit, & this deponent relying upon said promises and assurances did not consider it necessary to go to the trouble and expense of employing legal assistance and making his defence. That the said plaintiffs in violation of said agreement & assurances proceeded with said suit & took a judgment against this deponent for the sum of \$ 595.88. & costs, & had an execution issued directed to the Sheriff of Hancock County Illinois upon said judgment.

That this deponent has been advised by his Counsel & believes that he has a good and meritorious defence to said action that he considers justice requires that he should make such defence & that in making the motion to set aside the judgment and quashing the execution in said cause, he is impelled to have justice done him & not for the purpose of delay.

Sworn to & subscribed before me } Wm. L. Swannell

22. Philip Worcester Clerk of the
Kankakee County Circuit
Court of said State on
this the 19th day of November
A.D. 1857 as witness my offi-
cial Signature & seal of our
said Court at said County
& the day & year last aforesaid
Philip Worcester Clerk
By J.P. Bonfield Dep.



State of Illinois }
Cook County }

Recorders Court of
the City of Chicago. Of the November Term
A.D. 1857.
To the Hon. Robert Wilson Judge of the
said Court

Your Applicant William L. Swannell
respectfully represents, that John
Swannell executed & delivered unto
George W. Flanders, Elijah S. Alexander
and Theodore Sedgwick, plaintiffs
under their firm name & style of G. W.

X
 Flanders & Co. three certain promissory notes, the date of which your Applicant does not remember, nor the exact times they were payable, and that in two or three days after the execution & delivery thereof to the said G. W. Flanders & Co they presented the said notes to your Applicant to be endorsed, that your Applicant indorsed said notes, upon the express agreement and condition that your Applicant was not to be held as security for the payment of said notes, nor as a joint and several signer, but that the plaintiffs, G. W. Flanders & Co. should use due diligence to make the amount of said notes out of the said John Swannell according to the Statute of Illinois, requiring suit to be brought against the maker of notes upon their maturity, & a failure to make the amount out of such matter upon execution, before the indorser can be charged therein, that the said George W. Flanders, Elijah S. Alexander & Theodore Sedgwick received said indorsements upon upon said condition and with the said agreement and understanding.

Your Applicant further says that if suit had been brought upon said notes upon the maturity thereof, the amount of said

notes could have been collected out of the said John Swannell.

Your Applicant further states that suit was brought against him by said George W Flanders, Elijah S. Alexander, and Theodore Sedgwick upon said notes at the said Term of this Court and that the said Flanders, Alexander and Sedgwick at said Term recovered a judgment against your Applicant upon said notes for the sum of Five Hundred and ninety five Dollars and Eighty Eight Cents damages and costs of suit, and that thereupon an execution issued to the Sheriff of Kane County Illinois upon said judgment; and that said Sheriff is about to make the amount thereof out of the goods and chattels, lands and tenements of your Applicant.

Your applicant further states that it was by a breach of good faith that the said Flanders Alexander & Sedgwick took said judgment against your Applicant, for that your Applicant after being summoned in this cause, went to Chicago to prepare for his defense & employ legal assistance, that he met the said firm of G W Flanders & Co and that Theodore Sedgwick of said firm

25.

promised and agreed to and with your Applicant that the said firm of G. W. Flanders & Co would withdraw said suit that they would stop all proceedings and advised your applicant that it was not necessary to pay any further attention to the suit, as he would have ^{no further} trouble with it. Upon these assurances, your applicant considered it unnecessary to go to the expense and trouble of employing legal assistance and making the defense he has set forth aforesaid and that the said Flanders, Alexander, & Sedgwick in violation of said agreement & assurances went on and took judgment as aforesaid against your Applicant

Your applicant intending to move the Court to set aside the default and judgment in this cause and for leave to make his defence to the same, therefore prays that a certificate may be issued by your Honor staying all further proceedings upon said execution by the said Plaintiff or by the said Sheriff, until the order of the Court upon a motion to set aside said judgment and to quash execution can be had

Sworn to & subscribed before
me Philip Worcester

Wm G. Swannell

26. Clerk of the Circuit Court
in for Kaukaue County
on this 19th day of November AD 1857
as witness the seal of said Court
at said County.

Philip Worcester Clerk
By J. P. Bonfield Deput.



And afterwards to wit on the Eleventh day of February A.D. 1858, the said day being one of the days of the February term of the said Court in the year last afore said, the said Defendant filed in the said Court in support of the said motion the Affidavit which follows viz:

Recorder's Court of the City of Chicago
William L. Swannell }
and }
George W. Flunders }
Theodore Sedgwick Etal }

State of Illinois }
County of Cook }
City of Chicago } ss.

City of Chicago, ss. William G. Swannell
being duly sworn says that after the

institution of this suit, this affiant came
 to Chicago for the purpose of employing
 counsel and taking proper steps for the
 defense of this suit, that he then met
 Theodore Sedgwick one of the said Plaintiffs
 that he then in a conversation held with said
 Sedgwick, reminded him of the agreement
 made at the time this Affiant endorsed
 the notes sued upon in this cause, to wit:
 that he was only to be held liable as endorser
 in case due efforts and diligence were used
 for the collection of said debt from the maker
 of said notes without success - and
 that this Affiant only endorsed the said
 notes upon that condition, and this Affiant
 then further reminded said Sedgwick that
 there were two witnesses to said agreement,
 that said Sedgwick then and there agreed
 with this affiant to withdraw this suit
 and at his request this Affiant engaged
 to use his influence with the maker of said
 notes to induce him to execute a power
 of Attorney to confess a judgment on
 the said notes and stated to said
 Sedgwick that this Affiant could procure
 said power of Attorney & would do it, and
 would do all in his power to secure them the
 money from the maker of said notes
 that this agreement was made at a second

interview with said Sedgwick - after he stated that he said Sedgwick had consulted his Attorney, that before leaving him this Affiant asked if it was necessary for him to take any stipulation in writing showing that said suit was to be dismissed that said Sedgwick replied that it was not necessary, that this Affiant might rely upon that and that he would find him - the said Sedgwick in accordance with his agreement then made - That said Sedgwick then gave this Affiant a power of Attorney for John Swannell the maker of said notes to execute and this Affiant then in presence of said Sedgwick enclosed and directed & afterwards mailed to said John Swannell at Cathu in Vermillion County, the said Power of Attorney, that before taking the Power of Attorney said Sedgwick offered this Affiant a stipulation in writing agreeing on their part to dismiss this suit in case this Affiant procured said Power of Attorney signed by said John Swannell that this Affiant said he could not vouch for John signing it - but believed he would - And declined making this the condition of their agreement to dismiss - and said Sedgwick afterwards gave

this Affiant his unconditional promise to withdraw this suit

That afterwards this Affiant wrote to Flanders & Co the Plaintiffs making inquiries as to ^{whether said} ~~whether~~ power of Attorney had been received from John Swannell, that at one time afterwards Sedgwick was at the store of this Affiant in Kanokake City and spoke to this affiant about said claim against John Swannell and requested this affiant to go with him to Catlin and offered to pay his expenses of the trip - this Affiant then consented to go, but the next morning said Sedgwick said that this Affiant need not go as he said Sedgwick must stop on the route at other places - he also at this time stated that he the said Sedgwick had been down and seen the said John Swannell at Catlin and directed him not to execute the power of Attorney, that this was said in answer to the inquiries as to whether the power of Attorney had been received, that this conversation was about one month after the agreement to dismiss the suit.

This Affiant says that nothing was said about this suit still being pending, that said Sedgwick asked this

affiant if they had not complied with their agreement, that he told him they had supposing the suit was dismissed and this affiant then believed that this suit was dismissed, that within one or two days after this conversation, an execution was presented to this affiant and he learned for the first time that said Plaintiffs had secretly & in direct opposition to their afore said agreement entered a judgment against this affiant in said suit - that the entry of said judgment was a gross breach of faith on the part of said Plaintiffs and a fraud upon this affiant, and further this affiant says not

Subscribed and sworn to Wm. L. Swannell
before me this 20 Jan'y
1838

P. A. Hoynes
Clerk

Personally appeared before me John Swannell of Bathin Vermillion County Illinois, who is personally known to me who being duly sworn deposes and saith that about ~~about~~ Sept 27th 1857 he received a ~~power~~ power of Attorney from W. L. Swannell for said deponent to sign empowering some person in Chicago

31
to confess judgment in a matter in
which N. L. Flanders & Co were plaintiffs
and said Depoent Defendant and in
which matter N. L. Swannell was
security that said Depoent was about
to execute said power of Attorney and
forward it as directed, when Theodore
Sedgwick one of the plaintiffs called
at said John Swannells Booth on the
Vermillion County Fair Grounds near
Cottleville Illinois, and told Defendant not
to send said power of Attorney and
that in consequence of said instructions
of said Sedgwick he the Depoent
neglected to forward the same

John Swannell

Sworn to and subscribed

before me at my office in Danville Illinois
this 27th day of January A.D. 1858

M. Lesby J. Peace 

And afterwards on the Eight day of
June A.D. 1858 said day being one of the
days of the June Term of said Court
in the year last aforesaid, the said Defendant
filed in the said cause in support of the
said motion the affidavits which
follow viz:

State of Illinois }
 Kane County } St.

S. R. N. Hall being

duly sworn, depouth and saith, that on or
 about the day of A.D. 1857 Theodore
 Sedgwick of the firm of G. W. Flanders & Co
 of Chicago came to the store of Wm. G.
 Swannell in Kane County City with certain
 Judgment notes, which were signed by
 John Swannell of Catlin (amounting to
 nearly Six hundred dollars, as I learned
 from the conversation to get William G.
 Swannell to sign them, as he said
 in order to get them discounted at the
 Bank which he could not do without
 an endorser. W. G. Swannell said that
 Flanders & Co could endorse them themselves
 that he presumed their names were as
 good as his - and that under no consideration
 would he sign a judgment note. That if
 they were afraid of losing the debt it
 was in the best shape now for collection
 as John Swannell had a good stock of
 goods, he said it was not that, but they
 wanted to raise money on them. Sedgwick
 then asked W. G. Swannell if he would
 endorse simple notes of hand. W. G. Swannell
 objected for some time saying that he was

9
33
affair that John Swannell would not be able to pay them when due, and that he should have trouble about them. Sedgwick replied that there was no danger of his being troubled about them, that John Swannell would pay them easily enough. W. G. Swannell then said that he would endorse them on this condition that they should use due diligence and make every effort to collect them off of John Swannell before troubling him, as he did not wish to have any trouble with his brother John Swannell, about the matter. Sedgwick agreed to this saying that was the law anyhow, that they must sue John Swannell first; but that there would be no trouble about that when John Swannell knew that W. G. S. had endorsed the notes, he would make extra efforts to meet them, and that that was one object had in getting W. G. Swannell's endorsement. Sedgwick then tore off the judgment part of the notes and presenting them to W. G. Swannell (the simple notes) wanted him to sign on the face of the notes under John Swannell's name. W. G. Swannell objected saying that would make joint notes of them. Sedgwick said the second name was only ^{an} endorsement.

W. L. Swannell then wrote his name across the backs of the notes, and handing them to Sedgwick, said, now remember that I am not to be troubled in this matter until after you have used due diligence and failed to collect them out of J. Swannell, to which Sedgwick agreed.

That at various times thereafter Sedgwick called at W. L. Swannell's Store soliciting orders for groceries, at which times the claim against John Swannell was generally talked of. W. L. Swannell invariably telling him that he must look to John Swannell for his pay and frequently notified him to be prompt in collecting the claim, as he was afraid the other creditors would get in their claims first, as John Swannell was reported to be doing very badly.

At one time Sedgwick told W. L. Swannell that he had been to Catin and that the people there said that John Swannell's Stock was in W. L. Swannell's name, and that it would be a useless expense to try to collect anything out of him.

X W. L. Swannell then told him that it was not so, that John Swannell's stock was liable to execution that he Swannell was ready to testify

33.
X
to the fact, and urged him Sedgwick
to commence suit immediately, or
other creditors would get judgment
first and that the debt would be lost
W. G. Swannell also wrote to the firm
in Chicago, to my knowledge, urging
them to be prompt or the debt would be
lost, and stating that he had no claim
on John Swannell's stock

That after this Flanders & Co. sued
W. G. Swannell on the notes, W. G.
Swannell then went to Chicago and
when he returned he said to me that he
had consulted a Lawyer who said that
he could beat Flanders & Co. but that
it would be some expense, and advised
him to see Flanders & Co. and state to
them that he had witnesses to prove the
forgoing facts, and they would probably
withdraw the suit, that he had seen
Sedgwick who had agreed to withdraw
the suit against him and commence
against John Swannell, After this
Theodore Sedgwick called at W. G.
Swannell's Store and spoke as if the
suit ^{was} withdrawn and asked Swannell
if he had not lived up to his agreement
to which Swannell supposing the suit

was withdrawn replied, yes.

JR N Hall

Subscribed and sworn to before
me this 14th day of April 1858

Philip Worcester

Clerk



State of Illinois }
Kankakee County } ss.

Henry Swannell

being duly sworn deposes and saith
that on or about the day of
A.D. 1837. Theodore Sedgwick of the firm
of L. W. Flanders & Co of Chicago called
at Wm L. Swannell's Drug Store in
Kankakee City with certain judgment
notes, amounting to nearly six hundred
dollars, to which John Swannell's name
(of Galena) was attached, or signed, as principal.
Sedgwick wanting to get W. L. Swannell
to endorse them to make them more
negotiable, to this W. L. Swannell objected
saying that he would not sign a judgment
on any consideration whatsoever, that if
they were afraid of losing the debt, it was
in a better form for collection, than any
other way ^{that} they could get it, he Sedgwick
said it was not that, but that they wanted

37

to use them, he then asked W. G. Swannell if he would object to endorse simple notes of hand, if not he would tear off the Judgment part and reduce them to simple notes. To this W. G. Swannell objected for some time, saying that he was afraid that John Swannell would not pay them when due and that he might have some trouble about it. Sedgwick said that there was no danger of his being troubled that John Swannell could pay them easily enough that they had given him good time &c, W. G. Swannell then said that he would endorse them on this condition, that they, Flanders & Co. should use due diligence and make every effort to collect out of John Swannell before troubling him, that he knew if they did so they would collect the debt, as J Swannell had a good stock of goods, he W. G. Swannell urged Sedgwick to hold him W. G. Swannell harmless in the matter as he did not wish to have the unpleasant task of suing his own Brother, to which Sedgwick agreed saying that that was the law anyhow, that he must first sue John Swannell before he would have any claim on him

x

x

W. L. Swannell. Sedgwick then tore off the judgment part of the notes and presented them to W. L. Swannell to sign wanting him to sign his name under John Swannells, saying that it only amounted to an endorsement anyhow but W. L. Swannell objected saying that would make them joint notes, and he only intended to guarantee their collection at maturity. Sedgwick said that was understood. During the conversation Sedgwick said one of his objects in getting W. L. Swannell's name was that John Swannell was more likely to be prompt and make an extra effort to raise the money, when he knew that his brother would have to pay the notes if he did not, and that he would certainly not see his brother suffer loss on his acc. W. L. Swannell then wrote his name across the back of the notes and handed them to Theodore Sedgwick, saying, now remember that I am to have no trouble in this matter unless after having used due diligence in the matter you fail to collect them of John Swannell to which Sedgwick agreed and said that W. L. Swannell need not fear any trouble in the matter. Some

time afterwards Flanders & Company
 sued W. L. Swannell on said notes
 he went to Chicago to see them in the
 matter on his return he said that
 they had agreed to withdraw the suit
 and commence on John Swannell
 One week afterwards W. L. Swannell
 sent me to Chicago to see if the suit
 was withdrawn, I went to the office
 of L. W. Flanders & Co. I then saw
 Mr. L. W. Flanders, he said that he had
 been out, and did not know what
 Sedgwick had done in the matter, but
 presumed that he had done as he agreed
 he said Mr. Sedgwick was out of town
 he seemed displeased that Sedgwick
 had withdrawn the suit, and said he
 had been informed that nothing could
 be made out of John Swannell and it
 would be a useless expense to see him
 I then told him that to my certain
 knowledge John Swannell had over
 One Thousand dollars worth of goods
 unincumbered in his Store, that
 W. L. Swannell had no claim on it
 whatever, and that it was liable to exe-
 cution and that W. L. Swannell had
 not and never had any claim on John
 Swannell's Stock since said John

had been in business, and notified him
(as directed) to proceed against John
Swannell. I then enquired in what
Court the suit against W. G. had
been commenced, they directed me
where to go. I went as directed and
enquired of the Clerk whether there was
a suit still pending between G. W.
Flanders & Co & W. G. Swannell. the
Clerk replied that there was no such
suit pending

H. Swannell

Subscribed and sworn to
before me this 14th day of
April 1858

Philip Worcester

Clerk



And on the same day and
year the said Plaintiffs filed in
said cause, the affidavits which
follow to wit:

Recorder's Court of the City of Chicago
State of Illinois }
County of Cook } ss.

Theodore Sedgwick
being duly sworn upon his oath deposes

41
and says that on or about the 10th day of June 1837 John Swannell being indebted unto the firm of Geo W Flanders & Co of which this Deponent is a member, Deponent did then call upon the said John Swannell at his place of business in Cathu Vermilion County Ill. and asked the said John to pay the said indebtedness. John answered in effect that he was unable to do so at that time, but offered to give notes for the same, and to obtain the joint signature of his Brother Wm. G. Swannell to the same for the greater security thereof, if Deponent would give him time and that this Deponent upon that understanding agreed to extend the time for said payment; that in pursuance of said agreement three notes commonly called judgment notes were drawn up for the said sum, and signed ^{by the said John}, and the said John at the ^{same} time handed to Deponent a letter directed to his Brother Wm. G. ^{in which} to the said John requested the said Wm. G. to sign the said notes in consideration of certain land before that time deeded by him said John to said Wm. G. and stating that this Deponent would not accept the said notes, and give time to him said John unless he the said Wm. G. would sign the said notes and that he feared that Geo W.

Flanders & Co. would see him unless Wm
 G. would do as he requested and that he
 expected to be able to pay the said notes
 himself. Thereupon Deponent immediately
 proceeded with said notes, and said
 letter to Kanabakee City, the place of
 and presented said notes and said letter to said Wm G.
 business of the said Wm G. that the said
 Wm G. objected to sign the same on the
 ground that they were judgment notes
 that Deponent thereupon tore off the portion
 of the same containing the Power of Attorney
 to confess judgment leaving the same
 simple notes of hand (and being the same
 upon which suits have since been brought
 in this Court and judgments obtained
 against the said John and the said Wm G.)
 Deponent then requested the said Wm G.
 to sign the said notes on the face thereof
 that the said Wm G. objected to sign the
 said notes on their face. But after having
 first insisted that the said Powers of Attorney
 which had been torn off said notes should
 be destroyed, which was then done, he the
 said Wm G. without further conversation
 wrote his name on the back of the said
 notes remarking that he would guaranty
 their payment and handed said notes
 he then, after having handed said notes to Deponent
 to Deponent, requested Deponent to
 endeavor to collect the said notes from

John before troubling him the said Wm L. and to give him Wm L. no trouble if possible. Deponent further says that immediately after the first of said notes became due and at all times between that time and the time of the maturity of the last of said notes that he as well as the other members of the said firm of Geo W. F. & Co. at the urgent request of the said Wm L. did their utmost to obtain payment of the said notes from the said John, that during said time they have written to said John repeatedly and three several persons from the house of said Geo W. F. & Co. have been to ~~the~~ said John endeavoring to obtain payment of the said notes from him, that these endeavors to collect the same of John was done more to oblige the said Wm L. and in compliance with his requests than with any hope that the said notes could be collected from the said John, the said John then being considered worthless, his land having been previously conveyed to said Wm L. and he doing business, and he doing business apparently for Wm L. as Wm L.'s sign was then on the store in which the said John did business, the said John was at that time generally reputed to be a bankrupt - that although the said John in answer to every

44
letter, every message and every request stated
that he would pay said notes in a few
days, at the end of a week &c - yet he
had only paid a trifling sum on said
notes at the time when the last of them
became due. At which time suits were immen-
sely commenced against the said
John as maker and the said Wm L.,
as guarantor for the balance due on
said notes in this Court. That after
said suits were commenced and about
the 25th of September, Wm L. called upon
Deponent and asked him to dismiss the
suit against him Wm L. and proceed
against John first, that Deponent agreed
to do so if Wm L. would obtain from
John his signature to a proper authorize
judgment to be entered against him the
said John in the suit against him the
said John in order that a judgment
might be entered against the said John
in the October term then next ensuing, as
process had not been served upon said
John in time for said October term
Deponent further says that although
the said Wm L. had been served with
process in time for said October term
yet no judgment was taken against him
in order that he might have time to

12
45- comply with his agreement to obtain said power to confess judgment from John which agreement was the condition upon which the said suit against him to be dismissed and also that he was to do all he could to enable said Geo W Flanders & Co to collect the amount of said notes from said John. And Deponee says that said condition was not complied with in either particular by the said Wm G. But instead thereof as Deponee is informed and everily believes he induced on that same day Messrs Barclay Bros to obtain a confession of Judgment from said John and to levy on all the goods in the Store at Catlin which was in possession of said John, but upon which parties could not safely levy without the consent of said Wm G. as the goods were apparently owned by the said Wm G.

And Deponee further says that the said Wm G. did not comply with the condition requiring him to obtain the signature of the said John to the said confession of judgment authorizing a judgment to be entered against said John in the suit commenced against him in this Court by Deponee's firm that consequently no judgment could be

obtained against him the said John
 until the November Term of this Court, at
 which term the said John having been
 previously summoned in time, a judgment
 was entered against him, the said John, that
 an execution was immediately issued against
 him the said John, directed to the Sheriff
 of Vermillion Co with which Deponent
 immediately proceeded to said Vermillion
 County and meeting the said John there
 he the said John, there and not till then, or
 a few days previous at which time Deponent
 was at John's place and is not certain at which
 interview, offered to sign said confession
 and deliver it to Deponent which Deponent
 declined to receive as it was then too late
 and the judgment having then been entered
 without it. so John upon summons which
 had been served upon him previously, & therefore
 there was no necessity for it, Deponent
 further says that when he delivered said
 execution to the Sheriff of Vermillion
 County, said Sheriff stated that
 nothing could be done with it as the
 said John had no property in the
 County. That Deponent then telegraphed
 to Chicago to have a judgment
 entered against Wm. G. which judgment
 was not entered until then

47

when it was found that the debt could not be made out of John as aforesaid

Subscribed & sworn to before me this 10th day of Mar A.D. 183-8
Jas R. Forrest
Clerk

The^o Sedgwick

Recorders Court of the City of Chicago
State of Illinois }
Cook County, Ill }

James Smith being duly sworn upon his oath deposes and says that on or about the 7th day of December last he had a conversation with W^m G. Swannell in relation to his said Swannells guaranty on the notes made by John Swannell to Geo W Flanders & Co. that he the said William G stated that he knew that he was liable to pay the said notes and that he was willing to do so, as he held lands of the said John for that purpose which the said John had conveyed to him to indemnify him against his said guaranty and that the reason why he did not pay the said notes when he was first sued was because he did

48 not then wish to take so much money
out of his business

Subscribed & sworn to
before me this 26th
day of April A.D. 1838
Jesse Forrest

James Smith

CLB

Recorder's Court of the City of Chicago,
State of Illinois }
Book County p 3 }

George W. Flanders
being duly sworn upon his oath deposes
and says that at the maturity of the first
of the notes made by John Swannell
and guaranteed by W^m L. Swannell
being the same notes upon which a
judgment has been obtained against
said W^m L. in this Court in favor of
Deponent, C. S. Alexander & Theodore
Sedgwick. We demanded payment of
the said W^m L. Swannell on the said
notes, and that said W^m L. requested us
to try and collect them (said notes) of
John. We then tried to get payment
from John and sent to his (John's place)
at our own expense and demanded
payment, but was unable to get only
small sums, and further that John

13/

49

was doing business under the name of Wm. L. Swannell and that we did then and there make diligent inquiry in regard to said John means, and was informed that he had nothing subject to execution, and further that we were informed before commencing suit against Wm. L. that John had made over his personal property to Wm. L. consisting of goods & merchandize. Soon after Wm. L. guaranteed his paper and we have been informed and verily believe for the purpose of indemnifying said Wm. L. against the said guarantee, and for the purpose of evading his creditors generally, and further that the delay in commencing suit against Wm. L. Swannell, was owing to the request of the said Wm. L. Swannell that we would try and get the money from John and that after we had tried our utmost to induce John to pay we then sued Wm. L. S. and further that at the maturity of the notes and to this time as Deponent has been informed and verily believes that said John was a bankrupt, and further that we did not regard John as solvent after ^{the transfer of his} ~~the transfer of his~~ property to Wm. L. and did not suppose

that John would pay the notes as it was known that he was insolvent, as the records of the Court will show, and Deponent verily believes that said W^mly is secured for the guarantee of John. And further states that we did sue said John at the same time that we sued W^mly and did send execution to the Sheriff of Vermillion County which execution has been returned unsatisfied, and is informed and verily believes that said John has fled to parts unknown & verily believe that the request of W^mly, that we would collect from John was for the purpose of getting time as he very well knew that John had nothing that could be reached by execution.

Subscribed & sworn to } Geo W Flanders
before me this 26th }
day of April A.D. 1838 }
I Rb Forrest }
CR } 3

State of Illinois }
Cass County S.S. }

Benjamin S Honor
being duly sworn upon his oath deposes
and says that he knows John Swannell

9-1
late of Catlin Vermillion County
that in the early part of October or November
A.D. 1857 being in said Vermillion Co
he endeavored to collect and indebtedness
due by said John Swannell to his
Deponents firm, and upon which they
had previously obtained a judgment
that failing to collect anything from
the said John, he deponent made
inquiries concerning the said John
and found that he bore the reputation
of being insolvent and bankrupt
and Deponent so satisfied himself of
that fact that he considered it useless
to issue execution upon the judgment
against the said John, and from what
he learned at the time, and a few days
after that, when he again went to Verm
illion County endeavoring to collect
something from the said John by
other means, he verily believed and
does now believe that the said John
had no property of any kind that
could be reached by execution

Subscribed and sworn
to before me this 11th
day of May A.D. 1858

Philip A. Hoyme
Notary Public

B. L. Honore

5-2
The Attorneys for the Plaintiff
desire to call the attention of the
Court to Sec 7 Chap 73 of Rev. Statutes
wherein it is "provided that if the
institution of suit would have been
unavailing when the assigned note
become due the assignee may recover
against the assignor, as if due
diligence had been used, which
renders the Defendant liable at any
rate whether he be guarantor or second
endorser as he contends, for our
affidavits showing that suit against
the maker would have been unavai-
ling

Root & Young

And all of the said affidavits herein
set forth are now here shown to the
said Court, And there is also ^{now} shown
and exhibited to the Court, the following
papers from the files of a certain cause
lately pending in said Court, wherein
George W. Flanders, C. S. Alexander and
Theodore Sedgwick were plaintiffs
and John Swannell was Defendant
viz:

Records Court of the City of Chicago
Of the October Term A.D. 1857

State of Illinois }
City of Chicago }
Court County St. }

George W. Flanders

Elijah S. Alexander and Theodore Sedgwick partners in trade doing business under and by the firm name and style of Geo W Flanders & Co Plaintiffs in this suit by Root & Young their Attorneys complain of John Swannell Defendant who was summoned &c, in a plea of trespass on the case on promises. For that whereas the said Defendant heretofore, to-wit: on the tenth day of June in the year of our Lord One thousand eight hundred and fifty Seven, to-wit, at Chicago, in said County of Cook, made his certain promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the same to the said plaintiffs in and by which said note, said Defendant by the name, style and description of John Swannell promised to pay the order of the said plaintiffs under the firm

name and style of George W Flanders & Co three months after the date thereof for value received, the sum of Two Hundred Seventy three $\frac{50}{100}$ Dollars meaning two hundred and seventy three dollars and fifty cents. And whereas also the said defendant afterwards, to wit; on the day and year last aforesaid, to wit at Chicago aforesaid made his certain other promissory note in writing bearing date the day and year last aforesaid, and then and there delivered the said last mentioned note to the said plaintiffs in and by which said last mentioned note said defendant by the name and style of Geo Swannell promised to pay to the order of the plaintiffs under the firm name and style of Geo W Flanders & Co. the sum of Two hundred dollars, two months after the date thereof for value received — And whereas also the said defendant afterwards, to wit; on the tenth day of June in the year aforesaid, to wit at Chicago aforesaid, made his certain other promissory note in writing bearing date the day and year last aforesaid, and then and there delivered the same to the said plaintiffs in and by which said last mentioned note, said defendant

55
under and by name and style of
Jno Swannell promised to pay to
the order of the said plaintiffs under
their said firm name of Geo W Flanders
& Co one month after the date thereof
for value received, the sum of two
hundred dollars. By means whereof
and by force of the Statute in such case
made and provided, the said Defendant
became liable to pay said Plaintiffs
said sums of money mentioned in said
notes and being so liable in consideration
thereof, then and there understood and
promised to pay the same to the said
Plaintiffs according to the tenor
and effect, true intent and meaning
of the said notes, to wit at the place
aforesaid.

And whereas also the said
Defendant afterwards on the tenth
day of September in the year of our
Lord one thousand eight hundred and
fifty Seven, to wit, at Chicago in said
county, became and was indebted unto
the Plaintiffs in a large sum of
money to wit in the sum of one thousand
dollars for money before that time
lent and advanced to, and paid, laid out
and expended for said Defendant by said

56
Plaintiffs at said Defendants request
and for money before that had and
received by said Defendant to and for
the use of said Plaintiffs: and also
the like sum, for goods wares and
merchandise, before that time sold
and delivered by said Plaintiffs to
said Defendant at the like special
instance and request of the said Defendant
and also in the like sum for the labor
care and diligence of said Plaintiffs
before that time done and performed
by said Plaintiffs for said Defendant
and at the like instance and request
of said Defendant: and also in like
sum, then and there found due and
owing said Plaintiffs on an account
stated between them and the said Defendant
and being so indebted said Defendant
in consideration thereof, then and there
undertook and promised to pay said
Plaintiffs said last mentioned sum
of money, when thereunto afterwards
requested

And the said plaintiffs aver
that the said cause of action accrued
within the said City of Chicago in the
County of Cook, the City and County of
the Plaintiffs, in which said City and

57

County, they the said plaintiffs reside
and did reside when cause of action accrued

Yet the said Defendant
not regarding his said several promises
and undertakings, but contriving &c.

Although often requested so to do, has
not paid said Plaintiffs either of
said sums of money above mentioned
or any part thereof, but so to do has
hitherto wholly neglected and refused
and still does neglect and refuse
to the damage of said Plaintiffs
of One Thousand dollars and
therefore they bring this suit &c

Root & Young
Attys for Plffs

Copy of Instruments and Account sued on

\$273⁵⁰/₁₀₀

Chicago June 10th 1858

Three months after date for value
Received I promise to pay to George
W Flanders & Co or order the sum
of Two hundred Seventy three ⁵⁰/₁₀₀ dollars
(Signed) Erno Swannell

\$200⁰⁰/₁₀₀

Chicago June 10th 1857

Two months after date for

value Received. I promise to pay
to Geo W Flanders & Co or order the
sum of Two hundred $\frac{50}{100}$ Dollars
(Signed) Jno Swannell

Chicago June 10th 1857
\$200 $\frac{50}{100}$ One month after date for
value Received I promise to pay to
Geo W Flanders & Co, or order the
sum of Two hundred $\frac{50}{100}$ Dollars
(Signed) Jno Swannell

Jno Swannell

To Geo W Flanders & Co. Dr.
To money lent & advanced \$1000.00
To money expended & paid out \$1000. $\frac{50}{100}$
To money received \$1000.00
To Goods Wares & Merchandise \$1000.00
To labor & Services \$1000.00
To balance on Account Stated \$1000.00

Endorsed

Filed this 19th day of September
1857. Philip A Hoynes
Clerk

State of Illinois }
City of Chicago } St.
County of Cook }

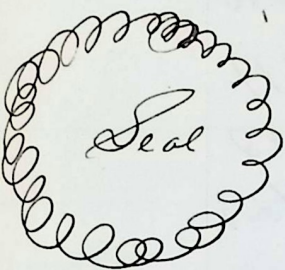
The People of the

State of Illinois, to the Sheriff of
Vermillion County, Greeting

We Command you, that of the
lands and tenements, goods and chat-
tels of John Swanell defendant
in your County, you cause to be
made the sum of Five Hundred and
Ninety five Dollars and Eighty two
Cents which Geo W Flanders, C. S.
Alexander & Th Sedgwick plaintiffs
lately in the Records Court of the
City of Chicago, at a term thereof
begun and held at Chicago in said
County on the first ~~Wednesday~~ Monday
of November last past, recovered
against the said defendant and
which by the said Court was adjudged
to the said plaintiffs for their damages

And also, the further sum of Seven
Dollars and Seventy cents which were
adjudged to the said Plaintiffs for
their costs and charges in that behalf
expended, whereof the said Defendant
convicted, as appears to us of Record
And have you these moneys ready to
render to the said Plaintiffs for their
damages and costs aforesaid, and
make return of this writ with an

endorsement thereon in what manner
you shall have executed the same, in
ninety days from the date hereof



Witness Philip A Hoyme Clerk of
our said Court, and the Seal thereof
at Chicago in said County this
9th day of November A.D. 1837
Philip A Hoyme
Clerk

Endorsed

Came to hand Nov. 14th 1837
at 8 o'clock A.M.

Thos McKitten
Shff V. C. Ill.

No property to be found in my
County to make the within debt Nov 8th
1837

Thos McKitten
Shff V. C. Ill.

And it is now here shown to the
Court, and admitted by the Counsel for
the Plaintiffs, that the name "Wm
S. Swannell, endorsed or written
upon the backs of the said several
promissory notes, which are herein
above set forth and upon which the

16/

61

said Defendant was declared against as guarantor thereof, was thereon signed in blank and that the words and figures of the said several endorsements written above the said signature were in the handwriting of the Plaintiff's Attorney and were by him thereon written after the institution of the said suit, and without the knowledge or consent of the said Defendant.

And this being all that is offered or shown, the said cause is submitted for the decision of the said Court, and afterwards on the Eleventh day of August A.D. 1838, the said day being one of the days of the August Term of said Court in the year last aforesaid, the Court overruled the said motion of the said Defendant.

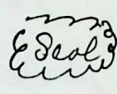
And to the said order and decision of the Court, overruling the said motion the said Defendant by his counsel then and there excepted in due form.

And for as much as the said several matters herein above stated do not else where or otherwise appear in the Record of said Cause, the said Defendant by his counsel makes this his bill of

62

Exceptions and prays that the same may be signed sealed and made a part of the Record in this cause and it is therefore done

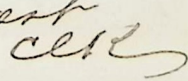
(Signed)

R. S. Wilson 
Recorder &c

State of Illinois }
County of Cook }
City of Chicago }

J. Joseph R. C. Forrest

Clerk of the Recorder's Court of the City of Chicago in the County and State of Illinois do hereby Certify that the above and foregoing is a full and true transcript of the papers and bill of exceptions on file in my Office and of the proceedings entered of Record in the case in which George W. Flanders and others are plaintiffs and William G. Swannell Defendant

In witness whereof I hereunto subscribe my name and affix the Seal of said Court at Chicago this day of
A.D. 1838
J. Joseph R. C. Forrest




Let a supersedeas issue in this cause
Bond under hundred dollars
Jesse Swannell surety

J. D. Eaton
Ch. J.

Records Court
City of Chicago

George W. Flanders
Etal

vs

Wm G. Swannell

Transcript

140 fol - \$14.00

Helm & Clark

Supreme Court of the State of Illinois
April Term A.D. 1859 -

William G. Swannell (Plf)

George W. Alexander }
Theodore Sedgwick } Ch Error -
Elijah S. Alexander } (Plf) from the
Records Court of the
City of Chicago

And now comes the
said Plaintiff in error, William G.
Swannell, by Behm & Clark his
Attorneys, and says that there
is manifest error in the judgment
rendered by the Records Court of the
City of Chicago, in the above case
and in the Record of the proceedings
thereof. and for particular causes
or grounds of error assigns and
sets forth, the following writ:

1st For that the said Records Court of the
City of Chicago erred in entering the
default of the said Plaintiff in error,
who was the Defendant in the said Court,
below.

2^d For that the said Records Court, was in giving judgment in the said cause in favor of the Plaintiffs in said Court, whereas judgment should have been in favor of the Defendant, in said Court, the said Plaintiffs in error -

3^d That the Declaration of the said Plaintiffs in the said Records Court was not sufficient in law to entitle them to recover from or charge the said Defendant in that Court -

4th For that the notes and other proofs offered in evidence by the Plaintiffs in the said Records Court, were not sufficient to support, the case set forth and contained in the said Declaration -

5th For that the said Records Court was in the assessment of the damages in the said cause - and in entering judgment thereupon against the Defendant in the said Court -

6th For that the said Records Court was in overruling the motion of the Defendant

in said Court, to vacate and set aside
the judgment in said Cause against
the said Defendant,

7th. For that the said Reverend Court, erred
in the said order and decision overruling
the said motion to set aside the said
judgment, and in giving final decision
upon said motion in favor of the Plaintiffs
in said Court, - whereas the said order
and decision should have been
in favor of the Defendant in said
Court, the said Plaintiffs in error,
and should have been set aside
the said judgment -

Shelton & Clark
Attorneys for the
Plaintiffs in error -

And the said depts in error by H K McAllister
their Attorney cannot say that there is no
error in the Record & proceedings as in
giving the judgment aforesaid And thus
the Whimpering depts pray that said judgment
may be affirmed &

H K McAllister
Depts. Atty

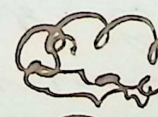
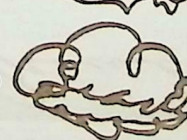
Know all men by these Presents
that we William G. Loomis
and Frederick Swannell of the
City of Kankakee, County of
Kankakee and State of Illinois,
are held and firmly bound unto
George W. Flanders, C. S. Alexander
and Theodore Sedgewick in
the sum of One Thousand
Dollars ^(\$1225) for the payment of
which we and our heirs,
executors, and administrators
firmly by these these presents -

Signed, Sealed and dated
this 12th day of August A.D. 1858.

The condition of the above
obligation is such that whereas,
the said Flanders, Alexander,
and Sedgewick, did on the 11th
day of November A.D. 1857, in
the Recorder's Court, in and for
the City of Chicago, State of Illinois,
recover a judgment against
the said William G. Loomis
for the sum of Two Hundred
and Ninety-five Dollars and Eighty
Eight Cents, that the said, William

Wm G Swannell is about to present
a writ of Error from the Supreme
Court of the State of Illinois, for
the reversal of the said judgment
and is about to apply to the said
Court for a subpoena, to stay
execution on the said judgment.

Now if the said William G.
Swannell shall use and truly
and with all necessary diligence
present his said writ of error,
and shall succeed in reversing
the said judgment, or in case
of failure therein shall pay
or cause to be paid to the said
Hlandus, Sedgewick and
Alyander, the amount which
may be due on said judgment
with the costs, then, together with
the costs of the said writ of error,
and also such damages as he
shall be adjudged to pay, to the
said Hlandus, Alyander, and
Sedgewick, then and in that case
the above obligation shall be
null and void.

Wm G. Swannell 
H Swannell 

State of Illinois

Hankakee County } ss

Frederick Swannell being
duly sworn deposes and
says, that he considers himself
worth fifteen thousand dollars and
upwards, over and above all his
debts, & ~~further~~ that his property is within
said State, & further this deponent saith
not.

Sworn to & subscribed before F. Swannell
me at said County on }
this 13th day 1858. }

Philip Wason
Clerk }

~~104~~ ²² Superior Court of Illinois

William G. Swannell

104-16 vs Pfin error

Geo W. Flannery et al
Deft in error

Transcript of Record -

Bond & Assignment of Error

Filed Oct. 18th 1878

Leland

clerk
J. P. Rice Deputy

A + C