No. 14273

Supreme Court of Illinois

Stewart

vs.

Smith

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STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

1473

No. 301.

Stewart

vs

Smith

1862

Replied

Supreme Court of Illinois.

GEORGE STEWART et al. vs. WILLIAM A. SMITH.

BRIEF AND ARGUMENT FOR PLAINTIFF.

A. E. WOLCOTT, Att'y.

SUPREME COURT,

FROM THE

SUPERIOR COURT OF CHICAGO,

ON ERROR.

GEORGE STEWART ET AL.,
vs.
WILLIAM A. SMITH.

Plaintiffs' Brief.

1st. The instrument in writing sued on and offered in evidence, in the cause below, is not a promissory note, nor negotiable, under the statute so as to enable the assignee to bring suit thereon in his own name.

[Purple's Ill. Statutes, ch. 73, sec. 3.]

It is not a promise to pay any "*sum of money*," nor any "*articles of personal property*," nor any "*sum of money* in personal property," nor does it "acknowledge any *sum of money*, or *articles of personal property* to be due," &c. But

It purports to be a "promise" (without consideration) "*to deliver*" such "*product*" (as they peradventure may raise or manufacture from) "280 hogs weighing" (in the aggregate) "45,545 lbs.," &c. The *number and aggregate weight* of hogs, being the only specific and definite thing in the whole instrument, yet, by the terms of the instrument, these *definite and specific things* are *not to be* "*delivered*," but something else, which is by no means *specific or definite*. Whether that *specific number and weight* means live and breeding, or slaughtered and dressed hogs; or whether the general and *very* indefinite term, "*product*," used in the instrument, means the *increase* of *breeding* hogs, or green, or cured, or packed meats, or lard, or oil, or grease, does not appear from the "instrument," yet *either* would *equally well answer the terms* thereof.

The word "*articles*," as used in this section of the statute, must (it is suggested) be construed to bear the same specific and qualifying relation to the term "*personal property*" that the word "*sum*," in the same section, does to the term "*money*." And if an instrument in writing, whereby I "*promise to pay*" (in either of these terms, to wit,) "*money*," or "*a sum of money*," or "*the money* that the *product* which I may raise or manufacture from 280 hogs, weighing 45,545 lbs., is worth to A B, or order," would not be a promissory note, or negotiable by statute; neither should an instrument in writing, whereby I "promise to deliver" (in either of these terms, to wit,) "*personal property*," or "*articles* of *personal property*," or "*such articles of personal property* as I may raise or manufacture from 280 hogs, weighing, &c., to the order of A B," be a promissory note, or negotiable by statute.

Yet either of such instruments in writing would be a good "*contract*," in the hands of the *promisee, provided* he could (by proper averments and proof) show a *good consideration* for the promise, and also make certain and definite what, by the terms of the instrument itself, is uncertain and indefinite.

If, therefore, it is necessary that the "instrument" should *specify* the *sum of money payable*, in order to make it a promissory note, and negotiable under the statute, it is *equally* (and for the same reason) necessary that the "instrument" should *specify* the *articles* of personal property, *deliverable*, in order to make it a promissory note and negotiable under the same statute; and the "*articles*," as well as the "*sum*," must alike be *so certain* and *definite* as to preclude the necessity of averments or proof to define and establish them.

This court, in the case of Lowe *v.* Bliss et al., 24 Ill. R. 168, have defined the kind and degree of certainty that is necessary in specifying the *sum* of "money" payable, in order to bring the "instrument" within the purview of the statute. In that case it is distinctly decided, that if, to an ordinary promissory note for the payment of a *specific sum* of money at a *specified time and place*, the clause "*with current rate of exchange on New York*" be added, the *uncertainty* of what that rate of exchange would amount to, and which "can't be made certain without *evidence* '*de hors*,' the instrument," makes *uncertain*

the whole *amount* embraced in the promise, and changes the "instrument" from a promissory note under the statute to an ordinary contract, requiring *specific* averments and proof "*de hors*" the instruments of a sufficient consideration to support the alleged promise.

"*Much more*," then, should the *uncertainty* (patent, as well as latent,) which lurks in every term of this instrument, the import and meaning of which it is *impossible* to ascertain without resort to evidence "*de hors*," exclude it from the same statutory purview, and leave it to the rules of the common law for remedial action thereon. "The 'product' of 280 hogs" is as indefinite as the product of a *bale of cotton* or of a *ton of iron* would be.

2d. But suppose said "instrument" be assignable under the statute. The question then arises, *When* was it *due and payable*, in such sense as to put the *assignee* in the position of a purchaser *with notice* of all the equities which the *makers, or others apparently liable* thereon, may have against it, as decided by this court in 20 Ill. R. 573?

A note for the payment of money, which does not specify the *time when payable*, is due at its date, and an action lies thereon immediately. A note payable "*on demand*" is due at its date, in such sense as that the statute of limitations begins immediately to run against it, [Chit. on Bills, 609,] and no demand is necessary as a preliminary step to the commencement of a suit thereon; the action itself being a sufficient demand to authorize a recovery.

11 Ill. 470; Wright's O. R. 582.

A note is *certainly due*, to *all intents and purposes*, as *soon* as an *action will lie thereon.*

In order to *hold* an *endorser* of a note payable "*on demand*," the *endorsee* must *make* his *demand as soon as he reasonably can*, which is *on the next day* after he receives it, if the maker lives in the *same place* with him.

Chitty on Bills, 410.

The *spirit* of the "Law Merchant," as well as of the statutes in aid or enlargement thereof, is to hold all persons who deal in or with

negotiable paper, to the exercise of such reasonable caution and inquiry in regard to the rights, equitable as well as legal, that the several parties thereto may have, as ordinarily cautious and honest men would do in the "*bona fide*" *purchase* and receipt thereof. Therefore, any *novelty*, either in the *phraseology* or *subject matter* of a negotiable instrument, is a "note of warning," a "*caveat emptor*," to the purchaser, of all the rights and reservations which the persons *apparently* liable thereon may have against it. By these rules and principles, this "instrument" was "*over due*" January 26, 1859.

But, without entering upon a nice metaphysical or legal analysis, as to the exact time when a note, in the ordinary and usual form, for the payment of a *specified sum* of money "on demand;" or, being silent as to the time of payment, is, *under every emergency*, due, it is respectfully submitted, that no person of ordinary sense and honesty, could for a moment doubt that the instrument upon which this action is based; made January 21, 1859, for the delivery (as *alleged* in the *narr*, and *sought* to be *proved* to the *jury* at the *trial*,) of the *green pork*, of a specific number and weight, of *slaughtered and dressed hogs, then on hand*, was "*over due*" (in every sense of the term) on May 28th, 1859, *after which time*, the defendants, in their said third amended plea, aver (and the demurrer thereto admits), the plaintiff (below) obtained it.

Nor is it a matter of any contideration in this case, whether any, or many persons (who are not "*apparently liable*" thereon) may have received it before him, in good faith, and (if possible) before it was due; for he, by his special endorsement of the instrument over the names of the promisees, to himself, elected to take it as it *then stood between them*, the payees and the *makers*. The *rights*, as well as the *liabilities*, of any and all prior holders or assignees (if *any* can be *presumed against* said *special endorsement*) could have been secured to him only by regular endorsement thereof.

20 Ill. 63.

A transfer by delivery without endorsement is merely a *quit claim without guaranty*, an assignment simply of the *legal title*, subject to all prior equities which the transferee is bound to inquire after before he takes it. The *legal presumption* of *notice* is the *same*, in law, as

actual notice. If, then, a person, before taking a negotiable instrument, either by endorsement or otherwise, has *actual notice* of valid equities against it, on the part of the *maker*, or "other persons apparently liable thereon," takes it subject to such defense; so likewise, where the *law* presumes such *notice* to have been *given* to *every one* who takes such instrument when "*over due*," is it taken by him when "*over due*" *subject* to *such defense.* Wherefore the 3d amended plea of defendants below set forth a complete defence to the action as made by plaintiff below, and should have been sustained against the demurrer.

3d. If the instrument was "*not due*" January 26, 1859, (the time when the promisees endorsed it to D. Howard Smith & Co.,) but was "*over due*" June 12, 1859, (the time when [as defendant~~s~~ ~~Allen~~ offered to prove] it was transferred by D. Howard Smith & Co., to plaintiff below,) *he* certainly could, *in no event*, claim a *greater* interest than his *assignor* at the time held in it.

Now the fourth plea avers (as defendants offered to prove) that D. Howard Smith & Co. took it as *collateral security* only for the *payment of another note*, given by assignors to the assignees, and that *that* note was fully paid by them to said assignees *before* said transfer to plaintiff, to wit, on May 24, 1859; and that the assignors took and held it in trust for the makers only as security for the payment of a balance of account, which had also been paid before said transfer, to wit, May 28, 1859; and that plaintiff took it from D. Howard Smith & Co., June 12, 1859.

To hold that the plaintiff below, under the circumstances and facts set forth in that plea and offered to be proved, was an *innocent and bona fide purchaser without notice*, and therefore *relieved* from such defense, ~~and~~ would open the door to the most *flagrant fraud and* "*mala fides.*" It would be a guaranty to every knave to speculate with the most sacred and confidential trust funds, in the form of negotiable securities, handed over to him in "*pledge*" *only*, yet *apparently* unconditional and absolute, in order that thereby they may be the more *perfect and available* AS SECURITIES.

On the contrary, courts of law as well as of equity, in their solic-

itude to see that those highly important and confidential trusts are faithfully kept and performed, require even *bona fide purchasers without notice* of such relations, and equitable rights and obligations, to *reply*, (to a plea setting up such facts,) the *whole truth* in regard to such purchase and transfer, and limit the recovery in *any event*, (where the trust or equity in the plea is established,) to the amount of what was in *fact parted with* or lost by the purchaser, in good faith, of the security.

Whatever has been, or now may be the diversity of opinion among judges upon the question whether or not "*a pre-existing debt*" is a "good and valuable consideration" for the transfer of a negotiable note, *before due and without notice*, so as to exclude the maker from setting up a defense to it, as *against* the *payee*, yet they all agree that when such a defense is offered and made by the maker, it devolves upon the holder to show how he came by the security, and *what consideration he paid or parted with for it.*

See 20 John. 637. 6 Hill, 98. 11 O. R. 186–7. 3 Ohio S. R. 156. 14 Ill. 199. 12 Ill., 342.

Therefore, the court below rejected important and material evidence offered by defendants below, to sustain the issues made in the case, to the country.

4th. The court below clearly erred in permitting plaintiff below to offer and give proof to the jury of the legal effect of the instrument, and of the meaning of the terms thereof.

If there be latent or patent ambiguities in instruments of writing, the plaintiff thereon may aver in his *narr* what the object and intent of the parties thereto was; and if not inconsistent with the words used in the instrument, may give evidence to show that such was the intent and meaning with which they made use of the language of the instrument. But by no means to prove what the *witness*, who was a stranger to the contract and to the parties thereto, would *infer* was the *meaning* and *import thereof.*

The plaintiff below might have averred that the "*hogs*" mentioned

in said instrument were slaughtered and dressed hogs of good marketable quality and condition for converting into good and merchantable provisions, (or otherwise as the facts may have warranted,) and that the "product" of said hogs was understood and intended by the parties to be, &c., (in accordance with the true intent and understanding of the parties at the time.) He would thereby have laid a foundation for the introduction of any legitimate evidence tending to establish such averments. But, having *made no such case* in his *narr*, he was not entitled to prove it to the jury.

5th. The court below erred in permitting plaintiff to give evidence to the jury of the nature or value of ANY KIND of "HOG PRODUCT."

1st. Because he did not prove that said 280 hogs were received by defendants *from Stevens & Bro.*,—a *material averment*—which the "instrument" itself (if in any event admissible as evidence in the case) does not even *tend* to establish, but on the contrary it *shows* that they did not so receive them. There was no proof offered in the case of the *value* of "*hog product*" on or about May 23, 1861, the time when *demand* was proved as alleged in the 2d and 3d counts of the *narr*; the proofs and verdict must therefore be regarded as referring to and founded upon the *first count alone.*

2d. Because the *narr* nowhere avers (nor was there the proof) that defendants *received any kind* of "product" from said hogs. The averment is, "*that the product of said hogs was large, to wit*, 560 *hams*," &c.

3d. Because the *narr* does not, *in direct and positive terms, aver a* "*promise to deliver*," &c., *to plaintiff*, nor does it *directly* and *positively allege a consideration* or inducement for the promise mentioned in the "instrument." The allegations and averments, in this behalf being, by way of recital and inference only.

6th. There was no sufficient evidence given upon *any issue* in the case to warrant the verdict of the jury.

The verdict was obviously based upon the testimony of the witness *Amulong* alone, for it is the *exact* amount of *his estimate in figures.*

But that was an estimate by the witness, *not* of the *value of the hogs*, (*nor* of the *product* thereof,) *mentioned* in the "*instrument*" (and *narr*), *at the date* thereof; or, in the language of the witness, "*as soon thereafter as the said hogs could be cut;*" but, it was *an estimate* upon "*a supposed*" 280 hogs, *freshly cut, on the 12th of June*, 1859.

That estimate also embraced "*items*," such as "*rumps*," and every *supposable thing*, in the item of "*lard, &c.*," not even mentioned in the *narr.*

Millward testified as to the value of "*cured and packed meat and lard*," (as he understood the "instrument" to import,) by the bbl. and lb., without regard to the number of bbls. and lbs.; nor was there any evidence of the number of bbls. and lbs., (probable or otherwise,) that said hogs could or did produce. His testimony was therefore too indefinite to warrant a verdict for any amount, and there were no other estimates or evidence of value from which the jury could infer any amount of damages.

A. E. WOLCOTT,
Attorney for Plaintiffs.

301

Stewart
vs
Smith

Pltffs Brief

Caton C.J.

Friday May 1st 1812

J Leland
C.M.

IN THE SUPREME COURT OF ILLINOIS.

ERROR

From the Superior Court of Chicago.

GEORGE STEWART AND JAMES STEWART,
Plaintiffs,
vs.
WILLIAM A. SMITH,
Defendant.

1 The defendant in error brought his action against the plaintiffs in error May 23, 1861, in the Superior Court of Chicago, and filed his narr
3 May 24, 1861, containing three counts.

4 1st. The first count states, that defendants (below) received, January 21, 1859, into their pork house, 280 hogs, weighing 45,545 pounds, from *Stevens & Brother*, the product of which they, the defendants, *by their certain instrument in writing*, then and there made and delivered to said Stevens & Bro., *undertook and promised to deliver* to the order of said Stevens & Bro. endorsed on said writing, and which instrument in writing is in the words and figures following:

"Chicago, 21st January, 1859.

"Received from teams in our pork house, No. 114 West Harrison street, 280 hogs, weighing 45,545 lbs., the product of which we promise to deliver to the order of Messrs. Stevens & Brother endorsed hereon.

"G. & J. STEWART."

5 And avers that Stevens & Bro. afterwards, to wit: at Chicago aforesaid, for value received, endorsed and negotiated said instrument, and the same was afterwards, in due course of business, for value received *delivered* to the plaintiff (below), by means whereof said *plaintiff became* the LEGAL HOLDER and OWNER THEREOF; that by said *endorsement* Stevens & Bro. ordered defendants to deliver, and the defendants by their said *instrument in writing* undertook and promised to deliver the product of said hogs to the plaintiff whenever they should be afterwards thereunto requested; by means whereof, and by force of the statute in such case made and provided, defendants became liable to deliver to plaintiff the product of said hogs *on demand*, at, &c.; that the pro-
6 duct of said hogs was large, to wit, 560 hams, 560 shoulders, 560 sides, 280 heads, and 10,000 lbs. of lard, which product was of great value, to wit, of $2,500; that plaintiff afterwards, on or about June 12, 1859, produced said writing so endorsed by said Stevens & Bro., and so held by plaintiff, and presented to defendants, at, &c., and demanded the said product, to be *then and there* delivered to him, and that defendants then and there refused to deliver the same or any part thereof to him, to his damage $2,500. Wherefore, &c.

8 2d. The second count is like the first, except that it avers a *demand* for the product on May 23, 1861, instead of June 12, 1859.

3d. The third count states that on Jan. 21, 1859, defendants (below) made their certain instrument in writing of that date and delivered the
9 same to Stevens & Bro., in and by which said instrument in writing defendants, in consideration of the receipt by them of 280 hogs weighing 45,545 pounds *from teams* in their pork house, promised to deliver the product of said hogs to the order of Messrs. Stevens & Bro., which said writing is in the words and figures following (setting out same instrument as in the two previous counts), and avers that Stevens & Bro. after-
10 wards, on the day and year aforesaid, endorsed said instrument in writing, by which endorsement said Stevens & Bro. ordered said product of said hogs in said instrument in writing mentioned to be delivered to the legal holder of said instrument; that afterwards, on the day and year aforesaid, at, &c., said Stevens & Bro. *negotiated* said instrument and *passed* the same out of their possession, and afterwards, on the —— day of ———, 1859, at, &c., said instrument *was sold and delivered to plaintiff;* by means whereof, and by force of the statute, &c., defendants *became liable*, and by said instrument they undertook and promised to deliver to plaintiff said product of said hogs on demand of said plaintiff, according to the tenor and effect of said instrument and the en-
11 dorsement aforesaid; that there was a large product of said hogs, and of great value, to wit, of $2,500; that afterwards, on May 23d, 1861, plaintiff being the legal holder of said instrument, produced the same *endorsed as aforesaid*, and with the following *order written immediately above the signature* of said *Stevens & Bro., across the back of said instrument*, to wit: "*Deliver to the order of William A. Smith*," and presented the same to defendants, at, &c., on the *last aforesaid day*, and demanded said product of said 280 hogs to be *then and there delivered by defendants to plaintiff*, which was refused, &c., to the damage, &c., of $2,500.

PLEAS.

14 1st. The general issue.

2d. That the hogs in the narr mentioned were none of them received from Stevens & Bro. as alleged, nor were any part of them ever owned by Stevens & Bro., but the same, at the time when, &c., were the exclusive property of defendants; that said alleged promises, if
15 made, were without consideration, and if said instruments of writing were endorsed and negotiated, and came into the possession of plaintiff, it was long after the same became due, to wit, on June 12, 1859, without the knowledge of defendants, and not in the ordinary and usual course of trade, &c., and concluding with a verification.

16 3d. That the hogs in the *narr* mentioned, at the time when, &c., were the exclusive property of defendants; that said instruments in writing were made and delivered by defendants to said Stevens & Bro. as collateral security only to said Stevens & Bro. for the payment by defendants to them of any balance of account that might thereafter, on settlement between them, be found due from defendants to them, and on condition then and there made and agreed between defendants and Stevens & Bro., that neither of said instruments in writing should be

negotiated or assigned by said Stevens & Bro., except on failure of defendants to pay such balance as should be found due as aforesaid, and
17 that on payment of such balance, said instruments, all and singular, should be immediately delivered up by said Stevens & Bro. to defendants; that before either of said instruments were assigned and passed into the hands of plaintiff, to wit, on May 28, 1859, defendants had a full accounting and settlement with said Stevens & Bro., whereby there was then and there found due from defendants to said Stevens & Bro. a balance of $505.46, which balance was then and there paid by defendants to said Stevens & Bro., and said instruments of writing were afterwards, on the day last aforesaid, demanded by defendants from said Stevens & Bro. in accordance with the aforesaid terms and conditions of their execution and delivery; that defendants, at the time of said settlement and payment as aforesaid, had no notice or knowledge that either of said instruments in writing had been endorsed, negotiated and passed out of the hands of said Stevens & Bro., and that since
18 said settlement and payment, defendants have in nowise been owing or indebted to said Stevens & Bro., which they "are ready to verify," &c.

4th. That the hogs in said narr mentioned, at the time when, &c., were the exclusive property of defendants, to which Stevens & Bro. had no title or claim whatever; that the promises and instruments in writing in the narr mentioned, if made and delivered as alleged, were without consideration therefor, but were made and presented by de-
19 fendants to said Stevens & Bro. gratuitously and *in trust*, to be held by them only as security for the payment by defendants to them of such balance as might, on settlement of account, be found and stated to be due from defendants to said Stevens & Bro., and upon condition that said instruments of writing should not be negotiated or assigned by Stevens & Bro., except on failure of defendants to pay such balance as might be found due as aforesaid, and that on such payment said instruments of writing should, all and singular, be by said Stevens & Bro. re-delivered to defendants; that on May 28, 1859, defendants and said Stevens & Bro. had a full accounting and settlement, whereby a balance of $505.46 was then and there found and stated to be due from defend-
20 ants to said Stevens & Bro., which said balance defendants then and there paid to said Stevens & Bro. in full satisfaction and discharge thereof; that defendants, since said settlement and payment, have been in nowise indebted to said Stevens & Bro.; that afterwards, on the day and year last aforesaid, defendants demanded of said Stevens & Bro. the re-delivery of said instruments of writing, all and singular; that at the time of said settlement and payment as aforesaid, defendants had no notice or knowledge that either of said instruments of writing had been endorsed, negotiated or passed out of the hands of said Stevens & Bro.; that if the same, or either of them, were endorsed, negotiated and passed, as in said narr alleged, it was without the authority, knowledge or assent of defendants thereto, and long after the same had become due and payable, to wit, on January 26, 1859, and not by absolute sale and delivery thereof in the ordinary course of trade, but as collateral, to wit, to D. Howard, Smith & Co., as security for the payment of

a certain promissory note made by said Stevens & Bro. to D. Howard Smith & Co., for the payment to them of $2000, in 30 days after the date thereof, with interest at the rate of 10 per cent. per annum, and dated January 26, 1859, which said note was afterwards, to wit, on May 24, 1859, fully paid by said Stevens & Bro. to said D. Howard Smith & Co.; that if plaintiff came into possession of said instruments of writing, or either of them, it was not by absolute purchase and sale thereof in the usual and ordinary course of trade, but by *delivery* thereof to him by said D. Howard Smith, for hazard and speculation, and without consideration, and long after the same had become due and payable, and after the payment by said Stevens & Bro. of said $2000 note as aforesaid, to wit, on or about June 12, 1859;—which they are ready to verify, &c., with which said pleas an affidavit of merits by said defendants below was duly made and filed.

To said second plea plaintiff filed his replication, that said instruments in writing were not made and delivered voluntarily and without consideration therefor; that they were not endorsed, negotiated and *received by plaintiff* after the same had respectively become due and payable according to the legal tenor and effect thereof, respectively.

To the fourth plea plaintiff replied, that said instruments in writing were not made and delivered without consideration, and were not made and gratuitously presented by defendants to Stevens & Bro. *in trust*, to be held by them as security for such balance as might, on settlement of accounts, be found due to Stevens & Bro., and were not endorsed, negotiated and passed after the same respectively became due and payable according to their legal tenor and effect; that said Stevens & Bro. did not pay and discharge said $2000 note before said promises and instruments in writing sued on were endorsed, negotiated and *delivered to plaintiff;* that plaintiff did not come into possession of said instruments in writing by *delivery to him* by said *D. Howard Smith & Co.* for hazard and speculation, without consideration, and *after* the same had become due and payable, and after the payment by Stevens & Bro. of said $2000 note.

To the 3d amended plea plaintiff filed his general demurrer, and defendants joined in demurrer.

The court sustained said demurrer to said 3d amended plea, and ruled the same insufficient, with leave to defendants to amend, whereupon defendants elected to stand by said plea.

BILL OF EXCEPTIONS.

That on the trial of said cause before a jury, the plaintiff called Wm. H. Worden, who testified in substance as follows: That on or about June 12, 1859, I went to defendants' place of business, No. 114 West Harrison Street, and saw one of the defendants, and made demand of the product of this receipt, and defendant *replied that he had not got it.* I made the demand for William A. Smith, the assignee of the receipt;

I was there once since; it was May 23, 1861; I went with Mr. Caulfield, who presented the receipt to one of defendants, and asked for the product or *stuff* mentioned in said receipt; defendant replied, that he had not got it. The defendants admitted their signature to said receipt.

37 Plaintiff then offered as evidence to the jury, the receipt referred to by the witness, of which the following is a copy:

"Chicago, January 21, 1859.

"Received, from teams in our pork house, No. 114 West Harrison street, 280 hogs, weighing 45,545 lbs., the product of which we promise to deliver to the order of Messrs. Stevens & Brother endorsed hereon.

"G. &. J. STEWART."

Upon the back of which is an endorsement, as follows:

"Deliver to the order of William A. Smith.

"STEVENS & BROTHER."

Whereupon defendants objected to the admission of said instrument of writing, endorsed as aforesaid, as evidence to the jury in said cause,

38 1st. Because said writing is not assignable under the statute so as to enable the assignee thereof to sue thereon in his own name;

2d. Because it is not a promissory note, and does not of itself import a good and sufficient consideration for the promise therein expressed, and that the plaintiff hath not alleged in his narr, nor proved a sufficient consideration for said promise.

But the court overruled said objection and allowed said writing to be read and given in evidence to the jury; to which ruling and decision defendants then and there excepted; whereupon said writing was read and given in evidence to the jury.

Plaintiff then called Wm. H. Fuller, Henry Milward and Henry Amulong (pork packers and produce dealers), as witnesses in said cause, and offered to prove to the jury, by them, the "mercantile meaning" of the word "product," as used in said instrument of writing, and also
39 to prove by them the value (on or about June 12, 1859, and on or about May 23, 1861,) of such product as they (said witnesses) understood the meaning of said word "product," in said instrument, to import.

Whereupon defendants objected to the introduction of such proof in said cause,

1st. Because there are no allegations in plaintiff's narr that said word "product" had, or was used in said instrument as having any unusual or local sense or meaning thereof;

2d. Because it was not competent for plaintiff to prove the value of any alleged or supposed product to which said instrument might refer, at the several different times alleged in said narr;

3d. Because plaintiff hath not made, by his allegations and proofs,

such a case as entitled him to prove to the jury the value of any product whatever.

But the court overruled said objections, and decided that such evidence might be given to the jury in said cause.

Whereupon defendants excepted to said ruling and decision.

40 Plaintiff thereupon called and examined, as a witness, Wm. H. Fuller, whose testimony therein was in substance as follows: "I am a pork packer in the city of Chicago. The product of hogs is pork and lard; in 280 hogs there would be twice that number of shoulders, hams and sides, and 280 heads, and a certain amount of lard. The simplest form of hog product would be fresh pork cut into suitable pieces for packing. If it was to be kept any length of time, it would have to be dry salted and cured. I am not acquainted with the value of 'hog product' at the times to which you refer."

Plaintiff then called and examined, as a witness in said cause, Henry Milward, whose testimony was in substance as follows: "I am a provision broker in the city of Chicago. My business embraces the purchase and sale of hogs and pork. I am acquainted with the value of hog product on or about June 12th, '59. Mess pork at that time was
41 worth $17 a bbl.—dry salted hams, packed, were worth from 8 to 8½ cts., dry salted shoulders, packed, 6 cents, prime pork $13 50 a bbl.—prime lard 11½ cents per pound, sides 7 cents; there were, however, no sides in the market at that time. Those are the prices indicated in the published list of Prices Current at that date, which I have before me, and which I believe correct. The 'mercantile meaning' of the word 'product' in this receipt is *cured meat and lard.*" Plaintiff then called and examined as a witness in said cause, Henry Amulong, whose testimony therein was in substance as follows:

"I am a provision dealer and pork packer in the city of Chicago. (Question by plaintiff.) 'What is the mercantile meaning of the word product' in this receipt, (showing the witness the aforesaid instrument of writing.) (Answer.) 'If called for the next day, it would be *green pork* cut into proper shape for packing. If called for a week after, it would be the same pork cured.' [Question by plaintiff] What would
42 be the value of the product of 280 hogs, weighing 45,545 lbs., on or about June 12th, '59? [Answer] '280 hogs, weighing 45,545 lbs., would make:

280 Heads, worth - - -	$ 98 00	green.
560 Hams, " - - -	453 60	"
560 Shoulders, " - - -	336 00	"
Lard, &c., of 280 hogs, - - -	323 40	"
Rumps, - - - -	42 00	"
Sides, - - - -	1149 75	"
Making in the agregate, - - -	$2402 75	

And the plaintiff offered no other evidence in said cause, whereupon

defendants objected to said testimony of said witnesses, Fuller, Milward and Amulong, and of each of them, and to every part thereof, and moved the court to rule the same and every part thereof from the consideration of the jury, for the reasons aforesaid offered against the introduction of such testimony, and for other reasons in said cause manifests. But said court overruled said objections and motion, and decided that the whole of said testimony and every part thereof was compitent and proper for the consideration of the Jury in said cause, and defendants then and there excepted to said ruling and decision.

43 Defendants then called said *Amulong*, and asked him to state to the court and jury, when, according to the custom of merchants in the city of Chicago, said instrument of writing would be deemed and considered as demandable. To which said question said witness answered. "On the next day, or as soon as the *hogs could be cut.*" Said witness also stated, in answer to a question of plaintiff, that when hogs are delivered to be cut a reasonable time would be allowed before the product would be demanded. It would not be expected that it would be called for the *next day*, although he *supposed it might be.*

Defendants then called Enoch B. Stevens, as a witness for them, who testified to the court and jury that he was one of the firm of "Ste-
44 vens & Brother," to whom said instrument of writing was made and delivered, and that he endorsed and delivered the same to D. Howard Smith & Co., on January 26, '59. And thereupon, defendants stated that they offered further to prove by said witness, Stevens, that the hogs, in said instrument mentioned, were not received from said Stevens & Brother, and were not at the date of said intrument of writing owned by said Stevens & Brother—that said Stevens & Brother received said instrument from defendants to be held by them as collateral security only, for the payment of any balance of account that might be found due on settlement of accounts from defendants to said Stevens & Brother. That on May 28, '59, defendants had a settlement with Stevens & Brother, on which a balance of $505 46 was found due from defendants to Stevens & Brother, and was paid, and the return of said instrument of writing demanded,—that on January 26, '59, said instrument of writing was assigned by Stevens & Brother to D. Howard Smith & Co., as collateral security for the payment of a
45 certain promissory note, of Stevens & Brother, to D. Howard Smith & Co., for $2000, due 30 days from date, with ten per cent interest, and dated January 26, '59. That on May 24, '59, said note was paid, and that on or about June 12, '59, said D. Howard Smith transferred said instrument of writing to the plaintiff. The court decided such evidence to be inadmissible *unless* defendants could prove that said instrument of writing was transferred to D. Howard Smith & Co. after January 26, '59; or, that the plaintiff had notice of such facts at the time said instrument of writing was transferred to him. And defendants' counsel stating his inability to prove such facts last mentioned, or either of them, said court excluded the evidence so offered by defendants. To which ruling defendants then and there excepted,
46 and no further testimony or evidence was offered by either party in said cause to said jury. And the jury brought in and rendered their

verdict in said cause in favor of the plaintiff and against the defendants for the sum of $2402 75 damages therein, whereupon the defendants moved said cause to set aside said verdict, and to grant them a new trial in said cause for that,

47 1st. The cause erred in admitting improper evidence on the part of said William A. Smith, on the trial of said cause.

48 2d. The court erred in rejecting proper evidence offered at the trial of said cause on the part of the said defendants, George and James Stewart.

49 3d. That said verdict is against the law and the evidence in said cause.

And said court overruled said motion, to which ruling and decision the defendants then and there excepted, and judgment was thereupon entered in said court against the defendants upon said verdict, and defendant prayed their bill of exceptions, etc., which was granted and entered of record, etc.

ASSIGNMENT OF ERRORS.

And the said George Stewart and James Stewart, now come and say, that in the record and proceedings aforesaid there is manifest error in this—to wit:

I. Said court below erred in sustaining said demurrer of said William A. Smith to their said third amended plea.

II. In allowing said receipt, or instrument in writing to be given in evidence to the jury in said cause.

III. In permitting said William A. Smith to give evidence to the jury of the "*mercantile meaning*" of said instrument in writing, and of the word "product," as used therein.

IV. In permitting said William A. Smith to give evidence to the jury of the nature and value of "*hog product*" in general, without limiting such testimony to the specific product alleged in his *narr*, and proved to have been *duly* demanded.

V. In rejecting the evidence offered by said defendants below, tending to establish the facts, or either of them, set forth in their 2d and 4th pleas, or either of them.

VI. In overruling their motion for a new trial in said cause.

VII. That said judgment was given in favor of the said William A. Smith, whereas, by the laws of the land, it ought to have been given in favor of the said George Stewart and James Stewart.

POINTS.

1st. The "instrument" declared on and given in evidence at the trial below, is not assignable so as to authorise the holder to bring suit in his own name. (Purple's Ill., Statutes, Ch. 73, sec. 3.)

2d. Said "instrument" if assignable under the statute, is not a "*promissory note*," and does not *import* and *dispense* with the *necessity* of *alleging and proving a consideration for the alleged promise.* (24 Ill. R. 170.)

3d. Said instrument was, on the 26th of January, 1859, "*over due*," so far, at least, as to put an ordinarily *prudent man* upon inquiries concerning all equities which the makers might have against it in the hands of the promisees.

4th. The third amended plea to the narr of plaintiff below avers, (and the demurrer thereto *admits*) that plaintiff below obtained said instrument, of writing after May 28, '59, which fact [if said instrument, *at that date*, is to be considered "*over due*," so far, at least, as to put *an ordinarily prudent man* upon *enquiry* concerning *any equities* which the "*makers or other persons apparently liable*" thereon might have against it,] constitutes, in connection with the other averments of said plea, a complete defence to the suit. 20 Ill. R. 573.

5th. If said demurrer to said plea was sustainable at all, it should have been carried back and sustained against the *plaintiff's narr*, which is fatally defective, and is not cured by verdict. 1 Chy. Pl. 330,–1. N. 615,—10 Wend. 487. Price *vs.* Easton, 1 Nev. and Man. 303.

6th. The court below improperly permitted plaintiff below to give evidence to the jury tending to prove the meaning and legal import of said instrument in writing, and of the words or terms thereof.

7th. The court below improperly permitted the plaintiff below to give evidence to the jury of the nature and value of "hog product" *in general* under the issues joined in the case.

8th. The court below improperly rejected important and material evidence offered by defendants below.

9th. The verdict was against the law and the evidence in the case.

A. E. WOLCOTT,

Atty. for Plaintiff.

301

Stewarts
vs
Smith

Abstract

Filed Ap. 24. 1862
L Leland
Clerk

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Second day of December in the year of our Lord One Thousand Eight Hundred and Sixty one and of the Independence of the United States of America the Eighty Sixth

Present, The Honorable John M Wilson Chief Justice of the Superior Court of Chicago.

Van H Higgins } Judges.
Grant Goodrich }

Carlos Haven Prosecuting Attorney.

Ayr Thomas Hesing Sheriff of Cook County.

Attest, Thomas Hoyne Clerk.

Be it remembered, that heretofore, to wit, on the twenty third day of May in the year of our Lord One Thousand Eight Hundred and Sixty one there issued out of and under the Seal of said Court a certain Peoples writ of summons which said writ, with the Sheriffs return thereon endorsed, are in the words and figures following, to wit

State of Illinois }
County of Cook } ss. The People of the
State of Illinois to the Sheriff of
said County Greeting:

We command
you that you summon George
Stewart & James Stewart partners
& C if they shall be found in your
County personally to be and ap-
pear before the Superior Court of
Chicago of said Cook County on
the first day of the next term
thereof, to be holden at the Court
House in Chicago, in said Cook
County, on the first Monday of
June next, to answer unto William
A Smith, in a plea of Trespass
on the Case upon promises
to the damage of the said plaintiff
as it said in the sum of Seventy
five Hundred dollars.

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

Seal

Witness Walter Kimball
Clerk of our said Court
and the seal thereof

at Chicago aforesaid this
23rd day of May A.D. 1861
Walter Kimball
Clerk

Served by reading to the within
named defendants this 24th day
of May 1861.
A. C. Hosmer Sheriff
By Wm Wagman
Deputy.

And afterwards to wit, on the
Twenty fourth day of May in
the year aforesaid there was
filed in the office of the Clerk
of the Superior Court of Chicago
a certain declaration in the
words and figures following,
to wit:

Superior Court of Chicago
June Term 1861

State of Illinois
County of Cook } ss.

The plaintiff William A Smith by Waller & Caulfield his attornies Complains of George Stewart and James Stewart engaged in the business of pork packing, as partners, under the name and style of G & J Stewart, defendants, who are summoned &c of a plea of trespass on the case on promises. For that whereas the said defendants heretofore to wit: on the 21st day of January A.D. 1859 at Chicago to wit. at said County of Cook, received in their pork house at Chicago aforesaid two hundred & eighty hogs which weighed forty five thousand five Hundred & forty five pounds. from Stevens & Brother the property of which they the said defendants by their Certain instrument in writing then and there made & delivered to said Stevens & Brothers undertook & promised to deliver to the order of said Stevens & Brother endorsed on said writing, and which instrument in writing is in words & figures following to wit:

"Chicago 21st January 1859
Received from Stevens in our pork house No 114 West Harrison St. 280 hogs weighing #45545 lbs. the property of

which we promise to deliver to the order of Mess. Stevens & Brother endorsed hereon G & C Stewart"

And the said Stevens & Brother afterwards to wit. at Chicago aforesaid. for value received. indorsed & negotiated said instrument. and the same was afterwards in due Course of business. for value received. delivered to said plaintiff by means whereof said plaintiff became the legal holder & owner thereof. And plaintiff avers that by their said indorsement on said instrument in writing the said Stevens & Brother ordered said defendants to deliver. and the said defendants by their said instrument in writing undertook and promised to deliver. the product of said Hogs to said plaintiff. at the pork house of said defendants. whenever they should be afterwards thereunto required.

By means whereof and by force of the Statute in such cases made and provided. the said defendants became liable to deliver to said plaintiff the product of the said Hogs on demand at their said pork house - and the plaintiff avers that the product of said hogs was large to wit: Five Hundred & sixty hams. Five

hundred & Sixty shoulders. Five Hundred & Sixty sides two hundred & eighty heads and two thousand pounds of lard - which product was of great value. to wit. of the value of twenty five Hundred dollars - and the plaintiff avers that afterwards. to wit. during the month of June 1859 and on or about the 12th day thereof the said plaintiffs produced said order so endorsed by said Stevens & Brother and so held by the plaintiff and presented the same to the said defendants at their pork house No 114 West Harrison Street in the said City of Chicago during the usual business hours and demanded the said product to be shewn and there delivered to him the said plaintiff. and the said defendant then and there refused to deliver the same or any part thereof to him. whereby the said plaintiff has sustained damages to the amount of twenty five hundred dollars

2nd And whereas also the said defendants heretofore to wit. on the 21st day of January A.D 1859 to wit at said County of Cook. received in their pork house in Chicago aforesaid. two hundred and eighty hogs from Stevens & Brother which said hogs weighed forty five thousand five hundred & forty five pounds. the product of which they

the said defendants promised by a certain instrument in writing then and there made by them and delivered to said Stevens & Brother, to deliver to the order of said Stevens & Brother endorsed on said instrument in writing, and which instrument in writing is in words and figures to wit.

"Chicago 21st January 1859

Received from Steams in our pork house No 114 West Harrison Street 280 Hogs weighing #45545 lbs the product of which we promise to deliver to the order of Mess Stevens & Brother endorsed thereon.

Yr & Stewart"

And the said Stevens & Brother, afterwards to wit, at Chicago aforesaid, for value received, endorsed and negotiated said instrument, and the same was afterwards in due course of business, for value received, delivered to the said plaintiff, by means whereof said plaintiff became the legal holder and owner thereof — And plaintiff avers that by their said endorsement on said instrument in writing the said Stevens & Brother ordered said defendants to deliver, and the said defendants by their said instrument in writing undertook and promised to deliver

the product of said hogs to said plaintiff. at the pork house of said defendants. whenever they should be afterwards thereto requested.

By means whereof and by force of the Statute in such case made and provided the said defendants became liable to deliver to said plaintiff the product of the said hogs on demand. at their said pork house— And the plaintiff avers that the product of said hogs was large. to wit. Five Hundred & Sixty hams. Five Hundred & Sixty shoulders. Five Hundred & Sixty sides. Two hundred & eighty heads. and ten thousand pounds of lard. which product was of great value. to wit. of the value of Twenty five Hundred dollars. and the plaintiff avers. that afterwards. to wit. on the 23d day of May 1861 the said plaintiff produced said writing so endorsed by said Stevens & Brother and so held by the plaintiff and presented the same to the said defendants. at their pork house No 114 West Harrison Street in the said City of Chicago during the usual business hours & demanded the said product to be then & there delivered to him the said plaintiff. & the said defendants then & there refused to deliver the same or any part thereof

to him. whereby the said Plaintiff has sustained damages to the amount of twenty five Hundred dollars.

3rd And whereas also the said defendants. heretofore. to wit. on the said 21st day of January 1859 at Chicago. to wit. at the County of Cook aforesaid. made their Certain instrument in writing bearing date the day and year last aforesaid. & then & there delivered the same to Mess Stevens & Brother in and by which said instrument in writing said defendants. by the name & style of G & J Stewart, in Consideration of the receipt by them of 280 hogs weighing 45545 lbs from teams in their pork house promised to deliver the product of said hogs to the order of the said Mess Stevens & Brother. and which said instrument in writing is in the words & figures following. to wit:

"Chicago 21st January 1859
Received from teams in our pork house No 114 West Harrison St 280 hogs weighing 45545 lbs. the product of which are promised to deliver to the order of Stevens & Brother, endorsed hereon G & J Stewart

And the said Stevens & Brother to whose order the said product

of said hogs was deliverable. afterwards. to wit. on the day & year aforesaid. at Chicago to wit. at the County of Cook aforesaid. endorsed said instrument in writing. by which endorsement said Stevens & Brother ordered & appointed the said product of said Hogs in said instrument of writing mentioned to be delivered to the legal holder of said instrument of writing.

And afterwards. to wit. on the day and year afs^d at the aforesaid Stevens & Brother negotiated said instrument of writing and passed the same out of their possession. and afterwards on the day of 1859. at the City of Chicago to wit. at the County of Cook afs^d. the said instrument of writing was sold and delivered to said plaintiff. by means whereof and by force of the Statute in such case made and provided. the said defendants became liable. and by their said instrument of writing. then & there undertook & promised to deliver to s^d plaintiff the s^d product of said Hogs on demand of said plaintiff according to the tenor & effect of said writing and the endorsement aforesaid.

And the said plaintiff avers that there was a large product

of said hogs. and of great value to wit. of the value of twenty five hundred dollars: and that afterwards. to wit. on the 23d day of May 1861. the plaintiffs being the legal holders of said instrument of writing, produced the same. endorsed as aforesaid. and with the following order written immediately above the signature of said Stevens & Brother across the back of said instrument of writing. to wit. "Deliver to the order of Gallum & Smith" and presented the same to the said defendants at their pork house No 1114 west Harrison street in the City of Chicago. during the usual business hours of said last named day and demanded the said product of said 250 hogs to be then & there delivered by said defendants to him the said plaintiff. and the said defendants then and there refused to deliver the said product or any part thereof of said hogs to him. whereby the said plaintiff saith he has sustained damages to the amount of Twenty five hundred dollars. and therefore he brings his suit.

Waller & Caulfield
attys for plaintiff

Copy of instrument read on:

"Chicago 21st January 1859.

Received from Steams in our pork house No 114 West Harrison St. 280 Hogs weighing #45545# lbs the product of which we promise to deliver to the order of Wm Stevens & Brother endorsed hereon.

G & J Stewart"

On the back of which is the following endorsement. to wit:

"Deliver to the order of William A Smith

Stevens & Brother"

And afterwards, to wit: On the third day of June in the year aforesaid the defendants by A E Walcott their attorney filed in the office of the Clerk aforesaid their certain Plea in the words & figures following, to wit:

Superior Court of Chicago

George Stewart & James Stewart
ats
William A Smith

June Term 1861.

1st. And the said George Stewart & James Stewart come & defend &c & say that they did not assume & promise in manner & form as the said William A Smith hath declared against them, and of this they put themselves upon the Country & the plaintiff doth the like.

2nd " And for a further plea in this behalf to all the several Counts of said plaintiffs declaration these defendants say "Actio non", because they say that the pogs in said several Counts respectively mentioned were not nor were any of them received from said Stewart & Brother as in said Counts respectively mentioned, nor were they or any part or portion of them ever owned by said Stewart & Brother, and the same at the time when &c were all & singular the Exclusive property of these defendants, and the said several promises & instruments in writing in said Counts respectively mentioned if made & delivered by

these defendants as therein respectfully alleged were so made and delivered voluntarily and without Consideration therefor. And if said several instruments in writing or either of them were endorsed & negotiated by said Stevens & Brother & came into the possession of the plaintiff as in said Counts respectfully alleged, they were so endorsed & negotiated & received by the plaintiff long after the same respectively had become due & payable, according to the legal tenor & effect thereof respectively, to wit, on or about the 12 th day of June A.D. 1859 & without the Knowledge or Consent of these defendants thereto. And the said instruments in writing were not, nor were either of them purchased & received by the plaintiff in the ordinary & usual Course of trade, and this they are ready to verify. Wherefore they pray judgment if the said plaintiff ought to have & maintain his aforesaid action thereof against them &c.

3rd And for a further plea in this behalf to the said several Counts of said declaration these defendants say. "Actio non" because they say

that the hogs in said County respectively mentioned (at dates therein specified when the same were received) were the exclusive property and possession of these defendants. to which the said Stevens & Brother had no title or claim whatever. and the said promises & instruments in writing in said Counts respectively mentioned if made & delivered by these defendants as therein respectively alleged, were so made and delivered by these defendants as Collateral Security only to said Stevens & Brother for the payment by these defendants to them of any ballance that might on settlement of accounts thereafter to be made between them. be found to be due from these defendants to said Stevens & Brother. & upon Condition then & there made & agreed between these defendants & said Stevens & Brother. that neither of said instruments in writing should be negotiated or assigned by said Stevens & Brother & upon failure of these defendants to pay such ballance, as should so as aforesaid be found due to said Stevens & Brother & that on payment of such ballance as aforesaid. said instruments in writing should

(17)

all & singular be immediately delivered up by said Stevens & Brother to these defendants. And these defendants aver that [before either of said instruments were assigned & passed into the hands of the plaintiff, to wit] on the 21st day of May A.D. 1859. at said Chicago they had a full accounting and settlement with said Stevens & Brother whereby there was then & there found due from these defendants to said Stevens & Brother a ballance of $505.46 and these defendants then and there paid to said Stevens & Brother said ballance of $505.46 in full satisfaction & discharge thereof. & afterwards to wit, on the day last aforesaid at the place aforesaid these defendants demanded of said Stevens & Brother that they deliver up said instruments in writing. all & singular in accordance with the conditions and agreements aforesaid to these defendants. And these defendants further aver in this behalf that at the time of said settlement and payment as aforesaid they had no knowledge or notice, that either of said instruments in writing had been endorsed. negotiated or passed out of the hands of said Stevens & Brother. And these

See Amendment July 19 1861: in brackets inclosed in red ink

defendants further aver in this
by half that they have in no wise
been owing or indebted to said
Stevens & Brother since the settle
ment & payment as aforesaid &
this they are ready to verify.
Wherefore they pray Judgment if the
plaintiff ought further to have &
maintain his aforesaid action there-
of against them &c.

4th And for a further plea in this
behalf to said several Counts of
said plaintiffs declaration these
defendants say. "Actio non", because"
they say that the hogs in said
Counts respectively mentioned
(at the time therein specified when
the same were received) were
the exclusive property & possession
of these defendants, to which the
said Stevens & Brother had no
title or claim whatever, and the
several promises & instruments
in writing in said Counts respec-
tively mentioned if made and
delivered by these defendants
as therein respectively alleged.
were without Consideration
therefor & were respectively made
& gratuously procured by these
defendants to said Stevens &
Brother. In Trust to be held
by them only as security for
the payment by these defendants

(19) to them of such ballance as might on settlement of accounts (thereafter to be made between them) be found and stated to be due from these defendants to them. And upon Condition made & agreed between these defendants & said Stevens & Brother at the time said instruments in writing were made & delivered as aforesaid alleged, that neither of said instruments in writing should be negotiated or assigned by said Stevens & Brother. Except on failure of these defendants to pay such ballance as should so as aforesaid be stated & found due from them to said Stevens & Brother, and that on payment of such ballance as aforesaid, said instruments in writing should all & singular ~~xxxxx~~ be immediately ~~xx~~ delivered up by said Stevens & Brother to these defendants. And these defendants aver that on the 28th day of may 1859 at said Chicago, they had a ~~full~~ accounting & settlement with said Stevens & Brother, whereby it was then & there stated & found to be due from these defendants to said Stevens & Brother a ballance of $505.46

and these defendants then & there paid to said Stevens & Brother said ballance of $505.46 in full satisfaction and discharge thereof & have since that time last aforesaid been in nowise indebted to them and aforesaids. & nit. on the day last aforesaid at the place aforesaid these defendants demanded of said Stevens & Brother that they should deliver up said instrument in writing all & singular in accordance with said trust & the Conditions thereof as aforesaid. — And these defendants further aver in their behalf that at the time of said settlement & payment as aforesaid they had no notice or knowledge that either of said instruments of writing had been endorsed, negotiated or passed out of the hands of said Stevens & Brother & of the same or either of them were endorsed negotiated & passed as in said Counts respectively alleged. it was without the authority. knowledge or assent of these defendants thereto & long after the same respectively had according to their legal tenor & effect became due & payable (to wit. on the 26th day of January A.D. 1859) & not by

(21)

absolute sale & delivery thereof in the ordinary & usual Course of trade but as Collateral Security to D Howard Smith & Co as security for the payment of a certain promissory note made by said Stevens & Brother to said D Howard Smith & Co for the payment to them of $2000 in thirty days after the date thereof with Interest at the rate of 10 per Cent per annum & dated January 26th 1859 which said promissory note was afterwards to wit: on the 24th day of May AD 1859 fully paid by said Stevens & Brother to said D Howard Smith & Co. and these defendants further aver in this behalf that if said plaintiff came into the possession of said instruments in arieting or either of them it was (not by absolute purchase & sale thereof in the usual & ordinary Course of trade but) by delivery thereof to him by said D Howard Smith. for hazard & speculation & without Consideration & long after the same had become due & payable & after the payment by said Stevens & Brother of said $2000 note as aforesaid. to wit. on or about the 12th day of June AD 1859. And this they are ready to verify.

Wherefore they pray judgment if the said Plaintiff ought further to have or maintain his aforesaid action thereof against them &c.

By A E Walcott
their atty.

And afterwards to wit: on the fifth day of June in the year aforesaid the defendants by their said attorney filed in the office of the Clerk aforesaid their certain affidavit of merits in the words & figures following to wit:

State of Illinois
Cook County } ss.
George Stewart & Sarah Stewart
vs. } In the Superior Court of Chicago
William A Smith } June term 1861.

George Stewart makes solemn oath & says that he is one of the defendants in the above entitled cause & that said defendants have a good & substantial defence to the whole of said cause upon the merits thereof

Geo Stewart

Subscribed & Sworn to before me
5th day of June A.D. 1861.
H Kimball
Clerk

And afterwards, to wit. on
the twenty seventh day of June
in the year aforesaid said
day being one of the days
of the June term of said
Court. the following among
other proceedings were had
and entered of Record in said
Court, to wit:

William A Smith
vs
George Stewart &
James Stewart
} Assumpsit.

This day
comes the said plaintiff by
Waller & Canfield his attorneys
and the said defendants by
A E Wolcott their attorney also
come. and the said defendants
having filed their several Pleas.
on their Motion it is ordered
that the said plaintiff file his
replications to defendants sec-
ond. third and fourth Pleas by
Coming in of the Court on
Wednesday next being the third

day of July instant.

And afterwards. to wit. on the Twenty ninth day of June in the year aforesaid the plaintiff by Waller & Caulfield ~~his~~ his Attorneys filed, in the office of the Clerk aforesaid. ~~his~~ his Certain Demurrer to defendants third Plea. and also ~~his~~ his certain Replication to defendants Second & fourth Pleas in the words & figures following, to wit.

Superior Court of Chicago
June Term 1864

W A Smith Plff
vs
Stewart & Bro Defts

Demurrer to 2d plea

And the said plaintiff. as to the said third plea of said Defts. and the matters and things therein Contained in manner and form as the same are therein pleaded & set forth. saith by Waller & Caulfield his attorneys. that the same are not sufficient in law to bar or preclude him said plff from having and maintaining his said action. and that said plff is not bound in law to answer the same, and, this he is ready to verify. Wherefore by

means of the insufficiency of
said plea in this behalf. &c pltff
prays judgment & his damages
by reason of the nonperformance
of said several promises and
undertakings &c declaration
mentioned. be adjudged to him.
Walker Caulfield p.q.

Superior Court of Chicago
June term 1861.

State of Illinois }
County of Cook } ss

W A Smith
vs
Stewart et al
Replications

2. And the said pltff as to the second
plea of said defendant says
precludi non. because he says
the said several promises and
~~undertakings~~ instruments of writing
in his said pltffs said Counts re-
spectively mentioned were not
made and delivered voluntarily
and without Consideration therefor
and were not endorsed. nego-
tiated and received by the plain-
tiff after the same had respec-
tively become due & payable

according to the legal tenor and effect thereof respectively.

And this he prays may be enquired of by the County and deft likewise.

4. And the said plaintiff as to the fourth plea of said defendants says precludi non, because he says the said several promises & instruments in writing in his d pltfs said Counts respectively mentioned were not made and delivered without Consideration, and were not made and gratuitously presented by d deft to d Stevens & Brother in trust to be held by them as security for such balance as might on settlement of accounts be found due to d Stevens & Brother, and were not endorsed, negotiated & passed after the same respectively had become due & payable according to their legal tenor & effect, and if the same were endorsed, negotiated and passed as Collateral security to d Howard Smith & Co for the payment of a certain promissory note of $2000 due by Stevens & Brother to d Howard Smith & Co as pleaded by d deft in his said plea, the said Stevens & Bro did

(27)

not pay and discharge the
promissory note of $2000. before
the said promises & instruments
in writing sued on were endorsed
negotiated and delivered to the
plaintiff. and the plaintiff did
not come into possession of the
said promises and instruments
in & writing by delivery to him
by the D Howard Smith & Co for
Wagging & speculation with-
out Consideration and after
the same had become due &
payable, and after payment
by the Sleeny & Brother of said
$2000 note.

And of this he puts him
self upon the Country & defi
de the like

Waller & Caulfield
for plff.

And afterwards to wit. on
the second day of July in the
year aforesaid the defendants
by their said attorney filed
in the office of the Clerk
aforesaid their Certain joinder
in Demurrer to the said
third plea in words and
figures following. to wit.

Superior Court of Chicago
June Term 1861.

Geo J Stewart
et al
William A Smith

And the
said Geo. Stewart and
James Stewart say that the
aforesaid third plea in manner
and form as the same is
by them pleaded & the matter
therein contained is insufficient
in law to bar and preclude the
said William A Smith from
having & maintaining his
aforesaid action against
them. which the said defendants
are ready to verify and
because the said plaintiff
hath not answered the said
plea nor denied the same.
they as before pray judgment
therein &

By A Walker Atty

And afterwards to wit. on the
Nineteenth day of July in the
year aforesaid. said day being
one of the days of the July
term of said Court the following
among other proceedings was
had and entered of Record

(28)

in said Court. to wit.

William A Smith
" assumpsit
George Stewart &
James Stewart

This day again comes the parties to this cause by their respective attorneys as aforesaid. and the cause being heard upon the plaintiffs demurrer to the third plea of the said defendants herein pleaded and argued by Counsel and the Court being fully advised in the premises is of the opinion that the said third plea and the matters therein are not sufficient in law. the demurrer is therefore sustained as to said third plea with leave to amend said plea
Which amendment will be found in original third plea. underlined & enclosed in red ink &.

and afterwards to wit. on the 3rd day of August in the year aforesaid the plaintiff by his said attorney filed in the office of the Clerk aforesaid his Certain demurrer to third plea amended in the words and figures following. to wit:

Superior Court of Chicago
Aug Term 1861.

W A Smith Plt.

Stewart & Ux Defts.

And the
sd plt as to the said third
plea as amended of sd defts
and the matters & things therein
in contained in manner & form
as the same are therein pleaded
saith by Waller & Caulfield his
attorneys that the same are not
sufficient in law to bar or pre-
clude him sd plt from having
and maintaining his sd action.
and that sd plt is not bound
in law to answer the same. and
this he is ready to verify.
Wherefore by reason of the in-
sufficiency of sd plea as amended
in this behalf. sd plt prays
judgment & his damages by
reason of the nonperformance
of sd several promises & under
takings in sd declaration men-
tioned be adjudged to him

Waller & Caulfield
Attys. for Plaintiff

(30)

(31)

And afterwards, to wit. on the Ninth day of August in the year aforesaid. the defendants by their attorney filed in the office of the Clerk aforesaid their certain joinder on demurrer to said third plea aforesaid. in the words & figures following. to wit.

In the Superior Court
Chicago Aug 7 1840

George Stewart &
James Stewart
vs
William A Smith

And the said George Stewart & James Stewart say that the said third plea aforesaid in manner and form as the same by them pleaded & the matters therein contained is insufficient in law to bar & preclude the said William A Smith from having & maintaining his aforesaid action against them. which the said defendants are ready to verify. And because the said plaintiff hath not answered the said plea nor denied the

Same. day as before pray
judgment therein &c
By a Walker Atty

and aftwards. to wit. On
the Ninth day of August.
in the year aforesaid. said
day being one of the days
of the days of the August
term thereof. the following
among other proceedings
were had and entered of
record in said Court. to wit.

William A Smith
vs assumpsit.
Jurgo Stewart &
James Stewart

This day again
comes the parties to this cause
by their attorneys as aforesaid
and the Court being further
heard upon the Plaintiffs
demurrer. to the third amend-
ed plea of the said defendants
was argued by Counsel. and the
Court being fully advised in the
premises. find the said amended
third plea of defendants and
matter therein insufficient in law.
the demurrer is therefor sustained
as to said third plea as amended
with leave to defendants to further

amend. and defendants electing to stand by their said third amended plea. issue is joined thereon.

And afterwards to wit. on the Fifth day of December. in the year aforesaid. said day being one of the days of the December term thereof. the following among other proceedings were had in said Court.

William A Smith
vs
George Stewart &
James Stewart
assumpsit.

This day comes the said plaintiff by Waller and Caulfield his attorneys. and the said defendants by A E Malcolm their attorney. also come and issue being joined herein it is ordered that a jury come. whereupon comes the jury of good and lawful men to wit. Peter Inman. D K Peck. Joseph D Clark. John Morton. Theodore Wyler. Johny M Kennedy. Lyman Kendall. L Whiting. G K Bruyers A G Wilder. George M Hawks and John M Eldonney. who being duly elected tried and sworn to try

the issues joined as aforesaid. after hearing evidence. argument of Counsel and instructions of the Court. retire to consider of their verdict. and the jury afterwards return into Court. submit their verdict and say. We the jury find issues for the said plaintiff and assess his damages herein against both of the said defendants for the sum of Two thousand four Hundred and two dollars and seventy five cents. And thereupon the said defendants submit their motion herein for a new trial in said cause.

And afterwards to wit. on the twenty first day of December. said day being one of the days of the term aforesaid of said Court. the following among other proceedings was had and entered of Record in said Court. to wit.

William A Smith.

assumpsit.

George Stewart & James Stewart

This day again comes said plaintiff by Waller and Caulfield his attorneys and the said defendants by A E Walcott their attorney also come and this cause coming on now to be heard upon the motion of said defendants heretofore submitted herein at the present

(34)

And afterwards to wit. on the eighteenth day of January in the year of Our Lord 1862 said day being one of the days of the January Term of said Court. the following among other proceedings were had and entered of record in said Court. to wit.

William A Smith
vs
George Stewart &
James Stewart.

assumpsit.

This day again comes the parties to this cause and on motion A E Walcott attorney for said defendants it is ordered that time to file Bill of Exceptions herein by said defendants be and is hereby extended to coming in of the Court on Saturday Morning next after the date hereof being the twenty fifth day of January instant.

(35)

term for a New trial in said Cause. and Counsel being heard, and the Court being fully advised in the premises, overruled the motion of said defendants for a new trial to which ruling of the Court said defendants thereupon excepted and enter their exceptions herein to the ruling of the Court in overruling their said Motion.

Whereupon the said plaintiff ought to have judgment entered upon the verdict of the jury heretofore rendered herein. and for his damages assessed thereon, Therefore it is Considered that the said plaintiff do have and recover of and from the said defendants his damages of two thousand four Hundred and two dollars and Seventy five Cents in form aforesaid found and assessed by the jury and also his Costs and Charges in this behalf expended and have execution therefor. And that said defendants having entered their Exceptions. it is ordered that said defendants file their Bill of Exceptions herein within thirty days from the date of the entry hereof

and afterwards to wit. on the twenty fifth day of January in the year of our Lord one thousand Eight hundred and sixty two the defendants by their said attorney files herein their certain Bill of Exceptions in the words and figures following to wit.

Superior Court of Chicago
December Term 1860.

William A Smith } In Assumpsit
vs
George Stewart &
James Stewart.

Bill of Exceptions.

Be it remembered that on the trial of this Cause before a jury at the December Term of said Superior Court of Chicago the plaintiff called as a witness in said Cause, William H. Warder whose testimony therein was in substance as follows to wit: I have resided in the City of Chicago about 7 years. I went to the defendants place of business (No 114 West Harrison St.) in June 1850 from the 10th to the 12th of the month. It was about the time a certain suit was brot by Wafler v Caulfield in the U S Court. I went to the establishment and saw one of the defendants and made demand of the product of the receipt. The said defendant replied that he had not got it. I made the demand for William A Smith, the assignee of the receipt I have been there once since. It was May 23rd /61 I met with Mr Caulfield who presented the receipt to one of the defendants

(36)

and asked for the product, or stuff mentioned in said receipt. Said defendant replied that he had not got it.

The defendants admitted their signatures to said receipt.

The Plaintiff then ~~called~~ offered as evidence to the jury in said Cause the "Receipt" referred to by said Witness in his said testimony of which the following is a copy, to wit.

"Chicago January 21st 1859

"Rec'd from teams in our Pork-
"house No 114 North Harrison St. 280
"280 Hogs weighing 45545 lbs the
"product of which we promise to
"deliver to the order of Messrs
"Stevens & Brother, endorsed hereon
Gr & Stewart."

upon the back of which is an endorsement as follows to wit:

"Deliver to the order of William A Smith"

(Signed) "Stevens & Brother"

Whereupon the said defendants objected to the admission of said instrument of writing endorsed as aforesaid as evidence to the Jury in said Cause 1st Because said Instrument of writing is not assignable under

the Statute so as to enable the assignee thereof to sue thereon in his own name.

2nd Because said instrument of writing is not a promissory note and does not of itself import a good and sufficient Consideration for the promise therein expressed, and that the plaintiff hath not alleged in his declaration, nor proved a sufficient Consideration for said promise. But said Court then and there overruled said objection and decided that said instrument might be read and given in evidence to the jury in said Cause, and the defendant then and there Excepted to said ruling and decision of said Court, whereupon said instrument of writing was read & given in evidence by the plaintiff to the jury in said Cause.

The plaintiff then called the following witnesses in said Cause to wit. William H. Fuller, Henry Milward & Henry Armstrong, pork packers & produce dealers, and offered to prove to the jury by them the "Mercantile Meaning" of the word "product" as used in said instrument of writing & also to prove by them to said jury the value on or about June

(38)

(39)

12/59 & on or about May 23/61 of such "product" as they, said Witnesses understood the meaning of said word "product" in said instrument of writing to import. Whereupon the defendants objected to the introduction & admission of such proof in said cause 1st because there are no allegations in said plaintiffs declaration that said word "product" had or was used in said instrument of writing as having any mineral or local sense or meaning thereof 2d Because it was not competent for the plaintiff to prove the value of any alleged or supposed product to which said instrument of writing might refer at the several different times alleged in said declaration

3d Because the plaintiff had not made by his allegations & proof such a case as entitled him to prove to the jury the value of any "product" whatever.

But said Court did & there overruled said objections & decided that such evidence might be given to the jury in said cause Whereupon the defendants then & there excepted to said ruling & decision of said Court.

The plaintiff thereupon called & examined as a witness in said Cause the said William H Fuller, whose testimony therein was in substance as follows.

I am a pork packer in the City of Chicago. The product of hogs is pork & Lard. In 280 Hogs there would be twice that number of Shoulders, hams & sides & 280 Heads & a certain amount of Lard. The simplest form of "Hog product" would be fresh pork cut into suitable pieces for packing. If it was to be kept any length of time it would have to be dry salted & cured. I am not acquainted with the value of "Hog Product" at the times you refer to.

The plaintiffs also called & Examined as a witness in said Cause the said Henry Milward whose testimony therein was in substance as follows. I am a provision broker, in the City of Chicago. My business embraced the purchase & sale of Hogs & pork. I am acquainted with the value of "Hog product" on or about June 12th 59. Mess pork at that time was worth $17 per bbl. dry salted hams packed were worth from 8 to

5½ cents. Dry salted Shoulders packed 6 cents. Prime pork $13.50 pr barrel. Prime Lard 11½ cents per lb. Sides 7 cents. There were however no sides in Market at that time.

Those are the prices indicated in the published list of prices Current at that date which I have before me. and I deem the same to be Correct In Mercantile Meaning of the word "product" in "this receipt" is Cured Meat & Lard.

The plaintiff also called & Examined, as a witness in said Cause the said Henry Armstrong whose testimony therein was in substance as follows. I am a provision dealer & pork packer in the City of Chicago. (Question by plff) what is the "Mercantile Meaning" of the word "product" as used in this receipt. (Showing to the witness the aforesaid instrument of writing) (answer) If called for the next day it would be green pork Cut into proper Shape for packing If called for a week after it would be the same pork Cured (Question by plaintiff) What would be the value of the

product of 280 Hogs weighing 45545 lbs/ on or about June 12, 59 (one) 280 Hogs weighing 45545 lbs would make

280	Heads worth	$98.	green
560	Hams	453.60	"
560	Shoulders	336.00	"
Lard of 280 Hogs		323.40	"
	Rumps	42.00	"
	Sides	1149.75	"

Making in the aggregate $2402.75

And the plaintiff offered no further or other evidence in said Cause. Whereupon the defendants then & there objected to said testimony of said Witnesses. Fuller, Milward & Annulay as given in said Cause as aforesaid & each of them & to every part thereof & moved the said Court to rule the same, & each & every part thereof from the consideration of the jury for the reasons aforesaid offered against the introduction of such testimony & for other reasons in said Cause Manifest.

But said Court then & there overruled said objections & Motion & decided that the whole of said testimony & every part thereof was Competent & proper for the Consideration of the jury

in said Cause, and the defendants then and there Excepted to said ruling & decision of said Court.

The defendants then called said Witness Amalong & asked him to state to the Court and jury when, according to the Custom of Merchants in the City of Chicago, said instrument of writing would be deemed & considered as demandable; to which said question, said Witness answered, "on the next day, or as soon as the hogs Could be Cut up"

The said Witness also stated in answer to a question of Plaintiff, that when hogs are delivered to be cut, a reasonable time would be allowed before the product would be demanded. It would not be Expected that it would be called for the next day, although he supposed it might be.

The Defendants then called Enoch B Stevens (as a Witness for them) who testified to the Court & jury in said Cause, that he was one of the firm of "Stevens & Brother" to whom said instrument of writing

ags made & delivered & that he indorsed & delivered the same to D Howard Smith & Co on the 26th day of January 1859. and then upon the defendant stated that they offered further to prove by said witness Stevens. that the Progs in said instrument mentioned were not received from said Stevens & Brother and were not at the date of said instrument of writing agreed by said "Stevens & Brother". That said Stevens & Brother received said instrument from defendant to be held by them as Collateral Security only for the payment of any balance of account that might be found due on settlement of accounts from defendants to said "Stevens & Brother" — That on May 28th 1859 defendants had a settlement with "Stevens & Brother" a ballance of $505.46 was found due from defendants to said Stevens & Brother & was paid & the return of said instrument of writing demanded

That on January 26th 1859 said instrument of writing was assigned by said Stevens & Brother to D Howard Smith & Co as Collateral Security for the payment of a Certain promissory note of

Stevens & Brother to D Howard Smith & Co for $2000. due thirty days from date with ten per Cent interest & dated January 26th 1859. That on May 24th 1859 said Note was paid & That on or about June 12th 1859 said D Howard Smith & Co transfered said instrument of writing to the plaintiff.

The Court decided such evidence to be inadmissible unless the defendants could prove that said instrument of writing was transfered to D Howard Smith & Co after the 26th day of January 1859, or that the plaintiff had notice of such fact at the time said instrument of writing was transfered to him, and the defendants Counsel stating his inability to prove such facts last mentioned or either of them, said Court excluded the evidence so offered by said defendant, to which ruling of said Court the said defendants then and there Excepted.

And no further ~~evidence~~ testimony or evidence was offered by either party in said Cause, and no further in-

Instructions were asked by either of the parties or were given by said Court to the jury in the Cause,

And the said jury thereupon retired and rendered their verdict in said Cause in favor of said the plaintiff and against the defendants for the sum of $2402.75 damages therein.

Whereupon the defendants moved said Court to set aside said Verdict & to grant them a new trial in said Cause

And afterwards on the day of December 1861 the defendants filed their motion in writing therefor as follows to wit.

George Stewart et al
vs
William A Smith.

In Superior Court of Chicago December Term 1861.
Verdict for $2402.75.

Motion for a New Trial.

And now Comes the defendants & Move the Court to set aside said Verdict & to grant them a new trial in this Cause for the following reasons, to wit:

1st The Court erred in allowing the plaintiff to give in evidence to the jury the instrument of writing mentioned & described in said declaration.

2d In allowing the plaintiff to give in evidence to the jury the instrument of writing mentioned in said declaration without proof of a good & sufficient inducement & consideration for the alleged promise & undertaking of the defendants in said instrument & declaration mentioned

3d In allowing the plaintiff to give evidence to the jury of the meaning of the word "product" as used in said instrument of writing.

4th In allowing the plaintiff to give evidence to the jury of the value of the product of 250 Hogs weighing 45545. lbs at the several times he demanded the same as alleged in said declaration.

5th In allowing the plaintiff to give evidence to the jury of the nature, amount & value of "Hog product" generally without limiting said evidence to any special "product" alleged & set forth in his said declaration.

6th In allowing the plaintiff to give evidence of the natural amount & value of any "product" whatever without proof that the defendants had received or realized such "product" out of or from the hogs mentioned in said instrument of writing & that the same had been demanded of them in a reasonable time & in a proper manner.

7th In not allowing the defendants to prove to the jury all the several material allegations & facts set up as a defence against the plaintiffs action in their 2nd & 4th pleas to said declaration, respectively.

8th In instructing the jury that said instrument of writing is a promissory note & imports of itself a good & sufficient consideration for the promise & undertaking therein expressed. That the same was assigned before it was due & that the plaintiff was entitled to recover so much as he had proved to them was the value of "Hog product" from 250 Hogs weighing 40540 lbs at the time demand thereof was made by the plaintiff as alleged in said declaration.

48

9th In refusing to instruct the jury at the request of the defendants that if they believed from the evidence before them that said instrument sued on was not assigned until January 26/59 it was not assigned before it was legally due.

10th That said verdict of the Jury was not warranted by & was against both the Law & the evidence in said Cause

By A E Walcott
Atty for Defts.

And afterwards on the 21st day of December 1861. said Court overruled & refused to grant said Motion & to which ruling & decision of the said Court. the defendants then & there excepted. and judgment thereupon was entered in said Court against the said defendants upon the verdict of the jury aforesaid. And forasmuch as the said several rulings & decisions of said Court & the Exceptions of the defendants thereto do not appear of Record in said Court the said defendants have prepared and tendered this their Bill of Exceptions and pray that the same may

be signed and sealed by the Court and made a part of the Record in said Cause which is accordingly done this day of January A.D. 1862.

Grant Goodrich (seal)

State of Illinois }
County of Cook } ss I Thomas
Baxter Clerk of the Superior Court
of Chicago within and for the County
of Cook & State aforesaid do hereby
Certify the foregoing to be a
full true and Complete transcript
of all the pleadings on file in
my office and proceedings
of Court entered of Record, toge-
ther with the Bill of Exceptions in
a Certain Cause wherein William
A Smith was plaintiff and
George Stewart and James Stewart
defendants.

In testimony whereof
I hereunto set my hand
and affix the Seal of
said Court at the City
of Chicago in said County
& State this 5th day of
February A.D. 1862.

Thomas Baxter Clerk

Assignment of Errors.

And the said George Stewart & James Stewart Now Come & say, that in the Record & proceedings aforesaid, there is manifest Error in this, to wit;

I, The Court Erred in sustaining said Demurrer of said William A. Smith to their said Third Amended Plea,

II. The Court Erred in allowing said Receipt, or instrument in writing, to be given in evidence to the jury

III. The Court Erred in permitting said Smith to give evidence to the jury of the "mercantile meaning" of said instrument in writing, as of the word "product" as used therein,

IV. The Court Erred in permitting said Smith to give evidence to the jury of the natural meaning of "hoop products" generally, without limiting such testimony to the Specific product alleged in his declaration & proved to have been duly demanded,

V. The Court Erred in rejecting the evidence offered by said defendants below tending to establish the facts set forth in their said 2d, 4th pleas, or either of them,

VI. The Court Erred in overruling their motion for a new trial in said cause,

VII. That said judgment was given for in favor of said William A. Smith, whereas

(52.)

by the Laws of the Land it ought to have been given in favor of the said Geo. Stewart & James Stewart, wherefore the said Geo. Stewart & James Stewart pray that a Citation may issue that the said Judgment may be Reversed, annulled & held for Nothing: And that they may be restored to all things they have lost by Reason thereof,

By A. Abbotts & Blair attys

Issued in Error

William A. Smith
vs.
Geo. Stewart &
James Stewart

Dan Error

And the said William A. Smith now Comes & waives process & notice herein & says that there is no Error in the Record & proceedings aforesaid, or in giving the Judgment aforesaid: And though he prays that the said Judgment may be affirmed & that his Costs may be Adjudged to him &c,

By Wallen & Caulfield his attys for plaintiff

155 301

Sup Ct of Chicago

Wm A Smith

vs

George Stewart

et al

Transcript

Filed Apl. 24. 1862.

L. Leland

Clk.

Fees $10—

Paid

J. B. Carter

Clerk