

No. 11969

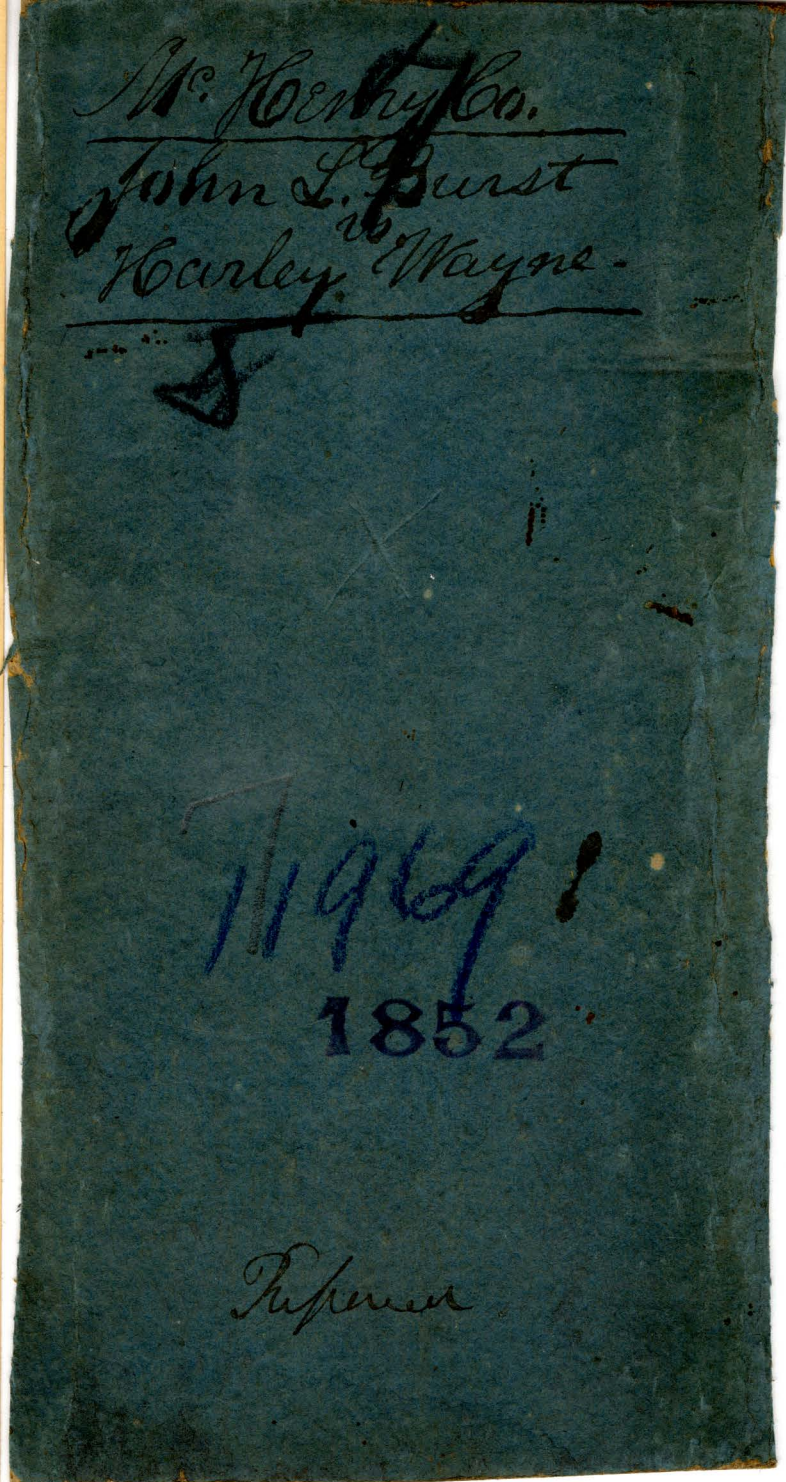
Supreme Court of Illinois

Burst.

vs.

Wayne.

71641  7



John L. Burt
vs
Haley Wagon

Appeal from
Madison County
Circuit Court

And now comes the Plaintiff
by C. Nelson his Atty and says that
there is manifest error in the pro-
ceedings had in the above written Cause
and assigns the following as Causes

- 1st The verdict of the Jury is against the evidence
- 2^d The verdict of the Jury is against the manifest weight of the evidence
- 3^d The Court erred in giving all the instructions given on part of defendant in error
- 4th The Court erred in refusing to give the instructions numbered 2-4 & 7 asked for by plaintiff in error
- 5th The Court erred in refusing a new trial on the ground of the incompetency of Calvin Ford one of the jurors of said case
- 6th The misdirection of the Court to the Jury as to the law of the case - and in overruling a motion for a new trial

And for further causes of error by
leave of the Court the appellant assigns
the following -

The declaration does not warrant
the judgment -

The matters ^{therein} ^{are} not cognizable in
this action -

The court erred in rendering judgment
for plaintiff and against defendant in the
court below -

Dickey & O'Brien
for appellant

Given July 10th 1852.
J. R. O'Brien Clerk -
By J. R. O'Brien & Co.

Super Court June Term 1852

Harley Wayne }
 at } Appeal from McHenry
John L. Burt }

And now comes the Seris
Harley Wayne Appellee by Church
& Willard his attorneys and says that
there is no error either in the record
and proceedings aforesaid or in render-
ing judgment aforesaid and prays
said judgment may be affirmed & -
Church & Willard
attys for Appellee

United States of America

State of Illinois } ss. That before the Hon^{ble} Isaac G.
McHenry County } Wilson Judge of the thirteenth
judicial circuit of the
State of Illinois and presiding Judge of the McHenry
Circuit Court at a Circuit Court began and held
at the Court House in Woodstock in said County
and State aforesaid on the fifteenth day of September
in the Year of our Lord One thousand Eight hun-
dred and fifty one and of the Independence of the
said United States the Seventy fifth.

Present the Hon^{ble} Isaac G. Wilson
Judge

J. M. Stath

Attest
W. Johnson
Clerk

State Attorney
John Brink
Shriff

Be it remembered that heretofore to wit on the
17th day of July in the Year of One thousand
Eight hundred and fifty Harley Wayne the
Plaintiff in this Suit filed in the office of
the Clerk of the Circuit Court of said County
his certain affidavits in the words and figures
following that is to say:

State of Illinois } ss.
McHenry County }

Harley Wayne of the said
County of McHenry being
duly sworn on oath deposes and saith that John
S. Bursh is justly and truly indebted to his deponent
in the sum of about eight hundred Dollars & eleven
dollars & thirty seven cents by virtue of a certain in-
strument of writing heretofore made by the said John

S Bursb which said instrument in writing is in the words and figures following to-wit:

"Franklinville June 6 1849"

"I hereby obligate myself to refund to Harley Wayne
"or his assigns one half the actual loss & expense
"sustained on all notes accounts & demands made in
"favor of W Wayne & Co or received by them during
"the time that they continued business under that
"name. Provided that all reasonable efforts are
"made by the said Harley Wayne to collect the same.
"and also to refund one half of all loss arising
"from the purchase & sale of wheat heretofore belonging
"to said firm. In Witness whereof I have hereunto
"subscribed my name

(Signed) John S. Bursb

This deponent further says that one half the loss on said Wheat before that time belonging to said Firm with interest amounts to about the sum of \$61.72 and one half the loss on bad debts in favor of said Firm is about \$422.58.

This deponent further says that one half the loss said defendant is indebted to him in the further sum of One Hundred and twenty seven & 7/8 dollars & thereabout for divers goods wares and merchandize interest and meat stocks before this time sold and delivered to said Bursb and his agents and further that said John S. Bursb is not a resident of this State and further saith not.

Subscribed & Sworn to before } Harley Wayne
me this 15th day of July 1850

J. H. Johnson Clerk

Which affidavit has endorsed thereon
Filed July 17th 1850

J. H. Johnson Clerk

And thereafter to-wit on the 2^d day of October A.D. 1851 the said Plaintiff filed in the office of the Clerk of the Circuit Court of said County his certain Attachment Bond as amended, herein, which bond is in the words and figures following to-wit:

Know all men by these presents that we Harley Wayne principal & Laurence S Church Security are held and firmly bound unto John S Burst in the penal sum of Seventeen Hundred Dollars lawful money of the United States for the payment of which said sum well and truly to be made we bind ourselves our heirs executors and administrators jointly and severally by these presents. Sealed with our seals and dated this third day of October A.D. 1851.

The condition of this obligation is such that whereas the above bounden Harley Wayne did on the fifteenth day of July in the Year 1850 pray an attachment out of the McHenry County Circuit Court at the suit of the said Harley Wayne and against the estate of the above named John S Burst for the sum of Eight hundred & Eleven Dollars & thirty seven cents: And the same having been sued out of said Court returnable on the third Monday of September A.D. 1850 to the term of the said Court then to be holden and having given Bond according to law with John D. Platt as security and the said Wayne being desirous of using said Platt as a witness and the said S. S. Church being by order of said Court substituted as security in the place of said John D. Platt. Now if the said Harley Wayne shall prosecute his said suit with effect, or in case of failure therein shall well and truly pay and satisfy the said John S Burst all such costs in said suit and such damages as shall be awarded against the said Harley Wayne his heirs executors or administrators in said suit or

suits which may hereafter be brought for wrongfully
suing out the said Attachments, then the above obligation
to be void otherwise to remain in full force and effect

Signed Sealed and Delivered
in presence of and approved } Harley Wayne Seal
by me in open Court Oct 2nd 1851 } S. S. Church Seal

W. Johnson Clk

which has endorsed thereon

Dated Oct 2nd 1851

W. Johnson Clk

And thereafter to wit on the 18th day of July in the
Year last aforesaid a certain writ of Attachment
was issued out of the office of the Clerk of the Circuit
Court of said County in the words and figures
following that is to say:

State of Illinois & of the People of the State of
McHenry County & Illinois to the Sheriff of said
County Greeting: Whereas

Harley Wayne of the County of McHenry and State
of Illinois hath complained on oath to said W. Johnson
Clerk of the Circuit Court of said McHenry County
that John S. Bursts late of the County of McHenry
and State of Illinois that John S. Bursts is justly
and truly indebted to the said Wayne in the sum of about
Eight hundred & Eleven dollars & thirty seven cents
by virtue of a certain in writing made by the said
John S. Bursts and that the said John S. Bursts
is not a resident of this State. And the said Harley
Wayne having given bond and security according to the
act in such cases made and provided:

We therefore command you that you attach so much
of the estate real or personal of the said John S. Bursts
to be found in your county as shall be of value
sufficient to satisfy the said debt and costs

according to the said complaint; and such estate
so attached in your hands to secure or so to provide
that the same may be liable to further proceedings thereupon
according to law at a Circuit Court to be holden at
Woodstock within and for the County of Madison on the
third Monday of September next: so as to compel the
said John L. Burst to appear and answer the complaint
of the said Harly Wayne and that you also summon
all persons as garnishees to be and appear before
the said Court on the said third Monday of September
next then and there to answer what may be objected
against him: when and where you shall make
known to the said Court how you have executed
this writ And have you then and there the writ
Witness Paul H. Johnson, Clerk of our said
Court and the seal thereof at Woodstock
this 18th day of July in the Year of our
Lord One thousand Eight hundred and fifty.
P. H. Johnson
Clerk

Which has endorsed thereon,

Rec^d this writ July 19th 1850 at 10 o'clock am.

Will Donnelly Sheriff
By Geo Warren Depty

By virtue of the within writ I have this 19th day of
July A.D. 1850 levied upon the following real estate to-wit:
The South West $\frac{1}{4}$ & North West $\frac{1}{4}$ of the South East $\frac{1}{4}$ of
Sec 23 Town 44 Range 6 Also the North half of the North
West $\frac{1}{4}$ of Section 7 Town 44 Range 7 Containing in
all Two Hundred & Eighty acres more or less, Excepting
and reserving so much of said Lands as is included
in the following described lines, Commencing at a stake
Nine chains and Eighty six links & one half link South
of the 1st Stake between Sections 22 & 23 in Town 44
Range 6 East of the third Principal Meridian, thence
South 4 chains, thence East 2 & 5th 100 Chains thence North

four chains, thence West 38th 00th chains to the place
of beginning

Neill Donnelly Sheriff
By Geo Warren Depty

Filed Aug 20 1850

J. Johnson cu

And thereafter to wit on the 6th day of September in
the Year last aforesaid the said Plaintiff filed in
the office of the Clerk of the Circuit Court of said
County his certain declaration in the words and
figures following to wit:

State of Illinois } ss. McHenry County Circuit
McHenry County } Court of the Sept Term 1850

Harley Wayne Plaintiff in this suit
by Bush and Platt his attorneys complains of John
S Bursch defendant in this suit who has been attached
as of a plea of Trespass, on the case on promises. For that
whereas the said defendant heretofore to wit: on the 6th day
of June in the Year of our Lord one thousand Eight hun-
dred and forty nine at Franklinville in the said County
of McHenry and State of Illinois in consideration that the
said Harley Wayne at the special instance and request
of the said John S Bursch the said defendant would
purchase of the said John S. Bursch, all the interest
which he the said John S Bursch then had in a certain
store of Goods and in the debts and accounts then due
and owing to said Wayne and Bursch from divers
persons persons then being at Franklinville aforesaid
and belonging to said Wayne and said Bursch under
the name style and firm of W. Wayne & Co he the said
defendant undertook and then and there faithfully
promised in writing to pay to the said Plaintiff one
half of the loss on all notes and accounts then

due said firm and also one half of the loss sustained on all wheat then belonging to said Firm which said instrument in writing is in the words and figures following to-wit:

"Franklinville June 6 1849

"I hereby obligate myself to refund to Harley Wayne or his
"assigns one half the actual loss & Expense sustained
"on all notes and accounts & demands made in favor
"of Wayne & Co. or received by them during the time
"that they continued business, under that name, Provided
"that all reasonable efforts are ~~used~~ made by the said
"Harley Wayne to collect the same and also to refund
"one half of all loss arising from the purchase & Sale
"of wheat heretofore belonging to said Firm. In Witness
"Whereof I have hereunto subscribed my name

(Signed) John S. Burst

And the said Harley Wayne plaintiff as aforesaid avers
that he the said plaintiff confiding in the said promises
& undertaking of the said John S. Burst did on the
same day & year last aforesaid at the County aforesaid
purchase of the said John S. Burst all the interest
of him the said Burst in the stock of goods debts &
accounts aforesaid and paid the said John S. Burst
therefor a large sum of money, to-wit the sum of
Fifteen Hundred Dollars, and the said plaintiff avers
that he did sustain Six Hundred Dollars loss & damage
on said said debts: and that he did sustain Six
hundred Dollars loss & damage on the wheat on the
wheats before then owned by said Firm amounting in
all to the sum of Twelve Hundred Dollars.

Yet the said defendant not regarding his said promise
and undertaking in this behalf but contriving and
wrongfully and unjustly intending to deceive and defraud
the said Harley Wayne in this behalf did not nor would
pay to the said plaintiff the loss and damage aforesaid
nor any part thereof but hath hitherto wholly neglected

and refused and still neglects and refuses so to do:
by reason whereof an action hath accrued &c

And for that whereas also the said defendant afterwards
twin on the day and year last aforesaid at the
County aforesaid in consideration that the said Plaintiff
at the special instance and request of the said defen-
dant would purchase of the said defendant all the
interest which one James H Burst then had in a
certain Store of Goods and in the debts then due and
owing to said Warley Wayne & James H Burst by
divers persons then being at Franklinville in said
County of McNairy & belonging to said Wayne and said
James H Burst under the name style and firm
of W Wayne & co he the said defendant undertook
and then and there faithfully promised in writing to
pay to the said Plaintiff one half the actual Loss and
Expense sustained on all notes accounts & demands
made in favor of W Wayne & co and one half of all
loss arising from the purchase and sale of wheat by
said Firm which said instrument in writing is in the words
and figures following to wit:

"Franklinville June 6, 1859

"I hereby obligate myself to refund to Warley Wayne
"or his assigns one half the actual loss & expense
"sustained on all notes accounts and demands made
"in favor of W Wayne & co or received by them during
"the time that they continued business under that name.
"Provided that all reasonable efforts are made
"by the said Warley Wayne to collect the same, and
"also to refund one half of all loss arising from the
"purchase & sale of wheat hereafter belonging to
"said Firm. In Witness Whereof I have hereunto sub-
"scribed my name

(Signed) John H Burst

And the said Harley Wayne plaintiff as aforesaid avers that he confiding in the said promise and undertaking of the said John S Bursb did on the same day and Year last aforesaid at the County aforesaid purchase of the said James H Bursb all his interest in the said stock of goods and debts aforesaid and paid him the said James H Bursb a large sum of money to wit: the sum of fifteen hundred dollars. And the said plaintiff avers that he did use due diligence to collect said notes and accounts and that one half of the actual loss on the same was Six Hundred dollars and that one half the loss on the said Wheat & owned by them aforesaid was Six hundred dollars amounting in all to Twelve Hundred Dollars.

Yet the said defendant not regarding his said promise and undertaking in this behalf but contriving and intending to defraud and injure the said Harley Wayne in this behalf hath not paid the same nor any part thereof but so & do hath hitherto wholly neglected and refused and still does neglect and refuse although often requested &c to the damage of the said Plaintiff of Twelve Hundred Dollars & therefore he brings suit &c.

And whereas also the said defendant afterwards to wit on the same day and year last aforesaid at the place aforesaid was indebted to the said plaintiff in the sum of Twelve Hundred Dollars for divers goods wares and merchandize by the said plaintiff before that time sold and delivered to the said plaintiff defendant and at his special instance and request

And also in the ^{further} sum of Twelve Hundred Dollars for money by the said plaintiff before that time lent and advanced to the said defendant and at his like instance and requests; and for other money by the said plaintiff before that time paid laid out and expended for the said defendant and at his like instance and requests

And for other money by the said defendants before that time had and received to and for the use of the said plaintiff: And being so indebted and in consideration thereof the said defendant afterwards to wit on the same day and year last aforesaid to wit at McHenry County aforesaid undertook and faithfully promised the ^{said} plaintiff to pay him the said several sums of money above mentioned when he should be thereto afterwards requested.

Yet the said defendant has not paid to the said plaintiff the whole or any part ~~thereof~~ of the said several sums of money above mentioned, although often requested &c but to pay the same or any part thereof to the said ~~defendant~~ plaintiff the said defendant has hitherto wholly neglected and refused and still does neglect and refuse to the damage of the said plaintiff of Twelve Hundred dollars and therefore he brings suit &c

Bush & Platt

Attornies for plaintiff

Copy of accounts declared upon.

John S. Bush

To Charles Wayne Do	
To Goods Wares & Merchandise	\$1200.00
" Money lent	" 1200.00
" Money paid for S. Bush	" 1200.00
" Money had & received by S. Bush for use of W. Wayne	" 1200.00
" Money due Wayne on settlements	\$1200.00

Which declaration has endorsed thereon

Filed Sept 6th 1850

J. W. Johnson clerk

And thereafter to wit on the 26th day of ~~June~~ ^{March} in the Year One thousand Eight hundred and fifty ^{one} the said ^{Plaintiff} ~~plaintiff~~ ^{Defendant} ~~plaintiff~~ filed in the office of the clerk of the Circuit Court of said County his ^{affidavit} ~~declaration~~ in the ^{sums} and begins following to wit

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his amended declaration herein which declaration
is in the words and figures following to wit:

State of Illinois J. C. McHenry Circuit Court
McHenry County D April Term A.D. 1851.

Warley Wayne
Plaintiff in this suit by Rush & Platt his attorneys Com-
plains of John S. Bursb the defendant in this suit who
has been attached &c in a plea of trespass on the case
on promises; For that, whereas the said defendant heretofore
to wit: on the Sixth day of June in the Year of our
Lord One thousand Eight hundred and forty nine
at Franklinville in the said County of McHenry
and State of Illinois, in consideration that the said
Warley Wayne at the special instance and request
of the said John S. Bursb would purchase of the said
John S. Bursb all the interest which he the said John
S. Bursb then and there had in a certain store of
Goods and in the debts and accounts then due and owing
to said Wayne and said Bursb from divers persons
then being at Franklinville aforesaid and belonging
to said Wayne and said Bursb under the name
style and firm of W. Wayne & Co he the said defendant
^{undertook} and there faithfully promised in writing to pay
to the said plaintiff one half of all the loss on all notes
and accounts then due said firm: and also one half
of the loss sustained on all wheat then belonging
to said firm: which said instrument in writing is in
the words and figures following to wit:

"Franklinville June 6th 1849"

"I hereby obligate myself to refund to Warley Wayne
or his assigns one half the actual loss & expense sustained
on all notes accounts & demands made in favor of
W. Wayne & Co or received by them during the time
that they continued business under that name. Provided
that all reasonable efforts are made by the said

Harley Wayne to collect the same and also to refund
"one half of all loss arising from the purchase and
"sale of wheat heretofore belonging to said firm.
"In Witness, Whereof I have hereunto subscribed my
"name

(Signed) John S Bursb

And the said Harley Wayne Plaintiff aforesaid
averts that he the said Plaintiff confiding in the
said promise and undertaking of the said defendants
did on the same day and Year last aforesaid at
the County aforesaid purchase of the said John
S Bursb all the interest of him the said Bursb
in the stock of store goods and debts & accounts
aforesaid, and paid him therefor a large sum of
money to wit: the sum of Fifteen Hundred Dollars;

And the said Plaintiff avers that he did sustain
Twelve Hundred Dollars, loss and damage on said
bad debts, and that he did ~~not~~ make all reasonable
efforts to collect the same and has been unable
to collect the same or any part thereof. Said bad
debts are against the following named persons and
amount as follows to wit:

James S McKerson	\$4 00	Wm Castlyn (cost to add)	25 00
Ebenezzer T Pickett	200 00	Margaret Oscon	3 00
Martha Viner	2 00	Horace Nichols	15 00
Andrew Sheppard	15 00	Oliver Curtis	35 00
Osage Mason	35 00	Shadew Thurston	15 00
James Sayer	100 00	Bela Harrison	20 00
William Simin	1 00	John Springer	5 00
Thomas J Kenyon	15 00	Franklin Griffing	5 00
Caleb Murrill (cost to add)	5 00	Bruce Terry	35 00
Robert N White	20 00	Erastus S Sheldon	80 00
Wm Williams	50 00	Frank Hance (add)	10 00
Wm Gould	20 00	Wm Carver (add)	10 00
Timothy Riggs (cost to add)	20 00	Lyman A Baker	25 00

David Murray	2 00	Geo Murray	10 00
John Grant	3 00	Daniel Warts	20 00
Nancy Dixon	6 00	Eber in Waldo (add costs)	29
Thos Granahan	5 00	Geo H Thurston	15 00
Thos Leavenay (costs to add)	2 00		

Interest on the above after
the same were liquidated to this time. \$200.00

Amount of costs incurred and paid by plaintiff
in attempting to enforce collection of said debt.

Costs Paid To Caleb Merritt	Mar 20, 1850	2 00
" " " Fredk House	" " "	3 00
" " " Timothy Regan	" " "	10 00
" " " Thos Leavenay	Oct 1st 1850	3 00
" " " Wm Joslyn	Mar, 1st 1850	4 00
" " " Eber in Waldo	Oct 1st "	3 00
" " " Rath & Bush attys for with above		20 00

Interest on costs paid to present time 3 00

And the said plaintiff
further avers that he did sustain Twelve Hundred
Dollars loss and damage on the said wheat before
that time and then owned by said Firm.

Yet the said defendants not regarding his said
promise and undertaking in his behalf but contriving
and wrongfully and unjustly intending to deceive and
defraud the said plaintiff in his behalf did not, nor
would pay to the said plaintiff the loss and damage
aforesaid, nor any part thereof but hath hitherto
wholly neglected and refused and still does neglect
and refuse so to do. by reason whereof an action
hath accrued &c.

And for that whereas also the said defendants after-
wards to wit on the day and year last aforesaid at the
County aforesaid in consideration that the said plaintiff
at the special instance and request of the said
defendants, would purchase all the interest that

one James W. Burch that, then had in a certain Store of Goods and in the debts then due and owing to said Harley Wayne & James W. Burch by divers which Merchandize and debts were then at Franklinville in said County of McNairy belonging to said W. Wayne and James W. Burch who were partners in business trading doing business under the name and style of W. Wayne & Co he the said defendant undertook and then and there faithfully promised by his certain agreement in writing to pay to the said Plaintiff one half of the actual loss, and expense sustained on all notes accounts and demands then due and owing to the said firm of W. Wayne & Co and made in their favor and one half of all loss that had or might be sustained by the purchase and sale of wheat by said firm which said instrument in writing is in substance as follows to wit:

Franklinville June 6th 1849

I hereby obligate myself to refund to Harley Wayne or his assigns one half of the actual loss, and expense sustained on all notes accounts & demands made in favor of W. Wayne & Co or received by them during the time they continued in business, under that name Provided that all reasonable Efforts are made by the said Harley Wayne to collect the same And also to refund one half of all loss arising from the purchase and sale of wheat heretofore belonging to said firm, In Witness Whereof I have hereunto set my hand and affixed subscribed my name

(Signed) John S. Burch

And the said Plaintiff avers that he confiding in the said promise and undertaking of the said John S. Burch did on the same day and year last aforesaid at the County aforesaid purchase of the said James W. Burch all the interest he had in the Goods chattel & property

belonging to the firm of M Wayne & Co and all the interest he had in the debts owing to said firm of said and paid him a large sum of money, to wit, the sum of fifteen hundred dollars.

And the said plaintiff avers that he did sustain twelve hundred dollars loss and damage on said bad debts and that he has made all reasonable efforts to collect the same and has been unable to collect the same or any part thereof the said debts which he has been unable to collect by using reasonable diligence are against the following named persons and for the following amounts viz:

James Fleckerson	\$21.00	William Caslyn	Cost add	\$20.00
Ebenezer J Pickett	200.00	Margaret Dixon		3.00
Martha Viner	2.00	Norace Nichols		13.00
Andruw Sherwood	15.00	Oliver Curtis		35.00
Isaac Mason	35.00	Madew Thurston		15.00
James Sayer	100.00	Bepa Harrison		20.00
Williams Swain	1.00	John Springer		5.00
Thomas Senyon	15.00	Franklin Griffing		5.00
Caleb Merritt	Cost add 5.10	Burrell Avery		35.00
Robert A White	20.00	Erastus S Sheldon		80.00
Wm Williams	50	Frederick Haase	add cost	100.00
Wm Gould	30.00	W R Carr & Isaac Nye		70.00
Timothy Ragan	Cost add 3.00	Syman J Baker		25.00
David Murray	2.00	Geo Murray		10.00
John Groats	30.00	Daniel Hart		20.00
Nancy Dixon	6.00	Edw M Waldo	add cost	33.29
Thos Grannahan	5.00			
Thos Caring	Cost add 20.00			
Interest on the above after the same were liquidated to this time amounts to the sum of Two Hundred dollars.				
Cash paid for		Caleb Merritt	March 20. 1850	2.00
" " "		Frederick Haase	" " "	3.00
" " "		Timothy Ragan		11.00
" " "		Thos Caring	Oct 1st 1850	2.00

William Joslyn March 1 st 1851	4.00
Eber M. Waldo Oct 1 st "	5.00
Hast, & Bush attys on the above	20.00
Interest on cost paid to present time	3.00

And the said defendant further avers that he sustained loss on the wheat bought by the firm of Wayne & Co. before that the date of said writing aforesaid to a large amount to wit the sum of twelve hundred dollars. Yet the said defendant not regarding his said promise and undertaking but contriving & hath not paid the same or any part thereof but so ^{by the plaintiff wholly neglected so to do} to do, until still does neglect & refuse although often requested so to do to the damage of the said plaintiff and therefore he brings suit &c.

And whereas, also the said defendant afterwards to wit on the same day and year aforesaid at the place aforesaid was indebted to the said plaintiff in the sum of Twelve Hundred dollars for divers goods wares and merchandize by the said plaintiff before that time sold and delivered to the said defendant at his special instance and request.

And also in the like sum of Twelve Hundred dollars for money before that time lent and advanced by the said plaintiff at his special instance and request.

And in the like sum of money before that time had and received by said defendant for the use of the plaintiff. And being so indebted and in consideration thereof the said defendant afterwards to wit on the day & year last aforesaid at the County aforesaid undertook and promised the said plaintiff to pay him the said several sums of money as above mentioned when he should be thereto afterwards required. Yet the said plaintiff hath not paid the whole

or any part of the said several sums of money
above mentioned although after requested so to do
but to pay the same or any part to the said plaintiff
the said defendant has wholly neglected and
refused and still does neglect and refuse to
the damage of the said plaintiff of two hundred
dollars & therefore he brings suit

Bush & Plath
Attorneys for the Plffs

Copy of the accounts declared upon
John S. Burst

To	Harley Wayne Dr
To Goods wares & Merchandize	\$ 1200.
Do Money sent	\$ 1200
Money paid	\$ 1200
Money had & received	\$ 1200
Money due on settlement	\$ 1200

Which has endorsed thereon

Filed March 26 1851

J. H. Johnson Clk

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And thereafter to wit on the 30th day of August in the Year
last aforesaid the said plaintiff filed in the office of the
Clerk of the Circuit Court of said County his
second amended declaration which is in the
words and figures following that is to say:

State of Illinois } of McHenry Circuit Court
McHenry County } Sept Term AD 1851

Harley Wayne
Plaintiff in this suit by Bush & Plath his attorneys
complains of John S. Burst the defendant in this suit
who has been attached &c of a plea of Trespass on the
case and promises: For that whereas heretofore to wit:

on the sixth day of June in the Year of our Lord one thousand Eight hundred and forty nine at Franklinville in the said County of McHenry and State of Illinois the said plaintiff and the said defendant had been partners in trade in buying selling and exchanging goods wares and merchandize under the name and style of W. Wayne & Co and on the day last aforesaid and at the place last aforesaid, they the said plaintiff and defendant dissolved their said partnership by mutual consent and upon such dissolution made a final settlement of all matters of debt between them and in and about said partnership business and upon such dissolution or settlement in consideration that the said Harley Wayne at the special instance and request of the said ^{and purchase of the said John S. Bursh} ~~Chapman~~ Bursh all the interests which he the said John S. Bursh then and there had in a certain store of goods and in the debts and accounts then due and owing to said Wayne and said Bursh from divers persons then living at Franklinville aforesaid & belonging to said Wayne and said Bursh under the name style & firm of W. Wayne & Co he the said defendant undertook and then and there faithfully promised in writing to pay to the said plaintiff one half of all the loss on all ~~loss~~ notes and accounts then due said firm: And also one half of the loss sustained on all wheat then belonging to said firm: which said instrument in writing is in the words and figures following to wit: " Franklinville June 6. 1849

"I hereby obligate myself to refund to Harley Wayne or his assigns one half the actual loss & expense sustained on all notes accounts & demands made in favor of W. Wayne & Co or received by them during the time that they continued business under that name. Provided that all reasonable efforts are made by the said Harley Wayne to collect the same.

and also to refund one half of all loss arising from the purchase and sale of wheat heretofore belonging to said Firm. In Witness Whereof I have ^{hereunto} subscribed my name

Signed John S. Burst

And the said Harley Wayne plaintiff as aforesaid avers that he confiding in the said promise and undertaking of the said defendant did on the same day and year last aforesaid at the County aforesaid purchase of the said John S. Burst all the interest of him the said Burst in the stock of store Goods and debts & accounts aforesaid and paid him therefor a large sum of money to wit: the sum of Fifteen hundred Dollars.

And the said plaintiff avers that he did sustain Twelve Hundred Dollars loss and damage on said bad debts, and that he did make all reasonable efforts to collect the same, and has been unable hitherto to collect the same or any part thereof.

The said bad debts which cannot be collected are against the following named persons and amounts in each case to the following sums to wit:

	Doll	Cts		Doll	Cts
James F. Atkinson	400	00	Wm J. S. Lynn (Cost to add)	35	00
Ebenezer A. Pickett	200	00	Margaret Quinn	3	00
Martha Viner	2	00	Horrace Nichols	15	00
Andrew Sherwood	15	00	Oliver Curtis	35	00
Osage Mason	35	00	Shadrach Thurston	15	00
James Sayer	100	00	Bela Harrison	20	00
Wm Sprain	1	00	John Sprague	5	00
Thos A. Kenyon	15	00	Manthui Griffing	5	00
Calcut Murritt (Cost to add)	5	40	Burrell Avery	35	00
Robt W. White	20	00	Erastus S. Sheldon	50	00
Wm Williams	5	00	Isid House (Cost to add)	100	00
Wm Gould	30	00	W. R. Lane & Isaac May	20	00
Timothy Pagan (Cost to add)	30	00	Symon A. Baker	20	00
David Murray	2	00	Geo Murray	10	00

John Groab	3000	Daniel Hart (Cost to add)	3000
Nancy Dixon	100	Eber M. Waldo (Cost to add)	31.00
Thos Granahan	500		
Thos Carey (Cost to add)	30.00		

Interest on the above after the same were liquidated = 200.00

All the above named persons were on the day last aforesaid and from thence hitherto have been utterly and entirely insolvent

Amount of costs incurred and paid by plaintiff in attempting to enforce collection of the above debts.

Costs paid for Caleb Merrill Mar 20 th 1858	2.00
" " " Fred th Wause " " "	2.00
" " " Timothy Regan " " "	11.00
" " " Thos Carey Oct 18 th 50	3.00
" " " Wm. Jackson Mar 1 st "	4.00
" " " Eber M. Waldo Oct 1 st "	3.00
" " " Platts & Bush attys. in the above	25.00

Interest on costs paid to present time 5.00

And the said plaintiff further avers that he did sustain Twelve hundred Dollars loss and damage on the said wheat before that time and then owned by said firm, which said purchase and sale of wheat and loss thereon is according to a statement or bill of particulars filed herewith.

Let the said defendant not regarding his said promise and undertaking in this behalf but contriving and wrongfully intending to deceive and defraud the said plaintiff in this behalf, did not, nor would pay to the said plaintiff the loss and damage aforesaid nor any part thereof but hath hitherto wholly neglected and refused and still does neglect and refuse so to do by reason whereof an action hath accrued.

And for that whereas also the said defendant afterwards to-wit: on the day and year last aforesaid at the County aforesaid in consideration that the said

and also to refund one half of all loss arising from the purchase and sale of wheat heretofore belonging to said Firm. In Witness Whereof I have ^{hereunto} subscribed my name

Signed John S. Bursb

And the said Harley Wayne plaintiff as aforesaid avers that he confiding in the said promise and undertaking of the said defendant did on the same day and year last aforesaid at the County aforesaid purchase of the said John S. Bursb all the interest of him the said Bursb in the stock of store Goods and debts & accounts aforesaid and paid him therefor a large sum of money to wit: the sum of Fifteen hundred Dollars

And the said plaintiff avers that he did sustain Twelve Hundred Dollars loss and damage on said bad debts, and that he did make all reasonable efforts to collect the same, and has been unable hitherto to collect the same or any part thereof.

The said bad debts which cannot be collected are against the following named persons and amounts in each case to the following sums to wit:

	Doll	Cts		Doll	Cts
James F. Atkinson	400	00	Wm Isely (Cost to add)	35	00
Obiezer J. Pickett	200	00	Margaret Davis	3	00
Martha Viner	2	00	Horace Nichols	15	00
Andrew Sherwood	100	00	Olivier Curtis	35	00
Osage Mason	35	00	Shadrus Thurston	15	00
James Sayer	100	00	Bela Harrison	20	00
Wm S. Main	1	00	John Spruigg	5	00
Thos A. Kenyon	15	00	Franklin Griffing	5	00
Calcut Murritt (Cost to add)	5	40	Burrell Avery	35	00
Robt W. White	20	00	Erastus S. Sheldon	50	00
Wm Williams	50	00	Good House (Cost to add)	100	00
Wm Gould	30	00	W. R. Lano & Isaac Ayer	70	00
Timothy Ryan (Cost to add)	30	00	Symon A. Baker	20	00
David Murray	20	00	Geo Murray	10	00

Plaintiff at the special instance and request of the said defendants would purchase all the interest that one James H. Burst then had in a certain store of Goods and with debts then due and owing to said Warley Wayne and said James H. Burst from divers persons which said merchandize and debts were then at Franklinville in said County of McHenry and belonging to the said Wayne and said Burst who had been partners in business & trading under the name and style of W. Wayne & Co and on the day and year last aforesaid dissolved their said partnership, he the said defendant undertook and there and there faithfully promised by his certain agreements in writing to pay to the said Plaintiff one half of the actual loss and expense sustained on all notes accounts and demands then due and owing to the said firm of W. Wayne & Co and made in their favor and one half of all loss that had been or might be sustained by the purchase and sale of wheat by said firm which said instrument in writing is in substance and effect as follows to wit:

Franklinville June 6 1849

I hereby obligate myself to ~~pay~~ refund to Warley Wayne or his assigns one half the actual loss and Expense sustained ^{on} ~~and~~ all notes accounts & demands made in favor of W. Wayne & Co, or received by them during the time they continued business under that name. Provided that all reasonable Efforts are made by the said Warley Wayne to collect the same and also to refund one half of all loss arising from the purchase & sale of wheat heretofore belonging to said firm. In Witness whereof I have hereunto subscribed my name

(Signed) John S. Burst

And the said Plaintiff avers that he confiding in the said promise and undertaking of the said John S. Burst, did on the same day and Year last aforesaid

at the County aforesaid purchase of the said James H. Burst, all the interest, which he the said James then had in the goods chattels & property aforesaid of the said Wayne & James H. Burst (then trading as aforesaid under the name and style of H. Wayne & Co) and all the interest he then had in the debt due and owing to said firm: and paid him therefore a large sum of money to wit: the sum of fifty hundred dollars.

And the said plaintiff avers that he did sustain Twelve hundred dollars loss and damages on said bad debts, and that he has made all reasonable efforts to collect the same and has been unable to collect the same or any part thereof.

Said bad debts which are not collectable by law are against the following named persons and of the following amount to wit:

	Doll	Cts		Doll	Cts
James J. Ackerson	4.00		Wm Joselyn Cost to add	35.00	
Obeneger & Pickett	200.00		Margaret Alison	3.00	
Martha Viner	2.00		Horace Nichols	15.00	
Andrew Sherwood	10.00		Oliver Curtis	35.00	
Isaac Mason	30.00		Madens Thurston	1.00	
James Sayer	100.00		Bela Harrison	20.00	
William Swain	1.00		John Springer	5.00	
Thos. H. Knyon	10.50		Franklin Griffing	5.00	
Caleb Merritt Cost to add	5.00		Burrell Avery	35.00	
Robert H. White	20.00		Erastus S. Sheldon	8.00	
Wm Williams	5.00		Fred. H. Hulse Cost to add	100.00	
Wm Gould	30.00		Wm H. Cass Cost to add	7.00	
Timothy Rigi Cost to add	30.00		Symon C. Parker	35.00	
David Murray	2.00		Geo. Murray	10.00	
John Groat	30.00		Daniel Mark	35.00	
Nancy Alison	1.00		Eben M. Waldo (Cost to add)	40.00	
Thos. Granahan	5.00				
Thos. Caveney (Cost to add)	20.00				

Interest on the above after

Statement of Wheat the purchase of Wheat by N

How Paved	Date of Purchase	Of whom purchased	Paid in \$ & Cts	Receipted in
153, Sedger by Self	Sept 25, 1848	Osgood Joslyn	396 24	4/2
61, Day Book 1844 Sedger <i>Discounts allowed</i>	Oct 30	William Sheldon	2 30	4/2
141 Sedger	Nov 4	Joseph Kimball Jr	300 00	4/2
129 " by self	" 8	Levi Nichols	185 31	4/2
21 " & Leonard	" 10	Bela Stone	157 25	4
143 " & self	" 18	Paschal Stowell	99.00	
107 Day Book	" 22	Mrs Carr	8 00	"
Wm Sporable, self	" 28	William Sporable	53 40	4/2
119 Day Book chg W Wayne	" 30	L A Bishop	7 37	4/2
57 Sedger	Dec 7	Harvey Chappel	44 15	4/2
78 Sedger & self	" 14	J N Fairchild	39 22	4/2
143 Day book, <i>Discounts allowed</i>	" 16	W H Wisick	5 04	4/2
193 Sedger & self	" 18	Russel Diggins	72 45	4/2
157 Day Book chg W Wayne	" 26	Fredrick Hause	20 18	4/2
171 " " " " "	Jan 3 1849	George H. Gould	14 17	4/2
170 parts credits Wm Gould				
167 Day Book self	" "	Simcon Bean	9 42	4/2
174 " "	" 25	Rev M Decker	3 50	4/2
164 " " chg W Wayne	" 28	Silas & Thos Dickerson	15 35	4/2
78 Sedger self	" 23	Chauncy Fairchild	21 29	4/2
Sauborn hauled in 2000 lbs & 1000 lbs <i>Sauborn initials</i>	Feb 25	Erns & Bairdine	79.15	4/2
94 Sedger & pr self	" 1	Simcon Bean	5 10	4/2
210 Day Book	" 3	Thos Luman Sen	11 23	4/2
134 Sedger self Discounts	" 24	George Burnside	164 30	4/2
225 Day book chg W Wayne	" 14	Thomas Bright	10 00	4/2
225 " " "	" "	Rev M Decker	3 00	4/2
226 " "	" 31	W B Wayne	43 45	4/2
Proved by him	" 20	Robt B Conklin	22 12	4/2
242 Day Book	March 27	Rev M Decker	200	4/2
282 & 94 Sedger Self	March 31	Simcon Bean	15 49	4/2
280 Day Book	Sept 30	Rev M Decker	200	4/2
178 " " by Wm Stowell	Apr 20	Joseph Kimball Sen	284 40	4/2
92 " "	Nov 14 1848	Rev M Decker	2 05	4/2
58 Sedger	Apr 4 1849	Wm Greensliff	108 42	4/2
123 "	" 5	James S Jackson	75 57	4/2

Bill of items.

John S. Rust to Harley Wrayne		Dr
Sept 1847.	For care of Farm & for negotiating with ^{Robinson}	5.00
Nov " "	" Attending to Draft to S. W. Ellis	5.00
December	" to Barn business and farm matters	10.00
"	" Draft to S. W. Ellis	5.00
"	" Hiring man for farm & for farm & land business	5.00
January 1848	" Care of Farm	5.00
February	" Care " "	5.00
March	" Care " "	10.00
April	" " " "	10.00
May	" Arbitration and settlement with Triph	10.00
January 1849	" Settlement with S. W. Burnsall and securing debt from him by mortgage	10.00
		<u>\$ 80.00</u>

Endorsed thereon

Filed Oct 1st 1851

J. H. Johnson Ch

110	"	"	"	Rev M Decker	10 00	4/5
54	"	"	16	" John Ackerson	5 52	4/5
111	"	"	18	" Rev M Decker	1 52	4/5
	Self in Evidence	"	"	" Thos M Richards	8 50	4/5
56	"	May 1	"	" Claudius N Potter	17 00	4/5
54	"	"	18	" John Ackerson	30 29	4/5
111	"	June 4	"	" Rev M Decker	5 00	4/5
119	"	"	6	" John G Ackerson	28 00	4/5

					2133 18	
For Freight on	Bu lbs	1603, 14		to Waukegan	1/5	
"	"	404, 00		" Chicago	16 2	
"	"	126, 04		"	1/5	

Discounts allowed on Goods paid for wheat 12 per
 Storage & Insurance on 2133 1/50 bu wheat 5 2
 Interest on the above bills from March 1, 1849 to Sep

Statement of Wheat sold by S Wain						Total
June 18, 1849 to E & C Co	Waukegan	1015 34				55 2
"	"	" Wesley Wanger "	424 55			56 2
"	"	" Gilman & Baldwin	Chicago	330 01		56 2
"	26	"	" John Phelps "	300, 01		54 2
Oct 26	"	" By A Shurtliff	Waukegan	35 53		54 2
July 20	"	" A & J Smith	Chicago	121 52		56 0
Interest \$1102, 18 from Jan 24, 1849, on 165, 26 from July 27, 1849 on 61, 26 from July 27, 1849 to 11, 31 from Aug 1, 1849						
Total Recd for Wheat & Int						11 2

Which has Endorsed thereon
 Filed Augt 30 1851. S Wain

Wayne & Co from Sept 11, 1848 to June 1, 1849

Amount paid in goods	Amount paid in cash	Total amount paid in goods	Amount paid in a month
\$19.31	\$128.89	\$148.20	
7.25		1.25	
	100.02	100.02	
14.07	53.69	67.76	
14.84	30.86	45.70	
	49.50	49.50	
00		4.00	
14.27	12.57	26.84	
3.79		3.79	
23.13		23.13	
19.66		19.66	
2.54		2.54	
20.54	15.83	36.37	
10.13		10.13	
7.08		7.08	
4.82		4.82	
1.95		1.95	
7.78		7.78	
10.74		10.74	
7.90	31.73	39.63	
2.58		2.58	
5.88		5.88	
13.26	68.99	82.25	
5.00		5.00	
1.50		1.50	
21.88		21.88	
1.10	10.00	11.10	
1.00		1.00	
7.90		7.90	
1.00		1.00	
	142.33	142.33	
1.03		1.03	
51.85		51.85	
37.97		37.97	

500	500
294	294
95	95
442	442
850	850
1524	1524
250	250
1400	1400
422 30	1066.71
	201.41
	6464
	3364
	5067
	14666
	23071
	1743.44
out 422 30	
15151851	
est of wheat 3 Lnts	
W. B. Co.	
7568 71	
237.97	
184 80	
700 10	
1831	
6826	
15864	
1347.39	1347.39
Total loss on wheat	7396.18
Half loss on wheat	7198.02 1/2
W. Clerk	

the same were ~~liquidated~~ liquidated to this time
 amounts to 200.00
 Cash paid for Leabur Meritt Mar 20th 1850 2.00
 " " Fred House " " " 3.00
 " " Timothy Regan " " " 11.00
 " " Thos Cavenney Oct 1st 1850 3.00
 " " Wm Joslyn Mar 1st 1850 4.00
 " " Eben M Waldo Oct 1st " 5.00
 " " Phobus Bush atty Gen on the above 35.00
 Interest on cash paid to present time 4.00

And the said plaintiff further avers that he did
 sustain loss on wheat bought by the said firm
 before the said day of June 1849 to the amount
 of Twelve hundred dollars which said purchase
 and sale of wheat and the loss thereon is stated
 in the bill of particulars, or what statement
 filed herewith. Yet the said defendant notwithstanding
 his said promise and undertaking but contriving &c
 hath not paid the same or any part of the said
 several sums in this count mentioned but so to do
 has hitherto wholly neglected and refused and
 still does neglect and refuse although often requested
 &c. To the damage of the said plaintiff of Twelve
 Hundred & therefore he brings suit &c

And whereas also the said defendant afterwards
 to wit, on the 1st day of Sept Eighteen hundred
 and fifty at McHenry County aforesaid was
 indebted to the said plaintiff in the further sum of
 Twelve Hundred dollars for work and labor before
 that time done and performed by the plaintiff for
 the said defendant and at the special instance
 and request of the said defendant. And being so
 indebted and in consideration thereof the said
 defendant afterwards to wit on the same day and
 Year last aforesaid at the County aforesaid undertook
 and faithfully promised the said plaintiff
 to pay him the said several sums of money

above mentioned when he should be thereto afterwards
 requested. Yet the said defendant has not paid to the
 said plaintiff the whole or any part of the said several
 sums of money above mentioned although often requested
 &c. but to pay the same or any part thereof to the said
 plaintiff the said defendant has hitherto wholly neglected
 & refused and still does neglect and refuse so to do
 To the damage of the said plaintiff of Twelve hundred
 Dollars and therefore he brings suit &c.

Platt & Bush

Plaintiff's Attorneys

Copy of accounts declared on	
John S. Bush & Harley Wayne	Dr
To Goods wares & merchandize	\$1500
" Money lent & advanced	" 1200
" Work & labor	" 1200
" Money had and received	" 1200
" Money had and received	" 1200
" Money due on settlements	" 1200
" Money paid	" 1200

Which has endorsed thereon

Dated Aug^r 30 1851

H. Johnson Ck

The following is a copy of the statements of wheat purchased
 by W. Wayne & Co

And thereafter to wit: on the 24th of Sept in the
 Year Our thousand Eight hundred and fifty
 the said defendant filed in the office of the Clerk
 of the Circuit Court of said County his certain
 plea herein which said plea is in the words and
 figures following that is to say:

John S. Bursb

ads
 W. Wayne

And the said defts by
 Strode & McClure his attys
 comes & defends the wrong & injury when & e, and for
 plea to the said plaintiff declaration except the first
 & second counts says actio non, because he says
 that he did not promise and undertake as the
 said plaintiff in his said declaration hath therof
 complained against him and of this he puts himself
 upon the Country &c

Strode & McClure
 for defts

And the plaintiff doth the like

Bush & Platt attys for plff

Filed this 24th Sept 1857

J. H. Johnson clerk

Which has endorsed thereon

Filed Apl 18. 1857

J. H. Johnson clk

And thereafter to wit: on the 18th day of April in the
 Year of our Lord Our thousand Eight hundred and
 fifty one the said defendant filed in the office of
 the Clerk of the Circuit Court of said County his
 certain second plea herein which is in the words
 and figures following to wit:

John S. Bursb

ads

Warley Wayne

And the said defendant by Strode
 & McClure his attorneys comes

& defends the wrong & injury when he & for plea
to the said plaintiff's declaration except the
first & second counts says action non because
he says that he did not promise and undertake
as the said plaintiff in his said declaration hath
thereof complained against him and of this he
puts himself upon the Country &c

Strode & McClure

And the plaintiff doth the like & for plea
Bush & Platt ^{attys} for plaintiff
which has endorsed them

Filed Apl 15 1851

J. H. Johnson cl

And this came to wit on the 16th day of Sept
in the year last aforesaid said defendant
filed in said Clerk's office his certain third plea
herein which plea is in the words and figures
following to wit:

John S. Bursb &
advs

Marley Wayne & Attachment

And now comes
the said defendant by Strode
and McClure his attys, and for plea to the second
& third count of said declaration says, action non
because he says, that he did not promise and
undertake in manner and form as the said plaintiff
in his said counts of his said declaration
hath thereof alleged against him and of this he
puts himself upon the Country &c

Strode & McClure

Attys for deft

And the plaintiff doth the like

Bush & Platt attys for plff

Endorsed them. Filed Sept 16. 1851

J. H. Johnson cl

And thereafter to wit on the Second day of October
in the Year last aforesaid, it being one of the days of
the late Septimber Term of the Circuit Court of said
County then in session at the Court House in Woodstock
in said County, the following among other proceedings
were had to wit:

Harley Wayne

John S. Bursb

Attachment

And now come
the parties by their respective
attorneys and the Court being fully advised on the
motion to strike the two bills of particulars filed
herin, by the said plaintiff yesterday sustains
the same as to the second and allows the first to
be introduced by the plaintiff aforesaid. It is
therefore ordered that the motion for a continuance
be overruled and issue being joined it is therefore
ordered that a jury come and thereupon come a
jury of good and lawful men to wit:

Hezekiah B. Throop

Wm. Hartman

Ambros Bennett

John Higgins

Calvin Ford

Alvin H. Parker

George Stickney

Thos. Silsbridge

Marshall Kellogg

P. B. Enos

John Bunker

and Elisha Huston

who being
duly empannelled and sworn tell and truly to
try the issue joined and ^{hearing heard} a portion of the
evidence, it is thereupon agreed that they may disperse
and meet the Court tomorrow morning.

And thereafter to wit on the 3^d day of October in
the Year last aforesaid said Court being then in
session as aforesaid the following proceedings
were had to wit:

Warley Hayne
 vs
 John S. Bursb } Attachment

And now ~~come~~ again ~~come~~ to the parties by their respective attorneys and Jurors formerly Empannelled herein also come and they having heard the Evidence and arguments of Counsel it is thereupon agreed by the parties that they may disperse and meet the Court tomorrow morning to hear the instructions of the Court.

And thereafter to wit on the fourth day of October in the Year last aforesaid said Court being then in session as aforesaid the following among other proceedings were had to wit:

Warley Hayne
 vs
 John S. Bursb } Attachment

And now come the parties by their respective attorneys and the Jurors formerly Empannelled herein also come and ^{they} having heard the instructions of the Court, to the opinion of the Court in giving the instructions on the part of the Plaintiff the defendant by his Counsel Excepts and the said defendant also Excepts and the said defendant also Excepts to the opinion of the Court in refusing to give instructions numbered 2, 4 & 7 on the part of the defendant, the Jury aforesaid thereupon retired to consider upon their verdict. And thereafter they returned into Court and delivered the following verdict to wit: We the Jury find the issue joined for the Plaintiff, and assess his damages at the sum of Three hundred and Eighty two dollars and Sixty cents. And thereupon the defendant by his Counsel moved the Court for a new trial. And

the Court having heard the parties thereon and being fully advised overrules the same to the opinion of the Court in overruling said motion the defendant by his Counsel excepts. It is therefore ordered considered and adjudged by the Court that the said plaintiff have and recover of the defendant the sum of Three hundred and Eighty two dollars and sixty cents his damages assessed as aforesaid as also his costs and charges herein expended and that he have execution therefor And thereupon the defendant by his Counsel prays an appeal herein which is granted upon condition he enter into bond before the Clerk of this Court in the sum of Eight hundred dollars, conditional according to law with George Tassons Allen Dufield and Charles Dufield as securities and thereupon by the agreement of the parties the appeal herein is ^{to be} perfected within fifty days from this date.

And thereafter to-wit on the Second day of June in the Year of our Lord One thousand Eight hundred and fifty two the said defendant filed in the office of the Clerk of the Circuit Court of said County his certain Bill of Exceptions herein, which said Bill is in the words and figures following that is to say:

State of Illinois }
McHenry County }

Harley Wayne

vs
John L. Burch

In the McHenry County
Circuit Court
September Term 1851

Be it remembered that on this Second day of October A.D. 1851 it being one of the days of the September Term of the McHenry County Circuit Court the above entitled Cause

came on to be heard before the Hon Isaac L. Wilson &
a jury. when the following proceedings were had.
the Plaintiff introduced the following testimony &
following letters, proving hand writing of Bursh. objected
to by defts Counsel, marked and numbered 1-283.

[No. 1.]

Mr Harley Wayne, Dear Brother, I have
written James in relation to your business, matters since
you left Shugans Molasses Teas and all provisions have
raised in market, flour has gone up to Six dollars
for good common and \$6.50 to \$6.75 for good. I think
you and James had better get all the wheat ^{you can} for goods
and pay part money when the wheat is sold it will
aid your trade by paying for teaming in trail and
by the last steamer the prospect of ~~an~~ a short crop in
Europe will probably increase the price of wheat
and Corn. I will enclose a paper to James
and you will see the drift of opinion about flour
corn &c. We are all in usual health and hope
you had a pleasant journey through Otsego
to your home. Please give us a description
of your journey and how you find matters in
trade &c at Belden on your return And how
your meetings prosper. James writes you have
your old preacher and a smart young man with
him. Yours in haste while you was here I had
much to see to and Two Thousand Dollars to pay
in the Bank which made it not so pleasant nor
so agreeable as should be
Seneca City Sept 9 1848. John S. Bursh

[No. 2.]

Mr Harley Wayne
Dear Brother, Brother
Barnes & Macher called on me this morning
showing a letter recd from you in which

you request them to send you a bill of Groceries
They say it is contrary to their usages to double
bills and your old bill has been standing over Eight
months but they said they would forward them
immediately if I would become security for the same
I told them to send them and I would see them
paid. I think you and James had better sell your
wheat as soon as possible as there is no prospect
of wheat being higher if the present crop is
good and no foreign demand it must depreciate
Still more it is best to pay promptly and have a
good credit if you should not realize so much
profit. Please write me and let me know
how you and James prosper in your storebusiness
and how you are suited with James. I have learned
recently that James has been trading horses and purchasing
machines which is wrong. I hope as you have Experienced
in business matters you will counsel him not to
deal in horses at all nor to purchase machinery
but apply himself exclusively to your business
and let Richard and John manage the farm
Please let us hear from you and your family
and the society and how James is prospering
in religion for I esteem that above money. Richard
Puckrin is a good man to work and I have no
doubt he will work the farm in good order and
season if team and tools are at his command
rich they should be Please let me know how
crops look I am now in a hurry and will move
at length soon money continues to be tight
I have not paid that Church subscription as
money has been so hard I should be pleased
to learn the progress of your new Church if
you are progressing with the work. I will
pay my subscription soon if possible nor
you will not need money if the church is
not to be finished this season. Please

Let me know and oblige
Jersey City May 21 1849, Yours John S. Bursh

[To 3]

Mr Harley Wayne, I have just received your letter and one from James giving a statement of his bad management. I wish you and James under these circumstances to dissolve immediately and take a correct inventory and in a settlement make yourself liable to me for the money I paid ^{for} you in New York, which will secure you from James's personal liabilities and I will come out and we will settle those matters if it cannot be done any other way. I wish James to enter up a Judgement in my favor for that money and the interest please see that all is done in a correct manner and tell those James owes not to trouble him they will get their pay for all lawful debts

Yours truly

Jersey City May 21 1849

J. S. Bursh

The following ^{Witnesses} were then produced and sworn on behalf of plaintiff.

Levi Sherwood:

Knows the circumstances of Andrew Sherwood. he is insolvent and has been for some years. He is my son. Only knows his particular circumstances from reports. Nothing of my own knowledge. Two years ago he had an old wagon & yoke of oxen worth together about Fifty Dollars. He lives near Chicago. Thinks debt could not be made out of him

Erastus Sheldon - Two or three years ago gave my note to Wayne for about \$114, for indebtedness. Since 1st June 1849 have not, but in condition

that any-thing could have been collected of me. Knows circumstances of James Sayers. He went to Wisconsin in spring of 1858. For a year previous thinks its doubtful if anything could be collected of him, he owned a Sake of Oxen worth \$40 and Wagon worth 15 or 20 dollars, knew the circumstances of Bela Harrison. Demand against him would be doubtful. Know nothing of my own knowledge. Know Oliver Curtis, was insolvent, had two cows, three Yearlings in all \$30 or 40 worth. He is now dead thinks from June 1849 was insolvent

Cross Examined by depts Counsel

My note to Wayne was for \$114. have paid a part, some wheat over a year ago. Think the note was given to Harley Wayne & not to Wayne & Co

Stephen Elbro. Knows the accounts book of H Wayne & Co. these are the books (Books produced and identified) Knows the circumstances of Tho^s Kenyon. He left between one and two years ago, he was a young man, without property, a debt could not be collected of him, Wayne ^{knew} his circumstances. Kenyon got goods at Wayne & Co.

Cross Examined, Says he paid the bill to Wayne, says that he got some goods there afterwards. Wayne must have known the circumstances of Kenyon

Agood Aslyn. Knows circumstances of Robt W White has had no property - a debt could not be collected of him.

Cross Examined, Says he lived within two or two and one half miles of Waynes store.

Robt W White. In the fall of 49 I traded at Waynes, brought a coat, vest, pants and boots about \$20 worth was not worth much when I traded with Waynes

The witness was permitted to inspect the plaintiffs books against the objection of defts. to which ruling of the Court the defts excepted.

John D. Platt, Was present at the time the agreement was entered into between Wayne & Bursh. This Bond was present. The accounts referred to in the agreement were the accounts contained in the books. The firm of H Wayne & Co was Harley Wayne & James H Bursh. I was present in New York when the goods were purchased. John S Bursh told me that Harley Wayne & his son James H Bursh were the firm of H Wayne & Co.

There was a settlement at the time the agreement was made between plaintiff and defendant June 1849. The books were to be the guide in ascertaining the amount of debts uncollected. John S Bursh spoke of them plaintiff and James H Bursh as partners. He said to them they had some bad debts. The goods were bought in New York City by the firm of H Wayne & Co & the firm was composed of Harley Wayne and James H Bursh.

Cross examined. The settlement of the 1st June was final. It was the agreement of the parties that they were to refer to the books to ascertain the amount of the bad debts.

John D. Platt recalled by plaintiff and referred to account books of H Wayne & Co to ascertain the amount of Robert H Whites account to H Wayne & Co which reference to said Books was objected to by defts Counsel (the Court overruled the objection and permitted the said witness to refer to said Books to ascertain the amount of the following accounts to which opinion of the Court the defendants by his counsel excepted.

Robert H Whites ac \$19.22 James F Ackerson \$3.80

Andrew J Sherman \$13.98 Isaac Mason \$34.50

Swain & Co \$12.40 The J Henson \$12.40 Caleb Merritt \$12.40

W S Williams 18 cts Wm Gould \$24.17 Timothy Ragan \$15.72
David Murray \$1.44 John Groit \$27.10 \$2.60 Tho Clavney
\$11.74 Wm Jaslyn \$20.45 Margaret Dixon \$2.07 Horace
Nichols 10 cts Bela Harrison \$2.54 Erastus Sheldon \$11.18
Murray \$3.16 Daniel Hart \$7.42 Waldo \$3.46.
Knows Isaac Mason. He went to California. He has
very little property. Knew Wm Gould left the country
had two yoke of oxen worth \$100 or 50

Levi Nichols Knows Oliver Curtis. he had yoke of
young cattle worth 45 or 50 \$. Knows Horace
Nichols. He has no property. Knows nothing about
Isaac Mason. Proves hand-writing of Horace Nichols

Dr Meick. Says Timothy Ragan is worthless,
Isaac Northup. Knows George Wemy. Now very
well off. he owned a yoke of oxen once. had a
family. Knew Bela Harrison He is now dead. Once
had a span of old horses. had nothing since. Wm Gould
had three yoke of cattle two years ago this fall. he moved
near Spruce

Genl J Wright. Says Thurston had no property.
Wm Gould had two or three yoke of oxen.

Noah R. Sage. Knows Ephraim Waldo had a yoke
of Oxen ^{more} ~~with~~ perhaps \$50 & a wagon worth \$20. Wayne
got the wagon.

Thos M Richards. Knew Caleb Merritt. thinks he was
part owner of a Threshing machine which he run with
others. It was encumbered, owned no other property
Timothy Ragan was insolvent

Thos Lillibridge. Knew Paul Wack he had no property
unencumbered.

David Barker. Constable & Timothy Ragan worthless. Knew
Caleb Merritt. he was in debt for Threshing machine

Mr Burbank. Knows David Murray. He had a yoke

of cattle in 1849 worth \$35 or 40. Knew George
Murray or debt could not be collected of him. Knew
Fred Hance in the fall of 1849, he owned a span of
horses or part of a span they were incumbered \$20
He left late in that fall or next spring.
Sol G Wood - Knew John Groat he has not paid any
more than the law would allow him

Mr Luckwood knows George Murray he was in possession
of a Yoke of Oxen worth \$40 or 45, Isaac Mason
had no property. As Sherwood had a cheap pair of oxen
worth \$35 or 40 and wagon worth 15 or 20 dollars
Hawes had no more than the law allowed him
Esq Dawley. - I am Justice of the Peace & was in
1849 - McKerson has had no property since
1849. Caleb Merritt has had no property. Bela
Harrison has had no property. Executions returned
no property found against them.

John Cram - Says Thomas Canning had no property
except by law. Had a yoke of oxen worth about \$40.
Obinezer Pickett - Says he is indebted to Wayne & Co
Have had yoke of oxen mare & colts. Oxen were sold
and applied on note and due Wayne & Co \$80.50
paid accrued before Wayne & Rust went together -

Wm Allen. Knows John Springer. He had a span
of horses. A cow or two colts &c he left this County first
week in Dec 1849, was a poor man.

Esq Dawley recalled by Plaintiff, Oliver Curtis was
poor lived about four miles from Wayne store.

Wm Jactyn had a span of horses & wagon worth
about \$150.00 He left the County in the fall of 1849
Dec there was a judgment against him in favor of
Wayne & Co of \$36.43 & costs \$4.28. Some articles attached
and satisfaction to the amount of \$3.18. Judgment
in favor of Wayne against Caleb Merritt for \$65
Execution returned ^{not} satisfied, he had no property.

Erastus Examined, Says Wayne had an opportunity
of knowing the condition of these men
Erastus Sheldon, Recalled by Plaintiff, Serial Mason
had a horse team, Wayne had an incumbrance on
it, He had 40 acres of land on which was a mortgage
Ebinger Pickett was the head of a family, had a
Sow of oxen, horse 2 or 3 cows & one time four cows
and forty acres of land on which Wayne had an
incumbrance,

At this stage of the proceedings Afts attys objected to
one of the jurors Calvin Ford who had been sworn in
this cause sitting as a juror and filed the following
affidavits in support of their objection

State of Illinois } p. This day James M Strode
McHenry County } and Charles McClure Attorneys
of John S Bursb in the case
now on hearing between Harley Wayne Plaintiff
and said Bursb defendants and being duly sworn
saith that they are informed and verily believe that
Calvin Ford a jurymen now sitting on the trial of
said Cause did before he was ^{sworn as such} Juror express his
opinion in said Cause against said Bursb the defendants
and that when the question was propounded to him before
being sworn as such Juror, in chief that he stated that
he did not know that he had formed any opinion in
said Cause - and that the fact came to their knowledge
of by information from S O Spencer this morning
that had they known said fact before said Juror
was sworn they would have objected to him and further
saith not

Sworn to and subscribed }
this 3^d day of Oct 1851 }
J H Johnson

J M Strode
Charles McClure

Clk

Endorsed thrown, Filed Oct 3^d 1851 J H Johnson Clk

State of Illinois } S. D. Spencer being duly sworn
McHenry County } on oath says that on Wednesday
Evening last, he had a conver-
sation with Mr Ford one of the Jurors upon the jury
now sitting and that in that conversation he the said juror
said he had expressed his opinion with reference to
the merits of this cause now under consideration,
wherein Harley Wayne is plaintiff and John S. Burch
is deft and that he the said Ford said in that
conversation that he had expressed an opinion and
that opinion was that he thought Wayne (meaning the plaintiff)
was a fine fellow and was in the right of it, meaning
his suit. And that from what he had heard he had made
up and expressed an opinion and would not sit
as a juror in that case (meaning the one now
under consideration) if he should be called
Subscribed and sworn to before } S. D. Spencer
on this 3^d day of October A.D. 1851 }

J. H. Johnson Clk

Which has endorsed therein

Filed Oct 3^d 1851

J. H. Johnson Clk

State of Illinois } S. L. Morse being duly sworn
McHenry County } says: that he had a conver-
sation ^{on yesterday} with Mr Ford one of the Jurors now sitting
in the Jury box and in that conversation he the said
Ford said he had made up and expressed ^{an} opinion
in reference to the merits of this cause meaning the
one under consideration that Ford the Juror
as aforesaid remarked that he wondered why the
counsel for the defendant let him sit for he had
expressed an opinion
Subscribed and sworn to before } S. L. Morse
on this 3^d day of Oct A.D. 1851 }

J. H. Johnson Clk

which objection was overruled by the Court to which
ruling of the Court the depts by his Counsel Excepts.

Notes against Pickett offered & put in evidence except
to by depts counsel which is in the words of figures following:

\$54.00

Franklinville Dec 29 1849

One day after date for value received promise
to pay Warley Wayne or order fifty dollars with
use

Slavens

Ebenezer F. Pickett

James, The Lxx. Says, Margaret Dixon, has no
property, she lived on my farm, is a daughter
of Nancy Dixon.
Shades Branches, says he had a lot of oxen and five or six calves worth sixty
dollars had a family residing with them

George J. Nasson - Says Wayne acted as agent
for defendants in paying money to Ellis - paid at
different times, plaintiff did various items of business
for depts.

Mr Sage, Says Wayne attended to an arbitration
for depts against Tripp, there were three arbitrators
Wayne paid me fifty cents as one of the arbitrators
Cross Examined, Says the arbitration was in July
or August, Arbitration before that.

Setters No 4 - 5 & 6 & 7

[to L] All the within building and work and said Irish
Examined by Warley Wayne and Mr Mead the Carpenter
and if the building and work is done better than first
rate to pay Mr Tripp more than I have agreed to
pay him and if the barn should not have perloins
under the roof or the shingle or boards or plank or doors
or grainery should not be of a good quality and the
work is not done in a good and workman-like manner
and the timber a proper size and stone butments
under the building sufficient to stand permanent
after the whole has been thoroughly Examined by Mr
Wayne and Mr Mead. I wish them to judge the

difference between first rate work, on the building
and farm and pay Mr Tripp in accordance with
the agreements with me in presence of Mr Wayne
it will be borne in mind if a contract is violated
the party should not receive more than what the
building and the work is worth, for instance if
Mr Tripp agreed to build me a good barn for
four hundred Dollars and he builds one not worth
more than two he cannot claim more than its true
value to me in proportion to a good one. Thereby
authorize Harley Wayne and Mr Mead to settle
with Mr Tripp for me
Jersey City March 9 1848 } John L. Bursh

Mr Orziel Tripp, agreed to build me a barn
in Franklinville the contract in the hands of Harley
Wayne the description of the barn is 30 by 50 - on the
ground, 16 ft posts the timber to be hewed in my
woods of proper size as per bill made out by
Mr Mead to be built in a good substantial and
workmanlike manner with good common white
pine siding and a good shingle roof and a
good threshing floor of good white pine common
two inch planks of twenty by thirty feet and a stable
floor of 12 by 30 ft with a grainery finished in
good order of 12 by 12 ft with a swing beam
12 ft from the bay all to be finished in good order
and to be well under-pined with stone for four
hundred dollars and all to be done by the first
of May 1848. I also paid Mr Tripp for planting
31 large Locust trees and 8 for making a
cellar door. Paid for trees \$5-81. Paid on barn \$100
With A Burnside 1 Yoke of Oxen & 3 Cows
& 2 Sows - 12 hens & 1 Rooster and 100 B Corn
in the crib of Wayne. Paid for
the plowing in the fall to be done by Mr

Tripp an inch deeper than it had been plowed
before for 8 per acre and Mr Tripp to sow
all the ground now cultivated on the farm except
twenty acres left for planting for \$20 ⁰⁰/₁₂ of the
sowing to be done Early and in good order
the seed sown to be paid for by me at a going
price in the winter

J. S. Riess

[No 5]

Jersey City April 10. 1848.

Mr Henry Wayne.

Dear Brother. I rec'd yours of the
20th of March and am happy to learn you and all
are well and hope all my work on the farm will
be done to in season and good order. I have secured
ten dollars worth of Library books for your Sabbath
school from our book room in N.Y. and intend
to get 50 testaments for the school, in relation to the
Barn. in the first place he agreed to get the frame
as the plan was drawn by Mr Mead. the sills
about 12 inches square and posts 12 by 12 perloins
& plait 7 by 7. Girts 7 by 7. Beams 12 + 12 Rafters
a proper size. Braces 4 + 6 - It is not necessary
to particularize all the items as Mr Mead drew
a bill of the timber and understands if it is got
out as per bill and good stone butments under
Each post the Lumber as described in contract
to be good sound white pine Lumber and in order
to build a good barn and finish it in a workman
like manner could not be done with green Lumber
could not be done with green Lumber and the
shingles were to be the best of white pine Lumber
shingle Eighteen inches long and laid five inches
to the weather so as to make a first rate roof
the idea with me is this in short he was to build
me a first rate barn of 30 by 60 ft 16 ft posts
and deliver it to me or my son on the first

of May 1848 for four hundred dollars of which
I paid him \$100 in advance to purchase his lumber
in the summer and get it good and in good order
if I build in that place I should be willing to build
a first rate barn of that size having the timber found
for \$200 - I wish you and Mr Mead to examine
the building and if all is done according to our
understanding of it when the job was let to him
pay him with what he has received \$400, and if any
part of the job is not as it should be pay him less
to make it equal to a first rate job done I have
given James a sketch of my views which he will
give you and if your views and Mr Drisk
varie I you to serve as an arbitrator for me
and let him choose one and if you two ~~choose~~
~~disagree~~ dont see alike Choose Mr Mead
for the third man or any man of good judgment
to make the barn a first rate barn done as agreed
and draw obligations to have the decision final
in settlements between Mr Drisk and me and
I will be satisfied I want Mr Drisk to have
all that belongs to him and please make a
bill of all Mr Drisks matters and send
and pay ^{and pay some all matters you have paid for me} and send it to me as soon as it shall be
consummated and my wife will pay the bills
I think William, Paul better work for James
this summer for \$11. per month and if you
buy that corn ground proposed of which
I wrote you 20 acres to be planted on
shares of for the half of the crop James
will bring a young man with him and
they can tend that with his own James
will have two good teams and I think
he can, rig a small plow and turn
narrow furrows and plow that 20 acres
Joining yours James is young and

hope you will be his counsellor in business matters. I have told him to go to you for counsel. He is a young man of good judgment but has always had a father to direct him. He is honest and unsuspecting of the snares of any evil designing men that might cross his path. Since I commenced this I have received your bills and orders have today been paid to them and herein enclose your receipts for what you directed that man for the shoes said Mr Cassin owed him a bill contracted in 1846 and did not feel pleasant about it but the other men were very pleasant. If Mr Cassin is not more prompt it will very much impair his credit if you have any time any business to see to it with pleasure James and my wife will start next Monday and if they have a prosperous journey will be in Chicago on the 25 of April if you have a team they can take your goods from the boat I will pay the freight of your goods to Buffalo and James will settle for them in Chicago Jersey City April 12/48. Yours truly
John S. Buob

[Not]

Mr Warley Wayne.

Dear Sir. I recd yours to day containing that receipt of Mr Ellises and enclose another check in this for the balance of my payment to Mr Ellis. You inform me the payment now due as balance is Six hundred and fifty six Dollars ^{and you six hundred and sixty dollars} as you said they thought of charging interest from the first of this month. I lose the interest of that Six hundred dollars I advanced Mr Ellis last July until I take possession next spring and Mr Cassin agreed with me

to fetch down the bond to Jersey City and if he should
 not come himself & he would send it down with
 some of his acquaintances that were coming to New York
 I told him at the time I had to collect money and
 it might be I should not have all the money in November
 but he said he should be down and he would use
 my note in New York so as to aid me in making
 up any deficiency in my payments but I had
 all the money in the bank on the 1st of Nov. If
 they choose to charge interest please pay it, it is
 always worth a few dollars to form acquaintance
 with strangers in a new place. I have written you
 in relation to Mr Driffy and other matters
 Please get a receipt of Mr Ellis or not pay
 him as the bond might get burned or lost and
 then I should have no security. I hope you
 will bear with me in taxing you with so
 much trouble but if we live it shall all be made
 right. Please send me a receipt from Mr Ellis with
 the arrangement you ^{may} make with Mr Driffy so that
 I can make arrangements to meet your expenses with
 him and oblige Yours
 Jersey City Dec 17th 1847 } John S. Burst

[No 7]

1841 Nicholas Burnside to J S Burst

	Dr		Cr
To cash loaned you	11 00	By 263 7/8 Bds at \$5.25 per ft	13 95
N Perrius judgment paid for you	73 00	1843 1/2 Chissu at 7 c	31
Your note for money loaned	71 62	1/2 Bushel corn 8 c	31
Interest due to April 1-1846	25 14	2 Barrels Cider 8 c	2 00
Sept 16 1847. To cash for purchases	37 00	4 Bushels Corn 4 c	2 00
April 16 To cash for purchases	13 00	1700 ft Bds 4 c	8 57
Interest on judgments for same	2 60	By several notes of Christy	13 73
March 1848 Paid Cassin's note for you	24 00	1847 1/2 Corn purchased for James	12 00
April 13. 1 Shalof - 12 c	1 57	1 do do	14 00
1 Pair Morris Books 4 c	1 13	1848 1 do do	13 00
			<u>\$198 20</u>

1 Pair Morocco Shots of,

1	00
462	09
198	24
263	85

Balance due of S Bursts.

The above account is a correct copy of our transactions as recorded on my Books and the notes I send enclosed and on them. I endorsed these notes I received of Christen in case I should be mistaken away that the amount ^{due me} might appear instead of the sum, but the above is a true statement of the whole matter. I wish Nicholas to be allowed for hogs or any such thing he has purchased for me. The cows and oxen I suppose paid their way inasmuch as he worked the oxen last summer and fall and turned them out to look for themselves during the winter and the spring. ~~By summer~~ ^{by summer} ~~themselves~~ ^{very poor} he was to keep them just as they were when he got them, but let that pass. I wish Mr Wayne to take this act and the notes and have Nicholas give me a mortgage on his farm or any other good security for what he owes me. if he cannot pay it soon a mortgage will be the best mode of settling it or a judgement and have it Recorded. Any way to settle it amicably and secure it as life is uncertain with us all. It must be settled and I will give him a chance to pay it. make the time when he thinks he can pay it and I will write to Nicholas to settle it with Mr Wayne for me and you can keep the mortgage or judgement for me. We are all well but I have not heard from you since the 1st of May. I think you and mother have neglected writing or been so busy as to forget me. Please drop me a line as soon as this reaches you and let me know how it goes. Mr Morgans Son of 24 years old was taken with a disease about a week since and is dying. life is fast

passing and Emma Stuy was taken with a
Bilious Fever and died in one week. Same in a
hurry
Jersey City June 3rd 1848, Yours truly John S. Bursh

After proving this hand writing put in evidence
which were excepted to by defts counsel.

Osgood Joslyn. That sold Wayne & Bursh three
hundred Bushels of wheat at fifty cents per bushel
in fall of 1848 about 1st September Joseph Kimball
for also sold Wayne & co about 200 bushels at
fifty cents. P Strongell sold them Two Hundred Bushels
at fifty cents. James Kimball sold them some
dont know how much. When Wayne & co paid
in Goods for wheat they made a discount on
the goods at twenty per cent.

Sevi Nichols. Says he sold Wayne & co in the
fall of 1848 about thirty five dollars. However
wasnt payment of an old account.

Saml. G. Wood. Says he took wheat from store to
Wayne & co he hauled some of the wheat for Wayne
& co to Staudegans one load of fifty four bushels
one a little more or less, some winter and some
spring wheat. Murry also drew some forty bushels
this was in the winter of 48-49. It was worth
one shilling per bushel to haul wheat to Staudegan
to Chicago.

Mr Sponable Sold Wayne some wheat, guess it
was in the fall of 1848. fifty cents cash per bushel
delivered at Wayne.

J. N. Fairchild. Says he sold Wayne & co sixty
bushels wheat in fall of 1848 at 50 cts, got about
\$30. in goods. here plaintiff asked witness to look
at plaintiffs books which was objected to by defts
counsel. objection overruled by the Court
and Excepted to by defts counsel. Witness inspected
Books. Says if he took Goods they were put

* See Burridge. Sold Wayne & Co 179 bushels
wheat in March of 1849 at 50 cts per bushel
both owner & goods at 12 per cent discount

at discount of 12 per cent.

Mr Diggins states that he sold Wayne & Co 72
bushels wheat in fall of 1848 at 50 cts per bushel
one half in goods at 12 per cent discount.

Mr Bean. Says in January 1849 he & Wayne & Co
have 15 bushels wheat at 50 cts & in March
17 bushels took goods at 12 per cent discount.

* Thos Osion. Set Wayne & Co have 10 bushels
wheat, his brother 20 in all 30 bushels at 50 cts per
bushel, nothing said about discount.

John O'Platt. Recalled by plaintiff. Was
present at a conversation between plaintiff &
defendants on Jan 1849. They said there was
about two thousand bushels of wheat in store at Mankato
& Chicago. Wheat that Wayne & Co bought in the fall
and winter of 1848 & 49. don't know of any other price
paid by Wayne & Co for wheat except 50 cents.

Deposition of John Sanborn.

The deposition of John Sanborn taken by
consent to be used in evidence on the trial of
Walter Wayne vs John S. Bursh.

Interrogatory 1st. Do you know that W. Wayne & Co
purchased wheat of Enos F. Bairden about the
last of January 1849 if so how much & what did
they pay per bushel for said wheat?

2^d. Did you haul said wheat to Littleport and
what was it then worth per bushel to haul
wheat from Franklinville to Littleport?

Answer to 1st Interrogatory
I know that said firm purchased wheat
of Enos F. Bairden sometime in the month
of January 1849 and to the best of my knowledge
and belief there was about fifty bushels

the price per bushel I do not recollect

Answer to 2^d Interrogatory

I did haul wheat to Sittelfort and it was worth one Shilling per bushel to haul from Frank-
linville to Sittelfort

Sworn to and Subscribed { John T Sanborn
before me this 2^d October A.D. 1851

Charles G Hawley

Justice of the Peace

Endorsed thus

Filed Oct 3^d 1851

J H Johnson cl

Excepted to by Defts counsel

Agreed Jashyn recalled. Says that Nathan
Stowell hauled 35 or 36 Bushels wheat for Wayne
80¢ to Waukegan. he got only 49 cts per bushel
for it the wheat was bought of me at 50 cts
per bushel.

Deposition of Enock D. Ely, (objected to by defts)

Depositions of Wesley Munger and Enock D. Ely, witnesses
produced sworn and examined upon their corporate
oaths on the tenth day of April A.D. 1851 at the office
of Augustus B. Cate Clerk of the Circuit Court,
in and for Lake County, in the State of Illinois
in Waukegan in said County at one o'clock in the
afternoon of said day taken in pursuance of the
notice hereto attached to be used as evidence in
a suit pending in the Circuit Court of the
County of McHenry in the said State wherein
Wesley Wayne is plaintiff and John S. Bursh
is defendant, the time of taking said deposition
having been extended continued from the time
mentioned in said notice until the time last
aforesaid and the said witnesses being produced
on the part of said plaintiff and no one

appearing on behalf of said defendants, Each of the said witnesses being first duly sworn by me previous to the taking of their depositions to testify ^{the truth in relation to} the matter in controversy so far as he should be interrogated testified and deposed as follows:

1st Interrogatory. What is your age name and place of residence and occupation?

Answer to *1st* Interrogatory. My age is Twenty Eight Years, my name is Grosh D. Ely, my place of residence is Hankyran Illinois & my business is merchandizing

2nd Interrogatory. Are you acquainted with the parties to this suit?

Answer to *2nd* Interrogatory. I am acquainted with the plaintiff but not with the defendant

3rd Interrogatory. Please state whether or not you purchased wheat of the firm of H. Wayne and Company in the spring or summer of 1849, and if yes, of which of them, and at what time did you purchase it and how much and at what time or times.

Answer to *3rd* Interrogatory. I purchased wheat of Harley Wayne & Co in the summer of 1849, I purchased it of Harley Wayne on the fifteenth day of June of that Year. The amount that I purchased was about one thousand bushels of spring wheat, perhaps a little over a thousand bushels

4th Interrogatory. Wheat did you pay per bushel and was it in a store house, if so, whose and where?

Answer to *4th* Interrogatory. I paid fifty six cents per bushel, It was in Mr. Manly's store house in Hankyran Lake County Illinois during the winter & spring previous

5th Interrogatory. What was the market price of wheat of like quality at the time you purchased the above wheat?

Answer to *5th* Interrogatory. I think the price

* Interrogatory proposed to the said Grosh D. Ely witness produced and sworn as aforesaid on the part of said plaintiff and his answers thereto as follows

I paid for it as mentioned in my answer to the fourth interrogatory was all that it was worth 1st Interrogatory. What was the usual price for storage and fire insurance on wheat at that time,

Answer to 6th interrogatory The usual price for fall and winter storage was six cents per bushel and insurance one per cent, and the usual price for policy is one dollar.

7th Interrogatory. Did you advance to H. Wayne & Co on the amount of wheat aforesaid if so how much per bushel and how much interest and commissions was paid on advances.

Answer to Seventh Interrogatory. I did advance to H. Wayne & Co thirty seven and a half cents per bushel, and the interest charged was at the rate of ten per cent per annum and six months interest was paid with two and one half per cent commissions.

E. D. Ely

Interrogatories propounded to the said Wesley Minger as witness produced and sworn as aforesaid on the part of the said plaintiff and his anxious friends as follows.

1st Interrogatory. What is your age, name, occupation and place of residence.

Answer to 1st Interrogatory. What is your age. My name is Wesley Minger my age is thirty six years and upwards. My place of residence is Frankegan Lake County Illinois and I am engaged in no particular business at present.

2nd Interrogatory. Are you acquainted with the parties to this suit?

Answer to 2nd Interrogatory. I am acquainted with plaintiff. but do not know that I am

acquainted with the defendant
3rd Interrogatory. Please state whether or not
you purchased wheat of the firm of H. Wayne & Company
in the spring or summer of 1849. If so of which of
them did you purchase it, and how much and
at what time or times.

Answer to 3rd Interrogatory. I purchased some
wheat in the spring or fore part of the summer
of 1849 of Harley Wayne. The amount was four hundred
bushels and forty bushels and upwards.

4th Interrogatory. What did you pay per bushel
and was it in the Store house and if yes where
and where.

Answer to 4th Interrogatory. I paid fifty six cents
per bushel. I think it was in my store house
in Wayne County Illinois.

5th Interrogatory. What was the ^{market} price of wheat in
store of like quality at that time.

Answer to 5th Interrogatory. Fifty six cents per bushel.

6th Interrogatory. ^{What was} The usual price for storage and
for fire insurance on wheat at that time?

Answer to 6th Interrogatory. The usual price
for full and winter storage was six cents
per bushel and fire insurance was one per
cent or more.

7th Interrogatory. Did you advance on the amount
of wheat aforesaid, and if yes, how much per bushel
did you so advance and how much interest
and commission was paid on such advances?

Answer to 7th Interrogatory. I did advance on
the amount of wheat aforesaid in the neigh-
borhood of thirty seven and a half cents per
bushel and the rate of interest paid was
twelve per cent with two and a half per cent
commissions for advances.

8th Interrogatory. Was any portion of the wheat
purchased by you as aforesaid winter wheat

and if you wish portion
Answer to said Interrogatory, Some of it was
winter wheat but what portion of it was such
I cannot state with certainty

Wesley Munger
State of Illinois } ss
Lake County } ss Augustus Blevins
Clerk of the Circuit Court

in and for said County hereby certify that the
foregoing depositions of Enoch Ely and
Wesley Munger were taken before and by me at
my office at Frankegan in the County and State aforesaid
on this tenth day of April A.D. 1851 and that I commenced
taking the same at one o'clock in the afternoon of said
day and that previous to the examination of said witnesses
they were severally sworn by me to testify the truth
in relation to the matter in controversy so far
as they should be ^{more} ~~carefully~~ ^{carefully} interrogated and that
after the said depositions ^{more} ~~carefully~~ ^{carefully} the same were carefully
read to said witnesses, the said Ely's to him, and the
said Mungers to him and afterwards signed by
them respectively. In Witness Whereof I have hereunto
set my hand and the Seal of said Court at
Frankegan in said County, this tenth
day of April A.D. 1851

(Seal) A. Blevins Clerk
Endorsed thereon.

Opened by leave of Court April 17, 1851
J. H. Johnson

Filed April 17, 1851
J. H. Johnson Clerk

John A. Platt recalled by Plaintiff
States that the contract as exhibited to the
jury is the same contract signed by John
E. Kurab interlined as it is. Says he saw

the contract before and when it was signed
The contract was here put in evidence and is as
follows.

Franklinville June 6, 1849

I hereby obligate myself to refund to Harley
Wayne or his assigns one half the actual loss
& expense sustained on all notes accounts
& demands made in favor of H Wayne & Co
or received by them during the time that they
continued business under that name, Provided
that all reasonable efforts are made by the said
Harley Wayne to collect the same and also to
refund one half of all loss arising from the
purchase & sale of wheat heretofore belonging
to said firm, In Witness Whereof I have here-
unto subscribed my name

John S. Burch

Also the promissory notes marked 1-2-3-4-5-6
7-8-9 & 10,

No 1
\$2.00

Franklinville Oct 12, 1850

One day after date for value received I
promise to pay H Wayne & Co or order Two
Dollars with use

S. A. Albro

Thos ^{his} Granahan
must

No 2
\$51.00

Franklinville Dec 29, 1849

One day after date for value received I promise
to pay Harley Wayne or order Fifty Dollars with use
Ebenzer D. Pickett

Endorsed thence. Received Oct 1 1850 on this note forty
two dollars & eight cents. \$42.08

No 3
\$200

Franklinville Dec 29 1849

By the first day of September next for value
received I promise to pay H Wayne or order two
hundred dollars with interest Ebenzer D. Pickett
Rec'd Feb 18, 1851 on this note fifty dollars by sale of the land in trust

No 11

Franklinville Dec 8th 1848

Mr Benjamin White

Please pay W. Wayne & co
or bearer Eight dollars and now due me & oblige
Robert H. White

No 5

\$23.20

Franklinville Feb 19. 1851

One day from date for value recd I promise
to pay W. Wayne & co or order thirty three dollars
& twenty cents being bal of Book ap & note
May 15 and Postage due \$1.15
Oliver Curtis

No 6,

Franklinville Oct 20, 1851

One day from date for value recd I promise
to pay W. Wayne & co or order fourteen dollars &
Eighty three cents, being bal of book ap & plow
note

Horace Nichols

No 7.

Franklinville Aug 23rd 1849

One day after date for value recd I promise
to pay W. Wayne & co or order fourteen dollars
& seventy nine cents

Thaddeus Thurston

Recd Apl 24, 1850 on this note one dollar ninety
five cents being bal of wheat over ap. \$1.95

No 8

\$8.86

Franklinville Dec 3, 1849

One day after date for value received
I promise to pay W. Wayne & co three dollars
& Eighty six cents with use

John Springer

No 9,

\$27.42

Franklinville Nov 12, 1849,

One day after date for value recd
I promise to pay W. Wayne & co

* Erastus Shelden Says the note spoken of by me in my first testimony was to Harley Wayne. it was not ^{drawn} by

W Wayne & Co ~~about 1848 or 1849~~
Ebinger & Pichey Says he owes Wayne & Co ^{my} ~~note~~ ^{note} for \$200. In the fall of 1848 or 49 gave Wayne my note for \$200. The note included a part of what I had traded with Harley ^{Wayne} as well as what I had traded with Wayne & Co I gave Wayne a mortgage on forty acres of land which has ^{since} been sold. Wayne purchased it at fifty dollars leaving a balance of about \$150 Says he is worth \$150 personal property & was to have the right to redeem the land by paying the note
Noah R Sage Says is a Constable, had an Execution in favor of Wayne & Co against Curry for \$15.50 cts took some hay & wheat in stacks which sold for \$4.50 Wayne & him then arranged to have Currough work out the balance - he Kirrens that he did subsequently work for Wayne and is still working.

Osgood Jones. Says let Wayne & Co have 300 bushels wheat in winter of 48 & 9 one hundred of it winter wheat, wheat sold that fall spring for 49 & 50 cts per bushel winter at 40 & 40 cts per bushel.

P Stowell. Says ^{let} Wayne & Co have 99 bushels wheat spring at 50 cts.

Henry Chapul Sworn Says let Wayne & Co have one or two loads in all 94 bush, they got 60 or 65 ^{he thinks} 65 cts.

Mr Fairchild Called by depts. Says sold to Wayne & Co 60 bushels one half spring & one half winter wheat in fall of 1848 was 50 cts
Dimeon Bean Sold Wayne some wheat in Jan 49 & some in March or April 1849 at 50 cts

or order twenty seven dollars & forty two
cents being bal of Book a/c

Daniel ^{his} Hurb.
Recd Nov 16. 1858 on this note ^{made} six dollars &
Eighty one cents & 9 cts addud making \$7.00
Nov 16.

\$91.13

Franklinville Oct 3, 1849

One day from date for value received I
promise to pay N Wayne & co or order ninety
dollars & thirteen cents being balance of Book
a/c to this date

James Sayre

When the ^{plaintiff} ~~defendant~~ stated his case.

Robert R White Called by the defendant - Sworn
says he got a coat pair of pants, vest boots &c
amounting to \$15 or 16 dollars, paid Wayne by an
order on Robert W White. It was paid in the
fall of 48 or 49 Was not twenty one years of age
at the time he traded and Wayne knew it. He got
a cap and comforter on Benj White's account
Horace Nichols. Settled with Wayne about a
year ago and gave him a note for fourteen
dollars and eighty five cents. Patter paid twenty
shillings of it since.

Franklin Griffin. Says he ~~never~~ never gave a
note to Wayne & co. never traded with them nor had
any account with them

* R Diggins. Sold Wayne some 72 bushels Spring
wheat at 50 cts per bushel for Spring for winter
in fall of 1848,

Geo Burnside Sold to Wayne in the fall & winter
of 48 & 49. 160 Bushels or 170 Recd pay in goods
at 12 per cent discount at 50 cts per bushel.

Geo Tasson. Knows plaintiff and defendant
has known Wayne about six years & ^{Burnside} ~~knows~~

about five years, was in the City of New York
when Wayne & the defendant Burst were about
purchasing goods on the partnership account.
Wayne told me in the fall of 1849 that he and
John S. Burst had settled up in August 49.
There were some notes that Wayne had given
Burst on their settlements & I bought from
* Burst of these notes amounting to about \$400.
Wayne said that the notes were given at the
time of their dissolution of the partnership.
I understood from them that the amount of the
notes was the amount of the interest purchased
by Wayne of John S. Burst. I said Mr Wayne in
the fall of 1848 in New York City and Mr John
S. Burst at Jersey City where he lived. There
was a considerable invoice of goods came
on to Franklinville directed to H. Wayne & Co
just before Wayne went back East to New York
in the fall of 1848 he had no partner, the bar
had been built before John S. Burst came
out here in 1849, Wayne said there was some
mistake about ~~seed~~ ^{seed} wheat in the settlements.
Carlton Shelden. Says he delivered a
true copy of the notice.

to Warley Wayne on the 11 day of October
1857. Wayne in reply to Col Strode remarked
that he Wayne & Burst ought to be kicked for
not having a written article of copartnership
Wayne said they had a contract but it was
lost, he did not know where it was.

J O Murphy. Sworn says he heard the same
as testified to by Sheldon.

John D Platt, recalled by plaintiff, was present
at the settlement on 6th June 1849. the consideration
of the notes from Wayne & Burst was the interest
of James H Burst in the concern of Wayne & Co.
John S Burst put into the concern about
one thousand dollars for his son J A H Burst
Wayne purchased the interest of James H Burst
and gave them notes to John S Burst. at the
time of the settlement agreed that the losses of the
concern were to be referred to to ascertain the
amount of bad debts. - Which was all the
evidence given in the cause.

The plaintiff then asked the following instructions
which were given by the court.
No one.

Of the Jury believe from the evidence that
Warley Wayne the plaintiff and James H Burst
were partners in business from September 1848
to June 1849 and that John S Burst in consideration
that Wayne purchased the interest which James
H Burst had in the partnership business, executed
the agreement declared on then the plaintiff
is entitled to recover one half of all demands
due said firm of Wayne & Burst which could
not be collected by Wayne by using all reasonable
efforts to collect the same also one half of all loss
if any arising from the purchase and sales of wheat
by said firm.

This instruction is given subject to the qualification

contained in defendants ^{9th} instruction
No 3.

That if the Jury believe from the Evidence
that John S Burst by the Execution of the writing
declared on became liable to pay ^{to} W Wayne one
half of all loss on the said debts which were
due and to become due to the firm of W Wayne &
& James S Burst, That in order to charge the
said John S Burst with the payment thereof
on accounts of having used all reasonable
Efforts as stated in the agreement sued on.
It is incumbent on the part of the plaintiff only
to prove that the persons who were indebted to
said firm were insolvent at the time said
debts began due and continued so insolvent
up to the time of the commencement of this suit
so that by using all reasonable diligence said
debts could not be collected, and that it is
not necessary in order to charge the defendants
with one half said loss, on such debts for the
plaintiff to prove a negative, by proving
that the said debts have not been paid
No 3.

That if the Jury find for the plaintiff one half
of the loss on the said debts due W Wayne & c
then it is competent and lawful for them
to find for the plaintiff one half of the interest
which has accrued on said said debts in cases
where such debts have drawn interest
and that notes due and accounts when
there has been a settlement and a balance
struck draw interest from the time of such
settlements.

No 4. If the Jury believe from the evidence
that John S Burst assigned to George S Mason

a note before it was due for the purpose of having
the note sued in Nassons name for the purpose
of avoiding a set off Wayne claim against
him arising on the writing which is the foundation
of this suit for the loss on bad debts and wheat.
It is a circumstance which may be considered
by the jury tending to show that Burst ^{had} received
notice of his liability for the losses sustained
by said Wayne on said bad debts and wheat
to S. If the jury believe from the evidence that the
books of the firm were by agreement of the parties
to be the criterion by which the amount of bad
debts were to be ascertained and were to be notice
of the amount of losses and that the books have
been open to the ^{inspection} ~~inspection~~ of the defendant
at all times then no further notice is necessary
to be given to defendant of such bad debts.

To the giving of which instructions on the
part of the plaintiff the defendant by his counsel
Except.

The defendant by his counsel asked the
following instructions which the Court refused to
give to which opinion of the Court in refusing
said instructions the deft by his counsel Except (to wit)
No 2 Instruction

If the jury believe from the evidence that the plaintiff
and defendant had a full ^{settlement} ~~statement~~ of all their business
affairs on the 1st of June 1819 the plaintiff has
no right to recover for any items contained in
the plaintiffs bill of particulars filed on the 1st day
of October instant if he has a right to recover at all.
No 4.

If the jury believe from the evidence that
the plaintiff and defendant had a full settlement
on the 1st of June 1819 and gave his notes
to the defendant for the balance found his
due outside of the written contract sued on

that fact would be prima facie evidence of settlement.
No 7.

Unless the jury believe from the Evidence
that the plaintiff ascertained the actual amount
of the loss accrued to Wayne & Co by losses
on bail debts due the firm and also by losses
on the purchase and sale of wheat purchased
on account of said firm, and that the
plaintiff after ascertaining the amount
of such losses from both sources gave the
defendant notice and demanded payment
of the amount so ascertained, from the defendant,
the plaintiff has no right to recover in this action
unless they also believe that the defendant is
indebted to the plaintiff on the bill of particulars
filed by the plaintiff on the 12th of October instant

After the giving of which instructions the jury
retired to consider of their verdict and afterwards
came into Court and delivered the following
verdict:

Harley Wayne }
vs }
John S Burch } We the jury in the above
entitled cause find for the
Plaintiff in the sum of Three Hundred & Eighty
two & 00/100 Dollars & cents
Foreman W B Throop

Endorsed thereon

Filed Oct 4 1851

J A Johnson etc

Whereupon the defendant by counsel moved the
Court for a new trial and filed the following
as reasons:

John S. Bursh }
ads } Attachment
Harley Wayne }

Be it remembered that on
this 4th day of October A.D. 1851 the following
reasons were filed in the above entitled cause, for a
new trial.

- 1st The verdict of the jury is contrary to the evidence
- 2d The verdict of the jury is against the manifest
weights of evidence.
- 3d The Court erred in giving all the instructions
given on behalf of the plaintiff.
- 4th The Court erred in refusing to give
Defendants instructions number 2, 4 & Seven
- 5th The Court erred in refusing new trial
on the ground of the incompetency of Calvin C.
Dord, a juror in said cause
- 6th The misdirection of the Court to the jury as to
the law of the case
- 7th The Court erred in refusing a new trial
on the ground of incompetency of a juror.

Endorsed.

Filed Oct 4 1851

J. H. Johnson Clerk

After hearing the parties the counsel overruled
said motion for a new trial and rendered
judgments on said verdict to the overruling of
which motion for a new trial and ~~renders~~ judgments
on said verdict the defendant by his counsel
excepts and prays that this his bill of exceptions
may be signed sealed enrolled and made a
part of the record which is done, in open court
at the May Term of the Kane Co Circuit Court

Isaac S. Wilson Secy

Judge &c

which said bill of exceptions has endorsed thereon
Filed June 27 1852. J. H. Johnson Clk

State of Illinois

Sabin L. Burch }

McHenry County Cir Court

John S. Pursh

Charles M Willard

says that he was employed by the Plaintiff

in the above entitled cause during the September Term of the Kentucky Co. Cir. Court, 1851 at which time

in the above entitled cause was tried and decided
by a jury, that he was not the original counsel
in the cause nor was he employed until the
term above referred to, and then employed by
said Wayne to advocate said cause before jury
with an express agreement with said Wayne
that he was to have nothing more in the cause.
That P. M. Platt and O. S. Cook were the attorneys
of Record for said Wayne in said cause
that upon the coming in of the jury who tried
said cause the defendant by his counsel made a
motion for a new trial which was argued by
by the depts counsel and by P. M. Platt, atty
for the Plff. That this deponent kept no minutes
of the evidence during the trial of said cause
more than to take a minute of the different
points in the case. That the motion for a new
trial was overruled by the Court at the same
term of the trial whereupon ^{the depts by} his Counsel
prayed an appeal at which time he asked
time to prepare a bill of exceptions in
the cause, that it was agreed by and between
the Counsel for each party to wit, Charles
McClure for the defendant and P. M. Platt
for plaintiff that the bill of exceptions should
be settled at the first week of the next ensuing
term of the Kane Circuit Court then soon to
be holden to wit The second Monday of November
A. D. 1881 that in pursuance of such agreement
P. M. Platt attended at said Kane Circuit
Court during the first week thereof for
the purpose of settling said bill of exceptions
which was not done or offered to be done
as this deponent believes, that since said
suit was tried as aforesaid two ~~times~~
terms of the Kane Circuit Court have
been held and no offer has been made

to settle said bill of exceptions at either of
them, that at each succeeding term of
said Kane Cir Court this deponent attend
for the purpose the first met and heard
no mention made of said bill of exceptions.

That during the May term of said Kane
Circuit Court A.D. 1852, said McLure procured
a bill of exceptions to be signed which this
deponent has never seen and which he
had no notice was to be signed or offered
to the judge of said Court to sign, that no
person was present on the part of said Wayne
when said bill of exceptions was signed
that this deponent and his partner S. S. Church
are the Plaintiffs Attornies in this suit and
have been since the removal of his former
attornies Bush & Platt who had both left
the State ^{of Michigan} long previous to the signing of
said Bill of exceptions. That this deponent
was informed during the last week of ~~June~~ ^{May}

May term of said Kane Cir Court that
said McLure had gone to Kane County
to make an effort to get said bill of
exceptions signed that this deponent immediately
started for Kane County to resist said motion
for the reasons above stated, that he
arrived at Marquette and found that
by an accident to the cars and their
being some two hours or more behind
the time it would be impossible for
him to reach Genesee the place where
said Court was in session on that day,
telegraphed to ^{said} Isaac S. Wilson judge of
said Court to sign a bill of exceptions
in said case, and that this deponent
would be there the next day that before

said telegraph reached said Judge
he had upon the representation of said
McClure to him that this deponent or his
partner would not be there nor do any
thing more about the matter signed said
bill of exceptions which this deponent learned
by letter from said Judge which is herewith
shown, which is in the hand writing of said
Judge Wilson, as this deponent believes from
a good acquaintance of said Wilsons hand
writing. That this deponent believes said Bill
of exceptions according to his recollection does
not contain a fair statement of the evidence
and other facts as they appeared on the trial
of said cause and that he believes great injus-
tice will be done to the Plaintiff if said Bill
of exceptions is passed upon by the Supreme
Court & further says not.

Sworn & subscribed before { Chas. M. Willard
me this 31st day of May 1853

Endorsed {

Paul N. Johnson Clerk
Filed May 31st 1853
J. H. Johnson Clerk

State of Illinois }
McHenry County } Paul N. Johnson Clerk of
the Circuit Court of
McHenry County being duly sworn on oath
says that he was acting Clerk of said Court
at the September term thereof 1851 that he was
present at the trial of the case of Wagner
Hurler Wagner against John L. Burch tried
at said term, that he was present when the
motion for a new trial was overruled and
an appeal prayed by defts Counsel that
he was also present when the bill of exceptions
was talked of in said cause, between

the Counsel of each party that it was then
agreed by and between the Counsel that
the bill of exceptions in said Cause should
be settled at the first week of the next term
of Kane Circuit Court, that this deponent
asked if the agreement should be entered
upon the records: to which the Court replied
as well as Counsel for the parties, that it
was not necessary so to do
Sworn & subscribed before me Joel H Johnson
this 18th day of May 1852

Enos H Smith County Clerk McKnuty
Endorsed thereon
Filed May 21st 1852
J H Johnson Ck

State of Illinois }
McHenry County } S S Church one of
the firm of Church
& Willard being sworn says that he was
present at the September Term of the McHenry
Circuit Court at the overruling of the motion
for a new trial in the case of Harley Bayne
vs John S Bush tried at that term
And that it was then and there agreed
between the counsel for Bush & Platt for
Plaintiff and Strode and McClure for
defendants that the bill of exceptions
should be settled at the succeeding
Term of the Kane County Court during
the first week of the term. The Clerk then
offered to spread the stipulation on the
record but the Counsel remarked that it
was not necessary as they all understood
it. This deponent further says that he and
his partner at that time were not employed

in the case any further than Chat McMillan
one of the firm should make the concluding
argument in the case. But that P. P. Platt
one of the original Counsel in the case went
to the same Circuit Court and remained
there during the first week of the next term
thereof in the employ of the said Plaintiff
for the purpose of settling the bill of exceptions
as per the above agreement, but this affiant
has been informed and truly believes that
no bill of exceptions was produced by the
defendant or his said Counsel and that
neither defendant or his said Counsel were
^{present} according to said agreement ~~next~~ to settle
said bill of exceptions and this affiant heard
of no bill of exceptions being tendered in
the cause until long after both P. P. Platt &
A. C. Bush the Counsel of said Plaintiff had
become non-residents of the State of Illinois
Said Platt when said bill of exceptions
was tendered was a resident of Texas
and Bush was a resident of Wisconsin
This affiant did not take sufficient part in
the trial of said cause to enable him to say
whether the bill of exceptions contains a fair
statement of the proceedings or not but believes
that great injustice might be done to the
Plaintiff if the bill of exceptions are suffered
to be & remains in the record of said cause
Entered & subscribed before S. S. Church
on this 9th day of June 1853

Endorsed,

Filed June 7th 1854

A. Johnson Clerk

over

State of Illinois }
McHenry County }

M S Jaslyn being sworn
says that he was in attendance
on the September Term of McHenry Circuit
Court 1851 as an attorney at Law and he
was present when the motion for a new
trial in the case of Hurlay Wayne vs
John S Burst was overruled and that it was
then and there deliberately agreed by and
between the Counsel P H Platt & A C Bush
for the Plaintiff and Charles McClure
& J M Straub for the defendant that the
bill of Exceptions should be settled at the
next succeeding term of the same Circuit
Court which was to be held in November
following during the first week of the term,
~~that the Clerk offered to put the agreement~~
~~on the record but the counsel for both~~
~~parties said it was not necessary. Said~~
~~Platt attended at the first week of the said~~
~~term of said same Circuit Court on the facts~~
~~of said Wayne for the purpose of settling~~
~~said bill of exceptions but no person appeared~~
~~on part of said defendant Burst for that~~
~~purpose~~

Sworn & subscribed before M. S. Jaslyn
me this 7th day of June
1852

A H Johnson clk,
Exonerat

The said Judge disregarding said objection
of the said plff signed and sealed the said
bill of Exceptions to which the plaintiff
excepted and prays that this his bill

of Exceptions may be signed and sealed which
is done

Saml G. Wilson Seal
Judge &c

Endorsed thereon

Filed May 3rd 1852

W. Johnson Clk

And heretofore to-wit on the 20th day of November
in the Year A.D. 1851 the said Defendant filed
in the office of the Clerk of the Circuit Court of said
County his certain appeal bond herein which
said Bond is in the words & figures following
that is to say:

Know all men by these presents that we John S. Burst,
George T. Masson, Allen Snfield and Charles Digfield
of the County of McHenry and State of Illinois are
held and firmly bound unto Harley Wayne also of
the same place in the penal sum of Eight Hundred
Dollars, lawful money of the United States for the
payment of which well and truly to be made, we
bind ourselves and each of our heirs Executors & admin-
istrators jointly severally and firmly by these presents.
Witness our hands and seals this 20th day of November
A.D. 1851.

The condition of the above obligation is such
that whereas the said Harley Wayne did on the
fourth day of October A.D. 1851 in the Circuit Court
in and for the County and State aforesaid recover
a judgment against the above bounden John S. Burst
for the sum of Three Hundred & Eighty two Dollars
and Sixty cents damages and costs of suit, from
which said judgment of the said Circuit Court the
said John S. Burst has prayed an appeal for and
obtained an appeal to the Supreme Court of said
State. Now if the said John S. Burst shall duly

prosecute his said appeal ^{with} Effect and shall moreover
 pay the amount of the Judgment cost interest and
 damages rendered and to be rendered against him, in
 case the said judgment shall be affirmed in the
 said Supreme Court then the above obligation
 to be void otherwise to remain in full force and virtue
 Taken and Entered into } John S. Rust by J. H. Rust Esq
 before me at my Office } Geo T. Nasson Esq
 this 20 day of November 1852 } Allen Dufield Esq
 W. Johnson Clk } Charles Dufield Esq
 Which bond has endorsed thereon
 Filed Nov 24 1852
 W. Johnson Clk

State of Illinois } ss I the undersigned Clerk of
 McHenry County } the Circuit Court in and
 for the said County in the
 State aforesaid do hereby certify that the foregoing
 is a true and perfect copy of the Record
 and proceedings in my office in the above
 Entitled Cause. Witness, Joel H. Johnson Clk
 of our said Court and the Seal thereof
 at Woodstock in said County this 7th
 day of June A.D. 1852
 Joel H. Johnson
 Clk Cir Ct



McHenry Co.
 Jm L. B. Best
 as
 Hearley Wayne
 Record.

Filed June 10th 1852.
 L. Seland Clk.
 by J. K. Seland Esq.

25.00
 2.50
 22.50

Be it remembered that heretofore to wit: on the 24th day of September in the Year of our Lord One Thousand Eight, hundred and fifty the said defendant filed in the office of the Clerk of the Circuit Court of said County his certain demurrer in the words and figures following that is to say:

John S. Burst }

vs
Harley Wayne } And the said deft, by Strader
& McClure his attys comes
& defends the wrong & injury when &c and avers
over of the said supposed writing in the first &
second counts of said declaration mentioned
and it is read to him, And the said defendant
according to the form of the Statute in such case
made and provided states & shows to the Court
the following causes of demurrer to the first
and second counts of said plaintiffs declaration
that is to say:

1st That said supposed writing in said first
& second counts mentioned, purports no
consideration for the promise by the defendant
to the plaintiff, which is binding in law.

2nd There is no disclosure of the names of persons
with the amount of their indebtedness (to the
firm of H. Wayne & Co) of whom the money could
not be made, nor is the kind of diligence
of the said Wayne averred, which he used
to collect said debts.

3^d And that the said counts are in other
respects uncertain, informal & uncertain
insufficient. Strader & McClure deposes
which has endorsed thereon. Filed this 24th of Sept. 1850.
J. Johnson Clerk

And thereafter to wit: on the day and Year last
aforesaid the said defendant filed in the office
of the Clerk of the Circuit Court of said
County his certain plea in the words and
figures following that is to say:

John S. Bush &

vs
W. Wayne

And the said deft by Strode
& McClure his attys comes
& defends the wrong & injury when &c and for
pleas to the said plaintiffs declaration. Except
the first & second counts, says actio non
because he says that he did not promise
and undertake as the said plaintiff in his
said declaration hath thereof complained
against him, and of this he puts himself
upon the Country &c

Strode & McClure
for deft

And the plaintiff doth the like

Bush & Platt attys for p[ar]ty

Which has endorsed thereon

Filed this 21st Sept 1850

J. H. Johnson Clerk

And thereafter to wit on the 4th day of October
in the Year last aforesaid the is being one
of the days of the September Term of the
Circuit Court of said County the following
among other proceedings were had to wit:

Warley Wayne &

vs
John S. Bush &

Attachment of this day

Comes for defendant and
files his demurrer to the plaintiffs declaration

in which the plaintiff joins, after argument
of Counsel for Court sustains the same.
It is therefore ordered by the Court that the
defendant have and recover of the plaintiff
his costs about this demurrer expending and
have execution therefor, and that the plaintiff
have leave to file an amended declaration.

And thereafter to wit on the 15th day of April
in the Year of our Lord One thousand Eight
hundred and fifty one the said defendant filed
in the office of the Clerk of the Circuit Court of
said County his certain demurrer in the words
and figures following that is to say:

John L. Pursh

ads

Warley Wayne &

And the said defendant
by Strode & McClure his

Attorneys comes and defends the wrong &
injury when &c and cravesoyer of the said

Supposed writing in the first Count of said
plaintiffs declaration, and it is read to

him, and the said defendant according
to the form of the Statute in such case made

& provided states and shows to the Court here
the following causes of demurrer to the first
Count of said declaration.

1st That said supposed writing in said first
Count mentioned does not show that the defendant
& plaintiff were partners - No consideration

2^d That the first Count alleges that they the def.
& plaintiff were partners at the time of the
Execution of said writing. Therefore the
plaintiff cannot recover in this form of
action.

3. The said Count claims as due on said contract the certain amount of loss, whereas the writing only alleges a liability for the one half.
4. The said Count does not disclose the kind of indebtedness to said firm, whether by account note, or record or otherwise,
5. The said Count does not disclose the kind of diligence or means used by the plaintiff, to collect said debts from the persons in said County mentioned,
6. That said Count does not allege notice of the non payment of said sum of money by the persons in said Count specified nor does it show that said debts were due
7. That said Count is in other respects uncertain informal and insufficient.

Strode & McClure
clerk Atty

Which has endorsed thereon

Dated April 18, 1851

M. Johnson
OK

And thereupon to wit on the day and Year last aforesaid the said defendants filed in the office of the Clerk of the Circuit Court of said County his certain demurrer in the words and figures following that is to say:

John S. Bursh {

ads,

Harley Wayne }

And the said clerk by Strode & McClure his attorneys comes & defends the wrong & injury when &c and craves oyer of the said supposed writing in the second count of said plaintiffs declaration mentioned And it is read to him. And the said defendants according to the forms

of the statute in such case made and provided
states and shows to the Court here the following
causes of demurrer to said second count

1st That said supposed promise in said supposed
writing in said second Count mentioned, does
not purport a consideration, for said promise
2^d - The said Count does not show the kind of
indebtedness of the persons to Hays & Co in said
Count mentioned whether by account notes or
otherwise,

3^d That said Count does not show the number
of bushels of wheat, from whom purchased
the price paid therefor and to whom sold and
the price sold for,

4th That this said Count, does not allege notice
from the plaintiff to debt before commencement
of suit nor of the amount of loss on debts
of wheat,

5th That said Count does not show the kind of
diligence used to collect said debts in said Count
specified, and also that the liability of the debt
to the plff if any exists cannot be enforced at law
as it relates to a partnership transaction.

6th That said Count does not allege that the debts
from the persons specified in said Count were
or are due

7th That the said Count is otherwise informal
and insufficient

Shoemaker & McClure
for debts

Which has endorsed thereon

Filed April 15th 1857

J. H. Johnston
Clerk

And thereafter, to-wit: on the 17th day of April in
the Year of last aforesaid said day being
one of the days of the April Term of the
Circuit Court of said County and said Court
being then in session the following among other
proceedings were had to-wit:

Harley Wayne }
vs } Attachment
John L. Bush }

And now come the
defendants by ~~Steele~~ ^{Steele} & McHenry ^{Steele} his attorneys
and files his demurrer to the first and second
Counts of the said plaintiffs declaration
in which the plaintiff by Platt and Bush
his attorneys joins and the Court having heard
the parties thereon takes the same under
advisement.

And thereafter, to-wit: on the 22^d day of April
in the Year last aforesaid, said Court
being then in session as aforesaid the
following among other proceedings were had
that is to say:

Harley Wayne }
vs } Attachment
John L. Bush }

And the Court being
sufficiently advised on the demurrer formerly
filed herein sustains the same. It is therefore
ordered and considered by the Court that
the said defendant have and recover of the
said defendant plaintiff his costs and charges
in and about his demurrer expended
and that he have execution therefor. And
thereupon on motion of Platt and Bush

plaintiffs attorneys it is ordered that he have leave to amend his declaration herein by the first day of September next. And it is further ordered that this Cause be continued.

And thereafter to wit on the 15th day of September in the Year last aforesaid the said defendant filed in the office of the Clerk of the Circuit Court of said County his certain demurrer in the words and figures following that is to say:

John S. Bursh }
ads } Sept Term 1881
Walter Wayne }

And the said defendant by Strode & McClure his Atty comes and defends the wrong and injury when &c and engages over of the said supposed writing in the first Count of said declaration mentioned and it is read to him,

And the said defendant according to the form of the Statute in such case made and provided states and shows to the Court here the following causes of demurrer,

1st That ~~the~~ said Count does not aver that said partnership business was finally settled a certain amount to be paid by debt to plaintiff, for which ascertained amount this suit is commenced, but on the contrary shows that there was not such final settlement and the amount ascertained but that the amount was to be ascertained in future.

2^d That said Count does not show what efforts were used to collect said debt in said Count specified.

3^d That from the showing of said Count the

defendants liability if any cannot be enforced
at law relating exclusively to unliquidated
partnership accounts.

1st That said Court does not aver notice to
the said defendants by said plaintiff, of said
loss on said debts & which,

And said defendant as to the second count
of said declaration argues aver of said writing
&c which is read to him &c

and the said defendant for causes of demurrer
shows the following.

1st That said Court does not aver any valid
consideration for the promise by said defendant
to the said plaintiff in said second count
mentioned

2^d That said Court does not show what efforts
were used by said plaintiff to collect said debts
in said count specified

3^d That said first & second counts are in other
respects informal uncertain and insufficient

And the said defendant by Strode & McClure
his attys comes & defends the wrong & injury
shown &c and to the third count of said
plaintiffs declaration says that he did not
promise and undertake in manner and form
as the said plaintiff in said count of said
declaration alleges and of this he puts him-
self upon the Country

Strode & McClure
Attys for defendants

And the plaintiff doth the like

Rush & Platt attys
for the plaintiff

Which has endorsed thereon

Dated Sept 15 1851

J. H. Johnson Clk

And thereafter to wit on the fifteenth day of
September in the Year of our Lord one
thousand Eight hundred and fifty one, it
being one of the days of the September Term
of said the Circuit Court of said County
and said Court being then in session, the following
among other proceedings were had, that is to say:

Harley Wayne }
John S. Burch } Attachment

And now come the defendants
by McClure Strader and Murphy his attorneys
and files his demurres to the said plaintiffs
second amended declaration in which the said
plaintiff by Platt and Burch his attorneys joins
And the Court having heard the parties
thereon and being fully advised in the premises
sustains the demurres to the first Count of
the said declaration and overrules the said de-
murres to the second Count of said declaration
It is therefore ordered and considered by the
Court, that the said defendant have and recover
of the said plaintiff his Costs and Charges
about his demurres expended and that he
have Execution thereon. And it is further ordered
and considered by the Court, that the said
plaintiff have and recover of the defendant
his Costs and Charges in and about his joinder
in demurres expended and that he have
Execution thereon.

State of Illinois & of the undersigned Clerk
McHenry County & of the Circuit Court in
and for said County do
hereby certify that the foregoing is a true and
perfect copy of the record and proceedings on
file in this office in addition to a record filed
in the office of the Clerk of the Supreme Court
^{under the 10th day of June 1852}
as appears by an endorsement thereon, of said
State in the above entitled cause. And thus
the foregoing is made out and attested in ob-
dience to the commands of a Writ of Certiorari
issued of and under the Seal of said Supreme Court
dated the 12th day of July A.D. 1852 and
hereto annexed.

Witness Joel H. Johnson Clerk
of our said Court and the Seal
thereof at Woodstock this 16 day
of July A.D. 1852.
J. H. Johnson Clerk

Received as Payment
Annexed Record

Filed July 19. 1852
Attestance Clerk

Supreme Court June Term 1852

Harley Wagner }
vs } Appeal from M. Henry
John L. Burt }

and now on this 2nd day
of July 1852 being one of the days of the
said Term of said Supreme Court Comes
the said Harley Wagner the above
appeller by Church & Willard his
attorneys and moves the Court here
to strike the bill of exceptions of
the said Appellant from the record of this
case for the following reasons.

1 for reasons appearing on the face of the bill
of exceptions

The bill on its face appears to have been
made nearly a year after the trial and
at the same Circuit May Term 1851

2 The exceptions do not appear to have
been taken on the trial nor does the bill
show on its face to have been taken
made or filed during the same term at
which the trial was had

The exceptions which are much the subject
of the bill appear to be taken at the time
of the signing of the bill and do not ap-
pear to have been taken on the trial

3 for reasons appearing in the appellants bill
of exceptions and in the affidavit of
H Wagner herewith filed

4 The Bill of exceptions has been impermissibly
allowed to be filed contrary to the law
and practice in such cases

Church & Willard

Attys for Left Appeller

Superior Court

June Term 1852

Harley Wagon

vs

John L. Burt

Motion to Discontinue
from Record

Filed July 3^d 1852
V. Kellogg & Co.

Shurt & Wilcox
for D.M.

State of Illinois, ss.

Supreme Court, Third Grand Division, at Ottawa :

The People of the State of Illinois,

To the Clerk of the Circuit Court of *Ill^e Henry* - County, GREETING :

WHEREAS, in a certain plea between *Harley Wayne* —
— plaintiff — and *John A. Bust* —
— defendant, lately depending in the Circuit Court
of said county, wherein judgment was rendered for the said *Wayne* —
— and against the said *Bust* —
and the said *Bust* *appealed from* — the judgment
of said Court, rendered against *him* as aforesaid, to the Supreme Court, held at
Ottawa, on the *2^d Monday in June last* and in pursuance of the said
Appeal — a transcript of the record and the proceedings in the plea afore-
said was transmitted. And, also, whereas it hath been suggested, on the part of said
Wayne — that the said record has been diminished, inasmuch as
a full & complete transcript —
hath not been sent up; and forasmuch as the said Supreme Court are not satisfied that
there is a sufficient record sent in the plea aforesaid, but in the record there is a diminu-
tion: YOU ARE, THEREFORE, HEREBY COMMANDED, that, without delay,
the said *transcript* therein you cause to be transmitted to the Supreme Court, ~~to be~~ *now in*
Session ~~held~~ at Ottawa, ~~on the~~ *instant* —
~~next~~, without any diminution or addition whatsoever, to the end that speedy justice may
be done in the premises. according to law; whereof you are in no wise to fail; and send
you then there this writ.

WITNESS, the Hon. SAMUEL H. TREAT, Chief Justice of
said Court, and the seal thereof, at Ottawa, this *12th*
day of *July* — in the year of our Lord one thou-
sand eight hundred and fifty-*two*.

L. Leland Clerk of the Supreme Court.

Burst vs Wayne.

Certiorari to
McHenry Co. -



To the Clerk of the Circuit Court of McHenry County, Illinois:
The People of the State of Illinois,
County Clerk Philip Grand Division of Illinois:
State of Illinois vs

W. L. B. 2 (copy of the Supreme Court)
153

Superior Court June Term 1852

Harley Warren } Appeal from McHenry
at
John L. Burst } and now comes the

serice applicant by Church
& Willard his attys and suggests
to the court him that the Transcript
brought here by the serice applicant at
this Term is deficient in this.

Demurrers were sustained by the Defendants
below to all the counts in the Declaration
but him which do not on the Trans-
cript appear to have been answered
by pleas and leave given severally
to file amended Declarations
at the several times that they appear
to have been filed by the Transcript

and that the several Demurrers and orders of court thereon
and the Orders for leave to file amended Declarations
and that to the last Declaration filed
as appears by the Transcript and upon
which the trial was held in the
court below. The Defendant filed
a demurrer to the first count which
was sustained by the court and
that the judgment of the court in
sustaining said Demurrer was not
and on the record but does not
appear on the Transcript

Church & Willard

Atty for Appellants
John L. Burst }
Lancaster County } ss L. S. Church being sworn say
that the above suggestion is true
L. S. Church

Subscribed & sworn to before me
This 12th day of July 1852
L. J. Willard Clerk Sup. Ct.
By J. W. Willard Deput

do not appear in the Transcript
I thought they are in the record of
the court below

Burst as Wayne

affd.

Filed Feb 12. 1852
L. Keland Clerk

State of Illinois
McHenry County

Harley Wayne of said County
being duly sworn on Oath says that he is the
plaintiff in the suit of Harley Wayne vs John
L. Burst, Thos. P. Plott & S. C. Bush, over his attorney
in said cause, until the time of trial when
he employed Chas. McMillan to move the closing
plea to the jury & for no other purpose that
he was present when the motion for a new
trial was overruled in said cause that
at that time an agreement was made between
Bush & Plott for this affair and Chas. McMillan
attys for Burst that the bill of exceptions should
be settled at the first week of the next term
of the Hon Circuit Court to wit the 2nd Tuesday
in Nov 1837, that he employed said Plott to
be in attendance and when he was so in
attendance on the first week of ^{the} term
of Court ^{as per agreement} that he when said Plott told
him the truth, in the case which was, that
no bill of exceptions was presented at that time
that said Bush & Plott had both left the
State of Illinois permanently before said bill
of exceptions was signed, and further says that
he never saw the bill which has been signed
in this cause - ^{until after it was signed} and knows that the evidence
is not fairly set forth therein,
and submitted the 21st

day of June 1832 before me
Notary Joel H. Johnson Harley Wayne
Clerk of the Circuit Court
of said County this 21st
day of June A.D. 1832
J. H. Johnson Clerk

Recd
W^{as} Wayne
off

Filed July 3^d - 1852.
L. Ireland Clerk

John L. Burst } Appeal to Supreme Court
Harley Wapner }

We do hereby enter ~~our~~^{our} security for costs
in this cause and acknowledge ~~our~~^{our} responsibility
to pay or cause to be paid all costs which
may accrue in this suit either to the
opposite party or to any of the officers of
this Court in pursuance of the laws
of this State Dated this 7th day of June
AD 1852

Wm. H. Murphy
James H. Burst

We declare the above signing is good
Charles W. Wapner

M. C. McEweny County

Bunt
vs Bona
Wayne

Filed June 10th 1852.
S. A. Leland Clerk.
By J. W. Leland Deputy.

State of Illinois
~~County~~ ^{Laurens} County

John L. Berry

vs
Hansy Wagner } Appeal from Mr. Thompson's
Circuit Court

Charles M. Blum, being duly
sworn says that the place of signing
the bill of exceptions, as appears in the
bill of exceptions, now on file - was
incorrectly by Judge Wilson - Stating at
the same time ~~that~~ ~~that~~ ~~he~~ ~~declared~~
that in error necessary to show that
the bill was signed in open Court
~~and was not~~ ~~at the~~ ~~the~~ ~~the~~
~~of this~~ ~~affair~~.
Sworn to & subscribed } Charles M. Blum
this 8th day of July 1852 }
J. Leland Clerk Sup. Court.
By P. H. Leland Depy.

John C. Burnett
vs.
Henry Wayne
Appidavit

Filed July 8th 1852.
J. Ireland Clk.
Per J. Ireland Dep.

State of Illinois
LaSalle County

John L. Burt

vs

Harley Wagon

} Appeal from Montgomery County
Circuit Court

Charles Wilson being duly sworn says that he with J. M. Stroder were the Counsel of the above named John L. Burt in the Circuit Court of the County of Montgomery that the Jury returned their Verdict in said cause in the afternoon of the last day of the said term and that the Hon. J. G. [unclear] who presided on the trial of said cause soon after receiving said Verdict and as soon as the motion for a new trial was overruled that it was out of the power of the Counsel for said Burt to prepare a bill of exceptions in said cause ~~during~~ the term of the said Court at which the trial was had. That this affiant's recollection of the facts, are then that immediately after overruling the motion for a new trial, Judge Wilson intimated that he would adjourn Court and could not remain to settle the bill of exceptions and that the same could be settled at the next term of the same County Circuit Court (which Court would be held in November 1851) but that this affiant did not understand that any day or week of said term was mentioned that the suggestion of said Judge was acquiesced in by the Attornies of both parties

that affiant prepared a bill of exceptions
and appeared at the next succeeding
term of the Kane County Circuit Court
To wit, in November 1851, as intended in
pursuance of said understanding and
agreement. ~~with~~ said bill of exceptions
on the second week of said Term. to the
best of his belief on Wednesday of said
second week in order to present said bill
to said Judge for his signature. That when
he arrived at said Court he found Judge
Shinn presiding in the place of Judge Wilson
who was absent at Chicago holding
Court, but that he Wilson was expected
at the Kane County Circuit Court on Friday
morning succeeding. ~~That this affiant~~
remained at said Kane County Circuit
Court until Friday after noon, of the
2d second week of s^d Court, and the said
Wilson, not returning, this affiant, left
said bill of exceptions with Mr. Harrington
to be delivered to s^d Judge as soon as he
should arrive, at the Kane Court aforesaid
That at the January Term of the ~~Kane~~
County Circuit Court, said Judge being
at said Court. This affiant enquired
of said Judge about said bill of exceptions
where to the best of this affiant's recollection he
was informed by s^d Judge, that he had not
had time to examine said bill, but
that he was going to return home, on Saturday
day of the first week of s^d Court and that
he would bring said bill with him

some time after. This affiant called
on Church & Willard and received
said Judge's minutes - That he prepared
a bill of exceptions in conformity to
said minutes, so furnished by said Judge and
that at the next term of the Iowa
Circuit Court, he presented said bill
together with the minutes so furnished.
That this affiant and said Judge
conferred and said bill & said minutes
after which said Judge signed said
bill, which said bill of exceptions
is as this affiant believes substantially
the same with the one first presented
to said Judge - This affiant further states
that he has never intended to waive any excep-
tions in this matter, that he has acted throughout
in good faith, and had signed upon said
Judge the signing of said bill, as far as he
dared prudently, and respectfully
sworn to & subscribed

This 8th day of July 1852 Charles M. Blair
J. Seland Clerk, Sup Court.
By P. H. Seland Depy.

John D. Burnett
vs.
Hartley Mayne.
Affidavit.

Filed July 8th 1852.
J. Seland Clk.
P. H. Seland Depy.

that said Judge did return on Monday
of the second week but did not say any
thing to the affiant about said bill, and
that just as he was leaving, said
County Court, as this affiant was informed
by J. B. Murphy an Atty at Law that
said Judge after he adjourned said Court
and just as he was leaving for home-
handed said bill of exceptions to him
and requested said Murphy to deliver the
same to me. That he had not yet ex-
amined said bill, but would be
back at the March Term of said
Methuen County Circuit Court 1852
that at the March term of said Court
said bill of exceptions was called up
and as this affiant then understood
Church & Willard then disclaimed
having any thing to do with the case
Willard's employment, being only to
make the closing speech on the trial
of said cause - That said Judge
then stated that he had on the trial
presented fully full of the testimony which
were at home. That when he returned
home he would examine them and
he would sign such a bill of excep-
tions as he thought fair. That some
time after said Judge returned home
he sent to this affiant a line stating
that he had forwarded to Church &
Willard a statement of the proceed-
ings as he understood them, and that
they would hand them to me. That