

14594

No.

Supreme Court of Illinois

Grier

vs.

Gibson

71641  7

STATE OF ILLINOIS,

April 1, 1864
SUPREME COURT,

THIRD GRAND DIVISION.

1864
No.

123 *49*

J. W. Middleton & Co., Stationers, 196 Lake St.

Green
93
1864
Green
1-31

SUPREME COURT OF ILLINOIS.

Third Grand Division.

APRIL TERM, A. D. 1864.

JOHN C. GRIER, Plff. in Error,
vs.
JACOB GIBSON, Def't. in Error.

ERROR TO PEORIA CIRCUIT COURT.

Page This was assumpsit, brought by said Deft. in Error, as endorsee, against Plff.
Record in Error, as maker of four notes, to the Feb. Term, 1864, of the Peoria Circuit Court.

- 2 Declaration filed January 21st 1864, contains four Special Counts one on each
note, and the common counts.

The first count sets out (p. 3) that Plff in error, on April 10th 1859, made his note in *substance* as follows, to wit: “\$113.97. Danville, Penn. April 10th, 1859, One year after date I promise to pay, James Sinington One hundred thirteen ⁹⁷/₁₀₀ dollars, with interest from date.

(Signed)

JOHN C. GRIER,"

and that Simington endorsed it to Plff. below.

Second count sets out, That Plff. in Error on said day made his other note, in *substance* as follows, to wit: \$113.97. Danville, Penn. April 10th 1859, Two years after date, I promise to pay James Simington One Hundred Thirteen $\frac{97}{100}$ dollars, with interest from date. (Signed) JOHN C. GRIER.

(Signed)

JOHN C. GRIER.

That said note was delivered to Simington in his life time, since dec'd. That (p 4) on or about November 6th 1859, said Simington made his will, appointing Wesley Shannon his executor. That afterwards, to wit: on said day, said Simington died. That afterwards, to wit: on said day, said Shannon proved said will, and assumed the execution thereof. That said Shannon, as such executor, endorsed and delivered said note to said Plff below.

- 3 & 4 Third count same as second, except that the note described is on three years time.
- 5 Fourth count same as second, except that the note described is on four years time.

7 & 8 Common counts and copy of account.

9 Feb. 4th 1864, Demurrer to 2nd, 3rd, and 4th special counts of declaration,
10 for want of profert of letters testamentary, and of said will. Also because no copies of instruments sued on are filed, and for other causes. Plea of general issue to common and 1st special counts.

11 Feb. 8th, 1864, Plea of general issue filed to the 2nd, 3rd, and 4th special counts. Also the following Special Pleas:

1st Plea, denying making of will, and appointment of executor, as alleged in declaration.

2nd Plea, denying proof of will.

3rd Plea, denying death of Simington.

4th Plea, denying the appointment of Shannon as executor.

13 Special Demurrer by Plff below to said 1st, 2nd 3rd and 4th Special Pleas.
1st. Because no legal issue is presented.
2d. They do not legally answer the declaration.
3d. Issues presented are immaterial.

14 Bill of Exceptions, filed Feb. 23d 1864, shows that on the 2d of Feb. 1864, a motion for continuance was made by Deft. below, because the declaration does not set out copies of the assignments of the notes in suit. Motion overruled, and exception taken by Deft. below. That on Feb. 6th, 1864, a further motion for continuance was made by deft. below, because no copies of notes sued on were set out in the declaration, nor filed in this cause; whereupon the Plff below asked and obtained leave against objections, and exception by Deft. below, to file the stipulation following: The defendant will take notice that correct copies of the notes mentioned and sued on in the 2d, 3d and 4th counts of the foregoing declaration, and set out therein. That the Court overruled said last motion, and Deft. below again excepted.

15 Feb. 6th, 1864, Demurrer of Deft. below to 2d, 3d and 4th counts of Plffs declaration. Overruled, and leave to plead given.

16 Feb. 23d, 1864, Plffs demurrer to Defts 1st, 2d, 3d and 4th special pleas sustained, and deft abides by his pleas.

17 March 2d, 1864, Trial by court. Judgment for plffs for \$587 ⁸⁸/₁₀₀.

18 March 6th, 1864, Bill of Exceptions filed, shows that on the coming on of this cause for trial, Plff., to maintain the issues on his part, offered first a note for \$113 ²⁷/₁₀₀, dated April 10th, 1859, at one year, with interest from date, payable to James Simington, and signed by John C. Grier, and endorsed, "Pay Jacob Gibson or order, James Simington:?" and three other notes, one at two, one at three, and one at four years, otherwise same as above note, and each endorsed, "Pay to

19 the order of Jacob Gibson, W. Shannon, Ex. of J. Simington." That Deft. below objected to each of said notes as offered. That said objections were overruled, and said notes all admitted in evidence, and defendant then and there excepted.

This was all the evidence in the case, and thereupon Deft. asked the Court to disregard said notes offered in evidence under the 2d, 3d and 4th counts of said declaration, and to find the issues on those counts for Deft. That the court refused said motion, and rendered judgment on all said counts for Plff., and Deft. excepted.

20 Deft. below then moved to set aside said finding, and in arrest of judgment and new trial, for these reasons:

- 1st. All the notes offered were improperly admitted.
 - 2d. The evidence did not justify a judgment for Plff. on said 2d, 3d and 4th counts, or on the common counts.
 - 3d. The finding was against the law and evidence.
 - 4th. Court erred in sustaining demurrer of Plff. to 1st, 2d, 3d & 4th Special Pleas of Deft.
- Motion overruled, and judgment rendered in accordance with the finding, and Deft. excepted.

ASSIGNMENT OF ERRORS.

- 1st. Error in overruling motions for continuance.
- 2nd. In sustaining demurrer to pleas of Deft. below to 2d, 3d and 4th special counts.
- 3d. Permitting filing of stipulation to amend declaration.
- 4th. In allowing said notes and each of them to go in evidence.
- 5th. In refusing to exclude the notes offered and read under the 2d, 3d and 4th special counts.
- 6th. Error in the finding and judgment of the court.
- 7th. In refusing motion to set aside finding of the court, in arrest, and for new trial.
- 8th. In rendering judgment for Plff. below.

COOPER & MOSS, for Plff. in Error.

¹²³
John C. Crier ⁴⁹
vs.
Jacob Gibson
Abstract

Filed Apr 14, 1864
Leland
Ch.

STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Peoria County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Peoria County, before the Judge thereof, between Jacob Gibson

plaintiff, and John B. Grier

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

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

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April ~~A.D. 1864~~ ^{next} to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Jacob Gibson

notice, together with this writ.

Procedence to Writen

Witness, The Hon. John B. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this first day of April in the year of our Lord One Thousand Eight Hundred and Sixty-four,

L. Leland

Clerk of the Supreme Court.
J. B. Rice



I have duly served the within
 writ on the within named Jacob Gibson
 by reading to him the same April 8th 1864

Fees \$2.00

Ja J. Murray Shuff
 of Morris County,
 By J. M. Guil Esq.

Received the above fees of J. H. Cooper
 Ja J. Murray Shuff

123

John B. Grier
 vs.
 Jacob Gibson

SCIRE FACIAS.

FILED... April 19... A. D. 1864

L. Leland Clerk.

SUPREME COURT OF ILLINOIS:

THIRD GRAND DIVISION.

April Term, A. D. 1864.

JOHN C. GRIER, Pl'ff in Error, }
vs.
JACOB GIBSON, Def't in Error, }

BRIEF OF PLAINTIFF IN ERROR.

I.

The motions for continuance should have prevailed. Gibson sued as indorsee of four different notes, and no copies of the endorsements were filed with or set out in the declaration. Sec. 8 of the practice act applies to both endorsement and note. The former is as essential to the plff's case as the latter. If not duly endorsed his suit on the notes must fail; and of *his right to sue*, def't was entitled to the notice intended by the statute. This was the more material here where three of the notes purport to be endorsed, not by the payee, but his executor, and as to these the declaration don't show that the endorsements were in *writing*.

II.

No copies of the notes were filed with, nor do they purport to ^{be} set out in *haec verba*, in the declaration. The averment as to the first note is, that def't "*made his* certain promissory note in writing, *in substance* as follows"; and as to each of the others that he "*made his* certain other instrument in writing, *in substance* as follows." This, it is submitted, is not sufficient. *Substance* and *copy* are not convertible or equivalent terms. The object of the law clearly is to give the def't specific notice of the exact words of the instrument on which he is sued. Would this be answered by *filing the substance* instead of a *copy* of it? Assuredly not. In *Shatton vs. Henderson*, 26 Ill. 68, a paper purporting to be a true copy of the Bond sued on had been duly filed ten days before the term, but being found not a literal copy, the court say, page 75, "this would have entitled def't to a continuance." Is then the *notice* sufficient which *professes* to

give only the *substance*? Of what more does that inform the def't than the *description* of the paper which every special count must contain? Nor did the stipulation which the court allowed pl'ff to file, on hearing the motion, cure the difficulty. That notice came too late. Def't was entitled to it ten days before the term. Besides, it was essentially an amendment of the declaration, and if material, of itself would ^{give} be a continuance.

III.

The demurrer of pl'ff below to the special pleas of def't to the 2d, 3d and 4th counts, was improperly sustained. Those counts averred death of payee of the notes; the making and probate of his will; that Shannon was executor, and as such endorsed the notes—all which were necessary averments, on which def't had a right to take issue, and this the pleas did, except as to the fact of endorsement. *Ne unques* executor is a good plea, but the general issue will not answer, and hence special pleas were proper. 1 Ch. Pl. 489-90; McKinley v Bladen, 1 Scam. 64; Ballance v. Frisby, 2 Scam. 63. The points made by the special demurrer are not well taken, and the pleas being good, *for substance*, the demurrer should have been overruled.

Nor are the pleas open to the objection ^{made} below, and on which the court acted, to-wit, that they amount to a denial of the *execution of the endorsement*, and must therefore be sworn to. This is founded in misconception either of the law or the facts, or both. It is only the *fact of the execution* of the note, or *making of the endorsement* that requires a sworn plea to put it in issue. Here that fact is not denied at all, in any of these pleas, but only the representative character of the party making the endorsement. This never requires a sworn plea. So also the death of the payee and making probate of will were properly put in issue by special pleas: at least where not objected to as amounting to the general issue.

IV.

For reasons given none of the notes should have been allowed in evidence, even under the general issue; and pl'ff having declined proof of the death of payee, execution and proof of will, &c., the motion to exclude the notes declared on in special counts should have prevailed, and more especially as all occurred in another State.

COOPER & MOSS,
Attys for Pl'ff in Error.

123 49
Giles vs. Gibson
Jeff's Brief =

Giles May 3. 1864
S. Island MR

IN THE SUPREME COURT OF ILLINOIS.

Third Grand Division.

JOHN G. GRIER, }
vs. } *Ottawa, April Term, A. D. 1864.*
JACOB GIBSON. }

DEFENDANT'S BRIEF.

This, in the court below, was an action by Gibson vs. Grier upon four promissory notes made by Grier to one James Simington, one of which was endorsed to Gibson by Simington in his life time, and the other three by Wesley Shannon, executor of Simington.

I

The court did not err in overruling the motion of defendant below, for continuance for want of copy of notes, sued on because the said notes are each copied *in haec verba* in the respective counts, one, two, three and four of the declaration.

II

The court did not err in overruling motion for continuance for want of copy of endorsements or assignments of said note.

1st. Because in a suit by endorsee against maker, the contract of endorsement is no part of the contract on which the suit is brought. The suit is on the note alone. The endorsement is a contract subsequent to the note to which the maker is not a party, and in which he has no interest. It creates no cause of action against him, but merely as between two-third parties passes the title of an existing cause of action. A different view may be taken in cases of suit by endorsee against endorser.

2nd. Because the only substantial part of the endorsement is the name of the endorser, which is fully written in each of the counts one, two, three and four, and need not be again copied.

Francy vs. True, et al, 26 Ill. 184.

Roberts impleaded vs. Thompson et al, 28 Ill. 79.

III

Demurrer to 2nd, 3rd and 4th counts of declaration was properly sustained. We submit that there is no rule of law or practice which requires the holder of a note endorsed to him by the administrator of the prayer in a suit against the maker, to set up or prove the administration of his endorser, same as if suit were brought by the administrator, and the fact of administration put in issue by plea.

2nd. The demurrer is an attempt to compel an issue upon the validity of the assignment. This can only be done by plea verified by affidavit. Upon this point authorities are cited below.

3rd. We submit that failure to set out copy of instrument sued on is not ground of demurrer to declaration.

4th. By inspection of the declaration it will appear that the said notes were each of them properly set out in the 1st, 2nd, 3rd and 4th counts respectively.

IIII

Demurrer to 1st, 2nd, 3rd and 4th special pleas was properly sustained,

1st. Because the said pleas tender only immaterial issues.

2nd. Because they do not answer any traversable allegation of the declaration.

3rd. Because they attack the genuineness of the assignment of said notes, which can only be done by plea verified by affidavit, and the same is admitted by omission of such sworn plea.

Hunt et al vs. Wier, 29th Ill. 83.

McIntire vs. Preston & al, 5 Gil. 48.

Archer vs. Bogue, 3 Scam 527.

Hudson vs. Dickinson, 12 Ill. 408.

The official or representative character and the agency and authority of persons making assignments in such capacities are admitted, unless denied as required by the 14th section of the practice act, as well as the material act of assigning whatever facts, relative to the execution of a note on which suit is brought, or its assignments, which the common law would require the plaintiff to prove, are held as admitted, under the 14th section of the practice act unless, they are put in issue by the sworn plea.

McIntire vs. Preston, 5 Gil. 64.

Consequently if the issue tendered by the said pleas could be made at all in this case, it could only be done by plea verified by affidavit.

4th These pleas might have all been stricken from the files, and the demurrer was also properly sustained because the facts therein named are alleged of one James Livingston, a person unknown to the transactions in question, instead of James Sinington, thus tendering an entirely immaterial issue. See record page 11, pleas 1, 2, 3, 4.

V

The said notes were properly admissable under the 2nd, 3rd and 4th counts, without proof of any of the said facts relative to the validity of the assignment. The case went to trial upon the general issue only, and even in a suit by an administrator no question as to his administratorship could be raised under the general issue.

McKinley vs. Braden, 1 Scam. 64.

A *fortiori*, none could be raised as to the administratorship of assignor of plaintiff below.

JOHNSON & HOPKINS, & O'BRIEN & CRATTY.

Defendant's Attorneys.

123 49
Grier & Gibson
Defendants
Brief & Argument

plaintiff below.

A Notice was duly served on the administration of
McIntosh & Perkins, & Grant, at
their residence.

The case went to trial upon the general issue only, and even in a suit by an
adversely interested party, the validity of the assignment.

The said notes were properly assigned under the act of 1841 and the
administration of Perkins, & Grant, at
their residence.

The case went to trial upon the general issue only, and even in a suit by an
adversely interested party, the validity of the assignment.

Filed May 16, 1864
S. L. Carter Clerk

STATE OF ILLINOIS, }
SUPREME COURT, }

ss. The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Peoria Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Court of Peoria County, before the Judge thereof, between Jacob Gibson

complainant, and John C. Grier

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

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

Pinckney C. Mason

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this first day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty four.

L. Deland

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



John C. Grier
No. *123* vs. *Jacob Gibson*

WRIT OF ERROR.

FILED *April 1st* A. D. 186*4*

L. Leland

Clerk.

Pleas before the Circuit Court within and for the County
of Peoria in the State of Illinois on the 14th day of March
in the year of our Lord One thousand Eight Hundred and
Sixty four.

Be it Remembered that heretofore to wit on
the 20th day of January A.D. 1864. Jacob Gibson filed in
the Clerk's office of the Court aforesaid a precept in assumpsit
against John L. Grier which is in the words and figures follow-
ing to wit:

Precept
" State of Illinois } Circuit Court
County of Peoria } at Peoria February Term 1864.
Jacob Gibson

vs } Assumpsit
John L. Grier } Damages \$ 1000.00

The Clerk of said Court will please issue
summons in the above cause against the above defendant,
returnable as the law directs.

W. W. O'Brien Atty for plff.

And afterwards on the same day there was issued out of the
Clerk's office of said Court under the seal of said Court a
summons in the above titled cause which is in the words
and figures following to wit:

Summons

" The People of the State of Illinois, To the Sheriff of Peoria

Courtesy Greeting. We command you to summon John L. Grier if he may be found in your County to appear before our Circuit Court on the first day of the term thereof to be held at Peoria within and for the County of Peoria on the first Monday of February next, then and there in our said Court to answer unto Jacob Gibson of a plea of Assumpsit to his damage One thousand dollars as he says, and make return of this writ, with an endorsement of the time and manner of serving the same on or before the first day of the term of said Court to be held as aforesaid. Witness Our Clerk P. Sloan Clerk of our said Court and the seal thereof at Peoria this 20th day of January in the year of our Lord one thousand eight hundred and sixty four.

Enoch P. Sloan, Clerk
pro. J. Newton Dpty.

(Endorsed)

"I have duly served this writ on the within named John L. Grier by reading to him the same January 20th 1864.
John H. J. Murray Sheriff,
by J. M. Guill Dy."

And afterwards to wit on the 21st day of January A.D. 1864 the following declaration was filed in the Clerk's office of said Court in the above entitled cause to wit:

Declaration

"State of Illinois	{	Circuit Court
County of Peoria		To February term 1864.
Jacob Gibson	{	Declaration
John L. Grier		In Assumpsit.

3

Jacob Gibson plaintiff in this suit by
 W. W. O'Brien his attorney complains of John L. Grier defendant
 in this suit of a plea of trespass on the case upon promises,
 For that whereas the said defendant on the tenth day of April
 A.D. 1859 at Danville Penna to wit in the County of
 Peoria aforesaid made his certain promissory note in writing
 in substance as follows to wit: \$ 113 $\frac{97}{100}$ Danville Penna April
 10th 1859. One year after date I promise to pay James Livingston
 one hundred thirteen $\frac{97}{100}$ dollars with interest from date
 (signed) John L. Grier

And then and there delivered the same to one James Livingston
 and then and there became liable and thereupon in consideration
 thereof promised to pay to said James Livingston the sum of money
 therein specified according to the tenor and effect thereof. And the
 said James Livingston then and there indorsed the same instru-
 ment in writing to the plaintiff whereof the defendant then
 and there had notice, and then and there in consideration of
 the promises promised to pay the plaintiff the said sum of money
 in said instrument specified according to the tenor and effect
 thereof. And whereas also the said defendant on the 10th day of
 April 1859 at Danville Penna to wit in the County of Peoria
 aforesaid made his certain other instrument in writing in substance
 as follows to wit: \$ 113 $\frac{97}{100}$ Danville Penna April 10th
 1859. Two years after date I promise to pay to James
 Livingston One hundred thirteen $\frac{97}{100}$ dollars with interest
 from date (signed) John L. Grier.
 And then and there delivered the same to one James Livingston
 in his life time, since deceased. And the said plaintiff

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first, with that heretofore to wit; on or about the 6th day of November A.D. 1857 at and within the County aforesaid the said James Livingston made his last will and testament in writing and thereby then and there made and appointed one Wesley Shannon executor thereof and the said James Livingston afterwards to wit on the day and year last aforesaid at and within the County aforesaid died and thereupon the said Wesley Shannon afterwards to wit: on the day and year last aforesaid at the County aforesaid duly proved the said last will and testament of the said James Livingston deceased and took upon himself the burden of the execution thereof; and the said Wesley Shannon so being executor as aforesaid of the ^{said} last will and testament of the said Livingston deceased, afterward to wit on the day and year last aforesaid at and within the County aforesaid as such executor as aforesaid indorsed the said promissory note to the said plaintiff and then and there delivered the said note so indorsed to the plaintiff whereof the defendant then and there had notice and then and there in consideration of the premises promised to pay to the said plaintiff the said sum of money in the said instrument specified according to the tenor and effect thereof.

3. And whereas also the said defendant on the 10th day of April 1859 at Danville Penna. to wit in the County of Peoria aforesaid made his certain other instrument in writing in substance as follows to wit:

" ~~Three~~ \$113. ⁹⁷/₁₀₀ Danville Penna. April 10th 1859,
" Three years after date I promise to pay James Livingston

5 "One hundred thirteen 97/100 dollars with interest from date
" (signed) John C. Grier

And then and there delivered the same to one James Simington in his life time since deceased and the said plaintiff further saith that heretofore to wit on or about the 6th day of November 1859 at and within the County aforesaid the said James Simington made his last will and Testament in writing and thereby then and there made and appointed one Wesley Shannon Executor thereof and the said James Simington afterwards to wit on the day and year last aforesaid at and within the County aforesaid died, and thereupon the said Wesley Shannon afterwards to wit on the day and year last aforesaid at the County aforesaid duly proved the said last will and Testament of the said James Simington deceased and took upon himself the burden of the Execution thereof, And the said Wesley Shannon to being Executor as aforesaid of the said last will and Testament of the said James Simington now deceased, afterwards to wit, on the day and year last aforesaid at and within the County aforesaid as such Executor as aforesaid indorsed the said promissory note to the said plaintiff and then and there delivered the said note so indorsed to the plaintiff, whereof the defendant then and there had notice and then and there in consideration of the premises promised to pay to the said plaintiff the said sum of money in said instrument specified according to the tenor and effect thereof

H. And whereas also the said defendant on the 10th day of

April 1859 at Danville Penna. to wit in the County
of Peoria aforesaid made his certain other instrument in
writing in substance as follows to wit:

" \$ 113 ⁹⁷/₁₀₀ Danville Penna April 10th 1859, Four years
after date I promise to pay James Limington One hundred
thirteen ⁹⁷/₁₀₀ dollars with int. from date
(signed) John C. Grier.

And then and there delivered the same to one James Limington in his life time since deceased. And the said plaintiff further saith that heretofore to wit on or about the 6th day of November A.D. 1859 at and within the County aforesaid the said James Limington made his last will and testament in writing and thereby then and there made and appointed one Wesley Shannon Executor thereof and the said James Limington afterwards to wit on the day and year last aforesaid at and within the County aforesaid died, and thereupon the said Wesley Shannon afterwards to wit on the day and year last aforesaid at the County aforesaid duly proved the said last will and testament of the said James Limington now deceased and took upon himself the burden of the execution thereof, and the said Wesley Shannon so being executor as aforesaid of the said last will and testament of the said James Limington deceased afterwards to wit on the day and year last aforesaid, at and within the County aforesaid as such executor as aforesaid indorsed the said promissory note to the said plaintiff and then and there delivered the said note so indorsed to the plaintiff, whereof the defendant then and there had notice and then

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and there in consideration of the promises promised to pay to the said plaintiff the said sum of money in said instrument specified according to the tenor and effect thereof

And whereas also the said defendant on the 18th day of January A.D. 1864 and within the County of Peoria aforesaid was indebted to the said plaintiff in the sum of One ~~hundred~~ thousand dollars for the price and value of goods then and there sold and delivered by the plaintiff to the defendant at his request.

And in the sum of One thousand dollars for the price and value of work then and there done and materials for the same provided by the plaintiff for the defendant at his request.

And in the sum of One thousand dollars for money then and there lent by the plaintiff to the defendant at his request.

And in the sum of One thousand dollars for money then and there paid by the plaintiff for the use of the defendant at his request.

And in the sum of One thousand dollars for money then and there received by the defendant for the use of the plaintiff.

And in the sum of One thousand dollars for money found to be due from the defendant to the plaintiff on an account then and there stated between them.

And whereas the defendant afterwards to wit: On the day and year last aforesaid at and within the County of Peoria aforesaid in consideration of the promises

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respectively then and there promised to pay the said last-mentioned several moneys respectively to said plaintiff on request. Yet the said defendant has disregarded his promise and has not paid any of the said moneys in this declaration mentioned ~~mentioned~~ or any part thereof to the damage of the said plaintiff of One thousand dollars and therefore he brings this suit &c

W. W. O'Brien
Atty for plaintiff.

Jacob Gibson

vs

John C. Grier

As Circuit Court

February Term 1864,

Copy of the Account mentioned in the foregoing declaration.

John C. Grier debt. Dr.
To Jacob Gibson Plff.

" Amount of prom note	\$ 1000.00
" Interest thereon	1000.00,
" Goods wares and merchandise	1000.00
" work labour & mals.	1000.00
" Money lent	1000.00
" Money paid	1000.00
" Money received	1000.00
" Money due on ac. stated	1000.00

The defendants will take notice that correct copies of the notes mentioned and used in the 2d 3d & 4th counts of the foregoing declaration are set out therein

C. Boies & Gratty Atty for plff.

9

And afterwards to wit on the 4th day of February AD, 1864 the defendant filed his demurrer in the Clerk's office of said Court in the above entitled suit in words & figures following to wit;

Demurrer

" Jacob Gibson vs. John C. Grier
In the Circuit Court of Peoria County Illinois
To February term 1864

And the said defendant by Cooper & Moss his Atty comes and defends the wrong and injury whereof and says that the second third and fourth counts therein contained in the manner and form as the same are above stated and set forth are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant, and he the said defendant is not bound by law to answer the same, and this he is ready to verify, wherefore by reason of the insufficiency of the 2^d, 3^d & 4th counts of the said declaration in this behalf the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against him.

For that the said plaintiff hath not brought the said letters testamentary nor probate into Court or made any proof thereof and because the said defendant in the manner the said Probate and letters testamentary are above pleaded, know whether letters testamentary have been issued, And also the said 2^d, 3^d & 4th

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 The counts of said declaration are in other respects uncertain informal and insufficient.

Cooper & Moss,

Atty for deft.

And for further special cause of demurrer deft. says a copy of the instruments sued on was not filed in said cause ten days before ~~before~~ commencement of term nor are they now filed
 C. & Moss atty for deft.

And afterwards to wit on the 11th day of February A.D. 1864 the defendant filed in the above cause the following plea to wit,

Plea

Jacob Gillen

vs.

John C. Green

In the Circuit Court of Peoria County
 Illinois

To February term 1864.

And the said defendant by Cooper & Moss his attys comes and defends the wrong and injury when &c and as to the first special count and the common counts of the said declaration ^{mentioned} says that he did not undertake or promise in manner and form as the said plaintiff hath above in these counts complained against him and of this he puts himself upon the Country &c,
 Cooper & Moss
 Attys for deft.

And the said plaintiff doth the like by
 W. W. O'Brien his Atty.

And afterwards to wit on the 8th day of February A.D. 1864 the defendant filed in the Clerk's office of said Court the following pleas in the above entitled cause to wit:

Pleas

J. Jacob Gibson } In the Circuit Court
vs } of Peoria County Ill.,
John C. Grier } 1st January term 1864,

And now comes the said defendant by Cooper & Moss his attys and defends the wrong and injury when &c. and as to the 2nd, 3rd & 4th Special Counts of the said declaration mentioned says that he did not undertake or promise in manner and form as the said plaintiff have above in these counts complained against him and of this he puts himself upon the County &c.

Cooper & Moss Attys for deft.

And the said plaintiff doth the like

W. W. O'Brien Atty for plaintiff

1. And for a further plea in this behalf leave of the Court first having been obtained defendant says actio non as to the 2d, 3d & 4th Special Counts of the said declaration because he says that heretofore to wit on or about the 6th day of November A.D. 1859 at and within the County aforesaid one James Livingston did not make his last will and testament and thereby then and there appoint one Wesley Shannon executor thereof as in said Counts alleged and of this he puts himself upon the County.
Cooper & Moss Attys for deft.

2. And for a further plea in this behalf defendant by like - obtained says actio non as to the 2d, 3d & 4th Special Counts of said declaration because he says that the said Wesley Shannon heretofore to wit on the 6th day of November A.D. 1859 at the

County aforesaid did not duly prove the said last will and testament of the said James Livingston deceased and take upon himself the burden of the execution thereof as said plaintiff hath in the 2^d, 3^d, & 4th Counts of his said declaration alleged and of this he puts himself upon the Country &c.

Cooper & Moss attys for defendant;

3. And for a further plea in this behalf defendant by like leave says *actio non* as to the 2^d, 3^d, & 4th special Counts of said Plffs. declaration because he says that heretofore to wit on 6th day of November A.D. 1859 at and within the County aforesaid the said James Livingston did not die as said plaintiff hath in the 2^d, 3^d, & 4th Counts of his said declaration alleged and of this he puts himself upon the Country &c.

Cooper & Moss. Attys for deft.

4. And for a further plea in this behalf defendant by like leave says *actio non* as to the 2^d, 3^d, & 4th Counts of said plaintiffs declaration because he says that the said James Livingston did not by his last will and testament make and appoint one Wesley Shannon executor thereof as said plaintiff hath in the 2^d, 3^d, & 4th Counts of his said declaration alleged and of this he puts himself upon the Country &c.

Cooper & Moss Attys for deft.

And afterwards to wit on the 8th day of February A.D. 1864 the plaintiff filed in said Clerk's office in the above entitled cause his demurrer to defendants pleas as follows to wit.

Demurrer to Jacob. Gibson } Circuit Court
1st 2nd 3rd 4th pleas vs. } Peoria County
 123 John C. Grier } Feb. Term 1864.

And the said plaintiff by W. W. O'Brien
 his attorney comes and demurs to the the 1st 2nd 3rd 4th ^{pleas} special
 of the said defendant herein for the following ^{among other} reasons to wit:

1. Said pleas do not nor does any of them present any legal issue to said plaintiff.
2. Said Pleas do not nor does any of them legally answer said plaintiff's declaration or any part or count thereof.
3. The issue presented by said pleas and each and every of them are immaterial and ought not be answered or replied to by said plaintiff.

W. W. O'Brien Atty for plff.

And afterwards to wit on the 23rd day of February A.D. 1864
 there ^{was} filed in the clerk's office of said Court a Bill of exceptions
 in the above entitled cause in the words and figures following
 to wit:

Bill of exceptions "Jacob Gibson } In the Circuit Court Peoria County Illinois
 vs. } February term A.D. 1864.
 John C. Grier }

Be it Remembered that on the coming on
 of this cause to be heard on the motion of said def^t for a continuance
 of said cause filed herein on the 2nd day of February A.D. 1864, in
 words and figures following to wit:

motion for "Jacob Gibson } In the Circuit Court of Peoria County Ills.
 continuance vs. } So February term 1864.
 John C. Grier }

And now comes the said deft. by Cooper & Moss his atty and moves for a continuance of said case for reasons following

1. Said declaration does not set out any copies of the assignment of said notes in suit. The Court overruled said motion and refused to continue said cause to which decision of said Court in overruling said motion & refusing to continue said cause & said defendant by his counsel then & there excepted, and ^{afterwards} ~~defendants~~ to wit on the 9th day of February A.D. 1864, said cause coming on again ~~to be heard~~ for further hearing upon the further motion of said defendant for continuance entered herein on the 6th day of said month of February 1864, in words and figures following that is to say:

" Jacob Gibson

vs.

John L. Grier

} Assumpsit.

And now comes the said defendant by his attorneys and moves the Court for a ~~new trial~~ continuance of this cause because there are no copies of the note sued upon set out in the declaration or filed in this cause.

Whereupon the said plff. by his counsel asked and obtained leave of Court against the objections of the defendant to file the following stipulation in writing viz:

" The defendant will take notice that correct copies of the notes mentioned and sued on in the 2nd 3rd & 4th counts of the foregoing declaration are set out therein "

And thereupon the Court overruled said motion of deft for continuance, to which said ruling of said Court last named is allowing said entry to be made & overruling said motion

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I refusing to continue said cause said defendant by his counsel, then and there again excepted and prays that this his bill of exceptions may be signed and sealed by the Court, which is done.
 M. Williamson ~~Esq~~ Judge

Proceedings at a term of the Circuit Court began and held at the Court house in and for the City and County of Peoria and State of Illinois on the first Monday in the month of February in the year of our Lord one thousand eight hundred and sixty four it being the first day of said month. Present the Honorable Marion Williamson Judge of the 16th Judicial Circuit in said State, John B. J. Murray Sheriff and Enoch P. Sloan Clerk to wit:
 Wednesday February 3rd A.D. 1864.

Jacob Gibson
 vs. Assumpsit.
 John B. Grier

This day this cause came on to be heard on motion for continuance for reasons on file and the Court being fully advised overruled said motion.

Saturday February 6th A.D. 1864.
 Jacob Gibson
 vs. Assumpsit
 John B. Grier

This day this cause came on to be heard on the demurrer of defendant to 2^d, 3^d & 4th special counts in plaintiff's declaration, and the Court being fully satisfied in the premises overruled said demurrer. On motion defendant

has leave to plead by 11 o'clock next Monday morning.

Tuesday February 9th A.D. 1864.

Jacob Gibson

vs.

John C. Grier

} Assumpsit

This day come defendant by Moss his attorney and moved the Court to continue this cause because the notes sued on are not copied in the declaration and on consideration the Court overruled said motion.

Tuesday February 23rd 1864

Jacob Gibson

vs.

John C. Grier

} Assumpsit

This day this cause come on to be heard on Plaintiff's demurrer to defendant's 1st 2^d 3^d & 4th ^{Special} pleas and the Court being fully advised in the premises do sustain said demurrer.

Wednesday March 2nd A.D. 1864

Jacob Gibson

vs.

John C. Grier

} Assumpsit

This day come plaintiff by O'Brien and the defendant by Hooper & Moss his attorneys and waive trial by jury and agree that all matters of law and fact arising in this cause shall be tried by the Court, and the Court having heard the evidence &c. in the case and not being fully advised in the

17 promises takes time to consider.

Thursday March 3rd A.D. 1864

Jacob Gibson

vs.

John C. Grier

} Assumpsit

This day came the parties to this suit by their attorneys and the Court now being fully advised in the premises do find for the plaintiff and assess the damages at the sum of Five hundred and eighty seven dollars and eighty eight cents.

Friday March 11th A.D. 1864,

Jacob Gibson

vs.

John C. Grier

} Assumpsit

This day came the parties to this suit by their respective attorneys, and it is considered by the Court that the motion for a new trial entered herein be overruled, and it is further considered by the Court that the said Jacob Gibson have and recover of the said John C. Grier the said sum of five hundred and eighty seven dollars and eighty eight cents, his damages aforesaid and also his costs and charges by him about his suit in that behalf expended and that he have execution therefor.

And afterwards to wit on the fifth day of March A.D. 1864 There was filed in the Clerk's Office of said Court a Bill of exceptions in the above cause which is in words & figures as follows to wit:

Bill of Exceptions

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" Jacob Gibson
vs
John C. Grier

In the Circuit Court -
February Term A.D. 1864,

Be it Remembered that on the coming on
of this cause for trial before the Court a jury being waived
by the parties, the plaintiff to maintain the issues on his part
offered in evidence the following described notes with the en-
dorsements thereon under the 1st 2nd 3rd & 4th Special Counts
of said declaration respectively viz:

"\$113. $\frac{97}{100}$

Danville Penna. April 10th 1859

One year after date I promise to pay James Simington One
hundred thirteen $\frac{97}{100}$ dollars with interest from date.

John C. Grier.

(Endorsed)

"Pay Jacob Gibson or order

James Simington"

"\$113 $\frac{97}{100}$

Danville Penna. April 10th 1859,

Two years after date I promise to pay James Simington One
hundred thirteen $\frac{97}{100}$ dollars with interest from date.

John C. Grier"

(Endorsed)

"Pay to the order of Jacob Gibson.

W. Shannon Ex. of J. Simington"

"\$113. $\frac{97}{100}$

Danville Penna. April 10th 1859

Three years after date I promise to pay James Simington One
hundred thirteen $\frac{97}{100}$ dollars with interest from date.

John C. Grier"

(Endorsed)

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"Pay to the Order of Jacob Gibson,

Wesley Shannon, Exr. of J. Simington"

"113 $\frac{27}{100}$ "

Danville Penna April 10th 1859

Four year after date of promise to pay James Simington One hundred thirteen $\frac{27}{100}$ dollars with int. from date.

John L. Greer "

(Endorsed)

"Pay to the order of Jacob Gibson,

Wesley Shannon Exr. of J. Simington, "

To the reading of which said notes and endorsements, and each of them as offered in evidence the defendant by his counsel then and there objected, the plaintiff by his counsel then and there stating to the Court that he did not expect to introduce any further or other evidence than said notes and endorsements to sustain his right to sue and recover thereon, whereupon the Court overruled the said objections of said defendant, as made and permitted said notes and said endorsements to be read in evidence without further proof. To which said several decisions of the Court in overruling said objections and permitting said several notes and said endorsements unsupported by further proof to go in evidence, the defendant by his counsel then and there excepted. This was all the evidence in the case, and thereupon the defendant asked the Court to disregard said notes offered and read in evidence under said 2nd. 3rd & 4th Counts of said declaration to find the issues on said Counts for the defendant. But the Court refused said application, and proceeded to find for plaintiff upon all said Counts and the defendant by his counsel then and there excepted.

Said defendant thereupon moved the Court to set aside said finding and in arrest of judgment and for a new trial of said cause in words and figures as follows viz:

- 1st. The notes offered in evidence by said plff. were improperly admitted by the Court,
 - 2d. There is not sufficient evidence in the case to authorize any judgment for the plff. on the 2d 3d & 4th counts or upon the Common counts & said plffs declaration,
 - 3rd. The finding of the Court is against the law & the evidence in the case,
 - 4th. The Court erred in sustaining the demurrers of the plff. to the 1st 2d 3d & 4th. Special pleas of the deft.
- Wherefore & for other good ^{& sufficient} reasons defendants moves for a new trial &c as above.

Which said motion was then and there overruled by the Court and the said Court proceeded to render judgment for the amount so found by the Court in favor of said plaintiff and against said defendant. To which last decisions of the Court in overruling said motion and rendering judgment as aforesaid against said defendant and in favor of said plaintiff, said defendant by his counsel then and there again excepted and prays that his Bill of exceptions may be signed sealed and made of record by the Court which is done.

M. Williamson Esq. Judge



State of Illinois }
 Peoria County } ss. Enoch P. Sloan, clerk of the
 Circuit Court within and for the County of Peoria in

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the State of Illinois do hereby certify that the foregoing is full complete and correct Record of all the papers filed & proceedings had in our said Court in a certain suit therein pending wherein Jacob Gibson is plaintiff and John C. Grier is defendant as the same remain on file & of record in my office.



Witness Enoch P. Sloan,
Clerk of the said Circuit Court
with the seal thereof hereunto
affixed at office in Peoria this
28th day of March A.D. 1864.
Enoch P. Sloan Clerk
per Newton D. Dwyer

John C. Grier	}	Error to Peoria County =
Plff in Error		
vs.	}	In the Supreme Court,
Jacob Gibson		
Def in Error	}	3 ^d Grand division =
		April Term A.D. 1864 =

And now comes the said John C. Grier, Plaintiff in Error in this Cause and says that manifest Error in the Record, proceedings & judgment of said Circuit Court in said Cause hath intervened in this, To Wit:

1st Said Court erred in overruling the ^{said} motions of said defendant below, ^{and each of them} for a continuance of said Cause =

over

2nd Said Court erred in ~~overruling~~^{sustaining} the demurrer of the plaintiff below to the pleas filed by said defendant below to the 2nd, 3rd & 4th Special Counts of said Plaintiff's declaration =

3rd Said Court erred in permitting the entry or filing by plaintiff below of the said stipulation or amendment at the foot of his said declaration =

4th Said Court erred in permitting said several notes & each of them, to be read in evidence on the trial of said cause =

5th Said Court erred in overruling the Motion of Dept below to exclude said notes offered & read in evidence under said 2nd, 3rd & 4th Special Counts of said declaration =

6th The finding and judgment of said Court in said cause were erroneous =

7th Said Court erred in refusing to allow the Motion of Dept below to set aside said finding, in arrest of judgment, and for a new trial of said cause =

8th Said Court erred in rendering judgment for said party below

Wherefore and for other good & sufficient reasons appearing in said Record, the plaintiff in error prays that the judgment

of said Circuit Court herein, may be set aside
reversed and wholly for naught & deemed
Cooper & Mags
for pepping in error

And the Defendant comes and says there
is not error intervening in the record
as above alleged and he therefore
prays that the ^{said} judgment be affirmed
By Johnson & Brinn & Gately
Counsel for Defendant

John C. Grier¹²³⁴⁹
as
Jacob. Gibson

Record & Errors

Filed April 1st 1884
L. Lett
Black

Fees \$6.00

Paid by Plff in Error
E. P. Sloan clerk
for Inverness, Ill.