

14329

No. _____

Supreme Court of Illinois

Lord

vs.

Favorite

71641  7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

14379

No. 192.

Land

Favorable

1862

Murphy

SUPREME COURT.

STATE OF ILLINOIS.

APRIL TERM, 1862.

THOMAS LORD and LAFAYETTE H. SMITH, Appellants,

vs.

SAMUEL FAVORITE, Appellee.

APPEAL FROM SUPERIOR COURT OF CHICAGO.

1 This is a suit by Favorite, as endorsee of the note of Lord and Smith, appellants, dated 19th April, 1861, payable to order of Wahl Brothers, two months after date, for \$589, and endorsed in blank by "Wahl Bros."

6 The defendant plead the general issue, and gave notice as follows :

"Take notice, that the above named defendants, on the trial of this cause, will give in evidence, and insist that, at the time when the note sued upon in this cause, became due and payable, and for a long time before, and for a long time thereafter, it was the property of Francis A. Hoffman, Otto Gelpeke, and Alexander Siller, doing business in the City of Chicago, under the name and style of Hoffman & Gelpeke, and in their actual possession and control; and on the day of payment of said note, and while the same was still owned and possessed by the said Hoffman & Gelpeke, the said defendants, then being, and for a long time before, having been the owners, and having the actual possession of a certain

paper, commonly called a certificate of deposit, in words and figures substantially as follows, to-wit :

Hoffman & Gelpcke,
BANKERS.

\$ 740 ³⁷/₁₀₀ Chicago, April 22nd, 1761. No. 27291.

Buell, Hill & Granger have deposited with us Seven Hundred and forty and Thirty-seven One-hundredth Dollars, in Currency, payable on return hereof to the order of J. H. Lester.

HOFFMAN & GELPCKE.

Endorsed as follows :

Pay Buell, Hill & Granger, or order.

J. H. LESTER.

Pay Lord & Smith, or order.

BUELL, HILL & GRANGER.

Under and by virtue of which said certificate, and the said endorsements, the said defendants were entitled to have and demand of said Hoffman & Gelpcke, the said sum of \$740 and thirty-seven one-hundredth, and that sum being then and there due to said defendants, from the said Hoffman & Gelpcke, the said defendants then and there applied to the said Hoffman & Gelpcke, and showed them the said certificate, so as aforesaid endorsed, and offered and demanded to surrender the same to them, and apply the same or so much thereof, as might be necessary to pay the said note, which the said Hoffman & Gelpcke refused to allow. And these defendants will further prove, that the said plaintiff took or procured the said note from the said Hoffman & Gelpcke long after the same became due and payable, and after the right of said defendants had accrued; and that the said Hoffman & Gelpcke now do, and have ever since that time, owed the said sum of seven hundred and forty and thirty-seven one-hundredth dollars to the

said defendants, which sum is still due and unpaid, and that the said defendants will set off and allow, on the trial of this cause, so much of the said sum of seven hundred and forty and thirty-seven one-hundredth dollars, against the said demand of the said plaintiff on said note, as will be sufficient to satisfy and discharge the same, according to the form of the statute, in such case made and provided.

And the said plaintiff will take further notice, that on the trial of this cause, the said defendants will prove and insist, that whatever right the said plaintiff has in said note, if he has any right therein, was acquired after the same became due, and that at the time when the same so became due, and while the same was the property of Hoffman & Gelpcke, through whom the said plaintiff procured the same, the said Hoffman & Gelpcke were and ever since have been, and still are indebted to the said defendant in the further sum of seven hundred and forty dollars and fifty-seven cents, upon a certain certificate, commonly called a certificate of deposit, becoming due the 22d day of April, A. D. 1861, and payable in currency, on the return of said certificate to the order of J. H. Lester, and duly endorsed to the said defendant before the day of the payment of said note; and that the said defendant will set off and allow on the trial hereof, so much of the said sum as will be sufficient to satisfy and discharge such demand, according to the form of the statutes in such cases, made and provided."

11 On the trial the plaintiff read in evidence the following note, and rested his case:

CHICAGO, April 18, 1861.

Two months after date, we promise to pay to the order of Wahl Brothers, five hundred and eighty-nine dollars, at Western Marine Bank, value received.

LORD & SMITH.

Endorsed, WAHL Bro's.

The defendant then called A. G. Smith, and offered to prove by him and another witness, all the facts set forth in the notice ; and also offered the certificate of deposit, mentioned in the notice, and that on the day the defendant offered to Hoffman & Gelpcke as set out in the notice, there was posted in their (H. & G.'s) bank a notice that bills of all Illinois bank would be taken in payment of notes due them.

The testimony was objected to by plaintiff, and objection was sustained by the Court, and defendants excepted.

The jury then found a verdict for plaintiff, for \$606.08, being twenty-four cents in excess of the principal and interest on the note.

The defendant moved for a new trial on following grounds :

- 1st. Court improperly excluded testimony offered by defendants.
- 2nd. The verdict was against the evidence.
- 3rd. The damages are excessive.

The motion was overruled and judgment entered for amount of verdict, and appeal taken.

ERRORS ASSIGNED.

1. That the Court below erroneously excluded the testimony of the defendants.
2. That the verdict was for more than the amount of the note and interest.

H. B. HURD,
Attorney for Appellants.

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Supreme Court

Thomas Lord and
Lafayette H. Smith
Appellants

vs.

Samuel Favorite
Appellee

Abstract

Filed April 30th 1862

L. Leland

Clerk.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

LAFAYETTE H. SMITH and }
THOMAS LORD }
vs. }
SAMUEL FAVORITE. } BRIEF.

This is a suit by Favorite, as endorsee of the note of Lord and Smith, appellants, dated 19th April, 1861, payable to order of Wahl Brothers, two months after date, for \$589, and endorsed in blank by "Wahl Bros."

The defendants below, Lord & Smith, filed a notice with the general issue, that upon the trial, they should prove, substantially, the following facts: That soon after the note was given, it was sold to Hoffman & Gelpcke, bankers, and at the time it became due, and for some time afterwards, *belonged to them*, and was in their actual possession; that *on the day their note became due and payable*, Lord & Smith, having and owning Hoffman & Gelpcke's certificate of deposit for \$740.37, payable on return of the certificate, applied to Hoffman & Gelpcke, and showed them the certificate, and offered and demanded to surrender the same to them, and apply the same, or so much as might be necessary to pay their note, which they refused to allow; that Favorite took the note of Hoffman & Gelpcke, *long after it became due and payable*. The notice further claims right to set off the certificate of deposit against the note.

On the trial, the defendants offered to prove the contents of their notice, and that at the time referred to, Hoffman & Gelpcke advertised that they would take currency in payment of notes due them.

The Court refused to hear any testimony in support of the notice, on the ground that the defendants could have no defense as against the assignee.

The judgment was rendered for sixty cents more than the principal and interest of the note. This was made a point on motion for new trial below, and the plaintiff did not enter a remittiter.

We make the following points:

I.

The tender by Lord & Smith to Hoffman & Gelpcke of their certificate of deposit, on the very day the note was due, showing the funds in their hands sufficient to pay their note, should be considered as a payment.

II.

The 9th sec. of chap. 63, Revised Statutes, '45, provides that "if any note be endorsed after the day on which it becomes *due and payable*, the maker shall be allowed to set up the same defense as if the action had been brought in the name of the party to whom the note was originally *made due and payable*."

The note was made payable to *the order* of Wall & Bro., and they ordered it to be paid to Hoffman & Gelpcke, in whose hands it fell due. It therefore was *made due and payable* in the first instance, *originally*, to them. They are the only persons that sustained the character mentioned in the statute, viz.: "The person to whom the note was originally *made due and payable*." It never was due to Wall & Bro., and never payable to them. It was both *due and payable* to Hoffman & Gelpcke.

The case of *Root vs. Irwin*, 18 *Ill.*, 147, was not such a case as the present. We have no fault to find with the decision, as applied to that case. It was undoubtedly right on the case made, but there is a clear distinction between that case and this, both with reference to its equities and the application of the provisions of the statute.

III.

Under a statute like ours, providing for set-offs between parties to the suit, it was held by Justice Beardsley, in *Bridge vs. Johnson*, as follows:

"All set-offs not growing out of contracts or dealings between the immediate parties to the suit, are a departure from the letter, and are admitted under the equity of the statute. Now, in regard to promissory notes, the books are full and uniform, that where a note is negotiated after it is due, its non-payment is a *suspicious* circumstance; it is dishonorable; and the endorsee or purchaser takes it *wholly on the credit of the endorser, payee, or seller, and subject to all the equities that existed against him*. . 4 *Mass. R.*, 372; *Chitty on Bills*, 98, 119; 1 *Camp.*, 383, 3 *T. R.*, 81; 2 *Caines*, 372. Taking it wholly on the credit of the assignor, or seller, and not on the credit of the maker, the purchaser stands in the relation of an assignee of a chose in action. If, therefore, a dishonored note has passed through half a dozen hands before it comes to the plaintiff, with each of whom the makee has had dealings, and has a balance due him from each, I think, under the equity of the statute, the plaintiff would be considered the representative of all through whose hands the note has passed after due, and the maker might avail himself of all these set-offs against the note when sued by the holder."

Bridge vs. Johnson, 5 *John.*, 356. *Driggs vs. Rockwell*, 11 *John.*, 510.

IV.

It is true the excess of damages is but small, yet the plaintiff below should not be allowed to insist upon his verdict. If the Court has any discretion, where shall the limit be? If he is allowed to remit here, it should certainly be on terms—payment of all costs.

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Smith

As

Favorite

Brief

Filed Apr. 29, 1862

J. Selma

clerk

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192

Smith

As

Favorite

Brief

Filed Apr. 29, 1862

J. Selman

clerk

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Jameson & Morse, Printers, Chicago.

SUPREME COURT.

APRIL TERM, 1862.

THOMAS LORD
AND
LAFAYETTE H. SMITH } *Appeal from Superior Court of Chicago.*
vs.
SAMUEL FAVORITE. }

BRIEF FOR APPELLEE, BY ARRINGTON & DENT.

The action, in the Court below, was founded upon a note of the following tenor:

“\$589 $\frac{9}{100}$.”

CHICAGO, April 19th, 1861.

Two months after date, we promise to pay to the order of Wahl Brothers five hundred eighty-nine $\frac{9}{100}$ dollars, at Western Marine Bank, value received.

(Signed) LORD & SMITH.”

This note, being indorsed in blank by the payees, was put in circulation, and after one or more intermediate transfers by delivery, came into the hands of the appellee, who instituted suit thereon against the appellants.

The defense set up, by notice of set-off under the general issue, was briefly this:

“That when the note became due, it was the property of Hoffman & Gelpcke, bankers, in Chicago, and that Lord & Smith then held a certificate of deposit, issued by Hoffman & Gelpcke, of the following tenor:

Hoffman & Gelpcke,
Bankers.

\$740⁵⁷.

CHICAGO, April 22d, 1861. No.

Buel, Hill & Granger have deposited with us seven hundred forty $\frac{57}{100}$ dollars, in currency, payable on return hereof, to the order of J. H. Lester.

(Signed) HOFFMAN & GELPCKE.

On this certificate were two indorsements:

1. "Pay Buel, Hill and Granger, or order."
(Signed) J. H. LESTER.
2. "Pay Lord & Smith, or order."
(Signed) BUELL, HILL & GRANGER.

The notice under the general issue further alleges, "that Lord and Smith, at the maturity of their note, applied to Hoffman & Gelpcke, and showed them such certificate, and offered and demanded to surrender the same, and to apply the same, or so much thereof as might be necessary, to pay the said note; which Hoffman & Gelpcke refused. And also that Favorite took the note after its maturity.

Upon the trial, Lord & Smith tendered evidence to sustain the allegations made in their notice; and also offered to prove that at the maturity of the note, at the time of said offer to return the certificate, Hoffman & Gelpcke had posted up in their bank a notice that bills of all *Illinois banks* would be taken in payment of notes due them. The evidence was objected to by Favorite, and the objection was held good by the court.

From this statement, it is obvious that the principal question in controversy is purely legal, viz: "In an action by the final indorsee against the maker of a note, can the defendant plead a set-off against one of the intermediate indorsers."

But the question is not subject to discussion in this court. It was decided in the negative in the case of *Root vs. Irwin*, 18 *Ill.*, 147, where it is expressly ruled, and in the clearest manner, "that the claim interposed by way of set-off, must be one against the plaintiff in the action, or against the payee of the note." And after citing the statute on the subject, Judge Caton says: "Surely, there is no mistaking the meaning of this statute."

It was a question depending upon statutory law, and the ruling just cited involved a construction of both the 19th § of chap. 83 of the Rev. Stat. of 1845, and the 8th § of chap. 73 of the same statutes.

The English rule is thus stated : "A party taking an overdue bill or note, takes it subject to the equities to which the party delivering the paper to him was subject, but with this restriction, *that the equities must be such as arise out of the bill or note transaction itself*, and hence he is not subject to a set-off in respect to a debt due from the indorser to the maker of the note arising out of collateral matters."

Chitty on Bills, 12th Am. ed., p. 220.

Burrough vs. Moss, 10 B. & C., p. 558.

5 M. & R., p. 296.

This is equally fatal to the appellants.

In the second place, it may be remarked, that the claim of Lord & Smith against Hoffman & Gelpcke does not appear to have been in a condition to constitute the subject of a set-off, even if the note had been sued by the latter. To be a matter of set-off, a debt must be completely due and in arrear at the bringing of the action. (1 *Chit. Pl.*, 572.) But the certificate was not due before demand of payment, and the notice does not allege any such demand, nor was there any offer of proof to that effect. The only demand pretended was to return the certificate and apply it or so much thereof as might be necessary to pay the note. Thus Hoffman & Gelpcke refused to take a certificate payable in currency for a note for specie.

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Lord & Smith v. Favorite.

Brief for appellee.

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Filed May 6, 1842

J. J. Calver
Clerk

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Arrington & Dent,
for appellee

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

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

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

Wm H. Higgins and Geo. Goddard Judges. }

Charles H. Owen Prosecuting Attorney.

Anthony C. Keeping Sheriff of Cook County.

Attest, Thomas B. Carter Clerk.

Be it remembered that writs were taken out the Eighteenth day of July in the year of our Lord One thousand eight hundred and sixty One. Samuel Harris Plaintiff by his Attorneys filed in the Office of the Clerk of said Superior Court of Chicago his certain Declaration of a Plea of trespass on the case upon promise in the words and figures, following to wit,

State of Illinois County of Cook SS

Superior Court of Chicago
Of the August Term 1861

Samuel Harris Plaintiff in this suit by Attorney and his Attorneys Complain of Thomas Ford and Labaythe H Smith who are partners under the name of Ford & Smith Defendants who are summoned &c of a plea of

trespass on the case or promise; And that whereas the
 said Defendants heretofore to wit; on the 19th day of April
 in the year of our Lord One thousand eight hundred and
 sixty one at Chicago, to wit at said County of Cook made
 their certain Promissory Note in writing bearing date the
 day and year aforesaid and then and there delivered
 the same to Wahl Brothers in and by which said Note
 said Defendants by the name state and description
 of Lord Smith promised to pay to the order of the said
 Wahl Brothers two months after said date Five Hundred
 and Eighty nine Dollars, at Western Marine Bank
 value received. And the said Wahl Brothers to whom
 or to whose order said Note was payable afterwards
 by the name of Wahl Bros to wit on the day and year
 aforesaid at Chicago that is to say at the County of
 Cook aforesaid endorsed said Note in writing by which
 said endorsement the said Wahl Bros then and there
 ordered and appointed the said sum of money in said
 Note mentioned to be paid to said Plaintiff, and then
 and there delivered said Note, so endorsed to the said
 Plaintiff. By means whereof, and by force of the statute
 in such case made and provided the said Defendants
 became liable to pay said Plaintiff said sum of money
 mentioned in said Note and being so liable and conducted
 thereof then and there undertook and promised to pay the
 same to the said Plaintiff according to the tenor and
 effect of the said Note, and of the endorsement aforesaid
 to wit at the place aforesaid;

And whereas also the said Defendants afterwards to wit
 on the 17th day of July in the year of our Lord One thousand
 eight hundred and sixty one to wit at said County became
 and were indebted unto the Plaintiff in a large sum of
 money to wit Eight Hundred dollars for money before

that sum lent and advanced to said Defendants
by said Plaintiff at said Defendants request; and
also in the like sum for money before that time paid laid
out and expended for said Defendants by the said
Plaintiff, at the like special request of said Defendants
and in the like sum for money before that time had,
and received by said Defendants to and for the use of
said Plaintiff; and also in the like sum for goods wares
and merchandise before that time sold and delivered
by said Plaintiff to said Defendants, at the like
special instance and request, and also in the like
sum for the labor care and diligence of said Plaintiff
before that time done and performed by said Plaintiff
for said Defendants and at the like instance and
request of said Defendants; and also in the like sum
then and there found to be due and owing to said
Plaintiff, on an account stated between them; and
being so indebted said Defendants in consideration
thereof then and there understood and promised to pay
said Plaintiff said several sums of money above
mentioned, when thereunto afterwards requested,
yet the said Defendants not regarding their said
promised and undertakings, but continuing & attempts
often requested to be paid said Plaintiff
either of said sums of money above mentioned in any
part thereof, but to do so have utterly wholly neglected
and refused, and still do neglect and refuse to the damage
of said Plaintiff of eight hundred Dollars and therefore
he brings this suit &c

Attest & Seal
Plaintiff's Attorney

Copy of Instrument and Account and Ob
of 559.400

Chicago April 19th 1864

Two Months after date we promise to pay to the
order of Wash Brothers Five Hundred & Eighty
Nine ⁰⁰/₁₀₀ Dollars at Western Marine Bank
value received

(signed)

Lord & Smith

Edmond Wash Bros

Lord & Smith

To Cash Favorite Dr

To money sent and advanced	\$ 800
To money paid laid out and expended	\$ 800 -
To money had and received to and for the use of said Plaintiff	\$ 800 -
To goods ware and Merchandise sold and delivered	\$ 800,
To labor and services	\$ 800,
To balance due on account stated	\$ 800,
" Amt of your Note to Wash Bros	800

And thereupon was issued out of said Court the
People's Writ of Summons under the seal of said Court
in the words and figures following to wit,

State of Illinois County of Cook ss

The People of the State of Illinois to the
Sheriff of said County greeting.

We command you that you summon Thomas
Lord and La Fayette H Smith partners or
if they shall be found in your County personally

To do and appear before the Superior Court of Chicago
of said Cook County on the first day of the next
Term thereof to be holden at the Court House in
Chicago in said Cook County on the first Monday
of August next to answer unto Samuel Harris
in a plea of trespass on the case upon premises
to the damage of the said Plaintiff as is said
in the sum of Eight Hundred Dollars,
And have you then and there this writ with
an endorsement thereon in what manner you
shall have executed the same,

Witness Walter Kimball Clerk of our
Said Court and the seal thereof
at Chicago of said this 18th day of
July A.D. 1861
Walter Kimball Clerk

And afterwards writ on the twenty fourth day of
July A.D. Eighteen Hundred and sixty one the writ
of summons aforesaid was duly returned with an
endorsement thereon in words and figures following
to wit,

Served by reading the within writ to the within
named defendants, the 24th day of July 1861.

Anthony C. Keeping Sheriff
by John W. Nelson Deputy

And afterwards writ on the 24th day of August in the
year last aforesaid, the said defendants by their attorney filed in the
office of the Clerk of said Court, a certain plea therein of and in
the words and figures following to wit,

Superior Court of Chicago
August Term AD 1861

Samuel F. Swift

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Thomas Lord and
Sabazette H. Smith

And the said defendants by
A. B. Hunt their atty comes and defends the wrong
& injury when & and say they did not undertake
and promise in manner and form as the said
plaintiff hath above thereof complained against
them and of this they put themselves upon the country &c
A. B. Hunt
Atty for defts

Mr Samuel Swift Plaintiff in the above entitled
Cause

I take notice that the above named defendants
On the trial of this cause will give in evidence & insist
that at the time when the note sued upon in this
cause became due & payable, and for a long time before
& for a long time thereafter was the property of
Stephan & Gelpcke and Alexander Sells being
business in the City of Chicago under the name & style
of Stephan & Gelpcke & in the actual possession &
control, and on the day of payment of said note
& while the same was still owned & possessed by the
said Stephan & Gelpcke the said defendants then
being for a long time before having been the owners
& having the actual possession of a certain paper
commonly called a Certificate of Deposit &c &c

figures substantially as follows to wit,

\$740⁰⁰

Chicago April 25th 1861 No 27291

Hoffman & Gelpcke
Bankers

Bull Hill & Prager have deposited
with us seven hundred forty five dollars in
currency payable on return hereof to the order
of J H Lester.

Hoffman & Gelpcke

Endorsed as follows

Pay Bull Hill & Prager or order
J H Lester

"Pay Lord & Smith or order
Bull Hill & Prager"

Under & by virtue of which said Certificate & the said
endorsements the said defendants were entitled to have
and demand of said Hoffman & Gelpcke the said
sum of \$740⁰⁰ & that subsequently there & there due
to said defendants from the said Hoffman & Gelpcke
the said defendants there & there applied to the said
Hoffman & Gelpcke & showed them the said Certificate
so as aforesaid endorsed & offered & demanded
to surrender the same to them and apply the same
was much thereof as might be necessary to pay the
said note which the said Hoffman & Gelpcke refused
to allow, And these defendants will further
prove that the said plaintiff took & procured
the said note from the said Hoffman & Gelpcke long
after the same become due & payable and after the
right of said defendants had accrued & that
the said Hoffman & Gelpcke would & have increased
the time over the said sum of seven hundred forty

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& \$1100 dollars to the said Defendants which sum is still due & unpaid & that the said Defendants will set off and allow on the trial of this cause so much of the said sum of Seven Hundred & fifty & \$1100 dollars against the said demand of the said Plaintiff on said Note as will be sufficient to satisfy and discharge the same according to the form of the Statute in such case made & provided

And the said Defendant will take further notice that on the trial of this cause the said Defendants will prove & insist that whatever right the said Plaintiff has in said Note if he has any right therein was acquired after the same became due and that at the time when the same so became due & while the same was the property of Hoffman & Gelpcke through whom the said Plaintiff procured the same the said Hoffman & Gelpcke were & ever since have been & still are indebted to the said Defendants in the further sum of Seven Hundred & fifty Dollars & fifty seven cents upon a certain Certificate commonly called a Certificate of deposit bearing date the 22^d day of April A.D. 1861 & payable in currency on the return of said Certificate to the order of J. H. Bates and duly endorsed to the said Defendants before the day of the payment of said Note and that the said Defendants will set off and allow on the trial hereof so much of the said sum as will be sufficient to satisfy & discharge such demand according to the form of the Statute in such case made & provided

Yours &c W. B. Hunt Separately

Superior Court of Chicago
August Term A.D. 1864

Samuel Flannery

of
Thomas Lord and
Lafayette H. Smith

State of Illinois Cook County of
Lafayette H. Smith one of said defendants being
duly sworn deposes & says that the said defendants
have a good defence to the above entitled suit upon the
merits,

Subscribed & sworn to before Lafayette H. Smith
on the 10th day of August A.D. 1864
Walton Kimball Clerk

And afterwards to wit on the third day of September
in the year last aforesaid the said plaintiff by his attorney
filed in the Office of the Clerk of said Court his certain
petition to plead of general issue in the words and figures
following to wit,

Samuel Flannery

of vs Humphreys
Thomas Lord and
Lafayette H. Smith

Superior Court of Chicago
And the said plaintiff as to the plea of the said
defendants whereof the said defendants have put
themselves upon the Country doth like &c

Arrington & Dent
Plffs Attys

And afterwards held on the tenth day of December in the year
of our Lord One thousand Eight Hundred and sixty One said
day being one of the days of the December Term of said Supreme
Court of Chicago the following among other proceedings were had
and entered of Record in said Court to wit,

Samuel Harris

vs Defendant,

Thomas Lord and

Ed Hayette & Smith

This day came said Plaintiff by Arrington & Dent his Attorney and the said
Defendants by H B Ward their Attorney all come and appear being joined
herein it is ordered that a jury be chosen to try the jury of good
and lawful men to wit Daniel M Ford, John H Beal, James Wood, G F
Belting, A C Cutler, C D Seacord, A M Fish, William Blanchard, Thomas Hillier
William Haul, C Worth, David W Clark and John Furrall who being duly elected
tried and sworn to try the issues joined as aforesaid after hearing evidence and argu-
ments of Counsel and instructions of the Court retired to consider of their verdict
and afterwards returned into Court their verdict which said they the jury find
in favor of said Plaintiff and are averse to his damages herein against both of
said Defendants to the sum of eight hundred and six dollars and eight cents

And thereupon the said Defendants submit their motion herein for a new
trial in said Cause, which motion for a new trial is overruled by the Court, to
which ruling of the Court the said Defendants thereupon except and state
their exceptions herein to the ruling and decision of the Court in overruling their
said motion for a new trial. Whereupon it is considered that the said Plaintiff

Richard and recover of and from the said Defendants his damages of eight hundred
six dollars and eight cents in form aforesaid by the jury here found and assessed
together with his costs and charges about his suit in this behalf expended and thereon
thereupon.

And thereupon the said Defendants having taken their exceptions pray an appeal
herein to the Supreme Court of this state from the judgment of this Court and do demand
to their appeal being bond in penalty of twelve hundred dollars with security to be
approved by a Judge of this Court, and to be paid with the cost of exceptions and any other
sum of this Court.

9606-08

And afterwards to wit on the twenty fourth day of December said day being one of the days of the December Term of said Court AD Eighteen Hundred and sixty One the following Bill of exceptions was filed in the Office of the Clerk of said Court in the words and figures following to wit,

Be it remembered, that ifsw being joined in a certain cause pending in the Superior Court of Chicago wherein Samuel Flawrto is Plaintiff and Thomas Lord and La Fayette H Smith are defendants the same cause is to be tried before the said Court and a jury the Honorable Geo H Higgins presiding on the tenth day of December AD 1861, being one of the days of the December Term of said Court 1861, and the said Plaintiff to maintain the ifsw in his behalf offered and read in evidence to the jury a note in words and figures following

\$589 00/100

Chicago April 19th 1861

Two months after date two promises to pay to the order of Elwell Brothers Five Hundred & Eighty Nine Two Dollars at Western Marine Bank value received

No 6747 due June 22^d Lord & Smith

with the following endorsement thereon Elwell Bros

And thereupon the said Plaintiff rested his case

And the said defendants on their behalf called A Smith a witness who being duly sworn to testify in said cause the said defendants proposed and offered to prove by said witness and by other

Witness then read & produced each and all the facts set forth in the said defendants notice filed in said cause, and to produce and read in evidence the Certificate of deposit therein set forth and also to prove that the said Hoffman and Gelpker had on the day said, note became due, and the said defendants applied as set out in said notice of demand to take up said note, the following notice posted up in and about their Bank, Bills of all Illinois Banks taken in payment of notes due us" to all of which and their showing of the said facts in evidence the said plaintiff objected and their objection was sustained by the Court on the ground that the same was incompetent, to the sustaining of which objection the said defendants then and there excepted.

The foregoing is all the testimony given or offered on the trial of said cause,

And thereupon the jury found a verdict for the plaintiff and assessed his damages at the sum of six hundred and six dollars and eight cents (606-08) whereupon the said defendants moved for a new trial and assigned the following reasons in support of their said, motion,

- 1st That the Court improperly excluded the testimony of said defendants
- 2nd That the verdict is against the evidence
- 3rd That the damages are excessive,

Which said motion was then and there overruled to the overruling of which motion the said defendants

then and then excepted and prayed an appeal to
the Supreme Court which was allowed. The Defendants
to file their Bill of Exceptions during the December
Term of said Court and during the same Term to
file their appeal bond in the form of law with surety
to be approved by the Court in the penal sum of Twelve
hundred Dollars (\$1200) and the said Defendants
pray that this bill of exceptions be made a part
of the record in said suit which is done.

In witness whereof the said V. W. H. Steggers
Judge of said Court as aforesaid has set his
hand this twenty third day of December A. D. 1864
being one of the days of said December Term.

V. W. H. Steggers (Seal)
Judge of the Superior
Court of Chicago

And afterwards to wit on the twenty fourth day
of December in the year of our Lord Eighteen hundred
and sixty one was filed in the Office of the Clerk of said
Court the certain appeal bond in the words and figures
following to wit:

Know all men by these Presents that we
Hiram A. Lord and Lafayette H. Smith as principal
and M. B. Smith as surety of the County of Cook
in the State of Illinois are held and firmly bound
unto Samuel H. Swift in the penal sum of twelve
hundred Dollars lawful money of the United
States for the payment of which well and truly

Whom made the said Ourselves Our heirs Executors
and Administrators jointly severally and jointly by their
Presents, Witness our hands and seals this twenty
third day of December AD 1861,

The Condition of the above obligation is such that
Whereas the said Samuel Harris did on the
tenth day of December AD 1861, in the Superior
Court of Chicago in the County of Cook secure
a judgement against the above bounden Thomas
Lord and Lafayette Smith for the sum of six
Hundred and six dollars and eight cents from
which judgement the said Thomas Lord and La-
fayette Smith have taken an appeal to the
Supreme Court of the State of Illinois

Now if the said Thomas Lord and Lafayette Smith
shall prosecute their appeal with effect
and in case the said judgement shall be affirmed
shall pay said judgement together with all costs
interest and damages then the above obligation to
be void otherwise to remain in full force and effect

Approved by the Court Thomas Lord *Thos L*
this twenty fourth day L H Smith *L H Smith*
of December AD 1861 W B Smith *W B Smith*

W H Higgins
Judge

State of Illinois

County of Cook

Marcus B Smith being duly
sworn doth depose and swear that he is

Worth at least twelve hundred dollars
lawful money over and above all liabilities and
that he signed the foregoing bond
Subscribed & sworn to W B Smith
before me this 24th day of
Dec 1861

Seal } Charles W Holden
Notary Public

State of Illinois }
County of Cook } S.D.

I, Thomas B. Carter, Clerk of the
Superior Court of Chicago, in and for said County,
do hereby certify that the foregoing is a full, true
and complete Transcript of all the Pleadings on file
in my office, and of the orders and judgment
entered of Record in said Court, together with the
Bill of Exceptions and Appeal Bond, in the case
Samuel Favorite plaintiff, Thomas Lord and
La Fayette H. Smith, defendants.

In testimony whereof, I hereunto
subscribe my name, and affix the
seal of said Court, at the City of
Chicago, in said County this
first day of February A.D. 1862
Thomas B. Carter Clerk

Lafayette H Smith
v Thomas Lord

Supreme Court of Illinois
April Term AD 1862

v
Samuel Favorite

And now come the
said appellants by Hand Book & Post
& say there is manifest error in
the foregoing record & the judgment
there is no error

1st The Court below excluded the
testimony of the appellants
2nd The verdict ^{judgment} was for more
than the amount of the note & interest
Hand Book & Post
City, for appellants.

And the said Samuel Favorite comes
by Arrington & Dent his attys. and
says there is no error, &c.

Arrington & Dent,
attys. for said Favorite.

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Samuel Flannery
of
Lafayette & Smith
Thomas Lord

Filed April 22, 1862
L. Leland
Clerk

Fees. \$4.00

Paid J. B. Carter
Clerk

A. B. Carter