

No. 12950

Supreme Court of Illinois

Walrod et al

vs.

Robb et al

71641  7

SUPREME COURT OF ILLINOIS.

Third Division—April Term, 1859.

ROBB et al.,
vs.
BALL et al. } *Appeal from De Kalb.*

PLAINTIFF'S BRIEF AND POINTS.

The ~~2d~~ and ~~3d~~ pleas present a good defence to the action, and should have been sustained.

The evidence introduced as to the amount of damages should have been excluded.

The transcripts in each of the cases are only parts of the record.

The transcript in Whitney vs. Ball, Robb and Phelps is not under the seal of the court.

The fee bill in Whitney et al vs. Ball et al, should not have been read, as it is not covered by the condition of the bond.

The sheriff's fees should not have been allowed, as they are not covered by averments in the narr, and are illegal.

W. T. BURGESS,
For Appellants.

212-97

to Walrod

4ps Points

April 20 1859
L. Leland
Black

IN THE SUPREME COURT

OF THE STATE OF ILLINOIS,

APRIL TERM, 1859.

CHARLES O. BOYNTON and	}	APPEAL FROM DE KALB CIRCUIT COURT.
GEORGE WALROD,		
Appellants, and		
HIRAM E. WHITNEY,		
vs.		
ALBERT G. ROBB, JOHN		
H. BALL & WM. PHELPS.		

ABSTRACT OF RECORD.

3 Suit commenced by Summons and Narr, filed March 26, 1858, as follows:

STATE OF ILLINOIS,	}	ss.	Circuit Court De Kalb County, Spring Term, 1858.
DE KALB COUNTY,			

4 Albert G. Robb, John H. Ball and William Phelps, plaintiffs in this action who sue for the use of George L. Wood, by Charles Kellum, their attorney, complain of Hiram E. Whitney, Charles O. Boynton and George Walrod defendants. who were summoned, &c., of a plea that they render to the said plaintiffs, the sum of twenty-seven hundred dollars lawful money of the United States, which to them they owe, and from them unjustly detain to their damage, two thousand dollars. For that whereas the said plaintiffs, Albert G. Robb heretofore to wit: on the 29th day of October, A. D. 1855, by the judgment and consideration of the Circuit Court for the county of Cook, in the State of Illinois, at the October term of the said court, in the year 1855, recovered against the said defendant, Hiram E. Whitney, two certain judgments, one for the sum of two hundred and forty-nine dollars and seventy-five cents damages and six dollars costs, and the other for the sum of one hundred and fifty-five dollars damages and six dollars costs, upon both which said judgments afterward to wit: on the same 29th day of October, A. D., 1855, writs of execution were duly sued out of said circuit court of Cook

5

county, directed to the said William Phelps, who then and there was sheriff of said county of De Kalb to execute, commanding him that of the goods and chattels, lands, tenements and chattels real of said Hiram E. Whitney, he should cause to be made the amounts of said several judgments and the costs thereon, and that he return the said writs of execution into the office of the clerk of said circuit court, within ninety days after the date thereof, which said executions were then and there delivered to the said William Phelps, Sheriff as aforesaid, upon which said executions he, the said Wm. Phelps, proceeded to levy and did levy upon property of the said Hiram E. Whitney, sufficient to satisfy both said executions, and afterwards to wit: on or about the ninth day of February, A. D., 1856, the said Hiram E. Whitney, as complainant, filed his bill of complaint in the said circuit court of Cook county, on the chancery side thereof, making the said plaintiffs herein defendants thereto, praying, among other things, that the said Albert G. Robb, John H. Ball and William Phelps, their agents, attorneys and deputies be enjoined from proceeding in any manner or form whatever to enforce the collection of said judgments, which said judgments were in said bill set forth, and for the purpose of procuring the issuing of said writ of injunction in said bill prayed for the said defendants, Hiram E. Whitney, as principal and the said Charles O. Boynton and George Walrod, as securities, then and there, to wit: on the eighth day of February, A. D., 1856, to wit: at the county of De Kalb, aforesaid, made, executed and delivered their certain writing obligatory sealed with their respective seals, and now produced and shown to this honorable Court, the date whereof is the day and year last aforesaid, and thereby acknowledged themselves to be held and bound unto the said plaintiff, in the sum of twenty-seven hundred dollars, the debt above demanded to be paid to the said plaintiffs, which said writing obligatory is in the words and figures following, to wit:

7 Know all men by these presents that we, Hiram E. Whitney, of De Kalb county Illinois, principal, and George Walrod and Charles O. Boynton, his sureties, are held and firmly bound unto Albert G. Robb John H. Ball and William Phelps, of said county, in the penal sum of twenty-seven hundred dollars, for the payment of which unto the said Robb and Ball, their heirs, executors or assignees, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by by these presents. Signed, sealed and dated this 8th day of February, A. D., 1856.

Which said writing obligatory was, and is subject to a condition thereunder, written in the words and to the effect following to-wit:

The condition of this obligation is such that whereas, the said Whitney has lately filed in the Circuit Court of Cook county, on the chancery side thereof, against the said Robb, Ball and Phelps, praying among other things, that an injunction writ be issued against them, the said Robb, Ball and Phelps, to enjoin them from proceeding in the collection of certain judgments therein mentioned, which writ hath been ordered to be issued, on filing bond as required by law. Now therefore, if the said Whitney shall pay all money and costs due the plaintiff upon said judgments, and also, all such costs and damages as shall be awarded against the complainant in case said injunction shall be dissolved, then the above bond to be void, otherwise to remain in full force and effect.

8

HIRAM E. WHITNEY, [SEAL.]
GEORGE WALROD, [SEAL.]
CHARLES O. BOYNTON, [SEAL.]

As by the said writing obligatory and the condition thereof, now here in court produced, will more fully appear.

And the said plaintiffs in fact, aver that the proceedings in said Circuit Court of Cook county intended to be in said condition recited, was the bill of complaint hereinbefore described, of said Hiram E. Whitney against these plaintiffs, and that the judgments therein referred to were, and are the same judgments in this declaration set forth recovered by the said Albert G. Robb against the said Hiram E. Whitney.

9 And the said plaintiffs further say that afterwards to-wit: on the 9th day of February, A. D. 1856, said writing obligatory, and condition thereunder, were filed according to law with the clerk of said Circuit Court of Cook county, at his office, and thereupon a writ of injunction duly issued out of the said Circuit Court for Cook county, restraining and enjoining the said plaintiffs from proceeding in the collection of the said judgments hereinbefore recited, of which said plaintiffs then and there had notice, and the said plaintiffs further say that afterwards to-wit: of the special term of June of said Circuit Court for the county of Cook, in the year A. D. 1857, by the order, decree and judgment of the said court, the said bill of complaint wherein said writing obligatory was filed, was dismissed and the said injunction dissolved.

And the said plaintiffs further say that neither the said Hiram E. Whitney, nor any person for him, hath paid all or any money and costs due the said Albert G. Robb upon the judgments aforesaid, nor such costs and damages as were awarded against said Whitney upon the dissolution of the said injunction as in the condition of the said writing

obligatory mentioned, but hath therein wholly failed and made default whereby the said writing obligatory, hath become forfeited by means whereof the said plaintiffs have sustained damages to the amount of two thousand dollars, and by means of the said premises, and by force of the statute, an action hath accrued to the said plaintiffs to demand and have the said sum of twenty-seven hundred dollars above demanded of and from the said defendants.

- 10 And whereas, also, the said defendants heretofore, to wit, on the 8th day of February, A.D., 1856, at Sycamore, in the county of De Kalb, aforesaid, by their certain other writing obligatory, sealed with their seals and to the court here now shown, the date whereof is the same day and year aforesaid, acknowledged themselves to owe and be indebted, held and firmly bound unto the said plaintiffs in the sum of twenty-seven hundred dollars above demanded, to be paid to the said plaintiffs, and the said plaintiffs say that the said writing obligatory, was, and is subject to a certain condition thereunder written, whereby after reciting to the effect following to wit, that whereas the said Whitney has lately filed in the Circuit Court of Cook county, on the chancery side, thereof, his bill of complaint against said Robb, Ball and Phelps, praying, among other things, that an injunction issue against them, the said Robb, Ball and Phelps, to enjoin them from proceeding in the collection of certain judgments in said bill mentioned, which judgments the plaintiffs aver to be the same described in the first count of this declaration, which said writ of injunction had been ordered to be issued on
- 11 filing bond as required by law; it is provided that if the said Whitney should pay all money and costs due the plaintiff, Albert G. Robb, upon said judgments, and also, all such costs and damages as should be awarded against said complainant in said bill in case said injunction should be dissolved, then the said obligation to be void or else to remain in full force and virtue.

And the said plaintiffs for assigning a breach of the condition of said writing obligatory, according to the form of the statute in such case made and provided, in fact say, that, after the making of said writing obligatory, to wit: on the ninth day of February, in the year of our Lord, one thousand eight hundred and fifty-six, the said writing obligatory was duly filed with the clerk of the said circuit court of Cook county, and the writ of injunction prayed for in said bill thereupon issued out of the said circuit court of Cook county, against the said Robb, Ball and Phelps, and was served upon them according to law, enjoining them from proceeding in the collection of the judgments aforesaid in said bill of complaint mentioned, which said bill of complaint was afterwards to

12 wit in the special term of June, of said circuit court of Cook county, in
the year 1857, by an order of said court, duly made and entered dis-
missed and the injunction aforesaid dissolved. Yet the said Hiram E.
Whitney, nor any one for him, hath not as yet paid the sums of money
and costs due on said judgments that is to say, the sum of two hundred
and forty-nine dollars and seventy-five cents damages, and six dollars
costs upon the judgments first in this declaration recited, and the sum of
one thousand and fifty-five dollars damages, and six dollars costs upon
the judgments, secondly in this declaration recited, together with inter-
est upon said several sums from the 29th day of October, A. D., 1855,
nor hath he paid such costs as were awarded against said Whitney upon
the dissolution of said injunction in the condition of said writing obliga-
tory mentioned, amounting to a large sum, to wit: the sum of seventy-
five dollars. By means of which said several premises the said writing
obligatory and condition thereunder have become forfeited and the said
13 plaintiffs have sustained damages to the amount of two thousand dollars,
and thereby an action hath accrued to the said plaintiffs, to demand and
have of and from said defendants the said sum of twenty seven hundred
dollars above demanded.

Yet the said defendants, although often requested, have not as yet paid
the said sum of twenty-seven hundred dollars above demanded, or any
portion thereof, to the said plaintiffs, but have hitherto wholly neglected
and refused so to do, and still do neglect and refuse so to do, to the
damage of the said plaintiff two thousand dollars, and therefore they
bring suit.

CHARLES KELLUM, Plff's Atty.

S. A. HURLBUT, of Counsel.

Pleas of defendants, Boynton and Walrod, filed April 9, 1858.

Title of Cause.

14 / And the said defendants, Walrod and Boyington, by their attorneys,
Mayo & Kellum, comes and defends the wrong and injury when,
&c., and say that the said bonds in said declaration set forth are not
their deeds, and of this he puts himself upon the country, &c., and the
plaintiffs do the like.

2 And for a further plea in this behalf said defendants say *actio non*,
because they say that they do not owe and are not indebted to the said
plaintiffs in manner and form as the said plaintiffs have above thereof
declared against them, and of this they put themselves upon the coun-
try, &c.

26 April 17th, 1858—cause submitted without a jury, and the court after
hearing the evidence and remarks of counsel, find for the plaintiffs
\$2,700 debt, and assesses damages for breaches assigned at \$1,601.17,
27 judgment for the debt, to be discharged upon payment of damages and
costs. Appeal prayed.

Bill of exceptions filed June 30th, 1858—plaintiff's evidence. A bond
made by Hiram E. Whitney as principal, and George Walrod and
Charles O. Boynton, as sureties to Albert E. Robb, John H. Ball and
29 William Phelps, in the penalty of \$2,700, dated February 8th, 1856,
the same set out in Narr.

31 James H. Beveridge sworn; stated that the bond was executed in his
presence and certain alterations were in it at that time. Bond read and
defendants except to it and the introduction of the evidence of
Beveridge.

Transcript from records of Cook Circuit Court of a bill filed there on
the 9th day of February, 1856, by Hiram E. Whitney, against John H.
Ball, Albert E. Robb and William Phelps, to restrain the collection of
two judgments by confession rendered in that court before the same
were due, in favor of said Robb and against said Whitney upon two
notes under a power of Attorney attached, which the complainant
therein charged had been fraudulently obtained from him, he having
42 been induced to sign them through the false representations of Ball, as
to their contents, upon which he had relied, and that Ball was really the
owner of the judgments, on which is indorsed an order for injunction
56 made by L. C. P. Freer, master in chancery of Cook county, upon the
said Whitney filing bond in penalty of \$2,700, with Walrod and Boynton
as surety. In the same transcript is a copy of an injunction writ
58 directed to John H. Ball, Albert G. Robb and William Phelps, reciting
the filing of the bill and restraining them from the collection of the
judgments mentioned in it, dated the 9th Feb. 1856, and a return en-
dorsed upon it of its having been served on the said Ball, Robb, and
Phelps. Also of an order submitting that cause to the court for hearing
61 upon bill, answer, replication, and proofs. Also of a stipulation as fol-
lows:

63 Also of an order made on the 12th June, 1857, on that stipulation,
dismissing the bill with costs, and directing the Sheriff to proceed and
collect the judgments mentioned in the bill.

64 This Transcript is certified to be a true copy of a "bill of complaint,
writ of injunction, stipulation and orders," in a certain cause wherein
Hiram E. Whitney was complainant, and John H. Ball, Albert G.
Robb, and William Phelps defendants, signed by the clerk, but no seal
of the court affixed.

To the reading of which the defendants objected—the objections overruled, and defendants except.

The plaintiff then offered a forthcoming bond, made by Hiram E. Whitney and George Walrod to William Phelps, in the penalty of \$2,500, dated Dec. 3, 1855, which—after reciting the issuing of two executions and fee bills from Cook Circuit Court, in favor of Robb and against Whitney, one for \$1,059.10, damages and costs, and the other \$253.85, damages and costs, and directed to Phelps, as Sheriff of De Kalb county, to execute a levy upon a stock of goods belonging to Whitney, of the value of \$5,000, and that Whitney desired to retain the possession thereof—is conditioned that if the goods are forthcoming on the 28th January, 1856, at the store of Whitney, or at any time thereafter when the Sheriff should call for them so that the same might be sold to satisfy said execution, then the bond to be void, otherwise to remain in full force, on which is endorsed by Phelps, that, by virtue thereof and a failure to deliver the goods according to the condition thereof, he had, on the 2d day of February, 1856, levied upon certain real estate, which had been turned out by said Walrod to satisfy the said execution, and signed by him as Sheriff.

To the reading of which defendants object—court overrules objection, receives the paper, and defendants except.

The plaintiffs then offered the execution and fee bill from the Cook Circuit Court in favor of Albert G. Robb and against Hiram E. Whitney, for \$249.75 damages, and \$2.60 costs, recovered at October term, 1855, dated the 29th day of October, 1855, endorsed collect interest from Oct. 25, 1855, received by Phelps the 9th Nov., 1855, and levy made upon stock of goods same day. “Fees—1 service 50c., 5 miles 25c., levy 50c., expense and trouble of keeping property \$10, taking bond 25c., demanding property of the plaintiff and security on the bond \$5, levy on the property of the security on the bond 50c., commission \$3.50—total \$20.40. Stayed by injunction.” Also fee bill of plaintiff’s costs \$2.60, and of the defendant’s costs \$1.50; and endorsed on the fee bill, same levy as on writ, and the fees—“service 50c., 5 mile 25c., levy 50c.—total \$1.25. Stayed by injunction.”

To the reading of all which defendants objected—court overruled objection, papers read, and defendants except.

The plaintiffs then offered another writ of execution from said Circuit Court in favor of Albert G. Robb against Hiram E. Whitney for \$1,055 damages and \$2.60 costs, recovered at October term, 1855, dated Oct. 29, 1855, directed to the Sheriff of DeKalb county, and endorsed to collect interest from Oct. 25, 1855, received by the Sheriff Phelps Nov. 9,

1855, and endorsements by him levied same day on stock of goods. Fees—1 service 50c., 5 miles 25c., levy 50c., expense and trouble of keeping property \$10, taking bond 25c., demanding property on the bond, including travel, \$5, commission \$9.44, levy on the property of the security on the bond and record certificate \$1.50—total \$27.44. Stayed by injunction.

A fee bill of the plaintiff's costs \$2.60, and defendant's costs \$1.50, received and levied same day as execution. Fees—service 50c., 5 miles 25c., levy 50c.—total \$1.25. Stayed by injunction.

To which execution and fee bills defendants objected; court overruled it, and defendants excepted.

The plaintiff then offered another transcript from the records of said Cook Circuit Court, containing the *placita* of the October Term thereof, 1855, and of an order entering a judgment by confession on the 29 October, 1855, in favor of Albert G. Robb, against Hiram E. Whitney, for \$249 75 damages and costs of suit, and an order entering a judgment by confession, on the same day, in favor of Albert G. Robb against Hiram E. Whitney for \$1055 damages and costs of suit, which is certified under the seal of the court and signature of the Clerk, to be a copy of two orders entered in that court.

To the reading of which defendants objected; the court overruled the objection, paper read, and defendants excepted.

The plaintiffs then offered a paper entitled,

HIRAM E. WHITNEY, <i>et al.</i>	} Cook County Circuit Court, March T., 1858. Plaintiffs' Costs.
6084 vs.	
JOHN H. BALL, <i>et al.</i>	

The follow items of Clerk's costs, in all,	\$6 85
Judge's fee	3 00
Sheriff " Lorenzo Whittemore, De Kalb Co.	5 36
" " " " " "	6 80
Master, L. C. P. Freer, paid by complainant,	20 00
Witness, Wm. B. Hovey, 2 days, 134 miles travel	8 70
	<u>\$50 71</u>

Defendants' Costs:

Clerk's Fees	\$4 00
Witnesses	15 40
	<u>\$19 40</u>

I hereby certify the above to a true copy of the taxed costs in the above entitled cause, and the whole thereof.

[L. S.]

WM. L. CHURCH,
Clerk.

To the reading of which defendants objected ; court overruled objection, and defendants excepted ; which was all the evidence in the cause.

New trial moved, and overruled ; and defendats except.

Computation upon which damages were assessed :

Judgment for	- - - - -	\$1055 00
Judgment for	- - - - -	249 75
Interest 2 years 5½ months	- - - - -	192 57
Plaintiffs' costs,	- - - - -	2 60
Sheriff's fees,	- - - - -	27 44
Plaintiffs' costs,	- - - - -	2 60
Sheriff's fees,	- - - - -	20 40
Plaintiffs' costs,	- - - - -	50 71
		\$1601 07

ERRORS ASSIGNED.

1st. The sustaining demurer to the 7th and 8th pleas.

2d. In admitting the various documents in evidence offered by plaintiff and read on the trial and overruling defendant's objections to the same.

3d. In admitting in evidence the copy of bill, &c., in case of Whitney vs. Ball, Robb and Phelps.

4th. In admitting in evidence the forthcoming bond made by Whitney and Walrod to Phelps, and the indorsements made thereon.

5th. In admitting the executions, fee bills and indorsements thereon in the cases of Robb vs. Whitney.

6th. In admitting in evidence the copy of the orders in the cases of Robb vs. Whitney.

7th. In admitting in evidence the copy of the fee bill in case of Hiram E. Whitney, *et al* vs. John H. Ball, *et al*.

8th. That the damages assessed are without proof to sustain them.

9th. That the judgment for plaintiff should have been for defendant.

BURGESS & HAWLEY,
For Appelants.

212 - 97

Rott. vs Walrod

Abstract

Filed April 25. 1859

Leland

Clk.

Prepared

Brynston & Walrad appellants vs. A. G. Robb. John St. Ball & Wm Phelps	Supreme Court Appeal from De Kalb
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Argument for Appellees.

The errors assigned which I propose to notice are the 1st & 8th.

This action is brought in Debt upon an Injunction Bond to restrain Collection of judgments recovered in Cic. Court. Cook County against Hiram Elwhitney.

The judgments are stated in the Abstract incorrectly. The second error for One Thousand and Fifty five dollars damages instead of One Hundred & fifty five.

\$1055.00

The Seventh Plea is intended to set up that the Injunction was procured to be dismissed by fraudulent combinations & a corrupt agreement between George Wood beneficial Plaintiff in this action & Hiram Elwhitney principal obligor in Injunction Bond.

The Eighth Plea is similar except that it is more specific as to the consideration

of the alleged corrupt agreement.

To these pleas a Demurrer was interposed & sustained & this is the first point made in Error.

The Pleas are defective because in the first place the matter of defence if any is Equitable not legal.

Secondly - The security upon an Injunction Bond is liable even for the fraudulent acts of his principals.

Third because it is not averred nor does the Record show that George L. Woods was a party to the Injunction Bill - or that he had any authority or power to interfere.

Fourth The Bill in Chancery for Injunction was under the Control of Whiting the Complainant and he had good right to make such an arrangement as the facts charged in the Plea show without the consent or knowledge of his Secretaries.

Fifth - That although the Pleas aver a corrupt agreement by the use of "adverbs" they aver no facts which show corruptness nor do they aver any damage to the Appellants by reason of such matters set up.

Sixth - The facts really set up in the plea are that Wood having a Deed of Trust to secure a debt from William Whitney of \$1500 - which was due - agreed with Hiram E. Whitney to extend the time of payment one year on said Trust Deed - if Hiram E. would dismiss this Bill for injunction - that such agreement was mutually carried into Effect. There is no proof of agreement to cancel the Injunction Bond.

Seventh. Outside of the plea it appears by the Sheriff's Return to the papers entered in the Cause that these Appellees actually received all the stock of goods listed on some of them gave a forthcoming Bond for the same that such stock was ample to pay the Executions Enjoined.

As to the Explicit Point assigned for Error -

It is probable that the judgment in this case is for too large a sum. The cause was submitted to the Judge - At the heel of the Term a rapid Computation is made by him & it would seem that the allowances have been made of Costs not recoverable by Plaintiff below upon the Just Bills.

offered in Evidence.

If thus are costs included in the judgment which should not have been in the Plaintiff, below would have remitted them if an opportunity had ever been given - And now we desire that if in the opinion of this Court the judgment appears from the Evidence to be too high - that it may be reduced & Judgment Entered in Supreme Court for the true amount, upon such Terms as this Court may prescribe as to Costs of Appeal &c

If therefore there appears to this Court no other defects requiring a remanding of the Cause for the purpose of full justice the Appellee requests that Judgment be entered in his favor for the sum which upon review may seem to be due

A. A. Hurlbut
Counsel for Appellee.

212-97
Supreme Court

Argentine Walcott
Appellant.

vs. } Arguments
}

A. G. Root, John A. Hall
vs. Wm. Phelps Appellus

Filed May 14, 1839
L. Deland
Clerk

A. A. Hurlbut
Counsel for
Appellus

Supreme Court

George Mahood &
Charles O Boynton appellants
Inps with William E
Minton

vs

Albert G. Robb
John H Ball &
William Phelps

appeal from
Orlando Cir
Court - ~~Phelps~~
Inps vs ~~Phelps~~

Place this case on the
Docket.

W. J. Phelps
for appts

212
Sup Court

Walworth vs

Robt vs

Princip —

Filed April 18. 1889
L. Leland
clerk

W. J. Bump

N. 212.

Malvad sat

A. G. Robb et al

} It is stipulated that
this Cause so far as
the Defendants in

Error are concerned shall be
submitted on Written Arguments
who filed in the Cause the Cause

April 21, 1859 } to be heard of this Term by
the Court

A. A. Hulth

Att. for Defs in Error

A. G. Robb Esq

ad. } ~~Stipulation.~~

George Walrad Esq

United States of America }
 State of Illinois } Pleas before the
 Honorable Isaac G. Wilson Judge of the Thirteenth
 Judicial Circuit in the State of Illinois at the
 April Term of the De Kalb County Circuit
 Court begun and held at the Court House
 in Sycamore on Tuesday the 6th day of April
 in the Year of our Lord One Thousand Eight
 Hundred and Fifty Eight and of the independence
 of the United States the eighty second

Present the Hon. Isaac G. Wilson Judge
 " Silas Tappan Sheriff

Attest James H. Beveridge Clerk.

Court opened by Proclamation

Be it Remembered, that on the 16th day of Jan-
 uary A.D. 1858 previous to said Term of Court
 the Plffs by Ch^s. Kellum their Attorney filed
 in the office of the Clerk of said Court their
 certain Precept for Summons which said Precept
 is in words and figures as follows, to wit:

" Albert G. Robb
 " John H. Ball &
 " William Phelps
 " who sue for the use of
 " George S. Wood

"
 " Hiram E. Whitney
 " George Walrod &
 " Charles O. Boynton

In the De Kalb County
 Circuit Court of the
 April Term A.D. 1858.
 Action of Debt.

Debt \$ 27 00
 Damages 2 00

The Clerk

Thereon in what manner you executed the same.

"E. S. S."

"Witness James H. Beveridge
"Clerk of our said Court, and
"the seal thereof at Sycamore
"this 16th day of January, A.D.
"1858"

"Jas H Beveridge Clerk"

On which is endorsed as follows, to wit:

"Served the within Summons by Reading
"to the within named Hiram E. Whitney
"Charles O. Boynton & George Walrod this 20
"day of February A.D. 1858"

"February 20, 1858"

"S Tappan Shff"

"By W B Prescott"

"Depty."

"Fees - Service 1 50

"Milage 30

"Return $\frac{30}{9.10}$

"Filed Feby 20th 1858"

"Jas H Beveridge CLK"

"Return for Plff"

And be it further Remembered that on the 26th
day of March A.D. 1858, the Plaintiffs filed
in the Office of the Clerk of said Court this
certain Declaration which Declaration is in
words and figures as follows to wit:
"State of Illinois
"De Kalb County f. Circuit Court De Kalb Co
"Spring Term 1858"

" Albert G Robb John H Ball and William
 " Phelps Plaintiffs in this action who sue for
 " the use of George L Wood, by Charles Kellum
 " their Attorney Complain of Hiram & Whitney,
 " Charles O Bogneton and George Watson De-
 " pendants who were summoned &c of a
 " Plea that they render to the said Plaintiffs
 " the sum of Twenty Seven Hundred Dollars
 " lawful money of the United States which
 " to them they owe and from them unjustly
 " detain to their damage Two thousand
 " Dollars "

" For that where as the said Plaintiffs
 " Albert G. Robb heretofore to wit on the 29th
 " day of October A.D. 1855 by the judgment &
 " consideration of the Circuit Court for
 " County of Cook in the State of Illinois at
 " the October Term of the said Court in the
 " Year 1855 recovered against the said
 " Defendant Hiram & Whitney two certain
 " Judgments one for the sum of Two Hundred
 " & forty Nine Dollars and seventy five cents
 " Damages and Six Dollars costs and the other
 " for the sum of One Thousand & fifty five
 " Dollars damages and six Dollars costs upon
 " both ^{which} said Judgments afterwards to wit on
 " the same 29th day of October A.D. 1855
 " Writs of Execution were duly sued out of said

5

" Circuit Court of Cook County directed
"ed to the said William Phelps who then &
" there was Sheriff of the said County of
" Cook to execute, commanding him
" that of the goods & Chattel Land tenements
" & Chattels real of said Hiram & Whitney
" he should cause to be made the amounts
" of said several judgments & the costs thereon
" and that he return the said Writs of Execution
" into the office of the Clerk of said Circuit
" Court within ninety days after the date
" thereof which said Executions were then &
" then delivered to the said William Phelps
" Sheriff as aforesaid upon which said
" Executions he the said William Phelps pro-
" ceeded to levy and did Levy upon property
" of the said Hiram & Whitney sufficient to
" to satisfy both said Executions; And
" afterwards to wit on or about the ninth
" day of February AD 1856 the said Hiram
" & Whitney as Complainant filed his Bill
" of Complaint in the said Circuit Court
" of Cook County on the Chancery side thereof,
" making the said Plaintiffs herein Defendants
" thereto praying among other things that the
" said Albert G. Robb, John H. Ball and
" Wm Phelps their agents attorneys & Deputies
" be enjoined from proceeding in any manner

" or from whatever to enforce the collection of
 " said Judgments which said Judgments
 " were in said Bill set forth and for the
 " purpose of proceeding the issuing of said
 " Writ of Injunction in said Bill prayed for
 " the said defendants Hiram O Whitney as
 " Principal and the said Charles O.
 " Boynton and George Walrod as Securities
 " then & there to wit on the Eighth day of
 " February AD 1856 to wit at the County
 " of De Kalb aforesaid made executed &
 " delivered their certain writing obligatory sealed
 " with their respective seals and now pro-
 " duced & shewn to this Honorable Court the
 " date whereof is the day & year last aforesaid
 " and thereby acknowledged themselves to be
 " held & bound unto the said Plaintiff in the
 " sum of Twenty Seven Hundred Dollars
 " the Debt above demanded to be paid to the
 " the said Plaintiff which said writing
 " Obligatory is in the words & figures following
 " to wit,

" Know all men by these presents that
 " we Hiram O Whitney of De Kalb County
 " Illinois Principal and George Walrod and
 " Charles O Boynton his Sureties are held
 " and firmly bound unto Albert G Robb
 " and John H Ball & William Phelps of said

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"County in the penal sum of Twenty Seven hundred
"dollar for the payment of which unto
"The said Robb and Ball their heirs executors
"Administrators or assigns we bind ourselves
"our heirs executors & administrators jointly
"severally & firmly by these presents. Signed
"Sealed and dated this 8th day of February
"AD 1856."

which said writing obligatory was and
is subject to a condition thereunder written
in the words and to the effect following
to wit.

"The Condition of this Obligation
"That whereas the said Whitney has lately
"filed in the Circuit Court of Cook County
"on the Chancery side thereof a gainst the said
"Robb Ball and Phelps praying among other
"things that an Injunction M^y be issued
"against them the said Robb Ball & Phelps
"to enjoin them from proceeding in the collection
"of certain judgments therein mentioned which
"M^y have been ordered to be issued on filing
"Bond as required by law Now therefore
"if the said Whitney shall pay all money
"& Costs due the Plaintiffs upon said judgments
"and also all such cost & damages as
"shall be awarded against the complainant
"in case said Injunction shall be dissolved

"then the above Bond to be void otherwise
 "to remain in full force and effect."

Hiram D. Whitney *Dealt*

Geo. Walrad *Dealt*

Charles O. Bognlow *Dealt*

As by said writing obligatory and the condition thereof now here in Court produced will more fully appear.

And the said Plaintiffs in fact aver that the proceedings in said Circuit Court of Cook County intended to be in said condition recited - was the Bill of Complaint herein before described of said Hiram D. Whitney against these Plaintiffs and that the judgments therein referred to were and are the same judgments in said this Declaration recovered by the said Albert G. Robt against the said Hiram D. Whitney.

And the said Plaintiffs further say that afterwards to wit on the ninth day of February AD 1856 said writing obligatory & condition thereunder were filed according to Law with the Clerk of said Circuit Court of Cook County at his office and thereupon a Writ of Injunction duly issued out of the said Circuit Court for Cook County restraining and enjoining the said Plaintiffs from proceeding in the collection of the

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said Judgments herein before recited of
which said Plaintiffs then & there had notice
And the said Plaintiffs further say that
afterwards, to wit of the Special Term of
June of the said Circuit Court for the County
of Cook in the year AD 1857 by the Order
decree & judgment of the said Court the said
Bill of Complaint wherein said writing
obligatory was filed was dismissed and the
said ~~Injunction dissolved~~
And the said Plaintiff further say
that neither the said Hiram C. Whitney
nor any person for him hath paid ^{all or}
money & costs due the said Albert &
upon the Judgments aforesaid, nor the
costs and damages as were awarded against
said Whitney upon the dissolution of the
said Injunction as in the condition of
said Writing obligatory mentioned but hath
therein wholly failed and made default
whereby the said writing obligatory hath
become forfeited by means whereof the
said Plaintiffs have sustained damages
to the amount of Two Thousand Dollars
and by means of ~~the~~ said premises and by force
of the Statute, an action hath accrued to
the said plaintiffs to demand & have the
the said sum of Twenty Seven Hundred
dollars above mentioned demanded of and

from the said Defendants. And whereas also the said Defendants heretofore to wit on the eighth day of February AD 1856 at Sycamore in the County of De Kalb aforesaid by their certain other writing obligatory sealed with their seals and to the Court here now shewn the date whereof is the same day and year aforesaid acknowledged themselves to owe and be indebted held & firmly bound unto the said Plaintiffs in the sum of Twenty Seven Hundred Dollars above demanded to be paid to the said Plaintiffs. And the said Plaintiffs say that the said writing obligatory was and is subject to a certain condition thereunder written whereby after reciting to the effect following to wit, That whereas the said Whitney has lately filed in the Circuit Court of Cook County on the Chancery side thereof his Bill of Complaint against said Robt Ball & Phelps praying among other things that an Injunction issue against them the said Robt Ball & Phelps to enjoin them from proceeding in the collection of certain Judgments in said Bill mentioned (which Judgments the Plaintiffs aver to be the same described in the first Count of this Declaration) which said writ of

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Injunction had been ordered to be issued on filing Bond as required by Law - it is provided that if the said Whitney should pay all money & costs due the Plaintiff Albert & Robb upon said Judgments & also all such costs & damages as should be awarded against said Complainant in said Bill in case said Injunction should be dissolved then the said Obligation to be void or else to be in full force and virtue.

And said Plaintiff for assigning a breach of the Condition of said writing obligatory according to the form of the Statute in such case made and provided in & say. That after the making of said writing obligatory, to wit. on the ninth day of February in the Year of our Lord One Thousand Eight hundred & fifty six the said writing obligatory was duly filed with the Clerk of the said Circuit Court of Cook County, and the Writ of Injunction prayed for in said Bill thereupon issued out of the said Circuit Court of Cook County against the said Robb, Ball & Phelps and was served upon them according to Law enjoining them from proceeding in the Collection of the Judgments aforesaid in said Bill of Complaint mentioned which said Bill of Complaint

was afterwards, to wit, in the Special Term
 of June of said Circuit Court of Cook
 County in the year 1857 by an order of
 said Court duly made and entered dis-
 missed and the Injunction aforesaid
 dissolved. Yet the said Hiram C Whitney
 nor anyone for him hath nor as yet paid
 the sums of money & costs due on said Jud-
 gments that is to say, the sum of Two Hundred
 and forty nine Dollars & seventy five cents dam-
 ages and six dollars costs upon the judgments
 first in this Declaration recited - and the
 sum of One ~~hundred~~ Thousand & fifty five
 dollars damages and six dollars costs upon
 the Judgment. Secondly in this Declara-
 tion recited together with Interest upon said
 several sums from the 29th day of October
 AD 1855 nor hath he paid such costs as were
 awarded against said Whitney upon the
 dissolution of said Injunction in the
 condition of said Writing obligatory men-
 tioned amounting to a large sum to wit the
 sum of Seventy Five dollars. By means
 of which said several premises the said
 writing obligatory & condition thereunder
 have become forfeited and the said plaintiffs
 have sustained damages to the amount of
 Two Thousand Dollars and thereby an action

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hath accrued to the said plaintiffs to demand & have of & from said Defendants the said sum of Twenty Seven Hundred Dollars above demanded.

Yet the said Defendants altho often requested have not as yet paid the said sum of ~~money~~ Twenty Seven Hundred dollars above demanded or any portion thereof to the said Plaintiffs but have hitherto wholly neglected & refused so to do and still do neglect & refuse so to do to the damage of the said Plaintiffs Two Thousand Dollars & therefore they bring

Charles Kellum
Plffs atty "
"S. A. Hurlbut
of Counsel } "

On which is endorsed as follows, to wit,
"Filed March 26, 1858.

Jas H Beneidse, CLK, "

"Chas Kellum, Plffs atty."

"S. A. Hurlbut, Counsel."

And afterwards, to wit, on the 9th day of April A.D. 1858, Defendants Charles O Boynton & George Walrod by Messrs James & Lowell their attorneys filed in the office of

the Clerk of the said Circuit Court their
certain Pleas, which said Pleas are in
words and figures as follows, to wit

"In the De Kalb Circuit Court of Term A D 1858

"Albert G Robb et al.

" Vs

"Hiram E Whitney et al.

Debt.

And the said

"Dependents Watrod & Boyington by their

"Attorney Mayo & — Comes & Defends

1 "the wrong & injury when &c & say that the

"said bonds in said Declaration set forth

"are not their deeds & of this he puts himself

"upon the country &c & I the Plaintiffs do

"the like -- Kellum & Hurlbut
Plpps Atty"

"And for a further Plea in this

"said Dependents says actio non because

2 "they say that they do not owe and are

"not indebted to the said plaintiffs in

"manner & form as the said Plpps have

"above thereof declared against them and

"of this they put themselves upon the country &c"

"And for a further plea said Dependents say

3 "Actio non because they say that there are no

"any records of the ^{said} supposed Recoveries in

"the said declaration mentioned nor of

"any or either of them in the said declaration"

"mentioned remaining in the Circuit Court
 " of Cook County before the Judge thereof
 " in manner & form as the said plaintiffs
 " have above in their said declaration al-
 " leged - And this the said Dependents are
 " ready to verify wherefore they pray
 " Judgment &c"

4 " And for a further Plea in
 " this behalf said dependents say a ctio
 " non because they say that there never was
 " any such bill of Complaint filed in
 " said Circuit Court in & for said Cook
 " County as in & by said Declaration
 " alleged & supposed & of this they put
 " selves upon the Country &c - and the

" Plffs do the like - Return & Nulbat Plffs atty

5 " And for a further Plea as to said
 " first count in this behalf said dependents say
 " Actio non because they say that there is not now
 " any record of the said supposed order and decree
 " dismissing said bill of Complaint & dissolving
 " said injunction remaining in the Circuit Court
 " of Cook County before the Judge thereof in
 " manner & form as the said plaintiffs have above
 " in their said declaration alleged - & this they
 " are ready to verify wherefore they pray jud-
 " gment &c"

" And for a further ^{plea} in this behalf as to

6 " said 2^d Count said dependants say actio non
 " because they say that there is not now any record
 " of the said supposed order and decree dismissing
 " said Bill of Complaint and dissolving said
 " injunction remaining in the Circuit Court
 " of said Cook County before the Judge thereof
 " in manner & form as the said Plaintiffs have
 " above thereof in that behalf alleged & of this
 " they are ready to verify wherefore they pray
 " Judgment &c."

7 " And for a further Plea in this behalf the
 " said dependants say actio non because they
 " say that on the 11th day of June AD 1857 at Syracuse
 " in the County of De Kalb, the said Whitney having
 " good grounds for setting aside the judgment
 " restraining the collection thereof under
 " tions issued thereon which are in said de
 " set forth, and being then and there a wholly irre
 " sponsible person, the said Plaintiffs fraudulently
 " combined and confederated with the said Whitney
 " to defraud and injure these dependants in the
 " premises, by procuring him ~~him~~ to consent to a
 " dismissal of said Suit in Chancery and dissolution
 " of said Injunction, thereby to render these dependants
 " liable upon ~~their~~ said bond for the payment
 " of said judgments and to that end it was
 " corruptly agreed between them without the
 " knowledge or consent of these dependants that

"If he the said Whitney would consent to dis-
 "miss his said bill and allow said injunction
 "to be dissolved, they would among other things
 "they would forbear & extend for the space of one
 "year to the father of the said Whitney the time
 "of payment of a large debt due from the old
 "man Whitney father of the said Hiram E.
 "Whitney to the said plaintiffs, to wit, the sum
 "of fifteen hundred dollars to secure which
 "the old man Whitney had conveyed by deed
 "in trust a certain eighty acre lot situated in
 "the town of Pampas in said De Kalb County
 "in which ^{said} conveyance the said plaintiffs
 "were the cestui que trust, and that accor-
 "and in pursuance of said corrupt agreement
 "the said plaintiffs did forbear or cause to be
 "forborne and delay of payment given to the
 "said old man Whitney, for the space of one
 "year, upon the said debt & liability aforesaid
 "due from said Whitney to the said plaintiffs,
 "and said Hiram E. Whitney did dismiss said
 "bill and allow said injunction to be dissolved
 "and so these defendants say that the said
 "Order of the said Circuit Court dismissing
 "said bill and dissolving said Injunction
 "was obtained by fraud by the said plaintiffs,
 "and is void & of no effect by reason thereof
 "as to these defendants, and this they are ready

"to verify - Wherefore they pray Judgment &c.

" And for a further plea in this behalf.

" The said dependants say actio non, because

8 " They say that on the 11th day of June A.D.

" 1857 at Syracuse aforesaid, the said Whitney

" having good grounds for setting aside the Jud-

" gments and restraining the collection thereof

" under the executions issued thereon which

" are in said Declaration set forth, and being

" then and there a wholly irresponsible person

" the said George S Wood the person for whose

" use and benefit this suit is brought and in

" whom the equitable interest is and then & there

" was fraudulently combined and confederated

" with the said Whitney to defraud and

" these dependants in the premises by procuring

" him to consent to a dismissal of said suit

" in Chancery and dissolution of said injunction

" thereby to render these dependants liable upon

" said bond for the payment of said judgments

" and to that end it was corruptly agreed between

" them without the knowledge or consent of

" these dependants, that if he the said Whitney

" would consent to dismiss his said Bill and

" allow said injunction to be dissolved that

" they would among other things forbear and

" extend the time of payment for one year after

" the same should become due and payable to

" One William Whitney father of the said Hiram
 " & Whitney a certain debt due from the said
 " William Whitney the reputable or legal intelli-
 " gent to which was also then and there in the
 " said George S Wood, said debt was for the
 " sum of \$1500, and which had fallen due on
 " the 2^d day of June A.D. 1857 and to receive
 " secure the payment of which debt the said
 " William Whitney had conveyed in trust to one
 " William B Hovey the following described land
 " & premises situated in the County of De Kalb and
 " State of Illinois aforesaid, to wit, North East
 " the North East quarter of Section twenty
 " in Township Forty North, Range five
 " Also the North East quarter of the North West
 " quarter of Section twenty three in the same
 " Township & Range, and that accordingly and
 " in pursuance of said corrupt agreement the
 " said Wood did forbear or cause to be foreborne
 " and day of payment given to said William
 " Whitney upon said debt and liability due from
 " him as aforesaid and said Hiram & Whitney
 " did dismiss said bill and allow said injunction
 " to be dissolved - And so these defendants say
 " that the said Order of the said Circuit Court
 " dismissing said Bill was obtained by fraud
 " by the said Wood & is void & of no effect
 " by reason thereof as to these defendants and this

"They are ready to verify wherefore they pray
"Judgment &c"

"Mayo, James & Lowell
Atty's"

On which is enclosed as follows. to wit.

"Filed April 9th 1858

Geo. H. Beveridge Clerk"

And afterwards, to wit, on the same day, being the
9th day of April A.D. 1858, the Plaintiffs filed
in the Circuit Clerk's office of De Kalb County their
Demurrer to the 3^d, 4th, 5th, 6th, 7th & 8th pleas
herein, which said Demurrer is in words and
figures following, to wit;

"A. G. Robb et al

"for use of Bro S. Wood

" vs

"St. V. Whitney et al.

"

And now
Come the
Plaintiffs & George
S Wood Beneficial
Plaintiff in this

"sued by Kellum & Hurlbut his attorneys & as
"to the several matters & things by said Defendants
"Walrod & Boynton severally pleaded in their
"Third, Fourth, Fifth & Sixth pleas by them
"filed says that the matters & things therein con-
"tained in manner & form &c are not sufficient
"in Law to bar & preclude the plaintiffs from
"having & maintaining his action aforesaid
"nor are they sufficient for these Plaintiffs

" to reply ~~unto~~ unto.

" And for causes of Demurrer in form of
" the Statute these Plaintiffs shew to the Court
" now here.

" 1 That the matters set up in said Pleas
" are equivalent to the General issue & can
" be given in evidence if at all under the plea
" of Non Est Factum.

" 2. That in & by said Pleas the said dependant
" attempt to traverse & set up matters of in-
" ducement.

Charles Kellum

S. A. Hurlbut

Plffs

" And as to the said 7th & 8th Pleas
" the matters therein set forth in manner & form
" & c the said plaintiffs say that the same &
" the matters therein contained are not sufficient
" in Law in manner & form as therein pleaded,
" for these plaintiffs to reply unto or to bar them
" Plffs from having & maintaining his action
" aforesaid. Wherefore he prays Judgment of
" the said Pleas & c"

Charles Kellum

S. A. Hurlbut

" On which is endorsed as follows to wit: Plffs Atty
" ^{the} Pleas April 9. 1858 of as H. H. Haveridge Clk
" And afterwards do not on the 14th day of
" April A.D. 1858. the Plaintiffs filed in the
" office of the Clerk of the Circuit Court of

" Of Kalk County their Replications to the
 " 3^d 5th & 6th Pleas, which said Replications
 " are in words and figures following, to wit:

" A. G. Robb et al

" for use of George L Wood

" vs

" H. E. Whitney et al

Replications

" And now come
 " the said Plaintiffs and for Replication to the
 " plea by said Defendants Bogington & Watson
 " Thirdly above pleaded they say Precludi
 " non because they say that there are re-
 " maining in the Circuit Court of Cook
 " Co records of the said Recoveries in said
 " Declaration mentioned before the J
 " thereof in manner & form &c as in &
 " said Records upon inspection thereof will
 " more fully appear & of this they pray may
 " be inquired of by the Country &c"

" Chas Kellum } Plffs
 " S. A. Hurlbut } Atty"

" And the said dependants doth the like

" Mayo, James & Lowell attys for
 " Defts"

" And as to the plea by the said Watson &
 " Boginton fifthly above pleaded the said plain-
 " tiffs say "Precludi non" because they say that
 " there remains of Record in the Circuit Court
 " of Cook County before the Judge thereof the

"Order & decree of the said Court dismissing said
 " Bill of Complaint & dissolving said Injunction
 " in manner & form as in said Declaration set
 " forth & this they pray may be enquired of by
 " the Country &c"

" Kellum & Hurlbut
 " Plffs Atty"

" And the said dependants doth the like

" Mayo James & Lowell Defts attys"

" And as to the plea by the said Watrod
 " & Bogden Sixthly above pleaded the said Plffs
 " say Procludi Non because they say that there
 " is now remaining in the said Circuit
 " of Cook County before the Judge thereof
 " record of the said Order & Decree dismissing
 " said Bill of Complaint & Dissolving the said
 " Injunction in manner & form as the said
 " Plaintiffs have above in the second Court
 " of said Declaration set forth & this day pray
 " may be ~~enquired~~ inquired of by the Country.

" Kellum & Hurlbut Plffs Atty

" And the said dependants doth the like

" Mayo James & Lowell
 " Defts Atty"

On which is endorsed as follows, to wit:

"Filed April 14th 1858 Jas. H. Beveridge Clerk"

"Kellum & Hurlbut for Plffs"

"The Court being ~~being~~ fully advised sustains said
 " motion and orders that said plea be stricken off,
 " and thereupon the plaintiff files his demurres
 " to the 3^d, 4th, 5th, 6th, 7th & 8th Pleas of said
 " Watrod and Bognton in which said dependants
 " join: And the Court after arguments of Counsel
 " being fully advised, orders that said Demurres
 " be sustained as to the 7th & Eighth pleas and
 " overruled as to the balance - It is therefore con-
 " sidered by the Court that the plaintiff ~~has~~
 " have and recover of the dependants Watrod
 " & Bognton his costs of Demurres sustained
 " and have execution therefor: And that
 " dependants Watrod and Bognton have
 " recover of the plaintiff their costs of demur-
 " overruled and have execution therefor: to
 " which ruling of the Court as against them
 " the said Defendant Watrod and Bognton
 " except which is here noted."

And be it further remembered that on Wednes-
 day the 14th day of April A.D. 1858, the same
 being one of the days of said Term of said
 Court the following proceeding in relation
 said Court was had to wit:

" Albert G. Robb et al.

" who sue for the use of

" George L. Wood

" Hiram E. Whitney et al.

} Debt.

This day came

"the parties by their attorneys waive a Jury
"and for trial submit this cause to the Court."

And be it further remembered that on Saturday
the 17th day of April A.D. 1858 the same being
one of the days of said Term of said Court
the following proceeding in said Court was
had, to wit:

" Albert G. Robb John

" At Ball & William Phelps

" who sue for the use of

" George S. Woud

" as

" Arcim D. Whitney

" George Matron & Charles O. Boynton

" parties by their attorneys, and the Court

" hearing the evidence and remarks of

" being fully advised finds for the plaintiffs

" the sum of Twenty Seven hundred dollars Debt

" and assesses the plaintiffs damages by reason

" of the non performance by the defendants of

" the covenants in the bond herein so far as they

" have assigned breaches of said covenants

" in their said Declaration, at the sum of six-

" teen hundred and one Dollars and seven cent;

" It is therefore considered by the Court that the

" plaintiffs have and recover of the defendants

" the said sum of Twenty Seven hundred

" Dollars Debt, to be discharged upon the payment

" Debt"

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"of Sixteen hundred and one dollars and some
 "cents damages together with their costs herein
 "expended and have execution therefor: And
 "hereupon exceptions are taken by the defend-
 "ants to the opinion of the Court which are all
 "owed and a Bill of exceptions ordered to be
 "filed herein by the first day of July next, and
 "thereupon the defendants prayed an appeal
 "to the Supreme Court which is allowed
 "on condition that the defendants file their
 "Bond within twenty days in the sum of
 "Three Thousand dollars with any two of
 "the following named persons as sureties
 "John C. Waterman James S. Waterman
 "S. Brown Phineas Stevens Horatio H. W.
 "Rufus Hopkins."

And be it further remembered that on the
 30th day of June A.D. 1858 there was filed
 in the office of the Clerk of the Circuit
 Court of De Kalb County a certain Bill
 of exceptions which said Bill of exceptions
 is in words and figures following, to wit:

"De Kalb County Circuit Court
 "Albert & Robt John H. Ball
 " & William Phelps who sue for
 "the use of George S. Wood
 "Charles O. Baginton & George
 "Walrod impleaded with Hiram E. Whitney

} April Term
 } AD 1858.

Be it remembered that on the seventeenth
 day of April in the year of our Lord One
 Thousand eight hundred and fifty eight
 which was one of the days of the April
 Term of said De Kalb County Circuit Court,
 held in the County of De Kalb in the Thirtieth
 Judicial Circuit in the State of Illinois said
 Cause was submitted to the Court for trial, without
 the intervention of a jury, whereupon the Plain-
 tiffs in this suit in order to sustain the issue
 on their part offered in evidence a certain
 Bond bearing date the eighth day of February
 AD 1856 signed by Hiram C Whitney George
 Watrod and Charles O Bogutson which said
 Bond is in words and figures follow-
 ing to wit. " Know all men by these
 Presents that We Hiram C. Whitney of De Kalb
 of De Kalb County Illinois principal and
 George Watrod and Charles O. Bogutson his
 Sureties are held and firmly bound unto Albert
 G Robb and John H Ball & William Phelps of
 said County in the penal sum of Twenty Seven
 Hundred Dollars for the payment of which
 well and truly to be made unto the said Robb
 and Ball their heirs executors administrators
 or assigns we bind ourselves our heirs ex-
 ecutors & administrators jointly severally &
 firmly by these presents signed sealed

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" and dated this 8th day of February AD 1856.
 " The condition of this obligation is such that
 " whereas the said Whitney hath lately filed in
 " the Circuit Court of Cook County on the
 " Chancery side thereof against the said Robt
 " & Ball & Phelps, praying among other things
 " that an injunction writ be issued against
 " them said Robt Ball & Phelps to enjoin them
 " from proceeding in the collection of certain
 " judgments therein mentioned, which writ
 " hath been ordered to be issued on filing
 " bond as required by law"

" Now therefore if the said Whitney
 " pay all money and costs due the plain
 " upon said judgments and also all su
 " costs and damages as shall be awarded a
 " gainst the Complainant in case said in
 " junction shall be dissolved then the above
 " bond to be void, otherwise to remain in full
 " force & effect"

" Miriam C Whitney Seal
 " Geo. Watrud Seal
 " Charles O. Boynton Seal

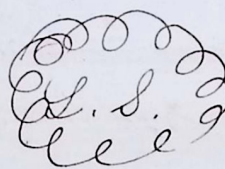
" State of Illinois
 " County of De Kalb }
 " } We George Watrud
 " and Charles O Boynton
 " of said County being duly sworn do depose
 " & say each for himself that they are each
 " worth five thousand dollars over and

"above the payment of all just debts & liabilities
 " against them or either of them - And that the
 " property is situated & being in this State"

"Geo Walrod "

"Charles O. Boynton "

"Subscribed & sworn to before
 " me this 8th day of February
 " AD 1856 & I certify that I
 " am personally acquainted
 " with said parties & consider
 " the facts set forth in the above
 " affidavit to be true - As Witness
 " my hand and official seal "

" "
 " Cl. S. C. "

"Jas H Beveridge

Clerk Circuit C

On which said Bond is endorsed as follows
 to wit " This Bond approved "

" S. C. P. Freer "

" Master in Chancery "

" Book let "

" Filed Feb 9 1856. - S. C. Hoard Clk "

" Filed April 9. 1858 J. H. Beveridge Clk "

" which was received by the Court as evidence
 " but before the same was so received the
 " plaintiffs called James H Beveridge Clerk of
 " the De Kalb County Circuit Court as a Witness

3/

" who after being duly sworn as a Witness in
" said cause testified that " the Bond was executed
" in my presence at my office - It was sent
" out from Chicago - The writing in the body
" of the bond is that of W. F. Burgess the filling
" in the name of Phelps in both places is in Mr
" Burgess hand writing also " which was all
" the evidence either given or offered by or
" from said Witness. To the acceptance of said
" bond as evidence by the court, as well as
" the acceptance of the evidence of said James
" H. Beveridge, the dependants by their
" then and there objected, which objection
" then and there overruled by the court.
" The same received as evidence; to which
" ruling by the court of the said objection, and
" the admission of the testimony of said
" Beveridge and the said bond as evidence
" the said dependants then & there excepted.
" The said plaintiff then offered in evidence
" a certified copy of the records and proceedings
" had in Cook County Circuit Court in a
" certain case determined in said court, on
" the Chancery side thereof, wherein William
" E. Whitney was complainant and John H. Ball
" Albert G. Robb and William Phelps were
" dependants which said records and proceedings
" were in the words and figures following

United States of
America State of
Illinois County
of Cook } p

Pleas before the Honorable
George McAniere Judge of the Seventh Judicial
Circuit of the State of Illinois, and presiding
Judge of the Circuit Court of Cook County in
said State at a special term began and held
at the Court House in the City of Chicago in
said County on the fourth Monday (being the 22nd)
of June in the year of our Lord One Thousand
Eight hundred and fifty seven. And of the
Independence of the United States the Eighty
in pursuance of an Order of this Court
and entered of record at the last term
of (Lower on the 10th day of April last past)
Appointing a special trial term of this Court in
accordance with the Statute in such case made
and provided.

Present

Honorable George McAniere Judge
of 7th Judicial Circuit - John L. Wilson
Sheriff of said County Carlos Heaven State Attorney
Attest: William L. Church Clerk

Be it remembered to wit: that on the 9th
day of February A.D. 1856 there was filed in the

Office of the Clerk of the Circuit Court of said
a certain Bill for Injunction on the Chancery
side thereof which said Bill is in the words
and figures following to wit:

To The Honorable
George Manierre Judge of the Seventh Judicial
Circuit of the State of Illinois, In the Cook
Circuit Court, In Chancery Sitting

State of Illinois
County of Cook

Your Orator Miriam
C. Whitney of the County of DeKalb in said
State humbly complaining shows unto your
Honor that in the month of August
the year one thousand eight hundred
and fifty five. Your Orator and one
Franklin C. Pratt under the firm name of
Whitney & Pratt was engaged in business
together as partners in selling goods and
carrying on a country Merchants Store at
Scottland in said County of DeKalb. and at
some time in that month Albert G. Robb
a defendant in this bill of complaint
proposed to your Orator to sell him and said
Pratt a stock of Goods that he then claimed
to be the Owner of and which were then in the
Custody of said Robb in the Town of Scottland

Aforesaid

And your Orator further shows that he is informed and believes the said Stock of Goods were not in fact the property of said Robb, but was then the property of and really belonged to one John H. Ball of Genoa in said County or to the firm of Ball Brothers of which said John H. Ball was a partner in that place. That the said Ball before that time had placed said Goods in the hands of said Robb. And gave him the charge thereof but for what purpose your Orator is not certainly informed. The Robb holding said Goods and the proceeds and avails thereof for the use and benefit said Ball and as Agent of said Ball dealing with, managing and disposing of the same according to the directions of the said John H. Ball & that no consideration of value was then or has since been paid by said Robb to said Ball or Ball & Brothers for said Goods.

And your Orator further shows unto your Honor that negotiations upon the said proposition of the said Robb then took place between your Orator acting for said firm of Whitney & Pratt and the said Robb in the course of which an agreement as to the price and times of payment for said Goods

was made between them subject to the
 ratification and approval of said John
 Mc Ball Upon its submission to him for
 that purpose the said Robb throughout
 the negotiation intimating that the terms
 must be such as would meet the views of
 the said John H. Ball. That having made
 such agreement & upon the invoice or delivery
 of said Stock of Goods or the payment of any part
 of the purchase money your Orator and said
 Robb went from Cortland when said
 stock was to the Village of Genoa to see said
 Ball about said trade. That upon the
 arrival and going to the house of said
 he and the said Robb after the purpose
 which they your Orator and said Robb
 come there had been mentioned had a private
 conversation together apart from and out of
 the hearing of your Orator and after the close
 thereof the said Robb came & informed your
 Orator that the terms of sale of said stock of
 Goods which had been agreed upon between
 them were satisfactory to said Ball and
 that the bargain might be considered as
 made or in words of that import and to
 that effect And thereupon your Orator &
 said Robb returned to Cortland.

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And your Orator further shows that as he is informed and believes in the sale of said Goods to said Whitney & Pratt and in the subsequent dealings & transactions growing out of said sale between your Orator & the said Ball & Robb the said Robb was the mere Agent of said Ball or Ball & Brother and allowed his name to be used as principal for the benefit of said Ball & not for his own benefit. And your Orator further shows that having so concluded upon the terms for the purchase of said goods your Orator before the invoice thereof was complete left for the east for the purpose of buying fall stock of goods and that at the time purchased said goods it was the understanding and agreement that upon his return from said trip to purchase goods at the East which he then had in contemplation he was to give the notes of said firm of Whitney & Pratt for said goods upon the same time he should purchase goods of a similar character then, and that when he left such was the understanding between the parties, that as he is informed and believes soon after he left as aforesaid said invoice was completed and amounted to about the sum of four thousand dollars

that thereupon in the absence of your orator without his knowledge or consent & before his return from said trip the said Robb and Ball induced said Prath to give the notes of said firm for the amount of said invoice in different amounts & payable at different times & variants from the terms and amounts as agreed upon by your orator with said Robb & Ball of which notes there are hereinafter set out & alluded to

And your orator further shows unto your Honor that on or about the 25th day of October A.D. 1855 your orator having sometime previous to that purchased out the interest of said Prath in the business & property of said Whitney & Prath & assumed the payment of the liabilities of said firm which fact was well known to said Ball & Robb the said Ball came to your orator with three of said notes in his possession namely one for two hundred seventeen dollars and ten cents due sixty days from the date thereof another for Eight hundred and thirty three ⁵⁵/₁₀₀ dollars due three months from date thereof & the third for one hundred and sixty six dollars & forty four cents due six months from date said notes being dated about the latter part of said month of August 1855 were all payable to the order of

Whitney & Pratt and indorsed in Blank by them
 and were so in blank when so produced by
 said ^{they said Ball} Ball represented to your Orator that he
 was in want of money and that if your orator
 would give him notes with a power of Attorney
 Authorizing the entry of a judgment when due
 that he would have no difficulty in raising
 the money on them and proposed to your
 Orator to extend the time of payment on said
 three notes seven months from that date if
 your Orator would give him notes payable
 then with interest at ten per cent per annum
 on the amount of the notes then about
 due in a few days & after four months
 the amount of the other two notes with
 to confer judgment when due if not then
 paid that your Orator acceded to the
 propositions as thus then made as it gave
 him an extension of four months time on
 the average of the notes then held by said
 Ball, was a substantial compliance as
 to their amount with the terms upon which
 said stock of goods had been purchased
 and was deemed by your orator
 a fair proposition and arrangement
 And nothing occurring to lead him to suspect
 that said John W. Ball had any covert
 design to defraud and overreach your Orator

And your Orator charges that during the whole of this negotiation not anything was said about any contingency arising upon which such renewed notes should become due and payable & the collection thereof enforced before the same should fall due by their times, or that the said Ball or his Agent could in any event whatever have the power to cause before they were due, but the judgment notes pledged to be entered on said notes, to be then given were spoken of as ordinary judgment notes to be used as such if not paid when due and that if Orator would give them in lieu held by said Ball it would be to a personal favor, enabling him to raise the money by borrowing the same on the pledge of said notes from some friend of his to assist him in his then pecuniary difficulties And your Orator was to have seven months from that date to pay them in before he should be put to any cost or any judgment be entered up under them And only in case of a failure to pay when due was judgment to be entered up & cost made under such judgment notes And your Orator further shows

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that this agreement being made in the terms above proposed and without any charge whatever in those terms the said Ball and your Orator proceeded to figure up and ascertain the amount of said three notes and as his suggestion the amount was divided into two sums of \$1000 + \$217 ¹⁴/₁₀₀ that thereupon the said Ball produced two printed blank forms for notes & warrants of Attorney to confess judgment and proceeded to fill them up for your Orator to execute under the above agreement and to carry the same into effect inducing your Orator to believe by the representations that were made that they would merely authorize entry of a judgment when due as they had agreed that your Orator not being familiar with legal phrases and terms and having full confidence in the representations of said Ball as to the powers contained in said warrants of Attorney and that they were such as they had agreed upon executed the notes and warrants of Attorney under written and printed without any examination as to their contents copies of which are hereto annexed made part of this bill of complaint marked Exhibit "A" & "B" and the originals whereof are now

on file of record in this Court & to which for greater certainty your Orator prays reference may be had and your Orator expressly charges that at no time during the negotiations preceding or at the making of said notes and warrants of Attorney was there any thing said about the said Ball having the right to enter up a judgment whenever he saw fit so to do neither was any thing of the kind insisted upon as necessary for his security but it was expressly stated that your Orator was to have seven months from that day to pay the money in that your was not aware at the time that printed blanks contained any power authorizing the entry of a judgment before said notes should fall due. And your Orator charges that the said Ball falsely and fraudulently induced your Orator to execute said powers of Attorney by holding out to him the inducement that he would thereby certainly have an extension of the time of payment for seven months from that date which in truth and in fact said warrants of Attorney authorized the enforcement of an immediate collection of said money long

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before it was due According to said note first given, with exorbitant Attorneys fees & costs of suit & that had your Orator known at the time that said warrants of Attorney contained such an authority he would not have executed them as the object proposed and understood by all parties was an extension of the time of payment to your Orator and no liabilities for costs of any kind unless your Orator failed to meet the same when due

And so your Orator charges that the said Ball fully & with the intention to deceive your Orator craftily falsely and fraudulently procured your Orator by circumvention and a craftily devised plan and through and by means of false & fraudulent representations and conduct calculated to create false impressions upon the mind of your Orator as to the extent of the powers contained in said warrant of Attorney induced ^{& procured} your Orator to execute said warrants of Attorney & notes he well knowing at the time ^{that} the said warrants of Attorney contained authority to enforce the collection of said note the moment they were signed but willfully

& intentionally concealed said fact from your Orator. He then well knowing that the only inducement or consideration for the giving of judgment notes by your Orator in lieu of the notes then held by him was the extension of time proposed and agreed to be given him.

And your Orator further shows unto your Honor that as he is informed and verily believes the said Ball on the twenty ninth day of October 1855 and within four days after the making of said notes took the same to the City of Chicago and judgments by confession to be entered that day under said warrants of Albin G. Robt. one on the said note for \$1000 for ten hundred and forty five dollars & costs of suit including therein fifty five dollars for Attorneys fees and on the other note of two hundred and seventeen dollars and sixteen cents a judgment for Two hundred and forty nine dollars and twenty five cents & costs of suit including therein thirty two dollars for Attorneys fee and on the said 29th day of October 1855

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caused executions on said judgments respectively to be issued to the Sheriff of DeKalb County under the seal of the Court commanding him to make said judgments of the goods & chattels lands & tenements of your Orator in his County which writs were soon thereafter delivered to William Phelps the Sheriff of said County ^{to execute} and were by him levied upon the Goods & chattels of your Orator in said County

And your Orator further shows that he was not aware of the entry of said judgments or of Executions thereon until the said Sheriff came with said Executions to make said levy that he never in any manner consented to the issuing thereof or the entry of said Judgment but the entry of said judgment and the issuing of said executions were done entirely without the knowledge or consent of your Orator And not until said execution came into the hands of said Sheriff And was presented to your Orator Did your Orator have the slightest intimation from any person that said warrants of Attorney accompanying said notes contained any clause authorizing the entry of judgments

thereunder until after said notes became due

And your Orator further shows unto your Honor that on the 25th day of November 1855 he caused a bill of complaint to be filed in the Circuit Court of DeKalb County aforesaid on the Chancery side thereof against said Ball & Robb setting forth among other things the fraudulent procurements of said warrants of Attorney from your Orator and praying among other things for an injunction to restrain any further proceedings by them in the collection of said judgments upon which an injunction by order of the judges of that Circuit was issued and served upon the said Ball & Robb enjoining them from proceeding further in the collection of said judgments until the further order of the Court which said writ was not served upon said Phelps nor is he made a party defendant to said bill and thereupon all proceedings were stayed in said matter until recently that now the said Ball & Robb set up as your Orator is advised and believes that said Circuit

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Court of DeKalb County have no jurisdiction to grant any injunction to stay said proceedings and execution which your Orator is now advised is the law of the land and the said Sheriff at their suggestion & under their direction is now about to proceed in the execution of said writ of execution ^{of said writ of execution} according to the exigency thereof and threatens to proceed & sell the property of your Orator to satisfy the same.

And your Orator further shows that he has frequently and in a friendly manner applied to the said Ball to cease the further prosecution of judgments & executions and their to collect the same from your Orator But now so it is may it please your Honor the said John A Ball Albert G. and William Phelps combining and confederating with divers other persons whose names are unknown to your Orator but who where discovered your Orator prays may be made parties hereto with proper and apt words to charge them here to injure and defraud your Orator in the premises and to vex harp oppress & wholly impoverish him refuse to comply with the reasonable request

of your orator in the premises and are threatening to proceed in the collection of said judgments and have caused advertisements of property to be made to be sold under and by virtue of the same on the twelfth day of this present month of February as he is informed and believes. And he verily fears they will carry such advertisements into effect & proceed to sell said property unless restrained by order of this Court. All which actings & doings are contrary to Equity & good conscience & tend to the manifest wrong & injury & prejudice of your orator.

To the End therefore that the said debts may be true full & perfect and make to all and singular the premises & that without oath which is hereby expressly waived

That the said Notes & Warrants of Attorney may be set aside and declared an Absolute nullity & the said Albert G. Robb directed to vacate the judgments thereon entered Or that the said Warrants of Attorney may be corrected and made to agree with the understanding of the parties by striking out all that part thereof that authorizes the

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entry of a judgment thereunder before the
said notes fall due. That the said Robt
Ball & Phelps their Agents & deputies be
enjoined And restrained from further
proceedings in any manner whatever to
enforce the collection of said judgments
with the further order of the Court and
that such Injunction be made perpetual
And for such other or further relief as
shall be agreeable to Equity & good consci-
ence And the nature of your Orators case
may require in the premises may it please
your Honor to Grant your Orator
of Summons against the said John
Albert Cobb and William Phelps
to appear before this Court at this m.
thereof Answer this Bill & abide by the order
& decree of the Court in the premises And
process of injunction enjoining & restraining
said defendants as herein above prayed
for. And your Orator will Ever pray &c.

Wm Harnsworth & Burgess	}	Hiram C. Whitney
Solrs & of Counsel		

State of Illinois
 Cook County
 of Cook Hiram C Whitney of
 DeKalb County being duly sworn doth
 depose and say that he has heard read
 the foregoing bill by him signed and
 knows the contents thereof and that the
 same is true of his own knowledge except
 as to matters stated to be on information
 & belief & as to those he believes it to be true

Hiram C Whitney

Sworn to, ^{and} subscribed before me this
 9th day of February 1856

L. C. P. Greer

Master in Chancery " Cook Co.

\$217.16 Portland October 25, 1855

Seven months after date
 for value received I promise to pay to
 Albert G Robb or order the sum of Two
 hundred and Seventeen $1\frac{1}{100}$ Dollars
 with interest at the rate of ten per cent
 per annum being for borrowed money

H. C. Whitney

Know all men by these presents that
 whereas I the subscriber Hiram C
 Whitney am justly indebted unto Albert
 G Robb upon a certain promissory

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note bearing even date herewith for the
sum of two hundred and seventeen ¹/₁₀₀
dollars by me made payable to said Albert
G. Robb, or order and due seven months
after the date hereof with interest at
the rate of ten per cent per annum
being for borrowed money now therefore
in consideration of the premises and the
sum of one dollar to me in hand paid
by the said Albert G. Robb the receipt
whereof is hereby acknowledged I do hereby
constitute and appoint Robert S. Black-
well, or any Attorney of any Court ~~or~~
~~or jurisdiction of any State of Kingdom Province~~
to be ~~my~~ true and lawful attorney
irrevocably for me and in my name
place and stead to enter my appearance
before any Justice of the Peace in any Court
whether of Record or not either of the
United States or any State or Territory
thereof or any State Province, Kingdom
or Empire either in term time or ⁱⁿ vacation
at any time from and after the date
hereof at the option of the said Albert G.
Robb the survivor or survivors of them and
their heirs executors administrators or
assigns or the legal holder or holders
of said note to waive the issuing and
service of process or other notice of suit

upon him his executors or administrators
 and suffer a judgment to pass against
 him his executors or administrators by
nil. dict. non. sum. informatus.
 or cognovit for whatever sum of money
 may then be unpaid (though not due)
 upon said note according to its tenor.
 And Attorney fees for entering the same
 to ten per centum upon the sum of money
 aforesaid with an order that execution
 issue forthwith thereon. And my said
 Attorney is also Authorized in my behalf
 to file a cognovit for the said sum
 of money and Attorney fees with
 Agreement therein that no writ
 or appeal shall be prosecuted,
 any bill in equity filed to interfere in
 any manner with the judgment that
 may be entered up under this power
 or execution issued thereon and to
 release all errors that may intervene
 in entering up said judgment or
 issuing Execution thereon hereby
 ratifying and confirming all that
 my said Attorney may do by virtue
 hereof. And for the considerations
 above mentioned I do hereby waive
 and release in favor of and to the said

Albert G Robb or his survivor or survivors of Executors administrators or assigns or legal ^{holders of} holders of said note in whose favor judgment may be entered under this power any and all rights interest & benefit accruing or to accrue to his executors or administrators by virtue of an act of the General Assembly of the State of Illinois entitled "An Act to Exempt Homesteads from sale on Executions" Approved February 11th 1857 in reference to any property which I now hold or hereafter acquire hereby expressly consenting on behalf of

Witness my hand and
this 25th day of October AD 1855
In presence of
John W. Ball H. C. Whitney
Deed Seal

Certified October 25, 1855
\$1000. Seven months after date for value received I promise to pay to Albert G Robb or order the sum of One thousand dollars with interest at the rate of ten per cent per annum being for borrowed money Interest after four months
H. C. Whitney

Know all men by these presents that
 whereas I the subscriber Heriaw C.
 Whitney, am justly indebted unto
 Albert G. Robb upon a certain
 promissory note bearing even date
 herewith for the sum of One thousand
 dollars by me made payable to
 said Albert G. Robb or order and
 due in seven months after the date
 hereof with interest at the rate of ten per
 cent per annum being for money borrowed
 Interest after four months Now therefore
 in consideration of the premises
 sum of one dollar to I in hand paid
 by said Albert G. Robb the receipt
 whereof is hereby acknowledged I do
 hereby make constitute and appoint
 Robert C. Blackwell or my Attorney
 of any Court of Record or Judicature
 in any State, Kingdom Province or
 Empire to be my true and lawful
 Attorney irrevocably for me and in my
 name place and stead to enter my
 Appearance before any Justice of the
 Peace or in any Court whether of record
 or not, either of the United States or any
 State or Territory thereof or any State
 Province or Kingdom or Empire

either in term times or in vacation
 at any time from and after the
 date hereof at the option of the said
 A. C. Robb, the survivor or survivors of
 them and their heirs executors, Adminis-
 trators or assigns or the legal holder or
 holders of said Note, to waive the issuing
 and service of process or other notice
 of suit upon me or my heirs Executors
 or administrators by Nihil dices, non
sum. informatus or Cognovit for whatever
 sum of money may then be unpaid
 (though not due) upon said note accord-
 ing to its tenor and Attorneys fees and
 entering up the same to two per centum upon
 the sum of money aforesaid with an order
 that Execution issue forthwith thereon
 And my said Attorney is also author-
 ized in my behalf to file a Cognovit
 for the said sum of money and Attorneys
 fees with an Agreement thereon, shall
 be prosecuted nor any bill in Equity filed
 to interfere in any manner with the
 judgment that may be entered up
 under this power or Execution issued
 thereon and to release all errors
 that may intervene in entering up
 said judgment or issuing Execution

thereon. Hereby ratifying and confirming
all that my said Attorney may do by
virtue hereof.

And for the considerations
above mentioned I do hereby waive
release in favor of & to the said Allen
& Robt, or the survivor or survivors
of Executors administrators or assigns
or legal holder or holders of said note
in whose favor judgment may be
entered under this power any and all
rights, interest and benefits accruing
or to accrue to heirs executors or ad-
ministrators by virtue of an act of
General Assembly of the state of Illinois
entitled "An Act to Exempt Homestead
from sale on Execution Approved
Feb'y 11th 1857. in reference to any property
which I now hold or hereafter may
acquire, hereby expressly consenting
in behalf of

Witness my hand and
seal this 25th day of October AD 1855
In presence of
John A. Bull & W. E. Whitney Deat

Office of Master in Chancery
Chicago February 9th 1856

Let the writ of Injunction issue
in Conformity with the Prayer of the foregoing
Bill of Complaint the Complainant
filing Bond in the usual form in
the penalty of Twenty Seven hundred
dollars with George Walcott & Charles
A Boynton as surety

Clerk of Circuit Court Cook Co.
S C Paine Treas

Master in Chancery
Cook Co.

Masters fee \$2.00 for granting writ of Injunction
Paid by Compt

Clerk issue sums to
the Coroner of DeKalb County

Farnsworth & Burges
for Compt

And afterwards to wit on the 9th day of
February A.D. 1856 there issued out of the
Office of the Clerk of the Circuit Court
of Cook County aforesaid the Peoples
writ commonly called Injunction
directed to the Coroner of DeKalb
County which said writ is in the
words and figures following to wit

State of Illinois
Cook County

The People of the State
of Illinois, To John H. Ball, Albert
G. Robb and William Phelps &c
of DeKalb County their Deputies Att.
Solicitors Agents and servants and each
and every of them Greeting:

Whereas it has
been represented to the Honorable George
Manierre, Judge of the Seventh
Judicial Circuit and presiding
Judge of the Circuit Court of
County of Cook, in said Circuit and
State of Illinois by Hiram C. [unclear]
Complainant in his certain bill
Complaint, Exhibited before said Judge
and filed in said Court amongst other
things that now the said Ball Robb Phelps
are seeking to enforce the collection
of two ^{certain} judgments lately rendered in our
said Court in favor of said Albert G.
Robb and against said Complainant
one for ten hundred and fifty five dollar
damages and costs of suit and the
other for Two hundred and forty nine dollars
and seventy five cents & costs of suit
upon which judgments executions dated

59 the 29th day of October A D 1853 have
been issued to the Sheriff of said DeKalb
County and are now in the hands of said
William Phelps as such Sheriff to execute
all of, which is contrary to Equity and good
conscience: And L C Patre ^{of} the Master in
Chancery in and for said County in the
Absence of the said Judge having under
his hand endorsed upon said bill an order that a
writ of Injunction issue out of said Court
according to the prayer of the said bill
Now therefore we do hereby strictly enjoin
and command you the said Ball
and Phelps your Deputies, your
Solicitors, Agents, and servants, and
Every of you, that you do absolutely
entirely desist and refrain from
proceeding any further in enforcing in
any manner whatsoever the collection of
said judgment or the execution of said
writs of execution until this Honorable
Court in Chancery sitting, shall make
other order to the contrary. Hereof fail
not under the penalty of what the law
directs

Witness Lewis D Board, Clerk of said
Circuit Court and the seal thereof at Chicago
in said County this 9th day of February

1856

S. D. Hoard : Clerk

To the Coroner of DeKalb County to Execute
 And afterwards to wit. on
 on the 14th day of February A.D. 1857 the
 above mentioned writ was return
 to & filed in the Office of the Clerk of
 the Circuit Court of Cook County
 aforesaid with endorsements on the back
 which are in the words and figures
 following to wit:

"Served this writ on the within named
 "John H. Ball William Phelps 11th day of Feb.
 "1856" & on Albert G. Robb on the 12th
 "February 1856 by reading the same
 "of them"

" Fees Service	1.50
" 14 miles	3.75
" Postage	.06
" Ret	.10
	\$ 5.36 "

" Lorenzo Whittemore
 " Coroner of DeKalb Co Ill "

And afterwards to wit. on the 8th day of
 November A.D. 1856 it being one of the days
 of the October Term of said Court for said
 year the following among other proceedings
 were had and entered of Record to wit:

Hiram C Whitney

vs

John H. Ball Albert
G. Robb & William Phelps

Chancery

And now at this day came again the said parties by their respective Solicitors and by agreement this cause is submitted to the Court on the bill answer replication and proofs filed herein and the Court having heard Counsel and not being fully advised in the premises take time to consider of the same.

And afterwards to wit. on the 12th day of June AD 1857 there ~~was~~ was filed in the Office of the Clerk of the Circuit Court aforesaid a certain stipulation in the words and figures following to wit:

State of Illinois
Cook County " Circuit Court

Hiram C Whitney
Complainant

vs

Albert G. Robb
John H. Ball and
William Phelps
Defendants

In Chancery

It is hereby stipulated
And agreed by and

between Hiram E Whitney Complainant
 in the above entitled suit and George L
 Wood the Assignee of the two judgments
 mentioned in the bill of complaint filed
 in this cause that the said Defendants
 shall bear the liberty to have a decree
 entered against the Complainant in any
 form which may be deemed necessary to
 protect the rights of the said Assignee
 of said judgments and that the
 Attorney or Counsel of said George L.
 Wood shall have the right to the Entry of
 any order in said suit which may
 necessary to carry out the decree and
 the judgments before referred to with
 and costs to be taxed. It is agreed on the part
 of said Wood that all claim for damages
 in consequence of the Issuing of the Injunction
 on the part of the said defendants or himself
 shall be waived. It is further agreed and
 stipulated by and between the parties
 that this stipulation may be filed with the
 Clerk of the Court and the decree and orders
 entered at any time the said George L. Wood
 his Attorney or Counsel may elect to do so
 Dated Syracuse June 11th 1857

Hiram E Whitney
 George L. Wood

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And afterwards to wit on the 12th day of June
A.D. 1857 there was filed and entered of Record
in the Office of the Clerk of the Circuit Court of
Cook County aforesaid a certain decree of
said Court which is in the words and figures
following to wit:

Heiram & Whitney
vs

Albert & Robb
John A Ball &
William Phelps

In Chancery
Bill for Injunction

On reading and filing the
stipulations on the part of the complainants
Heiram & Whitney and George L. Moore
of the judgment Enjoined and attempted to be
set aside by the bill filed in this case
motion of Counsel for the Defendants It is ordered
and decreed that the said bill be dismissed
with costs against the said complainants to be taxed
and that the Sheriff of Cook County be authorized
and directed to proceed and collect the judgments
aforesaid and that all liens acquired by virtue
of the said judgments and the issue of ex-
ecution thereon be ordered and decreed
valid and binding —

State of Illinois }
County of Cook } p

I William L. Church Clerk
of the Circuit Court of Cook
County, in the State aforesaid,
do hereby certify that the above
and foregoing transcript is a true perfect and
complete copy of the certain bill of complaint
Writ of Injunction, Stipulation, and orders
filed and Entered of Record in the Office of
the Clerk of the said Circuit Court of Cook
County Aforesaid in a certain case lately
pending therein on the chancery side
wherein Merriam & Whitney was complainant
and John A. Ball, Albert G. Robb
William Phelps were defendants and
whole thereof as appears to us of Record.

In Witness whereof I have hereunto
set my hand and affixed the seal of our
said Circuit Court aforesaid

Wm L. Church Clerk

to the reading and receiving of which in evidence the defendants objected which objection was overruled by the court and the same was received as evidence, to which ruling of the court the said defendants then and there excepted.

The said plaintiff then offered in evidence a certain bond commonly called a "Fork coming" or "delivery bond" executed by Miriam E. Whitney and George Walrod to William Phelps late sheriff of said DeKalb County which said Bond is in the words and figures following:

"Know all by these presents that we Miriam E. Whitney and George Walrod of the County of DeKalb State of Illinois are held and firmly bound unto William Phelps Sheriff of said DeKalb County in the State aforesaid in the sum of Twenty five Hundred dollars lawful money of the United States to be paid unto the said William Phelps Sheriff as aforesaid, his Executors, Administrators, or assigns, for which payment well and truly to be made we bind ourselves and each of our heirs, Executors, and Administrators jointly, and severally, firmly by these presents sealed with our seals and dated the 3^d day of December

AD 1855.

Whereas two certain writs of execution & the Bills Issued out of the Circuit Court of Cook County in the State of Illinois, both of said Executions in favor of Albert G. Robb and against the lands & tenements Goods & Chattels of Hiram E. Whitney (the above named obligor) one of said Executions calls for one thousand and fifty nine dollars and ten cents, including Damages & costs, and the other one of said Executions, calls for two hundred & fifty three dollars and eighty five cents, including Damages & costs, both said Executions drawing interest at the rate of the same and dated Oct. the 29th AD 1855 and directed and to the said William Phelps Sheriff as aforesaid to execute, under and by virtue of which said Executions, the said sheriff did on the ninth day of November AD 1855 levy upon the entire stock of Dry Goods, Groceries, hard ware, Crockery, Nails, Glass, Boots, Shoes, and ready made clothing belonging to the said Hiram E. Whitney admitted by the ^{parties} above bound to be in the Village of Cortland at least \$5,000 in value in the County of DeKalb and State aforesaid, to satisfy the said Executions, And whereas

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the said Hiram & Whitney desires to retain the use and possession of the said Goods until the day of the sale of the same

Now therefore the condition of this Obligation is such, that if the above bounden Hiram & Whitney and George Walrod shall keep harmless and deliver and be forth coming for the said Goods in their present good condition to the said William Phelps Sheriff as aforesaid or to his successor in Office on Monday the 28th day of January A.D. 1856 (at the Store occupied by said Hiram & Whitney at the time when said Levy was made or at any time thereafter when said Sheriff or his Successor in Office may demand the same so that the same may then and there be sold to satisfy the said Executions and all costs and charges thereon then this Obligation to be void. Else to remain in full force and virtue in law

Signed Sealed and delivered)

in presence of } Hiram & Whitney
 Char Kellum for Walrod } Geo. Walrod & Co.

By virtue of the foregoing Bond and executions therein described after having demanded the delivery of the property therein described

and set forth and a failure on the part of the obligors to deliver the same according to the stipulations of said Bond. I did on this 2^d day of February AD 1836 levy upon the following described property (Real Estate) To wit: Lots numbers five (5) Six (6) Seven (7) and Eight (8) in Block (10) of the Town of Sycamore in DeKalb County and State of Illinois a more perfect description can be had by reference to the plat of said Town as recorded in the recorder's office of DeKalb County, Illinois the same being turned out by the said George Walrod the above named obligor who at the same time waiving his right of Homestead exemption to satisfy said Executions in said Bond described and set forth

William Phelps
 Sheriff of DeKalb County

To the reading and receiving the same in evidence in said cause, the said defendants then and there objected, which objection was ~~overruled~~ by the court and the ^{said} bond was then & there overruled by the court and the said bond was then & there read and then & there received as evidence by court in said cause, to which ruling of the court the said defendants then & there excepted

The said plaintiffs then offered in evidence a certain writ of Execution and fee Bill, and the levies, and Sheriff's returns thereon issued out of the Cook County Circuit Court wherein Albert G. Robb was plaintiff and Hiram E. Whitney defendants which was in the words and figures following:

State of Illinois.
County of Cook } The People of the
State of Illinois to the
Sheriff of DeKalb County, Greeting:
We command you that of the
and tenements, goods and chattels
Hiram E. Whitney, Defendants in
you cause to be made the sum of
Hundred and forty nine dollars and
Seventy five cents which Albert G.
Robb Plaintiff lately in the Cook County
Circuit Court of said County at a term
thereof begun and held at Chicago in
said County on the fourth Monday of
October instant recovered against the
said defendant and which by the said
Court was adjudged to the said plaintiff
for his damages, Also the further sum
of Two dollars and sixty cents which
were adjudged to the said plaintiff for

his costs and charges in their behalf
 expended whereby the said defendant
 is convicted as appears to us of Record.
 And ^{have} you these moneys ready to render to
 the said Plaintiff for his damages and
 costs aforesaid and make return of
 this writ with an endorsement thereon
 in what manner you shall have executed
 the same in ninety days from ^{the} date
 hereof

Witness Louis D Hoard
 Clerk of our said Court and
 S. S. the seal thereof at Chicago
 said County this 29th day
 A.D. 1855 L D Hoard

(On which is endorsed as follows to wit.)
 "The Sheriff will collect Interest from Oct. 29, 1855
 Received this Execution this 9th
 day of Nov. A.D. 1855 at 10 o'clock A.M.
 Wm Phelps

Sheriff of DeKalb Co.
 By virtue of the within writ, I did on this 9th
 day of November A.D. 1855 levy upon the follow-
 ing described property to wit: the entire stock
 of dry Goods, Groceries hardware, Crockery
 ready made clothing, and Boots & Shoes
 in possession of the within named Hiram
 & Whitney in the village of Cortland in DeKalb

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County in the State of Illinois
 William Phelps
 Sheriff of DeKalb County

Fees 1 Servis \$.50

5 Mile 25

levy 50

Expense & trouble of
 keeping property 10.00

taking Bond .25

Demanding property of the plaintiff & security
 on the Bond 5.00

Levy on the property of the security on the
 Bond .50

Commission 3.60 \$ 20.40

Stayed by Injunction

William Phelps
 Sheriff of DeKalb County

Allen G Robb

vs.

Horatio C Whitney

Oct. 7. 1856

app & atty 15. doc 10. fil 4. papers 20. aff & fil 10 .50

ent proof 20. ent judgr 25. doc 10. ord ex 20.

m & r. c. 30. c. c. 20. Ex & fil 45. doc 10. ~~ord~~ 10 Sub 15. 1.30

\$ 2.60

A true copy from my fee book

L. D. Hoard

clerk.

Albert G. Robb. vs Meriam & Whitney
 Oct. 7 1855. app & atty 15. fil conf 5, Ent conf 20. M & E. C. 30, 70
 C. C. 20. cert seal & fil 40. doc 10. Sub 10. 1855

I Louis D Hoard Clerk of the Circuit Court
 of Cook County State of Illinois do hereby
 certify that the above is a true copy of Defts
 costs from my fee Book

L D Hoard. Clerk

State of Illinois

County of Cook

The People of the State of
 Illinois to the Sheriff of DeKalb
 County Greeting we command you that if the
 above fee bill amounting to one Dollar
 fifty cents shall not be paid within
 after being by you demanded that of
 Goods and Chattels lands and tenements
 of the said Meriam & Whitney in your
 county you make or cause the same to be
 made according to the Statute in that case
 made and provided and hereof make return
 within ninety days as the law directs

Witness Louis D Hoard Clerk of the
 Cook County Circuit Court and the
 Seal thereof at Chicago in said County
 this 29th day of Oct. A.D. 1855

L D Hoard. Clerk

Received this Fee Bill this 9th day of November
 A.D. 1855 at 10 o'clock A.M. William Phelps
 Shff of DeKalb Co.

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The within Fee Bill levied on the following property &c viz: The entire stock of Dry Goods Groceries, Hardware, Ready made Clothing Crockery, and Boots & Shoes in the possession of the within named Hiram E Whitney in the Village of Portland in DeKalb County, Illinois this 9th day of November AD 1855.

Fees Lewis 50-5 mil 25 levy 50- \$ 1.25

Stayed by Injunction William Phelps
Shff of DeKalb County

To the reading and receiving of all which in evidence the said defendants which objection were then and there overruled by the Court and the said Execution Fee levies and sheriffs returns thereon were received as evidence, to the decision of the Court in overruling said objections and in receiving said papers in evidence the said defendants at the time excepted.

The said plaintiffs then offered in evidence a certain other writ of Execution & fee Bill and the return and levies thereon which execution and Fees were issued out of the Cook County Circuit Court in a certain other cause wherein Albert G Robb was Plaintiff and Hiram E Whitney was defendant which were in the words and figures following:

State of Illinois

County of Cook

The People of the State
of Illinois to the Sheriff of
DeKalb County, Greeting: We command you
that of the lands and tenements Goods
and Chattels of Hiram C Whitney Defendant
in your county you cause to be made the
sum of One Thousand and fifty five
Dollars ^{by} Albert G. Robb Plaintiff lately in the
Cook County Circuit Court of said County at a
term thereof begun and held at Chicago in
said County on the fourth Monday of October
instant recovered against the said Defendant
and which by said Court was adjudged
to the said Plaintiff for his damages

Also the further sum of Two dollars and
sixty Cents which were adjudged to the
said Plaintiff for his costs and charges
in that behalf expended whereof the said
Defendant is convicted, as appears to us of
Record: And have you these moneys
ready to render to the said Plaintiff for
his damages and costs aforesaid and
make return of this writ with an endorsement
thereon in what manner you shall have
executed the same in ninety days from the date
hereof Witness Louis D. Board Clerk of our said
Court and the Seal thereof at Chicago

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in said County this 29th day
 of October A.D. 1855

S. D. Hoard

(On which is entered as follows to wit)

Clerk

The Sheriff will collect interest from Oct. 29. 1855

Rec^d this Execution this 9th
 day of Nov A.D. 1855 at 10 o'clock A.M.

Wm Phelps

Sheriff of DeKalb Co.

By virtue of the within writ, I did on this
 9th day of November A.D. 1855 levy upon
 the following described property to wit:

The Entire Stock of dry Goods, Groceries,
 Hardware, Ready made Clothing, Carriages
 and Boots & Shoes in possession of the
 named Hiram & Whitney in the village
 of Portland in DeKalb County in the State of Illinois

William Phelps

Sheriff of DeKalb Co.

Exp^s / Servis .50

5 miles 25

levy 50

Expense & trouble

of keeping property 10.00

Taking Bond .25

demanding property on the Bond including travel
 5.00 Commission 9.44

Levy on the property of the security

The Bond & Record Certificate 150 \$ 23.44

Stayed by Injunction

William Phelps

Sheriff of DeKalb County

Allen G. Robb vs Horatio C. Whitney
 Oct. T. 1855, app & atty 15, doc 10, fil 4 paper 20, off & fil 10 .50
 ent proof 20, ent Judge 25, doc 10, ord ex 20 .75
 M & E. C. 20, C. C. 20, Ex & fil 45, doc 10, Sret 10 Sur 15 1.80
 \$ 2.60

A true copy from my fee Book

L. D. Hoard, Clerk.

Allen G. Robb vs Horatio C. Whitney
 Oct. T. 1855 app & atty 15, fil 1 paper 5 ent conf 20

M & E. C. 20, C. C. 20, Cor Seal & fil 40 doc 10 Ent 10

I Louis D. Hoard, Clerk of the Circuit Court
 of Cook County State of Illinois do hereby certify
 that the above is a true copy of Defts costs from
 my fee Book L. D. Hoard, Clerk

State of Illinois }
 County of Cook } Is the People of the State
 of Illinois to the Sheriff of
 DeKalb County Greeting We command you
 that if the above Fee Bill amounting to
 one Dollar and fifty cents shall not be
 paid within thirty days after being by you

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demanded that of the goods and
 Chattels lands and tenements of the said
 Hiram & Whitney in your County you
 make or cause the same to be made
 according to the Statute in that case
 made and provided and hereof
 make return within ninety days as
 the law directs Witness Louis D Hoard

Clerk of the Cook County
 Circuit Court and the seal
 thereof at Chicago in said County
 this 29th day of October A.D. 1855
 L D Hoard

(On which is endorsed as follows to wit) — C

"Received this Fee Bill this 9th day
 November A.D. 1855 at 10 o'clock A.M.

William Phelps
 Sheriff of DeKalb County

The within Fee Bill, levied on the following
 property to wit The entire stock of Dry Goods
 Groceries, Hardware Ready made clothing
 Crockery and Boots & Shoes in the possession
 of the within named Hiram & Whitney in the
 Village of Cortland DeKalb County Illinois
 this ninth day of November A.D. 1855

Fees Levied \$8 5 ml 25 levy 50 \$1.25

Stayed by Injunction. William Phelps
 Sheriff of DeKalb County

To the reading and receiving all which in evidence the said defendants objected, but the objection was overruled by the Court and the same was ^{read and} received as evidence by the Court in the cause to all which reading of the Court the said Defendants at the time excepted.

The said Plaintiffs then offered in evidence a certified copy of the Records and proceedings had in a certain cause in the Cook County Circuit Court wherein Albert G. Robb was Plaintiff and Norman E. Whitney was Defendant, which said copy of record was words & figures following —

State of Illinois
Cook County

Pleas before the Honorable
George Maniere Judge of the Seventh
Judicial Circuit of the State of Illinois
and presiding judge of the Circuit Court
of the County of Cook in said State at a
Vacation term thereof began and held at
Chicago in said County of Cook on the fourth
Monday (being the twenty second day) of October
in the year of Our Lord one thousand eight
hundred and fifty five and of the Independen-
ce of the United States the Eightieth.

Court opened by proclamation, Presence
Honorable George Maniere Judge
Judicial Circuit

James Andrews Sheriff
Cook County

Attest Lewis D. Hoard Clerk
Circuit Court

Be it remembered to wit: that on the 29th
day of October AD 1855 it being one of the days
of the October Vacation Term of said Court
for said year the following among other
proceedings were had and entered of Record
in said Court to wit.

80

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Albert G. Robb
vs
Hiram E. Whitney

Confession

Oct 29 1855

This day comes the said Plaintiff by Blackwell his Attorney and the said Defendant by Underwood his Attorney also comes and the said Plaintiff by his Attorney files his declaration herein of a plea of trespass on the case on promises together with his certain power of Attorney and note thereto attached and the said Defendant by his Attorney aforesaid files his plea herein and waives se of process and releases all errors and which may intervene in the entering of this judgment and in Issuing execution thereon and says that he cannot deny the said Plaintiffs action against him nor but ^{that} he did undertake and promise in manner and form as the said Plaintiff has above thereof complained against him nor but ^{that} the said Plaintiff has sustained damages by reason of the nonperformances of the said promises and undertaking in the said declaration mentioned to the amount of Two hundred and forty nine Dollars and seventy five cents and

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\$ 249 ⁷⁵/₁₀₀

confesses judgment for that amount
 Therefore it is considered that the Plaintiff
 do have and recover of the said defendant
 his damages of Two hundred and forty nine
 dollars and seventy five cents confessed as
 aforesaid together with his costs and charges
 by him about his suit herein expended
 shall have execution therefor

And afterwards to wit:
 on the same day last mentioned it being ^{as yet}
 of the October vacation term of said Court
 for said year the following among other
 proceedings were had and entered
 Record in said Court to wit:

Albert G. Robb

812

vs

Heiram E. Whitney

Confession

This day comes
 the said Plaintiff by
 Blackwell his Attorney and the said Defendant
 by Underwood his Attorney also comes and the
 said Plaintiff files his declaration herein of a
 plea of trespass on the case on promises together
 with his certain power of Attorney and note
 thereto attached and thereupon the defendant
 files his plea herein and waives service of
 process and says that he cannot deny the said
 plaintiff action against him nor but that he did
 undertake and promise in manner and form as the

said Plaintiff has above thereof complained against him
 nor but that the said plaintiff has sustained damages
 by reason of the non-performance of the said promise
 and undertaking in the said declaration mentioned
 to the sum of ten hundred and fifty five dollars and con-
 fesses judgment for that amount. Therefore it is consid-
 ered that the said plaintiff do have and recover
 of the said defendant his damages of ten hundred
 \$1055.⁰⁰ and fifty five dollars confessed as aforesaid
 together with his costs and charges by him about
 his suit herein expended and have execution
 therefor;

State of Illinois
 Cook County } I William L. Church
 of the Circuit Court of
 County in the State aforesaid and I do
 certify that the above and foregoing transcript
 is a true perfect and complete copy of two
 certain orders Entered of Record in said
 Court in two certain causes in each of which
 wherein Albert G. Robb was Plaintiff and
 Herman E. Whitney was defendant and of the
 whole thereof as appears to us of Record

In witness whereof I have
 hereunto set my hand and affixed
 the seal of our said Honorable
 Court this 8th day of October
 AD 1857 Wm L. Church, Clerk

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" To the introduction and receiving in
" Evidence of which the said defendants then
" there objected, which objection was overruled
" by the Court and said Records & proceedings
" were then and there received as Evidence
" in said cause to which decision and
" ruling of the Court the said defendants
" at the time excepted.

And the said Plaintiff
then offered in Evidence a Bill of Costs in
a suit determined in the Cook County
Circuit Court wherein Hiram C. Whitney
et al were plaintiffs and John H. Ball
et al were defendants which said
Bill of Costs was in words and figures as follows:

60 84

Hiram C. Whitney et al	}	Cook Co Circuit Court
vs		
John H. Ball et al	}	March T. 1856
		Plaintiffs Costs

app & atty 15	doc 10	Proc 5	affr + fil 10	fil Bill 16	10	50
bond + fil 55	mntr + fil 75	Rule to answer 20	fil			150
Repr. 5	con 20	April S T. doc 10	con 20	May		
I doc 10	ord opn dep 20	Apr + fil 10	con 20			50
June S T. doc 10	con 20	Oct. T. doc 10	con 20	Nov T.		50
doc 10	ord opn dep 20	Apr + fil 10	ord set for trial			40
20	con 20	March T. 1857 doc 10	con 20	March S T. doc		70
10	con 20	April T. doc 10	con 20	June S T. doc 10	con	70

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Stip 20, M & E C 30. C.C. 20 Cost Seal & fil 40, doc 10 1.20
 S & Ret 10. .10
 6.85

Judges fee 3.00
 Shffs " Lorenzo Whitemore, DeKalb Co. 5.56
 " " " " " 6.5
 Masters " L. C. P. Free Paid by Compt 20.00
 Witnesses " Wm B. Hoovey 2 days + 134 Miles Travel 8.20
 \$50.71

Defendants Costs

app & atty 15 fil 3 answers & C. S. fil Stip 5, ord decree 20 .70
 Entg Decree 15, ord judg for costs 20, Ent jud 25 doc 30. 1.00
 Ord ex 20, ex & fil 45 doc 10, S Ret 10, Sar 45 M & E C 30
 Witness fees W. B. Hoovey 1 day + 134 M Travel 7.
 " " J. L. Ball 1 " " " " 7.5

I hereby certify the above to be a true copy
 of the taxed costs in the above entitled
 cause and the whole thereof

Wm L. Church

Feb 20^c Paid

Clk

To the introduction and
 receiving in evidence of which the said
 defendants then & there objected but the
 objection was overruled by the court
 and the same received as evidence to
 which decision of the court overruling said
 objection and receiving in evidence

the said bill of costs the said defendants at the time excepted.

The foregoing was all the evidence either offered or given upon the trial or hearing of said cause. Whereupon the Court found the issue for the Plaintiffs and assessed their damages at the sum of Sixteen Hundreds and one Dollars and seven Cents.

To all which decisions and rulings of the Court in the Trial of said Cause the said defendants then & there excepted.

Whereupon the defendants made a motion for a new trial, motion the Court then & there overruled which ruling of the Court in overruling motion of the defendants for a new trial the defendants then and there excepted and prayed that this their bill of exceptions be signed and sealed and made a part & parcel of the records and proceedings in said Cause which is accordingly done.

Isaac G. Wilson

And Be it further Remembered that on the 6th day of May A.D. 1858, George Walrod and Charles C. Boynton filed in the office of the Clerk of the Circuit Court of said County of De Kalb their certain Appeal Bond which said Appeal Bond is in words and figures following, to wit:

" Know all men by these presents that we,
 " George Walrod Charles C. Boynton, James S.
 " Waterman and Rufus Hopkins are held and
 " firmly bound unto John H Ball Albert G. Robb
 " and William Phelps for the use of George L. Wood
 " in the penal sum of three thousand Dollars lawful
 " money of the United States, for the payment
 " which well and truly to be made we be
 " selves, our heirs, executors and adminis-
 " trators jointly and severally, firmly by these presents
 " Witness our hands and seals this fourth
 " day of May A.D. 1858.

" The condition of the above obligation is
 " such that whereas the said John H Ball Albert
 " G. Robb and William Phelps who sued for the
 " use of George L. Wood did at the April Term
 " of the De Kalb County Circuit by the final order
 " and determination of said Court, recover a Judg-
 " ment against the above bounden George Walrod
 " and Charles C. Boynton impleaded with Abram
 " E. Whitney, in an action of Debt, for the sum

" of twenty seven hundred dollars debt
 " and for the sum of sixteen hundred and
 " one dollar and seven cents damages and
 " costs of suit, from which said judgment
 " the said George Watrod and Charles O Boynton
 " have taken an appeal to the Supreme Court
 " of the State of Illinois.

" Now if the said George Watrod and Charles
 " O Boynton shall duly prosecute their said appeal
 " with effect and shall pay the judgments costs
 " interest and damages in case said judgment
 " shall be affirmed, then the above obligation
 " to be void otherwise to remain in full
 " effect.

Geo. Watrod &

Chas. O. Boynton &

J. S. Waterman &

R. Hopkins &

On which is enclosed as follows, to wit:

"Filed May 6 1858

J. A. H. Beveridge

Clerk "

8.9

Albert G. Robb et al } DeKalb Circuit Court
for Geo. L. Wood } April Term 1858
vs } Debt,
Hiram C. Whitney }
et al }

Copy of Plff's Cont.
App't atty 15 doc 10 11 fil 55 Sum & fil 40
Ent and Call Whitney 20 or 5 Call 20. Ent debt
of Whitney 20. Ent aft wage June 20 10th 5
fil Dem 5. or 5 Ent Dem 20. or 5 Ent on Dem
20. Ent June 5th Dem 20. no strike 20 Plaf
fil 20 or 5 Ent. no 20 on June 20 Ent June 25
doc 10 or 5 & 20 B 630

415

Shiff. Tappan fee on Sum

210

Fees on Trans. fr. Court Circuit

1085 \$17. 10

Copy of Defendants Cont.

App't atty 15 1 fil 5. or 1 join in Dem 20. Ent
24 to June 20 Ent app't 20 to 50 B 630 160

Trans. to Supr. Court

25.00 \$26.60
\$43.70

Cont. Exp. of Computation of clse & ch.

100

State of Illinois
 Of Kalle County I, James A. Beveridge
 Clerk of the Circuit
 Court in and for said County in the State
 aforesaid, do hereby certify that the above
 and foregoing contains a correct Trans-
 cript of the Record in a certain cause lately
 pending in the ^{Circuit} Court of said County wherein
 Albert G. Robb, John H. Ball & William
 Phelps, who sue for the use of George
 Moore, are Plaintiffs, and Charles
 Bogneon & George Watrod, impleaded
 with William E. Whitney are defendants
 together with a copy of the docket and all
 other papers on file and appertaining to
 said cause as the same appear of Record
 and on file now remaining in my office.

(Witness my hand and the
 seal of said Court at
 Sycamore this 31st day
 of March A.D. 1859.



James A. Beveridge Clerk
 By J. L. Kellogg Deputy

In the Supreme Court of the State of Illinois
of April Term 1859-

George Malrod, Charles
O. Boynton Appellants
and William E. Whitney
vs

John H. Ball, Albert
H. Cobb & William Phelps
Appellus

} Apprial from District
Circuit Court

And now comes the said
Appellants & say that in the Record
pursuant and proceedings aforesaid
there is manifest & material error
appearing of record in this viz -

1st That the Court below sustained
the Demurres to the 7th & 8th Pages

2 In admitting in evidence the
various documents offered by the
Plaintiff and read on the trial -

3 In admitting in evidence the copy
of P. & in case of Whitney vs Ball
Cobb & Phelps -

4 In admitting in evidence the
forthcoming writ made by Whitney & Malrod
to Phelps & the endorsements thereon

5 In admitting the executions full bills
and endorsements thereon in the cases

of Robt vs Whitney

6 In admitting the Copy of the verdict in the case of Robt vs Whitney -

7 In admitting in evidence the Copy of the Fee bill in William L Whitney vs John H Ball et al -

8 That the damages assessed are without legal & competent proof to sustain them -

9 That the Court below rendered judgment for the Offgo below against the Defendants below - whereas the judgment should have been for the Offgo below -

For which & other errors manifest & material this said Appellants pray that the judgment of the Court below be reversed annulled & altogether held for nought - & they insist on

Prayer & Award
for Appts

Alb. G. Robb et al
ads.
Gurgil Valrad et al }

And now come the
Defendants by
Hear their Atty - and say that
in the Record judgment & proceedings
there is no error, wherefore be

A. A. Hullcutt
for Defts in Error

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Alg Robb. Ebert

ad } Indexed
 } in Error

Genselvalrad Stad

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George Walrod et al
vs

Albert G. Robb
et al

Filed April 21, 1859
Leland
clerk