No. 14841

Supreme Court of Illinois

Holmes

vs.

Boynton.

71641

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 112

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

14841

United States of America
State of Illinois DeKalb County } ss.

Pleas before the Honorable Theodore D. Murphy Judge of the Thirteenth Judicial Circuit in the State of Illinois at the September Term of the DeKalb County Circuit Court begun and held at the Court House in Sycamore in said County on the Second Monday (the same being the fourteenth day) of September, in the year of our Lord one thousand Eight Hundred and sixty three and of the Independence of the United States the Eighty Eighth.

Present the Hon Theodore D Murphy Judge
Elnathan D Coon States Atty
Henry Safford Sheriff
Attest Caleb N Brown Clerk

Court opened by Proclamation.

Be it Remembered That heretofore to-wit: on the 4th day of February A.D. 1863. there was filed in the office of the Clerk of the Circuit Court of said County, a certain Precipe

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for Summons. in a matter in suit wherein Henry Holmes was Plaintiff and Charles O. Boynton was defendant. which said precipe was in words and figures following that is to say; —

State of Illinois } DeKalb County
DeKalb County } Circuit Court Feb-ruary Term A.D. 1863.

Henry Holmes
v
Charles O. Boynton } Assumpsit
Damages $300.00
Ad ad clare issue

Summons in the above entitled cause. directed to the Sheriff of said DeKalb County. returnable to said Term and oblige &c.

James & Sawell
Plffs attys

Sycamore Feb 4, 1863.

On which is endorsed; —

Filed Feb 4, 1863.
O M Brown Clk

And thereafter, on the same day and year last aforesaid there issued out of said Court, and under the Seal thereof, the Peoples writ of summons. in said cause. which said Summons together with the Sheriffs return and filing thereon endorsed is

in words and figures following, that is to say:-

State of Illinois } ss. The People of the
DeKalb County } The People of the
State of Illinois to the
Sheriff of said County, Greeting:-

We command you that you Summon Charles O. Boynton, if he shall be found in your County personally to be and appear before the Circuit Court of said DeKalb County on the first day of the next Term thereof to be holden at the Court House in Sycamore, in said County on the fourth Monday of February 1863, to answer unto Henry Holmes in a plea of Assumpsit, to the damage of said plaintiff as he says in the sum of three hundred dollars And have you then and there this Writ with an endorsement thereon, in what manner you shall have executed the same.

Witness Caleb W Broan Clerk of our said Court, and the Seal thereof at Sycamore this Fourth day of February A.D. 1863.

(L.S.)

Rev Stamp For Fifty Cents

C W Broan Clerk

On which is endorsed:-

Filed Served the within by reading the same to the within named Charles O Boynton this 7th day of February A.D. 1863. Henry Jeffords Shff

Fees Service 50 Mileage 6.5 By Orlando Thiele Dep

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On which is endorsed:-
Filed Sept 12, 1863.
C. W. Bracon Clk

And thereafter, on the 13th day of February A.D. 1863, there was filed in said Court in said cause the following Narr, to-wit:-

State of Illinois } ss. DeKalb County
DeKalb County } Circuit Court
February Term A.D. 1863.

Henry Holmes Plaintiff by James & Lowell his attorneys, complains of Charles D. Poynton defendant in this suit who is summoned &c, in a plea of assumpsit:
For that whereas the said defendant on the 2d day of February in the year of our Lord one thousand eight hundred and sixty three, at said DeKalb County, was indebted to the said Plaintiff in the sum of three hundred dollars, lawful money of the United States of America for divers, goods wares and merchandise by the said plaintiff before that time sold and delivered to the said defendant, and at the Special instance and request of the said defendant, and being so indebted to the said plaintiff, the said defendant in consideration thereof afterwards, to-wit:- on the same day and year

and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said Plaintiff, the said sum of money last mentioned, when thereunto afterwards requested, And whereas, also the said defendant, afterwards, to-wit:- on the same day and year and at the place aforesaid, in consideration that the said plaintiff had before that time at the like special instance and request of the said defendant, sold and delivered to the said defendant divers other goods wares and merchandise of the said Plaintiff, the said defendant then and there undertook and faithfully promised the said Plaintiff that the said defendant would well and truly pay to the said plaintiff so much money as the last aforesaid goods wares and merchandise at the time of the sale and delivery thereof were reasonably worth when the said defendant should be thereunto afterwards requested and the said plaintiff avers that the said goods wares and merchandise last mentioned at the time of the sale and delivery thereof were reasonably worth the further sum of Three hundred dollars, of like lawful money aforesaid to-wit; at the place aforesaid, whereof the said defendant, afterwards on the same day and year and at the place afore-

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said, had notice. And whereas also the said defendant afterwards, to wit:- on the same day and year, and at the place aforesaid, was indebted to the said plaintiff in the further sum of Three Hundred dollars of like lawful money aforesaid, for money before that time lent and advanced by the said plaintiff to the said defendant, and at the like request of the said defendant, And for other money by the said plaintiff before that time paid, laid out and expended for the said defendant, and at the like request of the said defendant And for other money by the said defendant before that time had and received to and for the use of the said Plaintiff. And being so indebted, the said defendant in Consideration thereof afterwards to-wit:- on the same day and year, and at the place aforesaid undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said several sums of money in this Count mentioned when the said defendant should be thereunto afterwards requested. And whereas also the said defendant afterwards to-wit:- on the same day and year and at the place aforesaid accounted together with the said plaintiff of and concerning divers other sums of

money before that time due and owing from the said defendant to the said Plaintiff and then and there being in arrear and unpaid, and upon such accounting the said defendant, then and there was found to be in arrear and indebted to the said Plaintiff in the further sum of Three Hundred dollars of like lawful money as aforesaid; And being so found in arrear, and indebted to the said Plaintiff, the said defendant in consideration thereof, afterwards to-wit:— on the same day and year and at the place aforesaid, undertook, and then and there faithfully promised the said ~~defendant~~ Plaintiff well and truly to pay unto the said Plaintiff the said sum of money last mentioned when the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant (although often requested etc,) has not yet paid the several sums of money above mentioned or any or either of them or any part thereof to the said Plaintiff, but to pay the same or any part thereof to the said Plaintiff the said defendant has hitherto altogether refused, and still does refuse to the damage of the said Plaintiff Three Hundred dollars

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and therefore the said Plaintiff brings suit &c

James & Sawell
Plffs Attys

Charles O Poynter
vs
D. Henry Holmes Dft

1863.

Feb 2 D. Goods, Wares & Merchandises $ 300.
" " D. other goods, wares & Merchandise 300.
" " D. Money lent & advanced 300.
" " D. Money laid out & Expended 300.
" " D. Money had and received from 300.
" " D. Money due on account stated 300.

On which is endorsed:-

Filed Feb 13, 1863.
C.W. Brown
Clk

And afterwards, on the 14th day of September A.D. 1863. the same being one of the days of the September Term of said Court for said year; the following among other proceedings were had and entered of record in said Court that is to say:-

5766 Henry Holmes
vvg / Charles A Poynton } Asst

This day comes the Plaintiff by James & Sawell his attorneys, and the defendant by Mayo & Paine his attorneys also comes, and the defendant causes a rule to be Entered requiring the Plaintiff to file Bill of Particulars by Wednesday morning.

And thereafter on the 18th day of September A.D. 1862. there was filed in said court in said cause the following Bill of Particulars to wit:—

State of Illinois } ss. DeKalb County
DeKalb County } Circuit Court
February Term
A.D. 1862.

Henry Holmes
v
Charles A Poynton } Assumpsit
Bill of Particulars

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Charles O Boynton

To Henry Holmes

Sept 1. 1859. To money had and received by him Boynton to use of said Holmes $150.00

Jany 1. 1862 To money paid, laid out and ex= pended by said Holmes for said Boynton $150.00

" " To Goods & Chattels sold & delivered $150.00

$450.00

On which is endorsed:-

Filed Sept 18. 1863.

CM Braun Clk

And thereafter, on the 22d day of Feb= ruary A.D. 1864 the same being one of the days of the February Term of said Court for said year, the following, among other proceedings were had and entered of record in said Court in said cause that is to say:-

5166 Henry Holmes

172 vs

Charles O Boynton } Assumpsit.

This day comes the Plaintiff by James & Lowell his

attorneys, and the defendant by Dunn his attorney, and thereupon, on motion of the defendant, a rule of Court is entered requiring the Plaintiff to file Bill of Particulars by to-morrow morning.

And thereafter on the 28th day of February A.D. 1862. there was filed in said Court in said cause the following Bill of Particulars that is to say:—

State of Illinois } ss. DeKalb County Circuit
DeKalb County } Court February Term A.D. 1862.

Henry Holmes
v
Charles O. Boynton } Assumpsit: Bill of Particulars.

Charles O. Boynton
To Henry Holmes Dr.

1856. Feb 5= To money ~~paid~~ and Cash received by said Boynton to use of said Holmes on note dated May 14, 1855. due six months after date for $64.50 with interest at 10 p/c after due signed by said Holmes and endorsed to Rowin $150.00

1862. Sept 27th = To money paid said Holmes and ex=

11

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spended by said Holmes for the use of the said Poynton to pay the amt of the Judgment in the Circuit Court in favor of John Poynton vs said Holmes and Rowin rendered February 28th 1862 and Execution thereon, and costs on said Execution $150.00

1862 - Sept 27 = Do one pair Mares, and one Lumber Wagon and one double Harness sold on the said Execution in favor of said Poynton vs said Holmes and Wm H. Rowin $150.00

On which is endorsed:

Filed Feby 23. 1864

C M Brown Clk

And afterwards, on the 24th day of February A.D. 1864. there was filed in said court in said cause the following plea of the said defendant by him pleaded, which said plea is in the words and figures following, that is to say:—

State of Illinois } In the Circuit Court
DeKalb County } February Term A.D. 186[illegible]

Charles O. Boynton
vs
Henry Holmes

And the said defend= ant by R. L. Divine his attorney, comes and de= fends the wrong and injury when &c and says that he did not undertake and promise in manner and form as the said plaintiff has in his declaration thereof complained against him, and of this he puts himself upon the Country &c

R L Divine
Plff's Atty

And the said Plaintiff doth the like

James Lovell
Plff's Atty

And the said defendant for a further plea in this behalf says actio non because he says that the said plaintiff before and at the time of the commencement of this action was indebted to the defendant in the sum of Four hundred dollars for so much money before that time had and received by the defendant to the plaintiffs use, and in the further sum of Four hundred dollars for so much money before

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that time lent and accommodated by the Plaintiff to the defendant at his request and in the further sum of Two Hundred dollars for so much money before that time laid out and expended by the Plaintiff for the use of the defendant at his request: And in the further sum of Two Hundred dollars for so much money before that time and then due and payable from the said defendant to the plaintiff for interest upon and for the forbearance and use of divers large sums of money before then due and owing from the said defendant to the Plaintiff and by the Plaintiff forborne to the said defendant for divers large spaces of time before then elapsed at the request of said defendant - which said sums of money so due to the defendant exceeds the damages sustained by the Plaintiffs by reason of the non-performance by the defendant of the said several promises in the said declaration mentioned and out of which said sums of money so due to the defendant, he the said defendant is ready and willing and hereby offers to set off and allow to the plaintiff the full amount of the said damages according to the form of the Statute.

in such case made and provided. And this the said defendant is ready to verify wherefore he prays Judgment &c.

R L Dunn
Defts atty.

On which is endorsed:—

Filed July 24, 1863
C W Barrow Clk

And afterwards on the 3rd day of March AD 1864 the same being as yet one of the days of the February Term of said Court for said year, the following among other proceedings were had and entered of record in said Court that is to say:—

1866
177

Henry Holmes
v
Charles O Boynton
} Debt

This day comes the parties by their attorneys, and the plaintiff moves the Court for a continuance of this cause.

And thereafter, on the 4th day of March AD 1864, the same being one of the days of the February Term of said Court for said

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16 year, the following among other proceedings were had and entered of record in said Court that is to say:—

1866 Henry Palmer }
172. ats } Asst
Charles O Boynton }

This day come the parties by their attorneys and on the Plaintiffs motion, a rule of Court is entered requiring the defendant to file Bill of Particulars by 1st day of June, And it is further ordered by the Court, upon agreement of parties. that this suit be continued at the Plaintiffs Cost of Term, It is therefore considered by the Court that the defendant have and recover of the Plaintiff his Cost of Term herein expended, and that he have Execution therefor.

And thereafter. on the 12th day of September A.D. 1864. there was filed in said Court in said cause the following Bill of Particulars of set-off. to wit:—

$133.40 Sycamore Dec 15. 1857.

On the first day of June after date for

value received I promise to pay John P. Hart or order One hundred and ~~thirty~~ three $\frac{40}{100}$ dollars, with ~~interest at the rate of 10~~ per cent per annum - being for money loaned, and if not paid when due, with interest thereafter at the rate of 5 per cent per month until paid.

Henry Holmes (Seal)

Know all Men by these Presents That Whereas I, the subscriber of DeKalb County and State of Illinois being justly indebted to John P. Hart upon a certain Promissory Note dated December the 15 A.D. 1857 in the sum of One hundred and ~~thirty~~ three $\frac{40}{100}$ dollars, with interest at the ~~rate of 10 per~~ cent per annum, and if not paid when due with interest at the rate of ~~ten per cent per annum~~ 5 per cent per month until paid, and which said Note is due June 1, 1858. after date. Now therefore in consideration of the premises I do hereby make constitute and appoint Edward L. Mayo or any attorney of any Court of Record to be my true and lawful attorney, for me and in my name, (or either of our names) place and stead to appear in any Court of Record, of any of the States or Territories of the United States in Term time or vacation, at any time, either before or after said Note becomes due, and to waive the service of process, and sign a cognovit

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confessing a Judgment in favor of the said John R Hart, or his assignee upon said Note for the above sum, with interest; and in addition thereto, ten per cent on the amount as liquidated damages for delay if said Note is not paid on the day it becomes due, together with all costs; also the ~~further~~ sum of Forty dollars as attorneys fees for entering up said Judgment,* and issuing the execution thereon, immediately, and to waive any or either of any right to turn out Real Estate on Execution, and to stipulate that no writ of error or appeal shall be prosecuted on said Judgment, nor any Bill in Equity filed to interfere in any manner with the operation of the same: and in consideration of the money mentioned in said promissory Note, and one dollar to each of us in hand paid, the receipt whereof is hereby acknowledged and confessed we and each of us* do hereby stipulate and agree that all right claim interest benefit or advantage accruing or belonging to us or either of us from or by virtue of the Act of the General Assembly of the State of Illinois, entitled an act to exempt Homesteads from Sale on Execution approved February 11, 1857, and all other acts of a similar nature passed since

* We hereby waive and release and relinquish each and every right we have or may have in favor of said John R Hart and his assigns, by virtue of the benefit of said Act of the General Assembly of the State of Illinois, entitled an act to exempt Homesteads from Sale on Execution approved February 11, 1857, and all other acts of a similar nature passed since

* And also to pay to said John R Hart or his assigns the sum of Ten dollars for the amount that may be required and to release all errors that may occur in entering up said Judgment

are hereby wained and releasedo, and all property we, or either of us, now own or may hereafter acquire until the payment of said Note is hereby made subject to levy and sale, by virtue of an Execution issued hereon; and we hereby further stipulate and agree that Execution may issue upon any Judgment entered upon said Note at any time either in term time or in vacation of the Court in which said Judgment is entered; And also in and by this Indenture, which is executed subsequent to the making of the promissory Note aforesaid, and in consideration of one dollar to us in hand, the receipt whereof is hereby acknowledged and confessed, we do forever release discharge and acquit the said John P. Hart from all penalties forfeitures penal actions and causes of action penal statutes and defense of usury to or by reason of the note aforesaid, or by reason of any matter or thing to the time of executing this indenture, hereby ratifying and confirming all which our Attorney may do by virtue hereof.

Witness our hands and Seals this 15 day of December A.D. 1857.

Lyond Sealed and Delivered in presence of } Henry Holmes (Seal)

19 On which is endorsed:- Filed Sept 12th 1860 C. McBrown Clk

and thereafter on the 15th day of Septem-
ber A.D. 1864. the same being one of the
days of the September Term of said
Court for said year, the following among
other proceedings were had and entered
of Record in said Court that is to say:—

1866 Henry Holmes
39. v
Charles O'Brynton } Asst

This day comes the
Plaintiff by James & Lowell his attorneys
and the defendant by Divine his attorney
also comes, and on the Plaintiffs motion
leave is given him to file double replication
to the plea of the defendant by him pleaded.

and afterwards, and on the said 15th
day of September 1864. there was filed
in said Court in said cause, the
Plaintiffs replication to the 2nd Plea of
the defendant by him pleaded, which
said Replication is in the words and
figures following, that is to say:—

State of Illinois } ss. DeKalb County Circuit
DeKalb County } Court September Term
A.D. 1864.

Henry Holmes
v
Charles A. Boynton

And the said Plaintiff by way of Replication to the said pleas of the said defendant by him secondly above pleaded says precludi non - because he says that the said plaintiff is not indebted to said defendant in manner and form as said defendant in his said plea has alledged against him: And this he prays may be enquired of by the Country &c.

By James Lowell
Plffs attys

And the said defendant doth the like

R. J. Divine
Defts atty.

And for a further Replication to said second plea, by leave &c. the said plaintiff says precludi non, because he says that the said promissory Note filed in this suit by the said defendant as Bill of Particulars to his said second plea is the said defendants only and

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sole supposed cause of set off in this action; and that on to-wit; the 14th day of May A.D. 1855. being in want of money this Plaintiff made application to the defendant to borrow of him Fifty dollars for the term of six months from that date; and the said defendant agreed with the Plaintiff to loan him that sum of money for that term, and that Plaintiff should give defendant his promissory note for Fifty four dollars and fifty Cents payable in six months after that date, with interest at ten per cent per annum after due, and should procure one William A. Rowin to sign said Note with him, the said Plaintiff; and that in pursuance of said corrupt and usurious agreement, the said Plaintiff executed and procured the said Wm A Rowin to execute with him and delivered to the said defendant their promissory Note for the said sum of Fifty four 50/100 Dollars dated the said 14th day of May A.D. 1855. and due and payable six months after that date with ten per cent interest after due, in consideration of the loan of the said sum of Fifty Dollars - the loan of which for the term of six months as aforesaid was the only and sole consideration of the

paid Note last Mentioned; and this Plaintiff avers that fourteen dollars and fifty cents of the amount of said last mentioned note, was usurioously, corruptly, and unlawfully and contrary to the form of the Statute in such case made and provided charged as interest on said sum of fifty dollars for the said term of six months, the same being interest at the rate of fifty eight per cent per ~~month~~ annum; And further says that afterwards to wit:- on the 11th day of July AD1855, being in want of more money this plaintiff made application to said defendant to borrow of him a further sum of Fifty dollars for the term of six months from the date of said last mentioned application; and the said Defendant then also agreed with Plaintiff to loan him that further sum of money, and that plaintiff should give said defendant his other promissory Note for sixty four dollars and fifty cents payable six months after that date, and Plaintiff further avers that in pursuance of said last mentioned corrupt and usurious agreement he executed and delivered to said defendant his other promissory Note for the sum of Sixty four dollars and fifty Cents dated on the day of said last mentioned

application, and due and payable six months after the date thereof, in consideration of the loan of the said further sum of Fifty dollars, the loan of which for term of six months as aforesaid was the sole and only consideration of the said last mentioned note; and the plaintiff further avers that fourteen dollars and fifty cents of the amount of said last mentioned note, was usuriously, corruptly and unlawfully, and contrary to the form of the Statute in such case made and provided charged as interest for the said last mentioned sum of Fifty dollars for the term of six months, the same also being interest at the rate of fifty eight per cent per annum; And this plaintiff says that after said two Notes for $64.50 each became due respectively, this plaintiff from time to time executed and delivered to said defendant his other promissory Notes for interest on said two promissory Notes of $64.50 charged by said defendant at usurious rates thereon, and avers that the sole and only consideration of such other Notes was such interest at usurious rates by this Plaintiff agreed to be paid to said defendant for the extension of the time of

payment of said two notes aforesaid each
And this plaintiff further says that on
to-wit:- the 15th day of December A.D. 1853
this plaintiff paid to said defendant the
sum of One hundred dollars to apply
and applied on said notes before that time
executed by this plaintiff to said defend=
ant as aforesaid; and that thereupon
afterwards, on to-wit. the 15th day of December
A.D. 1853. the said defendant computed
the amount of the balance by him
claimed due on said notes executed for
the considerations aforesaid. and on those
only, and added thereto interest thereon at
a usurious rate from the said 15th day
of December A.D. 1853. to the first day of
June then next (to-wit: June 1st 1854). mak=
ing the aggregate sum of One hundred and
thirty three $^{40}/_{100}$ dollars; and thereupon
this plaintiff executed and delivered
to said defendant his promissory note, paya=
ble to John R. Hart or order for the said
sum of One hundred and thirty three $^{40}/_{100}$
dollars stated therein to be for money loaned
dated the 15th day of December 1853. and
due and payable on the first day of
June after date, with interest thereafter
if not paid when due. with at the rate
3 per cent per month until paid, and

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this Plaintiff avers that said last mentioned Note is the same Note filed in this cause by said defendant as his Bill of Particulars to said 2d Plea, and that the sole and only consideration thereof was and is the balance so computed due by said defendant, and such usurious interest thereon as stated aforesaid And this Plaintiff further says that at the time of the execution and delivery of the Note last aforesaid, to-wit; on the 15th day of December AD 1857 this Plaintiff delivered to the said defendant as collateral security for the payment of said Note for $133.40 two promissory Notes for fifty Dollars each payable to this Plaintiff and signed by Charles Gorham and James Rowin dated December 1st 1857 and due in one year from date with interest at six per cent per annum made payable at the house of said James Rowin in Franklin: And this Plaintiff avers that the said defendant has collected and received on said two Notes thus taken by him as collateral, a large sum of money to-wit the sum of One Hundred & Fifty dollars, and this Plaintiff further avers that said defendant, has at all time

since the execution thereof, been the owner and holder of said Note of $1,93, &c, made payable to the said John R Hart as aforesaid; And this he the said Plaintiff is ready to verify, wherefore he prays Judgment and his damages by him sustained on occasion of the non-performance of the said several promises and undertakings in the said Declaration mentioned to be adjudged to him &c

By James & Lowell
Plffs attys.

On which is endorsed:-

Filed Sept 15, 1854
C M Broom Clk

Re-filed as amended Sept 16, 1854
C M Broom Clk

And afterwards, on the said 16th day of September A.D. 1854 the same being one of the days of the September Term of said Court for said year, the following, among other proceedings were had and entered of record in said Court that is to say:-

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1766 Henry Holmes
39. v
Charles O Boynton } Asst

This day come the parties by their respective attorneys, and on the defendants Plaintiffs motion leave is given him to amend his Replication herein filed.

And thereafter on the 20th day of September A.D. 1766 the same being as yet one of the days of the September Term of said Court for said year, the following among other proceedings were had and entered of Record in said Court that is to say:-

1766 Henry Holmes
39. v
Charles O Boynton } Asst

This day come again the parties by their attornies, and on the defendants motion leave is given him to file double rejoinder to the double replication of the Plaintiff herein filed; and thereupon on the Plaintiffs motion by order of Court, a Jury of good and

lawful men to-wit:-

Marshall Ball	J S Brown	W W Marsh
J W Davis	H S. Champlin	A N King
Evans Wharry	Richard Sendow	John Ward
Daniel Hobb	B Woodruff	Erasmus Eddy

who being severally elected, tried and sworn also come, and after hearing the evidence, and arguments of Counsel, and instructions of the Court retire under charge of an officer of the Court to consider of their verdict: And thereupon, on the defendants motion leave is given him to withdraw plea of set off.

And thereafter on the 20th day of September A.D. 1864 there was filed in said Court in said cause the following Rejoinder of the defendant to-wit:-

State of Illinois } ss. In the Circuit
DeKalb County } Court - September
Term A.D. 1864.

Henry Holmes }
v }
Charles O Boynton }

And the said defendant
29 as to the said second Replication

of the said plaintiff to the said second plea of the said defendant. saith that the said plaintiff ought not by reason of anything by him in that Replication. to have or maintain his aforesaid action thereof against him the said defendant because he saith that the consideration for the said promissory Note for one hundred and thirty three $\frac{40}{100}$ dollars in said Replication mentioned. was not and is not the consideration therefor in the said Replication alleged and set forth. And of this the said defendant puts himself upon the Country &c.

And the said plaintiff doth the like.

James & Lowell
Plffs Attys

And for a further Rejoinder to the said Replication last above mentioned the said defendant. by leave of Court &c says that the said plaintiff ought not by reason of anything by him in that Replication alleged to have or maintain his aforesaid action thereof against him the said defendant because he says that the said plaintiff

did not deliver to this defendant as collateral security for said Two Note for One hundred and thirty three 40/100 dollars two Notes of fifty dollars each as in said Replication alleged, and that this defendant has not collected and received anything on said Notes for fifty dollars each as therein alleged, and of this the defendant puts himself upon the Country &c.

R. L. Dixon
Atty for Defts

And the said Plaintiff doth the like
James H Lowell
Plffs Atty.

On which is endorsed;—
Filed Sept 20, 1864
C M Braun
Clk.

And afterwards on the 21st day of September A.D. 1864. the same being as yet one of the days of the September Term aforesaid Court for said year the following among other proceedings were had and entered of Record in said

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32 Court that is to say:-

1866 Henry Holmes
39. v
Charles O'Boynton } Asst.

This day came again the said parties by their attornies, and the Jury heretofore empaneled in this cause return into Court with the following verdict: We the Jury find the issues for the Plaintiff, and assess his damages at the sum of One hundred and thirty nine dollars and seven cents. It is therefor considered by the Court that the Plaintiff have and Recover of the defendant the said sum of One hundred and thirty nine dollars and seven Cents his damages aforesaid together with his costs herein expended, and that he have Execution therefor. Thereupon the defendant moves the Court for a new trial

And thereafter on the 21st day of September A.D. 1866. the same being as yet one of the days of the September Term of said Court for said year the following among other proceedings were had and entered of Record

in said Court that is to-say:-

1866 Henry Holmes
39. v. Asst
Charles O Boynton

This day come again the said parties by their respective attorneys. and this cause coming on to be heard on the defendants motion for a new trial. after arguments of Counsel, the Court being now fully advised in the premises, orders that said motion be denied - to which ruling of the Court in denying said motion for a new trial the defendant by his Counsel excepts which is allowed and here noted of Record. And hereupon the said defend= ant prays an appeal to the Supreme Court which is granted on condition that the defendant enter into bond conditioned according to Law in the penal sum of Four hundred dollars within thirty days from this date, to-wit: September 24. 1866. And upon consent of parties it is ordered by the Court that the appeal Bond herein be approved by the Clerk

And thereafter on the said 24th day of September, A.D. 1864. there was filed in said Court in said Cause the following Bill of Exceptions to-wit:—

State of Illinois } ss. In the Circuit
DeKalb County } Court September
Term A.D. 1864.

Henry Holmes
v
Charles O. Poynton } Bill of Exceptions

Be it Remembered that on the trial of this cause at the September Term A.D. 1864. of the said Circuit Court wherein the said Plaintiff under a rule of the Court had previously filed a Bill of Particulars in the words and figures following:

State of Illinois } ss. DeKalb County Circuit
DeKalb County } Court February
Term A.D. 1864.

Henry Holmes
v
Charles O. Poynton } Assumpsit

Bill of Particulars

Charles O. Poynton
To Henry Holmes Dr

1856 Feby 5th To money had and received by said Boynton to use of said Holmes on note dated May 14th 1855 due six months after date for $624.50 with interest at 10 p/c after due signed by said Holmes and one William A Rowin $150.00

1862 Sept 27th = To money paid, laid out and expended by said Holmes for the use of the said Boynton to pay the amount of Judgment in the DeKalb Co Circuit Court in favor of John Boynton vs said Holmes and Rowin, rendered Feb= ruary 28th 1862. and of Execution thereon and Costs on said Execu= tion $150.00

1862 Sept 27th = To one pair mares and one Lumber Wagon & one Double Harness sold on the said Execution in favor of said John Boynton vs said Holmes and Wm A Rowin $150.00

On which is endorsed:

Filed Feby 23. 1864

C M Broom Clk

The said Plaintiff to maintain the issue on his part called William Rowin as a witness, who being first duly sworn as a witness tes=

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tified as follows:- In the Spring of 1835 Henry Holmes, the Plaintiff came to me and said he wanted to hire some money of Boynton, and asked me to sign a Note with him, & Boynton. It was this Note (Witness here examined a Note placed in his hands by Plaintiffs Counsel, and the same note hereinafter set forth, on which Judgment had been rendered) I think it was a short time after this Note came due I asked Boynton if Holmes had paid that Note - He said he had not: I told him I wished he would collect it. I did not like to have my name on such papers. I saw a three months after this conversation I met Boynton on the Street, and asked him about the Note. He said Plaintiff had settled it I never signed any other Note with Holmes. I never heard anything more about the Note for about five years after that - then Uncle Henry told me he expected he should have to pay that Note again

The Plaintiff also offered in evidence a certain Writ of Execution issued out of the office of the Clerk of the said Circuit Court in favor of one. John Boynton, and against the said Henry Holmes, together with

the endorsements. levy and return of the Sheriff thereon, which said Execution, endorsements. levy and return, were in words and figures as follows

State of Illinois } ss The People of the
DeKalb County } State of Illinois
to the Sheriff of
said County - Greeting: - We command you
that of the Lands and Tenements, Goods
and Chattels of Henry Holmes and William
A. Rowin defendants in your County, you
cause to be made the sum of One hundred
and six dollars and ninety cents which John
Boynton Plaintiff lately in the Circuit Court
of said County at a Term thereof begun
and held at Sycamore in said County on
the 4th Monday of February A.D. 1862, to-wit;
on the 28th day of February A.D. 1862, as of
said Term recovered against the said de-
fendants, and which by said Court was
adjudged to said Plaintiff for his Damages
And also the further sum of Two dollars
and ninety cents, which were adjudged to
the said Plaintiff for his Costs and Charges
in that behalf expended whereof the said
defendants were convicted as appears to us
of Record. And have you the money
ready to render to the said Plaintiff
for his damages and costs aforesaid

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and make return of this writ with an endorsement thereon in what manner you shall have executed the same.

Witness Caleb M Brown, Clerk of our said Court, and the Seal thereof at Sycamore in said County this 2nd day of June A.D. 1862.

(SS)

C M Brown Clerk

On which is endorsed:—

Received this Execution this 2nd day of June A.D. 1862. at 4 o'clock P.M. Baldwin Woodruff Sheriff.

(Certificate of Levy attached to said Execution)

State of Illinois }
County of DeKalb }

I. Baldwin Woodruff Sheriff of the County of DeKalb and State of Illinois. do hereby certify that by virtue of an Execution and Fee Bill issued out of the DeKalb County Circuit Court, and to me directed dated the second day of June A.D. 1862. and delivered in favor of John Boynton and against Henry Holmes and William H Rowin I have levied on the following personal estate to-wit:— A pair of grey mares eight

years old, and a lumber Wagon, and one double Harness

Witness my hand and Seal ~~this~~ at Sycamore this 19th day of August 1862

Baldwin Woodruff &c
Sheriff of DeKalb County

(Copy of Return of Sheriff)

By virtue of the within Execution I did after giving ten days notice sell on the within described levy to Ashman Patridge for the sum of One hundred and Twenty four dollars and fourteen cents. he being the highest bidder at Sale. became the purchaser this 27th day of September A.D. 1862. I return this Execution Satisfied

Baldwin Woodruff
Sheriff

Service	2.00
Levy	50
Advertising	75
Forthcoming Bond	50
Release	3.00
Commission	1.75
Return	10
Mileage	14
	$8.24

(Copy of Receipt)

Rec'd on the within Execution $111.10 - it being my damages in full. Sept 23d 1862.

John Boynton
By C. O. Boynton

On which is endorsed:-

Filed Sept 23d 1862
C. M. Brown Clk

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The said Plaintiffs also offered in evidence the files with the endorsements and entries thereon of a certain cause in said Circuit Court wherein the said John Boynton was Plaintiff and the said Henry Holmes was defendant, being the files of the same cause in which was rendered the judgment upon which the above mentioned Execution was issued, which said files consisted of a Declaration, Cognovit, Note, and Power of Attorney thereto attached, and proof of Execution of said Power of Attorney, and were in words and figures as follows:-

(Declaration)

State of Illinois } In the February Term of
County of DeKalb } the DeKalb County
Circuit Court A.D.
1862.

John Boynton the Plaintiff in this suit by Richard L Dionne his attorney complains of Henry Holmes and William H Rowni, defendants in this suit in an action of Assumpsit

For that whereas the said defendants on the fourteenth day of May in the year of our Lord one thousand Eight hundred and fifty five, at Sycamore, to-wit: at the County of DeKalb aforesaid, made their or-

saw Promissory Note in writing, bearing date the day and year last aforesaid, and then and there delivered the same to D O Boynton, and thereby promised to pay to the said D O Boynton or order six months after the date thereof for value received the sum of Sixty four 00/100 Dollars, with interest at the rate of ten per cent per annum after due, being for money loaned; and the said D O Boynton then and there endorsed the same to the Plaintiff, whereof the said defendants then and there had notice and then and there in consideration of the premises promised to pay the amount of the said Note to the said Plaintiff according to the tenor and effect thereof. Yet the said defendants have disregarded their said promise, and have not paid the said monies or any part thereof to the damage of the Plaintiff of Two hundred dollars, and therefore he brings suit &c.

R. L. Dixon
Plaintiffs Attorney

On which is endorsed:-

Filed Feb 28, 1862
C M Brown Clerk

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(Cognovit)
DeKalb County Circuit Court

42 State of Illinois } In February Term
DeKalb County } ss. A.D. 1862.

Henry Holmes &
William H Rowin
vs.
John Bryton

Cognovit.

And the said Henry Holmes and William H Rowin defendants by Edward L Mayo their attorney, come and defend the wrong and injury, when &c and waive service of process, and say that they cannot deny the action aforesaid of the said Plaintiff, nor but that the said defendants did undertake and promise in manner and form as the said Plaintiff has above thereof declared against them, nor but that the said Plaintiff has sustained damages by reason of the non-performance of the said several promises and undertakings aforesaid, including sum of Twenty dollars for his reasonable attorneys fees for entering up this judgment, to the amount of One hundred and six dollars and ninety cents, besides the costs and charges by the said Plaintiff in this suit expended to be taxed

and the said defendants consent to immediate execution being issued on the Judgment herein rendered, and release all errors in these proceedings and agree that no appeal shall be prosecuted on the Judgment entered by virtue hereof nor any bill in equity filed to interfere in any manner with the operation of said Judgment

Edward L. Mayo
Atty for Defts.

On which is endorsed:-

Filed Feb 28. 1862
C M Brown Clerk

(State and Power of Attorney)

64.50 Sycamore, May 14, 1855.

Six months after date for value received I promise to pay C. O. Boynton or order the sum of Sixty four 50/100 Dollars, with interest at the rate of ~~ten~~ 10 per cent per annum after due being for money loaned

Henry Holmes
Wm H Rowen

Know all Men by these Presents That we the subscribers of DeKalb County and State of Illinois being Justly indebted to C. O. Boynton upon a certain promissory

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Note dated May the 17th A.D. 1855. in the sum of Sixty four 4/100 dollars with interest at the rate of — per cent per annum until paid; and which said Note is due six months after date: Now Therefore in consideration of the premises, we do hereby make, constitute and appoint E. L. Mayo or any attorney of any Court of Record to be our true and lawful attorney, irrevocably for us, and in our name place and stead to appear in any Court of Record in this State or in any Court of Record in any of the States or Territories of the United States in Term time or vacation, at any time either before or after said Note becomes due, and to waive the service of process, and sign a cognovit confessing a Judgment in favor of the said Boynton or his assignee upon said Note for the above sum, or so much as appears to be due and unpaid upon said Note together with the interest thereon from the date thereof at the rate of ten per cent per annum to the day of the entry of said Judgment, together with Costs: and the further sum of Twenty dollars attorneys fees for entering up said Judgment, and also to file Cognovit for the amount that may be unpaid; and to release all errors that may accrue or intervene in the en-

tering up aforsaid Judgment and issuing the Execution thereon, and to waive an right to him our Real Estate on Execution, and to stipulate that no writ of error or appeal shall be prosecuted on said Judgment, nor any Bill in Equity filed to interfere in any manner in the operation of the same: And in consideration of the money mentioned in said promissory Note and of one dollar to us in hand paid, the receipt whereof is hereby acknowledged and confessed, we do hereby waive, release and relinquish in favor of the said Boynton and his assignees the benefit of all Exemption laws of this State, whether relating to Real or Personal Estate: And particularly, for the consideration aforesaid we do hereby stipulate and agree that all right, title, claim, interest benefit or advantage, accruing or belonging to us from or by virtue of the Act of the General Assembly of the State of Illinois intitled "An Act to Exempt Homestead from Sale on Execution" approved February 11. 1851. and all other acts of a similar nature, passed since are hereby waived and released, and all property we now own or may hereafter acquire until the payment of said Note is hereby made subject to levy and Sale by virtue of any Execution issued hereon: And we hereby

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further stipulate and agree that Execution may issue on any Judgment entered upon said Note, at any time either in term time or in vacation after the Court in which said Judgment is so entered: And also in and by this Indenture, which is executed subsequent to the making of the promissory Note aforesaid, and in consideration of one dollar to us in hand paid, the receipt whereof is hereby acknowledged and confessed do forever release, discharge and acquit the said Boynton from all penalties forfeitures penal actions, and causes of action penal statutes, and the defense of usury to or by reason of the Note aforesaid, or by reason of any matter or thing to the time of Executing this Indenture hereby ratifying and confirming, all which our attorney may do by virtue hereof Witness our hands and Seal this 14th day of May A.D. 1866.

Signed, Sealed and Delivered in the presence of
R.N. Watkins

Henry Holmes
Wm H Rowan

On which is endorsed:-
Pay John Boynton without Recourse to me
C O Boynton

State of Illinois }ss
DeKalb County }

Rufus Hopkins being duly sworn deposes and says that Henry Holmes & William H. Boyer executed the within note and power of attorney in the presence of this affiant, and that the signatures of said Holmes & Boynton thereto subscribed are genuine

Rufus Hopkins

Subscribed and Sworn to before me this 26th day of February A.D. 1862

P. M. Alden
Notary Public

Filed Feb 28. 1862
C. M. Brown Clk

Baldwin Woodruff was then produced & sworn as a witness on behalf of the Plaintiff and testified that he was Sheriff of DeKalb County in A.D. 1862. - That he made the levy on the Execution offered in evidence on the property of Holmes - That after the levy Holmes gave a forthcoming Bond for the property - that Witness sold the property on the Execution & Ashman Patridge bid it off for $124.14 - witness believes a little more than was due on the

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Execution - The Execution was controlled by defendant Charles O. Boynton

The Plaintiff then rested his case whereupon the defendant withdrew the plea of set off and offered to prove by Richard L Divine that he was the attorney who caused Judgment to be entered by confession in the above mentioned cause of John Boynton v Henry Holmes That on or about the day that said Judgment was rendered the Note and Power of attorney on which the same was rendered were placed in the hand of Witness by Charles O Boynton the defendant in this suit with directions to enter up Judgment thereon in the name of John Boynton - That the blank endorsement on said Note was filled up by Witness. To the introduction of this Testimony the said Plaintiff then and there objected, which objection was sustained by the Court. To which ruling of the Court in sustaining the objection aforesaid the said defendant then and there excepted The foregoing was all the evidence either offered or received on the trial of said cause

The defendant then moved the Court upon the evidence aforesaid to instruct the

Jury as follows;

(Defts Instruction)

Although the Jury may believe from the evidence that the Note upon which the Judgment was rendered was endorsed and delivered to John Boynton by or through an agent before its maturity; Nevertheless if the Jury believe that Holmes the Plaintiff had a defense to such Note as against the payee thereof; and that the agent of John Boynton, at the time of the purchase of such Note had knowledge of such defense then John Boynton, in contemplation of Law had knowledge of such defense, and the Plaintiff in this suit cannot recover.

Refused

If the Jury believe from the testimony that the Note introduced in evidence in this cause was sold and assigned by the defendant in this suit to John Boynton after the same became due then the Jury will find for the defendant

Refused

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Unless the Jury believe from the testimony that the note introduced in evidence by the Plaintiff was sold endorsed & delivered by the defendant to

Refused

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Refused

John Boynton before its maturity, they will find for the defendant

If the Jury believe from the evidence that the Note introduced in evidence in this case by the Plaintiff was sold, endorsed and delivered by the defendant to John Boynton after the same became due & payable, then they will find for the defendant

Which instructions the Court refused to give the Jury: To which refusal of the Court to give said Instructions the said defendant then and there excepted And the Court at the instance of the Plaintiff, instructed the Jury as follows

(Pltffs Instructions)

The Jury are instructed that if they believe from the evidence that the defendant Charles O. Boynton, either as agent for John Boynton or otherwise has spread upon the Record of this Court in a suit which has been determined and adjudicated, the fact that the Note given in evidence in this suit was assigned before it became due

Given

then said Poynton is not permitted to show the contrary in this suit, and the plaintiff is entitled to recover if the jury further believe that the note was paid by Holmes before judgment was rendered on it.)

The Jury are instructed that the presumption of law is that the Note given in evidence in this case was assigned before it became due, and in that case the Plaintiff in this suit could not have defeated a recovery in the suit of John Poynton against him and Rowin, and is therefore entitled to recover if the jury further believe that the Note had been paid by Holmes before judgment was rendered on the Note.

Given.

To the giving of which said instructions of the Plaintiff, the defendant then and there excepted, and thereupon the jury gave their verdict against the defendant Whereupon the defendant moved for a new trial upon the ground
1st - That the verdict of the Jury was contrary to the law and the evidence
2d. That the Court erred in refusing to give said defendant's instructions

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3rd - That the Court erred in giving said Plaintiffs instructions

But the Court overruled said motion and gave Judgment upon the said verdict of the said Jury against the defendant, to which the defendant then and there excepted And inasmuch as the matters aforesaid do not appear of Record the Counsel for the defendant presents this Bill of Exceptions, and prays that the same may be signed and sealed by the Court, and made part of the Record in said cause and it is done accordingly.

T D Murphy (Seal)
Judge &c

Filed Sept 24, 1864
C M Brown Clk

And thereafter on the 17th day of October A D 1864 there was filed in said Court in said Cause, the following appeal Bond to-wit:

State of Illinois } In the Circuit Court.
DeKalb County } Henry Healey vs Chas O Boynton.

Know all Men by these Presents, That we Charles O Boynton and Edwin D. Hunt of the County of DeKalb in

the State of Illinois, are held and firmly bound unto Henry Holmes in the penal sum of Two Hundred Dollars lawful money of the United States for the payment of which well and truly to be made, we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents. Witness our hands and Seals this 7th day of October A.D. 1878.

The condition of the above obligation is such that whereas the said Henry Holmes Plaintiff did on the 24th day of September A.D. 1878. in the Circuit Court of the County of DeKalb in said State of Illinois at the September Term A.D. 1878. thereof recover a Judgment against the above bounden Charles O. Boynton, defendant, in an action of assumpsit for the sum of One hundred and thirty nine 7/100 dollars and costs of suit - from which Judgment the said Charles O. Boynton has taken an appeal to the Supreme Court of the State of Illinois: Now if the above bounden Charles O. Boynton shall duly prosecute his appeal, and shall pay said Judgment, Costs, in-

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cost and damages, in case the said Judgment shall be affirmed, then the above obligation to be void, otherwise to remain in full force and effect

Charles O Boynton (Seal)
Edwin F Hunt (Seal)

On which is endorsed;

Filed Oct 12, 1864 & approved
C M Brown Clk

State of Illinois }
DeKalb County } ss. I, C M Brown
Clerk of the Circuit
Court in and for said County in the State
aforesaid do hereby Certify that the above
and foregoing is a true transcript of
all the papers filed, and all the pro-
ceedings had in a certain cause lately
pending and undetermined in the Circuit
Court of said DeKalb County, on the Law
side thereof, wherein Henry Holmes was
Plaintiff and Charles O Boynton was
Defendant, and of the whole thereof, as
appears of Record.

Witness my hand and the Seal of said
Court this November 7th A.D. 1864
C M Brown Clk
F K Whitemore Dep Clk

And now comes the appellant and says that in the record and proceedings aforesaid and in the rendition of the Judgment aforesaid there is manifest error in this to wit

1st The court erred in admitting improper evidence offered by plaintiff

2 The court erred in rejecting proper evidence offered by defendant

3 The court erred in giving each of the instructions asked for by plaintiff in court below

4th The court erred in refusing to give each of the instructions asked for by defft in the court below

5th The court erred in overruling the motion for a new trial

6th The court erred in rendering the Judgment aforesaid in manner & form aforesaid

Glover Cook & Campbell
attys for appellants

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And now comes the appellee in this cause & says there is not any error in the foregoing Record & Proceedings therein he prays that the same may be affirmed

Charles Kellum
Atty for Appellee
A. Hurd

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Holmes
v
Boynton

Copy Record

Filed March 28, 1858
A. Leland
Clk.

$1,300.