

13610

No. \_\_\_\_\_

# Supreme Court of Illinois

Hill et al

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vs.

Dudley

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STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 231

Dalley

vs

Thornbush

Hall & Co

1882

13610

October Term of the Whiteside County Circuit Court A.D. 1860

At a regular term of the Circuit Court in and for the County of Whiteside and State of Illinois begun and holden at the Court House in the Town of Morrison in said County and State on the second monday of October in the year of our Lord one thousand eight hundred and sixty (A.D. 1860) it being the eighth day of said month and the Judge not arriving on this day the Court convened and organized on Tuesday morning October ninth A.D. 1860

Present Hon John V. Justice Judge of the twenty second judicial circuit in the State of Illinois

Present Robert L Wilson Clerk of the Circuit Court in and for the County of Whiteside and State of Illinois

Present John Dippell Sheriff of Whiteside County and State of Illinois

Present Robert C Breckell States Attorney for the twenty second judicial circuit in the State of Illinois

Be it remembered that heretofore to wit on the twenty second day of September in the year of our Lord one thousand eight hundred and sixty there was filed in the office of the Clerk of the Circuit Court of said Whiteside County a certain precipe for summons clothed in the words and figures following

to wit: State of Illinois }  
Whiteside County } Circuit Court of Whiteside County  
of the October term A.D. 1860

Daniel H. Hummel George H. Hill  
and Joseph S. Hill partners in



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damages of said plaintiff as they say in the sum of five hundred ~~dollars~~ (\$500) dollars  
And you have then and there this writ with an increase near therein in what manner you shall have executed the same.

(Seal)

Witness R L Wilson clerk of our said court  
And the seal thereof at Marion aforesaid this  
22<sup>nd</sup> day of September A. D. 1860  
R L Wilson Clerk

pr J C Clemens Dep<sup>y</sup>

And afterwards to wit on the eighth day of October in the year last aforesaid said writ was returned into court by said Sheriff in answer as follows to wit:

State of Illinois }  
Whiteside County } The within named William C Duell  
-leg not found in my County

John Dippell Sheriff  
By C E Fitch dep<sup>t</sup>

And afterwards to wit on the eighteenth day of October in the year last aforesaid, it being one of the judicial days of said October Term of said court. The following among other proceedings were had and entered of record to wit:

Daniel A Hummel George A Hill }  
and Joseph S Hill partners in trade under }  
the name & style of Hummel Hill & Co }  
vs }  
William C Duell }  
} Trespas on the }  
} Case on promises }

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This day came said plaintiffs by their attorney  
and on his motion this cause is continued to the next  
term of this court for service on the said defendant

January Term A. D. 1861

At a regular term of the circuit court in and for the County  
of Whiteside and State of Illinois. begun and holden at the  
Court House in the Town of Morrison in said County and  
State on the third Monday of January in the year of  
our Lord one thousand eight hundred and sixty one. it  
being the twenty first day of said month and the judge  
not arriving on this day the Court convened and organ-  
ized on Tuesday morning January the twenty second (22)  
A. D. 1861

Present Hon John W. Custace Judge of the twenty second  
Judicial Circuit in the State of Illinois

Present Addison <sup>Co</sup> Farrington clerk of the Circuit <sup>Court</sup> in and  
for said County and State

Present Daniel M. Cartney State Attorney for the twenty  
second Judicial Circuit in the State of Illinois

Present Robert B. Glendon Sheriff in and for the County  
of Whiteside in the State of Illinois

Be it remembered that heretofore to wit on the twenty second  
day of November in the year of our Lord one thousand eight  
hundred and sixty there was issued out of the office of the clerk  
of said court, and under the seal thereof the peoples alias  
writ of summons, directed to the Sheriff of Whiteside County to

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execute and clothed in the words and figures following  
to wit: State of Illinois }  
Whiteside County }  
The People of the State of Illinois

To the Sheriff of said County Greeting  
We Command you

as we have before that you Summon William C Dudley  
if he shall be found in your county, personally to be and appear  
before the Circuit Court of Whiteside County, on the first day of  
the next term thereof to be holden at the Court House in the town  
Merrison in said Whiteside County on the third monday of  
January A.D. 1861 to answer unto Daniel A Hummell  
George A Hill and Joseph S Hill partners in trade under  
the name & style of Hummell Hill & co in a plea of tres-  
pass on the Case on promises. to the damages of said plain-  
tiffs as they say in the sum of five Hundred (\$500) dollars  
And you have then and there this writ with an indorsement  
thereon in what manner you shall have executed the same

Seal

Witness R L Wilson Clerk of our said Court and  
the seal thereof at Merrison aforesaid this 22<sup>th</sup>  
day of November A.D. 1860

R L Wilson Clerk  
per F Clendenin dep<sup>t</sup>

and afterwards to wit on the twenty first day of January  
in the year last aforesaid said writ of summons was retur-  
ned into Court by said Sheriff endorsed as follows to wit:

State of Illinois }  
Whiteside County }

I have duly served the within by reading  
the same to the within named William

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C Dudley, in his hearing and presence December 27<sup>th</sup>  
1860 as I am therein Comanded, Robert B Clendenin  
Sheriff B John Whallen Dep. Fees service 50 mileage 50  
return 10 = 90

Be it remembered that heretofore to wit on the twenty eighth  
day of September in the year of our Lord one thousand eight hund-  
red and sixty said Plaintiff filed his certain certain his  
certain declaration in said cause in the words and figures  
following to wit;

Circuit Court of Whiteside County of the October  
Term A.D. 1860

State of Illinois }  
Whiteside County }<sup>4</sup>

Daniel H Hummell George H Hill  
and Joseph S Hill partners in trade under the name style  
and firm of Hummell Hill & Co. plaintiffs in this suit  
by Carl Kirk their attorney Complain of William C Dudley  
defendant who was summoned &c in a plea of trespass on the  
Case on promises: For that whereas the said defendant he-  
retofore to wit on the fourth day of September in the year of our  
Lord one thousand eight hundred and fifty seven at Lynden  
to wit at Lynden in said County of Whiteside made his  
certain promisory note in writing, bearing date the day and year  
last aforesaid and then and there delivered the same to the Ster-  
ling and Rock Island Rail Road Company in and by which  
said note said defendant, by the name style and description  
of ~~William~~ C Dudley promised to pay to the order of the said

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Sterling and Rock Island Rail Road Company at the  
expiration of seven years next from and after the first day  
of September A.D. 1857 one thousand dollars together with interest  
thereon at the rate of ten per cent per annum payable semiannually  
each year on the first day of March, and the first day of September  
both principal and interest payable at the office of said Comp-  
any at Sterling in said county, for value received, And the  
said Sterling and Rock Island Rail Road Company to whom  
to whose order said note was payable, then and there indorsed and  
under their hand assigned the said note to Reynolds Wilder  
& Co. and then and there delivered the same so indorsed to the  
said Reynolds Wilder & Co. And the said Reynolds Wilder  
& Co to whom or to whose order the said note was so indorsed &  
delivered, then and there indorsed and under their hands  
assigned the said note to the said plaintiff, and then and  
there delivered the same so indorsed to the said plaintiff,  
By means whereof and by force of the statute in such case  
made and provided, said defendant became liable to pay to  
the said plaintiff said sum of money and said several  
installments of interest mentioned in said notes and being  
so liable in consideration thereof he the said defendant  
then and there undertook and promised to pay the same  
to the said plaintiff, according to the tenor and effect, true  
intent and meaning of the said note & of the indorsements there-  
on as aforesaid to wit at the place of aforesaid  
And the said plaintiff in fact saith that afterwards to  
wit: on the first day of September A.D. 1860, a large sum  
of money to wit the sum of three hundred <sup>(300)</sup> dollars for divers, to wit  
six of the semiannual installments of interest so payable

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by the terms and tenor of the said promissory note. Then  
last elapsed became and were due and payable from the  
said defendant to the said plaintiffs upon and by virtue of  
said promissory note, which said last mentioned sum of  
three hundred dollars he the said defendant then and there  
became liable to pay, and ought to have paid to the said  
plaintiffs according to the tenor and effect of the said promissory  
note, & of his said promises & undertakings to wit at the  
office of the said Sterling and Rock Island Rail Road Com-  
pany at Sterling in said County.

And for that whereas also, the said defendant heretofore  
to wit on the fourth day of August A.D. 1857 to wit at Lyndon  
in said County made his certain other promissory note in  
writing bearing date the fourth day of September A.D. 1857, and then  
and there delivered the same to the Sterling and Rock Island Rail  
Road Company, in and by which said note the said defendant by  
the name style and description of Wm C Dudley, promised to pay  
to the order of the said Sterling & Rock Island Rail Road Company  
the sum of one thousand dollars at the expiration of seven years  
next from and after the first day of September A.D. 1857 together  
with interest thereon at the rate of ten per cent per annum paya-  
ble semi-annually in each year on the first day of March & the  
first day of September. Said principal and interest to be respect-  
ively payable at the office of said Company at Sterling in said  
County for value received. And said Sterling and Rock Island  
Rail Road Company to whom or to whose order said note was  
payable, then and there indorsed and under their hand  
assigned the said note to Reynolds Wilder & Co & then and

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then delivered the same so indorsed to the said Reynolds  
Wilder & Co. And the said Reynolds Wilder & Co. to whom  
or to whose order the said last mentioned note was so in-  
vued & assigned, then and there indorsed and under their hand  
assigned the said last mentioned note to the said plaintiffs  
& then & there delivered the same so indorsed to the said plaintiffs  
By means whereof and by force of the Statute in such case made  
and provided, the said defendant became liable to pay the said pl-  
aintiffs the said principal sum of money mentioned in said  
note, and the several installments of interest thereon at the times  
when the same should severally become due & payable according  
to the tenor and effect of said last mentioned note. And the  
said plaintiffs in fact deith, that there so became due and  
payable to the said plaintiffs the following several semiannual  
installments of interest at the rate of ten per cent per annum  
upon and according to the tenor and effect of said last mentioned  
promissory note, and the indorsements thereon aforesaid, that  
is to say fifty dollars to wit, on the first day of March A.D. 1858  
& further fifty dollars on the first day of September A.D. 1858 +  
further fifty dollars on the first day of March A.D. 1859 and further  
fifty dollars on the first day of September A.D. 1859 & further fifty  
dollars on the first day of March A.D. 1860 & further fifty dollars  
on the first day of September A.D. 1860, amounting in all to a  
large sum of money to wit, the sum of three hundred dollars  
and the same being wholly in arrears and unpaid, & the said  
defendant being so liable as aforesaid, undertook and then  
and there faithfully promised to pay the same to the said  
plaintiffs according to the tenor and effect, true intent and  
meaning of said last mentioned note & of the indorsements aforesaid

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said to wit at the place aforesaid. And for that  
whereas also the said defendant heretofore to wit on the  
10<sup>th</sup> day of September A.D. 1860 was indebted to the said plaintiffs  
in a large sum of money to wit the sum of five hundred dollars  
for the loan and forbearance of another large sum of money to  
wit: the sum of one thousand dollars. Then and for a long space  
of time to wit: for the space of seven years owing from the said  
defendant to the said plaintiffs. And the said interest money  
being due & the amount thereof in arrears the said defendant  
afterwards to wit on the 10<sup>th</sup> day of September A.D. 1860 to wit at  
the County of Whiteside aforesaid in consideration of the premises  
undertook and faithfully promised the said plaintiffs to pay  
to the said plaintiffs the amount of said interest when he the  
said defendant should be therunto afterwards requested

And whereas also the said defendant afterwards to wit:  
on the tenth day of September in the year of our Lord one thousand  
and eight hundred and sixty to wit, at Sterling in said County,  
became and is indebted unto the plaintiff in a  
large sum of money to wit: Five hundred dollars, for  
money before that time lent and advanced to and paid  
laid out and expended for said defendant by said plain-  
tiffs at said defendants request. And for money before that  
time had and received by said defendant to and <sup>the use of</sup> for said  
plaintiffs; and also in like sum for goods wares and merchand-  
ise before that time sold and delivered by said plaintiffs to said  
defendant at like special instance and request; and also in like  
sum for the labor care and diligence of said plaintiffs before  
that time done and performed by said plaintiffs for said

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defendants. And at the like instance and request of  
said defendant. And also in like sum then and there found  
due and owing said plaintiffs on an account stated between  
them. And being so indebted said defendant in consideration  
thereof then and there undertook and promised to pay said  
plaintiffs said last mentioned sum of money, when thereunto  
afterward requested. Yet the said defendant not regarding  
his said promises and undertakings. But contriving &c, although  
often requested ~~to~~ do, has not paid said plaintiffs either  
of said sum of money above mentioned or any part thereof  
but so to do has hitherto wholly neglected and refused and still  
does neglect and refuse to the damage of said plaintiff of  
Five hundred dollars. And therefore he brings this suit etc  
E N Kirk plffs atty

## Copy of instrument and account sued upon

\$1000

Lynsen Sept 4<sup>th</sup> 1857

For value received I William C Dudley promise to  
pay to the Sterling and Rock Island Rail Road Co  
or order the sum of one thousand dollars at the expiration  
of seven years from the first day of September A.D. 1857 with  
interest thereon at the rate of ten per cent per annum payable  
Semi-Annually in each year on the first day of March  
and September Principal and interest payable at the  
office of said Company at Sterling in the County of Whites  
ide and State of Illinois

Wm C Dudley

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William C Dudley

To Hummell Hill & Co Dr

To money lent and advanced	\$ 500
To money expended and paid out for	\$ 500
To money received for use of	\$ 500
To Goods wares & Merchandise	\$ 500
To labor and services	\$ 500
To balance on account stated	\$ 500

And afterwards to wit on the twenty ninth day of January  
 in the year of our Lord one thousand eight hundred and sixty  
 one the said defendant filed in said Court his certain  
 pleas in said cause in the words and figures following

to wit: State of Illinois }  
 Whiteside County } In the circuit Court of White  
 side County to the January Term A.D.  
 1861

Daniel H Hummell George H Hills }  
 & Joseph S Hill partners in trade under }  
 the name & style of Hummell Hill & Co }  
 vs }  
 William C Dudley }

And now comes the said defend  
 ant William C Dudley by Ware & Strawser & Bristol his  
 attorneys and defends the wrong and injury when &c and  
 says that he did not undertake and promise in manner  
 and form as the said plaintiff hath above therein in their  
 said declaration complained against him, and of

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The sd  
This he puts himself upon the Country  
Plaintiff doth the like  
Ware & S. Mander & Bristol  
E. A. Kirk plff atty  
def atty

And for a further plea, in that  
behalf by leave of the Court first had and obtained for that  
purpose the said defendant says that the said plaintiffs  
ought not to have or maintain their said action aforesaid  
against him because he says that heretofore to wit  
on the                      day of                      the Sterling and Rock  
Island Rail Road Company by its officers and agents re-  
quested this defendant to subscribe for and take ten shares  
of the Capital Stock of said Sterling and Rock Island Rail  
Road Company, each share being one hundred dollars  
the ten shares amounting in all to the sum of one  
thousand dollars, and this defendant says that upon the  
solicitation of the said Sterling & Rock Island Rail Road  
Company by its officers and agents he did thereupon to  
wit: on the                      day of  
upon the Stock Books of subscription of said Sterling  
and Rock Island Rail Road Company, subscribe for and did  
agree to and did take ten shares of the Capital Stock of  
said Company, and did then and there agree to pay to  
the said Sterling and Rock Island Rail Road Company  
for said ten shares of the Capital Stock of said Sterling and  
Rock Island Rail Road Company, the said sum of one  
thousand dollars to be paid in such manner and proportions  
and at such times as the Board of Directors of said Ster-  
ling and Rock Island Rail Road Company might from time  
to time direct and this defendant says that after he had

Subscribed for the ten Shares of the Capital Stock of  
 the said Sterling and Rock Island Rail Road Company  
 upon the Stock Subscription Books of said Sterling and  
 Rock Island Rail Road Company as aforesaid, the said  
 Sterling and Rock Island Rail Road Company by its officers  
 and agents requested this defendant to make execute and  
 deliver to the said Sterling and Rock Island Rail Road  
 Company his, this defendants promissory note payable at the  
 expiration of seven years from the first day of September A.D.  
 1857 for the said sum of one thousand dollars with interest  
 thereon at the rate of ten percent per annum, or ten cents on  
 each and every dollar in said note mentioned for each and  
 every year that said note is to run before it becomes due  
 or one hundred dollars for each and every year that said  
 note is to run before it becomes due upon the said one thou-  
 sand dollars in said note mentioned, which said note  
 and money in said note mentioned is to be paid semi-  
 annually in each year to wit; on the first day of March  
 and the first day of September in each year and thereupon  
 and in pursuance of the request of the said Sterling and  
 Rock Island Rail Road Company the said William C  
 Dudley did to wit; on the fourth day of September in  
 the year of our Lord one thousand eight hundred and  
 fifty seven to wit at Lyndon in said County of Whiteside  
 make execute and deliver to the said Sterling and Rock  
 Island Rail Road Company his the said William C  
 Dudley promissory note calling for the sum of one thou-  
 sand dollars to be paid seven years from the first day

of September in the year of our Lord one thousand eight hundred and fifty seven with interest at the rate of ten per cent per annum or ten cents on each and every dollar mentioned in said note for each and every year that said note is to run before it becomes due or one hundred dollars as the one thousand dollars mentioned in the said note for each and every year the said note is to run before it becomes due and which interest on said note is to be paid semi-annually to wit; on the first day of March and the first day of September in each year, and which is the same note mentioned in said plaintiff's declaration. And the defendant further avers that the said Sterling and Rock Island Rail Road Company did to wit on the fourth day of September in the year of our Lord one thousand eight hundred and fifty seven to wit at said County of Whiteside demand and receive of and from this defendant the said promissory note mentioned in said declaration in consideration of and for the <sup>said</sup> ten shares of stock of the said Sterling and Rock Island Rail Road Company which this defendant had subscribed for as aforesaid and which said ten shares of the stock of the said Sterling and Rock Island Rail Road Company was the sole and only consideration for said note and that there was no other or different consideration for said note. And the defendant avers that the receiving of the said note by the said Sterling and Rock Island Rail Road Company in manner and form as aforesaid was and is in violation of the laws of the land and of the articles of the said Sterling and Rock Island Rail Road Company Corporation and the said indorsing and transferring of said note in the

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Subscribed for the ten Shares of the Capital Stock of  
the said Sterling and Rock Island Rail Road Company

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Manner mentioned in the plaintiffs said declaration is  
not authorized by the laws of the land and was and is in  
violation of the articles of the said Sterling & Rock Island Rail  
road Company's Corporation, and that the said note and the  
transfers and endorsements thereon is and are fraudulent and  
void in Law all of which the plaintiff well knew at  
the time said plaintiffs received said notes. And this the  
defendant is ready to verify wherefore he prays Judgement  
&c &c

Ware Strawser & Bristol

Defts attys

And for a further plea in this behalf by leave of Court first  
had and obtained the defendant says "Actio non" because  
he says that heretofore to wit on the \_\_\_\_\_ day of \_\_\_\_\_

The said Sterling and Rock Island Rail road  
Company by its officers and agents requested this defendant to  
subscribe for and take ten shares of the Capital Stock of  
the said Sterling and Rock Island Rail road Company  
each share being one hundred dollars. The said ten  
Shares amounting in all to the sum of one thousand do-  
llars, and this defendant avers that upon the solicitation of  
the said Sterling and Rock Island rail road Company its offic-  
ers and agents he did heretofore to wit on the \_\_\_\_\_ day of \_\_\_\_\_  
upon the stock books of subscription of said Sterling and  
Rock Island Rail road Company subscribe for and did agree  
to and did take ten shares of the Capital Stock of said Ster-  
ling and Rock Island Rail Road Company and did agree  
to pay to the Sterling and Rock Island Rail road Company  
for said ten shares of the Capital Stock of the said Ster-

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ling and Rock Island rail road Company the said sum  
of one thousand dollars to be paid in such manner and  
proportions and at such times as the Board of directors of said  
Sterling and Rock Island rail road Company may from time  
to time direct and this defendant avers that after he had sub-  
scribed for said ten shares of Capital stock of the said St-  
erling and Rock Island rail road Company upon the stock  
Subscription books of the said Sterling and Rock Island  
rail road Company as aforesaid, the said Sterling and  
Rock Island rail road Company by its officers and agents re-  
quested this defendant to make and deliver to them the said  
Sterling and Rock Island rail road Company his, this defend-  
ant's promissory note payable at the expiration of seven years  
from the first day of September in the year of our lord one  
thousand eight hundred and fifty seven for said sum of  
one thousand dollars with interest at the rate of ten percent  
per annum that is to say, that the said defendant should  
as interest on said note pay ten cents upon each and every  
dollar of the said one thousand dollars for each and every  
year for the said seven years that said note is to run  
before it becomes due to wit from September first A.D., 1857  
and thereupon this defendant avers that it was then and  
thereupon at the said County of Whiteside unlawfully use-  
riously and corruptly agreed by and between this defendant  
and the said Sterling and Rock Island rail road comp-  
any, that this defendant should make and deliver his  
said promissory note to the said Sterling and Rock Island  
rail road Company for the said sum of one thousand  
dollars, <sup>where said sum of one thousand dollars</sup> was for and in consideration of the ten shares of

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The Capital Stock of Said Sterling and Rock Island  
Rail road Company according to the request of the  
said Rail road Company as aforesaid. And this defe-  
ndant avers that afterwards to wit on the fourth  
day of September in the year of our Lord eighteen hun-  
dred and fifty seven the said defendant did in pur-  
suance of said unlawfull usurious and corrupt agree-  
ment of us aise to wit as said County of Whiteside  
make and deliver to the said Sterling and Rock Island  
Rail road Company his said promissory note for one  
thousand dollars payable at the expiration of seven years  
from the first day of September A.D. 1857 in the year  
of our Lord one thousand eight hundred and fifty seven  
with interest thereon at the rate of ten percent per  
annum. which interest is to be paid semi-annually  
in each year to wit. on the first day of March and  
the first day of September in each year Interest and pr-  
incipal to be paid at the office of said Company at Sterling  
in said County of Whiteside and State of Illinois. And  
this defendant avers that the said note is the same note  
mentioned in the said plaintiffs declaration. and the  
said defendant avers that the interest or profit agreed to be  
paid by the terms of said Contract as stated in said note  
is more than ten per cent interest on each and every doll-  
ar mentioned in said note for each and every year that  
said note is to run before it becomes due. and this defend-  
ant avers that the paying the interest on said note  
semi-annually. as is required by the terms of said Contract

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in said note gives to the holder of said note two dollars  
more profits or interest on the amount said note calls for  
each year than to pay ten per cent interest on the amount  
that said note calls for at the end of each year, the  
said two dollars and fifty cents being the amount of interest  
that the fifty dollars would acquire or draw for the six months  
of each year, and this defendant avers that the sole  
and only consideration of and for said note was the said ten  
shares of stock of the said Sterling and Rock Island Rail  
road Company, so subscribed for and taken by this defend-  
ant, as aforesaid, and that there was no other or different  
consideration of or for said note, and the defendant avers  
that the demanding and receiving said note by the said  
Sterling and Rock Island Rail Road Company, in manner  
and form as aforesaid was and is in violation of the laws  
of the land and of the articles of the said Sterling and Rock  
Island Rail Road Company's Corporation, and that the  
entering and transferring of said note in the manner  
mentioned in the said plaintiffs declaration is not  
authorized by the laws of the land, and was and is in  
violation of the articles of the said Sterling and Rock Is-  
land Rail Road Company's Corporation, and that the  
said note and the transfers and endorsements thereon  
was and is and are fraudulent and void in law  
all of which the plaintiffs well knew at the time said  
plaintiffs received said note, and this the defendant is  
ready to verify, wherefore, &c &c

Ware Standen & Bristol

And for a further plea in this behalf by leave of Court first had and obtained the said defendant says "actio non" because he says that he was induced to make execute and deliver the said supposed note in the said plaintiffs declaration mentioned, to the said Sterling and Rock Island Rail Road Company by means of the said Sterling and Rock Island Rail Road Company its officers and agents false and fraudulent representations and of the frauds & circumvention of the said Sterling and Rock Island Rail Road Company and its officers and agents which the said Sterling and Rock Island Rail Road Company its officers and agents practiced upon this defendant in procuring said note mentioned in the plaintiffs declaration all of which the plaintiffs well know at the time they received said note, and this the said defendant is ready to verify - wherefore he prays &c.

Ware Strawder & Bristol  
 deff Atty's

And for a further plea in this behalf by leave of Court first had and obtained the defendant says "actio non" because he says that he never received any value or legal consideration whatever for said note mentioned in said plaintiffs declaration, but that said note was obtained from him this defendant by the false and fraudulent representations of the said Sterling and Rock Island Rail Road Company its officers and agents, all of which the said plaintiffs well know at the time they received said note - and this the defendant is ready to verify

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Wherefore Vc &c

Ware Strawder & Bristol

Defendants attorneys

And for a further plea in this behalf by leave of Court first had and obtained the said defendant says "actio non" because he says that the amount of Capital Stock, required to construct and procure the right of way and motive power, and every other appurtenance for the completion and running the said Sterling and Rock Island Rail Road had not been subscribed for nor has it been taken to wit the sum of six hundred thousand dollars, that being the amount required as stated in the articles of association of the said Sterling and Rock Island Rail Road Company, which articles of association are now on file in the office of the Secretary of State in Springfield in the State of Illinois, all of which the plaintiffs well knew at the time they received said note in their said declarative mentioned and this the defendant is ready to verify wherefore he prays judgement &c

Ware Strawder & Bristol

Def attorneys

And for a further plea in this behalf by leave of Court first had and obtained the said defendant says "actio non" because he says that the said board of directors of the said Sterling and Rock Island Railroad Company did not previous to the making and delivery of said note mentioned in said plaintiffs declarative, nor have the said directors of the said Sterling and

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Rock Island rail road Company ever demanded of this defendant the full sum of the said Capital stock to wit the ten shares that this defendant subscribed for to the said Sterling and Rock Island rail road Company as aforesaid. All of which the plaintiffs well knew at the time they received said note, and this the said defendant is ready to verify. Wherefore he prays judgement whether the said plaintiff ought to have or maintain their action aforesaid against him

Ware Strawler & Bristol  
Plffs attys

And afterwards to wit on the same day and of ear last aforesaid the said defendant by his attorney filed in said Court his certain demurrer to the said plaintiffs declaration in the words and figures following to wit:  
State of Illinois, Whiteside County

Circuit Court of Whiteside

County of the January term A.D. 1861

Hummell Hill & Co }  
v }  
William O Dudley }

And the said Hummell Hill & Co by E. A. Orisk their attorney, as to the said second third fourth fifth sixth and seventh pleas of the said defendant by him above pleaded come and say "procludi non," because they say that the said

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are not, nor is any or either of them in manner and form  
as the same are above pleaded sufficient in law to be  
answered unto therefore they pray judgement etc  
E A O'Neil

pl'tff atty

May Term A.D. 1861

As a regular term of the circuit court in and for the County of Whiteside and State of Illinois began and holden at the Court House in the town of Morrison in said County and State on the third Monday of May in the year of our Lord one thousand eight hundred and sixty one (A.D. 1861) it being the twentieth day of ~~the~~<sup>the said</sup> month and the Judge not arriving on this day the Court convened and organized on Tuesday morning May twenty first A.D. Eighteen hundred and sixty one (1861)

Present A. C. John V. Justice Judge of the twenty second Judicial circuit in the State of Illinois

Present Addison Farrington Clerk of the Circuit Court in and for the County of Whiteside and State of Illinois

Present David M. Carney States attorney for the twenty second Judicial circuit in the State of Illinois

Present Robert B. Clendenin Sheriff in and for the County of Whiteside in the State of Illinois

Attest A. Farrington Clerk

And afterwards to wit on the twenty first day of May in the year of our Lord one thousand eight hundred and sixty one, it being one of the judicial days of said May term

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of said court the following among other proceedings were had and entered of record to wit:

Daniel A Hummell George A Hill }  
and Joseph Hill partners in trade under }  
the name & style of Hummell Hill & co }

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vs  
William C Dudley

} To pass on the case  
or promises

This day came the said plaintiffs by O'Kirk their attorney and the said defendant by Strawder and Ware his attorneys and the demurrer to said defendant's pleas after plea of general issue is this day sustained by the court.

And afterwards to wit on the thirtieth day of May in the year last aforesaid and yet of said May term of said court the following among other proceedings were had and entered of record to wit:

Daniel A Hummell George A Hill }  
and Joseph Hill partners in trade under }  
the name & style of Hummell Hill & co }

58

vs  
William C Dudley

} To pass on the case  
or promises

This day came the said plaintiffs by O'Kirk their attorney and the said defendant by Strawder and Bristol and Ware his attorneys and by the agreement of the parties hereto the intervention of a jury is waived herein and this cause is submitted to the court for trial, and after hearing the evidence

28  
And argument of counsel the Court finds the issues herein for the plaintiffs, and it appearing to the Court that this suit is brought for the interest due upon an instrument of writing for the payment of money only and that the damages of said plaintiffs rest in computation, it is therefore ordered by the Court that the clerk assess compute and report the said damages. Whereupon the clerk proceeded to make the assessment and computation aforesaid and reported to the Court the sum of two hundred dollars, as the amount of the plaintiffs damages herein, which assessment and computation upon examination by the Court appearing to be just and correct is by the Court approved and allowed.

Whereupon the said defendant enters his motion herein in arrest of judgment and also for a new trial, which said motions are overruled by the Court. To which rulings the said defendant by his attorneys excepts. It is therefore considered and ordered by the Court that the said plaintiffs have and recover of the said defendant the sum of two hundred dollars, being the amount of the damages assessed and computed as aforesaid together with all the costs and charges in and about this suit expended and that they have execution therefor. And the said defendant by his attorneys pray an appeal in this cause to the Supreme Court of this State, which is allowed by the Court on his filing a bond herein in the sum of five hundred dollars with George W Fitch for security within thirty days from the last day of this term of this Court. And on motion of said plaintiffs leave is given them to withdraw the notice file herein on their leaving a copy of the same

David W. Hummelwell  
George H. Hill &  
Joseph S. Hill under  
the name and style of  
Hummelwell Hill & Co  
VS  
William C. Dudley

Circuit Court  
Whiteside County  
Motion for new trial

And now comes the  
Defendant George W. Fitch and moves the  
Court to set aside the verdict and grant  
a new trial. for the following reasons  
to wit.

- 1<sup>st</sup> - The Court erred in sustaining  
the Demurrer to the Special pleas
- 2<sup>nd</sup> The Note is void.
- 3<sup>rd</sup> The Note is usurious
- 4<sup>th</sup> There is no Consideration for the Note
- 5<sup>th</sup> The judgment is against the law  
and evidence in the case.
- 6<sup>th</sup> The judgment should have been  
for the defendant.

Samuel Strawder & Joe Mann  
Attys for Defendants.

Bond

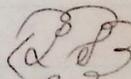
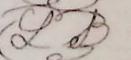
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Know all men by these presents that William C Dudley as principal and George Fitch as security are held and firmly bound unto Daniel H Hummell George H Hill and Joseph S Hill partners doing business under the name & style of Hummell Hill & Co in the penal sum of five hundred dollars lawfull money of the United States, for the payment of which well and truly to be made we bind ourselves our heirs and administrators jointly severally and firmly by these presents,

The Condition of the above obligation is such that whereas the said Daniel H Hummell George H Hill and Joseph S Hill partners as aforesaid did at the may Term A.D. 1861 of the Circuit Court of Whiteside County recover a judgment in said court against the above bounden William C Dudley for the sum of two hundred dollars debt and for costs of suit from which judgment the said William C. Dudley has taken an appeal to the Supreme Court of the State of Illinois. Now if the said William C. Dudley shall well and truly prosecute his suit with effect and shall pay whatever judgment may be rendered by the said Supreme Court upon the dismissal or trial of said appeal and shall pay the said judgment so rendered by the said Circuit Court with costs interest 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

Witness our hands and seals this 7<sup>th</sup> day of June A.D. 1861

Wm C Dudley  
G Fitch

State of Illinois }  
Whiteside County } I Addison Farrington clerk of the  
Circuit Court in and for said County

herby certify the above and foregoing to be a true full and  
complete copy of all the original papers, and proceedings  
entered of record in a certain case lately pending in said  
Court: <sup>file of the common law section of</sup> wherein Daniel H Hummel George H Hill &  
Joseph S Hill partners under the name ~~of Hummel~~  
Hill & co were plaintiff and William C Dudley  
was defendant

In witness whereof I have hereunto set my  
hand and affixed the seal of said court  
at monroie this 10<sup>th</sup> day of April A D 1862

A<sup>sup</sup> Addison Farrington clerk

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Supreme Court of the State of Illinois  
at Ottawa April Term 1862.  
Appeal from Whiteside County

William C Dudley } Appellant  
or  
Daniel A Hummel & George }  
Hill and Joseph S Hill partners } Appellee  
in Trade under the name & style of }  
Hummel Hill & Co }

And the said William C Dudley  
now comes and says that in the record and proceedings  
aforesaid there is manifest error in this to wit:

- First The court erred in sustaining <sup>demurrer</sup> filed by the plaintiffs below to the special pleas filed in the case by the said William C Dudley
- Second The court erred in not overruling said demurrer filed by the plaintiffs below to all the special pleas filed by the said William C Dudley in the case
- Third The judgment is manifestly against the law and the evidence in the case
- Fourth The court erred in overruling the motion for a new trial in this case
- Fifth The court erred in not granting a new trial in the case
- Sixth The said judgment was given in favor of the plaintiffs below whereas by the laws of the land it ought to have been given in favor of the said William C Dudley wherefore the said William C

C Dudley prays that the said judgment may  
be reversed annulled and held for nothing and  
that he may be restored to all things he has lost  
by reason thereof

Samuel Strawder & Joe Ware  
Attorneys for said William C Dudley

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Thurman Hill & Co

vs

Wm C Dudley

Transcript

Filed Apr 27. 1882  
L. L. Hill  
Ch.

Fees 68 paid by  
defendant

State of Illinois - Supreme Court  
At Ottawa April Term 1862

Appeal from Whiteside County

William C Dudley } Appellant  
VS }  
Daniel H Hummell }  
George H Hill & }  
Joseph S Hill partners } Appellee  
in trade under the name }  
and style of }  
Hummell Hill & Co }

And the said  
William C Dudley now comes and says  
that in the record and proceedings afore-  
- said there is manifest error to wit

1<sup>st</sup> The Court erred in sustaining the Demurrer  
filed by the plaintiffs below to the Special  
pleas filed in the case by the said William  
C Dudley.

2<sup>nd</sup> The Court erred in not overruling  
said Demurrer filed by the plaintiffs  
below to all the Special pleas filed

by said William C. Dudley. in the case

3<sup>d</sup> The judgment is manifestly against the law and the evidence in the case

4<sup>th</sup> The Court erred in overruling the motion for a new trial in the case

5<sup>th</sup> The Court erred in not granting a new trial in the case

6<sup>th</sup> The said judgment was given in favor of the plaintiffs below whereas by the laws of the land it ought to have been given in favor of the said William C. Dudley. Wherefore the said William C. Dudley prays that the said judgment may be reversed, annulled and held for nothing and that he may be restored to all things he has lost by reason thereof.

Samuel Stawder & Joe Ware  
Attorneys for said  
William C. Dudley

State of Illinois, Supreme Court  
At Ottawa, April Term, 1862

Appeal from Whiteside County.

William C. Dudley } Appellant  
vs  
Daniel H. Hummelwell }  
George H. Hill & }  
Joseph S. Hill, under }  
the name and style of }  
Hummelwell Hill & Co } Appellee.

This suit was brought  
Record to recover the Interest upon a Note given  
to the Sterling and Rock Island Company  
P 5 for one thousand Dollars and dated Sept  
P 6 4<sup>th</sup> 1857, payable seven years from Sept  
1<sup>st</sup> 1857, with Interest at the rate of 10%  
per annum, payable semi annually in  
each year, to wit, on the first days of  
March and September.

Record This suit was brought to recover the  
first six instalments of Interest. (\$300)  
IP 6 Three Hundred Dollars. on said note.

Declaration avers that said note was  
IP 7 transferred by the payee to Reynolds  
Wilder & Co and by them to Plaintiff's belief

IP 7 There are ~~two~~ Special and ~~the~~ Common  
8 & 9 Counts in the Declaration

William C. Dudley files his pleas -

IP 12 1<sup>st</sup>. The General Issue  
3<sup>rd</sup> Special Pleas.

IP 14 1<sup>st</sup> Special Plea avers that said note  
was given for ten shares of the Capital  
Stock of said Company, and that there

IP 15 was no other Consideration for said note,  
and that the note is void for want of  
power in said Company to receive said  
note.

Record 2<sup>nd</sup> Special plea avers that ~~payment~~  
IP 17 the agreement to pay the interest semi-  
IP 18 Annually is usurious and therefore void

3<sup>rd</sup> Special plea avers that the note was  
IP 20 obtained through the false and fraudulent  
representations of its officers and agents,

IP 20 4<sup>th</sup> Special plea, avers that there was no  
consideration for said note.

IP 21 5<sup>th</sup> Special plea avers that all the Capital  
stock required to build said Road was  
not nor has been subscribed for.

IP 22 6<sup>th</sup> Special plea, avers that the Directors  
never demanded the money upon said  
subscription.

All the Special pleas avers the fact  
that the plaintiffs knew what is therein  
alleged.

Record The Plaintiffs below ~~to whom~~ to the  
P 22 2<sup>nd</sup>, 3, 4, 5, 6 + 7 Pleas, The Court  
sustains the demurrer, Whereupon  
the Court rendered judgment of  
Two Hundred Dollars upon said note  
~~To which holding and rulings come~~  
whereupon the Defendant below filed  
his motion for arrest of judgment and  
a new trial, which were overruled by  
the Court.

To which holding and rulings  
P 28 the Defendant below prayed an appeal  
which was allowed, and Bond filed

The Defendant below claims, that the  
subscribing for the Capital Stock was  
a Condition Precedent to the collection  
of said money, 6<sup>th</sup> Sec of Charter.  
Cook's Statutes, P 938, that the Company  
had no authority - to take the note in question  
in payment for the Capital Stock, That the  
note calling for the interest payable semi-  
annually, is usurious, and the interest  
therefore forfeited, That there is no  
consideration for the note it is therefore  
void,

That the note was obtained through  
fraud and Circumvention, it is  
therefore void. That the Directors  
never demanded the money upon said  
subscription, That the peculiarity  
of the note carries upon its face its  
true character, therefore it is subject  
to all equities in whosever hands  
it may be,

Saml Stewart  
Jas Dove  
Attorneys for Dudley

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Dudley of Hunsford

abstracts  
brief -

Filed: April 24, 1862  
L. Deland  
Ch.

State of Illinois, Supreme Court  
At Ottawa, April Term, 1862

Appeal from Whiteside County.

William C. Dudley } Appellant  
vs  
Daniel H. Hummelwell }  
George H. Hill & }  
Joseph S. Hill, under } Appellee.  
the name and style of }  
Hummelwell Hill & Co }

This suit was brought  
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