

14349

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

# Supreme Court of Illinois

McAllister

---

vs.

Call.

---

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 100

14349

1862

McAllister

vs  
Ball

Prepared

1862

Chicago, Aug 28<sup>th</sup> 1861

Sup Court

Wm R McAllister

vs

Robert R Ball

Enclosed please find \$5.00  
to pay docket fee in the above  
cause. The Clerk will, if he  
conveniently can, please send me  
the Supersedeas and Sci fac  
to ditto in error.

To S Ireland Esq Yours &c

Clerk

W R McAllister

McAllister

<sup>25</sup>  
Ball

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Receipts

Filed Aug. 30. 1861

L. Leland  
CLM

STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Superior Court <sup>of Chicago</sup> ~~for the County of Cook~~ Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Superior Courts of Chicago Cook County, before the Judge thereof, between Robert R. Ball

plaintiff, and William K. McAllister

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

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

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 30<sup>th</sup> day of August in the Year of Our Lord One Thousand Eight Hundred and Sixty ~~one~~

L. Leland

Clerk of the Supreme Court.  
by J. D. McAllister

William K. McAllister

No. vs.

Robert R. Wallace

WRIT OF ERROR.

This writ of error is made  
a supersedeas & as such  
is to be obeyed by all  
concerned

L. Leland Clerk  
7/11/1861

FILED August 30th A. D. 1861

L. Leland

Clerk.



*Vertical handwritten notes on the left margin:*  
The Clerk of the Court  
Robert R. Wallace  
L. Leland  
August 30th 1861  
FILED

Supreme Court

McAllister

vs  
R R Ball

Reasons for Motion

The Plaintiff in error did not succeed in bringing debt into Court by the Seizer Thompson at the commencement of the Term the Court had no such jurisdiction of the person of debt, as would give plff a right to take any step in the Cause, But on the second day of the Term the debt enters his appearance and now asks that plff be compelled to go to trial, Plff objects on the ground that no notice was given by debt ten days before the Term of his intention to enter such appearance and have the Cause proceed to a hearing, See Rule 6 25<sup>th</sup> Ill Rep XIII which provides "No shall a defendant be at liberty to enter his appearance and compel plff. to proceed with the Cause, unless the defendant shall have given the plff ten days notice, before the term, of his intention to enter his appearance and have the Cause proceed to a hearing"

McAllister  
Pro se

Supreme Court  
William R McAllister  
100 vs Plaintiff

Robert R Ball  
Defendant  
Reasons for Motion

Filed April 24. 1862  
L. Leland  
Clerk

Supreme Court

William K McAllister  
Plff in Error

vs

Robert R Ball  
Def't in Error

State of Illinois vs

County of La Salle } William K McAllister

Plff in Error in this cause being duly sworn  
deposes and says that he has received

no notice whatever of any intention to  
enter appearance in this cause at the  
present term of said Court. Nor was

any appearance entered therein by the  
Defendant in Error until the second day  
of this term, whereupon deponent prays

that this cause may be continued to  
next term of this Court.

Sworn this 24. day  
of April A D 1862 before  
me

L. Keland  
Clerk

W K McAllister

<sup>100</sup>  
Supreme Court  
William K McAllister

100.  
vs  
Robert R Ball  
Appt for Contaminant

Upon the written affidavit  
of the Plaintiff shown  
moves under the rules  
of this Court that the  
written case be continued  
W K McAllister

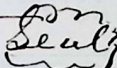
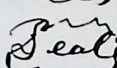
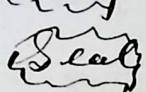
See Rule 6<sup>th</sup> 25<sup>th</sup> Ill  
R 10912

Filed April 24, 1862  
L. Island  
Clk.

Know all men by these presents that we  
William K McAllister Franklin Furness  
and David A Gage of the City of Chicago  
are held and firmly bound unto Robert R Ball  
his Executors & personal representatives in the penal  
sum of six hundred dollars lawful money of  
the United States of America for the payment of  
which well and truly to be made we bind our  
selves our heirs Executors & personal representa-  
tives jointly severally and firmly by these pres-  
ents. Witness our hands and seals this 30<sup>th</sup>  
day of May A D 1861

The Condition of the above obligation is such  
that whereas the said Robert R Ball at  
the April Term A D 1861 of the Supreme Court  
of Chicago by the Consideration and judgment  
of said Court did recover against the said  
William K McAllister upon a certain plea of tres-  
pass on the case upon premises then lately pending  
therein the sum of two hundred and fifty  
Eight dollars and forty cents damages besides  
Costs. And whereas the said William K Mc-  
Allister has prayed for a writ of Error from  
the Supreme Court of the State of Illinois  
to remove the record and proceedings in said  
Cause into said Supreme Court and has  
also made application to the Hon John D Catton  
one of the Justices of the said Supreme Court  
for an order making the said writ of

now to operate as a supersedeas according to the rules and practice of said Supreme Court Now therefore if the said William K McAllister shall pay the judgments, costs interest and damages in case the judgment aforesaid shall be affirmed in and by the said Supreme Court and shall duly prosecute his said writ of error then the above obligation to be void otherwise to remain in full force and virtue

W. K. McAllister   
Franklin Parmelee   
D. W. Gage 

State of Illinois  
County of Cook } ss:

William K McAllister  
Franklin Parmelee and David A Gage  
being duly sworn respectively and each for  
himself deposes and says that he is the  
owner of real and personal estate situated  
and being in the State of Illinois, That the said  
Franklin Parmelee and David A Gage are  
respectively the owners of real estate situated in  
the City of Chicago worth a sum exceeding

five thousand dollars and that they respectively own unencumbered personal property exceeding that sum and are respectively worth exceeding the sum of one thousand dollars over and above all just debts and liabilities. And the said William K McAllister says that he is the owner of real estate ~~is~~ situated in the County of Will in this state worth the sum of five thousand dollars over and above all incumbrance and that he is the owner of personal property in the City of Chicago unencumbered worth upwards of one thousand dollars and that he is worth a sum exceeding one thousand dollars over and above all just debts or liabilities

And deponents each for himself says that he executed the foregoing bond for the uses and purposes therein mentioned And further says not

Subscribed and sworn to } W K McAllister  
this 30<sup>th</sup> day of May A.D. } Frank Parnelle  
1861 before me } D. W. Hage  
J. H. Jones }  
Notary Public



Supreme Court  
William K McAllister  
vs Pff in Em

Robert R Ball  
Dept  
Supts Bond &c



Filed August 30. 1831  
L. Leland  
Clerk

Supreme Court  
William K McAllister  
vs Pff in Em

Robert R Ball  
Dept  
Supts Bond &c



Filed August 30. 1871  
L. Leland  
Clerk

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, }  
APRIL TERM, A. D. 1862. }

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William K. McAllister,  
*Plaintiff in Error,*

vs.

Robert R. Ball,  
*Defendant in Error.*

ERROR TO THE  
SUPERIOR COURT OF CHICAGO.

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## ABSTRACT OF RECORD AND POINTS.

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Rec. p. 2 This action was assumpsit brought to the April term, 1859, of the Cook county Court of Common Pleas.

**The Plaintiff's Declaration** was filed on the 4th of March, 1859, containing three special counts, based upon three several promissory notes, bearing date August 11, 1857.

4 The first count describes a note for one hundred dollars, payable in three months. The other two respectively describe a note for fifty-seven dollars, payable, one in six, and the other in nine months.

4 To these special counts were added the common counts for money lent and advanced; money paid, laid out and expended; money had and received; and for goods, &c., sold and delivered.

6 **The Defendant**, on the 6th day of April, 1859, filed a demurrer to the special counts, and to the common counts, the general issue, as

follows : (After the title to the cause) " And the said defendant, as to 'last, or *common counts*, in the declaration aforesaid, in his own proper 'person comes and defends the wrong and injury, when, &c., and says 'he did not undertake or promise, in manner and form, as the said plaintiff *in those counts* hath complained against him, and of this he puts 'himself upon the country," &c. And also filed therewith a proper affidavit of merits.

**The Court** overruled the demurrer to the special counts, and rendered final judgment in the cause.

10, 12 On the 25th day of January, 1861, the plaintiff's attorney obtained an order of the court, striking out the said common counts from his declaration, and also for leave to amend his declaration ; and thereupon at the same time filed his amended declaration, which contains all the identical causes of action, set out in the same allegations and words as in the original, including the common counts, for money lent and advanced ; money paid, laid out, and expended ; money had and received ; and for goods, wares and merchandize sold and delivered.

16 On the 4th day of February, A. D. 1861, at the same term of said court, the defendant filed a plea to the first special count, one of those to which the demurrer was overruled, and made no plea whatever to the  
17 second and third special counts.

18 At the March term, 1861, the plaintiff filed his replication to the special plea to said first count, but did not take defendant's default as to either the second or third counts, which remained unanswered.

21 The case was reached and called for trial at the April term, 1861, of said court, whereupon the plaintiff moved the court to enter defendant's default not only as to the said second and third counts, but also as to the common counts ; to which the defendant then and there objected ; but the court overruled the objection, and ordered that the defendant's default be entered both as to said second and third counts, and the common counts ; to which the defendant then and there excepted.

**The Defendant** thereupon objected to the trial of the cause, and moved that the same be dismissed, on the ground that the plaintiff, by replying to defendant's special plea, without causing his default to be entered as to the part of plaintiff's declaration unanswered by plea, at the same term at which it was filed, discontinued his action.

21 But the court overruled both the said objection and motion; and the said defendant then and there excepted.

The case was thereupon given to the jury, who assessed the damages on the counts upon which default was taken, at two hundred and fifty-eight dollars and forty cents, for which judgment was immediately rendered by the court.

**The Defendant** in the court below sued out a writ of error from this court, to review the said proceedings, and assigns for error :

23 **1.** The court erred in taking the defendant's default as to the common counts, whilst a plea of the general issue, specifying the said counts, was regularly upon the files in said cause. That the striking out of said counts, and immediately restoring the same, under leave to file an amended declaration, did not obviate the said plea.

**2.** The court also erred in overruling the motion to dismiss the cause for discontinuance, by replying without taking the default of defendant, at the same term, of filing said plea and replication.

**3.** The court erred in permitting the said plaintiff to take defendant's default as to the portion of declaration unanswered, at a term subsequent to that of filing the said plea and replication.

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## POINTS FOR PLAINTIFF IN ERROR.

### I.

The court erred in ordering the default of defendants below to be entered as to the common counts.

The declaration, containing three special counts, and the ordinary common counts, was filed for the April term, A. D. 1859, of the Court of Common Pleas. The defendant demurred to the special counts, and filed the general issue and affidavit of merits to the common counts. At the July term, A. D. 1859, the court overruled the demurrer to special counts, and rendered final judgment, without disposing of the common counts and the general issue thereto ; for which cause this court reversed the judgment (*McAllister vs. Ball*, 24 Ill. R. 149), and decided that the plea of general issue to said counts should have been disposed of.

The case coming back to the Superior Court, the plaintiff's attorney, in order to get rid of such issue, obtained an order, at the January term, 1861, striking out said counts from his declaration, and also leave, in the same order, to amend his declaration ; and thereupon, on the same day, filed an amended declaration, as he termed it, with the same identical common counts restored ; which, it is submitted, is the same in legal effect as if he had obtained an order striking out the common counts, and immediately obtained another order restoring the same.

Hence the question arises, can a plea to a declaration, or to any cause of action therein contained, be overreached or avoided in any such way ? The court below held, that by reason of the amendment, there was no plea to said counts, which I submit is manifest error, and not only that, but one which subverts the principles of a well settled practice, supported by reason and justice, and sets up another, dangerous and troublesome in its consequences. For why should a defendant be put to the expense of re-forming his issues, simply because a plaintiff may have found it necessary to amend his declaration, to correct mistakes, and avoid the consequences of perhaps his own sheer negligence and inattention ? But the law is well settled that such amendment did not require the defendant to re-file his general issue.

In *Wright et al vs. Lessee of Hollingsworth et al*, 1 Peters R. 165, after the defendants had pleaded the general issue, the plaintiffs added a new count. The court say that the authorities cited "prove unquestionably " that upon amendments being made to the declaration, by adding a count, " the defendants had the right to plead *de novo* ; they prove nothing " more. They do not show that the defendants in such cases *must neces-*

“sarily plead *de novo* ; or, that judgment may be entered by default, for want of a plea to the new count, if, before the amendment, he has pleaded the general issue. We think the practice is well settled to the contrary.”

The court held the same thing in *Parmelee vs. Fischer*, 22 Ill. R. 212.

See also, *Saltus vs. Bayard*, 12 Wend. 228.

6 Taunt, 400 ; 5 Salk, 517.

1 Hall ( N. Y. Superior C. R. ) 165.

But at all events, the plaintiff below was not entitled to a default as to the common counts, without first obtaining a rule to plead to the amended narr.

8 Durn. & East., 87.

1 Tidd's R. 708 and notes.

## II.

The court erred in refusing to dismiss the cause for discontinuance ; also, for allowing the defendant's default to be entered at the April term, 1851.

On the 4th February, 1861, the defendant filed a plea to the first special count ; at the March term, 1861, the plaintiff replied to said plea. Now, at the close of the last mentioned term, the second and third counts remained wholly unanswered ; and if the plaintiff was entitled to a default upon the common counts, it was because they likewise were never answered ; and by the well established practice in this State, it was incumbent upon the plaintiff to take the defendant's default, as to the second and third counts and said common counts, at the March term, at which he filed his replication to the special plea to first count, or his cause was discontinued, and could not be saved by taking such default at a subsequent term.

*Warren vs. Nowon*, 3 Scam. 38.

22 Ill. R. 330 ; 18 Ill. R. 55.

13 How. ( U. S. ) 182.

W. K. McALLISTER, *Pro. Se.*

Mrs McAllister  
as

Robert R. Ball  
abstract

Filed Apr 23, 1862  
J. J. Leland  
clerk

W. R. McAllister vs. R. R. Ball  
No. 1000  
1862

The court in the said judgment  
of the 10th day of April 1862  
has ordered that the said  
abstract be filed in the  
office of the clerk of the  
court.

Robert R. Ball  
vs.  
W. R. McAllister

1000  
1862

11

The court in the said judgment  
of the 10th day of April 1862  
has ordered that the said  
abstract be filed in the  
office of the clerk of the  
court.

W. R. McAllister vs. R. R. Ball  
No. 1000  
1862

1000  
1862

11

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

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

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

Wm H. Higgins }  
Francis Goodrich } Judges.

Charles Haven Prosecuting Attorney.

Anthony C. Hedding Sheriff of Cook County.

Attest, Walter Kimball Clerk.

Be it remembered that heretofore to wit on the fourth day of March A. D. Eight hundred and fifty nine came Robert R. Ball, plaintiff, and filed in the Office of the Clerk of the Cook County Court of Common Pleas (now the Superior Court of Chicago) his certain Declaration in a suit wherein Robert R. Ball was Plaintiff and William H. McAllister was defendant. Which Declaration is in the words and figures following to wit.

" State of Illinois ) Cook County Court of  
Cook County ) ss. Common Pleas

Robert. R. Ball

vs

William. K. McAlister

April Term A. D. 1859.

Robert. R. Ball by Blackburn & Spencer his attorneys complain of William. K. McAlister in a plea of Trespass on the case on promises

That whereas the said Deft heretofore to wit on the 11<sup>th</sup> day of August A. D. 1857 at Chicago to wit at said County of Cook made his certain promissory Note in writing bearing date the day and year aforesaid and then and there delivered the same to the said Plaintiff in and by which said Note the said Defendant by the name style and description of W. K. McAlister promised to pay to the order of the said Plaintiff by the name style and description of R. R. Ball three months after the date thereof the sum of <sup>Five</sup> Three hundred dollars payable at the Banking Office of R. K. Swift & Co at Chicago for value received by means whereof and by force of the Statute in such case made and provided the said Deft became liable to pay said Plaintiff said sum of money mentioned in said Note and being so liable in consideration thereof then and there undertook and promised to pay the same to the said Plaintiff according to the tenor and effect of said Note to wit at Cook County aforesaid.

And for that whereas also the said Deft afterwards to wit on the 11<sup>th</sup> day of August A. D. 1857

3

at Chicago to wit at said County of Cook made his  
certain other Promissory Note in writing bearing date the day  
and year last aforesaid and then and there delivered the  
same to the said Plaintiff in and by which said Note  
said Debt by the name style and description of W. K.  
Mrs. Alesser promised to pay to the said Plff by the name  
style and description of R. B. Bales or to his order six  
months after date hereof Fifty seven dollars payable at  
the Banking Office of R. B. Swift & Co Chicago for  
Value received By means whereof and by force of the  
Statute in such case made and provided the said Debt  
became liable to pay said Plff said sum of money as  
mentioned in said Note And being so liable in consideration  
thereof then and there undertook and promised to pay the  
same to the said Plff according to the tenor and effect  
hereof, to wit, at Cook County aforesaid,

And also for that whereas the said Defendant after  
wards to wit on the 11<sup>th</sup> day of August A. D. 1857 at  
Chicago to wit in Cook County aforesaid made his  
certain other Promissory Note in writing bearing date  
the day and year last aforesaid and then & there delivered  
the said Note to the said Plff, by which said Note the  
said Debt by his usual signature of W. K. Mrs Alesser  
then & there promised to pay said Plff by the name style  
and description of R. B. Bales Nine months after date  
of said Note the sum of Fifty seven dollars payable  
at the Banking Office of R. B. Swift & Co Chicago for  
Value received By means whereof and by force of the

Statute in such case made and provided the said deft then & there became liable to pay to the said Deft the said sum of money in the said Note specified according to the tenor and effect thereof and being so liable the said Deft in consideration thereof afterwards to wit on the same day and year and at the place aforesaid undertook and then & there faithfully promised the said Plaintiff well & truly to pay to said Deft the said sum of money in the said Note specified according to the tenor and effect of said Note to wit, at Cook County, aforesaid.

And whereas also the said Deft afterwards to wit on the 1<sup>st</sup> day of September A. D. 1857 to wit at said County became and was indebted to the said Deft in a large sum of money to wit the sum of Five hundred dollars for money before that time lent and advanced to said deft by said Deft at said Deft request And also in the like sum for money before that time paid laid out and expended for said Deft by said Deft at the like special request of said Deft - and in the like sum for money before that time had & received by said deft to and for the use of said Deft. And also in the like sum for goods, wares & merchandize before that time sold and delivered by said Deft to said deft at the like special instance & request And being so indebted said deft in consideration thereof then and there undertook and promised to pay said Deft said several sums of money last above mentioned when thereunto afterwards requested. Yet the said deft not regarding his said promises

5-

and undertakings although often requested to do so has not  
paid Plaintiff either of paid sums of money or any  
part thereof but so to do has hitherto wholly refused and  
neglected and still doth refuse & neglect to the damage  
of said Plff of Five hundred dollars and therefore he  
brings this suit &c

Blackburn & Spencer.  
Plffs Attorneys."

(Copy Notes filed in)

"\$100.00 - Chicago August 11<sup>th</sup> 1857.

Three months after date I promise to pay to  
the order of R. B. Ball One hundred dollars at the  
Banking Office of R. H. Swift & Co Chicago value received.  
W. H. McAllister."

"\$57.00 Chicago Aug: 11<sup>th</sup> 1857.

Six months after date I promise to pay to  
the order of R. B. Ball Fifty seven dollars at the <sup>Banking</sup> Office  
of R. H. Swift & Co Chicago value received.  
W. H. McAllister."

"Chicago. Aug: 11<sup>th</sup> 1857

Nine months after date I promise to pay to the  
Order of R. B. Ball Fifty seven dollars at the Banking  
Office of R. H. Swift & Co Chicago - value received.  
W. H. McAllister"

And hereafter to wit the sixth day of April A.D. Eighteen hundred and fifty nine came said defendant and filed in the Office of the Clerk of said Court his Plea to said Declaration which Plea with the Affidavit of Merits thereto annexed is in words and figures as following to wit.

"W<sup>m</sup> H. McAllister } Cook County Court of Common  
 \_\_\_\_\_ and \_\_\_\_\_ } Pleas of the April term 1859.  
 Robert B. Ball . . . }

And the said defendant as to the last or common counts in the Declaration aforesaid in his own proper person comes and defends the wrong & injury whereof he and says that he did not undertake or promise in manner and form as the said Plaintiff in those counts hath complained against him that if this he puts himself upon the Country &c

And as to the other counts in said Declaration the said defendant demurs to the same & each of said counts and says that the said counts and each of them is insufficient in law for the said Plaintiff to have or maintain his aforesaid action thereon and that he is not bound to answer the same therefore he prays judgment &c

W<sup>m</sup> H. McAllister pro. p<sup>o</sup>."

7

" State of Illinois  
County of Cook } ss.

W. H. Mc Alesser the above named  
defendant being duly sworn deposes and says that he  
believes that he had a defense in the merits to the said  
cause of action contained in the said common counts  
in the above plea stated and each and every thereof  
Sworn before me on this } W. H. Mc Alesser,  
6<sup>th</sup> day of April 1859 } ss.

Moses Stalick  
Notary Public."

And afterwards to wit on the sixth day of  
July (being one of the days of the July term of said  
court) A. D. eighteen hundred and fifty nine the  
following proceedings were had in said cause and entered  
of record in said Court to wit,

" Robert R. Ball  
vs \_\_\_\_\_ } Assumpsit  
William H. Mc Alesser }

This day comes said Plaintiff by  
Blackburn & Spencer his Attorneys and the said defendant  
in his own proper person also comes and Counsel being  
heard on the demurrer of said Defendant - herein pleaded to  
1<sup>st</sup> 2<sup>nd</sup> & 3<sup>rd</sup> Counts in Plaintiffs Declaration in this cause  
and due deliberation being thereupon had and the premises  
fully understood it appears to the Court, that said demurrer

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hereto pleaded to 1<sup>st</sup>, 2<sup>d</sup> & 3<sup>d</sup> counts in plaintiffs declaration in this case is insufficient in law to bar said plaintiff from having and maintaining his action on said 1<sup>st</sup>, 2<sup>d</sup> & 3<sup>d</sup> counts in his declaration against said defendant, the demurrer is therefore overruled as to said 1<sup>st</sup>, 2<sup>d</sup> & 3<sup>d</sup> counts in plaintiffs declaration, with leave to defendant to plead over, and the said defendant electing to say nothing further in bar or preclusion of said plaintiffs action against him and being called comes not and says nothing further but makes default, which is interest of record, therefore said plaintiff ought to have and recover of said defendant his damages sustained herein by reason of the premises and the court now here after hearing the allegations & proofs submitted by said plaintiff and being fully & advised in the premises assesses his damages herein to the sum of Two hundred and thirty one dollars and thirty two cents.

Therefore it is considered said plaintiff do have and recover of the said defendant his damages of Two hundred and thirty one dollars and thirty two cents in form aforesaid by the court here assessed and also his costs and charges in this behalf expended and have execution therefor.

And afterwards to wit on the twenty sixth day of July (being 1<sup>st</sup> of the said July term of said court) W. D. Eighteen hundred and fifty nine, the following

9

proceedings were had in said cause and entered of record in said Court, to wit.

" Robert R. Ball

vs

William H. McAllister

} Resumptions

Appeals allowed

And now comes said defendant William H. McAllister in person and prays and appeals herein to the Supreme Court which is allowed upon filing bond in the sum of Four hundred dollars with Frank Parnale as security thereon to be filed within ten days.

And afterwards to wit on the twenty fifth day of January (being one of the days of the January term of said Court) A. D., eighteen hundred and eight, and the following further proceedings were had in said cause and entered of record in said Court, to wit.

" Robert R. Ball

vs

William H. McAllister

} Resumptions

And now at this day comes the said Plaintiff by Reading & Wallace his attorneys and on their Motion it is ordered that common Counts in Plaintiffs declaration be and hereby is stricken from <sup>out</sup> the file, and on further Motion it is ordered that the said Plaintiff have leave to file his amended declaration herein, and thereupon

10 Plaintiff filed his amended declaration in said cause.

And thereafter to wit on the said twentieth fifth day of January A. D. eighteen hundred and sixty one the said Plaintiff filed in the Office of the Clerk of said Court his amended declaration in said cause, which amended declaration is in words and figures as follows to wit:

"State of Illinois }  
Book County . . . } In the Superior Court of Chicago  
February Term A. D. 1861

Robert R. Ball plaintiff in this suit by  
Reading & Wallace his attorneys complains of William H.  
McAlister defendant, who was summoned & is of a  
plea of pleas on the case on promise To wit that  
whereas the said defendant heretofore to wit on the Eleventh  
day of August A. D. 1857 at Chicago, to wit, at said  
County of Cook made his certain Promissory Note in  
writing bearing date the day and year aforesaid and  
then there delivered the same to the said Plaintiff in  
and by which said Note said defendant by the name  
style and description of W. H. McAlister promised to  
pay to the order of the said Plaintiff by the name  
style and description of R. R. Ball three months after  
the date thereof One hundred dollars payable at the  
Banking Office of R. B. Swift & Co. at Chicago value  
received By means whereof and by force of the Statute

11 in such case made & provided the said defendant became liable to pay said plaintiff said sum of money mentioned in said Note and being so liable in consideration thereof then & there undertook and promised to pay the same to the said Plaintiff according to the tenor and effect of the said Note to wit at Cook County aforesaid.

And also for that whereas also the said defendant afterwards to wit on the 11<sup>th</sup> day of August A.D. 1857 at Chicago to wit at said County of Cook made his certain other promissory Note in writing bearing date the day and year last aforesaid and then and there delivered the same to the said plaintiff in and by which said Note said defendant by the name & title and description of W. H. New Allister promised to pay to the said plaintiff by the name & title & description of R. B. Ball or to his order five months after the date thereof fifty seven dollars payable at the Banking Office of R. O. Swift & Co at Chicago for value received.

By means whereof and by force of the Statute in such case made & provided the said defendant became liable to pay said plaintiff said sum of money mentioned in said Note according to the tenor and effect of the said Note and being so liable in consideration thereof then & there undertook and promised to pay the same to the said plaintiff according to the tenor and effect of the said Note to wit at Cook County aforesaid.

And also for that whereas the said ~~is~~ defendant afterwards to wit on the Eleventh day of August

12 A. D. 1854 at Chicago in Cook County aforesaid  
made his certain other Promissory Note in writing  
bearing date the day and year last aforesaid and then  
there delivered the said Note to the said Plaintiff  
by which said Note the said defendant by the name  
style & description of M. N. The Alister then there  
promised to pay said Plaintiff by the name style and  
description of R. R. Bales or to his order nine months  
after date of said Note the sum of Fifty seven dollars  
payable at the Banking Office of R. B. Swift & Co,  
Chicago for value received By means whereof and by  
force of the Statute in such case made & provided the  
said defendant then there became liable to pay to the  
said Plaintiff the said sum of money in the said Note  
specified according to the tenor and effect thereof and being  
so liable the said defendant in consideration hereof after  
wards to wit on the same day and year and at the  
place aforesaid undertook and then there faithfully  
promised the said Plaintiff well and truly to pay to said  
Plaintiff the said sum of money in the said Note  
specified according to the tenor and effect of said Note to  
wit at Cook County aforesaid

And whereas also the said defendant after  
wards to wit on the first day of September A. D. 1858  
at said County became and was indebted to the  
said Plaintiff in a large sum of money to wit the sum  
of Five hundred dollars for money before that time  
lent and advanced to said defendant by said Plaintiff

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at said defendants request; and also in the like sum for money before that time paid laid out & expended for said defendant by the said Plaintiff at the like special request of said defendant; and in the like sum for money before that time had and received by said defendant to and for the use of said Plaintiff; and also in the like sum for goods, wares & merchandise before that time sold and delivered by said Plaintiff to said defendant at the like special instance and request; and being so indebted said defendant in consideration thereof then & there undertook and promised to pay said Plaintiff said several sums of money last above mentioned when thereunto afterwards requested.

Yet the said defendant not performing his said promises and undertakings although often requested to do so has not paid said Plaintiff said sums of money or either of them in this Declaration mentioned, or any part thereof, but so to do has hitherto wholly neglected & refused and still doth neglect and refuse to the damage of said Plaintiff of Five hundred dollars and therefore he brings this Suit &c

Reading & Wallace  
Plffs Atty's

(Copy of instruments & account sworn on)

\$100.00

Chicago Aug. 11<sup>th</sup> 1857

Three months after date I promise to pay to the order of R. K. Ball one hundred dollars at the

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Banking Office of R. K. Swift & Co. Chicago value received  
" N. K. Dno Allister."

" \$57.00

Chicago Aug: 11<sup>th</sup> 1857

Six months after date I promise to pay  
to the order of R. R. Ball fifty seven dollars at the  
banking Office of R. K. Swift & Co. Chicago value received  
" N. K. Dno Allister "

" \$57.00

Chicago Aug. 11<sup>th</sup> 1857

Nine months after date I promise to pay  
to the order of R. R. Ball fifty seven dollars at the  
Banking Office of R. K. Swift & Co. Chicago value  
received.

" N. K. Dno Allister."

" N. K. Dno Allister

To R. R. Ball Dr.

\$5 money lent and advanced	\$500
" " paid law out & expended	\$500
" " had & received to the use of said plaintiff	\$500
" goods wares & merchandize sold & delivered	\$500

And thereafter to wit on the fourth day of  
February A. D. Eighteen hundred and sixty one came  
said defendant day and filed in the Office of the Clerk of  
said Court his plea to said amended declaration:  
Which plea with Affidavit of Merits thereto annexed

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is in the words and figures as follows to wit:

" William H. The Olesier

vs

Robert R. Ball . . .

} Superior Court of Chicago

That the said defendant in his own proper person comes and as to the first count of the said plaintiffs amended declaration says that because he says that at the time of the making of the said supposed promissory note in said Court mentioned the said plaintiff claiming to have a demand against the said defendant then & there desired to have the amount thereof settled and fixed and the same was then & there settled & fixed by the agreement of said parties at the sum of One hundred eighty three dollars for which it was also then & there agreed that the defendant should give & the plaintiff receive the said debt promissory note for One hundred dollars payable in three months from date and the balance in another like note payable in six months.

That the said defendant avers that in pursuance of said agreement and to carry the same into effect a promissory note was then & there drawn for One hundred dollars payable in three months as aforesaid, but before the same was signed by the said defendant the said arrangement, so far as the giving of said notes and the amounts thereof & time when payable was concerned, was changed by the agreement of said parties to the effect that

instead of said Note for One hundred dollars payable in  
 three months it was then & there agreed by the said  
 parties that the said defendant should give and the  
 plaintiff receive the said debt Note for twenty five dollars  
 payable in four months from date and instead of the  
 balance of said One hundred & eighty dollars being put  
 into one Note payable in six months, the said debt  
 after giving said Note for twenty five dollars as  
 aforesaid should put the balance of said \$189 aforesaid  
 into two Notes of fifty seven dollars each payable re-  
 spectively in six & nine months, and in proceeding  
 to carry into effect the said last mentioned arrangement  
 & the same not being changed the said defendant drew  
 up in form a Note for twenty five dollars payable  
 in four months as aforesaid and the two Notes for  
 fifty seven dollars each payable respectively in six &  
 nine months as aforesaid, and which two last mentioned  
 Notes were then & there executed & delivered and are the  
 same promissory Notes in the Person & Third Counts of  
 said declaration contained; but in proceeding to sign  
 and deliver the said Note for twenty five dollars &  
 drawn as aforesaid and which had not then been  
 signed by the said debt, the said defendant by mistake  
 and without any intention of so doing substituted there  
 & there in the place and stead of the said Note for  
 twenty five dollars payable in four months, the said  
 Note for One hundred dollars payable in three months  
 which said Note for One hundred dollars so by mistake

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substituted as aforesaid in the place of that for Seventy five dollars payable in four months according to said agreement in the same supposed Promissory Note in said first Court mentioned and not other or different and this the said defendant is ready to verify  
Wherefore he prays judgment as to said first Court, if the said Plaintiff his aforesaid action thereof ought to have or maintain against him.

W. B. McAllister - pro se."

"State of Illinois }  
County of Cook } S.

W. B. McAllister being duly sworn deposes and says that he is the defendant named in the foregoing plea that said plea is true in substance and matter of fact.

Sworn this 4<sup>th</sup> day of February A. D. 1861 before me }  
W. B. McAllister }  
G. W. Fuller }  
Notary Public - City of Chicago."

And thereafter to wit on the Seventh day of March A. D. Eighteen hundred & sixty one said Plaintiff filed in the Office of the Clerk of said Court Replication to said plea in words and figures as follows to wit

"State of Illinois }  
Cook County } S.

In the Superior Court of Chicago  
March term A. D. 1861

Robert R. Ball

vs

William W. Allen

Assumpsit

And now comes the said Plaintiff by Reading & Wallace his attorneys and as to the said plea of the said defendant by him above pleaded to the said Court of the said Plaintiffs declaration says that the said Plaintiff by reason of anything by the said defendant in that plea alleged ought not to be barred from having or maintaining his action there against him the said defendant because he says that he denies that it ever was agreed by and between the said Plaintiff and defendant that the sum of money due and owing from the said defendant to the said Plaintiff should be fixed at the sum of One hundred and eighty nine dollars, and that said defendant should give and the said Plaintiff should receive the said Defendant's note for seventy five dollars payable in four months from date - and that by mistake the said defendant substituted the said One hundred dollar note in said Court mentioned for the said Note for seventy five dollars in manner and form as is thereof alleged in said plea And of this the said Plaintiff puts himself upon the Country &c

Reading &amp; Wallace

Plffs Attys."

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And thereafter to wit on the twelfth day of April  
(being one of the days of the April Term of said Court)  
A. D. Eighteen hundred and sixty one the following  
proceedings were had in said cause and entered of record  
in said Court, to wit.

"Robert. B. Ball  
\_\_\_\_\_ vs \_\_\_\_\_ } Assumpsit  
William. H. Mc Alesser

This day comes the said plaintiff  
Jey Reading & Wallace his attorneys and the said defendant  
in his own proper person also comes and the said defendant  
having failed to plead to the Common Counts and also to  
plead and show cause in plaintiffs declaration mentioned  
it is ordered that his default be and is hereby entered of  
record herein against him for want of pleas to said  
Counts, and the said defendant files his objections to the  
entering of his default which is overruled by the Court  
and defendant enters his exceptions to the ruling & decision  
of the Court in overruling the said objections.

And thereupon it is ordered that a Jury come to try the  
issue joined on first count in plaintiffs declaration aforesaid  
Whereupon comes the Jury of good and lawful men to wit  
Frederick Snyder - Phildander Parnell, Jas Boyer, George  
Anderson - Conrae Goethe - Henry Miller - H. W. Sanders the  
Mr. Hamilton - S. D. Watkins - William Thomas - George Ayres  
and Isaac Spear, who being duly elected, had and sworn  
to try the issue joined as aforesaid and to assess damages

as aforesaid after hearing evidence, arguments of Counsel and being fully advised upon instructions of the Court retire to consider of their Verdict and afterwards return into Court submit their Verdict and pay to the Jury find a verdict for Plaintiff on first count and we assess his damages on remaining counts against the said defendant to the sum of Two hundred and fifty eight dollars and forty cents.

Therefore it is considered that the said Plaintiff do have and recover of and from the said Defendant his damages of Two hundred and fifty eight dollars and forty cents in form aforesaid found and assessed by the Jury together with his costs & charges in this behalf expended and thereof have execution.

And thereafter to wit on the fifteenth day of April A. D. Eighteen hundred and sixty one the said defendant filed in the Office of the Clerk of said Court his Bill of Exceptions in said cause which Bill of Exceptions is in words and figures as follows, to wit

"Robert. B. Ball

vs

William. B. McAlister

} Superior Court of Chicago.

Be it remembered that at a term of said Court held at the Court House in the City of Chicago on the 17<sup>th</sup> day of April A. D. 1861 that being one of the days of the April Term 1861 of said Court by and before

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The Hon. Wm. H. Higgins one of the Judges of said Court came the said Plaintiff by Reading P Wallace begs his Attornies and before unspanelling of the Jury to try the said cause above intited, moved the Court to put the Defendants default upon the second, third and the common Counts of the Plaintiffs declaration. To which Motion the said defendant by W. P. Smith his Counsel then and there objected; The Court overruled the objection and decided and ordered that the Defendants default upon the said above mentioned Counts be entered.

To which Order and decision of said Court the said defendant by his said Counsel then and there excepted.

Whereupon a Jury was called drawn & duly sworn to try said cause but before any evidence was given to said Jury, the defendant by his said Counsel objected to the trial of the said cause and that the same be dismissed on the ground that the Plaintiff by replying to defendants special plea without causing his default to be entered as to the part of plaintiffs declaration unanswered by the plea at the term at which the same was filed, the plaintiffs action was discontinued. But the Court overruled said objection and refused to dismiss the said cause.

To which finding and decision of the said Court the said defendant by his said Counsel then and there excepted.

And because now of said matters and things aforesaid upon the record & proceedings aforesaid the said Judge

22 upon the prayer of said defendant has to this Bill of  
Exceptions yet his name and seal on this day of  
April 1861 at this same town of April 1861.

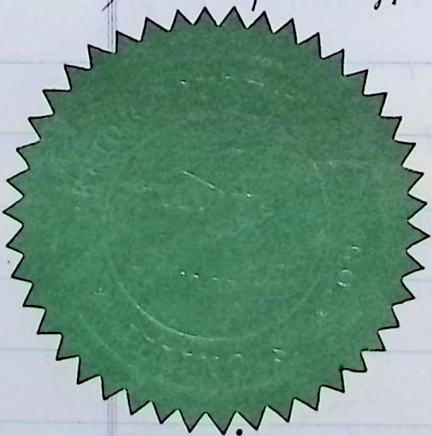
Wm H. Higgins (Seal)  
Clerk."

State of Illinois  
Cook County, Ill. Jc.

I Walter Kimball clerk of  
the Superior Court of Chicago (formerly the Cook County  
Court of Common Pleas) within and for the County of  
Cook in the State of Illinois Do hereby Certify the above  
and foregoing to be a full, true and perfect Transcript  
of the original declaration, plea & demurrer & affidavit of  
Merits - Amended declaration - plea & replication thereto -  
and Bill of Exceptions now on file in my Office, together  
with all orders and judgments entered of record in said  
Court in a certain suit therein, wherein Robert R. Ball  
was plaintiff and William H. The Assessor, defendant.

In testimony whereof I have hereunto set  
my hand and affixed the Seal of said  
Court at Chicago in said County this  
Twenty third day of April A.D. 1861.

Walter Kimball Clerk



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Suprem. Court

William K McAllister  
Plff in error

vs

Robert R Bull  
Def't in error

And now comes the said Plaintiff in error  
in his own proper person and says that in the  
Record and Proceedings, aforesaid there is mani-  
fest error in this to wit:

1<sup>st</sup>. The Court erred in entering the default  
of the def't below as to the Common Counts  
of in the aforesaid declaration, ~~which~~  
a plea to the same being regularly on file

2 The Court erred in overruling the motion  
aforesaid to dismiss the said cause

3<sup>d</sup> The Court erred in permitting the said  
plff below to take the default of the def't  
as to the ~~first~~ second & third counts aforesaid  
at a term subsequent to that at which  
the plea & replication were filed as aforesaid

Whereupon for the errors aforesaid and other  
errors in said Record & Proceedings the said  
plff in error prays that said Judgment  
be reversed &c

W K McAllister

Pro se

Get supersession issue on the matter record  
Bond six hundred dollars. Franklin Parmelee  
and David a huge surties

J. D. Cotton

And now comes the said  
Robert R. Ball, Defendant in Error  
and says there is no error in the  
record proceedings as aforesaid  
alleged

H. A. White  
W. C. Gandy for Ball

Supreme Court  
William K. McAllister  
vs  
Plff in law

100  
State of Illinois  
Cook County.

Robert R. Ball  
Def't  
Record

Robert R. Ball

— vs —

vs  
Wm K. McAllister

Record.

Filed August 30. 1865.  
L. Leland  
clerk

\$6.30