

12659

No. _____

Supreme Court of Illinois

Swift, et al.

vs.

Whitney, et al.

71641  7

1858

For the 1st of March

Amphibious War

or

James B. Whitely

173

~~12659~~

~~12659~~ 12659

1858

X

Revised

United States of America } S.S.
State of Illinois - County of Cook. }

Pleas before the Honorable John M. Wilson Judge of the Cook County Court of Common Pleas within and for the County of Cook and State of Illinois at a vacation. Term of said Cook County Court of Common Pleas begun and holden at the Court House in the City of Chicago in said County and State on the first Monday being the fourth day of January in the year of our Lord One Thousand Eight Hundred and fifty eight and of the Independence of the United States the Eighty Second.

Present The Hon^{ble} John M. Wilson Judge
John L. Wilson Sheriff
Attest Walter Kimball Clerk.

Be it Remembered that heretofore to-wit on the first day of December in the year of our Lord One Thousand Eight Hundred and fifty seven James B. Whitney & William J. Haven by Hooper Ayer & Sonnes their Attornies filed in the Office of the Clerk of said Court a certain Process for Summons, which said Process is in words and figures as follows to-wit-

John B Whitney } State of Illinois }
 Wm T Haven } Cook County } Sd.

Richard K Swift }
 Lyman P Swift & } In Court of Common Pleas
 James S. Johnston } Of January Term

To the Clerk of the said Court

Upon the filing of this Declaration in
 your Office let a Summons issue to the said
 Defendants returnable to the January Term
 of the said Court in an action of trespass on
 the case upon promises - Dam \$ 1000 -

Hooper Ayer & Sumner. }
 Atty for Plaintiffs }

And afterwards to wit on the same
 day and year aforesaid the said John
 B Whitney and William T Haven filed in
 the Office of the Clerk of said Court their
 Declaration and ^{Copy of} Note, which said Declaration
 and ^{Copy of} Note follow in the words and figures as
 follows to wit.

State of Illinois } Cook County Court of Common
 Cook County Is. } Pleas - Of the January
 Term A.D. 1857.

John B Whitney and William T Haven

partners trading under the name style and
 description of Whitney & Haven Plaintiffs in this
 suit by Hooper Ayer & Sonnes their attorneys
 complain of Richard H. Swift Lyman P. Swift &
 James S. Johnston Bankers trading under the
 name style and description of R. H. Swift
 Brother & Johnston Defendants who were
 summoned & in a plea of trespass on the case
 on promises For that whereas the said
 Defendants heretofore to wit on the 18th day of
 November A. D. 1857. at Chicago to wit at Chicago
 County of Cook made their certain promissory
 note in writing bearing date the day & year
 aforesaid & then & there delivered the ^{same} ~~said~~ note
 to John B. Whitney and William J. Haven
 in & by which said note the said Defendants
 by name style and description of R. H. Swift
 Brother & Johnston promised to pay in currency
 to the bearer thereof for account of certified
 checks four hundred & seventy seven ²³/₁₀₀ Dollars
 By means whereof & by force of the statute in
 such case made and provided the said Defendants
 became liable to pay said Plaintiffs said sum of
 money mentioned in said note as aforesaid
 & being so liable and in consideration thereof
 then & there undertook and promised to pay the
 same to said Plaintiffs according to the tenor
 and effect true intent and meaning of said note
 to wit at the place aforesaid.

And whereas also the said Defendants
 afterwards to wit on the 25th day of November in
 the year of our Lord One Thousand Eight hundred
 and fifty seven at Chicago aforesaid were
 indebted to said plaintiffs in the further sum of
 One Thousand Dollars lawful Money of the
 United States for the work and labor care and
 diligence of the said plaintiffs by the said
 plaintiffs before that time done performed and
 bestowed in and about the business of the said
 Defendants and at their special instance and
 request. And also for divers materials and
 other necessary things by the said plaintiffs before
 that time found and provided and used and
 applied in and about that work and labor.
 And also for ⁱⁿ the further sum of One Thousand
 Dollars lawful money for divers goods wares
 and merchandize by the said plaintiffs before
 that time sold and delivered to the said
 Defendants and at their like special instance
 and request. And also in the further sum of
 One Thousand Dollars of like lawful money
 for other money by the said ^{Plaintiff} Defendants before
 that time lent and advanced to and paid laid
 out and expended for the said Defendants
 and at their like special instance and request
 And also in the further sum of One Thousand
 Dollars of like lawful money for other money

5 By the said Defendants before that time had and received to and for the use of said Plaintiffs and also for that the said Defendants accounted with the said Plaintiffs of and concerning divers other sums of money from the said Defendants to the said Plaintiffs before that time due and owing and then in arrear and unpaid and upon such accounting the said Defendants then and there found to be in arrear and indebted to the said Plaintiffs in the further sum of One Thousand Dollars of like lawful money and being so indebted the said Defendants in consideration thereof afterwards lent on the day and year last aforesaid at Chicago aforesaid undertook and then and there promised the said Plaintiffs to pay them the said several sums of money in this Court mentioned when they the said Defendants should be thereunto afterwards requested.

Breach. And yet the said defendant not regarding their said several promises and undertakings have not as yet paid the ^{said} several sums of money or any or either of them or any part thereof to the said Plaintiffs though often requested so to do but the said Defendants to pay the same have hitherto wholly neglected and refused and still do ^{neglect and} refuse to the damage of the said Plaintiffs of \$1000⁰⁰ and therefore they

Sum \$5

Thos. Ayers & Sonnes.
Plaintiffs Atty.

No 169.

Chicago Nov 18th 1857.

Received from Whitney Staven four hundred and seventy seven $\frac{23}{100}$ Dollars payable in currency to the Bearer hereof for account of Antislavery checks

\$477 $\frac{23}{100}$.

R. H. Swift Brother & Johnston

per R. C. Wright.

R. H. Swift Brother & Johnston

To Whitney Staven Dr.

For work labor & materials furnished	\$ 1000 ⁰⁰ / ₁₀₀
" Goods & wares sold and delivered	\$ 1000 ⁰⁰ / ₁₀₀
" Money lent & advanced	\$ 1000 ⁰⁰ / ₁₀₀
" Money had & received	\$ 1000 ⁰⁰ / ₁₀₀
" Account stated	\$ 1000 ⁰⁰ / ₁₀₀

And afterwards levied on the same day and year last aforesaid there issued out of the office of the Clerk of said Court a writ of Summons in the words and figures following.

State of Illinois

County of Cook

ss.

The people of the State of Illinois
To the Sheriff of said County
Greeting

We command you that you summon
Richard H. Swift Lyman P. Swift ~~James~~ & P.
James S. Johnston if they shall be found in

7
your County. personally to be and appear before the
Cook County Court of Common Pleas of said County
on the first day of the next term thereof to be holden
at the Court House in the City of Chicago, ^{in said County} on the first
Monday of January next to answer unto John
B Whitney & William J Haven in a plea of
verdict on the case, ^{on promise} to the Damage of the said
Plaintiffs as they say in the sum of One
Thousand Dollars - And have you then and there
this writ with an endorsement thereon in what
manner you shall have executed the same

Witness Walter Kimball Clerk of our
said Court and the Seal thereof at the City of
Chicago in said County this 1st day of December
A. D. 1857.

L. S.

Walter Kimball Clerk.

Sheriff's return thereon

Served by reading to the within named
Richard H Swift and James S Johnston the 7 day
of Dec 1857. The within named Lyman P Swift
not found in my County the 2^d day of January
1858.

John L Wilson Sheriff
By John H Hart Deputy.

Receivance to wit on the fifth day of January
in the year of our Lord One thousand Eight
hundred and fifty eight came the said Richard

R. Swift and James I Johnston impleaded with
 Lyman P Swift and filed their Demurrer in the
 Office of the Clerk of said Court which said
 Demurrer is in words and figures as follows.

In the Cook County Court of Common Pleas
 Of the January Term A D 1858. -

Richard R Swift & James
 I Johnston impleaded with
 Lyman P Swift

vs

John B Whitney et al

And the said Defendants
 Richard R Swift and James I Johnston impleaded
 do come and defend the wrong and injury when it
 & say that the said first Count of the said Declaration
 & the matters and things therein contained in manner
 and as the same is therein stated and set forth
 are insufficient in Law for the said Plaintiffs to
 have or maintain their aforesaid action thereof
 against them and that they are not bound by
 Law to answer the same and this they are ready
 to verify whereupon by reason of the insufficiency
 of the said first Count of said Declaration in
 this behalf these defendants pray judgment
 & that the said Plaintiff may be barred from
 having & maintaining their aforesaid action
 thereof against them. And the said

9

Defendants state & shew to the Court here
the following Causes of Demurrer.

1st The Instrument declared on in said
Count & denominated a promissory Note
is not, as appears by said Count a promissory
Note.

2^d There is not in said first Count any
avowment of the value of the Currency made
payable by said Instrument therein described.

3^d Said Count does not shew any right
on the part of the said Plaintiffs to bring
suit on said Instrument therein described
at the time this action was commenced.

4th Said first Count is in other respects
informal uncertain and insufficient.

State of California, County of Alameda,
I, the undersigned, Judge of the said County,

do hereby certify that the foregoing

is a true and correct copy of the original

And afterwards writ on the twentieth
day of January in the year last aforesaid
the said day being one of the days of the
January Vacation Term of the Cook County
Court of Common Pleas the following among
other proceedings were had in said Court
and entered of Record to wit

John B Whitney &
William J Haven

vs

et al.

Richard W. Swift
 Lyman P. Swift &
 James S. Johnston

This day come the said
 Plaintiffs by Hooker Ayres & Simmons their
 Attorneys and the Defendants Richard W.
 Swift and James S. Johnston by Scates
 McAllister Jewett & Peabody their Attorneys
 also come and the Court after hearing the
 Argument of Counsel on said Defendants
 Demurrer to the first Count in said Plaintiffs
 Declaration herein being now fully advised
 therein sustains said Demurrer and
 leave is given said Plaintiffs to amend
 their said first Count.

And afterwards to wit on the fourth day
 of February in the year last aforesaid the
 said day being one of the days of the February
 Term of said Cook County Court of Common Pleas, the
 following among other proceedings were had in
 said Court and entered of Record to wit-

John B. Whitney
 & William T. Haven

vs
 Richard W. Swift
 Lyman P. Swift &
 James S. Johnston

And now again come the

11
said parties by their Attorneys aforesaid and
said plaintiffs withdraw the first Count
in their said Declaration And on their Motion
It is Ordered that the default of the said
Defendant Richard K Swift & James S.
Johnston be taken & returned for want of a
plea.

Wherefore the said plaintiffs ought
to have and recover of the said Defendants
Richard K Swift & James S Johnston im-
pleaded with Lyman P Swift their damages
herein sustained by occasion of the premises

And the Court now after hearing the
allegations & proofs submitted by said plaintiffs
being fully advised in the premises aforesaid
said plaintiffs damages to the sum of Four
hundred and twenty seven Dollars and
twenty three Cents Therefore it is considered
that the said plaintiffs do have and recover
of the said Defendants Richard K Swift &
James S Johnston impleaded as aforesaid
their damages of Four hundred & twenty seven
Dollars & twenty three Cents in form aforesaid
by the Court here aforesaid And also their
Costs and Charges by them about their Suit
in this behalf expended & have execution therefor

And therefore said Defendants
impleaded as aforesaid pray an appeal
to the Supreme Court of the state of Illinois

12
which is allowed upon their filing their appeal Bond in the sum of Seven hundred Dollars with Van H. Higgins or James H. Rees as Security, said Bond and their Bill of Exceptions to be filed in ten days from this day.

And afterwards court on the thirtieth day of February in the year last aforesaid the said Defendants Richard K. Swift & James S. Johnston by their Attorneys aforesaid filed their Appeal Bond in the Office of the Clerk of said Court, which said Bond is in the words and figures following

Know all Men by these presents That Richard K. Swift James S. Johnston and _____ are held and firmly bound unto John B. Whitney & William J. Haven in the penal sum of Seven hundred Dollars for payment of which well and truly to be made to said John B. Whitney & William J. Haven their heirs or assigns We bind ourselves jointly and severally our heirs Executors and Administrators firmly by these presents. Sealed with our seals and dated the fifth day of February A.D. 1858.

The condition of this obligation is such that whereas in a certain suit in the Cook County Court of Common Pleas wherein said John B. Whitney & William J. Haven were plaintiffs

and said Richard K Swift & James S Johnston
impleaded with Lyman P Swift were Defendants
the said Plaintiffs on the fourth day of February
A. D. 1858 received a judgment against the
said Defendants Richard K Swift and James
S. Johnston for the sum of Four hundred and
twenty seven ²³/₁₀₀ Dollars damages besides Costs
of Suit, from which said judgment Richard
K Swift and James S Johnston said last
named Defendant have prayed an appeal
to the Supreme Court of the State of Illinois -
which appeal has been granted upon said
Defendants giving this Bond.

Now if the said above bounden
Defendants shall well and truly pay the
judgment, Costs interest and damages in case
the said judgment shall be affirmed by said
Supreme Court and shall duly prosecute their
said appeal - then the above Obligation to be
void otherwise of force -

K	K Swift	(Seal)
J S Johnston		(Seal)
Wm St Hegguis		(Seal)

AND afterwards writ on the same day
and year last aforesaid the said day being
one of the days of the February Term of said Cook
County Court of Common Pleas, the following among
other proceedings were had in said Court

and entered of Record to wit. —

John B Whitney &
William T Haven

vs.

Richard K Swift
Lyman P Swift &
James S Johnston —

And now come the defendants
by their Attorneys aforesaid and on their motion
It is ordered that the time for filing their
Bill of Exceptions in this Cause be extended to
the eighteenth instant.

Afterwards to wit on the sixteenth
day of February in the year last aforesaid
came the said Defendants Richard K Swift
and James S Johnston impleaded with Lyman
P Swift by their Attorneys aforesaid and
filed in the Office of the Clerk of said Court
their Bill of Exceptions in the above Cause
which said Bill of Exceptions is in the
words and figures following to wit

State of Illinois. County of Cook.

In the Cook County Court of Common Pleas
Of the February Term A.D. 1858.

John B Whitney &
William T Haven

vs.

15

Richard K Swift &
James S Johnston
impleaded with
Lyman P. Swift.

Be it remembered That at
the February Term A D 1858 of said Court writ
on the fourth day of February A D 1858 the default
of the said Defendants Richard K Swift & James
S Johnston having been entered in this Cause and
the same having been brought on before the Court
for the assessment of Damages therein against
the said Defendants Richard K Swift & James
S Johnston. The said Plaintiffs for the purpose
of proving said Damages offered in Evidence
a certain instrument in writing in the words
and figures following to wit.

N^o 169.

R K Swift, Brother & Johnston.

Chicago Nov^r 18th 1857.

Received from Whitney & Haven Four hundred
and seventy seven ²³/₁₀₀ Dollars payable in
Currency to the Bearer hereof for account of
Certified Checks

477 ²³/₁₀₀.

R K Swift Brother & Johnston
per R C Wright.

R. K. Swift, J. S. Johnston -

To the reading of which as Evidence
the said Defendants by their Counsel then
and there objected for the reason that the

Instrument offered was a Special Contract and not admissible as Evidence under the common Counts.

Which objection is overruled by the Court and said Instrument in writing was read as Evidence To which ruling and decision of the Court in admitting said Instrument to be read as Evidence the said Defendants by their Counsel then and there excepted. Said Instrument in writing was all the Evidence offered by the Plaintiff on said aforesaid & the Defendants declining to offer any testimony the Court thereupon assessed the Damages at the Sum of Four hundred and seventy seven Dollars and twenty three Cents (\$477.23) - And the Defendants by their Counsel then and there moved the Court to set aside the Judgment & aforesaid so made and assessed as aforesaid and to grant to the said Defendants a reapportionment of Damages in said Cause which motion of the said Defendants so made as aforesaid was overruled by the Court and Judgment

To which ruling of the Court the said Defendants by their Counsel then and there excepted And judgment was thereupon Ordered by the Court against the said Defendants Richard K Swift & James S Johnston upon said aforesaid for the Sum of Four hundred and seventy seven Dollars & twenty three Cents And the said

17.
Defendants by their Counsel then and there
prayed an appeal to the Supreme Court of the
State of Illinois And that this their Bill of
Exceptions might be signed & sealed by the
Court which is accordingly done.

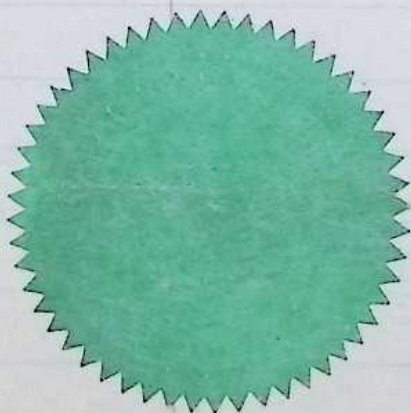
John M Wilson



State of Illinois
County of Cook } S.S.

I. Walter Kimball Clerk of Cook
County Court of Common Pleas, in and for said
County, do hereby certify, that the above and foregoing
is a full and true transcript of all the papers on
file in my office, and of the proceedings entered
of Record in said Court, in the case in which John
B Whitney and William T. Baran. are plaintiffs
and Richard K. Swift, Lyman B. Swift & James S.
Johnston are defendants in an action of Assumpsit.

In testimony whereof I hereunto
subscribe my name and affix
the Seal of said Court at the
City of Chicago in said County
this 23rd day of March A.D. 1858
Walter Kimball Clerk



Superior Court, State of Illinois
 West Grant Division
 April Term A.D. 1858

Richard W. Swift & James S.
 Johnston plaintiffs with
 Syreem S. Swift

vs
 James B. Whitney &
 William F. Weaver

And now comes the said
 Richard W. Swift and James S. Johnston, Appellants
 by Scates, McAllister, Sewell & Peabody, their attorneys
 and say, that in the Record and Proceedings afore-
 said and in the giving of the Judgment aforesaid
 there is manifest error, in this, that imperfe-
 ction was admitted in the assessment of Dam-
 ages in said case, And that said Judgment was
 entered against the said Appellants, when the
 same should have been in favor of said Appellants -

And there is seen also in the recording
 of said Motion for a Reassessment of Damages
 & in the entering up of said Judgment -

And the said Richard W. Swift & James
 S. Johnston pray that the Judgment aforesaid
 for the errors aforesaid, and for other errors
 in the said Record & Proceedings being, may be
 reversed, annulled and holden for naught
 and that they may be restored to all things

20

what they have lost by reason of the
Said Indemnity.

Edw. Wallis - Justice & Peck
Atty for Appellants -

Cook & Co. Long Beach, Cal.

163

Albion, N.Y.

Richard A. Smith

Wm. S. Allen

St. Joseph 9
C. S. P. R. R.

St. Louis 10/18/00

St. Louis
Mo.

Nov 4. 75

SUPREME COURT.

STATE OF ILLINOIS, THIRD DIVISION.

RICHARD K. SWIFT, AND
JAMES S. JOHNSON, *impleaded with*
LYMAN P. SWIFT,

Appellants,

VS
JAMES B. WHITNEY, AND
WILLIAM T. HAVEN,

Appellees.

APPEAL FROM
COOK Co. COURT OF COMMON PLEAS.

APPELLEE'S BRIEF.

The first point of appellants' must be abandoned. No objection was made in the court below to the admission of the certificate in evidence, on the ground that its execution was not proven. The transcript discloses the reason urged for its rejection—"That it was a special contract, and not admissible in evidence, under the common counts."

This objection concedes the execution, at all events, no objection on that point was specifically made.

4th Scam 7, 5th Gilman, 287.

The certificate was properly offered in evidence, under the common counts.—The suit was between the immediate parties to the instrument, and an acknowledgment of indebtedness.

Young vs Adams, 6 Mass., 189.

Wilson vs Fisher 4, Pick 421.

12 Pick, 126. Ibid 316

4 Wendell, 490,

The terms "currency," current bank notes, or bank notes, are equivalent to the word "money," and mean bank notes received and passing at par, or convertible into specie on demand.

Pierson vs Watkins, 2d Eng., 292.

Leiber *et al* vs Goodrich, 5 Cowen 187.

Judah vs Harris, 19th John, 144-5-6.

Munn *et al* vs Exrs Munn, 1 John, Ch. Rep., 231.

If not paid or tendered, the judgment on such certificates must be in money,

Smith vs Goddard, 1 Hamm, 179,

1st Hamm, 524.

Morris vs Edwards, 1 Hamm 189.

It follows, that if the terms used in the certificate import an obligation to pay in par funds the amount of deposit, the certificate itself ascertains the amount and value, and no evidence affixing it, was necessary or proper.

The judgment by default, removed all formal and technical objections, such as absence of proof of demand, even if were necessary to have made such demand, (which is not needed), in a case contested upon issues.

The action of the court upon the first count in the declaration, simply left the case as on a declaration containing the common counts, merely and under such counts upon the authorities cited, *We* contend that the certificate was clearly admissible in evidence.

E. R. HOOPER & JOHN M. S. CAUSIN,

Attorneys for Appellee.

173
Swift
75
Whitney

Filed August 1858
L. L. Linn
Clerk

State of Illinois, Supreme Court—3d Division.

RICHARD K. SWIFT AND
JAMES S. JOHNSTON, *impleaded with*
LYMAN P. SWIFT,

VS

JAMES B. WHITNEY, AND
WILLIAM T. HAVEN.

Appeal from the
Cook County Court of Common Pleas.

This was an action of *assumpsit*, brought by the appellees against the appellants, and one Lyman P. Swift, to the January term, A. D., 1858, of the Cook County Court of Common Pleas.

3-4-5
The Declaration filed on the 1st day of December, 1858, consists of one special count, and the common counts, and describes the defendants as Bankers, trading under the name, style and description of R. K. Swift, Brother & Johnston.

8-9
10-
11-
15
At the January term of the court, the defendants, Richard K. Swift and James S. Johnston, filed their demurrer to the first and special count of the declaration, which was sustained by the court, and leave given to the plaintiffs to amend. No amendment of said count was made, and at the February term of the court, the plaintiffs withdrew said count, and on their motion, the default of the defendants, Richard K. Swift and James S. Johnston was entered, and damages were assessed by the court against them on the common counts.

On the assessment of damages the only evidence offered by the plaintiffs was an instrument as follows :

No. 169.

R. K. SWIFT, BROTHER & JOHNSTON.

Chicago, Nov. 18th, 1857.

Received from Whitney & Haven Four Hundred and Seventy-seven
23-100 dollars, payable in currency to the bearer hereof, for account of certified
checks.

R. K. SWIFT, BROTHER & JOHNSTON.

Per R. C. WRIGHT.

R. K. Swift, L. P. Swift, J. S. Johnston.

15+16

The introduction of the instrument as evidence was objected to by the defendants' counsel as improper, under the common courts. Objection overruled by the court, and exception taken. The court thereupon assessed the damages at the sum of \$477 23-100 against the defendants, Richard K. Swift and James S. Johnston, who, by their counsel, moved the court to set aside the assessment, and grant a re-assessment of damages. Motion overruled by the court, and exception taken. Judgment entered on the assessment, and an appeal prayed and allowed. Defendants filed their bond, and bill of exceptions.

The admission of the instrument offered by the plaintiffs as evidence, the overruling of the motion for a re-assessment of damages, and the rendition of judgment are assigned for ever.

Points made, and authorities cited by the appellants.

I.

The first count of the declaration being withdrawn, there remained no special count upon the instrument offered in evidence. The default did not admit its execution. The plaintiffs should have proved the execution of the instrument. This was not done.

II

No judgment should have been rendered against the defendants in the case after the withdrawal of the special count. The defendants, after the demurer was sustained, had a right to judgment on that count, and the withdrawing of it was a discontinuance of the whole cause of action. The plaintiffs, by withdrawing the first count, were left in a position to bring a new action for the same cause, and the plea of former recovery, if pleaded in bar, would not be sustained by the record in this case, which shows that that cause of action was withdrawn.

Backus vs Richardson, 5 Johns 476.

5 Comyn's Digest, 157.

Cooper vs Taffin, 3 Term Reports, 511.

III.

But admitting that the first and second points are not sustained, we still insist that the instrument was not admissible under the common counts. It is not a simple receipt, but a receipt, and something more. Neither is it a promissory note for the payment of money or chattels.

Smith et al vs Dunlop, 12 Ills., 189.

Hixon vs Hixon, 7 Humphrey, 33.

Gordon vs Parker, 2 Sunde's & M., 485.

Dillon vs Evans, 4 Pike, 175.

Robinson vs Noble Adm't, 8 Peters 181.

IV.

The term "currency," does not generally or necessarily import money. Its value is fluctuating and uncertain. It is not a standard of value. If the instrument was admissible under the common counts, evidence should have been introduced to show the value of the currency.

See same authorities last cited.

V

The defendants being described as Bankers in the declaration, it is insisted that a demand of the money on the instrument should have been made and payment refused before the plaintiffs were entitled to bring suit.

Scates McAllister Smith & Eschwy
Attys for Appellants

173
Superior Cement
Reckard & Smith
21
Lancaster B. Whitney
Stal

Filed May 21, 1838
Lancaster
Stal

J. H. Jewett
for App'ts

SUPREME COURT.

STATE OF ILLINOIS, THIRD DIVISION.

RICHARD K. SWIFT, AND
JAMES S. JOHNSON, *impleaded with*
LYMAN P. SWIFT,

Appellants,

VS

JAMES B. WHITNEY, AND
WILLIAM T. HAVEN,

Appellees.

APPEAL FROM
COOK CO. COURT OF COMMON PLEAS.

APPELLEE'S BRIEF.

The first point of appellants' must be abandoned. No objection was made in the court below to the admission of the certificate in evidence, on the ground that its execution was not proven. The transcript discloses the reason urged for its rejection—"That it was a special contract, and not admissible in evidence, under the common counts."

This objection concedes the execution, at all events, no objection on that point was specifically made.

4th Scam 7, 5th Gilman, 287.

The certificate was properly offered in evidence, under the common counts.—The suit was between the immediate parties to the instrument, and an acknowledgment of indebtedness.

Young vs Adams, 6 Mass., 189.

Wilson vs Fisher 4, Pick 421.

12 Pick, 126. Ibid 316

4 Wendell, 490.

The terms "currency," current bank notes, or bank notes, are equivalent to the word "money," and mean bank notes received and passing at par, or convertible into specie on demand.

Pierson vs Watkins, 2d Eng., 292.

Leiber *et al* vs Goodrich, 5 Cowen 187.

Judah vs Harris, 19th John, 144-5-6.

Munn *et al* vs Exrs Munn, 1 John, Ch. Rep., 231.

If not paid or tendered, the judgment on such certificates must be in money,

Smith vs Goddard, 1 Hamm, 179,

1st Hamm, 524.

Morris vs Edwards, 1 Hamm 189.

It follows, that if the terms used in the certificate import an obligation to pay in par funds the amount of deposit, the certificate itself ascertains the amount and value, and no evidence affixing it, was necessary or proper.

The judgment by default, removed all formal and technical objections, such as absence of proof of demand, even if were necessary to have made such demand, (which is not needed), in a case contested upon issues.

The action of the court upon the first count in the declaration, simply left the case as on a declaration containing the common counts, merely and under such counts upon the authorities cited, *We* contend that the certificate was clearly admissible in evidence.

E. R. HOOPER & JOHN M. S. CAUSIN,

Attorneys for Appelles.

173

Bright & al

vs

Whitney & al

Brief

Filed May 22 1835
L. L. Loomis
Clerk

State of Illinois
Superior Court 3^d Division

Thomas K. Swift & James S. Johnson in pleaded with Lyman P. Swift -	Appellants	} Appeal from book court, Court of Common Pleas.
vs James B. Whiting and William T. Haven -	Appellees	

And the said James B.
Whiting & William T. Haven by their
Attorneys Hooper & Clausen, come and
say that there is no error either in
the record & proceedings aforesaid
or in giving the judgment aforesaid
& they pray that the said Court here
may proceed to examine as well the
record & proceedings aforesaid, as
the matters aforesaid above for
errors assigned & that the judgment
aforesaid, in form aforesaid
given may be in all things affirmed
& so forth

E. R. Hooper &
John M. A. Clausen
Att^{ys} for Appellees

173

Filed May 8th 1858
L. Belmont
Clerk