

12307

No. _____

Supreme Court of Illinois

Dwight

vs.

Newell.

71641  7



United States of America

State of Illinois &
McHenry County &

Now before the Hon-
orable Saml G. Wilson Judge of the
thirteenth Judicial Circuit of the State
of Illinois and presiding judge of the
McHenry County Circuit Court at a
Circuit Court begun and held at the
Court house in Woodstock in said
County on Monday the twentieth-day
of March in the year of our Lord
One thousand Eight hundred and fifty
four and of the Independence of the
said United States of America the
Seventy seventh &

Present the Hon

Saml G. Wilson
Judge

Attest J. H. Johnson States Attorney
Clark Cantish Hastings
Sherriff

And heretofore to wit on the 22^d day of March
A.D. 1854 John Sewell, plaintiff in this suit
Caused to be issued from the Office of the
Clerk of the Circuit Court of said County

A certain writ of Summons in the words
and figures following that is to say

State of Illinois } To The People of the
McHenry County } State of Illinois to
County Greeting — the Sheriff of said
County Greeting — We Command You
that you summon Henry Petrie Christopher
Walkup Robert J Schryver Squire C Brown
George J Kasson James Dufield Derrick C
Bush Franklin Safford Joshua J Burwick
William Strawn Peter W Ditz Arney A Gates
George H Griffing John J Vawter Charles W
Goodrich Josiah Dwight Calvin Spencer
Charles Hunt Daniel Blair Sam Richard
Parsons Nathan J Ingalls John J Fitch
Joseph Greund Wm C La Dow Robert Garrett
and Luke W Belcher if he shall be found
in your County personally to be and appear
before the Circuit Court of said County
on the first day of the next term thereof to be
holden at the Court House in Woodstock
in said County on the to answer unto John
Swell in a Plea of Trespass on the case
or promises to the damage of said
Plaintiffs as he sues in the sum of five
hundred Dollars — And have you
then and there this writ with an indent
thrown in what manner you shall have

Executed the same

Witness Joel H. Johnson Clerk of
the said Court and the seal thereof at
Hoodstock aforesaid this 22^d day
of March AD 1857



J. H. Johnson
Clerk of the Circuit Court

Endorsed Thereon

Personally served on the within named debts
by Reading in the hearing of Christopher Walkup
R. H. Schuyler G. E. Kasson James Dufield Amos
Safford Wm Sloan Peter H. Dotz Geo. N. Griffing
Chas. W. Goodrich Josiah Dwight Calvin Spencer
Chas. Hunt Daniel Blair Jr. Richard Parsons
John S. Fitch Wm B. Sadow April 30th 1857

Due for 16 Services 8.00
for 103 Miles due 5.15
for returning 10
13.25

John Brink Sheriff
By S. W. M. Martin Deputy
Filed April 14th 1857

J. H. Johnson
Clerk

And thereafter to wit on the 2^d day of April
AD 1857 the said plaintiff filed his decla-
ration in the Words and figures following
that is to say

State of Illinois Vs
McHenry County & McHenry County
Circuit Court April
Term ad 1837

John Sewell the plaintiff in
this suit complains of Henry Petrie Squam
C Brown Derick C Bush William Sloan
George H Griffing Josiah Dwight Daniel
Blair Jr John C Fitch Christopher Walcutt
George J. Kaason Franklin Safford Peter
W Ditz John G Vawter Calvin Spencer
Richard Parsons Joseph Green Robert G
Schuyler James Infield Joshua I Barnick
Arvey A Gato Charles W Goodrich Charles
Hunt Nathan P Ingalls William La Dow
Robert N Garrett & Luke M Belcher who
have been summoned on a plea of Trespass
on the Case on promises For that whereas
the said defendants and one James Hutchins
and one William T Combs since deceased
hereof to wit on the first day of June
in the year ^{ad} 1846 at Woodstock to wit in
the County of McHenry in the State Illinois
Made their certain promising note in writing
bearing date the day and year aforesaid
and then and then promised by the

Name and style of the McHenry County
Printing Company to pay on demand to
James Hentchins the sum of One hundred
and eleven & 53/100 dollars with interest
and then and there delivered the said prom-
issory Note to the said James Hentchins and
the said plaintiff in fact saith that after
the making of said Note and before the
payment of the sum of money therein mentioned
did leaving his last will in aid by which
said last will and testament he appointed
Emily Hentchins Executrix and Henry Titus
Executor of said last will and testament
of said James Hentchins, ^{deceased} and letters testa-
mentary were issued by the Court of Probate
in and for the County of McHenry aforesaid
on or about the Seventh day of September
A D Eighteen Hundred and forty eight to the
said Henry Titus and Emily Hentchins
and they were then and there appointed by
said Court Executor & Executrix of the Estate
of ^{said} James Hentchins deceased and the said
Emily Hentchins Executrix and Henry Titus
Executor of the Estate of James Hentchins
deceased as such Executor & Executrix before
said the sum of money in said Note
mentioned, was paid to wit on the day and
year last aforesaid endorsed and delivered
the said Note to the plaintiff who then
and there became the legal owner and

and bearer of said Note by means thereof
and by force of the Statute in such case
made and provided the said defendants
then and there became liable to pay to
the said plaintiff the said sum of money
in the said promissory Note specified
and being so liable the said defendants
in consequence thereof afterwards to wit
on the day and year last aforesaid at
the County of McHenry aforesaid the said
defendants undertook and then and there
promised to pay the said plaintiff the said
sum of money in said promissory Note
specified according to the tenor and effect
thereof

For that whereas the said defendants
and one James Hutchins and one William
F Combs since deceased heretofore to wit on
the fifteenth day of January A D Eighteen
hundred and forty seven at Woodstock
to wit in the County of McHenry in the State
of Illinois by the name and style of the
McHenry County Printing Company
made their certain promissory Note in
writing bearing date the day and year
last aforesaid and then and there by the
name and style of the McHenry County
Printing Company promised to

pay on day after date for value received
date to James Hutchins the sum of one
hundred and two & 33/100 dollars with interest
and then and there delivered the said promissory
note to the said James Hutchins the plaintiff
in fact saith that after the making of said
note and before the payment of the sum
of money therein mentioned said James
Hutchins died leaving his last will and
testament in and by which last will and
testament he appointed Emily H Hutchins
Executrix and Henry Petrie Executor of the last
will and testament of said James Hutchins
deceased and letters testamentary were duly
issued by the Court of Probate in and for
the County of McHenry aforesaid on or
about the seventh day of September at
eighteen hundred and forty Eight to the said
Henry Petrie and Emily Hutchins and they
were then and there appointed by said
Probate Court executor & executrix of the
goods and estate of said James Hutchins
deceased and the said Emily Hutchins
Executrix and Henry Petrie Executor of
the Estate of James Hutchins Deceased
as such Executrix and Executor before
the said sum in said note was paid
to wit on the day and year last aforesaid
endorsed and delivered the said note to

the plaintiff Wharton and thus become the
legal owner and bearer of said Note by
Means whereof and by the force of the Statute
in such Case made and provided the said
defendants then and thus became liable to
pay the said plaintiff the sum of money
in the said promissory Note specified and
being so liable the said defendants in
consideration thereof afterwards to wit on the
day and year last aforesaid at the County
of McHenry aforesaid the said defendants
undertook and then and thus promised
to pay the said plaintiff the said sum
of money in said promissory Note specified
according to the tenor and effect thereof
as padies and whereas also the said defendants
and one James Hutchins and one William
F Combs on the first day of March A D eighteen
hundred and fifty one was indebted
to the said plaintiff in the sum of five
hundred dollars on an account then
stated between them and whereas the said
defendants promised to pay the sum of
money when they should thereafter be requested
yet the defendants have disregarded their
promise and have not nor hath either
of them paid any of said monies or any

part thereof to the plaintiffs damages
of of five hundred dollars and thereupon
he begins suit &c

J. M. Platt attorney
for the Plaintiff

Copy of Notes declared on

Woodstock Jan 18th 1847

One day after date for Value recd the the McHenry
Co Printing Co promise to pay to Jas
Hutchins or order one hundred and two &
33/100 dollars with int

J. D. Wright Treas

on the back of said Note is the following endorsement

'We hereby assign within Note to John Sewell
without incurring any liability ourselves or
on the part of the Estate of James Hutchins
decd Henry Petrie Emily N Hutchins

Emily Hutchins Executrix ^{Executrix of James}
Hutchins decd
\$111.52

Woodstock 1st June 1846

For Value received of James Hutchins
We promise to pay to him or his or order one
hundred & Eleven 5/100 dollars on demand
and interest annually For the McHenry
County Printing Company

James Hutchins
Henry Petrie
S. B. Brown
James W
Committee

on the back of said Note is the following endorse-

must me hereby assign the within Note to John
Newall without incurring any liability our-
selves or on the part of the estate of James
Hutchins decd

Emily Hutchins
Executrix

Henry Petrie Executor
of the Estate of James
Hutchins decd
Emily H Hutchins
Executrix of the estate
of James Hutchins decd

Endorsed Thereon

Dated April 2^d 1851

J. H. Johnson Clerk

And thereafter to wit on the 28th day of
November A.D. 1853 the Circuit Court of
said County then being in session at
Woodstock aforesaid the following proceedings
were had to wit

John Newell

vs
Henry Petrie & al

Assumpsit

And now come the
plaintiff by Church and on his motion
it is ordered that he have leave to amend
his declaration by adding new Counts
And it is further ordered that this cause
be continued

And therafter to wit on the 10th day of
March AD 1854 the said plaintiff filed
his amended declaration in the words
and figures following that is to say

State of Illinois }
McHenry County } ss
John Newell }

is
Henry Petrie Esq } Amendment to Narr
by hand of Court.

V And whereas also afterwards to wit
on the 1st day of June AD 1846 at the
County aforesaid in the State aforesaid the
said defendants And James Hutchins
and William F Lamb (since deceased
in the in their life time by the name and
style of the McHenry Co Printing Co
of Dwight Great made their certain promissory
note in writing and then and thereby by
the name & style of the McHenry Co Printing
Co promised to pay on day after the date
thereof to our James Hutchins or order one
hundred and ³³/₁₀₀ Dollars with int And
then and then delivered the said promissory
note to the said James Hutchins in his lifetime

And the said plaintiff further saith
that after the making of the said promissory
note and before the payment thereof the

Said James Hutchins died having
previously made his last will and testament
by which said last will and testament one
Henry Petrie and Emily A Hutchins were
appointed Executor & Executrix of the last
will and testament aforesaid And afterwards
and before the endorsement hereinafter set
forth to wit on the 7th day of September 1848
became and were duly qualified
according to law to act and did act
as executor and executrix of the last will
and testament of the said James Hutchins
deceased and the said Henry Petrie
and Emily Hutchins Executor and Executrix
as aforesaid afterwards and before the payment
of the said sum of money in said Note
mentioned to wit on the day and year last
aforesaid as executor and executrix of said
James Hutchins dec'd endorsed and
delivered the said promissory Note to
the said plaintiff by means whereof and
by force of the Statute in such case made
and provided the said defendants then became
liable to pay ^{to the} said plaintiff the said sum
of money in the said promissory Note
mentioned according to the tenor and
effect thereof and being so liable the said
defendants afterwards to wit on the day

and your last aforesaid at the place aforesaid undertook and promised the said plaintiff to pay him the said sum of money aforesaid, note mentioned according to the tenor thereof

And whereas also afterwards to wit on the day your aforesaid the said defendants and James Hutchins and William T. Coombs since deceased in their life time made their certain promissory note in writing by the name and style ~~of~~ in the words and figures following to wit

Woodstock Jan 15 1847

On day after date for value received the Me Henry Co. Printing Co promise to pay to Jas Hutchins or order one hundred and two & $\frac{33}{100}$ dollars with int

J. Dwight Treas

and then and there delivered the said promissory note to the said Jas Hutchins and ^{thereby} then & thus promised by the name and style aforesaid to pay to the said James Hutchins or order the said sum of money in the said promissory note mentioned according to the tenor and effect thereof and the said plaintiff says that afterwards and before the payment of the said promissory note the said James Hutchins died to wit at the County aforesaid having by his last will and testament made

in his life time appointed Emily H Hutchins
Executrix of his said last will and testament
and the said Emily H Hutchins was ~~executrix~~
of the last Will and testament of the said
James Hutchins deceased at the time of
indorsing of the said promissory Note above
mentioned to wit on the 7th day of September
AD 1848 and as executrix of the said last
Will and testament of the said James
Hutchins deceased to wit on the day and
year last aforesaid at the County aforesaid
assigned by endorsement thereon the said Note
to the said plaintiff which said ^{Endorsement} ~~testament~~
is in the words and figures following to wit

Shubby assign the within to John
Newell Emily Hutchins Executrix of the
Estate of James Hutchins deceased

And the said Emily Hutchins as
Executrix of said Estate then and there
endorsed said Note as follows to wit
Shubby assign the within Note to John
Newell

Emily H Hutchins Executrix of the
Estate of James Hutchins dec^d

And the said Emily H Hutchins
was then and there executrix of the
last will and testament aforesaid

by means of the premises and by force
of the Statute, the said defendants became
liable to pay to the said plaintiff the said
sum of money in said promissory note
mentioned according to the tenor and
effect thereof and being so liable the said
defendants in consideration thereof afterwards
to wit on the day last aforesaid undertook
and then and there promised the said
plaintiff to pay him the said sum of money
in said note mentioned according to the
tenor and effect thereof

And whereas also afterwards to wit on
the 1st day of June AD 1841 at the County
of McHenry and State of Illinois the
said defendants and James Hartchins and
William F Coombs since deceased in their
life time by the name and style of

3. For the McHenry County printing Company
James Hartchins Henry Petrie S. B. Brown
Financier Committee made their certain
other promissory in writing bearing date
the day and year aforesaid thereby then and
then by the name and style aforesaid promised
for value received of James Hartchins
to pay him or his order one hundred and
Eleven $53/100$ dollars on demand and interest
annually and then and there delivered the
same to ^{the said} James Hartchins in his life time

And the said plaintiff further says that
after the making of the said ~~promissory~~
note last mentioned and before the
payment thereof the said James Hutchins
died and by his last will and testament
by him made in his life time Henry
Petric & Emily H Hutchins were appointed
Executor and Executrix of his said last
will and testament and after his said
death to wit on the 7th day of September
AD 1848 were lawfully qualified to act
and did act as and were then acting Executor
and executrix of said last will and testament
of the said James Hutchins deceased.

And the said Henry Petric and Emily
H Hutchins as Executor and Executrix of the
said last will and testament of the said
James Hutchins deceased on the day and
year last aforesaid and at the County aforesaid
and before the payment of ^{assigned the said note} said note
to the plaintiff and then and there delivered
the same to the said plaintiff by means
whereof and by force of the Statute in such
Case made and provided became liable
to pay to the said plaintiff the said
sum of money in said note mentioned
according to the tenor and effect
thereof and being so liable in consideration

then of the said defendants afterwards
to wit on the day and year last afore-
said undertook and promised the said
plaintiff to pay him the said sum of
money in said Note according to
the tenor and effect thereof.

And whereas also afterwards to
wit on the 1st day of June AD 1846 the said
Defendants and James Hutchins and
William H Coombs both since deceased
in their life time made their certain other
promissory Note in writing by the name and
style in the said promissory Note mentioned
which said promissory Note is in the words
and figures following to wit

11152 Woodstock 1st June 1846

4. For Value received of James Hutchins
we promise to pay him or order One Hundred
and Eleven ⁵²/₁₀₀ dollars on demand and interest
Annually For the M^{rs} Henry ^{Coombs} Printing Company

James Hutchins
Henry Price
S. C. Brown

James Hutchins
Henry Price
S. C. Brown

James Hutchins
Henry Price
S. C. Brown

And then and there delivered the said
promissory Note to one James Hutchins &
then by then and ~~then~~ by the name and style
their Warranted promised to pay the said

James Hutchins the ^{said} sum of money in
said note mentioned according to
the tenor and effect thereof and the
said plaintiff avers that the said James
Hutchins afterwards and before the payment
of said note died at the County aforesaid
having by his last will and testament
in his life time appointed and ^{one} Emily Hutchins
Executrix of the said last will and testament
who after the death of the said James Hutchins
to wit on the 7th day of September A.D. 1848
became and was executrix of the last will
and testament of the said James Hutchins
deceased.

And afterwards to wit on the and year
last aforesaid the said Emily N Hutchins
as executrix aforesaid endorsed and assigned
said promissory note to the plaintiff and
then and there delivered the same to the said
plaintiff by means whereof and by force of
the statute in such case made and provided
the said defendants became liable to pay
the said plaintiff the said sum of money
in said note mentioned according to the
tenor thereof and being so liable in consideration
thereof after to wit on the day and year
aforesaid undertook and promised to pay

the said Plaintiff the said sum of money
in said note mentioned according to the
tenor and effect thereof

And Whereas also afterwards to wit on
the 1st day of June in the year AD 1846 at
the County aforesaid the said defendants and
James Hutchins and William F. Corbidge
since deceased made their certain other
promissory note in writing and thereby then
and then by the name and style of "For
the W. Henry Printing Company James Hutchins
Henry Petrie S. C. Brown Finance Committee
for value received of James Hutchins promised
to pay him or order one hundred and eleven
& 52/100 dollars on demand and interest annually
and then and then delivered the said to the
said James Hutchins and the said Plaintiff
avers that after the making of the said note
and before the payment thereof the said James
Hutchins died and that by his last will
and testament by him made in his life
time Emily H. Hutchins was appointed and
by virtue of said appointment and due
qualification according to law became
Executrix of said last will and testament
and as such executrix became the owner
and possessor of said note and afterwards
to wit and before the payment thereof to wit
on the first day of Jan 1850 the said Emily

Hutchins in her capacity of Executrix
as aforesaid endorsed said Note to
said plaintiff and delivered the same
to him by means whereof and by force of the
statute or the said defendants became liable
to pay to the said plaintiff the said sum of
money according to the tenor and effect
of said Note and being so liable in consideration
thereof the said defendants afterwards to wit on
the day and year aforesaid undertook and
promised the plaintiff to pay him said
sum of money according to the effect of
said Note

And whereas also afterwards to wit on
the 15th day of January A.D. 1847 at the
County aforesaid the ^{said} defendants and James
Hutchins & William H. Combs by the name
and style of the Wm Henry Co. Printing Co

Dwight Evans made their certain prom-
issory Note in writing and thereby they and
they for value received by the name and
style aforesaid promised to pay to one James
Hutchins or order One Hundred and two
& 3/4 Dollars with int one day after the
date thereof and they and they delivered
the same to James Hutchins and the
said plaintiff further says that afterwards

and before the payment of said Note the
said James Hentchins did during in his
life time appointed Emily N Hentchins
Executrix of the last will and testament
by him also made in his life time and that
afterwards the said Emily Hentchins by due
qualification according to law became
and was Executrix of the said last will and
testament and as such was entitled to said
promissory Note and the money therein promised
and that afterwards to wit on the 1st day of
January A D 1850 at the County aforesaid
and before the payment of said Note the
said Emily N Hentchins Executrix as aforesaid
by endorsement thereon assigned said Note
to the plaintiff who thereby became the owner
thereof by means the premises and by force
of the Statute in such case made and provided
the said defendants became liable to pay said
plaintiff the said sum of money mentioned
in said Note according to its effect and being
so liable in consideration in consideration
thereof afterwards to wit on the day and year
aforesaid at the place aforesaid undertook
and promised the plaintiff to pay him the
sum of money on ordnung to the effect of
said Note

And whereas also afterwards on the 1st
day of January A D 1850 at the said County

the said Defendants were as ^{copartners} Corporators jointly
under the name and style of the ^{McHenry} County
Printing Company indebted to
the Plaintiff in the sum of Five Hundred
dollars for money by the said Plaintiff before
that time ^{lent and advanced} but and ^{debtor} to the said Defendants
at their request and in the further sum of five
hundred dollars for so much money before that
time by the said Defendants had and received
to and for the use of the said Plaintiff and
being indebted the said Defendants in consideration
thereof afterwards on the day and year last
aforesaid undertook and promised the Plaintiff
to pay him the said several sums of money
^{above mentioned} when they should be so requested. Yet the
said Defendants although often times requested
so to do have not as yet paid the said several
sums of money above mentioned or either of them
or any part thereof to the said Plaintiff but
has hitherto refused and still does refuse
so to do to the damage of the said Plaintiff
of five hundred dollars.

Church & Willard
Attys for Pltff.

Account

Cash lent & advanced \$ 500.
" had and received 500.

Endorsed thereon

Filed March 10 1854

C. H. Johnson

And

And afterwards to wit, on the 21st day of March in the year last aforesaid the said Court being in session and it being one of the days of the late March Term of said Court the following proceedings were had to wit

John Sewell

vs
George Wright et al

Plaintiff
vs
Defendant

And now comes the defendant by Mr. Cline and on his motion the rule to plead herein is extended till Monday morning next

And thereafter to wit on the 27th day of March in the year last aforesaid the said Court then being in session as aforesaid the said defendant files his plea to the amended declaration as the same are signed following to wit

Harry Petrie et al

vs
John Sewell

Plas for Amended from

And the said defendants by C. W. Cline their attorney comes and defends the wrong and injury whereof and for

plea to the 1st 3^d 4th 5th and 7th Counts
in said declaration says Actio Non
because they say that they did not promise
and undertake in manner & form as
the said plaintiff in said County of his
said declaration hath thereby complained against
them and of this they put themselves upon the
County

And for other and further plea in
this behalf to the third Count in the said
declaration says Actio Non—because they
say that the said promissory Note in said
Count mentioned was not endorsed at the time
in said Count mentioned by said Executor and
Executrix to the said plaintiff. but was endorsed
some time in the year 1850 or 1851 and the said
defendants further aver that at the time of
said endorsement ^{the said} Henry Petrie was not
the Executor of the said James Hutchins
died as alleged in said Count but that on
the 29th day of November A.D. 1849 the latter
testamentary of the said Petrie were revoked
by Lindsey Joslyn Probate Justice of McHenry
County Illinois (who as Probate Justice had
Jurisdiction of said subject matter) as appears
by the records of the said County of McHenry
County and of this they put themselves upon

the County

McClure for defts
And the said Plaintiff doth the like

And for other and further plea in this behalf to
the fourth Count in said declaration the sd
defendants say actis now - because they say
that at the time of the said endorsement of said
promissory Note to the said Plaintiff by Emily
Hutchins Executrix of the last will and testament
of James Hutchins dec'd, to wit on the 7th day
of September 1848 Henry Petrie was also Executor
of the last will and testament of said James
Hutchins dec'd appointed by the said James
Hutchins in his life time by his last will and
together with the said Emily H. Hutchins Executrix
and that letters testamentary were granted to them
as executor & executrix before said endorsement
by the said Emily as in said Count alledged
and this they are ready to verify whereof they
pray Judgment

And for other and further plea in this
behalf to the fifth Count of said declaration
say actis now - because they say that the
said Emily H. Hutchins by the last will and
testament of James Hutchins dec'd did not
become the owner and possessor of said

promissory note as in said Count alledged
and this they are ready to verify whereof
they pray Judgment

C. M. Clure

for defts

Endorsed thereon

Filed March 27th 1854

J. H. Johnson

Clk

And thereafter to wit on the day and year
aforesaid the said Court then being in
session as aforesaid the said defendants filed
their demurrer to the amended declaration
in the words and figures following that is to
say —

Henry Petrie Et al
vs
John Newell

Demurrer to 2^d Count
of a^d Amended Starr
And the said defts by C
McClure their atty answer & defend the wrong
and injury when &c, and say that second
and sixth Counts of sd declaration and
the matters therein contained in manner and
form as the same are stated and set forth
are not sufficient in law for the said plaintiff
to have or maintain his aforesaid action

thereof against the sd debts and that they
the said ^{defendants} ~~debtors~~ are not bound by law
to answer ~~this claim~~ ^{or any other} ~~they are ready~~
to verify whereupon by reason of the insufficiency
of said Counts of 5^d declaration in this behalf
the said debts pray Judgment and that said
plaintiffs may be barred from having and
maintaining his aforesaid action ~~therefore~~
against them

C McClure for debts

And the said defendants according to
the form of the Statute in such cases made
and provided state and shew to the Court
the following causes of demurrer to
the sixth Count of the said declaration that
is to say that there is no ~~admission~~ ^{admission} in said Count
that the assignment therein mentioned was
made by endorsement on said note under
the hand of the said Emily A Hutchins

C McClure
for debts

Endorsed thereon

Filed March 27th 1854

A. H. Johnson

Ch

And thereafter and on the 29th day of March
in the year last aforesaid the said plaintiff
filed his demurrer herein in the name and signs
following to wit

John Howell } M^{rs} Mary, Circuit et
Mary Peter et al } March Term 1834
Demurrer to
amended Answer

And
the said plaintiff as to the said second
and third and fourth pleas to said amen-
ded declaration pleaded are not sufficient
in law to bar him from having and main-
taining his aforesaid action against them
and that he is not bound in law to reply
to the same and that he is ready to verify
wherein &c

And for cause of Demurrer to the said
second plea plaintiff says that said plea
concludes with verification whereas it should
conclude with a verification

2. Said plea is double.

Same objections to H
Church & Howell
for H

heard the parties therein overrule the said
demurrer to the second Count of said de-
claration and sustains the said demurrer to
the sixth Count of said declaration. It is
therefore ordered and considered by the
Court that the said plaintiff have and
recover of the defendants his costs and
charges about his journey in demurrer
expended and that he have execution therefor
and it is further ordered and considered
by the Court that the said defendants have
and recover of the plaintiff their costs and
charges about their demurrer expended and
that they have execution therefor and therefore
on motion of Church leave is given him
to amend the sixth Count of his declaration
and the said Count being amended the said
plaintiff by Church files his demurrer to the
second third and fourth pleas filed herein
by the said defendants in which the defendants
by McChesney join and the Court having heard
the parties therein sustains the same. It is
therefore ordered and considered by the
Court that the said plaintiff have and
recover of the defendants his costs and
charges about his demurrer expended
and that he have execution therefor. And
thereupon on motion of the defendants leave
is given them to amend their said second

Now and the said defendants stand by their
said third and fourth pleas. It is therefore order
ed, that the said plaintiff be not barred by any
thing in said third and fourth pleas contained
and now being joined this cause is submitted
to the Court for trial without the intervention
of a Jury by the agreement of the parties
and the Court having heard the evidence
and arguments of Counsel finds the issue
joined for the plaintiff and assess his
damages at the sum of three hundred &
seventy dollars and twelve Cents. It is then
so ordered and considered by the Court
that the plaintiff have and recover of the
defendants the sum of three hundred & seventy
dollars and twelve Cents his damages so
assessed as also his costs and charges herein
about this suit in this behalf expended
and that he have Execution therefor and then
upon Josiah Deight one of ^{defendants} ~~the~~ defendants
may an appeal herein which is granted on
condition that he enter into bond with John
McClure as security in the sum of Eight
hundred dollars within thirty days from this
date

And thereafter to wit on the 30th day of
November in the year last aforesaid it being
one of the days of the late November term of
said Court the said defendants filed their
bill of Exceptions herein in the words and figures following

Henry Petrie et al } In McHenry County
vs } Circuit Court March
John Russell et al Term A.D. 1854

Be it remembered that on this 30th day of March A.D. 1854 it being one of the days of the March Term of said Court

The above entitled Cause came on to be heard before the Hon J. G. Wilson Judge of the 3rd Judicial Circuit of the State of Illinois a jury being waived by the parties and the cause submitted to the Court for trial, when when the plaintiff introduced the following record & papers of the Probate Court of McHenry County

State of Illinois } Probate Court Special
McHenry County } Term August 25th 1848

At a special Court of Probate held at Woodstock on the 25th day of August 1848 Present Judge J. G. Wilson Probate Justice

Then came Emily H. Hutchins and Henry Petrie and presented the last will and testament of of James Hutchins deceased which was proved as follows.

State of Illinois } We and each of us do
McHenry County } solemnly swear by the
ever living God that we

my presence and heard the testator James
Hutchins acknowledge the will herewith an-
nected to be his last will and testament
and wished us to intrust the same with
in the presence of the other and in the presence
of the testator and that we did then and
there do believe the said testator was of sound
mind and memory at the time of signing
the same

Subscribed and sworn to before me this 23rd day
of August 1848

L Joslyn P.

Then follows the last will and testament
of James Hutchins as above proven in
these notes and signing to wit

In the name of God Amen
I James Hutchins of Hoogstock in the
County of McNairy and State of Illinois
do make publish and declare this my
last will and testament in manner and
form as follows to wit being perfectly sound
in mind and memory but weak in body
but considering the shortness and uncertainty
of this mortal life I give my soul in the
hands of my God and my body to be decently
interred in the grave to mingle with its mother
earth all my funeral and other necessary
expenses paid by administration whom I shall
hereinafter name and appoint to act and

and manage in the settlement of my Estate
with my administrator named and appoin-
ted hereinafter. I give and bequeath unto
my beloved wife Emily H all of my personal
property of every sort and kind together with
all my household furniture and all my
wearing apparel not exceeding in value of
one thousand dollars or if she should prefer
to have my dwelling house and the two lots
now enclosed by fence and on which the
buildings now stand and the thirty acres
of land which I bought of John Gould
situated north of the village of Woodstock
in said County instead of the above named
personal furniture & wearing apparel this shall
be her choice and my will and wish. Also
I give and bequeath unto my adopted son
Abner Marshall Hutchins the sum of five
hundred dollars when he shall become twenty
one years old provided he shall and continues
to be good and faithful to his mother and
family until twenty one years old. Also it is
my request that he shall be well educated
during his minority but not liberally
unless he should prefer some mechanical trade
in which case he may if thought advisable
by his mother and administrator. Also I
give and bequeath unto my Son James
Abner Sewell Hutchins the sum of five hundred

dollars
to be paid when he shall become twenty one
years old and to receive a good education
but not a liberal one unless it should be
thought best and advisably so by his mother
and administrator or any good mechanical
trade if thought best during his minority
by him and others concerned and interested
in the matter. I also give and bequeath
unto my daughter Emily Sophia Hutchins
the sum of five hundred dollars to be paid
when she becomes twenty one years old and
a good education during said time provided
however if in case she should choose to get
get married before she becomes twenty one
years old and she has made a good
choice in her selecting a good and faithful
consortium and one well understanding how
to manage and take care of her property
and his then in this case if it should be
thought best by her mother and administrator
or by some other suitable and interested for
her to judge then in this case she can have
her money within three months after her
marriage. Also in case of the death of any
of the three named children before they shall
become twenty one years old in all such case
or cases it is my wish to have their share
equally divided among the surviving ones
to be paid as above named. Also in case
my wife Emily should be taken away

and having no will of hers in such case
it is my wish further to have her share of
the property equally divided among the Children.
Also I further will and bequeath unto my
beloved wife Emily H. all of my estate both
personal and real not otherwise disposed
of at the time of my after having my debts
all paid to be at her disposal and control
so long as she shall remain my widow. And
further should she choose to marry any person
in such case it is my wish to have the yearly
income of all my estate to go for the support
of my Children and her during their minor
ship and also her property willed by me to her
to be at her decease divided equally among
my Children. I also appoint my wife Emily
H. my administratrix and Henry Petrie as
my administrator to advise and assist with
her in the settlement of this my last will
and testament hereby revoking all former
wills by me made In testimony whereof
I have hereunto set my hand and seal
to this my last will and testament in presence
of three witnesses this fourteenth day of February
in the year of our Lord one thousand eight
hundred and forty Eight
Seymour Senter and James Hutchins 
deposed in presence of
Daniel Blair Alvin Jones Mrs. Brown

And therefore the said Emily H. Hutchins
and Henry Petre filed their bond as executors
of the last will and testament of James Hutch-
ins deceased in the words and figures following
to wit.

Know all men by these presents that we Em-
ily H. Hutchins and Henry Petre principals
and Daniel Blair for security of the County
of Montgomery and State of Virginia are held,
and firmly bound unto the People of the State
of Virginia in the penal sum of six thousand
dollars current money of the United States
which payment well and truly to be made
and performed we and each of us bind our
selves our heirs Executors administrators jointly
severally and firmly by these presents. Witness
our hands and seals this 7th day of September
A.D. 1848.

The condition of the above obligation
is such that if the above bound Emily H. Hutch-
ins Executor and Henry Petre Executor of the
last will and testament of James Hutchins
deceased do make or cause to be made a
true and perfect inventory of all and singular
the goods and chattels rights and credits tenements
and hereditaments and the rents
and profits issuing out of the same of the said
deceased which have or shall come into the
hands possession or knowledge of the said
Emily H. Hutchins and Henry Petre or into

the possession or knowledge of the said County
of Hutchins of any other person for them and
the same to make do exhibit in the Court of
Probate for the said County of McHenry as
required by law and also make and render
a fair and just account of their doings and
things as such Executors to said Court when
thereunto lawfully required and to well and
truly fulfil the duties enjoined upon them
in and by the said will and shall moreover
pay and deliver to the person entitled thereto
all the legacies and bequests contained in
said will so far as the Estate of the testator will
thereunto extend according to the value thereof
and as the law shall charge them and shall
in general do all other acts which may from
time to time be required of them by law then
this obligation to be void otherwise to remain
in full force and virtue

Seal
Probate
Court

Orally H. Hutchins. E.S.
Henry Peter E.S.
Daniel Blaw Jr. E.S.

And thereupon letting testimony now
given to the said County of Hutchins and
Henry Peter Executors & Executor as aforesaid
in the now and signing following to wit
State of Illinois The People of the State
McHenry County of Illinois to all to whom
these presents shall come

Know Ye That whereas James Hutchins
late of the County of McHenry and State
of Illinois died on or about the tenth day
of March A.D. 1848 as it is said after having
made and published his last will and testa-
ment a copy whereof is herewith annexed
lying at the time of his death property in
this State which may be lost destroyed
or diminished in value if speedy care be
not taken of the same and inasmuch as
it appears that Emily H. Hutchins and
Henry Peter have been appointed Executors in
and by the said last will and testament to execute
the same and to the end that the said property
may be preserved for those who shall appear
to have a legal right or interest therein and
that the said will may be executed according
to the request of the said testator We do hereby
authorize them the said Emily H. Hutchins
executing and Henry Peter as such Executors to
collect and receive all and singular the
Towns and chattels rights and credits
which were of the said James Hutchins
at the time of his decease in whosoever hands
or possession the same may be found in this
State and men and truly to perform and
fulfil all such duties as may be enjoined
upon them by the said will so far as there
shall be property and the law charge thereon
and in general to do and perform all other

acts which now are or hereafter may be requi-
red of them by law. Witness my hand and
Seal of Office at Woodstock this
Seventh day of September in the year of
our Lord 1848

Seal
Probate
Court

Samuel Joslyn
Probate Justice of the Peace

We do solemnly swear that this writing contains
the true and last will of James Hutchins deceased
so far as we know or believe and that we will
well and truly execute the same by paying
first the debts and then the legacies mentioned
therein as far as his goods and chattels will
thereunto extend and the law charge us and
that we will make a true and perfect inven-
tory of all such goods and chattels rights
and credits as may come into our hands
or knowledge belonging to the Estate of the
said deceased and render a fair and
just account of our executorship when
thereunto required by law to the best of our
knowledge and abilities so help me God
I now and subscribed Emily H. Hutchins Seal
to this day of Henry Titus Seal
September 1848 before me
Samuel Joslyn
P. J.

And also two promissory notes such the

enclosures therein which are in the
num & figures following
\$ 111.52

Woodstock 1 Jan 1846

For value received of James Hutchins
My promise to pay him or his order one
hundred and eleven 52/100 dollars on demand
and interest annually

For the McHenry County Printing Company

James Hutchins

Henry Peter

Endorsed on back

J. C. Burr

Witnessed
James C. Burr

McHenry County Printing Company Note \$ 111.52
Due on Demand

Note As I described in bill of exceptions
I hereby assign the within note to John Bewick
without incurring any liability ourselves or on the
part of the estate of James Hutchins decd

Henry Peter Executor
of the estate of James Hutchins
Emily H. Hutchins decd
Executing of the estate of James
Hutchins decd

I hereby assign the within to John Bewick
Emily H. Hutchins Executing
of the Estate of James Hutchins decd
Woodstock Jan 15 1847

One day after date for value recd the the McHen
ry Co Printing Co promise to pay to J. C. Hutchins
order one hundred and two 33/100 dollars
with int
J. Dwight Treas
112.33

West County Printing Company No 11233
Note No 2 described in bill of Exceptions

We hereby assign the within note to John
Bevel without incurring any liability ourselves
or on the part of the Estate of James Hutchins deceased

Wm. Peter

Emily M. Hutchins

Executor & Equator of the Estate of James Hutchins
I hereby assign the within note to John Bevel
Emily M. Hutchins

Executor of the Estate of
James Hutchins deceased

to the introduction of which notes the defend-
ants by their Counsel objected which objection
was overruled and said notes admitted as
evidence to which opinion of the Court in
admitting said notes the defendants by their
Counsel then & there excepted which was all
the evidence in said Cause when the Court
rendered judgment against the defendants
and in favor of the Plaintiff for the sum
of three hundred and Seventeen dollars
and twelve Cents Damages & costs of
suit to which opinion of the Court in ren-
dering said judgment, the depts by their
Counsel then and there excepted and
prays that this his bill of exceptions may

be signed. Seals enclosed & made part
of the record which is done. No objection
was made to the notes in consequence of
variance between them & the declaration.

Saml J Wilson (Seal)

Endorsed them

Saml March 30 1854

J. H. Johnson etc

And afterwards writ on the 26th day of
April in the year last aforesaid the said
defendant ~~giving~~ filed his appeal bond in the
terms and figures following to wit

Know all men by these presents that the
Josiah Dought principal and Josiah
McClure security are held and firmly
bound unto John Sewell in the penal
sum of eight hundred dollars which
payment well and truly to be made to
and each of us hold ourselves our heirs
executors administrators and assigns jointly
jointly and severally by these presents. Witness
our hands and seals at Woodstock New Hampshire
County this 20th day of April A.D. 1854

The condition of the above bond is such
that whereas the above named John
Sewell did on the 29th day of March
last 1854 during the March Term of

The Circuit Court of McHenry County,
in the State of Illinois A.D. 1854 recover
a judgment against the above bounden
Josiah Dought and Christopher Mallory
Robert J. Schuyler George J. Kassin James
Asafield Franklin Safford William Sloan
Peter H. Dietz George H. Griffing Charles H.
Goodrich Calvin Spencer Charles Heynt Daniel
Blair Jr. Richard Parsons John J. Fitch and
Mellings & La Parie indebted with George
C. Dunn and others for the sum of three hun-
dred and seventeen dollars and twelve cents
damages and costs of suit from which said
judgment of the said Circuit Court the
said Josiah Dought has taken an appeal
to the Supreme Court of the State of Illinois.
Now if the said Josiah Dought shall pro-
secute his appeal with effect and shall pay
and satisfy the judgment interest and
costs and damages in case the said judg-
ment shall be affirmed in the said
Supreme Court then the above obligation
to be void else to remain in full force and
virtue

Taken and returned Josiah Dought *Test*
into before me this John McCham *Test*
26th day of April A.D. 1854
Attest Charles McCham

Endorsed thereon

at 4 P.M.

Filed April 26th 1854

J. H. Johnson

clerk

State of Illinois
McHenry County

I the undersigned
Clerk of the Circuit
Court in and for the said County and
State aforesaid do certify that the fore-
going is a true and perfect copy
of the records and proceedings in the
above entitled Cause that was adjudicated
upon, on the trial of said Cause as
appears by the record and files in this
office in said Cause.

Witness Joel H. Johnson Clerk
of our said Court and the seal
thereof at Woodstock this 8th
day of June A.D. 1854

Joel H. Johnson
Clerk

And now comes the said appellants
by C. M. Shaw Attorney and say
that in the record and proceedings
aforesaid there is manifest error
in this to wit

- 1st The Court erred in sustaining the demurrer
to the third issue of the depts. to the ~~amended~~
fourth Count of the amended declaration
it should have been sustained to fourth Count
- 2d The Court erred in rendering
Judgment for the plaintiff ^{in the same bill} on the
final hearing of said Cause.
- 3d The Court erred in rendering Judgment
for the plaintiff (in the Circuit Court)
in the absence of proof that the defendants
(with Combs & Hutchins dec'd) composed the
members of the printing Company as averred
in the declaration. and also that J. Seaight
was the Treasurer ~~of said~~ on the note of one
hundred and two dollars and $\frac{33}{100}$
- 4th The Court erred in rendering Judgment
for the plaintiff (in the Circuit Court) on
the note signed by James Hutchins Henry
Peterson and S. C. Brown Finance Committee
mentioned in a declaration. in the absence of proof
that the depts. together with Combs and Hutchins
dec'd composed the printing company

The Court Enca is rendering judy-
ment against all the debts and a
part having appraunt and are default
having been taken

James Henry Brown

as agreed in said declaration and
also that said Hutchins Brown & Petrie
were the Finance Committee and ^{had} autho-
rized to bind the Company

3th The Court erred in rendering the Judgment
aforesaid in manner & form aforesaid
for which errors and others in
said record manifest they pray
that the Judgment aforesaid be
reversed

C. M. Brown for
Appellants

6th The Judgment of the Court is against the
evidence

7th The Judgment of the Court is unsupported
by the evidence

C. M. Brown for
Plaintiffs

And now comes the said appellee of ~~the~~
Glover & Leach & says that in the record
of proceedings aforesaid there is no error
& this they pray may be expressed of by
the court,
Glover & Leach

67.
Josiah Dwight m. d. n.
vs.

John Travell

Record

1854
67

Filed June 14th 1854.

L. Leland Clk.

By P. K. Leland Depy.

12307
Prepared

.854

11880 for 1188
Ans 1218

Wright vs Fowler

1st Error. The court erred in sustaining demurrer to the
3rd plea to 4th Count

one executor may well assign note of Testator
9 Cow 34, 4 Hill 492, 11 John 21. = 513. 1 Wend 810

2nd William on ex ~~583~~ 810

2nd Error The Court erred in rendering Judgment for the plaintiff

3rd & 4th Error. The court erred in rendering Judgment for
the plaintiff in the absence of proof that the
defendants compared the printing Co. and of
of the authority of the Treasurer & Finance
Committee

Answer 1st The finding of the court
upon the evidence was not exceptive to

Answer 2nd The execution of the notes in manner
charge was not denied under oath
Stearns vs Farnsworth 2 Gil. 715.

Warren vs Chaubers et al 12 Ill 124

McHenry vs Cluffine 7 Bldg 41

11 Mass

96

5th Error The court erred in rendering Judgment
against all the defendants only a part having
been served

Ans. The record show pleas by all the
defendants.

6th & 7th Errors, The Judgment is against the evidence & is
unsupportive by the evidence

Ans the finding of the court upon the evidence
is not exceptive to or assignable for error

The receiving the notes in Evidence is not
assignable for error

Lorah Leewick
vs
John Newell } Appeal from Mr Henry

I do hereby enter myself security
for costs in this cause and acknowledge myself
bound to pay or cause to be paid all costs which
may accrue in this action either to the opposite
party or to any of the officers of this Court in pur-
suance of the Laws of this State

Dated this 12th June 1854

Wm. H. Murphy
Charles McLean

67.

Smith

Stowell

Read for Card

Filed June 14th 1884
L. Leland Clk.
By P. H. Leland Secy

1884 June 14th
J. H. Arnold
J. H. Arnold

Joshua Dwight imp'd &c

vs { appeal from Ab Henry
John Newell }

This is a suit on 2 promis-
ory notes - 1st note as follows
\$111.52 For value received of James Hutchins
We promise to pay to him or his order one hundred
and 2 Cents $\frac{52}{100}$ dollars on demand and
interest Annually. For The Ab Henry County
Printing Company

James Hutchins
Henry Petrie
J. C. Brown

Finance
Committee

The other note as follows

Brookstock Jan 15th 1847
One day after date for value rec'd The The Ab
Henry Co Printing Co promise to pay to Jas Hutchins
or Order One hundred and two & 33/100 dollars
with int J. Dwight Trust

The notes imp'd to be assigned by The
Executor & Executrix of the p'ce. Hutchins, who
is averring in the special Counts of said declaration
to have dec'd - Suit commenced in 1851 Declara-
tion contained 3 Counts 1 first on the above dis-
cussed notes 3 on an act stated - general issue
and 2 special pleas - Declaration amended by
leave of Court - filed 10th March 1854 by adding
7 Counts 6 Special on said notes and one com-
mon - Some of the Counts averring the notes to
have been assigned to the Plaintiff, by Emily
H Hutchins Executrix &c and others averring
the assignment to have been made by Henry
Petrie Executor & Emily H Hutchins Executrix
&c - The two special Counts of the original now

advised the making of the notes by the depts themselves and not by agents.

The 6 Special Counts of The amended Declaration advise the promise by Dwight Lusk &c. and by James Hutchins Henry Peter S.C. Brown Committee &c.

General issue to amended ~~case~~ 1st 2^d 3^d 4th & 5th Counts amended declaration - Special pleas to the 3^d 4th & 5th Counts demur to 6th Sustained amended demur to 2^d 3^d & 4th pleas to amended case Sustained 2^d amended. depts stand by the 3^d & 4th pleas. The sustaining the demur to the 3^d plea is assigned for Error. The fourth Count of the amended case advises the assignment of the note to the plaintiff by Emily Hutchins Executrix of James Hutchins dec'd &c. And the plea advises that by the last will & testament of Hutchins dec'd Henry Peter was appointed Executor as well as Emily H Hutchins Executrix - which fact is admitted by the demur - Can the assignment (by one of two Executors) of a promissory note - authorize the plaintiff to sustain an action in his own name on s^d note - we think not.

The most prominent question however is did the Court ~~err~~ - in rendering final Judgment for the plaintiff in the absence of proof that the persons sued together with Combs & Hutchins composed the Albany County Printing Company as advised in Declaration - and if that was not error did not the Court ~~err~~ in rendering Judgment in the absence of proof that Dwight had authority to sign s^d note to bind the Company in the one instance & that Hutchins Peter & Brown Finance Committee in the other - in support of the position that further proof was necessary on the part of the plaintiff.

To warrant a Judgment we refer to the following authorities

3 Vol Cushing's Reports Page 339. Thibaultman vs Thibault. Suit on promissory note - as follows
~~in Boston~~ ~~Thibaultman vs Thibault~~ Boston March 4-1845 For value received are the members of Company G 1st Light Infantry Reg 1st Brig 1st Div. Ch. Ch. Jointly & severally agree to pay C. S. Field or order One hundred and twenty nine dollars sixty nine cents on demand with interest \$129.69. Albert H. Thibault Treasurer for Company G - on a note suit was brought vs Thibault - Held that he was not personally liable without further proof - Court remarks on page 340 - But in order to bind any body by such a contract, two things must be proved. First that the party signing was empowered to make such contract; and second that the party sued was one of the number included in the description and bound by the power LC

Vol 13 Illinois Reports Page 647
Peterson vs Sturck

Louder vs Walpole Cuthers Edition 2nd 319

67

J. Knighton

J. Knighton

Brief of Plaintiff

Subscribed

Filed June 21. 1854.

L. Leland Clerk.

By P. K. Leland Depy.