

No. 12807 $\frac{1}{2}$

Supreme Court of Illinois

Chickering.

vs.

Raymond.

J. W. Chickering et al

vs.
Ray - w Raymen et al

3 In error
3
Prif.

This was an action below brought by the
defendants in error, trustees of Atlantic
& Thomas Byard - in error - to recover
the value of a certain promissory note
signed by Samuel Bates dated ~~May 29~~
~~185~~ December 29, 1851, payable in
90 days - for \$400. The plea is not
guilty - plead severally - and tried below
by the Court - without the intervention of
a jury - by the bill of exceptions it appears
that the plaintiffs to ~~introduce~~ main-
tain their case, introduced a deed of
assignment to them, from Alvan
Ware & Co - for the benefit of their Creditors
and the testimony of E. S. Harris - that
on the first of May 1852, he saw one
of the defendants at the Court house,
the same produced the receipt in
these ~~words~~ words:

And Chicago Feb'y 10, 1852
of Alvan Ware & Co Samuel Bates note
dated December 29 - 1851, of \$400 pay-
able in 90 days - as collateral
security for the payment of Alvan Ware
note of \$600 - + 13⁰⁰ cents in my hands
for collection in favor of Brewster &
Bates - I have received the same and
will deliver to Alvan Ware & Co & Peter
Bates & Co my receipt

on showing said receipt to Chickering
said James he asked if Chickering^x
James had the note in their possession.
James replied they had. Wintrop said
he came as the Attorney of Paymen
Ryerson to obtain said note. & asked
if they would give it up on payment
of the amount ~~specie~~ specified in the
receipt. James replied that the agreement
as he understood it believed it to be was
that the note was held for a further
claim against Allan Vane & Co, & they
would not give it up without that
being paid. He made a tender of
the amount specified in the receipt.
Wintrop subsequently in March September
1853, called on Mr Chickering presented
the same receipt & demanded payment
the note, tendering the money Chickering
said he would take money - but the
note was in possession in Court.
The defence proved that Brinkerhoff Wenton
March 6. 1852, recovered judgment against
Vane & Co. for \$131, 45. Execution issued
returning "nulla bona". That the depen-
dants as Atty of Brinkerhoff Wenton com-
menced judgment, on said note, May
16, 1852, & on the 9 day of September 1852
procured judgment on said note which
was then filed in the clerk's office. This
suit was in the name of Vane & Co.
The defendant introduced an agreement
between dated April 1853. of the
judgment of Brinkerhoff Wenton

12807