

12996

No. _____

Supreme Court of Illinois

Bogue

vs.

Melick

71641  7

STATE OF ILLINOIS,
52
SUPREME COURT,
Third Grand Division.

No. 188.

360

Repar

Edward A. Bogus
vs
Abraham Melick

Supreme Court
Third Division
April 1 1860

And now comes the said
defendant Abraham Melick by Barker
& Luley his attorneys & enters his
appearance & waives the issue
of Scire facias & hears cross in
said cause

Barker & Luley
Atty's

Supreme Court
Third Grand Division

E A Bogue
Up in view

Aban Thelick
deft in error

Appearance

Filed April 17 1880
L. Leland
Clerk

IN THE SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, 1860.

EDWARD A. BOGUE }
 vs. }
ABRAHAM MELICK. }

POINTS AND AUTHORITIES FOR THE PLAINTIFF IN ERROR.

The evidence shows that Melick put his name upon the note *out of the ordinary course of assignment and negotiability, at the inception of the contract, and before it was put into circulation by the makers.*

See the testimony of Jason L. Lee.

The plaintiff relies upon the rule of law, that "he who puts his name upon the back of a promissory note at the *inception* of the *contract*, and *before it is put into circulation*, is liable, *prima facie*, as a guarantor, or surety, or as an original promisor."

This rule is sometimes laid down as follows: "He who puts his name on the back of a note out of the *ordinary course of negotiability*, is liable *prima facie* as a guarantor, a surety, or an original promisor."

"If one who is not a party to a note puts his name upon the back of it, he is a surety, or guarantor, or original promisor."

Whether the contract of Melick is an original promise, or an undertaking of suretyship, or guaranty, the plaintiff is entitled to recover, either upon the common counts or upon the special count on the guaranty.

It is conceded, as is claimed by the defendant, that the position of Melick's name on the note is such as to raise the presumption, *prima facie*, that he contracted a liability as second endorser only, but it is insisted

that such presumption is rebutted by proof that *he never had any property in the note, could not therefore have assigned, endorsed or transferred it, and that he put his name upon it before it was put into circulation.*

The following authorities confirm the above rule :

Camden vs. McKoy, 3 *Scam.* 437.
Cushman vs. Dement, 3 " 497.
Carroll vs. Weld, 13 *Ill.* 682.
Klein vs. Currier, 14 *Ill.* 240.
Josselyn vs. Ames, 3 *Mass.* 274.
Nelson vs. Dubois, 13 *John.* 175.
Herrick vs. Carman, 12 *John* 159.
Campbell v. Butler, 14 *John* 349.
Riley vs. Gerrish, 9 *Cush.* 104.
White vs. Howland, 9 *Mass.* 314.
Cook vs. Southwick, 9 *Texas* 615.
Sylvester vs. Downer, 5 *Washb.* 355.
Bright vs. Carpenter, 9 *Ham.* 139.
Schneider vs. Scheffman, 20 *Mis.* 571.
Martin vs. Boyd, 11 *N. H.* 385.
Flint vs. Day, 9 *Vt.* 345.
Malbon vs. Southard, 1 *Heath* 147.
Wetheraw vs. Paine, 2 *Mich.* 555.
McGuire vs. Bosworth et al., 1 *La. Ann.* 248.
Penny vs. Pasham, 1 *La. Ann.* 274.
Champion vs. Griffiths, 13 *Ohio* 228.
Leonard vs. Wildes, 1 *Heath* 265.
Beckwith vs. Angel, 6 *Conn.* 324.
Story on Promissory Notes, § 473.
5 *S. & M.* 627.

In *Herrick vs. Carman*, 12 *Johns* 159, Spencer, Justice, says : "Had it appeared that the defendant endorsed the note for the purpose of giving Ryan credit with L. Carman & Co., then the endorsement might have been converted into a guaranty to pay the note, according to the decision in the Supreme Judicial Court of Mass., 3 *Mass.* 274."

By this test, Melick is a guarantor.

In *Riley vs. Gerrish*, 9 *Cush.* 106, Chief Justice Shaw says : "If a party not the indorser places his name in blank on a note, before it is negotiated or passed, and so before it has acquired the character of a contract, the holder may fill up the blank, so as to charge such indorser as a promisor and surety."

By this test Melick is a promisor or surety.

In *Cook vs. Southwick*, 9 *Texas* 615, the Court says: Where a person not the payee of a note, signs his name upon the back *at the time of its inception*, he is liable as an original promisor or surety."

By this test Melick is liable.

In *Sylvester vs. Downer*, 5 *Washb.* 355, Redfield, C. J., says, "that he who writes his name upon the back of a note, if he were not before a party to it, assumes the same obligations as if he wrote his name upon the face of the instrument."

By this test Melick is liable.

In *McGuire vs. Bosworth et al.*, 1 *La. Ann.* 248, it is said, "when a person not a party to a note puts his name on the back of it, he is a surety."

In the case in 20 *Mis.*, the same remark is made.

The only case inconsistent with the above rule is that of *Hall vs. Newcomb*, 7 *Hill* 416. This case was fully considered in the case of *Carroll vs. Weld*, 13 *Ill.* 682, and disapproved, as neither correct in principle nor sustained by the weight of authority.

It is difficult to conceive a reason for the signature of one who is not a party to a note, and has no property in it, unless it be to secure its payment, as surety, or promisor, or guarantor.

Charles Hitchcock

¹⁸⁸ Supreme Court ¹⁷⁴

E. A. Bogue

vs
Abraham Melick

Brief of Plff

Filed Apr 20, 1868

L. L. Lamm

Clerk

Chas. Hitchcock
Atty.

In the Supreme Court—3d Grand Division.

APRIL TERM, A. D. 1860.

EDWARD A. BOGUE.

vs.

ABRAHAM MELICK.

The defendant in error makes the following points :

“ When a note is payable to an individual or his order, and is endorsed by him in blank and in that situation is presented to another person for his accommodation endorsement, who endorses it, accordingly, the legal effect of his indorsement is to make him liable in the character of second endorser merely, and he can in no event be made liable to the first endorser.” 7 Hill, Hall vs. Newcomb, 415.

“ That the signature of a third person on the back of a note, after the payee has endorsed it, is evidence

of a contract to become responsible as second indorser." Camden vs McKay, 2 Scam. 447.

"This is the legal effect of such an endorsement and the case is not open to any intendment, certainly not to any presumption that the party meant to contract a different obligation." Seabury vs. Hungerford, 2 Hill, page 82.

"If the name of a third party is put upon the back of a note not with the intention of affording additional security to the payee but to give it currency for his benefit to enable him to negotiate it, he assumes the liability of second endorser." Kline vs. Currier, 14 Illinois 237.

The position of Melick's name on the note is such as to render him liable as second indorser, and in the absence of proof to the contrary it must be intended that he meant to contract a liability as a second indorser. We submit that in this case inasmuch as it does not appear that Melick was informed as to what use the payee, F. Dorsett, meant to apply the note, and the proof showing that Lee, the party to whom the payee delivered it, had no communication with Melick—it must be intended that Melick intended to contract only as second indorser—and that Lee re-

ceived it from Dorsett with the implied understanding, that Melick was liable only so far as the law would make him liable from the position his Melick's name was found upon the note, to wit: as second indorser.

It is submitted that in the cases heretofore decided by this Court, making a party putting his name upon the back of a note before or at the time of the delivery of it to the payee, liable as a guarantor, are cases differing from this, that in all those cases, the name of the third party was put upon the note as additional security to the payee—in this case Melick could in no event be liable to the payee, as the payee was one of the makers of the note, and Melick a mere accommodation endorser.

BARKER & TULEY,

For Deff. in Error.

188-172

Edward A. Byrne

vs

Abraham Melick

Defendants Brief

Filed May 7, 1860
Edelmon
Clerk

In the Supreme Court—3d Grand Division.

APRIL TERM, A. D. 1860.

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BARKER & TULEY,

For Def. in Error.

188-172

Edward A. Byrne

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Archie McChick

Drfts. brief

Filed Aug 7. 1860
L. Island
Clerk

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Charles Fitchcock

1868 1724
Supreme Court

Edward A Bogue
vs

Abraham Melick

Brief of Plff

Filed Apr 20, 1868

L. L. Combs
Clerk

Chas Hitchcock
Atty,

In the Supreme Court—3d Grand Division.

APRIL TERM, A. D. 1860.

EDWARD A. BOGUE.

vs.

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BARKER & TULEY,

For Deff. in Error,

188-172
Edward A. Byrne
7
Abraham Melick
Dfts. brief

Filed May 7. 1860
L. Veland
Ch.

Supreme Court of Illi-
nois: Third Grand
Division April Term
AD 1868

Edward A. Boquer

vs
Abraham Melick

And now comes
the said Edward A. Boquer by
Charles Fitchcock his attorney
& enters his appearance in the
above cause
Charles Fitchcock

188-172
Supreme Court

Bogus
vs
Pielick

Appearance

Filed April 17, 1860
L. Leland
Clerk

Chas Fitchcock
Atty

1.
United States of America
State of Illinois } S. S.
County of Cook }

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 -
begun and holden at the Court House in the City of
Chicago in said County and State, on the first Monday
being the third day of October, in the Year of our Lord
Eighteen hundred and fifty nine, and of the Independ-
-ance of the United States of America the Eighty fourth.

Present

The Honorable John M. Wilson Chief -
- Justice of Superior Court of Chicago
Van H. Higgins & Grant Goodrich Judges
Carlos Haren. Prosecuting Attorney
John Gray Sheriff of Cook County.

Attest Walter Kimball Clerk

Be it remembered, that heretofore wit
on the fourth day of March in the Year of our Lord
One thousand eight hundred & fifty nine, Edward
A. Bogue, by Gallup & Hitchcock his Attorney
filed in the office of the Clerk of the Cook County

Court of Common Pleas has Precipe for Summons
in words and figures as follows. To Wit

State of Illinois }
County of Cook } J. J.

Common Pleas Court
April Term A. D. 1859

Edward A Bogue }
v. J. }
Abraham Melick }

The Clerk of said Court will issue a
Summons in the above cause, directed to the
Sheriff of Cook County, in a plea of assumpsit re-
turnable at the April Term of said Court, A. D. 1859,
to the damage of the Plaintiff of six hundred Dollars.

Gallup & Hitchcock, Plaintiffs Attorneys

To Walter Kimball Esqr Clerk
Chicago March 4th 1859.

And afterwards to wit on the day and Year
aforesaid, there issued out of the Office of the Clerk
aforesaid, the Peoples writ of Summons, which said

23
Writ, and the Sheriffs return thereon, are in words & figures as follows. To wit,

State of Illinois }
County of Cook } J. J. The People of the State of Illinois,
To the Sheriff of said County - Greeting

We command you that you summon Abraham Melick if he shall be found in 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 April next, to answer unto Edward, A. Bogue, in a plea of trespass, on the case on promises, to the damage of said Plaintiff as he says in the sum of six hundred Dollars.

And have you then 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 4th day of March A. D. 1859.

Walter Kimball, Clerk.

Return.

Served by reading to the within named Abraham Melick this 15th day of March 1859.

John Gray Sheriff.
By H. C. Husing Deput

And afterwards to wit on the twenty fifth day of March in the Year aforesaid, said Edward A. Bogue filed in the Clerks Office aforesaid his Declaration, which is in words & figures, as follows, to wit,

Cook County Court of Common Pleas
of the April Term A.D. 1859

State of Illinois }
County of Cook }

Edward A. Bogue Plaintiff
in this suit by Gallup and Hitchcock his attorneys,
complains of Abraham Melick. Defendant who
has been summoned to answer the Plaintiff of a
plea of trespass on the case on promises.

For that whereas, heretofore, to wit, on
the twenty ninth day of September in the Year of our
Lord one thousand eight hundred & fifty seven, at
Chicago, to wit at said County of Cook, Folson
Dorsett, William Dorsett & Rudolph Dorsett, made
their certain promissory note in writing, bearing date
the day and Year aforesaid, and then & there delivered
the same to the said Folson Dorsett in and by which
said note said Folson Dorsett, William Dorsett
& Rudolph Dorsett, by the name, style & description
of Dorsett Bros & Co promised to pay to the order
of the said Folson Dorsett, thirty Days after the date

thereof the sum of Two hundred and sixty five Dollars and sixty one cents with interest at ten per cent after due for value received: And the said Folsom Dorsett then and there ^{& delivered the said promissory note and} endorsed ^{to the said defendant; and the} said defendant thereupon then and there endorsed & delivered the said promissory note to said plaintiff.

And the said plaintiff avers that the said Folsom Dorsett, William Dorsett & Rudolph Dorsett, at the time said note became due & thence up to the time of the commencement of this suit were and have continued to be insolvent and unable to pay the said note and that the institution of a suit against the said Folsom Dorsett, William Dorsett & Rudolph Dorsett for the enforcement and collection of said promissory note at the time the same became due or at any time since that time would have been unavailing by reason of such insolvency: By reason whereof and by force of the Statute in such case made and provided, the said defendant became liable to pay to said plaintiff the sum of money in said promissory note specified, & being so liable in consideration thereof then and there promised the said plaintiff to pay him the amount thereof when requested

For that whereas also the said Folsom Dorsett William Dorsett & Rudolph Dorsett, heretofore

6.

to wit, on the twenty ninth day of September in the Year of our Lord One thousand eight hundred & fifty seven at Chicago, to wit, at said County of Cook, made this certain other promissory note in writing, bearing date the day and Year aforesaid and then and there delivered the same to the said Folsom Dorsett, in and by which said note said Folsom Dorsett, William Dorsett & Rudolph Dorsett, by the name style & description of Dorsett Bros & Co promised to pay to the order of the said Folsom Dorsett Thirty days after the date thereof the sum of Two hundred & sixty five Dollars and sixty one cents with interest at ten per cent after due for value received.

And the said Folsom Dorsett then and there endorsed and delivered the said promissory note so endorsed to the said defendant: and the said defendant thereupon then and there endorsed and delivered the said promissory note to said plaintiff. And the said plaintiff avers that the said Folsom Dorsett, at the time said note became due and thence up to the time of the commencement of this suit was & has continued to be insolvent and unable to pay the said note and that the institution of a suit against the said Folsom Dorsett for the enforcement and collection of said promissory note, at the time the same became due or at any time since that time would have been unavailing by reason of such insolvency. And the said Plaintiff further avers that at the time said note —

became due the said William Dorsett & Rudolph Dorsett had left the State of Illinois and have since continued to reside without the limits of said State. By means whereof, and by force of the statute ^{in such case} made and provided the said defendant became liable to pay to said plaintiff the sum of money in said promissory note specified, & being so liable in consideration thereof then & there promised the said plaintiff to pay him the amount thereof when requested.

For that whereas also the said Tolson Dorsett, William Dorsett & Rudolph Dorsett heretofore met on the twenty ninth day of September in the Year of our Lord One thousand eight hundred & fifty seven, at Chicago, to wit, at said County of Cook, made their certain other promissory note in writing bearing date the day & year last aforesaid, and then and there delivered the same to the said Tolson Dorsett in & by which said note, ^{said} Tolson Dorsett William Dorsett & Rudolph Dorsett, by the name, style & description of Dorsett Bros & Co promised to pay to the order of the said Tolson Dorsett, Thirty days after the date thereof, the sum of Two hundred & Sixty five Dollars & Sixty one cents with interest at ten per cent after due for value received: And the said Tolson Dorsett then & there endorsed and delivered the said promissory note so endorsed to the said plaintiff;

11

at the maturity thereof and then and there under-
took and promised the plaintiff to pay him the
same according to the tenor and effect thereof.

By reason whereof and by force of the Statute in such
case made and provided the said defendant
became liable to pay to said Plaintiff the sum
of money in said promissory note specified, &
being so liable in consideration thereof then &
there promised the said plaintiff to pay him the
amount thereof when requested.

For that whereas also the said Folsom
Dorsett, William Dorsett & Rudolph Dorsett
heretofore to wit, on the twenty ninth day of Sep-
tember in the Year of our Lord one thousand
eight hundred and fifty seven, at Chicago,
to wit, at said County of Cook made their cer-
tain other promissory note in writing bearing
date the day and Year aforesaid, and then and
then delivered the same to the said Folsom
Dorsett, in and by which said note Folsom
Dorsett, William Dorsett and Rudolph Dorsett,
by the name, style and description of Dorsett Bro
& Co promised to pay to the order of the said Folsom
Dorsett. Thirty days after the date thereof, the
sum of Two hundred and sixty five dollars &
sixty one cents, with interest at ten per cent after

12) due, for value received: And the said Folsom Dorsett, then and there endorsed and delivered the said promissory note to the said plaintiff: And before the delivery of the said note by the said Folsom Dorsett to the said plaintiff and before the said note was issued or put into circulation by the said Folsom Dorsett, William Dorsett and Rudolph Dorsett, the said defendant in consideration of that the plaintiff would forbear & give time to the said Folsom Dorsett on a debt then due and owing from the said Folsom Dorsett to the said plaintiff, guaranteed in writing upon the back of said note, the payment of the said note at the maturity thereof, and then and there undertook and promised the plaintiff, to pay him the same according to the tenor and effect thereof. By reason whereof and by force of the statute in such case made and provided, the said defendant became liable to pay to said plaintiff the sum of money in said promissory note specified, and being so liable in consideration thereof then and there promised the said plaintiff to pay him the amount thereof when requested.

For that whereas also the said Folsom Dorsett William Dorsett & Rudolph Dorsett heretofore to wit on the twenty ninth day of September -

13.

in the Year of our Lord one Thousand eight hundred and fifty seven, at Chicago, to wit, at said County of Cook made their certain other promissory note in writing bearing date the day and year last aforesaid and then and there delivered the same to the said Folsom Dorsett, in and by which said note said Folsom Dorsett, William Dorsett & Rudolph Dorsett by the name, style, & description of Dorsett Bro & Co. promised to pay to the order of the said Folsom Dorsett, Thirty days after the date thereof, the sum of Two hundred & sixty five Dollars & sixty one cents with interest at ten per cent after due for value received: and the said Folsom Dorsett then and there endorsed and delivered the said promissory note to the said plaintiff: and before the delivery of the said note by the said Folsom Dorsett to the said plaintiff, and before the said note was issued or put into circulation by the said Folsom Dorsett, William Dorsett & Rudolph Dorsett, the said defendant in consideration that the said plaintiff would forbear and give time to the said Folsom Dorsett, William Dorsett & Rudolph Dorsett, on a debt then due and owing from the said Folsom Dorsett, William Dorsett & Rudolph Dorsett to the said plaintiff guaranteed in writing upon the back of said note the payment of the same at the maturity thereof, and

14. then and there undertook and promised the plaintiff to pay him the same according to the tenor & effect thereof. By reason whereof and by force of the Statute in such case made and provided, the said defendant became liable to pay to said Plaintiff the sum of money in said promissory note specified, & being so liable in consideration thereof then and there promised the said Plaintiff to pay him the amount thereof when requested.

And whereas also, the said defendants afterwards, to wit, on the first day of March in the Year of Our Lord One thousand eight hundred and fifty nine, at the place aforesaid accounted together with the said Plaintiff of and concerning divers other sums of money before that time due and owing from the said defendant, to the said Plaintiff and then and there being in arrear & unpaid, and upon such accounting the said defendant, then and there was found to be in arrear and indebted to the said Plaintiff in the further sum of Four hundred Dollars of like lawful money as aforesaid. And being so found in arrear and indebted to the said Plaintiff said Defendant, in consideration thereof afterwards, to wit, on the same day and Year last aforesaid and at the place aforesaid undertook and then

and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said defendant should be thereunto afterwards requested.

And whereas, also the said defendant, afterwards, to wit, on the day & year last aforesaid, at the place aforesaid was indebted to the said plaintiff in the sum of four hundred dollars, lawful money of the United States of America, for money before that time lent and advanced, by the said plaintiff to the said defendant and at the special instance and request of the said defendant, and for other money by the said Plaintiff before that time, paid, laid out and expended for the said defendant, and at the like request of the said defendant. And for other money by the said defendant before that time had & received to and for the use of the said plaintiff. And being so indebted the said defendant in consideration thereof afterwards, to wit, on the same day and year last aforesaid and at the place aforesaid, undertook & then and there faithfully promised the said plaintiff well & truly to pay unto the said plaintiff the said sum of money in this count mentioned, when the said defendant should be thereunto after -

wards requested.

Nevertheless the said defendant (although often requested &c, to wit, on the day when the said note became due and payable according to the tenor & effect thereof, & oftentimes since to wit, at the place aforesaid) has not yet paid the several sums of money above mentioned or any or either of them or any part thereof to the said plaintiff, but to pay the same or any part thereof to the said plaintiff, the said defendant has hitherto altogether refused and still does refuse to the damage of the said plaintiff of six hundred dollars, and therefore they - bring suit &c

Gallup & Hitchcock
Attys for Plff.

The following is a copy of the instrument of writing upon which the foregoing action is formed and is the only cause of action relied upon or claimed

17.

Chicago Sept 29. 1857.

" \$265. $\frac{61}{100}$

Thirty days after date for value received,
we promise to pay to Folsom Dorsett or order the
sum of Two Hundred Sixty five $\frac{61}{100}$. Dollars with
interest 10 per cent after due.

Dorsett Bro & Co.

Endorsed

" Folsom Dorsett "

" Abm Melick "

And afterwards to wit on the thirteenth day of
April in the Year aforesaid Abraham Melick
By J. A. Barker his attorney, filed in the office
of the Clerk aforesaid his certain Plea & affidavit
of merits, which are in words and figures as
follows, to wit,

Cook County Court of Common Pleas

Abraham Melick

vs

Edward A. Bogue

} April Term A.D. 1859

And the said Abraham Melick, defendant
in this suit by Joseph A. Barker, his attorney
comes and defends the wrong and injury when &c.

18.

and says that he did not undertake or promise in manner and form as the said Plaintiff hath above thereof complained against him. And of this he puts himself upon the Country.

Joseph N. Barker
Attty for Defendant

Sirs - Please to take notice that the said defendant, at the trial of the above cause, will insist upon and give in evidence under the general issue above pleaded, that said Folsom Dorsett, William Dorsett, and Rudolph Dorsett, did not under the name style & description of Dorsett Bro & Co. make the said promissory note in said plaintiffs declaration mentioned, that said Folsom Dorsett, the payee of said promissory note, was not at the time of the execution of the same, nor has he been, at any time, since a member of the said firm of Dorsett Bro & Co. but that said firm of Dorsett Bro & Co. at the time of the making of said note, was composed of said William Dorsett and Rudolph Dorsett together with one John Dorsett and one Folsom Dorsett Jr, that said Dorsett Bro & Co. at the time when said note became due, were not insolvent and unable to pay the said note as is alleged in said declaration, but that said Dorsett Bro & Co.

And afterwards, to wit, on the tenth day of October in the Year aforesaid, said day being one of the days of the October Term of ^{The Superior Court of Chicago} said Court the following among other proceedings was had and entered of record in said Court to wit,

Edward A. Bogus

of
Abraham Melick

Assumpsit

This day comes said plaintiff by Gallup & Hitchcock his attorneys, and said defendant by Barker & Hyatt his attorneys also comes and issues being joined herein by agreement of parties the cause is submitted to the Court for trial without intervention of a jury and the Court now ~~has~~ after hearing allegations and proof submitted & arguments of Counsel and being fully advised in the premises finds issues for said defendant. And thereupon said plaintiff submits his motion to set aside finding of the Court & for a new trial, which motion is overruled, whereupon said plaintiff enters his exceptions. Therefore it is considered said defendant do have and recover of said plaintiff his costs & charges by him about his defence in this behalf expended & have execution therefor. And thereupon on motion plaintiff leave is given him to file his bill of exceptions herein within thirty days from & after this day.

22.

And afterwards to wit on the Eighteenth day
of October in the year aforesaid said Edward C.
Bogue filed in the office of the Clerk aforesaid his
Bill of Exceptions in words figures as follows to
wit

Superior Court of Chicago
October Term A.D. 1859.

Edward A. Bogue }
vs }
Abraham Melick }

Be it remembered, that
at the October Term of the Superior Court of
Chicago, before the Honorable Van H. Higgins
the above entitled cause came on for trial, and at
the trial of the issue therein, at the said October
Term, to wit, on the tenth day of October. A.D.
1859. the plaintiff to sustain the issue on his
part, introduced the following testimony:

Jason L. Lee was called as a witness
on the part of the plaintiff, and was shown the
note declared on ⁱⁿ the above cause, and of which
the following is a true copy:

\$ 265 ⁶¹/₁₀₀

Chicago Sept 29. 1859

Thirty days after date, for value received,
we promise to pay to Wilson Dorsett, or order, the
sum of Two Hundred Sixty five ⁶¹/₁₀₀ Dollars with

24.

interest 10 per cent after due.

"signed, Dorsett Bro & Co."

Endorsed on the back as follows:

"Folsom Dorsett
"Abraham Melick"

And after being duly sworn he testified as follows:

I have seen this note before - I saw it the day it is dated. 29th September, 1854. - It was in my possession at that time - Folsom Dorsett wanted an extension of a prior debt of his paper - He said he could get another name - I remarked if he could get another name that was satisfactory it could be done. He mentioned the name of Mr Melick - I drew up the note & he went and got it signed - Folsom Dorsett, William Dorsett, and Rudolph Dorsett, composed the firm of Dorsett Bro & Co.

And thereupon the said defendant in open Court admitted his signature upon the back of said note to be genuine, and waived proof thereof. And thereupon the said note, was offered and received in evidence.

Upon cross examination, the said Jason L. Lee testified as follows:

"It was a renewal of an old note - Tolson Dorsett told me the names of the firm - He did not tell me that it was H. Dorsett Jr who was the member of the firm - I had the note in my possession three or four months after it became due - I called on Mr Melick several times and did not find him in - No communications passed between Mr Melick and myself - Dorsett Bros & Co kept a grocery on State Street - Tolson Dorsett had an office on LaSalle Street - He had a real estate sign out I believe - Perhaps I had the note until in the Spring, in February or March "

And the foregoing was all the testimony offered by the plaintiff on the trial of said cause, and thereupon the Court, a jury having been expressly waived, rendered judgment for the defendant upon the issue aforesaid, and thereupon the plaintiff moved for a new trial, which motion was overruled by the Court, and to the decision overruling said motion, the plaintiff then & there accepted and asked the Court to sign and seal this bill of

26.

exceptions, which was done.

We find the above bill
of exceptions correct
Barker & Guly }

Van H. Higgins Esq
Judge

State of Illinois
County of Cook } S.S.

I Walter Kimball Clerk of the
Superior Court of Chicago in and for said County
(formerly the Cook County Court of Common Pleas) 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 and
Judgment entered of Record in said Court in the
Case of Edward A. Pogue Plaintiff and Abraham
Melick Defendant.

In testimony whereof I hereunto
Subscribe my name and affix the
Seal of said Court at the City of Chicago
in said County this 5th day of March
A.D. 1860 Walter Kimball Clerk



Supreme Court
Edward A. Bogue

Abraham Melick

And now comes the
dependant in *McTear*
then is no more in *same*
records proceedings; and
we pray that said Judgment
be affirmed with costs

Barke & Bully
Sherman & Warts Borne
Ally in dependant
in *same*

In the Supreme Court
Third Grand Division
April Term AD 1860.

Edward A. Bogue

vs
Abraham Melick

And now comes the said Edward A. Bogue by Charles Hitchcock his attorney and says that in the records and proceedings aforesaid there is ~~is~~ manifest error in this, to wit:

1st The Court erred in finding the issues for the defendant.

2nd The Court erred in overruling the plaintiff's motion for a new trial.

3rd The Court erred in rendering judgment for the defendant.

Wherefore the said plaintiff prays that the said judgment may be annulled, reversed and held for nought and that he may be restored to the rights he has lost thereby.

Chas^r Hitchcock
attorney for Plaintiff

188-172
Edward A. Pogue

co.
Abraham Melick,

Manuscript Record

12996

Rec'd April 12, 1860
L. Leland
Clerk

\$6.50.