

14477

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

# Supreme Court of Illinois


Ingham

---

vs.

Hinds et al

---

71641  7

136

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division

No. 79

144.7

1863

*Handwritten signature*

*Handwritten initials*

*Handwritten signature*

Supreme Court of the State of Illinois,  
THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

ORVIS C. HINDS,  
JAMES A. HINDS, Appellants. } Appeal from the Court  
ALPHEUS H. HINDS, } of Common Pleas of the  
vs } City of Aurora.  
JOHN INGHAM, Appellee. }

Page of  
Record.

ABSTRACT OF RECORD.

- 10 Summons issued on the 10th day of July, 1862, and duly served on all of the defendants.
- 5 Declaration filed on the 6th day of June 1862, counting specially on a promissory note made by defendants jointly, and payable to the said plaintiff for the sum of three hundred dollars, dated the 19th day of December, 1854, and payable on the 1st day of May, (then) next with ten per cent interest.
- 11 Defendants plead the general issue.
- 12 At the October term, 1862. Jury waived, and cause submitted to the Court by agreement of parties, and at said term, after hearing the proofs, Court took the same under advisement, saving the rights of all the parties, and judgment to be rendered as of the said October term, with the right of either party to except.
- 15 Afterwards, to-wit: at the December Chancery term, of said Court, to-wit: on the 2d day of December, A. D. 1862, the Court rendered judgment against all the defendants, for the sum of \$276 87, said judgment to be entered as of the October term, A. D. 1862. Defendants excepted and prayed an appeal to the Supreme Court; Bill of Exceptions and Bond to be filed in sixty days from the said 2d day of December, A. D. 1862.

17. Bill of Exceptions filed on the 31st day of January 1863, and, states that plaintiff introduced in evidence a promissory note in the words and figures following :

- 2d. The Court erred in not giving judgment for defendants.
- 3d. The Court erred in overruling motion for new trial.
- 4th: Judgment is against law and evidence.

WHEATON & BROWN,  
Att'ys for Appellants.

136 . 79  
C. C. F. v. S. et al.  
Appellants

vs  
John Ingham  
Appellee

— 11 —  
Abstract

Filed April 21-1863  
G. Leland  
Clerk

The Court entered in overruling motion for new trial.  
The Court entered in overruling motion for new trial.

WHEATON & BROWN,  
Attorneys for Appellants.

~~Herbert~~

of the Court -

~~Suppose~~ Mr. Chief-Justice Catow delivered the opinion of the Court. This is merely a question of evidence. The testimony of the witness, ~~Suppose~~, was abundantly sufficient to authorize the Court to find, that at the time the security <sup>the note, and</sup> paid the thirty dollars endorsed upon ~~it~~ <sup>it</sup> at the time he promised that the balance should be paid, he saw the endorsement on the back of the note. If he did see those endorsements, then he knew all that we <sup>now</sup> know in relation to any agreement to extend the time of payment, for there is not a particle of <sup>proof of</sup> any such agreement, apart from the endorsement. He saw the endorsement which is now relied upon for a defence, and paid a part <sup>and</sup> promised to pay the balance, with a full knowledge of every fact which he now insists upon for a defence. He thereby waived all defences which such facts would constitute, so that it is not necessary for us now to decide whether the proof shows an agreement to extend the time of payment or not. The judgment is affirmed.

The whole Court concurred.

Judgment affirmed.

Hinds  
in  
Lyrahon

Opinion  
Leaton

OK

Records Book 13  
12 67

Oros C. Ainds  
 James A. Ainds  
 & Alpheus H. Ainds  
 Appellants  
 is  
 John Ingham  
 Appellee

The Supreme Court  
 of the State of Illinois  
 Third Grand Division  
 April Term A.D. 1863

Argument of Appellants  
 This was an action brought by the  
 Appellee John Ingham against the  
 Appellants, in the Court of Common  
 Pleas of the City of Aurora, 2<sup>d</sup>  
 founded on a promissory note, made  
 by the Appellants & payable to the  
 Appellee. Judgment was rendered  
 against the defendants in said  
 Court for the sum of \$76.87, the  
 amount of which judgment is  
 conceded to be correct, provided the  
 plaintiff could recover anything.

This note is as follows

"Aurora Sept. 19<sup>th</sup>  
 1854. We jointly promise to pay  
 John Ingham or order Three Hundred  
 Dollars, on the first day of May  
 next, at ten per cent interest for  
 money loaned"

O. C. Ainds  
 J. A. Ainds  
 A. H. Ainds, Secy.

On the back of this note when the same was offered in evidence by the plaintiff, was the following indorsement, among others,

"Rec'd on the within note, in full for interest to Sept. 19<sup>th</sup> 1858. the time of the note extended to that time. Aurora Oct. 21<sup>st</sup> 1857."

A part of this indorsement, to-wit: "the time of the note extended to that time", was erased by drawing a pen through it, and the word "Error" was written immediately after the erasure.

As to who made this erasure, I think the testimony of McArthur settles clearly. He testifies (see page 19 of Record) that on the 21<sup>st</sup> day of October 1857, he wrote this indorsement on this note, that it then read, "Rec'd on the within note in full for interest to Sept. 19<sup>th</sup> 1858, the time of the note extended to that time. Aurora Oct. 21<sup>st</sup> 1857." That he wrote it on the note at the time the indorsement is dated in his store. That O. C. Hinds and John Ingham came into his store together, and Hinds requested him

to write this indorsement. That he wrote it as it then read, at the request of C. C. Ainds; and that John Ingham was present, and that after writing this indorsement he handed the note back to the said C. C. Ainds and John Ingham. That there was no erasure on this indorsement when he handed it back, nor was the word "error" on it at that time. That he did not make the erasure, nor write the word "error." He also testified that he did not know, that A. J. Ainds knew of this extension of time of payment on this note.

The fact about this indorsement is undoubtedly this. C. C. Ainds and John Ingham agreed to extend the time of payment on this note to the 19<sup>th</sup> day of September, 1858, in consideration of the payment of interest on the same to that time, that C. C. Ainds paid the interest up to that time, and Marshall wrote this indorsement on this note as they requested, and in exact accordance with their agreement. But that John Ingham learned, when he went

to commence suit on this note, but  
this indorsement, as it then read, <sup>and</sup>  
discharge the surety, A. H. Hinds <sup>and</sup>  
so he or his attorney erased the part  
extending the time <sup>and</sup> wrote the  
word "error" on it.

This must have been the case, for  
this indorsement without reference  
to the part erased, shows the payment  
of interest in advance, from the 21<sup>st</sup>  
day of October 1857, to the 19<sup>th</sup> day of  
September 1858, and this payment of  
interest in advance, to the 19<sup>th</sup> of Sept.  
1858, affords a very strong implication  
that the time of payment was to be  
extended to that time. But it does  
not matter, in my judgment, whether  
there was an express agreement to  
extend the time of payment or not.

If O. C. Hinds paid John Ingham  
the interest on this note, in advance,  
to the 19<sup>th</sup> of Sept. 1858, and it was so  
accepted by Ingham, then no court  
would hold that Ingham could  
sustain an action on this note  
until the 19<sup>th</sup> day of Sept. 1858, by  
reason of this payment of interest in  
advance, then the surety A. H. Hinds  
was discharged as absolutely as though

until this time had elapsed, and if Ingham could not sustain an action on this note

there had been an express agreement, founded on a valuable consideration, to extend the time of payment to that time.

But the only question in this case, I suppose, is, not whether this agreement, on the back of this note released and discharged the surety A. H. Hindle, for this is settled by this court in the 20<sup>th</sup> Ill. Reports, Page 286. & 27<sup>th</sup> Id. Page 326., but whether A. H. Hindle by his subsequent acts has not waived his right to insist on such release or discharge.

The only evidence of such waiver is found in the testimony of S. S. Ingham brother of the plaintiff John Ingham.

He swears (see Record, Page 20) that on the 13<sup>th</sup> day of January 1857 A. H. Hindle paid on this note Thirty Dollars, and that afterwards he told the said S. S. Ingham that the note should be paid. That he, S. S. Ingham had the note to collect for his brother John Ingham, at this time. But it nowhere appears that the said A. H. Hindle knew at the time that he made this payment of \$30. or at the time he made the promise to pay

that there had been an extension of time on this note, or that he was released or discharged from his liability to pay, in any manner whatever.

The law is well settled that a part payment by an indorser of a note, or a promise to pay after he has been released, by the laches of the holder is no waiver of his release, unless it is shown that at the time he made the payment or promise, he had full knowledge of his release.

- See Leonard vs Gary - 10<sup>th</sup> Wend Page 507  
" Trimble vs Thorne - 16<sup>th</sup> Johns R. " 152  
" Jones & Mann vs Savage - 6<sup>th</sup> Wend. " 658  
" Crain vs Colwell - 8<sup>th</sup> Johns R. " 384  
" Patkison vs Ingleby - 5<sup>th</sup> Ds. " 385  
" " " 4<sup>th</sup> Mass. " 341  
" " " 7<sup>th</sup> Ds. " 449  
" " " 8<sup>th</sup> Pick. " 1

Griffin vs Goff - 12<sup>th</sup> Johns R. 428

And it is incumbent on the plaintiff to prove that the indorser knew of his release or discharge at the time he made a payment or a promise to pay, in order that it should amount to a waiver.

- See " " 10<sup>th</sup> Wend. Page 507  
" " " 6<sup>th</sup> Ds. " 658  
" " " 16<sup>th</sup> Johns R. " 152

A binding agreement to give  
time to the maker, made between  
him and the holder, releases and  
discharges indorsers, guaranties and  
sureties alike. Story on Promissory  
notes, Sec. 414. 20th Ill. Reports, page  
285 & 286. This case in the 20th Ill  
Reports establishes the doctrine that  
such an agreement discharges the  
indorser, no matter whether it was  
made before the maturity of the note,  
or after its dishonor, or after the  
indorsers have been charged by  
presentment and due notice of dishonor,  
and says; the same doctrine is  
applicable to sureties. Then if the  
doctrine with reference to the  
release of indorsers and sureties is  
the same, there can be no good  
reason why the doctrine with  
reference to the waiver of this release  
should not be the same. But it is  
decided in the 21st Ill. Reports, Page  
129. with reference to an alteration  
of a note, signed by a surety, that  
if the surety consents to the alteration,  
or if subsequently with full knowledge  
of all the facts, he approves of it, he  
remains bound. This case clearly

explain that if the surety did not  
have full knowledge of all the facts  
when he approved of or consented to the  
alteration, he would not be bound by  
such approval or consent. Now the  
real reason why a surety is released  
by a binding agreement to give time  
to the maker, is because such an  
agreement is an alteration of the  
contract; see 27<sup>th</sup> Ill. Reports Page  
326, then this case in the 21<sup>st</sup> Ill.  
is precisely in point, & establishes the  
doctrine that a part payment, or a  
promise to pay by a surety, who has  
been released by an extension of time  
of payment, will not waive such  
release unless, at the time of the  
payment or promise he has full  
knowledge of such release. This  
is undoubtedly the law. It is  
very obvious, that a party must  
know what his rights are before  
he can waive them.

The payment of interest on a  
note by a guarantor, will not  
waive the laches of the holder, unless  
the guarantor at the time of such  
payment had full knowledge of such

Laches. See *W. H. Metcalf* 552, 556  
Story on Promissory Notes, Sec. 486.  
7<sup>th</sup> Conn. 528. 12<sup>th</sup> Petal 497.

It will be seen by reference to all of the above cases, that a binding agreement to extend the time of payment, made by the maker and holder of a note, discharges and releases indorsers, guarantors and sureties alike. And that a part payment or a promise to pay, will be no waiver of such release, unless the party making the same, knew at the time that he was so released, no matter whether he be guarantor, indorser or surety.

In this case the judgment was against all the defendants, they were all sued. It appeared on the face of the note that A. H. Smith was surety. This was sufficient evidence of that fact. See 18<sup>th</sup> Wend. 376.

The indorsement on the back of the note made by Marshall, was sufficient evidence alone of ~~the~~ such extension of the time of payment as discharged and released

who surety A. H. Ainds, see 27 Ill. Reports Page 320. and there was no such waiver of this release by the surety as to make him liable on this note. C. A. Ainds was solvent at the time of the extension of the payment. A. was insolvent when suit was brought (see Marshall's testimony, Pages 19 & 20 of Record) then A. H. Ainds and surety, was damnified by this extension as the law presumes.

For these reasons we hold that the judgment against dependants in the suit below was erroneous and should be reversed

Wheaton & Brown  
Appellants Attys.

136  
119  
Cross C. Bonds  
& Sta  
John's Bryan

Argument of  
appellants

Filed April 21-1863

G. Leland

Clerk

Wheaton Brown  
Appellants Atty

Supreme Court of the State of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, 1862.

O. C. HINDS et al }  
vs }  
JOHN INGHAM. }

It appears to be settled in the cases cited from the 26th and 27th Ill., and there are many authorities elsewhere to the same effect, that a contract for a consideration between the principal of a note and the payee, to extend the time of payment, without the consent of the surety, discharges the latter. It does not seem to have been considered before that where there are several makers of a note, that there could not be a valid contract made, to change the time of payment, without the consent of all the contracting parties, why it should not require the agreement of all who made the contract, to unmake, or modify its terms, does not seem to us apparent.

Supposing this note was drawing a greater rate of interest than two of the makers desired to pay, could the other one without consulting them, make a valid contract with the payee to extend the time for several years, so as to bind them to pay interest against their will? If the co-holders are not bound by the contract, so that the two could not stop interest, how is the payee bound? Where is the mutuality?

If it be possible to imagine the contract changed as to one, and not, as to the other makers of the note, and that the one making it was alone bound by the contract, what was there to have prevented the surety from taking up the note and suing his principal. And this is the only reason mentioned as the effect of the contract between principal and payee, to extend the time, and the reason why he is discharged by the alteration of the contract.

If it be said that it should be presumed that a co-maker who was a principal acquiesced, why not that the co-maker who was surety did also. According to a correct morality, the surety is as much bound to pay at maturity as the principal.

In this case, only one of the principals in the note, made the contract with the payee for an extension of time. If the principal or principals may without the consent of the security modify the contract, can one of the several principals do it without the consent of his co-principals? Suppose there are three principals can the minority of them make an arrangement with the payee to change the terms of the contract without the consent of the majority? If it be settled that the principal may extend the time without the consent of the security it must be because the principal or principals are the real debtors. If so a less number than the whole of the parties principal cannot make a valid contract with the payee to change the terms of the contract. How O. C. Hinds has legally, as to his two co-makers, extended the time on this note without their consent, passes our comprehension to understand, but we suppose it must be so, and that the difficulty is that we do not understand the subject.

If, however, we concede the authority of O. C. Hinds to extend the time so as to bind his co-makers by the contract between him alone, on one side, and the payee on the other, we think the evidence shows consent at the time, or subsequently acquiescence by the surety, A. H. Hinds, and under the authority of the case in the 27th, this will hold him.

The witness, Ingham, says that on the 13th of January, 1859, A. H. Hinds paid him \$30, that an endorsement of the payment was made, and that witness showed him the endorsement after it was made. The Court will observe that the memorandum to extend the time is in close proximity to this endorsement of the \$30. It was not very far wrong for the Judge below to infer that A. H. Hinds saw at this time the memorandum to extend the time, if he had not before learned the fact. If so, and if, as the witness says, A. H. Hinds afterwards promised to pay the note, it was not very improbable that he paid the \$30, and promised to pay the remainder, with knowledge of the fact of extension. The date of the payment of the \$30, is so long after the maturity of the note, and so long after the expiration of the additional time given by O. C. Hinds, that it renders it highly probable that he had heard of the affair of the extension. Although it does not positively appear that the makers of this note all lived in Aurora, the fact that the note and payments were made there, that the witness, Ingham, who had the note for collection, and A. H. Hinds were neighbors, that the three makers have the same surname, that the Court had no power to send its process out of the city, 26 Ill., 432, &c., raises a presumption that the means of knowledge of the security were good, and that he would have been likely to have heard of the extension of time on a note he had signed. The circumstances attending the erasure of the words "A. H. Hinds," from the bill of items paid on the note, might if it was done in Court, have been calculated to produce belief that he had this knowledge. (Record, p. 18.) Your Honors know that there is much which transpires on a trial, which cannot be made to appear by the written account given in a bill of exceptions. Every lawyer knows that there are often controlling circumstances which cannot be reproduced by pen and ink only. There is no better way of conveying the idea than by calling it the pantomime of the trial. There are also concessions in the conversation of counsel and parties, made in the presence of the Court, which never get into a bill of exceptions. If the makers were relations living or transacting business together, in Aurora, this would have manifestly appeared to the Judge who in-

vestigated the facts. For these, and many other reasons that might be suggested, the rule is well established that this Court will not disturb a verdict, unless in a strong case of error by jurors in their conclusions from facts proved. (And the reason is perhaps stronger when an intelligent Circuit Judge performs the duty of a Jury.) It seems to us, therefore, that the weight of evidence below, was to the effect that the security consented at the time, or subsequently acquiesced in the extension, and with knowledge of it, promised to pay the note. At any rate your Honors cannot we think say that the inferences of his Honor Judge Parks were so far out of the way that your Honors, with so much less opportunity to judge accurately, will substitute your own conclusions for his.

LELAND & BLANCHARD, and J. G. BARR,  
For Appellee.

136 179

C. C. Birds

vs

John Ingham

Depts Brief

Filed May 7<sup>th</sup> 1813

J. L. Caud  
clerk

Page 1st

United States of America  
State of Illinois  
County of Kane  
City of Aurora

ss

Plas before the  
Honorable R. G.  
Montgomery the Judge  
of the Court of Common Pleas of the City of  
Aurora at a regular term of said Court  
of Common Pleas of the City of Aurora begun  
and held at the Court Room in the City  
of Aurora in said County and State on the  
second Monday (the ninth (9) day) of March  
in the year of Our Lord one thousand eight  
hundred and Sixty three and of the Indep-  
-endence of the United States the Eighty Seventh

Present the honorable

R. G. Montgomery the Judge of said Court

" Charles J. Matynes State Attorney

" J. H. Whipple Sheriff of Kane County

Attest Charles P. Johnston

clerk

The Court opened by proclamation

Be it remembered that <sup>the</sup> <sup>hertofore</sup> <sup>been</sup>

Page 2<sup>a</sup>

the fourth day of June A D 1862 the following  
precepts for summons was filed in the clerk  
office of said Court to wit

John. Ingham  
vs  
Orvis. C. Hernds  
James. A. Hernds  
Alphens. H. Hernds

The Court of Common Pleas  
of the City of Amherst  
June Term 1862  
Assumpsit  
Damages \$400

The clerk of said court  
will please issue Summons in a cause as  
aforesaid for said defendants returnable  
at June Term 1862 according to law  
Damages \$400.

May 30<sup>th</sup> 1862

J. L. Barr  
Plffs Atty

Filed June 4<sup>th</sup> 1862

L. P. Johnston clerk

And also on the same day  
to wit on the 4<sup>th</sup> day of June A D 1862 the  
following summons were issued out of and  
under seal of said Court directed to the  
Sheriff Hamden County to wit

State of Illinois }  
County of Adams } ss  
City of Amherst }

The People of the State of Illinois to the Sheriff of said County, Greeting;  
 We command you that you Summon Lewis, C. Hinds James, A. Hinds and Alphens. H. Hinds if they shall be found in your county personally to be and appear before the Court of Common Pleas of the City of Annona in said County on the first day of the next-term thereof to be holden at the Court House in the City of Annona in said county on the third Monday of June (A.D. 1862) to answer unto John Ingham in as much as to the damage of the said plaintiff as he says in the sum of Four Hundred dollars

And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same

Witness C. P. Johnston Clerk of our said Court and the seal thereof at Annona aforesaid this 4<sup>th</sup> day of June A.D. 1862  
 C. P. Johnston Clerk

Seal

Sheriff return on the back as follows to wit

Executed this writ in the City of Annona June the 5<sup>th</sup> 1862 by reading the same to James, A. Hinds and Lewis, C. Hinds

Page 4 <sup>th</sup>/<sub>7</sub> And on the same as above mentioned I served the within writ-upon Alpheus H. Kenis by reading the same to him

D. Clark Sheriff  
By J. D. Andrews Deputy

<sup>was</sup> Filed June 16<sup>th</sup> 1862

C. P. Johnston  
Clerk

And afterwards to wit on the 6<sup>th</sup>  
day of June A.D. 1862, the following declaration  
was filed in said cause in the clerk's Office  
of said Court to wit

State of Illinois  
Kane County } SS  
City of Aurora

The Court of Common  
Plea of the City of Aurora  
June Term A.D. 1862

John Ingraham plaintiff in  
this suit by J. C. Bass his attorney complains  
of Orvis C. Heine James W. Heine and Alphens  
Heine defendants in this suit being summoned  
& of a plea of Trespass on the case upon promises  
Now that whereas the said defendants  
(the said Orvis C. Heine by the name of O. C. Heine  
the said James W. Heine by the name of J. W. Heine  
the said Alphens C. Heine by the name of A. C. Heine)  
heretofore to wit on the nineteenth day of September  
A.D. 1854 at Aurora to wit at the City of Aurora  
aforesaid made their certain promissory note  
in writing bearing date a certain day and year  
herein mentioned to wit the day and year last  
aforesaid then and there delivered the said note  
to the said plaintiff By which said note the said  
defendants jointly promised to pay to said plaintiff  
or order Three Hundred Dollars on the first  
day of May (then) next at ten per cent interest

for money loaned and which period has long since elapsed

By Reason Whereof and by force of the Statute in such case made and provided the said Defendants became liable to pay to the said plaintiff the said sum of money in said note specified according to the tenor and effect of said note and being so liable the said Defendants in consideration thereof afterwards to wit on the some day and year and at the place aforesaid understood and then and faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in said note specified according to the tenor and effect of the said note And whereas also the said Defendants afterwards to wit on the 15<sup>th</sup> day of May in the year of our Lord One Thousand eight hundred and Sixty two at the place aforesaid were indebted to the plaintiff in the sum of four hundred dollars lawful money of the United States of America for goods wares and merchandise sold and delivered to the said Defendants by the said plaintiff at said Defendants request and also in the further sum of four hundred dollars for money loaned before that time lent and advanced by the said plaintiff to the said Defendants and at the special request interest and request of said Defendants And also in the further sum of four hundred dollars for

other money by the said plaintiff before that time  
paid laid out and expended for the said defendants  
and as the like request of the said defendants  
And also in the further sum of four hundred dollars  
for other money by the said defendants before that  
time had and received to and for the use  
of the said plaintiff And being so indebted  
the said defendants in consideration thereof after-  
wards to wit on the same day and year last 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 in this com-  
mentioned when the said defendants should be  
thereunto afterwards requested And whereas also  
the said defendants afterwards to wit on the same  
day and year last aforesaid and at the place afo-  
-said accounted together with the said plaintiff of  
and concerning divers other sums of money before  
that time due and owing from the said defendants  
to the said plaintiff and then and there being  
in arrears and unpaid and upon such ac-  
-counting the said defendants then and there being  
found in arrears and unpaid indebted to the said  
plaintiff in the further sum of four hundred dollars  
of like lawful money as aforesaid and being  
so found in arrears and indebted to the said  
plaintiff the said defendants in consideration thereof  
afterwards to wit on the same day and year

last 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 defendants should be therunto afterwards requested

Nevertheless the said defendants (although often requested &c to wit on the day when the said note became due and payable according to the tenor and effect thereof and oftentimes since to wit at the place aforesaid) have not yet paid the said 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 defendants have hitherto altogether refused and still do refuse to the damage of the said plaintiff of four hundred dollars and thereof the said plaintiff brings suit &c

J. C. Burr, plaintiff Attorney

Copy of account declared on  
 \$300 Aurora September 19<sup>th</sup> 1854

The jointly promise to pay John. Ingraham  
 a order three hundred dollars (\$300.00) on the  
 first of May next at ten per cent interest for  
 money loaned

Signed

A. C. Hinds

Signed

J. A. Hinds

Signed

A. H. Hinds Junr

## Defendants to Jeff. D. W.

To Goods. Wares & Merchandise &c	\$400,00
To Money lent & advanced &c	\$400,00
To Money paid laid out & expended &c	\$400,00
To Money had & received &c	\$400,00
To Money due on account stated &c	\$400,00

Filed June 6<sup>th</sup> 1862

C. P. Johnston clerk

And afterwards to wit on the 25<sup>th</sup> day of June A. D. 1862 the same being one of the days of the regular June Term A. D. 1862 of said Court the following among other proceedings were had in said Court and entered of record in said Court to wit

John Ingham

vs

Orvis. C. Hernds

James A. Hernds

Alphens. H. Hernds

Defendants

This day came the defendants to this suit by their attorneys and withdrew their plea in abatement herein and on motion of plaintiff that an alias summons issue herein

It is ordered by the Court that an alias summons issue herein

And afterwards to wit on the 10<sup>th</sup> day of July A D 1862, an alias summons did issue out of and under the seal of said Court directed to the sheriff of Rome County as follows to wit

State of Illinois }  
 County of Rome } ss  
 City of Annapolis }

The people of the state of Illinois to the Sheriff of said County greeting

We command you as we before commanded you that you summon David C. Hinds James, A. Hinds and Alpheus H. Hinds

if they shall be found in the City of Annapolis in your county personally to be and appear before the Court of Common Pleas of the City of Annapolis in said County on the first day of the next term thereof to be holden at the Court House in the City of Annapolis in said County on the third Monday of October (A D 1862) next to answer unto

John England in a plea of trespass on the case upon promises to the damage of said plaintiffs as he says in the sum of Ten. Hundred Dollars And have you then and there this writ with our endorsement thereon in what manner you shall have executed the same

Witness Charles P. Johnston  
 clerk of our said Court and

Seal

the seal thereof at Amoria  
aforesaid this 10<sup>th</sup> day of July AD 1862  
Chas. P. Johnston clerk

Entered on the back as follows to wit

Executed this writ this 18<sup>th</sup> day of September  
1862 by reading it to James A. Hinds and  
Alphens, H. Hinds and on the 20<sup>th</sup> day  
of September 1862 I served the same on  
Ovis. L. Hinds by reading the same to  
him  
Demarcus Clark  
Sheriff of Rome County

Filed September 20<sup>th</sup> 1862  
C. P. Johnston clerk

And afterwards to wit on  
the 21<sup>st</sup> day of October AD 1862 the same being  
one of the days of the regular October Term AD 1862  
of said Court the following plea was filed in  
the clerk's office in said cause to wit

State of Illinois }  
Rome County }  
City of Amoria }

The Court of Common Pleas  
of the City of Amoria October  
Term. AD 1862

John. Ingham }  
vs }

O. L. Hinds vs }

And the said

Defendants by Wheaton & Brown

their attorneys come and defend the wrong and injury & and say that they did not undertake and promise in manner and form as <sup>the</sup> said plaintiffs above they have complained against them and of this they put themselves upon the country

and the Puff with the  
liber J. S. Barr Puff atty

Wheaton & Brown  
Depts atty

Filed October 21<sup>st</sup> 1862

C. P. Johnston clerk

And also on the same day to wit the 21<sup>st</sup> day of October A D 1862 the same being one of the days of the regular October term A D 1862, of said Court the following among other proceedings were had in said Court and entered of record in said Court to wit

John Ingham  
vs  
Oavis. S. Heind  
James A. Heind &  
Alphew. H. Heind

Alphew. H. Heind vs  
John Ingham

This day came the parties to this suit by their attorneys and by agreement in this cause that they waive a jury and submit the same to the Court

submit the same to the court to be heard at some future day

The Affidavit of James A. Heine  
Copied in Bu. Master  
Charles P. Johnston Clerk

And afterwards to wit on the 23<sup>rd</sup> day of October A.D. 1862 the same still being one of the days of the regular October term A.D. 1862 of said Court the following affidavit was filed in the clerk office of said Court in said Court to wit

State of Illinois  
County of Kane  
City of Annona

The Court of Common  
Pleas of the City of Annona  
October term A.D. 1862

John. Ingham  
vs

James A. Heine  
Orvis. G. Heine  
Alpheus. G. Heine

James A. Heine of Annona Kane County Illinois being first duly sworn doth, <sup>say</sup> that he is one of the defendants in the above entitled suit and that he is unable to prove that the said Orvis. G. Heine borrowed the money for which said note was given and this defendant was only security upon the same and that there has been payments upon said note as affiant believes which have not been endorsed except by the

this affidavit copied by mistake

parties to this suit And this defendant knows  
of no witness by which he can prove all the  
above facts except by parties to this suit  
subscribed and sworn to  
before me this 23<sup>d</sup> day of }  
October 1862 } Jas. A. Hinds

Charles P. Johnston clerk

Filed October 23<sup>d</sup> 1862

C. P. Johnston clerk

And afterwards to wit on the  
27<sup>th</sup> day of October A.D. 1862 the same being one of  
the days of the regular October term A.D. 1862 of said  
Court the following among other proceedings were  
had in said cases and entered of record in  
said Court to wit

John. Pugham  
vs  
Orvis, C. Hinds  
James A. Hinds &  
Alphens, H. Hinds

Apparatus

This day came the parties  
to this suit by their respective attorneys and  
this case having been heretofore submitted  
to the Court and now coming on to be  
heard and the Court after hearing the evidence  
adduced proofs and arguments of counsel

Page 15<sup>th</sup>

and not being fully advised takes the same under advisement

And afterwards to wit on the 29<sup>th</sup> day of October A.D. 1862 the same being one of the days of the regular October Term A.D. 1862 of said Court the following among other proceedings were had in said cause and entered of record in said Court to wit

John. Brighton

vs

Cris. G. Heinds

James. A. Heinds

Alphus. H. Heinds

Chancery Court

This cause having been

heretofore taken under advisement by the Court and the Court not yet being fully advised takes the matter under still further consideration until Monday next the rights of all parties to be saved and judgment rendered at that time with rights of either party to except the same as if entered in term time

And afterwards to wit on the 2<sup>nd</sup> day of December A.D. 1862 the same being one of the days of the regular Chancery Term A.D. 1862 of said Court the following among other proceedings were had in said cause and entered of record

Page 16<sup>th</sup> in said Court to wit

John Ingham

vs

Ovis C. Hinds

James A. Hinds

Alpheus H. Hinds

Defendant

This cause having been heard at the October term AD 1862 and the Court having taken the same under advisement the rights of all parties to be saved and judgment rendered as of the October term with the rights of either party to except the same as if entered in term time

376.87 The Court now being fully advised finds the issues joined for the plaintiff and assess his damages at the sum of Two hundred and Seventy Six dollars and Eighty Seven cents the judgment to be entered as of October 27<sup>th</sup> AD 1862

Therefore it is considered by the Court that said plaintiff have and recover of said defendants his damages of Two hundred and Seventy Six dollars and Eighty Seven cents in form aforesaid assessed and also his costs and charges by him about this suit expended and have execution therefor

To which decision of the Court the defendants by their counsel at the time excepted and prayed an appeal to the Supreme Court of the State of Illinois

It is therefore ordered by the Court

Page 17<sup>th</sup> that said defendants file an appeal Bond in the  
sum of five hundred dollars security to be approved  
by the clerk to be filed in sixty days from this  
date also to file their Bill of exceptions herein  
in sixty days from this date

And afterwards to wit on  
the 31<sup>st</sup> day of January A.D. 1863, the following Bill  
of Exceptions was filed in the clerk office of said  
Court to wit

But it remembered that on the  
23<sup>rd</sup> day of October A.D. 1862 said day being one of the  
days of the said October term of said Court in the  
year aforesaid the said cause came on to be heard  
upon the issue aforesaid And a jury being sworn  
and the respective parties agreeing to submit said  
cause to the Court for determination without  
the intervention of a jury the plaintiffs introduced  
in evidence a certain promissory note signed  
by the respective defendants with note is in the  
words and figures following to wit

\$300

Acrona Sept 19<sup>th</sup> 1854

We jointly promise to pay John  
England or order three hundred dollars (\$300)  
on the first of May next at ten per cent interest  
for money loaned

O. L. Hinds

J. A. Hinds

O. L. Hinds Security

Page 18<sup>th</sup> upon the back of which promissory note at the time when the same was offered in evidence as aforesaid were written the following ~~contents~~ <sup>ments</sup>

Aurora Sept 4<sup>th</sup> 1856 Rec<sup>d</sup> on the within note two years interest Sixty dollars

Rec<sup>d</sup> on the within note in full for interest to Sept 19<sup>th</sup> 1858 (followed by the following words erased by drawing a pen across the same and marked over to wit) the time of the note being extended to that time "Eros"

Aurora Oct 21<sup>st</sup> 1857 Aurora Oct 21<sup>st</sup> 1857

Rec<sup>d</sup> on the within note thirty dollars Jan 13<sup>th</sup> 1859

The plaintiff then offered to admit in evidence as assets to said Note a certain <sup>account</sup> as follows 1859.

	July 3 <sup>rd</sup> Dr to	3.00
	" 17 " "	8.00
	Sept 2 Cash	3.00
	Oct 1 "	2.00
	Cash by J. A. Hinds	5.00
Jan 1860	to Cash	3.00
Feb 3	Clothes at Store & Cash by <del>John H. Hinds</del>	5.00
March 22	Cash	1.00
Sept 26	"	60.00
	Clothes by <del>John H. Hinds</del>	3.00
		94.00
		4.00

Page 19<sup>th</sup> Which Account was admitted in evidence by  
consent of the parties

Defendants then called as a  
witness, John N. Marshall who being duly sworn  
testified as follows

I have seen this note I put  
on the endorsement dated Oct 21<sup>st</sup> 1854 it is in my  
hand writing the endorsement which I wrote  
reads as follows Rec<sup>d</sup> on the within note in full  
for interest to Sept. 19<sup>th</sup> 1858 the time of the note  
being extended to that time Assn<sup>d</sup> Oct 21<sup>st</sup> 1854.  
I think I wrote this endorsement at the time  
of its date I have an indistinct recollection  
as to whose direction I put on the endorsement  
O. G. Heide and the plaintiff were present I  
think they came into my store and Heide hand-  
-ed me the note and told me to make the endow-  
-ment I think that the other defendants were  
not present Don't know that O. G. Heide  
knew that the time on said note was extended  
my recollection in the matter is indistinct  
The word error is not in my hand writing I did  
not write the word error or make the erasures on  
said endorsement I handed the note to the plain-  
-tiff, <sup>and</sup> O. G. Heide after I wrote the endorsement and  
there were no erasures on it then at the time I made  
the endorsement I think O. G. Heide was solvent

Page 20<sup>th</sup> now I think he is not now

The plaintiff then called  
S. S. Ingraham as a witness who being duly  
sworn testified as follows I wrote the last  
endorsement on this note that is the one of thirty  
dollars dated January 13<sup>th</sup> 1859 the thirty dollar was  
paid to me by the defendant A. H. Heide at  
the time it was endorsed It was at my house  
he paid this thirty dollar I wrote the endorsement  
at the time it was paid think I got up from  
the table went and got the note and made  
the endorsement in the presence of said A. H. Heide  
think I then showed the endorsement to said  
defendant A. H. Heide on back of the said note  
reason is that it is my way of doing business  
to do so when I write an endorsement that  
the person may see that it is correct I do not  
recollect positive that I did in this case but  
think that I did

I collected the money for my  
Brother the plaintiff who was then gone to Iowa  
he left the note with me to collect A. H. Heide  
and I. were neighbors and I spoke to him  
about paying the note frequently after that  
and he told me that the note should be paid  
did not make any objection to it

Defendants also offered

Indorsements on back of note

This being all the evidence in the cause the court took the same under advisement by consent of parties until the next December term of said court And on the 2<sup>d</sup> day of December A.D. 1862 it being one of the days of said December term of said court The said court found the issues joined for said plaintiff and assessed the damages at the sum of Two Hundred and Seventy Six dollars and Eighty Seven cents and rendered judgment therefor to which the said defendants by their counsel then and there excepted And defendants thereupon entered on motion for a new trial which said court then and there overruled and said defendants by their counsel then and there excepted and prayed an appeal therefrom which granted

And inasmuch as the several matters hereinbefore stated do not otherwise appear the defendants by their counsel hereby pray that this Bill of Exceptions may be duly signed and stated and made a part of the record of said cause which is done

B. J. Parks *(Signature)*  
 Judge of the Court of Common  
 Pleas of the City of Cincinnati

Filed January 31<sup>st</sup> 1863

L. P. Johnston clerk

And also on the same day to wit on the 31<sup>st</sup> day of January A. D 1863 the following Appeal Bond was filed in the clerk office of said court to wit-

Know all men by these presents that we Orvis, C. Hinds Alphens H. Hinds and James, A. Hinds as principals and Corlis Hinds as surety are held and firmly bound unto John Ingham in the penal sum of five hundred dollars lawful money of the United States for the payment of which we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents Witness our hand and seal this 29<sup>th</sup> day of Jan A D 1863

The conditions of the above obligations is such that whereas at the last term of the Court of Common Pleas of the City of Anna to wit on the 2<sup>d</sup> day of December A D 1862 the said John Ingham did receive a judgment against the above bounden Orvis, C. Hinds Alphens H. Hinds James, A. Hinds for the sum of two hundred

and seventy six dollars and eighty seven cents from which said judgment the said Crvis, le, Heinds Alphens, He, Heinds and James He, Heinds have prayed an appeal to the supreme court of the State of Illinois

Now if the said James A, Heinds Alphens, He, Heinds and Crvis, le, Heinds shall duly prosecute their Appeal and shall pay the judgment costs interest and damage in case said judgment shall be affirmed by the said Supreme Court then this obligation to be void otherwise to remain in full force and effect

Alphens. He, Heinds	Seal
Crvis, le, Heinds	Seal
James A. Heinds	Seal
Curtis. Heinds	Seal

Copied in by mistake Char. P. Johnston

State of Illinois  
County of Kane } ss  
City of Anna

I Curtis Heinds surety named in the within Bond do solemnly swear that I am a freeholder within the state of Illinois and worth the sum of fifteen hundred dollars over and above all debts whatsoever owing by me subscribed and sworn to before Curtis Heinds me this 31<sup>st</sup> day of January A.D. 1868

Charles P. Johnston  
Clerk

Page 24<sup>th</sup>

Filed January 31<sup>st</sup> 1863

C. P. Johnston Clerk

STATE OF ILLINOIS, }  
COUNTY OF KANE, } ss.  
City of Aurora.

I, *Charles P. Johnston*

Clerk of the Court of Common Pleas, of the City of Aurora, in said City, County and State,  
do hereby certify that the above and foregoing transcript is a true, correct and complete  
copy of the *Records and the files* in a certain cause  
lately pending in said Court of Common Pleas of the City of Aurora, wherein.....

*John Ingham* is Plaintiff and  
*Orvis C. Rhine, Jas. A. Rhine & Alphonse H. Rhine* are Defendants as ap-  
pears to us of record.

Witness, my Hand and Seal of Our  
Court, at the City of Aurora, in said County  
and State this *Sixteenth* day of

*April* A. D. 1863

*Chas. P. Johnston* CLERK.



Court of Common Pleas, Aurora,

*John. Bingham*

vs.

*Devis. C. Hinds*

*et al*

Copy of Record

Filed this .....day of

.....A. D, 1862.

.....Clerk.

Fees.

*47* Folios. *11*.....*47.11*

Cert. and Seal.....*5*

*Stamp*.....*5*

*\$5.10*



*Page 2 of 4*

Orris C. Hinds	}	The Supreme Court of
James A. Hinds		the State of Illinois
Alpheus H. Hinds		3 <sup>d</sup> Grand Division
appellants		April Term A.D. 1863
is		
John Ingham	}	
appellee		

And afterwards toust on the 22<sup>nd</sup> day of April A.D. 1863 at the term aforesaid at Ottawa in the said state of Illinois Come the said appellants <sup>by Wheeler & Brown their attorneys</sup> and say that in the record and proceedings aforesaid and also in giving the judgment aforesaid there is manifest error in this toust, and

1<sup>st</sup> The Court, in giving judgment for the said appellee when by the law of the land the judgment ought to have been for appellants

2<sup>nd</sup> The Court erred in overruling motion for new trial

3<sup>d</sup> The judgment is against the law and the evidence

And the said appellants pray forth ~~errors~~ that judgment aforesaid for the errors aforesaid & other errors in the record aforesaid may be reversed <sup>might</sup> ~~and~~ <sup>Wheeler & Brown</sup> appellants' attorneys

156 119  
Common Pleas Aurora

John . Ingham

vs

Orvis. C. Hinds  
et als

---

Copy of Record

Filed April 21st 1863  
Leland  
Clerk

Fees

~~47~~ Folios 470

Cert & Seal 35

Stamp 5.00

---