

14771

No. _____

Supreme Court of Illinois

Anderson et al

vs.

Ball

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 37

J. W. Middleton & Co., Stationers, 196 Lake St.

*Anderson
X
Full*

SUPREME COURT,

3rd Grand Division,

April Term, A. D. 1864.

BENJAMIN ANDERSON
HERRICK R. HALSEY and
MILTON WARREN, Partners,
composing the firm of Anderson,
Halsey & Co.,

VS.

PLOWDEN H. BALL and
EDGAR F. GRIFFIN, Partners,
composing the firm of Ball & Griff-
in.—Appellees.

APPEAL FROM BUREAU COUNTY.

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ABSTRACT OF RECORD.

This was an action of Assumpsit brought by the appellees against the said plaintiffs as partners, to the March Term, A. D., 1863, of the Bureau County Circuit Court.

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Appellees filed their declaration declaring specially upon a note alleged to have been made by said plaintiffs, as partners, composing the firm of Anderson, Halsey & Co., to the appellees, and filed with, and as a part of said declaration, the usual common counts:

Copy of note and account appended to declaration.

At said Term a Rule was taken upon the plaintiffs below to file a more specific bill of particulars, and the cause was continued.

On the 5th of May the plaintiffs below filed a more specific bill of particulars.

At the August Term, 1863, a rule was taken on said Warren and the said Anderson, to plead to said declaration (there being no service on said Halsey.)

The said Warren and the said Anderson filed a plea in ~~an~~ abatement to the 1st count of said declaration, sworn to, which plea is the words and figures following:

BENJAMIN ANDERSON,
HERRICK R. HALSEY, &
MILTON T. WARREN.

Sued as co-partners compos-
ing the firm of Anderson,
Halsey & Co.

ats—Assumpsit.

PLOWDEN H. BALL &
EDGAR F. GRIFFIN, part-
ners, comprising the firm of
Ball & Griffin.

State of Illinois, Bureau County, ss.)
August Term thereof, A. D., 1863)

And now come the said defendants, Milton Warren & Benjamin Anderson, and as to the first count in said declaration defend the wrong and injury, when, &c, and pray judgment of the Writ, and said count in said declaration, because they say that the note in the first count in said declaration described was not made or executed by the said defendants, Milton Warren & Benjamin Anderson, as partners, joint obligors or payors, together with their said co-defendant, or otherwise as alleged in the first count in said declaration. And the said defendants, Milton Warren & Benjamin Anderson, further aver that at the time the said note in said count described is alleged to have been made, the said defendants, Milton Warren & Benjamin Anderson were not members of the said alleged firm of Anderson, Halsey & Co., as alleged in said declaration, and they further aver that at the said time of the making of the said promissory note there was no such co-partnership in existence as the firm of Anderson, Halsey & Co., composed of Benjamin Anderson, Herrick R. Halsey and defendant Milton Warren, as alleged in said declaration; and all which these defendants are ready to verify, wherefore they pray judgment, &c

FARWELL & HERRON,
Att'ys for Anderson & Warren.

12 13 14 BENJAMIN ANDERSON,
HERRICK R. HALSEY &
MILTON WARREN, sued
as co-partners composing the
firm of Anderson, Halsey &
Co.

ATS.
PLOWDEN H. BALL, &
EDGAR F. GRIFFIN, part-
ners comprising the firm of
Ball & Griffin.

State of Illinois, Bureau County Circuit Court, }
August Term, A. D. 1863. }

Assumpsit.

Milton Warren & Benjamin Anderson, two of the above defendants, being first duly sworn
on oath, say that the foregoing plea, by them above pleaded, is true in substance and in fact.

Sworn to and subscribed before me this } MILTON WARREN,
4th day of August, A. D. 1863. } BENJAMIN ANDERSON,
JESSE EMERSON, J. P.

Int. rev.
5 cts.

14 15 They also filed the plea of the general issue, verified by affidavit to the
same count.

16 To the common counts said Warren and the said Anderson filed 1st, the
16 plea of the general issue. 2nd, the plea of the statute of limitations.

18 At the December Term, 1863. the plaintiffs below obtained leave to
reply double.

Thereupon the plaintiffs below, to the said plea of abatement, filed a rep-
lication, which is in the words and figures following, viz :

State of Illinois, } In Circuit Court,
County of Bureau. } Dec.'r Term, A. D., 1863.
PLOWDEN H. BALL &
EDGAR F. GRIFFIN, part-
ners, &c.
vs.
BENJAMIN ANDERSON,
HERRICK R. HALSEY, &
MILTON WARREN, part-
ners, &c.

19 20 And now comes said plaintiffs, and as to said first plea of defendant, Anderson and War-
ren, ought not to have judgement, &c., as therein prayed, because they say that prior to the
time in said plea mentioned, to-wit : On or about the said first day of August, A. D., eigh-
teen hundred and fifty-seven, at said county of Bureau, there was a co-partnership in exist-
ence, composed of said Benjamin Anderson, Herrick R. Halsey and Milton Warren, defend-
ants herein, doing business under the aforesaid name and style of Anderson, Halsey & Co., as
alleged in said declaration, and that protesting that said firm had not dissolved partnership,
and that such partnership had not been dissolved at the time in said first plea mentioned, and
that such firm had an existence at such time, these plaintiffs, nevertheless, aver that they took
said promissory note for a valuable consideration under the hand and signature of one of said
co-partners, viz : Said Herrick R. Halsey, in good faith and without notice, that said co-part-
nership was dissolved or had in any way ceased to exist, and this they are ready to verify,
wherefore, &c. By TAYLOR & PADDOCK,
their Attorneys.

20 21 And to the 2nd plea to the second count, plaintiffs below filed a replica-
tion denying the running of the statute of limitations.

21 Also to the same plea they filed a 2nd replication, setting up the same
facts substantially as in their 1st replication to said plea.

22 22 The defendants below, Warren and Anderson, filed separate demurrers, gen-

eral and special, to the replication of plaintiffs below to 1st special plea of defendants below, and also to the 2nd replication to the special plea to the common counts in said declaration.

24 And the court overruled the demurrer to the said replication to the said special plea to the 1st count in the declaration, and sustained the demurrer to the 2nd replication, to the 2nd special plea, and the defendants below, Warren & Anderson, stood by their said demurrer, to the replication to said 1st special plea.

25 And by agreement of the parties, a jury was waived, and a trial by the Court was had, and a judgement was rendered in favor of the plaintiffs below, for the sum of 472 and 98-100 dollars, and a motion for new trial made and entered.

26 Motion for new trial was overruled, and judgment was entered against said defendants.

27 Said defendants prayed an appeal to the Supreme Court, which was granted on their filing bond with Robt. Farwell and Jesse Emerson, as security within 30 days.

On the trial of said cause a bill of exceptions was taken, signed and sealed.

25 29 30 Said defendants objected to the introduction in evidence of the note sued on, because of a variance between the note and the special count in said declaration. The plaintiffs below then swore Geo. L. Paddock, one of their attorneys, and proved by him that the signature, "Anderson, Halsey & Co.," to the note sued on, was in the hand-writing of Herrick R. Halsey—in the opinion of witness—that he thought he had seen said Halsey write his name—that he thought he had received letters from said Halsey, which were acted upon in the course of business. That he had received papers purporting to be signed by said Halsey, which had been acted upon and treated by said Halsey as having been signed by him, and that he had no doubt that said signature was in the hand-writing of said Halsey, which, with said note, was all the evidence in the case and the note was thereupon received in evidence, and the said defendants then and there objected, and the objections were overruled. and the said defendants then and there excepted, and judgment rendered for the amount of said note, to the rendition of which judgment the said defendants then and there excepted, and made a motion for a new trial, and the Court thereupon overruled said motion, and the said defendants then and there excepted to the overruling of said motion.

20 31 32 The bond was filed within the time fixed by the Court, by said Warren.
FARWELL & HERRON, Att'ys for Warren.

ERRORS ASSIGNED.

1st. The Court erred in overruling the demurrer the replication to the 1st special plea of the defendants below.

2nd The Court erred in not sustaining said demurrer.

4.

- 3rd The Court erred in receiving said note in evidence.
- 4th The Court erred in rendering judgment for the plaintiffs below.
- 5th The Court erred in overruling the motion for a new trial.

¹¹⁶⁵
Milton Warren
implicated with
H C

MS
Flawden H Ball
et al

Abstract of
the Record

Filed Apr 13. 1864

J. Leland CM

The Court and is overruling the motion for a new trial.
The Court over in rendering judgment for the plaintiff below.
The Court and is overruling and now in original.

Supreme Court of State of Illinois
3d Grand Division

Milton Warren complainant
with Benjamin Anderson &
Harriet R. Halsey alleged
partners &c

Appellant
from

vs
Plowden H. Ball &
Edgar F. Griffin partners
comprising firm of
Ball & Griffin

Respondent

It is hereby suggested to the
Court that the above named
Appellant - Milton Warren, since
the appeal was perfected has
departed this life intestate, and
that Jesse Emerson has been
 duly appointed Administrator
of his Estate -

Robt. Farwell
Att'y.

37. 143
Milton Mann
imphaded & c

VS
Plowden & Bull
et al
L

Given May 5. 1864
J. Leland MR

State of Illinois,
Bureau County 3^{es} Be it remembered
that on the 27th day of January in the
year of our Lord one thousand eight hundred
and sixty three came Plowden H. Ball and
Edgar F. Griffin partners composing the
firm of Ball and Griffin into the Circuit
Court of said County of Bureau by Taylor
Paddock their attorneys and filed their
veracipe for summons in assumpsit in
the words and figures following, to wit:

State of Illinois, In Circuit Court
Bureau County 3^{es} March Term A.D. 1863
Plowden H. Ball & Edgar F. Griffin
partners composing the firm of
Ball and Griffin

Benjamin Anderson, Herrick P. } Assumpsit
Halkey & Wilton J. Warren partners } Damages
composing the firm of Anderson } \$600.00
Halkey & Co.

The Clerk will please issue
a summons in the above cause against
the above defendants, lay the action in
assumpsit and set Plaintiffs damages
at six hundred dollars according to Statute
Princeton Jan. 27th 1863

Taylor & Paddock
attys for Pliffs.

Whereupon summons issued out of said Court in the words and figures following, to wit:

State of Illinois } The People of the State
Bureau County } of Illinois, To the
Sherriff of said County,
Greeting:

We command you, That you summon Benjamin Anderson, Herrick P. Halsey & Milton T. Warren partners composing the firm of Anderson Halsey and Co. if they 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 the Town of Princeton, in said County, on the second Monday in the month of March next to answer unto Plowden H. Ball and Edgar F. Griffin partners composing the firm of Ball and Griffin in a plea of Assumpsit, to the damage of the said plaintiffs, as they say in the sum of Six Hundred dollars; and have you then and there this mit, with an endorsement thereon in what manner you shall have executed the same.

Witness George W. Rudcliffe,
Clerk of said Circuit Court, and
the seal thereof at Princeton, in said County,
this 27th day of January in the year of our
Lord one thousand eight hundred and
sixty three.

Geo. W. Rudcliffe Clerk.
By Cain D. Trimble Deputy.

Internal
Revenue
50 cts.

Which said summons was returned into said Court endorsed "I have served this writ this 13th day of February A.D. 1863. by reading to the within named Milton J. Warren, and Benjamin Anderson, the within named defendant, Herrick R. Haley is not found in my county

Philas Battey Sheriff of
Bureau County"

And on the 27th day of February A.D. 1863 came the Plaintiffs aforesaid by their attorneys aforesaid and filed their narration herein in the words and figures following, to wit:

State of Illinois } In Circuit Court of said County
Bureau County } 3rd March Term A.D. 1863.

Plowden H. Ball & Edgar F.

Griffin partners composing the firm of Ball & Griffin, by Taylor & Paddock their attorneys, complain of Benjamin Anderson, Herrick R. Haley and Milton J. Warren partners composing the firm of Anderson, Haley & company in a plea of account. For that whereas the said defendants on the eighth day of December A.D. Eighteen hundred and fifty eight at Ouda in the County of Bureau and State of Illinois made their promissory note in writing bearing date on that day, and delivered the

the same to the plaintiffs, and thereby, by and under the name by and under their firm name of Anderson, Halsey & Co. Four months after the date thereof they promised to pay to the plaintiffs by and under their firm name of Ball & Griffin, Three Hundred & fourteen ⁸⁰/₁₀₀ dollars for value received negotiable and payable without defalcation or discount and with interest from said date, at the rate of ten per cent per annum, which period hath now elapsed, and then and there by and under their firm name aforesaid then and there promised the plaintiffs by their firm name aforesaid to pay to them the plaintiffs, the amount of the said promissory note, according to the tenor and effect thereof, yet the said defendants have disregarded their said promises and have not nor hath any or either of them paid the said sum of money or any part thereof.

And for that whereas, also the said defendants on the first day of December A. D. Eighteen hundred and fifty nine at the said County of Bureau, was indebted to the plaintiffs in the sum of six hundred dollars for the price and value of goods then and there sold by the plaintiffs to the defendants at

their request.

And in six hundred dollars for the price and value of goods then and there sold and delivered by the plaintiffs to the defendants at their request.

And in six hundred dollars for the price and value of work then and there done, and materials for the same provided by the plaintiffs for the defendants at their request.

And in six hundred dollars, for money then and there lent by the plaintiffs to the defendants at their request.

And in six hundred dollars for money then and there paid by the plaintiffs for the use of the defendants at their request.

And in six hundred dollars for money then and there received by the defendants for the use of the plaintiffs.

And in six hundred dollars for money found to be due from the defendants to the plaintiffs on an account then and there stated between them.

And whereas the said defendants afterwards on the first day of January A.D. 1862 at the said County of Bureau, in consideration of the premises then and there promised to pay the said last mentioned several sums of money to the plaintiffs on request, yet they have disregarded their said promises and

6
Have not, nor has any or either of them
paid the said several sums of money, nor
either of them nor any part thereof, to the
damage of the plaintiffs of six hundred
dollars; and thereupon they bring suit &c.

By Taylor and Cadrock their attys.

Account of common counts

Dec. 1. 1859

Anderson & Calcey vs. Defendants to Ball & Griffin Plaintiff, &c.

To amt. for goods sold & delivered by Pltffs to
Defts on request \$600.00

Same to Same Drs.

To amt for work & materials for same
provided by Pltff for Defts \$600.00

Same to Same Drs.

To amt for money lent by Pltff
to Defts at their request \$600.00

Same to Same Drs.

To amt for money paid by Pltff
for Defts at their request \$600.00

Same to Same Drs.

To amt for money received by
Defts for use of Pltff \$600.00

Same to Same Drs.

To amt for money found to be
due from defts to Pltff on an a/c
stated between them \$600.00

7

Copy of note sued on
\$3480 Ouda (Ill.) Dec. 8 = 1858.

Four months after date we promise to
pay to the order of Ball & Griffin at their
office in Chicago Three Hundred & Fourteen ⁵⁰/₁₀₀
Dollars, for value received negotiable and
payable without defalcation or discount and
with interest from date at the rate of 10.
per cent per annum

(Signed) Anderson, Halsey & Co."

Pleas before the Honorable Madison C.
Hollister Judge of the Ninth Judicial Circuit
of the State of Illinois at a Term of the Circuit
Court within and for the County of Bureau in said
State, begun and held at the Court House in
Princeton in said County, on the second Monday
in the month of March (being the ninth day of
said Month), in the year of our Lord one thou-
sand eight hundred and sixty three

Present Hon. W. C. Hollister Judge

George W. Rascliffe Clerk

Titus Butler Sheriff

David P. Jones State Attorney.

On the fourth day of said term, to wit:

Thursday morning March 12th A.D. 1868

8 1/2 O'clock Court met pursuant to adjournment

Present same as yesterday.

(and as at first)

Clowdon H. Ball and Edgar S. Griffin
Partners composing the firm of
Ball & Griffin

vs.

Assumpsit

Benjamin Anderson, Herrick
R. Halsey & Milton J. Warren
Partners composing the firm of
Anderson, Halsey & Co.

And now comes the
defendant Warren by Farwell his attorney and
said Farwell files his affidavit herein in the
words and figures following, to wit:

State of Illinois Bureau County.	
Clowdon H. Ball & Edgar S. Griffin	}
Partners composing firm of Ball & Griffin	
vs.	
Benjamin Anderson, Herrick R.	}
Halsey & Milton Warren Partners	
composing late firm of Anderson	
Halsey & Co.	

Robert Farwell being duly
sworn on oath says he is the Atty for said
defendant Warren & that he cannot

9

plead in said cause to the common counts
unless a more specific Bill of items is
furnished & that without a more specific
Bill is appended to the declaration
defendant does not nor does his client
know ^{how} or what to plead to said common
counts Robert Lawrence

Sworn to & subscribed
before me this 12th day of
March 1863.

Geo. W. Rascliffe clk.
By Cairn D. Trimble Depy.

and on motion of
the said defendant a rule is taken on said
plaintiffs to file a more specific Bill of
particulars herein

And on the 16th day of said Term, to wit:
Thursday morning 8 o'clock March 26th A.D. 1863
Court met pursuant to adjournment
Present same as yesterday
(And as on first day)

Clowdon C. Ball & Edgar F. Griffin
partners composing the firm of Ball & Griffin
Benjamin Anderson, Herrick A. Calsey,
& Milton F. Warren partners composing the
firm of Anderson Calsey & Co.

Now come the said parties
by their attorneys aforesaid and on motion, it is considered
by the court that this cause be continued generally until
the next term of this court, and that the said Plaintiffs
have leave to file a Bill of Discovery herein.

And, to wit, on the 5th day of May A.D. 1863 came the Plaintiffs aforesaid by their attorney aforesaid and filed their Bill of Particulars herein in the words and figures following, to wit:

State of Illinois } In Circuit Court
Bureau County } August Term A.D. 1863
Anderson Halsey & Co.

To Ball & Griffin

1857. Aug. 24. For cash sent by Express	\$ 500.00
" " 26 " " " "	540.00
bal of int. to Oct. 1.	<u>3.74</u>
	\$ 1043.74

Cr.

1857 Aug 26. By proceeds of sales	540.75
Sept. 7 " " "	219.99
Bal of a/c	<u>283.00</u> 1043.74
Oct. 1. To Bal of a/c brot down	283.00
1858 Dec. 9. Interest to date	<u>31.80</u>
" " " Money due on a/c stated	\$ 314.80

The above is filed this 5. May 1863
in pursuance of the rule of Court in
Plowden H. Ball et al

v.

Benjamin Anderson et al
at the March Term A.D. 1863 of
said Circuit Court Taylor & Padonick
of counsel

11
Pleas before the Honorable W. E. Hollister,
Judge of the Ninth Judicial Circuit of the
State of Illinois, at a Term of the said
Circuit Court within and for the County
of Bureau in the State aforesaid begun,
held and continued at the Court House in
Princeton in said County on the second
Monday in the Month of August (being the
tenth day of the said Month) in the year of
our Lord one thousand eight hundred and
sixty three

Present Honl. W. E. Hollister Judge
George W. Radcliffe Clerk
Niles Butler Sheriff and
David P. Jones States Attorney

Plowdon H. Ball & Edgar T. Griffin
Partners composing the firm of Ball & Griffin
Assumpsit

Benjamin Anderson, Herick R.
Halsey & Wilton T. Warren Partners
composing the firm of Anderson, Halsey & Co.

Now come the said Plaintiffs by
Taylor & Paddock their attorneys and the defendants
come by Farwell & Heron their attorneys, and, on
motion of the said Plaintiffs a rule is taken
on the said defendants Warren & Anderson
to plead herein by Saturday morning next.

And on the Eighth day of said Term, to wit:
Tuesday Morning 8 o'clock August 18th A.D. 1863.

Court met pursuant to adjournment.

Present: the same as on the first day.

Plowden H. Ball &

Edgar F. Griffin partners composing
the firm of Ball and Griffin

vs

Assumpsit.

Benjamin Anderson, Herrick R.

Halsey & Milton J. Warren partners
composing the firm of Anderson,
Halsey & Co.

Now come the said defendants
Anderson & Warren by Samuel & Herron their
attorneys and file their pleas herein in the
words and figures following, to wit:

Benjamin Anderson, Herrick R. } State of
Halsey & Milton J. Warren sued } Illinois
as co-partners composing the firm } Bureau County
of Anderson, Halsey & Co } August term

at = Assumpsit

} thereof

Plowden H. Ball & Edgar F. } A.D. 1863
Griffin partners composing }
the firm of Ball & Griffin }

And now come
the said defendants Milton Warren &
Benjamin Anderson and as to the first

Count in said declaration defend the wrong and injury when &c. and pray judgment of the Wit and said Court in said declaration because they say that the note in the first count in said declaration described was not made or executed by the said defendants Melton Warren & Benjamin Anderson as partners joint obligors or payors together with their said codefendant or otherwise as alleged in the first count in said declaration. And the said defendants Melton Warren & Benjamin Anderson further aver that at the time the said note in said count described is alleged to have been made the said defendants Melton Warren & Benjamin Anderson were not members of the said alleged firm of Anderson Hulsey & Co. as alleged in said declaration and they further aver that at the said time of the making of the said promissory note there was no such co-partnership in existence as the firm of Anderson, Hulsey & Co. composed of Benjamin Anderson, Herrick B. Hulsey & defendant Melton Warren as alleged in said declaration; and all which these defendants are ready to verify wherefore they pray judgment &c.

Lawell & Herron

Atty for Anderson &
Warren.

Benjamin Anderson,

Herrick, E. Halsey & Milton

Warren sued as co-partners
composing the firm of Anderson
Halsey & Co.

} State of Illinois
} Bureau County
} Circuit Court
} August Term
} A.D. 1863

ats.

Clowden H. Ball, & Edgar T.

Griffin partners composing
the firm of Ball & Griffin

} Accusant

Milton Warren & Benjamin Anderson
two of the abovenamed defendants being
first duly sworn on oath say that the
foregoing plea by them above pleaded is
true in substance and in fact.

Sworn to and subscribed
before me this 4th day of
August A. D. 1863.

Jesse Emerson J.P. } Milton Warren
Benjamin Anderson

Int. rev.
5 cts.

And for a further plea in
this behalf as to the first count in said
declaration Milton Warren & Benjamin
Anderson come and defend the wrong and
injury when &c. and say they did not to-
gether with their said co-defendant promise
or undertake in manner and form as
they said Plaintiffs have above thereof
complained against them in said count in
said declaration alleged and of this they

15-

put themselves upon the country &c.
The Pltffs do } Farwell & Herron for
the like } Anderson & Warren
Taylor & Paddock

State of Illinois &
Bureau County }^{ss} Weilton Warren &
Benjamin Anderson two of the above-
named defendants being first duly sworn
say that plea by them lastly above pleaded
is true in substance and in fact.

Subscribed and sworn to }
before me this 4th day of } Weilton Warren
August A.D. 1863 } Benjamin Anderson
Jesse Emerson J.P.

Sub. Rev.
5. cents

And as to the second
count in said declaration the said defen-
dants Weilton Warren & Benjamin Anderson
come and defend the wrong and injury when &c.
say they did not together with their said
co-defendant promise or undertake in
manner & form as the said Plaintiffs have
in said count in said declaration com-
plained against them and of this they
put themselves upon the country &c.

The Plaintiffs
do the like by
Taylor & Paddock
their attys.

And for a further plea in this behalf as to the said 2nd count in said declaration mentioned the said defendants Weilton Warren & Benjamin Anderson say that as to the said supposed cause & causes of action mentioned in said 2nd count the said Plaintiffs ought not to maintain their aforesaid action thereof against them because they say that the supposed cause & causes of action in the said 2nd count mentioned did not nor did either of them accrue to the Plaintiffs at any time within five years next before the commencement of this suit and this the said defendants are ready to verify wherefore the said defendants pray judgment &c.

Fawcett & Herrow

for Warren & Anderson

Pleas before the Honorable W. E. Hollister
 Judge of the Ninth Judicial Circuit of the
 State of Illinois, at a term of the said Circuit
 Court within and for the County of Bureau in
 the State aforesaid, begun held and contin-
 ued at the Court House in Princeton in said
 County on the second Monday in the Month of
 December (being the fourteenth day of said
 Month) in the year of our Lord one thousand
 eight hundred and sixty three

Present George W. Radcliffe Clerk
 David P. Jones State Attorney
 and Silas Batley Sheriff

And now on this first day of said term
 are present as aforesaid, but the Court
 W. E. Hollister Judge of said Court is not
 present, and thereupon according to the
 Statute in such case made and provided,
 Court stands adjourned until tomorrow.

Tuesday morning 10 o'clock December 15th
 A. D. 1863.

Court met pursuant to adjournment.
 Present the same as yesterday and also
 the Court W. E. Hollister Judge of said
 Court.

Clowdon H. Ball and Edgar F.
Griffin partners composing the
Firm of Ball & Griffin

vs

Assumpsit.

Benjamin Anderson, Herrick R.
Halsey & Milton J. Warren partners
composing the firm of Anderson, Halsey & Co.

Now come the said parties
by their attorneys aforesaid and the Plaintiffs
file the affidavit of George L. Paddock herein
in the words and figures following, to wit:

State of Illinois }
County of Bureau } In Ct. Ct. Dec. T. 1863.

Ball & Griffin
vs

Anderson, Halsey & Co.

Geo. L. Paddock being sworn
says that he is one of the attys. for said Plaintiffs
& that said Plaintiffs reside at a distance from
said Bureau County & that affiant is not ad-
vised of the facts which will appear in proof
and believes it necessary for the interests of his
clients that they have leave to reply double to said
defts special pleas & further he says not.

Subscribed and sworn to
before me this 15th day of
December A.D. 1863.

Geo. L. Paddock

Geo. M. Paddock Clk
By Cair D. Thibault Defy.

And now on motion leave is given said
Plaintiffs by the Court, to reply double to both
of the pleas by the said defendants specially
plead herein. And now come the said
Plaintiff and file their Replication herein,
in the words and figures following, to wit:

State of Illinois }
County of Bureau } In Circuit Court
Dec. Term A.D. 1863.

Clowden H. Ball and
Edgar L. Griffin partners &c.

v.

Benjamin Anderson, Herrick C.
Halsey and Wilton Warren
Partners &c.

And now come said Plaintiffs
and as to said first plea of Defendants
Anderson and Warren above pleaded they
say said defendants Anderson and Warren
ought not to have judgment &c. as therein
prayed, because they say that prior to the
time in said plea mentioned, to wit, on or
about the first day of August A.D. Eighteen
Hundred & fifty seven at said County of
Bureau there was a co-partnership in
existence composed of said Benjamin
Anderson, Herrick C. Halsey, and Wilton Warren
defendants herein doing business under the
aforesaid name & style of Anderson, Halsey &c.

as alleged in said declaration and that protesting that said firm had not dissolved partnership and that such partnership had not been dissolved at the time in said first plea mentioned, and that such firm had an existence at such time these plaintiffs nevertheless aver that they took said promissory note for a valuable consideration under the hand and signature of one of said co-partners viz, said Herrick R. Halsey in good faith and without notice that said co-partnership was dissolved or had in any wise ceased to exist and this they are ready to verify wherefore &c by
 Taylor & Paddock, their attys.

And as to the second plea of said defendants to Melton Warren and Benjamin Anderson to the second count of said declaration above pleaded the Plaintiffs say they ought not for reason of authority therein contained to be barred of their said actions in that count mentioned because they say that said causes of action in that count mentioned and every of them did accrue to the said Plaintiffs within five years next before the commencement of this suit. in manner and form as said Plaintiffs

Have above alleged and this they pray
may be enquired of by the country &c
by Taylor & Paddock attys.

And for a further Replication to said
second plea and by leave of court had
and obtained the said Plaintiffs say that
for anything in that plea alleged they
ought not to be barred of their aforesaid
actions in said second count set forth.
because they say that within five years
next preceding the commencement of
this suit, to wit, on the eighth day of
December A. D. 1858 at the County & State
aforesaid, the said defendants in considera-
tion of their aforesaid indebtedness again
promised to pay the same to the said
Plaintiffs at their office in Chicago four
months after that time with ten per cent
interest which period has now elapsed.
Which said Plaintiffs are ready to verify
wherefore they pray &c.

by Taylor & Paddock attys for Plffs

On the third day of said Term, to wit:
 Wednesday morning 9 o'clock December 16th.
 A.D. 1863 - Court met pursuant to adjournment
 Present the same as on the second day.

Plowden H. Ball and Edgar L.
 Griffin partners composing the
 firm of Ball & Griffin

vs.

Debtors.

Benjamin Anderson, Herrick R.
 Halsey & Wilton T. Warren partners
 composing the firm of Anderson, Halsey & Co.

Now come the said parties by
 their attorneys aforesaid, and the said defendants
 file herein their demurrer to the said Plaintiffs
 Replication to the said defendants first special
 plea and second replication to the said defen-
 dants second special plea in the words and figures
 following, to wit:

Plowden H. Ball & Edgar L.
 Griffin partners &c.

vs.

Benjamin Anderson, Herrick
 R. Halsey & Wilton Warren
 alleged to be partners &c.

And now come the
 said defendants Wilton Warren & Benjamin

Anderson and that the Replication filed to the defendants 1st special plea and the matters therein contained in manner and form as the same are above pleaded and set forth are not sufficient in the law for the said Plaintiffs to have or maintain this aforesaid action thereof against the said defendants and that the said defendants are not bound by law to answer and this the said defendants are ready to verify. Wherefore the said defendants pray judgment &c.

And for special causes of demurrer to the said Replication, that is to say that said Replication is manifestly drawn.

Because said Replication tenders an immaterial issue

Because matter is alleged therein under a protestation upon which issue might be taken

Because said Replication is double

Because said Replication is argumentative

And the said defendants as to the Plaintiffs 2^d Replication to defendants 2^d special Plea say that is not sufficient in the law to be answered unto by the defendants. Wherefore they pray judgment &c.

And for special cause they say that the matter in said Replication alleged

is already well and sufficiently alleged in
the 1st Replication to the said second
special Plea Farwell & Herron
for said depts

And after argument of counsel
and the Court being now duly advised in
the premises; it is considered by the Court
that the said demurrer be overruled as to
the said Replication to the said first
special plea, and that the said demurrer
to the said 2^d Replication to the said 2^d
special plea be sustained. It is therefore
further considered by the Court that the
said defendants have judgment against
the said Plaintiffs on the demurrer to the
said second Replication to the said 2^d special
plea so sustained as aforesaid.

On the fourth day of said term, to wit:
Thursday Morning 9 o'clock December 17th
A.D. 1868 Court met pursuant to adjournment.
Present same as on second day —

Plowden H. Ball & Edgar P.
Griffin partners composing the
firm of Ball & Griffin

vs

Assumpsit.

Benjamin Anderson, Herick
A. Halsey & Milton T. Warren
partners composing the firm of
Anderson Halsey & Co.

Now come the said
parties by their attorneys aforesaid and
by agreement of said parties, a jury is
waived herein, and this cause is submitted
to the Court for trial. And after hearing the
testimony and the argument of Counsel as
the Court being now fully advised in the
premises, it is considered by the Court that
the issues herein joined are in favor of the
said Plaintiffs and assesses the damages
which the said Plaintiffs have sustained by
reason of the premises at the sum of four hun-
dred and seventy two dollars and ninety eight
cents (\$472.98)

And the said defendants enter their motion
for a new trial herein

On the fourteenth day of said term, to wit
Tuesday morning December 29th A.D. 1863
9 o'clock Court met pursuant to adjournment.
Present same as on the second day.

Plowden H. Ball and Edgar B.
Griffin Partners composing the
Firm of Ball and Griffin

vs

Assumpsit.

Benjamin Anderson, Herrick B.
Halecy & Milton T. Warren Partners
composing the Firm of Anderson,
Halecy & Co.

Now come the said parties by their
attorneys aforesaid, and after argument of
counsel and the Court being now fully advised
in the premises, it is considered by the Court
that the motion of the said defendants Anderson
and Warren for a new trial herein be overruled.

It is therefore further considered by the
Court that the said Plaintiffs have and recover
from the said defendants Benjamin Anderson
and Milton T. Warren the said sum of Four
Hundred and seventy two dollars and ninety
eight cents, the amount of their damages
aforesaid, together with all their costs and
charges in and about their suit in this behalf
expended and that they have execution therefor.

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And the said defendants move the Court
for an appeal herein to the Supreme Court
of the State of Illinois, which appeal is
allowed by the Court upon the said defen-
dants Anderson ^{and} Warren within thirty
days from this date entering into a bond
to the said Plaintiffs in the penal sum of
one thousand dollars conditioned as the
law directs, with Robert Powell and Jesse
Emerson as securities.

And the said last named defendants
now come and file their Bill of Exceptions
herein in the words and figures following, to wit:

State of Illinois Bureau County ss.	
Clowdon H. Ball & Edgar D.	
Griffin Partners composing	Circuit
Firm of Ball & Griffin	Court
187.	December
Benjamin Anderson, Herick	Term
R. Halsey & Milton Warren	A.D. 1863.
alleged partners composing firm	
of Anderson, Halsey & Co.	Assumpsit.

Be it remembered
that on the trial of this cause the plain-
tiff offered the note sued on in evidence
which note is in the words and figures
following, to wit:

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\$31480 Bada (Ill) Dec. 8th 1858.

Four months after date we promise
to pay to the order of Ball & Griffin at
their office in Chicago Three Hundred
fourteen $8\frac{1}{100}$ Dollars for value received
negotiable and payable, without defalcation
or discount, and with interest from date
at the rate of 10 per cent. per annum.
Due..... (signed) Anderson, Halsey & Co.

And the defendants Anderson &
Warren objected to the introduction of said
note in evidence because of a variance
between said note and the said declaration.

And thereupon the Plffs swore G. L.
Paddock. He testified that he was acquaint-
ed with Herick R. Halsey and with
the handwriting of the said Halsey and
that the signature of Anderson Halsey & Co.
to said note was in the hand writing of
said Halsey in the opinion of said witness.

That to his best recollection witness had
seen Halsey sign his name to papers.

That some years ago witness was
deputy Clerk of the Civ. Court of said County,
& in that capacity had done business
with said Halsey who had Probate
business in said Court, & was according

to witness's recollection an administrator or executor of an estate then under settlement in said Court. That he would not be positive that he had seen said Halsey sign his name, but thought that he had, but that he was certain that he had rec^d from said Halsey or had had in the presence of said Halsey during such Probate proceedings papers purporting to be signed by said Halsey, which were treated by said Halsey as having been signed by him & witness further stated that he thought he had rec^d letters from said Halsey which were acted upon in the course of such business & that from the above means of knowledge witness had no doubt but the said signature was in the hand writing of said Halsey.

The note was thereupon read in evidence under the common counts in said declaration, to which ruling of the Court in receiving said note in evidence the said defts. then & thereat the time expected, which was all the evidence in the case it having been stipulated that said defts. would take no advantage on said trial nor in the Supreme Court of the omission of the Plaintiffs to prove the co-partnership or joint liability of the defts.

And thereupon the Court found for the Plaintiffs. And thereupon the said defendants moved for a new trial, which said motion the Court overruled; to the overruling of which motion the said defts. then and there at the time excepted & thereupon the Court rendered judgment in favor of the Plaintiffs, to the rendition of which judgment the said defts. then & there at the time excepted and prayed the Court to sign and seal this their Bill of Exceptions which is done accordingly.

(Signed) W. E. Hollister Judge *Chas*

And on the 23^d day of January A.D. 1864 came the defendant Melton Warren and filed his Bond for appeal herein in the words and figures following, to wit:

Know all men by these presents that we Melton Warren, Jesse Emerson & Robert Farwell are held and firmly bound unto Plandon H. Ball and Edgar L. Griffin partners composing the firm of Ball & Griffin in the penal sum of one thousand dollars lawful money of the United States for the payment of which

well and truly to be made we bind ourselves our heirs, executors and administrators jointly, severally and firmly by these presents,

Witness our hands and seals this 16th day of January A.D. 1864.

The condition of the above obligation is such that whereas the said Plowden H. Ball and Edgar F. Griffin partners composing the firm of Ball & Griffin did at the December Term of the Circuit Court A.D. 1863 of the County of Bureau and State of Illinois and on the 29th day of said month recover a judgment in said Court against the said ^{Warren} Milton and one Benjamin Anderson for the sum of Four Hundred and seventy two dollars and ninety eight cents damages and fifteen + ⁷⁵/₁₀₀ Dollars costs of suit; and whereas the said Milton Warren at the time of the rendition of said judgment prayed an appeal therefrom to the Supreme Court and the said Circuit Court permitted such appeal by requiring the said Warren with said Emerson + Farwell as his securities to file Bond within thirty days therefrom.

Now therefore if the said Milton Warren shall prosecute his said appeal with effect and shall also well and

truly pay said judgment & all costs
interest and damages in case said
judgment shall be affirmed, then above
obligation shall be null and void;
otherwise to remain in full force and
effect.

(Signed) Milton Warren Seal

Jesse Emerson Seal

Robt. Farwell Seal

State of Illinois,
 Bureau County J^{es} George W. Radcliffe
 Clerk of the Circuit Court in and for
 said County and State aforesaid do
 hereby certify that the foregoing is a true
 and correct Transcript and copy of all
 proceedings in said Court in the cause
 therein named as appears from the Records
 and papers on file in my office.



Witness my hand and the
 Seal of said Court at Princeton
 in said County this 12th day of
 March A.D. 1864

Geo. W. Radcliffe Clerk
 By Carlo D. Trimble Deputy

Clerks Fees

8 Folios	8.00
letf - seal	.35
Stamp	.05
	<u>\$8.40</u>

Paid by Defendant Warren
 G. W. R. CLK.

And now comes the said Appel-
lant - Milton Warren And
says that in the Record & proceedings
~~appears for error in the above~~
Appellant said there is manifest error
~~Record the following~~
in this Court

1st The Court Erred in overruling
the demurrer to the Replication
to the 1st Special Plea of the depts
below.

2nd The Court Erred in refusing
to sustain the demurrer of the
depts. below to the Replication of
the Pltffs below to the 1st Special
Plea

3^d The Court Erred in receiving
the note and on in evidence

4th The Court Erred in ordering
judgment for the Pltffs. below

5 The Court Erred in overrul-
-ing Motion of appellant for
a new Trial

The said appellant - Therefore
prays that the judgment of the Court
below May be reversed & said Cause
Remanded. Farnell & Heron
for appellant -

And now comes said Appelles by J. S.
Taylor that attests and say that in said
record there is no such errors as
appellants have assigned

J. S. Taylor
appellants

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Milton Warren
as

Flowers H. Ball ~~et al~~
& Edgar H. Griffin

Record & amt of
Inns.

Filed April 13th 1864
L. Leland
clerk