

No. 12947

Supreme Court of Illinois

Tinkham

vs.

Hunt et al

71641  7

Supreme Court

April Term 1859

Edward J. Latham Appellee

vs

Peter J. Hunt Compt^r to Appellant

The Counsel for the Appellant, has made the point that the judgment of the Court below was for too much - and he carries at his opinion by saying that the sum of \$2147.50, the amount of the note of April 9-1834, with interest at six per cent per annum from that time to November 13-1838, the date of the judgment, will amount to \$2352.43, or about \$20.51 more than the judgment rendered.

But the answer to this is that the Plaintiff below did not ^{receive} ~~obtain~~ judgment upon the note, for, if he had, the Court would have given him interest upon it from its date to the date of the judgment at 10 per cent interest per annum, which it bore upon its face, and this would amount to \$2489.26.

The judgment below was rendered upon the
1. Note of \$1000 dated Oct. 29-1836 and bearing interest from its date as it purports, at 10 per cent per annum to the date of the judgment, which amounts with interest to \$1204.17 and

2. The undrawn bank a/c. of which was stated and due by the firm of Hunt & Gillet at the time of their dissolution and amounted to \$1147.50 at that time and bore interest at 6 per cent per annum from that time to the date of judgment, amounting with interest to \$1288.06

the two being the original indebtedness of the firm to the plaintiff and amount in both to \$2492.23

this we think was the proper amount of the judgment -

xxx of the Court should keep the opinion that the judgment of the Court below should be for the \$1000 note and interest accruing to it to term, together with the bank account of \$1147.50, with the note then the proper judgment ought to be \$2351.67 and the Court made a simple computation to the amount of \$21.27. The error was undoubtedly in the computation of interest and is but a clerical error which the Court can remedy, the proper judgment being apparent from the record.

and the error in computation was in favor of the defendant below the appellant here, the judgment below being but \$2342.94
 If then the appellant surely cannot complain -

But if the Court should be of the opinion that judgment has been rendered, by error in computation, for more than the true amount it is in the power of the Court (if the elements for arriving at its proper judgment are exhibited in the record) to remedy the error, by rendering a judgment here for the proper amount.
 And this has the sanction of repeated precedents in the Court.

Clarkson How
 Attorney for Appellee

225 of 198
 Supreme Court
 Edward J. Graham
 Appellee

ad.
 Bela J. Hunt
 Implicatus de
 Appellant

As Portion of Brief
 on the part of
 Appellant

Filed May 3. 1859
 R. Leland
 Clerk

Clarkson How
 Attorney for Appellee

Hunt & Co
vs
Trickham

Supreme Court

The ~~Court~~ Amount of the note
which included all indebtedness
due from the defendants to the
plaintiff on the 9th of April 1857
The date of the note was \$2147.51

Interest on that Amount to the 13th
of November 1858 date of Judgement \$204.43

Amount of Principal & interest \$2352.43

Judgement Nov 13th ¹⁸⁵⁸ for \$2372.94
The Amount due was 2352.43
Error of Judgement \$20.51

The Court will see by an examination
of the Record in this case that the
Judgement was for the sum of \$20.51
more than the plaintiff presented
was due to him & that Amount more
than there was any evidence to show
the defendants to be indebted to the
plaintiff.

The Court is respectfully asked
to & amend the record which is very fully
set forth in the Abstract on this point
& to calculate the Amount due for them
below. I think above to be correct, all
of which is respectfully submitted
W. B. A. J. Attorney
for Plaintiff

225-108

Hunt & W
to

Tinkham

Points for Hunt

Filed May 5: 1859
Leland
Clerk

Defendant Hunt assigns the following Errors -

1st The Court Erred, in not granting a change of Venue on the application of ^{the} defendant Hunt -

2^d The Court Erred, in sustaining the plaintiff's motion for an alias summons for defendant, Giles - having no jurisdiction -

3^d The Court Erred, in sustaining the plaintiff's motion to strike defendant Hunt's second amended plea from the files

4 The Court Erred, in receiving improper evidence offered on behalf of the plaintiff

5 The Court Erred, in giving judgment against defendant Hunt, for the reason, first, he had no ~~jurisdiction~~ jurisdiction, either as to the person of said Hunt, or as to the subject matter in question, so far as it related to said Hunt - Secondly, because said judgment was predicated upon a note purporting to have been made by Hunt & Giles for liquidation, long after the dissolution of the firm of Hunt & Giles, & without the knowledge or consent of said Hunt.

6 The judgment of the court was against the law of the case

7 The judgment of the court was against the evidence in the case -

8 The court erred in each & every order and ruling, so far as the same related to defendant Hunt, subsequent to said Hunt's application for a change of venue -

Clarkson & Tree } Barry & Beveridge
Attorneys for appellee } Attorneys for appellant

And the said Edward J. Larkin by Clarkson & Tree his
Counsel comes and says that each there is an error in the
Record and proceedings aforesaid as to giving the judgment
aforesaid and that the said Court may examine as well
the record & proceedings aforesaid as the motion aforesaid
aforesaid for error by the foregoing assignments of error 1st 2nd
3rd 4th 5th 6th 7th 8th assigned and that the judgment
aforesaid may in all respects be affirmed &c

That the said appellee does not join in the 8th assignment
of error for the reason that an exception was taken in the
Court below to the ruling of said Court in allowing
appellee said motion, as appears from the Record

Clarkson & Tree
Counsel for appellee

United States of America
State of Illinois } ss.
County of Cook

Shas before the Honorable John
W. Wilson sole Judge of the Cook County Court of Common Pleas
within and for the County and State aforesaid, at a special term
of said Cook County Court of Common Pleas, begun and held at
the Court House in the City of Chicago on the Second Monday
being the Eighth day of November in the year of our Lord
one thousand Eight hundred and fifty Eight, due notice of the time
and place of holding said special term of Court having been
printed and published in the "Chicago Daily Democrat" the
Corporation Newspaper of the City of Chicago, said notice having
been printed and published twenty days previous to the holding
of said Court in accordance with the Statute in such case made
and provided, and in pursuance of an order made by the
Judge of said Court on the Seventh day of October A.D. Eighteen
hundred and fifty Eight.

Present The Honorable John W. Wilson Judge
Charles Harrel Prosecuting Attorney
John L. Wilson Sheriff

Attest

Walter Kimball Clerk

(2)

Be it Remembered. That heretofore. to wit. on the Twenty-fourth day of June A.D. One Thousand Eight Hundred and fifty seven. Edward J. Tinkham. by Clarkson Tree his attorney filed in the office of the clerk of the Cook County Court of Common Pleas, his Precept for summons. which said precept is in the words and figures following. To wit.

Cook County Court of Common Pleas

Edward J. Tinkham	}	Affumpsit
as		
Oliver T. Hunt & O. H. Giles		Damages \$3000

The clerk will please issue
summons in the above cause. directed to the Sheriffs of
Cook and Kane Counties. and returnable to the next term
of this Court

Chicago June 24th A.D. 1857

Clarkson Tree

Plaintiff's Attorney.

And thereupon To wit on the same day and year last aforesaid there issued out of the office of the clerk of said Court a writ of Summons. which said writ and the Sheriff's return thereon entered are in the words and figures. following. To wit.

State of Illinois }
County of Cook } ss. The People of the State of Illinois.

To the Sheriff of Kane County - Greeting:

We command you that you summon Bela T. Hunt & O. H. Giles if they 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 July next, to answer unto Edward J. Tinkham in a plea of Trespass on the Case on premises, to the damage of the said plaintiff as he says in the sum of Three Thousand Dollars. And have you then and there this writ with an Endorsement thereon in what manner you shall have executed the same.

(Seal)

Witness. Walter Kimball Clerk of our said
Court and the Seal thereof at the City of Chicago
in said County this 24th day of June A.D.
1854 Walter Kimball Clerk

(Endorsed)

I executed this writ June the 26. 1854 by reading
the same to the within named Bela T. Hunt, O. H. Giles, not
found in my County

J. E. Corwin Sheriff Kane County
By E. J. Allen Deputy.

And on the same day ^(ix) and year last aforesaid. the said plaintiff by his said attorneys filed in the office of the clerk of said Court his Declaration and Copy of Note. which are in the words and figures following. To wit.

In the Cook County Court of Common Pleas
Of the July Vacation Term A.D. 1857
Cook County, ss.

Edward J. Tinkham Plaintiff in this
suit, by Clarkson Tree his attorneys, complains of Bela T.
Shunk and C. H. Giles late partners under the style and firm of
Shunk & Giles Defendants in this suit who were summoned to
answer &c. in a plea of trespass on the case upon promises.
For that, Whereas the said defendants, heretofore to wit, on the
Ninth day of April in the year one thousand eight hundred and
fifty seven, at Chicago, to wit, in Cook County aforesaid,
made their promissory note in writing, bearing date the day
and year last aforesaid, and then and there delivered the said note
to the said plaintiff, whereby the said defendants by the name and
style of Shunk & Giles in liquidation promised to pay to the order
of the said plaintiff the sum of Twenty one Hundred and forty seven
50/100 Dollars. (meaning Twenty one hundred and forty seven
dollars and fifty cents) with interest at ten per cent. it being for
money loaned. Sixty days after the date thereof. (which period has
elapsed prior to the commencement of this suit, for value received.
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 the said note specified
according to the tenor and effect of the said promissory note.

And being so liable, the said defendants in consideration thereof afterwards, to wit on the same day and year and at the place aforesaid, undertook and ~~then and there~~ faithfully promised the said plaintiff well and truly to pay to the said plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect of the said promissory note. And whereas also the said defendants afterwards, to wit on the Twentieth day of June in the year one thousand Eight hundred and fifty seven, at the place aforesaid were indebted to the said plaintiff in the sum of Three Thousand Dollars lawful money of the United States of America for money before that time lent and advanced by the said plaintiff to the said defendants, and at the special instance and request of the said defendants, and for other money by the said plaintiff before that time paid, laid out and expended for the said defendants, and at the like request of the said defendants, And for other money by the said defendants before that time lent and received to and for the use of the said plaintiff, And for other money found due and owing from the said defendants to the said plaintiff upon an account then and there stated between the said plaintiff and the said defendants, And being so indebted the said defendants 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 in this count mentioned when the said defendants should be thereunto afterwards requested.

Nevertheless the said defendants (although often requested to) have not yet paid the said several sums of money above mentioned or any or either of them or any part thereof to the

(6) 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 Three Thousand Dollars, and therefore the said plaintiff brings suit &c.

Obertus Tree

Plaintiffs Attorneys.

Copy of Note said on

\$2147 ⁵⁰/₁₀₀.

Chicago Apr 9. 1854

Sixty days after date. for value received, we promise to pay to the order of Edward J. Tinkham, at his office in Chicago. Twenty one Hundred and forty seven ⁵⁰/₁₀₀ Dollars with interest at ten per cent it being for money loaned.

Hunt & Giles

per Liquidation

Wm Hunt & Giles

To Edward J. Tinkham Dr

1854
June 20 To money lent

\$3000

" " " due on account stated

\$3000.

And afterwards, to wit, on the Seventh day of July in the year last aforesaid, the said defendant Peter T. Hunt, filed in the office of the clerk of said court his affidavit of Merits, which said affidavit is in the words and figures following. To wit,

State of Illinois }
Cook County } s.d. Cook County Court afternoon Term
Of the July Vacation Term A.D. 1857
Treason on the case on promises

Edward J. Tinkham

vs
Pela T. Hunt & O. H. Giles

Pela T. Hunt one of the above named
defendants being first duly sworn on oath deposes and says
that he believes he has a good defence to the above suit upon the
merits.

Subscribed & sworn to before me

P. T. Hunt

this 7th day of July A.D. 1857

Walter Kimball Clerk

And afterwards to wit, on the same day and year last aforesaid,
being one of the days of the July Vacation Term of said Court, the
following, among other proceedings, were had in said Court, and
Entered of Record, To wit,

Edward J. Tinkham

1447

vs

Pela T. Hunt & O. H. Giles

Plaintiff

And now comes the said defendant
Pela T. Hunt by Barry his attorney, and on his motion it is
ordered that the rule to plea heretofore made in this cause be
extended one week from Thursday next, as to said defendant
Pela T. Hunt.

61 And afterwards, to wit. on the 16th day of July aforesaid. the said defendant Bela T. Hunt in his own proper person & filed in the office of the Clerk of said Court his pleas; which are in the words and figures following. To wit,

State of Illinois }
Cook County } Pending in the Cook County Court of Common Pleas.
Bela T. Hunt impleaded
with O. H. Giles
ad
Edward J. Tinkhaur }

And the said defendant Bela T. Hunt in his own proper person. comes and defends the wrong and injury where. and saith that he did not undertake and furnish in manner and form as the said plaintiff hath above thereof complained against him, and of this he puts himself upon the Country &c.

B. T. Hunt.

And for a further plea in this behalf the said defendant (Bela T. Hunt) by leave of the Court here for that purpose first had and obtained. according to the Statute in such cases made and provided. says that the said plaintiff ought not to have and maintain his aforesaid action thereof against him, because he says, that he did not make, execute or deliver the said note mentioned in said plaintiff's declaration as therein alleged. nor did he know of the said note being made, executed or delivered as is in said declaration alleged. and he expressly avers, that he never authorized any person to sign his name to said note, and that his name purporting to be one of the makers of said note

is not in his own handwriting. and thus far the signature to said note, set out in said Plaintiff's declaration is not genuine, and of this he puts himself upon the Country.

B. T. Hunt

State of Illinois } ss.

Hamilton County } Bela T. Hunt of lawful age on oath saith that he has carefully read the pleas hereto annexed in the case of Edward J. Tindham vs. Bela T. Hunt impleaded with O. H. Giles, and knows the contents of said pleas. That the matters in said several pleas are substantially true and correct.

Subscribed & sworn to before me

B. T. Hunt

this 15th day of July A.D. 1854

H. D. Barry

Co. Judge of Ham Co.

State of Illinois } ss.

Hamilton County } J. James Herrington, Clerk of the County Court within and for the said County do hereby certify that H. D. Barry was on the fifteenth day of July A.D. 1854. an acting Judge within and for said County duly commissioned and sworn. And that I am well acquainted with the handwriting of said Judge and verily believe his signature above is genuine.

Given under my hand and ^{the} Seal of said Court

Subscribed

this 15th day of July A.D. 1854

James Herrington Clerk

(176)
And afterwards, to wit, on the Twenty third day of October in the year last aforesaid the said defendant Bela T. Hunt filed in the office of the clerk of said court his application for a change of "venue" which is in the words and figures following, to wit,

State of Illinois,

Pending in the Cook County Court of Common Pleas.
Edward J. Tinkham }
vs }
Bela T. Hunt impleaded }
with O. H. Giles }

To the Hon. John M. Nelson
Judge of the Cook County Court of Common Pleas, of the State of Illinois. Bela T. Hunt the above named defendant, respectfully represents that he fears that he will not receive a fair trial of this action in the Cook County Court of Common Pleas, in which this action is pending on account that Edward J. Tinkham the above named plaintiff (the adverse party) has an undue influence over the minds of the inhabitants of said County aforesaid.

Your petitioner further shows that the above fact of undue influence first came to his knowledge on the Twenty second day of October A.D. 1857. Your petitioner therefore prays for a change of venue to some County where the above cause does not exist.

B. T. Hunt

State of Illinois }
Kane County }

Bela T. Hunt being duly sworn, on oath says that the facts stated in the petition above signed and

True in substance and fact.

Subscribed & sworn to before me

22nd day of October A.D. 1854

W. D. Barry

County Judge of
Kane County.

S. T. Hunt,

State of Illinois }
Kane County }

I, James Herrington Clerk of the County Court within and for the said County do hereby certify that W. D. Barry was on the 22nd day of October A.D. 1854 an acting County Judge within and for said County duly commissioned & sworn. And that I am well acquainted with the handwriting of said County Judge and verily believe his signature above is genuine.

(Seal)

Given under my hand and the Seal of said

Court this 22nd day of October A.D. 1854

James Herrington Clerk
H

And afterwards, to wit, on the same day and upon last aforesaid being one of the days of the September Term of said Court, the following, among other proceedings were had in said Court and entered of Record, To wit.

Edward J. Pinkham

vs

Ben T. Hunt & C. H. Giles

} Appraisers

This day comes the said plaintiff

Charleson Tree his attorney¹². and the said defendant Bela Tinkham
by Barry his attorney also comes and submits to the court his
motion on petition and affidavit for a change of venue in this
cause, and thereupon the said plaintiff submits his motion for
a continuance with an alias summons to said defendant O.
H. Giles, and the court having considered said motions now sustains
the motion of plaintiff, and overrules that of defendants for a
change of venue, to which ruling by the court, the said defendant
now enters his Exceptions.

And afterwards, to wit, on the Twenty sixth day of October in
year last aforesaid, the said plaintiff by his said attorney
in the office of the clerk of said court his Remuner to said
Defendants Pleas, which said Remuner is in the words and
figures following. To wit,

Books County Court of Common Pleas	
Edward J. Tinkham	{
^{vs} Bela T. Hunt imple ^d with O. H. Giles	
And the said plaintiff as to the said pleas of the said defendant Bela T. Hunt impleaded &c. by him above therein pleaded, comes and says that the said pleas, and the matters things therein contained in manner and form as the same are therein pleaded, and set forth, are not sufficient in law to bar or preclude the said plaintiff from having or maintaining his action aforesaid against him the said Bela T. Hunt, impleaded &c and that by the said	

plaintiff is not bound by law to answer the same, and this he is ready to verify, wherefore he prays Judgment &c.

Clarkson & Tree

Plff attys.

And afterwards, to wit on the Third day of November in the year last aforesaid, there issued out of the office of the clerk of said Court a writ of summons, which said writ and the Sheriff's Return thereon Endorsed, are in the words and figures following.

To wit.

State of Illinois }
County of Cook }

The People of the State of Illinois
To the Sheriff of Bureau County - Greeting:

We command you that you summon Bela T. Hunt & O. H. Giles if they be found in your County, personally to be and appear before the Cook County Court at Common Pleas of said County on the first day of the term thereof to be holden at the Court House in the City of Chicago in said County, on the first Monday of January next to answer unto Edward J. Finkham in a plea of Trepass on the Case on promise, to the damage of the said plaintiff as he says in the sum of Three Thousand Dollars.

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

Witness. Walter Kimball Clerk

(Seal)

our said Court and the Seal thereof at the City
of Chicago in said County this 3rd day of
November A.D. 1854

Walter Winball Clerk
H

(Endorsed)

I executed the within writ by reading to C. H. Giles this
13th day of November A.D. 1854. Bids F Hunt not found in
my County.

G. N. Waldron Shff
Bureau Coth Ills.

And afterwards, to wit, on the Sixth day of November in the year
last aforesaid, said day being one of the days of the November
Vacation Term of said Court, the following, among other busi-
nesses were had in said Court, and entered of Record. To wit

Edward J. Tinkham
" " } Appraiser
Bids F Hunt & C. H. Giles

This day again came the parties to
this case by their attorneys aforesaid, and the Court upon the
reading and filing of plaintiff's demurrer to defendant's first
and second pleas herein pleaded, being fully advised, sustains
the demurrer to second plea, and overrules the same as to first
plea, to which ruling and decision by the Court as to said
second plea, the defendant enters his exceptions, and thereupon
on motion leave is given said defendant to amend his pleas,
and to plaintiff to amend his declaration, and cause is further
continued.

And afterwards, to wit. on the Sixteenth day of November
aforesaid. the said defendant Bela T. Hunt filed in the office
of the clerk of said Court his Plea, and Amended Plea, which
said Plea are in the words and figures following, to wit.

State of Illinois }
Cook County }

Pending in the Cook County Court
of Common Pleas.

Bela T. Hunt impleaded with
H. Giles late partners under the
style of firm of "Hunt & Giles"
and
Edward C. Tinkham

And the said defendant Bela T.
Hunt impleaded as aforesaid in his own proper person, comes and
defends the wrong where to. and saith that at the date of the
making of the supposed note mentioned in the plaintiff's dec.
to wit. the 9th day of April A.D. 1854. there was no such
as "Hunt & Giles." and that such firm did not undertake
and promise in manner and form as the said plaintiff
hath above thereof complained against them, and of this he puts
himself upon the country to. And the plaintiff doth the like
B. T. Hunt.

State of Illinois }
Hane County }

Bela T. Hunt of lawful age on oath saith
that he has carefully read the foregoing plea, and knows the
contents thereof, and that the matters therein contained are
true and correct.
B. T. Hunt

Subscribed and sworn to before me this 16th day of November A.D. 1854

State of Illinois }
 Hancock County } J. James Herrington, Clerk of the County
 Court within and for the said County do hereby certify that W.
 D. Perry was on the Sixteenth day of November—A.D. 1857
 an acting County Judge of Hancock County within and for said County
 duly commissioned and sworn. And that I am well acquaint-
 ed with the handwriting of said County Judge, and verily believe
 his signature above is genuine.

(Seal)

Given under my hand and the
 Seal of said Court this 16th day of November
 A.D. 1857. James Herrington Clerk

And for a further plea in this behalf, the said defendant
 Bela T. Hunt implored & by leave of the Court &c. as to the said
 Court in said plaintiffs declaration says ad hoc because
 he says that at the date of the making and executing the said
 promissory note as mentioned in said plaintiffs declaration,
 to wit. the 9th day of April A.D. 1857, there was no such firm
 as Hunt & Giles mentioned in said declaration, nor did said
 firm of Hunt & Giles make execute and deliver the note men-
 tioned in said plaintiffs declaration as is therein alleged, nor do
 said defendant Bela T. Hunt know of the said note being
 made and executed and delivered as is in said declaration
 alleged, and he expressly avers that he never authorized any
 person to sign his name or the name "Hunt & Giles" his liquid-
 ation, ^{therein} and that his name purporting to be one of the makers of
 said note is not in his own handwriting nor is the same genuine,
 nor is the signature of "Hunt & Giles" as purporting to be makers

51

said note the true and genuine signature of ^{the firm of} "Hunt & Giles" and
of this he puts himself upon the Country.

P. T. Hunt.

State of Illinois }
Hane County }

John T. Hunt of lawful age on oath swears that
he has carefully read the foregoing plea, and knows the contents
thereof, and the matters therein contained are true & correct.

Subscribed & sworn to before me

P. T. Hunt.

this 16th day of Novr 1854

W. D. Barry, County Judge
of Hane County.

State of Illinois }
Hane County }

I, James Herrington Clerk of the County
Court within and for the said County, ^{do hereby certify} that W. D. Barry was on the
Sixteenth day of November A.D. 1854 an acting County Judge
of Hane County within and for said County, duly commissioned
and sworn. And that I am well acquainted with the hand
writing of said County Judge, and verily believe his signa-
ture above is genuine.

Seal

Given under my hand and the Seal of
said Court this 16th day of November
A.D. 1854. James Herrington Clerk

And afterwards to wit, on the Seventeenth day of November
aforesaid the said plaintiff by his said attorneys filed in the
office of the Clerk of said Court his Demurrer to said defend-
ant's amended Pleas which said demurrer is as follows.

To wit,

In the Cook County Court of Common Pleas
 Edward J. Tinkham

Bela T. Hunt impleaded
 with O. H. Giles

And the said plaintiff by Charles
 Tree his attorneys as to the said
 amended pleas of the said defendant Bela T. Hunt by him
 firstly and secondly above pleaded. with that the same and
 the matters therein contained. in manner and form as the same
 are above pleaded. and set forth are insufficient in law to
 bar or preclude him the said plaintiff from having or
 maintaining his aforesaid action thereof against the said
 defendant Bela T. Hunt. and that he the said plaintiff
 not bound by law to answer the same. and this he is ready to
 verify wherefore he prays judgment &c.

Charles Tree

Plff attys.

For special cause of demurrer to the first amended plea, the
 plaintiff shews.

1. That the said plea purports to be a plea of the general issue
 by said defendant Bela T. Hunt. and is in reality a plea
 denying the partnership of the said defendants Hunt & Giles
 sworn to.
2. The said first plea is double and is otherwise inadmissibly
 pleaded and is informal and insufficient.

For special causes of demurrer to the second amended plea of
 said defendant Bela T. Hunt.

1. The said plea is double, setting up two distinct defences in the same plea.
2. The said plea both admits and denies the partnership of the defendants Hunt & Giles.
3. The said second plea is in other respects informal, insufficient and uncertain.

Clarkson Tree

Piffy attys.

And afterwards, to wit, on the Nineteenth day of November aforesaid, said day being one of the days of the November Special Term of said Court, the following among other proceedings were had in said Court and Entered of Record, To wit.

Edward J. Tinkham
vs
Oliver T. Hunt & Otho H. Giles } Humphreys.

And now at this day again the parties to this case by their attorneys aforesaid, and the having heard plaintiffs demurrer to first and second amended pleas of defendant herein pleaded, and being fully advised, sustains the demurrer, and on motion of defendants, leave is given to amend second plea by Monday next.

And afterwards, to wit, on the Twentieth day of November aforesaid the said defendant Oliver T. Hunt filed in the office of the Clerk of said Court his Second amended Plea, which said Plea is as follows, to wit.

And for a further plea in this behalf the said defendant Bela T. Hunt, impeached with C.H. Giles by leave of the Court &c. and the first Court mentioned in said plaintiff's declaration, says action non, because he says that said defendants "Hunt & Giles" did not make execute and deliver to the said plaintiff the said promissory note mentioned in said plaintiff's declaration, as therein alleged, and the signature to the said promissory note set out in said plaintiff's declaration is not the true and genuine signature of the firm of Hunt & Giles, and of this the said defendant Bela T. Hunt puts himself upon the Country &c.

B. T. Hunt,

State of Illinois,

Kane County } Bela T. Hunt one of the above named defendants of lawful age on his oath says that he has carefully read the above plea, and that he knows the facts therein set out and that the same are true in substance and in fact, and he also further states on oath that he has read the declaration in the case of Edmund J. Tinkham against Bela T. Hunt impeached with C.H. Giles now pending in the Kane County Court of Common Pleas, in said State, and that he never made or executed the promissory note mentioned in said declaration as therein set forth, and the firm of Hunt & Giles did not make and execute said promissory note, and further he saith not.

B. T. Hunt

Subscribed & sworn to before me

this 23rd day of November A.D. 1857

A. H. Perry

Notary Public

And afterwards. to wit. on the Twenty fifth day of November
aforesaid. the said plaintiff by his said attorneys filed in the
office of the clerk of said Court his certain Motion. which said
motion is as follows. to wit.

Cook County Court of Common Pleas
Edward J. Tinkham Plff

²⁷
Pela T. Hunt inpl^t-rc } And now comes the said plaintiff
by his attorneys Clarkson Tree and moves the Court that the paper
filed in this cause on the 25th of November instant by said
defendant Pela T. Hunt as an amended plea be leave of Court
be stricken from the files. and that the said plaintiff do have
judgment against said Hunt for want of plea.

The plaintiff ^{assigns} as reasons for this motion that the said plea
is not entitled of any Court nor in any cause. and it does not
appear in any manner in and by said plea. that the same
be filed in said above described Court and cause.

Clarkson Tree

Plff attys

Nov. 25. 1857.

And afterwards. to wit. on the Ninth day October
A.D. Eighteen Hundred and fifty Eight, the said day being
one of the days of the September Term of said Court, the
following among other proceedings were had in said Court
and entered of Record. To wit.

22
Edward J. Tinkham

" } *Spurmpit.*
Bela T. Hunt, O. H. Giles

This day comes said plaintiff by
Clarkson & his attorneys, and due personal service of process
of summons issued in this cause, having been had on the said defendant
O. H. Giles, only and he being three times solemnly called in open
Court comes not nor does any person for him, but herein he makes
default, which is on motion ordered to be taken and is hereby entered
of Record, and thereupon on motion of said plaintiff it is ordered
that amended plea of said defendant Bela T. Hunt, be stricken
from the files of this cause, and issue being joined with the
defendant Hunt on his plea of the general issue, by agreement
of the parties this cause is submitted to the Court for trial, on the
general issue without intervention of a jury, and the Court on
hearing allegations and proofs submitted by said plaintiff and
arguments of counsel, takes the matter under advisement.

Said afterwards to wit, on the Thirteenth day of November in the
year last aforesaid, said day being one of the days of the first November
Special Term of said Court, the following, among other proceedings,
were had in said Court and entered of Record, to wit.

Edward J. Tinkham }
" } *Spurmpit.*
Bela T. Hunt, O. H. Giles

And now again comes the

parties to this cause, as well the said plaintiff by Clarkson & his attorneys as the said defendant Peter T. Hunt by Barry his attorney and the Court having had under advisement the issues joined herein with the said defendant Hunt upon his plea of the general issue and being fully advised in the premises finds issues on first count in declaration for the said defendant Hunt, and issues on common count (plea of general issue) for said plaintiff and assesses damages against both of the said defendants for damages to the sum of Three Thousand Three Hundred and seventy two Dollars and ninety four cents.

\$2372.94

Therefore it is considered said plaintiff do have and recover of the said defendants his damages of Three Thousand Three Hundred and seventy two Dollars and ninety four cents, in favor aforesaid by the Court here assessed, and also his costs and charges in this behalf expended and have Execution therefor.

And thereupon comes the said defendant Hunt by his attorney and submits his motion herein for a new trial in this cause, and counsel being heard on said motion and due deliberation being thereupon had, and the premises fully understood, it is considered by the Court, that said defendants motion for a new trial in this cause be overruled.

Whereupon said defendant enters his exceptions and brings an appeal to the Supreme Court, which is allowed upon condition that he file his appeal Bond in Three Thousand Dollars, with security to be approved by Judge of this Court within fifteen days and that he have thirty days in which to file his Bill of Exceptions.

24

And afterwards, to wit, on the Twentyfourth day of November in the year last aforesaid, the said defendant Hunt filed in the office of the Clerk of said Court his appeal Bond, which is as follows. To wit.

Know all Men by these Presents, That we Bela T. Hunt as principal, and Elisha Freeman & Geo. W. Waite as sureties, are held and firmly bound unto Edward J. Finkham in the penal sum of Three Thousand Dollars 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. Sealed with our seals and dated this 24th day of November A.D. 1855.

The condition of the above obligation is, that whereas the said Edward J. Finkham at the November Special Term A.D. 1855, of the Cook County Court of Common Pleas, recovered a Judgment against the said Bela T. Hunt impleaded with O. H. Hills for the sum of Twenty three Hundred Twenty two & 94/100 Dollars, and costs, from which said Judgment the said Bela T. Hunt has taken an appeal to the Supreme Court of the State of Illinois,

Now if the said Bela T. Hunt shall prosecute his said appeal with effect, and shall pay said Judgment & costs and interest and damages in case said Judgment shall be affirmed, then this above obligation to be void, otherwise to remain in full force and effect

Bela T. Hunt Seal

Approved

John M. Wilson

Judge & C.

Elisha Freeman

Gen. W. Waite

Seal
Seal

And afterwards, to wit, on the Thirtieth day of November in the year last aforesaid, being one of the days of the Second November Special Term of said Court the following, among other proceedings were had in said Court and Entry of Record, to wit,

Edward J. Tinkham }
" } Appellant
Bela T. Hunt & C. H. Hunt }

And now at this day again the said plaintiff by his attorneys Clarkson & Sec. and the defendant Bela T. Hunt by Barry his attorney, also come and on his motion and by consent of said plaintiff's attorneys it is Ordered, that the time for said defendant to file his Bill of Exceptions on his appeal allowed him herein be Extended to first day of January Eighteen Hundred and fifty nine -

20

And afterwards to wit, on the first day of January A.D.
Eighteen Hundred and fifty nine, the said defendant Hunt
by his said attorney, filed in the office of the Clerk of said
Court his Bill of Exceptions, which is in the words and
figures following. To wit,

Cook County Court of Common Pleas.

Edward J. Tinkham

vs

Bela T. Hunt and
O. H. Giles

Be it known that at a
Term of the said Cook County Court of Common Pleas held at the
Court House in the City of Chicago in the said County of Cook
on the Second Monday of September in the year one thousand Eight
hundred and fifty Eight, and on the Ninth day of October in
the said year that being a day of said term, before the Honorable
John W. Wilson, Judge of said Cook County Court of Common
Pleas, and issue being joined with the said defendant Hunt,
on his plea of the general issue, the aforesaid issue, arising
between the said defendant Bela T. Hunt and the said plaintiff
as aforesaid, came on to be tried, at which day came there as
well the said plaintiff as the said defendant Hunt, by their
respective attorneys aforesaid, and by agreement of said parties
the said cause was submitted to the Court for trial, upon the
issues aforesaid, without the intervention of a jury. And upon the
trial of the said issue the counsel for the said plaintiff to

maintain and prove the said issue on his part, introduced in evidence the deposition of Alexander A. Hazeltine which is in the words and figures following. To wit:

The deposition of Alexander A. Hazeltine of the Town of Maywood in the State of Illinois, a witness of lawful age, freeborn, sworn and examined upon his corporal oath on the seventeenth day of September in the year one thousand Eight hundred and fifty eight, at the office of the undersigned at the City of Chicago in the County of Cook and State of Illinois - taken by the consent of the Counsel for the respective parties to be read in Evidence in a certain suit and matter in controversy now pending and undetermined in the Cook County Court of Common Pleas wherein Edward J. Pinkham is plaintiff, and Bela H. Hunt impleaded with C. H. Giles is defendant, in behalf of the said plaintiff, as well upon the Cross Interrogatories of the defendant, as on the Interrogatories of the plaintiff.

The said Alexander A. Hazeltine being first duly sworn as a witness in the said cause, previous to the commencement of his Examination, to testify the truth as well on the part of the plaintiff as the defendant, in relation to the matters in controversy between the said plaintiff and defendant so far as he should be interrogated thereto testified and deposed as follows.

Interrogatory.

Interrogatory First 28

State your name, age, occupation and residence, and whether you are acquainted with the parties to this suit, and if so how long?

Answer,

My name is Alexander A. Hazeltine. I am twenty five years. I am a grain buyer by occupation. I reside at Ogansett Illinois. I am acquainted with the parties to this suit. I have known the plaintiff about three or four years. I have known Mr. Hunt since I can recollect. I know Mr. Giles about 4 years.

2 Interrogatory Second.

State if you were ever in the employ of the defendants suit, if so, when, where and in what capacity?

Answer

I was in Chicago. I don't recollect the exact dates when I commenced, but it was about 1855, or 1856, in the capacity of bookkeeper

3 Interrogatory Third.

State if you can recollect about the month that you went into the employ of the defendants, and about what time you left their employ, or about what month and year.

Answer,

I do not recollect the month now. I do not recollect the exact date now that I left their employ. I think it was about the middle of April before I had entirely left the employ of the concern. April of the year 1857.

Defts counsel object to answer of witness.

4 Interrogatory Fourth

State whether or not you know of the defendant Hunt and the defendant Giles being co-partners at any time, if yes, when were they such co-partners, where did they carry on business, and what was the character of such business?

Question objected to by Defendants Counsel.

Answer

Ido. I think their partnership commenced in 1855, and a dissolution was effected in 1856, it might have been in 1854, the time it commenced. The dissolution was effected in November 1856. They carried on business in Chicago, it was a produce and commission business.

The answer of the witness is objected to by defendants counsel.

5. Interrogatory Fifth

State if you ever heard any conversation between the defendant Hunt and the defendant Giles in reference to the settlement of firm's matters with the plaintiff Edward J. Finkham: if yes, when it was, where it was, and what it was.

Question objected to by defendants Counsel

I have. it was on North Street in their office, in the latter part of November 1856, as near as I can recollect. Mr. Giles asked Mr. Hunt what was to be done. I don't recollect what he said, whether it was these matters of Mr. Finkham, or note and account. Mr. Hunt said to include them both in note and state it off, far as he could. That is all the conversation that I think of now.

Answer objected to by defendants

6 Interrogatory Sixth

State if you can the precise language used by the defendant Hunt, in the conversation you have stated in your last answer.
Question objected to by Defts Council.

Answer.

Put them both together and give our note, and state it off as long as you can. - That is as near as I can recollect.

Answer of witness objected to by Defts.

7 Interrogatory Seventh

State if you know under what name, style and firm the defendants Hunt and Giles did business as co-partners.

Question objected to by defendants Council.

Answer.

At the commencement of their business the style of the firm was O. H. Giles & Co. But it was afterwards changed to Hunt & Giles.

8 Interrogatory Eighth.

State if you know whether or not the said defendants as co-partners were indebted to the plaintiff in this suit at the time of the conversation you have stated in answer to Interrogatory Sixth, if yes. In what amount and in what shape was said indebtedness.

Question objected to by defendants Council

Answer

They were indebted in the shape of one thousand dollars in a note, and about Eleven hundred dollars in account.

Answer of witness objected to by defendants.

9 Interrogatory Ninth.

State if you know the signature of the firm of Hunt & Giles.

the defendants in this suit, and if so, state how you know it.

Question objected to by defendants counsel

Answer.

I do, from being familiar with it, and seeing it often.

11 Interrogatory Tenth

State whether or not you have ever seen either of said defendants write the signature of said firm, if yes, which of them?

Question objected to by defendants counsel

Answer

I have, I have seen Mr. Giles write it.

11 Interrogatory Eleventh.

Have you ever seen Mr. Giles write the signature of said firm more than once? if yes, how often, if you can remember?

Question objected to by defendants counsel.

Answer.

I have. I do not recollect how often.

12 Interrogatory Twelfth.

Look at the paper now shown you marked Exhibit "A" copy of which is hereto attached, duly certified by the officer taking this deposition, and state whether or not you know the signature thereto attached is the true and genuine signature of the firm of Hunt & Giles the defendants in this suit.

Question objected to by defendants counsel.

Answer.

It is the genuine signature.

The Defendants counsel object to the answer.

13. Interrogatory Thirteenth

State if you know, in whose handwriting is said signature?

32 Question objected to by defendants counsel

Answer.

It is in Mr. Giles' handwriting.

14 Interrogatory Fourteenth.

State if you ever heard Mr. Giles, one of the defendants in this suit, say anything in reference to the settlement of the claim of the plaintiff subsequent to the conversation you have above stated in answer to Interrogatory Sixth between said Giles and the defendant Hunt. If yes, when it was, and what it was.

Question objected to by defendants counsel

Answer.

I have heard a conversation in reference to that same

I can't recollect when it was. I do not recollect what it was.

15. Interrogatory Fifteenth.

Did you ever hear the defendant Giles say anything in reference to the settlement of this plaintiffs claim against the said firm of Hunt & Giles, about the date of the note marked Exhibit "A"?

Question objected to by defendants counsel

Answer.

I have. He said he had settled the affair with Pinkham by giving their note. That is all I recollect now.

The defendants counsel object to witness answering.

Direct Examination closed.

Cross Examination.

x1 Cross Interrogatory First.

State whether or not you are a relative of the defendant Giles, and if so state what that relation is?

Answer.

I am. He is my brother in law.

x2 Cross Interrogatory Second.

State in whose employ you now are.

Answer.

I am working for myself.

x3. Cross Interrogatory Third.

Have you served with any process from the Courts to compel your attendance here as a witness?

Answer.

I am not

x4 Cross Interrogatory Fourth.

State whether or not O'Hiles is insolvent.

Question objected to by plaintiff's counsel

Answer.

He is insolvent.

x5. Cross Interrogatory Fifth.

Will you state whether or not the firm of Hunt & Giles with Edward J. Tinkham, or Edward J. Tinkham &

Question objected to by plaintiff's counsel

Answer.

I think it was Edward J. Tinkham & Co.

x6 Cross Interrogatory Sixth.

State if you know of your own knowledge that the firm of Hunt & Giles, were ever indebted to Edward J. Tinkham alone, in any sum, if so state in what sum?

Answer.

I do not.

x7 Cross Interrogatory Seventh.

324

Do you know of your own knowledge of the firm of Hunt & Gile
ever having any deal with Edward J. Tinkham alone, if you
state what such deal was?

Answer.

I have seen Mr. Tinkham give them money.

x8 Cross Interrogatory Eighth

Did Hunt & Gile keep a pass book with E. J. Tinkham or
E. J. Tinkham & Co. or with either or both? if you state with
which?

Answer.

They did. I think it was with E. J. Tinkham & Co.

x9 Cross Interrogatory Ninth.

Were there ever any monies or other transactions between
Giles and Edward J. Tinkham the plaintiff or E. J. Tinkham
& Co., save those set down in the pass book referred to in your
last answer? If yes, state what they were?

Question objected to by plaintiff's counsel.

Answer

I think not.

x10 Cross Interrogatory Tenth

Did Hunt & Gile ever have more than one pass book with
Edward J. Tinkham the plaintiff or E. J. Tinkham & Co.?

Answer.

I think not.

x11 Cross Interrogatory Eleventh.

Was not that pass book with E. J. Tinkham & Co.?

Answer

I think it was.

x12 Cross Interrogatory Twelfth.

Was Hunt & Giles ever indebted in anywise to Edward J. Trinkham except as referred to in the prior book in your last answer to your knowledge?

Answer.

I think they were not.

x13 Cross Interrogatory Thirteenth

Have you anything in your mind by which you can fix definitely the time referred to by you in your answers to the fifth direct Interrogatory, as to the time when the conversation took place between Hunt & Giles referred to therein?

Answer.

It was about the time the dissolution papers were signed, or about the 25th of November.

The defendants counsel objects to witnesses answer.

x14 Cross Interrogatory Fourteenth.

When did the dissolution of Hunt & Giles take place?

Answer.

On the 15th of November 1856.

x15 Cross Interrogatory Fifteenth.

Were you present when the articles of dissolution were drawn up? If yes, state when it was and where it was.

Answer.

I was present. It was about the 25th of November 1856. at Hunt & Giles office. it was then they were signed.

x16 Cross Interrogatory Sixteenth.

Was such dissolution in writing? If yes, who drew it up?

Answer.

36

It was in meeting, and Mr. Giles drew it.

x17 Cross Interrogatory Seventeenth.

When you speak of indebtedness from the defendants to the plaintiff in your answer to the Eighth direct Interrogatory, by note and account, state whether or not such note and account by you therein referred to was not due to E. J. Pinkham & Co. if not how otherwise?

Question objected to by Plaintiff's Counsel

Answer.

I think E. J. Pinkham & Co. was the name of the firm they were doing business with.

x18 Cross Interrogatory Eighteenth.

When you speak of indebtedness from the defendant to the plaintiff in your answer to the Eighth direct Interrogatory by note and account, state whether or not such note and account by you therein referred to was not due to E. J. Pinkham & Co.

Answer.

I think it was.

x19 Cross Interrogatory Nineteenth.

On your answer to the fifteenth direct Interrogatory in referring to conversation with defendant Giles, state where such conversation took place, and whether defendant Hunt was present.

Answer.

It was in Hunt & Giles office on North Water Street, it was Mr. Giles office at that time. Hunt was not present.

x20 Cross Interrogatory Twentieth.

Where did the defendants Hunt & Giles live respectively?

Answer.

Mr Hunt lived in St. Charles. Same County Illinois.
Giles lived in Chicago.

x21 Cross Interrogatory Twentyfirst.

Did the firm of Hunt & Giles after their dissolution carry on and do any business as produce and commission merchants?

Answer

They did not.

Cross Examination close.

Re-Examined.

Re 1 Re Interrogatory First

State if you know of your own knowledge whether or not the plaintiff Edward S. Pinkham had any partner at the time the said firm of Hunt & Giles were dealing with him, or at the time of the indebtedness heretofore mentioned of the said firm of Hunt & Giles to him was created?

Question objected to by defendants counsel.

Answer.

I do not.

Re 2 Re Interrogatory Second.

State if you know of your own knowledge that there were any money or other transactions between the said firm of Hunt & Giles, than those set down in the pass book (Refer to in your Cross Examination)?

Question objected to by defendants counsel.

Answer.

I do not know that there were not.

Re 3. Re ~~Cross~~ Interrogatory Third.

State if you know what was that usually transacted the

38
of the firm of Hunt & Giles with the plaintiff in this suit.
Answer.

O. H. Giles

Re 4. Re Interrogatory Fourth.

State if you know of your own knowledge that the said firm of Hunt & Giles did not have more than one pass book during the period of the said firms business transactions with the plaintiff in this suit?

Answer.

I do not know that they did not.

Re 5. Re Interrogatory fifth

State whether or not the defendants or their counsel have shown you the pass book about which they have been examining you.

Answer.

They have not.

Re 6. Re Interrogatory Sixth.

State whether you know of your own knowledge whether or not the plaintiff in this suit held a note of the said firm of Hunt & Giles, at the time of the dissolution of the said firm, if yes, state the amount of the said note.

Question objected to by defendants counsel

Answer.

There was a note of a Thousand Dollars out, but I did not know who had it. The last I heard of it it was in his hands.

Re 7. Re Interrogatory Seventh.

State if you know whether or not the said firm of Hunt & Giles was in any other way indebted to the plaintiff in this suit at

the time of the dissolution of the partnership of said firm.
If yes. How, and in what amount?

Question objected to by defendants counsel

Answer,

They were indebted to that House but whether to E. J. Tinkham
or E. J. Tinkham & Co. I don't know. It was an overdrawn
Bank account to the amount of Eleven Hundred Dollars.

Re Examination closed.

Re Cross Examination.

Re 1. Re Cross Interrogatory First

State to whom the one thousand dollar note by you referred to
in your re-direct examination was payable to?

Answer

I don't recollect whether it was payable to E. J. Tinkham
E. J. Tinkham & Co.

Re 2. Re Cross Interrogatory Second

Look at the note now shown you marked Exhibit 'B' a
copy of which is annexed to this your deposition, and state
or not that is the note by you herein referred to.

Answer

I think it is.

Re 3. Re Cross Interrogatory Third.

State whether or not the account by you referred to in your re-
Examination of \$1100.00 was not due to E. J. Tinkham & Co. by
the defendants, and not to Edward J. Tinkham.

Question objected to by plaintiffs counsel

Answer

I think it was E. J. Tinkham & Co. I don't know to whom.

due when the dissolution papers were signed. Let the debt
contracted, I think with E. J. Finkham & Co.

Re: Re Cross Interrogatory Fourth.

Have you any knowledge that the account referred to in your
last answer was ever transferred by E. J. Finkham & Co. to E. J.
Finkham?

Answer.

I have not.

Re: Re Cross Interrogatory Fifth.

Had you free access to all the books and papers of Hunt
Giles, during the time you were their bookkeeper?

Question objected to by plaintiff's counsel

Answer

I had.

Re: Re Cross Interrogatory Sixth.

Was there ever any indebtedness as appeared from any pass book
cash book or book of accounts, to your knowledge between the
defendants and E. J. Finkham alone.

Answer.

I don't recollect of any.

Re: Re Cross Interrogatory Seventh.

Would such indebtedness have appeared, did it exist, from the books
of Hunt & Giles, while you were in their employ as bookkeeper
if yes, was your relation such with the business transactions of
the firm that you would have known of such indebtedness.

Question objected to by plaintiff's counsel

Answer.

Yes sir, it should, my relations with the business transactions
of the firm was such that I should have known of such

indebtedness.

The witness here desires to explain his answer and says as follows.

If we had been doing business with E. J. Tinkham & Co. and they had changed the name of the firm without my knowing it, there would be no alteration made in the name of the account on my books.

Re x 8. Re. Crp. Interrogatory Eighth

State whether or not the pass book by you referred to in this deposition was not the pass book between E. J. Tinkham & Co. and Hunt & Giles and whether this was not used from time to time, from the formation of the firm of Hunt & Giles to its dissolution, and whether or not E. J. Tinkham & Co. did not from time to time during the whole of said period, make entries therein of the cash transactions between said firms until the dissolution of the firm of Hunt & Giles?

Question objected to by plaintiff's counsel.

Answer

I think the pass book was between E. J. Tinkham & Co. and Hunt & Giles, and was used from the formation of the firm of Hunt & Giles to its dissolution - I think - and E. J. Tinkham & Co. did make entries therein of the cash transactions between it and said firm until the dissolution of the firm of Hunt & Giles. It is barely possible that there might have been another pass book, but I don't recollect of any.

Re x 9. Re. Crp. Interrogatory Ninth.

Do you know of any indebtedness of any name or kind from the firm of Hunt & Giles during the whole period of their co-

242

- Partnership accruing to or payable to E. J. Tinkham alone.
If yes. State what such indebtedness was fully
Question objected to by plaintiffs counsel

Answer.

I don't think of any now.

Re-Open Examination closed.

Examination in Chief

1 Interrogatory first.

Did you ever see the note marked Exhibit 'B' before? If
State when you first saw it. and when you last saw it.

Answer.

I have seen it before. I don't recollect when I first saw it.
I last saw it July 6th 1857.

2 Interrogatory Second

In whose possession was it at that date?

Answer

In the possession of Mr. Hunt.

3 Interrogatory Third

State if you know how Mr Hunt came in possession of it.

Question Objected to by defendants

Answer.

I delivered it to him. with another note of the same amount
and also the Bank Book of the firm of Hunt & Giles.

4 Interrogatory Fourth.

State from whom you obtained that note.

Question objected to by defendants counsel.

Answer.

It was among the notes and papers of Hunt & Giles in my possession.

5 Interrogatory Fifth.

State whether or not the words "Paid Dec 2, 1856" were written across the face of said note when you delivered the same to the defendant Bela T. Hunt.

Question objected to by defendants counsel,

Answer,

I don't recollect.

6 Interrogatory Sixth.

State if you know in whose handwriting these words are written.

Question objected to by defendants counsel.

Answer,

I do not.

Examination in Chief closed.

Subscribed & sworn to before me

Alex. A. Haseltine

this 17th day of September AD. 1858.

Jno H. Magill

Not & Comm

State of Illinois

Cook County } ss

City of Chicago }

I, John H. Magill a Notary Public in and for the City of Chicago in the County of Cook and State of Illinois, duly appointed to take the deposition of the said Alexander A. Haseltine a witness whose name is subscribed to the foregoing deposition. do hereby certify that previous to the commencement of the examination of the said Alexander A. Haseltine as a witness in the suit between the said Edward S. Trickett plaintiff and the said Bela T. Hunt

44

impleaded with O. H. Giles defendant, he was duly sworn by me
as such notary to testify the truth in relation to the matters
in controversy between the said plaintiff and defendant, so
far as he should be interrogated concerning the same; that the
said deposition was taken at my office in the City of Chicago
aforesaid in the County and State aforesaid on the thirteenth
day of September in the year Eighteen Hundred and fifty
Eight. and that after said deposition was taken by me
as aforesaid, the interrogatories and answers thereto, as men-
tioned above, were read over to the said witness, and that there-
upon the same was signed and sworn to by the said deponent
before me. I further certify that at the taking of said deposition
the said plaintiff appeared by his counsel Messrs. Clark
Tice, and the said defendant by his counsel Messrs. Barry
and Eastman, and that the papers attached hereto and
marked respectively, ^{Exhibits} "A" & "B" are true and correct copies of
the originals thereof, produced shown and sworn to by the
witness at his said examination. In Testimony Whereof
I have hereunto set my hand and notarial seal at my office
in Chicago on the day and year above written.

Edw. B.

John H. Magill

Notary Public

\$2147⁵⁰/₁₀₀

Chicago April 9th 1854

Sixty days after date for value received we promise to pay to the order of Edward J. Finkham, at his office in Chicago Twenty one hundred & forty seven Dollars with interest at ten per cent. it being for money loaned.

Hunt & Stiles

In liquidation

This is a true copy of the Exhibit marked "A" produced & sworn to by the witness in the annexed deposition

John Magill

Not Secured

Exhibit "A" referred to
in annexed depositions
copy
J. H. Magill

\$1000⁰⁰/₁₀₀

Chicago Oct 29th 1856.

Thirty days after date we promise to pay E. J. Finkham & Co or bearer One Thousand no Dollars, with interest at 10 pr ct - value received, with Exchange on N.Y.

Hunt & Stiles

The counsel for the plaintiff further to maintain and per-
the said issue, called William H. Waite, who being sworn testified
That during the year 1856, and until September 1857, I was
note clerk for the plaintiff, plaintiff was a banker, and
carried on business in Chicago under the name and style
of E. J. Finkham & Co. during the year 1856, and until
late in the Spring of 1857, he had no partner to my
knowledge. My employment at the Bank was in part the
taking charge of the notes, drafts and collection matters
passing through the bank. I knew the defendants Hunt &
45-

46

Giles. Knew that the firm of Hunt & Giles gave a note of
thousand dollars, to the plaintiff during the month of October
1856. The witness was then shown a note of \$1000, dated
October 29th 1856, payable to E. J. Trinkham & Co. or bearer,
thirty days after the date thereof, and executed by the firm
of Hunt & Giles - a copy of which note is attached to the
deposition of Alexander Hagaltine.

The witness then said, I have seen this note before, it was
in the Bank and was not paid when it matured.

At the time the defendants Hunt & Giles dissolved partnership
the firm of Hunt & Giles owed the plaintiff the one thousand
dollar note of the 29th of October, and also overdrawn
their bank account to the amount of Eleven hundred and
forty seven dollars and fifty cents. I was the plaintiff's
clerk. The witness was here shown the following note.

\$2147 ⁵⁰/₁₀₀

Chicago April 9th 1857

Sixty days after date, for value received we promise
to pay to the order of Edward J. Trinkham at his office in
Chicago Twenty one hundred & forty seven Dollars, with
interest at ten per cent. it being for money loaned.

Hunt & Giles

In liquidation.

I have seen this note before, was present when it was executed.
this note was given for \$1000. note of October 29th 1856,
and the overdrawn bank account, of the firm of Hunt & Giles
of \$1147.50. I had seen Giles half a dozen times, and
could not collect the amount of the plaintiff's claim against
Hunt & Giles from him. When Giles executed the note dated

April 9th 1857 for \$2147.50. I gave him up the \$1000. note of October 29th. and also the pass books. I did not see the defendant Hunt. he lives at St. Charles.

The counsel for the said defendant Hunt to maintain and prove the said issue on his part, then cross examined the said William B. Waite. and on such cross examination he testified that there were never any notes given to the plaintiff by the said firm of Hunt & Giles that I can recollect, save the note dated April 9th 1857. for \$2147.50 after the \$1000. note of October 29th 1856. The following note was then shown to witness by counsel of defendant Hunt.

I have seen this note before. It is my filling up. Don't know for what it was given. I think Giles executed this note. This note I never saw in the bank. I think it never belonged to the Bank. It has not the usual Bank mark upon it which it would have if it passed through the Bank. The note of October 29th 1856 became due on the 27th of December of the same year. It was held in bank until April 9th 1857. I gave up the \$1000. note dated October 29th 1856. in April when the note for \$2147.50 was given. 21

48

The counsel for the plaintiff further to maintain and prove the said issue called John C. Ambler who being duly sworn testified as follows. I am a partner of Edward J. Tuckham I formed a partnership with him in the Spring of 1854. Mr. Tuckham had no partner at the time of his transactions with Hunt & Giles out of which this suit arises.

The counsel for the defendant Hunt to maintain and prove the said issue on his part, then cross-examined the said John C. Ambler, and in such cross-examination he testified as follows. I was in New York during the year 1856, until the 29th October, and then came to Chicago.

The counsel for the plaintiff further to maintain and prove the said issue called D. C. Garrison who being sworn testified as follows. I was a bookkeeper in plaintiffs Bank in February 1854. The plaintiff had no partner at that time but carried on business under the name and style of E. J. Tuckham & Co. I would not have known if one note had been given for another.

The counsel for the said plaintiff here submitted to the Court with the previous evidence, said note of \$2144.50 above referred to, and rested his cause.

And the counsel for the said defendant Hunt to maintain and prove the said issue on his part, called John Allord, who being sworn testified as follows. I reside at St Charles, in Kane County, Illinois, am acquainted with defendant Hunt, have known him for twenty years, am also acquainted with defendant Giles. I heard a conversation between Giles & Hunt in the last of November 1856. Hunt told Giles

in the Harness Shop of Hunt at St Charles. "I forbid you in any way shape or manner using my name in settling the affairs of the company". This was the first distinct conversation I heard. I remember the time from a memorandum I made at the time. It was the 28th or 29th of November 1856, that this conversation took place.

The counsel for the plaintiffs further to maintain and prove the said issue on his part, then cross-examined the said John Allord and on such cross-examination he testified as follows.

This was after the dissolution of the partnership that this conversation was had. Hunt and Giles had been together about an hour before I heard the statement. I was above in the shop at harnesses, and was ten or fifteen feet from Hunt & Giles. They were talking about their matters.

Mr. Hunt appeared to be out of humor. I was at work at the Reech at the time. After the conversation Hunt told Giles.

"I forbid you in any way shape or manner using my name in settling the affairs of the Company" I heard this because the words were spoken loud and Hunt appeared out of humor.

They soon after went out. I heard no other part of the conversation during the hour but these words. I am in the employ of Mr. Hunt.

It was then admitted by the plaintiffs counsel that a notice of the dissolution of the firm of O. H. Giles & Co of which the following is a copy.

Dissolution. The co-partnership heretofore existing between B. T. Hunt & O. H. Giles under the firm of Hunt & Giles was dissolved on the 15th November inst, by mutual

was inserted in the Chicago Daily Press, a newspaper printed and published in the City of Chicago, Cook County, Illinois from the 10th to the 14th day of December 1856, inclusive, and that said plaintiff took such daily paper during said period, and it was further admitted by said plaintiff counsel, for the purposes of the trial that the said Bela T. Hunt and O. H. Giles were not partners at the time of the making of note of \$2147.50 above referred to, and the counsel for defendant Hunt here rested the evidence for the defence. This was all the evidence offered, produced, and given on the said trial of said cause, on behalf of the said plaintiff and of the said defendant, to maintain the issue on their respective parts.

And afterwards, to wit on the 13th day of November 1858, the court found the issues on the first count in said declaration for the said defendant Hunt, and the issue on the common counts for said plaintiff and assessed his damages against said Hunt at \$2372.94, and also assessed his damages against said O. H. Giles upon his default heretofore entered herein at \$2372.94, and rendered judgment against both said defendants for the sum of Twenty Three Hundred and seventy two Dollars and ninety four cents. And thereupon the said defendant Hunt by his counsel moved the said court for a new trial of said cause, which motion was overruled by the said court.

Whereupon the said defendant Hunt by his counsel, entered his Exceptions, and prayed an appeal to the Supreme Court which was allowed on his filing a Bond in the penalty of \$3,000 Dollars by the 28th day of Novr A.D. 1858. the Bill of Exceptions to be filed by January 1. A.D. 1859, and because none of the Exceptions so offered and made to the decision of said Court, do appear upon the Record of the said trial, therefore on the prayer of the said defendant by his said Counsel, the said Judge of said Court, hath to this bill of Exceptions put his seal according to the Statute in such case made and provided this first day of January in the year one thousand eight hundred and fifty nine.

John M. Wilson

Seal

State of Illinois }
County of Cook } J. Walter Kimball Clerk of the Cook
County Court of Common Pleas within and for said County
do hereby Certify that the above and foregoing is a full, true
and correct transcript of the Process, Pleadings and Bill of
Exceptions and appeal Bond on file in my office, and of all the
proceedings had and entered of Record in said Court, in the
case wherein Edward S. Linkham is Plaintiff and
Bela T. Hunt and O. H. Giles are defendants.



In Testimony Whereof
I herewith subscribe my name
and affix the Seal of our said
Court at Chicago in said County

225¹

Cook County Court of
Common Pleas

Edw^d J. Fickham

^{or}
J. P. T. Hunt et al

Record

Filed April 20, 1851
L. Leland
Clerk

Fees \$14.00 paid
by defts atty
J. P. Kimball