

No. 14296

Supreme Court of Illinois

Mix

vs.

Nettleton

182
STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

293

No. 109.

14296

My

is

Wetzel's

1862

Prepared

State of Illinois. Supreme Courts
3^d division. April Term 1862

Henry A. Mix }
vs }
Moses Kellerton }

The defendant moves to
strike from the record the Bill of ex
ception, because it was ^{taken &} not filed
during the term of court at which
the trial was had. No order extending
time nor agreement to extend time appear-
ing, & the order of B. R. Sheldon to
the clerk made after the adjournment
of the court to file the bill as of the
last day of the last term was one he
had no authority to make he did it as
a man not as the court. It would
be extremely dangerous to sustain such
an act of the judge at a time when
he was not acting judicially.

See record page 63.

Deland Allen
clerk for app
in error

152 293

Myrs Nelson

Mo to Dappup

Beu of ~~exp~~

Leland Nelson
dand for ~~off~~
in ~~at~~

Henry A. Dix

Moses Pettleton



The motion to strike out the bill of exceptions comes too late for two reasons.

First, the errors are corrected, this is in effect saying that in the record as it stands is no error and submitting that question.

Second the cause has been submitted the court has taken it, there is no more ~~question~~ ^{reason} ~~whether~~ that this question should be tried than there is that any question whatever should be brought again into hearing when the case is submitted it is closed as to all questions in the record any other rule would work endless confusion;

Besides I could have got sufficient evidence as I suppose to now ~~reassure~~ answer the point made by showing that this bill was filed by agreement. I can't do it now in time and the recollection of my client might be most unjust.

B. C. Cook

152 293

Miss as Pitttton

*segestions against
motion*

Filed May 9th 1862

*L. Leland
Clerk*

Supreme Court 3^d Division
April Term 1862

Hon'y A. Mix
M
Messrs. Matthews

E. J. Seland being

duly sworn deposes & says that there was
a general, ^{not clearly defined} ~~partial~~ understanding between
B. C. Cook ~~that~~ & affiant that no more
technical arguments by taking notes for
abstracts, ~~findings in error~~ points & au-
thorities ~~or~~ should be taken of each ~~time~~
that at the time the motion to support
the bill of exceptions in this case was
withdrawn the Cook was absent &
the case was reached on the second
call with the motion pending & for
fear that the motion to support the
bill of exceptions might be considered
an infraction of the ~~understanding~~ ^{understanding} ~~of~~
affiant withdrawn it. The same kind of
a motion having been made in No. 220
by the partner of Mr. Cook & the bill hav-
ing been stricken from the files affiant
is satisfied that it would not have been
a violation of the arrangement to have in-
sisted upon the motion, & he asks to be
allowed the benefit of ^{renewal} ~~of~~ a ~~renewal~~

Removal of the Motion
Subscribed & sworn to before E. S. Seland
Me this 10th day of May 1872
L. Leland Clerk
52nd St. N. York

18- 298

May 11. 1872
low

Motion to strike
out and set
aside

Filed May 10. 1872
L. Leland
Clerk

State of Illinois }
 County of Ogle s.s. } - At a Circuit begun and
 holden in and for the County
 of Ogle in the State of Illinois, At the Court House
 in Oregon on the 13th day of June A. D. 1859. the same
 being the second Monday of said month - Then
 and there being present -

The Honorable John V. Custace, Judge
 Mortimer W. Smith, Clerk
 Frederick G. Petrie, Sheriff.

Precipe

State of Illinois. } In Ogle Circuit Court of June
 Ogle County s.s. } Term A. D. 1858.

Moses Nettleton }
 vs }
 Henry A. Mix } Clerk, will issue Summons in
 a plea of Debt, Debt Two thousand Dollars to
 Plaintiffs damage of 1000.00 Dollars
 Dutcher
 Plffs Atty.

Enclosed
 Filed May 10th 1858
 M. W. Smith Clerk

Filed Jan 29. 1861
 O. A. Penoyer
 Cler

Summons:

State of Illinois }
Ogle County } S.S.

The people of the State of Illinois to
the Sheriff of said County - Greeting.

We command you that you Summon
Henry A. Moir, if he 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 begun and
holden at the Court House in Oregon, in said
County on the first Monday of June next,
to answer Moses Nettleton in a plea of
Debt. Debt Two Thousand Dollars, to the
damage of the said Plaintiff, as he says,
in the sum of One Thousand Dollars, and
have you then and there this writ,

Witness, Mortimer W. Smith, Clerk
of our said Court, and the seal thereof,
at his Office at Oregon, in the County aforesaid,
this 10th day of May 1858

L.S. M.W. Smith, Clerk.

Endorsed

I have duly served the within on the
within named Henry A. Moir, by reading
the same to him in his presence and hearing

This 13th day of May 1858.

E. B. Tyler Sheriff
By M. C. Stoddard Deputy

Filed May 28th 1858

W. W. Smith Clerk

Filed Jan'y 29, 1861

O. A. Ranoyer Clerk

Declaration,
State of Illinois }
Ogle County } ss. In Ogle Circuit Court of
Jan'y Term AD 1858

Moses Nettleton plaintiff in this suit by E. F. Dutcher Attorney, complains of Henry A. Mit Defendant in a Plea of Debt.

For that whereas the said Defendant under the name and style of H. A. Mit heretofore to wit; on the first day of February in the year of our Lord One thousand eight hundred and fifty at the County of Ogle and State of Illinois in consideration of his then and there being indebted to the said Plaintiff in the sum of One thousand and fifty Dollars, lawful money of the United States did then & there under the name and style of H. A. Mit aforesaid by his promise or agreement in writing promissory note or due

Bill subscribed by his own proper hand and name
 bearing date a day & year therein mentioned to
 wit; ^{The day and year of the said, and the day and the month and} the day & year aforesaid, (The said promise
 or agreement in writing) promisory Note or due
 bill to the said Plaintiff by which said promise
 or agreement in writing promisory Note or due Bill,
 the said defendant then and there promised and
 agreed to pay on demand to the said plaintiff
 One Thousand and fifty Dollars for value received
 payable in Orders on the County of Ogle and State of
 Illinois, (meaning orders issued by the County of Ogle
 in the state of Illinois) In pursuance of the Statute
 in such case made and provided with interest,
 And the said plaintiff avers that Orders on the
 County of Ogle & State of Illinois were then and there
 of the value of One dollar in lawful Money of the
 United States for each & every order issued by said
 Ogle County in the said State of Illinois for the
 sum of One Dollar and that said sum of One
 thousand and fifty dollars specified in said
 promise or agreement in writing promisory Note
 or due Bill in Orders on the County of Ogle &
 State of Illinois were of the value of One thousand
 and fifty Dollars lawful Money of the United
 States of America by means whereof and by force
 of the Statute in such case made & provided
 the said defendant then & there became
 liable to pay to the said plaintiff the said
 sum of One Thousand and fifty Dollars and

interest in the said promise or agreement in writing promissory note or due bill specified according to the tenor and effect true intent and meaning of the said promise or agreement in writing promissory note or due bill, And the said plaintiff avers that afterwards and after the making of said promise or agreement in writing promissory note or due bill by said Defendant, and before the commencement of this suit payment of the same was demanded of the said defendant by the said plaintiff to wit at the County of Ogle aforesaid. And although the said sum of One thousand & fifty Dollars & interest in the said promise or agreement in writing promissory note or due bill, specified was then and had been long since due and payable according to the tenor & effect true intent & meaning of said promise or agreement in writing promissory note or due bill. Yet the said plaintiff in fact saith that the said Defendant although after requested so to do did not nor would pay the said sum of One thousand & fifty Dollars, either in Orders on the County of Ogle & State of Illinois, or in lawful money of the United States or otherwise in the said promise or agreement in writing promissory note or due bill specified or any part thereof to the said plaintiff in manner aforesaid or otherwise howsoever, but hath hitherto wholly neglected

Page 5
County of Ogle & State of Illinois
in writing
of Illinois, were of the value of one dollar in lawful money
very one Dollar Order issued by said

and refused so to do, whereby an action hath
accrued to the said plaintiff to demand and
have of & from the said defendant the said sum
of One thousand and fifty Dollars in the said
promise or agreement in writing promisory Note
or due Bill specified. And whereas also the
said defendant on the first day of May
AD 1858 was indebted at the County of Ogle
aforesaid to the said plaintiff in the further
sum of Nine hundred ^{and fifty} for so much
Money before that time and then due & payable
from the said Defendants to the said Plaintiff
for interest & for the forbearance of divers large
sums of Money before then, but & advanced by
the said plaintiff to the said defendant at
his special instance & request and by him
the said Plaintiff forbore to the said defendant
for divers long space of time before that elapsed
at the like instance & request of the said defendant
And also for other money before that time and
then due and payable from the said defendant
to the said Plaintiff for interest upon for the
forbearance of divers large sums of Money before
then due and owing from the said defendant
to the said Plaintiff, and by the said
Plaintiff forbore to the said defendant
for divers long spaces of time before then
elapsed at the like special instance

and request of said defendant, whereby by reason of the said last mentioned sum of money, being and remaining wholly unpaid an action ~~both~~ accrued to the said Plaintiff to have and demand of from the said defendant the said last mentioned sum of nine hundred and ^{Fifty} ~~Forty~~ dollars.

And also for that the said defendant was on the first day of May A.D. 1858 at the County & State aforesaid indebted to said Plaintiff in the sum of Two thousand Dollars for work & labor of said plaintiff done and performed by said plaintiff for said defendant, at defendants request and in the sum of Two thousand dollars for goods wares and Merchandize by plaintiff sold & delivered to defendant at his request and in the sum of Two thousand dollars for money before that time paid, laid, out and expended by said plaintiff to and for the use of the said defendant at his request, and in the sum of Two thousand dollars for money before that time lent and advanced by Plaintiff to the defendant at his request and in the sum of Two thousand dollars for other money by the said Defendant had and received of the said Plaintiff, to and for the use of ^{the} said defendant. And the said defendant being indebted in manner and form aforesaid to the said Plaintiff in the said several sums of money above mentioned agreed with the said -

Plaintiff to pay the same on request.
 Yet the said Defendant
 although often requested so to do hath not yet
 paid either of the said sums of money above
 demanded or any part thereof to the said
 Plaintiff but he to do this hitherto hath wholly
 refused and still doth refuse to the damage
 of the said Plaintiff of One thousand Dollars,
 and therefore he brings his suit &c
 E. F. Dutcher,
 Plffs Atty.

Copy of Instrument and account sued on for \$1050.
 Due Moses Nettleton on demand with interest One
 " thousand and fifty Dollars for value received
 " payable in orders on the County of Ogle and
 State of Illinois of such size and denomination
 " as said Mit may be able to furnish "
 Feby 1-1850 Signed "H. A. Mit"

Endorsed on back

Oregon March 18th Received
 on the within Ten Dollars and twenty cents of 10²⁰

Yours
 E. F. Dutcher
 Plff Atty

Endorsed

Filed May 28, 1858

M. W. Smith Clerk

Filed Jan 29, 1861

A. Penoyer
 Clerk

Demurrer.

State of Illinois } Ogle County Circuit Court.
Ogle County } of the March Term AD 1859

Moses Kettleton }

v

Henry A. Mix }

And the said defendant by Heaton his Attorney comes and defends the wrong and injury wherefore And says that the said special and common counts and each of them in said Plaintiffs declaration contained are not sufficient in law for the said Plaintiff to have and maintain his aforesaid action against him & this he is ready to verify, wherefore he prays judgement &c And for cause of demurrer to the said Plaintiffs first or special count in his said declaration contained, he says, That, said count is uncertain in this, that it does not show whether said note or writing therein referred to was a negotiable instrument within the statute of this State or whether it was such a written promise as would make it necessary to aver in the declaration and prove on the trial a special consideration.

That it is uncertain from said count by whom the said note or writing was made and by and to whom it was delivered, there being no direct

Statement of said making and delivering but only argumentatively.

That it is uncertain from said Court whether the Plaintiff demands the value of County order at the time said Note or writing became due or at the time he made demand of payment. Said Court does not show upon what consideration said agreement and said promise therein alleged was made, And as to the count in said Plaintiff declaration for interest, that said Court is also uncertain and confused and doth not show for the interest and forbearance of which & what sums in said Court mentioned interest is claimed. And as to said common counts, that the same do not show whether the two thousand dollars therein alleged to said by Plaintiff to Defendant use, the two thousand dollars alleged to have been lent the defendant, and the two thousand dollars had by defendant of Plaintiff may not have been the same two thousand dollars,

W. W. Heaton.

Def'ts Atty.

Filed March 25, 1859

M. W. Smith, Clerk,

Filed Jan'y 29, 1861

A. Penoyer, Clerk,

And afterwards to wit: - on Friday the seventeenth day of June A. D. 1859, the same being one of the days of the said June Term, the following among other proceedings, were entered of record - to wit: -

(As appears by transcript-filed)

Moses Nettleton }
vs } Assumpsit - This day comes the said
Henry A. Mott } Defendant in person, and enters his
demure to the said Plaintiffs declaration
herein, and after argument of counsel and consideration
by the Court, It is ordered that said demure be overruled.

State of Illinois } In Circuit Court in Vacation
Ogle County } after the September Term 1859

Moses Nettleton }
vs }
Henry A. Mott }

And the said defendant by
Heaton his attorney comes and defends and says
that he does ^{not} owe the said several sums of money
declared for by the Plaintiff in his said decla-
ration and this he prays may be enquired of by the
Court.

And for a further plea says actio non, as
to the first count in said Plaintiffs declaration
returned because he says that the sole and
only consideration for said note was as follows,
to wit: The said Moses Nettleton being then &

And there the possessor of five certain promissory notes made by Harvey Colburn and payable to one Major Chamberlin, dated the first of April 1843 and eight of said notes payable ^{with interest} in 2. 3. 4. 5. 6. 7. 8 & 9 years and for one hundred dollars each & one of said notes for the sum of \$125. payable in nine years and six months - upon which had been made some small endorsements. And was also possessed of five other promissory notes made by by one Frances Rice and Daniel Deable dated April 1. 1843. and all made payable to said Major Chamberlin and for the sum of one hundred dollars each except except one of said notes was for the sum of one hundred and twenty five dollars, payable in one year from date and the other eight, payable in 2. 3. 4. 5. 6. 7. 8. & 9 years from, respectively all of which notes were endorsed by said Major Chamberlin without recourse and delivered to said Nettleton That all of said notes were secured by Mortgage upon the North west Quarter of the North East Quarter of Section 27. T. 23. N. and Range 11 E. of 4 ^{9.7m.} ~~and~~ in said Ogle County. And which first above mentioned five notes were secured upon the equal undivided one third of said lands. And the said last mentioned nine notes being secured upon the undivided equal two thirds of said lands. And which said two Mortgage Deeds were then and there in the possession of the said Plaintiff. That the said Colburn Deable and

1
1
1
Tice, were then and there, and ever since and
hitherto have been insolvent, and have been
unable to pay and have not paid said Notes
or any of them or any part thereof. That the only
value of said notes was the supposed security
furnished for the payment of the same by said Mortgage
that said Plaintiff bring as possessed of said Notes and
Mortgages offered to the defendant. To purchase the same
and the defendant supposing and believing that said
Mortgages were good and valid existing liens upon
said lands and were to the extent of the value of
said security for the payment of said notes. And
no other lien or incumbrance appearing or record
against or upon the same did ^{purchase} ~~procure~~ said notes
and Mortgages, and did then and there wholly upon
the supposed ^{afforded} security, ^{offered} by said
Mortgages and did then and there and in consideration
thereof and for no other executed and delivered to said
plaintiff said note in said first count mentioned;
And the defendant avers that at the time he so executed
and delivered his said note to said Plaintiff. Said
Mortgages were not such valid and subsisting liens upon
said premises - but that said notes as well as said
Mortgages were utterly and entirely valueless, that by reason
of certain proceeding by mechanics lien commenced
against ^{said} premises by one Stephen Chapman in the Circuit
Court of Ogle County, and which proceedings was change
of venue removed to the County of Lee and in which
said proceeding the said plaintiff, had and on his own

petition been made a party and attempted to set up his said Mortgages while he so possessed the same the said plaintiff by his own act and permission and allowed said premises by the decree of said Court in said proceeding to be sold and conveyed in discharge of said lien and fully and entirely discharged of the lien of said Mortgages - to wit - at said County and long before said Mortgages were so assigned to you orator by reason whereof said mortgages became and were of no value all of which facts to were at the time when he were well known to said plaintiff and said defendant is ready to verify - whereupon he says that consideration of said note has wholly failed, whereupon he prays judgement. And for a further plea the defendant says actio non. - because he says that the note declared upon in the plaintiff's first Count of his said declaration is the same cause of action in the other counts of said declaration mentioned and was given for the delivery to said defendant by the said plaintiff of nine promissory notes all made by one Harvey Colburn on the 1st day of April A 1843. And eight of said notes payable to one Major Chamberlin and with interest, in two, three, four, five, six, seven, eight and nine years, and for one hundred dollars each. And the other of said notes made by said Colburn on the same day and payable to said Chamberlin nine years, and six months from date with interest and for one hundred

and twenty five dollars all endorsed in blank by said Chamberlin and "without recourse to him for debt or otherwise" And in the said Note is payable in two years with endorsement of twenty five dollars on the 16th of August 1847 - and also nine notes made by Francis Fice and David D. Cable on the 1st day of April 1843 and all payable to said Chamberlin in one, two three four five six seven eight and nine years from date. And all for the sum of One hundred dollars each, except the one payable in two years which was for one hundred and twenty five dollars, and which was endorsed Aug 20. 1844. \$35. = Also August 25th \$13.40 and the said Note due in two years endorsed with a payment on 16th August 1847. Sixty three $\frac{5}{100}$ dollars. and were all endorsed in blank by said Chamberlin and without recourse = And also for the delivery of a certain mortgage made by said Colburn on the 15th day of June 1844. on the undivided third part of the North west quarter of the North east quarter of Section twenty seven (27) Township (23) Twenty three North and Range (11) Eleven East of T.P.M. in the County of Ogle and State of Illinois = which Mortgage was duly executed and acknowledged and ^{supported} prepared to be given to secure the aforesaid notes so given to said Chamberlin. and to whom said Mortgage was payable and by said Chamberlin assigned to the Plaintiff. all of which appears from the said Mortgage And also one other mortgage made by said Francis Fice this 26th day of July A.D. 1843. and ^{convey} to said Chamberlin

two undivided third parts of the North west quarter of the North east of section (27) Twenty seven in Township 23 North and range (11) eleven East of 4th P.M. in said County and State, which Mortgage aforesaid in like manner was given to secure the payment of said notes so made by said Cable and Tice, all of which notes and Mortgages was so delivered by said plaintiff to this defendant, for the note declared upon, and for no other or different consideration and the said defendant avers that said notes were represented by said Plaintiff as being good and valid evidence indebtedness against said makers, well secured by said Mortgages, and were sold to this defendant for a sound price & for all said security was worth as a valid subsisting security This defendant believing said representation & purchasing the same exclusive upon the faith of the validity & value of said Mortgages. Whereas in truth and fact there was no subsisting cause of action against said makers on said notes or mortgages, but the same were by the laches & carelessness of said plaintiff entirely released & said promises fully discharged from all lien of said mortgages all of which, to wit:— at the time when &c. It was well known to said Plaintiff & that the same were utterly worthless & unavailing, the makers of said notes then & still being utterly insolvent wherefore the said defendant says that the consideration of said note so declared upon by the Plaintiff has wholly failed and of which he is ready to verify, wherefore he prays Judgment,

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And for a further plea defendant says
act, now because he says that at the time of the
commencement of ~~said~~ ^{to wit} suit, ~~that~~ at said County
said Plaintiff was indebted to the defendant
in a large sum of money to wit, in the sum of
two Thousand dollars for goods wares and merchandize
sold and delivered by the defendant to the plaintiff, and
for work and labour ^{done} performed by the defendant
for the Plaintiff before that time. And for money
loaned and received by the Plaintiff to and for
the use of the defendant. And for money before that
time lent and advanced by the defendant to
the Plaintiff - And for County Orders on the
County of Ogle, sold and delivered by the
defendant to said Plaintiff, All of which
he is ready to allow and set off against the
the demands of the said Plaintiff in so much
^{thereof} as will extinguish his said cause of action
Wherefore he prays judgement of The said Pla-
intiff ought further to have or maintain his said
action, and ^{claims} ~~demands~~ judgement for the balance
due. All of which Defendant is ready to verify
W B. Heaton, for Duff.

Copy of Ape intended to be used in offset on trial

Page 17 Moses Nettleton

1857

To H. A. Mix

Dr

26 To Amt of County orders

\$30,000

Oct 8	To Amt of County Orders	\$ 1.96
" 6.	" " " " " "	\$ 54.011
Oct 23	" " " " " "	\$ 6.00
" 23	" " " " " "	\$ 14.111
Oct 30	" " " " " "	31.19
	" " " " " "	8.41

Endorsed

Filed Oct 1, 1859
M W. Smith Clerk

Filed Jan 29, 1861
O A Penoyer
Clerk

And afterwards to wit:- at the November Term A.D. 1859 of said Court and on Thursday the Seventeenth day of said. November, the same being one of the days of the said November Term the following proceeding, were entered of record, to wit:-

Moses Nettleton }
vs } Assumpit- It is ordered
Henry A. Mott } by the Court, that this cause
be continued generally:-

And afterwards to wit:- at the June Term A.D. 1861. of said Court. and on Tuesday the Twelfth

day of said June. The same bring one of the days of the said June Term, the following proceedings, were entered of record to wit:—

Moses Nettleton }
vs } Assumpsit — This day comes the
Henry A. Moir } said Plaintiff by Dutcher and
Loop his Attorneys and on his motion leave
is given him to file his several Replikations to
the second and third Pleas of the said Defendant.
—ant.—

And afterwards to wit at the November Term
AD 1860, of said Court, and on Friday the Twenty
third day of said November, the same bring
one of the days of the said November Term.
The following proceedings, were entered of record, to wit.

Moses Nettleton }
vs } Assumpsit — And now on this day.
Henry A. Moir } comes the said Plaintiff by
Dutcher his Attorney, and the
Defendant comes in person, and by agreement of parties
It is ordered that the venue of this Cause be chan-
-ged to the County of Winnebago. And that the
Clerk of this Court transmit the record and
papers herein to the Clerk of the Winnebago Circuit
Court, as required by law.

to the said defendant or any part thereof,

2^d It dont appear from said plea that the Plaintiff made any false or fraudulent representations to the defendant in regard to said Notes & Mortgages mentioned in said plea

3^d It dont appear from said plea wherein the notes mentioned in said plea secured by Mortgages were ~~are~~ invalid

4th And also that the said Second plea is in other respects uncertain in form and insufficient &c

And the said Plaintiff states and shows to the Court here the following causes of demurrer to the said third plea. That is to say: It dont appear from said plea that the Plaintiff endorsed the notes mentioned in said plea which the Defendant alleges were secured by Mortgages. ^{On} And that the Plaintiff when he delivered the same to the said defendant became liable to pay the same to the said defendant or any part thereof

2^d It dont appear from said plea that the plaintiff made any false or fraudulent representations to the defendant in regard to said Notes & Mortgages mentioned in said plea.

3^d It dont appear from said plea wherein the notes

Page 22 mentioned in said plea. Second by Mortgages were invalid

4th It don't appear from said plea how, in what manner, why what means the Mortgages mentioned in said plea ~~were~~ released.

5th And also that the said third plea is in other respects uncertain, informal and insufficient &c

Dutcher & Brown
Plffs Atty's

Ordered

Filed Mar 1. 1861

C. A. Penoyer,
Clerk.

And afterwards to wit on the 2^d day of March 1861 at being one of the days of the February Term of the Winnebago County Circuit Court the following entry was made as appears of Court record to wit:-

188
Moses Nettleton }
vs }
Henry A. Mit. } Ch. venue, Ogde Co.

Now come the parties by their Attorneys and the Court having heard argument of Counsel on Demures to 2^d & 3^d pleas herein overrules the said demure as to 3^d plea & sustains the same as to 2^d. and on motion leave is granted to amend 2^d herein

State of Illinois } Winnebago County Circuit
Winnebago County } Court of the February Term
A D 1861

Henry A Meif }
at }
Moses Nettleton }

And the said defendant by
Lathrop and Heaton his Attorneys comes
and for amended plea to the said Plaintiff
declaration herein pleaded by leave of the
Court, Says Actio non because he says that
the only and sole cause of action of the said
Plaintiff in his said suit is the said promissory
note in the first count of his said declaration
mentioned. That the sole and only consideration
for the said note was as follows to wit. That at
and before the making of said note said
Plaintiff was in possession of two certain Mortgages
One of said Mortgages being made by one Francis
Tice on the 26th day of July A D 1843. and the
other ^{of said mortgages made} by one Harney Colburn. Said Mortgages made
on the 15th day of June A D 1844 and both on
the North west quarter of the North East quarter
of Section twenty seven in Township twenty three
north of Range Eleven East in the County of
Ogle and State of Illinois. And both of said
Mortgage deeds being made to one Major Chamberlain.
The first of said Mortgages being upon the

two undivided Third part of said premises, and the latter of said Mortgages being upon and conveying the other undivided one third part of said premises said Mortgages being at the time of the Execution of the same possessed in the same aforesaid proportions as tenants in common & in fee of said premises Each of said Mortgages being given to secure the sum of nine hundred & twenty five dollars, payable as in said Mortgages was & is specified and according to the tenor of Eighteen Certain promissory Notes in said Mortgages described and which said Notes were also held and owned to wit: at the time of making said note in said plaintiff's declaration mentioned by said Plaintiff, that at the time of the making of said last mentioned Note, The said Frances Tice and Harvey Colburn were utterly insolvent and unable to pay said notes or any part thereof which fact was then and there well known and understood by both the plaintiff and defendant, and their sole and only value was the supposed security offered by said Mortgages upon said land, that said Mortgages ^{were} duly recorded and appeared upon their face to be valid and subsisting liens upon said premises, which premises were ^{fairly} ~~partly~~ worth the amount of said Note in Plaintiff's declaration mentioned, The amount and value of said Note last mentioned being a full fair and sound price for said Mortgages, Considering and supposing them to be good and valid liens upon said

premises for the full value of said premises. And
defendants further avers that said plaintiff bring
them & there such owner of said Mortgages & the notes
the were given to secure in consideration that defend-
ant could & did then and there execute and
deliver to said plaintiff said note in his said
declaration mentioned, did then and there agree
to the consideration thereof, and did then and there
assign and transfer said said Mortgages and grant
and set over the same with all the right title &
claim to the premises in said Mortgages described
acquired by virtue of said Mortgages, and the
full and valid sale transfer and ^{Assignment} ~~conveyance~~ of the
same by said Chamberlain the grantee therein to
said Plaintiff and would & did deliver the same
together with said notes to one James B. Sale,
but in fact to and for the use and benefit of this
defendant. And said defendant supposing and
believing that said Mortgages were in fact as they
appeared upon the face and the due record thereof
good and valid liens upon said premises did then
and there in consideration of said sale and
transfer of said Mortgages & notes to said
Sale. But in fact for defendants use.
And for no other consideration whatever execute
and deliver said note to said Plaintiff. And
the defendant further avers that long before
that time to wit. on or before the May Term

Stephen Chapman commenced in the Ogle
 County Circuit Court a proceeding against
 said Haroy Colburn and one Milo Kelley
 grantee of said Title, after giving said Mortgage
 and against said premises for a Mechanics lien
 under the provisions of the Statute in such case
 made and provide. and to which said proceeding
 said Plaintiff was duly made and became a party.
 That said proceeding was afterwards by change of
 venue transferred to the County of Lee where
 such proceedings were after had thereon in the
 Circuit Court of said Lee County that the
 said Chapman recovered a Judgement against
 said premises by the decree of said Court at the
 August term to wit on the 19th ^{day} of August
 AD 1847 for a large sum of money to wit
 the sum of \$391 ⁶¹/₁₀₀ + Costs. and an order
 of said Court to sell said premises to satisfy
 said Judgements and decree, and it was also adjud-
 -ged and decreed by said Court said Plaintiff
 as to his said Mortgage + his claim by virtue
 thereof he bring them the owner of the same and
 having set them up in said cause. That
 upon payment of costs he go hence from said
 Court without ^{delay}. And afterwards and long
 before said Mortgage were so sold and
 assigned to said Gale said premises were
 and had been sold under and by virtue

Stephen Chapman commenced in the Ogle
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 August term to wit on the 19th ^{day} of August
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 the sum of \$391 ⁶¹/₁₀₀ + Costs. and an order
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 said Judgements and decree, and it was also adjud-
 -ged and decreed by said Court said Plaintiff
 as to his said Mortgage + his claim by virtue
 thereof he bring them the owner of the same and
 having set them up in said cause. That
 upon payment of costs he go hence from said
 Court without ^{delay}. And afterwards and long
 before said Mortgage were so sold and
 assigned to said Gale said premises were
 and had been sold under and by virtue

of said decree and the title to the same had
 absolutely and entirely proved as against said
 Plaintiff and his said mortgages to said Ste-
 phen Chapman. The purchase of said premises
 under said decree by reason whereof said mortgages
 had become and were at the time the same were
 so sold and assigned to said Isald wholly
 and entirely worthless were then and there by
 the proceedings aforesaid fully canceled and
 discharged. All of which facts to wit at the
 time and place of making and delivering
 of said note in said Plaintiffs declaration
 mentioned said plaintiff well knew. And
~~that~~ ^{that} the said defendant is ready to verify
 Wherefore he prays judgement &c

Lathrop & Heaton
 for defendant

Endorsed

Filed Mar 9. 1861

O. A. Penoyer

New Circuit Court

(Clerk)

Moses Nettleton

vs

Heby Term

Henry A. Mix

A D 1862

Not Erased

And the said plaintiff by
 Dutcher & Brown his Attorneys as to the
 said plea by the said defendant first
 above pleaded doth the like &c
 And defendant doth the like

And the said plaintiff for replication to the plea of the said defendant by him thirdly above pleaded says preclude now. Because he says that the said notes in the said plea mentioned did constitute and were good and valid evidences of indebtedness against the said makers thereof and ^{did} constitute and were a subsisting cause of action against the said makers thereof. And of this he the said plaintiff puts himself upon the country &c.

Defendant doth the like

And for a further replication to said ^{above} last mentioned plea the said plaintiff says Preclude now, because he says that the consideration of the said note mentioned in his said declaration was the sale and transfer by the said plaintiff to the said defendant of the said notes and mortgages in the said ^{plea} mentioned and not the representations of the said notes being good & valid evidences of indebtedness against said makers and well secured by said mortgages as is in said plea alleged and this he the said plaintiff says may be enquired of by the country &c.

Defendant doth the like

And for further replication to said

Third plea the said Plaintiff says precludi non,
because he says that at the time of the
making of the said note by the said
defendant the said plaintiff had not
by his laches & carelessness entirely released
and fully discharged said premises from all
lien of said mortgage as is in said plea alleged
and this the said plaintiff prays may be
inquired of by the court &c.

Defendant doth like,

And the said plaintiff for replication
to the amended plea of the said defendant
by him above pleaded says precludi non.
because he says at the time of the making
of the said note in the said plaintiffs
declaration mentioned. The said ^{Higgins} ~~Thomas~~
Dice and Harvey Colburn were not utterly
insolvent and unable to pay the notes in
the said plea mentioned or any part thereof
And this he the said plaintiff prays may
be inquired of by the court &c.

And the defendant doth the like

Sathrop Loop Justice

2^d And for a further Replication to the said defen-
dants said amended plea. the said Plaintiff
says precludi non. Because he says that a long
time previous to the purchase of the said notes
and mortgage by the said defendant & from
the said plaintiff & to the making of the said

Note in said declaration mentioned, the said suit or proceeding in behalf of said Stephen Chapman was commenced and carried on in said Circuit Court and the final judgement, decree or determination therein was a matter of record in said Circuit Court and the said plaintiff avers that the said defendant was and continued to be during the pendency of said suit or proceedings an Attorney and Counsellor at law, practicing in said Court and was the attorney for Miles Kelley one of the defendants in said suit or proceeding and thereby had notice of said suit or proceeding & the final determination thereof & of the effect thereof on the said lien of the said mortgages and this the said plaintiff is ready to verify wherefore &c.

And for a further replication to the said defendants said amended ~~plea~~, the said plaintiff says precludi non because he says that the assignment & sale of the said mortgages to the said defendant by the said plaintiff, was not the sole and only consideration of the giving of the Note in the said plaintiffs declaration mentioned, and this he prays may be inquired of by the Court &c.

And the defendant doth the like -

Lathrop & Loop for affd.

And for a replication to the plea of the
said defendant by him fourthly above pleaded
The said plaintiff says preclude non. because
he says that he was not, no is he indebted to the
said defendant in manner & form as the said
defendant hath above in his said plea in
that behalf alleged. And this the said plaintiff
prays may be enquired of by the Country &c

And the defendant doth the
like = Lathrop & Loop for D. ff.

Brown & Dutcher
Plffs Attys.

Endorsed

Filed Feb 25, 1862

O. A. Pennoyer,
Clerk

Filed Feb 26, 1862

O. A. Pennoyer
Clerk

And the said defendant as to the said
plaintiff's second replication to the defendants
amended plea - saith - that the said - plea -
-intiff ought not by reason of any thing by him
in that replication alleged to have or maintain,
his aforesaid action thereof against him. The
said defendant because he says - that he
this defendant was not the attorney of the
said Miles Kelley in manner as is alleged
in said Replication and of this he prays may

be enquired of by the Country -

Lathrop Loop for Deft

Endorsed

Filed Feb 26, 1862

O. A. Pennoyer

Clerk

And afterwards to wit on the 26 day of February 1862 it being one of the days of the February Term of the Winnebago County Circuit Court the following entry was made ~~in~~ ^{at} appears of Court record to wit.

Moses Nettleton

62

vs

Henry A. Moir

} Assumpsit

} And now comes the

} Plaintiff by Dutcher

Brown Taylor & Marsh his Attorneys & the Defendant by Keaton & Loop his Attorneys also comes and issue being joined it is ordered that a jury come and thereupon come a jury of twelve good & lawful men to wit Samuel Eastman, James O. Gregory, James Fenlon, Ezra Grippen, Elisha Harris, A. G. Mears, Brown Bonklin, Sumner Damon, Lewis Gregory, Henry R. Thomas, Alexander Knapp, W. B. Boston who bring duly empaneled tried and sworn well and truly to try the cause in hearing according to the evidence and having heard the evidence & the hour of adjournment having arrived the jury are charged to meet the Court at the hour of nine O'clock to morrow morning

arrived the jury are charged to meet the court at the hour of nine o'clock to morrow morning.

And afterwards to wit on the 27th day of February 1862 It being one of the days of the February Term of the Winnebago County Circuit Court the following entry was made as appears of Court record to wit

62 Moses Nettleton }
vs } Assumpsit
Henry A Moix }

And now come the parties herein as also the jury empaneled in this cause & having heard the evidence and argument of counsel they retire to consider of their verdict. and thereafter they return into court and render the following verdict. And thereafter they return into court and render the following verdict. Be the jury find for the plaintiff, and his debt in the sum of \$955.50. and assess the plaintiffs damages in the sum of \$614.44. thereupon the Defendant moves the Court for an new trial herein.

State of Illinois } Circuit Court of said County
Winnebago County } February, S. 1862

Moses Nettleton }
vs }
H A Moix }

And the said defendant comes - and enters his motion in arrest and for a new trial - and specifies the following ground for said motion

- 1st That an action of debt cannot be maintained on the instrument sued
- 2^d That it is not in contemplation of law a promissory note and was not therefore admissible in evidence without proof of consideration.
- 3^d That the Court erred in giving the instructions asked by the plaintiff and refusing those asked by the defendant
- 4th That the verdict is contrary to the law and evidence governing this cause
- 5th That the damages assessed were excessive and not warrantable by the evidence
- 6th And for many other causes and ^{errors} ~~reasons~~ - that appeared and was heard during the pendency and trial of said cause

Sathrop & Loop
Attys for Def

Endorsed

Filed Feb 28, 1862

Out Penneyer clerk

By W. H. Ferguson dep. clk

And afterwards to wit on the 5th day of March 1862 a being one of the days of the February Term of the Winnebago County Circuit Court the following entry was made as appeared

of Court record to wit,

Moses Nettleton }
v } Assumpsit
Henry A. Moir. }

And now again come
the parties by their Attorneys & the Plaintiff rem-
-its of \$435.33 from debt 322.29. From damages of
the ~~verdict~~ of the jury and the Court having heard
argument of Counsel on the motion for a new trial
herein overrules the same: It is therefore considered and
ordered by the Court that the Plaintiff have and
recover of the Defendant the sum of Five hundred
and twenty dollars & seventeen cents debt & the sum
of Two hundred & ninety two dollars & fifteen cents
damages as also his costs & charges herein expended
and that he have execution therefor. Thereupon
the defendant prays an appeal to the Supreme
Court which is allowed on his filing his appeal
bond to plaintiff with the Clerk of this Court
within 20 days with Pyram Jacobs surety in
the sum of one thousand two hundred dollars,

Bill of Exceptions.

State of Illinois
vinyet page
Ogle County ss Circuit Court of said
County February Term
1862

Moses Nettleton
vs
Henry A. Dix

Be it remembered
that on the trial of the above entitled suit
the plaintiff in order to maintain the issue
on his behalf introduced as a witness one
Edward F. Dutcher who being duly sworn
and qualified deposed as follows-

I know the parties to the above entitled
suit I have known them since the autumn of
1846 when I came into the County. I soon
after met the plaintiff on the prairie. I
commenced this suit for the plaintiff. I
called upon the defendant once and demand
ed pay for note this was in spring of 1858
before the commencement of this suit. he did
not pay the note. This was about the 15th of
May 1858. I told him I would take the
amount in Ogle County Orders. County orders
on Ogle County were worth from 87 1/2 to 94 cents
on the dollar at that time. In January or
February 1856 I sold some for 94 cents, they
were about the same up to 1858.

Thereupon the plaintiff offered in
evidence the note on which this action is
brought which is in the words and figures
following to wit

with interest one thousand and fifty dollars
for value received payable in orders on the
County of Ogle and State of Illinois of such
size and denomination as said Mix may be
able to furnish

Feb 1 1850.

W A Mix

To the introduction of which
the defendant then and there excepted -
First Because an action of debt could not
be maintained on such an instrument -
Second Because it was not a promissory
note and no action could be maintained
upon the without proof of consideration.
Which objections being heard and considered
by the Court were overruled and said note was
read to the jury to which ruling the defend-
ant then and there excepted.

On cross examination said Dutcher
further testified.

I have resided in Ogle County since 1846
Mix resided in Oregon Wisconsin in Ogle County
and here at Rockford. The distance from here
to Oregon is 25 or 26 miles I have driven it
in two and a half hours.

Mr Taylor gave me the note here in Rockford
I might have seen the Plaintiff as often as once
in six months I have met him between Ogle
County and Rockford. The first suit was com-
menced as early as in 1854 it might have
been in Court two years and may have been
more or less. After Mr Taylor died Mr Wisconsin
to charge of suit. I sold County Orders

in 1856 on 12 January of that year I sold
for 94 cents I sold some and got gold I sold
some for 90 and 92 cents. The first suit was
commenced on this note.

And further to maintain the issues
on behalf of the Plaintiff they introduced
& read in evidence the deposition of George
Kettleton which was in the words and figures
following to wit-

State of Illinois } In Winnebago Circuit Court
Ogle County sp. } of February Term A.D. 1861.
Moses Kettleton }

vs

Henry A. Mix } To Henry A. Mix, defend-
ant in the above entitled cause you are hereby
notified that I will on the thirtieth day of February
A.D. 1861 between the hours of ten o'clock in the fore-
noon and nine o'clock in the evening of the same
day before Oliver A. Pennoyer Clerk of the Winnebago
Circuit Court at his Office in Rockford (and
continue from day to day if need be) proceed to take
the deposition of George Kettleton a witness to be
produced, sworn and examined on the part of
the plaintiff to be used and read in evidence on
the trial of the above entitled cause when & where
you may attend & cross Interrogate said witness
if you deem proper so to do. Yours & Co

E. J. Dutcher Plffs Atty

February 2^d 1861

State of Illinois } Isaac Brown of the County of
Ogle County, p. } Ogle and State of Illinois being
first duly sworn doth depose and
say that Affiant did on the second day of February
A.D. 1861 serve the foregoing notice on Henry A Mix
by delivering him a true copy thereof.

Sworn & Subscribed before Isaac Brown

me this 12th day of February 1861.

Jno. W. Snowden J. P. (SS)

State of Illinois } In Winnebago Circuit
Winnebago County p } Court of February Term A.D. 1861.
Moses Nettleton }
vs }
Henry A Mix }

It is hereby agreed and stipulated
that the depositions of George Nettleton named in
annexed notice may be taken by and before James
E. Southgate, Deputy Clerk of said Circuit Court
and all errors are hereby waived and the same
may be used and read in evidence the same as
if taken before Oliver A Penoyer named in annex-
ed notice. Feby 13th 1861.

E. J. Dutcher
& W. Brown
Attys for Plff.
H. A. Meise

Moses Nettleton }
vs }
Henry A Mix }

Deposition of George Nettleton
Witness in the above entitled suit taken by James
E. Southgate, Deputy, Clerk of the Circuit Court
for the County of Winnebago and State of Illinois

on the thirteenth day of February 1861 at the Office of the Clerk of the Circuit Court in the presence of E. J. Dutcher and William Brown, Attorneys for the Plaintiff and Henry A. Mix on the part of the Defendants. said witness being duly sworn according to law deposes as follows:

Depositions of George Nettleton

Interrogatory 1. What is your name, age, and occupation and where do you reside:

Answer My name is George Nettleton, age thirty three years and occupation for the last summer a Miner at Pike's Peak - My residence is in Franklin County Iowa.

Interrogatory 2^d Are you or not acquainted with the Plaintiff Moses Nettleton and the Defendant Henry A. Mix and if you how long have you known them respectively:

Answer The Plaintiff is my father, have been acquainted with him as long as I can remember. I have been slightly acquainted with the Defendant Mix, or at least have known him when I saw him for about ten years.

Interrogatory 3^d Did you ever hear a conversation between the Plaintiff and Defendant? If you when and where was such conversation; and what was stated by said parties - State fully and particularly the same:

Answer. I did hear a conversation between the parties in the year 1851; - and as nearly as I can recollect in the

Month of June of that year it took place in Rockford.

Page 41

The conversation was in relation to a note that father held against Mr Mix for some County Orders, on Ogle County, Mr Mix requested father to wait on him about one year; He held out as an inducement for him to wait: he would get small County Orders which would easier be turned into money than large ones would. Father first objected to extending the time, but finally consented to it.

Interrogatory 4th Did, or not either the Plaintiff or the Defendant at the conversation referred to in your answer to the third interrogatory, state the amount of the note which the Plaintiff held against the Defendant, the time of payment of which the Defendant wished the Plaintiff to extend if you. state the same fully.

Answer I can not say positively that either party stated the amount

Interrogatory 5th. Had you, or not, at the time of the conversation mentioned in your answer to the third interrogatory any knowledge of a note made by the Defendant and payable to the Plaintiff; if you. what was the amount of said note, how payable and what was said note ~~for~~? given for?

Answer I had knowledge of Father holding a note against Mr Mix at that time; the note called for ten hundred and fifty dollars in Ogle County Orders - I have no

personal knowledge of what the note was given for.

Cross Interrogatory 1st. Please state when you first learned that your Father held the note referred to in your direct examination?

Answer - I can not state definitely when I first learned it: some time in the year 1850, either in the middle or latter part of the year.

Cross Interrogatory 2^d. Please state definitely when the conversation referred to in your answer to the 3^d direct interrogatory occurred? and who was present.

Answer - At the east end of the City Bridge in Rockford Father and myself were at work there when Mr. Nix came up - and Father saluted him as Mr Nix, this was the first time I ever saw him to know him. I recognize him to be the same gentleman who came up.

Cross Interrogatory 3^d. When was your attention first called to this conversation since its occurrence and by whom.

Answer I do not know as I can tell. we talked about it some 8 or 9 years ago, and I was here as a witness some 11 years ago. My attention was called to it by my father. Although I recollected it from his requesting me to at the time the conversation occurred.

Cross Interrogatory #15. What have you by which to fix the time of
Page 43 its occurrence.;

Answer - It was the season my brother John got Married. He
was married in March - My further recollection is that
we had the Mill leased out and was fixing the Mill.
It was leased to Wheeler and Lee Bar. - I know that
this was in 1851.

Direct examination resumed.

Have you seen the Defendant Mix since the
conversation referred to in your answer to the third
direct interrogatory, and if so, state how often and
when:

Answer I may have seen him since that conversation prior to
June 1857. I saw him at that time - I think I have not
seen him since until to day.

George Skelton

State of Illinois

Winnebago County } p. I James E. L. Southgate Deputy
Clerk of the Circuit Court in & for the County and State
aforesaid hereby certify that the above Deposition was taken
before me at the time and place mentioned in the Caption
thereof, and that the said witness was first duly sworn
and that the deposition was carefully read to the
Witness and signed by him. James E. L. Southgate

Dep. Cir. Clerk. & Comr.

Endorsed: Filed July 13 1861. C. A. Pennington Clk.

The Plaintiff having closed his testimony in chief rested

And the defendant thereupon introduced the following orders drawn by Plaintiff on defendant

Mer. H. A. Mix Esq: Ogle County Ill. February 2^d/52
Please let Mr. Peabody have fourteen dollars in County orders on my account and oblige. M. Kettleton

"
Mr. A. Mix Sir please pay to W^m J. Keys eight dollars and forty one cents in County orders and oblige.
Moses Kettleton by S. H. Hills

"
Mer. H. A. Mix Esq. please send by the bearer Seth W. Hills, some 30 dollars in County orders in small size if you can
Oct 23/52 M. Kettleton

Endorsed: Rec^d on this \$ 31.19 by H. A. Mix this 23 Oct. 1852 Seth W. Hills

"
Mer H A Mix Esq: Ogle County Ill. Dec 6th /51
Please pay the bearer Dr. Roe fifty dollars in County orders, and oblige.
M. Kettleton.

"
Mer H A Mix Esq. Oregon. - September 25th 1851
Dear Sir If this is presented before I see you. I wish you would let Dr. Roe have twenty dollars in County orders on my account.
M. Kettleton

Endorsed: Rec^d on this twenty dollars Sept 26 1851 J. Roe

"
Mer H A. Mix Esq. Ogle County Ill. Feby 3^d /52
Please let Mr. Whitson have six dollars in County orders and oblige.
M. Kettleton

"
Mer H. A. Mix Esq. Ogle County Ill Dec. 8th /51
Please pay the bearer in County orders one dollar ninety six cts and oblige
M. Kettleton

And then upon the defendant introduced James V. Gale as a witness who being duly sworn deposed as follows

I know the parties to this suit I have known them ever since they came into the County I have resided in Ogle County for 27 years, I have dealt in County Orders considerable. I was recorder of the County for eleven years and am a member of the Board of Supervisors. I do know the value of County Orders in 1850 they were not worth more than 50¢ they were about the same for some three or four years, in 1852 had a large order offered me for 50 cents - in 1850 a thousand dollars of orders could have been bought for forty cents they were about the same in 1851 did not vary much for two or three years the price was from forty five to fifty cents on the dollar. I know Frances Rice and Haney Colburn in 1850 I know what their circumstances were Colburn was ^{never} considered solvent Rice was not ~~con~~ responsible he was always considered insolvent. I think I have seen the note the note was given for two mortgages. Mr. Wretton told me some thing in regard to it but cannot recollect what Mr. Wretton told me I think that he held a demand against Mix for the mortgages but I cannot state positively what he said

On cross examination the witness stated that Rice lived in Ogle County ten years lived on the east side of river I could not tell the years that he was there. I could not state where he did go to I only know what his circumstances were by report. he lived on a farm he did not own it. he lived on a farm ten or fifteen years. Calburn was never considered responsible. He did not own the mill or any thing but might have been concerned in it some way. It is notorious that he is irresponsible - within ten years is not a responsible man has not got as much as the law allows

The defendant further produced John W. Hinckle who being sworn deposes as follows
I reside in Daysville Ogle County Illinois I have lived in Ogle County 24 years I have been constable recorder and county clerk I was County Clerk from 1849 to 1853 I know the parties to this suit. I have known Mr Dix ever since he came into the County I have traded and dealt in County Orders. Orders were worth from 40 to 50 cents in 1850 to 1852 & 1853 they were sold in the Stores for goods - at that price I bought them for 45 cash in 1850 & 1851 and remained the same for two or three years, up to 1857 when they began to raise gradually. The cash value of Orders from 1850 to 1853 was about 50% on the dollar I do not suppose you could have sold orders to the amount of \$1000. at any price, there were few people in Oregon that had money to invest in that way, but \$1000. of County

4
passed an order that they should be received in for taxes as other orders this was when Dan Dix was clerk 1843. Dix knew Colburn Ogle County was indebted the last year I was in office in 1853 about \$19,000. and had been more in debt for several years prior to that time

Robert B. Sigler a witness produced by the defendant who being duly sworn deposed as follows

I have resided in Ogle County for the last eighteen years. I have known the parties to this ever since I came to the County - I have been County Surveyor of Ogle County four years and clerk of the Circuit Court for eight years from 1848 to 1856 I took office in 1848 I have dealt in Ogle County orders have bought and sold them. I do know the value of orders in 1850 I have paid as high as 75 cents for them, at that time there was two class of orders revenue orders and building fund orders. Orders were worth from 40 to 50 per cent about this time Sales bought orders at 40 cents, from 1850 to 1853 the price of orders remained about the same, in 1854 when Air Line Rail Road project came up County orders went up there was a demand for lots in Oregon which created a demand for County orders.

I have known Harvey Colburn for some years there are judgments in Ogle Circuit Court against him. I do not think judgments are paid. I know costs not paid these judgments

obtained in 1850 & up to 1853 and for two or three hundred dollars. There are other judgments on the docket.

On cross examination witness said
There was no advance in County Orders from spring of 1851 to 1852 I think there was no advance in the price of County orders of any consequence until the Rail Road excitement in 1854.

Here the defendant introduced two mortgages & eight notes which are in the words & figures following to wit
Know all men by these presents that I Harvey Colburn of the County of Ogle and State of Illinois in consideration of the sum of nine hundred and twenty five Dollars to me in hand paid by Major Chamberlin of the State and County aforesaid the receipt whereof is hereby acknowledged do by these presents give grant bargain sell and convey unto the said Major Chamberlin his heirs and assigns the following described tract or parcel of land situated in said Ogle County to wit the equal and undivided one third of the north west quarter of the north east quarter of Section No (27) twenty seven in Township No Twenty three (23) of range No 111 Eleven East of the fourth principal Meridian being the premises conveyed to me by Solomon Langdon to have and to hold the aforesaid premises with the mill and

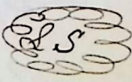
other buildings thereon and the appurtenances to the same belonging to him the said Major Chamberlin his heirs and assigns forever and I the said Harvey Colburn for myself heirs executors and administrators do covenant with the said Major Chamberlin his heirs executors and administrators and assigns that I am lawfully seized in fee of the foregoing premises that they are free from all incumbrances that I have good right and full power to sell the same to him the said Major Chamberlin his heirs executors administrators and assigns against the lawful claims of all persons whomsoever. Provided nevertheless that if the said Harvey Colburn shall well and truly pay or cause to be paid to the said Major Chamberlin his executors or administrators at the times they shall respectively become due the following described notes of bond signed by the said Harvey Colburn as they shall become due all dated on the first day of April in the year of our Lord one thousand eight hundred and forty three to the said Major Chamberlin to wit

- One Note of one hundred dollars payable two years from date with use at six per cent -
- One Note of One hundred dollars payable three years from date with use
- One note payable of one hundred dollars four years from date with use
- One Note of One hundred dollars payable five years from date with use
- One Note of One hundred dollars payable

six years from date with use
 One note of one hundred dollars payable
 seven years from date with use
 One note of one hundred dollars payable
 eight years from date with use.
 One note of one hundred dollars payable
 nine years from date with use
 One for one hundred and twenty five dollars
 payable in nine years and six months from
 date with use -

That the above deed to be null and
 void otherwise to remain in full force and
 virtue and the said Chamberlin is hereby
 authorized to fore close upon the failure
 to make either of the above payments of
 said notes for the amount that may then be
 due

In witness whereof I have hereunto set my
 hand and seal this the fifteenth day of June
 in the year of our Lord one thousand eight
 hundred and forty four.

Harvey Colburn 

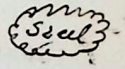
In presence of
 Solomon Langdon
 Wm J. Dix

Personally appeared before me Wm J. Dix
 a Justice of the Peace in and for the County
 of Ogle Harvey Colburn personally known to me
 to be the same person who executed the within
 deed and acknowledged the same to be his free
 act & deed and desired the same might be record-
 ed as such Ogle County All June fifteenth
 A.D. 1844
 Wm J. Dix J. P.

Know all men by the presents that I Major Chamberlin within named in consideration of the sum of Nine hundred & twenty five dollars to me paid by Moses Britton of the County of Ogle & State of Illinois the receipt of which is hereby acknowledged do hereby assign transfer & convey unto the said Britton his heirs & assigns all my right title & interest in & to the parcel of land within mentioned and all the improvements thereon & also all my right & interest in & to each & all the notes within named. To have & to hold the same to him the said Moses Britton his heirs & assigns forever all said notes being still wholly unpaid.

Witness my hand & seal this Fifth day of September in the year eighteen hundred & forty four.

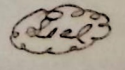
Signed sealed &
delivered in presence
of W W Fuller

Major Chamberlin 

On the back of said mortgages is a certificate in the words & figures following to wit
Recorders Office
Ogle County Ills

I hereby certify that the within mortgage and assignment was filed for record in my office November 10th 1847 & Recorded Nov 12th 1847 in Book B of Mortgages pages 145 & 146.

Given under my hand and seal this 12th day of Nov 1847.

John M. Haukley 
Recorder-

Endorsed: Rec^d. Aug. 16. 1847 - Twenty five dollars, the same being on the ^{note}
Two Years from date for value received I
promise to pay Major Chamberlin one hundred
dollars with use

April 1st 1843

on back of note to wit

Paid August 16th 1847

Twenty five dollars the

same being on the mortgage

Endorsed: "Without recourse" to me for debt or cost. Major Chamberlin

April 1st 1843

Three years from date for value rec^d I promise
to pay Major Chamberlin one hundred
dollars with interest from date

Endorsed: without recourse to me

for debt or cost. Major Chamberlin

Harvey Colburn

April 1st 1843

Four years from date I for value rec^d promise
to pay Major Chamberlin one hundred
dollars with interest from date

Endorsed: Without recourse to me

for debt or cost. Major Chamberlin

Harvey Colburn

April 1st 1843

Five years from date I for value rec^d promise
to pay Major Chamberlin one hundred
dollars with interest from date

Endorsed: Without recourse to me

for debt or cost. Major Chamberlin

Harvey Colburn

Six years from date for value received I
promise to pay Major Chamberlin one
hundred dollars with use

April 1st 1843

Endorsed: without recourse to me for debt or cost. Major Chamberlin

Seven years from date for value received I

Harvey Colburn

promise to pay Major Chamberlin or bearer
one hundred dollars with use -

April 1st 1843 Harvey Colburn

Endorsed: Without recourse to me for debt or cost. Major Chamberlin

Eight years from date for value received
I promise to pay Major Chamberlin one
hundred dollars with use

April 1st 1843 Harvey Colburn

Endorsed: Without recourse to me for debt or cost. Major Chamberlin

Nine years from date for value received
I promise to pay Major Chamberlin one
hundred dollars with use

April 1st 1843 Harvey Colburn

Endorsed: Without recourse to me for debt or cost. Major Chamberlin

Nine years and six months from date
for value received I promise to pay Major
Chamberlin one hundred and twenty five
dollars with use

April 1st 1843 Harvey Colburn

Endorsed: Without recourse to me for debt or cost. Major Chamberlin

On the back of each of the foregoing notes
is an endorsement in the words & figures
to wit " Without recourse to me for debt or cost -

Major Chamberlin -

I know all men by these presents that
Francis J. of the County of Ogle and State
of Illinois in consideration of the sum
of nine hundred dollars to me in hand
paid by Major Chamberlin of said County
& State the receipt whereof is hereby acknow-
ledged do by these presents give grant

bargain sell & convey unto the said Major
 Chamberlin his heirs and assigns the follow-
 ing described tract or parcel of land situated
 in the said Ogle County to wit^{the} equal undiv-
 ided two thirds of the North west quarter
 of the North east quarter of Section Number
 Twenty seven in Township Number Twenty Three
 of Range Number Eleven East of the fourth
 P.M. being the same property or premises
 conveyed to me by said Major Chamberlin
 To have and to hold the afore said premises
 with the mill and other buildings thereon
 and the privileges and appurtenances to
 the same belonging to him the said Major
 Chamberlin his heirs & assigns forever and
 I the said Francis Rice for my self my heirs
 executors & administrators do covenant
 with the said Major Chamberlin his heirs
 executors administrators and assigns
 that I am lawfully seized in fee of the afore-
 granted premises that they are free from
 all incumbrances that I have good right
 & full power to sell and convey the same
 to him the said Major Chamberlin his
 heirs executors & administrators as afore-
 said and that I will and my heirs
 executors & administrators shall warrant
 and defend, ^{the same} to him the said Major Cham-
 berlin his heirs executors administrators &
 assigns against the lawful claims of all
 persons whomsoever

Provided always that if the said Francis
 Rice and David S Cable or their lawful heirs
 or assigns shall well and truly pay to the

said Major Chamberlin his executors
administrator or assigns at the time
they shall respectively become due the follow-
ing described notes of hand signed by the
said Francis Rice & David De LaBele and all
dated on the first day of Apr in the year
of our Lord one thousand eight hundred
& forty three and made payable to Major
Chamberlin to wit one of one hundred & twenty
five dollars payable one year from date
with interest at the rate of six per cent from
date one for one hundred dollars payable
two years from date at the rate of six per cent
from date, one for one hundred dollars
payable three years from date with simple
interest, one for one hundred dollars
payable four years from date with simple
interest One for one hundred dollars
payable five years from date with
simple interest from date One for one
hundred dollars payable six years from
date with simple interest from date
One for one hundred dollars payable
seven years from date with simple interest
One for one hundred dollars payable
eight years from date with interest
One for one hundred dollars payable
nine years from date with interest -
The above notes amounting to nine hun-
dred dollars which if paid as above
written or before the above contract is to
be null and void otherwise to remain
in full force and virtue And the said
Chamberlin is hereby authorized to enter

or fore close upon the failure to pay either of the above described payments of said notes for the amount that may then be due

In testimony whereof I hereunto set my hand and seal this twenty sixth day of July in the year of our Lord one thousand eight hundred and forty three
In presence of
David D Cable
Joseph Williams
Francis Rice

State of Ill
Ogle County

On the Twenty Sixth day of July in the year of our Lord one thousand eight hundred & forty three personally appeared before me the subscriber a justice of the peace in & for said County of Ogle Francis Rice personally known to me to be the person who executed the above deed and acknowledged that he executed the same freely and voluntarily for the uses and purposes therein mentioned

Given under my hand & seal this Twenty Sixth day of July in the year of our Lord A.D. 1843
Joseph Williams J.P.

Recorder's Office
Ogle County
State of Ill

I do hereby certify that the within mortgage was filed for record Sept 11th 1843 & recorded Sept 17th 1843 in Book B of deeds Page 146.7.8.

Received Aug. 16 1847 Sixty three dollars & thirty nine ct. the same being on the note

James V Gale Ric

Upon the said mortgage is the following assignment to wit:

Know all men by these presents that I Major Chamberlin within named in consideration of one hundred dollars to me paid by Moses Wicketon of the County of Ogle & State of Illinois the receipt of which is acknowledged do hereby assign transfer sell and convey unto him the said Wicketon his heirs & assigns all my right title and interest in & to the parcel of land within mentioned & all the improvements thereon also all my right title & interest in & to all the notes in the within mortgage mentioned except the first note therein mentioned & twenty five dollars of the last note within named all of which notes except as is above excepted remain wholly unpaid, To have and to hold the same to him the said Moses Wicketon his heirs and assigns forever.

Witness my hand & seal this fifth day of September in the year Eighteen hundred & forty four
Signed Sealed & } Major Chamberlin Seal
delivered in presence }
of W W Fuller - }

(Notes)

#1 & 5. One year from date for value received we jointly & severally promise to pay Major Chamberlin one hundred and twenty five dollars with interest at the rate of six per cent from date
Waterloo April 1st 1843
Francis Rice
David D Cable

(On back) Rec^d ~~Rec^d~~ Aug 20 1844 on the
within thirty five dollars

Rec^d on the within note thirteen dollars
forty three cents Aug 25-

Rec^d June 12 1844 on the within note twenty
five dollars.

(Endorsement) - - - - Major Chamberlin
Without recourse

\$100) Two years from date for value received
we jointly and severally promise to Major
Chamberlin one hundred dollars with interest
at the rate of six per cent from date

Water town Apr 1 1843

Francis Piee

(On back)

David D Cable

Received August 16th 1847

\$13.31 Sixty three 31

\$100) Three years from date for value
received we jointly promise to pay Major
Chamberlin one hundred dollars with simple
interest from date

Water town Apr 1 1843

Francis Piee

David D Cable

\$100) Four years from date for value received
we jointly and severally promise to pay Major
Chamberlin one hundred dollars with simple
interest from date

Water town Apr 1 1843

Francis Piee

David D Cable

\$100. Five years from date for value received
we jointly and severally promise to pay
Major Chamberlin one hundred dollars with
simple interest from date

Water town Apr 1 1843.

Francis Piee
David D Cable

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\$100. Six years from date for value received
we jointly and severally promise to pay Major
Chamberlin one hundred dollars with simple
interest from date
Water Town Apr 1 1843 Francis Rice
David D Cable

\$100. Seven years from date for value received
we jointly and severally promise to pay Major
Chamberlin one hundred dollars with simple
interest from date
Water Town Apr 1 1843 Francis Rice
David D Cable

\$100. Eight years from date for value received
we promise jointly and severally to pay Major
Chamberlin one hundred dollars with simple
interest from date
Water Town Apr 1 1843 Francis Rice
David D Cable

\$100 Nine years from date for value received
we jointly promise to pay Major Chamberlin
one hundred dollars with simple interest
from date
Water Town Apr 1 1843 Francis Rice
David D Cable
(On back)

Received on the within
Apr 1 1843 Twenty five dollars

On the back of the
last five notes is an endorsement as follows
to wit "Without recourse to me for debt or cost
Major Chamberlin"

Defendant further introduced one Peter
Ho Will who being ^{duly} sworn testified as follows

I am son in law of the Plaintiff I know
 Nettleton and have known Dix since he came
 to Oregon. Nettleton the Plaintiff told me he
 had a note payable in County orders given
 to him by Dix for his interest in the mortgages
 he held against the White Oak Mill property.
 I think he said mortgages made by Colburn
 and Rice and he may have said Kelly
 I do not know of his having any other
 mortgages on this property but those
 that he sold to Dix. Nettleton told me
 that this note (made by defendant ~~which~~ ^{which was shown witness} meaning the note of \$10500)
 was given for the mortgages and notes and
 that he discounted the mortgages at 50
 per cent.

(Here an order was presented witness
 drawn by Plaintiff in favor witness or
 defendant) Mr Nettleton gave me this
 order to go to Dix to get some County orders
 on

Major Chamberlin a witness on behalf
 of defendant being duly qualified testified
 as follows.

I know parties to this suit I know
 the White Oak Mill property. I once owned
 some 15 or 20 years ago. I cannot state how
 the title came into Colburn & Rice, but my
 impressions are that Langdon sold to Rice
 & Cable and Cable to Colburn (Here the
 mortgages & notes shown witness) These
 mortgages I let Mr Nettleton have. The
 consideration in the trade was \$1800. we
 computed them at \$1800. in the deal.

8



I gave him these notes and mortgages for his claim in what is called the Water town Mill property. I hard by know what the thing was worth. I stilled with him all night. I got what I agreed to take for it. There is a good fishing ground now on the privileges

The defendant having closed his testimony in chief the Plaintiff again called Edward S. Dutcher who testified as follows

I got acquainted with Kelly in 1846 I know but little about the mechanic lien suit commenced by Chapman against Kelly in Ogle County. My recollection is that Mr. Dix & I were Attorneys for Kelly in Ogle County Circuit Court. A change of venue was taken to Lee County, where tried at Dixon Dix not there Mr Sample had something to do with it. Dix was acquainted with all the parties. Dix done business for Kelly & Colburn. Dix done Colburns business. White Oak Mill is in Ogle County. Dix is as well acquainted with land as any man. Since 1847 has dealt extensively in land Rise in real estate in Oregon took place in 1854. Rise in real property took place in 1852 & 1853 Dix understood real estate as well as any one. Dix did not know anything about his pecuniary circumstances Colburn for five or six years has been responsible. There are judgments in the Circuit Court against him. Mr Fuller acted for Middleton and I think for Kelly at Dixon in the mechanic's lien suit. Mr Dix had gone East I was a Dixon when it was tried. Mr Fuller appeared for defendant. Nettleton & I think Kelly at Circuit

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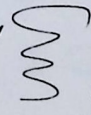
named Moses Nettleton did on the 6th day of
March A.D. 1862 recorded in the Circuit Court
of Winnebago in the State of Illinois. Then of the
February Term of said Court A.D. 1862 a judg-
ment against the above bounden Henry A.
Moit for the sum of Eight hundred and
twenty dollars, and costs of ^{suit} ~~suit~~ - from
which - said Judgement said Moit has taken
an appeal - to The Supreme Court of The
Third ^{ground} General Division of said State of Illinois
Now if the said Henry A. Moit shall will
and truly make payment - of said Judgement
- costs interest and damages in case. said
judgement shall be affirmed and shall also
well and truly prosecute said appeal, then
this obligation to be null and void otherwise
to remain in full force and effect

Henry A. Moit 
By Am Jacobs 

Condensed

Filed March 21st 1862

O. A. Pennoyer Clerk
By Wm S Ferguson
Deft Clerk

State of Illinois
Winnebago County,  J. O. Pennoyer Clerk of the
Circuit Court within of said County do hereby certify
that the foregoing is a true Copy of the record of the
judgment appealed from in the above entitled Cause
And contains a Copy of the process, the pleadings of
the parties (respectively on file) the verdict of the
jury, the judgment of the Court thereon - all orders
in said Cause made by the Court, the bill of exceptions
and the appeal Bond and copies of all the files of

the said Cause which the Attorney for the Defendants, indicated by Inspecie to me to be Copied into the record All as appears of record in my office And Contains no other matter or thing whatsover.

Witness my hand & the Seal of said Court
at Rodford this 17th day of April 1862
Oliver A. Pennypacker Clerk

Costs of Transcript to Supreme Court \$11.00
Plus Payment of Defendant Misc.
Of Pennypacker Clerk

And now Comes the said Henry A. Miss by Glover, book Reampture his Atty & says that in the Record of proceedings aforesaid and in the rendering of judgment aforesaid there is manifest error in this to wit

- 1 The Court Erred in admitting improper Evidence offered by Plaintiff in the Court below
- 2 The Court Erred in overruling the motion in arrest of judgment
- 3 The Court Erred in overruling the motion for a new trial
- 4 The Court Erred in entering the judgment aforesaid in whatever form aforesaid

Glover Leok & Campbell
Attys for Appellant

And now comes the said Appellee by
Selmond Blanchard his attorney and says
that in the forgoing judgment and
proceedings there is no error

Selmond Blanchard
for Appellee

152 293
Henry J. Elliot
Mosco Attleboro

Record

Filed Apr. 24, 1862
L. Nelson
Clerk