


No. 14307

# Supreme Court of Illinois

Mitchell

vs.

Brewster

71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 27

14307

*Mitchell*  
*G. W.*  
*Opinion*

1862

*Referred*

United States of America  
State of Illinois  
Stephenson County

Page. 1

Please, before the Hon Benj R. Sheldon Judge of the fourteenth Judicial Circuit of the State of Illinois at @ Regular Term of the Stephenson County Circuit Court began and held (in pursuance of Law) at the Court House in the City of Freeport in the County and Judicial Circuit aforesaid, on the 6<sup>th</sup> day of September (Monday) in the Year of Our Lord One Thousand Eight Hundred and fifty eight

Present — Hon Benj R. Sheldon Judge  
Urban O. Meacham State Attorney  
J Wilson Shaffer Sheriff  
Luther W. Sullivan Clerk

Be It Remembered That heretofore to wit: — On the 4<sup>th</sup> Day of July A.D. 1858 of said September Term of said Court the following Proceipe for @ Summons was filed in said Court to wit: —

"In the Stephenson County Circuit Court"  
of the September Term A.D. 1858 —

"James Mitchell, Alexander Putnam, &

"Roderick Richardson & John A. Payr &

"John K. Brewster and ..... } etampsit  
} Damages \$2000 —

"Joseph M. Brewster

The Clerk of the Circuit Court will  
" issue @ summons, against the Defendants in favor of  
" the above named Plaintiffs in said cause returnable  
" at the September Term of said Court directed to the Sheriff  
" of said County to execute

" July 6. 1858 — "Jason Marsh Plffs Attorney"

On the back of which appears the following in-  
dorsement to wit: "Filed July 7. 1858. L. W. Sullivan Clerk"  
"By W. H. Bay Esq"

2

And on the same day the following Summons was issued out of said Court tenor:—

State of Illinois 300  
Stephenson County 3

The People of the State of Illinois to the Sheriff of said County  
Greeting:— We command you to Summon John K. Brewster  
& Joseph M. Brewster if he be found in your County per-  
sonally to be and appear before the Circuit Court of said  
County of Stephenson on the first day of the next Term  
thereof to be holden at the Court House in the City of Free-  
port in said County on the first Monday in the  
month of September next to answer unto James Mitchell  
Holden Putnam, Roderick Richardson & John  
A. Page in @ Plea of Assumpsit to the damage  
of the said Plaintiffs as they say in the sum of  
Twenty Six hundred Dollars and have you then  
and then this writ with an endorsement thereon  
in what manner you shall have executed the same.

Witness Supter W. Guilan Clerk of our said Cir-  
cuit Court and the seal of said <sup>Court</sup> at Freeport in said  
County this 17th Day of July A.D. 1855

Seal

Attest S. W. Guilan Clerk  
By W. H. Barry Dep

On the back of which appear the following endorsement  
tenor:— "Served the within by reading the same to the  
within named John K. Brewster & Joseph M. Brewster  
this 17th day of July A.D. 1855— J. W. Shaffer Sheriff  
By M. A. Youngman Deputy

Service 1.00  
Mileage 1.15  
Relief 10  
2.25

Declaration

3

State of Illinois }  
Stephenson County }  
3

In the Circuit Court of the Sep-  
tember Term A. D. 1858 -

James Mitchell Holden Putnam

Roderick Richardson and John A Page Plaintiffs  
in this Suit by Jason Marsh their Attorney complain of  
John K. Brewster and Joseph M. Brewster Defendants  
who were summoned etc in a plea of trespass on the  
case on promises: It is that Whereas the said Defendants  
heretofore writ: - on the thirtieth day of May in the  
Year of Our Lord One Thousand Eight Hundred and  
fifty seven at Freeport Ill writ: - at Freeport in said  
County of Stephenson made their certain promissory  
Note in writing and then and there delivered the  
same to said Plaintiffs in and by which said Note  
said Defendants by the name style and description  
of J. K. Brewster & J. M. Brewster security promised  
to pay to the order of the said Plaintiffs by the name  
style and description of James Mitchell & Co thirty  
days after the date thereof (which period hath  
now elapsed) the sum of One thousand Dollars  
with ten per cent interest after due for money loaned  
for value received - By means whereof and by force  
of the statute in such case made and provided  
the said Defendants became liable to pay said  
Plaintiff said sum of money mentioned in said  
Note, and being so liable in consideration thereof  
then and there undertook and promised to pay  
the same to the said Plaintiffs according to the tenor  
and effect, true intent and meaning of the said  
note writ: - at the place aforesaid - And for that  
Whereas also the said Defendants heretofore writ:  
on the second day of June in the Year of Our  
Lord One Thousand Eight Hundred and fifty seven  
at Freeport Ill. writ: at Freeport in said County of  
Stephenson made their certain other promissory note

in writing and then and there delivered the same to  
 said Plaintiff in and by which said last mentioned  
 note said Defendants by the name style and description  
 of J. W. Brewster and J. M. Brewster promised to pay to the  
 order of the said Plaintiff by the name style and de-  
 scription of James Mitchell & Co thirty days after the  
 date thereof (which period hath now elapsed) the sum of  
 three hundred and two dollars with ten per cent  
 interest after due for money loaned for value received.  
 By means whereof and by force of the statute in ~~which~~  
 such case made and provided the said defendants  
 became liable to pay said Plaintiff said sum of money  
 mentioned <sup>in said last mentioned</sup> note, and being so liable in consideration  
 thereof then and there undertook and promised to pay  
 the same to the said Plaintiff according to the tenor  
 and effect, true intent and meaning of the said note  
 writ at the place aforesaid - And Whereas <sup>also</sup> the said  
 Defendants afterward to wit: - on the first day of July  
 in the year of Our Lord One Thousand Eight Hun-  
 dred and fifty eight to wit: - at Freeport in said  
 County became and were indebted unto the Plain-  
 tiffs in a large sum of money to wit: - twenty six  
 hundred dollars for money before that time lent and  
 advanced to and paid laid out and expended  
 for said Defendants by said Plaintiff at said  
 Defendants request, and for money before that  
 time had and received by said Defendants  
 to and for the use of said Plaintiff; and also in  
 like sum for goods, wares and merchandise before  
 that time sold and delivered by said Plaintiff  
 to said Defendants at like special instance and  
 request; and also in like sum for the labor care and  
 diligence of said Plaintiff before that time done  
 and performed by said Plaintiff for said Defen-  
 dants; and at the like instance and request of

S.

said Defendants, and being so indebted said Defendants in consideration thereof then and there undertook and promised to pay said Plaintiffs said last mentioned sum of money when thereunto afterward requested -

Yet the said Defendants not regarding their said promises and undertaking but Contriving etc, although often requested to do have not paid said Plaintiffs either of said sums of money or any part thereof but so to do have hitherto wholly neglected and refused and still do neglect and refuse to the damage of said Plaintiffs of twenty six hundred dollars and therefore they bring this suit &

Jason Marsh  
Plffs Attorney

Copy of Instrument and Account sued upon  
\$1000 - Report Dec May 30<sup>th</sup> 1859 -

Thirty days after date for value received we promise to pay James Mitchell & co or order one thousand \$ dollars with ten per cent interest after due for money loaned - Payable at Stephenson County Bank

J. K. Brewster  
By J. M. Brewster  
J. M. Brewster security

\$312 - Report Dec June 2<sup>d</sup> 1859 -

Thirty days after date for value received we promise to pay James Mitchell & co - or order three hundred & twelve \$ dollars with ten per cent interest after due for money loaned - Payable at Stephenson County Bank -

J. K. Brewster  
By J. M. Brewster  
J. M. Brewster security

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John H. Brewster and }  
Joseph M. Brewster }

To James Mitchell, Holden Putnam  
Rodrick Richardson & John A. Page - Dr

To Money lent and advanced —	\$ 2600.00
To money expended and paid out for —	\$ 2600.00
To money received for use of —	\$ 2600.00
To Goods Hares and Merchandise	\$ 2600.00
To labor and services	\$ 2600.00
To balance on account stated	\$ 2600.00

On the back of which Declaration appears the following  
Endorsement to wit —

"The Original declaration in this cause  
having since the trial of the cause been lost or mislaid  
It is hereby stipulated and agreed that this declaration  
may be filed in the place of the original declaration  
& shall form a part of the record in this case"

Sweet & Hubbard

Atty for Defts  
Jason Marsh - Plffs Atty

my

And afterwards to wit: on the 11<sup>th</sup> day of September A.D. 1858 one of the days of said September Term of said Court the following Entry appears of Record in this cause to wit:—

251 James Mitchell, Woldern Putnam,  
Roderick Richardson, & John A. Page.  
vs  
John K. Brewster & J. M. Brewster  
Spumpsit

Now came the said Defendants by their Attorney and file their Pleas—

"State of Illinois vs Stephenson County Circuit Court  
"Stephenson County" September Term A.D. 1858 —

John K. Brewster & Joseph M. Brewster  
advs  
James Mitchell, Woldern Putnam  
Roderick Richardson & John A. Page

1 And the said Defendants by their Attorneys Sweet & Hubbard come and defend the wrong and injury when &c — and says that they did not undertake or promise in manner and form as the said plaintiffs have above thereof complained against them and of this they put themselves upon the Country &c —

2 And for @ further Plea in this behalf, the said Defendants as to the first count of said Declaration by leave of the Court here for this purpose first had and obtained actio non — because they say that the said Plaintiffs heretofore to wit: — on the Eighteenth day of January A.D. 1858 at the December Term in the Year of our Lord 1857 of the Circuit Court within and for the County of Stephenson in the State of Illinois impleaded the said Defendant John K. Brewster in @ certain Plea of trespass on the case on Promises.

And afterwards to wit: on the 11<sup>th</sup> day of September A.D. 1858 one of the days of said September Term of said Court the following entry appears of Record in this cause to wit:—

251 James Mitchell, Woldern Putnam,  
Roderick Richardson, & John A. Page.  
vs  
John K. Brewster & J. M. Brewster  
Spumpsit

Now came the said Defendants by their Attorney and file their Pleas—

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"Stephenson County" September Term A.D. 1858 —

John K. Brewster & Joseph M. Brewster  
advs  
James Mitchell, Woldern Putnam  
Roderick Richardson & John A. Page

1 And the said Defendants by their Attorneys Sweet & Hubbard come and defend the wrong and injury when &c — and says that they did not undertake or promise in manner and form as the said plaintiffs have above thereof complained against them and of this they put themselves upon the Country &c —

2 And for @ further Plea in this behalf, the said Defendants as to the first count of said Declaration by leave of the Court here for this purpose first had and obtained actio non — because they say that the said Plaintiffs heretofore to wit: — on the Eighteenth day of January A.D. 1858 at the December Term in the Year of our Lord 1857 of the Circuit Court within and for the County of Stephenson in the State of Illinois impleaded the said Defendant John K. Brewster in @ certain Plea of trespass on the case on Promises.

to the Damage of the said plaintiffs of Two Thousand dollars for the not performing the very same identical promises and undertakings and each and every of them in the said first count of said declaration mentioned, and such proceedings were thereupon had in the said Court in that Plea. that afterwards to wit: in that same December Term A.D. 1857 the said Plaintiffs by the consideration and judgment of the said Court recovered in the said Plea against the said Defendant John K. Brewster the sum of Ten Hundred Seventy Eight Dollars and Eighty Nine cents for their Damages which they had sustained as well on occasion of the not performing the same identical promises and undertakings in the said first count of the said Declaration mentioned as for their costs and charges by them about their suits in that behalf expended whereof the said John K. Brewster was convicted as by the Record and proceedings thereof still remaining in the said Court more fully and at large appears which said judgment still remains in full force and effect not in the least reversed satisfied or made void, and this the said Defendants are ready to verify by the said Record, wherefore they pray judgment &c -

¶

And for @ further Plea in this behalf as to the second count of said Declaration the said Defendants by leave of the Court here for this purpose first had and obtained ays actio novi. because they say, that the said Plaintiffs heretofore to wit: On the eighteenth day of January A.D. 1858 at the December Term A.D. 1857 of the Circuit Court within and for the County of Stephenson in the State of Illinois impleaded the said <sup>Defendant</sup> John K. Brewster in @ certain Plea of Trespass on the case on Promises to the Damage of the said Plaintiffs of Two Thousand Dollars for the not performing the very same identical

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promises and undertakings and each and every of them in the said second count of said Declaration mentioned and such proceedings were thereupon had in the said Court in that Plea that afterwards to wit: in that same December Term A.D. 1854 the said Plaintiffs by the consideration and Judgment of the said Court recovered in the said last named Plea against the said Defendant John K. Brewster the sum of three hundred and forty six Dollars and Ninety four cents for their Damages which they had sustained as well on occasion of the not performing of the same identical promises and undertakings in the said second count of the said Declaration mentioned as for their costs and charges by them about this suit in that behalf expended whereof the said Defendant John K. Brewster was convicted, as by the Record and proceedings thereof still remaining in the said Court more fully and at large appears which said last named Judgment still remains in full force and effect not in the least reversed satisfied or made void. And this the said Defendants are ready to verify by the said record wherefore they pray Judgment &

Wm. H. Hibbard  
Depts. Atty

On the Back of which appears the following endorsement to wit: "Filed September 11<sup>th</sup> 1858 S. M. Guillean Clk"

And afterwards to wit: At the Regular December Term 1858 of said Court, on the 24<sup>th</sup> day of December A.D. 1858 one of the days of said December Term, the following entry appears of Record in this cause to wit:—

112 James Mitchell, Healden Putnam, 3  
Rodrick Richardson & John A. Page 3

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John N. Brewster & Joseph M. Brewster

Assumpsit

On motion of Plaintiffs by their Attorney leave is given them to file several Replications to Defendants Pleas -

And afterwards to wit: on the 3<sup>rd</sup> day of December as yet one of the days of said December Term of said Court the following entry appears of record in this cause to wit: -

112 James Mitchell Welden Putnam  
Roderick Richardson & John A. Page

Assumpsit

John N. Brewster & Joseph M. Brewster

Now come the said Defendants by their Attorney and file their Demure to the plaintiffs Replications -

And afterwards to wit: - On the 6<sup>th</sup> day of January 1859 as yet one of the days of said December Term of said Court the following entry appears of record in this cause to wit: -

112 James Mitchell Welden Putnam  
Roderick Richardson & John A. Page

Assumpsit

John N. Brewster & Joseph M. Brewster

Now comes the Plaintiffs by their Attorney and withdraw their Replications to Defendants Pleas & the said Defendants withdraw their Demure - and leave is given to Defendants to file an additional Plea - & to Plaintiffs to Reply anew -

And also on the same day the following entry appears of record in this cause to wit: -

112 James Mitchell Holden Putnam  
 11 Rodrick Richardson of John A. Page  
 To  
 John K. Brewster & Joseph M. Brewster

Assumpsit

Now come the Plaintiffs by their attorney and file their Replication herein

James Mitchell, Holden Putnam  
 Rodrick Richardson of John A. Page  
 To  
 John K. Brewster & Joseph M. Brewster

Steph Co Cir Court  
 Of Dec<sup>r</sup> Term A.D.  
 1858

1  
 1st Plea to said Plea

And the said Plaintiffs as to the said second Plea by them above pleaded say that the said Plaintiffs by reason of anything by the said Plaintiffs in that Plea alleged ought not to be barred from having and maintaining their aforesaid action thereof against the said Defendants because they say that there is not any Record of the said supposed recovery in the said Plea mentioned remaining in said Circuit Court within of for the County of Stephenson in the State of Illinois in manner & form as the said Defendants have above thereof in their said Plea alleged. & this they are ready to verify wherefore they pray judgment &c

2  
 1st Plea to said Plea

And for Replication to said Plea of the said Defendants by them thirdly above pleaded the said Plaintiffs say Recludi non. because they say that there is not any Record of the said supposed recovery in the said Plea mentioned remaining in said Circuit Court within of for the County of Stephenson in the State of Illinois in manner & form as the said Defendants have above thereof alleged - & this they are ready to verify

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2nd Reply to said Plea  
and said Judgment

And for @ further Replication to said second Plea the said Plaintiffs say Procludi non, because they say that at before the said supposed recovery of the said judgment in said Plea mentioned to the said Defendant Joseph M. Brewster had signed and Executed the said Promissory note in said first court in said Declaration mentioned as security with of for said Defendant John K. Brewster, and the said Plaintiffs aver that at the time of said supposed recovery the said John K. Brewster had become & was insolvent & for the better security or indemnity of the said Joseph M. Brewster, he the said John K. Brewster then & there without the knowledge or consent of the said Plaintiffs caused said judgment to be entered against himself by confession without process, which said judgment still remains unsatisfied & unexecuted. and this they are ready to verify wherefore

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3rd Reply to said Plea

And for @ further Replication to said second Plea the said Plaintiffs say Procludi non because they say that at the time of the said supposed recovery of said judgment in said Plea mentioned the said promissory note in said first court mentioned had been made & Executed by said Defendant John K. Brewster as principal by said Defendant Joseph M. Brewster as security. and said John K. Brewster then & there having become & being entirely insolvent voluntarily & without any agency of the said Plaintiffs, for the sole benefit of the said Defendant Joseph M. Brewster caused the said judgment in the said Plea mentioned to be entered against himself by confession without process or bringing of suit by said Plaintiffs or any act by said Plaintiffs for that purpose; and the said Plaintiffs aver that said judgment is the same judgment mentioned in said

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Plea, and that the same remains entirely unpaid unsatisfied & unexecuted - And this the said Plaintiffs are ready to verify wherefore &c -

And for @ further Replication to said second Plea the said Plaintiffs say Recludi non because they say that at the time of & previous to said supposed recovery in said plea mentioned the said Defendant Joseph M. Brewster had become & was liable for divers large sums of money by reason of being endorser or security on the said Promissory note in said first count mentioned & divers other Promissory notes executed by said Defendant John K. Brewster as principal, and the said John K. Brewster having then & there become being insolvent & voluntarily caused said judgment to be rendered against himself by confession without any agency<sup>act</sup> or consent of said Plaintiffs for such purpose, and the said Plaintiffs aver that said judgment was so confessed solely for the benefit & protection of said Defendant Joseph M. Brewster against and on account of his said liabilities and that said judgment remains unpaid & unsatisfied, and that said Defendant John K. Brewster has not at any time since the rendition thereof had any property whereby said judgment could have been executed, and this, they the said Plaintiffs are ready to verify wherefore &c -

(4) And for @ further ~~Leaving~~ Replication to said second plea the said Plaintiffs say Recludi non, because they say that said judgment in said Plea mentioned was rendered by confession of said Defendant John K. Brewster for the Benefit of said Defendant Joseph M. Brewster, without any act or authority of the said Plaintiff for that purpose, and this the said Plaintiffs are ready to verify, wherefore they pray judgment &c -

6th Page 7th Plea

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2nd Reply to 2nd Plea

And for @ further Replication to said Plea of said  
 Defendants thirdly above pleaded, the said Plaintiffs  
 say Precludi non, because they say that at & before  
 the said supposed Recovery of the said judgment in  
 said Plea mentioned the said Defendant Joseph M. Brewster  
 had signed & Executed the said Promissory Note  
 in said second count in said Declaration mentioned  
 as security with & for said Defendant John K. Brewster  
 and the said Plaintiffs aver that at the time of the  
 said supposed Recovery the said John K. Brewster  
 had become & was insolvent & for the better security  
 or indemnity of the said Joseph M. Brewster he then &  
 there without the knowledge or consent of said  
 Plaintiffs caused said judgment to be entered against  
 himself by confession without process which said  
 judgment still remains unsatisfied & unexecuted.  
 and this they are ready to verify - Therefore &c

(8)

And for @ further Replication to said second Plea  
 the said Plaintiffs say Precludi non - because they say  
 that at the time of the said supposed Recovery of said  
 judgment in said Plea mentioned the said Prom-  
 issory Note in said <sup>second</sup> count mentioned had been made  
 & Executed by said Defendant John K. Brewster as  
 principal & by said Defendant Joseph M. Brewster as secu-  
 rity, and said John K. Brewster then & there having  
 become & being entirely insolvent voluntarily & without any  
agency of the said Plaintiffs & for the sole benefit of  
 the said Defendant Joseph M. Brewster caused the  
 said judgment in said Plea mentioned to be entered  
 against himself by confession without process or bring-  
 ing of suit by said Plaintiffs, or any act by said  
 Plaintiffs for that purpose. And the said Plaintiffs  
 aver that the said judgment is the same mentioned

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in said Plea, & that the same remains entirely unpaid & unsatisfied & unexecuted. And this the said Plaintiffs are ready to verify - Wherefore &c.

(9)

And for @ further Replication to said Third Plea the said Plaintiffs say Preclude now - because they say that at the time of & previous to said supposed Recovery in said Plea mentioned the said Defendant Joseph M. Brewster had become & was liable for divers large sums of money by reason of being endorsed or security on the said Promissory note in said second Count mentioned & divers other promissory notes executed by said Defendant John K. Brewster as principal. And the said John K. Brewster having then & there become & being insolvent & voluntarily caused said Judgment to be rendered against himself by confession, without any agency act or consent of said Plaintiffs for such purpose, and the said Plaintiffs avow that said Judgment was so confessed solely for the benefit & protection of said Defendant Joseph M. Brewster against & on account of his said liabilities, and that said Judgment remains unpaid & unsatisfied, & that said Defendant John K. Brewster has not at any time since the rendition thereof had any property whereby said Judgment could have been executed. And this by the said Plaintiffs are ready to <sup>verify</sup> &c. Wherefore &c.

(10)

And for @ further Replication to said Third Plea the said Plaintiffs say Preclude now - because they say that said Judgment in said plea mentioned was rendered by confession of said Defendant John K. Brewster for the benefit of said Defendant Joseph M. Brewster & without any act or authority of the said Plaintiffs for that

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purpose. And this the said Plaintiffs are ready to  
verify - Wherefore they pray judgment &c -  
Jason Marsh Esq Atty

On the Back of which appears the following endorsement  
to wit: "Filed Jan 6<sup>th</sup> 1859. N. H. Guiteau Ck"

And afterwards to wit: - on the 11<sup>th</sup> day of January  
A.D. 1859 at one of the days of said December  
Term of said Court the following entry appears of Record  
in this cause to wit: -

1121 James Mitchell Et al }  
vs }  
John K. Brewster Et al }

Ex parte

Now comes said Defendants  
by their Attorney and file their motion to strike the Plain-  
tiffs 4<sup>th</sup> 5<sup>th</sup> 6<sup>th</sup> 8<sup>th</sup> 9<sup>th</sup> + 10<sup>th</sup> Replications from the files  
of this Court - and also file their Demurer to the 3<sup>rd</sup> +  
7<sup>th</sup> Replications -

John K. Brewster & Stephenson Circuit Court  
vs  
James Mitchell & al

And now come the said De-  
fendants and move the Court to strike from the files of  
this Court the 4<sup>th</sup> 5<sup>th</sup> 6<sup>th</sup> 8<sup>th</sup> 9<sup>th</sup> and 10<sup>th</sup> Replications  
of the said Plaintiffs in above entitled cause for  
the reason that the said 4<sup>th</sup> 5<sup>th</sup> 6<sup>th</sup> 8<sup>th</sup> 9<sup>th</sup> + 10<sup>th</sup> Replications set  
up substantially the same identical matter & sub-  
stantially in the same form as the 3<sup>rd</sup> Replication,  
and the 8<sup>th</sup> 9<sup>th</sup> + 10<sup>th</sup> Replications set up <sup>substantially</sup> the same  
identical matter & substantially in the same form

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as the 7<sup>th</sup> Replication

Sweet & Hubbard

On the Back of which appears the following endorsement  
to wit: "Filed Jan 11. 1859 S. W. Guileau CLK"

Stephenson Cir Court Dec Term  
1858 -

John K. Brewster &  
Joseph M. Brewster  
ads  
James Mitchell & al<sup>ys</sup>

Demurred to 3<sup>d</sup> & 4<sup>th</sup> Replications

And the said Defendants say  
that the third, <sup>fourth</sup> <sup>fifth</sup> seventh eighth ninth & Eleventh Replications  
and each and every of them and the matters and things  
therein contained in manner and form as the same  
are above pleaded & set forth are not sufficient in  
law for the said Plaintiffs to have or maintain their  
aforesaid action thereof against the said Defendants  
and that the said Defendants are not bound by law  
to answer the same, and this the said Defendants  
are ready to verify - Wherefore by reason of the insufficiency  
of the said Replications & each of them, in this behalf the  
said Defendants pray Judgment if the said Plaintiffs  
ought to have or maintain their aforesaid action thereof  
against them &c -

Sweet & Hubbard Att<sup>ys</sup>

On the Back of which appears the following endorsement  
to wit: "Filed Jan 11. 1859 S. W. Guileau CLK"

15

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And afterwards to wit: on the 12<sup>th</sup> day of December  
A.D. 1859, <sup>at the regular</sup> ~~as at one of the days of said~~ December  
Term A.D. 1859 of said Court the following Entry ap-  
pears of Record in this cause to wit: -

25 James Mitchell Et. al  
vs  
John K. Brewster Et. al  
Ex parte

On motion of said Defendants  
by Sweet & Heibbard their Attorneys it is ordered that  
Plaintiffs 6<sup>th</sup> & 10<sup>th</sup> Replications be stricken from the files  
to which ruling of the Court the Plaintiffs Except. and  
on their motion by Marsh their Attorney leave is given  
to file an additional Replication - And the said  
Plaintiffs file their additional Replication -

(11)

And for a further Replication to the said Defendants  
said second third Pleas the said Plaintiffs say Exclude  
non. because they say that at the time of the said supposed  
recovery of the said judgments in said Pleas mentioned  
the said Promissory Notes in said counts mentioned  
had been made & executed by said Defendants John  
K. Brewster & Joseph M. Brewster which said notes  
were then & there unpaid & unsatisfied, and the said  
Plaintiffs aver that said John K. Brewster then & there  
became & was insolvent & voluntarily caused said  
Judgments in said Pleas mentioned to be entered  
against him by confession without process or bringing  
of suit, and the said Plaintiffs further aver that said  
Judgments remain wholly unpaid & unsatisfied &  
unexecuted. And the said Plaintiffs also aver that  
they never have accepted received or taken the said  
Judgments in or as payment satisfaction or discharge  
of said promissory notes or any part of the money due  
or to become due thereby, and this they are ready to

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very verily. Wherefore &c.

J. Marsh. Atty for Plffs

On the back of which appears the following endorse-  
ment to wit: "filed Dec 12, 59. S. W. Christian CLK"

And on the same ~~17~~<sup>14</sup> day of said Term of said Court  
the following Entry appears of Record in this cause to wit:

(25) James Mitchell Et als }  
vs } Assumpsit  
John K. Brewster Et al }

By leave of the Court the Defen-  
dant withdraws his Demurris to the 3<sup>rd</sup> & 7<sup>th</sup> Replications  
and files his Demurer to 3<sup>rd</sup> ~~4<sup>th</sup>~~ ~~5<sup>th</sup>~~ ~~7<sup>th</sup>~~ ~~8<sup>th</sup>~~ ~~9<sup>th</sup>~~ ~~11<sup>th</sup>~~ Replications  
and the same coming on to be heard after arguments of counsel  
the Court being advised in the premises it is considered and  
ordered that the Demurres to the 4<sup>th</sup> 5<sup>th</sup> 8<sup>th</sup> & 9<sup>th</sup> Replications  
be overruled and sustained to all the other Replications.

<sup>17</sup> Demur  
Stephenson Civ Court Dec Term 1858

John K. Brewster }  
Joseph M. Brewster }  
ads } Demurer to 3<sup>rd</sup> & 7<sup>th</sup> Replications  
James Mitchell & als }

And the said Defendants  
say that the third <sup>fourth</sup> fifth seventh eighth ninth & Eleventh  
Replications and each and every of them and the matters  
& things therein contained in manner of form as the  
same are above pleaded & set forth are not sufficient  
in law for the said plaintiffs to have or maintain  
their aforesaid action thereof against the said

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Defendants, and that the said Defendants are not bound by law to answer the same, and this the said Defendants are ready to verify. Wherefore by reason of the insufficiency of the said Replications & each of them in this behalf the said Defendants pray judgment if the said Plaintiffs ought to have or maintain their aforesaid action thereof against them &c.

Sweet & Hubbard Esqrs Atty

On the Back of which appear the following endorsement to wit: "Filed Decr 12. 1859. S. M. Guilean c/o"

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And afterwards to wit: - on the 13<sup>th</sup> day of December 1859 at yet one of the days of said December Term of said Court the following entry appears of Record in this cause to wit: -

25 James Mitchell, Heedew Putnam  
Roderick Richardson & John A. Page  
vs  
John H. Brewster & Joseph M. Brewster  
Appumpsit

And come the Plaintiffs by Marsh their Attorney and file their Exceptions to the ruling of the Court -

Steph leiv Court  
James Mitchell et. al  
vs  
John H. Brewster et. al

Be It Remembered that at this December Term of this Court, come on & be heard the motion heretofore filed in this cause by said Defendants to strike from the files the 4<sup>th</sup> 5<sup>th</sup> 6<sup>th</sup> 8<sup>th</sup> 9<sup>th</sup> & 10<sup>th</sup> Replications filed by said Plaintiffs & the Court having heard the arguments of counsel of said parties sustained said motion as to said 6<sup>th</sup> & 10<sup>th</sup> Replications & orders the same to be struck from the files of this Court & overruled said Motion as to said 5<sup>th</sup> & 9<sup>th</sup> Replications, and the said plaintiffs except to said decision of the Court. - And on the same day to wit: - the 12<sup>th</sup> day of Dec 1859 come on & be heard the Demurer of said Defendants to said Plaintiffs 3. 4. 5. 7. 8. 9. & 11<sup>th</sup> Replications & the Court having heard the arguments of counsel of the respective parties, sustained said Demurer as to said 3<sup>rd</sup> 4<sup>th</sup> & 11<sup>th</sup> replications & overruled the same as to said 5<sup>th</sup> 7<sup>th</sup> 8<sup>th</sup> & 9<sup>th</sup> replications & thereupon the said plaintiffs except to the said decision of the

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Court sustaining said Demures & prays this their Bill of Exceptions be signed & sealed which is done accordingly -  
Benj R. Sheldon Esq

On the Back of which appears the following endorsement to wit: - "Filed Dec 13. 1859. S. W. Guiteau ctk"

And on the same day to wit: - the 13<sup>th</sup> day of December 1859 the following Entry appears of Record in this cause to wit: -

(25) James Mitchell Et. al }  
vs } Assumpsit  
John K. Brewster Et. al }

On motion of Defendants by their Attorney leave is given to withdraw their Demures that have been overruled by the Court and re-join -

And afterwards to wit: - on the 21<sup>st</sup> Day of December A.D. 1859 at or one of the days of said December Term of said Court the following Entry appears of Record in this cause to wit: -

(25) James Mitchell Et. al }  
vs } Assumpsit  
John K. Brewster Et. al }

On motion of Defendants by Sweet & Keithard their Attorney leave is given them to re-join several matters to Plffs Replications - and Defendants file their rejoinder -

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State of Indiana } In the Stephenson County Circuit  
Stephenson County } Court Dec T. 1859

James Mitchell & al }  
vs }  
Joseph M. Brewster Et. al }

And the said Defendants  
as to the said Replication of said Plaintiffs by them fourthly  
above pleaded say actio non, because they say that the  
said John M. Brewster did not cause the said judg-  
ment in said Replication mentioned to be entered  
against himself voluntarily & without any agency of  
said plaintiffs as is in said Replication alleged,  
and of this the said Defendants put themselves upon  
the Country &c —

And for further rejoinder to said fourth replication  
by leave of the Court first obtained for that purpose  
said Defendants say actio non, because they say  
that said John M. Brewster did not cause said  
Judgment in said replication mentioned to be entered  
against himself without any act by said Plaintiffs  
for that purpose as is in said Replication alleged &  
of this said Defendants put themselves upon the coun-  
try —

And for a <sup>fifth</sup> Rejoinder to the said <sup>fifth</sup> Repli-  
cation of said Plaintiffs by them above pleaded the  
said Defendants say actio non, because they say  
that the said John M. Brewster did not voluntarily  
cause said Judgment in said fifth Replication  
mentioned to be entered against himself without  
any agency act or consent of said plaintiffs, as  
in said Replication alleged and of this said De-  
fendants put themselves upon the Country &c —

And for rejoinder to said Replication of said Plaintiffs by them rightly above pleaded the said Defendants say actio non because they say that the said John N. Brewster did not cause said Judgment in said Replication mentioned to be entered against himself voluntarily and without any agency of the said Plaintiffs as is in said Replication alleged and of this the said Defendants put themselves upon the country &c —

And for a further rejoinder to said Replication of said Plaintiffs by them Eightly above pleaded by leave of the Court for that purpose first had & obtained the said Defendants say actio non because they say that said John N. Brewster did not cause said Judgment in said Replication mentioned to be entered against himself without any act by said Plaintiffs for that purpose as is in said Replication alleged and of this the said Defendants put themselves upon the Country —

And for Rejoinder to said Replication of said Plaintiffs by them Ninthly above pleaded the said Defendants say actio non, because they say that the said John N. Brewster did not voluntarily cause said Judgment in said ninth Replication mentioned to be entered against himself without any agency or consent of said Plaintiffs for such purpose as is in said Replication alleged & of this said Defendants put themselves upon the Country &c —

And for a further rejoinder to the said Plaintiffs said fourth & fifth Replications the said Defendants say actio non because they say that after the entering of the said judgments in said Replication

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mentioned the said plaintiffs accepted adopted and approved said judgment & caused an Execution to be issued on said judgment to wit: on the 30<sup>th</sup> day of January A.D. 1858. and this said Defendants are ready to verify wherefore they pray judgment &c -

and for @ further Rejoinder to the said Plaintiffs said Eighth & ninth Replications the said Defendants say actio non because they say that after the rendering of the said judgment in said Replications mentioned the said Plaintiffs accepted adopted & approved said judgment and caused an Execution to be issued on said judgment to wit on the 30<sup>th</sup> day of January A.D. 1858 and this the said Defendants are ready to verify - wherefore they pray judgment &c -

Sweet & Hubbard, Defts Atty

On the Back of Which appears the following endorsement to wit: "Filed Decr 21. 1859. S. K. Guilean CLK"

And afterwards to wit: - on the 12<sup>th</sup> Day of January A.D. 1860 or yet one of the days of said December Term <sup>A.D. 1859</sup> of said Court the following Entry appears of Record in this cause to wit: -

25) James Mitchell Et als

vs

John K. Brewster Et al

vs  
Assumpsit

Now on this day come the parties by their Attorneys and upon the issues joined for trial put themselves upon the County. Thereupon also come @ Jury of twelve good and lawful men

Tomit: - James Flansburgh and Elmer others who were severally duly elected tried and sworn, and after hearing the evidence adduced the hour of adjournment having arrived the further hearing is postponed until tomorrow morning -

And afterwards to wit: - On the 13<sup>th</sup> day of January A.D. 1860, as yet one of the days of said December Term of said Court the following Entry appears of Record in this cause to wit: -

25 James Mitchell Et. als }  
vs } Assumpsit  
John K. Brewster Et. al }

Now again come the parties by their Attorneys and the jury empaneled in this cause, and after arguments of counsel the jury retire in charge of an officer to consider of their verdict and after @ short absence they return into Court with their verdict as follows to wit: - that they find the issues for the Defendants. Thereupon the plaintiffs by their Attorney enter their motion for @ new trial.

And afterwards to wit: - On the 24<sup>th</sup> day of January A.D. 1860 as yet one of the days of said December Term of said Court the following Entry appears of Record in this cause to wit: -

James Mitchell Et. als }  
vs } Assumpsit  
John K. Brewster Et. al }

Now come on to be heard the Plaintiffs motion for @ New Trial and after arguments of counsel the Court being advised in

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the premises, the motion is overruled. To which ruling the Plaintiffs except - It is thereupon considered and ordered that said Defendants have and receive of said Plaintiffs their costs by them about their suit in this behalf expended - and that they have execution for the same - Thereupon said Plaintiffs by Marsh their Attorney pray an appeal - and it is ordered that the appeal be allowed - conditioned that said Plaintiffs or either of them file with the Clerk of this Court within thirty days from the rising of the Court their appeal Bond properly conditioned to the Defendants in the sum of five Hundred Dollars with John A. Clark as surety -

And afterwards to wit: - On the 3<sup>rd</sup> day of February A.D. 1860. as yet one of the days of said December Term of said Court, the following Entry appears of Record in this cause to wit: -

25 James Mitchell Et al }  
vs } Assumpsit  
John K. Brewster Et al }

Now comes the Plaintiffs by Marsh their Atty and file their Bill of Exceptions in this cause -

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James Mitchell  
 Golden Putnam  
 Rudrick Richardson  
 & John A. Page  
 vs  
 John K. Brewster &  
 Joseph M. Brewster

Steph Cobier Court

Be it Remembered that on the trial of this cause at the present December Term of this Court A.D. 1859 the Plaintiffs gave in Evidence two promissory Notes as follows -

" \$1000. Receipt See May 30<sup>th</sup> 1854. Thirty days after date for value received. We promise to pay James Mitchell \$1000 or order One Thousand Dollars with ten per cent interest after due for money loaned. payable at Stephenson County Bank.

J. K. Brewster  
 By J. M. Brewster  
 J. M. Brewster Surety

" \$312 Receipt See June 2<sup>nd</sup> 1854. Thirty days after date for value received We promise to pay James Mitchell \$312 or order Three hundred & Twelve Dollars with ten per cent interest after due for money loaned - payable at Stephenson County Bank -

J. K. Brewster  
 By J. M. Brewster  
 J. M. Brewster Surety

The Defendants then offered in evidence two Transcripts of Judgment as follows -

United States of America.  
 State of Illinois  
 Stephenson County

Algas Byron the Hon. Benj. Sheldon Judge of the 14<sup>th</sup> Judicial Circuit of the State of Illinois at @ Republic Term of the Stephenson County Circuit Court began and held in pursuance of said, at the Court House in the City of

Report in the County and Judicial Circuit aforesaid  
 On Monday the seventh day of December in the Year  
 of Our Lord One Thousand Eight Hundred and Fifty seven.  
 Present Hon. Ben R. Sheldon Judge  
 W. D. Grechampl State Atty  
 J. M. Shaffer Sheriff  
 J. M. Guileau Clerk

Be It Remembered That hitherto to wit: - on the 18<sup>th</sup> day  
 of January A.D. 1858 (of the aforesaid December Term A.D.  
 1857) at said Regular Term of said Court the following among  
 other proceedings appear of Record & on file in @ Court  
 then & there pending wherein James Mitchell, Noel den  
 Putnam Rodrick, Richardson & John A. Page are Plain  
 tiffs and John K. Brewster is Defendant. Viz -

Stephenson Co. Bond

\$1000  
 (copy) Report Dec. May 30<sup>th</sup> 1854  
 Thirty days after date for Value received the promise  
 to pay James Mitchell Esq or Order One Thousand Dollars  
 with Ten per cent interest after due for money loaned  
 Payable at Stephenson County Court

J. K. Brewster  
 By J. M. Brewster  
 J. M. Brewster Security

Knows all men by these Presents That whereas I the Sub-  
 scriber am justly indebted unto James Mitchell Esq upon  
 @ certain Promissory Note bearing date May 30<sup>th</sup> 1854 for  
 the sum of One Thousand Dollars made payable to the  
 said James Mitchell Esq or Order and due thirty  
 after the date thereof. Now Therefore in consideration of  
 the promise and the sum of One dollar to me in hand  
 paid the receipt whereof is hereby acknowledged I do  
 hereby make constitute and appoint John A. Clark  
 or any attorney of any Court of Record to be my true

and lawful Attorney irrevocably for me and in my name place and stead to enter my appearance before any Justice of the Peace or any Court of Record in any of the States or Territories of the United States or Elsewhere either in Term Time or in vacations at any time from and after the date hereof at the option of the said James Mitchell & Co to waive service of process and confess a Judgment in favor of the said James Mitchell & Co or their assigns or legal Representatives upon the said Note for the above sum or for as much as appears to be due according to the tenor & effect of said Note with interest thereon at the rate aforesaid, and Fifteen Dollars Attorneys fees; and my said attorney is also authorized in my behalf to file a Cognovit for the amount that may be so due with an agreement therein that no writ of error or appeal shall be prosecuted nor <sup>any</sup> writ in Equity filed to interfere in any manner with the operation of any Judgment that may be entered by virtue hereof, and also to release all errors that may intervene in entering up of said Judgments or issuing Executions thereon. hereby ratifying all that my said Attorney may do by virtue hereof and for the consideration above mentioned - Witness my hand and Seal this 16<sup>th</sup> day of January A.D. 1858

In Presence of  
 H. A. Shutz

John K. Brewster

State of Illinois,  
 Stephenson County

H. A. Shutz Being duly sworn says he knows John K. Brewster

to be the maker of the annexed Note and that said John K. Brewster Executed the power of Attorney hereto attached in the presence of this affiant  
 Seem to and subscribed before H. A. Shutz

me this 18th day of January  
1858 - John H. Black Notary Public

In the Circuit Court of Stephenson County  
 of the December Term A. D. 1857  
 Stephenson County ss. James Mitchell, Woodrow Putnam  
 Rodrick Richardson & John A. Page by Jason Marsh  
 their Attorneys come and complain of John K. Brewster  
 Defendant in this suit of a Plea of Trespass on the case  
 upon Promise For That whereas the said Defendant  
 on the Thirtieth day of May A. D. 1857 at Freeport Ill. said;  
 at the said County of Stephenson made his certain prom-  
 ising Note in writing and delivered the same to the  
 Plaintiffs whereby the Defendant then and there promised  
 to pay the Plaintiffs Thirty Days after the date thereof which  
 period has now elapsed, One Thousand Dollars for  
 Value received with Five per cent interest after due.  
 Let the Defendant although often requested to hath  
 not yet paid the said sum of money or any part  
 thereof to the Plaintiffs. But notwithstanding hath  
 wholly refused, and still doth refuse to the damage of  
 the Plaintiffs of Five Thousand Dollars and therefore  
 they bring suit on - Jason Marsh  
 Plaintiffs Attorneys

State of Illinois ss. In the Stephenson County Circuit Court  
 Stephenson County of the December Term A. D. 1857

John K. Brewster  
 ad  
 James Mitchell Woodrow Putnam  
 Rodrick Richardson John A. Page

And the said John K. Brewster Defendant in the above entitled suit by J. A. Grim his Attorney comes and defends the wrong and injury

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when he and waives service of process and says that he cannot deny the action of the said Plaintiffs, nor but that he the Defendant did undertake and promise in manner and form as the said Plaintiffs hath <sup>above</sup> complained against him nor But that the said Plaintiff hath sustained Damages on occasion of the non performance of the several Promises and undertakings in the said Declaration mentioned including the sum of fifteen Dollars for their reasonable Attorneys fees for entering up this Judgment and above their other costs and charges by them about their suit in this behalf expended to the amount of Two Hundred Seventy Eight Dollars and Eighty Nine cents. And the said Defendants further says that no writ of error or appeal shall be prosecuted on the Judgment of Justice hereof nor any Bill in Equity filed to interfere in any manner with the operation of said Judgment, and that he hereby releases all errors that may intervene in entering up the same or issuing the Execution thereon, and consents to immediate Execution upon such Judgment.

J. A. Brain  
 Defendants Attorney

Filed January 18, 1858  
 J. M. Guibau Clerk

364 James Mitchell, Theodor Putnam  
 Rodrick Richardson & John A. Page  
 John H. Brewster  
 Cognovit

And now at this day come the said Plaintiffs by Jason Marsh their Attorney and file this Declaration on an action of Trespass on the case on Promises against the said Defendant, and

also files a Warrant of Attorney signed and sealed by the said Defendant the Execution of which is duly proven to the satisfaction of the Court authorizing any attorney of any Court of Record to appear in this Court and waive service of process and confess judgment in favor of the said plaintiffs and against the said Defendant for the amount due upon a certain promissory Note attached to said Warrant of Attorney & fifteen Dollars attorney fees Thereupon came J. A. Brain Esq an Attorney of this Court and waives service of process and confesses and consents that judgment may be entered in favor of the said Plaintiffs and against the said Defendant for the sum of Ten Hundred Seventy Eight Dollars and Eighty Nine cents it being the amount due ~~thereon~~ on said Note & including fifteen Dollars attorneys fees. and the said Attorney releases all errors either in law or Equity in entering up this judgment or issuing Execution thereon and consents to the immediate issuing of Execution on the same. It is thereupon considered and ordered by the Court that the said Plaintiffs have and recover of the said Defendant their Damages in the sum of Ten Hundred Seventy Eight Dollars and Eighty Nine cents so as aforesaid confessed together with their costs by them about their suit in this behalf Expended and that they have Execution for the same -

And afterwards to wit: - On the 19<sup>th</sup> day of January A.D. 1858 (of the aforesaid Decurber Term A.D. 1857) the following Entry appears of Record & wit: -

Not James Mitchell Holden Putnam }  
 Rodrick Richardson & John A. Page }  
 John K. Brewster }  
 On motion of the

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said Plaintiffs by their Attorney. It is Ordered by the Court that leave be given them to withdraw the original Note herein and file instead @ copy thereof -

State of Illinois }  
Stephenson County }  
Circuit Clerk's Office }

I Luther M. Guiteau Clerk of the Circuit Court within and for the County of Stephenson and State of Illinois do hereby certify that the foregoing is @ correct Transcript of the Original papers & Entries of Record in above entitled suit in my office - In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court this 26<sup>th</sup> day of February A. D. 1858 -



L. M. Guiteau Clerk  
By Wm. H. Barry Dep

United States of America }  
State of Illinois }  
Stephenson County }

Pleas before the Hon. Benj. R. Sheldon Judge of the 14<sup>th</sup> Judicial Circuit of the State of Illinois (at @ Regular Term of the Stephenson County Circuit Court by an and held in pursuance of Law) at the Court House in the City of Peepert in the County and Judicial Circuit aforesaid on Monday the Twentieth Day of December in the Year of our Lord one Thousand Eight Hundred and Fifty seven -

Present - Hon. Benj. R. Sheldon. Judge  
W. D. Meacham State Atty  
J. M. Shaffer Sheriff  
L. M. Guiteau Clerk

Be It remembered that heretofore to wit: - on the 18<sup>th</sup> day of January A.D. 1858 (of the aforesaid December Term A.D. 1857) at said Regular Term of said Court the following among other proceedings appears of Record & on file in Court then & there pending wherein James Mitchell Hodder Putnam, Rodrick Richardson & John A. Page are Plaintiffs and John K. Brewster is Defendant Viz: - (copy)

Stephenson Co Bank

Transport Ill June 2<sup>d</sup> 1857  
 Thirty Days after date for value Received the promise to pay James Mitchell & Co, or Order Three Hundred & Twelve Dollars with Ten per cent interest after due for money loaned Payable at Stephenson County Bank

J. K. Brewster  
 By J. M. Brewster  
 J. M. Brewster Security

Know all men by these Presents That whereas I the subscriber am justly indebted unto James Mitchell & Co upon a certain Promissory Note bearing date June 2<sup>d</sup> 1857 for the sum of Three Hundred & Twelve Dollars made payable to the said James Mitchell & Co or order and due Thirty days after the date hereof - Now therefore in consideration of the promise and the sum of one Dollar to me in hand paid, the receipt whereof is hereby acknowledged I do hereby make constitute and appoint John A. Clark or any attorney of any Court of Record to be my true and lawful attorney irrevocably for me and in my name place and stead to enter my appearance before any Justice of the Peace or any Court of Record in any of the States or Territories of the United States or Elsewhere either in Term time or in Vacation at any time from and after the date hereof at the option of the said James Mitchell & Co to raise

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service of process and confess @ Judgment in favor  
of the said James Mitchell & Co or their assigns or  
legal Representatives upon the said Note for the above  
Sum or for as much as appears to be due according  
to the Tenor and effect of said Note with interest  
thereon at the rate of said and Fifteen Cents at  
some fee. And my said Attorney is also author-  
ized in my behalf to file @ Cognovit for the amount  
that may be so due with an agreement therein that  
no writ of Error or appeal shall be prosecuted nor any  
Bill in Equity filed to interfere in any manner  
with the operation of any Judgment that may be en-  
tered by Virtue hereof, and also to release all errors  
that may intervene in the entering up of said Judgment  
or issuing Execution thereon hereby ratifying all that  
my said attorney may do by Virtue hereof and for  
the consideration above mentioned. Witness my hand  
and Seal this Sixteenth Day of January A.D. 1858.

In Presence of  
H. A. Shultz

John K. Brewster Seal

State of Illinois  
Stephenson County  
H. A. Shultz being duly sworn says  
he knows John K. Brewster the  
maker of the annexed Note and that said John K.  
Brewster executed the power of Attorney hereto attached  
in the presence of this officiant. H. A. Shultz  
Sworn to and subscribed  
before me this 18<sup>th</sup> day of  
January 1858  
John A. Clark Notary Public

In the Stephenson County Circuit Court  
of the December Term A.D. 1857  
Stephenson County vs. James Mitchell, Godwin Putnam,

Roderick Richardson John A. Page by Jason Marsh their  
 Attorney come and complain of John K. Brewster De-  
 fendant in this suit of a Plea of Trespas ~~upon~~ <sup>on</sup> the case  
 upon Yreprise. For that whereas the said Defendant  
 on the second day of June A.D. 1857 at Tipton Ill  
 admit: - at the said County of Stephenson made his cer-  
 tain promissory Note in Writing and Delivered the same  
 to the Plaintiffs whereby the Defendant then and there  
 promised to pay the Plaintiffs thirty Days after the  
 date thereof which period has now elapsed. Three  
 Hundred & Twelve Dollars for Value received with  
 Ten per cent interest after due. Yet the Defendant  
 although often requested or hath not yet paid the said  
 sum of Money or any part thereof to the Plaintiffs  
 But so to do hath hitherto wholly refused and still  
 doth refuse to the Damage of the Plaintiffs if Two Thousand  
 Dollars and therefore they bring suit &c

Jason Marsh  
 Plaintiffs Attorney

State of Illinois } of the Circuit Court of Stephenson  
 Stephenson County } County of the December Term A.D. 1857  
 John K. Brewster }  
 advs }  
 James Mitchell, Hoolden Putnam }  
 Roderick Richardson or John A. Page }  
 vs }  
 Cognovits }

And the said John  
 K. Brewster Defendant in the above entitled suit  
 by J. A. Corwin his Attorney come and says the wrong and  
 injuries when or and waive service of process and  
 says that he cannot deny the action of the said Plain-  
 tiffs nor that he the Defendant did undertake and  
 promise in manner and form as the said Plaintiffs  
 hath thereof above complained against him nor but

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That the said Plaintiffs have sustained Damages on occasion of the nonperformance of the several promises and undertakings in the said Declaration mentioned including the sum of Fifteen Dollars for their reasonable attorneys fees for entering up this Judgment over and above their other costs and charges by them about their suit in this behalf Expended to the amount of three hundred and Forty six (346) Dollars and Ninety four cents - and the said Defendant further agree that no writ of error or appeal shall be prosecuted on the Judgment entered by Virtue hereof, nor any Bill in Equity filed to interfere in any manner with the operation of said Judgment, and that he hereby releases all error that may intervene in entering up the same or issuing the Execution thereon and consent to immediate Execution upon such Judgment -

J. T. Grain  
 Defendant's Attorney

Filed Jan 18, 1858  
 L. M. Guiteau Clerk

365 James Mitchell, Bolden Putnam  
 Roderick Richardson & John A. Papp  
 vs  
 John H. Brewster

Complaint

And now at this day came the said Plaintiffs by their Attorney Jason Marsh Esq. and file their Declaration in an action of Trespass on the case on promises against the said Defendant and also files a Warrant of Attorney signed and Sealed by the said Defendant the Execution of which is duly proven to the satisfaction of the Court authorizing any Attorney of any Court of Record to appear in this Court and waive service of process and confess Judgment in favor of said Plaintiffs and against the said Defendant for the amount due upon

@ certain Promissory Note attached to said Warrant of Attorney a fifteen Dollars, for Attorneys fees — Thereupon came J. H. Larkin Esq; an Attorney of this Court and waives service of process and confesses and consents that Judgment may be entered in favor of said Plaintiff and against the said Defendant for the sum of Three Hundred & Forty Six Dollars and Ninety four cents. It being the amount due on said Note including fifteen Dollars attorneys fees — And the said Attorney releases all error either in Law or Equity in entering up this Judgment or issuing Execution thereon, and consents to the immediate issuing of Execution on the same. It is thereupon considered and Ordered by the Court that the said Plaintiffs have and recover of the said Defendant their Damages in the sum of Three Hundred & Forty six Dollars and Ninety four cents so as aforesaid confessed together with their costs by them about their suit in this behalf Expended and that they have Execution for the same —

And afterwards to wit; on the 19<sup>th</sup> day of January AD 1858 (of the December Term AD 1857) the following Entry appears of Record Viz: —

Pls James Mitchell, Golden Putnam  
 Rodrick Richardson & John A. Payne  
 Vs  
 John K. Brewster  
 Cognovit

On motion of the said Plaintiffs by their Attorney. It is Ordered by the Court that leave be given them to withdraw the original Note herein and file in stead @ copy thereof —

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State of Illinois  
Stephenson County  
I, Supt. W. Guilan Clerk of the Circuit  
Court within and for the County of  
Stephenson and State of Illinois do hereby certify that  
the foregoing is @ correct Transcript of the Original pa-  
pers & Entries of Record in my Office -

In Testimony whereof I have hereunto set my  
hand and official Seal of said Court this 26<sup>th</sup>  
Day of February A.D. 1858 - W. Guilan Clerk  
By W. B. Barry Dep

To which the Plaintiffs Counsel objected. The Court overruled  
the objection & said Transcripts were read in evidence -  
to which decision & giving said Testimony the Plaintiffs  
Counsel Excepted. The Defendants offering no other testimony  
the Plaintiffs then moved the Court to exclude the Defendants  
testimony from the jury. the Court overruled the motion  
& the Plaintiffs Excepted -

The Plaintiffs then produced as  
@ witness John A. Clark who testified that @ short time  
previous to the entering of the judgments mentioned in said  
Transcripts the Defendant John N. Brewster had made @  
General Assignment of his (property) for the Benefit of his cred-  
itors & was then insolvent. That in said assignment  
James Mitchell & Co & several other persons were preferred  
creditors; that soon after said assignment was made  
& before said judgments were entered @ proceeding was  
commenced in the U.S. Dis Court for the purpose of set-  
ting aside said <sup>assignment</sup> judgment. That he the witness was surety  
with said J. N. Brewster on @ large amount of notes  
to James Mitchell & Co. That he witness, on the same day  
the judgments were entered went into the Bank of Plaintiffs  
& told James Mitchell one of the Plaintiffs that he witness  
was apprehensive that Brewster's Assignment might be set  
aside, & that it had occurred to him that it might be @

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good plan for him witness to have J. K. Brewster confess Judgment on the Note that he witness was surety on - for the purpose of protecting himself by having @ prior Lien on Brewster property in case said assignment should be set aside. That for that purpose Mitchell delivered to him (Witness) said Note. & Witness immediately went and proposed his plan to defendant J. K. Brewster, who consented to confess Judgment on said Note, on condition that the same thing should be done on the Note mentioned in said Transcript, & on several other claims mentioned in said assignment & preferred in the same manner. Thereupon witness went back to Plaintiffs Bank and procured said 3m Note from Mr Brewer who was @ Clerk in Plaintiffs Bank. That he (Witness) prepared all the papers for entering up 8 or 9 Judgments & got Mr Covert to sign the copy as attorney & Mr Marsh to sign the declarations & he (Witness) handed them to the Judge & had them Entered up. He witness, thinks that at the Time he got the 3m Note from Brewer, he did not see the Plaintiffs & said nothing to Brewer as to what he was going to do with the Note. That at the time of entering up the Judgments he acted in his own behalf as to the matter he was interested in & what else he did, he did at Brewsters request -

When cross-examination said witness stated that the papers in all of the 8 or 9 cases were made out & the judgments Entered up at the same Time, on the same day. That to the best of his recollection he received said 3m Note from Brewer, but could not state positively on that point, that his recollection is partly refreshed by having seen in Brewer's hand writing @ memorandum of the delivery of the Note to him (Witness), but that he could not swear positively that neither of the Plaintiffs was present, nor that nothing was

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said to Brewer by him as to what he was going to do with the notes. Nor could he swear positively that he did not get those notes from one of Pyper, that if any Executions were issued on said judgments, they were issued on his motion that he had no recollection of ever informing the Plaintiffs of the two judgments having been entered until after this defence arose in this case. and that the Plaintiffs were Bankers in this place -

Jason Marsh @ Witness for the plaintiffs testified that he signed the said Declarations at the request of Mr Clark that he had no conversation with or instruction from the Plaintiffs that nothing ever passed between him & the Plaintiffs on the subject, that all he knew or did in the matter was that Mr Clark handed the papers to him to sign, and he signed them without asking any questions - supposing it was all right -

The Defendants here produced & offered in evidence an affidavit & two Executions as follows -

James Mitchell, Holden Putnam } In the Circuit Court of Stephenson  
Rodrick Richardson & John A. Page } County, Ills. July 22<sup>nd</sup> Term 1857  
} Executions  
John C. Brewster

State of Illinois }  
Stephenson County } Holden Putnam of said County being  
} first duly sworn according to Law, Depo-  
} sith and oath that he is a member of the Firm of James  
} Mitchell do that said Firm of James Mitchell do is com-  
} posed of the following named persons to wit: James Mitchell  
} Holden Putnam, Rodrick Richardson and John A. Page.  
} That they the said James Mitchell, Holden Putnam, Rodrick  
} Richardson & John A. Page, appeared @ Judgment at the

43

Decreed Term A.D. 1857 of the Circuit Court of the County of Stephenson Illinois against John K. Brewster for the sum of Eleven hundred and sixty five Dollars and costs of suit. That on the 30<sup>th</sup> Day of January A.D. 1858 the said Plaintiffs caused Execution to be issued out of said Court upon said Judgment against the Goods, <sup>chattels</sup> Lands and Tenements of the said John K. Brewster Defendant directed to the Sheriff of Stephenson County Illinois to execute and that said Sheriff returned said Execution into said Court on the first day of February 1858 endorsed "no property found", and this affiant further saith that said Defendant has no property within the knowledge of this affiant in his possession liable to Execution, and this affiant further saith that he has just reason to believe that Joseph M. Brewster, George H. DeForest, Silas D. Clark, Edward Everett, Homer N. Hibbard, Farnham Lyon, De Witt C. Baker, Frank Aker severally are indebted to said Defendant John K. Brewster but in what sum or sums of money this affiant cannot state. He therefore prays that said Joseph M. Brewster, George H. DeForest, Silas D. Clark, Edward Everett, Homer N. Hibbard, Farnham Lyon, De Witt C. Baker and Frank Aker may be summoned as Garnishees and required to answer according to Law—

Subscribed and sworn to before me this 1<sup>st</sup> Day of February 1858

J. M. Guiteau Clerk

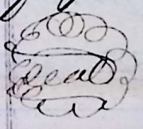
On the Back of which appears the following endorsement to wit: "Filed February 1<sup>st</sup> 1858"

J. M. Guiteau Clerk



44

State of Illinois  
 Stephenson County, The People of the State of Illinois to the  
 Sheriff of said County - Greeting: -  
 We command you, That of the Goods and Chattels Lands  
 and Tenements of John K. Brewster Defendant in your  
 County you cause to be made the sum of Ten Hundred  
 Sixty Eight Dollars and Eighty Nine cents Damages  
 which James Mitchell, Hadden Putnam, Radrick Rich-  
 ards and John A. Papp Plaintiffs lately in the Circuit  
 Court of said County of Stephenson at the December  
 Term thereof on the 18<sup>th</sup> day of January A.D. 1858 of said  
 Term by the confession of <sup>said</sup> Defendant, recovered against  
 the said Defendant and which by the said Court was  
 adjudged to the said Plaintiffs for Damages, and  
 also the further sum of Three Dollars and five cents  
 which were adjudged to the said Plaintiffs for costs  
 and charges in that behalf Expended, whereof the said  
 Defendant do stand convicted as appears to us of Record,  
 and have you these monies ready to render to the said  
 Plaintiffs for Damages debt and costs aforesaid and  
 make return of this writ with an endorsement thereon  
 in what manner you shall have Executed the same -  
 in Ninety days from the date hereof - Witness S. W.  
 Guilan Clerk of our said Court and the seal thereof  
 at Peopost in said County of Stephenson this 30<sup>th</sup> day  
 of January A.D. 1858 -



S. W. Guilan Clerk  
 By Wm. J. Barry Dep

State of Illinois Stephenson County of December Term A.D.  
 1857. in the matter of  
 James Mitchell Etal <sup>Confession</sup>  
 vs <sup>For Bill</sup>  
 John K. Brewster <sup>Plaintiffs Costs</sup>

45

Enty App & Atty 15 <sup>00</sup> Doc <sup>10</sup> Enty of fil. Narr & Note <sup>35</sup>	"	60
Fil off <sup>5</sup> ord Judge <sup>20</sup> Enty Judge <sup>25</sup> ord Ex <sup>20</sup> fil 1 Pap <sup>5</sup>	"	75
Ex of fil <sup>45</sup> Doc Ex <sup>10</sup> Shffs relm <sup>10</sup> Enty Satis <sup>15</sup>	"	80
Rec book 30 <sup>00</sup> cty & Seal 35 <sup>00</sup> ord to file copy Note 20 <sup>00</sup>	"	85
Fil copy 5 <sup>00</sup>	"	90

Total 3.05

I, S. M. Guiteau Clerk of the Circuit Court of Stephenson County, State of Illinois do certify that the above is @ true copy from my True Book of Plaintiffs costs. Given under my hand and Seal of said Court.

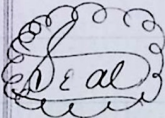


S. M. Guiteau Clerk  
By Wm. H. Barry Dep

Defendants costs In the Within Entitled Suit

Enty app & atty <sup>15</sup> Enty of fil. Cognit <sup>25</sup>	"	40
Maty & Enty P. B. 30 <sup>00</sup> cty & Seal <sup>35</sup>	"	65

I, S. M. Guiteau Clerk of the Stephenson County Circuit Court do hereby certify that the foregoing is @ True copy from my True Book of Defendants Costs in the within entitled Suit. Witness my hand and the Seal of said Court.



S. M. Guiteau Clerk  
By Wm. H. Barry Dep

State of Illinois }  
Stephenson County } The People of the State of Illinois to  
the Sheriff of said County Greeting:  
We command you: That the above or within the Bill amounting to One Dollar and cents, you cause to be levied of the Goods and Chattels Lands and Tenements of John K. Brewster in your County according to the Statute in such case made and provided. And make return of this writ within thirty

46

Done as the laid direct with an endorsement hereon  
in what manner you shall have executed the same -  
Witness S. M. Guiteau Clerk of the said Circuit Court  
and the Seal thereof at his Office in Detroit in said  
County this 30<sup>th</sup> Day of January. A.D. 1858.

Seal

S. M. Guiteau Clerk  
By Wm. H. Barry Dep

~~Received this Execution this 30<sup>th</sup> Day of January A.D. 1858  
at 5 O'clock P.M. J. W. Shaffer Sheriff~~

On the back of which appear the following endorsements  
to wit: -

"Received this Execution this 30<sup>th</sup> Day of January  
A.D. 1858 at 5 O'clock P.M." "J. W. Shaffer Sheriff"

"This Execution Returned no property found this 1<sup>st</sup> day  
of February A.D. 1858" "J. W. Shaffer Sheriff"

Sheriff's Fee

Service 50 - miles, travel 50 - Returning Execution 10 1.10

Filed Feb. 1. 1858. S. M. Guiteau Clerk. By W. H. Barry Dep

State of Illinois }  
Defterson County } The People of the State of Illinois to the Sheriff  
of said County - Greeting. We command  
you that of the Goods and Chattels Lands and Personalities  
of John W. Brewster Defendant in your County you cause  
to be made the sum of Three Hundred forty five Dollars  
and Ninety four cents Damages which James Mitchell  
Holden Putnam, Rodrick Richardson & John W. Page



124  
48 Defendants Costs in the Within Entitled Suit -  
Eulz app duty 10 Eulz ofly Cognovit 25 Pl. 30 off Seal = 1.00<sup>354</sup>

J. M. Guillean Clerk of the Stephenson County Circuit Court do hereby certify that the foregoing is a true copy from my file Books of Defendants Costs in the within Entitled suit. Witness my hand and <sup>the</sup> Seal of said Court  
J. M. Guillean Clerk  
By W. H. Barry Dep

State of Illinois  
Stephenson County <sup>53</sup> The People of the State of Illinois  
to the Sheriff of said County of  
Greene: We Command you that the above or within  
Articles amounting to One Dollar and twenty cents you  
cause to be levied of the Goods and Chattels Lands  
and Premises of John K. Brewster in your County ac-  
cording to the statute in such case made and provided.  
And make return of this writ within ninety days at  
the laid directs with an endorsement thereon in  
what manner you shall have executed the same -  
Witness J. M. Guillean Clerk of the said Circuit Court  
and the Seal thereof at his office in Keokuk in said  
County this 30th Day of January A.D. 1858 -  
J. M. Guillean Clerk  
By W. H. Barry Dep

On the Backs of which appear the following Endorsements  
to wit: -

"Received this Execution this 30 day of January  
A.D. 1858 at 5 O'clock P.M. J. M. Shaffer, Sheriff"

This Execution Returned No property found this 1st  
Day of February A.D. 1858. J. M. Shaffer, Sheriff

49

Sheriffs fees -

Service  $\frac{50^c}{-}$  Miles Travel 50<sup>c</sup> Return Exp 10<sup>c</sup>

1.10

Filed Feb'y 1. 1858. L. M. Guileau. Clk. By W. H. Barry Dep

To the admission of which the Plaintiffs objected for the reason that they were not competent to establish the issue. The Defendants then recalled the witness Clark who testified that the said affidavit was in his hand writing and that it was signed and sworn to by Plaintiff Putnam or that it was made at his (witness) request or suggestion for the purpose of procuring a Garnishee Process in one of the 809 cases before mentioned by said witness in which judgments were entered at the same time with the judgments offered in evidence in this case, & that the affidavit was filed to procure a Garnishee process in one of the cases in which witness was interested as security for said John K. Brewster to secure a Lien upon other property, & that said Garnishee Process was not in either of the cases in which the judgments offered in evidence were entered -

L. M. Guileau a Witness for the Defendants testified that he was clerk of this Court, that the said papers now offered belong to the files, the two Executions belong to the cases mentioned in said transcripts and the affidavit belongs to one of the cases in which Mr Clark is interested - The introduction of which two Executions & affidavit being allowed by the Court the same being given in evidence the Piffs excepted to the ruling of the Court -

W. P. Macburn a Witness for the Defendants testified that on or about the first Day of Feb'y 1858. he had a conversation with one of the Defendants (Putnam) when he witness spoke of the apprehension of Brewster's Assignment being set aside, & Putnam said it would make no difference with them, or that they didn't care anything about it, because

49

Sheriffs fees -

Service <sup>50¢</sup> Miles Travel 50¢ Return Exp 10¢

1.10

Filed Feb'y 1. 1858. L. M. Guileau. Clk. By W. H. Barry Dep

To the admission of which the Plaintiffs objected for the reason that they were not competent to establish the issue. The Defendants then recalled the witness Clark who testified that the said affidavit was in his hand writing and that it was signed and sworn to by Plaintiff Putnam or that it was made at his (witness) request or suggestion for the purpose of procuring a Garnishee Process in one of the 809 cases before mentioned by said witness in which judgments were entered at the same time with the judgments offered in evidence in this case, & that the affidavit was filed to procure a Garnishee process in one of the cases in which witness was interested as security for said John K. Brewster to secure a Lien upon other property, & that said Garnishee Process was not in either of the cases in which the judgments offered in evidence were entered -

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57

they had judgments for all their claims against J. K. Brewster. On cross-examination said witness stated that the words used by Putnam was, "John K. had confessed judgments on all the matters we were interested in contained in the assignment—"

J. M. Shaffer @ Witness for Defendants testified that he was Sheriff of Steph Co in Feb 1858. That the two Executions produced together with several others just like them that is between the same parties were handed to him in the Clerk's office he returned all of the Executions, at the same time Clark & Putnam were present in the Clerk's Office when he received & returned the Executions dont remember how they came into his hands nor who ordered them to be returned, but it was either Clark or Putnam & both were present at the time—

On cross-examination the witness stated he could not say that Putnam said anything about the Executions that Clark seemed to be the main managing man. He witness, understood or knew that Clark was interested in the Executions to @ large amount and that the object was to get out @ Garnishee Process. it was done in @ hurry and he (witness) cannot designate the two Executions (produced), as having been in his hands & returned by him as distinguished from the other Executions—

John A. Clark recalled by the Plaintiffs, testified that there was but one Garnishee process issued and that was in one of the cases in which he was interested.

<sup>577</sup>This being all the testimony offered by the parties the Plaintiffs requested the Court to instruct the jury—

1<sup>st</sup> Unless the Judgments offered in evidence against John K. Brewster were entered with the knowledge consent or act of the Plaintiffs then such judgments are no bar

57

they had judgments for all their claims against J. K. Brewster. On cross-examination said witness stated that the words used by Putnam was, "John K. had confessed judgments on all the matters we were interested in contained in the assignment—"

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John A. Clark recalled by the Plaintiffs testified that there was but one Garnishee process issued and that was in one of the cases in which he was interested.

This being all the testimony offered by the parties the Plaintiffs requested the Court to instruct the jury—

1<sup>st</sup> Unless the Judgments offered in evidence against John K. Brewster were entered with the knowledge consent or act of the Plaintiffs then such judgments are no bar

To the Plffs right of action —

12

If the Jury are satisfied from the proof that the judgments against J. K. Brewster given in Evidence in this cause were Entered without the Knowledge consent or act of the Plaintiffs, then said judgments are no bar to the Plffs right of action, which instructions the Court refused to give in that form & having modified them gave them as follows —

1st

Unless the judgments offered in Evidence against John K. Brewster were Entered with the Knowledge consent or act of the Plaintiffs (or with their subsequent ratification of them), then such judgments are no bar to the Plffs right of action —

2d

If the Jury are satisfied from the proof that the judgments against J. K. Brewster given in Evidence in this cause were Entered without the Knowledge consent or act of the Plaintiffs (or without their subsequent ratification of them), then said judgments are no bar to the Plffs right of action —

To which Ruling of the Court in refusing to give said instructions as requested & in giving them as modified the Plaintiffs Excepted.

The Defendants then asked the Court to give the following Instructions

1

If the Jury believe from the Evidence that the Plaintiffs or either of them caused or procured judgments to be confessed by and against John K. Brewster in their own favor before the commencement of this suit on the Note given in Evidence in this cause then the Jury will find for the Defendants

52

Given

2 The Notes given in Evidence in this cause are joint notes and judgments caused or procured by the Plaintiffs on said Notes against John K. Brewster are @ good defence to this action provided the Jury believe from the Evidence that such Judgments Exist -

Reputed

3 A party appearing in @ Court of Record in this State by Attorney is bound by the act of such Attorney in such appearance and cannot dispute his authority for such appearance when the Rights and interests of third parties are affected by the appearance of such attorney in such case -

Given

4 Attorneys under the Laws of this State are the sworn officers of Court and whenever they appear in @ cause by signing and filing @ declaration in this Court the Law presumes that such act is the authorized act of the party or parties for whom they appear until the contrary appears -

Given

5 It is @ General Intendment of Law that every Judgment Entered in @ Court of Record in this State is Entered by authority of the party in whose favor such Judgment purports to be Entered until the contrary appears -

Given

6 The Parties to the proceedings in the Courts of Record in this State are bound by the acts of their Attorneys - in such proceedings -

7 If the Jury believe from the Evidence that Judgments have been Entered by confession in favor of the Plaintiffs against John K. Brewster on the Notes given in Evidence in this cause then it is incumbent upon

Given the Plaintiffs to prove that said Judgments were Entered without the knowledge agency act or consent of the said Plaintiffs in that behalf —

8 The Tellers & Clerks in Banking Offices are the legal agents of their Principals and their principals are bound by the acts of such agents when within the ordinary range of Business entrusted to their charge —

9 If the Jury believe from the Evidence that John A. Clark as the Attorney of the Plaintiffs received from Mr Brewer the Notes given in Evidence in this cause, and if they further believe from the Evidence that said Brewer was the Clerk and agent of said Plaintiffs and as such agent delivered said Notes to said Clark for the purpose of having the judgments, offered in Evidence, Entered in the same against John K. Brewster and that the said Brewer had authority so to deliver said Notes to said Clark for such purposes and if the Jury further believe from the Evidence that said Clark as the Attorney of said Plaintiffs caused Judgments to be Entered on said Notes against John K. Brewster in favor of the Plaintiffs such Judgments are @ bar to the Plaintiffs right to recover in this cause, and the Jury should find for the Defendants —

10 If the Jury believe from the Evidence that Judgments were Entered on the Notes given in Evidence in this cause against John K. Brewster and in favor of the Plaintiffs, and that after the Entering of said Judgments said Plaintiff or either of them approved of said Judgments by causing Executions to be issued upon the same or directing Executions issued upon the same to be returned with @ view to prosecuting same

57 proceedings on said Judgments they will find for the Defendants —

11 If the Jury believe from the Evidence that after the Judgments given in Evidence by the Defendants were entered up, the Plaintiffs or either of them approved of said Judgments then the Jury will find for the Defendants —

12 If the Jury believe from the Evidence that John A. Clark as the Attorney of the Plaintiffs caused the Judgments given in Evidence by the Defendants in this cause to be entered up on the Notes given in Evidence in this cause by the authority of the Plaintiffs or either of them then the Jury will find for the Defendants —

13 In order to show that the Judgments given in Evidence by the Defendants in this cause were entered up with the knowledge agency act or consent it is not necessary to show such knowledge agency act or consent by positive proof but the Defendants may show it by circumstances —

14 In determining whether the Judgments given in Evidence by the Defendants in this cause were or were not entered up with the agency act knowledge or consent of the Plaintiffs or either of them the Jury must consider all the circumstances appearing from the Evidence given in this cause, and if they believe from the Evidence that after the said Judgments were entered up the Plaintiffs or either of them accepted said Judgments by doing any act which recognized and adopted the Judgments as their judgments against John K. Brewster then the Jury may infer such agency act knowledge or consent of the said Plaintiffs.

On the Back of Defts Instructions appears the following  
 endorsement to wit: "Filed Jan 13. 1860"  
 "S. W. Guitau clerk"

Which the Court gave & to the giving of which the Plaintiffs  
 Excepted—

The cause being submitted to the Jury, they  
 found a Verdict for the Defendants whereupon the plain-  
 tiffs moved for a new trial for the reasons—

1<sup>st</sup> That improper evidence had been allowed to go to the jury.  
 2 That the Court erred in refusing to give the instruction  
 asked for by the plaintiffs, and in giving the instruction  
 as modified, & in giving the Defendants instructions—

3 The Verdict was contrary to the law & evidence. The Court  
 having overruled said motion the plaintiffs excepted  
 to said decision & having prayed that their Bill of  
 Exceptions to be signed & sealed by the Court it is done ac-  
 cordingly—  
 Benj. R. Sheldon Seal

On the Back of which Bill of Exceptions the following  
 endorsement appears to wit: "Filed February 3<sup>rd</sup> 1860"  
 "S. W. Guitau clerk"

State of Illinois )  
Stephenson County ) Luther W. Guiteau Clerk of the  
Circuit in and for the County of  
Stephenson and State of Illinois do hereby certify that  
the foregoing is a true and complete copy of the record  
of the Judgment and all the proceedings had in this  
Court in a certain cause wherein James Mitchell  
Walden Putnam, Roden K. Richardson, & John A. Papp  
are Plaintiffs and John K. Brewster & Joseph W.  
Brewster are Defendants as the same appears of the  
records and files of said Court in my office -

In Witness Whereof I have hereunto  
set my hand and the seal of our  
said Court at the City of Freeport  
in said County this 12<sup>th</sup> Day of  
March a. S. 1860

attest - Luther W. Guiteau Clerk  
Per The North Deputy

Costs to Plaintiff

Doc suit & Firms <sup>50</sup> fily Praec Narr & Note <sup>20</sup> Sumd of fily <sup>40</sup>	1.10
Enty app & atty <sup>15</sup> fily 8 Pap <sup>40</sup> mo leave to file several Rep <sup>20</sup>	" 75
" ord to file several Rep Enty of fily Rep <sup>25</sup>	" 45
" Withell Rep Enty leave to Reply over <sup>20</sup>	" 40
" of fily new Rep Enty Except to strike Rep from files <sup>20</sup>	" 45
" Mo leave to file adl Rep Enty of fily adl Rep <sup>20</sup>	" 45
" of fily Except <sup>m</sup> to ruling of court <sup>25</sup> + Swg & caly Jury <sup>15</sup>	" 40
" ord post <sup>20</sup> Enty verdict Jury <sup>10</sup> mo Arud trial <sup>20</sup>	" 50
" ord overly mo Arud trial Enty Ex <sup>20</sup> prayer Appeal <sup>20</sup>	" 40
" on appeal <sup>20</sup> Enty of fily Except <sup>25</sup>	" 45
" ord Judgt <sup>20</sup> Swg 2 Mit <sup>10</sup> B. G. 30 <sup>4</sup> Fed Bill Exy 45 <sup>4</sup>	1.05
	6.40

Shffesus - J. W. Shaffer - Ex & rely Sumd 2.25  
 Tazart Sumy & caly Jury " 60  
 County for Jury 3.00  
 12.25

Costs to Defendant

Enty app & atty <sup>15</sup> Enty of fily Pleas <sup>25</sup> Enty of fily Arms <sup>25</sup>	" 65
" Leave to Withel Arms <sup>20</sup> Leave to file adl Plea <sup>25</sup>	" 45
" of fily mo to strike 4 <sup>th</sup> 5 <sup>th</sup> 6 <sup>th</sup> 7 <sup>th</sup> 8 <sup>th</sup> 9 <sup>th</sup> 10 <sup>th</sup> Rep from files	" 25
" of fily Arms to 3 <sup>rd</sup> & 7 <sup>th</sup> Rep <sup>25</sup> ord strike 6 <sup>th</sup> & 10 <sup>th</sup> Rep from files	" 45
" Withell Arms to 3 <sup>rd</sup> & 7 <sup>th</sup> Rep <sup>20</sup> Enty of fily Arms to several Rep <sup>20</sup>	" 40
" ord on Arms to do <sup>20</sup> Enty ord leave to Withel Arms over de <sup>20</sup>	" 40
" ord leave to rejoin several matters Enty of fily Rejoined <sup>25</sup>	" 45
Fily 12 Instructions <sup>60</sup> fily 4 Praec <sup>25</sup> 4 Subpd of fily <sup>1.60</sup>	2.40
Swg 3 Mit <sup>15</sup> Swg of fily 6 Mit off <sup>90</sup> Enty ord Judgt <sup>20</sup>	1.25
Enty Judgt <sup>25</sup> Satis <sup>15</sup> Ord Ex <sup>20</sup> Ex of fily 45 <sup>4</sup>	1.05
Doc Ex <sup>10</sup> Shffs ret <sup>10</sup> B. G. 30 <sup>4</sup> Ctp & Seal <sup>35</sup>	" 85
Shffesus - Tazart Ex & rely Subpd	2.80
Witnesses - W. A. Sheets - 10 ds <sup>810</sup> W. P. Malburn <sup>812</sup> 12 ds Dec 22.00	
" W. P. Malburn 23 ds <sup>823</sup> (Apr 1859) W. P. Malburn <sup>812</sup> 12 ds Sept 35.00	
" Same 26 ds <sup>826</sup> (Dec 1859) J. W. Shaffer 4 ds <sup>844</sup>	30.00
	87.00
	98.45

State of Illinois  
Stephenson County

Arthur H. Guiteau Clerk of Stephenson County Circuit Court  
In the State of Illinois do hereby certify that the foregoing is a true and correct copy from my Fee Book  
Witness my hand and official seal this 12th day of March  
A.D. 1860

In Supreme Court  
James Mitchell vs. John H. Brewster  
Plaintiff in Error  
vs.  
Defendant in Error

Arthur H. Guiteau Clerk  
By Thos North Deputy

Errors to  
Stephenson Co

The said Plaintiff in Error by James Mitchell their Attorney come & say that there is error in the record in this cause in the Court that the said Circuit Court

1. In striking from the files the said plaintiffs sixth & tenth Replications
2. In sustaining defendants demurrers to plaintiffs third, seventh & eleventh replications
3. In admitting in evidence the two transcripts of judgments and refusing to withdraw the same from the jury in the absence of their being any proof of said judgments being for the same causes of action as in this suit
4. In admitting in evidence the affidavits of Putnam & the two executions together with the testimony of witnesses respecting the same
5. In refusing to give the plaintiffs instructions as asked, leaving them as modified
6. In giving the defendants instructions
7. In refusing a new trial

The defendant in error says there is no such error as is above specified  
Seland & Bl an dnd  
for dth in error

James Mitchell  
for Plaintiff in Error

J Mitchell Esq

4/23 - 13

J K Brewster Esq

Record



Filed April 20. 1860  
L Leland  
Clerk

# SUPREME COURT OF ILLINOIS

THIRD GRAND DIVISION.

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APRIL TERM, 1862, AT OTTAWA.

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JAMES MITCHELL *et als.* }  
*vs.*  
JOHN K. BREWSTER *et al.* }

The 6th and 10th replications were properly stricken from the files. They are repetitions of an idea which is stated over and over again. One statement, that these judgments were entered up without the authority and consent of the plaintiffs, and that they never ratified the same, was enough, and the Court below ought to have allowed only one replication of this kind to each plea. So in relation to the sustaining the demurrer to the 3d and 7th replications—they are mere repetitions of an idea stated in other replications, with a change of phraseology. The 3d and 7th replications merely allege that the judgment was entered up without the knowledge or consent of the plaintiffs. They may have ratified the act subsequently; consequently the replications are not good; The 11th replication is clearly bad, because it does not negative the idea that the plaintiffs caused the judgments to be entered up. According to the ruling in *Parks vs. Holmes*, 22 Ill., 522, the Court ought not, in the first place, to have allowed but one replication stating the same fact, to each plea, or having incautiously done so, they should all but one have been stricken from the files. The sustaining the demurrer to the 3d and 7th replications does no harm, because the necessary fact is found stated many times in others. The third assignment of error is not well taken. The notes declared upon in this case are the same as those of which copies appear in the two transcripts of judgment. Whether the evidence of identity of the causes of action in the several suits was sufficient to warrant the finding on this point, is one we do not desire to discuss. They are identified by Clark as the same, and the description of the notes settles it beyond controversy, that the cause of action is the same. The 4th assignment is not well founded. The controversy was whether the plaintiffs authorized the

judgments by confession to be entered up, or subsequently ratified the acts of the attorney. Putnam was one of the plaintiffs, and swears that his firm recovered the judgment against John K. Brewster, and that they caused the execution to be issued, and prays that certain persons may be summoned as garnishees. The affidavit and execution surely are, under the issues, clearly competent proof tending to show that the plaintiffs authorized Marsh to file the declaration and obtain the judgment, or that plaintiffs ratified his act in so doing. The instructions contain only this principle, to wit: If the plaintiffs authorized the entering up the judgments, by confession against John K. Brewster, or sanctioned the act after it was done, the judgment is a bar to a subsequent one against both, on the same note. Our Court has settled the question, if there really ever was any, that a judgment against one of two joint promissors, is a bar to a suit against the two. The case of *Sheeby vs. Mandeville & Jameson*, is reviewed by Caton, Justice, in 2 Gillman, 355, and its authority is not recognized in this State. Its reasoning is also considered unsound by Baron Parke, in 13 Mees & Welsh, 494; see also 18 Johnson, 459, 13 Mass., 148; 19 Ill., 347, and authorities there cited. There certainly can be no distinction between a judgment confessed without process, and one rendered where the defendants are served process. (5 Bos. & Pal., 474.) In either case, if the judgment was obtained without the authority of the plaintiff at the time, or was not subsequently ratified by him, he might not be affected by it. This question of fact was submitted to the jury, and they have found the issues for the defendant, and these issues fairly allowed all the evidence there could be on the question.

*M. R. Sweet* — LELAND & BLANCHARD.

27

Brief

Yield May 11 1842  
Yield  
Clear

# SUPREME COURT OF ILLINOIS

THIRD GRAND DIVISION.

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APRIL TERM, 1862, AT OTTAWA.

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JAMES MITCHELL *et als.* }  
  *vs.* }  
JOHN K. BREWSTER *et al.* }

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*W. R. Sweet* 9 LELAND & BLANCHARD.

27  
Brief

Justice May 1. '62  
J. Delaney  
Clerk

6. Rep

And for a further Rep to said 2<sup>d</sup> plea.  
the said P<sup>l</sup>ff say preclude (now. because  
they say that at & before the said supposed  
recovery of the said judgment in said plea  
mentioned the said Deft J<sup>r</sup> M<sup>r</sup> Brewster  
had signed & executed ~~the~~ promisory  
in said first count in said declaration  
mentioned as security with apr said Deft  
J<sup>r</sup> K. Brewster & the said P<sup>l</sup>ff. over that  
at the time of the said supposed recovery,  
the said J<sup>r</sup> K. Brewster had become & was  
insolvent. & for the better security or indemnity  
of the said J<sup>r</sup> M<sup>r</sup> Brewster. he the said  
J<sup>r</sup> K. Brewster. then & there without the  
knowledge or consent of the said P<sup>l</sup>ff caused  
the said judgment to be confes<sup>d</sup>. against  
himself by confession without process which  
said judgment still remains unsatis-  
fied & unexecuted & thus thus

8. 4  
11. 4

(Same  
(Same to word mentioned) the said promisory  
notes in said count mentioned had been  
made & executed by said Deft. J<sup>r</sup> K.  
Brewster or J<sup>r</sup> M<sup>r</sup> Brewster which said  
notes were then & there unpaid & unsatisfied  
& the said P<sup>l</sup>ff aver that said J<sup>r</sup> K. Brewster  
then & there became & was insolvent & voluntarily  
caused said judgments in said plea as  
mentioned to be entered by confession

against him by confession without  
process or bringing of suit & the said  
Plffs further aver that said judgments  
remain wholly unpaid & unsatisfied  
& unexecuted And the said Plffs also  
aver that they never have accepted  
received or taken the said judgments  
in or as payment & satisfaction or  
discharge of said promissory notes or  
any part of the money due or to become  
due thereby And this &c

The record in this case being missing from the files, it  
is hereby stipulated that if said record shall not be  
found, that the court may decide the case from  
the abstract; that the above is a true & correct copy of the  
6" 7" & 11" replications in the record & that the  
abstract is sufficiently full except in respect to  
the testimony of Clark, which should show by the  
record, that when he proposed his plan to Brewster's  
he Brewster consented to it on condition that the  
same thing should be done in respect to the notes  
in question so as to secure his surety. J. M. Brewster  
equally with with the witness, Clark  
April 29<sup>th</sup> 1862

Stipulation—

Filed April 30, 1862,  
L. Deland

Jason Marsh  
for Plffs in error  
C. S. Deland  
for defts in error

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