

No. 13013

Supreme Court of Illinois

B
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vs.

Levings

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STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 137.

Boyle

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19012

Boyle

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, 1860.

MICHEAL BOYLE }
 vs. } *Appeal from Joe Daviess.*
ANN LEVINGS. }

ABSTRACT OF RECORD.

Page of Rec. THIS was an action of trover for the promissory note hereaf-
4 ter described in the bill of exceptions. The narr. also charged
a conversion of bank notes and coin.

The general issue was pleaded; also a special plea that the
note which was payable to the plaintiff below was only nominal-
13 ly hers, but really the property of the defendant below.

Verdict and judgment for plaintiff.

BILL OF EXCEPTIONS.

Plaintiff's Evidence.

21 *H. Roberts* testified that about 2 years ago he was going home
from Galena, and on the road was overtaken by defendant and
his wife, in a two horse wagon; defendant asked me to ride, and
I got in the back part of the wagon; defendant and his wife
were sitting on a board for a seat. Carter's Banking House had
suspended at that time, and this was before any arrangements
had been made to pay any one. I had money deposited with
Carter at that time. Mrs. Boyle asked me how I got along with
Carter; I told her there was nothing done. When defendant's
wife said, Ann had drawn her money from Corwith's Bank and
deposited it with Carter. She said it would be a pity for Ann
Levings, a poor hired girl, to lose her money that she had there,
and that she thought he ought to pay her. There was other
conversation, but this was the substance, if not the words used.
The defendant was driving the team. I did not say anything.
He made no remark and took no part in the conversation.

22 *James Carter* testified that on April 9th, 1857, there was de-
posited in his Bank about \$900, to the credit of Ann Levings—
that in October, after he had suspended, the defendants wife,
Margaret Boyle, called on him for the money, and as witness
knew Mrs. Boyle and Ann Levings both, he told her he had
nothing to do with her, that the money stood on his books as the
money of Ann Levings, and she must bring Ann Levings. Wit-

Page of Rec. ness does not remember whether she showed him the certificate or not at the time, but he stated to her he only knew Ann Levings in the transaction, as the money stood on his books in her name. Shortly after, the plaintiff, Ann Levings, and Mrs. Boyle came to the Banking House together, and wanted payment of the certificate. Ann's case had been especially called to my attention as a peculiar one. I wanted to give her paper of undoubted responsibility, and offered her the paper of T. & J. Leekly, which she declined, but agreed to take R. S. Harris & Co's. paper as she knew them. I then gave her the note, (here produced and shown to witness.) The note paid the amount deposited and interest up to its date. Mrs. Boyle and Ann both done some of the talking. The note was given to Ann Levings. Plaintiff asked what Mrs. Boyle said? The defendant objected, and the question was not further pressed. The note was then read in evidence, and is in the words and figures following, to wit:—

\$926 80-100.

GALENA, ILL., 6th October, 1857.

Eight months after date we promise to pay to the order of Ann Levings nine hundred and twenty-six 80-100 dollars with interest from date at seven per cent. value received.

R. S. HARRIS & Co.

- 24 *John R. Perkins* testified that he knew the plaintiff, and the defendant, and the defendant's wife, and had known them about six years; that he was the Teller in the Bank of Galena A. D. 1857; that about the last of March or first of April, of that year, Ann Levings drew out some money which she had deposited.— On the book of the Bank there were two certificates of deposit, both in the name of Ann Levings. One was a small one for about one hundred and eighty dollars, of comparatively recent date, the other was for between seven and eight hundred dollars, and was an old certificate on which a large amount of interest had accrued. That he calculated the interest on both certificates, and consolidated the whole and paid them together to Ann Levings. Mrs. Boyle, wife of defendant, and the plaintiff both came to the Bank together. Mrs. Boyle done most of the talking; she wanted witness to pay Ann seven per cent. instead of six, and compound interest, on the ground "Ann was a poor, hardworking girl, and the money had been there so long;" which witness declined, saying he was paying her as much as they paid any one.

On cross examination, he stated he did not remember what was said about endorsing them, but Ann endorsed them, as they were in her name; did not notice any division between them of the money, or who carried it off; was busy, and paid no further attention to them after he paid the money and got the certificates. Witness cannot state the amount of interest paid, without refer-

Page of Rec. ence to the books of the Bank, but remembers there was a large amount of accruing interest on the large certificate, from its being an old one; thinks the amount of interest on it was \$157, or something about that sum. The small certificate had but little interest, as it was of a more recent date; does not know who deposited the money. It was in the name of Ann Levings, in the books of the Bank.

26 *Thos. McNulty* testified that, as the agent of Ann Levings, he served a copy of the notice here produced to the witness on the day of the returns made on the back. The notice is in the words and figures following, to wit:

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GALENA, Ill., 6th October, 1857.

Eight months after date, we promise to pay to the order of Ann Levings, Nine hundred and twenty-six 80-100 dollars, with interest from this date at seven per cent. value received.

R. S. HARRIS & CO.

To MR. MICHAEL BOYLE,

Sir:—Thomas McNulty is hereby authorized to demand and receive the amount of money collected by you on the note of which the above is a copy, and in my name to receipt to you for the sum.

This 26th February, A. D. 1859.

Witness, T. McNULTY.

ANN her $\times$ mark LEVINGS.

Endorsed: Served the within by reading the same to the within named Michael Boyle, and demanding the money.

February 26th, 1859.

T. McNULTY, Const.

Fee \$1.00

Witness further testified that he served it on the defendant on Main street, in Galena. That defendant said in answer to the demand made by witness, "that he had no money belonging to Ann Levings." Defendant then requested witness to show the papers to his attorney, M. Y. Johnson, Esq., which witness did, either that day or the next.

It was admitted by counsel of defendant, that a suit on said note of R. S. Harris & Co. was prosecuted by the defendant in the name of Ann Levings to the use of Michael Boyle, to a judgment in the Jo Daviess County Circuit Court, at the October term, A. D. 1858. The plaintiff then introduced and read to the jury the said judgment of the Circuit Court in the case of Ann Levings, who sues for the use of Michael Boyle *vs.* R. S. Harris & Co. upon aforesaid note read in evidence.

The judgment referred to is in the words and figures following, to wit: (In the proceedings of the Jo Daviess County Circuit Court, at the October term A. D. 1858, under the date of October 20th, 1858.)

Page of Rec. 21	ANN LEVINGS, who sues for the use of MICHAEL BOYLE, <i>vs.</i> ROBERT S. HARRIS, and JAMES M. HARRIS, partners under the name and style of R. S. HARRIS & CO.	}	<i>Trespass on the case upon promises.</i>
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Now, at this day came the parties by their attorneys, and upon issue joined, they waive the intervention of a jury, and for trial put themselves upon the Court, and the Court, after hearing the evidence and arguments of counsel, finds the issue for the plaintiff, and damages at the sum of nine hundred and nineteen dollars and eighty cents, (\$919.80.) It is thereupon considered by the Court that the plaintiff have and recover of the defendants the said sum of nine hundred and nineteen dollars and eighty cents, (919.80,) so as aforesaid found by the the Court, together with her costs by her about her suit herein expended, and that execution issue therefor.

The defendants' attorney proposed to prove that Ann Levings had collected before suit brought, seventy-two (72) dollars from R. S. Harris & Co., the interest on said note sued on, and that defendant had sued and recovered a judgment against plaintiff for the same. Whereupon, the plaintiff's attorney admitted in rendering this judgment, that Harris & Co. received a credit for that amount on said note, and judgment was rendered for the balance, and that was all they claimed.

It was admitted by the defendant, that M. Y. Johnson was the attorney of Michael Boyle in the above case, and had no connection whatever with Ann Levings, and was not employed by her but was employed by Michael Boyle, and did prosecute said suit on said note to judgment. It was further admitted that R. S. Harris & Co. had paid the money over on said judgment to the Sheriff on execution, and the Sheriff had paid the same over to M. Y. Johnson, as the attorney of Michael Boyle, before the notice was served on the defendant by Thos. McNulty, as above set forth. The plaintiff then offered and read to the jury as evidence showing that she did not consent to the prosecution of the above suit in her name, and for no other purpose, the interpleader, filed by her in the above cause against Harris & Co., it being admitted by the defendant that Mr. McClellan, the attorney named in the interpleader, was authorized by Ann Levings to appear for her and file the same, and that he did appear, and object to the prosecution of said suit, and filed said interpleader for plaintiff. But to the introduction of said interpleader and reading the same as evidence in this cause, the defendant then and there objected, unless they would introduce all the papers in said cause.

Page of Rec. There were among said papers a number of affidavits filed by said Boyle, in resistance of said interpleader, tending to show the note belonged to him. Which objection the Court overruled and said interpleader was read as evidence to the jury. The Court expressly said to the jury that it was not evidence for any other purpose except to show plaintiff did not assent to the prosecution of the suit. Said interpleader is in the words and figures following, to wit:

STATE OF ILLINOIS, } *In Circuit Court, August Term,*
Jo Daviess County, } 1858.

ANN LEVINGS, who sues for }
 the use of MICHAEL BOYLE, }
vs. }
 R. S. HARRIS & CO. }

And now comes Ann Levings by McClellan, her attorney, and by leave of the Court first had and obtained, and interpleads herein, and avers that the said Michael Boyle has no interest in the note sued on in this case and ought not to receive the proceeds thereof from the said defendants. And this she is ready to verify, &c. Wherefore she prays judgment against said defendant, &c.

R. H. McCLELLAN,
Att'y for Interpleader.

Endorsed: Filed August 25th, (1858.)

W. R. ROWLEY, *Clerk.*

To which ruling and decision by the Court, the defendant then and there excepted.

This was all the evidence of the plaintiff, in chief.

Defendant's Evidence.

32 The defendant then introduced and examined *Mrs. Creighton*, who testified that she was the sister of Ann Levings, and Margaret Boyle, the defendant's wife; that the defendant and his wife had been in this Country about seventeen years, and that the plaintiff had been in this Country about ten years; that witness, plaintiff, Matthew Levings, their mother and her child, came over from Ireland together; that her sister Ann had been at service as a hired girl ever since she had been in this country, except about three years; that she lived off and on, and made her home at Margaret's, (the defendant's wife.) That last May, two years ago, witness was in Galena and had been below town to see another sister, and returning with Ann, the plaintiff, she had a conversation with her, in which Ann stated to witness that she and Margaret (the defendant's wife) had drawn their money from Corwith's Bank and she (Ann) had loaned her money (two hundred) to Curley & Omara at ten per cent. interest, and Margaret had deposited her money in Mr. Carter's Bank in her

Page of Rec. (Ann's) name. She did not state the amount Margaret had deposited in her name. She did say she had loaned her money (two hundred dollars) to Curley & Omara at ten per cent.—This is all the talk she had about the money.

33 *Jane McGunn* testified that she was a niece of the plaintiff, and defendant's wife, and acquainted with all the parties; that two years ago last Christmas, witness and Ann Levings, the plaintiff, were at the defendant's house—Margaret Boyle the defendant's wife had gone to Galena; that she had a conversation with Ann Levings, in which Ann told me the money belonged to Mrs. Boyle, and asked witness if she thought it would be a sin for her to keep it. Nothing was said about where the money was, the amount, or in whose name it was. Witness further testified, on cross examination, that no bad feeling existed with her against the plaintiff; that she never had any quarrel with her, and that Mrs. Boyle had never promised her a dress after the suit was determined.

34 *Mrs. P. Levings* testified that she was the sister-in-law of the plaintiff and defendant's wife, and that she had known all the parties for twenty-five years; that the defendant and his wife had been in this country about seventeen or eighteen years, the plaintiff about ten years; that plaintiff made her home at defendant's house for about three years of the time she has been in this country; that the defendant is a neat, tidy, good, industrious and economical girl; that six years ago this summer the plaintiff was at her house, and at that time told her that her mother wanted her (Ann) to take Margaret's money and for them to go back to Ireland and live on it.

On cross examination, witness said there has never been any difficulty between her and Ann; that Ann has not been to her house for two years, when her son was sick.

35 *Matthew Levings* testified that he was the brother of plaintiff and defendant's wife; that he has been in this country ten years; that he came over in company with the plaintiff, his mother, sister and a child of Mrs. Creighton; that the money that brought them over was contributed by the plaintiff, his mother, himself, and a part was sent over to them from this country by his brother Patrick Levings, and his sister Margaret Boyle, wife of the defendant; that the whole made about forty pounds; that he was the purser or cashier, and before they got to Galena the money was all spent; that on arriving at Galena, he had to borrow from his friends here six dollars to pay the freight on their baggage; (Ann's amongst the rest.) He states that Ann had no property in Ireland that he knew of, and does not know of her having any money; that for eight or nine years in Ireland, before they came to America, Ann was at service and hired with a counsellor in Dublin, and received, as he understood, ten

Page of Rec. pounds a year, boarding and lodging. Don't know but she may have had money and I not known it. This witness further testified that in A. D. 1852, he was sick at defendant's house, and while there, his mother showed him upwards of \$600 of Margaret's money in gold, and that he counted it himself. Witness further states, in A. D. 1853, he deposited three hundred dollars in Bank; that Ann, the plaintiff, loaned him some 15 or 20 dollars of the money to make up that amount—at the same time she gave him one hundred dollars of her money to deposit in his name, which he did, and it remained in his name until the Fall of A. D. 1854, when he was going to New York, when he drew his money, and hers, and paid it to her.

37 *Thomas Simpson* testified that he had lived here for thirty years and knew what had been wages of hired girls for the last ten years; said the wages had been from six to ten dollars per month; that it would average about eight dollars per month for a good girl during that time; that hired girls had to clothe themselves; that he had daughters and knew something about what it would cost a year to clothe them; said it would take all they made to satisfy some of them, depending on the girls; but it would not cost less than forty dollars a year at least. Witness in cross examination, said his estimate was a mere guess.

38 *Edward Irwin* testified that he had known the defendant, Boyle, for about sixteen years; that during all that time, he had been in good circumstances, and an independent farmer.

38 The defendant here rested his cause.

The plaintiff then introduced and examined *James Rood*, who testified that he knew the plaintiff; that she lived with him as a hired girl, from June to November, in the year A. D. 1854, and four and a half months in A. D. 1855, that she was sick and left his house and went to her sister's; (Mrs. Boyle's;) that he paid her seven and eight dollars per month while she was with him.

39 The plaintiff then introduced and examined *Patrick McGinn*, who testified that he was the brother of Jane McGinn, who had been examined as a witness in this cause; that some time since, he was at Mr. McCloskey's kitchen, where Jane lived, and talking about this money. He asked her if she was a witness in the case, she said "yes." He asked her if she was sworn; she said "no." He asked her if she held up her hand; she said "yes." He asked her if Mrs. Boyle had promised her a dress if she wins the case; she said "yes." Witness told her not to let that make any difference; not to take the dress. All this was in the presence of two other hired girls.

On cross examination, this witness stated that Ann Levings sent him a part of the money to come to this country on; after he came here he worked a month or two for the defendant, Boyle. When he was about to leave, Boyle complained he had

no money ; wanted Boyle to settle it with plaintiff. Boyle said he had nothing to do with her.

He would settle with witness. Boyle scraped up the money and paid witness. Ann was present, and witness pushed the money over to her for what he owed her. Witness don't know from whom or where Boyle got the money to pay him. This was in A. D. 1854. Boyle has about 160 acres of land.

The foregoing was all the evidence.

40 Here follow the instructions :

41 The second instruction given for plaintiff, is as follows :

If the jury believe from the evidence, that the money sued for was and is the money of Ann Levings, and that the same was collected by the defendant, before this suit was commenced, then the jury should find for the plaintiff.

Verdict for plaintiff for \$976.52-100. Motion by defendant for new trial, and in arrest of judgment ; overruled, and judgment and exception.

Errors Assigned.

1st. Verdict and judgment should have been for defendant below.

2d. Giving plaintiff's second instruction.

3d. Not granting a new trial.

4th. Overruling motion in arrest of judgment, and rendering judgment *vs.* defendant below.

5th. Admitting the interpleader of Ann Levings as evidence unless all the papers of the case were admitted.

6th. Action should have been assumpsit and not trover.

7th. Court admitted improper evidence for plaintiff, under the issues.

LELAND & LELAND AND M. Y. JOHNSON,
For Appellant.

BRIEF OF AUTHORITIES.

1st. The verdict is against the evidence.

2d. The action, if any, should have been assumpsit, and trover does not lie for a note after judgment rendered on it.

11 Iredell, 266. 19 Ala. 130. 3 John. 431.

3d. Trover cannot be maintained for the money collected, because the plaintiff never had possession of it, and it is not capable of identification. Trover only lies for a chattel which the plaintiff could have lost, and the defendant might have found, and consequently the 2d instruction is wrong.

7 Eng. Com. Law, 226.

107

Boyle no Savings

Abstract

Filed Apr 26, 1860
A. H. Leland
Clerk

IN THE
SUPREME COURT AT OTTAWA,

APRIL TERM, A. D. 1860.

JAMES BOYLE, AND
DAVID BARNES,
 Appellants.
vs.
ELIJAH CARTER,
 Appellee.

} *Appeal from R ck Island.*

BEARDSLEY & SMITH. *Attorneys for Appellee.*

I.

We can discover no error in the refusal of the Court below, to continue the cause, for the reasons assigned.

If the defendant's below desired a more specific bill of particulars, they should have sought a rule for that purpose.

Greater particularity than the note filed could scarcely be attained, and this intitled the plaintiff below to recover under some of the common counts.

It is obvious that the special count in the declaration misdescribed the note intended to be counted upon, but the note filed was a good exhibit or specification under the com-

mon counts, and would have dispensed with the necessity of filing a copy, even if a recovery could have been had under the special count.

It is claimed that under the common counts neither the note or a copy need have been filed, because it did not appear from these counts that the note was the instrument on which action was brought. —Indeed, as to these counts it was not the instrument on which action was brought. It was a piece of evidence only, that might or might not be used, to prove the account filed.

II.

It is admitted that the count properly excluded the note as evidence under the special count, for the reason that the note was misdescribed.

But the court did not err in admitting it under the count for money had and received.

No objection was made to the execution of the note, no objection urged that its execution was not proven, but the objection, as appears from the bill of exceptions, was simply general, and wholly indefinite. It is submitted that it is now too late to object that the execution of the note was not proven. The objection should have been specifically made in apt time, that the cause of objection might have been removed.

Conway vs. Case, 20 Ill. R. 127.

III.

As to any excess of damages the appellee hereby offers to remit the same.

149
Boyle et al
vs
Carver

Filed April 18, 1860

L. Deland
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, 1860.

MICHEAL BOYLE }
vs. } *Appeal from Joe Daviess.*
ANN LEVINGS. }

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Endorsed: Served the within by reading the same to the within named Michael Boyle, and demanding the money.

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Now, at this day came the parties by their attorneys, and upon issue joined, they waive the intervention of a jury, and for trial put themselves upon the Court, and the Court, after hearing the evidence and arguments of counsel, finds the issue for the plaintiff, and damages at the sum of nine hundred and nineteen dollars and eighty cents, (\$919.80.) It is thereupon considered by the Court that the plaintiff have and recover of the defendants the said sum of nine hundred and nineteen dollars and eighty cents, (919.80,) so as aforesaid found by the the Court, together with her costs by her about her suit herein expended, and that execution issue therefor.

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ANN LEVINGS, who sues for }
 the use of MICHAEL BOYLE, }
vs. }
 R. S. HARRIS & CO. }

And now comes Ann Levings by McClellan, her attorney, and by leave of the Court first had and obtained, and interpleads herein, and avers that the said Michael Boyle has no interest in the note sued on in this case and ought not to receive the proceeds thereof from the said defendants. And this she is ready to verify, &c. Wherefore she prays judgment against said defendant, &c.

R. H. McCLELLAN,
Att'y for Interpleader.

Endorsed: Filed August 25th, (1858.)

W. R. ROWLEY, *Clerk.*

To which ruling and decision by the Court, the defendant then and there excepted.

This was all the evidence of the plaintiff, in chief.

Defendant's Evidence.

32 The defendant then introduced and examined *Mrs. Creighton*, who testified that she was the sister of Ann Levings, and Margaret Boyle, the defendant's wife; that the defendant and his wife had been in this Country about seventeen years, and that the plaintiff had been in this Country about ten years; that witness, plaintiff, Matthew Levings, their mother and her child, came over from Ireland together; that her sister Ann had been at service as a hired girl ever since she had been in this country, except about three years; that she lived off and on, and made her home at Margaret's, (the defendant's wife.) That last May, two years ago, witness was in Galena and had been below town to see another sister, and returning with Ann, the plaintiff, she had a conversation with her, in which Ann stated to witness that she and Margaret (the defendant's wife) had drawn their money from Corwith's Bank and she (Ann) had loaned her money (two hundred) to Curley & Omara at ten per cent. interest, and Margaret had deposited her money in Mr. Carter's Bank in her

Page of Rec. (Ann's) name. She did not state the amount Margaret had deposited in her name. She did say she had loaned her money (two hundred dollars) to Curley & Omara at ten per cent.—This is all the talk she had about the money.

33 *Jane McGunn* testified that she was a niece of the plaintiff, and defendant's wife, and acquainted with all the parties; that two years ago last Christmas, witness and Ann Levings, the plaintiff, were at the defendant's house—Margaret Boyle the defendant's wife had gone to Galena; that she had a conversation with Ann Levings, in which Ann told me the money belonged to Mrs. Boyle, and asked witness if she thought it would be a sin for her to keep it. Nothing was said about where the money was, the amount, or in whose name it was. Witness further testified, on cross examination, that no bad feeling existed with her against the plaintiff; that she never had any quarrel with her, and that Mrs. Boyle had never promised her a dress after the suit was determined.

34 *Mrs. P. Levings* testified that she was the sister-in-law of the plaintiff and defendant's wife, and that she had known all the parties for twenty-five years; that the defendant and his wife had been in this country about seventeen or eighteen years, the plaintiff about ten years; that plaintiff made her home at defendant's house for about three years of the time she has been in this country; that the defendant is a neat, tidy, good, industrious and economical girl; that six years ago this summer the plaintiff was at her house, and at that time told her that her mother wanted her (Ann) to take Margaret's money and for them to go back to Ireland and live on it.

On cross examination, witness said there has never been any difficulty between her and Ann; that Ann has not been to her house for two years, when her son was sick.

35 *Matthew Levings* testified that he was the brother of plaintiff and defendant's wife; that he has been in this country ten years; that he came over in company with the plaintiff, his mother, sister and a child of Mrs. Creighton; that the money that brought them over was contributed by the plaintiff, his mother, himself, and a part was sent over to them from this country by his brother Patrick Levings, and his sister Margaret Boyle, wife of the defendant; that the whole made about forty pounds; that he was the purser or cashier, and before they got to Galena the money was all spent; that on arriving at Galena, he had to borrow from his friends here six dollars to pay the freight on their baggage; (Ann's amongst the rest.) He states that Ann had no property in Ireland that he knew of, and does not know of her having any money; that for eight or nine years in Ireland, before they came to America, Ann was at service and hired with a counsellor in Dublin, and received, as he understood, ten

Page of Rec. pounds a year, boarding and lodging. Don't know but she may have had money and I not known it. This witness further testified that in A. D. 1852, he was sick at defendant's house, and while there, his mother showed him upwards of \$600 of Margaret's money in gold, and that he counted it himself. Witness further states, in A. D. 1853, he deposited three hundred dollars in Bank; that Ann, the plaintiff, loaned him some 15 or 20 dollars of the money to make up that amount—at the same time she gave him one hundred dollars of her money to deposit in his name, which he did, and it remained in his name until the Fall of A. D. 1854, when he was going to New York, when he drew his money, and hers, and paid it to her.

37 *Thomas Simpson* testified that he had lived here for thirty years and knew what had been wages of hired girls for the last ten years; said the wages had been from six to ten dollars per month; that it would average about eight dollars per month for a good girl during that time; that hired girls had to clothe themselves; that he had daughters and knew something about what it would cost a year to clothe them; said it would take all they made to satisfy some of them, depending on the girls; but it would not cost less than forty dollars a year at least. Witness in cross examination, said his estimate was a mere guess.

38 *Edward Irwin* testified that he had known the defendant, Boyle, for about sixteen years; that during all that time, he had been in good circumstances, and an independent farmer.

38 The defendant here rested his cause.

The plaintiff then introduced and examined *James Rood*, who testified that he knew the plaintiff; that she lived with him as a hired girl, from June to November, in the year A. D. 1854, and four and a half months in A. D. 1855, that she was sick and left his house and went to her sister's; (Mrs. Boyle's;) that he paid her seven and eight dollars per month while she was with him.

39 The plaintiff then introduced and examined *Patrick McGinn*, who testified that he was the brother of Jane McGinn, who had been examined as a witness in this cause; that some time since, he was at Mr. McCloskey's kitchen, where Jane lived, and talking about this money. He asked her if she was a witness in the case, she said "yes." He asked her if she was sworn; she said "no." He asked her if she held up her hand; she said "yes." He asked her if Mrs. Boyle had promised her a dress if she wins the case; she said "yes." Witness told her not to let that make any difference; not to take the dress. All this was in the presence of two other hired girls.

On cross examination, this witness stated that Ann Levings sent him a part of the money to come to this country on; after he came here he worked a month or two for the defendant, Boyle. When he was about to leave, Boyle complained he had

no money ; wanted Boyle to settle it with plaintiff. Boyle said he had nothing to do with her.

He would settle with witness. Boyle scraped up the money and paid witness. Ann was present, and witness pushed the money over to her for what he owed her. Witness don't know from whom or where Boyle got the money to pay him. This was in A. D. 1854. Boyle has about 160 acres of land.

The foregoing was all the evidence.

40 Here follow the instructions :

41 The second instruction given for plaintiff, is as follows :

If the jury believe from the evidence, that the money sued for was and is the money of Ann Levings, and that the same was collected by the defendant, before this suit was commenced, then the jury should find for the plaintiff.

Verdict for plaintiff for \$976.52-100. Motion by defendant for new trial, and in arrest of judgment ; overruled, and judgment and exception.

Errors Assigned.

1st. Verdict and judgment should have been for defendant below.

2d. Giving plaintiff's second instruction.

3d. Not granting a new trial.

4th. Overruling motion in arrest of judgment, and rendering judgment *vs.* defendant below.

5th. Admitting the interpleader of Ann Levings as evidence unless all the papers of the case were admitted.

6th. Action should have been assumpsit and not trover.

7th. Court admitted improper evidence for plaintiff, under the issues.

LELAND & LELAND AND M. Y. JOHNSON,
For Appellant.

BRIEF OF AUTHORITIES.

1st. The verdict is against the evidence.

2d. The action, if any, should have been assumpsit, and trover does not lie for a note after judgment rendered on it.

11 Iredell, 266. 19 Ala. 130. 3 John. 431.

3d. Trover cannot be maintained for the money collected, because the plaintiff never had possession of it, and it is not capable of identification. Trover only lies for a chattel which the plaintiff could have lost, and the defendant might have found, and consequently the 2d instruction is wrong.

7 Eng. Com. Law, 226.

107
Boyle vs Jennings

Abstract

Filed Apr 26, 1860
Admstr.
Clerk

Boyle vs Lewis

In this case the question of law is entirely decided in the case of Chickering vs Raymond 15th Dec. 362

On the question as to the weight of evidence I wish to suggest in reply to Mr Seland, this argument is based upon the assumption that the plaintiff could not have owned that amount of money. I answer that the amount in April 1854 would have been only \$743. The remainder the Seller states expressly was interest, now she had the savings of 9 years service in Ireland and five years in America, it is in testimony that she was economical besides this the argument assumes that she never received any money from any other source, can the Court assume this, If the money was Mrs Boyle when died she got it they say she had it without the privity of her husband. It seems as reasonable that they should be obliged to account for her means

of obtaining money as for us
he says there was 3 years when ~~perhaps~~
was earning nothing. The record
does not show this it does not
follow that she was earning
nothing because she made it
her home generally with respect

The evidence shows Boyle sincerely
sacrificing money to pay his workman.

It seems to me to be a case where there
was a pure conflict of testimony
which the Jury were the proper
persons to determine which it
seems they did to the satisfaction
of the Jury who tried the case

It is asked ~~how~~ why 2 certificates of
deposit were taken in Ann's name
I answer the larger sum was deposited
in 1854 the smaller same 3 years ~~later~~
probably the saving of the 3 years
there were 2 certificates because
there were two deposits at different
times

B. C. Cook

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there were 2 certificates because
there were two deposits at different
times

B. C. Cook

137-48

Stevens Living

Deception for appeal

State of Illinois
In Davis County
14th Judicial Circuit
Pleas in the Circuit
Court in and for said
County in the State afore-
said at the October Term thereof AD
1859. Present Hon^{ble} Benjamin R Sheldon
Judge of said 14th Judicial Circuit,
of the State of Illinois
W D Meacham Prosecuting Attorney
John H Conlee Sheriff
Wm R Rowley Clerk

Ann Seivings
vs
Michael Boyle
Trove & Conversion
Pre it remembered
that heretofore to wit on
the first day of March AD 1859. The
plaintiff in the above entitled cause
by Mc Clellan, Rawlins & Sheehan her
attorneys, filed in the office of the
Clerk of said Circuit Court her
Precipi & bond for costs in the above
entitled cause.

The Precipi referred to is in the
words and figures following to wit

Ann Levings } State of Illinois
 vs } Jo Daviess County
 Michael Boyle } In Circuit-Court
 at March Term AD 1859
 Wm R Rowley Esq Clerk

Upon filing this precept in
 your office let a summons issue
 to the said defendant returnable to
 the next term of said Court in
 an action of Trover & Conversion
 Damages \$1200⁰⁰

McClellan Rawlins & Shean
 Attys for Plff

Endorsed

Filed March 1st / 59

Wm R Rowley Clerk

Per J. Bostwick Deputy

The Bond for Costs is in the words
 and figures following to wit-

State of Illinois } set
 Jo Daviess County } In the Jo Daviess
 County Circuit-Court
 of March Term AD 1859.

Ann Levings Plaintiff

vs

Michael Boyle Defendant

In Trover

Damages \$1200⁰⁰

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the officers of this court in pursuance of the laws of this state.

Dated at Galena this 27th day of January AD 1859
J. M. Harris Seal

Approved

Wm R. Rowley Clerk of Jo Daviess County
Circuit Court -

Per J. Postwick Deputy
Endorsed

Filed March 1st 1859

Wm R. Rowley clerk

Per J. Postwick Deputy

The summons in the above entitled cause is in the words and figures following to wit:

State of Illinois }
Jo Daviess County } Let The People of the State of Illinois to the Sheriff of said County Greeting. We command you to summon Michael Boyle, To appear before the Circuit Court of Jo Daviess County at the next term to be holden at Galena on 2nd Monday of March Inst - to answer

Ann Levings in an action of Trover and
Conversion. Damages Twelve Hundred
Dollars. And have you then there this
writ Witness William R Rowley
Clerk of the Circuit-Court of Jo Daviess
County Illinois, and the seal thereof at Galena
this 1st day of March AD 1859
Attest - Wm R Rowley Clerk
Per, J. Boatwick Deputy

Seal
C C

Endorsed,

Executed the within summons by reading
the same to the within named Michael
Boyle this fifth day of March AD 1859
J. A. Conner, Sheriff Jo Daviess Co

The Declaration filed by the plaintiff in
the above entitled cause is in the
words and figures following To wit:
State of Illinois } In Circuit Court -
Jo Daviess County } of March Term AD 1859
Ann Levings the plaintiff in this
suit - by McClellan Rawlins & Sheeran
her Attorneys complains of Michael Boyle
the Defendant in this suit of a plea of Trover
For that whereas the said plaintiff
heretofore to wit - on the ninth day of June
in the year of our Lord One Thousand eight

hundred and fifty eight. at; to wit; the
 County of Jo Daviess and State of Illinois
 was lawfully possessed as of her own
 property of a certain promissory note
~~xxx~~ Bank Notes and Money, goods and
 Chattels to wit a certain promissory note
 in writing made and drawn by one
 R S Harris & Co. ~~promiss~~ whereby the said
 R S Harris & Co. promised to pay to
 the ^{order of the} said plaintiff a certain sum of
 money. To wit; the sum of Nine hundred
 and twenty six Dollars and Eighty cents
 with interest at the rate of seven per
 Cent per Annum At a certain time
 therein mentioned. and now past: and
 divers to wit One hundred and Twenty
 bank Notes commonly called Bank
 Bills of divers different banks in
 the United States for the payment of
 the sum of Ten Dollars. each And a
 certain large sum of Money To wit
 The sum of Twelve hundred Dollars of
 lawful money of the United States of
 great value to wit of the value of Twelve
 Hundred Dollars. of lawful money of the
 United States of and being so possessed the
 said plaintiff afterwards to wit on the
 day and year aforesaid at the County

aforesaid. Casually lost the said promissory
 note Bank notes and Money goods and
 chattels out of her possession and the
 same afterwards. To wit on the day and
 year aforesaid at the County afore-
 said came to the possession of the
 said defendant by finding. Yet the
 said Defendant well knowing the said
 promissory Note Bank Notes and
 Money goods and chattels to be the
 property of the said plaintiffs and
 of right to belong to and appertain
 to her. but contriving and fraudulently
 intending craftily and subtly to de-
 ceive and defraud the said plaintiff
 in this behalf hath not as yet delivered
 the said promissory Note Bank Note
 Money goods & chattels or any or either
 of them or any part thereof to the said
 plaintiffs although often requested so
 to do ^{and hath hitherto wholly refused so to do} and afterwards to wit on the day
 and year aforesaid, at to wit the County
 aforesaid. Converted and disposed
 of the said promissory Note, bank
 Notes Money goods and chattels to
 his own use. And whereas also
 the said plaintiff afterwards to wit on
 the fifteenth day of August in the year

7
of Our Lord One Thousand eight hundred
and fifty eight - at to wit: the County
aforesaid was lawfully possessed of
a certain other promissory Note in
writing, goods and chattels to wit
(a certain other promissory note in
writing) in the words and figures follow-
ing to wit-

\$926.⁸⁰/₁₀₀

Galena Ill 6th October 1857

Eight months after date we promise
to pay to the order of Ann Seivings. Nine
hundred & twenty six ⁸⁰/₁₀₀ dollars with interest
from this date at seven per cent - value
received

R. S. Harris & Co -

No - - - Due - -

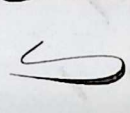
of great value to wit - of the value of Twelve
hundred Dollars of lawful money of the
United States and being so possessed
thereof, the said Plaintiff, afterwards to wit
on the day and year last aforesaid at the
County aforesaid casually lost the said
last-mentioned promissory Note goods
& chattels out of her possession and the
same afterwards to wit, on the day
and year last aforesaid at the County
aforesaid came to the possession of the
said defendant by finding

Made and drawn by the certain firm
of R S Harris & Co. bearing date the
sixth day of October in the year of
Our Lord One Thousand eight hundred
and fifty seven. Whereby the said R
S Harris & Co eight months after ^{the} date
thereof promised to pay to the order
of the said plaintiff the sum of Nine
hundred and Twenty six dollars
and Eighty cents with interest at
the rate of ten per cent per annum
and divers to wit One hundred and
twenty pieces of the Current coin of
the United States called double eagles
or twenty dollars pieces and divers. to
wit One hundred & twenty pieces of the
current coin of the United States called
Eagles and divers. To wit Two hundred
& forty pieces of the United States called
half Eagles and divers to wit Four hun-
dred and fifty Eight pieces of the
current coin of the United States called
quarter Eagles and divers. to wit
Twelve hundred ^{pieces} of the Current coin
of the United States called dollars
and divers to wit Twenty four hundred
pieces of the Current coin of the United
States called half Dollars. And divers

to wit forty eight hundred pieces of the
 current-coin of the United States called
 Quarters. And divers to wit Two hundred
 and forty bank Notes of other different
 Banks in the United States commonly
 called Bank Bills for the payment
 of Five Dollars each. And divers to
 wit a certain other sum of money
 in current-bank bills, bank notes
 amounting to the full sum of nine
 hundred and thirty four Dollars and
 sixty Cents. And divers to wit a
 certain other large sum of money
 of the Gold and Silver coin of the
 United States to wit the sum of Twelve
 hundred dollars of great value to
 wit of the value of Twelve hundred
 dollars of lawful money of the
 United States and being so possessed
 the said plaintiff afterwards to wit
 on the day and year first above
 in this Court mentioned at the County
 aforesaid casually lost the said
 last mentioned promissory Notes, Bank
 Notes money goods and Chattels out
 of her possession and the same after-
 wards to wit on the day and year
 first in this Court mentioned at

the County aforesaid came to the possession of the said defendant by finding. Yet the said defendant well knowing the said last mentioned promissory Note. Bank Notes Money goods and chattels to be the property of the said plaintiff and of right to belong and appertain to her but contriving and fraudulently intending. Craftily and subtly to deceive and defraud the said plaintiff in this behalf hath not as yet delivered the said last mentioned promissory Note bank Notes Money goods and chattels or any or either of them or any part thereof to the said plaintiff although often requested so to do. And hath hitherto wholly refused so to do and afterwards to wit on the day and year first aforesaid in this court mentioned at the County aforesaid converted and disposed of the said last mentioned promissory Note Bank Notes Money goods and chattels or any or either of them or any

part thereof to the said plaintiff although often requested so to do and hath hitherto wholly refused so to do And afterwards to wit on the day and year first aforesaid in this Court mentioned at the County aforesaid converted and disposed of the said last mentioned promissory Note Bank Notes money goods and chattels to his own use To the damage of the said plaintiff of Twelve hundred Dollars. and therefore she brings her suit - &c

McClellan Rawlins & Shearer
Atty for Def. 

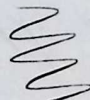
Endorsed

Filed March 4th 1859
J. R. Rowley clk

The Plea filed by the Defendant in the above entitled Cause is in the words and figures following to wit:

Ann Seivings

vs

 Provs

Michael Boyle 

In the Circuit

Court - May Term AD 1859.

4
13
And the said Michael Boyle comes
and defends &c. And says he is not
guilty of the supposed grievances laid
to his charge in manner and form as
the said plaintiff hath complained
against him. And of this he puts him-
self upon the Country &c
and Plff doth the like M J Johnson Deputy Atty
McClure Rawlins Shean
Attys for Plff

And the said defendant comes and
defends &c. And for a further plea in this
behalf says the said plaintiff ought not
to have and maintain his action
aforesaid. Because he says that the
said promissory note sued for was
made in the name of the said plaintiff
as payee without her the said plaintiff
having any right or interest in
the same. And this defendant avers
that said promissory note sued for
was made and executed and delivered
to the said defendant in consideration
of Eight hundred & fifty dollars and
the interest thereon of the proper
money of the said defendant before
that time deposited in the Banking
house of J. A. Carter & Co in the name

of the said Plaintiff. and at the time
 when so To wit - the said plff then and
 there delivered the same to this defendant
 who was the owner and entitled to the
 possession thereof. And as such owner
 might and did lawfully sue for and
 recover the same in the name of the
 said plaintiff for his use. And this
 he is ready to verify. Therefore he prays &c

Wm J Johnson. Atty of Deft

Endorsed

Filed May 17th 1859.

W. R. Rowley clk

The Replication filed by the plaintiff is in
 the words and figures following to wit

Ann Leving ^{In the Circuit Court of for}
 vs ^{David County Illinois of the}
 Michael Boyle ^{October Term 1859}
 Trorer

And the said Plaintiff as to the said
 plea of the said Defendant by him sec-
 -ondly above pleaded says Preclusi non
 because she says. that at the time when so
 she had & now has a lawful and right-
 -ful interest in the said promissory
 Note & was and is the owner of the same

and that the said sum of Eight hundred and fifty dollars and the interest thereon was and is the money and property of the said plaintiff and not the property of him the said defendant - as in said second plea is falsely alleged and this she the said defendant prays may be enquired of by the Country &c.
 And the said defendant McClellan Rawhous Shearn
 doth she like Attorneys for Plaintiff
 Endorsed

Filed Oct 29th 1859

MR Rowley & Co

And afterwards to wit on the 29th day of October A.D. 1859. at yet the October Term A.D. 1859 of said Indiana County Circuit Court in the Record of the proceedings thereof in the above entitled cause appears the following entry to wit:
 Ann Levings

vs Trover & Conversion
 Michael Boyle Now at this day
 came the parties by their Attornies And upon issue joined thereupon
 came a Jury of good and lawful men

to wit; Henry Bartlett, James Drynan
 Richard Williams, John Martin H. T.
 Green, Wm Pascoe, Augustus Mozier
 Rudolph Myers, Solomon Ferguson
 Wm Campbell, Joshua Amatage & Henry C. Bray
 who were duly elected tried and sworn
 and after hearing the evidence and
 arguments of counsel retire to consider
 of their verdict and after a short absence
 they return into Court with the following
 verdict To wit; We the Jury find the
 defendant Guilty and assess the plaintiffs
 damages at the sum of Nine hundred
 and Seventy six Dollars and fifty two
 cents, And the Defendant by his Attorney
 moves the Court for a new trial and
 for an arrest of Judgment

The Motion ~~for~~ ^{arrest of Judgment} ~~con~~ ^{removal} filed
 by the Defendant is in the words and
 figures following to wit;

Ann Levings In the Cir Court of Davidson
 as County Oct Term 1859
 Mich^d Boyle

And now at this day comes
 the Deft and moves the Court for an
 arrest of Judgment in this cause

1st Because said action should be Assumpsit for money had & received instead of Trover

2nd Because said action Trover cannot be maintained for a note after Judgment. The note is merged in a Judgment and the action should have been Assumpsit and not Trover

3^d Because the evidence and Record shows no Judgment could be entered in favor of the plff.

Endorsed *W. G. Johnson* Deft's Atty

Filed Oct-31-1859

W. R. Rowley Clerk

The Motion for a new trial is in the words and figures following to wit

Ann Seivings

vs

Michael Boyle

} Trover

} And now at this day comes the said defendant and moves the Court for a new trial on the finding of the Jury for the following reasons

1st Because the finding of the Jury is

contrary to the law and evidence

2nd Because there is no evidence in the cause to authorize the verdict returned

3^d Because the verdict is against all the evidence in the cause

4th Because the verdict should have for the defendant on the evidence

Wm Johnson
Deft's Atty

Endorsed

Filed Oct 31st 1859

J. Wm R. Bowley Clerk

And afterwards to wit on the 2nd day of November A.D. 1859. as yet of the said October Term A.D. 1859 of said So. Davis County Circuit Court in the Record of the proceedings thereof in said above entitled cause appears the following entry to wit -

Ann Levings

vs

Michael Boyle

≡ In re Conversion

Now at this day came on to be heard the motions heretofore filed by the Defendant for a new trial & for arrest

of Judgment herein Which Motion after argument by counsel is taken under advisement by the Court

And afterwards to wit on the 3^d day of November AD 1859, as yet of the said October term AD 1859 of said Go Daniel County Circuit Court in the Record of the proceedings thereof in said Cause appears the following entry to wit,

Ann Swings vs Michael Doyle	}	Traver Conversion The Court being fully advised, having fully considered of the Motion heretofore filed by the Defendant by his Attorney for a new trial and for an arrest of Judgment herein. Overrules the same. to which the defendant by his Attorney excepts. It is thereupon considered by the Court that the plaintiff have and recover of the Defendant the said sum of Nine hundred and seventy six Dollars and fifty two cents so as aforesaid assessed by the Jury together with her costs by her about her suit in
--	---	---

this behalf expended and that she have Ex-
-cution therefor. And the Defendant by
his Attorney prays. an appeal to the
Supreme Court. Which is granted an-
-ditioned that she enter into and file
with the Clerk of this Court a good
and sufficient Appeal Bond, properly
conditioned in the sum of Twelve
hundred Dollars. with either John
Rop. John Mahoney. Patrick Seving
or John Cloran as surety, within
Thirty days from this date.

And afterwards to wit on the 5th
day of November Ad 1859 as yet of the
said October Term Ad 1859 of said
Jo Davie County Circuit Court in
the Record of the proceedings thereof
in said cause appears the following
entry to wit
Ann Seving

vs Prover & Conversion
Michael Boyle The Defendant
by his Attorney comes
and files his Bill of Exceptions which
is certified by the Court.

The Bill of Exceptions referred to in the last recited entry is in the words and figures following to wit.

Ann Seivings vs Michael Boyle } In the Circuit Court of Jo-
Davis County Illinois
October Term 1859

Be it remembered on this the 29th day of October A.D. 1859. of the October Term of said Circuit Court: The cause of Ann Seivings vs Michael Boyle came on to be heard before the Hon^{ble} Benjⁿ R. Sheldon Judge, and a Jury.

The Plaintiff to maintain the action on her part introduced and examined as a witness H Roberts. Who testified that he was acquainted with the plff and defendant. And the defendant's wife that about two years ago he was going home from Galena and on the road he was overtaken by the defendant who was in a two horse wagon with his wife. That defendant asked witness to ride. That witness got in the back part of the wagon. That defendant and his wife was sitting on a board for a seat. That Mr Carter's Banking house had suspended at that time and this was

before any arrangements had been made to pay any one, Witnep was a depositor with Mr Carter and had money deposited with him at the time. When the conversation turned on the affairs of Mr Carter Mrs Boyle asked me how I got along with Mr Carter I told her there was nothing done. When defendants wife said Ann had drawn her money from Corwitts Bank. & deposited it with Carter. she said it would be a pity for Ann Levings. a poor hired girl to loose her money that she had there and that she thought he ought to pay her. there was other conversation but this was the substance if not the words used. The defendant was driving the the team. and ^{did} not say anything. he made no remark or took any part in the conversation.

The plaintiff then introduced and examined James Carter who testified that on the 9th day of April A.D. 1857 there was deposited in his bank about \$900.⁰⁰ to the credit of Ann Levings that in October after he had suspended the defendants wife Margaret Boyle called on him for the

money. And as Witness knew Mrs Boyle
 and Ann Levings both he told her he
 had nothing to do with her, that the
 money stood on his Books as the
 the money of Ann Levings and she
 must bring Ann Levings. Witness
 does not remember whether she showed
 him the Certificate or not at the time.
 But he stated to her he only knew
 Ann Levings in the transaction as
 the money stood on his Books in her
 name. Shortly after the plaintiff Ann
 Levings and Mrs Boyle came to the
 Banking House together and wanted
 payment of the Certificate. Anns case
 had been especially called to my attention
 as a peculiar one. I wanted to give her
 paper of undoubted responsibility and
 offered her the paper of T & I Seckley
 which she declined but agreed to
 take R & S Harris & Co paper as she
 knew them. I then gave her the note
 here produced and shown to witness.
 The note paid the amount deposited
 and interest up to its date. Mrs Boyle
 and Ann both done some of the talk-
 ing the note was given to Ann Levings.
 J. H. asked her what Mrs Boyle said.

the Deft objected and the question was not further pressed. The note was then read in evidence. It is in the words & figures following & wit

\$926 ⁸⁰/₁₀₀

Galena Ill. 6th October 1857.

Eight months after date We promise to pay to the order of Ann Levings. Nine hundred & twenty six ⁸⁰/₁₀₀ Dollars with interest from this date at seven per cent. - value received.
No. 1000
R. S. Harris Co.

The plaintiff then introduced and examined John R. Perkins who testified that he knew the plaintiff and the defendant's wife and had known them about six years. That he was the Teller in the Bank of Galena A.D. 1857 that about the last of March or first of April of that year Ann Levings drew out some money which she had deposited on the Books of the Bank. There were two certificates of deposit both in the name of Ann Levings. One was a small one for about one hundred and eighty dollars of comparatively recent date, the other was for between seven and eight hundred dollars and was an old certificate

on which a large amount of interest had
 accrued. That he calculated the interest
 on both Certificates and Consolidated the
 whole and paid them together to Ann
 Jennings. Mrs Boyle wife of defendant
 & the Plaintiff both came to the Bank
 together Mrs Boyle done most of the
 talking she wanted witness to pay Ann
 seven per cent instead of six. & Compound
 interest on the ground. "Ann was a poor
 hard working girl" and the money had
 been there so long. Which witness declined
 saying he was paying her as much as
 they paid any one. On Cross examination
 He stated he ~~was~~ does not remember what
 was said about endorsing them. But
 Ann Endorsed them, as they were in her
 name. did not notice any division
 between them of the money or who carried
 it off. was busy and paid no further atten-
 tion to them after he paid the money and
 got the certificates. Witness cannot state
 the amount of interest paid without
 reference to the Books of the Bank. But
 remembers there was a large amount of
 accruing interest on the large certificate
 from its being an old one. thinks the
 amount of interest on it was \$157⁰⁰/₁₀₀ or

something about that sum. The small certificate had but little interest as it was of a more recent date. does not know who deposited the money. It was in the name of Ann Seivings in the Books of the Bank

The Plaintiff then introduced and examined Tho's Mc Nulty who testified that as the agent of Ann Seivings he served a copy of the notice here produced to the witness on the ^{page of the} return made on the back. The notice is in the words and figures following to wit:

\$926. ⁸⁴/₁₀₀

Galena Ill 6th October 1857

Eight months after date we promise to pay to the order of Ann Seivings Nine Hundred & twenty six ⁸⁴/₁₀₀ Dollars with interest from this date at seven per cent value received

Wm. - due

R. S. Harris Secy

To Mr Michael Boyle

Sir Thomas Mc Nulty is hereby authorized to demand & receive the amount of money collected by you or the note of which the above is a copy and in my name to receipt to you ^{for} the same

This 26th February A.D. 1859 3

Ann Seivings

Witness T Mc Nulty

Endorsed

Served the within by reading
the same to the within named Michael
Boyle and demanding the money
February 26th 1857

J M Nutty Comr
for \$1.00

Witness further testified that he served
it on the Defendant on Main Street
in Galena That defendant said in answer
to the demand made by Witness
"That he had no money belonging to
Ann Levings" after then requested
Witness to show the paper to his Attorney
Mr J Johnson Esqr. which witness did
either that day or the next. It was ad-
mitted by counsel of defendant. that
a suit on said Note of Robt Harris
also was prosecuted by the Defendant
in the name of Ann Levings to the
use of Michael Boyle. to a Judgment
in the Goddard County Circuit Court
at the October Term AD 1858. The
Plaintiff then introduced and read
to the Jury the said Judgment of the
Circuit Court in the case of Ann
Levings who owes for the use of Michl

Boyle vs. R S Harris & Co upon the aforesaid note read in evidence.

The Judgment referred to is in the words and figures following To-wit: (In the proceedings of the for Davie's County Circuit Court ~~made~~ at the October Term AD 1858. under the date of October 20th 1858)

Ann Jennings who sues for the use of Michael Boyle	Trespass on
vs Robert S Harris and James M Harris partners under the name & style of R S Harris & Co	the case upon promises

Now at this day come the parties by their Attorneys and upon issue joined they waive the intervention of a Jury and for trial put themselves upon the Court - and the Court after hearing the evidence and arguments of Counsel finds the issue for the plaintiff and ~~the~~ damages at the sum of Nine hundred and Nineteen Dollars and Eighty Cents (\$919.80). It is thereupon considered by the Court that the plaintiff have and recover of the defendants

the said sum of Nine hundred and nineteen, Dollars and Eighty cents (\$919⁸⁰¢) so as aforesaid found by the Court together with her costs by her about her suit herein expended and that Execution issue therefor.

The Defendants Attorney proposed to prove that Ann Seivings had collected before suit brought twenty two (\$22⁰⁰) Dollars from R S Harris & Co the interest on said Note sued on, and that defendant had sued and recovered a judgment against plaintiff for the same. Whereupon the plaintiffs Attorney admitted in rendering this judgment that Harris & Co received a credit for that amount on said ^{note} and judgment was entered for the balance and that was all they claimed.

It was admitted by the defendant that M J Johnson was the Attorney of Michael Boyle in the above case, and had no connexion whatever with Ann Seivings and was not employed by her, but was employed by Michael Boyle and did prosecute said suit on said Note to judgment. It was further admitted

that R S Harris & Co had paid the money over on said Judgment above to the Sheriff on Execution and the Sheriff had paid the same over to M G Johnson as the Attorney of Michael Boyle before the Notice was served on the defendant by Tho's McNulty as above set forth. The Plaintiff then offered and read to the Jury as evidence showing that she did not consent to the prosecution of the above suit in her name. And for no other purpose the interpleader filed by her in the above Cause against Harris & Co. It being admitted by the defendant that Mr McClellan the Atty named in the interpleader was authorized by Ann Stevens to appear for her and file the same and that he did appear and object to the prosecution of said suit and filed said Interpleader for plaintiff. But to the introduction of said Interpleader and reading the same as evidence in this Cause the defendant then and there objected unless they would introduce all the papers in said Cause. There being among said

papers a number of affidavits filed by said Boyle in resistance of said Interpleader tending to show the note belonged to him. Which objection the Court overruled and said interpleader was read as evidence to the Jury. The Court expressly saying to the Jury that it was not evidence for any other purpose. except to show plaintiff did not assent to the prosecution of the Suit. Said Interpleader is in the words and figures following to wit;

State of Illinois ~ In Circuit Court
 Jo Daviess County ~ Aug Term 1858
 Ann Seving who sues ~
 for the use of Michael Boyle ~

vs
 R S Harris & Co ~

And now comes Ann Sevrings by McClellan her Attorney & by leave of the Court first had and obtained & interpleads herein and avers that the said Michael Boyle has no interest in the note sued on in this case and ought not to receive the proceeds thereof from the said

defendants-

And this she is ready to
verify &c Wherefore she prays
Judgment against said defendants.

Re H McCallan

Atty for ~~Ann Seivings~~

Interpreter

Endorsed

Filed Aug 25th 1858 (1858)
MR Rowley clk

To which ruling and decision by the
Court the defendant then and
there excepted

This being all the evidence
of the plaintiff in chief

The defendant
then introduced and examined Mrs
Oreighton who testified that she was
the sister of Ann Seivings and Marger-
et Boyle the Defendants wife. That the
defendant and his wife had been in
this County about Seventeen years. that
the plaintiff has been in this County about ten years. that
withup, plaintiff Matthew Seivings, their
mother and her child came over from
Ireland together. That her sister Ann
had been at service as a hired girl

ever since she had been in this Country except about three years. That she lived "off and on" and made her home at Margaret's (the defendant's wife). That last May two years ago, Witness was in Galena and had been ^{down} town to see another sister and returning in company with Ann the plaintiff ^{she} had a conversation with her in which Ann stated to Witness that she and Margaret (The Defendant's wife) had drawn their money from Corwith's Bank, and she (Ann) had loaned her money two hundred dollars to Curley & O'Hara at ten per cent interest and Margaret had deposited her money in Mr Carter's Bank in her (Ann's) name. She did not state the amount Margaret had deposited in her name. She did say she had ~~deposited~~ loaned her money two hundred dollars to Curley & O'Hara at 10 per cent. This is all the talk was had about the money.

The defendant then introduced and examined Jane McGinn who testified that she was

a niece of the plaintiff and defendants wife and acquainted with all the parties. That Two years ago last Christmas witness and Ann Seivings the plaintiff was at the defendants house Margaret Boyle the Defendants wife had gone to Galena that she had a conversation with Ann Seivings in which Ann told me the money belonged to Mrs Boyle and asked witness if she thought it would be a sin for her to keep it - nothing was said about where the money was the amount, or in whose name it was. Witness further testified on cross examination that no bad feeling existed with her against the plaintiff that she never had any quarrel with her and that Mrs Boyle had never promised her a drop after the suit was determined.

The Defendant then introduced and examined Mrs P Seivings, who testified that she was the sister in law of the plaintiff and defendants wife. That she had known all the parties for twenty five years

that the Defendant and his wife have been in this Country about Seventeen or eighteen years. The plaintiff about ten years. That plaintiff made her home at defts house for about three years of the time she has been in this County. The defendant is a Mas. tidy good, industrious & economical girl. That six years ago this Summer the plaintiff was at her house and at that time told her that her Mother wanted her Ann to take Margaret's money and for them to go back to Ireland and live on it. On Cross examination witness says there has never been any difficulty between her and Ann that Ann has not been to her house for two years when her Son was sick.

The defendant then introduced and examined Matthew Seivings who testified that he was the brother of Plaintiff and Defendants wife. That he had been in this Country Ten years. that he came over in company with the plaintiff, his Mother, Sister and a child of Mrs Creighton. That the money that

brought them over was contributed by the plaintiff - his mother and himself and a part was sent over to them from this Country by his brother Patrick Servings and his sister Margaret Boyle, wife of the Defendant. That the whole made about forty pounds. That he was the purser or Cashier and before they got to Galena the money was all spent. That on arriving at Galena, he had to borrow from his friends here six dollars to pay the freight on their luggage - Ann's among the rest. He states that Ann had no property in Ireland that he knew of & does not know of her having any money. That for eight or nine years in Ireland before they came to America Ann was at service and lived with a Counsellor in Dublin and received as he understood Ten Pounds a year Boarding and Lodging. Don't know but she may had money and he not know it. This witness further testified that in A.D. 1852 he was sick at Defendants house. And while there his Mother showed him upwards of

Six hundred Dollars of Margaret's Money in Gold and that he counted it himself. Witness further stated in A.D. 1853. he deposited Three hundred Dollars in Bank. That Ann the Plaintiff loaned him some 15 or 20 Dollars of the money to make up that amount. At the same time she gave him One hundred Dollars of her money to deposit in his name, which he did. And it remained in his name. until the fall of A.D. 1854. when he was going to New York when he drew his money and hers and paid it to her.

The Defendants then introduced and examined Thos Simpson who testified that he had lived here for thirty years. And knew what had been wages of hired girls for the last ten years. Said the wages had been from Six to Ten Dollars per month. That it would average about Eight Dollars per month for a good girl during that time. That hired girls had to clothe themselves. That he had daughters and knew something about

what it would cost a year to clothe them. Said it would take all they made to satisfy some of them depending on the girls. But it would not cost less than forty dollars a year at the least. Witness in Cross examination said his estimate was a mere guess.

The defendant then introduced & Examined Edward Irvin who testified that he had known the defendant Boyle for about sixteen years that during all that time he had been in good circumstances and independent farmer.

The defendant here rests his case. The plaintiff then introduced & Examined James Wood who testified that he knew the plaintiff, that she lived with him as a hired girl from June to Nov^r in the year A D 1854, and four and a half months in A D 1855, that she was sick and left his house and went to her sisters, Mrs Boyle, that he paid her seven and eight Dollars per month while she was with him.

The plaintiff then introduced and examined Patrick McGuinn who testified that he was the brother of Jane McGuinn who had been examined as a witness in this cause. That some time since he was at Mr Corkery's kitchen where Jane lived and talking about this money. He asked her if she was a witness in the case, she said yes. He asked her if she was sworn she said no. He asked her if she held up her hand, she said yes. He asked her if Mrs Boyle had promised her a drop if she wins the case, she said yes. Witness told her not to let that make any difference, not to take the drop - all this was in the presence of two other hired girls. On cross examination this witness stated that Ann Seivings sent him a part of the money to come to this country on. After he came here he worked a month or two for the defendant Boyle when he was about to leave. Boyle complained he had no money. Witness wanted Boyle to settle it with plaintiff. Boyle said he had nothing to do with her

He would settle with Witnep Boyle scraped up the money and paid Witnep Ann Dras presents and Witnep pushed the money over to her for what he owed her Witnep dont know from whom or where Boyle got the money to pay him this was in Ad 1854, Boyle has about 160 acres of land

This being all the evidence in said cause both on the part of the plaintiff & defendant the same was submitted to the Jury on the following Instructions for the plaintiff and defendant To wit;

Plaintiffs Instructions

- 1st It is the province of the Jury to pass upon the credibility of the evidence and to render their verdict in accordance with the preponderating testimony
- 2nd If the Jury believe from the evidence that the money sued for was and is the money of Ann Seivings & that the same was collected by the defendant before this suit was commenced then the Jury should find for the plaintiff

The defendants Instruction is as follows To wit:- The statements of the Atty as to what would have been proved in this cause is no evidence in the cause and

The Bond filed by the Defendant is in the words and figures following to wit

Know all men by these presents that we Michael Boyle and Patrick Seivings of the County of Goddard and State of Illinois are held and firmly bound unto Ann Seivings of the same County and State in the penal sum of Twelve hundred Dollars current Money of the United States for the payment of which well and truly to be made we bind ourselves our heirs Executors and Administrators jointly severally and firmly by these presents. Witness our hands and seals this fourteenth day of November AD 1859.

The condition of the above obligation is such that whereas the above named Ann Seivings did on the third day of November AD 1859. in the Circuit Court of Goddard County recover a Judgment against the above bounden Michael Boyle for the sum of Nine hundred and seventy six Dollars, and fifty two cents damages and Costs of suit; from which said Judgment of the said Circuit Court

the said Michael Boyle, has prayed for
and obtained an appeal to the Supreme
Court of said State Now if the said
Michael Boyle shall duly prosecute
his said appeal with effect and shall
moreover pay the amount of the judgment
costs interest and damages rendered and
to be rendered against him in case
the said judgment shall be affirmed
in the said Supreme Court then the
above obligation to be void otherwise
to remain in full force and effect
virtue

Taken and entered
into before me at my
office in Galena this
14th day of Nov A.D. 1859

signed Michael Boyle Deat
Patrick Jennings Deat

W. R. Rowley clerk

Endorsed

Filed Nov 14th 1859

W. R. Rowley clerk

47 State of Illinois } Third Grand Division of
Michael Boyle } the Supreme Court of the
vs } State of Illinois to the
Ann Levings } April Term A D 1860

And now at this day comes the said Michael Boyle and says that in the Record and proceedings aforesaid there is manifest error in this - to wit

- 1st Because the verdict and Judgment should have been for the defendant below
- 2nd The Court erred in giving the Plaintiff second instruction
- 3rd The Court erred in not granting a New Trial
- 4th The Court erred in overruling the motion in Arrest of Judgment, and in rendering Judgment against the defendant below.
- 5 The Court erred by admitting the Interpleads of Ann Levings as evidence, without all the papers of the case were admitted
- 6 Because the action should have been assumpsit and not Trover
- 7 Because the Court admitted improper evidence for the Plaintiff under the issues

Wherefore he prays said Judgment may be reversed annulled and for nothing taken and that he may be restored to all things he has lost by reason thereof &c

M J Johnson atty
for Mich Boyle

Michael ¹⁸⁷Boyle

Am living

Transcript of
record & entry
of Enns

Filed April 5, 1860

Leland
black