

No. 13614

Supreme Court of Illinois

Cutting

vs.

Conklin

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101
STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 197

Outtine
W. J.
Cantler

862
Prepared

13614

SUPREME COURT.

STATE OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, 1862.

ABSTRACT :

GUY H. CUTTING, Impleaded, &c., Appellant,)
—vs—)
ANDREW J. CONKLIN.)

APPEAL FROM SUPERIOR COURT OF CHICAGO.

3 The plaintiff's declaration contains a single count in assumpsit in the usual form, on a promissory note.

COPY OF INSTRUMENT SUEB ON :

\$300.00. Chicago, Feb'y 22d, 1860.

4 Five months after date we promise to pay to the order of J. E. Conklan Three Hundred Dollars, Dollars, at our office, value received, with interest at ten per cent.

4 (Endorsed,) J. E. CONKLIN. WALKER & CUTTING.

Defendant Walker was not served, and did not plead below.

6 Cutting plead general issue non assumpsit and notice of special matter.

At the April Term, 1861, of said Superior Court, a jury was waived, and cause tried by Hon. VAN H. HIGGINS.

The plaintiff offered in evidence the note, which is in the words and figures following :

11 \$300.00. Chicago, Feb'y 22d, 1860.

Five months after date we promise to pay to the order of J. E. Conklan, Three Hundred Dollars, Dollars, at our office, value received, with interest at ten per cent.

WALKER & CUTTING.

(Endorsed,) J. E. CONKLIN.

12 And no more proof was offered by the said plaintiff.

12 & 13 The defendant then introduced as a witness, James E. Conklin (not material to points made).

13 Defendants then introduced L. D. Nichols. (His testimony not considered material to points.)

13 The defendants then introduced as a witness Wells Meek, who testified as follows :

14 "I am book-keeper for the defendants ; was present at a conversation between J. E. Conklin, to whom the note in this case was made, at the office of said defendants, in this city. Mr. J. E. Conklin proposed to throw off the interest at ten per cent., and the balance due on the due bill, if he would pay him up. Could not state any part of the conversation. Don't remember that any money was paid at that time. Cutting stated to him that his leaving the yard was contrary to the rules. I heard a subsequent conversation on the same subject, of raising the money, in which Conklin agreed to throw off the ten per cent. Some money was paid to Conklin by Cutting at that time. I cannot tell how much."

Cross-Examined by plaintiff's attorney :

14 "Don't remember whether all the notes were then due. Cutting requested him to bring all his claims in, I should think."

The defendants then introduced Robert Smith as a witness, who testified as follows :

14 "I had a conversation with J. E. Conklin, the person to whom the note in this suit was made. He offered to throw off ten per cent. on the amount of his claims, if Cutting would pay him by such a time; don't remember what time it was. He said he considered what he offered to throw off as good as one hundred dollars. I think the store bills were mentioned. Cutting made the alterations of the initials of payee's name. The plaintiff stated to me, in conversation, that he had been at a good deal of trouble attending to his brother's business in this matter."

And the defendant here closed his testimony, and no more proof was offered by either party. Thereupon, a verdict and judgment were rendered by the Court against said defendant, Cutting.

Motion for new trial filed by defendant, as follows:

1st—Because the plaintiff is not the legal and *bona fide* owner of said note, but the same is the property of the said payee.

2d—That the said note was never legally and properly assigned to the said plaintiff.

15 3d—That the said court found a verdict for more than the plaintiff was entitled to recover.

4th—That the time for the payment of said note had been extended on a good and valuable consideration, and money paid on the new agreement, which was disregarded by the payee on having this suit brought before the time expired.

5th—That no consideration at all was paid for the transfer of said note.

6th—That said note was altered in a material part after the same was made, and is therefore void.

J. W. WAUGHOP,

For Appellant.

ERRORS ASSIGNED.

1st. The Court below erred in not rejecting the note offered, and admitted as evidence in this cause, on the ground of a variance between the said note and the declaration of the plaintiff below, in the following instances, to wit :

1st. The said plaintiff below described the said defendants below in his said declaration as "defendant," in the singular number, when they should have been charged in the plural number, as they were both sued and were both liable.

2d. The note is dated "Feby," and the said declaration charges it to be dated "Febrnary," without any qualification or allegation as to the legal effect of the abbreviation of the word.

3d. The payee of the said note is J. E. Conklan, according to the copy filed with the declaration and by the note itself, and the said payee is described in the said declaration as J. E. Conklin, without any qualification or charge as to the legal effect of the variance, the name in the note as payee, and the name of the payee in the declaration, being different names.

4th. It is alleged in the said declaration that the payee endorsed in writing the said note, and there and then ordered and appointed the said sum of money in the said note mentioned to be paid to the said plaintiff, &c., when in truth and in fact there is no endorsement whatever on the back of the said note, except and only the name of "J. E. Conklin," signed in blank, and no copy of the instrument, endorsed as alleged in said declaration, was filed with the declaration in said cause.

2d. The Court below erred in giving judgment in favor of the said plaintiff below, when he was not the owner of the note sued on, and not legally entitled to recover thereon.

797

Abstract

Leitching
no

Leoviklin

1812
1813
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1820

Filed Apr 29, 1842
J. L. Linn
clerk

Guy H Cutting Implicated &
or
A I Cooklin

This was an action of
assumpsit on an enclosed note, by the
inclosure against the makers. The
defendant pleaded the general issue
and gave notice of special matter
to be proved.

The cause was tried by one
of the Judges of the Superior Court of
Chicago, without the intervention of
a jury, and the finding and judgment
was for the appellee.

The action was against Walker
and Cutting, but Cutting was the only
party served. The declaration is
drawn in the plural, but twice in
the body of the count, the word
"defendant" is used instead of the
word "defendants", this is probably a
mistake in copying; ~~but~~ and altho'
assigned for error, is too small a
matter for comment.

The other variances assigned
are equally jejune, and unimportant,
especially as the note was admitted

in proof without objection. Such errors after judgment, are cured.

That the endorsement was not filled up is immaterial. The right of action existed if at all, before the suit was commenced, and could not begin at the trial by filling up the endorsement; besides had this objection been made it could have been obviated at the trial.

Corklin and Conklan in ordinary pronunciation are alike; at all events they are enough alike after judgment, no exception having been taken by pleading or at the trial, to sustain a judgment.

Corklin with an "i" and Conklan with an "a" are as much alike, as Thompson, with or without a "p"
The title of ownership of the note was attempted to be shown in some other person than the plaintiff but the proof on this score is very vague, and the Court having found the other way, the finding should not be disturbed.

M A Porke
for appellee
by Eck

101 No 197

Cutting
v
Conklin

Argument for
appellee,

Filed 3 May 1862
J. Secant

C. A. G.

SUPREME COURT.

Third Grand Division.

APRIL TERM, A. D. 1862.

CUTTING, Impleaded, &c.,

vs.

CONKLIN.

POINTS.

VARIANCES.

Page of Record, 3. 1st. The plaintiff below charges the defendants as "defendant," in the singular number, when there were two defendants.

Narr 3, Note 11. 2d. The note offered in evidence is dated "Feby," and in the declaration is described as dated "February," without any allegation as to the legal effect.

3 11 3d. The payee of note, as alleged in Narr, is J. E. "Conklin," and in the note the name of payee is J. E. Conklan, without any allegation as to discrepancy.

4th. The Narr alleges the note to have been endorsed in writing, when in fact there was no written endorsement, but the same was blank.

Spangler vs. Pugh, 21 Ill, p. 85.

14 5th. The Court below erred in giving judgment in favor of the said plaintiff below, when he was not the owner of the note sued on, and not legally entitled to recover thereon.

J. W. WAUGHOP,

Att'y for Appellant.

101

197

Cutting
no

Franklin

Apple Points

Filed Apr 29. 1862

J. Selman
clerk

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the first day of April in the year of our Lord One Thousand Eight Hundred and Sixty no and of the Independence of the United States of America the eighty fifth

Present, The Honorable John McWilson Chief Justice of the Superior Court of Chicago. }

Vary H Higgins and } Judges.
Grant Goodrich }

Carlos Mason Prosecuting Attorney.

Anthony O'Hering Sheriff of Cook County.

Attest, Walter Kimball Clerk.

Be it remembered that hereunto to wit on the Thirty first day of August in the Year of our Lord One Thousand Eight Hundred and Sixty there issued out of the office of the Clerk of the Superior Court of Chicago the People's Writ of Summons which said Writ with the Sheriff returned thereon endorsed is in words and figures as follows to wit.

State of Illinois }
County of Cook, SS }
The People of the State of Illinois,
To the Sheriff of said County in greeting
We Command You that You Summon
Martin O Walker & Guy H Cutting if they

I shall be found in Your County, personally to be
 and appear before the Superior Court of Chicago
 of said Cook County, on the first day of the term
 thereof, to be holden at the Court House, in the
 City of Chicago, in said Cook County, on the
 first Monday of October next, to answer unto
 Andrew J Conklin in a plea of trespass on
 the Case on promises, to the damage of said plaintiff
 as he says in the sum of Four Hundred Dollars
 And I am You then and there this writ, with
 an endorsement thereon, in what manner You
 shall see executed the same

(Seal)

Witness Walter Kimball, Clerk
 of our said Court, and the seal thereof
 at the City of Chicago, in said County
 this 31st day of August A.D. 1860
 Walter Kimball
 Clerk

Served by reading to the within named Guy H Cutting
 the 19th day of September 1860 Walker not found
 in my County
 John Gray Sheriff
 by Wm Gray Deputy

And afterwards to writ on the thirty first day of
 August in the Year aforesaid the said
 Andrew J Conklin by Michael A Porke his attorney
 filed in the office of the Clerk of said Court his return

Declarations in words and figures following
to wit

In the Superior Court of Chicago,
Of the October Term A D 1860
State of Illinois,
County of Cook SS

Andrew J Conklin the
Plaintiff in this suit by Michael Andrew Perke
his Attorney, Complain of Martin Praller and
Guy H Cutting the Defendants who were Comanded
to do of a plea of trespass on the Case on promise; For
that whereas the said Defendants sent for, to wit,
on the Twenty second day of February in the Year
of our Lord one thousand eight hundred and
Sixty at Chicago to wit, at said County of Cook,
made their Certain Promissory Note in Writing, bearing
date the day and Year aforesaid, and two and three
delivered the same to one J E Conklin in and by which
said Note said Defendant by the Name, Style and de-
scription of Praller & Cutting, promised to pay to the
order of the said J E Conklin at this office, five
months after the date thereof Three hundred dollars
for Value received with interest at ten per Cent
And the said J E Conklin to whom or to whose
order said Note was payable, afterwards, to wit, on
the day and Year aforesaid, at Chicago, that is to say
at the County of Cook aforesaid, endorsed said
Note in Writing, by which said endorsement the said
J E Conklin by the Name of J E Conklin three and
three ordered and appointed the said sum of money
in said Note mentioned to be paid to said Plaintiff
and then and there delivered said Note, so endorsed
to the said Plaintiff. By Means Whereof, and

by force of the Statute in such Case made and provided,
 the said Defendant became liable to pay said Plaintiff
 said sum of Money (mentioned in said Note, and
 being so liable, in Consideration thereof, then and there
 understood and promised to pay the same to the said
 Plaintiff according to the tenor and effect of the said
 Note, and of the endorsement aforesaid, to wit, at the
 Place aforesaid

Yet the said Defendants, not regarding
 their said promises and undertakings, but Contriving
 &c. although often requested to do, have not paid
 said Plaintiff the said sum of Money, above mentioned,
 or any part thereof, but to do have refused wholly
 neglected and refused, and still do neglect and refuse
 to the damage of said Plaintiff of Many hundred
 Dollars, and therefore he brings this Suit &c.

Michael Andrew Reske
 Plaintiff's Attorney

Copy of Instrument and Account sued on

\$300⁰⁰

Chicago Feb'y 20th 1860

Five months after date hereof promise to
 pay to the order of J. E. Conkran, Three hundred
 Dollars, ——— dollars, at our office.

Value received with interest at Ten per Cent

Walker & Cutting

Upon which note is the following Indorsement
 J. E. Conkran

And afterwards to wit on the first day of October
 in the Year aforesaid Guy W. Cutting by J. W. Mansfield
 his Attorney filed herein his certain affidavit

of Onerits in words and figures following to wit:

Martin O'Walker }
Guy H Cutting }
ads }
A J ConRhu }

Superior Court of Chicago
Of the October Term A.D. 1860

State of Illinois }
Cook County } S

Guy H Cutting of Said
County being duly sworn says that he is one
of the defendants in the above entitled Cause
that the defendants have a good defense to
Plaintiff's action therein on the Onerits thereof
Subscribed & Signed
before me this 14th
day of October A.D. 1860
Guy H Cutting

Walter Knibball Clerk

And afterwards to wit on the fourth day of
October in the Year aforesaid Guy H Cutting
impleaded with Martin O'Walker by his attorney aforesaid filed herein
his Certain plea and notice in words and figures
following to wit

Superior Court of Chicago
October Term A.D. 1860

Guy H Cutting impleaded }
with Martin O'Walker }
ads }
A J ConRhu }

And the said defendant

57 Guy H Cutting impleaded with M. O. Walker

by J. W. Drayton, his attorney, comes and defends
 the wrong and injury which he and faith that
 he did not undertake or promise in manner and
 form as the said Plaintiff hath above thereof Com-
 plained against him and of this they put himself
 upon the Country &c

The Plaintiff and his Counsel

Will shew take notice that
 the defendants will give in evidence and prove
 on the trial of this Cause the following facts,
 That long after the Note sued on in this Cause
 (with other Notes amounting to about four hundred
 dollars were due and holden by the payee of the
 said Note and other Notes. The defendants made a
 Contract and agreed with the payee of the said
 Note and other Notes he then being the holder and
 owner of the said Note and other Notes, that for the
 full amount of the said Notes including the said
 Note declared on in this Cause the said payee would
 make the sum of three hundred dollars in full
 for his Claim on all indebtedness between them
 and then and there the said defendants paid to
 the said payee of the said Notes the sum of twenty
 five dollars which was received by the said payee
 who fully consented and agreed to the said agree-
 ment and received the said sum of twenty five
 dollars on said agreement with express reference
 to the same

That the Consideration for the said
 agreement was that long after the said Notes were
 due, and before the same were transferred to the

Said Plaintiff the Pengee was in the employment of the said Defendants and was under a Contract to work for the Season and in order to be relieved from his Contract, he was willing to make a deduction on the said Notes which was done as aforesaid and all be Equelled for the sum of three hundred dollars, that on the said Agreement to take three hundred dollars the Pengee has already in addition to the twenty five dollars aforesaid have paid some fifty dollars in goods on orders

That the said Pengee was relieved from his Contract for ~~the~~ to work the Season through as he had agreed to do in Consideration of the said Agreement to take the three hundred dollars in full Satisfaction of said Claims That the Note paid on in this Cause is the Property of the said Pengee, and not the Property of the said Plaintiff,

That there was no Consideration paid for the transfer thereof but the same was transferred or pretended to be for the purpose of Cutting off a defence on the part of the Defendants

That the Plaintiff had full Knowledge of the fact and was done to defraud the Plaintiff

J. W. Brangh
Deft Cutting
Atty

And afterwards to wit on the fourth day of April in the Year of Our Lord One thousand Eight hundred and Sixty one Said day being one of the days of the April Term of said Court the following among other proceedings was had in said Court and entered of record to wit

4
Andrew J. Conkline
Martin O. Brattle
and Guy H. Cutting } Assumpsit

This day comes the said Plaintiff by Michael A. Rorke his Attorney, and the said defendant Guy H. Cutting by John W. Bangs his Attorney also comes and upon agreement of the parties made now here in open Court this Cause is submitted to the Court for trial on issues found in plea of the said defendant Guy H. Cutting only the said defendant Martin O. Brattle not being served with process and the Court now here after hearing evidence and arguments of Counsel, and being fully advised in the premises finds issues for the said Plaintiff on the issues found and assesses his damages herein against the said defendant Guy H. Cutting in pleaded as aforesaid to the sum of Three Hundred and Sixty Three Dollars and Sixty Cents And therefore the said defendant Guy H. Cutting submits his motion herein for a new trial in said Cause which motion is overruled by the Court, to which ruling and decision of the Court the said defendant enters his exceptions

Therefore it is considered that the said Plaintiff do have and recover of and from the said defendant Guy H. Cutting in pleaded with Martin O. Brattle his damages of Three Hundred and Sixty Three Dollars and Sixty Cents in form aforesaid found and assessed by the Court, together with his Costs and Charges in this behalf expended and therefore have execution

And afterwards to wit, on the eighth day of April
in the Year last aforesaid - Said day being one of
the days of the April Term of said Court, The following
Among the Proceedings was had, ^{in said Court} and entered of record
to wit: -

Andrew J Conklin
vs
Martin O Walker } Assumpsit
and Guy W Cutting }

This day Again Come the said
defendant Guy W Cutting impeached with the said
Martin O Walker by John W Wray his attorney
+ and having entered his exceptions ^{prayer} an appeal
herein to the Supreme Court of this State from the
judgment and decision of this Court, which is
allowed, to give upon filing his appeal bond with the
penalty of Six hundred Dollars with G W Cutting
as security, to be filed with his said bill of exceptions
by the last day of this term of the Court

And afterwards to wit on the eighth day of
April in the Year last aforesaid Guy W Cutting
impeached with Martin O Walker filed herein
his appeal bond in words and figures following
to wit

Know all Men by these presents that we
Guy W Cutting and Frank W Cutting are
held and firmly bound unto Andrew J Conklin
all of the County of Cook and State of Illinois
in the penal sum of Six hundred Dollars lawful
money of the United States for the payment of
which bond and truly to be made. We bind ourselves

our heirs executors and administrators jointly
severally and firmly by the presents
Witness our hands and seals the Eighth
day of April A D 1861

The Condition of
this Obligation is such that whereas the said
Andrew J Conklin did on the fifth day of
April A D 1861 in the Superior Court of
Chicago in and for said County of Cook and
State aforesaid and of the Civil Term thereof
A D 1861 render a judgment against the above
bounden Guy W Cutting indebted with
Martin Q Wallin for the sum of three hundred
and thirty three dollars and thirty cents
(\$333.30) being the plaintiffs damages in an action
of Assumpsit, from which said judgment of
the said Superior Court, the said Guy W Cutting
has prayed for and obtained an appeal to the
Supreme Court of said State of Illinois

Now therefore if the said Guy W Cutting shall
duly prosecute his said appeal with effect and
consecrately pay the amount of the judgment, costs
interest and damages, awarded and to be void
otherwise to remain in full force and virtue

Taken & approved and
entered into before me
in Chicago the 8th day of
April A D 1861

Guy W Cutting
R W Cutting


Grant Condrick Judge

And afterwards to wit on the sixth day of May in
the Year last aforesaid Guy W Cutting aforesaid
filed as aforesaid his certain bill of receipts in
words and figures following to wit:—

Superior Court of Chicago
of April Term A.D. 1861.

Andrew J. Conklin
vs.
Martin O. Walker and
Guy H. Cutting

Be it remembered that on the
Fourth day of April A.D. 1861 being one of the
days of said April Term of said court this cause was
called for trial, and by agreement of parties the issues
joined therein were submitted to the court, Genl. Van H. Heig-
gins presiding, for trial without a jury, the jury having
been waived by both parties.

To sustain his issues the plaintiff submitted to the
court as evidence the note declared on in this cause.

\$300⁰⁰ Chicago Feby 22^d 1860
Five Months after date we promise
to pay to the order of J. E. Conklin
Three Hundred Dollars ^{Dollars} at our office
Value Received, with interest at Ten per Cent

No 14th Dav Walker & Cutting
(Endorsed) J. E. Conklin

12
and no more proof was offered by said plaintiff but he
there ~~rested~~ rested his case.

To sustain the issues on his part the defendants
introduced as a witness James O. Conklin.

I was in the employment of the defendants last summer
did not work all summer. don't know as I had conversation with
Cutting about leaving the yard. I saw Cutting at his office
after I left. I had the note sued on in this cause with me
at that time, it was then due.

He said he was scarce of men would rather I would
stay, I offered to throw off ten per cent on the whole amount
if he would pay me by a given day, as I wanted the money -
nothing said about three hundred Dollars, did not
figure the interest. He then sued me four hundred Dollars
& interest for five months.

He did not pay me any thing then; he agreed
to get the money for me for ten per cent, nothing was
said about damages for getting the yard. He owed me
about twenty three Dollars besides the notes I did
not agree to throw off any thing except ten per cent.

I then said I would give him ten Dollars more if he
would pay me in two days, He said he could not
pay me in two days if I would throw half off.
I fulfilled my agreement which was to work at one
Dollar and fifty cents a day until the notes were
due. I made this agreement with Mr. Nichols. I
wanted the notes payable at the Bank so that I could
get them discounted but Cutting wanted them payable
at his office. I am the person to whom the notes were
made. I transferred the notes to my brother, it was
after they were due. I did not agree to cancel orders
of Nichols on store. I made no agreement to take
three hundred Dollars and cancel orders for store

goods. I collected the orders on store had my
pay in traps out of the store ~~in other stores~~

Cross examined by Plffs counsel.
The Defendants did not get the money for me as
they had agreed I went South when I could not get
the money. I returned in February 1861.

The Defts then introduced, as a witness L. D.
Nichols who testified as follows

I made an agreement with J. E. Conklin
to work on Brick yard. We came, and said if
I cannot get a job elsewhere will you give me work
here I told him I would give him one Dollar and
fifty cents per day after he came back. I have
talked with the plaintiff in this suit. He said the
defendants ought to give his brother James his money
& not bother him about his brothers business so much

Cross Examined by Plaintiffs Counsel
All the feeling I have ever had with
witness J. E. Conklin has been on account of this
business, there has been some little feeling we are
related by marriage myself and the said J. E. Conklin.
He told me he would go to work again if they
would pay him the money, we gave him due bills or
orders on a store for his work.

The Defendant then introduced as a witness
Hells Mick who testified as follows,
I am bookkeeper for the defendants was present at a
conversation between J. E. Conklin to whom the note
in this case was made at the office of said defendants
in this city. Mr J. E. Conklin proposed to throw off

the interest at ten per cent & the ballance due on the due bill if he would pay him up, could not state any part of the conversation, Don't remember that any money was paid at that time.

Cutting stated to him that his leaving the yard was contrary to the rules. I heard a subsequent conversation on the same subject of raising the money in which Conklin agreed to throw off the ten per cent. Some money was paid to Conklin by Cutting at that time I cannot tell how much.

Cross examined by Plffs. Counsel

Don't remember whether all the notes were then Cutting requested him to bring all his claims, in I should think.

The Defendants then introduced Robert Smith as a witness who testified as follows.

I had a conversation with J. E. Conklin the person to whom the note in this suit was made, He offered to throw off ten per cent on the amount of his claims, if Cutting would pay him by such a time don't remember what time it was He said he considered what he offered to throw off as good as one hundred Dollars. I think the store bills were mentioned, Cutting made the alterations of the initials of payee's name.

The plaintiff stated to me in conversation that he had been at a good deal of trouble attending to his brothers business in this matter.

And the defendant here closed his testimony, and no more proof was offered by either party.

Whereupon the said cause was submitted to the said court without argument for its

deciding thereon.

Thereupon the said court decided the same finding the issues therein for the said plaintiff and assessed his damages at the sum of three hundred and thirty three Dollars and thirty cents.

The Defendant by his counsel then made his motion for a new trial and assigned as causes therefor the following reasons.

1st. Because the plaintiff is not the legal and true-fide owner of said note, but the same is the property of the said payee.

2^d That the said note was never legally and properly assigned to the said Plaintiff.

3^d That the said court found a verdict for more than the plaintiff was entitled to recover.

4th That the time for the payment of said note had been extended on a good & valuable consideration, and money paid on the new agreement which agreement was disregarded by the payee in having this suit brought before the time expired.

5th That no consideration at all was paid for the transfer of said note.

6th That said note was altered in a material part after the same was made and is therefore void.

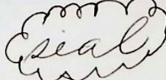
The said motion for a new trial was then overruled by said court the same having been submitted

to the said court for its decision thereon and to the ruling of the Court in overruling said motion for a new trial the defendants by their counsel then and there excepted which was allowed.

And on the _____ day of April being one of the days of the said April Term 1861 of said Court the defendants prayed an appeal to the supreme Court of Illinois which was allowed and an appeal Bond approved by said Court and filed.

To all which rulings and decisions of the court herein before severally enumerated the Defendant by his counsel then and there duly excepted and prayed an appeal therefrom which was granted.

Now for as much as the several matters and things herein before stated and set forth do not otherwise appear the said Defendant Cutting prays that this his Bill of Exceptions may be signed and sealed and made a part of the record of this cause
which is done,

Van H. Higgins 
Judge

M. J. P. Atty. General agrees that this Bill of Exceptions may be signed & sealed up to & on the 1st day of May term A.D. 1861.
M. J. P. Atty.
23rd Apr. 1861.

State of Illinois }
County of Cook } S.S.

I Thomas P Carter Clerk of the
Superior Court of Chicago, within and for the County
and State aforesaid, do hereby certify, that the
foregoing is a full, true and complete transcript
of all the process and pleadings on file in my office
and of ~~the~~ all orders, and judgment entered of
record in said Court, with the Bill of Exceptions &
Appeal Bond, in the case of Andrew Boucklin
plain tiff Martin O Walker & F H Cutting
defendants.

In testimony whereof, I hereunto
subscribe my name, and affix the
Seal of said Court, at the City of
Chicago in said County this 4.th
day of April A.D. 1862
Thomas P Carter Clerk



Errors assigned

Supreme Court of Illinois
3^d Grand Division

April Term A.D. 1862

Gay A. Leathley impleaded
with Martin C. Walker } Appellant from
Appellant, } Cook County
vs } Superior Court
Andrew J. Conklin } of Chicago
Appellee. }

And now this day comes the said appellant by John W. Wainwright his attorney and assigns to this Court the following causes of error upon which the said appellant prays that the Court below may be reversed,

1st The Court below erred in not rejecting the note offered and admitted, ^{as evidence} in this cause, on the ground of a variance between the said note and the declaration of the plaintiff below in the following instances, to-wit:

1st The said Plaintiff below described the said defendants below in his said declaration as "defendant," in the singular number when they should have been charged in the plural number, as they were both sued and were both liable.

2^d The note is dated "Feb'y" and the said declaration charges it to be dated "February" without any qualification or ab-

legation as to the legal effect of the abbreviation of the word.

3^d The payee of the said note is J. E. Couklian according to the copy filed with the declaration and by the note itself and the said payee is described in the said declaration as J. E. Couklian without any qualification or change as to the legal effect of the variance, the name in the note ^{as payee} and the name of the payee in the declaration being different names.

4th It is alleged in the said declaration that the payee endorsed in writing the said note ~~then~~ and ~~then~~ ~~and~~ ordered and appointed the said sum of money in the said note mentioned to be paid to the said plaintiff &c.

When in truth and in fact there is no endorsement whatever on the back of the said note except and only the ~~word~~ name of "J. E. Couklian" signed in blank and no copy of the instrument endorsed as alleged in said declaration was filed with the declaration in said case.

5th The Court erred in giving judgment in favour of the said plaintiff below when he was not the owner of the note sued on and not legally entitled to recover thereon.

6. Said record and proceedings
are otherwise manifestly
erroneous and contrary to
law -

Wherefore the said
Appellant prays that the
judgment aforesaid, for the
errors aforesaid, may be reversed
annulled and altogether held
for nothing, and that he may
be restored to all that he hath lost
by occasion of said judgments,
&c.

John W. Vaughan^{and}
Charles C. Bouney
for appellant -

In Nullo est erratum

J. M. Rorke

Deck for appellee

101 197

Guy H. Lenthig
impleaded with
Martin O. Walker
v

Andrew J. Concklin

Appeal from
S. C. Chicago -

Filed April 22, 1862
L. Leland

#4 50 paid

J. B. Carter Clerk

S. M. Hays
not a p.ellant

J. W. Bayne &
Chas. C. Bourne
for appellants