No. 12962

Supreme Court of Illinois

De Wolf

vs.

Wilder

71641

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 19.

DeWalt

vs.

Wilder

12 962

On Writ of Error to
Charles J. Wilder, Appellant } ~~Appeal from~~
v. } Circuit Court of
Wm F. De Wolf et al. Appellees } Cook County.

This was an action against a second endorser of two promissory notes payable to the order of the maker. The declaration is in the ordinary form, except that it does not aver notice of demand & refusal, but contains allegations presumed to be necessary in order to bring the case within the provisions of the 7th section of the statute of this state in relation to negotiable instruments. The case was submitted to the Court, on an agreed statement of facts, and judgement given for the plaintiffs.

The first objection to the judgement of the Court below is that the notes declared upon are not within the statute. The liability of assignors, or endorsers, can only be that of assignors, or endorsers, of "such" notes as have been defined by the 3d section of the statute. And "such" notes are those "made by any person or persons, & thereby such person or persons, promise or agree to pay

any sum of money, or articles of personal property to be due to any other person or persons shall be taken to be due & payable; and the sum of money or articles of personal property therein mentioned shall, by virtue thereof be due and payable to the person or persons to whom the said note bond, bill, or other instrument in writing is ~~should be~~ made. A note payable to the order of the maker cannot be within the statute, because there is but one party to it. Nor does such a note, by being Endorsed and negotiated, become a promissory note within the statute, although by the rules of the mercantile law the maker is liable to the holder to whom it has been negotiated. It is clear, therefore, either that the maker & Endorser of such notes are not liable thereon, at all; or else, that their liability is governed by the rules of the Mercantile Law.

If our statute were like the statute of 3 & 4 Anne, (ch. 9. s. 1) and, like the English statute had provided that notes made "to any other person, or his order, or to bearer", might be Endorsable like bills of Exchange, the statute might be so construed as to include notes payable to the order of the maker. But our statute has made no such

provision. On the contrary, it is sometimes said that the words "or order" and "or bearer" are surplusage. It may well be doubted, however, (as will more fully appear in the course of the argument) whether this remark should not be confined to cases in which the payee is plaintiff (viz. the remarks of Scates C.J. in the last paragraph of Sappington v. Pulliam & the case cited from 4 Pick.) But notwithstanding the doctrine that a note payable to the order of the maker and endorsed & negotiated by him might well be considered a promise to pay the bearer and so within the English statute, it was held in Flight vs. McLean (16 M & W. 51) that such a note was not within the statute of 3 & 4 Anne. I am aware that in Wood v. Mytton (52 Eng. Com. Law Rep. 804) the Court of Q.B. held the contrary opinion, and in effect, overruled the case first cited. But the ground of the decision is that the statute of Anne has provided for that class of notes by enacting that the maker of a note payable to his own order shall be liable to the "bearer" as well as to the "other person or persons" to whom the note may be made. There is therefore in the

The person to whom it is transferred by endorsement being a "bearer" within the statute

English statute, provision made for the case where the maker intends to pay the bearer, or else to commit a fraud on the Endorsee by the assignment of a useless Contract with himself to pay himself. The Eng. case just cited shows that the real intention of the Lent was so to construe the statute of Anne that the maker should not be able to practice a fraud on an innocent Endorsee.

But it cannot be alleged that notes of the kind declared upon in the case at bar are of frequent use in the community, and therefore that to hold that they are not within the statute would leave the holders of such notes without legal remedy against either maker or Endorsers. But while the premises are strenuously insisted upon, the conclusion is as strenuously denied. It is very probable that the peculiar provisions of the statute of this State may have had a great influence in regulating the form in which promissory notes are written. At any rate, it is a little remarkable, and a critical Examination of the

cases on the law of promissory note (which I have made with a view of confirming my notion of the propriety of raising the objection at this period of our judicial history in this department of law) proves that no case or a note payable to the order of the maker has ever been appealed, or brought to the judicial attention, of this Honorable Court. We are at liberty therefore to investigate the question on principle, and as one of new impression.

In insisting upon the position here assumed, I do not wish to be understood as denying to the holders of negotiable note, ~~Endorsed~~ payable to the order of the maker & Endorsed in blank, a legal remedy. When the maker of such a note Endorses it and delivers it to any particular person, he is bound, according to the custom of merchants, to pay that person the sum mentioned on the face of the note. But there is no contract except that implied & derived from a course of fair dealing between merchants to do so; for when such a note is negotiated by Endorsement & delivery, there is no actual subrogation of the holder to the place of the payee; and

therefore the only promise on the instrument is by the maker to pay himself, or bearer. In order therefore to sustain a class of negotiable instrument of frequent and convenient use, the Court of Q.B. held that the holder of such a note might have an action in his own name, since he was within the act of 3° & 4 Anne, as the "bearer". But on statute has made no such provision, and it cannot be Equitably construed so as to include parties to such notes either within its benefits or its restrictions. In fact it may be doubted whether the decision in Wood v. Mytton does not rest more upon an ingenious fiction invented by the Court for the purpose of sustaining the customs of merchants than on any sound principles of legal construction. For, at the time the Statute of Anne was Enacted (Hooper v. Williams 2 Doug. 21) notes of this kind were unknown. Hence the opinion of Lord Drumman involves an anachronism, so far as it is to be presumed that the word "bearer" may refer to any holder of this class of notes. Entirely unjustifiable except in view of the policy which suggested the invention of an ingenious fiction in order to prevent fraud on the part of the maker.

But this rule, although so far as it depends upon the construction of the statute, it is founded on a fiction, in favorem legis, ~~has its foundation~~ might also have been deduced, and that too with more cogency of logic, from the original contract on the part of the maker. It is sometimes said that the negotiability of notes depends upon the statute of Anne, and that the operation of that statute is to except them from the rules generally applicable to choses in action. But an analysis of all the cases on the subject previous to the statute of Anne taken in connexion with the preamble of that act proves conclusively that the statute, so far as it makes promissory notes negotiable is merely declaratory of the mercantile law as it had been administered by the Courts for a long time previous to its Enactment (See the Appendix in 1 Cranch Sup. Court Rep.). So Prof. Parsons (1 Parsons on Contracts 202) says, "if A in his note promises to pay B, or his order, then the original promise is in the alternative, and it is this which makes the note negotiable". The only fact that an alternative payee is referred to is indicative of a specific intention on the part

of the maker to give a right of action in favor of whomever the payee names may order payment to be made. The transferee has therefore a right of action on the ground of an original contract. On the same principle where the note is payable to the order of the maker, a promise arises in favor of the bearer; for he is the only person to whom anything is to be paid. On the other hand, the absence of an alternative direction to pay to the bearer, or to the order of the payee names is indicative of an intention on the part of the maker that his liability on such a note shoves be governed by the rules which regulate ordinary "choses in action", and not by the rules of the mercantile law

In the case before the Court, it is agreed that the plaintiffs acquired their notes by delivery merely, and without the endorsement of the party from whom they were received. If the endorsement of the intermediate holder was necessary, the plaintiffs have no right of action - at least in their own names. If, notwithstanding the non-endorsement of the intermediate holder, they have a right of action, it is by virtue of the rules of the mercantile law. But in this event the

declaration is insufficient because it does not aver notice to the endorser of demand and refusal by the maker. "A negotiable note, not endorsed, transferred by delivery, and a note not negotiable transferred by delivery are open to every equitable defence by the maker. The holder stands like the assignee of any other chose in action". Hedges v. Healy (9 Barb. 214). It becomes necessary therefore (since the notes in the case at bar have been endorsed once and transferred a second time, according to mercantile usage, without a second endorsement) not merely to enquire whether the judgment of the Court below should be reversed, for if the cases of Hilborn v. Artis 3 Scam. & Rossa v. Crist are authority - although in those cases the notes were not payable to the order of the maker; but what are the true grounds on which the reversal should be placed.

(there is no room for argument on the question)

In the first place then, it appears from what has been said that the contract of the defendant, cannot be within the provisions of the 7th section of our statute, because the contract of the maker was not within the 3d section. But

it has been shown that the maker is not discharged from his contract to pay any person to whom he might endorse & deliver the notes: and it follows, by parity of reasoning, that the endorser should not be discharged provided the endorsees or holders of the notes have discharged the obligation which the law imposes upon them in such cases - to wit, the obligation of giving the endorser notice of demand and refusal.

I am aware that much has been said in the course of adjudications, made on the 7th section of our statute, with regard to the intent of the legislature in passing the act. But it is deserving of attention that these dicta relate rather to the effect and operation of the proviso, rather than to the legal construction of the language of the 3d section; and that nothing whatever has been said with regard to the force of that language, or with regard (that of the third section)
to the rules and principles by which legislative intent is to be derived. And there is a strong reason why the rules and principles of construction (to be suggested presently) should be applied in order to ascertain the real meaning and force

of the 32 Section. For," if the reasons alleged as showing the intention of the legislature are examined, it will be seen that they are conflicting; and the cases & doctrines advanced irreconcilably oppose each other. So that it may well be questioned whether the recognition of the distinction and limitation to be insisted upon will not be the true policy of the Court, inasmuch as it would be attended with a plain line of demarcation between what is truth and error; and with the judicial recognition of a distinction which serves only to carry out the real intention of the parties to ~~the note~~ different kinds of promissory notes; - on the one hand, protecting the right of a class of people unfamiliar with commercial usages; and on the other, facilitating business and advancing the interest of a great Commercial Community.

The attention of the Court is therefore respectfully requested to the consideration of the inconsistencies and anomalies in the decisions heretofore made, and which serve, as it seems to me, only to leave a doubt as to what the law on the subject really is. In the first case,

Mason v. Nash (Breese 16) it is held that the usual averment of demand & notice was insufficient; but due diligence should be averred. And the reason given was, that our statute does not, like that of Anne, put promissory notes on the same footing with bills of exchange. And yet in New Haven v. Perry (11 Ills. 467) it is declared to be the object of the statute "to put promissory notes, as respects their negotiability on the same footing with bills of exchange. It is a remedial and not a restraining statute". The same language with that last cited has been substantially repeated in other cases. Was it then the intention of the legislature to put negotiable notes for the payment of money on the same footing with bills of exchange and at the same time to put them on the same footing with bonds, due bills, and notes payable in personal property? Is then the statute "remedial and not restraining"? or is it restraining and not remedial? - or is it both? I have endeavored to shew that the owner of an order of a note, in terms negotiable, is complete by the Common law merchant. See on the same point, the note of Chancellor Kent (3 Com. 87, note 8th Edition.) There seems therefore to be a violent

inconsistency in holding that the object of the statute was remedial and not restraining, & then, by virtue of statutory construction, to subject them notes payable in money and negotiable by their own terms & the same restrictions belonging to and imposed upon non-negotiable notes, bonds, due bills, and notes payable in personal property. The latter class of instruments are clearly those which are not used in the ordinary course of trade; which fact of itself, would seem to be indicative of the intention of the legislature to confine the operation of the act to that class - leaving the former class to the operation of the equitable and salutary principles which regulate the course of trade and the customs of merchants. If this Court will recognise the limitation of the act, as here insisted upon and to its legitimate consequence follow the authority of the case last cited, the inconsistency is obviated; and the statute is construed, practically as well as theoretically, as a remedial and not a restraining statute. For, on principles, as well as by the words of the

3d Section of our Statute 14th There is and can be no difference between negotiable notes made payable by a "Corporation" and those made payable by a private individual.

In the next place, the decisions are conflicting on the question whether the happening of one of the contingencies specified in the proviso of the 7th section is sufficient to "fix" the liability of an Endorser. It has been held that the insolvency of the maker at the date of the maturity of the note, must be averred & continue down to the time of the institution of the action against the endorser. In case therefore of the solvency of the maker after the maturity of the note, & before the date of the action against the endorser, the fact of demand and notice may be insufficient to charge the Endorser of a negotiable note. And yet the contract of the endorser with the maker, and with the transferee of a negotiable note, is, that on due notice, so that his business arrangements may not be presumed to suffer, he will pay the transferee. And any contract which impairs this obligation, founded, as has been shown, on the original contract, is clearly unconstitutional. But, in cases where the contract of the maker is with a particular person, and not also with whomever the payee may order the note to be paid, or with the bearer, the liabilities of assignee and assignor may well be defined by statute; and the contract will be assumed to have been made with reference to its provisions. In the case of negotiable instruments, which, by the custom of merchants are circulated like Bank notes, an Endorser may not know where the note is. He is not bound to take notice of the solvency of the maker; for it is one of the clearest maxims of Equitable jurisprudence that where a third party would hold another on a conditional contract, it is his duty to give notice that the condition on which the obligation depends - & it - the non payment by the maker - has occured. And this rule is carried to such an extent that even if the Endorser knew of the insolvency of the maker at the time the endorsement is made, he is yet entitled to notice 3 Kents Com. 146 - cases cited. And for authority, in this State, that the endorser is not bound to seek out the holder, without notice, see Bleecker v. Bowe, 14 Wend. 582

We do not know that the necessity of an averment of the continued insolvency of the maker in order to charge an endorser has ever been denied. On the same principle, it was held in Kilborn v. Artis (3 Scam. 344) that the mere happening of one of the contingencies specified in the proviso of the 7th section is not, of itself, sufficient to fix the liability of an endorser. And yet in Crouch v. Hall (15 Ill. 265) it is held that the liability of an endorser does become fixed on the happening of one of the contingencies. And again in Kilborn v. Artis it was said that it was the duty of the endorser to see that the maker is present when the note falls due, so that he may be bound to be sued in case of refusal to pay: or if he is not present, he should provide the means of payment. But this doctrine, too, has been repudiated in Bledsoe v. Graves, (and very properly we think) and it was there held that this is not a part of the duty of endorser, for he may have no information as to where the holder may be found.

Conflicting & contradictory

There are other dicta in the adjudications on the 7th section of the statute, and which need not be referred to here. The illustrations already given are sufficient to show the necessity of a reconsideration of the objects and intention of the legislature. They are all founded rather on a presumed secret intention on the part of the legislature, than on a legal intent as signified by the language of the 3d section. And in no case, I repeat does it appear that the language these use has been judicially construed.

From the language of the 3d section it appears that a particular class of instruments known to the law are described in appropriate technical language. The notes described are those which, of themselves, were and never could be circulated as bank bills, for they are payable only to a specified person therein named. This Court recognises the limitation in the description of the instruments to which the statute is applicable, in Sappington v. Pulliam - when Scates J. said that

the word "or order", or "or bearer, were not sur-
plusage in the description of a note except
where the payee is plaintiff. Notes negotiable
on their face, indicating thereby a broader
intention on the part of the maker, are cer-
tainly of a higher class than notes payable
only to a particular person, or persons, bonds
~~bonds~~, due bills, and instruments payable
in articles of personal property. But this
Court has decided that the Enumeration in
a statute of things of an inferior dignity
shall not extend to superior. Hence it follow
that notes payable to a person or persons, "or
bearer", or, "or order" (including those payable
to the order of the maker which have been
shown to belong to the same class) are not
within the statute, because, by its terms, only
those words are used which define a class of
instruments not negotiable without the aid
of the legislature. "Expressio unius est ex-
clusio alterius"; and since the recognition of
the distinction in Sappington v. Pulliam; and
the practical application of it in New Hope
bridge Co. v. Perry, instruments negotiable with-
out the aid of the statute cannot be now

Woodworth v. Paige (Breeze 275)

held to be within its purview; for they
are not included in its language, nonde-
fined by the terms there used.

Since then it appears that descriptive and tech-
nical words are used in the statute, the courts
will intend that the legislature used them in
their technical sense. A legislative intention
must be deduced from the language of the
statute and not from any presumed, but hid-
den purpose which the language of the stat-
ute will not justify. Bedell v. Janne, (4 Fla. 205)
Foley v. The People (Breeze 31)

It follows from what has been said, that an al-
leged contemporaneous construction of the stat-
~~will be~~ in cases arising under the 7th
section, cannot be binding as determining
the true construction of the 3rd section. For
this Court has decided that negotiable words are
not surplusage, except where the payee is plain-
tiff (Sappington v. Pulliam); and that the notes
of a Banking Corporation are not within the
statute. Moreover, as has been shown, the
real intent of the legislature is clear from the
language used: and no rule of contemporaneous
construction can be applied in contravention of

the intent shown by the 20 words of the statute.
Holbrook v. Holbrook (1 Pick. 250)

Hence it appears that there are well settled principles of construction, the application of which must inevitably lead to the recognition of the distinction, as well as the precise force and operation of the statute, here insisted upon. And in view of the confusion and uncertainty which must inevitably arise where legislative intention is not deduced from the force of the language used. there is no reason why the construction here contended for should not be adopted. It is submitted that the business interests of the community require that the statute should be construed so as to give effect, if possible & without ignoring the force of statutory language, ~~so as to give effect~~ to the just & equitable principles of the mercantile law in all cases where they have not been expressly abrogated by it. Although, in some of the cases, the notes were payable "to bearer" or "to order"; the question with regard to such notes being within the purview of the statute, does not appear to have been suggested. Before the Commercial

greatness of this state had dawned, there was no necessity for it. But since that time, we have and little in saying that it has been almost invariably the custom of merchants to give notice to endorsers, and that they assume their obligation on this implied condition. The distinctions between different kinds of notes, being as has been shown, well settled at Common law, the statute, in so far as it purports to enlarge the remedies of holders of non-negotiable notes, bonds & due bills, should be construed strictly as in derogation of the Common law. And if in the application of this well known rule, it follows that notes of superior class, circulating as money, are excluded from the operation of the statute, the rights and remedies of the parties are saved and determined by a system of law, which, without the aid of legislative Enactment, the Courts of Common law, giving effect to the requirements of society and the usages of trade had confirmed and adopted long before the statute of Anne was passed: and which

12 - 127

Charles J. Wilder
appellant

v.

William F. DeWolf et al,
appellees

Argument of Counsel for C. J. Wilder

Filed May 9, 1860
L. Adams
Clerk

George D. Noyes
atty.

Supreme Court.

Charles J. Wilder Plff in Error
vs.
Wm. F. DeWolf et al Defts in Error
} Error to Cook.

This Judgment was rendered upon an agreed Statement of facts.

The first and main objection made to the Judgment is that the notes upon which the suit was brought are not within the Statute. The act in regard to promissory notes was designed to provide for all promissory notes. Such was obviously the design of the 3d & 4th Anne; such was the design of the acts of other states in similar statutes, & Illinois passed this act following in part the language of other Statutes with different designed to suit the wants of a sparse and agricultural population. The early construction put upon the act made it include all notes whether negotiable or not by the law merchant. The construction put upon the act soon after its passage has been uniformly followed down to this day.

Mason vs. Nash
Breese 16

1 Scam. 47
2 Scam. 357
2 do 376
3 do 344
12 Ill. 417
13 do 144

The peculiarity in these notes does not prevent them from being promissory

Negotiable notes. They are declared to be such undoubtedly by Parsons. They are in frequent and daily use among business men and if there is no case in our Reports in which objection has been made to them it only shows that no one has ever supposed before that objection could be made.

1 Pars. Con. 206

It is settled in England that notes of this description are within the Statute of Anne. It is said that this is because the Statute of Anne provides for notes payable to bearer. But cannot it be said that notes payable to bearer are not within our statute? If A.B. makes and delivers to C.D. a note payable to Bearer it is a note payable to some other person than the maker & is within the Statute. It is well settled that a note payable to the maker's own order and indorsed in blank may be declared upon as a note payable to bearer, and if a note payable to bearer is within our statute then are the notes upon which this suit is brought. Before indorsement such a note is an incomplete instrument & the effect of the indorsement is to complete and perfect it & makes it a

59 Eng. Com. L. R. 804
2 Exch 13
& C.B. 336

promissory note payable to bearer.
The reasoning which led the English Courts to
this conclusion applies exactly to this case.
If it is settled that these notes are within
the statute there can be no question as
to the liability of the defendant as assignor
as it is agreed and admitted that the maker
was insolvent when the notes became due
& so continued to the time when suit
was brought & that during that time
a suit would have been unavailing.

II. Does the fact that there was an
intermediate holder who transferred the
notes by delivery for a valuable consid-
eration affect the plaintiff's right
to recover? The cases of Hilborn v. Artis
3 Seam. 344 and Rossa v. Crust 17 Ill. 450,
relied on by the Pltff in Error do not sus-
tain any such doctrine. The note can only
be negotiated by indorsement but when
with an indorsement
so negotiated in blank the assignor
has made the same payable to any ~~bearer~~
holder, & the holder may as in this
case fill up the blank indorsement
by his own name. The defendant indorsed
these notes in blank & by that indorsement
made them payable to the defendants in

Error when they were delivered to them.

III. If the Court should be of the opinion that the defendant is liable as an assignee or claim that he is liable on the Statement of Facts as a guarantor. The judgment was rendered upon the agreed Statement of Facts if these show that the defendant was liable as guarantor judgment should have been rendered against him.

In behalf of the Appellees,
John H. Thompson

19

Charles L. Miller
Plff. in Error
vs.
Mary F. Wood et al
Defts. in Error

Argument
for Defts in Error

Filed May 9, 1860
A. Kellogg
Clerk

John H. Thompson
Atty for Defts in Error

14 Ill 146 - ✓
Bann 16
1 Sc Law 580 ✓ - 470
" 344
" 116
14 " 146.

2 Sc Law 429 - XD

Supreme Court of Illinois

Charles L. Wilder
Plaintiff in Error

vs

William F. Dewey
et al.
Defts in Error.

It is hereby stipulated and agreed by and between the parties to the above entitled cause that said cause may be submitted to the Court upon the written arguments filed by the undersigned counsel for said parties.

George D. Hayes
Atty for Plff. in Error
John M. Thompson
Atty. for Defts in Error

Charles J. Wilder
vs
Wm F. Dibbly
et al.

Dissolution

Filed Nov 9. 1860
L. Adams
Clerk

State of Illinois }
County of La Salle ss }

G. D Mayes being duly sworn says that on the 30th day of May 1857, a judgement was recovered in the Circuit Court of Cook County, in the State of Illinois, by Wm F. De Wolf, James G. Matlay & Benjamin F. Quinby, Plaintiffs, against Charles J. Wilder, Defendant, from which said judgement, the said defendant appealed to the Supreme Court, and thereupon a bond was filed according to the statute in such cases made and provided. And afterwards in the prosecution of the appeal taken as aforesaid, a transcript of the record in said suit was made, according to the rule in such cases made & provided; and on or about the 16th day of April 1858 said transcript was forwarded by deponent to the clerk of the Supreme Court for the Northern Division of the State of Illinois with a request that the said transcript should be filed in the office of said Court. And said transcript, as deponent believes, was received in season to have been filed within the first three days of the sitting of this Court. Nevertheless said transcript has not been filed

19 - 126

Charles J. Wilder, Appellant
vs.
Wm F. DeWolf et al.

And now comes the said Appellant by his attorney and moves that the above entitled cause be docketed, on the facts stated in the affidavit filed herewith

G. D Hayes
Counsel for Appellant

19 126

Supreme Court

Charles J. Wilder

Appellant

v.

Wm. F. De Wolf et al.

Appellees

Motion to file & docket the above entitled cause.

G. D. Noyes
for Appellant

1

Monday 17th September AD 1856
United States of America
State of Illinois
County of Cook :

Now at this the
Twenty first Term of Circuit Court
of the Seventh Judicial Circuit
of the State of Illinois and holden
at the Court House in Chicago in
said County on the Third Monday
being the Seventeenth day of
September and in the year of our
Lord One Thousand Eight hundred
and fifty six and of the
Independence of the United States
the Eighty first

Present Honorable Thomas Drummond Circuit
Judge of the United States
Thomas J Beach Coroner
Attending Sheriff of said County
Daniel Prestley
States Attorney
Clerk Louis D Boardman Clerk
County Court by Jonathan Young

Be it Remembered that
that on the 1st day of
October A.D. 1856 there was filed
in the Office of the Clerk of the
Circuit Court of Cook County
in the State aforesaid a certain
Praecipe which is in the words
and figures following to wit

Cook County Circuit Court
Of the October Vacation Term
A.D. 1856

William F. Duff } Assumpsit
James G. Mackey } Damages
Benjamin F. Devinney } $200

Charles F. Peleber

Please issue Summons in the
above entitled cause in an
action of Trespass on the Case
upon promises for the October
Vacation Term Damages $200

J. V. Thompson
Pltff Atty

A Dowd Esq
Clerk &c

3 And afterwards to wit:
On the 1st day of October
A.D. 1857 there issued out of
the Office of the Clerk of the
Circuit Court of Cook County
in the State aforesaid the Certain
certain writ Commonly called
Summons directed to the Coroner
acting Sheriff of Cook County
aforesaid which said Summons
is in the words and figures
following to wit:

State of Illinois }
Cook County } ss.

The People of the state of Illinois
to the Coroner acting Sheriff of
said County - Greeting:
We command you that you
Summon Charles J Wilder
if he shall be found in your
County, personally to be and
appear before the Circuit Court
of Cook County on the first day
of the next term thereof, to be
holden at the Court House in
the City of Chicago, in said
County, on the fourth Monday

5

State of Illinois }
County of Cook }

William F. Wing of
Samuel F. Wheeler and Benjamin
F. Goudy by Stiles Hanford
Thompson their attorney, Complain
of Charles S. Weber who has Summons
ed of a plea of Trespass on the
case upon promises For that
whereas Joseph Weiland on the
16th day of September in the year
One thousand Eight hundred and
fifty four, at Chicago, to wit,
in said County of Cook, made
a certain note in writing commonly
called a promissory note
bearing date the day & year last
aforesaid by which said note
the said Joseph Weiland promised
to pay to the order of himself
sixty days after date one
hundred & Sixty nine dollars and
forty eight cents at the Merchants
& Mechanics Bank Chicago value
Received & and the said Joseph
Weiland to whom after the
payment of the said sum of money
in the said note specified was to
be made after the making of the
said promissory note before the

payment of the said sum of money therein specified, to wit, on the day & year aforesaid at Chicago aforesaid, indorsed the said promissory note under his hand by which said Endorsement he the said Sorekh William then and there ordered and appointed the said sum of money to be paid to Charles J Wheeler defendant in this suit and then and there delivered the said promissory note so indorsed as aforesaid to the said Charles J Wheeler and the said Charles J Wheeler to whom or to whose order the payment of the said sum of money in the said promissory note specified was by the said Endorsement directed to be made after the making of the said promissory note and before the payment of the said sum of money therein specified, to wit: on the day and year aforesaid at Chicago aforesaid received & appointed the said promissory note, by which said last mentioned Endorsement

7 he the said Charles J Wilson
defendant in this suit, there
& there Ordered and Adjudged
the said sum of money in the
said note specified to be paid
to the Plaintiffs and then and
there delivered the said note to
the said Plaintiffs and the said
Plaintiffs then that afterwards
when the said promissory note
became due and payable
according to the tenor and
Effect thereof, to wit, on the
18th day of January AD 1856
the institution of a suit against
the maker of said note, his
heirs, Executors & administrators
would have been availing
by means whereof and by
force of the Statute in such
case made and provided the
said defendant then and
there became liable to pay to
the said Plaintiffs the said
sum of money on the said note
specified when he the said
defendant should be thereunto
afterwards by noticed and being so liable
he the said defendant afterwards

to wit:- on the day and year
last aforesaid, at Chicago
aforesaid, undertook & then
& there faithfully promised the
said Plaintiffs to pay them the
said Sum of money in the said
note specified when he should
be thereunto afterwards requested
For that whereas, also, one
Joseph Millard heretofore to wit:-
on the 16th day of September in
the year of Our Lord One Thousand
Eight Hundred & fifty five at
Chicago aforesaid to wit:- in the County of
Cook made his certain other
promissory note in writing
bearing date a certain day
& year therein mentioned, to
wit:- the same day and
year aforesaid by which said
note he the said Joseph Millard
then and there promised & by
& the order of himself thirty
days after date One Hundred
Dollars and fifty Eight Cents
at the Merchants and Mechanics
Bank Chicago value received
and then and there delivered
& delivered & upon the said

promissory note to Charles. D. Wilder defendant in this suit who then and there endorsed & delivered and assigned the said promissory note to the said plaintiffs; and the said plaintiffs then there afterwards when the said promissory note became due and payable according to the tenor and effect thereof & prior to the nineteenth day of December A.D. 1855 the institution of a suit against the maker of said note his heirs, Executors and administrators

by means whereof & by force of the Statute in such case made and provided the said defendant then and there became liable & agreed to the said plaintiffs the said sum of money in the said promissory note specified when he the said defendant thereto afterwards requested and became so liable he the said defendant in consideration thereof afterwards &

On the 19th day of December A.D. 1857 at Chicago Jonathan Medbertson and then & there faithfully promised the said Plaintiffs & pay them the said Sum of money in the said writ Specified when he the said Defendant should be thereunto afterwards Requested And the said Defendant afterwards, on the 5th day of September in the year of Eighteen Hundred Sixty Six in the County aforesaid, was indebted to Plaintiffs in the Sum of Two Hundred Dollars for goods Sold and delivered by the Plaintiffs & the Defendant at his request; and in the Sum of Two Hundred Dollars for work done, and materials for the same, provided by the Plaintiffs for the Defendant at his request; and in the Sum of Two Hundred Dollars for money lent by the Plaintiffs & the Defendant at his request; and in the Sum of

One hundred dollars for money
paid by the plaintiffs for the
use of the defendant at his
request, and in the sum of
One hundred dollars for money
received by the defendant for the
use of the plaintiffs and in
the sum of One hundred dollars
for interest" for the forbearance
by the plaintiffs of the
defendants request, of sundry
due and owing from the defendant
to the plaintiffs and in the sum
of One hundred Dollars for
money found to be due from
the defendant to the plaintiff
on an account stated between
them, and the defendant
afterwards on the day and
year last aforesaid, in the
County aforesaid, in
Consideration that the said
premises and their promises
then and there promised to
pay the said last mentioned
several sums respectively
to the plaintiffs, on request;
& the defendant has disregarded
his promises, and not paid

any of the said sums of money or any part thereof to the Plaintiff damage of two hundred Dollars and therefore they bring Suit &c

John S Thompson
Plaintiffs Attorney

Copy of Note Declared on
Chicago Jan 16th 1855

Sixty days after date I promise to pay to the Order of Myself One hundred & Sixty nine 169 100 Dollars at the Merchants and Mechanics Bank Chicago value Received

Joseph Hilliard

Indorsed

Joseph Hilliard
Charles J Hilliard

Rec'd on the within note fifty four 19/100 Dollars this 12th June 12th 1856

Chicago Jan 16 1856

Sixty days after date I promise to pay to the order of Myself One hundred & Sixty Dollars at the Merchants

13

The Mechanics Bank Chicago
vs
Joseph Wellard
Indorsed
Joseph Wellard
Chas J Welden
Rec'd on a/c within mentd Sum
of $1856 Sixty 23/100 Dollars

And afterwards to wit On the
20th day of October A.D. 1856 the
last mentioned writ of Summons
was returned and filed in the Office of the
Clerk of the Circuit Court of Cook
County in the State aforesaid with
Endorsements on the back thereof
are in the words and figures
following to wit:—

"Served by reading to the within
named Chandler J. Welden the 15th
day of October 1856
" Fees Service 50
" Mile 5
" Return 10 65
" Thomas S Beach Coroner and
ex Officio Sheriff
" By Jno Swan Dep

And afterwards to wit: On the 20th day of October A.D. 1886 there was filed in the Office of the Clerk of the Circuit Court of Cook County in the State aforesaid a certain "Declaration" which is in the words and figures following to wit:—

Cook County Circuit Court
of the October Action Term 1886

State of Illinois
Cook County ss

Charles J Welden
vs
William F. DeWolf
James G Mackey &
Benjamin F. Swinburn

And the said Charles J Welden by Geo D Hoyt his Attorney Comes and defends the wrong and injury &c and the declaration of said plaintiff &c and the matter therein contained in manner form as the same are in the declaration set forth are not sufficient for the said

15

William F. DeWolf, James G. Macfay & Benjamin F. Devlin by to have or maintain their aforesaid action against him the said Charles J. Wilder & that he the said Charles J. Wilder is not bound by the law of the land to answer the same and this he is ready to verify wherefore for want of a sufficient declaration in this behalf the said Charles J. Wilder prays judgment & that the said William F. DeWolf James G. Macfay & Benjamin F. Devlin may be barred from having or maintaining their aforesaid action against him And the said Charles J. Wilder according to the form of the Statute in such case made and provided Etc. & thereupon the said Court here the following causes of demurrer to the said declaration that is to say

1 The declaration does not disclose the ground why the intestate of said against the maker of the notes therein alleged to have been made and at the time of their

maturity, have been demanding —

2nd The declaration does not allege that a suit against the maker of said note at any time between the date of that maturity & the date of the suit against the defendant Charles J. Hilden would have been demanding per the reasons why such suit would have been demanding

3 The declaration does not aver that any notice was by any act of the holders of said note given to the defendant Charles J. Hilden of the non payment of said note by the maker thereof —

And also that the said declaration is in other respects uncertain informal and insufficient

George O Stayes
Atty for Deft

And afterwards to wit, On the first day of December A.D. 1856 it being one of the days of the regular December Term A.D. 1856 the following among other proceedings were had and entered of Record in said Court to wit

17
Jan 21. 1856. William F. Duffy, James Gillaudeau & Benj F. Devinny
vs
Charles J. Heisler

Trespass

And now on this day come the parties by their respective attorneys, and the Court being fully advised orders that the declaration to the same be sustained and on their motion grants leave to the Plaintiffs to amend

And afterwards, to wit: On the 22nd day of September A.D. 1856 there was filed in the office of the Clerk of the Circuit Court of Cook County in the State aforesaid, a certain amended declaration by the Plffs atty which is in the words and figures following to wit:

State of Illinois
County of Cook } ss

Cook County Circuit Court
Of the September Term A.D. 1856

William F. Wolf, Thomas
F. Mackey & Benjamin F. Quimby
by John Hunland Thompson
their Attorney for a further
declaration in their behalf
by leave of the Court for this
purpose first had and Obtained
further Complaint of Charles
J. Wheeler who was summoned
&c of a Plea of Trespass on
the Case upon Promises &c
that whereas on Sixth
Wednesday in the 16th day of
September in the year of our
~~Lord~~ Thousand Eight hundred
and fifty four at Chicago
to wit Chicago in said County
of Cook made their certain
note in writing commonly
called promissory notes
bearing date the day and
year last aforesaid by the
which said promissory
notes the said Joseph Wheeler
promised to pay to the order
of himself Sixty days after
date One hundred and Thirty
nine Dollars and Sixty Eight
Cents at the Merchants and

19 Mechanics Bank Chicago
value received and to be
secured by the
second of which said promissory
notes the said Joseph Hilton
promised to pay to the order
of himself thirty days after
date One hundred Dollars and
fifty eight Cents at the
Merchants & Mechanics Bank
Chicago, unless sooner and the
said Joseph Hilton to waive
the payment of the said sums
of money in the said note
specified was to be made
after the making of the said
promissory notes and
before the payment of the
said sums of money &
money thereon specified to
be the day and year aforesaid
at Chicago aforesaid - indorsed
the said promissory notes
by which said indorsements
he the said Joseph Hilton
then and there ordered and
directed the said sums
of money in said notes specified
to be paid to Charles G. Hilton
Trustee with in this Suit and
then and there delivered to

Said promissory notes so
indorsed as aforesaid to the
said Charles J Wilder; and
the said Charles J Wilder to
shew or to refuse order the
payment of the said sums
of money in the said promissory
notes specified may by the said
indorsement directed to be made
after the making of the said
promissory notes and before
the payment of the said
sums of money therein specified
And that on the day and year
last aforesaid at Chicago
aforesaid, indorsed and assigned
the said the said promissory
notes to the plaintiffs in this
suit, by which said last mentioned
indorsement & assignment he the said
Charles J Wilder defendant then and
there ordered and appointed the said
sums of money in the said notes
specified to be paid to the said
plaintiffs and then and there delivered
the said notes so indorsed as aforesaid
to the said plaintiffs
And the said plaintiffs
thus afterwards at the time and

17th
Nov. 1856. William F. Duffy, James
Macbay & Bro. & Bro. & Bro.
vs
Charles J. Heisler

Complaint

And now on this
day comes the parties by their
respective Attorneys, and the Court
being fully advised orders that
the demurrer to the Plea be
sustained and on their motion
grants leave to the Plaintiffs to
amend

And afterwards to wit: On the
22nd day of November A.D.
1856 there was filed in the
office of the Clerk of the Circuit
Court of Cook County in the
State aforesaid, a certain amended
declaration by the Plffs. by
which is in the words and
figures following to wit:

In Cook County Circuit Court
Of the November Term A.D. 1856

State of Illinois }
County of Cook } ss.

William S. Adolf, James
S. Mackay & Benjamin F. Quimby
by John Sinclair Thompson
their Attorney for a Justices
declaration in this behalf
by leave of the Court for this
purpose first had and obtained
Against the Complaint of Charles
J. Wilder who was summoned
&c of a Plea of Trespass on
the Case upon Promises For
that whereas on Seventh
Wilder on the 16th Day of
September in the year of our
Lord One thousand Eight hundred
and fifty four at Chicago
to wit Chicago in said County
of Cook made his certain
note in writing commonly
called promissory notes
bearing date the day and
year last aforesaid by the
Style of which said promissory
notes the said Seventh Wilder
promised to pay to the order
of himself Sixty days after
date One hundred and Sixty
nine Dollars and Sixty Eight
Cents at the Merchants and

21 times when Each and both of said notes became due and payable according to the tenor and effect thereof, a suit against the makers of said notes, his heirs, Executors and administrators would have been unavailing. by reason of the insolvency of said maker and that from the time when Each of said notes became due to the time of the institution of this suit the said maker of said notes and Continued insolvent and destitute of any property which Could have been reached by Execution in Consequence and by means of which a suit against the said maker of said notes at any time after the second mentioned of said notes became due to the institution of this suit could have been successfully by means thereof and by virtue of the Statute in such Case made and provided the said Defendant then and there became liable to pay to the said plaintiffs the said sums of money in said notes

Specified when the said
Defendant should be
thereunto afterwards requested
and being so liable he the said
defendant afterwards, to wit:-
on the day and year last aforesaid
at Chicago aforesaid undertook and
then and there faithfully promised
the said plaintiffs to pay them the
said sums of money in the said
notes specified when he should
be thereunto afterwards
requested:-
And whereas also the said defendant
afterwards, on the first day of
September in the year Eighteen
hundred & fifty six, in the County
of Cook aforesaid was indebted
to said plaintiffs in the sum
of two hundred dollars for work
done and delivered by the plaintiffs
& the defendant at his request
and in the sum of two hundred
dollars for work done, and
materials for the same, provided
by the plaintiffs for the defendant
at his request, and in the sum
of One hundred Dollars for
money lent by the plaintiffs

to the Defendant at his request
and in the Sum of two hundred
Dollars for money paid by the
Plaintiffs for the use of the
Defendants at his request and
in the Sum of two hundred
dollars for money Received by
the Defendants for the use of
the Plaintiffs and in the Sum
of Sixteen hundred Dollars for
interest. for the performance
by the Plaintiffs at the
Defendants request, of so many Due
and owing from the Defendant
to the Plaintiffs and in the
Sum of Two hundred Dollars
for money found to be due from
the Defendant to the Plaintiffs
on an account Stated between
them; and the Defendant
afterwards on the Day and
year last aforesaid in the County
aforesaid, in Consideration of the last
mentioned premises respectively
then and there promised to pay
the said last mentioned several
monies respectively to the
Plaintiffs on request; yet
the Defendant hath not

his promises and has not paid any of the said moneys, or any part thereof, to the plaintiff. Damages, Four hundred Dollars and therefore they bring Suit &c

John S. Thompson
Plaintiffs Attorneys

Copy of note and account declared on.

(1) Chicago Nov 16 1855

Sixty days after date I promise to pay to the order of Myself One hundred and Sixty nine 44/100 Dollars at the Merchants (and Mechanics Bank Chicago Value received

$169.44 Joseph Holland

(Indorsed)

Joseph Holland
Charles J. Wilder

Rec'd on the within note fifty five 19/100 dollars this June 12th 1856

(2) Chicago Nov 16 1855

Sixty days after date I promise to pay to the order of myself One hundred and 58/100

25

Dollars at the Merchants & Mechanics Bank Chicago
Value Received
Note. Joseph Williams
(Indorsed)
Joseph Williams
Charles J Wilder

Rec'd on the within note June 1st 1856
forty 25/100 Dollars

Filed afterwards to wit On the
thirtieth day of December A.D. 1856
there was filed by Geo. Stayer, Defts
Atty in this cause a certain "Demurrer
to Amended Declaration" in the words and figures following
to wit:

Circuit Court of Cook County

1856
June Term

Charles J Wilder
vs
William F. De Wolf
Thomas Mackay
Benjamin F. Trimble

And the said Charles J Wilder
by Geo. Stayer his attorney
comes and defends the wrong & injury

accepted as said plaintiffs amended declaration and says that the said declaration and the matters therein contained in manner & form as the same are in the said declaration set forth are not sufficient for the said plaintiffs to have or maintain their aforesaid action against him the said C. J. Wilder and that he the said Charles J Wilder is not bound by the law of the land to answer the same and that he is ready to verify & wherefore for a count of an insufficient declaration in bar of the said Charles J Wilder prays judgement and that the said William F Wolf Isaac F Mackay & Benjamin F Quimby may be quit from having or maintaining their aforesaid action against him,

And the said Charles J Wilder hereinafter States and Shews to the Court the following Causes of Demurrer to the said amended declaration that is to say

1st It is not alleged that notice

27

of non payment of the notes declared on and given by the holders of the said plaintiffs to the said defendant ——

2d It is not alleged that notice was given by the holders of said note to the defendant that a suit against the maker would be commenced and that they the said holders rely upon him the said defendant for payment and also that the said declaration is in other respects uncertain uniformed and insufficient

George D Hynes
Defts Atty

And afterwards to wit On the 22 day of January A.D. 1857 it being one of the days of the Regular Session of said Court for the year A.D. 1856 the following among other proceedings were had and entered of Record in said Court to wit

William S. Dilliard & James
S. McKay & Benja F. Quinby
vs
Charles J Wilder

Dft

And now again comes the said parties by their attorneys and the Court having heard Counsel on the demurrer of the said defendant to the said Plaintiffs amended declaration filed in this Cause after due Consideration, the premises being well understood finds said declaration Sufficient in law for the said Plaintiffs to sustain their said action against the said defendant, Wherefore said demurrer is overruled and to the ruling of the Court the said defendant excepts and thereupon leave is given to the said defendant to plead by the morning of the Court on Wednesday morning next

And afterwards to wit on the 6th day of January A.D. 1853, there was filed in the Office of the Clerk of the Circuit Court of Cook County in the State aforesaid a certain "Plea & Affi" by the Defts Atty in this with which said "Plea & Affi" is in the words & figures following

29

In Info.

State of Illinois } Cook County
Cook County } Circuit Court
Nov Term 1856

Charles J. Wilder
vs
William S. Wheeler et als

And the said Charles J. Wilder by George D. Meyer his attorney comes and defends &c and says he did not assign the said notes or either of them to the plaintiff and the said Wilder says that the notes were not duly assigned by the maker to one Wm. Ayers of one Wm Oxtheim whereupon the said Wilder prays judgement

George D. Meyer
Defts Atty

George D. Meyer being duly sworn says that he verily believes the facts stated in the above plea are true

George D. Meyer

And afterwards Towit: On the
12 day of April A.D 1859
J.H. Thompson Pltffs Atty filed in the
Office of the Clerk of the Circuit Court
aforesaid his certain "motion to
Strike plea from files" which said
motion is in the words and
figures following to wit:

Circuit Court
of the April Term A.D 1859

Wm. A. DeWolf Etal
vs
Chas. J. Miller
Defendants

The Plaintiffs
in the above entitled suit by
J.H. Thompson their attorney
come and move this Honorable Court
that the plea now on file in said
suit be Stricken from the files for
want of due affidavit

John H. Thompson
Pltffs Atty

And afterwards Towit: On the 2nd
day of April A.D 1859 it being one
of the days of the Regular April

31 Term of said Circuit Court of the County of Cook in said year the following among other proceedings were had and entered of record in said Court Viz:

William F. DeWolf et al

vs

4478 Charles J Whitlock

This day comes said plaintiffs and move the Court to strike said Defendants plea from the files

And on the 22nd day of April A.D. 1859 George D Sayles Deputy Atty files in the office of the Clerk of the Circuit Court of the County of Cook aforesaid a certain plea which is in the words and figures following Viz:

Circuit Court of Cook

Charles J Whitlock

vs

Wm F DeWolf et al

And the said Defendant by George D Sayles his

Attorney Jones and by virtue
of the Statute in such cases made
and provided says that the facts
in said plaintiffs Declaration
mentioned were true in fact
& injured & the said plaintiff
could thus he is ready to verify
Wherefore he prays that the
said plaintiff may be barred
from having & maintaining
the said action

Geo L Hayes
Dep Co Atty

State of Illinois }
Cook County }

Geo L Hayes
being duly sworn says he verily
believes the facts stated in the
above plea are true

Geo. L Hayes

Subscribed & Sworn to
before me this 22nd Day
of April A.D. 1859

Wm H Church

33 And afterwards to wit On the
2nd day of August A.D. 1859
there was filed in the Office
of the Clerk of the Circuit Court
of the County of Cook a certain
Motion paper in the words and
figures following to wit

In Circuit Court
William H. Dyrkes et als
vs
Charles J. Walker

And now
comes the said Plaintiffs by Stiles
M Thompson their Attorney &
files there in the Court to Strike
from the files of this Court the
plea filed herein by the said
Defendants

Stiles M Thompson
Plffs Atty

And afterwards to wit On the 2nd day
of May A.D. 1859 there was filed in the
Office of the Clerk of the Circuit Court
of Cook County in the State aforesaid
a certain Motion paper in the words
and figures following to wit

State of Illinois
vs
William S. Dorsey etc

Circuit Court
of Cook County

And now comes the said defendant by G. A. Singer his attorney and moves the Court to constitute the plea of the said defendant on the files of this Court

George A. Singer
Defts Atty

And afterwards to wit On the 29th day of April A.D. 1859 it being one of the days of the Regular April Term of the said Circuit Court of the County of Cook for said year. the following among other proceedings in said Court were had and entered of Record to wit:-

William S. Dorsey
Thomas J. McCahey +
Benjamin F. Dunlevy
vs
Charles J. Welsh

Defts

This day came the said parties by their Attorneys and the Court being fully advised in the said

Plaintiff's motion to Strike from the files the plea of the said Defendant herein pleaded and sets up the same

And afterwards to wit On the 25 day of May A.D. 1857 there was filed in the office of the Clerk of the Circuit Court of the County aforesaid a certain "Agreed Statement of Facts" which is in the words and figures following to wit

William F. Dewitt Pltff
vs
Charles J. Wilder

Circuit Court of Cook County of the April Term A.D. 1857

This cause is submitted to the Court upon the following Agreed Statement of Facts

The notes on which the action was brought were made payable to the order of the maker and were indorsed in blank and delivered by the maker to the Defendant. The Defendant then indorsed the notes

in Bank, without Consideration,
and delivered them to the Intestate
who then delivered them to the Defendant
to endorse for the Plaintiff and
the Plaintiff borrowed them of Defendant
for a valuable Consideration
but neither the Endorsement
to the Plaintiff. The Plaintiff
had no knowledge that the
Endorsement of the Defendant
was without Consideration, and
all said transfers were made
before the Notes became due
when the Notes became due, the
Intestate was insolvent & so
continued to the time when
the Suit was instituted & during
during that time a Suit
against him could have been
successfully
The Defendant had no notice
of the non Payment of the
Notes when the said Notes
became due
It was further agreed that the
Defendant failed or refused
to be authorized by the 27th Section
of the Practice Act (Rev. Stat
1845 ch 2 Practice Act. 501) accord

37 according to the provisions of
that act.
If upon the Statement of facts
the Court shall be of opinion
that the Plaintiffs are
entitled to recover judgment
is to be entered in their favor
for the amounts due on the
notes & otherwise judgment
is to be entered for the defendant
John W Thompson Plffs atty
George D Noyes Defts atty

And afterwards to wit: On the
23rd day of May A.D 1859 it being
as yet one of the days of the April
Term of said Circuit Court for
said year, the following among
other proceedings were had and
entered of Record in said Court
to wit:

William F. Bishop
Samuel G Wheaton
Benjamin F Trimble
vs
Orlando J Hills

Appeal

This day comes the said parties
by their attorneys and by their

Agreement made between Plaintiff & Defendant & Jury is waived and this Cause submitted to Court upon an "Agreed Statement of Facts"

And afterwards to wit: On the 26th day of May A.D. 1859, there was filed in the office of the Clerk of the District Court aforesaid a certain "Supplement to Agreed Statement of Facts" which is in the words and figures following to wit:

Wm. H. DeWolf et al
vs
Charles J. Weber
} Defendants

Supplement to the Agreed Statement of Facts upon which this Cause is submitted it is further agreed & admitted that the said Bank Endorsement of the said Defendant has been filled up by the said Plaintiffs at the time of submitting this Cause to the Court with a special Endorsement making the Notes payable to themselves their order it being understood & agreed that the Defendant does not admit

the right of said plaintiff to
file as said indorsement
without the indorsement of an
assignee intermediate between
Defendant & plaintiff being
named

John M Thompson Plffs atty
George D Sayer Plffs atty

And afterwards to wit: On
the same day last aforesaid to
wit: the 26th day of May A.D.
1857. there was filed in the
office of the Clerk of the Circuit
Court of the County of Cook
aforesaid Ten certain conjunct
promissory notes which are
in the words and figures following
to wit

Chicago May 16th 1857

Thirty days after date I
promise to pay to the order of
Myself One hundred & Ten Dollars
at the Merchants & Mechanics
Bank Chicago value received

Joseph Hilland

Plff. 55

and each and every of said notes
was indorsed on the back of
same and figures following to wit

40 11

Joseph Stilson

"Pay Order of J. Mackay & Quinlan or
"order Chas. F. Stilson

"Rec'd on acct without recte June 12th
"1856 Forty-23/100 Dollars

Chicago Jun 16th 1856

Sixty days after date I promise
to pay to the order of myself
One hundred & Thirty nine 40/100
Dollars at the Merchants &
Mechanics Bank Chicago
Value received

Joseph Stilson

8 Dep. 48

Chas. Said last mentioned note has
Endorsements on the back to be
found in the rolls and Journals
pertaining to this

Joseph Stilson

" Pay Order of Mackay & Quinlan
or order Chas. F. Stilson

"Rec'd on acct without recte of Joseph
"Gin 139/100 Dollars this June
"12th 1856."

Afterwards to wit: On the
30th day of May and term in Vacation
as yet one of the days of the
Regular April Term of said Court
for said year, the following
among other proceedings was
had and entered of Record in
said Court to wit:-

William F. Kelley
Homer F. Mackey
Benjamin F. Bumby
vs
Charles J. Hilton
Appt

This day
came the said parties by their
Attorneys and this cause having
been heretofore submitted to
Court upon an agreed State
of facts and the Court having
had this Cause under advisement
and having Carefully inspected the
papers herein and the Evidence in
Vacation thereupon hold finds for the
plaintiffs and assess their damages
herein at the sum of One hundred
and fifty six dollars and fifty
one cents
Whereupon it is considered that said

plaintiffs at law and recover
of said defendant their Damages
$156.82 of One hundred and fifty six dollars
and eighty two cents in Damages
aforesaid assessed together with
their Costs and Charges by them
in this behalf Expended and
which they have Ordered to be
levied upon said defendants
goods and chattels and the said
Court of the State of Illinois
which is appellate and until the
first day of next term given to
file bond for One hundred
Dollars
with Robert Rea & George D Hayes as
securities Conditioned According to
Law

Dated aforesaid This 10th day
of October A D 1857
Then came Jesse A Gale
& the Clerk of the Circuit
Court of Cook County in the
State aforesaid & certain
Appeal Bond which is in
the words and figures
following to wit

43

Know all Men by these Presents,

That we Charles J. Wilder as principal and Robert Rae & George D. Hayes of the County of Cook and State of Illinois, are held and firmly bound unto William O. Wolf, James G. Ray & Benjamin F. Lewis also of the same County and State, in the penal sum of Two Hundred ——— Dollars, lawful 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 10th day of October A. D. 185 7

The Condition of the above Obligation is such, That whereas, the said William O. Wolf, James G. Ray & Benjamin F. Lewis did, on the 30th day of May A. D. 185 7 in the Circuit Court, in and for the County and State aforesaid, and of the April Term thereof, A. D. 185 recover a judgment against the above bounden for the sum of One Hundred & fifty 00/ ——— Dollars and 50/ cents, besides costs of suit; from which said judgment of the said Circuit Court, the said Charles J. Wilder ha prayed for, and obtained an appeal to the Supreme Court of said State.

NOW, THEREFORE, if the said Charles J. Wilder shall duly prosecute his said appeal with effect, and 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 virtue.

Taken and entered into before me, at my office in Chicago, this 10th day of October A. D. 185 7

Wm. L. Church CLERK.

Charles J. Wilder SEAL

Robert Rae SEAL

Geo. D. Hayes SEAL

and foregoing transcript is a true, perfect and complete copy of the files as well as of the Orders & proceedings of said Court Entered of Record in said Court in a Certain Case lately pending therein, wherein William H. Dewey, James I. Mackey and Benjamin F. Brinkley were plaintiffs and Charles J. Walker was defendant, and of the whole thereof as appears & remains of Record

In Witness Whereof I have hereunto Set my hand and affixed the Seal of our said Honorable Court this 16th day of October AD 1852

Hugh Edwards Clerk

I. I see no Error in this record & return
Superseedias

I D Caruthers
Att Genl Dec

Jas J. Thielen

vs.

F. De Wolf et al

Assignment of Errors

Filed May 4. 1858

S. Leland

Clk

Charles J. Milder, Appellant
Wm F. Dr Wolf et al. Appellees
} assignment of Errors.

The Court below erred in giving judgement for the plaintiffs, because the notes declared on, being payable to the order of the maker are not within the third section of the statute relating to negotiable instruments.

The Court below erred in holding that the action could be maintained without an averment that the defendant had notice of demand and refusal by the maker

If the above grounds of error are invalid, the Court erred in giving judgement for the plaintiffs because it is admitted that they do not derive title to the notes by the endorsement of the party from whom they received them.

The Court erred in giving judgement for the plaintiffs on the ground that the defendant was a guarantor, ~~on the ground~~ because it is admitted that he had no notice. It was error to hold the defendant as guarantor.

Wm F. Debolt et ux
Defts in Error
vs
Charles J. Nolder
Plff in Error

And now come the said defendants in Error by John H. Thompson their attorney, and say that there is no Error in said Record & pray that the judgement may be affirmed.

John H. Thompson
Atty for Defts in Error.
May 9. 1860.

Cook County Cir Ct.

Wm. J. Dewolf
vs.
19. Etals
Charles J. Wilder.

Complete Record Entry
for Sept Term
Filed Oct. 30. 1858
L. Leland
Clk.
Journal for
Fee Docket

Fee $8.00/100
Add. 30
$8.30/100

John H. Kimbark Pltf
vs. Action &c.