

No. 13237

Supreme Court of Illinois

Easter

vs.

Minard

STATE OF ILLINOIS,
SUPREME COURT,
3229
Third Grand Division.

No. 224.

Easter
HJ

Thurman

1861

Replevin

Supreme Court of the State of Illinois,

IN THE THIRD GRAND DIVISION.

JOHN D. EASTER, impleaded with CHARLES G. SCOTT, Appellant, vs. IRA MINARD, Appellee.	}	APRIL TERM, A. D. 1861.
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STATEMENT OF CASE.

This suit was commenced by Appellee against Appellant upon a Promissory Note signed by Charles G. Scott and John D. Easter in Assumpsit, and service had upon both Scott and Easter; declaration in the ordinary form. Scott and Easter filed the general issue Plea, and Easter filed two special Pleas, setting up that the *execution* of the Note was obtained from him by fraud and circumvention, and therefore void in law. To the first special Plea issue was joined; to the second special Plea the Appellee filed a general Demurrer, which the Court sustained, and gave judgment against the second special Plea, and the Appellant stood by his Plea. Trial was had before the Hon. Isaac G. Wilson, and a Jury, and judgment rendered for \$363,33. Motion by Appellant for a new trial, which was overruled, which was excepted to, and Bill of Exceptions signed by the Judge.

POINTS AND BRIEF.

The Appellant insists that the second special Plea is good upon its face, and is an exact copy of the first Plea, with the exception of averring notice to the Appellee. A copy of the Plea may be found upon the last page of the printed Abstract.

Section 11 of Chap. 73, page 292, of S. T. & B. Statute enacts, "that if any fraud or circumvention be used in obtaining the *making* or *executing* of any of the instruments aforesaid, such fraud and circumvention may be pleaded in bar to any action to be brought on any such instruments so obtained, whether such action be brought by the party committing such fraud or circumvention, or any assignee or assignees of such instrument."

This Plea clearly sets forth such agreements and acts as constitutes such fraud and circumvention, and constitutes a good bar to the action, whether in the name of Strader, the payee of the Note, or Minard, the Appellee. See *Woods vs. Hoynes* 1 Scam. 103; *Mulford vs. Shepherd*, 1 Scam. 583.

When fraud is clearly stated in the Plea, it is a good defence. See *Kirkland vs. Lott*, 2 Scam. 13.

Fraud makes void all contracts between the parties. *Lowry vs. Orr*, 1 Gill. 70; and under our Statute on Promissory Notes, between parties or their assigns.

The Plea is a good one, and the Circuit Court erred in sustaining the Demurrer to it.

The Circuit Court erred in giving the second, third and fifth Instructions asked for by the Appellee. The second Instruction takes away from the Jury the question of fraud and circumvention presented by the pleading, and places it upon the ground as to whether Easter "has been injured, or his liability extended."

If the execution of the Note was obtained from Easter by fraud, then the Note is void, and that is the issue tried, and not whether Easter has been injured or his liability extended, and to instruct the Jury that fraud and circumvention is

no defence to the Note, unless Easter has been injured or his liabilities extended, is not the law.

The first and second Instructions are at variance. The first states that the principal question for the Jury to determine is, whether there has been fraud and circumvention used in obtaining Easter's name; and the second Instruction puts it upon the ground as to whether Easter has been injured. This instruction misled the Jury, and there was *no evidence upon that point*.

The third instruction, as I understand it, is not the law in this case. It was not necessary that Strader at the *time he took the Note*, to have intended to defraud Easter; if Strader accepted the Note in violation of his agreement, without Parks having first signed it, then it was a fraud in law, and just as much so upon Easter, as though Strader had intended it from the beginning, and Easter just as much damaged, for he only gave his name with the understanding that Parks was to share the liability with him.

The fifth Instruction is not law, because the Instruction *assumes* that the conversation between Strader and Parks was a *casual conversation*. The Court had no right to assume that the conversation was such, and it was entirely contrary to the evidence, as by reference to Parks's testimony—see pages 1 & 2 of the printed Abstract—it will be seen that Strader went to Parks several times, for no other purpose, than to see why he did not sign the Note.

The verdict is contrary to the evidence, and the Court erred in not setting aside the judgment. The witness Parks says that Strader told him that he had agreed with Easter not to let Scott have the money upon the Note, unless he, Parks, signed it. The same agreement was stated to witness Parks by Strader at every conversation had, when Strader was enquiring why he, Parks, did not sign the Note, and also Strader stated the purport of the same agreement to the witness Ferson, showing conclusively that Easter's name was obtained to the Note upon the express agreement that it was not to be accepted and received by Strader, until Parks had signed it. Strader stated to the witness Ferson that he presumed that Easter would not pay the Note, as there were not names enough to the Note. The Jury from being wrongly instructed brought in a verdict contrary to the evidence, and the Appellant should have a new trial.

CHAS. B. WELLS,
Atty. for Appellant.

Eastw²²⁴

v

Minut

Argument & Brief

Filed Apr. 24th 1861

L. Leland
Clerk

IN THE THIRD GRAND DIVISION.

Plaintiff in Error,

VS.

Defendant in Error.

Page of Record.

This suit was commenced by Defendant in Error against the Plaintiff in Error, on the 25th day of April, A. D. 1859, in Assumpsit, upon a Promissory Note signed by the Plaintiff in Error, and Charles G. Scott, and Summons served up on both as per return of the officer, and tried at the May Term, A. D. 1860, of the Kane County Circuit Court, the Hon. Isaac G. Wilson presiding, and a Jury. The Note was joint and several. A copy may be found attached to the Plaintiff's Declaration. The Plaintiff in Error, joined with Scott, filed a general issue Plea, and John D. Easter filed his two separate special Pleas. See Record, pages 8, 9, 10 & 11, in which he set up that the execution of said Note was obtained from him by fraud and circumvention. To the first special Plea the Defendant in Error joined issue, and filed a general Demurrer to the second special Plea. The Plaintiff in Error joined issue on said Demurrer, after agreement of Counsel, the Court sustained said Demurrer, and gave judgment against said second special Plea, by which said Plea the Plaintiff in Error elected to stand.

19 IRA MINARD
 vs.
 CHAS. G. SCOTT, &
 JOHN D. EASTER.

Assumpsit. Kane County Circuit Court,
May Term, A. D. 1860.

ST. CHARLES, April 19th, 1858.

(Signed)

Know the parties to this suit. I had a conversation with Richard Strader sometime in February or March, 1858—it might have been later and in April, I think perhaps in April, near the last of the month—about a Note which Easter the Defendant had signed with the Defendant Scott. He, Strader, asked me why I did not sign the Note. He said that he had agreed not to let Scott have the money unless I signed the Note as security. He seemed to be anxious to know my reasons for not signing the Note. I did not tell him my reasons then, but told him the Note was good enough as it was. Strader spoke to me about not signing the Note several times, once in the middle of the Summer of '58, and afterwards, and told me about the same thing.

21 Cross Ex.—I had several conversations with Strader about the matter. The first conversation I had with him was not when he was at work on Durant's house, but before that, in the street, between Scott's and Durant's houses. He then wanted to know why I did not sign the Note, and talked about Scott & Easter's circumstances. I had money belonging or owing to Strader, and this conversation was soon after I paid him the money I was owing him. The first conversation I had with Strader about money matters was in Foss' building. I told Strader that Scott wanted to borrow \$300. He asked me what I thought about Scott's affairs. I told him I thought him good. He then said that if I would pay in the money I was owing him within a few days, he would let Scott have \$300. I paid him (Strader) the money that I owed him, about \$1500, about the time this Note was given. I know this fact from dates in my pass book, as about that time I drew some large checks; it was about the middle of April when I paid Strader the money I was owing him. Soon after, or within a few days after this, I saw a Note. Scott brought it to me with Easter's & Scott's name on it; don't know as this was the Note; don't recollect the date nor amount of the Note. Scott wanted me to sign it; I refused to sign it. The conversation with Strader on the street first referred to was a few days after Scott showed me the Note. I think it could not be to exceed two weeks afterwards. He, Strader, then asked me why I did not sign the Note; asked me if I mistrusted Scott was not good. He said he had told Easter that he would not loan the money to Scott unless I would sign the Note. After Scott failed, he came to me again, and talked about the Note; wanted to know if I refused to sign the Note because I thought Scott was going to fail. In Foss' saloon we talked about Scott's wanting to borrow the money, and some other things. This is about what was said then. The next conversation was in the street, on the West side of Fox River. Strader asked me why I did not sign the Note, and what I thought of Scott and Easter's circumstances; that was about all that was said. The next conversation with Strader was when he was at work on Durant's house; he then asked me about the same thing.

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Direct Resumed.—He, Strader, said that he would let Scott have the money if I would pay it in. I paid it to him within a few days. In my conversations afterwards with Strader he asked me several times why I did not sign the Note. He said that he told Easter that he would not let Scott have the money unless I signed the Note. This was after the Note was showed to me by Scott. After Scott was supposed to be in failing circumstances, Strader said to me he was afraid that Easter would try to cheat him out of the Note. Easter was then in good circumstances, or so considered, and is now perfectly good as far as I know.

23

Re-Cross.—I am not very positive about the precise times of our conversations, but have given them as near as I can recollect the circumstances. I took no particular notice of them at the time, but have thought to fix the time since this suit was brought.

Henry Hyde sworn.—Know parties. Am book-keeper in Ira Minard & Co.'s Bank. (Note shown witness.) I have seen this Note before; this is the Note in controversy. I saw it first in the Bank. Strader brought the Note there; there was one other Note brought there of \$42, I think at the same time these Notes were left with us for collection.

Cross-Ex.—Strader owed the Bank at the time he left the Notes about \$150.

The Defendant's Counsel then read the answer of Ira Minard to a Bill of Discovery filed in this case by the Defendant John D. Easter to the Jury, showing his, Minard's relation to said Note.

24

"State of Illinois, } Kane County Circuit Court of the May Term, A. D. 1860.

The answer of Ira Minard, Defendant, to the Bill of Complaint of John D. Easter.

This Defendant, now and all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the Complainant's said Bill of Complaint contained, for answer there-

24 unto, or unto so much, and such parts thereof as this Defendant is advised is material to him to make answer unto, he answers and says he admits that the Complainant and Charles G. Scott, on the nineteenth day of April, A. D. 1858, executed a certain Promissory Note to one Richard Strader, for the sum, and payable at the time as charged in said Complainant's Bill of Complaint.

This Defendant further answering admits that said Promissory Note had been endorsed to him (said Minard.) He also admits that he brought suit thereon in his own name, which said suit is now pending in the Kane County Circuit Court. This Defendant further answering, says that said Note was endorsed to him before the same by its terms became due, but the precise time this Defendant cannot now recollect, but this Defendant believes it was endorsed sometime in the month of March, 1859, and that he received it then for the first time; and this Defendant positively denies that at the time he received said Note he had any knowledge of the previous history of said Note. He also denies that he ever had any knowledge that said Parks ever agreed to sign said Note with said Easter and Scott at the time said Note was endorsed to him, and that he had no information upon that subject. This Defendant further answering says, at the time said Note was endorsed to this Defendant by said Strader, said Strader was indebted to this Defendant in the sum of about one hundred and fifty dollars, for which said Note was endorsed to this Defendant as collateral security. The precise sum which said Strader owed him this Defendant does not now recollect, which said sum since that time has been fully paid and satisfied by said Strader to me.

This Defendant further answering, says that this suit was not brought in his name for the purpose of preventing said Complainant from making his defence against the same at law, but said suit was brought in good faith for the purpose of collecting the amount of the said Note and interest, as he is informed and believes the same to be true, that said Note was given for money loaned, and that the amount of said Note is just, and ought to be paid.

W. D. BARRY, *Atty. for Deft.*

IRA MINARD.

26 State of Illinois, }
Kane County, } ss. I, Ira Minard, being duly sworn, depose and say that all the several matters and things which are stated in the foregoing answer, as from the information of others, I believe to be true, and that all the several other matters and things therein set forth, are true in substance and in fact.

IRA MINARD.

Sworn and Subscribed to before me, this 20th day of May, A. D. 1860.

A. H. BARRY, *Notary Public.*

Filed May 28, 1860, P. R. Wright, Clerk.

Amended Answer Filed May 30, 1860. P. R. Wright, Clerk.

Defence Rests.

27 Reed Ferson sworn for Plff.—Know the parties. In the Spring of 1858 I held a Note against Scott & Easter. I let Scott have the money at Easter's request, and Easter signed the Note as security. Scott paid the Note to me when due. He, Scott, got the money of Strader to pay me. Strader was there with Scott at the time, but Scott paid over the money to me, \$300. The money given for this Note was paid to me by Scott. Easter said to me since Scott failed, that he supposed that he was in for the Note in this suit, and would have to pay it, but I need not buy it expecting that he would pay it when due or that he would pay two per cent a month. Strader wanted to sell me the Note, but we could not agree on the terms. I told Easter that Strader was not yet frightened enough to sell the Note as I wanted to buy it.

Cross-Ex- by Deft.—Strader said when he came to sell me the Note, that he was afraid he should lose it. This was in the Fall of 1858, about Dec., after Scott had failed. Strader said there was not names enough on the Note. Said something about Parks not signing it. Think he said something about Scott having agreed to get Parks to sign it, or something to that effect; cannot recollect exactly what he did say. Easter had signed the Note, and I considered him good.

27 I did not buy the Note, because I thought Strader was not frightened enough yet to sell it as I wanted to buy it.

Re-Ex.—I understood that Scott got the money of me to buy some machines. Easter was then in the same business, and I supposed operating together.

28 — Johnson sworn for Deft. Know Easter & Scott Defendants. Easter has sold machines for me for about 10 years. Easter recommended to me Scott, and I gave Scott the right to sell machines in the State of Michigan. Easter and Scott were not in co-partnership in the business of selling machines, nor in no way interested in the profits of each other.

The above is all the evidence given to the Jury on the trial of the above case, by either party. The Plaintiff then asked the Court to give the instructions marked "Given," to the Jury.

Given. 1. "The principal question in this case for the Jury to determine is a question of fraud and circumvention, and although the Jury may believe from the evidence that there was an agreement between Scott and Easter that the Note should not be delivered to Strader unless Charles K. Parks signed said Note, yet the Plaintiff is entitled to recover, unless the Jury further believe from the evidence that Strader was a party to that contract, and that Easter was defrauded and deceived thereby."

"Filed May 30th, 1860, P. R. Wright, Clerk."

Given. 2. "If the Jury believe from the evidence that Easter has not been injured, or his liability extended by the misrepresentations of Strader in regard to obtaining the signature of Parks to the Note in question, then such misrepresentations are no defence to this action, and the law is for the Plaintiff."

"Filed May 30th, 1860, P. R. Wright, Clerk."

Given. 3. "The Note in this case is evidence of indebtedness against each of the Defendants, and unless the Defendant Easter has proved to the satisfaction of the Jury that Strader with intent to defraud him, Easter, took the Note from Scott, contrary to his agreement, then the law is for the Plaintiff."

"Filed May 30th, 1860, P. R. Wright, Clerk."

Given. 4. "Unless the Jury believe from the evidence that there was an express agreement between Strader and Easter that he Strader would not receive the Note in question, unless the same was signed by Parks, and that it was through such agreement that Easter was induced to sign the Note, then the law is for the Plff."

"Filed May 30th, 1860, P. R. Wright, Clerk."

Given. 5. "Of all kinds of evidence, that of casual observations, and hearsay declarations, is the weakest and most unsatisfactory, as they are always liable to be mistaken, and mis-remembered, and their meaning is liable to be misrepresented, and exaggerated. Hence the Jury should weigh with care the evidence of the witness Parks, as to the statements of Strader."

"Filed May 30th, 1860, P. R. Wright, Clerk."

which said Instructions were marked on the margin "given," and read by the Court to the Jury. To the giving of said Instructions as asked for by the Plaintiff, by the Court, the Defendant by his Counsel then and there duly excepted. The Defendant then asked the Court to give the following Instructions, marked "Given."

Given. "That the admissions or declarations of Strader, made after the execution of said Note, are evidence against him to prove the terms on which the Note was executed, and if the Jury believe from the evidence, that Strader told Parks that he had agreed not to accept the Note in question, without his, Parks' signature, such admissions is competent evidence of the fact, as against him, Strader."

"Filed May 30th, 1860, P. R. Wright, Clerk."

31 "If the Jury believe from the evidence that Richard Strader, the payee of the
Given. Note in question, agreed with the Defendant Easter, that if he, Easter, would execute said Note as the surety of Scott, and that he, Strader, would not accept said Note so signed by Easter & Scott, unless the same should be signed by Charles K. Parks, and if the Jury also believe that Easter was thereby induced to sign said Note, and if they also believe that said Strader did accept said Note without the signature of said Parks, such acceptance of said Note by Strader was a fraud on said Easter, and the Jury should find the issues for the Defendant."

"Filed May 30th, 1860, P. R. Wright, Clerk."

The Jury found the issues joined for the Plaintiff, and assessed his damages at \$363.33. The said Defendant then moved the Court for a new trial, on the ground that the verdict is entirely against the law and evidence, that the Court erred in giving the Instructions as asked for by the Plaintiff to the Jury.

32 The Court overruled the motion for a new trial, and entered judgment against the Defendants on the verdict. To the action of the Court in overruling the motion for a new trial as asked for by the Defendant, the said Defendant then and there by his Counsel duly excepted, and prays an Appeal for the following reasons: That the verdict is against the law and the evidence; that the Court erred in giving the Instructions of the Plaintiff to the Jury; that the Court erred in overruling the motion of the Defendant for a new trial, and asks that this his Bill of Exceptions may be signed in open Court.

ISAAC G. WILSON. [Seal.]

which said Bill of Exceptions is endorsed as follows:

"Filed June 23d, 1860, P. R. Wright, Clerk."

And afterwards, to-wit: on the 12th day of July, A. D. 1860, there was filed in the office of said Clerk aforesaid, an Appeal Bond, which is in the words and figures following, to-wit:

"Know all men by these presents, that we, John D. Easter & Robert J. Haines, of the County of Kane, and State of Illinois, are held and firmly bound unto Ira Minard, in the penal sum of seven hundred & fifty dollars, for the payment of which sum well and truly to be paid, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents. Sealed with our seals, and dated this 11th day of July, A. D. 1860.

33 The condition of the above obligation is such, that whereas the said Ira Minard, at the May Term, A. D. 1860, of the Kane County Circuit Court, recovered a judgment against the said John D. Easter and one Charles G. Scott, for the sum of three hundred and sixty three & 33-100 dollars damages, and costs of suit, from which said judgment the said John D. Easter has taken an Appeal to the Supreme Court of the State of Illinois. Now if the said John D. Easter shall prosecute his said Appeal with effect, and shall pay said judgment, and all interest, damages and costs, in case said judgment shall be affirmed, then this obligation to be void, otherwise to remain in full force and effect.

J. D. EASTER, [Seal.]

R. J. HAINES. [Seal.]

"Approved July 12, 1860,
P. R. Wright, Clerk."

which said Bond is endorsed as follows:

"Filed July 12th, 1860,
P. R. Wright, Clerk."

THE FOLLOWING ERRORS ARE ASSIGNED.

1st. The Court erred in sustaining the Demurrer to the second special Plea of said John D. Easter.

2d. The Court erred in giving the Instructions of the Defendant in Error.

3d. The Court erred in overruling the Plaintiff in Error's motion for a new trial, and in giving judgment upon the verdict of the Jury.

4th. That the verdict is against the law and the evidence,

CHARLES B. WELLS,
Attorney for Plaintiff in Error.

- 11 The following is the second special Plea demurred to, and judgment rendered against the Plea :

3. And for a further Plea in this behalf, by leave of the Court for this purpose first had and obtained, the said Defendant, John D. Easter impleaded with the said Charles G. Scott, as to the said first count in the said declaration mentioned, says, that the said Plaintiff ought not to have or maintain his aforesaid action thereof against this defendant, because he says that the execution of the said supposed promissory note in that count mentioned was obtained from this defendant by Richard Strader the payee thereof, and the said Charles G. Scott in collusion with him, by fraud, circumvention and covin, that is to say, by the payee, and the said Defendant Scott in collusion with him, fraudulently representing to this Defendant that if he, this Defendant, would execute said Note as surety for the said Defendant Scott, would procure the execution of said Note by Charles K. Parks, and that the same should not be delivered to the said Strader, the payee as aforesaid, until the same should be executed by said Parks. And the said Defendant avers that before the execution of said Note by this Defendant, the said Richard Strader to induce this Defendant to execute said Note as surety as aforesaid, falsely, deceitfully and fraudulently assured this Defendant that if he, this Defendant, would execute said Note as aforesaid, he, said Strader, would not accept said Note unless the same should be executed by the said Charles K. Parks.

- And that this Defendant further avers, that in consideration of the assurance of the said Strader as aforesaid, and in consideration of the assurance of the said Scott with the knowledge of the said Strader that said Note should not be delivered to, nor accepted by said Strader without the execution thereof by said Parks, he, the said Defendant executed said Note, to-wit: at Kane County aforesaid.
- 12 And the said Defendant further avers that after the execution of said Note by this Defendant as aforesaid, and without the execution thereof by said Parks, and without the knowledge and against the consent of this Defendant, the said Defendant Scott fraudulently delivered said Note to said Strader, and the said Strader then and there fraudulently accepted said Note so executed as aforesaid, to-wit: at Kane County aforesaid. Wherefore he the said Defendant saith that the said Note in the said declaration mentioned, was and is void in law, and this the said Defendant is ready to verify, wherefore he prays judgment, &c.

D. L. EASTMAN,
Def't's. Atty.

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John D. Easter might
with Chas. G. Scott
Appellant

Cha Moirand
Appellee

Abstract of Record

Filed April 18. 1861

L. L. Leland
Clerk

John D. Easton in p^d

has Min and

It is ordered in the above case
that the profits arising and
unwindings be entire interest of the
profits of appearance. Oct. 15-1887

J. A. Carter
P. H. Waller
Wm. P. Rice

United States of America
State of Illinois Hancock County

Pleas before the
Honorable Isaac L. Wilson Judge
of the thirteenth Judicial Circuit of
the State of Illinois and sole pre-
siding Judge of the Circuit Court
of Hancock County in the State aforesaid
and at a regular Term thereof begun
and held at the Court House in the
Village of Geneva in said County
on the Third Monday (being the
twenty first day) of May in the
Year of our Lord one Thousand
Eight hundred and Sixty and of
the Independence of the United
States the Eighty fourth.

Present The Hon. Isaac L. Wilson Judge
of the 13th Judicial Circuit
Edward S. Joslyn State Attorney
of the 13th Judicial Circuit
Ethan J. Allen Sheriff of Hancock County

Attest

Paul A. Wright Clerk

Be it Remembered that heretofore to wit on
the 23th day of April AD 1859 there was
issued out of the Office of the Clerk and under the

Seal of said Circuit Court a summons which
 is in the words and figures following to wit:
 "State of Illinois }
 Kane County } The People of the State
 of Illinois to the Sheriff of
 said County Greeting:

We command you that you
 summon Charles G. Scott & John D. Easter
 if they shall be found in your County personally
 to be and appear before the Circuit Court of said
 County on the first day of the next Term thereof
 to be holden at the Court House in Geneva in
 said County on the third Monday of May
 next to answer unto Ira Maynard in a plea
 of Trespass on the case upon promises to the
 damage of said plaintiff as he says in the sum
 of five hundred dollars. And have you then
 and then this writ with an endorsement thereon
 in what manner you shall have executed the
 same.

Seal
 of
 Court

Witness Paul A. Wright
 Clerk of our said Court and the seal
 thereof at Geneva in said County this
 25th day of April AD 1839

P. A. Wright Clerk

Which said Summons is endorsed as follows

"Served by reading to Charles G. Scott
 and John D. Easter this 30 day of April
 1839.
 Ethan J. Allen Sheriff

3.

by N W Clark Dep"
"Filed May 6 1859
R W Wright Clk"

And afterwards to wit: on the 6th day of May
AD 1859 there was filed in the Office of said
Clerk a Declaration which is in the words and
figures following to wit:
" State of Illinois } Kane County Circuit Court
Kane County } of the May Term AD 1859
Ira Howard plaintiff in this suit
by N W Barny his attorney complains of Charles
G Scott and John D. Easter defendants in a
plea of trespass on the case on promises: For
that whereas the said defendants heretofore to wit
on the Nineteenth (19th) day of April in the Year of
our Lord One Thousand Eight hundred and
fifty eight (1858) at St Charles to wit at the said
County of Kane made their certain promissory note
in writing bearing date the day and year aforesaid
and then and there delivered the same to Richard
Strader in and by which said note said defendants
by the name style and description of Cha^s G Scott
and J. D. Easter promised to pay to the said
Richard Strader or order the sum of Three Hundred
dollars for value received with interest at ten per
cent one year after date the date of said
note meaning; which period has now elapsed

And the said Richard Strader to whom or to whose order said note was payable afterwards to wit: on the day and year aforesaid at St Charles to wit: in the County of Kane aforesaid endorsed ~~in~~ said note in writing by which said endorsement the said Richard Strader then and there 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 defendants became liable to pay said plaintiff the said sum of money mentioned in said note and being so liable in consideration thereof then and there undertook and promised to pay the same to the said plaintiff according to the tenor and effect true intent and meaning of the said note and of the endorsement aforesaid to wit: at the place aforesaid.

And whereas also the said defendants afterwards to wit: on the 20th day of April AD 1839 at St Charles to wit at the said County of Kane were indebted to the said plaintiff in the sum of five hundred dollars for goods then sold by the plaintiff to the said defendants at their request and in the sum of five hundred dollars for work then done and materials for the same provided by the plaintiff for the said defendants

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at their request; and in the sum of five hundred dollars for money then lent by the plaintiff to the said defendants at their request; and in the sum of five hundred dollars for money then paid by the plaintiff for the use of the said defendants at their request; and in the sum of five hundred dollars for money then received by the defendants for the use of the plaintiff; and in the sum of five hundred dollars for interest then due from said defendants to said plaintiff for the loan and forbearance of large sums of money before then by the said plaintiff loaned and advanced to the said defendants at their request; and in the sum of five hundred dollars for money found to be due from the said defendants to the said plaintiff upon an account then and there stated between them;

And in consideration of said indebtedness the said defendants then and there promised the plaintiff to pay him the said several sums of money above mentioned when they should be thereunto afterwards requested.

Nevertheless the said defendants although often requested to wit on the day when the said note became due and payable according to the tenor and effect thereof and often times since to wit at the place aforesaid, have not yet paid the said several sums of money above mentioned or any or either of them or any part thereof to the said plaintiff but to pay

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the same or any part thereof to the said plaintiff
the said defendants have hitherto altogether refused
and still do refuse to the damage of the said
plaintiff of five hundred dollars and therefore
the said plaintiff brings suit to

A. V. Barry

Atty for Plff. "

"Copy of Note sued on"

"\$300.00"

St Charles April 19th 1858

One year after date for value received
we jointly and severally promise to pay Richard
Strader or order the sum of Three Hundred
Dollars with interest at ten per cent

(Signed) Chas. G. Scott
J. D. Easter "

"Copy of Account sued on"

"Charles G. Scott & John D. Easter

Do Ira Maynard Dr

Do Goods sold	\$300.00
" Work and materials	500.00
" Money lent	500.00
" Money paid out	500.00
" Money received	500.00
" Interest due	250.00
" Account stated	500.00 "

Which said Declaration was endorsed as follows

"Filed May 6 1859

R. R. Wright Atty

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And afterwards to wit: on the 16th day of May
AD 1859 the same being the first day of
the May Term of said Court AD 1859 an
order was made by said Court and entered upon
the records thereof in the words and figures fol-
lowing to wit:

"It is further ordered by the Court
that pleas in all cases on the Common Law Book
et numbered from 1 to 100 inclusive be filed by
tomorrow morning and in cases numbered from
101 to 150 inclusive by Wednesday morning next
and in all the balance of the cases by Thursday
morning next"

And afterwards to wit: on the 17th day of May
AD 1859 the same being one of the days of the
said May Term of said Court for 1859 the
following among other proceedings was had
and entered of record in said Court to wit:

Dra Minard

6853

v

Charles S Scott

and John D Easter

Apumpsit

This day on motion of
defendants by Eastman their
attorney the time for filing pleas herein is extended

And afterwards to wit: on the 26th day of May
AD 1859 there were filed in the said Office

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of the doers of said Court certain pleas which
are in the words and figures following to wit:

Charles G. Scott
John D. Easter

at
Ira Menard

Hancur Court
May Term 1859

And the said defendants
by Eastman their attorney come and defend the
wrong and injury when so and say they did not
undertake and promise in manner and form as the
said plaintiff hath above in his said declaration
alleged and thus the said defendants pray may be
enquired of by the Country so

L. A. Eastman

And the plaintiff doth
the like. A. W. Barry

Depts. Ally

Atty for Defs

2

And for a further plea in this behalf by leave
of the Court for this purpose first had and ob-
tained the said defendant John D. Easter implead-
ed with the said Charles G. Scott as to the said
first count in the said declaration mentioned says
that the said plaintiff ought not to have or main-
tain his aforesaid action thereof against this de-
fendant because he says that the execution of the said
supposed promissory note in that count mentioned
was obtained from this defendant by Richard Stron-
der the frayed thereof and the said Charles

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G. Scott in collusion with him by fraud
 deceit circumvention and covin; that is to say
 by the said payee and the said defendant Scott
 in collusion with him, fraudulently represent-
 -ing to this defendant that if he this said defend-
 -ant would execute said note as surety for the said
 defendant Scott he the said defendant Scott
 would procure the execution of said note by Charles
 H. Parks and that the same should not be de-
 -livered to the said Strader the payee as aforesaid until
 the same should be executed by said Parks. And
 the said defendant avers that before the execution
 of said note by this defendant the said Richard
 Strader to induce this defendant to execute said
 note as surety as aforesaid falsely deceitfully
 and fraudulently assured this defendant that
 that if he this defendant would execute said note
 as aforesaid - he said Strader would not accept
 said note unless the same should be executed by
 the said Charles H. Parks. And this defendant
 further avers that in consideration of the assurance
 of the said Strader as aforesaid and in consid-
 -eration of the assurance of the said Scott with
 the knowledge of the said Strader that said note
 should not be delivered to nor accepted by said
 Strader without the execution thereof by said Parks
 he the said defendant executed said note to wit
 at Harb County aforesaid. And the said

defendant further avers that after the execution of said note by this defendant as aforesaid and without the execution thereof by said Parks. and without the knowledge and against the consent of this defendant the said defendant Scott fraudulently delivered said note to the said Strader and the said Strader then and there fraudulently accepted said note so executed as aforesaid to wit: at Kane County aforesaid. And the said defendant further avers that said note was assigned to the said plaintiff after the same became due of which the said plaintiff then had notice to wit: at Kane County aforesaid; wherefore he the said defendant saith that the said note in the said declaration mentioned was and is void in law and thus the said defendant is ready to verify wherefore he prays judgment to

L. L. Eastman

Defts atty.

3

And for a further plea in this behalf by leave of the Court for this purpose first had and obtained the said defendant John L. Easter unpleaded with the said Charles L. Scott as to the said first Count in the said declaration mentioned says that the said plaintiff ought not to have or maintain his aforesaid action thereof against this defendant because he says that the execution of the said supposed promissory note in that Count mentioned

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was obtained from this defendant by Richard Strader the payee thereof and the said Charles S. Scott in collusion with him by fraud circumvention and covin, that is to say the payee and the said defendant Scott in collusion with him fraudulently representing to this defendant that if he this defendant would execute said note as surety for the said defendant Scott, would procure the execution of said note by Charles M. Parks and that the same should not be delivered to the said Strader the payee as aforesaid until the same should be executed by said Parks and the said defendant avers that before the execution of said note by this defendant the said Richard Strader to induce this defendant to execute said note as surety as aforesaid falsely deceitfully and fraudulent-ly assured this defendant that if he this defendant would execute said note as aforesaid, he said Strader would not accept said note unless the same should be executed by the said Charles M. Parks.

And the this defendant further avers that in consideration of the assurance of the said Strader as aforesaid and in consideration of the assurance of the said Scott with the knowledge of the said Strader that said note should not be delivered to nor accepted by said Strader without the execution thereof by the said Parks

he the said defendant executed said note to wit:
 at Kane County aforesaid. And the said
 defendant further avers that after the execution
 of said note by this defendant as aforesaid and
 without the execution thereof by said Parks and
 without the knowledge and against the consent of
 this defendant the said defendant Scott fraudu-
 -lently delivered said note to said Strader and the
 said Strader then and there fraudulently accepted
 said note so executed as aforesaid to wit at
 Kane County aforesaid. Wherefore he the said
 defendant prays that the said note in the said
 declaration mentioned was and is void in Law and
 thus the said defendant is ready to verify wherefore
 he prays judgment to

L. L. Eastman
 Defts atty

which said pleas are endorsed as follows to wit
 Filed May 26 1839

P. P. Wright Clerk

And afterwards to wit: on the day and year last
 aforesaid there was filed in said Office another
 Plea which is in the words and figures follow-
 -ing to wit:

Charles S. Scott
 John L. Easter

Kane Co Court
 May Term 1839

at
 Ira Moward.

And the said

defendant Charles G. Scott by Boteford
his attorney comes and defends the wrong and
injury when so and says he did not under-
take and promise in manner and form as the
said plaintiff hath above in his said declara-
tion alleged and thus the said defendant prays
may be enquired of by the country &c

A. A. Boteford
Defts Atty.

& the plaintiff doth the like

At D B arry. atty for Plffs
which said plea is endorsed as follows to wit
"Filed May 26th 1839
P. R. Wright Clerk"

And afterwards to wit: on the 28th day of Novem-
ber AD 1839 there was filed in the said Office of
the Clerk of said Court a Replication which
is in the words and figures following to wit:
Ira Maynard

vs Charles G. Scott & John D. Easter	}	Hancock County Circuit Court of the November Term AD 1839
--	---	---

And the said Plaintiff says
that by reason of anything by the said John D.
Easter impleaded with the said Charles G. Scott
in his second plea alleged ought not to be barred
from having and maintaining his aforesaid action thereon

against the said John D. Easter impleaded
with the said Charles G. Scott because he says
that the execution & delivery of the said promissory note
in said plaintiff's declaration mentioned was not ob-
tained from the said defendant John D. Easter by
Richard Strader the payee thereof by fraud col-
lusion or deceit with the said Charles G. Scott and
the said Richard Strader & that the said note
was not indorsed to the said plaintiff after the same
became due with the knowledge of the said plaintiff of
said fraud & collusion as is alleged in said plea
and of this the said plaintiff puts himself upon the
country &c.

A. N. B. Barry

Atty for Plff

which said Replication is endorsed as follows:

"Filed Nov 28 1859

R. R. Wright Clk"

And afterwards to wit: on the day last aforesaid
there was filed in the said Clerk's Office aforesaid
a Demurrer which is in the words and figures
following to wit:

Dra Myard

vs

Charles G. Scott

& John D. Easter

Kane County Circuit
Court of the November
Term 1859

And the said plaintiff says

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that the said third plea of the said John D. Easter in manner and form pleaded and the matter in the same contained is not sufficient in law to bar the said plaintiff of his aforesaid action against him the said John D. Easter (& the said Charles G. Scott) and that he is not bound by law to answer the same & thus he is ready to verify wherefore he prays judgment & his damages aforesaid to be adjudged to him to

W. L. Barry

Atty for Pltff.

which said Demurrer is endorsed as follows

"Filed Nov-28-1859

R. W. Wright Clk"

And afterwards to wit: on the day last aforesaid the same being one of the days of the November Term 1859 of said Court present as aforesaid the following among other proceedings was had and entered of record in said Court to wit:

Ira Maynard

6853

Charles G. Scott
& John D. Easter

} Atampsit

This day comes the plaintiff by Barry his attorney and files his demurrer to the 3rd plea of the defendant herein in which the defendant by Eastman & Moore his attorneys joins. after argument

of counsel the Court not being fully advised takes
time to consider

And afterwards to wit: on the 17th day of December
AD 1859 the same being the last day of said
November Term of said Court aforesaid an order
was made by said Court and entered upon the records
thereof in the words & figures following to wit:

"This day it is ordered by the Court that all
suits on the Docket not finally disposed of do
stand continued to the next term of this Court;

Also that all motions pending & undetermined by the
Court be continued to the next Term."

And on said day last aforesaid the said
Court adjourned to Court in course

And afterwards to wit: on the 8th day of March
AD 1860 the same being one of the days of the
February Term of said Court AD 1860 present as
aforesaid the following among other proceedings
was had and entered of record in said Court to wit:
Dra. Maynard.

6853

Charles G. Scott
& John D. Easter

} Appumpit

This day comes on to be
heard the plaintiff's Demurrer
filed herein to the 3^d plea of the defendant Easter and
after argument of counsel the Court being fully

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advised adjudges said 3^d Plea insufficient and sustains said demurrer, and said defendant electing to stand by his said Plea, it is ordered by the Court that the plaintiff be not barred from having and maintaining his action against the defendants by reason of anything in said 3^d Plea contained.

And afterwards to wit: on the 9th day of March A.D. 1860 the same being the last day of the said February Term of said Court A.D. 1860 the said Court adjourned to Court in course and all suits not ^{finally} disposed of were continued until the next Term of said Court.

And afterwards to wit: on the 30th day of May A.D. 1860 the same being one of the days of the May Term of said Court A.D. 1860 present as aforesaid the following among other proceedings was had and entered of record in said Court to wit:

Ira Whinnard

6858

Charles G. Scott
& John D. Easter

vs. Hunssett

This day comes the plaintiff by Barry his attorney and the defendants by Wood & Botzford their attorneys also come and on motion of the plaintiff it is ordered by the Court that a jury come whereupon come a jury of good and lawful men of the County to wit:

Augustin Raymond George W. Bunker
 N. W. Glass Francis Wald N. H. Kenyon
 O. C. Co. St. L. White L. M. Coates L. B. Scott
 David Martin Henry B. Edwards & George D. Buck-
 land who are severally truly elected and sworn to
 try the issues joined between the parties in this suit,
 And after hearing the evidence arguments of counsel
 and instructions of the Court the Jury retire under
 the charge of a sworn officer of the Court to consider
 of their verdict. Subsequently the jury return into Court
 and for a verdict upon their oaths do say: That the jury
 find the issues joined for the Plaintiff and assess
 his damages at the sum of Three Hundred and
 Sixty three dollars and thirty three cents which is
 ordered by the Court to be entered of record.

Whereupon come the defendants by their
 attorneys aforesaid and move the Court for a new
 trial herein.

And afterwards to wit: on the 21st day of June A.D. 1860
 the same being as yet one of the days of the said May
 Term of said Court for the year last aforesaid present
 as aforesaid the following among other proceedings
 was had and entered of record in said Court to wit:

Geo. Minard

Charles L. Scott
 & John L. Easter

Attest

This day comes the

Plaintiff by Barry his attorney and the defendants by Moore & Botsford their attorneys also come and the defendants motion for a new trial heretofore entered herein coming on to be heard, after argument of counsel the Court being fully advised overrules said motion, to which decision of the Court the defendants by their counsel except. It is therefore considered by the Court that the plaintiff have and recover of the defendants the sum of three hundred and sixty three dollars and thirty three cents damages and also his costs in this suit expended and that he have execution therefor.

Whereupon comes the defendant Easter by his attorneys aforesaid and prays an Appeal from the judgment herein to the Supreme Court of the State of Illinois which is allowed by the Court on condition that he file his Appeal Bond with Surety to be approved by the Clerk of this Court in the penal sum of Seven hundred and fifty dollars conditioned as required by law in thirty days from this date

And afterwards to wit: on the 23^d day of June AD 1860 there was filed in the aforesaid Clerk's Office a Bill of Exceptions which is in the words and figures following to wit:

Wm. Mignard

v

Chas. A. Scott &
John D. Easter

} Kane County Circuit Court
May Term AD 1860
Apumpsit

20 This cause having come on to be heard upon the issues joined therein the plaintiff in order to maintain his cause of action offered and read in evidence a note a copy of which was appended to the declaration in this case as follows:

"\$300⁰⁰"

St Charles April 19th 1858

One year after date for value received we jointly and severally promise to pay Richard Strader or order the sum of three hundred dollars with interest at ten percent

(Signed) Chas. G. Scott
J. D. Easter "

The plaintiff here rests his case.

The defendant then in order to maintain the issue on the part of the defendant John D. Easter introduced as a witness Charles H. Parks who being sworn testified as follows:

I know the parties to this suit, I had a conversation with Richard Strader sometime in February or March 1855; it might have been later and in April, I think perhaps in April, near the last of the month; about a note which Easter the defendant had signed with the defendant Scott. He, Strader, asked me why I did not sign the note, he said that he had agreed not to let Scott have the money unless I signed the note as security. He seemed to be anxious to know my reasons for not signing the note

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I did not tell him any reasons then, but told him the note was good enough as it was. Strader spoke to me about not signing the note several times once in the middle of the summer of '38 and afterwards & told me about the same thing.

Crop Ex.

I had several conversations with Strader about the matter. The first conversation I had with him was not when he was at work on Durants' house but before that, in the street between Scott's & Durants' houses. He then wanted to know why I did not sign the note and talked about Scott & Easter's circumstances. I had money belonging or owing to Strader and this conversation was soon after I paid him the money I was owing him. The first conversation I had with Strader about money matters was in Foss' building. I told Strader that Scott wanted to borrow \$300, he asked me what I thought about Scott's affairs, I told him I thought him good, he then said that if I would pay in the money I was owing him within a few days he would let Scott have \$300. I paid him (Strader) the money that I owed him, about \$1500, about the time this note was given. I know this fact from dates in my Paper Book as about that time I drew some large checks, it was about the middle of April when I paid Strader the money I was owing him, soon after or within a few days after this I saw a note Scott brought it to me with Easter's & Scott's name on it.

don't know as this was the note, don't recollect the date nor amount of the note, Scott wanted me to sign it, I refused to sign it, the conversation with Strader in the Street first referred to was a few days after Scott showed me the note I think it could not be to exceed two weeks afterwards, he, Strader then asked me why I did not sign the note, asked me if I mistrusted Scott was not good, he said he had told Easter that he would not loan the money to Scott unless I would sign the note after Scott failed he came to me again and talked about the note, wanted to know if I refused to sign the note because I thought Scott was going to fail. In Doss' Saloon we talked about Scott's wanting to borrow the money and some other things, this is about what was said then, the next conversation was in the street on the West side of Fox River. Strader asked me why I did not sign the note and what I thought of Scott's and Easter's circumstances, that was about all that was said. The next conversation with Strader was when he was at work on Duran's House, he then asked me about the same thing.

Direct resumed -

He, Strader said that he would let Scott have the money if I would pay it in I paid it to him within a few days, in my conversations afterwards with Strader he asked me

several times why I did not sign the note. He said that he told Easter that he would not let Scott have the money unless I signed the note, this was after the note was showed to me by Scott. After Scott was supposed to be in failing circumstances Strader said to me he was afraid that Easter would try to cheat him out of the note - Easter was then in good circumstances or so considered and is now perfectly good as far as I know.

Re-Crop. I am not very positive about the precise times of our conversations, but have given them as near as I can recollect the circumstances. I took no particular notice of them at the time but have thought to fix the time since this suit was brought.

Henry Hyde sworn - Know parties - am bookkeeper in Ira Mearns & Co Bank. (Note shown witness) I have seen this note before this is the note in controversy. I saw it first in the Bank. Strader brought the note there, there was one other note brought there of \$42 I think at the same time, these notes were left with us for collection.

Crop - &c. Strader owed the Bank at the time he left the notes about \$150.

The defendant's counsel then read the answer of Ira Mearns to a bill of discovery filed in this case by the defendant John D.

Easter to the Jury showing his Mynard's relation to said note

State of Illinois } Kane County Circuit
Court of the May Term
AD 1860

The answer of Ira Mynard defend-
-ant to the bill of complaint of John L. Easter

This defendant now and all times hereafter having and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained for answer thereunto or unto so much and such parts thereof as this de-
-fendant is advised is material to him to make answer unto; He answers and says he admits that the complainant and Charles G. Scott on the nineteenth day of April AD 1858 executed a certain promissory note to one Richard Strader for the sum and payable at the time as charged in said complainant's bill of complaint.

This defendant further answering admits that said promissory note had been endorsed to him (said Mynard) he also admits that he brought suit thereon in his own name which said suit is now pending in the Kane County Circuit Court. This defendant further ans-
-wering says that said note was endorsed to him before the same by its terms became due but the

25
precise time this defendant cannot now recollect
^{but this defendant believes it was endorsed some time in the month of March 1859}
^{and that he secured it then for the first time}
-but this defendant positively denies that at the
time he received said note he had any knowl-
-edge of the previous history of said note. He also
denies that he ever had any knowledge that said
Parks ever agreed to sign said note with said
Easter and Scott at the time said note was en-
-dorsed to him and that he had no information upon
that subject. This defendant further answering
says at the time said note was endorsed to this defen-
-dant by said Strader said Strader was indebted to
this defendant in the sum of about one hundred and
fifty dollars for which said note was endorsed to this
defendant as collateral security, the precise sum
which said Strader owed him this defendant does
not now recollect which said sum since that time has
been fully paid and satisfied by said Strader to me.

This defendant further answering says that this
suit was not brought in his name for the purpose of
preventing said complainant from making his defence
against the same at law but said suit was brought
in good faith for the purpose of collecting the a-
-mount of the said note and interest as he is inform-
-ed and believes the same to be true that said note was
given for money loaned and that the amount of
said note is just and ought to be paid

W D Barry
Atty for Deft

Ira Fitzgerald

State of Illinois }
 Kane County }

I Ira Muiard being
 duly sworn depose and say
 that all the several matters and things which
 are stated in the foregoing answer as from the
 information of others I believe to be true and
 that all the several other matters and things
 therein set forth are true in substance and in fact
 Sworn and Subscribed to

Executed

before me this 28th day
 of May A.D. 1860

Ira Muiard

A. W. Barry Notary Public

"Filed May 28" 1860

P. R. Wright Clerk

"Amended Answer Filed May 30 1860
 P. R. Wright Clerk"

Defence rests.

Reed Person sworn for Plff.

Know the parties. In the spring of
 1858 I held a note against Scott & Easter. I
 let Scott have the money at Easter's request
 and Easter signed the note as security. Scott
 paid the note to me when due, he Scott got the
 money of Strader to pay me. Strader was there with
 Scott at the time, but Scott paid over the money to
 me \$300. The money given for this note was paid
 to me by Scott. Easter paid to me since Scott

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failed that he supposed that he was in for the note in this suit and would have to pay it but I need not buy it expecting that he would pay it when due or that he would pay two per cent a month. Strader wanted to sell me the note but we could not agree on the terms. I told Easter that Strader was not yet frightened enough to sell the note as I wanted to buy it.

Crop- Ex. by Lft

Strader said when he came to sell me the note that he was afraid he ~~was~~ should lose it, this was in the fall of 1838 about Dec. after Scott had failed. Strader said there was not names enough on the note said something Parks not signing it, think he said something about Scott having agreed to get Parks to sign it or something to that effect, cannot recollect exactly what he did say. Easter had signed the note and I considered him good. I did not buy the note because I thought Strader was ^{not} frightened enough yet to sell it as I wanted to buy it.

Re Ex - I understood that Scott got the money of me to buy some machines. Easter was then in the same business and I supposed operating together.

un Johnson sworn for Lft.

Know Easter

& Scott defendants. Easter has sold machines for me for about 10 years Easter recommended to me Scott and I gave Scott the right to sell machines in the State of Michigan Easter and Scott were not in copartnership in the business of selling machines nor in any way interested in the profits of each other.

The above is all the evidence given to the Jury on the trial of the above case by either party.

The plaintiff then asked the Court to give the instructions marked ("Given") to the Jury

1 " The principal question in this case for the jury to determine is a question of fraud and Circumvention and although the jury may believe from the evidence that there was an agreement between Scott and Easter that the note should not be delivered to Strader unless Charles K Parks signed said note, yet the plaintiff is entitled to recover unless the jury ^{further} believe from the evidence that Strader was a party to that contract and that Easter was defrauded and deceived thereby.

"Filed May 30th 1860

PP Wright Clerk

2 If the Jury believe from the evidence that Easter has not been injured or his liability extended by the misrepresentations of Strader in regard to obtaining the signature of Parks

Given

Given

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to the note in question then such misrepresentations are no defence to this action and the law is for the plaintiff."

Filed May 30th 1860

P. R. Wright Clerk

3

"The note in this case is evidence of indebtedness against each of the defendants and unless the defendant Easter has proved to the satisfaction of the jury that Strader with intent to defraud him Easter took the note from Scott contrary to his agreement then the law is for the plaintiff."

Filed May 30th 1860

P. R. Wright Clerk

4

"Unless the jury believe from the evidence that there was an express agreement between Strader and Easter that he Strader would not receive the note in question unless the same was signed by Parks and that it was through such agreement that Easter was induced to sign the note then the law is for the plaintiff."

Filed May 30th 1860

P. R. Wright Clerk

5

"Of all kinds of evidence that of casual observations and hearsay declarations is the weakest and most unsatisfactory as they are always liable to be mistaken and misremembered and their meaning is liable to be misrepresented and

Given

Given

30
Gurn
exaggerated, Hence the Jury should weigh
with care the evidence of the witness Parks
as to the statements of Strader."

"Filed May 30th 1860

R. R. Wright Clerk

which said Instructions were marked on the
margin "given" and read by the Court to the
Jury to the giving of said instructions as asked
for by the plaintiff by the Court the defendant by
his counsel then and there duly excepted. The
defendant then asked the Court to give the
following instructions marked (Given)

Gurn
"That the admissions or declarations of
Strader made after the execution of said note
are evidence against him to prove the terms
on which the note was executed, and if the
Jury believe from the evidence that Strader
told Parks that he had agreed not to ac-
cept the note in question without his Parks sig-
nature such admissions is competent evidence
of the fact as against him. Strader."

"Filed May 30th 1860

R. R. Wright Clerk

If the Jury believe from the evidence that
Richard Strader the payee of the note in question
agreed with the Defendant Easter that if he
Easter would execute said note as the surety
of Scott and that he Strader would not

Given

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accept said note so signed by Easter & Scott unless the same should be signed by Charles H. Parks, and if the jury also believe that Easter was thereby induced to sign said note; and if they also believe that said Strader did accept said note without the signature of said Parks, such acceptance of said note by Strader was a fraud on said Easter and the jury should find the issues for the defendant."

"Filed May 31st 1860

R. W. Wright Clerk"

The jury found the issues joined for the plaintiff and assessed his damages at \$363.33. The said defendant then moved the Court for a new trial on the ground that the verdict is entirely against the law and evidence, that the Court erred in giving the instructions as asked for by the plaintiff to the jury.

The Court overruled the motion for a new trial and entered judgment against the defendants on the verdict. So the action of the Court in overruling the motion for a new trial as asked for by the defendant the said defendant then & there by his counsel duly excepted and prays an appeal for the following reasons: That the verdict is against the law and the evidence, that the Court erred in giving the instructions of the plaintiff to the jury; that the Court erred in overruling the motion of the defendant for

a new trial and asks that ^{this} his bill of exceptions may be signed in open Court.

J. Isaac G. Wilson Esq
which said bill of exceptions is endorsed as follows

"Filed June 23rd 1860

R. R. Wright Clerk"

And afterwards to wit: on the 12th day of July A.D. 1860 there was filed in the Office of said Clerk aforesaid an Appeal Bond which is in the words and figures following to wit:

"Know all Men by these presents that we John D. Easter & Robert J. Staines of the County of Kane and State of Illinois are held and firmly bound unto Ira Minard in the penal sum of Seven hundred & fifty dollars for the payment of which sum well and truly to be paid we bind ourselves our heirs executors and administrators jointly severally & firmly by these presents. Sealed with our seals and dated this 11th day of July A.D. 1860.

The condition of the above obligation is such that whereas the said Ira Minard at the May Term A.D. 1860 of the Kane County Circuit Court recovered a judgment against the said John D. Easter and one Charles L. Scott for the sum of Three Hundred and sixty three & ³³/₁₀₀ dollars damages & costs of suit from which said judgment the said John D. Easter has taken an

9
32 Appeal to the Supreme Court of the State of Illinois.
Now if the said John L. Easter shall prosecute his said appeal with effect and shall pay said judgment and all interest damages & costs in case said judgment shall be affirmed then this obligation to be void otherwise to remain in full force and effect.

J. L. Easter
R. J. Haines

"Approved July 12 1860
R. W. Wright Clerk"

which said Bond is endorsed as follows:

"Filed July 12th 1860
R. W. Wright Clerk"

State of Illinois

Kane County J. S. Thomas C. Moore Clerk
of the Circuit Court in and for
the said County in the State aforesaid do hereby
certify that the foregoing is a complete record
in a certain suit lately pending in said Court
wherein Ira Minard was Plaintiff and Charles
J. Scott and John L. Easter were defendants in
an action of aumpsit, comprising the process
issued, the pleadings bill of exceptions and appeal
bond filed and all orders of Court entered of record
in said cause in said Court.

Witness my name and the seal of



said Court at Geneva in said County
this First day of February A.D.
1861

J. C. Moore
Clerk.

The following Errors are assigned.

1st

The Court erred in sustaining the Demurrer to the Second Special of said John D. Easter.

2^d

The Court erred in giving the Instructions of the Defendant in Error.

3^d

The Court erred in overruling the Plaintiff in Error Motion for a new trial, and in giving Judgment upon the Verdict of the Jury.

4th

That the Verdict is against the law and the Evidence

Charles P. Wells
Attorney for Plaintiff in Error

224
Kane Co. Ex. Court
Ira Minard

John D. Easter
impeached with
Charles J. Scott
Record

Filed Apr. 17, 1861
L. Ireland
Clk.

Supreme Court
Third Grand Division
No. 1111

John & Easter
vs
Charles & Scott

} Appeals from
the County
Court of Kane
County.

And now Comes the
Said Apple vs. record
by W. D. Barry his attorney
& says there is no man in
the said ~~Record~~ above
record filed in this Court

W. D. Barry
Atty for Apple

founder in error

Filed April 23. 1861

L. Leland

Clerk.