

No. 12456

Supreme Court of Illinois

Ro
Amb~~er~~son

vs.

Carpenter

71641  7

255-171
Amberson

vs
Carpenter

255

1858

Amberson

12456

~~X~~ Papers

State of Illinois of The People of the
Madison County of State of Illinois to any
Justable of said County of
Granting. You are hereby Commanded to
Summon Chester Carpenter to appear before
me at my office in Chemung on the 27th
day of July 1855 at 10 o'clock A.M. to answer to
the Complaint of John Ambrosen for a failure
to pay him a certain sum not exceeding
One Hundred Dollars and hereof make due
return as the law directs

Given under my hand and Seal this 17th
day of July A.D. 1855. W. B. McArthur Seal

Justice of the Peace

Enacted this writ by reading to and in the
hearing of Chester Carpenter July 19th 1855

Service D^o

Mileage $\frac{50}{25}$

Wm B Hill

Justable

over

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Justice Court Chemung W. B. McArthur & Co
John Ambrosini

vs
Chester Carpenter } Action Assumpsit
Demand \$ 50.00

1855 July 7th Summons issued returnable

Pls Costs July 7th at 10 o'clock And delivered to Wm B Hill
Summons . 10 Constable

Docket 10th July 7th suit called Plaintiff appeared and
Judgment 25 answered no appearance by the Defendant

40 cents 25 Plaintiff Demand on Book account items

One Pair of Steers a lot of Hay and Breaking
Ambrose Johnson George Kelly Peter Antonius

Witnesses \$1.50 Snow and claimed their fees Wm Herrmann
after hearing the testimony in the case offered

the Court considers that the Plaintiff have and
Anckfus recover of the Defendant the sum of Fifty Dollars

service 25 Dollars and two cents Debt. And the costs of the
mileage 50 Suit taxed at three dollars and six cents and

that he have execution therefor according to law

Debt 52.12

Costs 3.00

W. B. McArthur J.P.

Defendants cost An appeal taken by Chester Carpenter Defendant

the appeal 25 and Bond filed this 15th day of August AD 1855

Transcript 25 W. B. McArthur J.P.

Transcript made and certified to this 20th day
of August AD 1855

State of Illinois of the Subscribed a Justice
of the Peace in and for the said
County do certify that the above transcript and
the papers annexed contain a full and perfect
statement of all the proceedings and of the
judgement before me in the above entitled
cause.

Dated this 20th day of August A.D. 1855
H. B. McArthur J.P.

Filed Aug 24th 1855
E. S. Lamb Clerk

Know all men by these presents that we Chester
Carpenter and Thomas J. Richards are held and
firmly bound unto John Ambrosen in the penal
sum of One hundred and fifteen Dollars lawful
money of the United States for the payment of
which well and truly to be made we bind
ourselves our heirs and administrators jointly
severally and firmly by these presents
Witness Our hands and seals this 15th day of
August A.D. 1855.

The condition of the above obligation
is such that whereas the said John Ambrosen
did on the 27th day of July A.D. 1855 before H. B.
McArthur a Justice of the Peace for the
County of McHenry receive a judgement against
over

the above mentioned Chester Carpenter for the sum
 of Fifty two dollars and two cents Debt and
 three dollars and six cents cost from which
 judgment the said Chester Carpenter has
 taken an appeal to the County Court of the
 County of McHenry aforesaid and State of
 Illinois. And if the said Chester Carpenter
 shall prosecute his appeal with effect and
 shall pay whatever judgment may be
 rendered by the Court upon dismissal or
 trial of said appeal then the above obligation
 to be void otherwise to remain in full
 force and effect.

Approved by me Chester Carpenter Seal
 this 15th day of August Thomas J. Richards Seal
 AD 1855 at my office

W B W Arthur

Justice of the Peace

Filed August 20th 1855

E M Lamb Clerk

State of Illinois; The People of the State of
McHenry County Illinois to the Sheriff of
Said County Greeting

We command you that your summon John
Ambrosen if he shall be found in your
County personally to be and appear before the
County Court of said County on the first day of
the next term thereof to be holden at the
Court house in Woodstock in said County
on the first Monday of December next to
answer unto Chester Carpenter in an appeal
from a Judgment rendered by Ward B
McArthur a Justice of the Peace in and
for the said County July 27th AD 1855
And have you then and there this writ
with an Endorsement thereon as to the
manner in which you execute the same

Witness Our Hand Clerk of the
said County and the Seal thereof
at Woodstock in said County this
Nineteenth day of September AD 1855

Filed December 21st 1855

Edw M Samb

Edw M Samb Clerk

Clerk

Returned not served not found in
my County Nov 1st 1855 J W Bentley

Sheriff

Return. 10 ct

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State of Illinois } The People of the State
 McHenry County } of Illinois to the Sheriff
 of said County Greeting

We command you as we have before commanded
 you summon John Amberson if he shall
 be found in your County personally to be and
 appear before the County Court of said County
 on the first day after the next term thereof to be
 holden at the Court house in Woodstock in
 said County on the first Monday of March
 next to answer unto Chester Carpenter in
 an appeal from a Judgement rendered
 by Ward B. McArthur a Justice of the Peace
 in and for said County. And have you then
 and then this writ with and endorse
 in to thereon us to the manner in which
 you execute the same

(J. C. W.) Witness Eliza M. Smith Clerk of
 our said Court and the Seal
 thereof at Woodstock in said County
 this 18th day of January A.D. 1856.

Eliza M. Smith

Clerk

United States of America
State of Illinois
McHenry County

Shew before the
Hon James McSherry
Judge of the County Court
in and for the County aforesaid at a term
thereof begun and held at the Court house
in Woodstock in said County on Monday
the third day of March in the year of
our Lord One thousand Eight hundred
and fifty six And of the American Inde-
pendence of the United States of America
the Eightieth

Present
George W. Butler Sheriff
The Hon James McSherry Judge
Attest.

Edw Mc Sumb, Clerk
Adjourned to meet at Schryvers Hall.
at two o'clock this afternoon

And thereafter at the term aforesaid on
the second day thereof to wit on the fourth
day of March A.D. 1856 the following
among other proceedings were had
John Ambrosen

vs
Appell
Charles Carpenter Defendant by his
Attornies Con and Rogers
our

And enter a motion to dismiss this suit at
Plaintiff Costs for want of prosecution.

The Court being fully advised sustains
the motion. It is therefore ordered that
this suit be dismissed at Plaintiffs Costs

And thereafter on the day and time before
said the following among other
proceedings were had

John Ambrose } Appeal
as } And now comes
Chester Carpenter } the Plaintiff by
his Attorney Church

And Willard Ambrose a Justice
produced an affidavit to have the
order formerly made herein dismissing
this suit for want of prosecution reversed
And to have this suit reinstated on
the docket the Court after hearing
sustains the motion

And thereafter to wit on the 9th day of
March A.D. 1856 the following among
other proceedings were had

John Ambrose } Appeal
as } And now comes the
Chester Carpenter }

Plaintiff by his attorneys Church and
Willard on his motion the Court
order that this suit be continued to the
next term of this Court. J. M. E. Judge
Attest Alan M. S. Clerk
And thereafter to wit on the 3^d day of
Jan. AD 1851 the following among proceed-
ings were had

John Ambrose } Appeal
vs }
Chester Carpenter } It is ordered by the
Court that this suit
stand continued to the
next term of this Court

And thereafter at the September term
to wit on the 2nd day of September
AD 1851. the following among
other proceedings were had.

John Ambrose } Appeal
vs } And now comes
Chester Carpenter } the Defendants by
his attorney A. B. Com
And enters his motion that this suit
over

stand Antenuel which motion is predicated
upon an affidavit on file which affidavit
being considered sufficient it is ordered
by the Court that this suit stand con-
tinued at the costs of the Defendant for
this term until the next term of this
Court and that the plaintiff has and
recover of the defendant his costs and
charges about this term expended and
that he have execution therefor

United States of America }
State of Illinois }
McHenry County } Pleas before the
Hon James Mc Shode
Judge of County Court of McHenry
and State of Illinois at a term thereof
begun and held at the Court house in
Hoodstock in said County for the transac-
tion of business on Monday the second
day of March in the year of our
Lord One thousand Eight hundred
and fifty seven and of the American
Independence the Eighty first
John Elder Sheriff Present the Hon
James Mc Shode
Attest Elam M. Smith Judge
Clerk

And thereafter at the said time To Wit
on the third day of March AD 1857
the following among other proceedings
were had

John A. Boser / Appeal
vs. And comes
Chester Carpenter the Plaintiff by
Church and Willard
his attorneys And also comes the defendant
by Daniel Rogers his attorneys And
upon being joined herein. It is ordered
by the Court that a jury and
thereupon a jury of good and lawful
men To Wit Elijah Williams Thomas Cox
Samuel W. Bennett Scudder Church
E. S. May den John Van Husein G. B. Storrs
Andrew Kent Elias Dickerson Ira
Strom Joseph C. Button and Daniel
A. Canoe who being duly empanelled
elect and swear to well and truly try
the issue joined

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File of Warrants
 State of Illinois of County Court of
 McHenry County & McHenry County
 March Term 1857

John Ambrose
 as
 Chester Carpenter } Appeal

Plas before the
 Honorable James Mc Elrod County Judge
 of said County. Be it remembered that on
 the trial of the above cause on the 3^d day of
 March 1857 said day being one of
 the days of said term the following
 proceedings were had on the trial of said
 cause before said Judge and the following
 persons. Elijah M Williams Thomas Cook
 Samuel McConnell Sander Church E. S.
 Hayden John Van Housen G B Stevens
 Andrew Wood Silas Dickerson Ira
 Shuman Joseph C Buttrick and Daniel
 A Canoe who were sworn as a Jury in said
 cause Do Wit.

The Plaintiff declared upon
 took account for one yoke of sters sold
 the defendants for breaking Prairie & a quantity
 of a hay sold the defendant & for interest on
 the same The Plaintiff introduced Ambrose
 Ambrose who testified as follows upon the

direct Examination To Wit
That the parties is a son of the plaintiff
in the spring after Daniel Carpenter
started for California the plaintiff sold
to the defendant a yoke of Steers for \$28.
the plaintiff said he would sell them
cheap if the defendant would ~~allow~~
the price upon \$48. note that
Daniel Carpenter held against him
which note was then in the hands of
Charles Carpenter the defendant for collection
(the defendant wanted to turn the
steers upon ^{credit} the Plaintiff and Daniel
Carpenter for Sumner. The plaintiff
objected and the Defendant agreed
to increase the price upon the \$48 note
other took the steers. News of the Plain-
tiff breaking Prairie for the defendant
to the amount of \$10.63 and of the
Defendants having hay of the plaintiff
to the amount of \$6.00. The Defendant
after Daniel Carpenter returned from
California wanted my father to let
him turn the steers breaking hay
upon which the plaintiff and Daniel
Carpenter for Sumner and the balance
as interest upon the \$48 note Plaintiff
refused to allow it and said it must be
over

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Endorsed upon the 5 & 6 notes at 25th Street
 Father said that the interest on the
 note amounted then to as much as
 the notes. It was to be endorsed upon
 the Wilson note the Plaintiff here admitted
 that the Wilson note was held by the
 defendant only as agent for collection
 for David Carpenter.

Mr Herr testified that he was ^{an} attorney
 at law that sometime in May or June
 A.D. 1855 David Carpenter the brother
 of the defendant put into his hands
 the note for them produced for collection
 that suit was brought ^{for} the sum
 in the name of ^{David} Carpenter
 against the present plaintiff and
 judgement was rendered on the note
 by the Justice on the 14 day of June
 A.D. 1855 the time endorsed upon the note.
 The plaintiff then offered the note
 in evidence to the jury which was objected
 to on the part of the Defendant which
 objection was overruled by the Court
 And the plaintiff gave the note in
 evidence to the jury which note and
 the ^{affidavits} ~~affidavits~~ & endorsements thereon
 is in the words and figures following
 To Wm

\$48.00

May the 11th 1857

I do hereby receive & promise to pay
Edwin C. Wilson or bearer forty eight
Dollars on or before the twenty first day
of February 1852 with interest at
eight per cent

Johannes ^{his} Schraeder
mark

June 2nd 1857

I sign the within to Daniel
Carpenter and I guarantee that the
within shall be paid at the time it
is due

Edwin C. Wilson

Received on the within note twenty
dollars and ninety three cents

June 15th 1857

Judgment entered on the
within note June 14th 1855

R. C. Honey Place

In the giving of which note in evidence
to the jury & the overruling the defendants
objections thereto the Defendants by his
counsel then and there excepted

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The above was all the direct evidence on the part of the Plaintiff who then asked his case. The defendant then called Daniel Carpenter who testified as follows
To Wit

Is a brother of the Defendant started from New Henry County to California the last of December A.D. 1851 before he went to California owned two notes against the Plaintiff one for \$48. Called the Milton note. This one given as evidence by the Plaintiff and another note originally for \$55 given by the Plaintiff to Olson a Norwegian that was called that all there was various endorsements upon this note then was there drawn upon this note about \$29. The defendant then asked the following questions to the witness To Wit

What agreement if any was made by you the Plaintiff and yourself as to before the time you started for California about the payment of the notes you had against him, which question was objected to by the Plaintiff and the objection was sustained by the Court

to the sustaining of such objection
and the refusing to allow the question
to be answered the Defendants by
his attorneys then and there excepted.
The Witness further testified

That at the time he went to California
he informed the plaintiff that he could
pay the notes to Chester Carpenter the
defendant. The witness was then asked
the following questions To Wit.

That all you said to him the plaintiff
at that time about the payment and
what his replies were to such statements
which questions and the answer thereto
was objected to by the plaintiff and the
objection sustained by the Court to the
ruling of the Court in sustaining the
objection to the question the answering
the defendant by his Counsel then and
there excepted.

Witness told the plaintiff that he should leave
the notes with the Defendant his brother
Chester Carpenter for collection and told him
(Plff) that witness owned the notes Chester
Carpenter was by the witness appointed
his agent to collect the notes. Both notes
were left with him. Witness returned
from California on April 1854.

Plaintiff and defendant lived about
 1/2 mile apart after return from California
 Chester Carpenter gave up the \$48 note
 to witness there was then endorsement on
 it twelve 2 1/2 dollars there was no endorse-
 ment on the same when took it home
 never saw the Old or Short Old note since
 the Defendant took it two years ago this
 month the Plaintiff & Defendant were at
 my house talking over their matters and
 trying to settle Plaintiff said he had
 let Defendant have \$4.00 worth of Hay &
 was breaking for him the amount of hay
 was agreed upon they differed about
 the amount of the breaking the Plaintiff
 said he would go and measure it
 again they both requested me to come
 down the next morning to help them
 settle. I came down next morning
 Plaintiff said he had measured the
 breaking and it came to \$10.63 I told
 the Defendant to pay him what he
 owed him as I wanted to ^{a settlement} settle with
 with him. The plaintiff and could not
 settle until the plaintiff & defendant should
 settle their matters. The plaintiff and defen-
 -dant were both present.

The Defendant replied that he had not got
the money. I told him I would ^{let} him ^{it to} him
and did lend him a twenty dollar gold piece
out of which he offered the plaintiff \$17.00 to
pay him the odd cents was to be for interest.

The plaintiff told the defendant to pay it to
me for him as he was owing me. The
defendant did so in his presence & gave me
back the same gold piece the matter of the
stems was then talked over the defendant
said he had taken the stems of the
Plaintiff for \$28. dollars and gave up
the Clear or Short Ok note as it was
called and the balance of Twelve dollars
and some odd cents he had endorsed
upon the \$48. or Wilson note. The
Plaintiff said that was so and it was
then all right. The Defendant has settled
with ~~me~~ ^{me} for the \$17. loaned
The defendant was my agent when I was
in California & had the notes against
the Plaintiff for collection.

Upon cross examination he testified
that the plaintiff did not refuse to take
the \$17. offered but told the defendant
to pay it to me it was not left with me
as a tender has never told any one
that it was, did not tell William Kerr

when Our kind have the \$48 or thereabouts
 against the Plaintiff for collection at
 Kerr's store in Bear County that the
 Plaintiff refused to take the \$17 and that
 the defendant then left with her as a tender
 and that it (the \$17) was then subject to
 his order and orders to that effect, have
 no recollection of telling him or at that
 or any other time and sure that I did not
 I gave the note to Ken for collection
 there was an endorsement of two dollars
 and 3 cents upon it there the endorsement
 is in the hand writing of the defendant
 I think the affidavit or guaranty is in the
 same hand writing it looks like it part of it
 looks like my writing Before I went to
 California I lent the defendant plaintiff
 some lumber and told him, the defendant
 would measure it out to him I do not
 know how much he got he (Plf) has
 paid me for it since I returned from
 California The defendant promised me
 the Bill of the amount, the Plaintiff is a
 Norwegian and does not talk very
 good English I can understand the
 most he says. He generally had his
 son to talk and interpret for

him. His son was present at the time of
the payment of the \$17. And the talk about
the breaking and say the plaintiff and his son
both talked the matter over the plaintiff did
not then say or claim that the store should
have been endorsed or allowed upon the
\$48 or Wilson notes neither did his son say or
claim it for him there was something
said about the digging of the mill run
lumber. The mill was dug and stoned on my
farm while I was gone for California
(I think I allowed the plaintiff for digging
the same by turn on the lumber)

did not say or
mean anything

Mrs David Carpenter testified that
she is the wife of David Carpenter the brother
of the defendant. David Carpenter left for
California in December A.D. 1851 when he
left (he made the defendant his agent) left
notes with him for collection against the
plaintiff these master notes are of \$48.
and an originally of \$55. gave to Olsen
or Short Ole as he was called upon which
there had been endorsements. The defendant
lived with me on my husband's farm. The
Plaintiff saw paid me \$10. on the Olsen or
Ole note after my husband left. The defendant
generally accused me about my husband's
over

did not
say or

[2456-12]
L

business. He informed me that the plaintiff
would let a yoke of steers go on the notes
I told him he had better take them.

Some after the defendant brought a yoke of
steers home for my husband. It was in the
winter or spring after my husband left for
California that the steers were brought
about. Two or three weeks after the steers were
brought. Some after my husband left the
plaintiff got some number of my husband
the defendant measured it out to him
I do not know how much he got I saw
him haul it away. A short time after
the steers were sold the plaintiff and
defendant the plaintiff son Cleo or Short
Cle were present at my house they
then talked over the purchase and ~~sale~~ of
the steers the defendant told the plaintiff
he would give him up the small note
(the Cle note) that the endorser the balance
of the price of the steers upon the \$48
note in payment for the steers the
plaintiff said he would do it. the defendant
then gave up to the plaintiff the small
note and endorsed the balance upon
the \$48. note I think there was about
\$23. due upon the small note

Old the defendant & the plaintiff talked
the matter over & I think figured the
interest I hired the plaintiff to dig a
well for me while my husband was in
California he dug it I think it came to
about twenty dollars. The plaintiff and
defendant lived about a half a mile
apart.

Upon cross examination she testified
that the plaintiff did not say or claim
that the price of the stews should be endorsed
upon the \$48 note and quite sure that the
plaintiff's son Ambrose was present
at the time of the giving up of the small
note however that Olesner Short Ole was
there the plaintiff could not talk very good
English I could understand the most he
said. His son generally talked and
interpreted for him Short Ole some times
does so.

The defendant here recited his case
The plaintiff then recalled William
Herr who testified that that ^{Daniel} Daniel Carpenter
when he gave him the \$48 note told
him that the defendant offered to pay
the plaintiff \$17. but the plaintiff would
not take it and that the defendant
then left with him Daniel Carpenter
over

subject to the plaintiffs order and that he then held the money subject to such order which the plaintiff could have by calling for it upon such examination he stated that he was a practicing attorney and when received the note for collection was the Attorney of the Plaintiff in the Court below ^{before} the Justice and in this Court and was a witness for the plaintiff in the Court below.

The Plaintiff then called Charles Ambrosen as a witness who was asked if he saw Olesen & him of any payments ^{showing} being made to him upon the \$55 note before ^{him} Daniel Carpenter went to California which question the answer thereto was objected to by the defendant which objection was overruled by the Court and the witness allowed to answer to which ruling by the Court the defendant by his Counsel then and there excepted.

The witness then answered that he knew Olesen paid to him for his father unpaid note \$15. at one time \$8 for two at another time his father the plaintiff drew some breaking for Olesen to the amount of \$60 which was to be endorsed upon

the note My father also paid his twenty
dollar gold piece I think in 1851 it was
the first \$20. gold piece I ever saw the note
was not present but Olsen agreed when ^{the money} ~~he~~ to have it endorsed by
Father Mr Olsen could not write
My brother Examination He testified
that he did not know only the boots &
the \$15, being endorsed had never talked
with Daniel Carpenter about the note
or heard him say anything about
it he was not present at any of the
times of payment

Ambrose Ambrose recalled
testified that he was not present with
his Father the defendant Olsen at
Daniel Carpenter when the small
note was given up and the endorse-
ments of \$2.98 made upon the \$48
note knows nothing of such an
endorsement never knew what became
of the small or Olsen notes that he
was present at the talk spoken of by
Daniel Carpenter between Piff & Piff
and Carpenter and knows that at
that time Piff did insist that the store
may breaking should ^{be audited} ~~audited~~ on the \$48
note that he did most of the talking for the
over

* It was proved and sworn by father
Daniel Carpenter that money for the lumber
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Plff and interpreted for him.

The above was all the evidence
on said cause.

The Plaintiff then asked the
following instructions!

If the jury believe from the
evidence that the defendant Carpenter
purchased the staves in question of the
Plaintiff at the price of \$28. And at the
same time agreed to account to Daniel
Carpenter for that amount and have
it indorsed ^{upon} the \$48. note and that he
received the staves of the Plff upon
such agreement and did not account
to Daniel Carpenter did not indorse the
note upon the \$48 note in question then
the plaintiff is entitled to recover the value
of the staves in this action unless they
believe that the Plff has been otherwise
paid for them.

That the Plff is entitled to recover whatever the
jury believe he has paid the defendant to be
indebted to him either for the staves breaking
May or any other indebtedness from the
defendant to the plaintiff unless they believe
the plff has been paid for the same or
otherwise satisfied therefor.

Which instructions was given by the Court
to the giving of each and every ^{of the} instructions
by the Court the defendant by his counsel
then and there excepted

The defendant then asked the Court
to give the following Instructions to the

Of the jury believe from the
1 Evidence that at the time of the sale of the
Sters in question the defendant was acting
in the capacity of the agent of Donnell & Son
and that such agency was known
to the plaintiff and that the defen-
dant at that time of the transaction
with the plaintiff about the Sters
acted within the scope of his authority
then the plaintiff can have no action
or right of action against the
Defendant on the account of
said Sters.

2 Of the jury believe from the evidence
that at the time of the sale of the Sters
by the plaintiff it was agreed by the
plaintiff and defendant that the \$28
the price of the Sters was to be
endorsed upon the note of the
over

plaintiff then held by the defendant
owned by Daniel Carpenter and that afterwards
the Plaintiff and defendant agreed
to apply the price of said staves upon
the Clemon note as far as said note
would go and that note given up and
the balance of the price of the staves
was to be rendered upon the \$48 note
and in pursuance of such agreement
the Clemon note was given up to the
Plaintiff and the balance rendered
upon the \$48 note then such transaction
would be a payment to the plaintiff
for the staves

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Of the jury believe from the evidence
that in the Spring of A.D. 1855 the
plaintiff and defendant talked over
their accounts and came to a final
settlement of their account and that
upon such settlement there was
due from the defendant to the plaintiff
the sum of fifteen ³/₄ dollars (\$15.63)
and that the defendant offered to
pay him the plaintiff the sum at that
time and the plaintiff directed ~~him~~
the defendant to pay the same to

Daniel Carpenter for him (the plaintiff)
and the defendant did pay the same
to Daniel Carpenter then they must find
for the defendant

By agreement of the Counsel it was then
ordered that after the jury should agree
they might seal the same deliver it
to the ~~foreman~~ ~~clerk~~ ~~clerk~~ and must
the Court at 9 o'clock Wednesday morning
and afterwards to wit on the 4th day
of March A.D. 1857 being one of the
days of the above term the jury
came into Court and rendered the
following verdict To Wit. That the
jury find for the Plaintiff and award
the damages at Fifty two dollars and
two cents. The defendant then entered
his motion for a new trial and assigned
the following reasons To Wit

State of Illinois of McHenry County Court
McHenry County March Term A.D. 1857

John Ambrose
vs
Chester S. Carpenter } And now comes
the defendant in
over

the above cause and by Ann & Rogers
his attys And moves the Court for a
new trial herein And for cause
appears the following reasons to wit

- 1st The Court rejected proper Evidence
- 2nd The Court admitted improper testimony
- 3^d The Court gave improper Instructions
- 4th The verdict of the Jury is against the law
- 5th The verdict is against the instructions
of the Court
- 6th The verdict is against the Evidence
- 7th The verdict is against the weight of Evidence
- 8th The verdict is too high & is Excessive

Windsor March 4th 1857

Ann & Rogers Depts
Attys

The Court being fully advised in said
motion overruled the same and rendered
Judgement upon the verdict for the sum
of Fifty two dollars & two cents damages & costs
of suit. To the overruling of the defendants
motion for a new trial as well as the
rendering judgement upon the
verdict of by the Court the Defendant
by his counsel then and there excepted
And now prays that this ^{his} bill of
exceptions may be signed and
Sealed by the Court and made part
of the Record in this cause
which is done

J M Strickland Esq
County Clerk of McHenry County Court

The above is agreed to
by Counsel

Church & Willard

Atty's for Plff
Lester & Rogers attys for Deft

And thereafter to wit on the 4th day of
March A.D. 1857 the following among
other proceedings were had

John Ambrose } Appeal
as

Chester Carpenter }

And now come
the parties by their
respective attorneys and the jury formerly
empaneled herein also come, ^{and} for verdict
say. That the jury find for the Plaintiff
and assess his damages at the sum
of Fifty two dollars and two cents.

This therefore Ordered and Considered
by the Court that the Plaintiff have
and recover against the Defendant
his said damages in the sum of Fifty
two dollars and two cents which he
has sustained as also his costs and
charges herein this suit expended and
that he have execution therefor as also
And thereupon the said Defendant
moves the Court for a new trial which
motion is overruled by the Court

And thereupon the defendant prays
an appeal herein which is granted
by the Court on condition that that he
enter into an appeal bond in the penal
sum of two hundred dollars with Amos
B. Brown as security within thirty days
from this date and that the bond of

Examiners be prepared and called during
the next term of the Circuit Court

Attest
Oliver W. Sams
County Judge of McHenry
County Court
Clerk

Know all men by these Presents
that the Chester Carpenter and Mrs
B. S. born of the County of McHenry
and State of Illinois are held and
firmly bound unto John Ambrose
in the penal sum of One hundred
dollars lawful money of the United
States for the payment of which well
and truly to be made we bind our-
selves our heirs executors and
administrators jointly severally and
firmly by these Presents
Witness our hands and Seals this
31st day of March A.D. 1857.

The condition of this
above obligation is such that
Whereas the said John Ambrose

over

34

did on the third day of March
 A.D. 1857 in the County Court of said
 McHenry County receive a Judgment
 against the above bounden Chester
 Carpenter for the sum of Fifty two
 dollars and two cents from which
 said Judgment the said Chester
 Carpenter has taken an appeal
 to the Supreme Court of the State of
 Illinois. Now if the said Chester
 Carpenter shall prosecute his appeal
 with effect and shall pay the said
 Judgment costs interest and damages
 in case the said Judgment shall
 be affirmed then the above Obligation
 to be void otherwise to remain in
 full force and effect

Chester Carpenter Seal
 by his attorney at law
 Amos B. Com Seal

Filed March 31st 1857

Clam M. Sams
 Clerk

State of Illinois
McHenry County I the undersigned Clerk
of the County Court in and
for said County hereby certify that the
 foregoing is a true copy of the proceedings
in the suit of John Ambrosen against
Chester Carpenter as appears upon examination
of the Records and of papers on file in my
Office

Witness William H Stewart Clerk
of the said Court and the seal
thereof at my Office in Woodstock
in said County this 20 day of April
A.D. 1858. W. H. Stewart Clerk

61 fol. 1, 10
Cert. made 1858
\$6.45

Assignment of Errors
(over)

And now comes the Appellant
by Glover & Book his Atty & says
that in the record of proceedings
aforesaid & in the rendering of judg-
ment aforesaid in manner &
form aforesaid there is manifest
error in this to wit

- 1st The Court erred in admitting
improper evidence on the part
of the Plaintiff
- 2^d The Court erred in excluding
proper evidence for the Defendant.
- 3^d The Court erred in giving
the instructions for the Plaintiff &
in giving each of them
- 4th The Court erred in overruling
the motion for a new trial
- 5th The Court erred in rendering
judgment aforesaid in
manner & form aforesaid
Glover & Book
for Appellant

Arthur Auburn

64
Arthur Carpenter } Differ from Watson

and now comes the
same appeal to S. Schuch his atty
and for justice says there is in
the record and proceedings in said
case no such errors as an
in and I send argument of
errors supposed to be in
S. S. Schuch
att for appeal

255

Ambrose Ambrose

MS

Chuter Carpenter

Manuscript

Filed April 22, 1854

L. Leland
clerk

5 p 2

STATE OF ILLINOIS—SUPREME COURT.
THIRD GRAND DIVISION.

ABSTRACT OF RECORD.

CHESTER CARPENTER }
 ^{vs.} } *Appeal from McHenry.*
JOHN AMBROSON. }

This was an action of assumpsit before Justice of the Peace, brought by appellee against appellant. Judgment rendered in favor of plaintiff for fifty-two dollars and two cents and costs of suit, and suit taken to the county court of McHenry county by appeal, and the cause coming on to
¹³ be heard, the plaintiff called as a witness Ambrose Ambrosion, who testified that he was a son of plaintiff, that the spring after Daniel Carpenter went to California, plaintiff sold defendant a yoke of steers for \$28. Plaintiff said he would sell the steers cheap if defendant would endorse the price upon the \$48 note that Daniel Carpenter held against him which note was left with defendant for collection. Defendant agreed to this and took the steers. Plaintiff broke prairie for defendant to the amount of \$10,63. Defendant had hay of the plaintiff to the amount of \$6,00.

After Daniel returned from California the defendant wanted father to let him turn the price of the steers, the breaking and the hay upon what the plaintiff owed Daniel for lumber, and apply the balance upon the interest upon the \$48 note. To this plaintiff objected and said it must be
¹⁴ endorsed on the \$48 note.

Plaintiff here admitted that this note was held by defendant only as agent for collection for Daniel Carpenter.

Wm Kerr testified that :

He was an attorney at law, that some time in May or June, '55, Daniel Carpenter put into his hands the note then produced (the \$48 note) for collection, that suit was brought on the note in the name of Daniel Carpenter against the present plaintiff, and judgment rendered on said note by the Justice on the 14th of June, 1855.

The plaintiff then offered in evidence the note above referred to. Defendant objected and Court overruled, and defendant excepted, and the note read, of which the following is a copy :

15 \$48.

May the 11th, 1851.

For value received, I promise to pay Edwin O. Wilson or bearer, forty-eight dollars, on or before the 24th day of February, 1852, with interest at eight per cent.

his

JOHANNES X AMBROSON.

mark.

June 2nd, 1851.

I assign the within to Daniel Carpenter, and I guaranty that the within shall be paid at the time it is due.

EDWIN O. WILSON.

Received on the within note twelve dollars and ninety-three cents.
June 15th, 1852.

The defendant then called Daniel Carpenter, who testified as follows:

16 I am a brother of defendant. I started from McHenry county for California the last of December, 1851. Before I went I owned two notes against the plaintiff,—one for \$48, called the Wilson note, and another originally for \$55, given by the plaintiff to Oleson, a Norwegian called "Short Ole;" there were various endorsements on this note, and about \$29 due upon it.

QUES. What arrangement was made between the plaintiff and yourself at or before the time you started for California, about the payment of the note you had against him?

Objected to by plaintiff and objection sustained by the Court, and defendant excepted.

17 Witness further testified that at the time he went to California, he informed the plaintiff that he could pay the notes to Chester Carpenter, the defendant.

QUES. State all you said to the plaintiff at that time, and what his replies were to such statements.

Objected to by plaintiff, and sustained by the Court. Defendant excepted.

Witness further stated that he told the plaintiff that he should leave the notes with the defendant for collection: that he, Daniel, owned them, and that Chester, the defendant, was his agent for the collection. He returned from California in 1854. Defendant then gave up the \$48 note to me. There was \$12.93 endorsed on it then. There was no endorsement on it when I gave it to him. I have never seen the Oleson note since the defendant took it two years ago this month. Plaintiff and defendant were over at my house, trying to settle. Plaintiff said he had let defendant have \$6 worth of Hay,—had done breaking for him, which was finally agreed to amount to \$10.63. Told defendant to settle with plaintiff. Defendant replied that he hadn't any money. I told him that I would lend it to him, and did lend him a \$20 gold piece, out of which defendant offered plaintiff \$17.

The plaintiff told the defendant to pay it to me, as he, plaintiff was owing me. Defendant did pay it to me in presence of the plaintiff. The matter of the steers was then talked over. Defendant said he had taken the steers for \$28 and gave up the Oleson note and endorsed the balance of \$12 and some odd cents on the \$48 note. Plaintiff said that was so and was all right. Defendant has the \$17 loaned. He was my agent while I was gone to California.

Plaintiff did not refuse to take the \$17, but told defendant to pay it to me. It was not left with me as a tender. I have never told any one so.
²⁰ Did not tell William Kerr so. When I gave the note to Kerr for collection there was an endorsement of \$12 and some cents on it, in defendants hand writing.

Before I went to California I lent the plaintiff some lumber, and told him defendant would measure it out for him. Don't know how much he got. He has paid me for it. Plaintiff is a Norwegian, and does not talk very good English; I can understand most he says. He generally has
²¹ his son with him to interpret; his son was present at the time of the payment of the \$17; neither of them claimed that the price of the steers should have been applied on the \$48 note.

Mrs. Daniel Carpenter testified that she was the wife of Daniel Carpenter, the last witness. He left for California in 1851; made the defendant his agent, and left notes with him for collection, the \$48 note and the Oleson note. Defendant lived with me upon my husband's farm. Plaintiff's son paid me \$10 on the Oleson note shortly after my husband left. Defendant generally consulted me about my husband's
²² business. He told me defendant would let the steers go on the notes. I told him he had better take them. Soon after he brought home a yoke of steers for my husband. Plaintiff got some lumber of my husband. Defendant measured it out to him soon after my husband left. Soon after the steers were got, plaintiff and his son, Oleson and defendant were present at the house and talked over the sale of the steers. Defendant told plaintiff he would give him up the small note, (the Oleson note) and endorse the balance on the \$48 note, as payment for the steers. Plaintiff agreed, and defendant then did give up the Oleson note and endorse upon the \$48 note. They all talked the matter over, and I think,
²³ figured the interest. I hired plaintiff to dig a well for me while my husband was gone; think it cost about \$12. Plaintiff did not claim that the price of the steers should have been endorsed upon the \$48 note;—am quite sure Ambrose was present;—know that Oleson was.

The plaintiff then called Wm. Kerr, who testified that Daniel Carpenter when he gave him the \$48 note for collection, told him that defendant offered to pay plaintiff \$17, but plaintiff would not take it, and that defendant then left it with him (Daniel) subject to the plaintiff's order,
²⁴ and that he then held the money subject to such order. Upon cross examination witness stated that he was a practising attorney, and was attorney for plaintiff in the court below, and in this court was a witness below.

Charles Ambrosen called by plaintiff.

Was asked if he knew Oleson, and knew of any payments having been made to him on the \$55 note, before Daniel Carpenter went to California.

Question objected to by defendant. Court overruled objection, and defendant excepted.

Witness answered, I know that Oleson paid to him for my father \$15 at one time, and \$3 at another. Father did some breaking for Oleson, amounting to \$6. That was to be endorsed upon the note. Father also paid him a \$20 gold piece, the first one I ever saw. The note
²⁵ was not there, but Oleson agreed to have it endorsed on it.

Cross-examined. Said he only knew of the \$15 and the \$3 being endorsed. He was not present at the times of payment; never heard Daniel Carpenter say anything about the note.

Ambrose Ambrosen re-called.—Said he was not present with his father, Oleson and defendant at Daniel Carpenter's, when the Oleson note was given up and the endorsement made upon the other. Never knew what became of the small note. He was present at the conversation between plaintiff, defendant and Daniel Carpenter, and that plaintiff did insist that the steers, hay and breaking should be credited on the \$48 note; that he²⁶ did most of the talking for plaintiff, and interpreted for him, and was present and saw my father give Daniel the money for the lumber.

This was all the evidence.

PLAINTIFF'S INSTRUCTIONS.

1st. If the jury believe, from the evidence, that the defendant, Carpenter, purchased the steers in question of the plaintiff, at the price of \$28, and at the same time agreed to account to Daniel Carpenter for that amount, and have it endorsed upon the \$48 note, and that he received the steers from the plaintiff upon such agreement, and did not account to Daniel Carpenter, and did not endorse the amount upon the \$48 note in question, then the plaintiff is entitled to recover the value of the steers in this action, unless they believe that the plaintiff has been otherwise for them.

2d. That the plaintiff is entitled to recover whatever the jury believe he has paid the defendant, to be indebted to him either for the steers, breaking, hay, or any other indebtedness from the defendant to the plaintiffs, unless they believe the plaintiff has been otherwise paid for them, or otherwise satisfied therefor.

To the giving of each of which instructions defendants then and there excepted.

The jury found for the plaintiff, and assessed his damages at fifty-two dollars and two cents.

The defendant then entered a motion for a new trial, which was overruled by the court, and the defendant excepted.

The court then rendered judgment in favor of the plaintiff.

And now comes the said defendant, and says that in the record and proceedings aforesaid, and in the rendering of judgment aforesaid in manner and form aforesaid, there is manifest error in this, to wit:

1st. The court erred in admitting improper evidence on the part of the plaintiff.

2d. The court erred in excluding proper evidence for the defendant.

3d. The court erred in giving the instructions for the plaintiff, and in giving each of them.

4th. The court erred in overruling the motion for a new trial.

5th. The court erred in rendering judgment aforesaid in manner and form aforesaid.

GLOVER & COOK,
Att'ys for Appellant.

255 - 171

Carpenter
vs
Ambrose
Abstract

Filed May 22. 1888
L. Leland
Clk

CLOVER & COOK
Attys for Plaintiff

1. The court ruled in refusing judgment for plaintiff in return and
2. The court tried in overruling the motion for a new trial.
3. The court ruled in giving the instructions for the plaintiff and the
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Chester Carpenter }
 " }
 John Ambrosion }

Brief for appellant

This was an action of Assumpsit brought by Appellee vs Appellant to recover the price of a pair of steers \$28 - of some breaking \$10⁶³ & of some hay \$6 -

The evidence shows that one Daniel Carpenter left McKenry County for California in December '51 - leaving with his brother Chester Carpenter the appellant ^{two} certain notes against Ambrosion the Appellee, certain notes for collection, that Chester resided on the farm of Daniel with Daniels wife and had the management of the farm and of Daniels business generally - That in the spring of '52 - Ambrosion sold Chester Carpenter a pair of steers for \$28, the price of which ^{were} to be endorsed upon a \$48 - note ^{made by Ambrosion} This being one of the notes held by Dift as agent for his brother - That by a subsequent agreement between Plaintiff & Dift, Dift gave up to Ambrosion the other note of his brothers, in part payment for the steers & endorsed on the \$48

note the balance of the price, being
some \$12²³ -

There was also proof tending
to show that Dye offered Platt \$17 -
as pay for the key breaking & that
Platt Ambrosen ordered Dye to pay the
\$17 - to his brother Daniel as he Ambrosen
was owing Daniel, & that Dye did so
pay the \$17 - to Daniel in presence of
Ambrosen -

The first error assigned is
that the Court below admitted im-
proper evidence in favor of the
Plaintiff below -

Ambrose Ambrosen was asked
by plaintiff if he, witness, knew of
any payments having been made
to Olson (the payer of ~~one~~ the note
given up by Chester to Ambrosen, said
note having been endorsed by Olson
to Daniel Carpenter) by plaintiff on
the \$55 - note before Daniel went to
California -

The question was clearly objec-
tionable on account of its leading

form sought therefore to have been
excluded -

And witness should not
have been allowed to answer be-
cause he did not personally know
of the money being paid or ever
heard Daniel Carpenter the owner
of the note admit any payments

Because if such payments had
been made by Ambrosen to Olson
after he, Olson, had assigned the
note to Daniel Carpenter such pay-
ments were not shown to have been
ultimately received by Daniel. Then
such payment to Olson would not
go toward the liquidation of the
note held by Daniel Carpenter -

The second error assigned is
that the Court erred in excluding
proper evidence for the Dft below -

Daniel Carpenter was asked
"What arrangement was made be-
tween Ambrosen & himself at or be-
fore the time he started for Cali-
fornia about the payments of the

notes witness held against him
Ambrosion -

This was proper -
It was for the purpose of showing
that Ambrosion had agreed with
Daniel to pay said notes to Ches-
ter Barfenter & that he knew that
Chester was empowered to collect
them, & either to receive money or
property on them -

This arrangement might al-
so have shown that when Ambro-
son sold the Steers to Chester upon
the condition that their price should
be endorsed on one of the notes,
he Ambrosion, knew that he was
dealing with Chester as the agent
of Daniel & that the Steers were
purchased by Chester for Daniel

The testimony of Mrs Daniel Barfen-
ter tended to show that this was
the fact & Daniel should have
been allowed to answer this
question for the purpose of cor-
roborating it -

If Chester was his brother's agent and as such purchased the steers for him Ambrosion knew it, (and this is the very fact which the answer to this question would have shown). Then Chester was not at all liable to Ambrosion for the price of the steers -

An Agent is not personally liable for the debt of his principal unless he refuses or neglects to disclose the fact that he was acting as such agent

2. Sil 371 -

4 - Ibid. 85 -

This question, if the answer had been allowed, would have shown that Chester was only acting as agent & that Ambrosion knew it at the time. The answer should for these reasons have been allowed -

Another question asked of witness was "To state all that he paid to Ambrosion at the time before the"

ken of also Ambrosious replies -

This question was not allowed to be answered - This we insist was error -

The question was put for the purpose of showing ^{the same} state of facts, that might have been shown if the first question had been allowed to be answered & should have been allowed for the reasons above stated

The Third Error assigned is that, the Court erred in giving each of the instructions for the Plaintiff

The First Instruction is not law because -

1st - Under it, if Chester Carpenter purchased the steers of the Plaintiff, although the purchase may have been for his brother & Plff. knew the fact, yet Defendant would be liable -

By this instruction might have misled the jury, by any fair construe
of its language, it ought not to have been given

2^d although it may have paid
\$25.- or any other sum less than the
full amount, upon the price
of the Steers, yet if he did not
endorse the whole price (\$25-) upon
the (\$45-) note then under the
Instructions, plaintiff would
be entitled to recover the whole
amount +.

3^d although subsequently the Plaintiff
& defendant, may have agreed the
one to receive the other to give, some
other compensation or credit for the
Steers, then the one first agreed on
Yet if the credit first agreed on
was not given, under this instruction
plaintiff would be entitled to
recover the whole price of the Steers
The 4th Error assigned is that the
Court erred in not granting a
new trial -

This we think is evident
from the evidence in the case, the
proof shows that Chester was
agent for the collection of these
notes, and that upon an agreement
subsequent to the purchase the

plaintiff, gave up to defendant the Olson note in part-consideration for the price of the steers & credited the balance on the (\$48-) note. The steers were then fully paid for, whether they were bought by Chester for himself or Daniel

2^d The proof, we think shows that in the purchase of the steers Chester was acting as agent for Daniel & that Dept knew it.

If this was so, Dept was not liable for the price of the steers at all & when the jury found for the plaintiff in a sum evidently including the price of the steers, the Court should have granted a new trial.

The 5th Error assigned is that the Court erred in rendering judgment.

This is certainly so if any of points insisted upon above are well taken.

Wesley Carpenter
255-171 v - ~~171~~
John Ambrosen

Brief for
Appellant

Filed June 1st 1888
S. Leland
C. R.

Glover Books