

No. 14232

Supreme Court of Illinois

Haines

vs.

King

SUPREME COURT.

JANUARY TERM 1860.

Joseph King, surviving partner, &c.,
vs.
A. & J. Haines.

} Plaintiff's Brief.

The first error assigned is the overruling the objection of plaintiff in error to the introduction of the notes in evidence, and permitting the same to be read to the jury without further proof. This we think is erroneous under the pleadings. The partnership and joint liability were put in issue by plea verified by affidavit, which devolved upon the defendant the necessity of proving the partnership and joint liability, that issue having been clearly and distinctly made by the plea and replication thereto.

S.T. & B. Statutes Ills., page 256, sec. 8; 3rd Greenleaf's Evidence, sec. 51, 51 & 52; Hinton vs. Husbands 3rd Scammon, 187-8; Warren vs. Chambers, 12th Ills. 124; Stillson, et. al. vs. Hill, 18 Ills. 262; Shufelt vs. Seymour, 21 Ills. 504.

The second error assigned in giving defendants instructions, and the 3rd, in refusing plaintiff's instructions rest upon the same principle as the first and a determination of the former will determine the latter, as also the fourth and fifth errors assigned.

TUPPER & NELSON,
Att'ys. for Pl'ff. in Error.

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Brief

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Sup Court of Ill
Jan'y Term AD 1860
Joseph King Surviving Partner
vs
A & J. Marnes
Argument for Plff in Error

1st Error. The issue in this case was that King was not partner of Whitney nor jointly liable with him. This was the plea directly traversed by the replication and upon which the parties went to trial.

The notes offered and read in evidence were not pertinent to this issue, and were therefore improperly admitted after objection. They would be evidence of the liability of the firm in whose name they are made if there was such a firm, but they do not even tend to prove that fact as against an individual denying it, by plea verified by affidavit.

This plea fully states sufficient ground of defence. If King was

was not a partner of Whitney, then no one had authority to use his name as such. And if he was not jointly liable, then no one had authority otherwise ~~as by~~ than as partner to sign his name to this note.

1st Ground of Ev. § 51. 51 a & 52.

2nd Error. The instructions for the jury are too abstractly but like the evidence offered are irrelevant.

They assume the existence of evidence of partnership, when none such is shown. They take for granted the point in issue. If Whitney and King were partners, and that fact was shown by proof under the pleadings in this cause, then as evidence of the liability of that partnership, the notes would be proper evidence; and in such state of case in proof, the instructions would be applicable, and unexceptionable.

3rd Error.

The instruction asked by plff in error should have been given in the Court below. It is the law applicable to the question raised by the pleading.

Plffs in Error rely upon Scates, Heat & Blackwell's Statutes pages 253-4 Sec 14. And it is insisted that in this case there should have been an express denial of the execution of the notes. In answer we say, that the legislature clearly intended by this statute to change the rule of evidence as at common law, and to lessen the quantum of proof required in the first instance of plffs suing on promissory notes or other written instruments, and make the instrument itself evidence, prima facie of its own execution unless denied &c.

But this was clearly intended for Application to Cases of the Signature of individual names, or at most when there was a such a firm as that whose name is signed. This is shown not only upon principle but authority. If A. conclude that it will be to his advantage to use the name of B. as his partner, and do so without B's consent, and make a contract, either written or Verbal, accordingly, certainly it cannot be insisted that B. would in such case be liable. This act never was intended to change these fundamental and primary principles governing the rights and liabilities of parties - and to give such a construction is to do violence to Common Sense.

Again; at Sec 8. page 23 of above cited Statute, the legislature have provided for this Class of Cases in another Statute. Where it is declared that the partnership may be deemed

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(5)
by plea in abatement or (in
the disjunctive) by denying the exe-
cution of the notes. Now this plea is
in form ~~in~~ perhaps, in abatement
but in substance is in bar.

Warren vs Chambers 12 Ill. 124

This plea is equivalent to a plea
in abatement denying partnership
and to one of non assumpsit which
may both ^{be} pleaded & put in issue
not only the partnership but the
whole cause of action & may be
tried as one issue.

Stillsow vs Still 18 Ill. 262.

Again. It is insisted that a special
plea, in terms denying the execution
of these notes was necessary in this
case. ~~If this~~ This is not the law
but if it were. This plea is equiv-
-alent to such a plea. Had such
a plea been filed, then clearly the
burden of proof would have
been on plaintiffs below. They would
have been required to prove the
allegations of their declaration —
just what this plea denies. and

what they reaffirm in their repli-
 cation. In such a state of plead-
 ing the question would be on the
 fact of the execution of the note
 by King. In order to establish
 this fact, they would have to prove
 either first, that Whitney and King
 were partners, and the signature of
 name was in the handwriting
 of one of the members of the firm.
 Or secondly, that there being no
 such firm, King in person
 executed the note upon a contract
 made by himself. Or thirdly
 that he authorized some one
 to use his name in that way.
 in this instance. Proof of either
 of these propositions would be proof
 that he executed the notes and his
 liability as maker would accrue.

This plea denying the partnership
 and the joint liability both; raises
 the very same questions. and either
 of the same methods of proof will
 make out the case for plffs. below
 and they must have made one

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Or the other in order to succeed.
If they prove that Whitney and King
are partners, then the note under
the 1st part of this plea would be King's
note. If they prove that the act
of making was King's act, either
in person or by an authorized
agent then the note is his note
whether there was a partnership
or not. There is nothing in the
form of this plea that shifts the
~~onus~~ onus probandi as insisted
by defts in error, on the contrary
it remains where it was at com-
-mon law, on the plffs.

See Warren vs Chambers 12 H. 124
In fact the form of Pleading adop-
-ted is not only legal but logical.
The mind inquiring for truth natu-
-rally goes back to primary facts
and primary principles. If King was
not a partner of Whitney, then no
one had authority to make him lia-
-ble as such - and his liability on notes
executed in a firm name depends
not upon the facts that such notes

exist: but upon the fact that the individual sought to be made liable was a member of such firm.

Lastly it is urged that the affidavit to this plea is not sufficient. That it should in absolute and positive terms deny the partnership & joint liability. This it does in effect and substantially. The plea & affidavit must be taken together. True, in the form of the Certificate of the Clerk King is said to swear according "to the best of his knowledge & belief", although this is not formally absolute & positive - it is substantially: For the Court will observe that he swears in a matter in which he is bound to have personal and positive knowledge, and he could not ~~deny~~ avoid responsibility on this affidavit on account of the form of it. If it is false in fact he could be successfully prosecuted for perjury not

Joseph King, Surviving Partner,
of the Firm of Whitney & King
vs. Z. Erb to Macon,
A & J Haines.

The Court will see from
an Examination of the Record, Abstract
and Brief, that this was an Action
of Assumpsit, brought by the
Defendants in Error, against the Plff.
in Error, on Two Promissory Notes,
The Defendants in Error, Pleaded the
Making of the Notes by the Firm
Name of Whitney & King the Death of
Whitney, and, the Court is against
King as Surviving Partner,
There is a Talbot Count, & all
the Common Counts, in the Declaration
The Plea of King is not the
ground issue (as the Atty for
King claims) verified by affidavit,
The Plea is a Plea in Bar, and,
avows that the Plaintiffs ought
not to have and Maintain &c.
because he says, avow. he was not
a Partner, nor jointly liable with
Whitney &c. to which there is

an affidavit attached, avowing that
the Plea is true to the best of
his knowledge & belief &c. The Plea
concludes with a verification
and not to the Country,

Replication in usual form,
on The Trial the Atty of
King claimed that under these
Issues Haines had to Prove the
Partnership of Whitney & King,
and the joint liability of
King. We insist that under
the 7th & 8th Sections of Ch. 40, R. A. 1845,
in Relation to Partnerships,
and the Fourteenth Section of
the Practice Act Page in
the first instance do not require
Proof of the Partnership &c.
and that to require us to make
such Proof King must deny
the Execution of the Notes on
oath. This Court most certainly
should not require us to Prove
a fact in Issue, where by the
very language of King's Plea he
has, himself, said he will verify

his Plea, King has not only
not put the Execution of the
Notes in Issue, but he has as
we insist, in so many words,
taken it upon himself to
make the Proof of his Plea,
We ask now that the Court
will hold Mr King to do what
he has voluntarily agreed, and,
undertaken to do, by his own
oath, that the Court will
let him do as he has sworn
he would, "Verify" his Plea,

We take the ground, that the
affidavit to the Plea, if the
Plea were sufficient, does not
do what the Statute, above
mentioned requires. This being
a Plea not favored by Courts
or by the Law, must be
Trespass, in all cases, except when
he is sure as, Executor, or the
like, then he may swear to
the best of his Knowledge.
This is a proviso in the 14th
Section of the Practice Act,

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the best of his Knowledge.
This is a proviso in the 14.th
Section of the Practice Act,

and by all Rules of Construction
this is equivalent to saying that
in all other cases, the Party
making such Plea, must,
State Positively, that the Plea is
True,

Then the Court will see that
if either of these Positions is
correct, that is 1st that a
Plea in Kings own Person, to put
us upon the Proof of the
Original Liability, or to the
Proof of the Execution of the
Notes, should, deny the Execution
of the Notes,

or 2nd that King in making
such Plea should State Positively
in his affidavit, that the Plea is
True, Then the Court dies right
in admitting the Notes in
Evidence without any Proof,
of the Partnership or, making
the Notes,

The instructions of ^{Expert to the} the Jury are
in accordance with our Laws,
on the Subject of Evidence,

We insist that the Common Law authorities in relation to the Admissin of Evidence, are not in Spirit, that our Legislature have changed, the Rule of the Common Law, as to Evidence of Written Evidence when the writing is the foundation of the Suit;

The Notes were Permitted to be Read, to the jury, there was no other or further Proof, offered by either Party, and we claim that the Verdict of the jury is right, that if King had Proof to make his Plea good, and did not avail himself of that Proof, it is his own folly, and not to be to our detriment.

We want to maintain this Verdict,

Prather & Malone,

for Defts in Error,

SUPREME COURT OF ILLINOIS.

JANUARY TERM, A. D. 1859. }

JOSEPH KING, Surviving Partner, }
 vs. } ERROR TO MACON.
 A. & J. HAINES.

This is an action of assumpsit brought by defendants in error vs. plaintiff in error, as surviving partner of the firm of Whitney & King, to the November term, 1859, of the Macon Circuit Court.

- R. 4. The Declaration contains four counts :
- 1st. *Quant Val.*, on promise of Whitney & King.
 - 2d. Special count on two notes of Whitney & King, on promise of King alone.
 - 3d. Common counts on King's promise.
 - 4th. Account stated on King's promise.
- R. 11: Plaintiff in error pleaded that he was not a partner of Whitney, nor was he jointly liable with Whitney in the several undertakings—verified by affidavits.
- R 12. Defendants in error replied traversing plea and the parties went to trial.
- R 9.10 Defendants in error offered in evidence two notes, as follows :
- PEKIN, ILL., July 1, 1858.
- R 9 \$140. Eight months after date, for value received, we promise to pay to A. & J. Haines or bearer, One Hundred and Forty Dollars $\frac{9}{100}$, with interest from the 1st day of July, 1858, at the rate of ten per cent. per annum, payable at Peddecord & Burrows' bank, Decatur.
- [Signed] WHITNEY AND KING.
- R 10 \$140. PEKIN, ILL., July 1, 1858.
- Three months after date we promise to pay A. & J. Haines or bearer, One Hundred and Forty $\frac{9}{100}$ Dollars, with interest from the first day of July, at the rate of 10 per cent. per annum after maturity until paid, payable at Peddecord & Burrows' bank, Decatur.
- [Signed] WHITNEY AND KING.
- R 16 Plaintiff in error objected to the reading of which in evidence. Objection overruled and exception.
- R 14 Verdict for defendants in error for \$317.64. Motion for new trial overruled, and judgment on verdict.
- 15 Instructions for defendants in error :
- That a note executed in the name of a firm, by one member thereof, is evidence against all the members, when the declaration is against them, or the survivor of them, as a firm.
- That no proof of authority of one member of a firm to sign the firm name is necessary, unless the execution of the note is denied on oath.
- R. 17 To the giving of which instructions plaintiff in error excepted.
- R. 17 } Plaintiff in error then asked the court to give the following instruction :
- 18 } That in order for the plaintiff to recover in this cause, the proof must show that the defendant, King, and John Whitney, in his lifetime, were partners, and that the notes offered in evidence were executed by them as partners, or one of them having the right to use the partnership name in the execution thereof.
- Which the court refused and plaintiff excepted.
- R 18 Plaintiff in error excepted to the judgment of the court on the verdict.

ERRORS ASSIGNED :

- R 17 : 1st. In over-ruling the objection made and permitting the notes to be read in evidence.
- 2nd. In giving the instructions for defendants in error.
- 3d. In refusing the instruction asked by Plaintiff in error.
- 4th. In over-ruling the motion for a new trial.
- 5th. In rendering judgment upon the verdict.

AUTHORITIES CITED.—S. T. & B's Statutes Ill., page 256, § 8 ; 3d Greenleaf's Evidence, § 51. 51 a and § 52 ; *Hinton vs. Husbands*, 3d Scammon, 187-8; Warren vs. Chambers, 12th Ill., 124; *Stillson et al, vs. Hill*, 18th Ill., 262 ; *Shuffelt, vs. Seymour*, 21, Ill., 524.

TUPPER & NELSON, Att'ys for Pl'ff in Error.

Sup Court Ill
Jan'y Term 1860

Jos King Sen part.
vs
A & J Haines

Filed Jan 19. 60
Wm A. Sumner
cl

SUPREME COURT OF ILLINOIS

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J A N U A R Y T E R M 1 8 6 0 .

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King

or
Hames

Brief

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Wm K. Barry
etc

LIBRARY OF THE
SUPREME COURT

Supreme Court, --- Second Grand Division.

JANUARY TERM, 1860.

JAS. KING, ^{Senior} Plff. in error, vs. A. & J. HAINES, Deft's in error.

This was an action on two Promissory Notes, given by Whitney & Hing to A. J. Haines, Partners, &c. The Declaration contains,

1. The Val. B. Count.
2. Count on the Notes against King as survivor of the firm of Whitney and King.
3. The Common Counts, &c.

The Plea says the Deft.'s ought not to have, &c., because he says at the time, &c., he was not the partner of Whitney, &c., nor was he jointly liable, &c., and this he is ready to verify, &c.

To which plea there is an affidavit that Jas. King, &c., made oath, &c., that the matters and things, &c., are true, to the best of his knowledge and belief, &c.

Replication to plea, on the part of Deft.'s in error, it is insisted that they were not bound to prove the partnership or the execution of the notes, that by the pleadings King had to prove his plea. That the 7th and 8th Sec. of Ch. 40 R. S. 1845, and the 14th Sec. of the Practice Act. The said King should swear positively, not to the best of his knowledge. See the whole of Sec. 14, R. S. 1845. "But no person shall be permitted to deny on trial, the execution of any instrument in writing whether sealed or not, upon which any action may have been brought, unless the person so denying the same shall, if Defendant, verify his plea by affidavit." King should have denied the execution of the notes, to require proof by the Plff.'s below, that the notes, &c., were made. The burden of proof is on the Defendant below.

This Court say in a case in 20 Ill. 396, "If a person suffers his name to be used in business, or holds himself out as a copartner, he will be so regarded.

PRATHER & MALONE,
For Deft.'s in Error.

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Hames

ad

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Supreme Court, --- Second Grand Division.

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PRATHER & MALONE,
For Deft.'s in Error.

Haines

ad,

King

Brief

Files for 20/60

Wm. H. H. H. H.
cl

State of Illinois }
Wacon county } p

To all whom
These Presents shall come
Know ye; That we having
caused to be inspected the
records of the Circuit Court
of said Wacon County in
the State of Illinois; do find
the following proceedings in
the cause therein entitled
to this;

On the 30th day of September 1858
a Process was filed in a cause therein
entitled in words & figures following
to wit.

State of Illinois = of the honorable Court
Wacon County = of Wacon County Cir Court
1857

Ancel Haines and Jonathan Haines

Partners in business by firm name of

A and J. Haines

vs = et al = action of assumpsit
= Damages \$400-00

Joseph King surviving partner of the
firm of Whitney and King

The Clerk of said Court
will please issue process of summons in the
above entitled cause to Sheriff of
said county to returnable as above & oblige

Prother & Walcott

Attys

Which said process is entered as follows
Filed Sept. 30 1857 at 12 o'clock by Harry Staten Dep

And upon the filing of said process
a summons was issued in words &
figures following to wit:

State of Illinois } of the County of Macon
 Macon County } County Circuit Court A D 1859
 Ansel Haines & Jonathan Haines
 partners in business by the firm name
 of A & J Haines plffs. in this suit
 by Prather & Malone their attys complain
 of Joseph King surviving partner of the
 firm of Whitney & King defendants in
 this suit of a Plea of assumption
 For that whereas said Defendant here-
 before in the life time of one John
 Whitney since deceased & whom the
 said Defendant hath survived To wit;
 on the 15 day of July A D 1858 at Decatur
 at the County of Macon in the State of
 Illinois were indebted to said Plffs in
 the sum of \$400. for goods, wares & mer-
 chandise ^{by said Plffs} before that time sold & delivered
 to said John Whitney at their special
 instance & request & being so indebted
 they the said Defendant John Whitney
 in consideration thereof afterwards in
 the life time of said John Whitney
 to wit; on the day & year aforesaid
 at & aforesaid undertook & then
 others faithfully promised the said
 Plaintiffs to pay them so much money
 as the said goods wares & merchandise
 at the time of the sale & delivery

thereof were reasonably worth when
 the said Defendant & said Whitney should
 be thereunto afterwards requested. & the
 Plffs aver that the said goods wares
 & merchandise at the time of said sale
 & delivery thereof were reasonably
 worth the sum of \$100, whereof
 afterwards to wit; on & at & aforesaid
 Defendant & Whitney & then had notice

And whereas also the said
 Deft & one John Whitney whom the
 deft hath carried & carried to wit
 on the day & year aforesaid & in the
 life time of said John Whitney ^{being} made
 their promissory note in writing bearing
 date a certain day & year this said men-
 tioned to wit the 15th day of July 1858
 at the county & State aforesaid & thereby
 then & there promised to pay three
 months next after the date thereof
 to the Plffs. or bearer by the name & ini-
 tials of A & S Haines the sum of
 one hundred & fifty dollars with
 interest from the 15th day of July
 1858 at the rate of 10 percent per
 annum after maturity until paid
 payable at Reddick & Burrows
 bank Secutors for value rec & signed
 the said note by the firm name of

Whitney & King. & then & there delivered the same To Plaintiffs.

And whereas also the said Defendant & said John Whitney whom he hath survived since deceased & in the lifetime of said Whitney to wit on the 15th day of July 1855 at &c aforesaid made their certain other promissory note in writing & thereby then & there promised To pay eight months next after the date thereof to the Plffs or bearer by the initials & name of A. J. Haines the further sum of one hundred & thirty Dollars with interest at the rate of 10 per cent per annum from the 15th day of July 1855 payable at Redden & Burrows bank & central for value rec^d. which period has elapsed & then & there signed the last mentioned note by the firm name of Whitney & King & then & there delivered the same To Plffs. By means whereof & by force of the Statute in such case made & provided said Defent & said Whitney since deceased & in the lifetime of said Whitney; said Defent & said Whitney then & there became liable To pay To the Plffs the said sum of money in the said

Two promissory notes mentioned according to the tenor & effect thereof & being so listed by the said Defendants afterwards to wit; on the day & year aforesaid at &c aforesaid in consideration thereof undertook & then & there faithfully promised the said Plffs to pay them the said sums of money in the two promissory notes specified according to the tenor & effect thereof and also in the further sum of \$400 for money by the said Plffs before that time lent & advanced to & paid out & expended, for the said Defendant & one John Whitney since deceased & in the life time of said Whitney at their special instance & request & also in the further sum of \$400 for money by the said Defendant before that time had & received to & for the use of said Plffs & being so indebted to the said Dfnt in consideration thereof afterwards to wit on the 20th day of September A D 1857 at the County & State aforesaid undertook & then & there faithfully promised said Plffs to pay them said last mentioned several sums of money in this

Account mentioned when he the said Defendant should be thereunto afterwards requested.

And whereas also the said Defnt afterwards to wit; on the 20 day of September A D 1859 at the County & State aforesaid accounted with said Plaintiff of & concerning divers other sums of money from the said Defendant & one John Whitney now & before the commencement of this suit deceased to the said Plffs before that time due & owing & then in arrear & unpaid & upon such accounting said Defnt ad surviving partner of the firm of Whitney & King was then & there found to be indebted & in arrear to said Plaintiffs in the further sum of \$400 & being so found in arrear & indebted the said Defnt in consideration thereof then & there undertook & faithfully promised said Plffs to pay them the said last mentioned sum of money when he the said Defendant should be thereunto afterwards requested.

Yet the said Defendant & John Whitney in his life time

& I & J King since Whitney's death
 to pay them the sum back
 them to wholly neglected & refused
 & ^{still} doth refuse to the damage
 of the said Plffs of Four Hundred
 Dollars & therefor they bring
 suit &c

Prather & Walcott
 Plffs attys.

Joseph King surviving partner of the firm
 of Whitney & King D^r

To A. J. Haines

To 2 promisory notes	\$ 400.00
" Goodwill and merchandise &c	\$ 400.00
" Money lent &c	400.00
" " had & rec ^d &c	400.00
" " due an amount	

Given Ill July 1 1858

\$1400.00

Eight months after date
 for value rec^d; he promised to pay to
 A. J. Haines or bearer, one thousand
 & thirty ⁰⁰/₁₀₀ Dollars with interest from
 the 1st day of July 1858 at the rate of
 10 per cent per annum

Payable at Peedecord & Burrows
 Bank Decatur

Whitney & King

Due March 1 1859

P.O. address Deatur W.

W
W
W

\$140.00

Perkin W July 1 1858

Three months after date
for value rec'd we procured copy
A of Harnes or Bears

One Hundred & Forty Dollars
with interest from the 1st day of July
1858 at the rate of 10 percent per
annum after maturity until paid

Payable at Sedgewood & Burrows bank Deatur

Due Oct 1 1858

Whitney & King

P.O. address Deatur W.

W
W

And said Declaration is endorsed as follows
to wit: "Filed Oct 28th 1859

J. A. Oden Clerk"

And on the 15th day of Nov. being at the
Nov Term 1859 of said Court the following
Plaw was filed to wit:

Joseph King as Surring Partner
 ats Term AD 1859 of Macon
 And J. Haines. Circuit Court

And the Defendant Joseph
 King in his own proper person
 comes & defends the wrong & injury
 wherof aforesaid says that the
 said Plff ought not to have &
 maintain this aforesaid action
 thereof against him as in their
 said declaration they have thereof
 complained against him, because
 he says that at the time of the
 making of the said several aforesaid
 promises & undertakings he was
 not the partner aforesaid John Whitney
 in name & form as is therein alleged
 nor was he jointly liable with him
 said Whitney in the said several
 undertakings & promises in manner
 aforesaid as is therein alleged &c and
 that he is ready to verify &c
 Joseph King

State of Illinois }
 Macon County } Personally appeared
 before me the undersigned Joseph
 King who subscribed the foregoing
 plea & made oath in due form

of Law That he well understood the same & that
 the same are true to the best of his know-
 ledge & belief & subscribed the same
 Joseph King

Sworn to & subscribed

before me 15th Nov 1859

J. J. A. Odor clk

By Harry Watson Dep

Endorse as follows to wit

"Filed Nov 15th 1859

J. J. A. Odor clk"

Came on the said Day of the said Term
 of said Court that a replication was
 filed in words & figures following to wit

A. J. Haines

vs Macomb Grant Ct. Nov Term 1859

Joseph King &c

Come now the Plaintiff &c
 for replication to said Plea by
 said Defendant by him above
 pleaded says that for any
 thing in the said Plea contained
 they ought not to be barred from
 having & maintaining their
 aforesaid action there against

him said Defendant &c because
 they say the said Defendant &c at
 the time when &c in manner & form
 as the Piffs by this Declaration have
 above alleged was then & there a
 partner of said John Whitney & was
 then & there jointly liable with said
 John Whitney to the Piff as &c by the
 Declaration alleged. &c

Wherefore Plaintiffs pray
 judgment of the Court &c & that their
 damages be adjudged to them &c &
 of this they put themselves upon
 the Country &c

Prayer ^{and} Malone
 for Piffs

And at the said Nov Term 1859 of said
 Court the following order was entered
 of Record in the said Cause to wit

Ansel Haines & Jonathan Haines
 2317 vs \equiv Apumpack
 Joseph King

On this day appeared
 parties to the suit by their respective
 attys of the issues being joined & the
 parties ready for trial the following
 jury came to wit; Milton Boyd
 As. Curtis A. H. Merrivether John
 Williams, Milborn Elow, Parra Ede
 S. F. Brier, Solomon Epler, John Peaké
 Sam. Robinson, S. J. Mettlin & Isaac
 W. Jennings who being duly sworn
 to well & truly try the issues joined
 after hearing the evidence for verdict
 say "We the Jury find a verdict
 for the Plaintiff for the sum of
 Three Hundred Seventeen $\frac{1}{100}$ Dollars
 Whereupon the Defendant by Dupper
 & Cleon his attys entered a motion
 for a new trial

And on a subsequent day of the said
 Term of said Court the following
 further order was had in said
 Cause to wit:

Ansel Haines & Jonathan Haines
 vs ³ Akempt
 Joseph King

again at this day
 comes the parties to this suit by their
 respective attys & the motion for a
 new trial entered by the Defendant in
 this suit on yesterday being now
 argued by the Counsel is by the Court
 overruled & a new trial refused. It
 is therefore ordered by the Court that
 the Plaintiffs have & recover the
 said sum of Three Hundred Seventeen
 + 64/100 Dollars ^{together with their Costs herein Expended} & that they have
 Execution therefor.

And on the 30 Day of Nov 1858 at said
 Term of said Court the following Bill
 of Exceptions was filed to wit

To which the Defendant by his counsel then objected which objection was overruled by the Court & the Defendant by his counsel then & there Excepted thereupon said notes were read to the Jury which being all the Evidence in the case the Plaintiffs then rested their case & the Court then gave the following instructions for the Plaintiff;

"The Court instructed the Jury that a note executed by in the name of a firm by one member thereof is Evidence against ^{all} the members when the Declaration is against them or the survivor of them as a firm

"That no proof of authority of one member of the firm to sign the firm name is necessary unless the Execution of the note is denied on Oath. To the giving of which instructions the Defendants then & there Excepted And said Defendant then asked the Court to give to the Jury the following instructions viz;

The Court instructed the Jury for the Defendant that in order for the Plaintiffs to recover in this cause the proof must show that the Defendant King & John Whitney

in his life Time were partners & that the notes offered in Evidence were executed by them as partners or one of them having the right to use the partnership name in the execution thereof", which instructions the Court refused to give; To which ruling of the Court in refusing to give said instructions the ~~defendant~~^{defendant} by his counsel then & there upon excepted; And when the jury retired to consider of their verdict & having agreed upon the same returned into Court with a verdict for the Plaintiff \$317. 40. And said def^t by his counsel then presented ^{to the Court} a motion for a new Trial which motion was denied by the Court & a verdict rendered for Plaintiff for \$317. 40. Which ruling by the Court in denying said motion for a new Trial & rendering judgment against the Def^t Defendant by his counsel then excepted & prayed that this ^{his} bill of exceptions be signed by the Court which is done accordingly


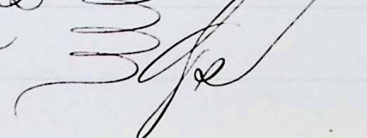
Chas. Sumner Judge

Dea

Endorse as follows

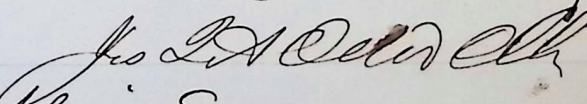
"Filed Nov 25th 1859

J. A. Oles Clerk

State of Illinois 
Macon County 

I Jos L A Odor
Clerk of the Circuit Court of said
County do hereby certify that the
forgoing is a full true & complete
transcript of all the records filed
& orders of Court as they appear of
record in my office in the cause
therein entitled

In Testimony whereof I
have hereunto set my name
& Seal of said Court at
Decatur this Dec. 8th A.D. 1857

Jos L A Odor 
Errors Assigned

- 1st In Overruling the objection made and
permitting the notes to be read in evidence
- 2^d In giving the instructions for Dept. in Error
- 3^d In refusing instructions asked by Plff in Error
- 4^c In Overruling the Motion for a new trial
- 5^t In rendering ~~Verdict~~ Judgment upon the Verdict.

Supper & Nelson for Plff.

Come now the Defendants in Error, and say
there is no Error in this Name. Prother & Holm
Depts. Atty's.