

No. 14510

Supreme Court of Illinois

Miles et al

vs.

Danforth

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No.

8

Miles

75

Sanford

1870

IN THE SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

BENJAMIN E. MILES AND OTHERS, Plaintiffs in Error, <i>vs.</i> ALMON G. DANFORTH, Defendant in Error.	}	ERROR TO TAZEWELL.
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ABSTRACT OF RECORD, ASSIGNMENT OF ERRORS, AND PLAINTIFFS'
BRIEF AND POINTS.

This was an action of assumpsit, brought to the September Term, 1862, of the Tazewell County Circuit Court.

Record, page 2. The declaration was filed August, 1862, ten days before the first day of the term.

Record, page 3. The 1st count was upon a note dated September 14, 1861, for \$169.37, payable one day after date, with interest at 10 per cent., to A. H. Danforth & Co., and by the latter assigned to plaintiff.

The 2d count was upon a note dated January 21, 1861, payable to A. H. Danforth & Co., at one month, for \$594.27, with interest, and by the latter assigned to plaintiff.

Record, page 4. The 3d count was upon a note dated July 14, 1860, payable on the first day of September next thereafter to William M. Thompson, for \$700, \$300 of said sum to be paid in coin, with interest after maturity at 10 per cent., and by the latter assigned to A. H. Danforth & Co., and by the latter assigned to the plaintiff.

Record, page 5. The 4th count was upon a note dated November 22, 1857, payable one day after date to Asa H. Danforth & Co., for \$1,000, with ten per cent. interest from date, and by the latter, under the name and style of A. H. Danforth & Co., assigned to the plaintiff.

Record, page 6. The 5th count was upon a note dated November 22, 1857, payable one day after date to Asa H. Danforth & Co., for \$1000, with ten per cent. interest from date, and by the latter, under the name and style of A. H. Danforth & Co., assigned to the plaintiff.

Record, page 7. The 6th count was upon a note dated November 22, 1857, payable one day after date to A. H. Danforth & Co., for \$2,000, with ten per cent. interest from date, and by the latter assigned to the plaintiff.

Record, page 8. The 7th count was upon a note dated November 22, 1857, payable one day after date to A. H. Danforth & Co., for \$2,000, with ten per cent. interest from date, and by the latter assigned to the plaintiff.

The common counts aver that defendants were indebted to plaintiffs in the sum of \$20,000, for money lent and advanced, and in same amount for money paid, laid out, and expended, and for money had and received.

The defendants, on the 1st September, 1862, filed fifteen pleas.

Record, page 13.

First Plea, *non assumpsit*.

Second Plea,—to the 1st, 2d, 3d, 4th, 5th, 6th and 7th counts,—that the notes in said counts mentioned were indorsed to the plaintiff after they were due, and payment to A. H. Danforth & Co.

Third Plea,—to the 1st, 2d, 3d, 4th, 5th, 6th and 7th counts,—that they paid to A. H. Danforth & Co. the whole amount due on the notes in said counts mentioned, and the plaintiff took and accepted said notes with notice of such payment.

Record, page 14.

Fourth Plea,—to the 1st, 2d, 3d, 4th, 5th, 6th and 7th counts,—that the notes therein mentioned are the notes and property of A. H. Danforth & Co., and that the plaintiff had no interest in said notes, and payment to A. H. Danforth & Co.

Fifth Plea,—to the 4th, 5th, 6th and 7th counts,—that the notes therein mentioned were executed without consideration, and indorsed to plaintiff after they became due.

Record, page 15.

Sixth Plea,—to the 4th, 5th, 6th and 7th counts,—that the notes therein mentioned were not given for money loaned; that A. H. Danforth & Co., the payees, on the 22d of April, 1854, sold and delivered to the defendants, Daniel L. Miles, and Paul N. Rupert, a stock of goods for the sum of \$14,215.35, for which the defendants and said Miles and Rupert, executed their three notes, each for \$4,738.45—one at six, one at twelve, and one at eighteen months, with ten per cent. interest; that on the 22d of April, 1856, Danforth & Co. and the makers of said notes computed the amount with interest at 10 per cent., and after deducting payments the defendants and Daniel L. Miles executed three notes of that date, amounting to \$10,500; two for \$5,000 each, and the third for \$500; all at one day, and bearing interest at 10 per cent., and that there was included in said three promissory notes the sum of about \$940 of unlawful and usurious interest, being four per cent. per annum on said sum of \$14,215.35 remaining unpaid, and in the part paid from the date thereof until such payments were made; that on the 22d of November, 1857, the defendants, after deducting payments actually made on said last three mentioned notes, executed to the said A. H. Danforth & Co. the said promissory notes in said 4th, 5th, 6th and 7th counts mentioned, and their two other notes—one for \$1,000, and one for \$328.18,—in payment of said three promissory notes. Both of said notes, one for \$1,000 and the other for \$328.18, have been fully paid, and the defendants say that they have fully paid all the said several promissory notes in said 4th, 5th, 6th and 7th counts mentioned, except as to about

Record, page 16.

the sum of \$1,704, and the interest thereon from the date of said notes; and as to said sum of \$1,704 and the interest thereon at 10 per cent., is for unlawful and usurious interest, which was well known to the plaintiff when the said notes were assigned to him.

Record, page 17.

Seventh Plea,—to the 4th, 5th, 6th and 7th counts,—that the said sums of money specified in said notes, as therein mentioned, were fully paid before the commencement of this suit, except \$1,752.66 and interest on same at 10 per cent. from the time said notes were executed, said \$1,752.66 being unlawful and usurious interest that was included in the sums specified in said notes in said counts mentioned, said unlawful and usurious interest having accrued on sums of money specified in certain other notes which Danforth & Co. held against defendants and other persons hereafter named. The only consideration of said notes in said 4th, 5th, 6th and 7th counts mentioned was a stock of goods sold to the defendants and said Miles and Rupert on the 19th April, 1854, and of which a full and complete invoice was then taken, and the same delivered to said defendants and Miles and Rupert, on the 22d of the same month, and in payment of which the said defendants and Miles and Rupert executed three notes of same date, each for \$4,738.45—one at six, one at twelve, and one at eighteen months, with 10 per cent. interest: that on the 22d April, 1856, Danforth & Co., the defendants, and said Miles and Rupert, computed the amount then due on said three notes with 10 per cent. interest, and after deducting payments the defendants and said Miles executed three notes of that date—two for \$5,000 each, and one for \$500—all at one day, with 10 per cent. interest:

Record, page 18.

Record, page 19.

that these notes were given for the balance lawfully due on said first mentioned notes, and \$955 of unlawful and usurious interest, which sum of \$955 had accrued on said 14,215.35 at 4 per cent. per annum, several payments having been made previous to said change of notes: that on the 22d November, 1857, Danforth & Co. and defendants computed the whole amount due on said three last mentioned notes with 10 per cent. interest, and after deducting payments the defendants executed the said four notes mentioned in the 4th, 5th, 6th and 7th counts, and one note for \$1000, and one for \$328.18, which two last named notes have been paid in full: that on the 22d November, 1857, the time of giving the notes specified in said 4th, 5th, 6th and 7th counts, the said \$955 unlawful and usurious interest, which had been included in said two \$5,000, and said \$500 notes, was exacted and reserved, as also the interest on said \$955 at 10 per cent., which up to November 22, 1857, amounted to \$151.20, in all \$1,106.20. There was also reserved and claimed \$1,723.74 as interest on the balance due after deducting said \$955 on said two \$5,000 and one \$500 notes, when only \$1,097.28 should have been claimed, making a total amount of \$1,752.66 of usurious interest included in the said notes in said 4th, 5th, 6th and 7th counts

Record, page 20.

mentioned, and that plaintiff well knew the same, he being the son of A. H. Danforth: that the assignment of said notes in said 4th, 5th, 6th and 7th counts mentioned was made to plaintiff long after they became due: that said \$1,752.66, with interest at ten per cent. from Nov. 22, 1857, should be deducted from the sums specified in said notes in said 4th, 5th, 6th and 7th counts mentioned.

Record, page 21.

Eighth Plea—Payment to plaintiff on the 14th August, 1862, in full for all the promises and moneys in plaintiff's declaration mentioned.

Ninth Plea—That plaintiff, on the 12th August, 1862, by a writing, in consideration of \$20,000, released to the said defendants the said causes of action in plaintiff's declaration mentioned.

Record, page 22.

Tenth Plea—Indebtedness of plaintiff on 15th August, 1862, in the sum of \$30,000, for work and labor, care and diligence, and attendance of the said defendants, materials and other necessary things furnished; in \$30,000 for goods, wares and merchandise sold and delivered; in \$30,000 for money lent, advanced and paid out; in \$30,000 for money had and received; in \$30,000 for storage on wheat, corn, etc., etc.

Record, page 23

Eleventh Plea,—To the 1st count,—that the only consideration in the said note therein mentioned was unlawful and usurious interest on other and different sums long since paid: that on the 14th April, 1861, Danforth & Co., the payees of said note, exacted and claimed said sum of \$169.37, as specified in said 1st count, the same being usurious interest; all of which the plaintiff well knew when said note was indorsed to him.

Twelfth Plea,—To the 4th, 5th, 6th and 7th counts; payment of the notes therein mentioned, except the unlawful and usurious interest which said notes contained, and interest at 10 per cent. on said usurious and unlawful interest.

Thirteenth Plea,—to 3d count,—that the note therein mentioned was assigned to A. H. Danforth & Co. by William M. Thompson long after it became due; that it was indorsed by the former to A. G. Danforth long after it became due: that defendants paid said note before the commencement of this suit, by delivering to the payee and indorsers seven hundred dry hides, which they received as money.

Record, page 24.

Fourteenth Plea,—to the 1st, 2d, 3d, 4th, 5th, 6th and 7th counts,—that the plaintiff received the notes therein mentioned well knowing that they had been fully paid to A. H. Danforth & Co., except the unlawful and usurious interest: that the indorsement of said notes in said counts mentioned to A. G. Danforth by A. H. Danforth & Co. was made for the sole and only purpose of collection.

Fifteenth Plea,—that on the 14th August, 1862, defendants furnished and delivered to plaintiff 10,000 barrels of No. 1 flour, at \$5 per barrel, amounting to \$50,000; also 1,000 sacks of shorts, at \$2 per sack; also 20,000 bushels of corn, at 25 cents per bushel.

Record, page 13. The plaintiff below filed the following replications :

To 1st Plea, issue to the country.

Record, page 56. To 2d, 3d and 4th Pleas, that defendants did not pay notes as in said pleas mentioned.

To 5th Plea, that said notes in said counts mentioned were not given without consideration.

To 6th and 7th Pleas,—that the said notes in said 4th, 5th, 6th and 7th counts mentioned were made for a good consideration: that there was no usurious interest included in said notes.

Record, page 57. To 8th Plea,—that defendants did not pay the said plaintiff or satisfy said promises and moneys specified in said plaintiff's declaration mentioned.

To 9th Plea,—that the plaintiff, by a certain writing, in consideration of \$20,000, did not release to the said defendants the said causes of action in plaintiff's declaration mentioned.

To 10th Plea,—that the plaintiff is not indebted as in said plea alleged.

To 11th Plea,—that the only consideration of the said note in said 1st count mentioned is not unlawful and usurious interest, or other sums which defendants have paid.

Record, page 58. To 12th Plea,—that the note in said 4th, 5th, 6th and 7th counts mentioned had not been paid, except usurious and unlawful interest, as alleged.

To 13th Plea,—that said note in said 3d count mentioned was not assigned to A. H. Danforth & Co. by William H. Thompson after the same became due, nor indorsed by the former to plaintiff after the same became due: that defendants before the commencement of this suit did not pay said note, by delivering to the payee and indorsers 700 dry hides which they received as money, or otherwise.

To 14th Plea,—that plaintiff did not receive the notes in said 1st, 2d, 3d, 4th, 5th, 6th and 7th counts mentioned of A. H. Danforth & Co. well knowing that they had received payment for the same, except usurious interest that said Danforth & Co. were claiming of said defendants: that said indorsement was not made for the sole purpose of collection, thereby attempting to collect usurious interest.

Record, page 59. To 15th Plea,—that before the commencement of this suit defendants did not furnish to plaintiff 10,000 barrels of flour at \$5 per barrel, or 1,000 sacks of shorts at \$2 per sack, or 20,000 bushels of corn at 25 cents per bushel.

Issue to the country was joined on all the replications.

Record, page 20. On the first day of the term the defendants below filed their petition for a change of venue in these words:

STATE OF ILLINOIS, }
Tazewell County, } ss.

In the Circuit Court of Tazewell County aforesaid,
to September Term, A. D. 1862.

ALMON G. DANFORTH,

vs.

BENJAMIN E. MILES,
WELLS ANDREWS, JR., and
JOHN A. ANDREWS, partners,
trading under the name and style of
ANDREWS, MILES & Co.

In Assumpsit.

Record, page 27.

Wells Andrews, jr., one of the defendants in the above entitled cause, being first duly sworn according to law, on oath states that he fears that the defendants above named will not receive a fair trial in the Court in which the above action is pending (being the Tazewell County Circuit Court), on account that the judge of said Court, the Hon. James Harriott, is prejudiced against the defendants, so that the defendants can not expect a fair trial in said Court. He therefore, by way of petition, prays that the Court may award a change of venue in said cause to some County and Court where the causes complained of do not exist. He further states that he makes this petition and application by and with the consent of all the defendants in said cause. He makes this application at the first time of this Court that the application could be made.

WELLS ANDREWS, JR.

Subscribed and sworn to before me this 1st day of September, 1862.

GEO. H. HARLOW, Clerk,
Per A. P. GRISWOLD, Deputy.

The bill of exceptions, filed September 3d, 1862, Record, pages 26, 27 and 28, shows that on the hearing of the motion for a change of venue it appeared that said motion and petition was filed in the afternoon of the first day of the term; and David Kyes, attorney for defendants, at the time of filing said motion and petition, observed to Roberts, plaintiff's attorney, that defendants expected to take a change of venue, and that he had filed pleas in said cause, and also a motion and petition for a change of venue, without mentioning said fact as notice: and the motion for change of venue was taken up and heard on the morning of the second day of the Term. And plaintiff objected to granting the motion, because no notice was given, and no consent of all the defendants shown. The Court overruled said motion, and refused to change the venue, to which the defendants objected and excepted.

See Record, pages 25, 26 and 27.

At the September Term, 1862, the cause was continued on the application of the defendants. At the February Term, 1863, the defendants made a motion to continue the cause, upon the following affidavit, to wit:

Record, page 30.

STATE OF ILLINOIS, }
Tazewell County, } ss.

In the Circuit Court of Tazewell County,
February Term, A. D. 1863.

ALMON G. DANFORTH,

vs.

BENJAMIN E. MILES,
WELLS ANDREWS, JR., and
JOHN A. ANDREWS.

Motion to continue this cause.

Wells Andrews, jr., being first duly sworn, on oath states that the defendants can not

Record, page 31.

safely proceed to trial at this Term of this Court without the testimony of Chester Andrews and Frank Lawson, both of whom are residents of Tazewell County, but now and for the twelve months last past have been in the military service of the United States, and both are now somewhere in the state of Mississippi, Tennessee, or Alabama. He further states that the suit is brought by the plaintiff to recover the amount of several promissory notes set out in plaintiff's declaration, and that all of the notes described in plaintiff's declaration were assigned to the plaintiff, as deponent is informed and believes, by A. H. Danforth & Co., just before the commencement of this suit. He further states that the dealings between the defendants and said A. H. Danforth & Co. for the past eight years have been large, and exceed in amount the sum of ninety thousand dollars. That on the 22d day of April, 1854, said A. H. Danforth & Co. sold to the defendants in this suit, Daniel L. Miles, and Paul N. Rupert, a stock of goods, at and for the price and sum of \$14,215.35, in payment of which said Miles, Paul N. Rupert and these defendants executed their three promissory notes of that date to said A. H. Danforth & Co., each for \$4,738.45,—one at 6 months, one at 12 months, and one at 18 months,—all bearing interest at 10 per cent. : no other consideration was paid or received for said three notes. Deponent further states that the deposition of Paul N. Rupert, on file, shows the foregoing statement as to the sale of the goods and the giving of said notes to be true. Deponent further states that between the time said three notes were given and the 22d April, 1856, the makers of said three notes made sundry payments thereon, amounting to a large sum of money, the precise sum deponent can not now state; and that on said 22d April, 1856, the defendants, Daniel L. Miles, and Paul N. Rupert, and said A. H. Danforth & Co., figured up the amount of said three notes, and added interest on the said three notes at the rate of 10 per cent. per annum on all then remaining unpaid, and upon all the remainder until the time payments were made, and deducted therefrom the amount paid on said notes; and three new notes were executed for the balance by the defendants and Daniel L. Miles,—one for \$500, and two for \$5,000 each,—all payable to said A. H. Danforth & Co., at one day, and all bearing interest at 10 per cent. per annum. These defendants expect to prove by said Chester Andrews that said original three notes were taken up as stated, and that three new notes were given for balance of old notes and interest, after deducting payments, and that included in the three new notes executed by the defendants and said Daniel L. Miles there was included over nine hundred dollars of unlawful and usurious interest. He further states that he expects to prove by said Chester Andrews that between the said 22d April, 1856, and the 22d November, 1857, the defendants and said Miles made large payments on said three notes, dated April 22d, 1856, and on said 22d November, 1857, the defendants, Daniel L. Miles and said A. H. Danforth & Co. figured up the amount of said three last notes, and added interest thereto on all remaining unpaid, and on all the balance until payments were made, and deducted payments actually made; and the defendants for the balance executed to said A. H. Danforth & Co. the notes described and set forth in the 4th, 5th, 6th and 7th counts in plaintiff's declaration, and two other notes,—one for \$1,000, and one for \$328.18, both of which last notes the defendants have fully paid to said A. H. Danforth & Co., and cancelled the same. He also expects to prove by said Chester Andrews that no other or further consideration was paid or received for said last mentioned notes, and that the further sum of eight hundred and four dollars of unlawful and usurious interest was included in said notes so executed by the defendants on said 22d November, 1857, making in all the sum of \$1,704 of usurious and unlawful interest included in and forming part of the notes so executed November 22d, 1857. He further states that these defendants have at various times had other dealings with said A. H. Danforth & Co., and have paid them large sums of money, drafts, etc., that these defendants intended to apply on the claims said A. H. Danforth & Co. held against them. But just before the commencement of this suit A. H. Danforth & Co. assigned the notes in suit to plaintiff, the effect of which is to embarrass the defendants in making their defense. He further states that the plaintiff is a son of one of said firm of

Record, page 32

Record, page 33.

A. H. Danforth & Co., and a nephew of the other, and was acting as clerk and cashier of said firm during the principal part of the time the dealings between defendants and said A. H. Danforth & Co. were going on. Deponent further states that said A. H. Danforth & Co. have also commenced suit against these defendants in this Court, which is now pending herein, to recover for a bank account against the defendants. He further states that this deponent has filed his affidavit in said cause for a continuance, in which deponent sets out a statement of payments, credits, etc., and showing that these defendants have overpaid said account of A. H. Danforth & Co. some 6 to 8,000\$, which ought to be credited and allowed to defendants in this suit: he makes said affidavit a part of this application the same as if here inserted at length. He expects to prove the same facts in this cause by the said Chester Andrews and Frank Lawson as stated in said affidavit; and defendants have no other witnesses by which to prove the same facts known to deponent. He further states that he also expects to prove by said Chester Andrews that all said notes in plaintiff's declaration mentioned were assigned to plaintiff after they became due. He further states that he at the last term fully believed he could prove by said Paul N. Rupert all the facts in relation to the lifting and giving the notes as herein before stated; but said Rupert on being examined could only state as to the notes given for said goods. He further states that he has other witnesses to prove some other and additional payments and credits on the notes in this suit, but he knows of no witness by whom the defendants can prove the same facts as he expects to prove by said Chester Andrews and Frank Lawson. He further states that he believes there will be a controversy about the facts in the case, and it will be indispensably necessary for the defendants to have the testimony of said Chester Andrews and said Lawson. or defendants will be greatly injured

The following is the affidavit referred to in the foregoing affidavit.

STATE OF ILLINOIS, }
Tazewell County, } ss.

In the Circuit Court of Tazewell County,
February Term, 1863.

ASA H. DANFORTH AND
GEORGE W. DANFORTH,

vs.

BENJAMIN E. MILES,
WELLS ANDREWS, JR.,
AND JOHN A. ANDREWS.

In Assumpsit.

Wells Andrews, jr., one of the defendants in the above entitled cause, being first duly sworn, on oath states that the defendants can not safely proceed to trial in the above cause at the present term of this court, on account of the absence of Frank Lawson and Chester Andrews, both of whom are residents of Tazewell county, and both of whom are material and important witnesses on the part of these defendants. He further states that this action is brought by the plaintiffs to recover for money loaned, paid, etc., and to recover for rent of certain premises, and for greater certainty this defendant, as showing the cause of action only, refers to the plaintiffs' declaration on file.

Record, page 36.

Deponent further states that these defendants have fully paid to the plaintiffs, between the 22d day of June, 1857, and the commencement of this suit, all the money, items, articles, drafts, checks, etc., mentioned in the account hereto annexed, marked A, and amounting to the sum of 73,626.68 dollars, and at the times, and in the amounts, and in the way and manner, set forth in said account, which account is annexed hereto and made part of this application and affidavit; and said account is in all respects true and correct.

Deponent further states that, in addition to said sum of 73,626.68 dollars mentioned and set forth in said account hereto annexed, the defendants have also delivered to said plaintiffs drafts on S. S. Guthrie, of Buffalo, N. York, amounting to the further sum of 15,054.64 dollars, which drafts are more particularly set forth in the account filed herewith marked B, and which account is true and correct, and shows the date and amount of each draft, all of which drafts were fully and promptly paid by said Guthrie; and these defendants fully paid said Guthrie for the same, and these defendants are entitled to and should be credited with the full amount of said drafts on any claim the plaintiffs may have against these defendants.

Deponent further states that, in addition to the above two amounts, said two amounts being \$88,681.32 cents, these defendants have still other claims and demands against said plaintiffs, which ought to be allowed to these defendants on any amount proved by the plaintiffs. He further states that said other claims and demands are as follows, for storage, goods, mill account, etc., amounting to some four hundred dollars.

Record, page 37

Deponent further states that the accounts and demands of the defendants against the plaintiffs exceed by some six to eight thousand dollars the just claim of plaintiffs against the defendants, if these defendants are credited with payments they have actually made, and credited with their just credits.

Deponent further states that he expects to prove by said Chester Andrews and Frank Lawson that they, and each of them, acted as clerks for the defendants, at the store of the defendants in Washington, Tazewell county, for a long space of time; that said Chester Andrews acted as clerk for these defendants about two years, commencing about the first of June, 1857, and that said Frank Lawson acted as clerk for these defendants some three months in the fall of 1861, and while the clerk of these defendants Eli Heiple was absent.

He further states that these defendants can prove by said Frank Lawson and Chester Andrews that these defendants paid all the moneys and delivered to plaintiffs all the drafts, property, etc., shown in the accounts hereto annexed, up to about the first of May, 1859, and for the period of three months in the fall of 1861, and these defendants expect to prove all the items of said account true and correct during the times above mentioned. These defendants expect to prove by Heiple that said accounts herewith filed are true and

correct from and after May 1, 1859, except during the three months of his absence, in the fall of 1861: they also expect to prove the delivery of the principal part of the drafts set forth in account marked B, by the deposition of said S. S. Guthrie, on file. He further expects that there will be some conflict in the testimony of the parties, and that it will be indispensably necessary for these defendants to have the testimony of said Frank Lawson and Chester Andrews on the trial of this cause. He further states that there is no other witnesses by which the defendants can prove the same facts as they expect to prove by said Lawson and Andrews. He further states that said Chester Andrews is now and for the twelve months past has been a soldier in the 47th Regiment Illinois Volunteers, and since the last term of this court he has been moving with his company and regiment from place to place in the line of his duty, in the states of Mississippi, Alabama, and Tennessee: that said Andrews has not been in this state since the last term of this court. He further states that the said Frank Lawson is also a volunteer in the military service of the United States, and has been absent from the State of Illinois since the last term of this court, and has during said last mentioned time been in active service as a member of the 8th Regiment Illinois Volunteers, and moved from place to place with his regiment, in the states of Tennessee, Mississippi, and Alabama, as deponent is informed and believes. He further states that these defendants caused a summons to issue in this cause in the first part of December, 1862, to the Sheriff of Tazewell county, for said Frank Lawson and Chester Andrews; but said sheriff has not been able to find said witnesses, as deponent verily believes. He further states that these defendants caused a potestatem commission to issue in this cause out of and under the seal of this court, directed to Capt. Joseph B. Miles (a captain in the 47th Regiment Illinois Volunteers), commissioner to take the depositions of said Frank Lawson and Chester Andrews in this cause, upon interrogatories duly filed, which commission was issued on or about the 3d day of December, 1862, which was forwarded to him, the said commissioner, at once by mail; but said commissioner has not as yet been able to take said depositions, or either of them, and has not taken and returned the same to this court. He further states that said commission was procured, issued and forwarded in good faith, bona fide, as soon as these defendants found out where to forward the same. That said commission and interrogatories were forwarded by mail on the 5th day of December, 1862, to said commissioner at Corinth, Mississippi, where said commissioner and said witnesses were at that time, as he verily believes. He further states that, owing to the disturbed condition of affairs in that neighborhood, said commissioner has been unable to take and return said commission and depositions. He states expressly and positively that these defendants know of no other reliable person to take said depositions. That said commission was procured and forwarded as soon as these defendants learned the whereabouts of said Frank Lawson and Chester Andrews, and were forwarded without delay. He further states that he fully expects to procure the depositions of said witnesses, Lawson and Andrews, by the next term of this court; that this application is not made for delay, but that justice may be done. He therefore prays that this cause may be continued until the next term of this court.

Record, page 38.

Record, page 39.

WELLS ANDREWS, JR.

Subscribed and sworn to before me this 3d day of February, 1863.

GEO. H. HARLOW, Clerk.

Account marked "A" referred to and made part of Wells Andrews' affidavit.

A. H. DANFORTH & Co. in account with ANDREWS, MILES & Co.

1857.					1858.						
June	22,	To	Cash	200.00	July	1,	To	Cash	400.00		
July	8,	"	do.	240 50		10,	"	do.	806.22		
	9,	"	do.	54.00		15,	"	do.	100.00		
Record, page 40.	10,	"	do.	150.00		20,	"	do.	150.00		
	"	"	do.	38.00		22,	"	do.	130.00		
	14,	"	do.	135.00		24,	"	do.	135.00		
	"	"	do.	400.00		26,	"	do.	250.00		
	15,	"	do.	539.69		31,	"	do.	100.00		
	16,	"	do.	62.00	August	7,	"	do.	100.00		
	18,	"	do.	100.00		11,	"	do.	200.00		
	23,	"	do.	87.00		12,	"	do.	140.00		
	24,	"	do.	26.00		13,	"	do.	120.00		
	"	"	do.	75.00	Record, page 42.						
	25,	"	do.	93.00	August	16,	"	do.	300.00		
	30,	"	do.	191.50		17,	"	do.	195.00		
August	3,	"	do.	34.00		21,	"	do.	111.00		
	7,	"	do.	36.00		25,	"	do.	376.00		
	8,	"	do.	76.00		27,	"	do.	115.00		
	12,	"	do.	130.00		30,	"	do.	300.00		
	15,	"	do.	54.00	Sept.	30,	"	Cy. draft Chicago	348.25		
	"	"	do.	325.00	Oct.	13,	"	Cash	1150.00		
	20,	"	do.	26.00		14,	"	do.	1750.00		
	29,	"	do.	41.00		15,	"	do.	145.00		
Sept.	1,	"	Draft Munn, Gill & Co.	500.00		16,	"	do.	250.00		
						22,	"	do.	100.00		
Oct.	6,	"	Cash	103.00		25,	"	do.	400.00		
	8,	"	do.	176.14		27,	"	do.	166.00		
	27,	"	do.	356 00		30,	"	do.	1700.00		
Nov.	2,	"	do.	256.00	Nov.	1,	"	Cy. check Pekin Bank	150.00		
	11,	"	do.	112.00		4,	"	Cash	125.00		
	17,	"	do.	20.50		9,	"	do.	1000.00		
Dec.	5,	"	Draft on Harlan & Hull	476.41		18,	"	do.	1000.00		
	22,	"	Cash	120.00		22,	"	N.Y. dft and ex. and cy.	1470.00		
	30,	"	do.	500.00	Dec.	4,	"	Cash	600.00		
Record, page 41.						6,	"	do.	500.00		
1858.	Jan'y	13,	"	Difference on certificate of deposit	.78		10,	"	do.	500.00	
	"	"	"	Peter Cannon	1.50		14,	"	do.	550.00	
	15,	"	"	Draft on Powell & Co.	84.58		18,	"	"	Draft on St. Louis	1000.00
	"	"	"	Cash	496.00		23,	"	Cash	400.00	
	7,	"	do.	500.00		31,	"	do.	540.00		
	12,	"	do.	500.00	1859.						
	23,	"	"	Draft Powell & Co.	336.30	Jan'y	1,	"	do.	4.00	
	"	"	"	Cash	999.00		12,	"	do.	500.00	
	29,	"	do.	226 00		13,	"	do.	300.00		
	30,	"	do.	145 00		17,	"	do.	150.00		
Feb.	1,	"	do.	383.68	Record, page 43.						
	9,	"	do.	695 00	Jan'y	27,	"	do.	100.00		
	16,	"	do.	26 64		29,	"	do.	51.50		
	25,	"	do.	160.00	Feb.	8,	"	do.	150.00		
March	2,	"	do.	128.00		22,	"	"	Draft on Chicago	109.95	
	3,	"	do.	113.00		26,	"	"	Check and cash	250.00	
	11,	"	do.	120.00		28,	"	Cash	100.00		
April	7,	"	"	Sight draft Powell & Co., St. Louis	600.00	March	2,	"	do.	50.00	
							1,	"	(omitted) Cash	50.00	
June	9,	"	Cash	300.00			4,	"	Cash	175.00	
	24,	"	do.	200.00			5,	"	do.	60.00	
	26,	"	do.	300.00			11,	"	do.	100.00	

Record, page 47.

Oct.	13,	To Cash	48.70	May	23,	To Dft. on N.Y.	835.01
	20,	" do.	109.00		" "	Premium	50.10
	30,	" Dft on Buffalo	896.05		16,	" Cash	29.00
Nov.	2,	" Cy. dft.	250.00		21,	" do.	30.17
	3,	" do.	264.36	June	1,	" Dfts. H. D. Wal-	
	8,	" Dft on Roop	299.00			bridge & Co.	967.04
	10,	" do.	299.00		5,	" Dfts. Brown, Wal-	
Dec.	12,	" Premium on drafts	4.05			bridge & Co.	400.00
	19,	" Currency check and			" "	Dfts. Buffalo	175.00
		premium drafts	565.00		19,	" Peter Fifer	10.00
	21,	" Cash	400.00		29,	" Dft. H. D. Wal-	
1861.						bridge & Co.	186.21
Jan.	8,	" Dft. on N.Y. and		July	3,	" Brown, Walbridge	
		premium	230.35			& Co.	100.00
March	6,	" Dft. on New Orleans			8,	" Coin	25.00
		(shipments)	352.21		26,	" Cash	23.00
	" "	Premium on same	17.60	Sept.	3,	" Dft. on Walbridge	
	8,	" Remittance A. H.				& Co.	300.00
		Henkle & Co & ex.	416.23		9,	" Two checks (coin)	204.00
	12,	" Dft. G. W. & Co.,		Oct.	1,	" Dfts. Brown, Wal-	
		St. Louis	443.90			bridge & Co.	100.00
	16,	" Cash	165.00		" "	Smith's dft. on	
	" "	Dfts. and ex.	523.37			Dowds	12.19
	26,	" do.	684.92	Sept.	30,	" School order Dist.	
	28,	" Cash	381.00			No. 5	31.44
April	1,	" Coll. of Henkle & Co.	8.07		14,	" Cash	7.00
	6,	" Cash	112.95	Oct.	8,	" Dft. Brown, Wal-	
	13,	" do.	256.37			bridge & Co.	100.00
	20,	" Dft. on Buffalo	274.18		12,	" Dft. H. D. Wal-	
	20,	" do. on New York	275.00			bridge & Co.	64.64
May	3,	" 1 st on Buffalo	1000.00		23,	" Dft. Brown, Wal-	
	3,	" Premium on do.	70.00			bridge & Co.	200.00
	" "	Check on Peoria	50.00	Nov.	30,	" Oats to Williard	
	" "	Dft. Walbridge & Co	152.60			& Co.	149.50
	" "	Premium on do.	10.64				
April	23,	" Premium of N.Y.		1860.			\$73516.41
		drafts	24.75	Nov.	3,	" Omitted cash	65.00
Record, page 48.	23,	" Premium on Buffalo	21.92	1861.			
	May	3,	" Cash	May	23,	" do. dft. on	
		4,	" do.			N.Y. & prem.	32.42
		11,	" do.	June	31,	" Omitted cash	12.85
		13,	" do.				
		20,	" do				\$72626.68

Record, page 49.

Account marked "B" referred to in Wells Andrews' affidavit.

A. H. DANFORTH & Co. in account with ANDREWS, MILES & Co.

1860.	August 4,	To Dft. on Guthrie & ex.	1503.75	March 16,	To Dft. on Guthrie & ex.	160.27
Sept. 14,	"	do.	300.00	"	"	do. Dec. 12, '60. 81.63
26,	"	do.	600.00	"	"	do. 340.00
Oct. 12,	"	do.	400.00	April 20,	"	do. 274.18
18,	"	do.	400.00	May 3,	"	do. 1000.00
5,	"	do.	62.72	June 17,	"	do. 150.00
30,	"	do.	400.00	July 15,	"	do. 400.00
Nov. 5,	"	do.	132.19	June 4,	"	do. 175.00
Oct. 31,	"	do.	500.00	Aug. 19,	"	do. 500.00
Nov. 22,	"	do.	300.00	26,	"	do. 500.00
Dec. 19,	"	do.	184.13	Sept. 3,	"	do. 300.00
1861.				10,	"	do. 300.00
Jany. 28,	"	do.	21.32	Record, page 50.		
Feb. 8,	"	do.	300.00	Sept. 12,	"	do. 300.00
"	"	do.	219.45	23,	"	do. 600.00

Oct.	1,	To Dft. on Guthrie & ex.	300.00	Nov.	18,	To Dft. on Guthrie & ex.	750.00	
	8,	" do.	600.00		28,	" do.	500.00	
	17,	" do.	300.00	Dec.	6,	" do.	300.00	
	23,	" do.	300.00	1862.	April	23,	" do.	500.00
	31,	" do.	400.00					
Nov.	4,	" do.	300.00					
	9,	" do.	400.00					\$15054.64

Thereupon the plaintiff, under objection of the defendants, read in evidence the affidavit of said Wells Andrews, jr., filed at the last term of this court, in words and figures following:

STATE OF ILLINOIS, } ss.	In the Circuit Court of Tazewell County,
TAZEWEEL COUNTY, }	September Term, 1862.
ALMON G. DANFORTH, }	
vs. }	
BENJAMIN E. MILES, }	Motion for continuance.
WELLS ANDREWS, JR., and }	
JOHN A. ANDREWS. }	

Record, page 51. Wells Andrews, jr., being first duly sworn, on oath states that he is one of the defendants above named, and that Paul N. Rupert and Eli Heiple are material and important witnesses on the part of the defendants in this cause, and without whose testimony they can not safely proceed to trial at the present term of this court. He further states that the defendants on the trial of this cause expect to prove by said Paul N. Rupert that on or about the 22d day of April, 1854, the defendants and Daniel L. Miles and said Paul N. Rupert purchased a stock of goods of A. H. Danforth & Co., and said purchasers executed three notes to said A. H. Danforth & Co., in payment therefor, as follows,— one note due at 6 months, one at 12 months, and one at 18 months— each note for \$4,738.45, amounting in all to the sum of \$14,215.35, and each and all of said notes were payable with interest at the rate of 10 per cent. per annum; and that no other consideration was given by said A. H. Danforth & Co., or received by the makers of said notes, than said stock of goods. The defendants further expect to prove by said Paul N. Rupert that between the time said notes were given and the 22d day of April, 1856, the makers of said notes paid to said A. H. Danforth & Co. a large amount on said notes, but the precise amount deponent can not state exactly. He further states that the defendants expect to prove by said Paul N. Rupert that on said 22d day of April, 1856, the makers of said notes and said A. H. Danforth & Co. figured up the amount of said notes and added interest thereon at the rate of 10 per cent. per annum on all then remaining unpaid, and upon all the remainder until the time payments were made thereon, and deducted therefrom the amount paid on said notes; and three new notes were given for the balance by the defendants and Daniel L. Miles. He further expects to prove by said Rupert that the sum of nine hundred dollars, at least, of usurious and unlawful interest was added in and to the amount of said three notes, after deducting the payment, and the same was included in and formed a part of the three new notes, dated April 22, 1856. He further expects to prove by said Eli Heiple, and by the said notes, that said three new notes were payable to said A. H. Danforth & Co.; two of which were for \$5,000 each, and the third for \$500, all payable at one day, and all bearing interest at the rate of 10 per cent. per annum. The defendants further expect to prove by said Heiple that the makers of said three last notes, so executed by the defendants and said Miles, made large payments thereon, and that said A. H. Danforth & Co. charged interest on the whole sum of said notes until payments were made, and interest on all the unpaid part, at the rate of 10 per cent. per annum, and that on the 22d day of November, 1857, the notes described in plaintiff's declaration, and sued on in this cause, and set out in the 4th, 5th, 6th and 7th counts, and two other notes, were given for the balance unpaid of said notes, dated April 22d, 1856, and the interest thereon at the rate of 10 per cent. per annum. He further states that the further sum of eight

Record, page 52.

Record, page 53.

Record, page 54.

hundred and four dollars of unlawful and usurious interest was included in and made part of the said notes executed by the defendants to the said A. H. Danforth & Co. at the time the notes sued on and described in said 4th, 5th, 6th and 7th counts were executed, making \$1,704 of unlawful and usurious interest, which they expect to prove by said Heiple. The defendants also expect to prove by said Heiple that the two other notes — one note for \$1,000, and the note for \$328.18, dated November 22, 1857 — have long since been fully paid by the defendants. He further states that he fully expects to prove by said two witnesses that seventeen hundred and four dollars of the principal of the notes sued on and set out in the 4th, 5th, 6th and 7th counts is for unlawful and usurious interest, and that amount should be deducted from the face of the notes sued on, all which are set out in said 4th, 5th, 6th and 7th counts (copies of which are filed with the declaration in this cause), as of their date. He further states that he expects to prove by said Heiple that the defendants have paid eight hundred dollars on said notes sued on, and that the defendants have other just credits amounting to the sum of about \$1,487.43, as follows: goods, \$249.13; storage on 2,400 bushels corn one year, \$288; storage on pork, \$63.20; flour, \$100; draft on Guthrie, \$297.10; and one other draft on same for \$500, which ought to be applied on some or all of the notes described in plaintiff's declaration. He further states that the defendants expect to prove by said Heiple that the notes sued were assigned and indorsed to the plaintiff after they became due, and that plaintiff took said notes with notice of all matters herein before set forth. He further states that the defendants have no other witnesses by whom they can prove the same facts. He states that the declaration was filed in this cause on the 22d day of August, 1862, and that said Paul N. Rupert resides somewhere in the south part of this state, and the defendants do not know in which county he does reside in, and they could not therefore procure his attendance (nor take his deposition) at this term of court, for want of time, and for the additional reason that they do not know where he lives. He further states that said Heiple is a resident of Tazewell county, and left said county with his family some time in the fore part of July, 1862, for Pennsylvania on a visit, and has not as yet returned, at least the defendants have no knowledge of his return. He further states that the defendants fully expect to procure the attendance of both said witnesses at the next term of this court, or they will procure the depositions of said witnesses by next term of this court if they can not procure their attendance.

He further states that, in consequence of the shortness of the time and the unsettled and disturbed condition of the country, and other causes, the defendants have not in other respects been able to prepare their case for trial as fully as its importance to them requires; that this application is not made for delay, but that justice may be done.

WELLS ANDREWS, JR.

Subscribed and sworn to before me, September 3d, 1862.

JNO. GRIDLEY, Clerk County Court.

But the Court overruled the motion to continue, and the defendants excepted. The defendants then filed their motion to consolidate this cause with case No. 67, which motion is in the words and figures following, to wit:

STATE OF ILLINOIS, }
TAZEWELL COUNTY, } ss.

In the Circuit Court of Tazewell County,
February Term, 1863.

A. H. DANFORTH AND G. W. DANFORTH, }

vs.

WELLS ANDREWS, JR., BENJAMIN
MILES AND JOHN A. ANDREWS.

No. 67.

ALMON G. DANFORTH, }

vs.

WELLS ANDREWS, JR., BENJAMIN
MILES AND JOHN A. ANDREWS.

No. 68.

The defendants enter a motion to consolidate the above causes No. 67 and No. 68, for the reasons following:

Record, page 62

1. All the subject matter involved in the above suits constitute in fact but one cause of action.
2. The notes sued on in No. 67, and which is the only cause of action in said suit, were assigned by A. H. Danforth & Co. to the plaintiff just before the commencement of this suit, and long after the said notes became due.
3. The account sued on in the case No. 68 accrued while said notes in No. 67 were held and owned by said A. H. Danforth & Co., and the defendants made payments from time to time on both, and in separate trials great injustice will be done to the defendants.
4. If the defendants are compelled to go into separate trials on the trial of 67, the plaintiffs will insist that the credits, and payments, and offsets, of the defendants ought to be applied on the account in 68, and when 67 is disposed of then the plaintiff in 68 will probably dismiss it, and thus greatly injure the defendants; and these defendants claim that as against the claims in both suits they have credits offsets and payments amounting to more than any just claim of the plaintiffs in both.
5. That A. H. Danforth and G. W. Danforth, the plaintiffs in 67, and Almon G. Danforth, the plaintiff in 68, constitute and compose in fact the firm of A. H. Danforth & Co.
6. The bringing of two suits was designed to, and does in fact, embarrass the defendants in making their defense.
7. There are a large number of witnesses in the case, and the maintenance of two suits will be attended with additional expense, and trouble, and cost to the defendants.
8. Other reasons.

KYES & GROVE,
For Defendants.

Record, page 63

The defendants to support their motion read in evidence the affidavits of Edwin F. Fish, B. D. Smith, Thomas Birkett, and Wesley B. Harvey, and the affidavits of Wells Andrews, jr., on motion to continue 67 and this cause, which said affidavits of said Edwin F. Fish, R. D. Smith, Thomas Birkett, Wesley B. Harvey, and Wells Andrews, jr., are in words and figures following, to wit:

STATE OF ILLINOIS, }
TAZEWELL COUNTY, } ss.

In the Circuit Court of
Tazewell County.

A. H. DANFORTH AND G. W. DANFORTH, }

vs.

WELLS ANDREWS, JR., BENJAMIN
MILES, and JOHN A. ANDREWS.

67.

ALMON G. DANFORTH, }

vs.

WELLS ANDREWS, JR., BENJAMIN
MILES, AND JOHN A. ANDREWS.

68.

Motion to consolidate.

Edwin T. Fish, being sworn, on oath says that the above named A. H. Danforth, G. W. Danforth (plaintiffs in 67), and Almon G. Danforth, plaintiff in 68, are now, and for a number of years have resided in Washington, in Tazewell county, in Illinois, and they have been engaged in business as bankers in that town a number of years. He further states that said A. H.

Record, page 64.

Danforth, G. W. Danforth, and Almon G. Danforth, were during the same time apparently acting as partners in the banking business in Washington, and managed a bank called the Prairie State Bank at that town. He further states that said Almon G. Danforth on more than one occasion informed deponent that he was a partner of A. H. Danforth & Co. in the banking business. He further states that during the time said firm were doing business they had in the Prairie State Bank sundry printed cards, and which were distributed by the members of said firm, on which card the names of said A. H. Danforth, G. W. Danforth, and Almon G. Danforth, were printed and set forth as constituting the owners of the Prairie State Bank. Deponent further states that deponent has also lived in Washington for a number of years, but was absent at times; and deponent has for a number of years always understood that said three constituted and composed said firm. He further states that he has acted as clerk for the defendants and has been on good terms with the Danforths, and deponent has considerable knowledge about the claims and matters in controversy in said suits; and deponent believes that payments made by defendants to said Danforths were made and were to apply on their indebtedness to said firm. Deponent further states that the defendants have claims to large amount against said firm, and in the best judgment of deponent great injury may be done to defendants if compelled to make separate defenses.

EDWIN T. FISH.

Subscribed and sworn to before me this 6th day of February, A. D. 1863.

GEO. H. HARLOW, Clerk.

Record, page 65.

Thomas Birkett, being sworn, on oath says that he resides at Washington, Tazewell County, Illinois, and has for some twelve years; and during the same time deponent has been engaged in the business of making and manufacturing carriages, wagons, etc., at that place. He further states that he is well acquainted with said A. H. Danforth and G. W. Danforth, plaintiffs (in 67) and Almon G. Danforth, plaintiff in 68; all of said Danforths have resided and done business in said Washington for a number of years, and deponent always understood that the three Danforths above named constituted and composed the firm of A. H. Danforth & Co. in the banking business, loaning money, etc. He further states that about four years ago deponent went to the place of business of said A. H. Danforth & Co. to get them to accept a draft, which they done, and at the same time said Almon G. handed to deponent a printed card, on which it was printed, and appeared to the best of deponent's recollection, that said A. H. Danforth, G. W. Danforth, and Almon G. Danforth, composed or constituted the firm of A. H. Danforth & Co. He further states that he always understood and believed that said three Danforths owned and controlled the bank called the Prairie State Bank at Washington. Deponent further states that he done considerable business with said firm; paid them money and borrowed money of them from time to time; and said Almon G. appeared to be the managing man of the concern, and in conversation frequently said, in speaking of business, that we could accept a draft or transact business, referring to himself as being one of the firm.

THOS. BIRKETT.

Subscribed and sworn to before me this 6th day of February, 1863.

GEO. H. HARLOW, Clerk.

Per A. P. GRISWOLD, Deputy.

Record, page 66.

R. D. Smith, being sworn, on oath says he has lived at Washington and has been acquainted with A. H. Danforth, Geo. W. Danforth, and Almon G. Danforth, for near three years. He further states that he always supposed said three were partners in the banking business, and it is the impression of deponent that A. H. Danforth a year ago last summer told deponent that Almon G. had an interest in the bank, meaning the Prairie State Bank at Washington.

R. D. SMITH.

Subscribed and sworn to before me this 12th day of February, A. D. 1863.

GEO. H. HARLOW, Clerk.

STATE OF ILLINOIS, }
TAZEWELL COUNTY, }

At the February Term, A. D. 1863, of the Circuit Court
of Tazewell County, State of Illinois.

Record, page 67.

Wesley B. Harvey, being first duly sworn, on his oath says that he is a citizen of the town of Washington in said Tazewell county, and that he has been acquainted with A. H. Danforth, George W. Danforth, and Almon G. Danforth, for at least five years; and that he done business with the firm of A. H. Danforth & Co. during the time that they were carrying on the Prairie State Bank in the said town of Washington, and that during the time that said Prairie State Bank was in operation said Almon G. Danforth was acting as cashier, and appeared to conduct the business; and that he, affiant, was in the habit of depositing money in said bank, and that at the time said bank broke, and at the time the banks of Illinois suspended payment, being on or about the first day of May, A. D. 1861, he had deposited in said Prairie State Bank about the sum of one hundred and sixty dollars; and that soon after he heard that said bank had suspended he called at said bank for the purpose of withdrawing his said deposits from said bank. Almon G. Danforth charged and required this affiant to pay a discount of some fifteen per cent. on the said one hundred and sixty dollars, which he did under protest. In a few days afterwards affiant called at said Prairie State Bank and asked said Almon G. Danforth why he had exacted and required a larger discount of him than they were requiring of other persons who had money deposited in said bank, affiant having been informed that they were charging other depositors a few cents less than they had taken from him. Affiant says that in answer to said question said Almon G. Danforth said we had not then consulted together and determined on the amount that we would discount our depositors.

WESLEY B. HARVEY.

Sworn to and subscribed before me this 9th day of February, A. D. 1863.

[SEAL.]

DAVID KYES, N. P.

Record, page 83.

STATE OF ILLINOIS, }
TAZEWELL COUNTY, } ss.
ALMON G. DANFORTH,

vs.

BENJAMIN E. MILES,
WELLS ANDREWS, JR., and
JOHN A. ANDREWS,

In the Circuit Court of Tazewell County,
February Term, 1863.

Motion to continue this cause.

Wells Andrews, jr., being first duly sworn, on oath states, that the defendants can not safely proceed to trial at this term of this court without the testimony of Chester Andrews and Frank Lawson, both of whom are residents of Tazewell County, but now and for the twelve months last past have been in the military service of the United States, and both are now somewhere in the states of Mississippi, Tennessee, or Alabama.

He further states that the suit is brought by the plaintiff to recover the amount of several promissory notes set out in plaintiff's declaration, and that all of the notes described in plaintiff's declaration were assigned to the plaintiff, as deponent is informed and believes, by A. H. Danforth & Co. just before the commencement of this suit.

He further states that the dealings between the defendants and said A. H. Danforth & Co., for the past eight years, have been large, and exceed in amount the sum of ninety thousand dollars.

Rec. 21, page 84.

That on the 22d day of April, 1854, said A. H. Danforth & Co. sold to the defendants in this suit, Daniel L. Miles, and Paul N. Rupert, a stock of goods, at and for the price and sum of \$14,215.35, in payment of which said Miles, and Paul N. Rupert, and these defendants, executed their three promissory notes of that date, to said A. H. Danforth & Co., each for \$4,738.45 — one at 6 months, one at 12 months, and one 18 months — all bearing interest at 10 per cent. No other consideration was paid or received for said three notes.

Deponent further states that the deposition of Paul N. Rupert, on file, shows the foregoing statement, as to the sale of the goods and the giving of said notes, to be true.

Deponent further states that between the time said three notes were given and the 22d day of April, A.D. 1856, the makers of said three notes made sundry payments thereon, amounting to a large sum of money, the precise sum the defendant can not now state; and that on said 22d day of April, A.D. 1856, the defendants, Daniel L. Miles, and Paul N. Rupert, and said A. H. Danforth & Co., figured up the amount of said three notes, and added interest on the said three notes at the rate of 10 per cent. per annum, on all then remaining unpaid, and upon all the remainder until the time payments were made, and deducted therefrom the amount paid on said notes; and three new notes were executed for the balance by the defendants and Daniel L. Miles — one for \$500, and two for \$5,000 each — all payable to said A. H. Danforth & Co. at one day, and all bearing interest at 10 per cent. per annum.

These defendants expect to prove by said Chester Andrews that said original three notes were taken up, as stated, and that three new notes were given for balance of old notes and interest, after deducting payments, and that included in the three new notes executed by the defendants and said Daniel L. Miles there was included over nine hundred dollars of unlawful and usurious interest.

Record, page 85.

He further states that he expects to prove by said Chester Andrews, that between the said 22d day of April, 1856, and the 22d day of November, 1857, the defendants and said Miles made large payments on said three notes dated April 22, 1856; and on said 22d day of November, 1857, the defendants, Daniel L. Miles, and said A. H. Danforth & Co., figured up the amount of said three last notes, and added interest thereto on all remaining unpaid, and on all the balance until payments were made, and deducted payments actually made; and the defendants for the balance executed to said A. H. Danforth & Co. the notes described and set forth in the 4th, 5th, 6th and 7th counts in plaintiff's declaration, and two other notes — one for \$1,000, and one for \$328.18 — both of which last notes the defendants have fully paid to said A. H. Danforth & Co., and cancelled the same.

He also expects to prove by said Chester Andrews, that no other or further consideration was paid or received for said last mentioned notes, and that the further sum of eight hundred and four dollars of unlawful and usurious interest was included in said notes so executed by the defendants on said 22d day of Nov., 1857, making in all the sum of \$1,704 of usurious and unlawful interest, included in and forming part of the notes so executed Nov. 22d, 1857.

He further states that these defendants have at various times had other dealings with said A. H. Danforth & Co., and have paid them large sums of money, drafts, etc., that these defendants intended to apply on the claims said A. H. Danforth & Co. held against them. But just before the commencement of this suit said A. H. Danforth & Co. assigned the notes in suit to the plaintiff, the effect of which is to embarrass the defendants in making their defense.

Record, page 86

He further states that the plaintiff is a son of one of said firm of A. H. Danforth & Co., and a nephew of the other, and was acting as clerk and cashier of said firm during the principal part of the time the dealings between the defendants and said A. H. Danforth & Co. were going on.

Deponent further states that said A. H. Danforth & Co. have also commenced suit against these defendants in this court, which is now pending herein, to recover for a bank account against these defendants.

He further states that this deponent has filed his affidavit in said cause for a continuance, in which deponent sets out a statement of payments, credits, etc., and showing that these defendants have overpaid said account of A. H. Danforth & Co. some 6 to 8000\$, which ought to be credited and allowed to defendants in this suit. He makes said affidavit a part of this application the same as if here inserted at length.

He expects to prove the same facts in this cause by the said Chester Andrews and Frank Lawson as stated in said affidavit, and defendants have no other witnesses by which to prove the same facts, known to deponent.

He further states that he also expects to prove by said Chester Andrews that all said notes in plaintiff's declaration mentioned were assigned to plaintiff after they became due.

Record, page 87. He further states that he at the last term fully believed he could prove by said Paul N. Rupert all the facts in relation to the lifting and giving the notes, as herein before stated; but said Rupert, on being examined, could only state as to the notes given for said goods.

He further states that he has other witnesses to prove some other and additional payments and credits on the notes in this suit, but he knows of no witnesses by whom the defendants can prove the same facts as he expects to prove by said Chester Andrews and Frank Lawson.

He further states that he believes there will be a controversy about the facts in the case, and it will be indispensably necessary for the defendants to have the testimony of said Chester Andrews and said Lawson, or defendants will be greatly injured.

He further states that said Chester Andrews is now, and since this suit was commenced was, a captain of a company in the 47th Regiment of Illinois Volunteers, and in the active discharge of his duties as such; and that said Lawson, during the same period, was, and still is, a soldier in the 8th Regiment of Illinois Volunteers, and moving about from place to place in the states of Mississippi, Tennessee and Alabama. He further states that these defendants caused a summons to issue in this cause in the first part of December, A.D. 1862, to the sheriff of Tazewell county, for said Frank Lawson and Chester Andrews, but said sheriff has not been able to find said witnesses, as defendant is informed and verily believes.

Record, page 88. He further states that these defendants caused a potestatem commission to issue in this cause, out of and under the seal of this court, directed to Captain Joseph B. Miles, a captain in the Forty-seventh Regiment Illinois Volunteers, commissioner to take the deposition of said Frank Lawson and Chester Andrews in this cause, upon interrogatories duly filed; which commission was issued on or about the third day of December, A.D. 1862, which was forwarded to him, the said commissioner, at once by mail; but said commissioner has not as yet been able to take said depositions, or either of them, and has not taken and returned the same to this court.

He further states that said commission was procured, issued and forwarded in good faith, bona fide, as soon as these defendants found out where to forward the same; that said commission and interrogatories were forwarded by mail to said commissioner, at Corinth, in the State of Mississippi, where said commissioner and said witnesses were at that time, as he verily believes.

He further states that, owing to the disturbed condition of affairs in that neighborhood, said commissioner has been unable to take and return said commission and depositions.

He states expressly and positively that these defendants know of no other reliable person to take said depositions; that said commission was procured and furnished as soon as the defendants learned the whereabouts of said Frank Lawson and Chester Andrews, and were forwarded without delay.

He further fully expects to procure the depositions of said witnesses Lawson and Andrews by the next term of this court.

Record, page 89. That this application is not made for delay, but that justice may be done. He prays, therefore, that this cause may be continued.

WELLS ANDREWS, JR.

Subscribed and sworn to before me, this 3d day of February, A.D. 1863.

GEO. H. HARLOW, Clerk.

The affidavits of Wells Andrews, jr., read in evidence on the motion to consolidate, and the account attached to the same, may be found in record on pages from 67 to 89 inclusive, and appear in printed abstract on pages 9, 10, 11, 12, 13, 14, 18, 19, 20.

The defendants also read in evidence in support of the motion the bill of particulars in 67, and the notes and indorsements set out in this cause,

which said bill of particulars in case 67 was filed February 12th, 1863, and is in words and figures following, to wit:

Messrs. Andrews, Miles & Co.	To A. H. Danforth & Co.,	Dr.	
Dec. 5th, 1861.			
To balance of account rendered as per pass-book of account current to this date, (all checks and vouchers having been returned to said Andrews, Miles, & Co.)			\$1,619.29
Dec. 6th, 1861.		Cr.	
By 15 days draft on S. S. Guthrie, Buffalo, N. Y., for	\$300.00		
Less discount and exchange	2.90	297.10	
May 3d, 1862. By one day sight draft on S. S. Guthrie, Buffalo, N. Y., dated May 3, 1862,		500.00	797.10
Balance,			\$822.19

Both of the above drafts were drawn by Miles, Andrews & Co.

Said notes and indorsements are in the words and figures following, to wit:

Record, page 90. \$169.37. Washington, Tazewell County, Ill., Sept. 14th, 1861.
One day after date, we, the subscribers, of Washington, County of Tazewell, State of Illinois, promise to pay to A. H. Danforth & Co., or order, at their office in Washington, one hundred and sixty-nine $\frac{37}{100}$ dollars, for value received, with 10 per cent. interest.
ANDREWS, MILES & CO.

Indorsed: Pay ALMON G. DANFORTH,
A. H. DANFORTH & CO.

\$594.27. Washington, Tazewell County, Ill., 21 January, 1861.
One month after date, we, the subscribers, of Washington, County of Tazewell, State of Illinois, promise to pay to A. H. Danforth & Co., or order, at their office in Washington, five hundred and ninety-four $\frac{27}{100}$ dollars, for value received, with interest.
ANDREWS, MILES & CO.

Indorsed: Pay ALMON G. DANFORTH,
A. H. DANFORTH & CO.

\$700. Washington, Ill., July 14th, 1860.
On the first day of September next, we promise to pay to the order of William M. Thompson seven hundred dollars, three hundred dollars to be paid in coin, value received, with interest after maturity at 10 per cent. per annum.

ANDREWS, MILES & CO.

Indorsed: September 14, 1861. Interest paid on this note from September 1, 1860, to September 1, 1861 — \$70.

Pay A. H. DANFORTH & Co.,

WILLIAM M. ^{his} ~~X~~ THOMPSON.
_{mark.}

Attest, THOS. TAYLOR.

Pay ALMON G. DANFORTH,
A. H. DANFORTH & CO.

Record, page 91.

\$1,000.00.

Washington, Ill., November 22d, 1857.

One day after date, we, jointly or severally, promise to pay to Asa H. Danforth & Co., or order, one thousand dollars, with interest from date, at the rate of 10 per cent. per annum, for value received.

Indorsed: Credit this note one year interest, up to Nov. 22, 1858. \$100.00.

Feb. 22, 1860. Interest paid on this note from Nov. 22, 1858, to Nov. 22, 1859, \$100.00.

B. E. MILES,
WELLS ANDREWS, JR.,
JOHN A. ANDREWS.

Sept. 14, 1861. Interest paid on this note from Nov. 22, 1859, to August 22, 1861, \$175.

Pay ALMON G. DANFORTH,
A. H. DANFORTH & CO.

\$1,000.00.

Washington, Ill., November 22d, 1857.

One day after date, we, jointly or severally, promise to pay to Asa H. Danforth & Co., or order, one thousand dollars, with interest from date, at the rate of 10 per cent. per annum, for value received.

Indorsed: Credit this note one year interest up to Nov. 22, 1858. \$100.00.

Feb. 22, 1860. Interest paid on this note from Nov. 22, 1858, to Nov. 22, 1859, 100.00.

B. E. MILES,
WELLS ANDREWS, JR.,
JOHN A. ANDREWS.

Sept. 14, 1861. Interest paid on this note from Nov. 22, 1859, to August 22, 1861, \$175.

Pay ALMON G. DANFORTH,
A. H. DANFORTH & CO.

\$2,000.00.

Washington, Illinois, November 22d, 1857.

One day after date, we, jointly or severally, promise to pay to A. H. Danforth & Co., or order, two thousand dollars, with interest from date, at the rate of 10 per cent. per annum, for value received.

Record, page 92.

Indorsed: Credit this note one year interest up to Nov. 22, 1858. \$200.00.

Feb. 22, 1860. Interest paid on this note from Nov. 22, 1858, to Nov. 22, 1859, \$200.00.

B. E. MILES,
WELLS ANDREWS, JR.,
JOHN A. ANDREWS.

Sept. 14, 1861. Interest paid on this note from Nov. 22, 1859, to August 22, 1861, \$350.00.

Pay ALMON G. DANFORTH,
A. H. DANFORTH & CO.

\$2,000.00.

Washington, Ill., November 22d, 1857.

One day after date, we, jointly or severally, promise to pay to A. H. Danforth & Co., or order, two thousand dollars, with interest from date, at the rate of 10 per cent. per annum, for value received.

Indorsed: Credit this note one year interest up to Nov. 22, 1858. \$200.00.

Feb. 22, 1860. Interest paid on this note from Nov. 22, 1858, to Nov. 22, 1859, \$200.00.

B. E. MILES,
WELLS ANDREWS, JR.,
JOHN A. ANDREWS.

Sept. 14, 1861. Interest paid on this note from Nov. 22, 1859, to August 22, 1861, \$350.00.

Pay ALMON G. DANFORTH,
A. H. DANFORTH & CO.

The plaintiff, in opposition to said motion, then read in evidence the affidavits of Thomas Taylor and Almon G. Danforth, which said affidavits are in the words and figures following, to wit:

STATE OF ILLINOIS, }
TAZEWELL COUNTY, }

In the Tazewell County Circuit Court,
February Term, A. D. 1863.

Record, page 93.

A. H. DANFORTH & CO.,
vs.
ANDREWS, MILES & CO. }

Thomas Taylor, being duly sworn according to law, depose and say, that he went into the employ as book-keeper of A. H. Danforth & Co., the plaintiffs in the above entitled cause, on or about December 1, 1858, and continued in that capacity until December 21, 1861, and that the parties composing the said firm of A. H. Danforth & Co. were Asa H. Danforth and Geo. W. Danforth. Deponent further saith that Almon G. Danforth, during said time, acted in the capacity of cashier for said A. H. Danforth & Co., for a salary, and that said Almon G. Danforth had no capital invested in the business of said A. H. Danforth & Co., and was not a partner in said firm; and further deponent saith not

THOMAS TAYLOR.

Subscribed and sworn to before me this 12th day of February, A. D. 1863.

GEO. H. HARLOW, Clerk.

STATE OF ILLINOIS, }
TAZEWELL COUNTY, }

In Circuit Court,
February Term, A. D. 1863.

ALMON G. DANFORTH,
vs.
ANDREWS, MILES & CO. }

Record, page 94.

Almon G. Danforth, being duly sworn according to law, depose and say, that he is the plaintiff in the above entitled cause, and that he was at the time of the commencement of the above suit, and still is, the sole owner in his own individual right, of the notes upon which the above suit was brought, and that he will be entitled to the proceeds of said notes, when collected, in his own individual right. And this deponent further saith that he has no interest whatever in the suit brought by A. H. Danforth & Co. against Andrews, Miles & Co; and further deponent saith not.

ALMON G. DANFORTH.

Subscribed and sworn to before me this 12th day of February, A. D. 1863.

GEO. H. HARLOW, Clerk.

But the court overruled the motion, and refused to consolidate the causes 67 and 68; to which decision of the court in overruling said motion, and in refusing to consolidate the causes 67 and 68, the defendants then and there at the time objected and excepted.

The court then directed a jury to be called, to which the defendants objected and excepted, on the ground that a change of venue should have been granted by the court; and the plaintiff, to maintain the issues upon his part, offered in evidence the following notes, with the indorsements thereon, to wit:

Record, page 95.

One note, dated September 14, 1861, payable at one day to A. H. Danforth & Co., for \$169.37, with interest at 10 per cent., made by Andrews, Miles & Co., and by the former indorsed to plaintiff. One note, dated January 21, 1861, payable at one month, to A. H. Danforth & Co., for \$594.27, with interest, made by Andrews, Miles & Co., and by the former indorsed to plaintiff. One note, dated July 14, 1860, payable on the first day of September next thereafter, to William M. Thompson, for

\$700 — \$300 to be paid in coin — with interest after maturity, at 10 per cent., made by Andrews, Miles & Co., and by the former indorsed to A. H. Danforth & Co., and by the latter to plaintiff. Indorsed September 14, 1861.: Interest paid from September 1, 1860, to September 1, 1861, \$70. Two notes, each dated November 22, 1857, payable at one day to Asa H. Danforth & Co., for \$1,000, with interest at 10 per cent., made by B. E. Miles, Wells Andrews, jr., and John A. Andrews, and by A. H. Danforth & Co. indorsed to plaintiff. Indorsed: Interest paid to Aug. 22, 1861, \$375. Two notes, each dated Nov. 22, 1857, payable at one day, to A. H. Danforth & Co., for \$2,000, with interest at 10 per cent., made by B. E. Miles, Wells Andrews, jr., and John A. Andrews, and by the former indorsed to plaintiff. Indorsed: Interest paid to Aug. 22, 1861, \$750. (The notes and indorsements are set out at length in printed abstract on pages 21 and 22.)

Record, pages
95 and 96.

To which the defendants objected. Objection overruled. Defendants excepted.

The plaintiff here rested.

The defendants then called Asa H. Danforth, who testified as follows, to wit:

These notes in suit were assigned by A. H. Danforth & Co. to the plaintiff at the time I brought them to Pekin to be sued. It was about two weeks before the commencement of this suit; was in August, 1862. I am one of the firm of A. H. Danforth & Co. The defendants then asked what consideration, if any, was paid by the plaintiff to A. H. Danforth & Co. for the assignment of the notes: to which plaintiff objected. Objection sustained. Defendants excepted. The defendants then proposed to prove that the notes still belonged to A. H. Danforth & Co., and were assigned to plaintiff for collection merely. Plaintiff objected. Objection sustained. Defendants excepted. The defendants then called John A. Andrews, who testified that on the 22d April, 1854, the defendants and Daniel L. Miles, and Paul N. Rupert, purchased a stock of goods of A. H. Danforth & Co. for \$14,215.35, and gave their notes at 6, 12 and 18 months, each for \$4,738.45, at 10 per cent. interest.

Record, page 98.

First note was paid before maturity and delivered up. On 22d April, 1856, A. H. Danforth & Co., and makers of notes, footed up amount of interest on two remaining notes at ten per cent., added same to principal, and then computed interest on the amount for the second year at 10 per cent., and then deducted sundry payments and credits. Defendants and Daniel L. Miles then gave their notes of same date for the balance.

Witness executed the two following notes, which were read to the jury, to wit: One at 12 and the other at 18 months, each for \$4,738.45,

Record, pages
98 and 99.

Record, pages
99 and 100.

Record, page 101.

Record, page 102.

payable to A. H. Danforth & Co., with 10 per cent. interest, and dated April 22, 1854, and signed by Paul N. Rupert, Daniel L. Miles, Wells Andrews, John A. Andrews, and B. E. Miles. Witness then identified the three notes executed April 22d, 1856, which were read to the jury, as follows: Two for \$5,000 each, and one for \$500, all payable at one day to Asa H. Danforth & Co., with 10 per cent. interest, and signed by Daniel L. Miles, John A. Andrews, Wells Andrews, jr., and B. E. Miles. Witness further stated that on the 22d Nov., 1857, the defendants and A. H. Danforth & Co. computed the amount due on said three notes dated April 22d, 1856, at 10 per cent. interest, and deducted the credits and payments, and then gave the notes described in the 4th, 5th, 6th and 7th counts, and one other note for \$1,000, and one for \$328.18, for the balance due on the notes dated April 22d, 1856. That defendants paid said two last mentioned notes. On cross examination witness stated that he could not tell the amount paid on notes dated April 22, 1854, at the time the next notes were given, nor whether the payments exceeded the amount. But on comparing the interest then due with the notes then given, stated that the amount defendants then paid exceeded all the interest charged, and also paid part of the principal, and that when the notes were changed, April 22, 1856, the amount then paid to A. H. Danforth & Co. exceeded the interest also then charged in said notes, and also discharged part of the then unpaid principal, and said three notes of that date were executed for the balance then due after deducting said payments: Defendants then called Wells Andrews, who stated that on 22d April, 1854, the defendants, and Daniel L. Miles, and Paul N. Rupert, purchased a stock of goods of A. H. Danforth & Co. for \$14,215.35, and gave their notes at 6, 12 and 18 months for \$4,738.45 each, with 10 per cent. interest. That no other consideration was given. That the note at six months was paid before due, and on the 22d April, 1856, the defendants and Daniel L. Miles settled with A. H. Danforth & Co. for the two notes, at 12 and 18 months. That at that time the interest on same was computed for one year at 10 per cent. and added to the principal, and interest on amount computed for second year at 10 per cent. and added to the principal, and after deducting the credits and payments the three notes dated April 22, 1856, were given for the balance of said two notes and interest. That on 22d Nov., 1857, defendants and A. H. Danforth & Co. computed the amount due on the three notes dated April 22, 1856, at 10 per cent. interest, and after deducting credits, the notes in suit of that date, and two others of same date — one for \$1,000, and one for \$328.18 — were given, which two last named notes have been paid. That the stock of goods was the only consideration for notes in suit. Cross examined. That at the settlement of April 22, 1856, defendants had an account against A. H. Danforth & Co., and the latter had an account against defendants, but could not tell how much. Yet at

the time of giving up the notes in 1856, and also in 1857, and executing the new ones, the amounts then paid and settled exceeded the amount of interest accrued then on the notes. Defendants then called Eli Heiple, and proposed to prove that they had an account of \$200 for storage against A. H. Danforth & Co. that ought to be credited on notes. Plaintiff objected, because account had been allowed in suit No. 67. Objection sustained. Defendants excepted.

Record, page 103.

Plaintiff then called Thomas Taylor, who, on being handed an account, stated that in the settlement of Nov. 22, 1857, there was an item of \$100 in money that A. H. Danforth & Co. had paid for defendants, and defendants were credited with \$2.11 of interest. The amount of defendants' account at that time exceeded the interest on the notes over \$2,000. Cross examined. Had no recollection of the facts except as his memory was refreshed by the account, and only swore as matters appeared on the account in his hands, and he took the amounts from the account. That he made the entries stated in the account, and also made the calculations, and would swear to his own work. The parties here rested their cause. This was all the evidence in the case.

The plaintiff then asked the following instructions:

The jury are instructed that if they believe from the evidence that after the 21st day of January, 1857, the defendants and the plaintiffs had a full settlement, and the defendants gave plaintiffs their notes, including interest, calculated at the rate of 10 per cent. on notes due before that time, this would not be a usurious transaction, and the plaintiffs would be entitled to recover the amount due upon said notes and interest, that were given after January 21, 1857.

Record, page 104.

If the jury believe from the evidence that in 1854 A. H. Danforth & Co. sold a stock of goods to the defendants and two other persons and took the notes of the purchasers for the price thereof, with interest at the rate of 10 per cent., and that upon a settlement of accounts between them new notes were executed leaving out one of the obligors; and again in Nov. 22, 1857, the notes sued on were executed leaving out another of the obligors to the second notes, bearing interest at the rate of 10 per cent. from date, the said last transaction would not be usurious, and the plaintiff will recover the amount of the notes, and interest at 10 per cent.

Defendants objected. Objection overruled. Defendants excepted.

The defendants then asked the following instructions:

The jury are instructed that by the act of the General Assembly of the State of Illinois, approved January 30, 1849, it is provided that in the trial of any action brought upon a promissory note or writing obligatory in any of the courts of this state, wherein is reserved a higher rate of interest than six per cent. per annum, it shall be lawful for the defendant to set up and plead as a defense in any such suit, that the consideration of said note or writing obligatory, upon which such suit was not for money loaned. And if it appear upon the trial of the cause that the note sued on was not given for money loaned, then the court shall only render judgment for the principal sum in the said note, and six per cent. interest.

Record, page 105.

The defendants in this case set up as a defense, in part, to four of the notes set out in plaintiff's declaration, that in April, 1854, they, with Daniel Miles and Rupert, purchased a stock of goods of A. H. Danforth & Co., amounting to the sum of \$14,215.35, and gave them three notes for the amount, and that said notes were given for money loaned, and

that said notes bore interest at the rate of ten per cent., and that on the 22d day of April, A. D. 1856, the defendants and Daniel Miles figured up with A. H. Danforth & Co. the amount of said three notes, and interest thereon at 10 per cent., added the sums together and deducted sundry payments, and then gave three notes for the balance, amounting to the sum of \$10,500, and on the 22d November, 1857, the defendants, with A. H. Danforth & Co., again figured up the amount of the \$10,500 notes, and interest on the same at the rate of ten per cent., and from the whole amount deducted payments and credits, and gave the notes dated Nov. 22, 1857, for the balance; and the defendants now seek to have deducted from said notes the difference between interest at six per cent. and the interest actually charged.

(The foregoing instructions, as asked by defendants, the court refused to give, and to which decision defendants excepted.)

Record, page 106. Whatever interest was agreed to be paid on any contract, for any thing except money loaned, under the law of 1849, over the rate of 6 per cent., was usurious, and the six per cent. only can be recovered; but if new notes are given for the former purchase under the law of 1857, and made to draw 10 per cent., the new notes would not be usurious; but if they are a part of the former transaction, the 4 per cent. usury in the former notes so taken may be deducted from the amount due on the latter notes.

Record, page 107. The jury returned the following verdict:

We, the jury, find for the plaintiff, and assess his damages in the sum of seven thousand eight hundred and forty-eight dollars.

The defendants then entered a motion to set aside the verdict and for a new trial, which motion is in the words and figures following, to wit:

STATE OF ILLINOIS, } TAZEWELL COUNTY, } ss.	In the Circuit Court of Tazewell County, February Term, 1863.
ALMON G. DANFORTH, } vs. }	Motion to set aside verdict, and for a new trial.
MILES AND OTHERS.	

Record, page 108. The defendant enters a motion for to set aside the verdict in this cause, and for a new trial, for the following, among other reasons:

1. The court improperly refused to grant a change of venue in this cause.
2. The court improperly overruled the motion to continue this cause at this term.
3. The court allowed improper evidence to be given on the part of the plaintiffs.
4. The court excluded proper evidence on the part of the defendants.
5. The court gave improper instructions on the part of the plaintiffs.
6. The court refused proper instructions asked by the defendants.
7. The verdict is against the weight of evidence.
8. The verdict is against law.
9. The court improperly refused to consolidate this cause with case number 67, tried at this term.

Other reasons.

GROVE & KYES,
For Defendants.

Motion overruled. Defendants excepted.

The court then rendered the following judgment on the verdict:

Record, page 109. It is therefore ordered and adjudged by the court that the plaintiff have and recover of the said defendants the damages aforesaid in form aforesaid found, likewise the costs and charges by him about his suit expended, and that execution issue therefor.

Defendants excepted.

The plaintiff assigns the following errors on the record:

1. The court below erred in not awarding a change of venue, as prayed.
2. The court below erred in not granting a continuance of the cause at the February term, 1863.
3. The court below erred in not consolidating the cause with case No. 67.
4. The court admitted improper evidence on the part of the plaintiff below.
5. The court excluded proper evidence offered by the defendants below.
6. The court below erred in giving improper instructions for plaintiff below.
7. The court below erred in refusing proper instructions asked by defendants below.
8. The verdict was against the weight of evidence.
9. The verdict was against the law of the case.
10. The verdict is for too much.
11. The court below erred in overruling the motion for a new trial.
12. The instructions were calculated to mislead the jury, and were contradictory.
13. Other reasons.

By GROVE & KYES, *Their Attorneys.*

BENJAMIN E. MILES AND OTHERS, Plaintiffs in Error, <i>vs.</i> ALMON G. DANFORTH, Defendant in Error.	}	<i>PLAINTIFFS' BRIEF AND POINTS.</i>
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1. A change of venue should have been awarded.

The petition was presented on the first day of the term; heard on the second day; was in proper form, and the adverse party had reasonable notice.

See on this point

Clark *vs.* the People, 1 Scam. 117.
 Berny *vs.* Wilkinson, 1 " 164.
 McGoon *vs.* Little et al., 2 Gil. 42.
 Pearl et al. *vs.* Wellman, 11 Ills. 356.
 Searls *vs.* Munson, 17 Ills. 561.
 Moss et al. *vs.* Johnson, 22 Ills. 640.

As to the question of notice generally —

Cody *vs.* Hough, 20 Ills. 43.
 Cox et al. *vs.* Millner, 23 Ills. 476.

2. The court should have continued the cause at the Feb. Term, A. D. 1863.

See affidavits of Wells Andrews, jr., and account attached, printed abstract, pages 9, 10, 11, 12, 13, 14, 18, 19, 20.

In deciding this point the court will consider the amount in controversy, the disturbed condition of the country, and the difficulty of procuring depositions of soldiers in the field.

See also

Lyon et al. *vs.* Boilvin, 2 Gil. 637.
 Cole *vs.* Choteau et al., 18 Ills. 441.
 Shook *vs.* Thomas, 21 Ills. 89.

3. The court below erred in not consolidating the case with case No. 67. The affidavits, account and notes read in evidence on the hearing of the motion show that A. H. Danforth & Co., the plaintiffs in case No. 67, and the defendants in both cases had large dealings together, amounting in the aggregate to over \$90,000. That Danforth & Co. held sundry notes against the defendants, as well as a bank and other accounts. Just before the commencement of the suits, Danforth & Co. assigned the notes they held against the defendants to A. G. Danforth, a son of one of the firm of A. H. Danforth & Co., and the nephew of the other, and the clerk of both. Almon G. Danforth sued on the notes, and A. H. Danforth & Co. brought suit on the accounts. The design of A. H. Danforth & Co. in thus splitting the cause of action was to make the payments of the defendants apply in payment of usurious interest charged in A. H. Danforth & Co.'s account.

See 1 Chitty on Pleading, 198.

"Where the plaintiff has two causes of action which may be joined in one action, he ought to bring one action only; and if he commence two actions he may be compelled to consolidate them, and to pay the costs of the application."

See cases cited in note, 1 Chitty on Pleading, 9th American Edition, page 199.

Here Danforth & Co. had an account running for several years, and sundry notes. They could have sued and tried the whole together. They brought two suits—one on the account in their own names, and one in the name of their clerk. It is submitted that the whole record shows that they were the parties interested in both suits. (It may be stated here, as illustrative of the whole proceeding, that in Case 67 Miles *et als.*, the defendants, recovered a verdict against A. H. Danforth & Co. for over twenty-five hundred dollars, which the court below set aside and granted a new trial, although it does not appear in the record.)

4. The court excluded proper evidence offered by the defendants below. See testimony of A. H. Danforth, printed abstract, page 24. The witness was asked what consideration, if any, was paid by Almon G. Danforth for the notes. The question was not permitted to be put. The defend-

ants below then proposed and offered to prove by the witness that the notes were assigned to Almon G. Danforth for collection only.

See also the testimony excluded as to the storage.

The doctrine is that a party to a negotiable instrument is not a competent witness to inquire into the consideration. But this does not apply to the indorser, when he is called on to testify as to the consideration paid by his indorsee, or whether the indorsement was not made merely to collect, or whether the note has not been paid.

Bradley et al. *vs.* Morris, 3 Scam. 183.
Webster et al. *vs.* Vickers, 2 Scam. 296.
Lyon et al. *vs.* Boilvin, 2 Gilman 637,
Smith *vs.* Lovett, 11 Pick. 417,
Byles on Bills, 237,

5. The court gave improper instructions on the part of the plaintiff below.

Sufford et al. *vs.* Vail, 22 Ill. 328.
Great Western R.R. Co. *vs.* Hanks, 25 Ill. 242.
Springdale Cemetery Association *vs.* Smith et al. 24 Ill. 482,
Brown *vs.* Graham, 24 Ill. 630 and 631,

6. The court refused proper instructions asked by defendants below.
See same authorities last above cited.

7. The instructions given are contradictory, and calculated to mislead.

8. The court should have granted a new trial.

H. GROVE,
For Plaintiffs in Error.

377 138

In the Supreme Court.

APRIL TERM, A. D. 1863.

BENJAMIN E. MILES, and others,
PLAINTIFFS IN ERROR,
vs.
ALMON G. DANFORTH,
DEFENDANT IN ERROR.

ABSTRACT OF RECORD,
ASSIGNMENT OF ERRORS,
AND
PLAINTIFFS' BRIEF AND POINTS.

NASON, LAW PRINTER, COR. FULTON & WASHINGTON, PEORIA.

*Filed April 21
1863*

J. Leland

Mc

IN THE SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A.D. 1863.

BENJAMIN E. MILES AND OTHERS, Plaintiffs in Error, <i>vs.</i> ALMON G. DANFORTH, Defendant in Error.	}	ERROR TO TAZEWELL.
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ABSTRACT OF RECORD, ASSIGNMENT OF ERRORS, AND PLAINTIFFS'
BRIEF AND POINTS.

This was an action of assumpsit, brought to the September Term, 1862, of the Tazewell County Circuit Court.

Record, page 2. The declaration was filed August, 1862, ten days before the first day of the term.

Record, page 3. The 1st count was upon a note dated September 14, 1861, for \$169.37, payable one day after date, with interest at 10 per cent., to A. H. Danforth & Co., and by the latter assigned to plaintiff.

The 2d count was upon a note dated January 21, 1861, payable to A. H. Danforth & Co., at one month, for \$594.27, with interest, and by the latter assigned to plaintiff.

Record, page 4. The 3d count was upon a note dated July 14, 1860, payable on the first day of September next thereafter to William M. Thompson, for \$700, \$300 of said sum to be paid in coin, with interest after maturity at 10 per cent., and by the latter assigned to A. H. Danforth & Co., and by the latter assigned to the plaintiff.

Record, page 5. The 4th count was upon a note dated November 22, 1857, payable one day after date to Asa H. Danforth & Co., for \$1,000, with ten per cent. interest from date, and by the latter, under the name and style of A. H. Danforth & Co., assigned to the plaintiff.

Record, page 6. The 5th count was upon a note dated November 22, 1857, payable one day after date to Asa H. Danforth & Co., for \$1000, with ten per cent. interest from date, and by the latter, under the name and style of A. H. Danforth & Co., assigned to the plaintiff.

Record, page 7. The 6th count was upon a note dated November 22, 1857, payable one day after date to A. H. Danforth & Co., for \$2,000, with ten per cent. interest from date, and by the latter assigned to the plaintiff.

Record, page 8. The 7th count was upon a note dated November 22, 1857, payable one day after date to A. H. Danforth & Co., for \$2,000, with ten per cent. interest from date, and by the latter assigned to the plaintiff.

The common counts aver that defendants were indebted to plaintiffs in the sum of \$20,000, for money lent and advanced, and in same amount for money paid, laid out, and expended, and for money had and received.

The defendants, on the 1st September, 1862, filed fifteen pleas.

Record, page 13.

First Plea, *non assumpsit*.

Second Plea,—to the 1st, 2d, 3d, 4th, 5th, 6th and 7th counts,—that the notes in said counts mentioned were indorsed to the plaintiff after they were due, and payment to A. H. Danforth & Co.

Third Plea,—to the 1st, 2d, 3d, 4th, 5th, 6th and 7th counts,—that they paid to A. H. Danforth & Co. the whole amount due on the notes in said counts mentioned, and the plaintiff took and accepted said notes with notice of such payment.

Record, page 14.

Fourth Plea,—to the 1st, 2d, 3d, 4th, 5th, 6th and 7th counts,—that the notes therein mentioned are the notes and property of A. H. Danforth & Co., and that the plaintiff had no interest in said notes, and payment to A. H. Danforth & Co.

Fifth Plea,—to the 4th, 5th, 6th and 7th counts,—that the notes therein mentioned were executed without consideration, and indorsed to plaintiff after they became due.

Record, page 15.

Sixth Plea,—to the 4th, 5th, 6th and 7th counts,—that the notes therein mentioned were not given for money loaned; that A. H. Danforth & Co., the payees, on the 22d of April, 1854, sold and delivered to the defendants, Daniel L. Miles, and Paul N. Rupert, a stock of goods for the sum of \$14,215.35, for which the defendants and said Miles and Rupert, executed their three notes, each for \$4,738.45—one at six, one at twelve, and one at eighteen months, with ten per cent. interest; that on the 22d of April, 1856, Danforth & Co. and the makers of said notes computed the amount with interest at 10 per cent., and after deducting payments the defendants and Daniel L. Miles executed three notes of that date, amounting to \$10,500; two for \$5,000 each, and the third for \$500; all at one day, and bearing interest at 10 per cent., and that there was included in said three promissory notes the sum of about \$940 of unlawful and usurious interest, being four per cent. per annum on said sum of \$14,215.35 remaining unpaid, and in the part paid from the date thereof until such payments were made; that on the 22d of November, 1857, the defendants, after deducting payments actually made on said last three mentioned notes, executed to the said A. H. Danforth & Co. the said promissory notes in said 4th, 5th, 6th and 7th counts mentioned, and their two other notes—one for \$1,000, and one for \$328.18,—in payment of said three promissory notes. Both of said notes, one for \$1,000 and the other for \$328.18, have been fully paid, and the defendants say that they have fully paid all the said several promissory notes in said 4th, 5th, 6th and 7th counts mentioned, except as to about

Record, page 16.

the sum of \$1,704, and the interest thereon from the date of said notes; and as to said sum of \$1,704 and the interest thereon at 10 per cent., is for unlawful and usurious interest, which was well known to the plaintiff when the said notes were assigned to him.

Record, page 17.

Seventh Plea,—to the 4th, 5th, 6th and 7th counts,—that the said sums of money specified in said notes, as therein mentioned, were fully paid before the commencement of this suit, except \$1,752.66 and interest on same at 10 per cent. from the time said notes were executed, said \$1,752.66 being unlawful and usurious interest that was included in the sums specified in said notes in said counts mentioned, said unlawful and usurious interest having accrued on sums of money specified in certain other notes which Danforth & Co. held against defendants and other persons hereafter named. The only consideration of said notes in

Record, page 18.

said 4th, 5th, 6th and 7th counts mentioned was a stock of goods sold to the defendants and said Miles and Rupert on the 19th April, 1854, and of which a full and complete invoice was then taken, and the same delivered to said defendants and Miles and Rupert, on the 22d of the same month, and in payment of which the said defendants and Miles and Rupert executed three notes of same date, each for \$4,738.45—one at six, one at twelve, and one at eighteen months, with 10 per cent. interest: that on the 22d April, 1856, Danforth & Co., the defendants, and said Miles and Rupert, computed the amount then due on said three notes with 10 per cent. interest, and after deducting payments the defendants and said Miles executed three notes of that date—two for \$5,000 each, and one for \$500—all at one day, with 10 per cent. interest:

Record, page 19.

that these notes were given for the balance lawfully due on said first mentioned notes, and \$955 of unlawful and usurious interest, which sum of \$955 had accrued on said 14,215.35 at 4 per cent. per annum, several payments having been made previous to said change of notes: that on the 22d November, 1857, Danforth & Co. and defendants computed the whole amount due on said three last mentioned notes with 10 per cent. interest, and after deducting payments the defendants executed the said four notes mentioned in the 4th, 5th, 6th and 7th counts, and one note for \$1000, and one for \$328.18, which two last named notes have been paid in full: that on the 22d November, 1857, the time of giving the notes specified in said 4th, 5th, 6th and 7th counts, the said \$955 unlawful and usurious interest, which had been included in said two \$5,000, and said \$500 notes, was exacted and reserved, as also the interest on said \$955 at 10 per cent., which up to November 22, 1857, amounted to \$151.20, in all \$1,106.20. There was also reserved and claimed \$1,723.74 as interest on the balance due after deducting said \$955 on said two \$5,000 and one \$500 notes, when only \$1,097.28 should have been claimed, making a total amount of \$1,752.66 of usurious interest included in the said notes in said 4th, 5th, 6th and 7th counts

Record, page 20.

mentioned, and that plaintiff well knew the same, he being the son of A. H. Danforth: that the assignment of said notes in said 4th, 5th, 6th and 7th counts mentioned was made to plaintiff long after they became due: that said \$1,752.66, with interest at ten per cent. from Nov. 22, 1857, should be deducted from the sums specified in said notes in said 4th, 5th, 6th and 7th counts mentioned.

Record, page 21.

Eighth Plea—Payment to plaintiff on the 14th August, 1862, in full for all the promises and moneys in plaintiff's declaration mentioned.

Ninth Plea—That plaintiff, on the 12th August, 1862, by a writing, in consideration of \$20,000, released to the said defendants the said causes of action in plaintiff's declaration mentioned.

Record, page 22.

Tenth Plea—Indebtedness of plaintiff on 15th August, 1862, in the sum of \$30,000, for work and labor, care and diligence, and attendance of the said defendants, materials and other necessary things furnished; in \$30,000 for goods, wares and merchandise sold and delivered; in \$30,000 for money lent, advanced and paid out; in \$30,000 for money had and received; in \$30,000 for storage on wheat, corn, etc., etc.

Record, page 23

Eleventh Plea,—To the 1st count,—that the only consideration in the said note therein mentioned was unlawful and usurious interest on other and different sums long since paid: that on the 14th April, 1861, Danforth & Co., the payees of said note, exacted and claimed said sum of \$169.37, as specified in said 1st count, the same being usurious interest; all of which the plaintiff well knew when said note was indorsed to him.

Twelfth Plea,—To the 4th, 5th, 6th and 7th counts; payment of the notes therein mentioned, except the unlawful and usurious interest which said notes contained, and interest at 10 per cent. on said usurious and unlawful interest.

Thirteenth Plea,—to 3d count,—that the note therein mentioned was assigned to A. H. Danforth & Co. by William M. Thompson long after it became due; that it was indorsed by the former to A. G. Danforth long after it became due: that defendants paid said note before the commencement of this suit, by delivering to the payee and indorsers seven hundred dry hides, which they received as money.

Record, page 24.

Fourteenth Plea,—to the 1st, 2d, 3d, 4th, 5th, 6th and 7th counts,—that the plaintiff received the notes therein mentioned well knowing that they had been fully paid to A. H. Danforth & Co., except the unlawful and usurious interest: that the indorsement of said notes in said counts mentioned to A. G. Danforth by A. H. Danforth & Co. was made for the sole and only purpose of collection.

Fifteenth Plea,—that on the 14th August, 1862, defendants furnished and delivered to plaintiff 10,000 barrels of No. 1 flour, at \$5 per barrel, amounting to \$50,000; also 1,000 sacks of shorts, at \$2 per sack; also 20,000 bushels of corn, at 25 cents per bushel.

Record, page 13. The plaintiff below filed the following replications :

To 1st Plea, issue to the country.

Record, page 50. To 2d, 3d and 4th Pleas, that defendants did not pay notes as in said pleas mentioned.

To 5th Plea, that said notes in said counts mentioned were not given without consideration.

To 6th and 7th Pleas,—that the said notes in said 4th, 5th, 6th and 7th counts mentioned were made for a good consideration: that there was no usurious interest included in said notes.

Record, page 57. To 8th Plea,—that defendants did not pay the said plaintiff or satisfy said promises and moneys specified in said plaintiff's declaration mentioned.

To 9th Plea,—that the plaintiff, by a certain writing, in consideration of \$20,000, did not release to the said defendants the said causes of action in plaintiff's declaration mentioned.

To 10th Plea,—that the plaintiff is not indebted as in said plea alleged.

To 11th Plea,—that the only consideration of the said note in said 1st count mentioned is not unlawful and usurious interest, or other sums which defendants have paid.

Record, page 58. To 12th Plea,—that the note in said 4th, 5th, 6th and 7th counts mentioned had not been paid, except usurious and unlawful interest, as alleged.

To 13th Plea,—that said note in said 3d count mentioned was not assigned to A. H. Danforth & Co. by William H. Thompson after the same became due, nor indorsed by the former to plaintiff after the same became due: that defendants before the commencement of this suit did not pay said note, by delivering to the payee and indorsers 700 dry hides which they received as money, or otherwise.

To 14th Plea,—that plaintiff did not receive the notes in said 1st, 2d, 3d, 4th, 5th, 6th and 7th counts mentioned of A. H. Danforth & Co. well knowing that they had received payment for the same, except usurious interest that said Danforth & Co. were claiming of said defendants: that said indorsement was not made for the sole purpose of collection, thereby attempting to collect usurious interest.

Record, page 59. To 15th Plea,—that before the commencement of this suit defendants did not furnish to plaintiff 10,000 barrels of flour at \$5 per barrel, or 1,000 sacks of shorts at \$2 per sack, or 20,000 bushels of corn at 25 cents per bushel.

Issue to the country was joined on all the replications.

Record, page 26. On the first day of the term the defendants below filed their petition for a change of venue in these words:

STATE OF ILLINOIS, } ss. In the Circuit Court of Tazewell County aforesaid,
TAEWELL COUNTY, } to September Term, A. D. 1862.

ALMON G. DANFORTH, }
vs. }
BENJAMIN E. MILES, }
WELLS ANDREWS, JR., and } *In Assumpsit.*
JOHN A. ANDREWS, partners, }
trading under the name and style of }
ANDREWS, MILES & Co. }

Record, page 27. Wells Andrews, jr., one of the defendants in the above entitled cause, being first duly sworn according to law, on oath states that he fears that the defendants above named will not receive a fair trial in the Court in which the above action is pending (being the Tazewell County Circuit Court), on account that the judge of said Court, the Hon. James Harriott, is prejudiced against the defendants, so that the defendants can not expect a fair trial in said Court. He therefore, by way of petition, prays that the Court may award a change of venue in said cause to some County and Court where the causes complained of do not exist. He further states that he makes this petition and application by and with the consent of all the defendants in said cause. He makes this application at the first time of this Court that the application could be made.

WELLS ANDREWS, JR.

Subscribed and sworn to before me this 1st day of September, 1862.

GEO. H. HARLOW, Clerk,
Per A. P. GRISWOLD, Deputy.

The bill of exceptions, filed September 3d, 1862, Record, pages 26, 27 and 28, shows that on the hearing of the motion for a change of venue it appeared that said motion and petition was filed in the afternoon of the first day of the term; and David Kyes, attorney for defendants, at the time of filing said motion and petition, observed to Roberts, plaintiff's attorney, that defendants expected to take a change of venue, and that he had filed pleas in said cause, and also a motion and petition for a change of venue, without mentioning said fact as notice: and the motion for change of venue was taken up and heard on the morning of the second day of the Term. And plaintiff objected to granting the motion, because no notice was given, and no consent of all the defendants shown. The Court overruled said motion, and refused to change the venue, to which the defendants objected and excepted.

See Record, pages 25, 26 and 27.

At the September Term, 1862, the cause was continued on the application of the defendants. At the February Term, 1863, the defendants made a motion to continue the cause, upon the following affidavit, to wit:

Record, page 30. STATE OF ILLINOIS, } ss. In the Circuit Court of Tazewell County,
TAEWELL COUNTY, } February Term, A. D. 1863.
ALMON G. DANFORTH, }
vs. }
BENJAMIN E. MILES, } *Motion to continue this cause.*
WELLS ANDREWS, JR., and }
JOHN A. ANDREWS. }

Wells Andrews, jr., being first duly sworn, on oath states that the defendants can not

Record, page 31.

Record, page 32

safely proceed to trial at this Term of this Court without the testimony of Chester Andrews and Frank Lawson, both of whom are residents of Tazewell County, but now and for the twelve months last past have been in the military service of the United States, and both are now somewhere in the state of Mississippi, Tennessee, or Alabama. He further states that the suit is brought by the plaintiff to recover the amount of several promissory notes set out in plaintiff's declaration, and that all of the notes described in plaintiff's declaration were assigned to the plaintiff, as deponent is informed and believes, by A. H. Danforth & Co., just before the commencement of this suit. He further states that the dealings between the defendants and said A. H. Danforth & Co. for the past eight years have been large, and exceed in amount the sum of ninety thousand dollars. That on the 22d day of April, 1854, said A. H. Danforth & Co. sold to the defendants in this suit, Daniel L. Miles, and Paul N. Rupert, a stock of goods, at and for the price and sum of \$14,215.35, in payment of which said Miles, Paul N. Rupert and these defendants executed their three promissory notes of that date to said A. H. Danforth & Co., each for \$4,738.45,—one at 6 months, one at 12 months, and one at 18 months,—all bearing interest at 10 per cent.: no other consideration was paid or received for said three notes. Deponent further states that the deposition of Paul N. Rupert, on file, shows the foregoing statement as to the sale of the goods and the giving of said notes to be true. Deponent further states that between the time said three notes were given and the 22d April, 1856, the makers of said three notes made sundry payments thereon, amounting to a large sum of money, the precise sum deponent can not now state; and that on said 22d April, 1856, the defendants, Daniel L. Miles, and Paul N. Rupert, and said A. H. Danforth & Co., figured up the amount of said three notes, and added interest on the said three notes at the rate of 10 per cent. per annum on all then remaining unpaid, and upon all the remainder until the time payments were made, and deducted therefrom the amount paid on said notes; and three new notes were executed for the balance by the defendants and Daniel L. Miles,—one for \$500, and two for \$5,000 each,—all payable to said A. H. Danforth & Co., at one day, and all bearing interest at 10 per cent. per annum. These defendants expect to prove by said Chester Andrews that said original three notes were taken up as stated, and that three new notes were given for balance of old notes and interest, after deducting payments, and that included in the three new notes executed by the defendants and said Daniel L. Miles there was included over nine hundred dollars of unlawful and usurious interest. He further states that he expects to prove by said Chester Andrews that between the said 22d April, 1856, and the 22d November, 1857, the defendants and said Miles made large payments on said three notes, dated April 22d, 1856, and on said 22d November, 1857, the defendants, Daniel L. Miles and said A. H. Danforth & Co. figured up the amount of said three last notes, and added interest thereto on all remaining unpaid, and on all the balance until payments were made, and deducted payments actually made; and the defendants for the balance executed to said A. H. Danforth & Co. the notes described and set forth in the 4th, 5th, 6th and 7th counts in plaintiff's declaration, and two other notes,—one for \$1,000, and one for \$328.18, both of which last notes the defendants have fully paid to said A. H. Danforth & Co., and cancelled the same. He also expects to prove by said Chester Andrews that no other or further consideration was paid or received for said last mentioned notes, and that the further sum of eight hundred and four dollars of unlawful and usurious interest was included in said notes so executed by the defendants on said 22d November, 1857, making in all the sum of \$1,704 of usurious and unlawful interest included in and forming part of the notes so executed November 22d, 1857. He further states that these defendants have at various times had other dealings with said A. H. Danforth & Co., and have paid them large sums of money, drafts, etc., that these defendants intended to apply on the claims said A. H. Danforth & Co. held against them. But just before the commencement of this suit A. H. Danforth & Co. assigned the notes in suit to plaintiff, the effect of which is to embarrass the defendants in making their defense. He further states that the plaintiff is a son of one of said firm of

Record, page 33.

A. H. Danforth & Co., and a nephew of the other, and was acting as clerk and cashier of said firm during the principal part of the time the dealings between defendants and said A. H. Danforth & Co. were going on. Deponent further states that said A. H. Danforth & Co. have also commenced suit against these defendants in this Court, which is now pending herein, to recover for a bank account against the defendants. He further states that this deponent has filed his affidavit in said cause for a continuance, in which deponent sets out a statement of payments, credits, etc., and showing that these defendants have overpaid said account of A. H. Danforth & Co. some 6 to 8,000\$, which ought to be credited and allowed to defendants in this suit: he makes said affidavit a part of this application the same as if here inserted at length. He expects to prove the same facts in this cause by the said Chester Andrews and Frank Lawson as stated in said affidavit; and defendants have no other witnesses by which to prove the same facts known to deponent. He further states that he also expects to prove by said Chester Andrews that all said notes in plaintiff's declaration mentioned were assigned to plaintiff after they became due. He further states that he at the last term fully believed he could prove by said Paul N. Rupert all the facts in relation to the lifting and giving the notes as herein before stated; but said Rupert on being examined could only state as to the notes given for said goods. He further states that he has other witnesses to prove some other and additional payments and credits on the notes in this suit, but he knows of no witness by whom the defendants can prove the same facts as he expects to prove by said Chester Andrews and Frank Lawson. He further states that he believes there will be a controversy about the facts in the case, and it will be indispensably necessary for the defendants to have the testimony of said Chester Andrews and said Lawson, or defendants will be greatly injured. He further states that said Chester Andrews is now and since this suit was commenced a captain of a company in the 47th Regiment of Illinois Volunteers, and in the active discharge of his duties as such;

Record, page 34.

and that said Lawson during the same period was and still is a soldier in the 8th Regiment of Illinois Volunteers, and moving about from place to place in the states of Mississippi, Tennessee, and Alabama. He further states that these defendants caused a summons to issue in this cause in the first part of December, 1862, to the Sheriff of Tazewell County, for said Frank Lawson and Chester Andrews, but said Sheriff has not been able to find said witnesses, as deponent is informed and verily believes. He further states that these defendants caused a potestatem commission to issue in this cause out of and under the seal of this Court, directed to Capt. Joseph B. Miles, a captain in the 47th Regiment Illinois Volunteers, commissioner to take the depositions of said Frank Lawson and Chester Andrews in this cause, upon interrogatories duly filed, which commission was issued on or about the 3d day of December, 1862, which was forwarded to him, the said commissioner, at once by mail; but said commissioner has not as yet been able to take said depositions, or either of them, and has not taken and returned the same to this Court. He further states that said commission was procured, issued, and forwarded in good faith, bona fide, as soon as these defendants found out where to forward the same; that said commission and interrogatories were forwarded by mail to said commissioner at Corinth, in the State of Mississippi, where said commissioner and said witnesses were at that time, as he verily believes. He further states that owing to the disturbed condition of affairs in that neighborhood said commissioner has been unable to take and return said commission and depositions: he states expressly and positively that these defendants knew of no other reliable person to take said depositions; that said commission was procured and furnished as soon as the defendants learned the whereabouts of said Frank Lawson and Chester Andrews, and were forwarded without delay. He further fully expects to procure the depositions of said witnesses, Lawson and Andrews, by the next term of this court. That this application is not made for delay, but that justice may be done. He prays, therefore, that this cause may be continued.

Record, page 35.

WELLS ANDREWS, JR.

Subscribed and sworn to before me this 3d day of February, A.D. 1863.

GEO. H. HARLOW, Clerk.

The following is the affidavit referred to in the foregoing affidavit.

STATE OF ILLINOIS, }
TAZEWELL COUNTY, } ss.

In the Circuit Court of Tazewell County,
February Term, 1863.

ASA H. DANFORTH AND
GEORGE W. DANFORTH, }

vs.

BENJAMIN E. MILES,
WELLS ANDREWS, JR.,
AND JOHN A. ANDREWS. }

In Assumpsit.

Wells Andrews, jr., one of the defendants in the above entitled cause, being first duly sworn, on oath states that the defendants can not safely proceed to trial in the above cause at the present term of this court, on account of the absence of Frank Lawson and Chester Andrews, both of whom are residents of Tazewell county, and both of whom are material and important witnesses on the part of these defendants. He further states that this action is brought by the plaintiffs to recover for money loaned, paid, etc., and to recover for rent of certain premises, and for greater certainty this defendant, as showing the cause of action only, refers to the plaintiffs' declaration on file.

Record, page 36.

Deponent further states that these defendants have fully paid to the plaintiffs, between the 22d day of June, 1857, and the commencement of this suit, all the money, items, articles, drafts, checks, etc., mentioned in the account hereto annexed, marked A, and amounting to the sum of 73,626.68 dollars, and at the times, and in the amounts, and in the way and manner, set forth in said account, which account is annexed hereto and made part of this application and affidavit; and said account is in all respects true and correct.

Deponent further states that, in addition to said sum of 73,626.68 dollars mentioned and set forth in said account hereto annexed, the defendants have also delivered to said plaintiffs drafts on S. S. Guthrie, of Buffalo, N. York, amounting to the further sum of 15,054.64 dollars, which drafts are more particularly set forth in the account filed herewith marked B, and which account is true and correct, and shows the date and amount of each draft, all of which drafts were fully and promptly paid by said Guthrie; and these defendants fully paid said Guthrie for the same, and these defendants are entitled to and should be credited with the full amount of said drafts on any claim the plaintiffs may have against these defendants.

Deponent further states that, in addition to the above two amounts, said two amounts being \$88,681.32 cents, these defendants have still other claims and demands against said plaintiffs, which ought to be allowed to these defendants on any amount proved by the plaintiffs. He further states that said other claims and demands are as follows, for storage, goods, mill account, etc., amounting to some four hundred dollars.

Record, page 37

Deponent further states that the accounts and demands of the defendants against the plaintiffs exceed by some six to eight thousand dollars the just claim of plaintiffs against the defendants, if these defendants are credited with payments they have actually made, and credited with their just credits.

Deponent further states that he expects to prove by said Chester Andrews and Frank Lawson that they, and each of them, acted as clerks for the defendants, at the store of the defendants in Washington, Tazewell county, for a long space of time; that said Chester Andrews acted as clerk for these defendants about two years, commencing about the first of June, 1857, and that said Frank Lawson acted as clerk for these defendants some three months in the fall of 1861, and while the clerk of these defendants Eli Heiple was absent.

He further states that these defendants can prove by said Frank Lawson and Chester Andrews that these defendants paid all the moneys and delivered to plaintiffs all the drafts, property, etc., shown in the accounts hereto annexed, up to about the first of May, 1859, and for the period of three months in the fall of 1861, and these defendants expect to prove all the items of said account true and correct during the times above mentioned. These defendants expect to prove by Heiple that said accounts herewith filed are true and

Record, page 38.

Record, page 39.

correct from and after May 1, 1859, except during the three months of his absence, in the fall of 1861: they also expect to prove the delivery of the principal part of the drafts set forth in account marked B, by the deposition of said S. S. Guthrie, on file. He further expects that there will be some conflict in the testimony of the parties, and that it will be indispensably necessary for these defendants to have the testimony of said Frank Lawson and Chester Andrews on the trial of this cause. He further states that there is no other witnesses by which the defendants can prove the same facts as they expect to prove by said Lawson and Andrews. He further states that said Chester Andrews is now and for the twelve months past has been a soldier in the 47th Regiment Illinois Volunteers, and since the last term of this court he has been moving with his company and regiment from place to place in the line of his duty, in the states of Mississippi, Alabama, and Tennessee: that said Andrews has not been in this state since the last term of this court. He further states that the said Frank Lawson is also a volunteer in the military service of the United States, and has been absent from the State of Illinois since the last term of this court, and has during said last mentioned time been in active service as a member of the 8th Regiment Illinois Volunteers, and moved from place to place with his regiment, in the states of Tennessee, Mississippi, and Alabama, as deponent is informed and believes. He further states that these defendants caused a summons to issue in this cause in the first part of December, 1862, to the Sheriff of Tazewell county, for said Frank Lawson and Chester Andrews; but said sheriff has not been able to find said witnesses, as deponent verily believes. He further states that these defendants caused a potestatem commission to issue in this cause out of and under the seal of this court, directed to Capt. Joseph B. Miles (a captain in the 47th Regiment Illinois Volunteers), commissioner to take the depositions of said Frank Lawson and Chester Andrews in this cause, upon interrogatories duly filed, which commission was issued on or about the 3d day of December, 1862, which was forwarded to him, the said commissioner, at once by mail; but said commissioner has not as yet been able to take said depositions, or either of them, and has not taken and returned the same to this court. He further states that said commission was procured, issued and forwarded in good faith, bona fide, as soon as these defendants found out where to forward the same. That said commission and interrogatories were forwarded by mail on the 5th day of December, 1862, to said commissioner at Corinth, Mississippi, where said commissioner and said witnesses were at that time, as he verily believes. He further states that, owing to the disturbed condition of affairs in that neighborhood, said commissioner has been unable to take and return said commission and depositions. He states expressly and positively that these defendants know of no other reliable person to take said depositions. That said commission was procured and forwarded as soon as these defendants learned the whereabouts of said Frank Lawson and Chester Andrews, and were forwarded without delay. He further states that he fully expects to procure the depositions of said witnesses, Lawson and Andrews, by the next term of this court; that this application is not made for delay, but that justice may be done. He therefore prays that this cause may be continued until the next term of this court.

WELLS ANDREWS, JR.

Subscribed and sworn to before me this 3d day of February, 1863.

GEO. H. HARLOW, Clerk.

Account marked "A" referred to and made part of Wells Andrews' affidavit.

A. H. DANFORTH & Co. in account with ANDREWS, MILES & Co.

1857.				1858.			
June	22,	To Cash	200.00	July	1,	To Cash	400.00
July	8,	" do.	240 50		10,	" do.	806.22
	9,	" do.	54.00		15,	" do.	100.00
Record, page 40.	10,	" do.	150.00		20,	" do.	150.00
	"	" do.	38.00		22,	" do.	130.00
	14,	" do.	135.00		24,	" do.	135.00
	"	" do.	400.00		26,	" do.	250.00
	15,	" do.	539.69		31,	" do.	100.00
	16,	" do.	62.00	August	7,	" do.	100.00
	18,	" do.	100.00		11,	" do.	200.00
	23,	" do.	87.00		12,	" do.	140.00
	24,	" do.	26.00		13,	" do.	120.00
	"	" do.	75.00	Record, page 42.			
	25,	" do.	93.00	August	16,	" do.	300.00
	30,	" do.	191.50		17,	" do.	195.00
August	3,	" do.	34.00		21,	" do.	111.00
	7,	" do.	36.00		25,	" do.	376.00
	8,	" do.	76.00		27,	" do.	115.00
	12,	" do.	130.00		30,	" do.	300.00
	15,	" do.	54.00	Sept.	30,	Cy. draft Chicago	348.25
	"	" do.	325.00	Oct.	13,	" Cash	1150.00
	20,	" do.	26.00		14,	" do.	1750.00
	29,	" do.	41.00		15,	" do.	145.00
Sept.	1,	Draft Munn, Gill & Co.	500.00		16,	" do.	250.00
Oct.	6,	" Cash	103.00		22,	" do.	100.00
	8,	" do.	176.14		25,	" do.	400.00
	27,	" do.	356 00		27,	" do.	166.00
Nov.	2,	" do.	256.00		30,	" do.	1700.00
	11,	" do.	112.00	Nov.	1,	Cy. check Pekin Bank	150.00
	17,	" do.	20.50		4,	" Cash	125.00
Dec.	5,	Draft on Harlan & Hull	476.41		9,	" do.	1000.00
	22,	" Cash	120.00		18,	" do.	1000.00
	30,	" do.	500.00		22,	N.Y. dft and ex. and cy.	1470.00
Record, page 41.	1858.			Dec.	4,	" Cash	600.00
Jan'y	13,	" Difference on certificate of deposit	.78		6,	" do.	500.00
	"	" Peter Cannon	1.50		10,	" do.	500.00
	15,	" Draft on Powell & Co.	84.58		14,	" do.	550.00
	"	" Cash	496.00		18,	" Draft on St. Louis	1000.00
	7,	" do.	500 00		23,	" Cash	400.00
	12,	" do.	500.00		31,	" do.	540.00
	23,	" Draft Powell & Co.	336.30	1859.			
	"	" Cash	999.00	Jan'y	1,	" do.	4.00
	29,	" do.	226 00		12,	" do.	500.00
	30,	" do.	145 00		13,	" do.	300.00
Feb.	1,	" do.	383.68		17,	" do.	150.00
	9,	" do.	695.00	Record, page 43.			
	16,	" do.	26 64	Jan'y	27,	" do.	100.00
	25,	" do.	160.00		29,	" do.	51.50
March	2,	" do.	128.00	Feb.	8,	" do.	150.00
	3,	" do.	113.00		22,	" Draft on Chicago	109.95
	11,	" do.	120.00		26,	" Check and cash	250.00
April	7,	" Sight draft Powell & Co., St. Louis	600.00		28,	" Cash	100.00
June	9,	" Cash	300.00	March	2,	" do.	50.00
	24,	" do.	200.00		1,	" (omitted) Cash	50.00
	26,	" do.	300.00		4,	" Cash	175.00
					5,	" do.	60.00
					11,	" do.	100.00

1859.			
March	15,	To Cash	100.00
	19,	" do.	100.00
	28,	" do.	175.00
	23,	" (omitted) Cash	1000.00
	28,	" Cash	740.00
April	18,	" do.	130.00
	14,	" do.	100.00
	18,	" do.	100.00
	19,	" do.	100.00
	8,	" do.	181.25
	22,	" do.	60.00
	25,	" do.	70.00
May	21,	" do.	140.00
	24,	" do.	100.00
	"	" do.	100.00
June	8,	" do.	100.00
May	30,	" do.	100.00
June	15,	" do.	70.00
	20,	" do.	55.00
	25,	" do.	50.00
	"	" do.	60.00
	21,	" do.	50.00
	22,	" do.	125.00
July	5,	" do.	40.00
	"	" do.	68.50
	7,	" do.	50.00
	9,	" do.	100.00
	15,	" do.	180.00
	19,	" do.	85.00
	30,	" do.	163.00
August	9,	" do.	90.00
	15,	" do.	100.00
	18,	" do.	100.00
	24,	" do.	50.00
	27,	" do.	100.00
	"	" do.	50.00
Sept.	5,	" do.	103.00
	"	" Dft. Miles & Wright	
		Chicago	300.00
	27,	" " do. do.	56.03
	"	" " David Kern	78.65
	"	" " Hobbs & Oliphant	200.00
	15,	" " Chicago	100.00
	"	" Cash	100.00
October	13,	" do.	60.00
	15,	" do.	38.00
	8,	" Dft on Chicago	300.00
	19,	" do.	50.00
	19,	" do.	101.94
	22,	" do.	98.00
	28,	" do.	240.00
	21,	" Draft on Chicago	300.00
	"	" Coll. of Wilson & Vesey	20.00
Nov.	8,	" Cash	310.00
	3,	" Coll. of Wilson	78.72
	16,	" Cash	90.00
	17,	" Dft. on Miles & Wright	500.00
Dec.	6,	" Cash	500.00
	7,	" do.	500.00
	10,	" do.	100.00
	20,	" do.	1000.00

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Dec.	23,	To Draft on Miles & Wright	400.00
	29,	" Cash	500.00
1860.			
Jan.	7,	" do.	500.00
	9,	" do.	500.00
	25,	" do.	670.00
Feb.	9,	" do.	400.00
March	8,	" Draft on Chicago	100.00
April	21,	" Cash	100.00
May	1,	" do.	80.00
	2,	" Draft King Brothers & Co.	684.42
	2,	" do. do.	523.09
	3,	" Premium on drafts	3.00
	"	" Dft. K. B. & Co.	652.53
	4,	" Cash and check	800.00
	17,	" Dft. K. B. & Co.	812.16
	26,	" do. do.	448.28
	"	" Premium	3.15
June	1,	" Dft. K. B. & Co.	498.27
	"	" Premium	1.25
	5,	" Cash	80.00
	20,	" do.	230.00
	11,	" Dft K.B.&Co.& ex.	268.29
	23,	" Cash	55.00
	27,	" do.	50.00
Record, page 46.			
June	29,	" do.	150.00
July	3,	" do.	150.00
	28,	" do.	100.00
	"	" Draft on New York	957.39
	"	" Premium on do.	4.79
	7,	" Cash	142.00
	11,	" do.	1077.50
	14,	" do.	40.00
August	18,	" do.	237.73
	"	" do.	277.50
	20,	" do.	452.41
	23,	" do.	481.56
	"	" Storage	14.65
	29,	" Dft on St. Louis	300.00
	4,	" " Miles, Wright & Sherman	290.80
	8,	" Dft on N.Y. & ex.	984.03
	10,	" " do.	234.97
	15,	" " Miles, Wright & Sherman	214.61
	17,	" Cash	56.00
Sept.	1,	" Dft on N.Y. & ex.	98.91
	11,	" Cash	514.21
	"	" do.	300.00
	12,	" do.	275.00
	13,	" do.	125.00
	14,	" do.	365.00
	18,	" do.	50.00
	19,	" Dft on Toledo	114.76
	"	" Cash	122.47
	22,	" do.	100.00
	26,	" do.	850.00
	28,	" do.	75.00
Oct.	5,	" do.	85.00
Record, page 47.			
Oct.	13,	" Dft on H. Roop	62.01
	"	" do.	250.00

Oct.	13,	To	Cash	48.70	May	23,	To	Dft. on N.Y.	835.01
	20,	"	do.	109.00		"	"	Premium	50.10
	30,	"	Dft on Buffalo	896.05		16,	"	Cash	29.00
Nov.	2,	"	Cy. dft.	250.00		21,	"	do.	30.17
	3,	"	do.	264.36	June	1,	"	Dfts. H. D. Wal-	
	8,	"	Dft on Roop	299.00				bridge & Co.	967.04
	10,	"	do.	299.00		5,	"	Dfts. Brown, Wal-	
Dec.	12,	"	Premium on drafts	4.05				bridge & Co.	400.00
	19,	"	Currency check and			"	"	Dfts. Buffalo	175.00
			premium drafts	565.00		19,	"	Peter Fifer	10.00
	21,	"	Cash	400.00		29,	"	Dft. H. D. Wal-	
1861.								bridge & Co.	186.21
Jany.	8,	"	Dft. on N.Y. and		July	3,	"	Brown, Walbridge	
			premium	230.35				& Co.	100.00
March	6,	"	Dft. on New Orleans			8,	"	Coin	25.00
			(shipments)	352.21		26,	"	Cash	23.00
	"	"	Premium on same	17.60	Sept.	3,	"	Dft. on Walbridge	
	8,	"	Remittance A. H.					& Co.	300.00
			Henkle & Co & ex.	416.23		9,	"	Two checks (coin)	204.00
	12,	"	Dft. G. W. & Co.,		Oct.	1,	"	Dfts. Brown, Wal-	
			St. Louis	443.90				bridge & Co.	100.00
	16,	"	Cash	165.00		"	"	Smith's dft. on	
	"	"	Dfts. and ex.	523.37				Dowds	12.19
	26,	"	do.	684.92	Sept.	30,	"	School order Dist.	
	28,	"	Cash	381.00				No. 5	31.44
April	1,	"	Coll. of Henkle & Co.	8.07		14,	"	Cash	7.00
	6,	"	Cash	112.95	Oct.	8,	"	Dft. Brown, Wal-	
	13,	"	do.	256.37				bridge & Co.	100.00
	20,	"	Dft. on Buffalo	274.18		12,	"	Dft. H. D. Wal-	
	20,	"	do. on New York	275.00				bridge & Co.	64.64
May	3,	"	1 ⁴ / ₈ on Buffalo	1000.00		23,	"	Dft. Brown, Wal-	
	3,	"	Premium on do.	70.00				bridge & Co.	200.00
	"	"	Check on Peoria	50.00	Nov.	30,	"	Oats to Williard	
	"	"	Dft. Walbridge & Co	152.60				& Co.	149.50
	"	"	Premium on do.	10.64					
April	23,	"	Premium of N.Y.		1860.				\$73516.41
			drafts	24.75	Nov.	3,	"	Omitted cash	65.00
Record, page 48.	23,	"	Premium on Buffalo	21.92	1861.				
May	3,	"	Cash	18.00	May	23,	"	do. dft. on	
	4,	"	do.	20.00				N.Y. & prem.	32.42
	11,	"	do.	500.00	June	31,	"	Omitted cash	12.85
	13,	"	do.	50.00					\$75626.68
	20,	"	do.	100.92					

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Account marked "B" referred to in Wells Andrews' affidavit.

A. H. DANFORTH & Co. in account with ANDREWS, MILES & Co.

1860.					March 16,	To	Dft. on Guthrie & ex.	160.27
August 4,	To	Dft. on Guthrie & ex.	1503.75		"	"	do.	Dec. 12, '60. 81.63
Sept. 14,	"	do.	300.00		"	"	do.	340.00
26,	"	do.	600.00		"	"	do.	274.18
Oct. 12,	"	do.	400.00	April 20,	"	do.	do.	1000.00
18,	"	do.	400.00	May 3,	"	do.	do.	150.00
5,	"	do.	62 72	June 17,	"	do.	do.	400.00
30,	"	do.	400.00	July 15,	"	do.	do.	175.00
Nov. 5,	"	do.	132 19	June 4,	"	do.	do.	500.00
Oct. 31,	"	do.	500.00	Aug. 19,	"	do.	do.	500.00
Nov. 22,	"	do.	300.00	26,	"	do.	do.	300.00
Dec. 19,	"	do.	184.13	Sept. 3,	"	do.	do.	300.00
1861.				10,	"	do.	do.	
Jany. 28,	"	do.	21.32	Record, page 50.				
Feb. 8,	"	do.	300.00	Sept. 12,	"	do.	do.	300.00
"	"	do.	219.45	23,	"	do.	do.	600.00

Oct. 1,	To Dft. on Guthrie & ex.	300.00	Nov. 18,	To Dft. on Guthrie & ex.	750.00
8,	" do.	600.00	28,	" do.	500.00
17,	" do.	300.00	Dec. 6,	" do.	300.00
23,	" do.	300.00	1862.		
31,	" do.	400.00	April 23,	" do.	500.00
Nov. 4,	" do.	300.00			
9,	" do.	400.00			\$15054.64

Thereupon the plaintiff, under objection of the defendants, read in evidence the affidavit of said Wells Andrews, jr., filed at the last term of this court, in words and figures following:

STATE OF ILLINOIS,	} ss.	In the Circuit Court of Tazewell County, September Term, 1862.
TAZEWELL COUNTY,		
ALMON G. DANFORTH,	} Motion for continuance.	
vs.		
BENJAMIN E. MILES,		
WELLS ANDREWS, JR., and		
JOHN A. ANDREWS.		

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Wells Andrews, jr., being first duly sworn, on oath states that he is one of the defendants above named, and that Paul N. Rupert and Eli Heiple are material and important witnesses on the part of the defendants in this cause, and without whose testimony they can not safely proceed to trial at the present term of this court. He further states that the defendants on the trial of this cause expect to prove by said Paul N. Rupert that on or about the 22d day of April, 1854, the defendants and Daniel L. Miles and said Paul N. Rupert purchased a stock of goods of A. H. Danforth & Co., and said purchasers executed three notes to said A. H. Danforth & Co., in payment therefor, as follows,— one note due at 6 months, one at 12 months, and one at 18 months— each note for \$4,738.45, amounting in all to the sum of \$14,215.35, and each and all of said notes were payable with interest at the rate of 10 per cent. per annum; and that no other consideration was given by said A. H. Danforth & Co., or received by the makers of said notes, than said stock of goods. The defendants further expect to prove by said Paul N. Rupert that between the time said notes were given and the 22d day of April, 1856, the makers of said notes paid to said A. H. Danforth & Co. a large amount on said notes, but the precise amount deponent can not state exactly. He further states that the defendants expect to prove by said Paul N. Rupert that on said 22d day of April, 1856, the makers of said notes and said A. H. Danforth & Co. figured up the amount of said notes and added interest thereon at the rate of 10 per cent. per annum on all then remaining unpaid, and upon all the remainder until the time payments were made thereon, and deducted therefrom the amount paid on said notes; and three new notes were given for the balance by the defendants and Daniel L. Miles. He further expects to prove by said Rupert that the sum of nine hundred dollars, at least, of usurious and unlawful interest was added in and to the amount of said three notes, after deducting the payment, and the same was included in and formed a part of the three new notes, dated April 22, 1856. He further expects to prove by said Eli Heiple, and by the said notes, that said three new notes were payable to said A. H. Danforth & Co.; two of which were for \$5,000 each, and the third for \$500. all payable at one day, and all bearing interest at the rate of 10 per cent. per annum. The defendants further expect to prove by said Heiple that the makers of said three last notes, so executed by the defendants and said Miles, made large payments thereon, and that said A. H. Danforth & Co. charged interest on the whole sum of said notes until payments were made, and interest on all the unpaid part, at the rate of 10 per cent. per annum, and that on the 22d day of November, 1857, the notes described in plaintiff's declaration, and sued on in this cause, and set out in the 4th, 5th, 6th and 7th counts, and two other notes, were given for the balance unpaid of said notes, dated April 22d, 1856, and the interest thereon at the rate of 10 per cent. per annum. He further states that the further sum of eight

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hundred and four dollars of unlawful and usurious interest was included in and made part of the said notes executed by the defendants to the said A. H. Danforth & Co. at the time the notes sued on and described in said 4th, 5th, 6th and 7th counts were executed, making \$1,704 of unlawful and usurious interest, which they expect to prove by said Heiple. The defendants also expect to prove by said Heiple that the two other notes — one note for \$1,000, and the note for \$328.18, dated November 22, 1857 — have long since been fully paid by the defendants. He further states that he fully expects to prove by said two witnesses that seventeen hundred and four dollars of the principal of the notes sued on and set out in the 4th, 5th, 6th and 7th counts is for unlawful and usurious interest, and that amount should be deducted from the face of the notes sued on, all which are set out in said 4th, 5th, 6th and 7th counts (copies of which are filed with the declaration in this cause), as of their date. He further states that he expects to prove by said Heiple that the defendants have paid eight hundred dollars on said notes sued on, and that the defendants have other just credits amounting to the sum of about \$1,487.43, as follows: goods, \$249.13; storage on 2,400 bushels corn one year, \$288; storage on pork, \$63.20; flour, \$100; draft on Guthrie, \$297.10; and one other draft on same for \$500, which ought to be applied on some or all of the notes described in plaintiff's declaration. He further states that the defendants expect to prove by said Heiple that the notes sued were assigned and indorsed to the plaintiff after they became due, and that plaintiff took said notes with notice of all matters herein before set forth. He further states that the defendants have no other witnesses by whom they can prove the same facts. He states that the declaration was filed in this cause on the 22d day of August, 1862, and that said Paul N. Rupert resides somewhere in the south part of this state, and the defendants do not know in which county he does reside in, and they could not therefore procure his attendance (nor take his deposition) at this term of court, for want of time, and for the additional reason that they do not know where he lives. He further states that said Heiple is a resident of Tazewell county, and left said county with his family some time in the fore part of July, 1862, for Pennsylvania on a visit, and has not as yet returned, at least the defendants have no knowledge of his return. He further states that the defendants fully expect to procure the attendance of both said witnesses at the next term of this court, or they will procure the depositions of said witnesses by next term of this court if they can not procure their attendance.

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He further states that, in consequence of the shortness of the time and the unsettled and disturbed condition of the country, and other causes, the defendants have not in other respects been able to prepare their case for trial as fully as its importance to them requires; that this application is not made for delay, but that justice may be done.

WELLS ANDREWS, JR.

Subscribed and sworn to before me, September 3d, 1862.

JNO. GRIDLEY, Clerk County Court.

But the Court overruled the motion to continue, and the defendants excepted. The defendants then filed their motion to consolidate this cause with case No. 67, which motion is in the words and figures following, to wit:

STATE OF ILLINOIS, }
Tazewell County, } ss.

In the Circuit Court of Tazewell County,
February Term, 1863.

A. H. DANFORTH AND G. W. DANFORTH, }

vs.

WELLS ANDREWS, JR., BENJAMIN
MILES AND JOHN A. ANDREWS.

No. 67.

ALMON G. DANFORTH, }

vs.

WELLS ANDREWS, JR., BENJAMIN
MILES AND JOHN A. ANDREWS.

No. 68.

The defendants enter a motion to consolidate the above causes No. 67 and No. 68, for the reasons following:

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1. All the subject matter involved in the above suits constitute in fact but one cause of action.
2. The notes sued on in No. 67, and which is the only cause of action in said suit, were assigned by A. H. Danforth & Co. to the plaintiff just before the commencement of this suit, and long after the said notes became due.
3. The account sued on in the case No. 68 accrued while said notes in No. 67 were held and owned by said A. H. Danforth & Co., and the defendants made payments from time to time on both, and in separate trials great injustice will be done to the defendants.
4. If the defendants are compelled to go into separate trials on the trial of 67, the plaintiffs will insist that the credits, and payments, and offsets, of the defendants ought to be applied on the account in 68, and when 67 is disposed of then the plaintiff in 68 will probably dismiss it, and thus greatly injure the defendants; and these defendants claim that as against the claims in both suits they have credits offsets and payments amounting to more than any just claim of the plaintiffs in both.
5. That A. H. Danforth and G. W. Danforth, the plaintiffs in 67, and Almon G. Danforth, the plaintiff in 68, constitute and compose in fact the firm of A. H. Danforth & Co.
6. The bringing of two suits was designed to, and does in fact, embarrass the defendants in making their defense.
7. There are a large number of witnesses in the case, and the maintenance of two suits will be attended with additional expense, and trouble, and cost to the defendants.
8. Other reasons.

KYES & GROVE,

For Defendants.

Record, page 63

The defendants to support their motion read in evidence the affidavits of Edwin F. Fish, B. D. Smith, Thomas Birkett, and Wesley B. Harvey, and the affidavits of Wells Andrews, jr., on motion to continue 67 and this cause, which said affidavits of said Edwin F. Fish, R. D. Smith, Thomas Birkett, Wesley B. Harvey, and Wells Andrews, jr., are in words and figures following, to wit:

STATE OF ILLINOIS, }
Tazewell County, } ss.

In the Circuit Court of
Tazewell County.

A. H. DANFORTH AND G. W. DANFORTH, }

vs.

WELLS ANDREWS, JR., BENJAMIN
MILES, and JOHN A. ANDREWS.

67.

ALMON G. DANFORTH, }

vs.

WELLS ANDREWS, JR., BENJAMIN
MILES, AND JOHN A. ANDREWS.

68.

Motion to consolidate.

Edwin T. Fish, being sworn, on oath says that the above named A. H. Danforth, G. W. Danforth (plaintiffs in 67), and Almon G. Danforth, plaintiff in 68, are now, and for a number of years have resided in Washington, in Tazewell county, in Illinois, and they have been engaged in business as bankers in that town a number of years. He further states that said A. H.

Record, page 64.

Danforth, G. W. Danforth, and Almon G. Danforth, were during the same time apparently acting as partners in the banking business in Washington, and managed a bank called the Prairie State Bank at that town. He further states that said Almon G. Danforth on more than one occasion informed deponent that he was a partner of A. H. Danforth & Co. in the banking business. He further states that during the time said firm were doing business they had in the Prairie State Bank sundry printed cards, and which were distributed by the members of said firm, on which card the names of said A. H. Danforth, G. W. Danforth, and Almon G. Danforth, were printed and set forth as constituting the owners of the Prairie State Bank. Deponent further states that deponent has also lived in Washington for a number of years, but was absent at times; and deponent has for a number of years always understood that said three constituted and composed said firm. He further states that he has acted as clerk for the defendants and has been on good terms with the Danforths, and deponent has considerable knowledge about the claims and matters in controversy in said suits; and deponent believes that payments made by defendants to said Danforths were made and were to apply on their indebtedness to said firm. Deponent further states that the defendants have claims to large amount against said firm, and in the best judgment of deponent great injury may be done to defendants if compelled to make separate defenses.

EDWIN T. FISH.

Subscribed and sworn to before me this 6th day of February, A. D. 1863.

GEO. H. HARLOW, Clerk.

Record, page 65.

Thomas Birkett, being sworn, on oath says that he resides at Washington, Tazewell County, Illinois, and has for some twelve years; and during the same time deponent has been engaged in the business of making and manufacturing carriages, wagons, etc., at that place. He further states that he is well acquainted with said A. H. Danforth and G. W. Danforth, plaintiffs (in 67) and Almon G. Danforth, plaintiff in 68; all of said Danforths have resided and done business in said Washington for a number of years, and deponent always understood that the three Danforths above named constituted and composed the firm of A. H. Danforth & Co. in the banking business, loaning money, etc. He further states that about four years ago deponent went to the place of business of said A. H. Danforth & Co. to get them to accept a draft, which they done, and at the same time said Almon G. handed to deponent a printed card, on which it was printed, and appeared to the best of deponent's recollection, that said A. H. Danforth, G. W. Danforth, and Almon G. Danforth, composed or constituted the firm of A. H. Danforth & Co. He further states that he always understood and believed that said three Danforths owned and controlled the bank called the Prairie State Bank at Washington. Deponent further states that he done considerable business with said firm; paid them money and borrowed money of them from time to time; and said Almon G. appeared to be the managing man of the concern, and in conversation frequently said, in speaking of business, that we could accept a draft or transact business, referring to himself as being one of the firm.

THOS. BIRKETT.

Subscribed and sworn to before me this 6th day of February, 1863.

GEO. H. HARLOW, Clerk.

Per A. P. GRISWOLD, Deputy.

Record, page 66.

R. D. Smith, being sworn, on oath says he has lived at Washington and has been acquainted with A. H. Danforth, Geo. W. Danforth, and Almon G. Danforth, for near three years. He further states that he always supposed said three were partners in the banking business, and it is the impression of deponent that A. H. Danforth a year ago last summer told deponent that Almon G. had an interest in the bank, meaning the Prairie State Bank at Washington.

R. D. SMITH.

Subscribed and sworn to before me this 12th day of February, A. D. 1863.

GEO. H. HARLOW, Clerk.

STATE OF ILLINOIS, }
TAZEWELL COUNTY, }

At the February Term, A. D. 1863, of the Circuit Court
of Tazewell County, State of Illinois.

Record, page 67.

Wesley B. Harvey, being first duly sworn, on his oath says that he is a citizen of the town of Washington in said Tazewell county, and that he has been acquainted with A. H. Danforth, George W. Danforth, and Almon G. Danforth, for at least five years; and that he done business with the firm of A. H. Danforth & Co. during the time that they were carrying on the Prairie State Bank in the said town of Washington, and that during the time that said Prairie State Bank was in operation said Almon G. Danforth was acting as cashier, and appeared to conduct the business; and that he, affiant, was in the habit of depositing money in said bank, and that at the time said bank broke, and at the time the banks of Illinois suspended payment, being on or about the first day of May, A. D. 1861, he had deposited in said Prairie State Bank about the sum of one hundred and sixty dollars; and that soon after he heard that said bank had suspended he called at said bank for the purpose of withdrawing his said deposits from said bank. Almon G. Danforth charged and required this affiant to pay a discount of some fifteen per cent. on the said one hundred and sixty dollars, which he did under protest. In a few days afterwards affiant called at said Prairie State Bank and asked said Almon G. Danforth why he had exacted and required a larger discount of him than they were requiring of other persons who had money deposited in said bank, affiant having been informed that they were charging other depositors a few cents less than they had taken from him. Affiant says that in answer to said question said Almon G. Danforth said we had not then consulted together and determined on the amount that we would discount our depositors.

WESLEY B. HARVEY.

Sworn to and subscribed before me this 9th day of February, A. D. 1863.

[SEAL.]

DAVID KYES, N. P.

Record, page 83.

STATE OF ILLINOIS, }
TAZEWELL COUNTY, } ss.

ALMON G. DANFORTH,

vs.

BENJAMIN E. MILES,
WELLS ANDREWS, JR., and
JOHN A. ANDREWS,

In the Circuit Court of Tazewell County,
February Term, 1863.

} Motion to continue this cause.

Wells Andrews, jr., being first duly sworn, on oath states, that the defendants can not safely proceed to trial at this term of this court without the testimony of Chester Andrews and Frank Lawson, both of whom are residents of Tazewell County, but now and for the twelve months last past have been in the military service of the United States, and both are now somewhere in the states of Mississippi, Tennessee, or Alabama.

He further states that the suit is brought by the plaintiff to recover the amount of several promissory notes set out in plaintiff's declaration, and that all of the notes described in plaintiff's declaration were assigned to the plaintiff, as deponent is informed and believes, by A. H. Danforth & Co. just before the commencement of this suit.

He further states that the dealings between the defendants and said A. H. Danforth & Co., for the past eight years, have been large, and exceed in amount the sum of ninety thousand dollars.

Rec. r., page 84.

That on the 22d day of April, 1854, said A. H. Danforth & Co. sold to the defendants in this suit, Daniel L. Miles, and Paul N. Rupert, a stock of goods, at and for the price and sum of \$14,215.35, in payment of which said Miles, and Paul N. Rupert, and these defendants, executed their three promissory notes of that date, to said A. H. Danforth & Co., each for \$4,738.45 — one at 6 months, one at 12 months, and one 18 months — all bearing interest at 10 per cent. No other consideration was paid or received for said three notes.

Deponent further states that the deposition of Paul N. Rupert, on file, shows the foregoing statement, as to the sale of the goods and the giving of said notes, to be true.

Deponent further states that between the time said three notes were given and the 22d day of April, A.D. 1856, the makers of said three notes made sundry payments thereon, amounting to a large sum of money, the precise sum the defendant can not now state; and that on said 22d day of April, A.D. 1856, the defendants, Daniel L. Miles, and Paul N. Rupert, and said A. H. Danforth & Co., figured up the amount of said three notes, and added interest on the said three notes at the rate of 10 per cent. per annum, on all then remaining unpaid, and upon all the remainder until the time payments were made, and deducted therefrom the amount paid on said notes; and three new notes were executed for the balance by the defendants and Daniel L. Miles — one for \$500, and two for \$5,000 each — all payable to said A. H. Danforth & Co. at one day, and all bearing interest at 10 per cent. per annum.

These defendants expect to prove by said Chester Andrews that said original three notes were taken up, as stated, and that three new notes were given for balance of old notes and interest, after deducting payments, and that included in the three new notes executed by the defendants and said Daniel L. Miles there was included over nine hundred dollars of unlawful and usurious interest.

Record, page 85.

He further states that he expects to prove by said Chester Andrews, that between the said 22d day of April, 1856, and the 22d day of November, 1857, the defendants and said Miles made large payments on said three notes dated April 22, 1856; and on said 22d day of November, 1857, the defendants, Daniel L. Miles, and said A. H. Danforth & Co., figured up the amount of said three last notes, and added interest thereto on all remaining unpaid, and on all the balance until payments were made, and deducted payments actually made; and the defendants for the balance executed to said A. H. Danforth & Co. the notes described and set forth in the 4th, 5th, 6th and 7th counts in plaintiff's declaration, and two other notes — one for \$1,000, and one for \$328.18 — both of which last notes the defendants have fully paid to said A. H. Danforth & Co., and cancelled the same.

He also expects to prove by said Chester Andrews, that no other or further consideration was paid or received for said last mentioned notes, and that the further sum of eight hundred and four dollars of unlawful and usurious interest was included in said notes so executed by the defendants on said 22d day of Nov., 1857, making in all the sum of \$1,704 of usurious and unlawful interest, included in and forming part of the notes so executed Nov. 22d, 1857.

He further states that these defendants have at various times had other dealings with said A. H. Danforth & Co., and have paid them large sums of money, drafts, etc., that these defendants intended to apply on the claims said A. H. Danforth & Co. held against them. But just before the commencement of this suit said A. H. Danforth & Co. assigned the notes in suit to the plaintiff, the effect of which is to embarrass the defendants in making their defense.

Record, page 86

He further states that the plaintiff is a son of one of said firm of A. H. Danforth & Co., and a nephew of the other, and was acting as clerk and cashier of said firm during the principal part of the time the dealings between the defendants and said A. H. Danforth & Co. were going on.

Deponent further states that said A. H. Danforth & Co. have also commenced suit against these defendants in this court, which is now pending herein, to recover for a bank account against these defendants.

He further states that this deponent has filed his affidavit in said cause for a continuance, in which deponent sets out a statement of payments, credits, etc., and showing that these defendants have overpaid said account of A. H. Danforth & Co. some 6 to 8000\$, which ought to be credited and allowed to defendants in this suit. He makes said affidavit a part of this application the same as if here inserted at length.

He expects to prove the same facts in this cause by the said Chester Andrews and Frank Lawson as stated in said affidavit, and defendants have no other witnesses by which to prove the same facts, known to deponent.

He further states that he also expects to prove by said Chester Andrews that all said notes in plaintiff's declaration mentioned were assigned to plaintiff after they became due.
 Record, page 87. He further states that he at the last term fully believed he could prove by said Paul N. Rupert all the facts in relation to the lifting and giving the notes, as herein before stated; but said Rupert, on being examined, could only state as to the notes given for said goods.

He further states that he has other witnesses to prove some other and additional payments and credits on the notes in this suit, but he knows of no witnesses by whom the defendants can prove the same facts as he expects to prove by said Chester Andrews and Frank Lawson.

He further states that he believes there will be a controversy about the facts in the case, and it will be indispensably necessary for the defendants to have the testimony of said Chester Andrews and said Lawson, or defendants will be greatly injured.

He further states that said Chester Andrews is now, and since this suit was commenced was, a captain of a company in the 47th Regiment of Illinois Volunteers, and in the active discharge of his duties as such; and that said Lawson, during the same period, was, and still is, a soldier in the 8th Regiment of Illinois Volunteers, and moving about from place to place in the states of Mississippi, Tennessee and Alabama. He further states that these defendants caused a summons to issue in this cause in the first part of December, A.D. 1862, to the sheriff of Tazewell county, for said Frank Lawson and Chester Andrews, but said sheriff has not been able to find said witnesses, as defendant is informed and verily believes.

Record, page 88. He further states that these defendants caused a potestatem commission to issue in this cause, out of and under the seal of this court, directed to Captain Joseph B. Miles, a captain in the Forty-seventh Regiment Illinois Volunteers, commissioner to take the deposition of said Frank Lawson and Chester Andrews in this cause, upon interrogatories duly filed; which commission was issued on or about the third day of December, A.D. 1862, which was forwarded to him, the said commissioner, at once by mail; but said commissioner has not as yet been able to take said depositions, or either of them, and has not taken and returned the same to this court.

He further states that said commission was procured, issued and forwarded in good faith, bona fide, as soon as these defendants found out where to forward the same; that said commission and interrogatories were forwarded by mail to said commissioner, at Corinth, in the State of Mississippi, where said commissioner and said witnesses were at that time, as he verily believes.

He further states that, owing to the disturbed condition of affairs in that neighborhood, said commissioner has been unable to take and return said commission and depositions.

He states expressly and positively that these defendants know of no other reliable person to take said depositions; that said commission was procured and furnished as soon as the defendants learned the whereabouts of said Frank Lawson and Chester Andrews, and were forwarded without delay.

He further fully expects to procure the depositions of said witnesses Lawson and Andrews by the next term of this court.

Record, page 89. That this application is not made for delay, but that justice may be done. He prays, therefore, that this cause may be continued.

WELLS ANDREWS, JR.

Subscribed and sworn to before me, this 3d day of February, A.D. 1863.

GEO. H. HARLOW, Clerk.

The affidavits of Wells Andrews, jr., read in evidence on the motion to consolidate, and the account attached to the same, may be found in record on pages from 67 to 89 inclusive, and appear in printed abstract on pages 9, 10, 11, 12, 13, 14, 18, 19, 20.

The defendants also read in evidence in support of the motion the bill of particulars in 67, and the notes and indorsements set out in this cause,

which said bill of particulars in case 67 was filed February 12th, 1863, and is in words and figures following, to wit:

Messrs. Andrews, Miles & Co.	To A. H. Danforth & Co.,	Dr.	
Dec. 5th, 1861.			
To balance of account rendered as per pass-book of account current to this date, (all checks and vouchers having been returned to said Andrews, Miles, & Co.)			\$1,619.29
Dec. 6th, 1861.		Cr.	
By 15 days draft on S. S. Guthrie, Buffalo, N. Y., for	\$300.00		
Less discount and exchange	2.90	297.10	
May 3d, 1862. By one day sight draft on S. S. Guthrie, Buffalo, N. Y., dated May 3, 1862,		500.00	797.10
Balance,			<u>\$822.19</u>

Both of the above drafts were drawn by Miles, Andrews & Co.

Said notes and indorsements are in the words and figures following, to wit:

Record, page 90. \$169.37. Washington, Tazewell County, Ill., Sept. 14th, 1861.
One day after date, we, the subscribers, of Washington, County of Tazewell, State of Illinois, promise to pay to A. H. Danforth & Co., or order, at their office in Washington, one hundred and sixty-nine $\frac{37}{100}$ dollars, for value received, with 10 per cent. interest.
ANDREWS, MILES & CO.

Indorsed: Pay ALMON G. DANFORTH,
A. H. DANFORTH & CO.

\$594.27. Washington, Tazewell County, Ill., 21 January, 1861.
One month after date, we, the subscribers, of Washington, County of Tazewell, State of Illinois, promise to pay to A. H. Danforth & Co., or order, at their office in Washington, five hundred and ninety-four $\frac{27}{100}$ dollars, for value received, with interest.
ANDREWS, MILES & CO.

Indorsed: Pay ALMON G. DANFORTH,
A. H. DANFORTH & CO.

\$700. Washington, Ill., July 14th, 1860.
On the first day of September next, we promise to pay to the order of William M. Thompson seven hundred dollars, three hundred dollars to be paid in coin, value received, with interest after maturity at 10 per cent. per annum.

ANDREWS, MILES & CO.

Indorsed: September 14, 1861. Interest paid on this note from September 1, 1860, to September 1, 1861 — \$70.

Pay A. H. DANFORTH & Co.,

WILLIAM M. ^{his} ~~X~~ THOMPSON.
mark.

Attest, THOS. TAYLOR.

Pay ALMON G. DANFORTH,
A. H. DANFORTH & CO.

Record, page 91.

\$1,000.00.

Washington, Ill., November 22d, 1857.

One day after date, we, jointly or severally, promise to pay to Asa H. Danforth & Co., or order, one thousand dollars, with interest from date, at the rate of 10 per cent. per annum, for value received.

Indorsed: Credit this note one year interest, up to Nov. 22, 1858. \$100.00.

Feb. 22, 1860. Interest paid on this note

note from Nov. 22, 1858, to Nov. 22, 1859, \$100.00.

Sept. 14, 1861. Interest paid on this note from Nov. 22, 1859, to August 22, 1861, \$175.

Pay ALMON G. DANFORTH,
A. H. DANFORTH & CO.

B. E. MILES,
WELLS ANDREWS, JR.,
JOHN A. ANDREWS.

\$1,000.00.

Washington, Ill., November 22d, 1857.

One day after date, we, jointly or severally, promise to pay to Asa H. Danforth & Co., or order, one thousand dollars, with interest from date, at the rate of 10 per cent. per annum, for value received.

Indorsed: Credit this note one year interest up to Nov. 22, 1858. \$100.00.

Feb. 22, 1860. Interest paid on this note

from Nov. 22, 1858, to Nov. 22, 1859, 100.00.

Sept. 14, 1861. Interest paid on this note from Nov. 22, 1859, to August 22, 1861, \$175.

Pay ALMON G. DANFORTH,
A. H. DANFORTH & CO.

B. E. MILES,
WELLS ANDREWS, JR.,
JOHN A. ANDREWS.

\$2,000.00.

Washington, Illinois, November 22d, 1857.

One day after date, we, jointly or severally, promise to pay to A. H. Danforth & Co., or order, two thousand dollars, with interest from date, at the rate of 10 per cent. per annum, for value received.

Indorsed: Credit this note one year interest up to Nov. 22, 1858. \$200.00.

Feb. 22, 1860. Interest paid on this note

from Nov. 22, 1858, to Nov. 22, 1859, \$200.00.

Sept. 14, 1861. Interest paid on this note from Nov. 22, 1859, to August 22, 1861, \$350.00.

Pay ALMON G. DANFORTH,
A. H. DANFORTH & CO.

B. E. MILES,
WELLS ANDREWS, JR.,
JOHN A. ANDREWS.

\$2,000.00.

Washington, Ill., November 22d, 1857.

One day after date, we, jointly or severally, promise to pay to A. H. Danforth & Co., or order, two thousand dollars, with interest from date, at the rate of 10 per cent. per annum, for value received.

Indorsed: Credit this note one year interest up to Nov. 22, 1858. \$200.00.

Feb. 22, 1860. Interest paid on this note

from Nov. 22, 1858, to Nov. 22, 1859, \$200.00.

Sept. 14, 1861. Interest paid on this note from Nov. 22, 1859, to August 22, 1861, \$350.00.

Pay ALMON G. DANFORTH,
A. H. DANFORTH & CO.

B. E. MILES,
WELLS ANDREWS, JR.,
JOHN A. ANDREWS.

The plaintiff, in opposition to said motion, then read in evidence the affidavits of Thomas Taylor and Almon G. Danforth, which said affidavits are in the words and figures following, to wit:

STATE OF ILLINOIS, }
TAZEWELL COUNTY, }
Record, page 93. A. H. DANFORTH & CO., }
vs. }
ANDREWS, MILES & CO. }

In the Tazewell County Circuit Court,
February Term, A. D. 1863.

Thomas Taylor, being duly sworn according to law, depose and say, that he went into the employ as book-keeper of A. H. Danforth & Co., the plaintiffs in the above entitled cause, on or about December 1, 1858, and continued in that capacity until December 21, 1861, and that the parties composing the said firm of A. H. Danforth & Co. were Asa H. Danforth and Geo. W. Danforth. Deponent further saith that Almon G. Danforth, during said time, acted in the capacity of cashier for said A. H. Danforth & Co., for a salary, and that said Almon G. Danforth had no capital invested in the business of said A. H. Danforth & Co., and was not a partner in said firm; and further deponent saith not

THOMAS TAYLOR.

Subscribed and sworn to before me this 12th day of February, A. D. 1863.

GEO. H. HARLOW, Clerk.

STATE OF ILLINOIS, }
TAZEWELL COUNTY, }
ALMON G. DANFORTH, }
vs. }
ANDREWS, MILES & CO. }

In Circuit Court,
February Term, A. D. 1863.

Almon G. Danforth, being duly sworn according to law, depose and say, that he is the plaintiff in the above entitled cause, and that he was at the time of the commencement of the above suit, and still is, the sole owner in his own individual right, of the notes upon which the above suit was brought, and that he will be entitled to the proceeds of said notes, when collected, in his own individual right. And this deponent further saith that he has no interest whatever in the suit brought by A. H. Danforth & Co. against Andrews, Miles & Co; and further deponent saith not.

ALMON G. DANFORTH.

Subscribed and sworn to before me this 12th day of February, A. D. 1863.

GEO. H. HARLOW, Clerk.

But the court overruled the motion, and refused to consolidate the causes 67 and 68; to which decision of the court in overruling said motion, and in refusing to consolidate the causes 67 and 68, the defendants then and there at the time objected and excepted.

The court then directed a jury to be called, to which the defendants objected and excepted, on the ground that a change of venue should have been granted by the court; and the plaintiff, to maintain the issues upon his part, offered in evidence the following notes, with the indorsements thereon, to wit:

One note, dated September 14, 1861, payable at one day to A. H. Danforth & Co., for \$169.37, with interest at 10 per cent., made by Andrews, Miles & Co., and by the former indorsed to plaintiff. One note, dated January 21, 1861, payable at one month, to A. H. Danforth & Co., for \$594.27, with interest, made by Andrews, Miles & Co., and by the former indorsed to plaintiff. One note, dated July 14, 1860, payable on the first day of September next thereafter, to William M. Thompson, for

Record, pages
95 and 96.

\$700 — \$300 to be paid in coin — with interest after maturity, at 10 per cent., made by Andrews, Miles & Co., and by the former indorsed to A. H. Danforth & Co., and by the latter to plaintiff. Indorsed September 14, 1861.: Interest paid from September 1, 1860, to September 1, 1861, \$70. Two notes, each dated November 22, 1857, payable at one day to Asa H. Danforth & Co., for \$1,000, with interest at 10 per cent., made by B. E. Miles, Wells Andrews, jr., and John A. Andrews, and by A. H. Danforth & Co. indorsed to plaintiff. Indorsed: Interest paid to Aug. 22, 1861, \$375. Two notes, each dated Nov. 22, 1857, payable at one day, to A. H. Danforth & Co., for \$2,000, with interest at 10 per cent., made by B. E. Miles, Wells Andrews, jr., and John A. Andrews, and by the former indorsed to plaintiff. Indorsed: Interest paid to Aug. 22, 1861, \$750. (The notes and indorsements are set out at length in printed abstract on pages 21 and 22.)

Record, page 97.

To which the defendants objected. Objection overruled. Defendants excepted.

The plaintiff here rested.

The defendants then called Asa H. Danforth, who testified as follows, to wit:

Record, page 98.

These notes in suit were assigned by A. H. Danforth & Co. to the plaintiff at the time I brought them to Pekin to be sued. It was about two weeks before the commencement of this suit; was in August, 1862. I am one of the firm of A. H. Danforth & Co. The defendants then asked what consideration, if any, was paid by the plaintiff to A. H. Danforth & Co. for the assignment of the notes: to which plaintiff objected. Objection sustained. Defendants excepted. The defendants then proposed to prove that the notes still belonged to A. H. Danforth & Co., and were assigned to plaintiff for collection merely. Plaintiff objected. Objection sustained. Defendants excepted. The defendants then called John A. Andrews, who testified that on the 22d April, 1854, the defendants and Daniel L. Miles, and Paul N. Rupert, purchased a stock of goods of A. H. Danforth & Co. for \$14,215.35, and gave their notes at 6, 12 and 18 months, each for \$4,738.45, at 10 per cent. interest.

First note was paid before maturity and delivered up. On 22d April, 1856, A. H. Danforth & Co., and makers of notes, footed up amount of interest on two remaining notes at ten per cent., added same to principal, and then computed interest on the amount for the second year at 10 per cent., and then deducted sundry payments and credits. Defendants and Daniel L. Miles then gave their notes of same date for the balance.

Record, pages
98 and 99.

Witness executed the two following notes, which were read to the jury, to wit: One at 12 and the other at 18 months, each for \$4,738.45,

Record, pages
99 and 100.

Record, page 101.

Record, page 102.

payable to A. H. Danforth & Co., with 10 per cent. interest, and dated April 22, 1854, and signed by Paul N. Rupert, Daniel L. Miles, Wells Andrews, John A. Andrews, and B. E. Miles. Witness then identified the three notes executed April 22d, 1856, which were read to the jury, as follows: Two for \$5,000 each, and one for \$500, all payable at one day to Asa H. Danforth & Co., with 10 per cent. interest, and signed by Daniel L. Miles, John A. Andrews, Wells Andrews, jr., and B. E. Miles. Witness further stated that on the 22d Nov., 1857, the defendants and A. H. Danforth & Co. computed the amount due on said three notes dated April 22d, 1856, at 10 per cent. interest, and deducted the credits and payments, and then gave the notes described in the 4th, 5th, 6th and 7th counts, and one other note for \$1,000, and one for \$328.18, for the balance due on the notes dated April 22d, 1856. That defendants paid said two last mentioned notes. On cross examination witness stated that he could not tell the amount paid on notes dated April 22, 1854, at the time the next notes were given, nor whether the payments exceeded the amount. But on comparing the interest then due with the notes then given, stated that the amount defendants then paid exceeded all the interest charged, and also paid part of the principal, and that when the notes were changed, April 22, 1856, the amount then paid to A. H. Danforth & Co. exceeded the interest also then charged in said notes, and also discharged part of the then unpaid principal, and said three notes of that date were executed for the balance then due after deducting said payments. Defendants then called Wells Andrews, who stated that on 22d April, 1854, the defendants, and Daniel L. Miles, and Paul N. Rupert, purchased a stock of goods of A. H. Danforth & Co. for \$14,215.35, and gave their notes at 6, 12 and 18 months for \$4,738.45 each, with 10 per cent. interest. That no other consideration was given. That the note at six months was paid before due, and on the 22d April, 1856, the defendants and Daniel L. Miles settled with A. H. Danforth & Co. for the two notes, at 12 and 18 months. That at that time the interest on same was computed for one year at 10 per cent. and added to the principal, and interest on amount computed for second year at 10 per cent. and added to the principal, and after deducting the credits and payments the three notes dated April 22, 1856, were given for the balance of said two notes and interest. That on 22d Nov., 1857, defendants and A. H. Danforth & Co. computed the amount due on the three notes dated April 22, 1856, at 10 per cent. interest, and after deducting credits, the notes in suit of that date, and two others of same date — one for \$1,000, and one for \$328.18 — were given, which two last named notes have been paid. That the stock of goods was the only consideration for notes in suit. Cross examined. That at the settlement of April 22, 1856, defendants had an account against A. H. Danforth & Co., and the latter had an account against defendants, but could not tell how much. Yet at

the time of giving up the notes in 1856, and also in 1857, and executing the new ones, the amounts then paid and settled exceeded the amount of interest accrued then on the notes. Defendants then called Eli Heiple, and proposed to prove that they had an account of \$200 for storage against A. H. Danforth & Co. that ought to be credited on notes. Plaintiff objected, because account had been allowed in suit No. 67. Objection sustained. Defendants excepted.

Plaintiff then called Thomas Taylor, who, on being handed an account, stated that in the settlement of Nov. 22, 1857, there was an item of \$100 in money that A. H. Danforth & Co. had paid for defendants, and defendants were credited with \$2.11 of interest. The amount of defendants' account at that time exceeded the interest on the notes over \$2,000. Cross examined. Had no recollection of the facts except as his memory was refreshed by the account, and only swore as matters appeared on the account in his hands, and he took the amounts from the account. That he made the entries stated in the account, and also made the calculations, and would swear to his own work. The parties here rested their cause.

This was all the evidence in the case.

The plaintiff then asked the following instructions :

The jury are instructed that if they believe from the evidence that after the 21st day of January, 1857, the defendants and the plaintiffs had a full settlement, and the defendants gave plaintiffs their notes, including interest, calculated at the rate of 10 per cent. on notes due before that time, this would not be a usurious transaction, and the plaintiffs would be entitled to recover the amount due upon said notes and interest, that were given after January 21, 1857.

If the jury believe from the evidence that in 1854 A. H. Danforth & Co. sold a stock of goods to the defendants and two other persons and took the notes of the purchasers for the price thereof, with interest at the rate of 10 per cent., and that upon a settlement of accounts between them new notes were executed leaving out one of the obligors ; and again in Nov. 22, 1857, the notes sued on were executed leaving out another of the obligors to the second notes, bearing interest at the rate of 10 per cent. from date, the said last transaction would not be usurious, and the plaintiff will recover the amount of the notes, and interest at 10 per cent.

Defendants objected. Objection overruled. Defendants excepted.

The defendants then asked the following instructions :

The jury are instructed that by the act of the General Assembly of the State of Illinois, approved January 30, 1849, it is provided that in the trial of any action brought upon a promissory note or writing obligatory in any of the courts of this state, wherein is reserved a higher rate of interest than six per cent. per annum, it shall be lawful for the defendant to set up and plead as a defense in any such suit, that the consideration of said note or writing obligatory, upon which such suit was not for money loaned. And if it appear upon the trial of the cause that the note sued on was not given for money loaned, then the court shall only render judgment for the principal sum in the said note, and six per cent. interest.

The defendants in this case set up as a defense, in part, to four of the notes set out in plaintiff's declaration, that in April, 1854, they, with Daniel Miles and Rupert, purchased a stock of goods of A. H. Danforth & Co., amounting to the sum of \$14,215.35, and gave them three notes for the amount, and that said notes were given for money loaned, and

that said notes bore interest at the rate of ten per cent., and that on the 22d day of April, A. D. 1856, the defendants and Daniel Miles figured up with A. H. Danforth & Co. the amount of said three notes, and interest thereon at 10 per cent., added the sums together and deducted sundry payments, and then gave three notes for the balance, amounting to the sum of \$10,500, and on the 22d November, 1857, the defendants, with A. H. Danforth & Co., again figured up the amount of the \$10,500 notes, and interest on the same at the rate of ten per cent., and from the whole amount deducted payments and credits, and gave the notes dated Nov. 22, 1857, for the balance; and the defendants now seek to have deducted from said notes the difference between interest at six per cent. and the interest actually charged.

(The foregoing instructions, as asked by defendants, the court refused to give, and to which decision defendants excepted.)

Record, page 106. Whatever interest was agreed to be paid on any contract, for any thing except money loaned, under the law of 1849, over the rate of 6 per cent., was usurious, and the six per cent. only can be recovered; but if new notes are given for the former purchase under the law of 1857, and made to draw 10 per cent., the new notes would not be usurious; but if they are a part of the former transaction, the 4 per cent. usury in the former notes so taken may be deducted from the amount due on the latter notes.

Record, page 107. The jury returned the following verdict:

We, the jury, find for the plaintiff, and assess his damages in the sum of seven thousand eight hundred and forty-eight dollars.

The defendants then entered a motion to set aside the verdict and for a new trial, which motion is in the words and figures following, to wit:

STATE OF ILLINOIS, } TAZEWELL COUNTY, } ALMON G. DANFORTH, } vs. } MILES AND OTHERS. }	In the Circuit Court of Tazewell County, February Term, 1863. <i>Motion to set aside verdict, and for a new trial.</i>
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Record, page 108. The defendant enters a motion for to set aside the verdict in this cause, and for a new trial, for the following, among other reasons:

1. The court improperly refused to grant a change of venue in this cause.
2. The court improperly overruled the motion to continue this cause at this term.
3. The court allowed improper evidence to be given on the part of the plaintiffs.
4. The court excluded proper evidence on the part of the defendants.
5. The court gave improper instructions on the part of the plaintiffs.
6. The court refused proper instructions asked by the defendants.
7. The verdict is against the weight of evidence.
8. The verdict is against law.
9. The court improperly refused to consolidate this cause with case number 67, tried at this term.

Other reasons.

GROVE & KYES,
For Defendants.

Motion overruled. Defendants excepted.

The court then rendered the following judgment on the verdict:

Record, page 109. It is therefore ordered and adjudged by the court that the plaintiff have and recover of the said defendants the damages aforesaid in form aforesaid found, likewise the costs and charges by him about his suit expended, and that execution issue therefor.

Defendants excepted.

The plaintiff assigns the following errors on the record:

1. The court below erred in not awarding a change of venue, as prayed.
2. The court below erred in not granting a continuance of the cause at the February term, 1863.
3. The court below erred in not consolidating the cause with case No. 67.
4. The court admitted improper evidence on the part of the plaintiff below.
5. The court excluded proper evidence offered by the defendants below.
6. The court below erred in giving improper instructions for plaintiff below.
7. The court below erred in refusing proper instructions asked by defendants below.
8. The verdict was against the weight of evidence.
9. The verdict was against the law of the case.
10. The verdict is for too much.
11. The court below erred in overruling the motion for a new trial.
12. The instructions were calculated to mislead the jury, and were contradictory.
13. Other reasons.

By GROVE & KYES, *Their Attorneys.*

BENJAMIN E. MILES AND OTHERS, Plaintiffs in Error, <i>vs.</i> ALMON G. DANFORTH, Defendant in Error.	}	<i>PLAINTIFFS' BRIEF AND POINTS.</i>
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1. A change of venue should have been awarded.

The petition was presented on the first day of the term; heard on the second day; was in proper form, and the adverse party had reasonable notice.

See on this point

Clark *vs.* the People, 1 Scam. 117.
 Berny *vs.* Wilkinson, 1 " 164.
 McGoon *vs.* Little et al., 2 Gil. 42.
 Pearl et al. *vs.* Wellman, 11 Ills. 356.
 Searls *vs.* Munson, 17 Ills. 561.
 Moss et al. *vs.* Johnson, 22 Ills. 640.

As to the question of notice generally —

Cody *vs.* Hough, 20 Ills. 43.
 Cox et al. *vs.* Millner, 23 Ills. 476.

2. The court should have continued the cause at the Feb. Term, A. D. 1863.

See affidavits of Wells Andrews, jr., and account attached, printed abstract, pages 9, 10, 11, 12, 13, 14, 18, 19, 20.

In deciding this point the court will consider the amount in controversy, the disturbed condition of the country, and the difficulty of procuring depositions of soldiers in the field.

See also

Lyon et al. *vs.* Boilvin, 2 Gil. 637.
 Cole *vs.* Choteau et al., 18 Ills. 441.
 Shook *vs.* Thomas, 21 Ills. 89.

3. The court below erred in not consolidating the case with case No. 67.

The affidavits, account and notes read in evidence on the hearing of the motion show that A. H. Danforth & Co., the plaintiffs in case No. 67, and the defendants in both cases had large dealings together, amounting in the aggregate to over \$90,000. That Danforth & Co. held sundry notes against the defendants, as well as a bank and other accounts. Just before the commencement of the suits, Danforth & Co. assigned the notes they held against the defendants to A. G. Danforth, a son of one of the firm of A. H. Danforth & Co., and the nephew of the other, and the clerk of both. Almon G. Danforth sued on the notes, and A. H. Danforth & Co. brought suit on the accounts. The design of A. H. Danforth & Co. in thus splitting the cause of action was to make the payments of the defendants apply in payment of usurious interest charged in A. H. Danforth & Co.'s account.

See 1 Chitty on Pleading, 198.

"Where the plaintiff has two causes of action which may be joined in one action, he ought to bring one action only; and if he commence two actions he may be compelled to consolidate them, and to pay the costs of the application."

See cases cited in note, 1 Chitty on Pleading, 9th American Edition, page 199.

Here Danforth & Co. had an account running for several years, and sundry notes. They could have sued and tried the whole together. They brought two suits—one on the account in their own names, and one in the name of their clerk. It is submitted that the whole record shows that they were the parties interested in both suits. (It may be stated here, as illustrative of the whole proceeding, that in Case 67 Miles *et als.*, the defendants, recovered a verdict against A. H. Danforth & Co. for over twenty-five hundred dollars, which the court below set aside and granted a new trial, although it does not appear in the record.)

4. The court excluded proper evidence offered by the defendants below. See testimony of A. H. Danforth, printed abstract, page 24. The witness was asked what consideration, if any, was paid by Almon G. Danforth for the notes. The question was not permitted to be put. The defend-

ants below then proposed and offered to prove by the witness that the notes were assigned to Almon G. Danforth for collection only.

See also the testimony excluded as to the storage.

The doctrine is that a party to a negotiable instrument is not a competent witness to inquire into the consideration. But this does not apply to the indorser, when he is called on to testify as to the consideration paid by his indorsee, or whether the indorsement was not made merely to collect, or whether the note has not been paid.

Bradley et al. *vs.* Morris, 3 Scam. 183.
Webster et al. *vs.* Vickers, 2 Scam. 296.
Lyon et al. *vs.* Boilvin, 2 Gilman 637,
Smith *vs.* Lovett, 11 Pick. 417,
Byles on Bills, 237.

5. The court gave improper instructions on the part of the plaintiff below.

Sufford et al. *vs.* Vail, 22 Ill. 328.
Great Western R.R. Co. *vs.* Hanks, 25 Ill. 242.
Springdale Cemetery Association *vs.* Smith et al. 24 Ill. 482.
Brown *vs.* Graham, 24 Ill. 630 and 631.

6. The court refused proper instructions asked by defendants below.

See same authorities last above cited.

7. The instructions given are contradictory, and calculated to mislead.

8. The court should have granted a new trial.

H. GROVE,
For Plaintiffs in Error.

In the Supreme Court.

APRIL TERM, A.D. 1863.

BENJAMIN E. MILES, and others,
PLAINTIFFS IN ERROR,
vs.
ALMON G. DANFORTH,
DEFENDANT IN ERROR.

ABSTRACT OF RECORD,
ASSIGNMENT OF ERRORS,
AND
PLAINTIFFS' BRIEF AND POINTS.

NASON, LAW PRINTER, COR. FULTON & WASHINGTON, PEORIA.

Filed Apr. 21. 1863
L. Leland M

State of Illinois } In the Supreme Court
Supreme Court ss } April Term 1863.

Benjamin E Miles }
and others } Error to Supreme
vs }
Almon G Sanborn }
Plaintiffs brief &
Points

1. The Court should have ^{ordered} ~~granted~~ a change of venue.

The suit was brought to the Sept Term 1862 and the declaration was filed on the 22 day of August 1862 (See record page 2) on the last day under the rules.

The Petition for a change of venue was filed on the afternoon of the first day of the Term (See record Page 2) and at the time of filing the motion and Petition Mr Keyes the attorney for defendants Observe to Mr Roberts Plaintiffs attorney that defendants objected to take a change of venue. that he had filed pleas in said cause and also a motion and a petition for a change of venue without mentioning said fact as notices and on the morning of the second day of the Term the motion for a change of venue was taken up & heard.

The Plaintiffs below objected to a change of venue on the ground that no notice was given and no consent of all the defendants shown. See record Page 26 27 & 28.

1 2 1 1

The Petition for the change of venue was in
the words ~~following~~

State of Illinois } In the Circuit Court of ~~Penn~~
Jayneville County } Jayneville County aforesaid
at the September Term 1862

Almon G Danforth

vs

Benjamin E Miles
Wells Andrews Junior
or John A Andrews
Partners trading under
name & style
Andrews Miles & Co

In answer

Wells Andrews Jun
is one of the defendants in the above
entitled cause being first duly sworn
according to law on oath states that
he fears that the defendants above na
med will not receive a fair trial in
the Court in which the above action is pen
ding (being the Jayneville County Circuit Court)
on account that the Judge of said Court
the Hon James Harriott is prejudiced
against the defendants so that the defen
dants cannot expect to receive a fair
trial in said Court He therefore by
way of petition prays that ~~the Court~~
the Court may award a change of =

venue in said cause to some County & Court where the causes complained of do not exist. He further states that he makes this petition and application by and with the consent of all the Defendants in said cause. He makes this application at the first term of this Court that the application could be made.

Wells Audens Junior

Subscribed & sworn to before me Geo H Harlow Clerk

Per A P Gusnoia Deputy

~~Two~~ Two objections

were made to the motion

1. That no notice was given
2. That ~~the~~ ^{no} consent of all the defendants shown.

As to notice. The record shows that the Petition was filed on the first day of the Term. (The Petition states it was made at the first term of the Court it could be made) Mr Keyes was the Attorney of the Defendants below. Mr Robert was the Plaintiffs attorney. ~~Mr Keyes said to Mr~~ At the time Keyes filed the petition he observed to Mr Roberts that Defendants expected to take a change of venue and that he ^{had} filed Pleas in said cause and also a ~~Petition~~ motion & Petition for a change of venue.

14111
without mentioning said fact as notice
is the language of the Rule of 4 o'clocks.

The question then is fairly presented. Was
reasonable notice of the application for
the change of venue given?

The motion & petition ~~was~~ ^{were} duly filed and
Roberts Plunketts Attorney duly notified
of the filing. Roberts was also duly
notified that the defendants expected to
take a change of venue. It must be
borne in mind that the Statute does
not require written notice. The language
is "reasonable notice of the application having
been given to the other party or his attorney".

It is true and such is the statement in the
record that Kyes did not use the words
I give you notice ~~or~~ ^{nor} that you will take
notice but he did say to the attorney of
the other party & did give him notice
that the defendants expected to take a change
of venue and that the motion & petition
~~was~~ ^{were} filed. Now Dr. Roberts have reason-
able notice of the application ~~to~~ To say
otherwise is ^{to} deny the facts.

2. ~~As~~ The petitioner distinctly states that
he made the application with the consent
of all the defendants. No counter-
testimony was offered or heard. The truth
of the Petition was not questioned & yet

5
The motion was overruled;

There can be no question raised here as to the sufficiency of the Petition on any other ground than that of the consent of the other defendants.

The first case decided in this court on the question of a change of venue is reported in 1 Scammon 117. Black vs The people Indictment for Arson. On calling the case for trial the prisoner moved the Court for a change of venue. Motion overruled. This court say.

per Semples Justice: "When by petition venued by affiant the accused brings himself within the regulations of the Statute the obligation of the Judge or Court to allow it is imperative"

In Berry vs Wilkinson et al 1 Scam 164 the plaintiff gave notice on the third day of the Term to the plaintiffs below defendants in error and several days afterwards he made the application founded upon affidavit setting forth the Plaintiffs had an undue influence over the minds of the people & that the inhabitants were prejudiced against him. The application was overruled Nelson Chief Justice. "The Statute that authorizes a change of venue for causes therein enumerated requires that reasonable notice should be given of an application to the

Judge or court for such purpose shall
be given to the adverse party or his attorney

The length of time necessary to constitute reasonable notice will in some cases depend upon the peculiar circumstances of each particular case + + +

For aught that appears in the petition the existence of the pregnancy of which the defendant below complains may have been known to him months before the time. If such was the fact and it may be inferred from the contrary not being averred the Court might properly say that no time during the term of the Court after the plaintiffs had incurred the expense of a preparation for trial was not such a reasonable notice as the Statute contemplates.

See also 2 Gilman 42.

11	Ms.	121
16	Ms.	356.
17	"	561
22.	"	640.
11	McPown	379

It is submitted that these authorities ~~are~~ determine and show that the Court erred in not awarding a change of venue.

See as to the question of notice generally
20 Ill 43, 23 Ill. 476,

2 The Court below should have continued the cause at the Feb Term A D 1863.

On this point the Court is referred to the Affidavits of Wells Andrews Junior and the accounts therein referred to see printed abstract pages 6, to 14 inclusive,

There was pending in the Taynall Circuit Court a suit against the same Defendants brought by A H Banforth & Co and one of the affidavits & the accounts were filed in that cause which was No 67. on the docket. The affidavit & accounts in Case 67. are referred to and made part of the affidavit in this case. The affidavit shows the residence of the witnesses the materiality of the testimony and the diligence used.

1. In the affidavit in 67. Andrews states that they expect to move by order Frank Lawson & Charles Andrews that the Defendants have all the moneys and delivered all the crops property &c shown in the account up to May 1 1859 and this month in the fall of 1859, what amount to one

twenty thousand dollars.
and that the defendants have
no other reliefs to prove the
same facts

As to diligence In
happening upon the question of diligence
the Court will consider all the
circumstances of the case
A summons was duly issued
for the witnesses in Dec 1862, two
months before the commence-
ment of the term, and the
sheriff could not find them
in the County. A Commission
was issued to take the depositions
of Chester Andrews and Frank
Larson on the second day of
Dec 1862. Directed to ~~the~~ the Com-
missioner at Corinth. In ordina-
ry times a Commission could be
sent & depositions taken in two
weeks at furthest. Had the Com-
missioner been issued two months prior
to the Court and the affidavit
states that the Commissioner was
prevented from taking the depo-
sitions by the disturbed condition
of affairs in that neighborhood.
Our unhappy country was es-

gaged in a bloody war. It led
to armies scattered in detached
masses over several States. At
times ~~persons~~ ^{civilians} were not permitted
to pass within the lines and fre-
quently the movement of Regiments
and armies were purposely kept
secret. The defendants below
do not go on any State which
would enquire they mean as to
the whereabouts of their witnesses.

Since there was no one to apply to
that knew. Thousands of our
soldiers were in hospitals in detach-
ed and frequently months would
pass before any thing could be learn-
ed in reference to them.

Here the Commission
was frank in being enough to receive the
depositions. The failure was not
owing to any negligence on the part
of the defendants below.

It is respectfully
submitted that in view of all the
circumstances the Indigent should
be secured on this ground. ~~all~~
"A" on the motion to continue the cause
the Court permitted the Plaintiffs
below to read an affidavit filed
at a former term. It is submitted
that this was error.

8

As to the consolidation of the cases
the Court is referred to the printed brief
& points annexed to the printed ab-
stract

Danforth No held an account
and issuing notes against Melis No.
If Danforth No has bought two or
more suits in their own names the
Court under the law would consoli-
date them. Can Danforth No

deprive Melis No of their right to
consolidate the suits by bringing one
or more ^{suits} in the name of some third
person. Here there is no counter

evidence to the proofs on the motion
except that of the Plaintiff in 68.

He says that he is the sole owner
in his individual right of the
notes & that he has no interest
in the account in 67.

He does not
deny but that he was one of the
firm of A H Danforth No. Nor does
he claim that he has anything for
the notes.

As a legal proposition
it may be correct that when the
endorsement of the notes by his father
or the legal title to them vests in
Plaintiff in that suit. But that
does not destroy our right to

to avoid the expense & trouble
of bringing two suits - See the re-
sult here in 67. the defendants
recovered a judgment against
the said A. H. Banford for
over 2500 of twenty five hundred
dollars & the Court granted
a new trial. But no were beaten
in this suit & are now here seeking
to protect their rights.

If this judgment is re-
versed as I sincerely trust it will
be it would be but just that the
reversal will be accompanied by
an order of this Court directing
the suits to be consolidated.

4. The Court ~~reverses~~ below will
in eliciting evidence offered by the de-
fendants below. See evidence of A. H.
Banford. on printed abstract Page
24, and testimony of Hecht on
Page 26 at 702 of Page.

The object of the evidence was
of Banford was to show that A.
H. Banford did not own the
notes & that Mainoff has no inter-
est in them. Under this ruling

The efforts of Mules No would not
be proper

In Hepler's testimony the
defendants below propose to
prove that they had an account
of 200 \$ for storage that ought
to be credited on the notes sued.

The evidence as of Charles because
account was allowed in Case 67.

Who was the proper person to de-
termine whether the item was al-
lowed or not. The jury were
the triers. They could determine
the question after hearing the evidence.
The Court erred in excluding this
evidence.

9. The instructions given on the part
of the Plaintiff below Printed Abstract
Page 26

were erroneous. They do not
declare the loan as it is. and
that instruction conflict with
the last instruction given for depts
below.

See authorities cited in Brief
Points

The ~~defendants~~ instructions of
asked of the defendants below
are misplaced in their order I refer
to those two on Printed sheet page
26. The last of the two men asked
just once both of should have
been given. The second states the
substance of the defence as set forth
in the Pleas, & the other the same ar-
ranging on the Pleas.

The fact is undoubtedly
correct.

For the Points in the case the
court is respectfully referred to
the Printed Brief Points & authorities
cited & to the written Argument of Judge
Pomeroy

All of which is respectfully
submitted

J. H. Brown & D. K. Kays
att for P^{ty}
E. N. Powell for
Plaintiffs

54/ 138
Miles et al

9
Sanford

per argument

Given Apr 21. 1863

L. Deland M

State of Illinois } In the Supreme Court
Supreme Court do } Of the April Term
1863 at Ottawa

142 Benjamin E. Miles
vs Wells Andrews Junior &
John A. Andrews.
Plaintiffs in Error
vs
Almon G. Sanforth
Defendant in Error } Error to Jaze
well.

In the above entitled
the cause it is hereby stipulated and agreed
by the parties that the Plaintiffs in
Error may file the record in this cause at
any time in the Supreme Court so that
the cause can be tried at the April Term
1863 at Ottawa and no summons
or process shall issue to or be served on the
Defendant in Error. It being expressly stip-
ulated and agreed that the filing service
of process is waived and the full appear-
ance of the Defendant in Error shall be
construed as entered on the Plaintiffs filing
the record of this stipulation with the Clerk
of said Court
It is now adjourned
April 1/1863

State of Illinois } In the Supreme Court of Illi
Supreme Court do } nois April Term Oct 1863

Benjamin E Miles
Wells Andrews Jr &
John A Andrews.
Plaintiffs in Error
& Defendants below

vs
Almon G Danforth
Defendant in Error
& Plaintiff below

Error to the Cir
cuit Court of
Seymour County

From a writ of ~~Scia~~
Error & Scia fa to Sheriff of Seymour Co
returnable according to law in above cause
H. Brown

To Le Leland
Clerk Supreme Court
Illinois

Atty for Plaintiffs
in Error

April 2 1863

To Le Leland cl

Above I send you papers
in above case. Almon G Danforth was Plain
tiff below & deft non. ~~The~~ Miles et als were
Defendants below. The action was affirmed &
Judgment against defendants below. Trial Feb
may Term 1863. I send you 15¢ back a fair tally
H. Brown

57 Benjamin E. Miles
to this

vs
Almon G. Danforth

Receipt

Filed April 2nd 1863
L. Leland
Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

BENJAMIN E. MILES *et al.* }
 vs. } *Error to Tazewell.*
ALMON G. DANFORTH. }

BRIEF.

I.

The statute requires that reasonable notice should be given of an intended application for a change of venue. What that reasonable notice is, will depend upon the circumstances of the case. As for instance, when a party has just learned for the first time that the Judge of the Court is prejudiced against him, one day might be sufficient. But nothing of that kind appears in this case. For aught that appears in the affidavit, the affiant may have known of the prejudice of the Judge for years. It was unreasonable, then, that defendants should not give notice to the plaintiff of the intended application for a change of venue, until after the commencement of the term of the Court in which the cause was pending, and after plaintiff had been to the trouble and expense of getting ready for trial. But there was no notice given in this case. Kyes, attorney for defendants, merely observed to the attorney for plaintiff, the afternoon of the day before the motion was decided, that the defendants expected to take a change of venue, without mentioning such fact as notice. This was not notice.

Berry *vs.* Wilkenson, 1 Scam. 164.
Moss *vs.* Johnson, 22 Ill. 640.

II.

At the September term, 1862, the cause was continued upon the motion of the defendants on account of the absence of *Paul N. Rupert* and *Eli Heiple*, who were alleged to be material witnesses.

At the February term, 1863, defendants made a motion for a continuance on account of the absence of *Chester Andrews* and *Frank Lawson*, by whom it was alleged defendants could prove the same facts which at the September term it was alleged could be proved by Rupert and Heiple alone; that defendants, at the then last term, fully believed they could prove by said Rupert all said facts; but said Rupert, on being examined, could only state as to the notes given for the goods. See Abstract, page 8, 14.

But what became of Heiple? And when did defendant first learn that these facts could be proved by Andrews and Lawson?

The affidavit no where states that Heiple was not on hand, and that the same matters could not be proved by him.

It is true that in the affidavit, filed at February term, 1863, it is stated that the defendants know of no other witness by whom they can prove the same facts; but at the November term before, the same statement was made in regard to Rupert and Heiple, and there is no explanation made in regard to Heiple in the last affidavit.

It is upon its face apparent that this motion was made merely for the purpose of delay.

Heiple was present, as the Record shows, page 26 of Abstract, at the trial, and was sworn.

But there is a total want of diligence. He states that he sent the commission for taking the depositions by mail, to Corinth, Miss, and that, owing to the existing state of affairs, they had not been taken. Now, this is a reason why he should not have risked it in that way. For ought that appears, there may have been no mail to Corinth; and under such circumstances, he was bound to take it there himself or send it in some other way. and if there was a mail, but the communication uncertain. he should have taken some other way, or shown that no other way was available.

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Greater diligence should be required on a second application for a continuance than upon a first application.

Shook vs. Thomas, 21 Ill. 87.

Besides all this, the whole set off and claims of the defendants could have been pleaded and determined in the suit between the payees of the note and the defendants, then pending in the same Court.

There is an objection taken to the reading of the first affidavit of Wells Andrews, Jr., in the second application for a continuance, founded upon an affidavit of the same party. The affidavit was then upon the files, and was not read as a counter affidavit. The Court had a right to look into it to see whether these motions were not made for delay, as well as to see how much diligence had been used by the parties since their last continuance.

III.

The motion for a consolidation of the suits, was a matter of discretion, and cannot be assigned for error.

The plaintiff's affidavits show that plaintiff was the *bona fide* holder and owner of the notes sued on, and entitled to the proceeds, and that he had no interest in the suit between the payees of the note and the defendants. The Court could not, therefore, consolidate the suits without manifest injustice.

IV.

The offer of the defendants to prove by A. H. Danforth, one of the payees and indorsers of the notes, what the consideration for the assignment of the notes to plaintiff was, and that they were merely assigned to plaintiff for collection, was properly refused.

It is true that an endorser to a negotiable instrument is a competent witness to prove payment or anything else by which it has been discharged, after his assignment; but he is not a competent witness to prove any facts tending to invalidate the note in the hands of the endorsee. Besides, it is a rule that no man shall be allowed to defeat, by his testimony, a security to which he has given credit as a party. Every man is pro-

hibited from alleging his own turpitude in such a transaction. It would be against public policy, as tending unnecessarily to repress the circulation of commercial paper.

Churchill *vs.* Soter, 4 Mass. 157.
 Bank of M. *vs.* Jones, 8 Peters, 12.
 Bank U. S. *vs.* Dunn, 6 Peters, 51.
 Butler *vs.* Damon, 15 Mass. 223.
 Chandler *vs.* Morton, 5 Greenl. 374.
 Deering *vs.* Sawtel, 4 " 191.
 Houghton *vs.* Paige, 1 N. H. 60.
 Harrisburg Bank *vs.* Forster, 8 Watts, 309.
 Style *vs.* Lynch, 2 Dall. 194.

But the testimony we think was immaterial under the issues of the case. The witness had already testified that the assignment was made to the plaintiff long after the notes became due, and just before suit brought. This let defendants into a full defense, if they had any.

The testimony of Eli Heiple was properly excluded, because it appears affirmatively that the storage account, amounting to \$200, had already been allowed in the suit between the payees of the note and the defendants.

V.

The instructions given on the part of the plaintiff, were unobjectionable. The notes were all given since the passage of the act of 1857, and the defendants had then a right to contract to pay 10 per cent. interest; and, if they then agreed to pay 10 per cent. interest on notes made while the law of 1849 was in force, they would be bound by it.

Leegar vs Leegar, 19 Ill. 121.

The plaintiffs in error, in their abstract, fail to give the instructions given on behalf of defendants below correctly. The instructions of defendants were all given with the following qualification:

"Whatever interest was agreed to be paid on any contract, for anything except money loaned, under the law of 1849, over the rate of 6 per cent., was usurious, and the six per cent. only can be recovered; but if new notes are given for the former purchase under the law of 1857, and made to draw 10 per cent., the new notes would not be usurious; but if they are a part of the former transaction, the 4 per cent. usury in the former notes so taken may be deducted from the amount due on the latter notes."

This will be apparent, if the instructions are read over and compared, commencing at page 105 of the Record. And this qualification was proper.

Or, to speak more correctly, it was more favorable to the defendants than the law warranted. And they cannot now complain of error made by the Court in their own favor.

With this explanation, the instructions will be made consistent and correct, so far as defendants have any right to complain.

There is a point made as to the amount of the verdict, and a motion for a new trial; but no reasons are given. We have examined this matter, and can find no error, as it appears to us.

H. M. WEAD,
B. S. PRETTYMAN,
A. G. KIRKPATRICK,
For Defendants in Error.

54 138 18
Benj. E. Miles et al

v.
Almon G. Sanforth

Defendants
Plaint

Filed May 5, 1863.
S. L. L. and
C. H.

State of Illinois }
Supreme Court }

In the Supreme Court.
April Term A. D. 1863.

Benjamin E. Miles,
Wells Andrews junior &
John A. Andrews
Plaintiffs in Error,

vs

Almon G. Danforth
Defendants in Error

Error to Tagwell

And now comes the
Plaintiffs in error and say, that in the record
and proceedings and in the rendition of judgment
in this cause, manifest error has intervened to
their prejudice and for assignment of errors hereupon
the record, show the following

1. The Court below erred in not awarding
a change of venue as prayed

2. The Court below erred in not granting a
continuance of this cause at the February term A. D. 1863.
and in hearing counter affidavits

3. The Court below erred in not consolidating
the cause with Case No 67.

4. The Court admitted improper evidence on
the part of the plaintiff below.

5. The court excluded proper evidence offered by the defendants below.

6. The court below erred in giving improper instructions for plaintiff below.

7. The court below erred in refusing proper instructions asked by defendants below.

8. The verdict is against the weight of evidence.

9. The verdict is for too much. was against the law of the case.

10. The verdict is for too much.

11. The court below erred in overruling the motion for a new trial.

12. The instructions were calculated to mislead the jury and were contradictory.

13. Other reasons.

By Grove & Kyes

their attys

In nullo est erratum

Stm Wessel
for deft

1
Meas

To a Term of the Circuit Court
begun and held at the Court House
in Pekin within and for the County of
Tazewell and State of Illinois on the
first Monday of the month of September
in the year of our Lord one thousand eight
hundred and sixty two. Present. Honorable
James Harriott Judge of the 21st Judicial
Circuit of the State of Illinois, composed of
the Counties of Mason, Tazewell &c. Chapman
Williamson Sheriff and George H. Harless
Clerk.

Be it remembered, that on the 15th day of August
A. D. 1862, a summons was issued from the Clerks Office of
the Circuit Court of said Tazewell County, which said
summons is in the words and figures following, to wit:

" State of Illinois }
" Tazewell County } s. The People of the State of Illinois, to
the Sheriff of said County,reeting:
" He command you that you summon Benjamin E.
" Miles, Wells Andrews Junior, & John W. Andrews, partners
" under name & style of Andrews, Miles & Co. if they shall be
" found in your County, personally to be and appear
" before the Circuit Court of said Tazewell County, on the
" first day of the next term thereof, to be holden at the Court
" House in Pekin in said Tazewell County, on the first
" Monday of September 1862, to answer unto Almon S.
" Danforth in a plea of trespass, to the damage of
" said Plaintiff as he says in the sum of Twenty thou
" sand Dollars, And you have then and there this word

with an endorsement thereon, in what manner you shall have executed the same.

Witness, George A. Harlow, Clerk of our said Court, and the seal thereof, at Peking aforesaid, the 15th day of August A.D. 1862.

Geo A. Harlow Clerk.
per A. F. Griswold Deputy

Which said summons, was, on the 22^d day of August A.D. 1862, returned with the following endorsement to wit:

State of Illinois }
Tazewell County } I have duly served the within by
reading the same to the within named Benj. E. Miles
Wells Andrews Jr, served on 16th Aug 1862, John A. Andrews
served on 18th Aug 1862, as I am therein commanded.
C. Williamson Sheriff
per Thos Cross Deputy

Now afterwards, to wit: on the 22^d day of August A.D. 1862, a declaration was filed in the office of the Clerk of the Circuit Court of said County, which said declaration is in the words and figures following, to wit:

State of Illinois }
Tazewell County } In the Tazewell County Circuit Court
September Term A.D. 1862.
Almon G. Danforth the plaintiff in this
cause by Roberts & Ireland his attorneys, complains of
Benjamin E. Miles, Wells Andrews Jr and John A. Andrews
partners trading under the name and style of Andrews
Miles & Co. the defendants in this cause of a plea of trespass
on the case upon promises. For that whereas the said

defendants heretofore, to wit: on the 14th day of September
 A. D. 1861, at Washington, Tazewell County, Ill., that is to
 say, at, to wit: Tazewell County aforesaid, made their certain
 promissory note in writing bearing date a certain day and
 year therein mentioned, to wit: the day and year aforesaid, and thereby then and there promised one day after
 the date thereof, by the name and style of Andrews Miles & Co
 to pay to A. H. Danforth & Co or order at their office in Washington
 the sum of One hundred & sixty nine ⁵⁰/₁₀₀ Dollars for value
 received with ten per cent interest; and then and there
 delivered the said promissory note to the said A. H. Danforth
 & Co, and the said A. H. Danforth & Co under their hands in
 writing on the back of said note, then and there indorsed
 and delivered the said promissory note to the said plaintiff,
 by means whereof, and by force of the statute in such cases
 made and provided, the said defendants become liable to
 pay to the said plaintiff ~~the said plaintiff~~, the said
 sum of money in the said promissory note specified,
 according to the tenor and effect of said promissory note;
 and being so liable they the said defendants in consideration
 thereof, afterwards, to wit: on the day and year aforesaid,
 at Tazewell County aforesaid, undertook
 and then and there faithfully promised the said plaintiff
 to pay him the said sum of money in the said promissory
 note specified according to the tenor and effect thereof.

2^d County

For that whereas also the said defendants, heretofore,
 to wit: on the 21st day of January A. D. 1861, at Washington
 Tazewell Co. Ill., that is to say, at, to wit: Tazewell County
 aforesaid, made their one other certain promissory note in
 writing bearing date a certain day and year therein
 mentioned, to wit: the day and year last aforesaid, and
 thereby then and there promised one month after the date

" thereof by the name and style of Andrews Miles & Co to pay
 " A. H. Danforth & Co or order at their office in Washington
 " Five hundred and Ninety four ²⁷/₁₀₀ Dollars for value
 " received with interest; and then and there delivered the
 " said promissory note to the said A. H. Danforth & Co;
 " And the said A. H. Danforth & Co then and there under
 " their hands in writing in the back of said note, indorsed
 " and delivered the said promissory note to the said plaintiff,
 " by means whereof, and by force of the statute in such
 " cases made and provided, the said defendants became
 " liable to pay to the said plaintiff the said sum of money
 " in the said promissory note specified according to the tenor
 " and effect of said promissory note; And being so liable,
 " they, the said defendants, in consideration thereof,
 " afterwards, to wit: on the day and year last aforesaid,
 " to wit: at Tazewell County aforesaid, undertook and
 " then and there faithfully promised the said plaintiff
 " to pay him the said sum of money in the said promissory
 " note specified according to the tenor and effect thereof.

3^d count

" For that whereas also, the said defendants heretofore
 " to wit: on the 14th day of July A.D. 1860. at Washington
 " D.C. that is to say, ^{at} to wit: Tazewell County aforesaid, made
 " their one other certain promissory note in writing, bearing
 " date, a certain day and year therein mentioned, to wit:
 " the day and year last aforesaid, and thereby then and there
 " promised by the name and style of Andrews Miles & Co on
 " the first day of September next thereafter to pay to the
 " order of one William W. Thompson the sum of One
 " Hundred Dollars, three hundred dollars of said sum to
 " be paid in coin for value received, with interest after
 " maturity at ten per cent per annum, And then and
 " there delivered the said promissory to the said William

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W. Thompson: And the said William W. Thompson
under his hand in writing on the back of said note, then
and there indorsed and delivered the said promissory
note to A. H. Danforth & Co. And the said A. H. Danforth
& Co. then and there under their hands in writing, on the
back of said note indorsed and delivered the said
promissory note to the said plaintiff. By means whereof
and by force of the statute in such cases made and provided
the said defendants become liable to pay to the said plaintiff
the said sum of money in the said promissory note specified
according to the tenor and effect of said promissory note. And
being so liable they the said defendants, in consideration
thereof, afterwards, to wit: on the day and year last aforesaid,
to wit: at Tazewell County aforesaid, undertook and
then and there faithfully promised the said plaintiff
to pay him the said sum of money in the said promissory
note specified, according to the tenor and effect thereof.

4 count

For that whereas also the said defendants heretofore,
to wit: on the 22nd day of November A. D. 1857, at
Washington Ill. that is to say at, to wit: Tazewell
County aforesaid, made their one other certain promissory
note in writing bearing date a certain day and year
therein mentioned, to wit: the day and year last
aforesaid, and thereby then and there promised one day
after the date thereof to pay to A. H. Danforth & Co. or order
the sum of One thousand Dollars with interest from
date at the rate of ten percent per annum for value
received, and then and there delivered the said prom-
issory note to the said A. H. Danforth & Co. And the
said A. H. Danforth & Co. by the name & style of A. H.
Danforth & Co. then and there under their hands in
writing on the back of said note indorsed and delivered

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the said promissory note to the said plaintiff. By means
whereof, and by force of the statute in such cases made
and provided, the said defendants became liable to pay
to the said plaintiff the said sum of money in the said
promissory note specified, according to the tenor and effect
of said promissory note; And being so liable, they the said
defendants in consideration thereof, afterwards, to wit: on the
day and year last aforesaid, to wit: at Tazewell County
aforesaid, undertook, and then and there faithfully
promised the said plaintiff to pay him the said sum
of money in the said promissory note specified, according
to the tenor and effect thereof.

5
For that whereas also the said
defendants heretofore, to wit: on the 22nd day of November A.D.
1857, at Washington Ill, that is to say at, to wit: Tazewell
County aforesaid, made their one other certain promissory
note in writing bearing date a certain day and year
therein mentioned, to wit: the day and year last aforesaid, and thereby then and there promised one day after
the date thereof, to pay to Asa H. Danforth & Co or order the
sum of One thousand Dollars, with interest from date at
the rate of ten percent per annum for value received; and
then and there delivered the said promissory note to the said
Asa H. Danforth & Co; And the said Asa H. Danforth & Co by
the name and style of A. H. Danforth & Co, then and there
under their hands in writing on the back of said note
endorsed and delivered the said promissory note to the
said plaintiff. By means whereof, and by force of the
Statute in such cases made and provided, the said defendant
became liable to pay to the said plaintiff the said sum of
money in the said promissory note specified according
to the tenor and effect of said promissory note; And

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being so liable they the said defendants in consideration thereof, afterwards, to wit: on the day and year last aforesaid, to wit: at Tazewell County aforesaid, undertook and then and there faithfully promised the said plaintiff to pay him the said sum of money in the said promissory note specified, according to the tenor and effect thereof.

6 counts

For that whereas also, the said defendants heretofore, to wit: on the 22nd day of November 1857, at Washington Ill, that is to say at, to wit: Tazewell County aforesaid, made their one other certain promissory note in writing, bearing date a certain day and year therein mentioned, to wit: the day and year last aforesaid, and thereby then and there promised one day after the date thereof to pay ^{to} A. H. Danforth & Co or order, the sum of Two thousand Dollars with interest from date at the rate of ten per cent per annum for value received, and then and there delivered the said promissory note the said A. H. Danforth & Co; And the said A. H. Danforth & Co, then and there under their hands in writing on the back of said note, indorsed and delivered the said promissory note to the said plaintiff; By means whereof, and by force of the Statute in such cases made and provided the said defendants then and there became liable to pay to the said plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect of said promissory note; And being so liable they the said defendants in consideration thereof, afterwards, to wit: on the day and year last aforesaid, to wit: at Tazewell County aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said sum of money in the said promissory note specified, according to the tenor and effect thereof.

7 County

For that whereas also the said defendants heretofore,
 to wit: on the 22nd day of November A.D. 1857, at Washington,
 Ill., that is to say, at, to wit: Tazewell County aforesaid, made
 their one other certain promissory note in writing, bearing date
 a certain day and year therein mentioned, to wit: the day and
 year last aforesaid, and thereby then and there promised one
 day after the date thereof to pay to A. H. Danforth & Co. or
 order, the sum of Two thousand Dollars, with interest from
 date at the rate of ten per cent per annum for value received;
 And then and there delivered the said promissory note to the
 said A. H. Danforth & Co.; And the said A. H. Danforth & Co.
 then and there under their hands in writing on the back of
 said note, indorsed and delivered the said promissory
 note to the said plaintiff, By means whereof, and by force
 of the statute in such cases made and provided the said
 defendants become liable to pay to the said plaintiff the said
 sum of money in the said promissory note specified,
 according to the tenor and effect of said promissory note;
 And being so liable they the said defendants in consideration
 thereof, afterwards, to wit, on the day and year last aforesaid,
 to wit: at Tazewell County aforesaid, undertook and then
 and there faithfully promised the said plaintiff to pay
 him the said sum of money in the said promissory
 note specified according to the tenor and effect thereof.

8 County

And whereas also the said defendants afterwards,
 to wit: on the 1st day of August A.D. 1862, to wit: at
 Tazewell County aforesaid were indebted to the said
 plaintiff in the further sum of Twenty thousand Dollars
 for so much money by the said plaintiff before that time
 lent and advanced to the said defendants at their
 special instance and request; And in the further
 sum of Twenty thousand Dollars for so much money

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" by the said plaintiff before that time paid, laid out
 " and expended to and for the use of ^{the} said defendants at
 " their like special instance and request: and in the
 " further sum of Twenty thousand Dollars for so much
 " money by the said defendants before that time had
 " and received to and for the use of the said plaintiff;
 " and being so indebted, they the said defendants in
 " consideration thereof, afterwards, to wit: on the day and
 " year last aforesaid, to wit: at Tazewell County, aforesaid
 " undertook, and then and there faithfully promised the
 " said plaintiff to pay him the said last mentioned sums
 " of money when they the said defendants should ^{be} thereunto
 " afterwards requested.

" Nevertheless the said defendants
 " not regarding their said several promises and undertakings
 " but contriving and fraudulently intending to deceive
 " and defraud the said plaintiff in this behalf, have not
 " as yet paid the said several sums of money, or any
 " or either of them, or any part thereof to the said plaintiff
 " although often requested so to do by the said plaintiff
 " But the said defendants to pay him the same have
 " hitherto wholly neglected and refused and still do
 " neglect and refuse to the damage of the said plaintiff
 " of Twenty thousand Dollars, and therefore he brings
 " his suit &c

" Roberts & Ireland
 " Attorneys for Plaintiff

Copy of Notes sued on

" \$169 ³⁷/₁₀₀

Washington Tazewell Co. Ill. Sept 15 1861.

" One day after date we the subscribers of Washington
 " County of Tazewell, State of Illinois promise to pay to
 " A. A. Danforth & Co, or order, at their office in Washington

" One hundred ~~and~~ sixty nine $\frac{37}{100}$ Dollars for value
 " received, with ten per cent interest,
 " "Endorsed" Andrews Miles & Co
 " Pay Almon S. Danforth
 " A. H. Danforth & Co

" \$594 $\frac{27}{100}$ Washington Tazewell Co. Ill. 21 Jan'y 1861.
 " One month after date we the subscribers of Washington
 " County of Tazewell State of Ill. promise to pay ^{to} A. H.
 " Danforth & Co or order, at their office in Washington, five
 " hundred & ninety four $\frac{27}{100}$ Dollars for value received
 " with interest,
 " "Endorsed" Andrews Miles & Co
 " Pay Almon S. Danforth.
 " A. H. Danforth & Co

" \$700 Washington Ill. July 14th 1860
 " On the first day of Sept^r next we promise to pay to the
 " order of William W. Thompson Seven hundred Dollars,
 " Three hundred Dollars to be paid in coin, value received,
 " with interest after maturity at ten per cent per annum.
 " "Endorsed" Andrews Miles & Co
 " Sept^r 14/61 Interest paid on this note from Sept^r 1/60 to Sept^r 1/61

" \$700-
 " Pay A. H. Danforth & Co
 " William W. ^{his} X Thompson
 " attest Th^r Taylor
 " Pay Almon S. Danforth
 " A. H. Danforth & Co

" \$1000.00 Washington Ill November 22nd 1857.
 " One day after date we jointly or severally promise to pay

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to Asa H. Danforth & Co. or order, One thousand Dollars
with interest from date at the rate of ten per cent per
annum for value received.

"Endorsed"

B. E. Miles

"On this note one year interest

Wells Andrews Junior

"up to Nov 22 1858 \$100.00

John A. Andrews.

"July 22/60 Interest paid on this

"note from Nov 22/58 to Nov 22/59 \$100.00

"Sept. 14/61. Interest paid on this note

"from Nov 22/59 to Aug 22/61. \$175.00

"Pay Almon G. Danforth

"A. H. Danforth & Co

"\$1000.00

Washington, Ill. November 22nd 1857.

"One day after date we jointly or severally promise to pay
to Asa H. Danforth & Co or order, One thousand Dollars
with interest from date at the rate of ten per cent per
annum for value received.

"Endorsed"

B. E. Miles

"On this note one year interest

Wells Andrews Junior

"up to Nov 22 1858, \$100.00

John A. Andrews.

"July 22/60. Interest paid on this note

"from Nov 22/58 to Nov 22/59 \$100.00

"Sept. 14/61. Interest paid on this note

"from Nov 22/59 to August 22/61 \$175.00

"Pay Almon G. Danforth

"A. H. Danforth & Co

"\$2000.00

Washington, Ill. November 22nd 1857

"One day after date we jointly or severally promise to
pay to A. H. Danforth & Co or order, Two thousand Dollars
with interest from date at the rate of ten per cent per

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" annum for value received,
 " "Endorsed"
 " On this note one year interest up
 " to Nov 22^d 1858 \$200.00
 " Feb'y 22/60, Interest paid on this note
 " from Nov 22/58 to Nov 22, 1859. \$200.00
 " Sept. 14/61, Interest paid on this note
 " from Nov 22/59 to Aug 22/61. \$350.
 " Say Almon G. Danforth
 " A. H. Danforth & Co

B. E. Miles
 Wells Andrews Junior
 John A. Andrews.

" \$2000.00. Washington D. C. November 22nd 1857.
 " One day after date, we jointly or severally promise to pay
 " to A. H. Danforth & Co or order, Two thousand Dollars
 " with interest from date at the rate of ten per cent per
 " annum for value received

" "Endorsed"
 " On this note one year interest up to
 " Nov 22nd 1858, \$200.00
 " Feb'y 22/60, Interest paid on this note
 " from Nov 22, 1858, to Nov 22/59. \$200.00.
 " Sept. 14/61 Interest paid on this note
 " from Nov 22/59 to Aug 22/61 - \$350. -
 " Say Almon G. Danforth
 " A. H. Danforth & Co

B. E. Miles
 Wells Andrews Junior
 John A. Andrews.

Now afterwards, to wit: on the 1st day of September
 A. D. 1862, the defendants filed their pleas in said cause
 in the words and figures following, to wit:

" State of Illinois Vs. In the Circuit Court of Bazewell
 " Bazewell County County September Term A. D. 1862.

" Simon G. Danforth

" Benjamin O. Miles.

" Mills Andrews Junior

" John A. Andrews

} In Assumpsit.

" And the said defendants come & defend & when & for plea say they did not undertake or promise as the said plaintiff hath thereof complained against them and of this they put themselves upon the country &c

" And Plaintiff doth believe

by David Hyes their attorney

" Robert & Ireland atty

2 " And for further pleas as to the said 1. 2. 3. 4. 5. 6. & 7th counts in plaintiff's declaration mentioned, defendants say actio non. because they say that all and every of the said promissory notes in said 1. 2. 3. 4. 5. 6 & 7th counts mentioned were assigned and endorsed by the said A. H. Danforth & Co to the plaintiff after the said several promissory notes in said 1. 2. 3. 4. 5. 6 & 7th counts became and were due. & the defendants aver that while said several promissory notes in said 1. 2. 3. 4. 5. 6 & 7th counts mentioned were in possession of, and owned & controlled by the said A. H. Danforth & Co the defendants fully paid each and all of said promissory notes to them the said A. H. Danforth & Co as they lawfully might do, and this they are ready to verify, wherefore they pray Judgment &c

by David Hyes their attorney

3^d

" And for further pleas as to the said 1. 2. 3. 4. 5. 6 & 7th counts in plaintiff's declaration mentioned, defendants say actio non. because they say that they fully paid the said A. H. Danforth & Co. the whole amount due on said several

notes, principal and interest while and during the
 time said A. H. Danforth & Co. held and owned said
 promissory notes, and defendants aver that the said
 plaintiff took and accepted said several promissory
 notes in said 1. 2. 3. 4. 5. 6. & 7th counts mentioned with notice
 that the same & each & every part thereof were fully paid
 and this they are ready to verify, wherefore they pray
 Judgment &c

David Hayes, attorney for Defendants
 4th And for further plea defendants as to said 1. 2. 3. 4. 5. 6.
 7th counts in plaintiffs declaration, say act's now because
 they say that the said several promissory notes in said
 1. 2. 3. 4. 5. 6. & 7th counts mentioned are the notes and property
 of A. H. Danforth & Co. and the said promissory notes were
 assigned, endorsed & transferred to the plaintiff for
 collection only, and the plaintiff has no interest in said
 notes, & the defendants aver that before the commencement
 of this suit, & after said several notes became due, and while
 they were owned, held and controlled by said A. H. Danforth
 & Co. they defendants paid said notes & each and all of them
 in full to the said A. H. Danforth & Co. and this they are
 ready to verify, wherefore they pray Judgment &c
 By David Hayes their attorney.

5th And for further plea as to said 4. 5. 6. & 7th counts
 in plaintiffs declaration, defendants say act's now.
 because they say that each and all of the said several
 promissory notes in said 4. 5. 6. & 7th counts mentioned
 were executed by the defendants without any consideration
 good or valid in law, and the defendants aver that said
 A. H. Danforth & Co. assigned & endorsed said several
 notes & each and all of them in said 4. 5. 6. & 7th counts

" mentioned, to the Plaintiff after they became due
 " and this they are ready to verify, wherefore they pray
 " Judgment &

" by David Hayes their attorney.

6th " And for further plea as to the said fourth, fifth,
 " sixth and seventh counts in plaintiff's declaration
 " mentioned, defendants say a *non* because they say
 " said several notes in said 4, 5, 6, & 7th counts mentioned
 " were not given for money loaned. And the defendants
 " further aver, that on the 22^d day of April A.D. 1854, at
 " the County of Warewell aforesaid, the said C. H. Danforth
 " & Co. the payees in said several promissory notes in said
 " 4, 5, 6, & 7th counts mentioned, sold & delivered to the defen-
 " dants, Daniel S. Miles & Paul M. Rupert a stock of goods
 " at and for the price and sum of Fourteen thousand two
 " hundred and fifteen & ³⁵/₁₀₀ Dollars, and the defendants
 " and said Daniel S. Miles and Paul M. Rupert, then
 " and there in payment of said stock of goods, executed
 " to said C. H. Danforth & Co. their three promissory notes, one
 " for four thousand seven hundred and thirty eight dollars
 " and forty five cents, one due at six months from the date
 " thereof, and one for same amount due at twelve months,
 " and one for same amount due at eighteen months, each
 " and all of said notes bearing interest at the rate of
 " ten per cent per annum. And the defendants aver
 " that on the 22^d day of April A.D. 1856, the said C. H.
 " Danforth & Co. and the said defendants Daniel S. Miles
 " & Paul M. Rupert by an arrangement of that date
 " computed the whole amount due on said three promissory
 " notes with the interest thereon at the rate of ten per cent
 " per annum from the date thereof, and after deducting

" payments actually made thereon, the defendants and
 " said Daniel S. Miles then and there executed three
 " notes of that date to said J. H. Danforth & Co for the sum
 " of Ten thousand and five hundred Dollars, two notes
 " for Five thousand Dollars each, and the other note for
 " Five hundred Dollars, all at one day and each an all
 " of them bearing interest at ten per cent per annum.
 " And the defendants aver that there was included in
 " said three promissory notes the sum of about nine
 " hundred and forty Dollars of unlawful & usurious
 " interest, being four per cent per annum on said sum
 " of Fourteen thousand two hundred and fifteen Dollars
 " and thirty five cents remaining unpaid, & in the part
 " paid from the date thereof until each payments were made.
 " And the defendants further aver that on the 22^d day of
 " November A.D. 1857, the defendants after deducting
 " payments actually made on said three last mentioned
 " notes, executed to the said J. H. Danforth & Co the said
 " promissory notes in said 4, 5, 6 & 7th counts mentioned,
 " and their two other notes in payment of said three notes
 " said two other notes so executed by the defendants on said
 " 22^d day of November A.D. 1857, were for the sums following,
 " one for One thousand Dollars, and one for three hundred
 " and twenty eight Dollars & eighteen cents, both due one
 " day after date Both have been fully paid by the defen-
 " dants, and so the defendants say that as to all of the
 " said 4, 5, 6, & 7th counts they have fully paid all the
 " said several promissory notes therein mentioned,
 " except as to the sum of about Seventeen hundred &
 " four Dollars and the interest thereon from the date
 " of said notes, and as to said sum of 1704⁰⁰/₁₀₀ Dollars
 " & the interest thereon at ten per cent the defendants say

12
" is for unlawful & usurious interest, and the defendants
" aver that said Plaintiff well knew at the time said
" several promissory notes in said 4. 5. 6 & 7th counts
" mentioned, were assigned and indorsed to him,
" that the said sum of 1704⁰⁰/₁₀₀ Dollars of the principal
" of said notes was for unlawful & usurious interest
" & this they are ready to verify, wherefore they pray
" Judgment &c
" By David Hayes their attorney

27th
" And for further plea as to said 4. 5. 6. & 7th counts in
" Plaintiff's declaration, defendants say aetio non because
" they say that said sums of money specified in said
" promissory notes, mentioned in said 4. 5. 6 & 7th counts
" of Plaintiff's declaration have been fully paid before the
" commencement of this suit, except the sum of Seventeen
" hundred and fifty two ⁶⁶/₁₀₀ Dollars, and the interest on
" said 1752 ⁶⁶/₁₀₀ Dollars at ten per cent per annum from
" the time said notes were executed, said Seventeen
" hundred and fifty two ⁶⁶/₁₀₀ Dollars being unlawful &
" usurious interest that was included in the sums
" specified in said notes mentioned in said 4. 5. 6 & 7th
" counts of Plaintiff's declaration said unlawful &
" usurious interest having accrued on sums of
" money specified in certain other notes which said
" A. N. Danforth & Co held against the said defendants
" and other persons hereafter named, the first and
" only consideration of said notes in said 4. 5. 6 & 7th counts
" mentioned was a stock of goods sold at the Farm of
" Washington Tazewell County aforesaid by A. N.
" Danforth & Co to the defendants and Daniel L. Miles
" & Paul N. Rupert, which sale took place on the

" Fifteenth day of April 1854, when and where a
 " full and complete Invoice of said goods was taken,
 " & the said goods were on the 22^d day of April A.D. 1854,
 " delivered to the defendants and said Daniel S. Miles
 " and Paul M. Rupert, in payment of which said
 " stock of goods then and there sold & delivered, the said
 " defendants and Daniel S. Miles & Paul M. Rupert,
 " executed & delivered to A. H. Danforth & Co their three
 " promissory notes, bearing date April the 22^d A.D. 1854,
 " each of said three notes were for the sum of Four thousand
 " seven hundred and thirty eight Dollars and forty five cents
 " one due in 6 months, one in 12 months, one due in 18 months
 " with interest at ten per cent, making in all the sum of
 " Fourteen thousand two hundred and fifteen Dollars and
 " thirty five cents, defendants aver that on the 22^d day of
 " April A.D. 1856, Paul M. Rupert having withdrawn, or
 " being about to withdraw from the business of selling &
 " retailing goods, in said Town of Washington & in said
 " County aforesaid, the said A. H. Danforth & Co and the
 " defendants and Daniel S. Miles & Paul M. Rupert
 " computed the whole amount then due on said three
 " notes, with interest at the rate of ten per cent per
 " annum, and then and there after deducting the
 " several payments that had been made on said three
 " promissory notes, the said defendants and said
 " Daniel S. Miles, then and there executed & delivered
 " to A. H. Danforth & Co, their three certain promissory notes,
 " bearing date April 22^d A.D. 1856, two of said notes were for Five
 " thousand Dollars each, & one for Five hundred Dollars, each
 " of said three notes were made payable one day after date
 " with ten per cent per annum, said defendants aver
 " that said three last mentioned promissory notes were

given for the balance which was lawfully due on said
 first mentioned promissory notes and Nine hundred and
 fifty five Dollars of unlawful & usurious interest which
 said A. H. Danforth & Co. exacted, reserved & claimed and
 did have included in the said three last mentioned notes
 of the 22^d day of April A.D. 1856, the said Nine hundred and
 fifty five Dollars, unlawful & usurious interest, being the
 sum that accrued on said Fourteen thousand two
 hundred & fifteen ³⁵/₁₀₀ Dollars at four per cent per
 annum, several payments having been made previous
 to said change of notes. And the said defendants further
 aver that on the 22^d day of November A.D. 1857, Daniel
 L. Miles having withdrawn, the said A. H. Danforth & Co.
 and defendants computed the whole amount due on said
 last mentioned ^{three} promissory notes with interest at the
 rate of ten per cent per annum from the date thereof
 and after deducting payments actually made thereon
 the defendants executed & delivered to the said A. H.
 Danforth & Co. the said four notes mentioned in the 4, 5,
 6, & 7th counts of Plaintiff's declaration, and one note for
 One thousand Dollars, and one note for Three hundred
 & twenty eight Dollars and eighteen cents, which two
 last named notes have been paid in full. defendants
 aver that there was on the 22^d day of November A.D. 1857,
 at the time of the giving of the notes specified in said
 4, 5, 6 & 7th counts of Plaintiff's declaration, exacted, reserved
 & claimed by said A. H. Danforth & Co. the said \$955. Dollars
 unlawful & usurious interest which had been included
 in the sum specified in said two Five thousand Dollar
 promissory notes and said Five hundred Dollar promissory
 note, and that the said A. H. Danforth & Co. also exacted
 interest on said \$955. Dollars at ten per cent which

up to the 22^d day of November A.D. 1857, amounted
 to the sum of One hundred and fifty one Dollars and
 twenty cents, in all Eleven hundred and six Dollars
 and twenty cents, and the said A. N. Danforth & Co. also
 then and there exacted, reserved and claimed,
 Seventeen hundred and twenty three Dollars and
 seventy four cents as interest on the balance due after
 deducting said \$955⁰⁰ as above specified, on said two
 Five thousand Dollar & one five hundred Dollar
 promissory notes, when in law and in fact he should
 of claimed but Ten hundred and ninety seven Dollars
 and twenty eight cents, making a total amount us
 usury which said A. N. Danforth & Co. claimed, and
 did have included in the said notes mentioned in
 said 4, 5, 6, & 7th counts of Plaintiff's declaration, the
 sum of Seventeen hundred and fifty two dollars and
 sixty six cents, which said sum of \$1752⁶⁶/₁₀₀ is and was
 unlawful & usurious interest, all of which said Plaintiff
 knew and was well acquainted with, he being the son
 of A. N. Danforth - defendants also aver that the
 assignment & indorsement of said notes mentioned
 in said 4, 5, 6 & 7th counts of Plaintiff's declaration
 mentioned was made by A. N. Danforth & Co. to the
 said Plaintiff long after said promissory notes become
 due - defendants aver that said \$1752⁶⁶ with interest
 at ten per cent per annum from the 22^d day of
 November A.D. 1857, should be deducted from the
 sums specified in the said notes mentioned in
 said 4, 5, 6, & 7th counts of Plaintiff's declaration, and this
 they are ready to verify, wherefore they pray Judgment &c
 by David Rye
 their attorney

8th

And for further plea defendants say actio non
 because they say that after the making of the said several
 promises in Plaintiff's declaration mentioned, and
 before the commencement of this suit, to wit: on the
 fourteenth day of August A.D. 1862, at and within the
 County of Tazewell aforesaid, the said defendants fully
 paid & satisfied the said Plaintiff in full, for all the
 promises, monies named and specified in Plaintiff's
 declaration & this they are ready to verify, wherefore they
 pray Judgment &c

By David Keyes their attorney

9th

And for further plea, defendants say actio non
 because they say that after the making of the said several
 promises in Plaintiff's declaration mentioned, to wit: on the
 Twelfth day of August A.D. 1862, at Tazewell County
 aforesaid, the Plaintiff by a certain writing in consid-
 -eration of Twenty thousand Dollars to him then and
 there paid, did release to the said defendants the said
 cause of action in the Plaintiff's declaration mentioned,
 which said release will be shown to the Court on the trial
 of this cause, and this the said defendants are ready to
 verify, wherefore they pray Judgment &c

By David Keyes their attorney

10th

And for further plea, defendants say actio non
 because they say, that the Plaintiff before and at the
 commencement of this suit, to wit: on the Fifteenth day
 of August A.D. 1862, at Tazewell County aforesaid, was
 indebted, and still is indebted to the said defendants
 in the sum of Thirty thousand Dollars, for work
 and labor, care & diligence and attendance of the

" said defendants, by said defendants before that time done and
 " performed and bestowed, in and about the business of the said
 " Plaintiff, and for the said Plaintiff at his request, and for
 " divers materials and other necessary things furnished by said
 " defendants before that time and used and applied in and
 " about the said work and labor for said Plaintiff at his like
 " request, and the further sum of Thirty thousand Dollars for
 " goods, wares, merchandise sold and delivered to said Plaintiff
 " by the said defendants at Plaintiff's request. And Thirty thousand
 " Dollars for money before that time lent, advanced to and paid, laid
 " out and expended for the said Plaintiff, at his special instance and
 " request. And for Thirty thousand for money before that time
 " had and received by said Plaintiff to and for the use of said
 " defendants, and for Thirty thousand Dollars for storage,
 " on sundry lots of wheat, corn, potatoes, Whiskey, Rum,
 " Lin, Brandy, Lager Beer, Pork, Beef, Goods, wares and
 " merchandise, all of which storage was received by Plaintiff at
 " his special instance and request & this the said defendants are
 " ready to verify, wherefore they pray Judgment &c
 " By David Hayes their atty

11th " And for further plea, defendants say actio non, as to the
 " first count of Plaintiff's declaration, because they say, that the
 " only consideration in the said promissory note in said first
 " count of Plaintiff's declaration mentioned, was, and is a
 " sum of money, which was, and is unlawful & usurious interest
 " on other and different sums of money which defendants have
 " long since fully paid; defendants aver that on the 1st day of
 " April A.D. 1861, A.H. Danforth & Co. the payees of said promissory
 " note mentioned in said first count of Plaintiff's declaration,
 " exacted & claimed of said defendants, said sum of One
 " hundred and sixty nine ³⁷/₁₀₀ Dollars, as specified in said first

" count in Plaintiff's declaration, the same being usurious
 " interest, and they persisted in exacting and claiming until
 " one of the partners of the said firm of Andrews Miles & Co. did
 " execute said promissory note, all of which said Plaintiff well
 " knew at the time that said note was indorsed to him for the
 " purpose of bringing this suit for the collection of said promissory
 " note, and this the said defendants are ready to verify wherefore
 " they pray Judgment &c
 " By David Hyes their attorney

12th " And for further plea as to the 4, 5, 6 & 7th counts of Plaintiff's
 " declaration defendants say a ctio non because they that before
 " the commencement of this suit, the promissory notes in said 4, 5, 6,
 " 7. counts in Plaintiff's declaration mentioned, had been by the
 " defendants fully paid, except the unlawful and usurious interest
 " which the said notes contained and interest at ten per cent per
 " annum on said usurious and unlawful interest, and this
 " defendants are ready to verify wherefore they pray Judgment
 " By David Hyes their atty

13th " And for further plea as to the third count in Plaintiff's
 " declaration, defendants say a ctio non because they say that
 " the promissory note in said third count mentioned was assigned
 " & indorsed to A. H. Danforth & Co by W^m W. Thompson long after
 " it became due and payable, And that said promissory
 " note was indorsed to A. H. Danforth by A. H. Danforth & Co
 " long after it became due. Defendants aver that before the
 " commencement of this suit, they paid said promissory note
 " in full by delivering to the payee and indorsers, seven hundred
 " dry Hides which they received as money, and this the said
 " defendants are ready to verify wherefore they pray Judgment &c
 " By David Hyes their attorney

14th

And for further pleas as to the 1. 2. 3. 4. 5. 6 & 7th counts in Plaintiff's declaration, Defendants say actio non because they say that the Plaintiff took & received the notes mentioned in said 1. 2. 3. 4. 5. 6 & 7th counts mentioned of A. H. Danforth & Co. well knowing when he so took and received said notes that the several sums of money in said promissory notes mentioned had been fully paid to A. H. Danforth & Co. except the unlawful & usurious interest, which said A. H. Danforth & Co. were exacting, reserving and claiming off of said defendants: Defendants aver that the indorsement of said promissory notes in said 1. 2. 3. 4. 5. 6 & 7th counts in Plaintiff's declaration mentioned to A. H. Danforth by A. H. Danforth & Co. was made for the sole and only purpose of collection, thereby intending and attempting to collect off of defendants a large sum of unlawful & usurious interest in violation of the statute in such cases made and provided, & this the defendants are ready to verify wherefore they pray Judgment.

By David Reyes atty

15th

And for further plea, defendants say actio non because they say that before the commencement of this suit to wit: on the Fourteenth day of August A.D. 1862, at Tazewell County aforesaid, they furnished and delivered to said Plaintiff, Ten thousand barrels of Number one Flour at five dollars per Barrel, amounting in all to the sum of Fifty thousand Dollars - they also furnished and delivered at the same time and place to said Plaintiff One thousand sacks of Shorts at two dollars per sack - at the same time and place defendants furnished and delivered to said Plaintiff, Twenty thousand bushels of Corn at twenty five cents per bushel, all of said Flour, Shorts & Corn, was delivered by defendant to plaintiff.

" at his special instance and request, all of which said
 " sums of money are now due from Plaintiff to the said
 " defendants, and out of said several sums of money so
 " due to the defendants, they the said defendants are ready
 " and willing and hereby offer to set off and allow to the
 " Plaintiff the full amount of damages that may be found
 " due to him less the usury & unlawful interest above in
 " other pleas specified, and thus the said defendants are
 " ready to verify wherefore they pray Judgment &c
 " By David Hyes their atty

Now afterwards, to wit: at a term of the Circuit
 Court begun and held at the Court House in Pekin,
 within and for the County of Tazewell and State of Illinois
 on the first Monday of the month of September A.D. 1862,
 and on the 2nd day of said Term, it being the 2nd day of
 said month, the following proceedings were had, to wit:

2nd Day.

Tuesday September 2nd 1862.

Almon G. Danforth

vs.

Benjamin C. Miles, Wells Andrews Junior
 & John A. Andrews, partners under name
 and style of Andrews, Miles & Co

In chambers

Now on this day came
 the parties by their attorneys, and this cause having come on
 to be heard upon the motion of defendants upon affidavit
 filed herein, for a change of venue in this cause, and the Court
 having heard argument of counsel thereon, and being fully
 advised in the premises is of opinion that said motion be overruled.

Now afterwards, to wit: on the 3rd day of said month, it being the 3rd day of said month, the defendants filed their Bill of Exceptions in said cause which said Bill of Exceptions is in the words and figures following, to wit:—

" State of Illinois } In the Circuit Court of Poyewell
 " Poyewell County } County aforesaid, at the September Term A.D. 1862.

" Almon S. Danforth

" vs.

" Benjamin O. Miles

" Mills Andrews Junior &

" John A. Andrews

Be it remembered that on this day this cause came on to be heard, upon the motion & petition of the defendants for a change of venue in this cause, on the grounds that the Judge of this Court is prejudiced against the defendants. The defendants in support of said motion read affidavit of Mills Andrews Junior, in words and figures following,

" State of Illinois } In the Circuit Court of Poyewell County
 " Poyewell County } aforesaid, 3rd September Term A.D. 1862.

" Almon S. Danforth

" vs.

" Benjamin O. Miles Mills

" Andrews Junior, & John A.

" Andrews, partners trading

" under name & style of

" Andrews Miles & Co

In Assumpit

" Mills Andrews Junior, one of the defendants in the above entitled cause, being first duly sworn according to law, on oath states, that he fears that the defendants

" above named will not receive a fair trial in the Court in
 " which the above action is pending (being the Tazewell County
 " Circuit Court) on account that the Judge of said Court the
 " Hon James Harriott is prejudiced against the defendants
 " so that the defendants cannot expect a fair trial in said
 " Court; He therefore by way of Petition prays that the Court
 " may award a change of venue in said cause to some County
 " & Court where the causes complained of do not exist, he
 " further states that he makes this petition & application by and
 " with the consent of all the defendants in said cause; He makes
 " this application at the first time of this Court, that the
 " application could be made.

" Subscribed & sworn to before.

" me this 1st day of September 1862.

" Geo H. Harlow Clerk
 " per A. P. Eisenwald deputy

Wells Andrews Junior

" It appearing that said
 " motion and petition was filed on the afternoon of the
 " first day of the Term, and David Hyes attorney for
 " defendants at the time of filing said motion & petition
 " observed to Roberts, Plaintiff's attorney that defen-
 " dants expected to take a change of venue and that he
 " had filed pleas in said cause, and also a motion &
 " petition for a change of venue without mentioning said
 " fact as notice, and the motion for change of venue was
 " taken up and heard on the morning of the Second day of
 " the Term. And plaintiff objected to granting the motion
 " because no notice was given, and no consent of all the
 " defendants shown. On consideration whereof the Court
 " overruled said motion and refused to change the venue
 " in said cause, to which the defendants then and there at
 " the time objected. To which decision of the Court in

" overruling said motion and in refusing to order a change
 " of venue in said cause, the defendants then and there
 " at the time objected and excepted and prayed that this
 " their Bill of Exceptions might be signed and sealed
 " and made part of the record in this cause, which is
 " done accordingly.

James Harriott ES

Now afterwards, to wit: on the same day, the
 following proceedings were had, to wit:-

Almon S. Danforth

Benjamin O. Miles, Wells Andrews Junior } In Assumpsit
 & John A. Andrews, partners under name }
 and style of Andrews Miles & Co

Now comes the defend-
 ants by their attorney, and enter their motion upon
 affidavit filed for a continuance of this cause, which
 motion the Court allowed, and this cause is ordered
 to be continued at defendants costs

Now afterwards, to wit: at a Term of the Circuit
 Court, begun and held at the Court House in Pekin within
 and for the County of Tazewell and State of Illinois on the
 first Monday of the month of February A. D. 1863. Present
 Hon James Harriott Judge of the 21st Judicial Circuit
 of the State of Illinois composed of the Counties of Mason
 Tazewell &c. Abraham Bergen States Attorney, James S.
 Hawkins Sheriff, and George. H. Harlow Clerk, and on
 the 2nd day of said Term, it being the 3rd day of said
 month, the following proceedings were had, to wit:-

2nd DayTuesday February 3rd 1863.

Almon E. Danforth

vs.
 Benjamin E. Miles.
 Mills Andrews Junior &
 John A. Andrews, partners
 under name and style of
 Andrews Miles & Co

Assumpsit

Now come the parties by their attorneys, and the defendants enter their motion ^{upon affidavit filed} for a continuance of this cause, which motion the Court refused.

Now afterwards, to wit, on the 3rd day of said Term, it being the 4th day of said month, the defendants filed their Bill of Exceptions in said cause, which said Bill of Exceptions is in the words and figures following, to wit:—

State of Illinois } In Sangrewell County Circuit Court
 " Sangrewell County } Feb Term A.D. 1863.

Almon E. Danforth

vs.

Benjamin E. Miles
 " Mills Andrews Jr
 " John A. Andrews

Motion for continuance

Be it remembered that on this day this cause came on to be heard upon the motion of the defendants to continue this cause until the next Term of this Court. The defendants to maintain their motion on their part read in evidence the affidavit of Mills Andrews Jr filed Feb 3. 1863. in support thereof, which affidavit was & is in the words

and figures following, to wit:-
 State of Illinois } In the Circuit Court of Tazewell
 Tazewell County } County, Feb Term 1863.

Almon L. Danforth

vs.

Benjamin O. Miles

Mells Andrews Jr

John A. Andrews

Motion to continue this cause

Mells Andrews Junior being first
 duly sworn on oath states, that the defendants cannot
 safely proceed to trial at this Term of this Court without
 the testimony of Chester Andrews and Frank Lawson
 both of whom are residents of Tazewell County, but now
 & for the twelve months last past have been in the military
 service of the United States and both are now somewhere in
 the State of Mississippi, Tennessee or Alabama. He
 further states that this suit is brought by the Plaintiff to
 recover the amount of several promissory notes set out in
 Plaintiff's declaration & that all of the notes described in
 Plaintiff's declaration, were assigned to the Plaintiff as
 defendant is informed and believes by A. N. Danforth & Co. just
 before the commencement of this suit. He further states that
 the dealings between the defendants and said A. N. Danforth
 & Co for the past eight years have been large, and exceed
 in amount the sum of ninety thousand Dollars. That
 on the 22^d day of April A. D. 1854, said A. N. Danforth & Co. sold
 to the defendants in this suit, Daniel S. Miles and Paul A.
 Rupert a stock of goods, at & for the price & sum of \$4215.35
 cents in payment of which, said Miles, Paul A. Rupert &
 these defendants executed their three promissory notes of
 that date to said A. N. Danforth & Co, each for 4738⁴⁵/₁₀₀ dollars

1 at 6 months, 1 at 12 months, & one at 18 months, all bearing
 interest at 10 percent, no other consideration was paid or
 received for said three notes; Deponent further states that the
 deposition of Paul A. Rupert on file, shows the foregoing
 statement as to the sale of the goods & the giving of said notes
 to be true. Deponent further states that between the time said
^{three} notes were given and the 22^d day of April A.D. 1856, the makers
 of said three notes made sundry payments thereon amount-
 ing to a large sum of money, the precise sum deponent
 cannot now state & that on said 22^d day of April A.D.
 1856, the defendants, Daniel L. Miles & Paul A. Rupert &
 said A. H. Danforth & Co, figured up the amount of said
 three notes and added interest on the said three notes at
 the rate of ten percent per annum, on all then remaining
 unpaid and upon all the remainder until the time
 payments were made, and deducted therefrom the amount
 paid on said notes, and three new notes were executed for
 the balance by the defendants & Daniel L. Miles one for \$500-
 & two for \$5000⁰⁰ each, all payable to said A. H. Danforth & Co
 at one day, & all bearing interest at 10 percent per annum.
 These defendants expect to prove by said Chester Andrews,
 that said original three notes were taken up as stated &
 that three new notes were given for balance of old notes
 and interest after deducting payments, & that included
 in the three new notes executed by ^{the} defendants and said
 Daniel L. Miles, there was included over nine hundred
 Dollars of unlawful & usurious interest, he further states
 that he expects to prove by said Chester Andrews, that between
 the said 22^d day of April 1856, and the 22^d day of November 1857
 the defendants & said Miles made large payments on said
 three notes dated April 22, 1856, and on said 22^d day of November
 1857, the defendants, Daniel L. Miles & said A. H. Danforth & Co

figured up the amount of said three last notes & added
 interest thereto on all remaining unpaid & on all the balance
 until payments were made & deducted payments actually
 made & the defendants for the balance executed to said A. H.
 Danforth & Co. the notes described and set forth in the 4, 5, 6,
 & 7. counts in Plaintiff's declaration, and two other notes one
 for 1000 \$ & one for 328 ⁹/₁₀₀ \$ both of which last notes the
 defendants have fully paid to said A. H. Danforth & Co &
 cancelled the same. He also expects to prove by said Chester
 Andrews, that no other or further consideration was paid or
 received for said last mentioned notes & that the further
 sum of Eight hundred & four dollars of unlawful & usurious
 interest was included in said notes so executed by the
 defendants on said 22 day of Nov 1857. making in all the
 sum of 1704 ⁰⁰/₁₀₀ Dollars of usurious and unlawful interest
 included in & forming part of the notes so executed Nov
 22, 1857. He further states that these defendants have at
 various times had other dealings with said A. H. Danforth
 & Co. & have paid them large sums of money drafts &c
 that these defendants intended to apply on the claims
 said A. H. Danforth & Co. held against them. But just
 before the commencement of this suit A. H. Danforth & Co
 assigned the notes in suit to the Plaintiff, the effect of which
 is to embarrass the defendants in making their defence.

He further states that the Plaintiff is a son of one of
 said firm of A. H. Danforth & Co and a nephew of the other
 and was acting as clerk and cashier of said firm during
 the principal part of the time the dealings between defendants
 & said A. H. Danforth & Co were going on. Defendant further
 states that said A. H. Danforth & Co have also commenced
 suit against these defendants in this Court, which is
 now pending herein, to recover for a Bank account against

these defendants; He further states that this deponent has
 filed his affidavit in said cause for a continuance in which
 deponent sets out a statement of payments, credits &c &
 showing that these defendants have overpaid said account
 of C. H. Danforth & Co, some 6 to 8000 \$ which ought to be
 credited and allowed to defendants in this suit, he
 makes said affidavit a part of this application the
 same as if here inserted at length. He expects to prove
 the same facts in this cause by the said Chester Andrews &
 Frank Lawson as stated in said affidavit, & defendants
 have no other witnesses by which to prove the same facts
 known to deponent. He further states that he also expects
 to prove by said Chester Andrews, that all said notes in Plain-
 tiff's declaration mentioned were assigned to Plaintiff after
 they became due; He further states, that he at the last term
 fully believed he could prove by said Paul M. Rupert all
 the facts in relation to the lifting & giving the notes as herein
 before stated, but said Rupert on being examined could
 only state as to the notes given for said goods; He further
 states that he has other witnesses to prove some other and
 additional payments & credits on the notes in this suit,
 but he knows of no witness by whom the defendants can
 prove the same facts as he expects to prove by said Chester
 Andrews & Frank Lawson; He further states that he believes
 there will be a controversy about the facts in the case, & it
 will be indispensably necessary for the defendants to have the
 testimony of said Chester Andrews & said Lawson, or defen-
 dants will be greatly injured. He further states that said
 Chester Andrews is now & since this suit was commenced
 was a Captain of a Company in the 47th Regiment of
 Illinois Volunteers, & in the active discharge of his duties
 at such, and that said Lawson during the same period

" was & still is a soldier in the 8th Regiment of Ill. Volunteers
 " & moving about from place to place in the State of Mississippi
 " Tennessee and Alabama. He further states that these defen-
 " dants caused a summons to issue in this cause in the first part
 " of December A.D. 1862, to the Sheriff of Tazewell County for
 " said Frank Lawson and Chester Andrews, but said
 " Sheriff has not been able to find said witnesses, as defendant
 " is informed and verily believes. He further states that these
 " defendants caused a Potestatum Commission to issue in
 " this cause out of and under the seal of this Court, directed to
 " Captain Joseph B. Miles, a Captain in the fifty seventh
 " Regiment Illinois Volunteers, Commissioner to take the
 " depositions of said Frank Lawson and Chester Andrews in this
 " cause upon interrogatories duly filed, which Commission
 " was issued on or about the third day of December A.D. 1862,
 " which was forwarded to him the said Commissioner at once
 " by mail, but said Commissioner has not as yet been
 " able to take said depositions or either of them, and has not
 " taken and returned the same to this Court. He further
 " states that said Commission was procured, issued and
 " forwarded in good faith, bona fide as soon as these defen-
 " dants found out where to forward the same, that said
 " Commission and interrogatories were forwarded by mail
 " to said Commissioner at Corinth in the State of Mississippi
 " where said Commissioner and said witnesses were at that
 " time as he verily believes; He further states that owing to
 " the disturbed condition of affairs in that neighborhood
 " said Commissioner has been unable to take and return
 " said commissions and depositions, he states expressly and
 " positively that these defendants knew of no other reliable
 " person to take said depositions, that said commission
 " was procured and furnished as soon as the defendants

" learned the whereabouts of said Frank Lawson & Chester
 " Andrews & were forwarded without delay. He further fully
 " expects to procure the depositions of said witnesses Lawson &
 " Andrews by the next Term of this Court. That this appli-
 " cation is not made for delay but that justice may be done.
 " He prays therefore, that this cause may be continued.
 " Subscribed and sworn to Wells Andrews Junior
 " before me this 3rd day of
 " February A.D. 1863.

" Geo. H. Karlow Clerk

The following is the affidavit referred to in the foregoing
 affidavit

" State of Illinois } In the Circuit Court of Piquette County.
 " Piquette County } Feb Term 1863.

" Asa H. Danforth &
 " George W. Danforth

" Benjamin E. Miles.

" Wells Andrews Jr &

" John A. Andrews

In Assumpsit

" Wells Andrews Jr one of the defendants
 " in the above entitled cause, being first duly sworn, on oath states,
 " that the defendants cannot safely proceed to trial in the above
 " cause at the present term of this Court on account of the
 " absence of Frank Lawson and Chester Andrews, both of whom
 " are residents of Piquette County, and both of whom are material
 " and important witnesses on the part of these defendants.
 " He further states that this action is brought by the
 " Plaintiffs to recover for money loaned, paid &c, and to
 " recover for rent of certain premises, and for greater certainty
 " this defendant as showing the cause of action only, refers

to the Plffs Declaration on file.

Deponent further states that these defendants have fully paid to the Plaintiffs between the 22 day of June 1857, and the commencement of this suit all the money, items, articles, drafts, checks, &c mentioned in the account hereto annexed marked A. & amounting to the sum of 73,626.⁶⁸ /100 dollars, and at the times & in the amounts, and in the way & manner set forth in said account which account is annexed hereto & made part of this application & affidavit & said account is in all respects true & correct.

Deponent further states that in addition to said sum of 73,626.⁶⁸ /100 dollars mentioned & set forth in said account hereto annexed, the defendants have also delivered to said Plaintiffs drafts on E. B. Guthrie of Buffalo N. York, amounting to the further sum of 15054.⁶⁴ /100 Dollars which drafts are more particularly set forth in the account filed herewith marked B, & which account is true & correct, and shows the date & amount of each draft all of which drafts were fully & promptly paid by said Guthrie & these defendants fully paid said Guthrie for the same, and these defendants are entitled to & should be credited with the full amount of said drafts on any claim the Plaintiffs may prove against these defendants.

Deponent further states that in addition to the above two amounts, said two amounts being \$88,681.32 cents, these defendants have still other claims & demands against said Plaintiffs which ought to be allowed to these defendants, on any amount proved by the Plaintiffs. He further states that said other claims & demands are as follows, for storage, goods, mill account &c amounting to some four hundred dollars. Deponent further states that the accounts & demands of the defendants against the

" Plaintiffs exceeds by some Six to Eight thousand
 " Dollars, the just claim of Plaintiffs against the defen-
 " dants, if these defendants are credited with payments they
 " have actually made, and credited with their just credits,
 " Deponent further states, that he expects to prove by said
 " Chester Andrews & Frank Lawson that they, and each of
 " them acted as clerks for the defendants at the store of
 " the defendants in Washington Tazewell County, for a
 " long space of time, that said Chester Andrews acted as
 " Clerk for these defendants about two years, commencing
 " about the first of June 1857, and that said Frank Lawson
 " acted as Clerk for these defendants some three months
 " in the fall of 1861, & while the clerk of these defendants,
 " Eli Keiple was absent, he further states that these defen-
 " dants can prove by said Frank Lawson & Chester
 " Andrews that these defendants paid all the moneys
 " and delivered to Plffs all the drafts, property &c shown in
 " the accounts hereto annexed up to about the first of May
 " 1859, and for the period of three months in the fall of 1861,
 " & these defendants expect to prove all the items of said
 " account true & correct, during the times above mentioned
 " These defendants expect to prove by Keiple that said accounts
 " herewith filed are true and correct from and after May 1, 1859,
 " except during the three months of his absence, in the fall of
 " 1861, they also expect to prove the delivery of the principal
 " part of the drafts set forth in account marked C.B. by
 " the ~~deposition~~ ^{testimony} of said Guthrie on file. He further expects
 " that there will be some conflict in the testimony of the parties
 " & that it will be indispensably necessary for these defen-
 " dants to have the testimony of said Frank Lawson, & Che-
 " Andrews on the trial of this cause. He further states that
 " there is no other witnesses by which the defendants can prove

the same facts as they expect to prove by said Lawson & Andrews.
 He further states that said Chester Andrews is now, and for
 the twelve months past has been a soldier in Forty seventh
 Regiment of Illinois Volunteers, & since the last term of this
 Court he has been moving with his company & regiment
 from place to place in the line of his duty in the States of
 Mississippi, Alabama, & Tennessee. That said Andrews
 has not been in this State since the last term of this Court.
 He further states that the said Frank Lawson is also a
 volunteer in the military service of the United States, and
 has been absent from the State of Illinois since the last
 term of this Court, and has during said last mentioned
 time been in active service as a member of the 8th Regiment
 Illinois Volunteers, and moved from place to place to place with
 his regiment in the States of Tennessee, Mississippi &
 Alabama as deponent is informed & believes. He further
 states that these defendants caused a summons to issue
 in this cause in the first part of December 1862, to the
 Sheriff of Tazewell County for said Frank Lawson &
 Chester Andrews, but said Sheriff has not been able to
 find said witnesses, as deponent verily believes. He further
 states, that these defendants caused a *Subpoena*
Commission to issue in this cause out of and under the
 seal of this Court directed to Captain Joseph B. Miles
 (a Captain in the 47th regiment Illa Volunteers) *Commissioner*
 to take the depositions of said Frank Lawson & Chester
 Andrews in this cause upon interrogatories duly filed, which
 commission was issued on or about the 3 day of December
 A.D. 1862, which was forwarded to him the said Commissioner
 at once by mail, but said Commissioner has not as
 yet been able to take said depositions or either of them
 & has not taken & returned the same to this Court.

He further states that said Commission was procured
 issued & forwarded in good faith, bona fide as soon as these
 defendants found out where to forward the same. That said
 commission & interrogatories were forwarded by mail on the 5th
 day of December A.D. 1862. to said Commissioner at Corinth
 Mississippi where said Commissioner & said witnesses were
 at that time as he verily believes. He further states that owing
 to the disturbed condition of affairs in that neighbourhood
 said Commissioner has been unable to take & return said
 commission & depositions. He states expressly & positively
 that these defendants know of no other reliable person to
 take said depositions. That said commission was procured
 & forwarded as soon as these defendants learned the whereabouts
 of said Frank Lawson & Chester Andrews & were forwarded
 without delay. He further states that he fully expects to
 procure the depositions of said witnesses Lawson & Andrews
 by the next term of this Court. That this application is
 not made for delay, but that justice may be done. He
 therefore prays that this cause may be continued until
 the next Term of this Court.

Subscribed & sworn to
 before me this 3^d day
 of February 1863.
 Geo H. Harlow Clerk

Wells Andrews Junior

Account marked "A" referred to & made part of
 Wells Andrews affidavit.

A. H. Danforth & Co.

In ac with Andrews Miller & Co

1857
 June 22 To Cash
 July 8 " do
 9 " do

200.00

200.00

50.00

July 10 To Cash

" " do

14 " do

" " do

15 " do

16 " do

18 " do

23 " do

24 " do

" " do

25 " do

30 " do

August 3 " do

7 " do

8 " do

12 " do

15 " do

" " do

20 " do

29 " do

Sept 1 " Draft Munn Gill & Co

Oct 6 " Cash

8 " do

27 " do

Nov. 2 " do

11 " do

17 " do

Dec 5 " Draft on Harlan & Hull

22 " Cash

30 " do

1858 Jan 13 " Difference on Certificate of Deposit

150 00

38 00

135 00

400 00

539 69

62 00

100 00

87 00

26 00

75 00

93 00

191 50

34 00

36 00

76 00

130 00

54 00

325 00

26 00

41 00

500 00

103 00

176 10

356 00

256 00

112 00

20 50

476 41

120 00

500 00

78

1858	Jan	13 th	To Peter Cannon	150
		15 th	Draft on Powell & Co	8458
		" "	Cash	49600
		7 th	do	50000
		12 th	do	50000
		23 th	Draft Powell & Co	33630
		" "	Cash	99900
		29 th	do	22600
		30 th	do	14500
	Feb	1 st	do	38368
		9 th	do	69500
		16 th	do	2664
		25 th	do	16000
	March	2 nd	do	12800
		3 rd	do	11300
		11 th	do	12000
	April	7 th	Eight Dft Powell & Co St Louis	60000
	June	9 th	Cash	30000
		24 th	do	20000
		26 th	do	30000
	July	1 st	do	40000
		10 th	do	80622
		15 th	do	10000
		20 th	do	15000
		22 nd	do	13000
		24 th	do	13500
		26 th	do	25000
		31 st	do	10000
	August	7 th	do	10000
		11 th	do	20000
		12 th	do	14000
		13 th	do	12000

August	16	To Cash	300 00
	17	" do	195 00
	21	" do	111 00
	25	" do	376 00
	27	" do	115 00
	30	" do	300 00
Sept.	30	Cy Draft Chicago	348 25
Octo	13	Cash	1150 00
	14	" do	1750 00
	15	" do	145 00
	16	" do	250 00
	22	" do	100 00
	25	" do	400 00
	27	" do	166 00
	30	" do	1700 00
Nov.	1	Cy check Peikin Bank	150 00
	4	Cash	125 00
	9	" do	1000 00
	18	" do	1000 00
	22	N.Y. Dft & Excy	1470 00
Dec.	4	Cash	600 00
	6	" do	500 00
	10	" do	500 00
	14	" do	550 00
	18	Draft on St Louis	1000 00
	23	Cash	400 00
	31	" do	540 00
1859 Janey	1 st	" do	4 00
	12	" do	500 00
	13	" do	300 00
	17	" do	150 00

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Jan	27	To Cash	100 00
	29	" do	51 50
Feb.	8	" do	150 00
	22	" Draft on Chicago	109 95
	26	" Check & Cash	250 00
	28	" Cash	100 00
March	2	" do	50 00
	1	" (omitted) do	50 00
	4	" do	175 00
	5	" do	60 00
	11	" do	100 00
	15	" do	100 00
	19	" do	100 00
	28	" do	175 00
	23	" (omitted) do	1000 00
	28	" do	740 00
April	18	" do	120 00
	14	" do	100 00
	18	" do	100 00
	19	" do	100 00
	8	" do	181 25
	22	" do	60 00
	25	" do	70 00
May	21	" do	140 00
	24	" do	100 00
	"	" do	100 00
June	8	" do	100 00
May	30	" do	100 00
June	15	" do	70 00
	20	" do	55 00
	25	" do	50 00
	"	" do	60 00

June 21st Cash

3000

22nd do

12500

July 5th do

4000

" do

6850

7th do

5000

9th do

10000

15th do

18000

19th do

8500

30th do

16300

August 9th do

9000

15th do

10000

18th do

10000

24th do

5000

27th do

10000

" do

5000

Sept 5th do

10300

" Dft. Miles & Wright Chicago

30000

27th " do "

5608

" " David Keen

7865

" " Hobbs & Cliphant

20000

15th " Chicago

10000

" Cash

10000

October 13th do

6000

15th do

3800

8th Dft on Chicago

30000

19th do

5000

19th do

10194

22nd do

9800

28th do

24000

21st Draft on Chicago

30000

" Call of Wilson & Vesey

2000

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Nov	8	To cash	310 00
	3	" coll of Wilson	7872
	16	" Cash	9000
	17	" Dft on Miles & Wright	50000
Dec.	6	" Cash	50000
	7	" do	50000
	10	" do	10000
	20	" do	100000
	23	" Draft on Miles & Wright	40000
	29	" Cash	50000
	7	" do	50000
	9	" do	50000
1860 Jan	25	" do	67000
	9	" do	40000
Feb.	8	" Draft on Chicago	10000
March	21	" Cash	10000
April	1	" do	8000
	2	" Draft King Brothers & Co	68442
May	2	" do	52309
	3	" Premium on Dfts	300
	"	" Dft K. B & Co	65253
	4	" Cash & check	80000
	17	" Dft K. B & Co	81216
	26	" do	44828
	"	" Premium	315
	"	" Dft K. B & Co	49827
June	"	" Premium	125
	5	" Cash	8000
	20	" do	23000
	11	" Dft K. B & Co & Co	26829
	23	" Cash	5000
	27	" do	5000

June	29	To Cash	15000
July	3	" do	15000
	28	" do	10000
	"	Drft on New York	957 39
	"	Premium on do	479
	7	Cash	14200
	11	" do	107750
	14	" do	4000
August	18	" do	23775
	"	" do	27750
	20	" do	45241
	23	" do	48156
	"	Storage	1465
	29	Drft on St Louis	30000
	4	" Miles Wright & Sherman	29080
	8	Drft on N.Y. & Ex	98403
	10	" do	23497
	15	" Miles Wright & Sherman	21461
	17	Cash	5600
Sept	1	Drft on N.Y. & Ex	9891
	11	Cash	51421
	"	" do	30000
	12	" do	27500
	13	" do	12500
	14	" do	36500
	18	" do	5000
	19	Drft on Toledo	11476
	"	Cash	12247
	22	" do	10000
	26	" do	85000
	28	" do	7500
Oct.	5	" do	8500

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Oct.	13	To Dft on N. Roop	6201
"	"	do	25000
"	"	Cash	4870
	20	do	10900
	30	Dft on Buffalo	89605
Nov	2	Cy Dft	25000
	3	do	26436
	8	Dft on Roop	29900
	10	do	29900
Dec	12	Premium on Dft	405
	19	Currency Check + Premium Dft	56500
	21	Cash	40000
1861	Jan	8 Dft on N. Y. premium	23035
	March	6 " " New Orleans (Shipments)	35221
	"	Premium on same	1760
	8	Remittance A. N. Henkel & Co. ex	41623
	12	Dft L. M. Co. St. Louis	44390
	16	Cash	16500
	"	Dft ex	52337
	26	do	68492
	28	Cash	38100
April	1	Col of Henkel & Co	807
	6	Cash	11295
	13	do	25637
	20	Dft on Buffalo	27018
	20	" New York	27500
May	3	Dft on Buffalo	101000
	3	Premium on do	7000
	"	Check on Period	5000
	"	Dft Halbridge & Co	15260
	"	Premium on do	1064
April	23	Premium of N. Y. dft	2475

April	23	To premium on Buffalo	21 92
May	3	Cash	15 00
	4	do	20 00
	11	do	500 00
	13	do	50 00
	20	do	100 92
	23	Dft on N.Y.	835 01
	"	Premium	50 10
	16	Cash	29 00
	21	Cash	30 17
June	1	Dft H. D. Walbridge & Co	967 04
	5	" Brown Walbridge & Co	400 00
	"	" Buffalo	175 00
	19	Peter J. Fer	10 00
	29	Dft H. D. Walbridge & Co	186 21
July	3	Brown Walbridge & Co	100 00
	8	Coin	25 00
	26	Cash	23 00
Sept	3	Dft on Walbridge & Co	300 00
	9	two checks (coin)	204 00
Oct	1	Dft Brown Walbridge & Co	100 00
	"	Omaha dft on Bonds	12 19
Sept	30	School Order Dist No 5	31 44
	14	Cash	7 00
Oct	8	Dft Brown Walbridge & Co	100 00
	12	" H. D. Walbridge & Co	64 64
	23	" Brown Walbridge & Co	200 00
Nov	30	Cats to Willard & Co	149 00
1869			73576 41
Nov	3	Quitted Cash	65 00
1861			
May	23	do dft on N.Y. & spec	32 42
June	31	" Cash	12 85
			73626 68

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Account marked "B" referred to in Mills
Andrew's affidavit.

M. H. Danforth & Co

In case with Andrews Miles & Co

1860

Aug	4	To Dft on Guthrie & Co	150375
Sept	14	" Do	30000
	26	" Do	60000
Octo	12	" Do	40000
	18	" Do	40000
	5	" Do	6272
	30	" Do	40000
Nov	5	" Do	13219
Octo	31	" Do	50000
Nov	22	" Do	30000
Dec	19	" Do	18413
1861			
Jan	28	" Do	2132
Feb	8	" Do	30000
	"	" Do	21945
March	14	" Do	16027
	"	" Do	8163
	"	" Do	34000
April	20	" Do	27418
May	3	" Do	100000
June	17	" Do	15000
July	15	" Do	40000
June	4	" Do	17500
Aug	19	" Do	50000
	26	" Do	50000
Sept	3	" Do	30000
	10	" Do	30000

Dec 12/60

Sept	12	To Dft on Andrew & Co	300 00
	23	do	600 00
Oct	1	do	300 00
	8	do	600 00
	17	do	300 00
	23	do	300 00
	31	do	400 00
Nov	4	do	300 00
	9	do	400 00
	18	do	750 00
	28	do	500 00
Dec	6	do	300 00
1862			
April	23	do	500 00
			\$1505464

Thereupon the Plaintiff under objection of the defen-
 dants read in evidence the affidavit of said Wells Andrews
 Jr. filed at the last Term of this Court in words and
 figures following:
 State of Illinois } In the Circuit Court of Tazewell
 Tazewell County } County Sept Term 1862.

Almon G. Danforth.

Benjamin O. Miles
 Wells Andrews Jr &
 John A. Andrews

Motion for continuance

Wells Andrews Jr being first duly
 sworn, on oath states that he is one of the defendants above
 named and that Paul A. Rupert and Eli Heiple are
 material and important witnesses on the part of the
 defendants in this cause, and without whose testimony

they cannot safely proceed to trial at the present term
 of this Court. He further states that the defendants on
 the trial of this cause expect to prove by said Paul N.
 Rupert that on or about the 22^d day of April A.D. 1854,
 the defendants and Daniel L. Miles and said Paul N.
 Rupert purchased a stock of goods of A. H. Danforth & Co.
 & said purchasers executed three notes to said A. H. Danforth
 & Co in payment thereof as follows, one note due at 6 months,
 one at 12 months, and one at 18 months, each note for
 4738⁴⁵/₁₀₀ \$ amounting in all to the sum of \$14,215.35 &
 and each and all of said notes were payable with
 interest at the rate of ten per cent per annum, and that
 no other consideration was given by said A. H. Danforth
 & Co, or received by the makers of said notes than said
 stock of goods. The defendants further expect to prove by
 said Paul N. Rupert that between the time said notes were
 given and the 22^d day of April A.D. 1856, the makers of
 said notes paid to said A. H. Danforth & Co a large amount
 on said notes, but the precise amount defendant cannot
 state exactly. He further states that the defendants expect
 to prove by said Paul N. Rupert that on said 22^d day
 of April A.D. 1856, the makers of said notes and said
 A. H. Danforth & Co figured up the amount of said notes
 and added interest thereon at the rate of ten per
 cent per annum on all then remaining unpaid
 and upon all of the remainders until the time payments
 were made thereon, and deducted therefrom the amount
 paid on said notes, and three new notes were given for
 the balance by the defendants and Daniel L. Miles.
 He further expects to prove by said Rupert that the
 sum of nine hundred Dollars at least of usurious
 and unlawful interest was added in & to the amount

of said three notes after deducting the payment and
 the same was included in & formed a part of the three
 new notes dated April 22, 1856. He further expects to
 prove by said Eli Keiple and by the said notes, that
 said three new notes were payable to said A. H. Danforth
 & Co. two of which were for 5000.⁰⁰/₁₀₀ each & the third for
 500⁰⁰/₁₀₀ all payable at one day, and all bearing interest
 at the rate of ten per cent per annum. The defendants
 further expect to prove by said Keiple that the makers
 of said three last notes so executed by the defendants
 and said Miles made large payments thereon and
 that said A. H. Danforth & Co charged interest on the
 whole sum of said notes until payments were made
 & interest on all the unpaid part at the rate of ten
 per cent per annum and that on the 22^d day of
 November A D 1857, the notes described in Plaintiff's
 declaration & sued on in this cause & set out in the 4, 5,
 6 & 7 counts & two other notes were given for the balance
 unpaid of said notes dated April 22, 1856, and the
 interest thereon at the rate of ten per cent per annum.
 He further states that the further sum of Eight hundred
 & four Dollars of unlawful & usurious interest was
 included in & made part of the said notes executed
 by the defendants to the said A. H. Danforth & Co at the
 time the notes sued on and described in said 4, 5, 6 & 7
 counts, were executed, making \$1704⁰⁰/₁₀₀ of unlawful
 & usurious interest which they expect to prove by said
 Keiple. The defendants also expect to prove by said
 Keiple that the two other notes, one note for 1000⁰⁰/₁₀₀ &
 the note for \$328⁰⁰/₁₀₀ dated Nov 22, 1857, have long
 since been fully paid by the defendants. He further
 states that he fully expects to prove by said two witnesses

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that Seventeen hundred & four. Dollars of the principal
 of the notes sued on & set out in the 4, 5, 6, & 7 counts
 is for unlawful and usurious interest and that
 amount should be deducted from the face of the notes
 sued on all which are set out in said 4, 5, 6 & 7 counts
 (copies of which are filed with the declaration in this
 cause,) as of their date, He further states, that he expects
 to prove by said Keiple that the defendants have paid
 Eight hundred Dollars on said notes sued on, and
 that the defendants have other just credits amounting
 to the sum of about 1487 ⁴³/₁₀₀ \$ as follows, goods 249 ¹³/₁₀₀ \$
 Storage on 2400 bushels Corn one year 288 ⁰⁰/₁₀₀ \$
 Storage on Pork \$63 ²⁰/₁₀₀ Flour \$100. Draft on Guthrie
 \$297 ⁰⁰/₁₀₀ & one other draft on same for \$500. which
 ought to be applied on some or all of the notes described in
 Plaintiff's declaration, He further states that the
 defendants expect to prove by said Keiple that the
 notes sued were assigned and endorsed to the Plaintiff
 after they became due & that Plaintiff took said notes
 with notice of all matters hereinbefore set forth.
 He further states that the defendants have no other
 witnesses by whom they can prove the same facts
 He states that the declaration was filed in this cause
 on the 22^d day of August 1862, and that said Paul
 St. Rupert resides somewhere in the south part of
 this State & the defendants do not know in which
 County he does reside in & they could not therefore
 procure his attendance (nor take his deposition) at
 this term of Court for want of time & for the additional
 reason that they do not know where he lives.
 He further states that said Keiple is a resident of
 Parquell County & left said County with his family

" some time in the fore part of July 1862 for Pennsylvania
 " on a visit and has not as yet returned, at least
 " the defendants have no knowledge of his return -
 " He further states that the defendants fully
 " expect to procure the attendance of both said witnesses
 " at the next term of this Court, or they will procure
 " the depositions of said witnesses by next term of this
 " Court if they cannot procure their attendance.
 " He further states that in consequence of the
 " shortness of ^{the} time & the unsettled and disturbed
 " condition of the Country and other causes, the depts
 " have not in other respects been able to prepare their
 " case for trial as fully as its importance to them
 " requires. That this application is not made for
 " delay, but that justice may be done.
 " Subscribed and sworn to Wells Andrews Junior
 " before me Sept 3^d 1862.
 " Geo. Bradley Clerk County Court X

" But the Court overruled the motion to continue
 " this cause and refused ~~to~~ to continue the same, to
 " which decision of the Court in overruling said motion
 " to continue this cause until the next term of this Court
 " and in refusing to continue the same, & in permitting
 " the Plaintiff to read the former affidavit of said
 " Wells Andrews Jr the defendants then & there at the
 " time objected & excepted, & prayed that this his bill of
 " exceptions may be signed & sealed in this cause, & make
 " part of the record in this cause which is done accordingly
 " James Harriott (ual)

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Now afterwards, to wit: on the 9th day of said Term
it being the 12th day of said month, the following proceedings
were had, to wit:—

Thursday February 12th 1863,

Almon E. Danforth

^{vs}
Benjamin O. Miles
Wells Andrews Junior
John A. Andrews, partners
under name and style of
Andrews, Miles & Co

In Assumpsit

Now on this day come
again the parties by their attorneys, and the defendants
enter their motion to consolidate this cause with No. 67.
(A. E. Danforth vs Andrews Miles & Co) at Plaintiff's costs,
and the Court having heard argument of counsel thereon
and being fully advised in the premises, is of opinion that
said motion be overruled.

Now afterwards, to wit: on the 10th day of said Term
it being the 12th day of said month, the Plaintiff filed his
replications in said cause, in the words and figures following
to wit:—

" State of Illinois
" Tazewell County

} In Circuit Court
February Term 1863.

" Almon E. Danforth

^{vs}
" Benjamin O. Miles
" Wells Andrews Junior
" John A. Andrews

} In Assumpsit

And the said Plaintiff as

" the pleas by the defendant secondly, thirdly & fourthly above
 " pleaded, says precludi non &c. Because he says that said
 " defendants did not nor did either of them pay the said several
 " sums of money or any or either of them or any part thereof
 " to the said A. H. Danforth & Co, or any one else at any time,
 " and this the said plaintiff prays may be inquired of by
 " the country &c

" And the Defendants doth the like Roberts & Ireland attys
 " by Grove & Kyes their attys

" And the said plaintiff as to the plea by the defen-
 " dants fifthly above pleaded says precludi non &c. Because
 " he says that said notes in said counts mentioned, were
 " not given without consideration, but were funded upon
 " a good and valuable consideration, and this the plaintiff
 " prays may be inquired of the country &c

" And the Defendants doth the like Roberts & Ireland attys
 " by Grove & Kyes

" And to the pleas by said defendants, sixthly, and
 " seventhly above pleaded, plaintiff says precludi non &c.
 " Because he says that the said promissory notes in said
 " 4th 5th 6th & 7th counts mentioned, were made by the said
 " defendants, for a good and legal consideration, and not in
 " pursuance of or upon said corrupt and unlawful
 " agreement for the purpose in the said pleas of the said
 " defendants mentioned, nor was there any usurious
 " interest included in said notes in said counts in said
 " pleas mentioned in manner and form as the said defen-
 " dants have in said 6th and 7th pleas above in that behalf
 " alleged, and this the said Plaintiff prays may be
 " inquired of by the Country &c

" And defendants doth the like Roberts & Ireland for Plff
 " by Grove & Kyes attys

And for replication to the defendants 8th plea above
 pleaded, said Plaintiff says precludi non, Because he says
 that said Defts did not fully pay to the said Plaintiff +
 satisfy all or any part of the said promises + moneys
 specified in said Plfs declaration mentioned, & of this he
 puts himself upon the Country &
 And defendants doth the like Roberts & Ireland for Plf
 by Groves & Kyes attys

And for replication to said Defts 9th plea above
 pleaded, said Plff says precludi non, Because he says the
 Plaintiff by a certain writing in consideration of \$20,000.00
 to him then & there paid, did not release to the said Defts the
 said causes of action in said Plfs declaration mentioned
 & of this he puts himself upon the Country &
 And Defendants doth the like Roberts & Ireland for Plf
 by Groves & Kyes attys

And for replication to said Defts 10th plea above pleaded
 Plaintiff saith precludi non, Because he says that he was not
 & is not indebted to the said defendants in or for any or either
 of the said alleged cause of indebtedness as in said plea
 alleged or otherwise and of this he puts himself upon the
 Country
 And defendants doth the like Roberts & Ireland for Plf
 by Groves & Kyes then attys

And for replication to the said Defts plea 11th above
 pleaded, said Plaintiff says precludi non, Because he says
 that the only consideration of the said note in said Plaintiff's
 1st count mentioned, was & is not a sum of money which
 was & is unlawful and usurious interest or other and
 different sums of money which defendants have long since
 fully paid & of this he puts himself upon the Country
 And defendants doth the like Roberts & Ireland for Plf
 by Groves & Kyes then attys

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And for replication to said Defts 12th plea above
pleaded, said Plff says precludi non. Because he says at &c
that the promissory note in said Plffs' 4, 5, 6 & 7, counts
mentioned had not by said defendants or otherwise been
fully or in any part paid, except usurious & unlawful interest
as alleged & of this he puts himself upon the Country
And defendants by Brox & Kyes Roberts & Ireland for Plff
their attys do the like

And as to the said 13th plea of Defts above pleaded
Plff says precludi non. Because he says that said note in
said Plffs' 3^d count above named was not assigned to A. H.
Danforth & Co by said M. H. Thompson after the same
became due, nor indorsed by said A. H. Danforth & Co to
Plaintiff after the same became due, & Plff avers that
Defts before the commencement of this suit did not
pay said note in full or in part, by delivering to the payee
& indorsers seven hundred dry hides which they received
as money or otherwise & of this they put themselves upon
the Country
And defendants by Brox & Kyes their Roberts & Ireland for Plff
attorneys do the like

And as to the 14th plea of said Defts above pleaded & said
Plff says precludi non. Because he says the Plaintiff did
not take & receive the notes mentioned in said 1, 2, 3, 4, 5, 6 & 7
counts, of A. H. Danforth & Co well knowing that said sums
of money in said notes mentioned had been fully paid
to A. H. Danforth & Co, except usurious interest, that said
A. H. Danforth & Co were claiming & exacting off of said
Defts, and Plaintiff avers that said indorsement was
not made for the sole and only purpose of collection
thereof attempting to collect off of defendants usurious
& unlawful interest, & of this he puts himself

" upon the Country
 " And defendants doth the like
 " by Groves & Hyes their attorneys

Roberts & Ireland for Plf

" And as to the said 15th plea of Defts above pleaded,
 " said Plaintiff says precludi non, because he says that
 " before the commencement of this suit, said defendants did
 " not furnish or deliver to said Plaintiff 10,000 barrels of Flour
 " at \$5. per barrel, or 1000 sacks of Shorts at \$2. dollars per
 " sack, or 20,000 bushels of Corn at 25 cts per bushel, or any
 " or either of them or any part thereof, & of this he puts
 " himself upon the Country.

" And defendants doth the like
 " by Groves & Hyes their attys

Roberts & Ireland for Plf.

Now afterwards, to wit; on the 12th day of said
 Term, it being the 14th day of said month, the following
 proceedings were had, to wit:—

12th Day

Saturday February 14th 1863.

Almon S. Danforth

vs.

Benjamin O. Miles,
 Mills Andrews Junior &
 John A. Andrews, partners
 under name and style of
 Andrews Miles & Co

In Assumpsit

Now again comes as well the
 Plaintiff by his attorney Chittymann & Ireland, as the said
 defendants by their attorneys Groves & Hyes, and issue having
 been joined, whereupon came a jury of twelve good and
 lawful men, to wit; E. C. Buckley, J. S. Nammur, David
 Sloan, Jacob Breneman, Samuel Rhoads, Andrew Smith

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Elijah Stout, C. Worthington, J. H. Leadley, Isaac Parry,
Augustus Ames & Samuel Berry, duly elected, tried
and sworn, who having heard the allegations and proofs
of parties, and argument of counsel thereon, for verdict
say: As the Jury find for the Plaintiff and assess his
damages in the sum of Seven thousand Eight hundred
and forty eight Dollars (\$7,848⁰⁰/₁₀₀) whereupon the defen-
dants enter their motion for a new trial, which motion
the Court overruled; and by agreement of parties Bilgoff
Exceptions to be signed in vacation ^{from the adjournment of Court} within 30 days. It is
therefore ordered and adjudged by the Court, that the
Plaintiff have and recover of the said defendants, the
damages aforesaid, in form aforesaid found, likewise
the costs and charges by him about his suit expended
and that execution issue therefor

Now afterwards, to wit: on the 16th day of
said Jun. it being the 24th ^{day} of said month, the
following proceedings were had, to wit:

Almon J. Danforth

Benjamin O. Miles.
Wells Andrews Junior +
John A. Andrews partners
under name & style of
Andrews Miles & Co

In Assumpsit

Now comes the Plaintiff
by his attorneys, and upon affidavit filed, execution is
ordered to issue herein instantly

Now afterwards, to wit: on the 28th day of March
it being within 30 days from the assignment of said
A. D. 1863, a Bill of Exceptions was filed in said cause,
which said Bill of Exceptions is in the words and figures
following, to wit:—

State of Illinois } ss. In the Circuit Court of Tazewell
Tazewell County } County. To Sub. Term A.D. 1863,

1. Simon G. Danforth
 2. Benjamin S. Miles et al.

Be it remembered, that on this
day, being the 9th day of the Term, and before the trial of either
cause, this cause came on to be heard when the motion of ^{the} defendants
to consolidate this action with case number 67. which motion was
and is in words and figures following, to wit, =

X. " and is in words and figures following, to wit, =
 " State of Illinois } Encke Circuit Court of Tazewell
 " Tazewell County } County February Term 1863.

" A. H. Danforth & E. W. Danforth
" vs.
" Mills Andrews Jr. Benjamin
" Miles & John A. Andrews

" Simon E. Danforth
" is.
" Wells Andrews Jr. Benjamin
" Miles & John A. Andrews

" Miles & John A. Andrews
" The defendants enter a
" motion to consolidate the above causes No. 67, & No. 68, for the
" reasons following.

1. All the subject matter involved in the above points

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- 1 constitute in fact but one cause of action,
2. The notes sued on in No. 67, & which is the only cause
of action in said suit, were assigned by A. H. Danforth
to the Plaintiff just before the commencement of this
suit, and long after the said notes became due.
3. The account sued on in the case No. 68, accrued
while said notes in No. 67, were held & owned by said A. H.
Danforth & Co. & the defendants made payments from time
to time on both, & in separate trials great injustice will
be done to the defendants.
4. If the defendants are compelled to go into separate trials
on the trial of 67, the Plaintiffs will insist that the credits
& payments & offsets of the defendants ought to be applied
on the acct in 68, & when 67 is disposed of, then the
Plaintiff in 68, will probably dismiss it, & thus greatly
injure the defendants, & these defendants claim that as
against the claims in both suits, they have credits
offsets & payments amounting to more than any just
claim of the Plffs in both.
5. That A. H. Danforth & E. W. Danforth the Plaintiffs in
67, & Almon E. Danforth, the Plaintiff in 68, constitute and
compose in fact the firm of A. H. Danforth & Co.
6. The bringing of two suits was designed to & does in
fact embarrass the defendants in making their defence.
7. There are a large number of witnesses in the case &
the maintenance of two suits, will be attended with
additional expense & trouble & cost to the defendants.
8. Other reasons.

Nyes & Groves for Defs.

The defendants to support their motion read in evidence
the affidavits of Edwin F. Fish, B. D. Smith, Thomas

" Birkett, and Wesley B. Harvey and the affidavits of
 " Wells Andrews Jr. on motion to continue 67. and this cause
 " which said affidavits of said Edwin J. Fish, A. D. Smith,
 " Thomas Birkett, Wesley B. Harvey and Wells Andrews Jr.
 " are in words and figures following, to wit;

" State of Illinois } In the Circuit Court of
 " Tazewell County } Tazewell County

" A. H. Danforth & E. W. Danforth }
 " vs. } 67
 " Wells Andrews Jr. Benj. Miles &
 " John A. Andrews }

" Almon E. Danforth }
 " vs. } 68
 " Wells Andrews Jr. Benjamin
 " Miles & John A. Andrews }

Motion to consolidate.

" Edwin J. Fish being sworn on oath says that the above
 " named A. H. Danforth, E. W. Danforth (Plaintiffs in 67)
 " and Almon E. Danforth, Plaintiff in 68, are now for a
 " number of years have resided in Washington in Tazewell
 " County in Illinois, & they have been engaged in business
 " as Bankers in that Town a number of years. He further
 " states that said A. H. Danforth, E. W. Danforth and
 " Almon E. Danforth were during the same time of ha-
 " rently acting as partners in the Banking business
 " in Washington and managed a Bank, called the
 " Prairie State Bank at that Town. He further states
 " that said Almon E. Danforth on more than one
 " occasion informed deponent that he was a partner of

A. H. Danforth & Co, in the Banking business. He further
 states that during the time said firm were doing business
 they had in the Prairie State Bank, sundry ^{printed} cards, and
 which were distributed by the members of said firm, in
 which card the names of said A. H. Danforth, E. H. Danforth
 & Almon E. Danforth were printed & set forth as constituting
 the owners of the Prairie State Bank; Deponent further
 states, that deponent has also lived in Washington for
 a number of years, but was absent at times, and
 deponent has for a number of years always understood
 that said three constituted & composed said firm.
 He further states that he has acted as clerk for the
 defendants & has been on good terms with the Danforths
 & deponent has considerable knowledge about the claims
 & matters in controversy in said suits, & deponent believes
 that payments made by defendants to said Danforths
 were made and were to apply on their indebtedness to
 said firm. Deponent further states that the defendants
 have claims to large amount against said firm & in
 the best judgment of deponent, great injury may be
 done to defendants if compelled to make separate defences
 Subscribed & sworn to before } Edwin T. Fish
 me this 6th day of February A.D. 1863.
 Geo. H. Harlow (Clerk)

Thomas Birkett being sworn on oath says
 that he resides at Washington Tazewell County
 Illinois, and has for some twelve years, and during
 the same time deponent has been engaged in the
 business of making & manufacturing carriages
 Wagons &c at that place. He further states that he is
 well acquainted with said A. H. Danforth & E. H. Danforth

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1 Puffs (in 67) & Almon G. Danforth Puff in 68, all of said
 1 Danforths have resided & done business in said Washington
 1 for a number of years, and deponent always understood
 1 that the three Danforths above named constituted and
 1 composed the firm of A. H. Danforth & Co in the banking
 1 business, loaning money &c. He further states that about
 1 four years ago deponent went to the place of business of
 1 said A. H. Danforth & Co to get them to accept a draft
 1 which they done, and at the same time said Almon G.
 1 handed to deponent a printed card on which it was
 1 printed and appeared to the best of deponents recollection
 1 that said A. H. Danforth, G. W. Danforth & Almon G.
 1 Danforth composed or constituted the firm of A. H.
 1 Danforth & Co. He further states that he always
 1 understood and believed that said three Danforths
 1 owned and controlled the Bank called the Prairie
 1 State Bank at Washington. Deponent further
 1 states that he done considerable business with said
 1 firm, paid them money, and borrowed money of them
 1 from time to time, and said Almon G. appeared to be
 1 the managing man of the concern, & in conversation
 1 frequently said in speaking of business that we could
 1 accept a draft or transact business, referring to him-
 1 self as being one of the firm.

1 Subscribed & sworn to before me

1 this 6th day of February 1863.

1 Geo. H. Norton Clerk

1 per A. P. Garrison & Co

Thos. Birkett.

1 A. D. Smith being sworn on oath says he has
 1 lived at Washington & has been acquainted with A. H.
 1 Danforth, George W. Danforth & Almon G. Danforth for

near three years. He further states that he always
 supposed said three were partners in the banking business
 & it is the impression of deponent that A. H. Danforth
 a year ago last summer told deponent that Almon
 G. had an interest in the Bank, meaning the Prairie
 State Bank at Washington
 Subscribed & sworn to before me
 this 12th day of February A.D. 1863.
 Geo. H. Karlow Clerk

A. D. Smith

State of Illinois } At the February Term A. D. 1863, of the
 Tazewell County } Circuit Court of Tazewell County, State of Illinois
 Meloy B. Harvey being first duly sworn on his oath
 says that he is a citizen of the Town of Washington in
 said Tazewell County and that he has been acquainted
 with A. H. Danforth, George W. Danforth & Almon G. Danforth
 for at least five years, and that he done business with the
 firm of A. H. Danforth & Co. during the time that they were
 carrying on the Prairie State Bank in the said Town of
 Washington, and that during the time that said Prairie
 State Bank was in operation, said Almon G. Danforth
 was acting as Cashier and appeared to conduct the
 business, and that he affiant was in the habit of
 depositing money in said Bank, and that at the time
 said Bank broke and at the time the Banks of Illinois
 suspended payment being on or about the first day of
 May A. D. 1861, he had deposited in said Prairie State
 Bank about the sum of One hundred and sixty dollars,
 and that soon after he heard that said Bank had sus-
 pended, he called at said Bank for the purpose of
 withdrawing his said deposits from said Bank. Almon
 G. Danforth charged and required this affiant to pay a

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" discount of some fifteen per cent on the said One
 " hundred and sixty Dollars which he did under
 " protest, in a few days afterwards affiant called at said
 " Prairie State Bank and asked said Almon G.
 " Danforth why he had exacted and required a larger
 " discount of him than they were requiring of other
 " persons who had money deposited in said Bank.
 " affiant having been informed that they were charging
 " other depositors a few cents less than they had taken
 " from him, Affiant says that in answer to said question
 " said Almon G. Danforth said we had not then
 " consulted together and determined on the amount
 " that we would discount our depositors.

" Emorn to and subscribed } Wesley B. Harvey.
 " before me this 9th day of
 " February A. D. 1863.
 " Esse David Keyes N.P. } +

" State of Illinois } In the Circuit Court of
 " Jazewell County } Jazewell County Feb. term 1863.

" Asa H. Danforth & George W. Danforth }
 " vs. }
 " Benjamin D. Mills, Wells Andrews Jr } on Assumpsit
 " & John A. Andrews }

" Wells Andrews Jr
 " one of the defendants in the above entitled cause, being first
 " duly sworn, on oath states that the defendants cannot
 " safely proceed to trial in the above cause at the present
 " term of this Court on account of the absence of Frank
 " Lawson and Chester Andrews both of whom are residents
 " of Jazewell County, and both of whom are material and

" important witnesses on the part of these defendants
 " He further states that this action is brought by
 " the Plaintiffs to recover for money loaned, paid, &c. and
 " to recover for rent of certain premises, and for greater
 " certainty, this Defendant as showing the cause of action
 " only, refers to the Piffs declaration on file.

" Deponent further
 " states that these defendants have fully paid to the Plaintiffs
 " between the 22 day of June 1857, and the commencement
 " of this suit, all the money items articles drafts checks &c
 " mentioned in the account hereto annexed marked A.
 " & amounting to the sum of 73,626.⁶⁸/₁₀₀ Dollars, and at the
 " times & in the amounts & in the way & manner set forth in
 " said account, which account is annexed hereto & made
 " part of this application & affidavit, & said account is in
 " all respects true & correct.

" Deponent further states, that in
 " addition to said sum of 73,626.⁶⁸/₁₀₀ Dollars mentioned
 " & set forth in said account hereto annexed the defendants
 " have also delivered to said Plaintiffs drafts on E. S. Luthrie
 " of Buffalo N. York amounting to the further sum of
 " 15054.⁶⁴/₁₀₀ Dollars, which drafts are more particularly
 " set forth in the account filed herewith marked B, &
 " which account is true & correct, and shows the date &
 " amount of each draft all of which drafts were fully &
 " promptly paid by said Luthrie & these defendants
 " fully paid said Luthrie for the same, and these defen-
 " dants are entitled to & should be credited with the full
 " amount of said drafts on any claim the Plaintiffs
 " may prove against these defendants.

" Deponent further
 " states that in addition to the above two amounts, said

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" two amounts being \$88,681.32 cents these defendants have
 " still other claims and demands against said Plaintiffs
 " which ought to be allowed to these defendants on any
 " amount proved by the Plaintiffs. He further states that
 " said other claims & demands are as follows: for Storage,
 " Goods, Mill account & amounting to some Four hundred
 " Dollars.

" Deponent further states that the accounts &
 " demands of the defendants against the Plaintiffs
 " exceeds by some Six to Eight thousand Dollars the
 " just claim of Plaintiffs against the defendants, if these
 " defendants are credited with payments they have actually
 " made, and credited with their just credits.

" Deponent further
 " states that he expects to prove by said Chester Andrews &
 " Frank Lawson, that they and each of them acted as
 " Clerks for defendants at the store of defendants in
 " Washington Dazewell County for a long space of time,
 " that said Chester Andrews acted as clerk for these defen-
 " dants about two years commencing about the first of
 " June 1857, and that said Frank Lawson acted as
 " Clerk for these defendants some three months in the
 " fall of 1861, & while the Clerk of these defendants Eli
 " Heiple was absent.

" He further states that these defendants
 " can prove by said Frank Lawson & Chester Andrews, that
 " these defendants paid all the moneys and delivered to them
 " all the drafts, properly shown in the account hereto
 " annexed up to about the first of May 1859, and for the
 " period of three months in the fall of 1861, & these defendants
 " expect to prove all the items of said account true & correct
 " during the times above mentioned.)

" These defendants expect to prove by Heiple that said
 " accounts herewith filed are true & correct from and after
 " May 1, 1859, except during the three months of his absence
 " in the fall of 1861, they also expect to prove the delivery of the
 " principal part of the drafts set forth in account marked B,
 " as ~~was~~ ^{is} by the depo^{ition} of said C. S. Gustin on file.

" He further expects that there will be some conflict in the
 " testimony of the parties & that it will be indispensably necessary
 " for the defendants to have the testimony of said Frank Lawson
 " & Chester Andrews on the trial of this cause.

" He further states that
 " there is no other witnesses by which the defendants can prove
 " the same facts as they expect to prove by said Lawson & Andrews.

" He further states that said Chester Andrews is now
 " and for the twelve months past has been a soldier in Forty
 " seventh Regiment of Illinois Volunteers, & since the last
 " term of this Court he has been moving with his company
 " & regiment from place to place in the line of his duty in the
 " States of Mississippi, Alabama & Tennessee. That said
 " Andrews has not been in this State since the last term of
 " this Court.

" He further states that the said Frank Lawson
 " is also a volunteer in the military service of the United States
 " and has been absent from the State of Illinois since the last
 " term of this Court, and has ~~been~~ during said last men-
 " tioned time been in active service as a member of the 8th
 " Regiment Illinois Volunteers, and moved from place to
 " place with his regiment in the States of Tennessee, Mississippi
 " & Alabama as defendant is informed & believes.

" He further states
 " that these defendants caused a summons to issue in this
 " cause in the first part of December 1862, to the Sheriff of

"Jazewell County for said Frank Saurson & Chester
 "Andrews, but said Sheriff has not been able to find said
 "witnesses as defendant verily believes.

"He further states that
 "these defendants caused a Potestatum Commission to
 "issue in this cause out of and under the seal of this Court
 "directed to Captain Joseph B. Miles, (a Captain in the
 "47. regiment Ills Volunteers) Commissioner to take the
 "depositions of said Frank Saurson & Chester Andrews
 "in this cause upon interrogatories duly filed which com-
 "mission was issued on or about the 3^d day of December
 "A.D. 1862, which was forwarded to him the said Commissioner
 "at once by mail but said Commissioner has not as yet
 "been able to take said depositions or either of them & has
 "not taken & returned the same to this Court.

"He further states
 "that said Commission was procured issued & forwarded
 "in good faith bona fide as soon as these defendants found
 "out where to forward the same. That said Commission &
 "interrogatories were forwarded by mail on the 5th day of
 "December A.D. 1862, to said Commissioner at Corinth
 "in Mississippi where said Commissioner & said
 "witnesses were at that time as he verily believes.

"He further states, that owing to the disturbed
 "condition of affairs in that neighborhood said commis-
 "sioner has been unable to take & return said commission
 "& depositions.

"He states expressly & positively that these defen-
 "dants know of no other reliable person to take said
 "depositions. That said Commission was procured &
 "forwarded as soon as these defendants learned the whereabouts
 "of said Frank Saurson & Chester Andrews & was forwarded

" without delay. He further states that he fully expects to
 " procure the depositions of said witnesses Salmon & Andrews
 " by the next term of this Court.

" That this application is not
 " made for delay but that Justice may be done. He therefore
 " prays that this cause may be continued until the next
 " term of this Court.

" Subscribed & sworn to
 " before me this 3^d day
 " of February 1863.
 " Geo H. Harlow Clerk

Mills Andrews Junior

Account marked "A" referred to & made part of
 Mills Andrews affidavit.

A. H. Danforth & Co

In ac^t with Andrews Miles & Co

1857

June 22 To Cash

July 8 " 50

9 " 50

10 " 50

" " 50

14 " 50

" " 50

15 " 50

16 " 50

18 " 50

23 " 50

24 " 50

" " 50

25 " 50

200 00

240 50

54 00

150 00

38 00

135 00

400 00

539 69

62 00

100 00

87 00

26 00

75 00

92 00

73

	20	"	do	19150
August	3	"	do	3400
	7	"	do	3600
	8	"	do	7600
	12	"	do	13000
	15	"	do	5400
	1	"	do	32500
	20	"	do	2600
	29	"	do	4100
Sept	1	"	Draft Munnell & Co	50000
Oct	6	"	Cash	10300
	8	"	do	17614
	27	"	do	35600
Nov	2	"	do	25600
	11	"	do	11200
	17	"	do	2050
Dec	5	"	Draft on Harlan & Hall	47641
	22	"	Cash	12000
	30	"	do	50000
1858 Jan	13 th	"	Difference on Certificate of Deposit	78
	13	"	Peter Cannon	150
	15	"	Draft on Powell & Co	8458
	"	"	Cash	49600
	7	"	do	50000
	12	"	do	50000
	23	"	Draft Powell & Co	33630
	"	"	Cash	99900
	29	"	do	22600
	30	"	do	14500
Feb	1 st	"	do	38368
	9	"	do	69500
	16	"	do	2664

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	25	To Cash	100 00
March	2	" do	128 00
	3	" do	113 00
	11	" do	120 00
April	7	Eight Dft Powell & Co St Louis	600 00
June	9	Cash	300 00
	24	" do	200 00
	26	" do	200 00
July	1 st	" do	400 00
	10	" do	806 22
	15	" do	100 00
	20	" do	150 00
	22	" do	130 00
	24	" do	135 00
	26	" do	250 00
	31	" do	100 00
August	7	" do	100 00
	11	" do	200 00
	12	" do	140 00
	13	" do	120 00
	16	" do	300 00
	17	" do	195 00
	21	" do	111 00
	25	" do	37 60
	27	" do	115 00
	30	" do	300 00
Sept	30	By Draft Chicago	848 25
Octo	13	Cash	1150 00
	14	" do	1750 00
	15	" do	145 00
	16	" do	250 00
	22	" do	100 00

75-

	25 th	do	40000
	27 th	do	16600
	30 th	do	170000
Nov	1 st	Cy Check Pekin Bank	15000
	4 th	Cash	12500
	9 th	do	100000
	18 th	do	100000
	22 nd	St. L. Sft & Ex & Cy	147000
Dec	4 th	Cash	60000
	6 th	do	50000
	10 th	do	50000
	14 th	do	55000
	18 th	Draft on St Louis	100000
	23 rd	Cash	40000
	31 st	do	54000
1859 Jan	1 st	do	400
	12 th	do	50000
	13 th	do	30000
	17 th	do	15000
	27 th	do	10000
	29 th	do	5150
Feb	8 th	do	15000
	22 nd	Draft on Chicago	10995
	26 th	Check & Cash	25000
	28 th	Cash	10000
March	2 nd	do	5000
	1 st (omitted)	do	5000
	4 th	do	17500
	5 th	do	6000
	11 th	do	10000
	15 th	do	10000
	19 th	do	10000

	28	To Cash	175 00
	28	• (mitted) do	100 000
	28	" do	74 000
April	18	" do	13 000
	14	" do	100 00
	18	" do	100 00
	19	" do	100 00
	8	" do	18 125
	22	" do	60 00
	25	" do	7 000
May	21	" do	140 00
	24	" do	100 00
	"	" do	100 00
June	8	" do	100 00
May	30	" do	100 00
June	15	" do	70 00
	20	" do	55 00
	25	" do	50 00
	"	" do	60 00
June	21	" do	50 00
	22	" do	125 00
July	5	" do	40 00
	"	" do	68 50
	7	" do	50 00
	9	" do	100 00
	15	" do	180 00
	19	" do	85 00
	30	" do	163 00
August	9	" do	90 00
	15	" do	100 00
	18	" do	100 00

	24	"	do	5000
	27	"	do	10000
	"	"	do	5000
Sept	5	"	do	10300
	"	"	Dft Miles & Wright Chicago	30000
	27	"	do	5600
	"	"	David Kern	7865
	"	"	Hobbs & Elephant	30000
	15	"	Chicago	10000
	"	"	Cash	10000
October	13	"	do	6000
	15	"	do	3800
	8	"	Dft on Chicago	30000
	19	"	do	5000
	19	"	do	10194
	22	"	do	9800
	28	"	do	24000
	21	"	Draft on Chicago	30000
	"	"	Col of Wilson & Venz	2000
Nov	8	"	Cash	31000
	3	"	col of Wilson	7872
	16	"	Cash	9000
	17	"	Dft on Miles & Wright	50000
Dec	6	"	Cash	50000
	7	"	do	50000
	10	"	do	10000
	20	"	do	10000
	25	"	Draft on Miles & Wright	40000
	29	"	Cash	50000
1860 Jan	7	"	do	50000
	9	"	do	50000
	25	"	do	67000

76	Feb	9	To Cash	40000
	March	8	" Draft on Chicago	10000
	April	21	" Cash	10000
	May	1	" do	8000
		2	" Draft King Brothers & Co	68442
		2	" do	52309
		3	" Premium on dfts	300
		"	" Dft K. B & Co	65253
		4	" Cash & check	80000
		17	" Dft K. B & Co	81216
		26	" do	44828
		"	" Premium	315
	June	1	" Dft K. B & Co	49827
		"	" Premium	125
		5	" Cash	8000
		20	" do	23000
		11	" Dft K. B & Co exp	26829
		23	" Cash	5300
		27	" do	5000
		29	" do	15000
	July	3	" do	15000
		28	" do	10000
		"	" Dft on New York	95739
		"	" Premium on do	479
		7	" Cash	14200
		11	" do	107750
		14	" do	4000
	August	18	" do	23773
		"	" do	27750
		20	" do	45241
		23	" do	48156
		"	" Storage	1465

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	29	"	Dft on St Louis	30000
	4	"	" Miles Wright Sherman	29080
	8	"	Dft on N. Y. exp	98400
	10	"	" do	23497
	15	"	" Miles Wright Sherman	21461
	17	"	Cash	5600
Sept	1	"	Dft on N. Y. exp	9891
	11	"	Cash.	51421
	"	"	do	30000
	12	"	do	27500
	13	"	do	12500
	14	"	do	36500
	18	"	do	5000
	19	"	Dft on Toledo	11476
	"	"	Cash	12247
	22	"	do	10000
	26	"	do	85000
	28	"	do	7500
Oct.	5	"	do	8500
	13	"	Dft on H. Roop	6207
	"	"	do	25000
	"	"	Cash	4870
	20	"	do	10900
	30	"	Dft on Buffalo	89600
Nov.	2	"	by Dft	20000
	3	"	do	26436
	8	"	Dft on Roop	29900
	10	"	do	29900
Dec	12	"	Premium on Dfts	400
	19	"	Currency Check & Premium Dfts	56500
	21	"	Cash	40000
1861 Jan	8	"	Dft on N. Y. & premium	23080

March	6	Dft on New Orleans (Shipments)	35221
"	"	Premium on same	1760
"	8	Remittance A H Henkle & Co ex	41623
"	12	Dft G. M & Co St Louis	44390
"	16	Cash	16500
"	"	Dfts ex	52337
"	26	do	68492
"	28	Cash	38100
April	1	Coll of Henkle & Co	807
"	6	Cash	11295
"	13	do	25637
"	20	Dft on Buffalo	27418
"	20	" " New York	27500
May	3	Dft on Buffalo	100000
"	3	Premium on do	7000
"	"	Check on Peoria	5000
"	"	Dft Walbridge & G	15260
"	"	Premium on do	1064
April	23	Premium of A. J. Dft	2475
"	"	Premium on Buffalo	2192
May	3	Cash	1800
"	4	do	2000
"	11	do	50000
"	13	do	2000
"	20	do	10092
"	23	Dft on N.Y.	83511
"	"	Premium	5010
"	16	Cash	2900
"	21	Cash	3017
June	1	Dfts H. J. Walbridge & G	96704
"	5	" Brown Walbridge & G	40000

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	5	"	Buffalo	17500
	19	"	Peter Zifer	10000
July	29	"	Dft H. D. Walbridge & Co	18621
	3	"	Brown Walbridge & Co	100000
	8	"	Coin	2500
	26	"	Cash	2200
Sept	3	"	Dft on Walbridge & Co	30000
	9	"	two checks (coin)	20400
Oct	1	"	Dft Brown Walbridge & Co	10000
	"	"	Smiths Dft on Douds	1219
Sept	30	"	School order Dist etc. 5.	3144
	14	"	Cash	700
Oct	8	"	Dft Brown Walbridge & Co	10000
	12	"	" H. D. Walbridge & Co	6464
	23	"	" Brown Walbridge & Co	20000
Nov	30	"	Cats to Mullins & Co	14950
				<u>\$73,51641</u>
1860	Nov	13	Omitted Cash	6000
1861	May	23	do Dft on Nyr & Co	3242
	June	21	" Cash	1285
				<u>\$73,62668</u>

Account marked "B" referred to in Wells & Andrews' office

A. H. Danforth & Co

In apmt with Andrews, Miller & Co

1860

Aug	11	"	Dft on Andrews	150370
Sept	10	"	do	30000
	26	"	do	60000
Oct	12	"	do	40000
	18	"	do	40000
	24	"	do	4272

Octo	30	To Sft on Guthrie & Co	40000
Nov	5	"	13219
Octo	31	"	20000
Nov	22	"	30000
Dec	19	"	18413
1861			
Jan'y	28	"	3132
Feb'y	8	"	30000
"	"	"	21945
March	16	"	16027
"	"	"	8163
"	"	"	34000
April	20	"	27418
May	3	"	100000
June	17	"	15000
July	15	"	40000
June	4	"	17000
Aug	19	"	50000
"	26	"	50000
Sept	3	"	30000
"	10	"	30000
"	12	"	30000
"	23	"	60000
Octo	1	"	30000
"	8	"	60000
"	17	"	30000
"	23	"	30000
"	31	"	40000
Nov	4	"	30000
"	9	"	40000
"	18	"	70000
"	28	"	50000
1862			
Dec	6	"	30000
April	23	"	50000
			41505464

Dec 12/60

State of Illinois } In the Circuit Court of Tazewell
Tazewell County } County Feb Term 1863.

Almon B. Danforth }
vs } Motion to continue this cause
Benjamin E. Miles }
Wells Andrews Jr & }
John A. Andrews }

Wells Andrews Junior being first duly sworn on oath states, that the defendants cannot safely proceed to trial at this term of this Court without the testimony of Chester Andrews and Frank Lawson both of whom are residents of Tazewell County but now & for the twelve months last past have been in the military service of the United States, and both are now somewhere in the States of Mississippi, Tennessee or Alabama.

He further states that this suit is brought by the Plaintiff to recover the amount of several promissory notes set out in Plaintiff's declaration, & that all of the notes described in Plaintiff's declaration were assigned to the Plaintiff, as deponent is informed and believes by A. H. Danforth & Co just before the commencement of this suit.

He further states that the dealings between the defendants and said A. H. Danforth & Co. for the past eight years have been large and exceed in amount the sum of thirty thousand Dollars.

That on the 22^d day of April A. D. 1861, said A. H. Danforth & Co. sold to the defendants in this suit Daniel L. Miles and Paul A. Rebert a stock of goods at & for the price sum of \$14,215.35 cents in payment of which said Miles Paul A. Rebert & these defendants executed their three promissory notes of

that date to said A. H. Danforth & Co each for 4738.⁴⁰/₁₀₀ dollars, 1 at 6 months, 1 at 12 months, & one 18 months, all bearing interest at 10 per cent. no other consideration was paid or received for said three notes.

Dependent further states that the deposition of Paul A. Rupert on file, shows the foregoing statement as to the sale of the goods & the giving of said notes to be true.

Dependent further states that between the time said three notes were given and the 22 day of April A.D. 1856, the makers of said three notes made sundry payments thereon amounting to a large sum of money the precise sum defendant cannot now state & that on said 22 day of April A.D. 1856, the defendants Daniel S. Miles & Paul A. Rupert & said A. H. Danforth & Co. figured up the amount of said three notes and added interest on the said three notes at the rate of ten per cent per annum, on all then remaining unpaid and upon all the remainder until the time payments were made and deducted therefrom the amount paid on said notes, and three new notes were executed for the balance by the defendants & Daniel S. Miles one for 500 & two for 5000⁰⁰/₁₀₀ each, all payable to said A. H. Danforth & Co. at one day & all bearing interest at 10 per cent per annum.

These defendants expect to prove by said Chester Andrews that said original three notes were taken up as stated & that three new notes were given for balance of old notes and interest after deducting payments & that included in the three new notes executed by the defendants and said Daniel S. Miles there was included over nine hundred Dollars of unlawful & usurious interest.

He further states, that he expects to prove by said
 Chester Andrews that between the said 22 day of April
 1856, and the 22 day of November 1857, the defendants
 & said Miles made large payments on said three notes
 dated April 22, 1856, and on said 22 day of November
 1857, the defendants Daniel S. Miles & said A. H. Danforth
 & Co. figured up the amount of said three last notes & added
 interest thereto on all remaining unpaid & on all the
 balance until payments were made, & deducted
 payments actually made & the defendants for the
 balance executed to said A. H. Danforth & Co. the notes
 described & set forth in the 4, 5, 6, & 7 counts in Plaintiff's
 declaration and two other notes one for 1000. \$ & one for
 328 ⁸/₁₀₀ \$ both of which last notes the defendants have
 fully paid to said A. H. Danforth & Co. & cancelled the
 same.

He also expects to prove by said Chester Andrews that
 no other or further consideration was paid or received for
 said last mentioned notes, & that the further sum of
 Eight hundred & four Dollars of unlawful & usurious
 interest was included in said notes so executed by the
 defendants on said 22 day of Nov 1857, making in all
 the sum of 1704. ⁰⁰/₁₀₀ Dollars of usurious and unlawful
 interest included in & forming part of the notes so
 executed Nov 22, 1857.

He further states that these defendants
 have at various times had other dealings with said
 A. H. Danforth & Co. & have paid them large sums of
 money, drafts &c. that these defendants intended to
 apply on the claims said A. H. Danforth & Co. held
 against them. But just before the commencement of
 this suit said A. H. Danforth & Co. assigned the notes in

" suit to the Plaintiff the effect of which is to embarrass the
 " defendants in making their defence.

" He further states that
 " the Plaintiff is a son of one of said firm of A. H. Danforth
 " & Co. and a nephew of the other and was acting as Clerk
 " and Cashier of said firm during the principal part of the
 " time the dealings between the defendants & said A. H.
 " Danforth & Co. were going on.

" Deponent further states that
 " said A. H. Danforth & Co. have also commenced suit against
 " these defendants in this Court which is now pending
 " herein to recover for a Bank account against these defen-
 " dants.

" He further states that this deponent has filed his
 " affidavit in said cause for a continuance in which
 " deponent sets out a statement of payments, credits &c
 " & showing that these defendants have overpaid said account
 " of A. H. Danforth & Co. some 6. to 8000, of which ought to be
 " credited & allowed to defendants in this suit. He makes
 " said affidavit a part of this application the same as if here
 " inserted at length.

" He expects to prove the same facts
 " in this cause by the said Chester Andrews & Frank
 " Lawson as stated in said affidavit & defendants to have
 " no other witnesses by which to prove the same facts known
 " to deponent.

" He further states that he also expects to prove
 " by said Chester Andrews that all said notes in Plaintiff's
 " declaration mentioned were assigned to Plaintiff after
 " they became due.

" He further states that he at the last

" then fully believed he could prove by said Paul &
 " Rupert all the facts in relation to the lifting & giving
 " the notes as herein before stated but said Rupert on being
 " examined could only state as to the notes given for said
 " goods.

" He further states that he has other witnesses to prove
 " some other and additional payments & credits on the
 " notes in this suit, but he knows of no witnesses by whom
 " the defendants can prove the same facts as he expects to
 " prove by said Chester Andrews & Frank Lawson.

" He further
 " states that he believes there will be a controversy about
 " the facts in the case & it will be indispensably necessary
 " for the defendants to have the testimony of said Chester
 " Andrews & said Lawson, or defendants will be greatly
 " injured.

" He further states that said Chester Andrews is
 " now & since this suit was commenced was a Captain of
 " a Company in the 47th Regiment of Illinois Volunteers
 " & in the active discharge of his duties as such, and that
 " said Lawson during the same period was & still is a
 " soldier in the 8th Regiment of Ills Volunteers & moving
 " about from place to place in the States of Mississippi,
 " Tennessee and Alabama, He further states that these
 " defendants caused a summons to issue in this cause
 " in the first part of December & D. 1862, to the Sheriff
 " of Tazewell County for said Frank Lawson and Chester
 " Andrews, but said Sheriff has not been able to find said
 " witnesses as defendant is informed and truly believes.

" He further states that these defendants caused a
 " Subpoena Commission to issue in this cause, out of and
 " under the seal of this Court, directed to Captain Joseph B.

" Miles, a Captain in the Forty seventh Regiment Illinois
 " Volunteers, Commissioner to take the deposition of said
 " Frank Lawson and Chester Aubens in this cause, upon
 " interrogatories duly filed, which commission was issued
 " on or about the third day of December A.D. 1862, which
 " was forwarded to him the said Commissioner at once
 " by mail, but said Commissioner has not as yet been
 " able to take said depositions or either of them and has
 " not taken and returned the same to this Court.

" He further states that said Commission was
 " procured, issued and forwarded in good faith, bona
 " fide as soon as these defendants found out where to
 " forward the same, that said commission and inter-
 " rogatories were forwarded by mail to said Commissioner
 " at Corinth in the State of Mississippi where said
 " Commissioner and said witnesses were at that time
 " as he verily believes.

" He further states that owing to the
 " disturbed condition of affairs in that neighbourhood
 " said Commissioner has been unable to take and
 " return said commission and depositions.

" He states expressly
 " and positively that these defendants, knew of no other
 " reliable person to take said depositions, that said
 " commission was procured and furnished as soon as the
 " defendants learned the whereabouts of said Frank Lawson
 " & Chester Aubens & were forwarded without delay.

" He further fully expects to procure the depositions
 " of said witnesses Lawson & Aubens by the next term
 " of this Court.

" That this application is not made for delay

" but that Justice may be done. He prays therefore that
 " this cause may be continued.

" Subscribed and sworn to
 " before me this 3^d day of
 " February A. D. 1863.
 " Geo H Harlow Clerk

Miles Andrews Junior

X The defendants also then read in evidence in support
 " of the motion the bill of particulars in 67. and the notes and
 " endorsements set out in this cause which said bill of
 " particulars in case 67. was filed February 12th 1863 and is
 " in words and figures following, to wit:-

" Messrs Andrews Miles & Co

" 1861

To A. H. Danforth & Co Dr.

" Dec^r 5th To Balance of account rendered
 " as per pass book of a/c current to
 " this date (all checks and vouchers
 " having been returned to said Andrews Miles & Co.) \$1619.29

" 1861

" Dec^r 6th By 15 days draft on E. E. Guthrie Buffalo
 " N. Y. for \$300.00

" 1862 Less Discount exp 2.90 \$297.10

" May 3. By 1 day sight draft on E. E. Guthrie
 " Buffalo N. Y. dated May 3/62 500.00 \$797.10

Balance \$822.10

" Both of the above drafts were drawn
 " by Miles Andrews & Co. —

" Said notes and endorsements are in the words and figures
 " following, to wit:-

" \$169 ³⁷/₁₀₀

Washington Tazewell Esq. Secy. 12th 1861.

" One day after date are the subscribers of Washington County

of Jazewell State of Illinois. promise to pay to A. H.
Danforth & Co. or order, at their office in Washington, One
hundred & sixty nine $\frac{57}{100}$ Dollars, for value received, with
ten per cent interests

Andrew Miles & Co.

" Endorsed "

" Pay Almon J. Danforth
" A. H. Danforth & Co.

" \$594²⁷ Washington Jazewell Co. Ill. 21 Jan'y 1861.
" One month after date we the subscribers of Washington County
" of Jazewell State of Ill promise to pay to A. H. Danforth & Co.
" or order, at their office in Washington, Five hundred & ninety
" four $\frac{27}{100}$ Dollars for value received with interest.

Andrew Miles & Co

" Endorsed "

" Pay Almon J. Danforth
" A. H. Danforth & Co.

" \$700. * Washington, Ill. July 14th 1860.
" On the first day of Sept: next we promise to pay to the order
" of William W. Thompson Seven hundred Dollars. Three
" hundred dollars to be paid in coin, value received, with interest
" after maturity at ten per cent per annum.

Andrew Miles & Co

" Endorsed "

" Sept: 14/61 Interest paid on this note from Sept: 1/60 to Sept: 1/61. - \$70.
" Pay A. H. Danforth & Co.

William W. Thompson

attest Thos Taylor

Pay Almon J. Danforth
A. H. Danforth & Co

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\$1,000.00 Washington, Ill. November 22nd 1857.
 One day after date we jointly or severally promise to pay to
 Asa H. Danforth & Co. or order One thousand Dollars with
 interest from date at the rate of ten per cent per annum for
 value received.

"Endorsed."

On this note one year interest up to
 Nov 22nd 1858. \$100.00

Feb. 22/60. Interest paid on this note
 from Nov 22/58 to Nov 22/59 \$100.00

Sept. 14/61. Interest paid on this note from Nov 22/59 to Sept 22/61. — \$175.

Pay Almon S. Danforth
 A. H. Danforth & Co.

B. E. Miles
 Wells Andrews Junior
 John A. Andrews.

\$1,000.00 Washington, Ill. November 22nd 1857.
 One day after date we jointly or severally promise to pay to
 Asa H. Danforth & Co. or order One thousand Dollars with
 interest from date at the rate of ten per cent per annum. for
 value received.

"Endorsed."

On this note one year interest up to
 Nov 22nd 1858. — \$100.00

Feb. 22/60. Interest paid on this note
 from Nov 22/58 to Nov 22/59. 100.00

Sept. 14/61. Interest paid on this note from Nov 22/59 to Sept 22/61. — \$175.

Pay Almon S. Danforth
 A. H. Danforth & Co.

B. E. Miles
 Wells Andrews Junior
 John A. Andrews.

\$2,000.00 Washington, Ill. November 22nd 1857.
 One day after date we jointly or severally promise to pay to
 A. H. Danforth & Co. or order Two thousand Dollars with
 interest from date at the rate of ten per cent per annum.

" for value received.

" Endorsed.

" On this note one year interest up to

" Nov. 22nd 1858.

\$200.⁰⁰

" Feb 22/60. Interest paid on this note

" from Nov 22/58. to Nov. 22. 1859. \$200.⁰⁰

" Sept. 14/61 Interest paid on this note from Nov. 22/59. to Aug 22/61. \$350.

" Pay Almon G. Danforth.

" A. H. Danforth & Co.

" \$2,000.⁰⁰.

" Washington, Ill. November 22nd 1857.

" One day after date we jointly or severally promise to pay to
" A. H. Danforth & Co. or order. Two thousand Dollars with
" interest from date at the rate of ten per cent per annum for
" value received.

" Endorsed.

" On this note one year interest up to

" Nov 22, 1858.

\$200.⁰⁰

" Feb 22/60. Interest paid on this note

" from Nov. 22. 1858. to Nov. 22/59. — \$200.⁰⁰

" Sept. 14/61. Interest paid on this note from Nov. 22/59. to Aug 22/61 — \$350.

" Pay Almon G. Danforth.

" A. H. Danforth & Co.

" The Plaintiff in opposition to said motion, then read
" in evidence the affidavits of Thomas Taylor and Almon
" G. Danforth, which said affidavits were in the words and
" figures following, to wit:—

" State of Illinois

" Wazewell County

" In the Wazewell County Circuit Court
" January Term A.D. 1863.

" A. H. Danforth & Co. }

" ^{vs.} Andrews Miles & Co. }

" Thomas Taylor being duly sworn
 " according to law depose and say, that he went into the employ
 " as Book Keeper of A. H. Danforth & Co. the plaintiffs in the
 " above entitled cause, on or about December 1. 1858, and con-
 " tinued in that capacity until December 21. 1861, and that
 " the parties composing the said firm of A. H. Danforth & Co.
 " were A. H. Danforth and George W. Danforth; Depo-
 " nent saith that Almon G. Danforth during said time
 " acted in the capacity of Cashier for said A. H. Danforth
 " & Co. for a salary, and that said Almon G. Danforth had
 " no capital invested in the business of said A. H. Danforth
 " & Co. and was not a partner in said firm, and further
 " deponent saith not.

" Subscribed & sworn to before
 " me this 12th day of Feb
 " A. D. 1863,
 " Geo. H. Harlow CLK }

Thomas Taylor.

" State of Illinois }
 " Tazewell County }

In Circuit Court
 February Term A. D. 1863.

" Almon G. Danforth }

" ^{vs.} Andrews Miles & Co. }

" Almon G. Danforth being duly
 " sworn according to law depose and say, that he is the
 " Plaintiff in the above entitled cause, and that he was at
 " the time of the commencement of the above suit, and still
 " is the sole owner in his own individual right, of the notes

upon which the above suit was brought, and that he
 will be entitled to the proceeds of ~~the~~ ^{said} notes when
 collected in his own individual right, and this deponent
 further saith that he has no interest whatever in the suit
 brought by A. H. Danforth & Co. against Auburn, Miles & Co.,
 and further deponent saith not.

Almon G. Danforth

Subscribed & sworn to before
 me this 12th day of February
 A.D. 1863,
 Geo. H. Karlar Clerk

But the Court overruled the motion and refused
 to consolidate the causes 67 and 68, to which decision of
 the Court in overruling said motion and in refusing to
 consolidate the causes 67 and 68, the defendants then and
 there at the time objected and excepted.

The Court then
 directed a Jury to be called to which the defendants objected
 and excepted on the ground that a change of venue should
 have been granted by the Court, and the Plaintiff to
 maintain the issues upon his part offered in evidence the
 following notes with the endorsements thereon, to wit:—

\$169 ^{37/100} Washington Tazewell Co. Ill. Sept. 14th 56.
 One day after date, we the subscribers of Washington County
 of Tazewell State of Illinois promise to pay to A. H. Danforth & Co.
 or order, at their office in Washington, One hundred & sixty
 nine ^{37/100} Dollars for value received with ten per cent interest.

Auburn Miles & Co

Endorsed,

Pay Almon G. Danforth
 A. H. Danforth & Co.

\$594.²² Washington Tazewell Co. Ill. 21 Jan'y 1861.
 One month after date we the subscribers of Washington, County
 of Tazewell State of Ill. promise to pay to A. H. Danforth & Co
 or order, at their office in Washington Five hundred &
 ninety four \$594.00 Dollars. for value received with interest
 "Endorsed" Andrews Miles & Co
 Pay Almon G. Danforth
 A. H. Danforth & Co.

\$700.00 Washington, Ill. July 14th 1860.
 On the first day of Sept^r next we promise to pay to the
 order of William W. Thompson Seven hundred Dollars.
 Three hundred dollars to be paid in coin value received, with
 interest after maturity at ten per cent per annum.
 "Endorsed" Andrews Miles & Co.
 Sept^r: 14/61 Interest paid on this note from Sept^r: 1/60 to Sept^r: 1/61 - \$70.
 Pay A. H. Danforth & Co
 William W. Thompson
 attest Tho^{sr} Taylor
 Pay Almon G. Danforth
 A. H. Danforth & Co.

\$1,000.00 Washington, Ill. November 22nd 1857.
 One day after date we jointly or severally promise to pay to A. H.
 Danforth & Co. or order One thousand Dollars with interest from
 date at the rate of ten per cent per annum. for value received.
 "Endorsed" B. E. Miles
 On this note one year interest up to
 Nov 22nd 1858. \$100.00 Wells Andrews Junior
 John A. Andrews.
 July 22/60. Interest paid on this note from Nov 22/58 to Nov 22/59 \$100.00
 Sept 14/61. Interest paid on this note from Nov 22/59 to Aug 22/61. \$175.
 Pay Almon G. Danforth
 A. H. Danforth & Co.

\$1,000.00 Washington, Ill. November 22nd 1857.
 One day after date we jointly or severally promise to pay to A. H.
 Danforth & Co. or order One thousand Dollars with interest from
 date at the rate of ten per cent per annum for value received.
 "Endorsed"

B. E. Miles.

Or this note one year interest up to

Wells Andrews Junior

Nov 22nd 1858. ————— \$100.00

John A. Andrews.

July 22/60 Interest paid on this note from Nov 22/58 to Nov 22/59 — 100.00

Sept 14/61 Interest paid on this note from Nov 22/59 to Aug 22/61. \$175.-

Pay Almon E. Danforth

A. H. Danforth & Co.

\$2,000.00 Washington, Ill. November 22nd 1857.
 One day after date we jointly or severally promise to pay to A. H.
 Danforth & Co. or order Two thousand Dollars with interest from date
 at the rate of ten per cent per annum for value received.
 "Endorsed."

B. E. Miles

Or this note one year interest up to

Wells Andrews Junior

Nov. 22nd 1858 ————— \$200.00

John A. Andrews.

July 22/60 Interest paid on this note from Nov 22/58 to Nov 22, 1859. — \$200.00

Sept 14/61 Interest paid on this note from Nov 22/59 to Aug 22/61. — \$350.

Pay Almon E. Danforth

A. H. Danforth & Co.

\$2,000.00 Washington, Ill. November 22nd 1857.
 One day after date we jointly or severally promise to pay to A. H. Danforth
 & Co. or order Two thousand Dollars with interest from date at the rate of
 ten per cent per annum for value received.

"Endorsed."

B. E. Miles

Or this note one year interest up to

Wells Andrews Junior

Nov. 22nd 1858 ————— \$200.00

John A. Andrews.

July 22/60, Interest paid on this note from Nov 22, 1858, to Nov 22/59, - \$200.00

Sept 1/61, Interest paid on this note from Nov 22/59, to Aug 22/61, - \$350.00

Pay Almon S. Danforth.

A. H. Danforth & Co.

X To which the defendants then & there at the time objected but pointed out no particular objection and excepted. But the Court overruled the objections & permitted the plaintiff to read said notes & endorsements to the jury. To which decision of the Court in overruling said objections and admitting said notes in evidence, the defendants then and there at the time objected & excepted.
(The Plaintiff here rested)

The defendants then called Asa H. Danforth who being sworn stated to the jury as follows.

These notes in suit were assigned by A. H. Danforth & Co. to the Plaintiff at the time I brought them to Pekin to be sued. It was about two weeks before the commencement of this suit. It was in August 1862. I am one of the firm of A. H. Danforth & Co. The defendants then asked what consideration if any was paid by the Plaintiff to A. H. Danforth & Co. for the assignment of the notes. To which question the plaintiff then & there objected, and the Court sustained the objection & refused to allow the question to be put or answered. To which decision of the Court in refusing to permit the question to be put or answered the defendants then & there at the time objected and excepted.

The defendants then proposed to prove by the witness that the notes in suit still belonged to A. H. Danforth & Co. and were assigned to the Plaintiff for collection merely. To

which the Plaintiff objected, and the Court sustained the objection and refused to permit the defendants to prove said facts, to which decision of the Court, in refusing to permit the defendants to prove that the notes still belonged to A. H. Danforth & Co, and that they were assigned to the Plaintiff for collection merely, the defendants then and there at the time objected & excepted.

The defendants then called John A. Andrews, who testified that on the 22^d day of April A. D. 1854, the defendants and Dan L. Miles & Paul C. Rupert purchased a stock of goods of A. H. Danforth & Co. for the sum Fourteen thousand two hundred and fifteen Dollars, and thirty five cents and gave their notes one at six, one at twelve & one at eighteen months, each for Four thousand seven hundred & thirty eight Dollars, and forty five cents, all bearing interest at ten per cent per annum. Witness said first note was paid before maturing and delivered up. That on the 22^d day of April A. D. 1856, said A. H. Danforth & Co. and the makers of said notes footed up the amount of the interest on the two remaining notes at ten per cent for one year, added the interest to the principal and then the interest on the whole for the second year at ten per cent, and then deducted sundry payments and credits, and then the defendants and Dan L. Miles gave their new notes for the balance dated April 22^d A. D. 1856. Witness executed the two notes dated April 22^d A. D. 1854, and the same were read to the Jury in words and figures following, to wit:—

\$4738.45

Twelve months after date for value received, we or either of us, jointly or severally, promise to pay A. H. Danforth & Co. or order Four thousand Seven

" Hundred and thirty eight Dollars and forty five cents
 " with ten per cent interest from date until paid.
 " Washington April 22nd 1854.

" Paul A. Rupert.
 " Daniel L. Miles.
 " Wells Andrews
 " John A. Andrews
 " B. E. Miles.

" \$4738.45.

" Eighteen months after date for value received, we
 " or either of us jointly or severally promise to pay A. H.
 " Danforth & Co. or order. Four thousand seven hundred
 " and thirty eight Dollars, and forty five cents, with ten
 " per cent interest from date until paid.
 " Washington April 22nd 1854.

" Paul A. Rupert.
 " Daniel L. Miles
 " Wells Andrews.
 " John A. Andrews
 " B. E. Miles.

" The witness then identified the notes executed April 22nd
 " A. D. 1856, three in number, and the same were read in evidence
 " to the jury in words and figures following, to wit:-
 " \$5,000.00 Washington, Ill. April 22nd 1856.

" One day after date for value received we jointly or severally promise
 " to pay to cash A. H. Danforth & Co. or order. Five thousand Dollars
 " with interest from date at the rate of ten per cent per annum.

" Daniel L. Miles
 " John A. Andrews
 " Wells Andrews Jr
 " B. E. Miles

" \$5,000.00 Washington, Md. April 22nd 1856.

" One day after date for value received we jointly
 " or severally promise to pay to Asa H. Danforth & Co.
 " or order. Five thousand Dollars, with interest from
 " date at the rate of ten per cent per annum.

" Daniel L. Miles.

" John A. Andrews.

" Wells Andrews Jr.

" B. O. Miles.

" \$500.00 Washington, Md. April 22nd 1856.

" One day after date for value received we jointly or
 " severally promise to pay to Asa H. Danforth & Co. or
 " order. Five Hundred Dollars, with interest from date
 " at the rate of ten per cent per annum.

" Daniel L. Miles.

" John A. Andrews.

" Wells Andrews Jr.

" B. O. Miles.

" The witness further stated, that on the 22^d day of
 " November A. D. 1857, the defendant and A. H. Danforth
 " & Company again had a settlement, They figured
 " up the amount of the interest at ten per cent on the
 " three notes dated April 22^d A. D. 1856, and added the
 " Ten thousand five hundred Dollars to the amount and
 " deducted the credits and payments, and then gave the
 " notes described in the fourth, fifth, sixth and seventh counts
 " and one other note for one thousand Dollars, and one for
 " three hundred & twenty eight ¹⁸/₁₀₀ Dollars, for the balance
 " due on the notes dated April 22^d A. D. 1856.

" That the defendant paid the other one thousand
 " dollars note, and the said Three hundred and twenty eight
 " dollar and eighteen cents was also paid by defendants.

" On Cross examination, the witness stated, that he could
 " not tell the amount of payments made on the two notes
 " dated April 22^d A.D. 1854, at the time the next notes were
 " given, nor whether the payments exceeded the amount.
 " But on calculating the amount of interest then due, and
 " comparing the same with the amounts for which the notes
 " were then given, stated, that the amount then defendants
 " then paid in that settlement exceeded all the interest
 " charged & also paid part of the principal, and also stated
 " that when the notes were changed April 22^d 1856, the amount
 " then paid to the said A. H. Danforth & Co. exceeded the interest
 " also then charged on said notes & also discharged part
 " of the then unpaid principal & said 3 notes of that date
 " were executed for the balance then due after deducting the
 " said payments.

" The defendants then called Wells Ambers
 " who being sworn, on oath stated to the Jury, that on the 22^d
 " day of April A.D. 1854, the defendants and Dan L. Miles
 " and Paul A. Rupert, purchased a stock of goods of A. H.
 " Danforth & Company for the sum of \$14,215.³⁵/₁₀₀ Dollars, and
 " gave their notes at six, twelve and eighteen months for
 " \$4738.⁴⁵/₁₀₀ Dollars each, and all bearing interest at ten per
 " cent, no other consideration but goods was given or
 " received for these three notes.

" Witness further stated that
 " the note at six months was paid before due, and on the
 " 22^d of April A.D. 1856, the defendants and Dan L. Miles
 " settled with A. H. Danforth & Company, and for the two
 " last notes, the one at twelve and the other at eighteen months

That at that ~~the~~ time the interest on said two notes
 was computed ~~at~~ one year at ten per cent, and added to
 the principal, and interest on the whole computed at ten
 percent for the second year and added to the principal sum
 and after deducting the credits and payments of the makers,
 the three notes dated April 22^d A.D., 1856, read in evidence
 to the jury were given for the balance of said two notes
 and interest. He further stated, that on the 22^d day of
 November A.D., 1857, the defendants in this suit and A. H.
 Danforth and Company figured up the interest on the
 three notes dated and given April 22^d A.D., 1856, at the rate
 of ten per cent from date until November 22^d A.D., 1857,
 added the interest to the principal and after deducting
 amount of defendants credits therefrom, the notes in suit
 of that date, and one other note of one thousand dollars,
 and one of Three hundred & twenty eight ¹⁸/₁₀₀ Dollars of
 same date was given, the other note of one thousand
 Dollars, and note of \$328.18. have been paid by defendants,
 no other consideration was given or received for the notes in
 suit but said stock of goods.

On cross examination, the
 witness stated, that at the settlement of April 22^d, 1856, the
 defendants had an account against A. H. Danforth & Co
 and the latter had some account against the defendants
 but he could not tell how much. Yet at the time of
 giving ^{up} the notes in 1856 & also in 1857, and executing the new
 ones, the amounts then paid and settled exceeded the amount
 of interest accrued then on the notes.

The defendants then called
 Eli Keiple and proposed to prove by him that the defen-
 dants had an account for Storage against A. H. Danforth
 & Co, that ought to be credited on the notes in suit and

" and amounting to two hundred dollars, to which the
 " Plaintiff objected, for the reason that the defendants had
 " proved and got the benefit of that account in a former
 " suit No. 67, in this Court, and the Court sustained the
 " objection and refused to permit the defendants to prove
 " said storage, to which decision of the Court in refusing
 " to allow the defendants to prove said storage account by
 " said witness, the defendants then and there at the time
 " objected and excepted.

" (Defendants here rested their cause)

" The Plaintiff then called Thomas Taylor, who on
 " being handed an account, stated that in the settlement
 " of Nov 22^d A.D. 1857, there was an item of \$100.⁰⁰ in money
 " that A. A. Danforth & Co had paid for defendants, and the
 " defendants were also credited with an item of \$2.11 of
 " interest. The amount of the defendants account at that
 " time exceeded the interest on the notes over Two thousand
 " Dollars.

" On Cross examination the defendant states, that he
 " had no recollection of the facts, except as his memory
 " was refreshed by the account, and only swore as matters
 " appeared on the account in his hands, and he took the
 " amounts from the account, that he made the entries
 " stated in the account, and also made the calculations, and
 " would swear to his own work!

" The parties here rested their cause.

" This was all the evidence in the case.

" The Plaintiff then
 " asked the following instructions,

" The Jury are instructed
 " that if they believe from the evidence that after the 21st day

" January, 1857, the defendants and the plaintiffs had a
 " full settlement, and the defendants gave plaintiffs their
 " notes including interest calculated at the rate of ten per cent
 " on notes due before that time this would not be a usurious
 " transaction, and the plaintiffs would be entitled to recover the
 " amount due upon said notes & interest that were given after
 " January 21, 1857.

" If the Jury believe from the evidence that in
 " 1854, A. H. Danforth & Co. sold a stock of goods to the defendants
 " and two other persons and took the notes of the purchasers for
 " the price thereof with interest at the rate of ten per cent and
 " that upon a settlement of accounts between them new notes
 " were executed leaving out one of the obligors, and again in
 " Nov 22, 1857, the notes sued on were executed leaving out
 " another of the obligors to the second notes bearing interest at
 " the rate of ten per cent from date, the said last transaction
 " would not be usurious, and the plaintiff will recover the
 " amount of the notes and interest at ten per cent. X

To which the
 " defendants then and there at the time objected, but the Court
 " overruled the objections and gave said instructions as asked
 " to the Jury, to which decision of the Court in overruling the
 " objection and in giving the said instructions to the Jury, the
 " defendants then & there at the time objected & excepted.

X " The defendants then asked the following instructions

" The Jury are instructed that by the Act
 " of the General Assembly of the State of Illinois approved
 " January 30, 1849, it is provided that in the trial of any
 " action brought upon a promissory note or writing obligator
 " in any of the Courts of this State wherein is reserved a
 " higher rate of interest than six per cent per annum, it

" shall be lawful for the defendant to set up and plead
 " as a defence in any such suit, that the consideration
 " of said note or writing obligatory upon which such
 " suit was not for money loaned. And if it appear
 " upon the trial of the cause that the note sued on was not
 " given for money loaned, then the Court shall only render
 " Judgment for the principal sum in the said note and
 " six per cent interest.

" The defendants in this case set up
 " as a defence in part to four of the notes set out in Plaintiff's
 " declaration, That in April 1854, they with Dan Miles
 " & Robert purchased a stock of goods of A. H. Danforth & Co
 " amounting to the sum of \$14,215.35 and gave them three
 " notes for the amount and that said notes were given
 " for money loaned and that said notes bore interest at
 " the rate of ten per cent, and that on the 22 day of April
 " A. D. 1856, the defendants & Dan Miles figured up with
 " A. H. Danforth & Co. the amount of said three notes and interest
 " thereon at ten per cent added the two sums together and
 " deducted sundry payments and then gave three notes
 " for the balance amounting to the sum of 10,500. \$ and on
 " the 22. November 1857. the defendants with A. H. Danforth
 " & Co. again figured up the amount of the 10,500. \$ notes and
 " interest on the same at the rate of ten per cent, and from
 " the whole amount deducted payments & credits, and
 " gave the notes dated Nov 22, 1857. for the balance, and the
 " defendants now seek to have deducted from said notes
 " the difference between interest at six per cent & the
 " interest actually charged. X

X " Whether interest was agreed
 " to be paid on any contract for any thing worth money
 " loaned under the law of 1849, over the rate of six per cent

was usurious, and the six per cent only can be recovered, but if new notes are given for the former purchase under the law of 1857, and made to draw 10 per cent, the new notes would not be usurious, but if they are a part of the former transaction, the 4 per cent usury in the former notes so taken may be deducted from the amount due on the latter notes. +

But the Court refused to give the following instructions as asked by the defendants.

The Jury are instructed that by the Act of the General Assembly of the State of Illinois approved January 30, 1849, it is provided that in the trial of any action brought upon a promissory note or writing obligatory in any of the Courts of this State wherein is reserved a higher rate of interest than six per cent per annum, it shall be lawful for the defendant to set up and plead as a defence in any such suit that the consideration of said note or writing obligatory upon which such suit was not for money loaned. And if it appears upon the trial of the cause that the note sued on was not given for money loaned, then the Court shall only render judgment for the principal sum in the said note and six per cent interest.

The defendants in this case set up as a defence in part to four of the notes set out in Plaintiff's declaration, That in April 1852, they with Dan Miles & Rupert purchased a stock of goods of C. H. Danforth & Co, amounting to the sum of \$14,215.35, and gave them three notes for the amount, and that said notes were given for money loaned and that said notes bore interest at the rate of ten per cent, and that

" on the 22. day of April A.D. 1856, the defendants & Dan
 " Miles figured up with A.H. Danforth & Co. the amount of
 " said three notes and interest thereon at ten per cent,
 " added the two sums together and deducted sundry pay-
 " ments, and then gave three notes for the balance, amounting
 " to the sum of 10,500. \$ and that on the 22 November 1857, the
 " defendants with A.H. Danforth & Co. again figured up the
 " amount of the 10,500 \$ notes and interest on the same at the
 " rate of ten per cent, and from the whole amount deducted
 " payments & credits, and gave the notes dated Nov 22, 1857,
 " for the balance and the defendants now seek to have deducted
 " from said notes, the difference between interest at six per
 " cent & the interest actually charged.

" To which decision of the Court in refusing to give
 " said instructions, the defendants then & there at the
 " time objected & excepted.

x " The Jury returned the following
 " verdict:

" We the Jury find for the Plaintiff, and assess
 " his damages in the sum of Seven thousand eight
 " hundred and forty eight Dollars.

" The defendants then
 " entered a motion to set aside the verdict and for a new
 " trial, which motion is in the words and figures following
 " to wit:

" St. of Illinois } In the Circuit Court of Jaywell
 " Jaywell County } County, Feb Term 1863.

" Amos E. Danforth }
 " do }
 " Miles & others } Motion to set aside verdict
 " for a new trial

The defendants interposed motion for to set aside the verdict
in this cause for a new trial for the following among other
reasons.

1. " The Court improperly refused to grant a change
of venue in this cause.

2. " The Court improperly overruled the
motion to continue this cause at this term.

3. " The Court allowed
improper evidence to be given on the part of the Plaintiffs.

4. " The Court excluded proper evidence on the part of the
defendants.

5. " The Court gave improper instructions on the
part of the Plaintiffs.

6. " The Court refused proper instructions
asked by the defendants.

7. " The verdict is against the weight
of evidence.

8. " The verdict is against law.

9. " The Court improperly refused to consolidate
this cause with case number 67, ^{tried} at this term.

" Other reasons.

Groves & Hayes for Defts. X

" But the Court overruled the motion & refused to set
aside the verdict or grant a new trial. To which decision of
the Court in overruling said motion & in refusing to set
aside the verdict and grant a new trial the defendants
then & there at the time objected and excepted.

X

" The Court
then rendered the following Judgment on the verdict.

" It is therefore ordered and adjudged by the Court

" that the Plaintiff have and recover of the said defendants
 " the damages aforesaid in form aforesaid found, likewise
 " the costs and charges by him about his suit expended and that
 " execution issue therefor."

" To which rendition of said Judgment
 " the defendants then & there at the time objected & excepted
 " & prayed that this his bill of exceptions might be signed &
 " sealed & made part of the record in this cause which is done
 " accordingly.

James Harriott *seal* 

State of Illinois }
 Tazewell County }



I, George H. Harbott Clerk of the
 Circuit Court within and for said County, do hereby
 certify that the foregoing 108 1/4 pages, contain a true,
 perfect and complete copy of the Record of the Proceedings
 had in the cause therein named as fully as the same appears
 of Record in my Office.



In Witness whereof I have hereunto set
 my hand and affixed the seal of said
 Circuit Court at office in Pekin this
 2nd day of April A.D. 1863.

George H. Harbott Clerk
 per A. P. Griswold Deputy Clerk

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Miles & Aal

vs

Danforth

Record &
Asst. of Enos

Filed April 21st 1823

L. Leland
Clerk