

No. 14503

# Supreme Court of Illinois

Hall

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vs.

Jones

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STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division

No. 12

*Hall*

*vs*

*Levin*

14503

Supreme Court of the State of Illinois,  
THIRD GRAND DIVISION.

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APRIL TERM, 1882.

MYRON V. HALL }  
                  vs }  
JOHN JONES. }

We shall make but a short argument in this case, but we most respectfully ask of this Court a full consideration, for upon the decision of this case, our client's debt depends. A reversal of this case is a loss of his debt.

The first point we shall make, is, the judgment in this case was entered in open Court. The record recites the fact that A. M. Herrington in open Court, came and waived the service of process, and produced a power of Attorney duly proven giving him the right to do so.

There is no proof whatever, contradicting the recitals of the record. The record imports absolute verity. In our judgment it could not be contradicted. But that question does not necessa-



This Court has repeatedly decided that the appearance of an Attorney in open Court is presumed to be good until the contrary appears.

Ransom vs. Jones 1 Scam. 291.  
Rust vs. Frothingham, Bre. 260.  
Lagour vs. Patterson, 1 Blackford  
327.

Had judgment been entered of record in vacation, instead of in open Court, the party placing on file only the cognovit, and then if that cognovit had been explained by the affidavit of James Herrington it might have called for some explanation from us. In such a contingency there would have been no court to make a record and to judicially look into the matter before giving a judgment.

As the record now stands, the *onus probandi* is upon the plaintiff in error. He has not given us one word from A. M. Herrington. And upon the principle that what is not proven does not exist, we say that he has not done it, for the reason that he cannot do it. C. B. Wells the Attorney who entered up the judgment has been nearly two years in the military service of the United States; we could get no information from him. We know that the foundations of everything seem broken up, but we hope there is yet left some security in a record of a Court of superior jurisdiction, until at least some sort of proof is offered to overthrow it.

Second. It is undoubtedly true that the note is imperfectly described in the declaration. If the case had been commenced by summons, a plea of the general issue in, and then a bill of exceptions preserving the note, the only thing the Court could do would be to reverse it. But such is not the case, there is no plea that could get at the variance, nor raise that point by any known principle. It could only be raised under the general issue.



1st. Chitty's Pleading 476, has the following language referring to the law as it existed before the adoption of the recent rules: "It was always a rule that when the defendant insisted that *no such contract* as stated in the declaration had been in fact made, he *must* have pleaded the *general issue*."

The count is good as it stands. The party claims in his narr. Three Thousand Dollars. The note and power of Attorney are properly proven, and constitute a part of the record, and M. V. Hall agrees to waive all errors that may arise in the entering up of said judgment, and taking out execution thereon. The plaintiff in error has no plea to raise the question of variance between the note counted on, and the note introduced but on the contrary he has expressly agreed that he will not take advantage of any errors. This Court has decided the power of an Attorney to be an agreement and goes so far as to say that it can make the note appended to the power due before the note by its terms is due.

See *Sherman vs. Boddley*, 11 Ill.  
622.

Again, although the pleader in describing the note, has accidentally left out the word *two* next before the word *thousand*, yet the note and warrant of Attorney accompanied the declaration and formed a necessary part of the papers to identify the note upon which the judgment was confessed. In a suit upon the note where the cause of action need not necessarily be left on file, the reason for holding that the declaration ought to describe the note accurately, and for excluding the evidence for a variance description, is so that a former recovering might be pleaded, and proved in a second action. This reason does not apply where the power of Attorney, note, and proof of execution of cognovit, are necessary to be placed on file in order to authorize the judgments. Under these circumstances it seems hardly necessary to vacate the judgment on account of the accidental omission in the Narr. of the word *two* which appears in the accompanying papers.

As to where a note is due payable on demand, with interest after due, we refer the Court to the petition for a rehearing filed at this term, in the case of *Waterman et al vs. John Jones*. In answer to the position taken there, the warrant of Attorney only authorized a judgment to be confessed against Hall & Brothers, we say that the warrant of Attorney having only been executed by M. V. Hall, a judgment against him alone was authorized. He could not authorize one to be confessed against his partner who had not executed the power, and it is good only as against him who executed—so far it is good. As to the proof of the execution, Patten says that he is well acquainted with the handwriting of Hall & Brothers, and says he believes that the signatures to the note and power of Attorney are true and genuine. He uses the plural expression, signatures, and refers clearly to that of Hall & Brothers, to the note, and to M. V. Hall to the power of Attorney.

On the subject further of the proof, Mr. Metzner's affidavit is that *he believes* no further proof was offered. See his affidavit on record.

The *belief is left out in the abstract*. He does not say that he had made any inquiry upon the subject, of the Clerk or of the Judge of the Court or of the Attorneys in the case, in relation to what proof was offered. In answer to the position that it is uncertain, the case of *A. G. Sloo & Co., vs. State Bank of Ill.*, 1 Scam. 428, is directly in point. In that case the power of Attorney was signed by Horatio G. McClintoc, by name of A. G. Sloo & Co.—Horatio G. McClintoc signed the power of Attorney, the judgment was held good against McClintoc.

This judgment was rendered on the 20th day of November, A. D. 1860. Execution was issued, a levy was made under it. Hall does nothing for two years and upwards. He waits until the recollection of the facts become in a manner weakened, and then



seeks by affidavits, uncertain and insufficient, based upon belief of parties who at the time were not participants in the transaction, had made no examination into it, and then he comes in and tries to impeach the record. We insist he comes too late. Many terms of Court had elapsed before he makes his motion to set aside the judgment upon his affidavits. We refer the Court to the following authority:

Cook vs. Wood et al, 24 Ill., 296.

The only exception to the rule in that case, is that a judgment may be disturbed at a subsequent term where there is fraud. When it is unconscionable that the judgment should remain. If the note was given without consideration, or obtained by fraud and circumvention, or there was usury, any defence going to the merits then under the equitable jurisdiction which the Court possesses over its judgments, it would permit a defendant in the Circuit Court to come and defend at a subsequent term, not otherwise. But when no averments are made that there is anything wrong with the consideration upon which the judgment is based, it will not do it. It seems to us that no Court will allow a debtor two years after a judgment is rendered against him to *plaster* a record over with affidavits of third persons to try and catch up some technical point upon which to reverse a judgment, and that too, to benefit a broken Banker, who is trying to swindle his friend who deposited his money with him, upon his solemn pledge of honor that he would protect him.

We know this Court wants to do justice and will. We say then that the affidavits came too late. Had the affidavits shown merits, this Court would have been anxious to find some place to let those merits be adjudicated. But when the plaintiff in error has nothing to say about merits, offers no meritorious defence, gives a note on demand upon which three days after, a judgment is entered in open Court, we most respectfully submit that two years after, no Court who has a proper regard for the administration of



public justice, will let a party in with affidavits to try and get up a technical question upon which to destroy a meritorious judgment.

Hall himself does not make any affidavits. Waterman and his Attorney make some, and *try to* make out that A. M. Herrington's name has been improperly used. A. M. Herrington does not complain. He has nothing to say. And we all know him well enough to know that if any one had been using his name wrongfully or improperly, this record would have been full of his indignant protestations in that regard.

We repeat then that all the affidavits should be excluded as coming too late.

We have no love for judgment notes, yet if they can occasionally help a meritorious creditor get his dues out of those who have constantly abused them, they ought to be allowed to do it as an offset to the wrongs they have done.

We say our debt is meritorious; we have a right to say that, because the plaintiff in error has said nothing to the contrary on this record, and we respectfully ask the Court to consider that question in deciding the case.

In conclusion, the plaintiff in error has seen fit to put in the Bill of Exceptions his statement made through his Attorney in the Court below. It is not sworn to; it is simply a part of his speech made in the Circuit Court. It has no business in the record. It seems to us a sort of a chuckle over the fact that Hall & Brothers, with whom our client had deposited Two Thousand Dollars, <sup>are</sup> ~~is~~ about to ~~steal~~ <sup>chisel</sup> out of his money. Since the Plaintiff in error has been indulged in his statement, let us make ours.

Hall & Brothers were Bankers at Aurora, on the 17th day of

November, A. D. 1860. They failed owing their depositors one hundred and twenty thousand dollars. Our client had two thousand deposited with them. He had helped them through one *squall*, and they promised to protect him. He got two notes, as collateral security for his debt:—the note in suit in this case as also the note in the case of Waterman and Hall vs. Jones, now pending before this Court, on a motion for a rehearing. It was agreed that he should have judgments on them both. Myron V. Hall had a large and controlling interest in a stock of Hardware, held in name of D. B. Waterman & Co. The notes were payable on demand because every authority which could be got at, said that they could be sued instantly. The executions were levied upon the stock of Hardware, under what was supposed to be an amicable arrangement. Shortly after D. B. Waterman became insolvent and transferred the Hardware to Harry White, his father-in-law. The Halls are entirely insolvent. White replevined the Hardware, and we are defending under executions based upon these judgments. If our judgments are set aside, we lose our demand.

We know that perhaps it is not strictly proper to say this, but we claim we have just as good a right as the plaintiff in error, and we think a better, for the reason that we can prove our statement, and we are advised by our client that they cannot.

Two thousand dollars in money is a large sum for a farmer in good middling circumstance to lose, and we ask the Court to give the matter a full consideration and make the law of the land do us justice if possible.

B. F. PARKS and LELAND & BLANCHARD,  
Att'ys for Def't in Error.

We are not responsible  
for matters others record  
L & B



31 122

Heall

vs

Jones

Brief of def<sup>m</sup> in Error

Filed May 4, 1863

L. L. L. and  
Mc

1863

do as justice is possible.

D. B. PARKS and FREDARD G. HAVENCHARD,

Attorneys for Def<sup>m</sup> in Error.

Give the master a full compensation and make the job of the jury in good mitigating circumstances to see, and no ask the Court to  
Two thousand dollars in money is a large sum for a farmer  
statement and is made a party by our client that they cannot  
for and not what we ask for the reason that we can prove our  
job we claim as it is just as good a right as the plaintiff in it  
And I now say that it is a right which is proper to see that



STATE OF ILLINOIS,  
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Kane County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of Kane County, before the Judge thereof, between

John Jones

plaintiff....., and

Clyron O. Hall unpleaded &c.

defendant....., it is said that manifest error hath intervened, to the injury of the said

Clyron O. Hall

as we are informed by his complaint ~~that~~ the record and proceedings of which said judgments we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said

Clyron O. Hall

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said

Clyron O. Hall

notice, together with this writ.

Witness, The Hon. John T. Gaten, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 28<sup>th</sup> day of March in the year of our Lord One thousand and Sixty-three.

S. Seland  
Clerk of the Supreme Court.



31 122

William D. Hall

No. VS.

John Lewis

SCIRE FACIAS.

Filed April 21st A.D. 1863

J. Nelson Clerk of Court

I duly served the within by reading to the within named John Lewis this 30th day of March A.D. 1863

Grey dress 30  
Buttons 50  
Return 10  
\$100

Joseph H. Phillips  
Sheriff of  
Randolph Co.  
Wm. A. & Lester Deputy



Supreme Court of the State of Illinois,  
THIRD GRAND DIVISION.

APRIL TERM, 1933.

MYRON V. HALL }  
vs  
JOHN JONES. }

ARGUMENT, BRIEF, AND POINTS FOR PLAINTIFF IN  
ERROR.

The first point for which we rely for a reversal of this judgment, is that the declaration does not support the judgment. The cause of action described in the declaration is for *one thousand dollars*, while the judgment is for \$2020. But it is insisted by defendant in error that such is merely a variance, and cannot be taken advantage of at this stage of the cause. Let us see whether this is sound doctrine. *The record is not in a shape so that we could by the record, sustain a plea of former recovery, if another suit had been brought on the note, and why!—because the record, (the declaration,) describes a cause of action for one thousand dollars, while the note is for two thousand dollars, nor would we be permitted to introduce parol evidence to show that the judgment was in fact entered upon this note, for by so doing we would contradict the record.—*



Again, there is a clear variance between the note in evidence, and the one described in the declaration. While an appearance might cure such a defect, (which is a proposition which we are not willing to admit,) yet, before the Court can render judgment, the authority of the Attorney to appear and confess judgment, must be clearly proven, which has not been done in this case, as the affidavit purporting to prove the execution of the warrant of Attorney is fatally defective, and hence there is no appearance. But we insist that an appearance cannot cure the defect, and that in a proceeding of this kind, a sufficient declaration must be filed, to make the record sufficient to sustain the judgment. The declaration is a necessary part of the record.

24 Ill. Rep. 600.

The second point is, that the note at the time of the entry was not due, and therefore the judgment was prematurely entered. A note payable on demand is due on demand, but there must be an *actual demand* for the money; and while it is true that the bringing of the suit is a sufficient demand, yet such is only the case where the suit is commenced by summons. There the payor can save further costs by paying the amount of the note, and the costs of summons, which is but trifling. But in this proceeding the first notice that the payor has of a demand for the money is when the Sheriff calls on him with the execution. Will any one say that a Court will permit such an abuse of its proceedings? Compel a man to pay a bill of costs without giving him an opportunity to avoid it? We think not. It is no hardship to the payee to say to him, before you shall have the aid of the Court in this matter, you must give the payor an opportunity to avoid costs, especially, as this note was intended as a continuing security, and was for a time to remain unpaid, and unsatisfied, drawing interest at ten per cent. Nor is the position taken by the Attorney for the defendant in error, upon this question correct, for the cases by him cited, are not in point. These cases establish the doctrine that a note payable on demand, is due on demand, but do not do

away with the necessity of a demand, nor do they establish the doctrine that the institution of proceedings of this nature, is a sufficient demand.

The third point is, that there was no proof of the execution of the warrant of attorney. 1st. The affidavit does not state *how the witness* became acquainted with the handwriting of Hall & Brothers. This Court in the case of Pate vs. People, 3 Gill 660, said: "The general rule in relation to the proof of handwriting, is that it is not to be made by the comparison of hands, but by the production of witnesses who have acquired a knowledge of the general character of the handwriting of the party.

"The modes of acquiring this knowledge are either by having seen him write, or by having seen letters or other documents which the party has, in the course of his business, recognized or admitted to be his own.

"A witness who has *thus* become acquainted with the handwriting of the party, is allowed to examine the writing in question, and declare his belief, founded on his previous knowledge concerning its genuineness.

"A witness ought first to be asked if he is acquainted with the handwriting of the party. If he answers in the affirmative, he is then asked how he obtained his knowledge. *It is only when he professes to have this knowledge acquired from legitimate sources that he is permitted to express an opinion.*"

It seems that the above authority is directly in point. The affidavit fails to show that the witness *acquired his knowledge of the handwriting from a legitimate source.*



And 2d. The warrant of attorney is not signed by Hall & Brothers, but by *M. V. Hall alone*; the witness nowhere states that he is acquainted with the handwriting of M. V. Hall; that he obtained such acquaintance from a *legitimate* source, either by having seen him write, or seen papers signed by Hall, which Hall in due course of business admitted to be his own signature. *Non constat* but what some other member of the firm of Hall & Brothers signed the warrant of attorney.

But it will be argued by the Attorney for the defendant in error, that the judgment is entered in term time, and therefore every presumption is in favor of sustaining the judgment, and that the proper proof was made. But in answer to that, we say that the record shows that the affidavit on the back of the note and warrant of attorney, was the only proof of its execution. No evidence was received in open Court. The affidavit on the back of the warrant of attorney, was the only proof, and by the affidavit filed by the plaintiff in error, on the motion to vacate the judgment, it appears that no other proof of the execution of the note and warrant of attorney was introduced at the time of confession of the judgment. But the record shows conclusively that the judgment was entered in the same manner as in vacation, the same papers were filed as under the vacation practice.

The last point is that the cognovit was signed by a person who had no authority to sign the name of A. M. Herrington to such cognovit. James Herrington swears that he signed the name of A. M. Herrington to said cognovit, that such signing was wholly unknown to, and without the permission of said A. M. Herrington, and that such blank cognovits were afterwards unbeknown to said James Herrington, filled up and used in this cause. I need not dwell at length upon the propriety of such practice, but will confine myself entirely to the questions of law arising in the case. This Court in the 24th Ill. 601, says: "It is a rule of general application that all powers not coupled with an interest must be strictly pursued in their execution. And in 5th

"Hill N. Y. P. 497, the Court says: 'An authority to confess judgment without process must be clear and explicit and must be strictly pursued.'

"In the 15 Pick. 307, the Court says: 'The general principle is that a delegated authority can be executed only by the person to whom it is given, for the confidence being personal cannot be assigned to a stranger.'

Apply the law as above quoted, to the facts in this case, and there can be no doubt but what the judgment was entered without authority. Even if the cognovit had been signed by James Herrington in the name of A. M. Herrington by his consent and authority, it would have been illegal as he had no power to delegate the authority conferred upon him. The confidence given was personal and could not be delegated, we had a right to have an attorney with legal attainments to confess the judgment in a proper manner, upon a declaration that describes the cause of action correctly, so that the judgment would be a bar to another recovery upon the same cause of action.

But in this case the signature was without authority, and null and void, and the Judgment for that alone, should have been vacated.

But when this cognovit was signed by James A. Herrington this warrant of attorney and note were not in existence, and the subsequent execution of the note and warrant of attorney, would not make legal and valid, the act of James A. Herrington, which was unauthorized and illegal.

It has been urged by the Attorney for the defendant in error, that this all might be true, and yet A. M. Herrington might have confessed the judgment in open Court; such an event the record clearly shows did not occur, for the record shows that the declara-



Again, it is urged by the attorney for defendant, in error, that A. M. Herrington made no protestations as to the use of his name to said cognovit. Assume that mere assertion to be true, and he also knows that the imposition and unauthorized use of his name was not discovered till at the last February Term of the Kane County Circuit Court, and that then A. M. Herrington, during the entire term of said Court, was in Springfield, attending the meeting of the Legislature.

It is also said by the gentlemen that the statement of the Counsel for the plaintiff, in error, as to the facts in the case amount to nothing &c., and in his argument the counsel for the defendant, in error, proposes to give what he calls his side of the case, and while the Court tries the case upon the law, and not upon questions of fact, yet *the statement of facts as shown by the bill of exception, was made at the request, and for the information of the Court, in the presence of Mr. Wheaton, then counsel for the defendant in error, by his consent, who acquiesced in the statement, and made no objection.*

A few general remarks in answer to the bombastic and untrue assertions made by the counsel for the defendant in error, will conclude my argument. It seems that the counsel for the defendant has resorted to the old trick of *crying stop thief*, to cover up the illegal and rascally transactions of the defendant in error and

[illegible]

some of his legal assistants. His long statement of what he gives as facts, are utterly at variance with what in reality occurred. I should not have answered any portion of them, if it were not for the fact that silence might be construed as an acquiescence in his statements. But so far as the statement that the note is an honest debt, due by Hall to Jones is concerned, it is entirely unwarranted and untrue. When an opportunity is presented for making a proper defence to the note, that defence will be made.

The gentleman says with reference to the statement made by the Attorney in the Court below 'that it seems to them a sort of chuckle over the fact that Hall & Brothers were about to chisel Jones out of his money.' Where is the evidence in the record that any such attempt was ever made by Hall & Brothers; or that Jones ever had money with them on deposit? There is none in the record, and these statements seem to be necessary to prop up, and uphold a judgment pregnant with errors and obtained by fraud. The gentleman knows that the statement was made at the request of the Court, and for the information of the Court, by the consent of Mr. Wheaton, then attorney for Jones.

Then the gentleman goes on and makes a statement as to the facts, which is entirely at variance with what really occurred in the transaction. He says: "Jones received these two notes as collateral security for the payment of the money claimed by him." If the notes were the same debt, how is it that one is for \$2000, the other for \$2020? We will show to the Court why our version of the affair is correct; the Hall note was for \$2000, together with \$20 attorney fees. Judgment was entered upon it; the amount of the judgment was \$2020, and in the payment of that a note was executed by Hall & Waterman, (Waterman as security,) for \$2020 dollars, with the understanding that they were to have time. *It was to be a continuing security*, but the note had hardly got into his possession before judgment was entered upon it by Jones, and property levied upon amounting in value to \$5000, and that was to be sacrificed for the benefit of Mr. Jones, at a



Sheriff's sale eleven days after the execution was issued upon the judgment, and then when Hall & Waterman found that they were to be sacrificed in violation of their agreement, they then looked to the protection of their legal rights, by suing out a writ of error on the Judgment.

The gentleman further says : "That two thousand dollars is a large sum for a farmer in good middling circumstances to lose." Where is the evidence in the record to warrant such an assertion? Where is the evidence that Jones will lose the two thousand dollars, if it is an honest bona fide debt? "A farmer in good middling circumstances," why is that expression used? where is the evidence that Jones is a farmer? none whatever. A farmer is a man whose occupation is to till the soil, and earns a living by honest, hard work. In what part of the record does it appear that Jones is a man of that calling? Nowhere. And if it did, the tears of several homeless families of Kane County, would testify to the contrary. In conclusion we ask the Court to carefully consider the record, the errors assigned, the authorities cited, and with pleasure we will submit to its adjudication.

CHARLES J. METZNER,  
Att'y for Plff in Error,

Weymouth Hall  
Es  
John Jones  
122.

Brief & Arguments  
for Plaintiff in Error.

Filed May 5. 1863  
J. L. Under  
clerk



Supreme Court of the State of Illinois,  
THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862

MYRON V. HALL, impl. &c. }

vs

JOHN JONES. }

JUDGMENT BY COFFESSION.

- Page 1. November 20th, 1860, there was filed in the Office of the Clerk of the Kane Circuit Court a declaration containing one  
Page 2. special count, which alleges in substance that "on the 17th day  
"of November, A. D. 1860, the defendants made their certain  
"note in writing and delivered the same to the plaintiff, by  
"which said note said defendants by the name and style of Hall,  
"& Brothers, promised to pay to the said plaintiff the sum of  
"thousand dollars on demand with interest after due at ten per  
"cent for value received."

- And on the same day the following cognovite was filed in the Office of said Clerk of said Court in said cause. "And the said  
Page 3. "Myron V. Hall defendants in the above entitled suit by A.  
"M. Harrington *their* attorney come and defend the wrong, and  
"injury when, &c., and say that *they* cannot deny the action of  
"the said plaintiff, nor but that the said plaintiff has sustained  
"damages on occasion of the non-performance of the several  
"promises, and undertakings in said declaration mentioned, in-  
Page 4. "cluding the sum of twenty dollars for his reasonable attorney  
"fees for entering up this judgement, over and above all other  
"costs and charges, by him in his suit in this behalf expended to the  
"amount of two thousand and twenty dollars, and *the said defen-*  
"dants further agree that no writ of error or appeal, shall be  
"prosecuted on the judgement entered by virtue hereof, nor any  
"bill in equity filed to interfere in any manner with the operation  
"of said judgement and that *they* hereby release all errors, &c.

A. M. HARRINGTON, Def'ts Atty.

Page 5. And also the following note and warrant of attorney was filed in said cause on said day, to-wit:

\$2000

AURORA, Nov. 17th, 1860.

"On demand, for value received, we promise to pay to John Jones or order, at the Bank of Aurora, two thousand dollars, with interest *after due* at ten per cent per annum."

HALL & BROTHERS.

Page 6. "Know all men by these presents that we Hall & Brothers, of Aurora are indebted to John Jones, upon a certain promissory note bearing even date herewith, for the sum of two thousand dollars with interest *after due*, at the rate of ten per cent per annum, and due on demand. Now, therefore, in consideration of the premises we do hereby make, constitute and appoint W. B. Plato, or any attorney of any court of record, to be *our* true and lawful attorney irrevocably for *us*, and *in our names places* and *stead* to appear in any court of record in term time or in vacation, or before any justice of the peace in any of the States or Territories of the United States, at any time from and after the date hereof, to waive the service of process and confess a judgement in favor of said John Jones, or their said assigns or assignees, upon the said note for the above sum, or for as much as appears to be due according to the tenor and effect of said note and interest thereon to the day of entry of such judgement together with all costs and twenty dollars attorney fees and also to file a cognovit for the amount that may be so due, with an agreement therein that no writ of error or appeal shall be prosecuted upon the judgement entered by virtue thereof nor any bill in equity filed to interfere in any manner with the operation of said judgement, and to release all errors that may intervene in the entering up of said judgement, or issuing the execution thereon, and also consent to immediate execution upon such judgement. Hereby ratifying and confirming all that our said attorney may do by virtue hereof.

Witness our hands and seals, this 17th day of November, A. D. 1860.

In presence of

M. V. HALL

LS

On the back of which note and warrant of attorney was the following affidavit: "Charles Patten being first duly sworn, doth depose and say that he is well acquainted with the handwriting of Hall & Brothers, and that he believes that the signatures to the within note and power of attorney, to be true and genuine.



"Then follows the affidavit of C. J. Metzner, setting forth that  
"the affidavit on the back of said warrant of attorney was *the*  
"only proof of the execution of said warrant of attorney, upon and by  
"virtue of which the judgment was entered.

"which affidavit together with the statement of C. J. Metzner,  
"as to the issuing of the execution and levy upon said judgment  
"was all the evidence in the motion introduced by either party,  
"and said defendant having appeared by his attorney, and resisted  
"said motion, the Court overruled said motion, to which ruling  
"the defendants excepted.

The errors assigned are : 1st. The Court erred in rendering  
judgment against defendants in favor of plaintiff. 2d. The Court  
erred in not granting defendants motion to vacate said judgment.

C. J. METZNER.

Att'y for Plff in Error.

122-31

Wall, m. p. 1. 16

as  
Jones

Filed Apr. 20<sup>th</sup> 1863  
L. L. Co. m. p.



# Supreme Court of the State of Illinois, THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862

MYRON V. HALL, impl. &c. }

vs

JOHN JONES. }

## JUDGMENT BY COFFESSION.

- Page 1. November 20th, 1860, there was filed in the Office of the Clerk of the Kane Circuit Court a declaration containing one special count, which alleges in substance that "on the 17th day of November, A. D. 1860, the defendants made their certain note in writing and delivered the same to the plaintiff, by which said note said defendants by the name and style of Hall, & Brothers, promised to pay to the said plaintiff the sum of *thousand dollars* on demand with interest *after due* at ten per cent for value received."

- Page 3. And on the same day the following cognovite was filed in the Office of said Clerk of said Court in said cause. "And the said Myron V. Hall defendants in the above entitled suit by A. M. Harrington *their* attorney come and defend the wrong, and injury when, &c., and say that *they* cannot deny the action of the said plaintiff, nor but that the said plaintiff has ststained damages on occasion of the non-performance of the several promises, and undertakings in said declaration mentioned, including the sum of twenty dollars for his reasonable attorney fees for entering up this judgement, over and above all other costs and charges, by him in his suit in this behalf expended to the amount of two thousand and twenty dollars, and *the said defendants* further agree that no writ of error or appeal, shall be prosecuted on the judgement entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of said judgement and that *they* hereby release all errors, &c.

A. M. HARRINGTON, Def'ts Atty.

210

100

20

350

100

210

350

350

175

100

110

175

1950

30

58,500

63900

54600

1950

3700

Page 5. And also the following note and warrant of attorney was filed in said cause on said day, to-wit:

\$2000

AURORA, Nov. 17th, 1860.

"On demand, for value received, we promise to pay to John Jones or order, at the Bank of Aurora, two thousand dollars, "with interest *after due* at ten per cent per annum."

HALL & BROTHERS.

"Know all men by these presents that we *Hall & Brothers*, of Aurora are indebted to John Jones, upon a certain promissory note bearing even date herewith, for the sum of two thousand dollars with interest *after due*, at the rate of ten per cent per annum, and due on demand. Now, therefore, in consideration of the premises *we* do hereby make, constitute and appoint W. B. Plato, or any attorney of any court of record, to be *our* true and lawful attorney irrevocably for *us*, and *in our names places and stead* to appear in any court of record in term time or in vacation, or before any justice of the peace in any of the States or Territories of the United States, at any time from and after the date hereof, to waive the service of process and confess a judgement in favor of said John Jones, or their said assigns or assignees, upon the said note for the above sum, or for as much as appears to be due according to the tenor and effect of said note *and interest* thereon to the day of entry of such judgement together with all costs and twenty dollars attorney fees and also to file a cognovit for the amount that may be so due, with an agreement therein that no writ of error or appeal shall be prosecuted upon the judgement entered by virtue thereof nor any bill in equity filed to interfere in any manner with the operation of said judgement, and to release all errors that may intervene in the entering up of said judgement, or issuing the execution thereon, and also consent to immediate execution upon such judgement. Hereby ratifying and confirming all that our said attorney may do by virtue hereof.

Page 6.

Witness our hands and seals, this 17th day of November, A. D. 1860.

In presence of

M. V. HALL



On the back of which note and warrant of attorney was the following affidavit: "Charles Patten being first duly sworn, doth depose and say *that he is well acquainted with the handwriting of Hall & Brothers, and that he believes that the signatures to the within note and power of attorney, to be true and genuine.*"



Sworn and subscribed to, &c.

CHARLES PATTON.

Page 7. Judgement for plaintiff, against Myron V. Hall for \$2020 00 and costs of suit, Nov. 20th, 1860.

Page 8. February 16th, 1863. Motion by defendants to vacate the judgement; motion overruled, defendants except; leave given

Page 9. to defendant to file bill of exceptions; bill of exceptions filed February 17th, 1863.

Bill of Exceptions states that on the 16th day of February A. D. 1863, it being one of the days of the February term of said court, the defendants in support of his motion, filed the following affidavit.

Page 10. 1st. The affidavit of Daniel B. Waterman, who states that he is well acquainted with the firm of Hall & Brothers, that said firm on the 17th of November till after November 20th, A. D. 1860, was composed of *Myron V. Hall and Philip A. Hall*.

2d. The affidavit of James Harrington, which affidavit is as follows :

|          |                         |                                                            |
|----------|-------------------------|------------------------------------------------------------|
|          | JOHN JONES              | } Kane County Circuit Court,<br>February term, A. D. 1863. |
|          | vs                      |                                                            |
| Page 11. | MYRON V. HALL impl. &c. |                                                            |

### JUDGEMENT BY CONFESSION.

"James Harrington being first duly sworn on oath, doth depose and say that sometime previous to the entering up of the judgement herein, C. B. Wells, plaintiff's attorney, came to the office of A. M. Harrington, where this affiant then was, and presented to this affiant three blank cognovits and requested this affiant to sign the name A. M. Harrington, as defendant's attorney to the same stating that he had accommodated the said A. M. Harrington, before in the same way, and that if your affiant would so sign the said cognovits as said Wells requested, it would be all right, that after some hesitancy on the part of this affiant, this affiant did sign said three blank cognovits with the name of A. M. Harrington as defendant's attorney, the signing of which was wholly unknown to and without the permission of A. M. Harrington, that one of said blank cognovits was afterwards and unbeknown to this affiant, filled up and used in this cause; and further deponent says not.

JAMES HARRINGTON.

Subscribed and sworn to before me this 2d day of February A. D. 1863.  
T. C. MOORE, Clerk.

"Then follows the affidavit of C. J. Metzner, setting forth that  
"the affidavit on the back of said warrant of attorney was *the*  
"only proof of the execution of said warrant of attorney, upon and by  
"virtue of which the judgment was entered.

"which affidavit together with the statement of C. J. Metzner,  
"as to the issuing of the execution and levy upon said judgment  
"was all the evidence in the motion introduced by either party,  
"and said defendant having appeared by his attorney, and resis-  
"ted said motion, the Court overruled said motion, to which rul-  
"ing the defendants excepted.

The errors assigned are : 1st. The Court erred in rendering  
judgment against defendants in favor of plaintiff. 2d. The Court  
erred in not granting defendants motion to vacate said judgment.

C. J. METZNER.  
Att'y for Pl'ff in Error.



122-31

Wall mpt? H

H

Jones

Abstracts

Filed H. 21. 1863

Leland M

~~Fortier~~ <sup>the Court.</sup> ~~opinion of the Court, delivered by~~  
~~Darst~~ Mr. Chief Justice Catow delivered the opinion of  
the Court. We have here presented a  
most offensive exhibition of human  
depravity, <sup>and</sup> dishonesty on the part of Papin,  
at least, if not of Darst. Fortier, an ignorant  
<sup>and</sup> excellently confiding man, placed in <sup>the</sup> hands  
of Papin, <sup>and</sup> the mortgage <sup>and</sup> notes, for collection, in order  
to avoid further vexation <sup>and</sup> expense in their  
prosecution; and agreed to give him one  
third of the proceeds, in consideration that  
Papin should take all trouble <sup>and</sup> pay all  
expense. In violation of the trust and  
Confidence reposed in him, he sets himself  
to work to get a tax title to the land; ~~and~~  
allows an execution to be issued against  
Fortier for costs, which he had occasioned  
in attempts to collect the amount; and  
finally, assigns his claim to the notes and  
mortgage to Darst, for the purpose of  
cheating Fortier out of the money due  
him. <sup>and</sup> Darst now files this bill to enjoin  
Fortier from intermeddling in the matter.  
Claiming the whole to belong to him, as the  
bona fide assignee of Papin. We  
say this is the most provoking exhibition  
of Rascality we have lately met with.  
and we are strongly inclined to the  
opinion that Darst is as deeply im-



*pleaded*

as Papin; but whether this be so or not, can make no difference with the final result of this suit. The legal title to the notes <sup>and</sup> ~~the~~ <sup>has</sup> ~~the~~ <sup>has</sup> ever remained in Fortin, ~~and the~~ <sup>the</sup> only title Papin ever had to them, was an equitable title, and he could acquire no higher or better title <sup>than Papin had</sup> ~~by~~ <sup>under</sup> ~~the~~ assignment by Papin; even if that assignment were not a forgery, by reason of the attestation made in it, which is ~~manifested~~ testified to by travel, and is manifest on inspection of the instrument, which is before me. But waiving this, the complainant, by taking an equitable title, which he has to resort to a court of Equity to enforce, took that title with all the equities <sup>and</sup> ~~the~~ <sup>infirmities</sup> existing against it, and can claim nothing under it, which Papin, his assignor, could not <sup>have</sup> ~~claimed~~ <sup>Olds v. Cummings, ante p.</sup> ~~a party who~~ comes into a court of Equity, asking for equitable relief, which a court of law cannot afford him, and exhibit a case blighted all over with fraud, <sup>and</sup> overreaching, as this is, must expect little favor or

*Olds*

*Cummings*  
*ante*



Sympathy at our house. Papin,  
by the gross violation of every obli-  
gation imposed on him by his agreement  
with Fortier, has forfeited all rights  
under it; and Barst, his assignee, who  
occupies no higher or better ground,  
also has no rights which he can assert  
under the agreement with Fortier, who  
must be allowed to go on <sup>and</sup> collect the  
money due him, <sup>and</sup> enjoy it, without  
further molestation, from either of these  
Papin, or Barst.

The decree is reversed, <sup>and</sup> the bill dismissed.

~~In this opinion the whole Court concurred.~~

Decree reversed, and bill  
dismissed.



Forster  
2  
Durst

Opinion  
Luton

Recorded 12<sup>th</sup> 171  
company

Supreme Court of the State of Illinois,  
THIRD GRAND DIVISION.

---

APRIL TERM, 1862.

MYRON V. HALL }  
                  <sup>VS</sup> }  
JOHN JONES. }

We shall make but a short argument in this case, but we most respectfully ask of this Court a full consideration, for upon the decision of this case, our client's debt depends. A reversal of this case is a loss of his debt.

The first point we shall make, is, the judgment in this case was entered in open Court. The record recites the fact that A. M. Herrington in open Court, came and waived the service of process, and produced a power of Attorney duly proven giving him the right to do so.

There is no proof whatever, contradicting the recitals of the record. The record imports absolute verity. In our judgment it could not be contradicted. But that question does not necessa-



rily arise. For there is no proof whatever, that A. M. Herrington did not appear as the record recites.

It is true that some time previous, James Herrington, a brother and clerk of A. M. Herrington's, signed some blank cognovits in the exercise of the ordinary professional courtesy which should exist among respectable gentlemen of the profession. The affidavit does not say when, but some time previous James Herrington does not state even upon belief that the blank in this case which was used in open Court, where A. M. Herrington was present, without his authority. Must this Court presume against a record without proof? There is not a word in the affidavits contradicting the recitals of the record. It was done in open Court, before a Judge who knew A. M. Herrington, knew his handwriting, where A. M. Herrington was constantly practicing. And when the record says that A. M. Herrington was present, it must be taken as true, until at least some evidence is offered contradicting the fact. And it seems to us that that evidence should be direct and positive. The only evidence on the question is, that sometime before, professional courtesy existed between two lawyers living at Geneva, the county seat of Kane County. Again, suppose the blanks had been printed, with A. M. Herrington's name printed at the bottom, and the affidavit of the printer was that Wells came and got one of them, and afterwards the record of a Court should declare that A. M. Herrington appeared, and that the blank was used. Suppose the affidavit of the printer was in the exact language of James Herrington, yet the record said that A. M. Herrington appeared, would this Court destroy the judgment, and presume against the record?

A. M. Herrington does not say that he did not appear, and it is not his act. A Circuit Judge has judicially decided it was his act in open Court.

If a record can be destroyed in this manner, then property rests upon a weak and unsatisfactory basis.

This Court has repeatedly decided that the appearance of an Attorney in open Court is presumed to be good until the contrary appears.

Ransom vs. Jones 1 Scam. 291.

Rust vs. Frothingham, Bre. 260.

Lagour vs. Patterson, 1 Blackford  
327.

Had judgment been entered of record in vacation, instead of in open Court, the party placing on file only the cognovit, and then if that cognovit had been explained by the affidavit of James Herrington it might have called for some explanation from us. In such a contingency there would have been no court to make a record and to judicially look into the matter before giving a judgment.

As the record now stands, the *onus probandi* is upon the plaintiff in error. He has not given us one word from A. M. Herrington. And upon the principle that what is not proven does not exist, we say that he has not done it, for the reason that he cannot do it. C. B. Wells the Attorney who entered up the judgment has been nearly two years in the military service of the United States; we could get no information from him. We know that the foundations of everything seem broken up, but we hope there is yet left some security in a record of a Court of superior jurisdiction, until at least some sort of proof is offered to overthrow it.

Second. It is undoubtedly true that the note is imperfectly described in the declaration. If the case had been commenced by summons, a plea of the general issue in, and then a bill of exceptions preserving the note, the only thing the Court could do would be to reverse it. But such is not the case, there is no plea that could get at the variance, nor raise that point by any known principle. It could only be raised under the general issue.



1st. Chitty's Pleading 476, has the following language referring to the law as it existed before the adoption of the recent rules: "It was always a rule that when the defendant insisted that *no such contract* as stated in the declaration had been in fact made, he *must* have pleaded the *general issue*."

The count is good as it stands. The party claims in his narr. Three Thousand Dollars. The note and power of Attorney are properly proven, and constitute a part of the record, and M. V. Hall agrees to waive all errors that may arise in the entering up of said judgment, and taking out execution thereon. The plaintiff in error has no plea to raise the question of variance between the note counted on, and the note introduced but on the contrary he has expressly agreed that he will not take advantage of any errors. This Court has decided the power of an Attorney to be an agreement and goes so far as to say that it can make the note appended to the power due before the note by its terms is due.

See *Sherman vs. Boddley*, 11 Ill.

622.

Again, although the pleader in describing the note, has accidentally left out the word *two* next before the word *thousand*, yet the note and warrant of Attorney accompanied the declaration and formed a necessary part of the papers to identify the note upon which the judgment was confessed. In a suit upon the note where the cause of action need not necessarily be left on file, the reason for holding that the declaration ought to describe the note accurately, and for excluding the evidence for a variance description, is so that a former recovering might be pleaded, and proved in a second action. This reason does not apply where the power of Attorney, note, and proof of execution of cognovit, are necessary to be placed on file in order to authorize the judgments. Under these circumstances it seems hardly necessary to vacate the judgment on account of the accidental omission in the Narr. of the word *two* which appears in the accompanying papers.

As to where a note is due payable on demand, with interest after due, we refer the Court to the petition for a rehearing filed at this term, in the case of *Waterman et al vs. John Jones*. In answer to the position taken there, the warrant of Attorney only authorized a judgment to be confessed against Hall & Brothers, we say that the warrant of Attorney having only been executed by M. V. Hall, a judgment against him alone was authorized. He could not authorize one to be confessed against his partner who had not executed the power, and it is good only as against him who executed—so far it is good. As to the proof of the execution, Patten says that he is well acquainted with the handwriting of Hall & Brothers, and says he believes that the signatures to the note and power of Attorney are true and genuine. He uses the plural expression, signatures, and refers clearly to that of Hall & Brothers, to the note, and to M. V. Hall to the power of Attorney.

On the subject further of the proof, Mr. Metzner's affidavit is that *he believes* no further proof was offered. See his affidavit on record.

The *belief is left out in the abstract*. He does not say that he had made any inquiry upon the subject, of the Clerk or of the Judge of the Court or of the Attorneys in the case, in relation to what proof was offered. In answer to the position that it is uncertain, the case of *A. G. Sloo & Co., vs. State Bank of Ill.*, 1 Scam. 428, is directly in point. In that case the power of Attorney was signed by Horatio G. McClintoc, by name of A. G. Sloo & Co.—Horatio G. McClintoc signed the power of Attorney, the judgment was held good against McClintoc.

This judgment was rendered on the 20th day of November, A. D. 1860. Execution was issued, a levy was made under it. Hall does nothing for two years and upwards. He waits until the recollection of the facts become in a manner weakened, and then



seeks by affidavits, uncertain and insufficient, based upon belief of parties who at the time were not participants in the transaction, had made no examination into it, and then he comes in and tries to impeach the record. We insist he comes too late. Many terms of Court had elapsed before he makes his motion to set aside the judgment upon his affidavits. We refer the Court to the following authority :

Cook vs. Wood et al, 24 Ill., 296.

The only exception to the rule in that case, is that a judgment may be disturbed at a subsequent term where there is fraud. When it is unconscionable that the judgment should remain. If the note was given without consideration, or obtained by fraud and circumvention, or there was usury, any defence going to the merits then under the equitable jurisdiction which the Court possesses over its judgments, it would permit a defendant in the Circuit Court to come and defend at a subsequent term, not otherwse. But when no averments are made that there is anything wrong with the consideration upon which the judgment is based, it will not do it. It seems to us that no Court will allow a debtor two years after a judgment is rendered against him to *plaster* a record over with affidavits of third persons to try and catch up some technical point upon which to reverse a judgment, and that too, to benefit a broken Banker, who is trying to swindle his friend who deposited his money with him, upon his solemn pledge of honor that he would protect him.

We know this Court wants to do justice and will. We say then that the affidavits came too late. Had the affidavits shown merits, this Court would have been anxious to find some place to let those merits be adjudicated. But when the plaintiff in error has nothing to say about merits, offers no meritorious defence, gives a note on demand upon which three days after, a judgment is entered in open Court, we most respectfully submit that two years after, no Court who has a proper regard for the administration of

public justice, will let a party in with affidavits to try and get up a technical question upon which to destroy a meritorious judgment.

Hall himself does not make any affidavits. Waterman and his Attorney make some, and *try to* make out that A. M. Herrington's name has been improperly used. A. M. Herrington does not complain. He has nothing to say. And we all know him well enough to know that if any one had been using his name wrongfully or improperly, this record would have been full of his indignant protestations in that regard.

We repeat then that all the affidavits should be excluded as coming too late.

We have no love for judgment notes, yet if they can occasionally help a meritorious creditor get his dues out of those who have constantly abused them, they ought to be allowed to do it as an offset to the wrongs they have done.

We say our debt is meritorious; we have a right to say that, because the plaintiff in error has said nothing to the contrary on this record, and we respectfully ask the Court to consider that question in deciding the case.

In conclusion, the plaintiff in error has seen fit to put in the Bill of Exceptions his statement made through his Attorney in the Court below. It is not sworn to; it is simply a part of his speech made in the Circuit Court. It has no business in the record. It seems to us a sort of a chuckle over the fact that Hall & Brothers, with whom our client had deposited Two Thousand Dollars, <sup>are</sup> is about to ~~lose~~ <sup>chisel</sup> out of his money. Since the Plaintiff in error has been indulged in his statement, let us make ours.

Hall & Brothers were Bankers at Aurora, on the 17th day of



31 122  
Hall  
18  
Jones

Depts. Brief

Index May 6. 1863

G. L. Leland  
CWR

upon these judgments. If our judgments are set aside, we lose  
the judgments, and we are defeated under execution process  
indefinitely. The bills are chiefly judgments. While before  
involvement and contained the judgments to Henry White, his  
undisputed ownership of the property after D. B. Williams became  
then the stock of Leland, under what was supposed to be an  
act they could be sold legally. The executions were levied  
on Leland, because each, supposing, which could be got up and  
held in name of D. B. Williams & Co. The notes were payable  
to him and a notice and certificate of interest in a stock of Leland  
noted that he should have judgments on them paid. Martin W.  
bearing before the Court, for a motion for a rehearing. It was  
also the note in the case of Williams and Leland Jones now  
containing a receipt for the debt; the note in suit in this case is  
altered, and they promised to protect him. He got two notes re-  
specting and each the same dollar. Our client had two notes  
November 1. D. B. Williams. They will get their notes one

do as just as it possible.

B. B. PARKS and EDWARD G. HAZARD

Attys for Deft in prior

give the matter a full consideration and make the law of the land  
in good thinking circumstances to pass and we ask the Court to  
The foregoing follows in money is a larger sum for a greater

statement, and we are advised by our client that they cannot  
not and we think object to the reason that we can prove our  
but we claim we have just as good a right as the plaintiff in ex-  
We know that perhaps it is not strictly proper to say this

Amora March 27<sup>th</sup> 1863  
L. Selana Esq  
Sir Sir

Your favor of 25<sup>th</sup> inst  
is rec<sup>d</sup> and enclosed please  
find seven dollars six for  
Duties per 50 cts each for stamp  
on writ of error & same for scrip  
facias please attend to it right  
off and advise

Respectfully Yours

C. S. Meyer  
W. Van Watorap



# Supreme Court of Illinois,

THIRD GRAND DIVISION.

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APRIL TERM, A. D. 1863.

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MYRON V. HALL, IMPL. &C. }

vs. }

JOHN JONES. }

JUDGMENT BY CONFESSION.

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## BRIEF AND POINTS FOR PLAINTIFF IN ERROR.

There are two assignments of error in this case: 1st, the Court erred in rendering judgment for the plaintiff, and against the defendant. And 2d, the Court erred in not vacating said judgment on plaintiff in error's motion. Both assignments of error substantially involve the same questions, and can be disposed of together. It is insisted, on the part of the plaintiff in error, first

That the declaration does not support the judgment. The declaration describes a cause of action for one thousand dollars, while the judgment is for two thousand and twenty dollars.

The declaration is a necessary part of the record; it is a part of the proper papers necessary to constitute the record,

24 Ill., 600.

2d. We insist that the note, at the time of the entry of the judgment, was not due. The note is dated November 17th, 1860; the judgment was entered Nov. 20th. The note is payable on demand for \$2000, *with interest after due*, at ten per cent. per annum. We claim that the record must show an actual demand for the money before the entry of judgment, otherwise the judgment is prematurely entered.

A note payable on demand is considered a continuing security.

*Merritt v. Todd.* 23 N. Y. (Just published.)

9th Mees. and Welsl., 15.

And the fact that a note draws interest strengthens the indication that it was for a time to remain unpaid.

*Pars. M. L., p. 107.*

Ordinarily, the bringing of suit is a demand by the payee upon the payor, for payment; but Courts will hardly hold that instituting a proceeding of this kind is a demand. The reason for the rule, is that by the payment of the debt and other costs of the summons, the payor can avoid further cost; but in this proceeding, the first notice the payor has of a demand, is by the sheriff, with the execution.

But again we insist that the warrant of attorney is inconsistent with itself, and authorizes no judgment; it authorizes, in its body, a confession of a judgment against Hall & Brothers, and is not signed by them, but only M. V. Hall.

3d. There is no proof of the execution of the warrant of attorney, in two respects:—1st, it does not state how the witness became acquainted with the handwriting of Hall & Brothers.

3 *Gill*, 644,

4 *Gill*, 85.

And 2d, Hall & Brothers did not sign the warrant of attorney, but one M. V. Hall.

4th. Said *cognovit* is uncertain and insufficient. It does not properly describe the parties in the cause, neither in the caption or body; it is in the plural number.

And 5th, we claim that the *cognovit* was signed by a person without authority from us. (See affidavit of James Herrington, p. 10 of record.) James Herrington swears that he had no authority to sign the name of A. M. Herrington, to said *cognovit*, and that he signed said blank *cognovit* a long time before the warrant of attorney was executed.

Powers, not coupled with an interest, must be strictly pursued. A. M. Herrington would have no authority to confer upon any other person authority to confess a judgment; much less would a person be authorized to enter judgment in his name, without any authority from him, and without his consent. We therefore insist that the Court must condemn such practice, and reverse the judgment.

C. J. METZNER,

*Attorney for Pltfs. in Error.*



Have  
for  
Jones  
122.  
Platts. Bucks

Filed Apr 23. 1843  
L. Seane  
clerk

Supreme Court of the State of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, 1862.

MYRON V. HALL }  
vs  
JOHN JONES. }

ARGUMENT, BRIEF, AND POINTS FOR PLAINTIFF IN  
ERROR.

The first point for which we rely for a reversal of this judgment, is that the declaration does not support the judgment. The cause of action described in the declaration is for *one thousand dollars*, while the judgment is for \$2020. But it is insisted by defendant in error that such is merely a variance, and cannot be taken advantage of at this stage of the cause. Let us see whether this is sound doctrine. *The record is not in a shape so that we could by the record, sustain a plea of former recovery, if another suit had been brought on the note, and why?—because the record, (the declaration,) describes a cause of action for one thousand dollars, while the note is for two thousand dollars, nor would we be permitted to introduce parol evidence to show that the judgment was in fact entered upon this note, for by so doing we would counterdict the record.—*



Again, there is a clear variance between the note in evidence, and the one described in the declaration. While an appearance might cure such a defect, (which is a proposition which we are not willing to admit,) yet, before the Court can render judgment, the authority of the Attorney to appear and confess judgment, must be clearly proven, which has not been done in this case, as the affidavit purporting to prove the execution of the warrant of Attorney is fatally defective, and hence there is no appearance. But we insist that an appearance cannot cure the defect, and that in a proceeding of this kind, a sufficient declaration must be filed, to make the record sufficient to sustain the judgment. The declaration is a necessary part of the record.

24 Ill. Rep. 600.

The second point is, that the note at the time of the entry was not due, and therefore the judgment was prematurely entered. A note payable on demand is due on demand, but there must be an *actual demand* for the money; and while it is true that the bringing of the suit is a sufficient demand, yet such is only the case where the suit is commenced by summons. There the payor can save further costs by paying the amount of the note, and the costs of summons, which is but trifling. But in this proceeding the first notice that the payor has of a demand for the money is when the Sheriff calls on him with the execution. Will any one say that a Court will permit such an abuse of its proceedings? Compel a man to pay a bill of costs without giving him an opportunity to avoid it? We think not. It is no hardship to the payee to say to him, before you shall have the aid of the Court in this matter, you must give the payor an opportunity to avoid costs, especially, as this note was intended as a continuing security, and was for a time to remain unpaid, and unsatisfied, drawing interest at ten per cent. Nor is the position taken by the Attorney for the defendant in error, upon this question correct, for the cases by him cited, are not in point. These cases establish the doctrine that a note payable on demand, is due on demand, but do not do

away with the necessity of a demand, nor do they establish the doctrine that the institution of proceedings of this nature, is a sufficient demand.

The third point is, that there was no proof of the execution of the warrant of attorney. 1st. The affidavit does not state *how the witness* became acquainted with the handwriting of Hall & Brothers. This Court in the case of Pate vs. People, 3 Gill 660, said: "The general rule in relation to the proof of handwriting, is that it is not to be made by the comparison of hands, but by the production of witnesses who have acquired a knowledge of the general character of the handwriting of the party.

"The modes of acquiring this knowledge are either by having seen him write, or by having seen letters or other documents which the party has, in the course of his business, recognized or admitted to be his own.

"A witness who has *thus* become acquainted with the handwriting of the party, is allowed to examine the writing in question, and declare his belief, founded on his previous knowledge concerning its genuineness.

"A witness ought first to be asked if he is acquainted with the handwriting of the party. If he answers in the affirmative, he is then asked how he obtained his knowledge. *It is only when he professes to have this knowledge acquired from legitimate sources that he is permitted to express an opinion.*"

It seems that the above authority is directly in point. The affidavit fails to show that the witness *acquired his knowledge of the handwriting from a legitimate source.*



And 2d. The warrant of attorney is not signed by Hall & Brothers, *but by M. V. Hall alone*; the witness nowhere states that he is acquainted with the handwriting of M. V. Hall; that he obtained such acquaintance from a *legitimate* source, either by having seen him write, or seen papers signed by Hall, which Hall in due course of business admitted to be his own signature. *Non constat* but what some other member of the firm of Hall & Brothers signed the warrant of attorney.

But it will be argued by the Attorney for the defendant in error, that the judgment is entered in term time, and therefore every presumption is in favor of sustaining the judgment, and that the proper proof was made. But in answer to that, we say that the record shows that the affidavit on the back of the note and warrant of attorney, was the only proof of its execution. No evidence was received in open Court. The affidavit on the back of the warrant of attorney, was the only proof, and by the affidavit filed by the plaintiff in error, on the motion to vacate the judgment, it appears that no other proof of the execution of the note and warrant of attorney was introduced at the time of confession of the judgment. But the record shows conclusively that the judgment was entered in the same manner as in vacation, the same papers were filed as under the vacation practice.

The last point is that the cognovit was signed by a person who had no authority to sign the name of A. M. Herrington to such cognovit. James Herrington swears that he signed the name of A. M. Herrington to said cognovit, that such signing was wholly unknown to, and without the permission of said A. M. Herrington, and that such blank cognovits were afterwards unbeknown to said James Herrington, filled up and used in this cause. I need not dwell at length upon the propriety of such practice, but will confine myself entirely to the questions of law arising in the case. This Court in the 24th Ill. 601, says: "It is a rule of general application that all powers not coupled with an interest must be strictly pursued in their execution. And in 5th

"Hill N. Y. P. 497, the Court says: 'An authority to confess judgment without process must be clear and explicit and must be strictly pursued.'

"In the 15 Pick. 307, the Court says: 'The general principle is that a delegated authority can be executed only by the person to whom it is given, for the confidence being personal cannot be assigned to a stranger.'"

Apply the law as above quoted, to the facts in this case, and there can be no doubt but what the judgment was entered without authority. Even if the cognovit had been signed by James Herrington in the name of A. M. Herrington by his consent and authority, it would have been illegal as he had no power to delegate the authority conferred upon him. The confidence given was personal and could not be delegated, we had a right to have an attorney with legal attainments to confess the judgment in a proper manner, upon a declaration that describes the cause of action correctly, *so that the judgment would be a bar to another recovery upon the same cause of action.*

But in this case the signature was without authority, and null and void, and the Judgment for that alone, should have been vacated.

But when this cognovit was signed by James A. Herrington this warrant of attorney and note were not in existence, and the subsequent execution of the note and warrant of attorney, would not make legal and valid, the act of James A. Herrington, which was unauthorized and illegal.

It has been urged by the Attorney for the defendant in error, that this all might be true, and yet A. M. Herrington might have confessed the judgment in open Court; such an event the record clearly shows did not occur, for the record shows that the declara-



Again, it is urged by the attorney for defendant, in error, that A. M. Herrington made no protestations as to the use of his name to said cognovit. Assume that mere assertion to be true, and he also knows that the imposition and unauthorised use of his name was not discovered till at the last February Term of the Kane County Circuit Court, and that then A. M. Herrington, during the entire term of said Court, was in Springfield, attending the meeting of the Legislature.

It is also said by the gentlemen that the statement of the Counsel for the plaintiff, in error, as to the facts in the case amount to nothing &c., and in his argument the counsel for the defendant, in error, proposes to give what he calls his side of the case, and while the Court tries the case upon the law, and not upon questions of fact, yet *the statement of facts as shown by the bill of exception, was made at the request, and for the information of the Court,* in the presence of Mr. Wheaton, then counsel for the defendant in error, by his consent, who acquiesced in the statement, and made no objection.

A few general remarks in answer to the bombastic and untrue assertions made by the counsel for the defendant in error, will conclude my argument. It seems that the counsel for the defendant has resorted to the old trick of *crying stop thief*, to cover up the illegal and rascally transactions of the defendant in error and

The production was not so well received  
all errors by the same in the letter, in  
answer of which we say, for the benefit  
of agreement in the illustration of the  
production we have written our own  
of error. 1843. Wm. 1844.  
April 24. This volume of any number  
to be published generally & will have not  
been done in the same way. 1848.  
October, 1848. W. 1848.

some of his legal assistants. His long statement of what he gives as facts, are utterly at variance with what in reality occurred. I should not have answered any portion of them, if it were not for the fact that silence might be construed as an acquiescence in his statements. But so far as the statement that the note is an honest debt, due by Hall to Jones is concerned, it is entirely unwarranted and untrue. When an opportunity is presented for making a proper defence to the note, that defence will be made.

The gentleman says with reference to the statement made by the Attorney in the Court below 'that it seems to them a sort of chuckle over the fact that Hall & Brothers were about to chisel Jones out of his money.' Where is the evidence in the record that any such attempt was ever made by Hall & Brothers; or that Jones ever had money with them on deposit? There is none in the record, and these statements seem to be necessary to prop up, and uphold a judgment pregnant with errors and obtained by fraud. The gentleman knows that the statement was made at the request of the Court, and for the information of the Court, by the consent of Mr. Wheaton, then attorney for Jones.

Then the gentleman goes on and makes a statement as to the facts, which is entirely at variance with what really occurred in the transaction. He says: "Jones received these two notes as collateral security for the payment of the money claimed by him." If the notes were the same debt, how is it that one is for \$2000, the other for \$2020? We will show to the Court why our version of the affair is correct; the Hall note was for \$2000, together with \$20 attorney fees. Judgment was entered upon it; the amount of the judgment was \$2020, and in the payment of that a note was executed by Hall & Waterman, (Waterman as security,) for \$2020 dollars, with the understanding that they were to have time. *It was to be a continuing security*, but the note had hardly got into his possession before judgment was entered upon it by Jones, and property levied upon amounting in value to \$5000, and that was to be sacrificed for the benefit of Mr. Jones, at a



Sheriff's sale eleven days after the execution was issued upon the judgment, and then when Hall & Waterman found that they were to be sacrificed in violation of their agreement, they then looked to the protection of their legal rights, by suing out a writ of error on the Judgment.

The gentleman further says : "That two thousand dollars is a large sum for a farmer in good middling circumstances to lose." Where is the evidence in the record to warrant such an assertion? Where is the evidence that Jones will lose the two thousand dollars, if it is an honest bona fide debt? "A farmer in good middling circumstances," why is that expression used? where is the evidence that Jones is a farmer? none whatever. A farmer is a man whose occupation is to till the soil, and earns a living by honest, hard work. In what part of the record does it appear that Jones is a man of that calling? Nowhere. And if it did, the tears of several homeless families of Kane County, would testify to the contrary. In conclusion we ask the Court to carefully consider the record, the errors assigned, the authorities cited, and with pleasure we will submit to its adjudication.

CHARLES J. METZNER,  
Att'y for Plff in Error.

122.-31  
Myron W Hall  
vs  
John Jones  
Brief & Argument  
for Plaintiff in Error.

Filed May 5, 1863  
J. L. Lander, Jr.



Myrow & Hall v. plead, &c. Supreme Court  
vs  
John Jones  
of the State of  
Illinois, &c.  
1863

Writ of Error to Kane.

To the Clerk of said Court:

Sir:

Please issue  
a writ of error in the above cause, to  
the <sup>Circuit</sup> Clerk of Kane County in a cause  
where John Jones is plaintiff & Myrow &  
Hall v. plead, &c. defendants.  
And oblige

Wm. H. Metcalf

Att'y for Petitioner.

P.S. You will also find enclosed \$5.00  
docket fees, for which you will forward  
me a receipt. Send the writ of error to  
me and I will have the Sheriff serve it.  
Aurora Ills March 23<sup>d</sup> 1863.

P.S. I don't know whether the judges fees  
has to be paid in advance, if not I will  
settle for them, the 1<sup>st</sup> day of term.

31 122  
Myra B. Hall  
John Jones  
Precipe

Filed Dec. 28. 1863.  
Island Ck.



Supreme Court of Illinois  
Third Grand Division

Myron D Hall  
D W Waterman

Plffs in error

N<sup>o</sup>. 76

vs

John Jones

Deflt in error

"

In addition to the authorities already cited in this case, as to the method of computing time, I beg leave to call the attention of the Court to, *Merritt vs Todd* 23 New York (just published),

That was a case, where a note was made payable on demand with interest, as at the case at bar, payment of the note was not demanded until over three years after its date, and the question was whether such delay discharged the indorser. The Court of appeals held that it did not, and Ch J, Comstock in delivering the opinion of the Court to that effect placed it upon the following grounds.

"We think that a note payable on demand with interest is a continuing security from which none of the parties are discharged until it is dishonoured by an actual presentment and a refusal to pay. The loan or forbearance of money may be for a definite or an indefinite time. If the parties declare in the written instrument which is the only evidence of their agreement that the money shall be paid on call with interest in the meantime a productive investment of the sum for some period of time is plainly intended, what then is that period? The only answer which can



be given is that it is indefinite or undetermined and ascertained only by an actual call for the money, and if that be the meaning of the principal parties the indorser must be deemed to lend his name to the contract with the same intention.

Precisely the same doctrine has been held by the English Courts. Thus in *Brooks v Mitchell* 9 Mees & Welsb, 15 The Court say, a promissory note payable on demand is intended to be a continuing security. It is quite unlike the case of a Check which is intended to be presented speedily. Such was also the doctrine laid down in *Barough v White* 4 B & C 325.

It is evident then that in view of all the authorities cited on this point that the following propositions are established

1<sup>st</sup>. That when an act is to be done, from and after a particular date, the day of the date is to be excluded in the computation unless there is something in the agreement manifesting a different intention, and that this is the legal construction of the word from & after.

2. That a note payable on demand with interest is a continuing security & hence in the case at bar, the whole instrument taken together shows affirmatively that the parties intended that the legal construction should be given to the word from and after.

The note calls for interest, and the Warrant of Attorney authorizes the entry of Judgment upon it, at any time from and after its date, with interest at ten per cent per annum.



up to the day, of the entry of Judgment.  
thus showing beyond all question that it was  
not <sup>the</sup> intention to have Judgment entered on the  
same day

Ed Stone



171 - 31

Oto y b

Heall  
vs  
Jones

Ptts Ayt.

my affidavit

added in Heall

Given Nov 14, 1862

J. J. Leland  
clerk



1  
United States of America }  
State of Illinois. County of Kane }

Was at a  
regular Term of the Circuit Court  
of said County of Kane, begun <sup>and</sup>  
held at the Court House in Geneva  
in said County of Kane, on Monday  
the second day of February, in the  
year of our Lord one thousand  
Eight Hundred <sup>and</sup> sixty three,  
being the first Monday of said  
Month.

Present Isaac G. Wilson Judge  
Joseph N. Whipple Sheriff  
Charles J. Metzger States Attorney

Attest.  
Thomas C. Moore  
Clerk.

Be it remembered that heretofore, to wit:  
on the 20<sup>th</sup> day of November 1860. the follow-  
ing paper was filed in the office  
of the Clerk of said Court, to wit:



State of Illinois } ss. Circuit Court of Kansas  
Kansas County } County, November Term A.D. 1860.

John Jones Plaintiff in  
his suit, by Charles B. Wells Attorney, complains  
of Myron V. Hall and Philip A. Hall partners  
doing business under the firm name of Hall and  
Brothers Defendants in a plea of trespass on the  
case on promises: For that whereas the said  
Defendants, heretofore, to wit: on the 17<sup>th</sup> day of  
November in the year of our Lord one thousand  
eight hundred and sixty at Aurora, to wit: at  
said County of Kansas, made their certain promis-  
sory Note in writing, bearing date the day and year  
aforesaid, and then and there delivered the same  
to the plaintiff in and by which said note, said  
Defendants by the name, style & description of  
Hall and Brothers promised to pay to the  
order of the said plaintiff the sum of Thou-  
sand Dollars on demand with interest after  
due at ten per cent per annum for value  
received, By means whereof, and by force  
of the Statute in such case made and provided,  
the said Defendants became liable to pay to said  
Plaintiff said sum of money mentioned in said  
note, and being so liable, in consideration thereof  
then and there undertook and promised to pay  
the said Plaintiff same to the said Plaintiff



3

according to the tenor and effect, true intent and meaning of the said note, to wit: at the place aforesaid.

Yet the said Defendants, although often requested, &c., have not yet paid the said sum of money, or any part thereof to the Plaintiff, but so to do have hitherto wholly refused, and still do refuse, to the damage of the Plaintiff of Three Thousand Dollars, and therefore he brings suit, &c.

Charles B. Mills Plaintiff's attorney

Myron V. Hall }  
advs }  
John Jones }  
Circuit Court of Kane County  
November Term A.D. 1860  
Cognovit

And the said Myron V. Hall Defendant in the above entitled suit, by A. M. Herrington their Attorney come= and defend the wrong and injury, when, &c., and waived service of Process, and say that they cannot deny the action of the said Plaintiff nor but that the said plaintiff has sustained damage on occasion of the nonperformance of the several promises and undertakings in the said declaration mentioned, including the sum of Twenty Dollars, for his reasonable Attorney's fees for entering up this judgment

over and above all other costs and charges  
by him about his suit in this behalf expended to  
the amount of Two Thousand & Twenty Dollars  
And the said Defendant further agree that no  
writ of Error or appeal shall be prosecuted on  
the judgment entered by virtue hereof, nor any  
bill in equity filed to interfere in any manner  
with the operation of said judgment, and that  
they hereby release all errors that may intervene  
in entering up the same, or issuing the execution  
thereon, and consent to immediate execution  
upon such judgment.

A. M. Kerrington  
Defendants Attorney.

On which was the following endorsement  
Filed Nov 20<sup>th</sup> 1860

J. R. Wright  
Clerk

And afterwards to wit: On the 20<sup>th</sup>  
day of November AD 1860 the following paper  
was filed in the office of the Clerk of said  
Court. to wit:



2,000

Aurora, Nov. 17<sup>th</sup> 1860

5

On demand for value received, we  
promise to pay to John Jones or order, at the  
Bank of Aurora Two Thousand Dollars with  
interest after due, at ten per cent. per annum.

Nall & Brothers

Know all men by these presents, that we  
Nall & Brothers of Aurora, <sup>are</sup> justly indebted  
to John Jones, upon a certain Promissory Note,  
bearing even date herewith, for the sum of Two  
Thousand Dollars, with interest after due, at  
the rate of ten per cent. per annum, and due  
on demand. Now therefore, in consideration of  
the premises, we do hereby make, constitute and  
appoint W. B. Platts, or any attorney of any Court  
of Record, to be our true and lawful Attorney,  
irrevocably for us and in our names, places and  
stead, to appear in any Court of Record, in  
term time or in vacation, or before any Justice  
of the Peace in any of the States or Territories of  
the United States, at any time from and after  
the date hereof, to waive the service of process,  
and confess a judgment in favor of said John  
Jones or their assigns, or assignees upon the said  
Note, for the ~~subscribed~~ sum, or for as much as appears  
to be due according to the tenor and effect of  
said Note, and interest thereon, to the date  
of entry of such judgment together with



all costs, and Twenty Dollars Attorneys fees;  
and also to file a cognovit for the amount that  
may be so due, with an agreement therein that  
no writ of error or appeal shall be prosecuted  
upon the judgment entered by virtue thereof,  
nor any bill in equity filed, to interfere in  
any manner with the operation of said Execu-  
tion judgment, and to release all errors that  
may intervene in the entering up of said judg-  
ment or issuing the Execution thereon, and  
also consent to immediate execution upon such  
judgments. Hereby ratifying and confirming  
all that our said Attorney may do by vir-  
tue hereof.

Witness our hands and seals this  
17th day of November A.D. 1860.

In the Presence of J.  
State of Illinois  
Hauw County

M. V. Hall

Filed  
Nov 20<sup>th</sup> 1860



Chas. Patten first being

duly sworn doth depose and say, that he is  
well acquainted with the hand writing of Hall  
& Brothers, & that he believes that the signatures  
to the within noted Power of attorney to be  
true and genuine.

Sworn and subscribed  
to before me this 20th day  
of November A.D. 1860

Chas. Patten

P. R. Wright

Clerk



7

On which was the following  
Endorsement, to wit:

Filed Nov. 20<sup>th</sup>/60

P. R. Wright

Clk.

And Be it remembered that heretofore  
to wit On the 20<sup>th</sup> day of November A.D. 1860,  
the same being one of the days of the November  
Term of said Court, the following amongst  
other proceedings was had and entered of  
Record in said Court, to wit:

John Jones

7613

Myron V. Hall impleaded  
with Philip A. Hall

} Assumpsit

This day comes  
the Plaintiff by Wells his attorney and files  
his declaration against the Defendants herein.  
Whereupon comes the Defendant Myron V.  
Hall by A. M. Harrington his attorney duly  
authorized by virtue of a Warrant of attorney  
filed herein the execution of which by said  
Defendant is duly proved, waives service  
of process, and says that he cannot deny the  
action of the Plaintiff and that the Plaintiff  
has sustained damages on occasion of the  
nonperformance of the promises in said

declaration mentioned, including Twenty Dollars attorneys fees, to the amount of Two Thousand and Twenty Dollars.

It is therefore considered by the Court that the Plaintiff have and recover of the said Defendant Myron V. Hall, the sum of Two Thousand and Twenty \$ 20 20.<sup>00</sup> Dollars, damages aforesaid, and also the costs in this suit expended, and that he have execution therefor, and that such execution issue forthwith.

And afterwards, to wit: On the 16<sup>th</sup> day of February A.D. 1863, the same being one of the days of the February Term of said Court: the following, amongst other proceedings, was had and entered of Record in said Court, to wit:

John Jones

Myron V Hall in

pleaded with Philip A. Hall

} Motion to vacate Judgment

This day comes the Plaintiff by Wheaton his attorney, and the Defendants by Metzner their attorney also comes and enters their Motion to vacate the judgment



3

9 heretofore rendered herein, coming on to be heard, after hearing the argument of Counsel, the Court being fully advised, overrules the same: to which ruling of the Court, the Defendant, by his attorney Excepts; And it is ordered That Defendants may file their bill of exceptions herein, within twenty days.

And afterwards, to wit: On the 17<sup>th</sup> day of February A.D. 1863, the following bill of Exceptions was filed in the Office of the Clerk of said Court, to wit:

|                      |                                                             |
|----------------------|-------------------------------------------------------------|
| John Jones           | } H. County<br>Circuit Court, Feb-<br>ruary Term A.D. 1863. |
| vs.                  |                                                             |
| Myron V. Hall imple. | } Motion to vacate Judgment                                 |
| with Philip A. Hall  |                                                             |

Be it remembered that on the 16<sup>th</sup> day of February A.D. 1863, it being one of the days of the February Term A.D. 1863, of said Court, said defendant Myron V. Hall having filed his affidavits in support of said motion, which said affidavits are as follows, to wit:



John Jones  
vs

Myron V. Wall impleaded  
with Phillip A. Wall

Band County Circuit  
Court November Term A.D.  
1860.

Judgment by Confession

State of Illinois vs.  
Band County

Daniel B. Waterman of the County

of Band, State of Illinois, being first duly  
sworn upon oath says, that he is well ac-  
quainted with the firm of Wall & Brothers,  
that said firm on the 17<sup>th</sup> day of November A.D.  
1860, <sup>20<sup>th</sup> Nov. 1860</sup> was composed of the following named per-  
sons, to wit: Myron V. Wall & Phillip A. Wall,  
this affiant would further state, that an execu-  
tion was issued upon the judgment entered  
up in the above cause, and delivered to the  
Sheriff of Band County for collection & fur-  
ther deponent saith not

Subscribed and sworn to  
before me, this 22<sup>nd</sup> day of  
September A.D. 1862

A. F. Van Hookwick J.P.

Daniel B. Waterman

Filed Sept 23<sup>rd</sup> / 62

J. C. Moore Clerk

John Jones  
vs

Myron V. Wall, impleaded &c.

Band County Circuit Court,  
February Term A.D. 1863,

Judgment by Confession

James Harrington being first



11  
duly sworn, on oath doth depose and say,  
that sometime previous to the entering up of the  
Judgment herein, C. P. Wells plaintiffs attor-  
ney, came to the office of A. M. Herrington,  
where this affiant then was. And presented to  
this affiant three blank Cognovits, and  
requested this affiant to sign the name of  
A. M. Herrington as defendants attorney, to  
the same, stating that he had accommodated the  
said A. M. Herrington before in the same way,  
and that if your affiant would so sign  
said Cognovits as said Wells requested, it would  
be all right, that after some hesitancy on the  
part of this affiant, this affiant did sign of  
said three blank Cognovits with the name of A. M.  
Herrington Defendants attorney, the signing of  
which was wholly unknown to and without the  
permission of A. M. Herrington, that one of  
said blank Cognovits was afterwards and  
unknown to this affiant filled up and  
used in this cause.

And further this affiant saith not.

Subscribed and sworn to  
before me this 2<sup>nd</sup> day  
of February 1863.

D. C. Moore

Clerk.

James Herrington

Filed Feb. 2<sup>nd</sup> / 63

D. C. Moore  
Clerk



John Jones  
vs

Myron V. Hall impleaded  
with Philip A. Hall

Moane County Circuit Court.  
November Term, A.D. 1860

Judgment by Confession

State of Illinois ss.  
Moane County

Charles J. Metzner being  
first duly sworn, upon oath says that he is  
the attorney for the defendant in the above entitled  
suit, that an Execution was issued in the judg-  
ment entered in said cause against the defen-  
dant Myron V. Hall, directed to the Sheriff  
of Moane County, and delivered to him for  
collection. This affiant would further state that  
said judgment was entered up by virtue of  
a power of attorney attached to the Note a-  
mong the files of the papers in said cause,  
and that the affidavit on the back of said  
Warrant of Attorney as this affiant verily  
was the only proof of the Execution of said  
Warrant of Attorney. And further de-  
ponent saith not.

Subscribed and sworn to  
before me this 22<sup>nd</sup> of September  
A.D. 1862. N. F. Van Bortwick

Charles J. Metzner  
J.P.

Filed Sept 23/62

V. C. Mome  
Clerk.



13

and C. J. Metzner the attorney for the defendant Hall, having made the following statements as to the facts in this case, to wit: the judgment in this cause was entered up by virtue of the warrant of attorney attached to said note at the November Term A.D. 1860 of this Court. that an execution issued upon said judgment & a levy made upon Hall's interest of the stock goods belonging to D. B. Waterman & Co. that afterwards, <sup>in full</sup> payment of said judgment, costs & attorney fees, upon which note another judgment was entered, which was afterwards reversed by the Supreme Court, and said affidavits together with said statement being all the evidence produced by either party on said motion, and said plaintiff having entered his appearance in said motion by Charles Wheaton his attorney, and the Court being fully advised in the premises overruled said motion to vacate said judgment to which decision of the Court in overruling said motion said Defendant Myron V. Hall then and there excepted and prays that his said bill of exception may be signed and sealed which is done &c.

Isaac G. Wilson Clerk  
 Sdgd

On which was the following

endorsement, to wit:

Filed July 17/63.  
D. C. Moore  
Clerk



State of Illinois vs.  
Kane County

J. Thomas C. Moore  
Clerk of the Circuit Court.

in and for said County, in the State aforesaid  
Certify the foregoing to be true and complete  
copies of all the papers on file <sup>in</sup> my office, and  
orders of Court had and entered of Record,  
in a cause lately pending and determined therein  
wherein John Jones was Plaintiff and Myron  
V. Hall and Philip A. Hall were Defendants.

Witness, Thomas C. Moore Clerk  
of said Court and the seal  
thereof, at Geneva, this 18<sup>th</sup> day  
of March A.D. 1863.



J. C. Moore  
Clerk

Myron W Hall in plead. &c.  
John Jones

Supreme Court of  
the State of Illinois  
April term AD  
1863 3<sup>d</sup> Grand  
division.

And now comes the said plaintiff in error  
by C. J. Metzner his attorney. And prays there is  
error in the foregoing record and the proceed-  
ing therein set forth in this to wit 1<sup>st</sup>  
the Court erred in rendering judgment in  
favor of defendant in error and against  
plaintiff in error. 2<sup>d</sup> the Court erred in  
not granting plaintiff in error motion  
to vacate said judgment wherefore said  
Plaintiff in error prays that said judgment  
may be vacated reversed and annulled  
&c.

Charles J. Metzner  
Att'y for Plaintiff in error.

And the said Defendant in error by  
B. F. Parks and a Blanchard his  
Att'y says there is no such error as is  
alleged above

B. F. Parks and  
Blanchard for defendant



31 122  
John Jones

*ats.*

Myron V. Hall *and*

Philip A. Hall

Asst. Cog

Filed April 1, 1863

Sealand

Clk

Fees \$5.00