

No. 13399

Supreme Court of Illinois

corbin et al

vs.

McChesney

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 107.

*McLesney
vs
Carhart*

1861

133 B/9

SUPREME COURT OF ILLINOIS.

Third Grand Division, }

APRIL TERM, A. D. 1861. }

Daniel W. Corbin and
James Duffy,

Plaintiffs in Error,

v s.

Hiram McChesney,

Defendant in Error.

ERROR TO THE

SUPERIOR COURT

OF CHICAGO.

ABSTRACT OF RECORD.

This was an action of assumpsit tried before the Hon. VAN H. HIGGINS, one of the Judges of said Court, without a jury, on the 21st day of May, A. D. 1860.

14, 15 The only contest was as to one item of plaintiff's account.

16, 17 Defendants had been partners in the name of D. W. Corbin &
18 Co.; and as such, had dealings with the plaintiff, in which plaintiff
24 became indebted to the defendants in the sum of about \$60, ex-

25 cluding the sum of \$119 in dispute. Duffy was indebted to the
plaintiff in the sum of \$119, and by his direction, the book-keeper
19 credited the plaintiff and charged Duffy with that sum on the
books of the defendants.

27 There is considerable evidence as to the knowledge of Corbin
that such credit had been made and of his ratification of the same,
but no evidence of any writing signed by him ; and thereupon his
counsel objected that the plaintiff could not recover against him,
because there was no note or memorandum in writing signed by
him, containing any promise or agreement to pay the debt of his
co-defendant Duffy. But the Court decided that the original debt
of the defendant Duffy was extinguished, and the new debt of the
defendants substituted therefor ; and that no note or memorandum
in writing was necessary to bind the defendant Corbin.

28 The Court found for the plaintiff and the defendants excepted.

Defendants also moved for a new trial, because *inter alia* the
Court erred as to the law of the case upon the statute of frauds,
which motion the Court overruled and defendants excepted.

31 Defendants bring the cause to this Court by writ of error, and
assign for error :

1. That the Court erred in deciding that no note or memorandum in writing was necessary to bind the defendant Corbin.

2. That the Court erred in rendering judgment for the plaintiff.

VAN BUREN & GARY,

Attorneys for Plaintiffs in Error.

SUPREME COURT OF ILLINOIS.

Third Grand Division, }

APRIL TERM, A. D. 1861. }

Daniel W. Corbin and
James Duffy,

Plaintiffs in Error,

v s.

Hiram McChesney,

Defendant in Error.

The only question in this cause is upon the statute of frauds.

The case shows simply that Corbin & Duffy were partners. McChesney was indebted to them -- Duffy was indebted to McChesney in a larger amount, and credited McChesney with that amount upon the books of Corbin & Duffy, so as to turn the balance upon those books in favor of McChesney. From the evidence, the Court below believed that Corbin assented to or ratified the transaction, but there is no pretence that any writing, in compliance with the statute of frauds, was ever made.

McChesney sues Corbin & Duffy for the balance thus created in his favor.

There is manifestly no consideration, express or implied, on the part of Corbin to contribute to the payment of Duffy's debt, but we relied upon the statute of frauds, as a simple and perfect defence. *Eddy et al vs. Roberts*, 17 Ill. R. 505.

Hite v. Wells 17 Ill. 88.

VAN BUREN & GARY,
Attorneys for Plaintiffs in Error.

107-42
Daniel W. Corbin
et al

by
Hiram McChesney

Abstract & brief
for appltg

Filed April 17, 1861
Heldman
CR

Van Buren & Gary
appltg attys.

Know all men by these presents that we Daniel W. Corbin as principal & Daniel B. Shipman as surety are held & firmly bound to Hiram W. Chesney in the penal sum of Two Hundred Dollars for the payment whereof to the said Hiram W. Chesney his executors administrators or assigns we hereby bind ourselves our heirs executors & administrators jointly & severally by these presents.

Witness our hands & seals this 30th day of May A.D. 1860—

The Condition of the above obligation is such that whereas the above named Hiram W. Chesney did at the May Term A.D. 1860 of the Superior Court of Chicago recover in said Court a judgment against the above bounden Daniel W. Corbin and one James Duffy for the sum of Fifty five dollars & sixty five cents damages besides costs of suit from which judgment the said Daniel W. Corbin is about to prosecute a writ of error to the Supreme Court of the State of Illinois in the name of the said Duffy & himself. Now if the said Daniel W. Corbin shall well & truly pay the judgment,

Costs, interest & damages in case
the said judgment shall be
affirmed & shall also duly
prosecute said writ of error
then the foregoing obligation
shall be void - otherwise to
remain in full force -

Signed sealed & delivered
in presence of {

Daniel W. Perkins (Sd)

Saml B. Shipman (Sd)

It is hereby stipulated between
the parties to the above mentioned
writ of error that the above bond
is satisfactory & that upon filing
the same, with the transcript
of the record & assignment of
errors in the office of the Clerk
of the Supreme Court at Ottawa,
the said writ of error shall be
made a supersedeas -

Chicago May 30th 1860.

Hooper & McNeill

Atty for Peff

McChesney
as
Cabin etal
Bond

Filed June 22. 1860
L. Leland
Clerk

STATE OF ILLINOIS,
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of

Cook

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Superior Court of Chicago Cook County, before the Judge thereof, between Hiram McChesney

plaintiff, and Daniel W. Corbin & James Duffy

defendant^s, it is said that manifest error hath intervened, to the injury of the said defendants

as we are informed by their complaints — the record and proceedings of which said judgment 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 Hiram McChesney

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 Hiram McChesney

notice, together with this writ.

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 26th day of June in the Year of Our Lord One Thousand Eight Hundred and Sixty

L. Leland

Clerk of the Supreme Court.
by J. B. Rine Deputy

We hereby accept service of the
within writ for the within named
Hiram W. Chesney & enter our
appearance for him in the
Supreme Court in the within
Cause — Chicago July 3, 1860

Hooper & Skunk

107

Daniel W. Corbin

& James Duffly

No.

vs.

Hiram W. Chesney

SCIRE FACIAS.

FILED

July 5, 1860

C. Veland

Clerk.

Served

United States of America
State of Illinois Cook County P.

Cases before the Honorable
the Judges of the Superior Court of Chicago within
and for the County of Cook and State
of Illinois, at a regular term of said
Superior Court of Chicago, begun and holden
at the Court House in the City of Chicago,
in said County and State on the first Mon-
day being the seventh day of May in the
year of our Lord eighteen hundred and
sixty and of the Independence of the
United States of America the eighty fourth.

Present The Hon John M. Wilson Chief Justice
of the Superior Court of Chicago.

Sam H. Higgins C. J. Grant Foxworth Judges

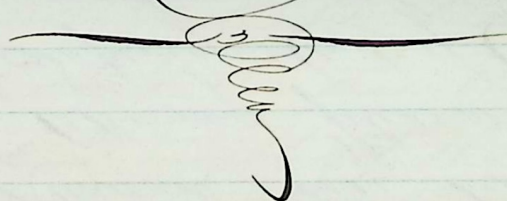
Charles Haven Prosecuting Attorney

John Gray Sheriff of Cook County

Attest

Walter Kimball

Clerk.



2

It is remembered that heretofore, to wit: on the 3rd day of January in the year of our Lord One Thousand Eight Hundred & Sixty, Herman McChesney by his Attorneys, filed in the office of the Clerk of the Superior Court of Chicago, his certain Declaration, in the words & figures following to wit:

Superior Court of Chicago
February Term A.D. 1861.

State of Illinois
Cook County ss.

Herman McChesney Plaintiff
in this suit by Joseph Willard his Attorney
complains of Daniel W. Corbin & James Cuffy
partners in trade under the name, style & firm of
D. W. Corbin & Co Defendants of a plea of trespass
on the case on promises.

For that whereas the said defendants on the twentieth day of January in the year our thousand eight hundred and sixty at Chicago aforesaid, the said defendant were indebted to the said plaintiff in the sum of two thousand dollars lawful money of the United States of America for money before that time lent and advanced by the said plaintiff to the said defendants and at the special instance and

3

request of the said defendants. And for other money by the said plaintiff before that time paid, paid out, and expended for the said defendants, and at the like request of the said defendants - And for other money by the said defendants before that time had and received, to and for the use of the said plaintiff - And being so enabled, the said defendants in consideration thereof, afterwards, to wit: on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sum of money in this Count mentioned, when the said defendants should be therunto afterwards requested.

And whereas also the said defendants afterwards, to wit: on the same day and year last aforesaid, and at the place aforesaid, accounted together with the said plaintiff of and concerning said other sum of money before that time due and owing from the said defendants to the said plaintiff, and then and there being in arrears and unpaid, and upon such accounting the said defendants then and there found themselves in arrears, and indebted to the said plaintiff in the further sum of two hundred dollars, of like lawful money, as aforesaid.

4

And being to found in arrears and indebted to the said plaintiff, the said defendant in consideration thereof, afterwards, to wit: on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned, when the said defendants should be thereunto afterwards requested.

Nevertheless the said defendants (although ^{on the day when the said note became due and payable, according to the tenor and effect, at} ~~thereof, and often times since to wit,~~ ^{often requested, &c. to wit,} at the place aforesaid,) have not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff, but to pay the same, or any part thereof, to the said plaintiff the said defendants have hitherto altogether refused, and still do refuse, to the damage of the said plaintiff of ten hundred dollars and therefore the said plaintiff brings suit, &c.

Horace Willard

Atty for Plff

D. H. Corbin & Co.

To Henry McChesney

To Groceries, provisions & more

\$200

To money lent

\$200

To balance due

\$200

To Work & Labor

\$200

Horace Willard for Plff

5 And afterwards, to wit, on the 10th day of February, in the year aforesaid, said day being one of the days of the February Term of said Superior Court, the following among other proceedings were had and entered of record in said Court, to wit:

William McChurney
as Assumpsit
Daniel H. Corbin
James Coffey.

On motion defendants it is ordered that the rule to plead herein be and is hereby extended to Monday next.

And afterwards, to wit, on the 5th day of March, in the year of our Lord one thousand eight hundred and sixty, the said Defendants by their Attorney filed in the office of the said Clerk of said Court their certain Declaration, in the words of figures following, to wit:

6 Daniel H. Fortney
James Coffey
at
William W. Cheney

In the Superior
Court of Chicago
of the March Term
A.D. 1860.

And the said defendants by
Van Buren & Gay their attorneys come & defend
the wrong & injury when &c. & say that they
did not undertake or promise in manner
or form as the said plaintiff in his said
Declaration has above thereof complained
against them & of this they put themselves
upon the Country &c.

And for a further plea in this behalf
the said defendants say actio non &c. because
they say, that the said plaintiff before & at
the time of the commencement of this suit,
to wit: at said County was & still is indebted
to the said defendants in a large sum of money
to wit the sum of Two hundred dollars. for
divers goods, wares & merchandize sold & deli-
vered by the said defendants to the said plaintiff
& at his request & for money by the said defend-
ants before that time lent & advanced to & paid,
laid out & expended for the said plaintiff
& his like request & for money before that time
by the said plaintiff had & received to & for
the use of the said defendants & for money

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due & owing from the said plaintiff to the said defendants upon an account before then stated between them. Which said sum of money so due & owing to the said defendants as aforesaid & such the damages sustained by the said plaintiff by reason of the non-performance by the said defendants of the said several supposed promises & undertakings in the said declaration mentioned & out of which said sum of money so due & owing from the said defendants plaintiff to the said defendants, the said defendants are ready & willing & hereby offer to set off & allow to the said plaintiff the full amount of the said damages according to the form of the Statute in such case made & provided & for the balance thereof the said defendants pray judgment according to the form of the Statute in such case made & provided & that the said defendants are ready to verify wherefore they pray judgment &c.

Van Doren & Gary
 Defts Atty's.

Copy of Aff. filed as set off.

Wm. McChesney in ac^t with P. H. Corbin & Co.

Aug 24	For Mirror	70 00	1857	Apr 6	By Bill Lumber	50 25
Oct 16	" Segars	3 00	1858	May 1	" Cash	30 00
26	" Cash	40 79		24	" Paid down for note	251 00
1858						
Jan 29	" Segars	3 80		"	" Set on same	79 06
Feb 13	" "	3 00		July 3	" Laying Sidewalk	45 55
" 11	" G. taxes	16 12		Dec 4	" Cash	20 00
Apr 15	" Cigars	6 00		Jan 5	" J. C. Mould	18 00
" 19	" "	1 00		" 28	" Cash	60 00
" 20	" "	4 00		Feb 5	" "	18 00
May 1	" Cash	36 00				
11	" "	12 00				
12	" "	2 50				
15	" "	1 10				
31	" Segars	8 00				
June 12	" Cash	43 00				
21	" Cigars	2 00				
24	" "	80				
July 8	" "	2 75				
10	" Cash	10 00				
19	" "	10 00				
24	" "	10 00				
29	" Segars	3 20				
Aug 13	" Cash	10 00				
18	" Segars	5 00				
25	" Cash	10 00				
31	" "	15 00				
Amt Car for		\$329 06		Amt Car for		571 86

		Amt Bro't For?		Amt Bro't For?	
Sept	7 To Cash	5 00	Nov 22 By Cash	45 00	
	13 " "	110 00	Jan'y 9/60 " Balance	63 35	
	22 " Cigar	5 00			
Oct	6 " "	8 00			
Nov	8 " "	8 40			
	22 " "	3 15			
Dec	24 " Cash	20 00			
	22 " Cigar	3 00			
	31 " Cash	150 00			
Jan'y	26/59 " Sugar	4 30			
Feb	16 " "	5 50			
Mar	14 " "	5 00			
Apr	11 " Cigar	3 00			
June	20 " "	8 20			
May	10 " "	13 20			
Sept	29 " "	2 00			
"	7 " "	4 20			
Dec	1 " "	2 00			
"	31 " "	2 20			
Jan'y	9/60 " "	2 00			
		<u>\$ 683 21</u>			<u>\$ 683 21</u>
Jan'y	9/60				
	By I. Balance	63 35			

In the Superior Court
of Chicago
of the March Term A.D. 1860.

Between *Verdict* *James McChesney Plaintiff*
as
Daniel W. Corbin & James Duffy Defendants

State of Illinois
County of Cook

Daniel W. Corbin
being duly sworn says he is one of the
defendants above named & that he
believes that the said defendants have
a good defence to said suit upon the
merits -

Sworn & subscribed
before me this 5th
day of March A.D. 1860
W. Kimball (Clerk)

D. W. Corbin

11

And afterwards, to wit, on the 21st day of May
in the year aforesaid, said day being one of
the days of the May Term of said Court, the
following among other proceedings was had
and entered of record in said Court, to wit:

William M. Cheney Assumpsit
vs
Daniel H. Corbin &
James Paffy

This day comes said plaintiff by Hooper
Stillard his attorney, and said defendants
by Van Buren & Geary their attorneys also come
and upon agreement of the parties made now
here in open Court. This Cause is submitted to
the Court for trial on issues joined without
intervention of a Jury, and the Court now
here after hearing evidence and arguments
of Counsel and being fully advised in the
premises finds issues for plaintiff and
assesses his damages herein to the sum of fifty
five dollars and sixty five cents.

And thereupon defendants submit their
motion herein to set aside finding of Court.

12 And after mass, to wit, on the 23rd day of the
month of June last aforesaid, the said Defendants
by their Attorneys filed in the office of said
Court, their certain Bill of Exceptions in the words
following, to wit:

William McChesney	vs	In the Superior
Daniel H. Foxlin		Court of Chicago
James Duffy		May Term
		A.D. 1860.

Be it remembered that on the 21st day
of May A.D. 1860. the above entitled cause
came on to be tried in said Court & there-
upon the said parties by their respective Attorneys
appeared & waived a jury & submitted the
same to the Court for trial.

And the said Attorneys of the said Plaintiff
to maintain & prove the issue upon his part
produced & read in evidence the deposition
of Joseph C. Mould & the exhibits thereto
attached as follows: to wit:

13

Superior Court of Chicago

Hiram McChesney

vs
Daniel H. Corbin &
James Puffy Assampt

It is hereby stipulated that
by and between the parties that the Deposition
of Joseph C. Mowen shall be taken before
Calvin Dewolf a Justice of the Peace of Chicago
March 2nd 1865.

Cooper & Hillard

Atty for Puff

Vandusen & Gang

Defts Attys.

Deposition of Joseph C. Mowen taken before
C. Dewolf a Justice of the Peace in and for
the County of Cook State of Illinois in
pursuance of the foregoing stipulation to be
used on the trial of said Cause in said
stipulation mentioned. The said Witness
being first duly sworn deposes and testifies
as follows in answer to

Questions by Hillard Atty of Puff

Question 1st What is your name, age, occupation residence

14 & do you know the parties to this suit.

Answer My name is Joseph C. Mould. I am over 24 years of age. I was a Book-keeper for Aft in 1855. to First City Soc. & know the parties to this suit.

Question 2^d Look at account now handed to you, marked Exhibit "A", and state if you know in whose hand writing it is, from whose Book or Books if any the same was drawn, and whether it is a true copy from those Books.

Answer The account now handed me and bills attached & marked Exhibit "A" is in my hand writing. It was drawn from the Books of D. H. Coburn & Co. I should say it is a true copy from those Books.

Question 3 State whether said account is a copy of the whole account between Plff and Defendant as appears from the Books of the Defendants at the time you drew the same.

Answer It is.

Question 4 State whether you have since the time you drew said account drawn another one

15 from the same Books at the request of either of the Defendants, if yes, which of them and wherein does it differ if at all from the one marked Exhibit "A"

Answer Since that time I have drawn another account from the same Books at the request of Defendant Corbin. It differs from said Exhibit "A" only in regard to the last item of credit on Exhibit "A" to the Pff \$119. which is not contained in the last account.

Question 5th State whether the account now shown to you and attached to defendants pleas is the one you drew at Defendant Corbin's request

Answer It is.

Question 6th State at what time you drew each of said accounts?

Answer I drew Exhibit "A" after January 9th 1861, in that month. and the other account which is attached to the Pleas about the 1st of March 1861.

Question 7th Who composed the firm of D. H. Corbin & Co

16 from 1855. to about the 1st of July 1860.

Answer It was composed of Daniel M. Corbin & James Duffy till about 12 or 15th Jan'y 1860. at which time it was dissolved

Question 8th State whether during the time you were in Duffs employ you knew of either or both of Defendants giving credit upon the Books of the Defendants to different parties having accounts with them and changing the name to the individual account of the Defendant upon whose account the credit was given.

Answer There were such transfers made by both the Defendants I should say.

Question 9th Do you recollect calling on one W. K. McAllister with an account of D. M. Corbin & Co. against him, if yes, state what disposition was made of the same?

Answer I did call on him with a Bill which was not on the Books which was against him McAllister - I think the Bill was charged to Mr Corbin by his direction amount about \$300

#17

Question 10th Do you know of the Plff letting one Mr. Tucker have a quantity of wood some time in 1838. If you state if you know, out of whose funds said wood was paid, for, & if out of the defendants funds, state if you know, to which of the defendants it was finally charged & what amount.

Answer I think Mr Tucker did purchase some wood of Plff in 1838 - to amount of about \$35⁰⁰ & the Plff think was paid for by D. H. Corbin & Co. and charged to her on their books, and that it was afterwards charged to D. H. Corbin.

Question 11th Did you make an inventory of the goods & effects in Defendants store at or about the time they dissolved, if you state whether there was any balance on such inventory in favor of the plaintiff if you how much.

Answer I did make such inventory about the 12th January 1840. There was a balance of the same amount as on exhibit "A" which was among their liabilities in the inventory.

18
Question 12th By whose direction did you make said Inventory & State whether either or both of Defendants looked the same over after you completed it

Answer I made it by direction of Defts - & they both looked it over after it was completed.

Question 13th State whether the final footings inventory you speak of was the one shown by Defendants to the Creditors of the defendants soon after it was made, if any was shown as containing an account of their liabilities and assets?

Answer It was.

Question 14th State whether the Defendants about the time of their dissolution showed to any of their Creditors each of their individual accounts, with D. H. Corbin & Co. or the footings of such accounts, if yes, state whether the Charge of \$119. to Duff, which is the last credit upon Exhibit 'A' to the Plff. was included in Defendant Duff's Account.

Answer They showed the balance of each of their individual accounts with D. H. Corbin & Co.

19 said item of \$119. was included in Duffys account.

Cross Ex by Gary for Dft.

1st Question By whose direction did you make said credit of \$119. to Duff on Dfts Books.

Answer By Duffys & the amt was ch^d to him & Cr to McChesney

2nd Question Do you know what the item of \$119. was for.

Answer It was for Duffys private account goods furnished him by Dff.

3rd Question Do you know that Mr Corbin had any knowledge of the credit being made.

Answer I do not know that he saw it on the Books but he had access to them I do not know that he had any knowledge of the credit being made.

4th Cross Question. Did Mr Corbin go East shortly after this credit was made, if so state when? How long gone.

Answer He went East about the tenth day of December 1839. and returned on the 29th day of same month.

57 July Look at paper shown you marked Exhibit "B" state whether you have seen it before. where, & in whose hands?

Answer I have seen said paper before. Mr Cheney gave it to me I think, it was after the dissolution - I gave it to Mr Corbin - He refused to let the law - Mr Cheney gave me the power to present to Mr Corbin for the Pigons.

68 Question Do you know whether before presentation of that order Corbin had any knowledge of the \$119 credit having been made to Puff on the Books of the Defendant.

Answer I do not know of any certain knowledge, but he had access to the Books and to the inventory that had been made out I have no recollection of having seen him look at the items of the account of Puff, or at the inventory.

69 Question At the dissolution of the defendants firm did either of the defendants viz. which claim the assets and assume the liabilities of

to.

21 Dpts firm

Answer Yes. Mr Corbin retained the assets and assumed the liabilities of the firm.

8th Question Did the inventory of which you spoke contain the balances of all the accounts on the books of the firm of D. H. Corbin & Co. when on the Dr or Cr side.

Answer It did.

9th Question About how many accounts were there? & what aggregate sum?

Answer Probably from 150 to 200 accounts, about \$50,000 each of Debits & credits.

10th Question, What was the State of Mr Duffy's own account with the firm at the time of making that inventory.

Answer. He was owing the firm about \$3200.

11th Question. At whose instance did you draw off Exhibit "A".

Answer It was drawn at the instance of McChesney.

12th Question.

Q. 12

Did Mr Corbin know of your drawing it off at the time it was drawn or at any time until today.

Answer I suppose not. I had been requested to make it out by Mr Chesney & Caffery.

Direct Reexamined

1st Was there a writing made between Defendants containing the terms of the Dissolution & final Settlement.

Answer There was.

2nd Was the item of \$119. credited to Caff & charged to Caffery upon the Books of Defendants at the time of the Dissolution.

Answer It was.

3rd Did you remain in the employ of D. H. Corbin after the dissolution, if yes, when did you leave his employ?

Answer I did till 1st February 1864.

4th At the time you left Corbin's employ was this

23

Or of \$119. to Ref get remaining on Refs
Books.

Answer It was.

Qth What was the Condition of Corbin's account
as to debt & credit at the time of the dis-
solution?

Answer He was owing the firm about \$1.100.

J. C. Mould

State of Illinois
Cook County. I Calvin D Wolf a Justice
of the Peace in and for said County do
hereby certify that prior to the taking of
the foregoing deposition and on the 20th day
of March A.D. 1860. the said witness J. C.
Mould was by me duly sworn to testify the
truth in relation to the matter in controver-
sy in the Caption of the suit mentioned in
the Caption to these depositions, and that
said deposition was reduced to writing by me
and was signed and sworn to by said witness
in my presence. Witness my hand here at Chicago
this 20th day of March A.D. 1860.

Calvin D Wolf 
Justice of the Peace

William M. Cherry in ac with C. M. Lytle & Co.

1857

Aug 24	To Mirror	70 00	Apr 658	By Cash oc.	50 25
Nov 16	" Segars	3 00	May 1	" "	30 00
26	" Cash	40 79	May 24	" "	330 06
Jan 29/58	" Segars	3 00	July 5	" Sumner's	45 55
Feb 13	" "	3 00	Dec 4	" Cash	20 00
18	" Taxes	16 12	Jan 5/59	" J. C. Gould	18 00
Apr 12	" Segars	6 00	" 28	" Cash	60 00
19	" "	1 00	July 5	" "	18 00
20	" "	4 00	Nov 22	" "	45 00
May 1	" Cash	36 00	Dec 7	" L. Puffy	119 00
11	" "	17 00			
12	" "	2 50			
15	" "	1 10			
31	" Segars	8 00			
June 12	" Cash	43 00			
21	" Segars	2 00			
29	" "	00			
July 8	" "	2 75			
10	" Cash	10 00			
19	" "	10 00			
24	" "	10 00			
29	" Segars	63 20			
Aug 13	" Cash	10 00			
18	" Segars	5 00			
25	" Cash	10 00			
31	" "	15 00			

7.

25

Sept 7	"	"	5 00
13	"	"	100 00
22	"	Cigars	5 00
Oct 6	"	"	8 00
Nov 8	"	"	8 40
22	"	"	13 15
Dec 4	"	Cash	20 00
22	"	Cash	8 00
31	"	Cash	150 00
Jan 26/59	"	Cash	4 30
Feb 16	"	"	5 50
Mar 14	"	"	5 00
Apr 11	"	"	3 80
June 30	"	"	8 20
May 10	"	"	15 20
Sept 29	"	"	2 20
Dec 1	"	"	2 20
31	"	"	2 20
Sept 7	"	"	4 20
Jan 9	"	"	2 00
	"	Balance	55 65
			<u>\$ 739 60</u>

\$ 739 60

1860
Jan 9 By Balance 55 65

Exhibit "D"

(Chicago) 8th Jan 1860.
Messrs D. W. Corbin & Co. 3

Please send me
Signs to the amount of the balance of A/c
due me from you.

H. McChesney

And further to maintain & prove said issue
on his part the said Attorney of the said
plaintiff called as a witness Peter Rocken-
stym who being sworn testified that he was
clerk for said defendants at & before the time
of the dissolution of their partnership which
took place on the 11th day of January A.C.
1860. & until some few weeks since that the
defendants have a difficulty between
themselves from the 1st day of January
A.C. 1860. up to the time of dissolution.
That the defendant Corbin retained the stock
of goods & assumed the liabilities of the concern
& transferred it to Kent & Loomis. That shortly
after the dissolution about January 30th 1860.
witness heard a conversation between defendants
Corbin and Kent. Henry P. Kent. Corbin said

27 "You see how it goes. here is a man who has
owed us money or up for two years. & now as
soon as we give him he runs for it".
Said also that if plaintiff had asked for
his pay he would have paid him - said
the amount of the balance they owed plaintiff
was some fifty one dollars. - the witness
further testified, that he knew of the plaintiff
sending for cigars by O'Banion for the
balance before the suit & after the dissolution
which Corbin refused to deliver.

The foregoing was all the evidence in the
cause on either side & thereupon the defendant's
attorney urged to the Court that the evidence
was not sufficient to show the knowledge
or assent of the defendant Corbin to the
credit given to plaintiff as the books of the
defendants & also that the plaintiff could
not recover any judgment against the
defendant Corbin because there was no
note or prom or any writing signed
by him containing any promise or agreement
to pay the debt of his Co-defendant Daffy.
But the Court decided that the original debt
of the defendant Daffy was extinguished &
the new debt of the defendants substituted

therefor & that no note or memorandum in writing was necessary to bind the defendant Corbin - offered a verdict in favor of the Plaintiff for the sum of Fifty five dollars & sixty five cents Damages. To which decision & finding & verdict of the Court the said defendants then & there excepted.

And the said defendants also then & there moved the Court to set aside the said verdict & for a new trial on the ground -

1st The evidence was insufficient to justify the verdict, and

2^d The Court erred as to the law of the case upon the subject of the Statute of Frauds.

Which motion the Court then & there overruled & the said defendant then & there excepted to the decision of the Court in overruling the same.

And for as much as the said several matters do not appear on the record of said Cause the said defendants pray that this their bill of exceptions may be signed, sealed & enrolled by the Court, & made a part of the record in this Cause which is accordingly done.

Wm H. Higgins' *Per B*
Clerk Sup Ct

29

And afterwards, to wit: on the 25th day of the month of year aforesaid, said day being one of the days of the May Term of said Court. the following among other proceedings were had and entered of record in said Court. to wit:

William McHenry
vs
Daniel H. Coburn & James Coffey Assumpsit.

And now again comes said plaintiff by Hoopes & Willard his attorneys, and said defendants by Van Buren & Gray their attorneys also come, and defendants motion heretofore submitted herein to set aside finding of the Court in this behalf. being heard and argued by Counsel, and the Court being fully advised overrules defendants motion to set aside finding of the Court and also their motion for a new trial whereupon defendants enter exceptions wherefore plaintiff ought to have judgment entered on finding of the Court. and verdict rendered which it is ordered shall be entered now as of the twenty first instant. Therefore it is considered that said plaintiff do have and recover of said defendants his

his damages of fifty five dollars and sixty five cents, in form aforesaid by the Court here found and assessed which is entered now as of the 21st day of May last past, together with his costs and charges in this behalf expended and have execution therefor.

State of Illinois

Cook County ^{Illinois} I, J. Walter Kimball
 Clerk of the Superior Court of Chicago, within
 and for the County and State aforesaid,
 do hereby certify the foregoing to be a true
 full and complete transcript of all the plead-
 ings on file in my office & the proceedings of Court
 entered of Record, together with the Bill of exceptions,
 in a certain cause, wherein Hiram McCarty was
 plaintiff and Daniel H. Corbin & James Duffy were
 Defendants



Witness my hand & the seal
 of said Court at the City
 of Chicago this 4th day of
 June A. D. 1860

Walter Kimball Clerk

In the Supreme Court
April Term A.D. 1861

Daniel W. Corbin
& James Duffy }
Plffs. in Error }

vs
Hiram W. Cheney }
Def't in Error }

And now before the Judges
of the People, of the Supreme Court
of the State of Illinois at the Court
House in the City of Ottawa come
the said Daniel W. Corbin & James Duffy
by Van Buren & Gay their attorneys
& say that in the record & proceedings
aforesaid & also in the giving the
judgment aforesaid there is manifest
error in this to wit -

1st That the Court erred in deciding
that no note or memorandum in writing
was necessary to bind the Defendant Corbin.

2nd That it appears by the record aforesaid
that the judgment aforesaid in favor
aforesaid given was for the said Hiram
W. Cheney against the said Daniel W.
Corbin & James Duffy whereas by the law
of the land the said judgment ought to
have been given for the said Daniel W.

Corbin & James Duffy against the said
Hiram McChesney — And the said
Daniel W. Corbin & James Duffy
pray that the judgment aforesaid
for the error aforesaid and other
errors in the record & proceedings aforesaid
may be reversed, annulled &
altogether held for nothing & that they
may be restored to all things which
they have lost by occasion of the
said judgment &c.

Van Buren & Gay
Attys of Plffs in Error

And the said defendants by Hooper and
Willard, their attorney, says that the Court
did not error,

Hooper & Willard
Sefs attys

107-42

Hiram M Chesney

vs

G. H. Cortin et al
=====

Filed June 22. 1860
L. Leland
Clerk

June 14th.

- Gang. order of the court
for days.

\$5.00 paid

Ans J. G. 100