

12714

No.

Supreme Court of Illinois

Bolton

vs.

McKinlay

47 47-10

Mr. H. H. H.

1859

1859

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12714

1859

1859

United States of America

STATE OF ILLINOIS, COUNTY OF COOK, S. S.

Pleas, before the Honorable George Manienn

Judge of the Seventh Judicial Circuit of the State of Illinois, and Solo Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the

Tenth Monday, (being the Tenth day) of

March in the year of our Lord one thousand eight hundred and

Fifty Eight and of the Independence of the said United States the

Eighty Second

Present, Honorable George Manienn Judge of the 7th Judicial

Circuit of the State of Illinois.

Charles Haven States Attorney.

John S. Wilson Sheriff of Cook County.

Attest: Wm. L. Church Clerk.

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Be it remembered that heretofore to wit. On the
8th day of December (A) 1857 there were filed
in the Office of the Clerk of the Court aforesaid
certain papers to wit a Declaration, cognovit
note & power of Attorney, which declaration &c
are in the words and figures following to wit:

State of Illinois?

Cook County 3^d Circuit Court of Cook
County, November Term (A) 1857. William M
Bolton Plaintiff in this Suit by Charles W & Free
his attorneys complains of William M Kinley
Defendant in a plea of trespass on the case on promise.
For that whereas the said Defendant heretofore to
wit on the Eighth day of December last at the
year of our Lords one Thousand Eight hundred
and fifty seven at Chicago to wit at said County
of Cook made his certain promissory note in
writing bearing date the day and year aforesaid
and then and there delivering the same to the said
Plaintiff in and by which said note said Defendant
by the names style and description of Wm M Kinley
promised to pay to the order of the said Plaintiff
thirty days after the date thereof the sum of Seventeen
Hundred and Ninety three dollars with interest for
value received and the said Defendant then
&c, there^{at} made and executed his certain power of
attorney under his seal whereby he empowered constituted
and appointed C W Hoerner or any other attorney of
Record his true and lawful attorney for him to appear

in this Court waive service of process and
confess judgment at any time, after the
date of said note, in favor of the said Plaintiff
for the amount due thereon, and also costs and
usual attorney's fees which said plaintiff's
attorney is assigned to said note and the
said note and power of attorney are hereto attached
and referred to for more certainty. By means
whereof and by force of the Statute in such case
made and provided the said Defendant
became liable to pay 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 same to the said plaintiff according to the
true and effect true intent and meaning
of the said note to wit, at the place aforesaid.
Yet the Defendant, although often requested
there, hath not yet paid the said sum of money
or any part thereof to the Plaintiff, but so to do
hath hitherto wholly refused and still does
refuse to the damage of the Plaintiff of
Two Thousand Dollars and therefore he brings
suit in

Charles W. Case Plaintiff Attorney

Circuit Court of Cook County

November Term 1857

William McKinlay

advs

William H. Burt } Co-att

And the said William M. P. Kinley defendant
 in the above entitled suit by C. D. Hoerner
 his attorney comes and defends the wrong
 and injury when re, and waives service of
 process and says that he can not 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 the said declaration
 mentioned including the sum of Twenty five
 Dollars for his reasonable attorneys 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
 Eighteen Hundred and Eighty one Dollars, And
 the said defendant further agrees that no writ
 of error or appeal shall be prosecuted on the
 judgment entered by virtue hereof nor any bill in
 Equity shall be introduced in any manner with the
 view of reversing said judgment and that he hereby
 releases all errors that may intervene in
 entering up the same or issuing the execution
 thereon and consents to immediate execution
 upon said judgment

E. Peck Defendant's Attorney
 Chicago 26 Dec 1887

\$1793

Witness my hand and seal after date of the Subscribing
 Chicago County of Cook State of Illinois

promise to pay to Wm H. Polton or order
Seventeen Hundred & Ninety Three Dollars
for value received with interest

Wm H. Polton

Know all men by these Presents that I
the subscriber am justly indebted to Wm H.
Polton upon a certain Promissory Note bearing
even date herewith for the sum of Seventeen
Hundred & Ninety Three Dollars with interest
and due thirty days after date. Now therefore
in consideration of the premises I do hereby make
constitute and appoint C. B. Hoerner or any attorney
of any Court of Records to be my true and lawful
attorney irrevocably for me and in my name, place
and stead to appear in any Court of Records in any
time or in vacation in any of the States or Territories
of the United States at any time after the date of said
note to waive the service of process and confess a
judgment in favor of the said Wm H. Polton or his
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 the entry of said judgment
together with costs and usual and reasonable 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 judgment entered by virtue hereof nor any
bill in Equity filed to interfere in any manner with

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the operation of said judgment and to release
 all errors that may intervene in entering up
 said judgment or if in the execution thereof
 and also to waive all benefits of advantage
 to which I may be entitled by virtue of any
 Homestead or other Exemption as now or
 hereafter existing in this or any State or
 Territory where judgment may be entered by
 virtue hereof. Verily ratifying and confirming
 all that any said attorney may do by virtue
 hereof. Witness my hand and seal this Eighth
 day of December AD 1857

In presence of
 St. J. Reads R. B. Fogarty } Wm McKimley

City of Illinois St. J. Reads of Chicago in
 Cook County } said County being duly sworn
 deposes and swears that he
 knows the within named William McKimley as
 that the said Wm McKimley signed and ap-
 peared before him and Charman of Attorney in the
 cause of defendant

Subscribed and sworn to
 before me this 8 day of
 December AD 1857
 O B Hoerner
 Notary Public

St. J. Reads

And afterwards to wit
 at the November Term of said Court to wit December

8th (1857) the following among other proceedings
in said Court were had and entered of records to
wit;

William W F Bolton,

vs

William McKinlay,

Confession

This day comes the said
plaintiff by Clarke & Fee his attorneys who file
herein his certain declaration of a plea of trespass
on the case on promises and therupon comes the
said Defendant by C F Wormen his attorney in fact
who files herein his warrant of attorney the execution
of which being duly proven and also his cognovit
confessing the action of said plaintiff against him
and that he has sustained damages to the sum
of One Thousand Eight Hundred and Eighteen
Dollars. Therefore it is considered that said
plaintiff do have and recover of said defendant
his damage of One Thousand Eight Hundred and
Eighteen Dollars in form as aforesaid confessed
together with the costs and charges by him
about his suit in this behalf expended and
thereof have execution

And afterwards to wit
on the 30th day of December in the year last
aforesaid the said Defendant by O W Porter
his attorney filed his certain motion to vacate
judgment re, which motion is in the words and
figures following to wit;

William H Bolton & And the said William
 William W McKinlay & McKinlay comes into
 Court by William A
 Porter his attorney and moves the Court for an
 order staying all proceedings upon the
 judgment & execution in this action & that
 the said judgment be vacated & the said
 execution and all proceedings in said action
 subsequent to the declaration be set aside
 & that the said defendants be allowed to plead
 to the said declaration & to defend the said
 action & for such further or other relief as to the
 Court shall seem meet & proper

Dated Chicago Dec 31st 1887

Wm A Porter

Atty for def^t

And afterwards to wit, at the term of said
 Court last aforesaid to wit, December 31st
 1887, the following among other proceedings
 in said Court were had and entered of record

William H Bolton

v. s

William W McKinlay & On Motion of the def^t in this
 action & after hearing Wm A Porter in support
 thereof & no opposition being made thereto & Clackson
 & the said atty being present & consenting thereto
 It is ordered that all proceedings by the Plaintiff
 or any of his attorneys or agents or the Sheriff

or any of his deputies under or by virtue of the
execution in this action, be stayed until the
decision of the motion now pending in this
Court to vacate the judgment in this action
until the further order of this Court the
Jury (meanwhile to continue in no manner
to be affected thereby

And afterwards to wit
at the January Special Term of said Court
to wit January 2nd 1858 the following
among other proceedings in said Court were
had and entered of records to wit
William H. Bolton,

vs
William McCorday,

Motion having been
made by the Def^t to vacate
and set aside the judgment & execution in
this action & for other relief, upon the grounds
among others that the note & power of attorney
upon which the said judgment was entered
are not genuine nor valid, which motion is
still pending & undetermined & the affidavits
made upon said motion by the respective
parties being conflicting & contradictory it
is ordered that a feigned issue be & the same
is hereby directed to try the question whether
the note upon which judgment in this action
is entered was genuine and valid and that

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Doth ally prepare said issue & that the same
be tried at the present January Term of said
Court & that all proceedings upon the judgment
& execution in this action be stayed until it
further order of this Court & until said issue be
determined, & the said motion decided, but
nothing herein shall be deemed to affect the
lien of said judgment or the levy on said
execution

And afterwards to wit at the term of said
Court last aforesaid 18th of January 18th 1858
the following among other proceedings in
said Court were had, made, entered & records
to wit,

Wm H Bolton	}	In application of R ^o A Porter
vs		
Wm McKinlay	}	E ^o R ^o R ^o E ^o assenting thereto

It is ordered that E^o R^o R^o be substituted as
the Defendants attorney in the place and
stead of said Porter

And afterwards to wit on the 2nd day of January
in the year last aforesaid the said Defendant
filed in said Court his & co^s affidavit which
is in the words and figures following to wit

William H Bolton	}
vs	
Wm McKinlay	}

State of Illinois)

Cook County) William McKimley the above

defendant being sworn says
that in order to prepare his defense in this action
(upon the signed issue) it will be necessary for
him upon the trial of this cause to have the
Books including & day books Ledgers Cash
Books and all other Books and Books of original Entries
containing Entries of any indebtedness by this
deponent to the plaintiff existing on the 8th
day of December 1857 and also the Books
containing a certain Memorandum purporting to
contain certain representations made by this
deponent to the plaintiff of his circumstances
and circumstances upon his property on or about
the said Eighth day of December 1857

Sworn before me this 31st) Wm McKimley
day of January 1858)

L & F Street Master in Chancery Cook Co

And upwards, to wit, at the Term of said
Court last aforesaid to wit, on the day and
year last aforesaid the following among other
proceedings in said Court were had and

it is of record, to wit,

William H Bolton)

vs

William McKimley)

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State of Illinois, On reading & filing affidavit
Cook County & on Motion of E. Van Buren
attorney for Defendant it is
ordered that the plaintiff on the trial of the
feigned issue in this cause produce in
evidence all his books of account including
Day Books, Ledger Cash Books, Books of original
entries and all other books containing entries of any
indebtedness by the above defendant to the said
plaintiff existing on the Eighth day of
December 1858 and also the Books containing
a certain memorandum purporting to contain
certain representations made by the defendant
to the plaintiff of his circumstances and
incumbrances upon his property or any other
person and also thereof made on or about the 8th
day of December 1858

And afterwards to wit on the 3^d day of March
A.D. 1858 there was filed in the office of the Clerk
of said Court a certain Record for Feigned Issue
which is in the words & figures following, to wit,

Circuit Court of Cook County. Pleas before the
Honorable George Manierre Circuit Judge at the
Court House in the City of Chicago of the January
Special Term A.D. 1858

Between George Manierre Judge & M. Church Clerk
Cook County to wit — He it Remembers that on
the 17th day of January 1858 in the January

Special Term of the Circuit Court of Cook
County before the Honorable George Manierre
Circuit Judge at the Court House in the City of
Chicago comes Wm N Bolton by Clarkson & Free
his attorneys & brings into said Court now here
his certain bill against William McKenney in
a plea of trespass on the case upon promise
which said bill follows in these words that is
to say

Cook's County of Wm N Bolton Plaintiff in
this Suit by Clarkson & Free
his attorneys complains of Wm McKenney defendant
of a plea of trespass on the case upon promises
for that Whereas the said defendant on the
Eight day of December in the year one
Thousand Eight hundred and fifty Seven
at Chicago to wit at the City of Chicago
in the County of Cook & State of Illinois
made a certain promissory note in writing
commonly called a promissory note bearing
date the day and year last aforesaid
and then and there delivered the said note
to the said Plaintiff Wm N Bolton by which
said note the said defendant promised to pay
the said Wm N Bolton or order the sum of Seventy
hundred & Ninety three Dollars thirty days after
date with interest for value received,
By reason whereof and by force of the Statute in

7. such cases made and provided the said defendant
became liable to pay to the said plaintiff the
said sum of money in the said note specified
according to the tenor and effect of the said
note, and being so liable the said defendant
in consideration thereof afterwards to wit on
the same day and year and at the place
aforesaid undertook and faithfully promised
the said plaintiff well and truly to pay unto
the said plaintiff the said sum of money in
the said note specified according to the tenor
and effect of said note. Nevertheless the said
Defendant (although often requested &c, to wit
at the time when the said note became due and
payable according to the tenor and effect thereof
and often times since to wit at the place
aforesaid) ha - not yet paid the said several
amounts 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
defendant ha - hitherto altogether refused
and still do - refuse to the damage of the
said Plaintiff Nineteen Hundred Dollars
and thereof the said plaintiff bring suit
&c Thus the following is a copy of the note
aforesaid

\$1798

Chicago 8th Decr 1857

Ninety days after date I the subscriber of Chicago

County of Cook State of Illinois promise to pay
to John W. Bolton or order Seventeen Hundred &
& Ninety Three Dollars for value received with
interest (signed) John W. McKinlay

And the said defendant by E.
P. Buren his attorney comes and
defends the wrong & injury when & says
that the said Plaintiff ought not to
have or maintain his aforesaid action thereof
against the said defendant because he says
that he did not make or execute the
promissory note mentioned in the said
Plaintiff's declaration & of this the said
defendant puts himself upon the Country
And for a further plea in this behalf the
said defendant by leave of the Court has for
this purpose first had and obtained
according to the form of the Statute in
such case made and provided says that
the said Plaintiff ought not to have or maintain
his aforesaid action thereof against him
because he says that heretofore to wit on the
said 8th day of December 1857 at the City
of Chicago in the County of Cook aforesaid
the said Plaintiff agreed to lend & advance
to the said defendant the sum of One hundred
dollars for the term of thirty days from the said
date & that in consideration thereof the said

Defendant then and there agreed to give & pay the said plaintiff as interest for the use of ^{the} said sum of One hundred dollars for the said term of thirty days the sum of Three dollars & to execute & deliver to the said Plaintiff his promissory Note for the sum of One hundred & three dollars for the principal and interest aforesaid payable thirty days from the said 8th day of December & that the said Defendant in pursuance of the said agreement then & there signed his name to a blank form for a promissory note which blank form at the time when the said Defendant signed his name thereto as aforesaid was of the tenor following

"I _____ 18____
 "_____ after date _____ the Subscriber
 "of _____ County of _____ State of _____
 "promise to pay to _____
 "or order _____ Dollars for value
 "received with interest

And it was then and there understood & agreed between the said plaintiff and the said Defendant that the said Plaintiff should fill in the said Blank form over the name of the defendant & signed thereto as aforesaid so that the same should be and purport to be the promissory note of the said defendant for the

sum of One hundred and three Dollars
payable thirty days from the said 8th day
of December unto the said defendant
further said that afterwards to wit on the
said 8th day of December 1857 at the City of
Chicago in the County of Cook aforesaid
the said defendant fraudulently filled in
the said Bank form above set forth so
signed by the said defendant as aforesaid
so as to make the same of the tenor following
that is to say

"\$1793

Chicago 8th Decr 1857

"Thirty days after date I the Subscribers
of Chicago County of Cook State of Illinois
promise to pay to Wm H. Dolton or order Treasurer
hundred & ninety three Dollars for value
received with interest

Wm H. Dolton

which said instrument so fraudulently
filled in as aforesaid for the sum of \$1793
instead of the afore mentioned sum of \$103
is the same alleged promissory Note mentioned
in the said Plaintiffs declaration to wit
at the County of Cook aforesaid, and
that the said defendant is ready to verify
wherefore he prays judgment if the said
Plaintiff ought to have or maintain his

afforded action against him &c

State of Illinois

Circuit Court of the said State of Illinois

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The above named plaintiff being duly sworn deposes and says that the foregoing pleas to the plaintiffs declaration and the matters therein contained are true

Subscribed and Sworn to
before me this 17 March 1888

Jmes L Church Clerk Wm McKinley

(Replication) And the said plaintiff as to the plea of the said defendant by him first above pleaded whereby he puts himself upon the Country doth the like

And for replication to the said second plea of the said defendant the said plaintiff with precludi non recaves he says that the said promissory note in the said declaration mentioned was made executed and delivered by the said defendant to the said plaintiff at the time when &c in manner and form as by the said plaintiff in his said declaration alleged and was not made or obtained by the said plaintiff fraudulently as in

the said defendants said second plea alleged
and the said plaintiff prays may be enquired
of by the County &c

Clarkson & Free Plffs Atty

And the said defendant doth the like

E W Burren Dft Atty

And afterwards to wit at the March Term of
said Court to wit, March 17th AD 1858 the
following among other proceedings in said Court
were had and entered of records, to wit,

William W Boston

Motion to Create Indignities

Thomas McKimley

And now at this day comes
as well the said plaintiff by Clarkson and Free
his attorneys also the said defendant by
Peter & E W Burren his attorneys and thereupon
to try the issues joined up in this cause
also to the Jurors of a Jury of good and
lawful men, to wit, John Cuxeney, Stephen
Spencer, J. Tappan, Washington B B Ray,
Daniel T. Wray, J. D Childs, R. W Andrews,
P. Hook, Benjamin Chase, R. W Andrews,
C B Waples, who being duly elected tried and sworn
to do truly to try the issues aforesaid after
hearing a part of the testimony and the hour of
adjournment having arrived are allowed to
separate to meet the Court tomorrow morning
And afterwards to wit on the 18th day
of March &c last aforesaid it being as yet

of the same term of said Court last aforesaid
the following among other proceedings in said
Court were had and entered of records, to wit,

William H. Bolton

vs

William McKinlay

Motion to Quash Judgment

This day again comes as
well the said parties by their attorneys as the
jury heretofore impannelled in this cause and
they having heard further evidence in the
cause and the hour of adjournment having
arrived are allowed to separate to meet the
Court tomorrow morning. And afterwards to wit
on the 19th day of the Month of June last
aforesaid it being of the same Term of said
Court last aforesaid, the following among
other proceedings in said Court were had
and entered of records in this cause, to wit,

William H. Bolton

vs

William McKinlay

Motion to Quash Judgment

This day again comes
the said parties by their attorneys and the
jury heretofore impannelled to try the issues
joined in this cause also come, and having
now heard all the evidence adduced, arguments
of counsel & instruction from the Court retire to
consider of their verdict, and afterwards come
into court and say "We the jury find the law

in this cause for the defendant, Whereupon
the said Plaintiff moves the Court for a new
trial of this cause which motion after due
consideration being thereupon had, the
premises well understood is ordered to be
and is hereby is overruled, to which ruling
of the Court in overruling his said motion
the said Plaintiff by his Counsel now here
excepts, Therefore it is ordered and
considered by the Court that the Judgment
heretofore to wit on the 8th day of December
A.D. 1857 taken and entered of record
against the said defendants and in favor of
the said Plaintiff for the sum of One
Thousand Eight hundred & Eighty Dollars ~~and~~ ^{cents}
be and the same hereby is vacated, set aside
and for nothing held and that the
execution if and thereon be returned into Court
& all proceedings thereon set aside & held for naught
and that the said defendant do have & recover
of the said Plaintiff his costs and charges by
him in this behalf expended & have execution
therefor

Whereupon the said Plaintiff prays an
appeal to the Supreme Court of the State of
Illinois which is granted on condition that the
said Plaintiff within twenty days execute
& file a bond with surety to be approved by the

Cook County Circuit Court

William H. Bolton

vs
William McKensie

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Be it known that at a
session term of the said Cook County Circuit
Court held at the Court House in the City of
Chicago in the said County of Cook on the first
Monday of March in the year One Thousand
Eight Hundred and fifty seven and on the
seventeenth day of March in said year that
being a day of said term before the Honorable
George Manerick, Judge of the said Circuit Court
the aforesaid issue so joined between the said
Justice as aforesaid came on to be tried by a Jury
of the County of Cook aforesaid for that purpose
duly empanelled good and lawful men of the
said County.

At which day comes there as well
the said plaintiff as the said defendant by their
respective attorneys aforesaid and the Jurors of the
Jury aforesaid empanelled to try the said issue, be-
called, also come and were then and there in due
manner sworn and sworn to try the said issue.

Upon the trial of the said issue the Counsel for
the said plaintiff to maintain and prove the said

if ^{on his part} called Nathaniel P. Reed who being
sworn testified as follows, I am in the Hovey
and White goods business, I am in the plaintiffs
employ, I know both the parties to this suit (the
note attached to the declaration in said cause and
the subject matter of said suit - was here handed
to witness by plaintiffs counsel) I have seen
the note before. I saw it on the 8th day of December
last and since, my name is subscribed
to it as witness. My name was written by me, I
know the signature of the defendant William
P. Kimball, The note and warrant of attorney
were signed by him at Number 118 Lake Street
in my presence and on the 8th day of December
the day the note bears date. The defendant
came over to the store of the plaintiff William H.
Hollan at Number 118 Lake Street in Chicago
and had some conversation with the plaintiff
when I witnessed the note it was not entirely filled
up, the figures in the upper left hand corner of the
note \$1793 were then written and the note was
written in the body of it as far as the words
"Seventeen hundred" It was dated and filled
up as it now is to the words "Seventeen hundred"
exclusive - the words "& twenty three Dollars
were not in it then, The warrant of attorney
was in blank and was signed at the bottom by the
defendant, The note was written in there by the

14 Court in the penal sum of Three Thousand
Dollars conditioned according to law
and it is further ordered that the said
Plaintiff have 30 days to prepare & file his
bill of exceptions in this cause.

And afterwards
to wit, at the March term of said Court
last aforesaid to wit, as of the 19th day of
March in the year last aforesaid, the said
plaintiff by his said attorney filed in said
Court his certain Bill of Exceptions, which is
in the words and figures following, to wit,

plaintiff and in the presence of the defendant and myself, when it was written thus for the defendant paid "I am in a hurry, let me sign the note and you can fill up the balance afterwards" With that the plaintiff handed the defendant the pen, and the defendant signed his name to the note and warrant of attorney, as soon as he did so he stepped outside of the railing. The note was signed in the plaintiff's office which is inside of his store, inside of the office railing at the office desk. Defendant was to give the plaintiff a Judgment note, but say why plaintiff wrote the note, except because we always write our notes, it is customary, after it was signed I came inside the railing and witnessed the signing.

Upon Cross examination the said witness testified as follows. I have been the plaintiff's clerk a year and a half and in no other business. I am with him as clerk; I came to him from William R Williams. I have no share in the profits. I was by the store when the defendant came in to the store of plaintiff, and when the note was being drawn I was standing by the office railing, when defendant came in I moved from the stove, I was doing nothing at the stove, when defendant went inside of the railing I went to the end of the desk just outside of the railing.

I knew defendant was to give the plaintiff a note
I heard defendant say so and I went to the
railing because a note was to be drawn, and
I went to witness it; I went for no other reason
I was at the desk before the note was signed,
The Counting room or office occupied a space of
about 8 feet by twelve railed off from the corner
of the store. The desk is about 4 feet long
the end of it is about twelve or fifteen inches
from the railing the Counting Room is not
elevated above the rest of the store floor, I stood
it might have been five minutes at the railing
may have been three minutes - it may have been
seven minutes, could not have been less than three
minutes, The store is nine or ten feet from the
railing on the west side of it, I could see from
the outside of the railing what was written in
the note, When the plaintiff draws notes I am
in the habit of looking over him while drawing
notes to see if they are judgment notes or
common notes, when judgment notes are drawn
it is common for me to witness them, I have
witnessed a good many judgment notes, I
suppose it would have been time enough for me
to wait till I was asked, I don't recollect now
of any particular note that I have witnessed
Benton stood in front of the desk when the
note was signed, While I stood there I was

not reading the note, I did not read it before I witnessed it - did not know what was inside the note till I witnessed it. I went inside the prison - witnessed it when defendant came out, I witnessed it when it was not filled up, I read all there was of it, I always read papers before witnessing them - I have witnessed other judgment notes. The note was filled up to the point I have described.

Defendant stood to the left of the plaintiff when plaintiff was filling up the note, I have seen the judgment note since. Saw it two months ago in Mr Clarkson's hands at De Moe's Office, have spoken of the case with Mr Clarkson, - I looked over the affidavit since - I read over my affidavit since I made it - read it yesterday at Mr Clarkson's Office, I wanted to see it for curiosity, and also to see what I had stated in it, Mr Clarkson handed it to me and told me to read it over - I went to his office to see about this case - Mr Bolton and myself have talked over the case, this was day before yesterday - He asked me if I remembered the facts - I knew the case was coming on then, I was not subpoenaed. I was in Court yesterday, went to Clarkson's Office first - He asked me if I had seen the other

witnesses. Plaintiff put me to see to getting
the witnesses; that the case was coming on
yesterday, Plaintiff is not here now, after the
note was partly filled up, plaintiff gave the
pen to defendant, and I then went in after
defendant signed the note, After I witnessed
the note I went outside the railing to the store,
about nine feet, I recollect distinctly that
I stood by the store - I now recollect that
when I went outside the railing I went
to the front part of the store about 12 or 15
feet from the railing and back, I did
nothing there; stand there five or ten minutes
I could not swear now where I went to
after that, except that I stood at the store.

The direct examination of the witness was
here resumed when he testified as follows
~~This is a diagram of the store~~



15 The windows of the Store face South in front, the passage way from the Street is on the East side of the Store, the Store is on the Second Story, The Counting Room is on the East side of the Store, in the South East corner of the Store, ^{the entrance to the Store is on the East side of this} there is a projection over the passage way forming a recess in the Store, the Counting Room occupies this recess

The Cross Examination of the witness was here resumed, and the counsel for the defendant put to the witness the following interrogatory

Question At the time of the transaction did Bolton give McKinlay a check? If so for what amount and upon what Bank?

But the Counsel for the plaintiff then and there objected to the interrogatory, and to the answering of the same by the witness, on the grounds,

1st That it was immaterial and irrelevant to the issue before the Court and Jury, being an inquiry into the consideration of the note in question, which was not a relevant inquiry nor competent evidence under the pleadings in the case and the issue joined

2d That it was not competent for the defendant in Cross Examination

of the witness for the plaintiff, to examine him as to facts and circumstances not connected with the matters stated in his direct-examination nor to introduce his own case by cross-examining the witness for the plaintiff before he has opened his case,

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And

Thereupon the said Circuit Judge declared and delivered his opinion that the said objection so taken by the said Counsel for the said plaintiff as aforesaid, ought not to be allowed, and then and there overruled the said objection and allowed and decided that the said interrogatory should be put to the said witness, and his answer thereto taken to which said opinion and decision of the said Judge the said Counsel for the said plaintiff at then and there in behalf of the said plaintiff accept

And thereupon the said witness then and there testified as follows — Plaintiff gave the defendant a check for \$100 at the time of the transaction on Hoffmann & Joseph (a copy of a check is here shown to the witness) I did not read the check I presume the plaintiff has the check, ~~I presume the plaintiff has the check~~ This is like the original check, except it is not in the plaintiff's handwriting.

The Counsel for the defendant then put to the witness the following interrogatory

Did Mr Bolton draw or partly draw another judgment note at the time of this transaction, and before the note in question was executed; if so, what became of it?

To which interrogatory and the taking of the answer by the plaintiff by his said Counsel then and there objected for the reasons stated in the objection to the foregoing interrogatory.

But the said Judge then and there overruled the said objection and decided that the said interrogatory should be put to the witness and his answer thereto taken to which ruling and decision of the said Judge the said plaintiff by his said Counsel then and there excepted. And thereupon the witness testified as follows. He did - he began to write it, and got in the figures \$1800, when defendant spoke to him and then tore it up.

The direct examination of the witness was then resumed and he testified as follows

He began to fill up the note for \$1800 when Mr Kendry said it was a large amount and even numbers like

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that might look suspicious, if it was entered up, and then the plaintiff tore it up the note he had commenced to draw. The check for \$100 was given to McKensay in the same place and position when he signed the note for Seventeen hundred and odd dollars. My impression is, the check was given first, but am not certain. It was given at the same time as the note was signed. Plaintiff left the City Monday night, he was sent for on important business; he was delayed here and would have left before but for this case.

Cross Examination of witness was then resumed.

The check was made before the parties changed their position at the desk - I am not very far certain that the check was given before the first note was torn up, Defendant says the store before the second note was filled up, because he said he was in a hurry. The Counsel for the Defendant then interrogated the witness as follows.

Did Bolton give the Defendant any money at the same time that the note was executed?

But the Counsel for the Plaintiff then and there objected to the said interrogatory being put to the witness, and to the taking of his answer thereto, for the reasons

stated as the objections made to the interrogatory
just hereinafter objected to

And the said Judge
then and there gave it as his opinion, and
decided that the interrogatory should be put
to the witness and his answer thereto taken, to
which ruling and decision of the Court
the said Plaintiff by his said Counsel then
and there excepted,

The witness then stated. - He did not
The Counsel for the defendant then interrogated
the witness as follows

Did he give him any note or check or other
thing besides the note?

Which was then and there
objected to by Plaintiff Counsel for the reasons
before given, which objection was then and
there overruled by the said Judge, and the
answer thereto allowed to be taken, to which
ruling of the Court the said Plaintiff by his said
Counsel then and there excepted.

The witness then
replied to the said Interrogatory - He did not
The Counsel for the Plaintiff further
to maintain and prove the said case called

Richard R. Fogarty who being sworn testified
as follows - I am a partner in Plaintiff's Store
at New York, and the Store is, New

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nothing to do with the books or sales, don't do
any of the writing about the establishment
I know the defendant by eye sight, have never
spoken to him. (The note in question is shown to the
witness) The signature at the left hand of the
note is mine, I think I wrote my name there in
December last. I saw defendant as plaintiff's
attorney in December. I saw him sign this note. I
saw him sign it below (at the power of attorney)
Don't recollect whether I saw him sign it
above. When he signed it there was some writing in
the body of the note and 4 figures in the left hand
corner above. I cannot swear those are the figures
I think they were whole numbers, but can't be
sure. Did not see the defendant sign any
other note on that day and did not witness any
other. When he signed the note he was inside the
railing and about eighteen inches from it, he
was leaning on the desk when he signed the
note (The note in question was here shown to the
witness) This is the paper I saw him sign.
I saw him sign a paper on the desk and there
was no other paper on the desk. There is nothing
in the paper that makes me think it was
the note.

Upon Cross Examination the Witness testified
as follows

McKinsey was not present when I
signed the note. I signed it two or three minutes

after he left, I was standing at the other
desk when I saw him sign the note, do (not
recollect any of the writing in the note, want
to know there were the numbers in it, I am
sure there were no ciphers among the figures,
I am not sure there were no ciphers among them
I saw in the note, I can't swear what the
numbers were, I did swear in an affidavit
I made in this case that the numbers in the
note were integers, don't know the meaning of
the term, have been in plaintiff's employ about
three or four months, I did not see plaintiff
tear up any note or paper, I did not see
it, I don't know when he first came into the store.
He was standing at the desk when I first saw
him, The plaintiff asked me to sign as a witness,
I had never witnessed any other note, either before
or since.

The direct examination of the said witness
was here resumed and he testified as follows, A
cipher is a figure - is one figure, I can make
figures can make a cipher - naught is a cipher
there was no naught in the note, I recollect
Mr. Clarkson telling me at the time the affidavit
was made by me that an integer was a whole
number, Figures were on the top when I saw
the defendant sign the note.

The Cross Examination

was here assumed and the said witness testified
as follows,

19 I did not count the figures on the
note. I gave one look. I can't tell a single
one of the figures that were on the note. I did
not pay attention more than to give one glance.

The Counsel for the plaintiff here
rested his case.

And the Counsel for the said
defendants, to maintain and prove the said
issue on his part, produced and offered in
evidence as a certain instrument of writing
dated the Eighth day of September A.D.
1854, purporting to be an assignment from
the said defendant to William D. Rife of the
stock in trade, notes, bills, dues demands
and effects of the said defendant, in trust
for the benefit of the Creditors of him the
said defendant.

But to the reading of the same
in evidence, the said Counsel for the said plaintiff
then, and there, stated, that he did not object on
the grounds that the execution was not proven
but objected upon the grounds that it was
wholly irrelevant to the issue joined in the
cause, and incompetent under the State of the
pleadings; that it was offered for the purpose
of establishing a total or partial want of

consideration for the note in question, which fact was in no way put in issue by the pleadings. But the said Judge did then and there deliver his opinion and decide that the said objection should be overruled and did then and there overrule the said objection and decide that the instrument of writing should be admitted in evidence; to which ruling and decision of the said Judge the said counsel for the plaintiff then and there excepted.

The said instrument of writing or assignment was then read in evidence by counsel for defendant, in behalf of defendant, in the words, and figures following, to wit;

This Indenture made this eighth day of September in the year of our Lord one thousand eight hundred and fifty-seven, between William McKinlay of Chicago in the County of Cook and State of Illinois, Merchant, of the first part, and William P. Rife of the City of Chicago aforesaid of the second part;

Witnesseth, Thomas the said party of the first part is justly indebted in sundry dues and sums of money, and is at present unable to pay the immediate demands upon him, and is desirous of making a just, fair, and equitable distribution of all his property and effects among his creditors, and deems it just and reasonable to secure and pay his creditors in the manner hereinafter mentioned.

Now therefore this Indenture witnesseth that the said party of the first part, in consideration of the premises, and of the sum of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred, and conveyed, and by these presents doth grant, bargain, sell, assign, transfer and convey to the said party of the second part and his assigns forever, all the stock in trade, goods, wares, merchandise, debts,

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chores in action, notes, bills, bonds, policies of Insurance, claims, demands, chattels, property and effects of every description, belonging to the said party of the first part, (saving and excepting from this assignment, such property as may be exempt from execution under and by virtue of the laws of the State of Illinois (and which property hereby assigned is more particularly enumerated and described in the Schedule of Effects hereto annexed marked "Schedule A"); To Have and to hold the same, and all and singular the premises herein assigned and transferred or intended so to be, and every part and parcel thereof, to the said party of the second part, his heirs, executors, administrators, and assigns (his and their use forever. But in trust for and upon the following uses and purposes, namely, the said party of the second part to take possession of all and singular the said trust property, and effects hereby assigned and sell and dispose of the same or such parts thereof as are of a saleable nature, upon such terms and conditions, as in his judgment may appear best and most for the interest of all the parties concerned and convert the same into cash, and shall use his best in-

deans to collect all and singular the said notes, bills, bonds, judgments, debts, choses in action, claims and demands, and execute, acknowledge, and deliver all receipts and instruments necessary and proper in the premises for the purposes aforesaid. And by and with the proceeds of such sales and collections to pay or cause to be paid

First. All the just and reasonable costs, expenses, commissions, and charges of executing and carrying out the objects of this assignment.

Second. To pay and discharge in full the several and respective debts, notes and sums of money due or to accrue due from the said party of the first part to the said party of the second part, and the other persons and firms specified in the Schedule hereto annexed marked "Schedule B" together with all interest now due, or that may accrue due thereon, and if the said proceeds and avails shall not be sufficient to pay and discharge the same in full, then such proceeds and avails shall be distributed pro rata, among the said several persons and firms named in Schedule B aforesaid, in proportion to

the amount of their several claims.
 Thirdly to pay and discharge in full the several and respective debts, notes, and sums of money due or to grow due from the said party of the first part to the several persons and firms specified in the schedule hereto annexed marked "Schedule C" together with all interest money now due or to become due thereon, And if such proceeds shall not be sufficient to pay and discharge the same in full, then such proceeds and avails shall be distributed pro rata among the said several persons and firms specified in said "Schedule C" aforesaid in proportion to the amount of their several claims).

Fourthly, to pay and discharge all other debts of the said party of the first part, due or to become due from him to any other person or persons whatsoever, provided there be sufficient funds for that purpose, and should they prove insufficient then the same to be applied pro rata to the payment of the said debts in proportion to their respective amounts.

Fifthly, to return the full surplus of the said proceeds, and avails, if any there shall be, to the said party of the first part his executors, administrators and assigns.

And the said party of the first part, by these presents, doth name, constitute and appoint the said party of the second part to be his Attorney irrevocable, with full power of substitution in his name or in the name of the said party of the first part or otherwise as may be necessary, but to and for the trustee herein declared to demand, sue for, recover and receive the outstanding debts, interests, trust, property and effects and to institute, prosecute, and defend all such suits at law or in equity, and to make and execute all such deeds, receipts and instruments as shall be necessary or expedient to carry into effect the uses and trusts herein declared or contained as fully and effectually as the said party of the first part could do personally if these presents had not been made.

And the said party of the first part hereby covenants with said party of the second part, that he will at all times promote and forward the speedy receipt and recovery of the debts, property and effects aforesaid and shall and will aid said party of the second part in managing the concerns of the said trust estate in the ex-

execution of this indenture when they requested
upon being allowed a reasonable compensa-
tion for services rendered therein.

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And it is agreed that said party of the
second part may at his discretion compound
any debt or debts due or owing to said party
of the first part, and may compromise all
matters which may be in dispute. And
it is further agreed that the naming of any
debt or debts in any schedule hereto annexed
shall not prevent the party of the first part
from calling in question the amount of the
same, and if the claims of any creditor
shall have been stated as being greater
or smaller than it really is, such cred-
itor shall be entitled to the benefit of these
presentes upon and for, and only upon and
for the amount which may be actually and
justly due him.

And the said party of the second part doth
specially covenant with the said party of the first
part, that said party of the second part
shall and will execute and perform the
trusts in him hereby reposed to the best of
his judgment and discretion, Provided
always and it is hereby agreed that the
trustee for the time being, his executors or

administrators shall not be liable or accountable for any more money or effects, than he shall receive, nor for any loss or damage which may happen thereto, except the same shall arise by or through his own wilful default or misconduct.

And it is understood and agreed that any corrections and alterations may be made in the schedules hereto annexed for the more full and accurate specification of the matters and things therein contained or intended to be contained.

In testimony whereof the said parties have hereunto set their hands and seals the day and year first above written

William McKimley [SEAL]
 John F. Ross [SEAL]

Schedule A
Notes due to William McKimley

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N. S. Hawley	\$ 18.00
Hugh O. Mackey	12.00
Joseph Wiggins	27.00
E. A. Moth	43.53
Charles Campbell	75.00

Accounts due to William McKimley

Capt Porters	\$ 8.75
Mrs Ennis	18.50
" Williams	5.48
" Williams	5.00
Miss Glasscock	4.00
Miss Decker	3.00
Mr Rice	1.75
Mrs Hamner	.75
Mrs De Rose	4.50
Mr Cutler	.44
Mrs Peterson	.50
Mr Stewart	6.00
Mrs Sletten	1.25
Mrs Dunn	11.30

Our policy of Insurance by the Alliance
Insurance Company on Wm McKimley's stock

of goods for \$1500. —
Or do do by the Continental Insurance Co.,
both of Philadelphia, for \$1500. —

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On the foregoing policies of Insurance McKinlay
has sustained a loss of \$1400. as the
said policies were assigned to John H.
McKenzie for collection, and if collected said
John H. McKenzie was to retain the amount
due to them from McKinlay and to return
the balance to McKinlay.

Property.

The stock of goods of said McKinlay was in
the store known as number three North Clark
street and which is estimated to be worth
about \$2800 —

The above estimate includes the store furni-
ture, counters, fixtures, stores &c contained in
said store and which stock of goods is the
same that William P. Roff holds a chattel
mortgage on, duly executed by said McKinlay
before John Dunlap a justice of the Peace
in the town of North Chicago, and specifically
mentioned in said Chattel mortgage and
schedule thereto annexed excepting what goods
have been sold by said McKinlay in the
regular course of business since said Chattel
Mortgage was made.

"Schedule B"

Notes owing by William McKimley.
To William P. Robt

3 notes, total amount \$3899.19
besides interest.

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"Schedule C"

John A. Dyer & Co	\$622.22
Whitely Haseltine & Co	190.32
Wm H. Dutton	616.08
W & T. Doherty	300.00
Peake Knapp & DeLong	218.13
Wm Dr. Robt & Co	303.08
Lucius Steward	300.00
G. W. Williams	677.43
Bernard Hecht	224.31
Downs & Sawdyck	249.46

The Counsel for the defendant further to maintain and prove the said issue on his part then produced and offered in evidence a certain instrument of writing purporting to be an agreement on the part of the Creditor of the said McKimley that the aforementioned assignment should be cancelled and annulled dated October 3^d AD 1857, also a certain other instrument of writing dated October 3rd AD 1857 purporting to be a reassignment from William P. Rof to the said defendant of the property and effects conveyed to the said Rof by the said defendants under and by the assignment above mentioned; and also certain other instruments of writing dated October 3rd 1857 purporting to be a deed or agreement of composition or compromise between the said defendant and his creditors, and further to prove the said issue on behalf of said defendants the said Counsel for the said defendant produced as a witness William A. Porter and offered to prove by the said William A. Porter that he the said witness had prepared the said last three mentioned instruments of writing and had procured the several signatures thereto of the parties thereto respectively.

But to the reading of the said three instruments of writing in evidence, and to the

admission of the said William A Porter as a
witness for the purposes aforesaid, the said
Counsel for the plaintiff did then and there
object for the reasons stated in the objection
to the admission in evidence of the assignment
above herein referred to - But the said Judge
then and there overruled the said objection
and decided that the said agreement and
re-assignment and composition deed should be
read in evidence on the part of the said defendant
and that the said William A Porter should be
admitted and sworn as a witness, to which
said opinion and decision of the said Judge
the said plaintiff by his Counsel did then
and there except. And thereupon the said
agreement - re-assignment and composition
deed were read in evidence in behalf of the said
defendant and are in the words and figures
following to wit

We the undersigned, Creditors of William
McKinlay named in an assignment of his
property recently executed to one William P. Ross
of Chicago do hereby in consideration of one dollar
to each of us paid & other good & valuable con-
sideration, agree with the said McKinlay & to and
with each other that the said assignment shall
be & the same is hereby by our mutual agree-
ment & consent cancelled & annulled & we
hereby agree & consent that the assignee shall
convey back & restore the assigned property & all
proceeds thereof in his possession to the said
McKinlay so that he shall be the exclusive
owner thereof. But this shall not be construed
as an acknowledgement of satisfaction either
in whole or in part of any of our debts.
Chicago October 3^d 1857

Wm P. Ross	(B)	Wm Ross & Company	(Seal)
Peake March & Co	(B)	Lucius Munn	(Seal)
Whitely Hargrett & Co	(B)	By H. A. Munn	(Seal)
W. H. Bolton	(B)	Bernard Kicht & Co	
Wm V. Williams	(B)	W. S. Doherty	(Seal)
Downs & Van Dyck	(B)	John H. Doherty & Co	(Seal)

Release

Whereas William McKinlay of the City of Chicago usually made an assignment to me William P. Ross of the same place for the benefit of his Creditors & whereas certain of said Creditors have expressed a determination to contest the validity of said assignment & whereas there are doubts as to the validity of the said assignment by reason of certain provisions therein contained. I am therefore in consideration of the premises & of the agreement and consent of all of the parties to the said assignment and of one dollar to me in hand paid by the said McKinlay, I the said W. P. Ross the assignee agree to & do hereby re-convey & do sell, assign, & set over to the said Wm McKinlay all and every part, parcel, & article of the Property embraced by the provisions of said assignment or intended so to be, excepting so much as has been converted into money & I do hereby agree to pay back to the said McKinlay on demand by him or his Attorney all moneys or other proceeds of any of the property embraced by the said assignment or intended so to be; which said assignment is hereby annulled & reference is hereby made thereto.

Our witnesses whereof I have set my hand & seal hereto this 5th of October 1887

In presence of
Wm. A. Porter

Wm. P. Ross Seal

Whereas William McKinlay of the City of Chicago recently made an assignment to me William P. Ross of the same place for the benefit of his creditors & whereas certain of said creditors have expressed a determination to contest the validity of said assignment & whereas there are doubts as to the validity of the said assignment by reason of certain provisions therein contained. I am therefore in consideration of the premises & of the agreement and consent of all of the parties to the said assignment and of one dollar to me in hand paid by the said McKinlay, I the said W. P. Ross the assignee agree to & do hereby receive & do sell, assign, & set over to the said Wm McKinlay all and every part, parcel, & article of the property embraced by the provisions of said assignment or intended so to be, excepting so much as has been converted into money & I do hereby agree to pay back to the said McKinlay on demand by him or his Attorney all moneys or other proceeds of any of the property embraced by the said assignment or intended so to be; which said assignment is hereby amended & reference is hereby made thereto.

Our witnesses whereof I have set my hand & seal hereto this 5th of October 1887

In presence of
Wm. A. Porter

Wm. P. Ross Seal

To all to whom these presents shall come,
 we whose names are hereunder written, and
 seals affixed, creditors of William McKimley,
 not including J. P. Ross or R. P. Dambel, of
 the City of Chicago, County of Cook and
 State of Illinois, send greeting:

Whereas the said William McKimley does
 justly owe, and is indebted unto us, his said
 several creditors, in diverse sums of money, but
 by reason of many losses, disappointments, and
 other damages happened unto the said William
 McKimley, he is become unable to pay and
 satisfy us our full debts and just claims and
 demands, and in consideration that the said
 McKimley promises and agrees to remain a resident
 of & carry on business in the said City of
 Chicago during the whole of the time and space
 of six months hereinafter mentioned, and unless
 he so does this agreement shall be utterly
 void, we the said creditors have resolved
 and agreed with the said McKimley & to &
 with each other to undergo a certain loss
 and to accept of 50 cents for every dollar
 owing by the said William McKimley to us the
 several and respective creditors aforesaid,
 to be paid in full satisfaction and dis-
 charge of our several and respective debts,

Now Know ye, that we the said creditors of
the said William McKimlay do, for ourselves,
severally and respectively, and for our
several and respective heirs, executors, and
administrators, covenant, promise, compound,
and agree, to and with the said William
McKimlay, by these presents, that we the said
several and respective creditors shall and
will accept, receive, and take, of and from
the said William McKimlay, for each and
every dollar that the said William McKimlay
does owe and is indebted to us the said
several and respective creditors, the sum
of 50 cents in full discharge and satisfac-
tion of the several debts and sums of money
that the said William McKimlay does owe
and stand indebted to us the said sev-
eral and respective creditors, to be paid
unto us the said several and respective
creditors, within the time or space of six
months, next after the date of these presents,
and we the said several and respective
creditors do severally and respectively covenant,
promise, and agree to and with the said
William McKimlay, that he the said William
McKimlay, shall and may from time to
time, and at all times within the said

time or space of six months next ensuing the date hereof assign, sell, or otherwise dispose of all his goods and chattels, wares and merchandises and property of every description which he now has or may have at his own free will and pleasure, and that neither we the said several and respective creditors, nor any of us, shall or will at any time or times hereafter sue, arrest, molest, or trouble, or take any proceedings for the collection of our respective debts either in law or in equity against the said William McKimley, or his goods and chattels or property of any description or take out any execution upon or against the same for any debt or other thing now due and owing to us or any of us his respective creditors aforesaid; so as the said William McKimley do as well and truly pay or cause to be paid unto us his said several and respective creditors the said sum of 50 cents for every dollar he does owe and stand indebted unto us respectively, within the said time or space of six months next ensuing the date hereof, and any execution already issued for the collection

of any debt or other demand or thing above mentioned shall be immediately stayed & no further proceedings shall be had or taken thereon, and all and every of the grants, covenants, agreements, and conditions herein contained shall extend to and bind our several executors, administrators and assigns, as well as ourselves. In witness whereof, we the said several creditors of said William McKinlay have hereunto set our hands and seals this 3rd day of October AD 1857

Witness.

The interlineation between the 7th & 10th line from the bottom on the 3rd page, and the erasure of five lines on the 3rd page and the interlineations between the 2nd & 3rd & between the 4th & 5th & between the 13th & 14th lines on the 3rd page before execution. Also the interlineations between the 13th & 14th lines 1st page & between the 3rd & 4th lines 1st page, & between the 14th & 15th lines 1st page before execution

W. H. Bolton	[Seal]
Downs & Co. By J. C. H. J. C. H.	[Seal]
Whitely, Kesselring & Co	[Seal]
Peake, Knapp & Co	[Seal]
H. W. Ross & Co	[Seal]
Lucius Atwood	[Seal]
By W. N. Atwood	[Seal]
Dr. W. Williams	[Seal]
Bernard Hesch & Co	[Seal]
W & S. C. C. C.	[Seal]
J. H. W. W. W.	[Seal]

And the said William A. Porto who being
duly sworn testified as follows;

I drew this
paper. the agreement to cancel the apigimaw
was defendant's attorney at the time, and
as such went round to all the parties whose
names are upon it, and they signed it in
my presence.

I went to the firm of H. K.
Marsh & Co. don't recollect which first
signed it, it was

Conspicuous

signed by one who said he was a member of
the firm. I saw the reassignment executed
by Rife at his store after the previous paper
had been executed. I saw the Composition
deed executed by the parties whose names
are subscribed to it, it was subscribed by them
at the same time the other paper was signed.
This paper contained all the interlineations now
upon it at the time it was signed. The 50 cents
for every dollar was on it at that time, and
not intended to be erased. I obtained the
signatures to this Composition deed as
McKenzies Attorney. There was no other agreement
than that expressed in the Deed. I went round
with the papers and they signed it. The Counsel
for the defendant then interrogated the witness
as follows

On the 8th of December was defendant
indebted to you, and if so how much?
And the Counsel for the Plaintiff then and there
objected to the same as wholly irrelevant to the
issue, But the said Judge then and there overruled
the said objection and decided that the said
interrogatory should be put to the said witness
and his answer thereto taken, to which ruling
and decision of the said Judge the said Plaintiff
by his said Counsel then and there excepted.
The Witness then stated, Defendant
was indebted to me in the sum of \$113 and interest

I had a note for the amount made in October. I think there was interest in it, I had dunned him for the money. The latter part of the week before I had dunned him for it, and I then told him I wanted him to pay me that note. He did not pay me at that time. He paid me \$75 of it on the 8th of December just before dinner; to all of which testimony so given by the said witness as above the said plaintiff by his said Counsel did then and there object as irrelevant to the issue, and the said Judge then and there overruled the said objection to which ruling the said plaintiff by his said Counsel then and there excepted.

The said witness William S. Porter then further testified as follows in his direct examination

I first learned of this judgment on the 9th day of December after the note was executed. McKimlay and the Sheriff came to me after the levy the next day I think the 10th. I went to the Store of the plaintiff with the defendant, I found the plaintiff there and stated to him that I had come for the purpose of enquiring of him as regard to the judgment or the note. The defendant was present. I

(6)
 think defendant had made a remark to
 plaintiff previous to mine, defendant as he
 entered, said to plaintiff under a great
 deal of excitement you are a great man
 or a pretty fellow for entering up judgment
 against me for that amount. You know it
 was only \$100 and \$3 interest and you promised
 not to enter that up until the thirty days
 were up. Then Bolton made a reply, his
 reply was. there is no use of your talking
 about that note Mac - the note is right -
 up to that time I had stood there and said
 nothing, I think McKinley replied then
 to plaintiff, you are a liar or you are a
 damned liar, I think the latter and you
 know it. It was then for the first time I
 addressed plaintiff in regard to the matter.
 I then said Mr Bolton. my object in
 coming here is to enquire in regard to the
 amount of that note. He then replied
 I suppose you are going to pitch in, and
 I'd better say nothing about it, or that
 it would be more prudent not to say
 anything about it. I will not now be
 positive about the exact words. There was
 another person in the Store at the time an
 other man. and he made a remark.
 He (Bolton) was then present. He (Conde) said
 if it is up you can get it set aside, I

aperted to it, I then wrote to defendant and said well we had better go and we walked off together. It was here admitted by self that self gave the defendant a check of \$100.00 on the day the note was executed.

The Counsel for the said Plaintiff then Cross Examined the said William A. Foster who then testified as follows

I made an affidavit in this case, on a motion to set aside ^{the} judgment. Have not read it since I think.

I think the first thing defendant said to Bolton when we went into his store was "Well you are a pretty fellow, or a great fellow to enter up a judgment for that amount against me. I think very likely I did swear in that affidavit that Mr Kenley at that time asked Bolton whether he did not borrow \$100 of him (Plaintiff) and whether he (Bolton) did not promise not to enter up judgment until the note was due. He (Mr Kenley) also said substantially what I have now stated to be his words.

Interrogation by Plaintiff's Counsel

Did you swear in that affidavit whether anything was paid about the amount of that

Note P

Answer

39 I don't recollect whether he spoke of that amount or of \$1800, I have not sworn that the amount was mentioned. I think Mr. Keane did make the inquiries stated in the affidavit, I recollect what I have stated now, I know the character of the conversation and recollect the manner of the parties, defendant's manner was very excited, all I said to plaintiff what I have said, my manner was not threatening I said Mr. Pollon I have called here to get an explanation in regard to the amount of that note. Have no recollection that he said I had better go and see his counsel, don't think he did, I have never sworn to the conversation before circumstantially, I don't think defendant ever swore that he had stated all that occurred at the time I did not intend to state in my affidavit all that occurred as to what passed between plaintiff and defendant, I did not think very important, my object in going there was to hear what explanation plaintiff would give in regard to the note, I think he did state the words used in the affidavit of defendant viz, "Did I not borrow \$100 of you and did you not promise me to enter up the judgment until the note was due" These words were not

Necessarily all that were used, they were
used as also those I have stated at first
"You are a pretty fellow &c" I think those
words in substance were used in the
conversation.

When I took the Composition
paper I went to the place of business of Pease
Marsh & Co and asked for members of the firm.
This I did with all who signed the paper.
I have no doubt it was signed by one of this
firm, I had a conversation with him on
the subject, don't know whether the name
of Bolton was mentioned in that conversation.
I was not informed by him that Bolton had
been to them and asked them to sign it.
In the Condition the paper was in before it
was altered it had been circulated among
the creditors for execution. There were a
few signatures to that paper before it was
taken around by me, when it was altered
I took it around among the Creditors for
signature, Can't say whether Pease Marsh
& Co were on it before it was altered, I don't
know, when I took it around
think it very likely Pease Marsh & Co.
Whitely Magilline & Co, Doons & Can Fryer and
Bolton were all on the paper when I took it
around, Can't say who procured their signatures

I can't say that when I took the altered
 paper to them they said they had before
 signed it at plaintiff's request. I don't
 know that plaintiff had previously interested
 himself in September to get signatures to
 that paper, I never had heard defendant
 say so. The "50 cents on the dollar" was
 originally on the paper. It is not on my hand
 writing. I think all the alterations in it
 I made are noted at the bottom of the paper.
 I did not know that Peake Marsh & Co
 had judgment and execution against
 defendant at that time. There were one or
 two demands near judgment. It is quite
 probable I had heard that one of the demands
 was on execution. I took this paper the
 agreement to cancel the assignment, to the
 creditor, it was signed contemporaneously
 with the compromise deed. Those four
 creditors before mentioned were on the paper
 when I went with the compromise agreement
 and stated it to them. They did not sign it
 over but merely acknowledged their signatures.
 I never said of Peake on the subject. I took
 the paper to Peake & Co. and they signed it
 at my request. I don't know whether any
 one else had used any influence with them.

The note I held against the ~~credit~~
 debt account was a bona fide one. It was a

Judgment note, it was given for services

The said Counsel for the defendant then resumed the direct examination of said witness, who testified as follows

What I mean by the original compromise, was the paper as it was before I made the interdictum. It was signed by some of the Creditors but others refusing, defendant assigned to Ref. I was absent from the City when he assigned, on my return I altered the paper and procured the signatures of all the Creditors except those on it, whose acknowledgments I also obtained, and the assignment was then set aside

The Counsel for the said defendant further to maintain and prove the case for on his part produced as a witness William H Sharpe, to whose deposition as a witness the said plaintiff by Counsel objected, on the grounds that the facts expected to be proven by the said witness were wholly irrelevant to the issue

But the said Judge then and there overruled the said objection and directed that the said Sharpe should be admitted and sworn as a witness in the case, to which said decision and ruling

of the said Judge the said plaintiff by
his said Counsel then and there expected
And thereupon the said Minors testified
as follows

441 I was Clerk for the Defendant
on the 8th of December last, I commenced
to Clerk for him on the 15th of December
186, at the time of the agreement the
Defendant was indebted to the plaintiff a few
years over. of the plaintiff here admits
the statement of the debt in the agreement
to be correct. This was in September,
after that the Defendant became further
indebted, on October 3rd for \$100.54 This was
all that defendant bought of plaintiff after
agreement, up to the 8th of December I kept
defendants books and sold his goods. Defendant
owed the \$100 to Oliver and did not know where
to get the money and he requested me to go and
see if Bolton was here and tell him that the
defendant wanted to see him Bolton at his
defendants store. ^{This was on Monday the 7th day of December} I went to the plaintiffs
Store at nine O'clock on Monday morning
and the plaintiff was not there Mr Read
his clerk was here in the Store and I told him
to tell Plaintiff that the defendant wished to see
Bolton at his Store that A.M. - Bolton came
to the defendants the same day at about 11 O'clock
he was present but one and the defendant.

And the defendant said he wanted to borrow
\$100 dollars of him for 30 days - that he wanted
to pay a note of \$100 which was past due
that he would pay him good interest and
give him a judgment note for it. Rollins replied
it was pretty hard times but that he thought
he could help him out of it, and that
defendant was to come over at 3 O'clock in
the P.M. McKinlay went over at that
time, he was absent about one hour and a
half and came back, he went there again
the 2nd day the 8th of December about 11
O'clock A.M. he was back by 13 O'clock
and did not see him have any money when
he returned. An Officer called there on the
14th day of December between 3 & 4 P.M.,
it was Thomas Root Deputy Sheriff, I
was before the Court. He shut up the
Store by virtue of the Execution in question.

The 15th of December 1858 on Rollins
execution. McKinlay went off out of the
Store and was gone an hour or two, where
he went I don't know. William A. Porter
was his Counsel at that time.

The said Counsel for the plaintiff then moved
to exclude the testimony of the said Sharpe
as irrelevant to the issue, which Judge the
Court overruled, to which

ruling the said plaintiff by his Counsel then
and there excepted.

The Cross Examination of
this witness was ~~then~~ waived by Plaintiff
Counsel.

52 The Counsel for the defendant here
rested his case.

The plaintiff to rebut the
testimony offered by the defense, then called
George J. Marsh, who being duly sworn
testified as follows.

I am a member of the firm
of Drake Marsh & Co of Chicago, we were
creditors of the defendant, our claim on the
8th of December was \$208.13 against
defendant. I know the plaintiff Bolton
(The above mentioned Composition deed was
here shown to the witness) I recognize the
Signature of our firm but this is the first
time I ever saw the paper, never saw it
before. I recollect in the month of September
last a proposition was made to us by the
defendant for a Settlement at 50 cents
on the dollar - his own note without any
security which we refused to take. The matter
ran along some time, and Bolton came to us
and said he wished to fix up the matter of the
defendant and put him through as he expressed
it. He also said he was getting up a paper

for Creditor to sign taking 50 cents on the Dollar - Creditor was to take Defendants note without any security, he stated to me he believed defendant was making this offer in good faith and that if we would sign the paper he would guarantee to us the amount, that is one half of our debt. I told my partner to sign the paper when brought in as the plaintiff had guaranteed the amount to us \$109.00. I refused to agree to defendants first proposition.

I. Plaintiff applied to me some 3 or 4 times about it - and we signed it solely upon the agreement made by plaintiff, Our firm signed no other Composition paper that I know of. I should have known if there had been any other, our claim at that time was not quit, it was our intention to do so, our firm since that time have looked to Bolton for payment, This agreement was conditional, I knew nothing about defendants intentions except what plaintiff told me, I do not know whether defendant knew that plaintiff was using his influence with me to procure this compromise, I never have met plaintiff and defendant together, the plaintiff was the only one I ever had any conversation with about the compromise against

On Oath Examination by the Counsel for the
defendant, the said witness testified as follows

43
I never saw this paper until to day, that I
know of. There are three members of our
firm, Peake and myself are here, there is
a probability he may have signed a paper
without my knowledge, Don't think he would
put his name to a paper without consulting
me, He is older than I am, we are both equal
in the business, I am pretty sure I know
everything he has done in behalf of the firm,
If we were to sign the paper I wanted some
definite understanding with the plaintiff
before we did so, Don't know how the paper was
when he signed it, Peake told me he had
signed the compromise, Have conversed with
the plaintiff - No one was around, we were
alone, It was twice in the Street and once
in the Store, what I have stated is the
substance of all the conversations, The first
conversation was in Lake Street along in last
August or September, It was shortly
after our bill came due, The first conversation
was in the evening, think the plaintiff began
the conversation, Can't remember the first words
I can not give details exactly, Can't give
any fact of the conversation verbatim, Thomas
continued this way, I asked him how

defendant was getting along, hot position.
Conversation began this way, what I recollect
distinctly was he said he was going to
circulate ^{or was circulating a paper} a paper, and in substance he
wanted us to sign it "I want you to sign
that Compromise of McKim's and it will
be all right" I told him we would not sign
any paper and take defendant's notes without
security. Recollect nothing further then,

Saw him next at the Corner
of Lake Street and Wabash Avenue, we were
returning from dinner, this was about 3
o'clock, he asked me then if we had concluded
to sign defendant's paper, I told him we
had not unless we had security, lost much
more paper then

The next conversation was in
the front part of our Store, no one else was there.
This was in the morning, it was last September
or 1st of October, Bolton came in and said if
we would sign the paper he would
guarantee our debt to us of \$109.06.
This was the substance of what he said,
may not have been his exact words, he may
have expressed himself differently, he told
me he would see that we were paid, that
just I recollect. Don't recollect of Bolton
using the words to me that he would fully

protect us if in his power as much as his own
 claim" - think they were not the words used
 by him, Don't remember that he used such
 words, I think these were not the substance
 of his words. - He told me he would see that
 we got 50 cents and would guarantee it to
 us. He spoke to us pretty strong, He said
 nothing else that I recollect, No one was
 present at this conversation, He gave me no
 written evidence or note, but merely his word
 for it, we have an interest then if that
 judgment is paid, we expect our claim to
 be paid out of it by him \$109.86, I took
 of plaintiff's word for his promise, I could not
 prove plaintiff's promise if he denied it, If
 this judgment is paid I think we shall
 receive our whole debt, I have had a
 conversation with Mr. Charters about what
 I should swear to - to day in this room and
 about an hour and a half ago, I have also had
 a conversation with plaintiff a week or ten
 days ago, I told him what I could swear
 to, I made an affidavit in this matter
 at one time, I told Charters the amount
 was wrong in the affidavit and to alter it,
 when I signed it I supposed it was altered -
 I sworn to the affidavit - the plaintiff states
 to me in substance as stated in this affidavit

The Plaintiff further to admit the testimony offered by the defence then called James B Allen who being duly sworn testified as follows -

I am a member of the firm of John W Weber & Co. On the 8th day of last September the said defendant was indebted to us in \$623, no payment was made on it to the 5th of October last by defendant, not a dollar due to December 8th last. An application for the purpose of effecting a compromise with other Creditors in behalf of the defendant was made to us by Bolton - Prior to that no application was made by any one, Previous to that however a notice had been sent on to us by the defendant that he could not pay over 50 Cents, the reason given was the hard times and a recent fire. Bolton brought this Composition paper to us in fore part of September last - he handed it to me - I looked at it - four or five names were then attached to it - I am positive that three two were on it, viz William H Bolton and Downs & Van Hook and I think Margelline & Co were upon it when it was handed to me, Bolton requested our signature to the composition and advised us to sign it, we declined doing so, he also stated that if we

would sign the Compromise we should not
lose a dollar, I refused to do so on account
of having a Judgment against the defendant
and an execution in the hands of the Sheriff
at the time, This was about the substance of
the conversation at that time.

A few days
after I had an other conversation at Bolton's
Store, the defendant was there, Bolton and the
defendant requested me again to sign, The
defendant said it would allow him to go
on in business, and he had no doubt it would
allow him to pay it in the end, I then told
the defendant if he would give as security we
would sign the document, otherwise we would
not do so, I told the defendant I thought
it a dishonest transaction. I also told him
I thought he ought to exhibit a statement
of his affairs, showing how he stood at the
time of the fire, and a statement of his affairs
This he refused to do, This is all I recollect
at this time of what was said to him by me,
After that I left the store, leaving both Bolton
and the defendant there, afterward, Bolton
spoke to me several times on the subject - He
stated that if we would sign the Compromise
that he would protect our claim and that we
should not lose a dollar, I asked him how he
would do it - he said his influence over the

defendant, was such that he could make him
do almost anything he wanted him to. He
said he had to pay his credit - and had in
fact made him what he was, the defendant
gave Bolton as a reference to us when we
first gave him a credit - I told Bolton we
would consider further about the matter, and
I decided signing until all the creditors
had signed it. I signed the paper myself for
the firm, we came to the conclusion that we
should eventually realize 100 cents on the dollar
from the representations which Bolton had
made to us entirely. This was the inducement -
When I signed the document I took it from
the hands of Bolton, all the creditors had then
signed it, the main consideration for signing
it is already stated. I told Bolton that I
would not sign it unless he would deposit the
Composition deed with us. This was another
consideration - He took the document stating
that he would consult with the defendant in
regards to leaving the paper with us. He returned
with it with defendant's consent to now
holding the Composition deed for which I
gave him a receipt. I never heard the defendant
say anything as to any particular person being
engaged in his behalf for procuring the names of
the creditors. Bolton said he had seen the other

46. Creditors to get them to come in. He stated
he had no doubt the residue of the Creditors
would sign the Composition. I know nothing
of my own knowledge of his efforts to induce
other Creditors to sign the Composition. The only
other person who came near us on the subject
besides Bolton was Foster. Since the firm
signed that paper we have looked to Bolton for
our debt. We had no confidence in the defendant.
I told the defendant at the time we never
expected to receive a dollar from him. Our
claim was then in execution. It was placed in
the hands of the Sheriff and is there still. It
was paid after the signing of this document.
I wanted the defendant to make a statement
of his affairs.

On Cross Examination by the
defendants Counsel the said witness testified
as follows.

The first conversation with Bolton
was had after the defendants agreement to
Ref. Once he had a Composition Paper with
him at our firm, and once I was at his
Store. That paper did not then contain the
interiminations now in it. These were afterward
put in it. Our object in acquiring the paper to
be left with us was to secure our payment
before any other Creditor. The reasons I gave
was that the defendant would want to get

the paper, and that in order to get possession of it he would pay us, That was one reason. This was a natural supposition. If the defendant had come and paid some part of the money I would have given him the paper although the other creditors had not got anything. I gave Porter a receipt for the paper, (the receipt was here introduced and read in evidence) Porter afterwards called at our door to see the Composition I did not show it to him, It was in the hands of Bolton - I had placed it in his hands for inspection - He called for it - I let him have it, and he promised to return it, Porter called twice I think, He said I ought to let him have it, I told him if he would call on Bolton no doubt he would let him see it, Porter said in substance, that he had my receipt for it and that it was my business to get it - He also wrote me a note, that note requested me to return the Composition I have made an affidavit in this matter, I saw my affidavit last evening, I did not read the affidavit but took it only for the purpose of looking at the figures, the sum stated in my affidavit is incorrectly stated It is down \$600, it should be \$633, I read no other part of the affidavit - nor have I read it

since I made it - I have had a half
dozen conversations with Bolton on the subject
First - as our son then in fore part of
September was defendants assignment,
Dont know what day the assignement was
47 made. The Composition was after the
assignement, I do not understand that
the object of the first Composition was to procure
an assignement, I recollect that the assignement
was made before the first offer of a compromise
was made. We had a judgment which was
obtained after the assignement & we then came
to or intended to, to break up the assignement
The first talk with me about a compromise
was after our judgment. The first conversation
with Bolton was a week or two days after we
obtained our judgment, we had several
conversations from time to time until the 1st of
October. I have no means of arriving at
those conversations except from recollection.
Bolton when he brought the Composition paper
to our place stated that he wanted us to sign
it - that he had no doubt that he would
get all the Creditors to come into the arrange-
ment. That if we would sign it he would
consider himself holder, or would protect our
claim. My recollection is that he said he would
protect us from any loss; that was all he
said on the subject, Except that he was going

amount among the Creditors and had no doubt
he would procure them to sign it. The paper
had two or three names on it. The first
conversation was at Bolton's Store. He then
requested us to sign the paper. He thought
we had better take that than lose the
whole debt - that we had better allow the
defendant to go on in business. - That was
all I think he said at that time. The third
conversation may have been in the Street. He
still advised us to sign it. The fourth
conversation was the same in substance as
the last conversation. He advised us to sign
that composition deed. He told him we
would not sign it until all the Creditors
had signed it, and that we would also
think of the matter further. He said several
times that he had a good deal of influence
over the defendant. I made an affidavit
in this case. At the time I made the
affidavit I think my recollection then was
as good as it is now. The affidavit was not
drawn by my dictation. I was not present
when it was drawn. It was brought to me
by Mr. Jackson at the Court House and then
handed to me. I went to the Court House for
the purpose of giving it. I read over the
affidavit myself. I think it was right. -

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Bolton and say he had not the least doubt I would get my debt if I would sign it. He gave me no writing to that effect. I have no written evidence of his promise. I asked him for it once and he would not give it. If the money is collected on his judgment I expect to receive a part of my money from the proceeds of the judgment. I did not think it important that the debt was stated in the affidavit at less than it actually was. Our judgment was obtained in the Common Pleas at September term 1857. I think from the 3rd to the 10th of September.

The plaintiff further to rebut the testimony introduced by the defence, then called John W. Cook who being duly sworn testified as follows

I know the parties to this suit - I am an attorney - I was attorney for Hecht & Co in September last - They were then creditors of the defendants. On the 3rd of October last; An application was made to me & in October to sign ~~to sign~~ a Composition paper, in behalf of the defendants. (The Composition Deed was here shown to the witness) This paper I saw in Bolton's station - Bolton came to me at that time in behalf of defendants - previously to that time I

had not been applied to for that purpose
either by the defendants or any other
person for him. The firm of Hecht & Co
came to me for advice. They first came to
me, then Bolton came and stated the
circumstances of the case, I told him we
were Hecht & Co's attorneys, and he then
asked me what objections I had to their
signing it. I told him none except
those I had learned out in the States. He
then said he wished I would bring Hecht
to his store. I went to the plaintiff's store
alone, as Hecht did not come in that day -
I waited some time for the plaintiff to
come in, when he came in we began
talking about this McKinlay matter. He
sat down and made a statement of the
defendants affairs in figures to me, and
said he had lost so much by fire, and
so much one way, and so much by another
- some 3 or 4 different ways that he had
met with losses - He talked some time about
this and other matters, and I took the figures
telling him I would get Hecht to sign
it, if that was a true statement of defendants
affairs. As I was going out he said the best
thing that Hecht can do is to sign this, if
I don't sign it he won't get a cent, and if

he does sign it he may get 50 cents -
At the time of the conversation the
plaintiff produced this Composition deed
It was signed down as far as Lewis Allen
not including his name, but including
William M. Robt & Co - There are two names
but no Hecht & Co's signature, Dougherty's
and Heber & Co - I have stated all that
I recollect of that conversation. At
another time I went again to the plaintiff's
store with Hecht. We had a conversation
with the plaintiff which I did not hear,
At length I came to me in the store and
said that he would sign the paper, In
the first conversation the plaintiff said that
if you can get Hecht & Co to sign this all
the rest will come in, I was applied to
by one of the Hechts for advice, My first
advice was not to sign - but after the
conversation with Bolton I advised them
to sign the paper by all means after
that, - About the last of November I
went over to the defendant's store on the
North side to look after this matter - while
standing at the door, before entering, I saw
the defendant engaged in conversation with
some persons, - don't know who - near the
door inside of the store. The person the
defendant was talking with seemed quite

excited and they were talking about this same business. The first thing that called my attention particularly to what was said was the mention of the name of Bolton by that person. The defendant answered that Bolton was a friend of his, or had befriended him, - I forget which expression was used, and that Bolton was in for him some \$1000 or 1800 either that he was in to Bolton or that Bolton was in for him. I transacted my business that I had to do and left. Prior to that time I had been past the Store, had looked in, but had never stopped in after the execution of the Composition deeds, prior to the time of this conversation. Don't think the defendant learned the precise figures, it was as I have given it.

On Cross Examination by the defendant's Counsel the said witness testified as follows

I can't say what particular time this conversation was. I can tell within three weeks from facts within my knowledge. After this conversation which I heard I returned home. I had done the business referred to before I heard the

12
30
conversation, my business over at defendant's
store was to see whether the defendant
was carrying his goods away as I had
heard he was doing. I was standing
on the door steps when I over heard the
conversation - Was not there more than
once about that time. I was there
also in 1855 but not before in 1854 if
I recollect. Don't recollect seeing but
two persons in the Store at the time of
this conversation. The other man I did
not know. They were standing in the
front of the Store perhaps about six feet
from the door. The defendant talked
quite low. The other man spoke louder.
Can't recollect the first words said. They
did not whisper themselves as strongly as
my friends - Don't remember which
spoke first. I do not positively know
what they were talking about. I was
going to wait till the defendant got
through before speaking to the defendant.
Did not speak to him - One reason why
I did not was my surprise in hearing
that he owed the plaintiff so much when
the plaintiff had not paid he had such
a debt against the defendant. - Can't
recollect what the other man said. He
said he hoped this was all right. Don't know

what he meant by it - I stood there
for 4 minutes. I told my partner what
I had heard first - I also told Hecht-
Caut recollect the precise words uttered
by defendant. I saw this Composition
paper at Bolton's Store, just as it is now
I provided more on Bolton - did not care
about reading that document - The
names were not all there - There were
two names on it - Will not swear
positively that Robt V. G's name was there,
am partly positive Prave Marsh was
on it - Think erasures were there - Caut
swear this paper was exactly as now
with respect to all the interlineations -
It was not my errand to speak to
defendant - I did not go there to speak
to him, but to see whether goods were
being removed

The direct examination
of the witness was here resumed and he
testified as follows

I went to the Store for the
purpose of seeing whether defendant
was removing the goods - in that visit
I acted impersonally and not personally

The Plaintiff further to rebut the

testimony offered by the defense then
called Edward Bolton, who being duly
sworn, testified as follows.

I am in the
employ of the plaintiff as bookkeeper.

51 I know the defendant. On the 8th
day of last September the defendant
owed plaintiff \$616 and some odd cents.
I speak from knowledge of the sale of goods
to defendant. I get my information from
the books. I was in the Country last
September. Have been bookkeeper with
the plaintiff since I came here.

It was
here admitted by the defendant's Counsel
that the debt due by defendant to
plaintiff in September was \$616.00
And in October by a further sale of goods 100.54
Total \$716.54

The plaintiff further to rebut the testimony
offered by the defense then recalled
Nathaniel T. Reed who testified as
follows, I know William H. Sharpe who
testified here yesterday - I recollect his
coming to the plaintiff's store on the 7th
day of December last. He left word
that the defendant wished to see Mr. Bolton.
I delivered the message myself

The defendant when he came into
Bolton's Store on the 8th of December sat
down by the stove with the plaintiff. I
was standing there at the time but they
were so long in a very low tone of voice as
if in a private conversation, and I
moved away from the stove - After they
went through the conversation at the
store they both got up and the plaintiff
went to the railing and turned around
and asked the defendant if he could meet
his payment on his composition when
it became due. The defendant said he
could not possibly, said he wanted \$100
that day and should want some more in
a few days. Bolton then said he would
not take a Judgment note from him unless
it would secure him, and the other Creditors
wished that Bolton went to the desk and
drew up a statement which is in our
reference book which McKenley signed,
After signing that the plaintiff gave
him the check for \$100. This is all I
recollect as passing in that conversation.
The loan of \$100 was not refused, Bolton
said he would not take a Judgment note
from him to secure him unless he would
secure him and some other creditors whom

he felt morally bound to see back.
Mr Bolton called off to defendant a
few names of the Creditors he referred to,
viz Peake Marsh & Co, J & H Steben & Co
and Whitely & Margelloni. These are all
the parties I heard Bolton name over,
52 when he told defendant he would not
take a note & wait he secured other
parties; the defendant made no reply
at all. He was very anxious to get the
\$100. Mr Bolton then moved off to the
desk and wrote this statement in our
reference book - The statement in the
reference book was here read to the jury
by the witness, which is as follows

Statement of William McKenlay
made 8th of December 1857

There is no
encumbrance on my stock, I have not
given any person any judgment note,
Chattel Mortgage, or any other writing by
which I may be closed up, and my
transactions with William H Bolton are
straight forward and honorable and I shall
protect his interest as I agree in reference
to loan of today & also the other Creditors
things
At Test (signed) Wm McKenlay

I saw the defendant sign the paper,
it was then as now - I witnessed this entry

On Cross Examination the said witness testified
as follows

There may be other statements in this
book I have witnessed. I read the Defendant's
Statement at the time I witnessed it. Have
read it several times. Read it last evening
I wanted to know what he did say, if
questioned about it. I knew what was in
it before. I witnessed it after the defendant
left, about two minutes after he went out of
the door. Bolton was standing at the desk
when I signed as a witness. It was lying
on the desk. I read it at the time it was signed.
Generally read such statements. At the
time of the conversation I was standing
in the front part of the store within five or
six feet of them. I remember what I have
stated. That is the whole of the conversation
I heard. When the defendant first came in
they sat down by the stove together. They
had a private conversation. Bolton asked
the defendant if he could meet his
composition, and the defendant said he could
not possibly. Said he wanted \$100 that day,
and should want some more in a few days

think he mentioned the amount from \$200 to \$300. - Bolton did not say whether he would let him have it or not. Defendant said he would want more in ten days or two weeks. Bolton then said he would not take a judgment note from him unless he would secure him and other creditors signing he felt morally bound to see them paid. I have read my affidavit since yesterday. I had a conversation with Edward Bolton.

The plaintiff here closed his testimony - and the defendant then recalled William H. Thayer who testified as follows - I do remember the time L. Peck was at the store. He was not in the store, He have double doors, he stood eight to ten feet inside of the door. I knew the man. I recollect who the defendant was talking with at the time, His name was Dodge. I cant say what they were talking about - it was about McKinlay. I dont know where Dodge now is. I never heard a word about the defendants being into the plaintiff - locking of the mill, I was a great deal nearer to them than he. I heard no such conversation, never heard any such from McKinlay. He was never there before or after - Am quite positive

he was never there but at that time. Store is
opened at 10 o'clock and closed by
10 o'clock. I was there all the time —
I never saw Peck there before. He was never
there while I was there. He may have been
there some other time.

The Prop. Examination was
made by the Plaintiffs Counsel.

The defendant
it recd. William A. Peck who testified
as follows. I made those alterations in
the Compensation deed, I made them shortly
before the agreement was executed. From
the time I first made the alterations to the
time it obtained all the signatures. I
am not positive whether Robt Ho's signature
were upon the paper when I made the
alterations.

In Prop. Examination the witness
testified as follows — I made the alterations
about the 3^d of October. It was a fair paper
when I made the alterations. There was no
interruptions at that time whatever. Every
signature that appears there I procured. The
signature of Hecht Ho I procured. That was
written in my presence at the place of business
of that firm. I think it was in Lake Street
but will not say so. I went around from one

to the other as rapidly as possible. I went to Bolton's Store and showed him that agreement and the other agreement, and he signed them. There were some signatures to the paper as it was before it was taken by me. There were some ten or there to it before I took it. I don't think Prof & Co's signature was on it when I went out with it. I prepared the paper before I went out of my office to procure the signature. I did not prepare part of it one day and part of it the next. During the progress of the alterations and up to the time it was signed, it was not out of my possession. Don't recollect getting that signature. But recollect going there, but don't recollect whether he actually signed it. I got their acknowledgment. Can't say positively that I got Atwoods' signature to it. Don't think there were six signatures on it when I started out. I have no doubt that I procured William R. Williams signature. His place of business is on Lake Street. Whether he acknowledged or signed it to me I will not be positive. I swear positively he either signed or acknowledged it. Think he signed it. I took the paper also to R. Hecht & Co place of business. I think they signed the paper when I took it to them. Have no doubt they did. I went to Dougherty and one of the firm

signed the paper in my presence. Heber & Co.
was signed by one of the firm. I did not
regard it as material whether they had
previously signed or not. My object was to
get this paper executed, but whether I
procured the signature or it was there before
I will not be positive. I will not be positive
how many were on the paper before it was
altered. I will be positive that Necht
& Co. were not on the paper. It may have been
on it. I do not think it was. Still
I cannot say certainly. I do not think
there were more than 3 or 4 there, but I
will not undertake to say there were not
more than 3 or 4 - there are 7 or 8 in all

The plaintiff to rebut the testimony offered
by the defence then called Bernhard Necht
who being duly sworn testified as follows
(The Composition was here shown to the witness)
- I recognize the signature of our firm
1 this paper, it was signed by me. I was
a creditor of William McKinlay, & Messrs
& Menzies were my counsel. I signed it
by the advice of my counsel Peck. I had
no interview with Bolton on the subject.
At first they gave me no certain advice,
but after they had seen the plaintiff they
told me it was the best I could do -

I had the paper and took it to Mr. Peck,
and submitted it to him as my Counsel
I signed it at my office. I think
Mr. Porter brought it there and he gave it to
me and I took it to Peck, & brought it back
55 and then I signed it.

On cross-examination by
the defendant's Counsel the said Mr. Peck testified
as follows. — I am not very sure that I
took the paper. Think Porter left it with me.
If he did so, I took it to my Counsel, — would
not be very certain Porter left it, but it is my
impression that he did. If he had it I don't
know how long he kept it. Might have been
a few days. This may have been in August.
Think it was in September. Would not be
very positive as to the time. Am sure
Porter was present when I signed it.
I can't say who brought it there.

William A. Porter on the part of the plf. further
testified as follows, Deft. gave me a note
for \$113.00 bearing date Oct 5th, this was
for services rendered in procuring the
execution of these papers & the papers bear date
the 5th of Oct.

This was all the evidence offered
before the jury in the said trial & the
case on behalf of the said plaintiff and of the

said defendant to maintain the issue on their respective parts

And thereupon the Counsel of the plaintiff asked the Court to give the two following instructions, which were given

Plaintiffs' Instructions

1st If the Jury believe from the evidence that the Note in question was executed by the defendant, or that the said Note was filled up as it is over his signature by his knowledge and direction, and without fraud on the part of the plaintiff, then under the pleadings in this case the Jury will find for the plaintiff, although they should not be fully satisfied from the evidence that there was a consideration therefor then existing from the plaintiff to the defendant to the full amount of said Note

2^d Whether there is a total want or partial or total failure of the Consideration of the Note in question is not put on issue under the State of the pleadings in the cause, and the only fact for the jury to determine is whether the defendant executed the Note in question for the amount therein stated, or signed it partly filled up for the amount and directed or requested the plaintiff to fill up the balance of it

with the knowledge of the amount which
was inserted therein, and if the Jury shall
believe from the evidence that the defendant
executed the said Note, or agreed it and
directed it as to be filled up, then they will
find for the plaintiff.

And thereupon the
said Counsel for the said defendant prayed the
said Judge to give the instructions following to
the jury on behalf of the said defendant.

Def't Instr

If the Jury shall find from the evidence that
the defendant signed a blank Note for the
plaintiff with the understanding and agreement
that the Plaintiff should fill up the same with
the sum of One hundred & three dollars payable
thirty days after date - and that the plaintiff
without the knowledge of the defendant and
without his consent, fraudulently filled in
the said blank note with the sum of Seventeen
hundred & twenty three dollars then the jury
will find that the execution of the said Note
was fraudulently procured and their verdict
on the issue should be for the defendant.

The Court instruct the jury that even though
the evidence establishes that Bolton promised
to pay defendant (McKinney's) debt or debt
to any other party or parties such promise was

not valid or of any legal effect, unless
a note or Memorandum in writing
of such promise was made and signed by
said Bolton.

which said instructions the Judge
then and there did give to the Jury on behalf
of the said defendant, and the said
plaintiff by his said Counsel did then &
there except to the giving ^{of the last H} of the same. N^o 2.

3

And the said issue, with the
evidence so given on the trial thereof as aforesaid
with the said instructions of the said Court,
was given to the said Jury, And the Jury
aforesaid thereon rendered their verdict for
the said defendant.

And thereupon the said
plaintiff by his said Counsel moved the said
Court for a new trial of said issue and said
cause for the reasons

1. That the said verdict of the said Jury was
contrary to the evidence given

2. That the Court erred in admitting the documentary evidence offered by the said defendant, at the trial of said cause

3. That the Court erred in admitting the evidence
of William A. Porter and William B. Shreve
on behalf of said defendant

4

That the Court erred in overruling the several
exceptions taken by the said Counsel for the said

plaintiff to the admission of testimony as herein
particularly stated

5

That the said Judge erred in giving the
instruction No 2 prayed for by said defendant.

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Court, and herein set forth

But the said Judge then and there overruled
the said Motion for a new trial so made
by the said Counsel for the said Plaintiff,
and refused to allow the same, to which
ruling and decision of the said Court the
said plaintiff by his said Counsel then
and there excepted. - And because none
of the said exceptions so offered and made
to the rulings and decisions of the said
Circuit Judge do appear upon the Record
of the said trial, therefore on the prayer of
the said plaintiff by his said Counsel, the
said Circuit Judge hath to this Bill of
Exceptions put his seal, according to the
Statute in such case made and provided.
This Nineteenth day of March in the year
One thousand eight hundred and fifty eight

George Munroe (Jr)
Judge of 7th Judicial Circuit
Ills

And afterwards, to wit, on the 7th day of
April in the year last aforesaid, the said
plaintiff filed in said Court his certain
Apparal Bond which is in the words and
figures following, to wit,

Know all men by
these presents that we William H Polton
Charles B Smith John Tappan of the
City of Chicago in the County of Cook,
and State of Illinois are held and firmly
bound unto William McKinley of the same
place in the penal sum of Three Thousand
Dollars lawful money of the United States, for
the payment of which well suitably to be made, we
bind ourselves our and each of our heirs
executors and administrators, jointly
severally and firmly by these presents.
Tested with our seals, dated at Chicago
aforesaid this 7th day of April A.D. 1858

The Condition of this obligation
is such that, whereas the above named
William McKinley did on the 1st day of March A.D. 1857 recover a judgment
in the Cook County Circuit Court, in and
for the said County of Cook against the
above bounden William H Polton for his
costs of suit; from which judgment the
above bounden William H Polton hath taken
Appeal to the Supreme Court of the said

State of Illinois

Now if the above bounden
William B Bolton, shall duly prosecute
his said Appeal, and shall pay the judgment
costs interest and damages, in case the
said judgment shall be affirmed, then the
above obligation to be void otherwise to
remain in full force and effect—

Approved by me this
7th day of April 1858

W B Bolton (seal)

C B Smith (seal)

John Tappan (seal)

Wm H. Bolton

vs.

Wm McKinty

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Record of
James McKinty

Filed April 22 1894
Litchfield
Vt

W. S. P.

Charles McKinty for plaintiff

James McKinty for defendant

[1274-5]

State of Illinois, }
COUNTY OF COOK. } S. B.



J. WILLIAM L. CHURCH, Clerk of the Circuit
Court of Cook County, in the State aforesaid, do hereby
certify the above and foregoing, to be a true, perfect and complete
copy of ~~all the papers filed~~ *(except those affidavits which do not
relate to the signed issue in this cause) proceedings and returns of record*
in a certain cause lately pending in said Court on the
Common Law side thereof, wherein William A. Bolton
was plaintiff and
William McKim Lay was defendant

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our
said Court at Chicago, this twentieth day of April A. D. 1858

Filed for Record / 24 85

W. L. Church
Clerk.

Supreme Court of the State of Illinois

William H. Bollen Appellant

William McKimley Appellee

of the April Term A. D. 1858

Came now at the said Term of said Supreme Court
of said State before the judges thereof Comes the said
William H. Bollen by his Clerk and Counsel his Attorney,
and says that in the record and proceedings aforesaid
and also in giving the judgment aforesaid there is
manifest error in these to wit

1. The Court below erred in admitting the documents
evidence offered by the said defendant ^{below} on the trial of said
Cause.
2. The Court below erred in admitting the evidence
of William C. Porter and William H. Shanks
on behalf of said defendant below.
3. The Court below erred in admitting the several
objections taken by the said Counsel for the said
plaintiff ^{below} to the admission of testimony ^{below}.
4. The Court below erred in giving the 2^d
Instruction asked for by the defendant below.
5. The Court below admitted improper evidence on
the part of the defendant below.
6. The Court below refused to admit proper evidence
on the part of the plaintiff below.
7. The Court below improperly reversed the motion
for a new trial made by the plaintiff below, and gave

judgment for the defendant below.

And the said William H. Bellows prays
that the judgment aforesaid for the errors aforesaid
~~and also~~ in the record and proceedings aforesaid
may be reversed, annulled and altogether
held for nothing, and that he may be restored,
to all things that he has lost by occasion thereof
se

William H. Bellows

Attorney for Appellant

And the said William H. Bellows (by
E. Van Buren his Attorney) comes here
into Court and says that there is no error in
the record and proceedings aforesaid, or in
giving the judgment aforesaid and he prays
that the said Court before the justice thereof
now here may proceed to examine as well the
record and proceedings aforesaid as the matters
aforesaid assigned for error and that the
judgment aforesaid in favor aforesaid given,
may in all things be affirmed se

E. Van Buren

: Atty for Appellant

Supreme Court of the State of Illinois

May Term 1885

William H. Bellin, Plaintiff in Error

William McKim, Defendant in Error

Additional Error assigned

And the said William H. Bellin by Charles S. Lee
his Attorney Comes and says that in the Record and proceedings
aforesaid and also in giving the judgment aforesaid there is
manifest error in this

1. The judgment for costs for the defendant Bellin was erroneous.

2. The judgment given decided by the Court below was not
authorized by law.

3. The awarding of the judgment given by the Court below
was erroneous.

And the said William H. Bellin for them with
others comes in said Record and proceedings, prays that the
judgment aforesaid, may be reversed, annulled, and altogether
held for nothing &c

Charles S. Lee

Atty for Plaintiff in Error

And the said William McKim by E. Van Buren his
Attorney Comes and says that there is no error in the
Record and proceedings aforesaid, or in giving the judgment aforesaid
and he prays that the said judgment may be affirmed &c
in all things, in form aforesaid given.

E. Van Buren

Atty for Defendant in Error

Supreme Court

William W. Wall

12 Off. in Court

William W. Wall

H. L. Evers

Additional Court

as per report

Filed May 7. 1858.

L. Leland Clerk.

Supreme Court
 William W. Bolton
 vs Plaintiff in Error
 William Mc Kinley
 Defendant in Error

Agreement
 for Debt
 in Error

I

The Plaintiff in Error claims "that the
 Court below erred in admitting all
 documentary evidence offered by the said
 defendant below on the trial of this
 Cause". The testimony shows that on
the eighth day of Sept 1857 Mc Kinley the
defendant made an assignment to W. W.
Bolton for the benefit of all his creditors

On the 3^d of Oct 1857 an agreement was
 made by Mc Kinley with all his creditors
 including Bolton by which they compromise
 their claims against Mc Kinley
at 50 cts on the dollar and extended
the time for the payment of this sum
six months from the 3^d of October
1857 - In other words, they agreed
 that if Mc Kinley would pay them
 fifty Cents on the dollar on the 3^d
 of April 1858 they would dis-
 charge him from his liabilities to

them. And they also agreed that they would not during that time sue him, or enforce any judgment against him or in any way enforce their claims.

On the same day, to wit, the third day of October 1857, the Creditors also executed another agreement by which they consented that the general Assignee should reassign the assigned property to Dr. Kinley.

On the 6th day of October 1857 the Assignee did reassign.

None of these Papers are copied in the abstract, as they should have been, but they appear in the Record.

It further appears in Evidence that Dr. Kinley employed Ben Porter an Attorney of this Court, to draft the above Papers & procure the signatures of his Creditors to these papers, and for those services gave ^{him} his promissory Note.

Afterwards, on the 7th day of December 1857, Dr. Kinley applied to Bolton to borrow of him \$100, to pay Porter for the above services. Bolton agreed to loan it to him for 30 days at 3 per cent per Month, on Dr. Kinley's giving him a judgment Note. Dr. Kinley went to Bolton's Office. Bolton commenced drawing a Judgment Note, pretended to have made

a mistake & was about to draw another when Mr. Henley told him, he was in a hurry, that he would sign the Note and Warrant of Attorney in Blank which he could fill up. He did so sign it, took his check for \$103. including the 3 per cent Int. & went away. Bolton afterwards filled up the Note for \$1793, instead of \$103.

These are the facts put in issue. These are the facts clearly proven. & these are the facts found by the jury. And it is this high handed villainy, that the Plaintiff is endeavouring to sustain.

In order to establish this issue, on the part of the defence, it became important & was particularly relevant to ascertain the consideration of the Note, to en whether the defendant was indebted to the plaintiff. to ascertain the state of their accounts & to show the dealings between the parties.

The documentary evidence showed, that in September 1857 Mr. Henley owed Bolton \$616. And in October a further indebtedness accrued of \$100.54. making the aggregate ^{That there was no other indebtedness} \$716.54. ^{That Mr. Henley had} made a general assignment, & afterwards he compromised with the Creditors

including Bolton. by whom ^{Bolton} ~~Porter~~ was
to ^{receive} ~~pay~~ fifty cents on the dollar. payable on the
3^d of April 1858. That Bolton with others
agreed first to prosecute or enforce their
claims against Mr. Kinley. ^{it is} ~~is~~ probable
that Mr. Kinley would on the 3^d day of
October make such an agreement, - agree
to pay Porter over \$100. to effect the arrangement
& on the 8th day of December to enable him
to raise \$100. to pay the very expenses of that
arrangement give a judgment for \$1793. -
give a judgment of \$1793. when all his
debts were postponed for 6 months. a
judgment upon which an execution could
at once be issued. & thus bring upon him
the ruin he had been struggling to avert.
And was not this, testimony admissible?
There are some principles too plain for
disputation & this I submit is one of them.
In actions of Fraud. as I understand
the rule, greater latitude is allowed
than in any other class of cases. all the
transactions between the parties, and all
the circumstances surrounding the case,
are admissible; often transactions between
the parties charged with Fraud & other persons
are admitted to give character to the
transaction. Fraud is usually proven by
circumstances. These facts however

had a direct bearing upon the case, going to show the real nature of the transaction between the parties & to show the indebtedness from McKinley to Bolton.

Besides Bolton claimed that this Note included the whole of his debt & of two or three other Creditors. These Papers served directly to disprove these facts.

The Counsel objected to this evidence upon the ground that it was offered to establish a partial or total failure of consideration. The Testimony was offered to show that the Note was fraudulently filled up, not a failure of consideration, but to show the fraud, in which it was competent to show the transactions, call it consideration or any thing else, but if the Counsel cannot see the difference between this case and the ordinary case of a failure of consideration, it is not my business to enlighten him.

Again the Counsel seemed to suppose that the only question to be tried was as to the Execution of the Note; I have already shown what the issue was. It was not upon the execution of the Note. The Execution in the 2^d Plea is directly admitted and the fraudulent filling up of the Note

distinctly pleaded, on which issue was taken.

~~II~~

It is also claimed that the defendant's Instruction 3^d was error. Y^t that we answer, that if Bolton made any such promise. It was a promise to pay the debt of a third person, which by the Statute of Frauds is void, for not being in writing. Purples Statutes Vol 1 page 585. Que 1.

~~III~~

It is also claimed that the verdict was against Evidence.

I understand the rule of law to be
"That a verdict will not be set aside as
"against Evidence, where there has been
"Evidence on both sides, and no rule of law
"has been violated, nor manifest injustice
"done, although there may appear to have
"been a preponderance of Evidence against
"the verdict,

2	Str	1142,	3	Willie	437,
1	Wile	22,	7	Tamm.	153,
4	Maul & Sel	192,	8	Corven	223,
5	Misp. Rep.	353	1	Loft	521,

Now what is the Evidence in this case

It appears by the Testimony of William H
Sharpe, page 12, That he was clerk for
Mr Kently. he says, "defendant owed this
\$100. to Porter & did not know where to get
the money & he requested me to go & see if
Botton was here & tell him, that the
defendant wanted to see him (Botton)
at his (Defts) store. This was on Monday
the 7th day of December. I went to Plaintiffs
store at 9 O'clock Monday morning, and the
Plaintiff was not there, Mr Reed, his clerk
was there in the store. I told him to tell
the Plaintiff that the defendant wished
to see him Botton at his store that A M
Botton came to defendant's store that same
day about 11 O'clock, no one was present but
me & the defendant & the defendant said
he wanted to borrow \$100 for 30 days. &
that he wanted to pay a Note of \$100 which
was past due. that he would pay him
good interest & give him a judgment Note
for it. Botton replied, it was pretty hard
times, but that he thought he could help
him out of it, and that defendant was
to come over at 2 O'clock in the afternoon.
Mr Kently went over at that time, he was
absent about an hour and a half & came
back, he went there again the next day

the 8th of December about 11 o'clock, forenoon,
he was back by 12 o'clock. I did not see him
have any money when he returned. An
officer called there on the 9th day of December
between 3 & 4 P.M. It was Thos^W Holt, Deputy
Sheriff. I was behind the Counter. He
shut-up the Store by virtue of the Execution
Mr. Kinley went off out of the Store & was
gone an hour or two. where he went I don't
know. Wm. A. Porter was his Counsel at
that time.

This, it will be remembered was
on the 8th day of December, the same day
the Note bears date. Nathaniel Reed the
Plaintiff's Witness & Clerk says, on the 8th
of December, defendant called at Bottoms
Store. The Note was then executed, He
says, "it was filled up to the words Twenty
Hundred, when it was written thus far
the defendant said, I am in a hurry,
let me sign the Note & you can fill up
the balance afterwards. Page 4 of
Abstracts.

This Witness, signed his name as a
Witness before it was filled up.

He further says, "Plaintiff gave
defendant a Check for \$100, on Hoffman
& Gilspike Bank & did not give him
any money or anything else except the check

Page 7. That Bolton had partly drawn another Note & got in the figures \$1800⁰⁰ then tore it up and drew the one in question for \$1793. Judgment was afterwards entered upon this Note including Costs. for \$1818. -

The Note was witnessed by this man Reed & also Fogarty Plaintiff's Partner.

Fogarty says, page 7. "I saw him sign it below (at the Power of Attorney) don't recollect whether I saw him sign it above," again at Page 8. he says "I have never witnessed any other Note either before or since".

W^m A Porter says at Page 10 "Defendant was indebted to me in the sum of \$113 & Interest. had a Note &c. I had demanded him for the money, &c he paid me \$75. of it, on the 8th December just before dinner". This was part of the avails of the \$100. check.

On the 9th of December he first heard of the Judgment. he was W^m Kenney Counsel. The next day I went to the Store of Plaintiff with Defendant. I found Plaintiff there & stated to him, that I had come for the purpose of enquiring of him in regard to the Judgment on the Note, the Defendant was present. Defendant as he entered said to

" Plaintiff under a good deal of excitement,
" You are a great or a pretty fellow for entering
" up judgment against me for that amount.
" You know it was only \$100. and \$3. interest.
" And you promised not to enter that up
" until the thirty days were up." Bolton
" replied "There is no use of your talking
" about the Note. Mac, the Note is right. Debt
" replied "you are a liar."

" Mr Porter then said to Bolton, my
" object in coming here, is to enquire in regard
" to the amount of that Note." Bolton replied
" I suppose you are a going to pitch in, and
" I had better say nothing about it, or it would
" be more prudent not to say anything
" about it."

Now what was this judgment Note
given for? It is very clear that Bolton had
agreed to loan Mr Kinley one hundred dollars
for which Mr Kinley was to give him a
judgment Note for \$103. at 30 days. It is
equally clear that Mr Kinley only owed
Bolton ^{only} \$716.54. It is admitted that
defendants whole indebtedness to Plaintiff
was only \$716.54, Page 19. and that was
compromised at 50 cents in the dollar to be
paid in 6 months.

Why then should he give a Note for
\$1793. upon which judgment could be

entered up at once. Mr. Kinley had been
struggling to keep along with his business.
had made a great effort - & incurred
large expenses to save himself from bankruptcy.
Would a sane man give a judgment
for \$1793. to procure the loan of \$100. by
which he could be shut & was shut
up the next day? And that too, while
he was protected from all suits and
judgments & Executions. Why did
Mr. Kinley immediately on hearing of
this judgment, charge the fraud upon
Botton, to his face? Why did Botton
not then claim that there was a consideration
for the Note? & explain that consideration?
Why act & talk to Mr. Kinley & Porter like
a guilty knave?

Why was this Note signed by two
Witnesses, an unusual thing? Why was
the Porter of the Store made to sign his
name as a Witness two or three minutes
after Mr. Kinley had left? a thing which
he never did before or since.

If there was any other consideration
than the Check? why was it not explained
or given in evidence? Why was the Note
partly filled in for \$1800, & abandoned?
because he knew that round numbers
would look more suspicious.

It is admitted that the Note was signed in blank - thus enabling a dishonest man to perpetrate the act complained of. and Bolton said, as his own Witness James P. Allen testified, page 15, "His influence over defendant was such, that he could make him do almost anything he wanted him to." Yes this is true, and this confidence he has basely abused.

It will be remembered that it so where appears even by the Plaintiffs employer. That Dr. Kinley knew what had been filled in the Note when he signed it.

The Explanation sought to be made by Plaintiffs shows his guilt. In the first place he introduced a paper signed by Mr. Kinley in which he says, "my transactions with Bolton are straight forward & honorable and I shall protect his interest as I agree in reference to loan & (of to day) and also the other Creditors."

By looking at the original it is evident that the words "and also other Creditors", are written in since the Execution. But why take such a paper? It is not usual for a man to take a certificate of the honesty of an honest transaction? men who perpetrate fraud often wear out, honest transactions

vindicate themselves. Page 20. But after all what does it amount to? "I shall protect his interest as I agree in reference to loan &c of to day & also the other creditors, what does this mean? This don't say any thing about the note, the Note would protect itself. If I had reference to any thing, it was the compromise agreement.

The Plaintiff also made a lame & impotent attempt to show that the Note included the debts of Peck & Marsh and J. W. Hazeltown &c.

There is no evidence however to show that such was the fact. He attempts to show that he, Bolton had, when they signed the compromise agreement, agreed to see these debts paid. The testimony however fails to show any such thing, and if he had made such promise, it would not be binding.

There is no evidence that these debts were included in the Note & the whole thing was an after thought, to patch up & sanctify such a rotten & wicked fraud. The debts of these men were also compromised at 50 cents on the dollar & postponed at that for six months, who is credulous enough to believe that Mr. Kinley would give a judgment Note including these demands at twice the

amount they had agreed to take to Mrs
before it was due?

I have thus I believe answered
every ~~part~~^{point} worthy of Notice.

There is however one more point
assigned as Error in the Plaintiffs second
edition of Assignments which I will
briefly notice

It is this: "That no judgment should
"have been entered". The facts are these,
after the verdict of the jury, the Judge
in the exercise of his discretion granted
the motion to vacate the original judgment
and ordered "that the said defendant do
"have & recover of the said Plaintiff his
"Costs & Charges in this behalf expended, &
"have Execution therefor"

"Here was no judgment upon the
issues. No judgment upon the verdict
of the jury. No judgment in that suit.
It was simply an order of the Judge
vacating the original judgment & that
the defendant pay the costs of the first
issue. Those Costs may be collected by an
attachment as for contempt in not obeying
the order of the Court. If the Plaintiff wished
to vacate or modify that order, he should
have applied to the Court on motion to
do so.

again, assuming, that the order for Costs is to be taken as a judgment & that it was erroneous. Then the Court will only reverse it as to Costs, leaving the verdict of the jury and the order of the Court vacating the original judgment. A judgment may be reversed in part & affirmed in part: Purple Statutes, Vol 2, page 828. Sec 52.

Where where judgment in a Sci Fa, gives damages for delay of Execution, the judgment may be reversed as to damages alone
2 Ste 807.

So in a qui tam action, where judgment was given for damages as well as for the penalties, it was reversed as to the damages
4 Burr 2018.

So when Costs were awarded by a judgment against Executors on a Sci Fa the judgment was reversed as to the Costs and Affirmed for residue. 1 Ste 188.

V

It is concluded that the Note was only partly filled up, and that the Warrant of Attorney was entirely in blank.

It has been repeatedly held that a paper signed & sealed in blank with

verbal authority to fill it up, which is afterwards done, is void, as to the party so signing & unless he afterwards delivers it or acknowledge & adopt it.

Gilbert vs Anthony	1 Yerg	69
Wynn vs Garsenn	" "	149.
Byers vs McBlancham	6 Hill & A. H.	250
Pennister vs McDaniel	1 Hill	267
Boyd vs Boyd	2 N. & M.	125
	2 Brock,	64
	1 Ham	368

It is upon the familiar principle that the authority to do an act must be of equal solemnity with the act to be done. Now here, the Power of Attorney was under seal, the authority to fill it up if any, was verbal. This was insufficient.

E. Vane Duren
Atty for Def^t

47
Supreme Court
William H. Bolton
Plff in Error

vs
Mrs M. Kinley
Def in Error

Argument for
Def in Error

C. A. & J. W.
Baker
Atty for Deft.
in Error

Filed April 21 1839
L. Deland
Clerk

21142

S U P R E M E C O U R T .

THIRD GRAND DIVISION—APRIL TERM, A.D. 1858.

William H. Bolton, Plff in Error, }

vs. }

William McKinlay, Def't in Error. }

ERROR TO COOK COUNTY
CIRCUIT COURT.

ABSTRACT.

On the 8th day of December, A. D. 1857, that being a day of the November term of said court, the plaintiff in error, William H. Bolton, entered a judgment by confession in his favor in the Cook County Circuit Court, upon a certain note and warrant of attorney for the confession of a judgment thereon for the sum of \$1,793, made and executed as was alleged by the defendant in error.

The declaration, cognovit, affidavit of the execution of the note, and warrant of attorney, were all duly filed in said court, on said day, and judgment entered for the sum of \$1,818 and costs in favor of plaintiff in error.

The Record in the case sets out:

1. The declaration containing one count on the note, alleging also the execution at the same time by defendant in error of the warrant of attorney authorizing entry of judgment thereon at any time after its date.
2. The cognovit of the defendant in error confessing the sum of \$1,818 and costs, as damages sustained by the plaintiff in error.
3. The note, warrant of attorney, and affidavit of its execution, all the above filed in said court, December 8th, A. D. 1857.
4. Record of judgment in said court by confession in favor of plaintiff in error against defendant in error for \$1,818 and costs. Entered December 8th, A. D. 1857.
4. Motion in said court by defendant in error, by William A. Porter, his attorney, to stay proceedings upon the said judgment and execution, and to vacate the same, and to allow defendant in error to plead to said declaration and defend said suit, made December 24th, 1857, during said November term.
5. Order of said Circuit Court, entered December 30th, A. D. 1857, of the said November term, in said cause, that all proceedings upon the

execution issued upon said judgment be stayed until the motion to vacate said judgment be decided, or until further order of said court.

5 8. Order of said court, entered January 13th, A. D., 1858, of the January special term thereof, that a feigned issue be directed to try the question whether the note upon which judgment in said cause was rendered was genuine and valid (motion being pending in said court to set aside said judgment upon the ground, among others, that the said note and power of attorney upon which the same was entered are not genuine nor valid); and that all proceedings upon said judgment and upon the execution issued thereon be stayed until further order of said court, and until said issue be determined and said motion decided.

9. Substitution of E. Van Buren as attorney for defendant in error instead of William A. Porter, entered of record in said court January 18th, A. D. 1858, of said special term.

10. Affidavit of defendant in error and order of Court made thereon, that plaintiff in error do produce in evidence on the trial of the feigned issue all his books of account and other papers containing entries of any indebtedness by defendant in error to plaintiff in error, also the book containing a certain memorandum of representations made to plaintiff in error by defendant in error of his circumstances and incumbrances on his property, &c., made December 8th, A. D. 1857. Order entered January 22d, 1858.

6 11. Feigned issue directed by said court.

6 1. Declaration, containing one count, alleges that defendant in error, on the 8th day of December, A. D., 1857, made his certain promissory note in writing, whereby he promised to pay said plaintiff or order, thirty days after the date thereof the sum of \$1,793, with interest, for value received, concluding with allegation of liability and promise to pay and breach. Ad damnum \$1,900.

Copy of note then follows:

\$1,793.

CHICAGO, 8th December, 1857.

Thirty days after date I, the subscriber, of Chicago, County of Cook, and State of Illinois, promise to pay to Wm. H. Bolton, or order, seventeen hundred and ninety-three dollars, for value received, with interest.

(Signed)

WM. MCKINLAY.

7 2. 1st Plea. Denial of the making and execution of the note in the declaration mentioned, and concluding to the country.

No general issue.

8
2d Plea. That on the 8th of December, 1857, at Chicago aforesaid, plaintiff in error agreed to lend and advance defendant in error \$100 for thirty days from said date; that in consideration thereof defendant then and there agreed to give plaintiff as interest for use of said \$100 for thirty days the sum of \$3, and to execute and deliver to plaintiff his promissory note for the sum of \$103, for principal and interest aforesaid, payable thirty days from said 8th day of December, 1857, and that defendant, in pursuance of said agreement then and there signed his name to a blank form for a promissory note, which blank form then was as follows:

§ 18
after date the subscriber, of
County of State of promise to pay to
or order - dollars, for value received, with
interest.

And it was then and there understood and agreed between the said plaintiff and the said defendant that plaintiff should fill in the said blank form over the name of defendant, so signed thereto as aforesaid, so that the same should purport to be the promissory note of defendant for \$103, payable thirty days from the said 8th day of December; and that afterwards, to wit, on said 8th day of December, at Chicago, in the county aforesaid, the said defendant fraudulently filled in the said blank form above set forth, so signed by the said defendant as aforesaid, so as to make the same of the tenor following, that is to say:

\$1,793.

CHICAGO, 8th December, 1857.

Thirty days after date I, the subscriber, of Chicago, County of Cook, State of Illinois, promise to pay to Wm. H. Bolton, or order, seventeen hundred and ninety-three dollars, for value received, with interest.

WM. MCKINLAY.

Which said instrument, so fraudulently filled in as aforesaid, for the sum of \$1,793 instead of the aforementioned sum of \$103, is the same alleged promissory note mentioned in said plaintiff's declaration, to wit, at the County of Cook aforesaid..

Concluding with verification and prayer of judgment, &c.

Both pleas sworn to..

3. Replications..

1. To 1st Plea.. Similiter..

2. To 2d Plea..

Precludi non, because plaintiff says that the said promissory note on the said declaration mentioned, was made executed and delivered by the said defendant to the said plaintiff, at the time when, &c., in manner and form as by the said plaintiff in his said declaration alleged, and was not made or obtained by the said plaintiff fraudulently as in said second plea of said defendant is alleged.

Concluding to the country.

Similiter by defendant to this replication.

10 Trial of the foregoing issue was had before said court and a jury, at the March term of said court, and verdict thereon was rendered on the 19th day of March, A. D. 1858, of said term, for the defendant in error.

The plaintiff in error filed a motion for a new trial, which was overruled, to which exception was taken. Whereupon writ of error was taken.

The bill of exceptions is inserted here at length, and is as follows:

Be it known that at a vacation term of the said Cook County Circuit Court, held at the Court House, in the city of Chicago, in the said County of Cook, on the first Monday of March, in the year one thousand eight hundred and fifty-seven, and on the seventeenth day of March in the said year, that being a day of said term, before the Hon. George Manierre, judge of the said Circuit Court, the aforesaid issue, so joined between the said parties as aforesaid, came on to be tried by a jury of the County of Cook aforesaid, for that purpose duly empanelled, good and lawful men of the said county.

At which day came there as well the said plaintiff as the said defendant, by their respective attorneys aforesaid, and the jurors of the jury aforesaid empanelled to try the said issue, being called also came, and were then and there in due manner chosen and sworn to try the said issue.

And upon the trial of the said issue the counsel for the said plaintiff to maintain and prove the said issue, on his part called

Nathaniel T. Read—who, being sworn, testified as follows:

12 I am in the hosiery and white goods business; I am in the plaintiff's employ; I know both the parties to the suit. (The note attached to the declaration in said cause, and the subject matter of said suit, was here handed to witness by plaintiff's counsel.) I have seen the note before; I saw it on the 8th day of December last, and once since; my name is subscribed to it as witness; my name was written by me; I know the signature of the defendant, William McKinlay; the note and warrant of attorney were signed by him at No. 118 Lake street, in my presence, and on the 8th day of December, the day the note bears date.

12
The defendant came over to the store of the plaintiff, William H. Bolton, at No. 118 Lake street, in Chicago, and had some conversation with the plaintiff; when I witnessed the note it was not entirely filled up, the figures in the upper left hand corner of the note, \$1,793, were then written, and the note was written in the body of it as far as the words "seventeen hundred;" it was dated and filled up as it now is to the words "seventeen hundred" inclusive—the words "and ninety-three dollars" were not in it then; the warrant of attorney was in blank, and was signed at the bottom by the defendant; the note was written in there by the plaintiff, and in the presence of the defendant and myself; when it was written thus far the defendant said, "I am in a hurry. Let me sign the note, and you can fill up the balance afterwards;" with that the plaintiff handed the defendant the pen, and the defendant signed his name to the note and warrant of attorney; as soon as he did so he stepped outside of the railing; the note was signed in the plaintiff's office, which is inside of his store; inside of the office railing, at the office desk; defendant was to give the plaintiff a judgment note; can't say why plaintiff wrote the note, except because we always write our notes; it is customary; after it was signed I came inside the railing, and witnessed the signing.

Upon cross-examination the said witness testified as follows:

73
I have been the plaintiff's clerk a year and a half; am in no other business; I am with him as clerk; I came to him from William R. Williams; I have no share in the profits; I was by the stove when the defendant came into the store of plaintiff, and when the note was being drawn I was standing by the office railing; when defendant came in I moved from the stove; I was doing nothing at the stove; when defendant went inside of the railing I went to the end of the desk just outside of the railing; I knew defendant was to give the plaintiff a note; I heard defendant say so, and I went to the railing because a note was to be drawn, and I went to witness it; I went for no other reason; I was at the desk before the note was signed; the counting room or office occupies a space of about 8 feet by 12, railed off from the corner of the store; the desk is about four feet long; the end of it is about twelve or fifteen inches from the railing; the counting room is not elevated above the rest of the store floor; I stood, it might have been, five minutes at the railing, it may have been three minutes, it may have been seven minutes, could not have been less than three minutes; the stove is nine or ten feet from the railing, on the west side of it; I could see from the outside of the railing what was written on the note; when the plaintiff draws judgment notes I am in the habit of looking over him while drawing notes, to see if they are judgment notes or common notes; when judgment notes are drawn, it is common for me to witness them; I have witnessed a good many judgment notes; I don't recollect now of any particular note that I have witnessed; both stood in front of the desk when the note was signed; while I stood there I was not reading the note; I did not read it before I witnessed it; did not know what was inside the note till I witnessed it; I went inside the railing to witness it, when defendant came out; I witnessed it when it was not fully filled up; I read all there was of it; I always read papers before.

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witnessing them; I have witnessed other judgment notes; the note was filled up to the point I have described; defendant stood to the left of the plaintiff when plaintiff was filling up the note; I have seen the judgment note since; saw it two months ago in Mr. Clarkson's hands, at DeWolf's office: have spoken of the case with Mr. Clarkson; I looked over the affidavit since; I read over my affidavit since I made it; read it yesterday at Mr. Clarkson's office; I wanted to see it for curiosity, and also to see what I had stated in it; Mr. Clarkson handed it to me, and told me to read it over; I went to his office to see about this case; Mr. Bolton and myself have talked over the case; this was day before yesterday; he asked me if I remembered the facts; I knew the case was coming on then; I was not subpoenaed; I was in court yesterday; went to Clarkson's office first; he asked me if I had seen the other witnesses; plaintiff told me to see to getting the witnesses; that the case was coming on yesterday; plaintiff is not here now; after the note was partly filled up plaintiff gave the pen to defendant, and I then went in, after defendant signed the note; after I witnessed the note I went outside the railing to the stove, about nine feet; I recollect distinctly that I stood by the stove; I now recollect that when I went outside the railing I went to the front part of the store, about 12 or 15 feet from the railing and desk; I did nothing there; staid there five or ten minutes; I could not swear now where I went to after that, except that I staid in the store.

The direct examination of the witness was here resumed, when he testified as follows:

A diagram of the store was here shown.

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The windows of the store face south in front; the passage way from the street is in the east side of the store; the store is on the second story; the counting room is on the east side of the store, in the southeast corner of the store; the entrance door to the store is on the east side of the store; there is a projection over the passage way, forming a recess in the store, and the counting room occupies this recess.

The cross examination of the witness was here resumed, and the counsel for the defendant put to the witness the following interrogatory:

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Question. At the time of the transaction did Bolton give McKinlay a check? If so, for what amount, and upon what bank?

But the counsel for the plaintiff then and there objected to the interrogatory, and to the answering of the same by the witness, on the grounds

1. That it was immaterial and irrelevant to the issue before the court and jury, being an inquiry into the consideration of the note in question, which was not a relevant inquiry nor competent evidence under the pleadings on the case, and the issue joined.

2. That it was not competent for the defendant, in cross examination of the witness for the plaintiff, to examine him as to facts and circumstances not connected with the matters stated in his direct examination, nor to introduce his own case by cross examining the witness for the plaintiff before he has opened his case.

16 And thereupon the said Circuit Judge declared and delivered his opinion that the said objection so taken by the said counsel for the said plaintiff as aforesaid ought not to be allowed, and then and there overruled the said objection, and allowed and decided that the said interrogatory should be put to the said witness, and his answer then be taken; which said opinion and decision of the said judge the said counsel for the said plaintiff did then and there on behalf of the said plaintiff except.

And thereupon the said witness then and there testified as follows:

Plaintiff gave the defendant a check for \$100 at the time of the transaction on Hoffman & Gelpcke. (A copy of a check is here shown to the witness.) I did not read the check; I presume the plaintiff has the check; this is like the original check, except it is not in the plaintiff's handwriting.

The counsel for the defendant here put to the witness the following interrogatory:

16 Did Mr. Bolton draw, or partly draw, another judgment note at the time of this transaction, and before the note in question was executed? If so, what became of it?

To which interrogatory, and the taking of the answer thereto, the plaintiff, by his said counsel, then and there objected, for the reasons stated in the objection to the foregoing interrogatory.

But the said judge then and there overruled the said objection, and decided that the said interrogatory should be put to the witness, and his answer thereto taken; to which ruling and decision of the said judge the said plaintiff by his said counsel then and there excepted.

And thereupon the witness testified as follows:

He did. He began to write it, and got in the figures \$1,800, when defendant spoke to him, and he then tore it up.

The direct examination of the witness was then resumed, and he testified as follows:

17 He began to fill up the note for \$1,800, when McKinlay said it was a large amount, and even numbers like that might look suspicious, if it was entered up; and then the plaintiff tore up the note he had commenced to draw. The check for \$100 was given to McKinlay, in the same place and position where he signed the note for seventeen hundred and odd dollars. My impression is the check was given first, but am not certain. It was given at the same time as note was signed. Plaintiff left the city Monday night; he was sent for on important business; he was delayed here, and would have left before, but for this suit.

Cross examination of witness was then resumed.

The check was made before the parties changed their position at the desk; I did not say for a certainty that the check was given before the first note was torn up; defendant left the store before the second note was filled up, because he said he was in a hurry.

The counsel for the defendant then interrogated the witness as follows :

Did Bolton give the defendant any money at the same time that the note was executed?

But the counsel for the plaintiff then and there objected to the said interrogatory being put to the witness, and to the taking of the answer thereto, for the reasons stated in the objections made to the interrogatory first herein above objected to.

And the said Judge then and there gave it as his opinion and decided that the interrogatory should be put to the witness, and his answer thereto taken; to which ruling and decision of the court the said plaintiff by his said counsel then and there excepted.

The witness then stated—he did not.

The counsel for the defendant then interrogated the witness as follows :

Did he give him any note or check or other thing besides the note?

Which was then and there objected to by plaintiff's counsel, for the reasons before given; which objection was then and there overruled by the said Judge, and the answer thereto allowed to be taken; to which ruling of the court the said plaintiff by his counsel then and there excepted.

The witness then replied to the said Interrogatory—he did not.

The counsel for the plaintiff, further to maintain and prove the said issue, called Richard B. Fogarty, who, being sworn, testified as follows :

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I am a porter in plaintiff's store; I take out bundles, dust out the store, &c.; have nothing to do with the books or sales; don't do any of the writing about the establishment. I know the defendant by eye-sight; have never spoken to him. (The note in question is shown to the witness.) The signature at the left hand of the note is mine; I think I wrote my name there in December last; I saw defendant in plaintiff's store in December, and saw him sign this note; I saw him sign it below (at the power of attorney); don't recollect whether I saw him sign it above; when he signed it there was some writing in the body of the note, and four figures in the left hand corner above; I think they were whole numbers; did not see the defendant sign any other note on that day, and did not witness any other; when he signed the note he was inside the railing and about eighteen inches from it; he was leaning on the desk when he signed the note. (The note in question was here shown to the witness.) This is the paper I saw him sign; I saw him sign a paper on the desk.

Upon cross examination the said witness testified as follows :

McKinlay was not present when I signed the note; I signed it two or three minutes after he left; I was standing at the other desk when I saw him sign the note; Do not recollect any of the writing in the note; won't be sure these were the numbers in it; I am sure there were no ciphers among the figures I saw on the note; I can't swear what the

numbers were; I did swear in an affidavit I made in this case that the numbers in the note were *integers*; don't know the meaning of the term; have been in plaintiff's employ about three or four months; I did not see plaintiff tear up any note or paper; did not see defendant when he first came into the store; he was standing at the desk when I first saw him; the plaintiff asked me to sign as a witness; I had never witnessed any other note, either before or since.

The direct examination of the said witness was here resumed, and he testified as follows:

A cypher is a figure, is one figure; I can make figures; can make a cypher; naught is a cypher; there were no naughts in the note; I recollect Mr. Clarkson's telling me at the time the affidavit was made by me that an *integer* was a whole number; figures were on the top when I saw the defendant sign the note.

The cross examination was here resumed, and the said witness testified as follows:

I did not count the figures on the note; I am certain there were four figures.

The counsel for the plaintiff here rested his cause.

19 And the counsel for the said defendant to maintain and prove the said issue on his part, produced and offered in evidence a certain instrument of writing dated the eighth day of September, A. D. 1857, purporting to be an assignment from the said defendant to William P. Ross, of the stock in trade, notes, bills, dues, demands and effects of the said defendant, in trust for the benefit of the creditors of him, the said defendant.

But to the reading of the same in evidence the said counsel for the said plaintiff then and there objected, upon the ground that it was wholly irrelevant to the issue joined in the cause, and incompetent under the state of the pleadings; that it was offered for the purpose of establishing a total or partial want of consideration for the note in question, which fact was in no way put in issue by the pleadings.

But the said judge did then and there deliver his opinion, and decide that the said objection should be overruled, and did then and there deliver his opinion and decide that the said objection should be overruled, and did then and there overrule the said objection, and decide that the same instrument of writing should be admitted in evidence; to which ruling and decision of the said Judge the said counsel for the plaintiff then and there excepted.

The said instrument of writing or assignment was then read in evidence by counsel for defendant on behalf of defendant.

(Here follows the assignment.)

20 The counsel for the defendant, further to maintain and prove the said issue on his part, then produced and offered in evidence a certain,

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instrument of writing, purporting to be an agreement on the part of the said McKinlay that the aforementioned assignment should be cancelled and annulled, dated October 3d, A. D. 1857; also a certain other instrument of writing, dated October 6th, A. D. 1857, purporting to be a re-assignment from William P. Ross to the said defendant of the property and effects conveyed to the said Ross by the said defendant under and by the assignment aforementioned; and also a certain other instrument of writing, dated October 3d, A. D. 1857, purporting to be a deed or agreement of composition or compromise between the said defendant and his creditors; and further to prove the said issue on behalf of said defendant, the said counsel for the said defendant produced as a witness William A. Porter, and offered to prove by the said William A. Porter that he (the said witness) had prepared the said last three mentioned instruments of writing, and had procured the several signatures thereto of the parties thereto respectively.

But to the reading of the said three instruments of writing in evidence, and to the admission of the said William A. Porter as a witness for the purposes aforesaid, the said counsel for the plaintiff did then and there object, for the reasons stated in the objection to the admission in evidence of the assignment afore herein referred to.

But the said Judge then and there overruled the said objection, and decided that the said agreement and re-assignment and composition deed should be read in evidence on the part of the said defendant, and that the said William A. Porter should be admitted and sworn as a witness; to which said opinion and decision of the said Judge the said plaintiff by his said counsel did then and there except.

31 Aug.

And thereupon the said agreement, re-assignment and composition deed were read in evidence on behalf of the said defendant, and the said William A. Porter, being duly sworn, testified as follows:

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I drew this paper (the agreement to cancel the assignment); was defendant's attorney at the time, and as such went round to all the parties whose names are upon it, and they signed it in my presence. I went to the firm of Peake, Marsh & Co.; don't recollect which one signed it; it was signed by one who said he was a member of the firm; I saw the re-assignment executed by Ross at his store after the previous paper had been executed. I saw the composition deed executed by the parties whose names are subscribed to it; it was subscribed by them at the same time the other paper was signed. This paper contained all the interlineations now upon it at the time it was signed. The 50 cents for every dollar was in it at that time, and not intended to be erased. I obtained the signatures to this composition deed as McKinlay's attorney. There was no other agreement than that expressed in the deed. I went round with the paper and they signed it.

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The counsel for the defendant then interrogated the witness as follows:

On the 8th of December was defendant indebted to you? and if so, how much?

And the counsel for the plaintiff then and there objected to the same as wholly irrelevant to the issue. But the said judge then and there overruled the said objection, and decided that the said interrogatory should be put to the said witness, and his answer thereto taken. To which ruling and decision of the said judge the said plaintiff by his said counsel then and there excepted.

The witness then stated: Defendant was indebted to me in the sum of \$113 and interest. I had a note for the amount made in October; think there was interest on it. I had dunned him for the money. The latter part of the week before I had dunned him for it, and I then told him I wanted him to pay me the note. He did not pay *me at that time*. He paid me \$75 of it on the 8th of December, just before dinner.

To all of which testimony so given by the said witness, as above, the said plaintiff by his said counsel did then and there object as irrelevant to the issue; and the said judge then and there overruled the said objection; to which ruling the said plaintiff by his said counsel then and there excepted.

The said witness, William A Porter, then further testified as follows, in his direct examination:

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I first learned of this judgment on the 9th day of December, after the note was executed. McKinlay and the Sheriff came to me after the levy. The next day, I think the 10th, I went to the store of the plaintiff with the defendant; I found the plaintiff there, and stated to him that I had come for the purpose of inquiring of him in regard to the judgment on the note. The defendant was present. I think defendant had made a remark to plaintiff previous to mine; defendant, as he entered, said to plaintiff, under a good deal of excitement, You are a great, or a pretty fellow, for entering up judgment against me for that amount. You know it was only \$100 and \$3 interest, and you promised not to enter that up until the thirty days were up. Then Bolton made a reply. His reply was: There is no use of your talking about the note, Mac—the note is right. Up to that time I had stood there and said nothing. I think McKinlay replied then to plaintiff, You are a liar, or, you are a damned liar (I think the latter), and you know it. It was then, for the first time, I addressed plaintiff in regard to the matter. I then said, Mr. Bolton my object in coming here is to inquire in regard to the amount of that note. He then replied, "I suppose you are going to pitch in, and I had better say nothing about it, or that it would be more prudent not to say anything about it." I will not now be positive about the exact words. There was another person in the store at the time. An attorney Cond, and he made a remark. Plaintiff was then present. He (Conde) said if it is wrong, you can get it set aside. I assented to it. I then spoke to defendant and said, Well, we had better go, and we walked off together.

The counsel for the said plaintiff then cross examined the said William A. Porter, who then testified as follows:

38

I made an affidavit in this case, on a motion to set aside the judgment. Have not read it since, I think. I think the first thing defendant said to Bolton, when we went into his store, was, "Well, you are a pretty fellow, or, a great fellow, to enter up a judgment for that amount against me." I think very likely I did swear in that affidavit that McKinlay at that time asked Bolton whether he did not borrow \$100 of him (plaintiff), and whether he (Bolton) did not promise not to enter up judgment until the note was due. He, McKinlay, also said substantially what I have now stated to be his words.

Interrogatory by plaintiff's counsel. Did you swear in that affidavit whether anything was said about the amount of that note?

39

Answer. I don't recollect whether he spoke of that amount, or of \$1,800. I have not sworn that the amount was mentioned. I think McKinlay did make the inquiries stated in the affidavit. I recollect what I have stated now; I know the character of the conversation and recollect the manner of the parties. Defendant's manner was very excited. All I said to plaintiff is what I have said. My manner was not threatening. I said, Mr. Bolton I have called here to get an explanation in regard to the amount of that note. Have no recollection that he said I had better go and see counsel; don't think he did. I have never sworn to the conversation before circumstantially. I don't think defendant ever swore that he had stated all that occurred at the time. I did not intend to state in my affidavit all that occurred. As to what passed between plaintiff and defendant I did not think very important. My object in going there was to hear what explanation plaintiff could give in regard to the note. I think he did state the words used in the affidavit of defendant, viz.: "Did I not borrow \$100 of you, and did you not promise not to enter up the judgment until the note was due?" Those words were not necessarily all that was used; they were used, as also those I have stated at first. "You are a pretty fellow," &c. I think those words in substance were used in the conversation.

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When I took the composition paper, I went to the place of business of Peake, Marsh & Co., and asked for members of the firm. This I did with all who signed the paper. I have no doubt it was signed by one of the firm. I had a conversation with him on the subject. Don't know whether the name of Bolton was mentioned in that conversation. I was not informed by him that Bolton had been to them, and asked them to sign it. In the condition it was in before it was altered, it had been circulating among the creditors for execution. There were a few signatures to that paper before it was taken around by me. When it was altered, I took it around among the creditors for signatures. Can't say whether Peake, Marsh & Co. were on it before it was altered. Weber & Co. were not on it, I know, when I took it around. Think it very likely Peake Marsh & Co., Whitely, Hazletine & Co., Downs & Van Wyck, and Bolton, were all on the paper when I took it around. Can't say who procured the signatures. Can't say that when I took the altered paper to them they said they had before signed it at plaintiff's request. I don't know that plaintiff had previously interested himself in Septem-

ber to get signatures to that paper; never had heard defendant say so. The "50 cents on the dollar" was originally on the paper. It is not in my handwriting. I think all the alterations in it I made are noted at the bottom of the paper. I did not know that Peake, Marsh & Co. had judgment and execution against defendant at that time. There were one or two demands near judgment. It is quite probable I had heard that one of the demands was in execution. I took this paper, the agreement to cancel the assignment, to the creditors. It was signed contemporaneously with the compromise deed. Those four creditors before mentioned were on the paper when I went with the compromise agreement, stated it to them. They did not sign it over, but merely acknowledged their signatures. I never saw J. H. Peck on the subject. I took the paper to Hecht & Co., and they signed it at my request. I don't know whether any one else had used any influence with them.

The note I held against the defendant was a bona fide one. It was a judgment note. It was given for services.

The said counsel for the defendant then resumed the direct examination of said witness, who testified as follows:

210

What I mean by the original compromise was the paper as it was before I made the interlineations. It was signed by some of the creditors, but others refusing, defendant assigned to Ross. I was absent from the city when he assigned. On my return I altered the paper and procured the signatures of all the creditors except those on it whose acknowledgment I also obtained, and the assignment was then set aside.

40

The counsel for the said defendant, further to maintain and prove the said issue, on his part produced a witness, William H. Sharpe, to whose admission as a witness the said plaintiff by his counsel objected, on the ground that the facts expected to be proven by the said witness were wholly irrelevant to the issue. But the said Judge then and there overruled the said objection, and decided that the said Sharpe should be admitted and sworn as a witness in the cause. To which said decision and ruling of the said Judge the said plaintiff by his said counsel then and there excepted.

And thereupon the said witness testified as follows:

41

I was clerk for the defendant on the 8th of December last; I commenced to clerk for him on the 15th of December, 1856; at the time of the assignment the defendant was indebted to the plaintiff a few dollars over \$500. (The plaintiff here admits the statement of the debt in the assignment to be correct.) This was in September; after that the defendant became further indebted, on October 3d, for \$100.54. This was all that defendant bought of plaintiff after assignment; up to the 8th of December I kept defendant's books and sold his goods. Defendant owed this \$100 to Porter, and did not know where to get the money, and he requested me to go and see if Bolton was here, and tell him that the defendant wanted to see him (Bolton) at his (defendant's) store. This was on Monday, the 7th day of December. I went to the plaintiff's

store at 9 o'clock on Monday morning, and the plaintiff was not there. Mr. Reed, his clerk, was there in the store, and I told him to tell the plaintiff that the defendant wished to see Bolton at his store that A. M. Bolton came to defendant's store the same day, at about 11 o'clock. No one was present but me and the defendant, and the defendant said he wanted to borrow \$100 of him for 30 days; that he wanted to pay a note of \$100, which was past due; that he would pay him good interest and give him a judgment note for it. Bolton replied that it was pretty hard times, but that he thought he could help him out of it, and that defendant was to come over at 2 o'clock in the P. M.; McKinlay went over at that time; he was absent about an hour and a half, and came back; he went there again the next day, the 8th of December, about 11 o'clock A. M.; he was back by 12 o'clock; I did not see him have any money when he returned. An officer called there on the 9th day of December, between 3 and 4 P. M. It was Thos. Holt, deputy sheriff. I was behind the counter. He shut up the store by virtue of the execution in question, on the 15th of December, 1858, on Bolton's execution. McKinlay went off out of the store, and was gone an hour or two. Where he went I don't know; Wm. A Porter was his counsel at that time.

41 The said counsel for the plaintiff then moved to exclude the testimony of the said Sharpe as irrelevant to the issue; which motion the said Judge then and there overruled; to which ruling the said plaintiff by his counsel then and there excepted.

The cross examination of this witness was waived by plaintiff's counsel.

The counsel for defendant here rested his cause.

42 The plaintiff, to rebut the testimony offered by the defence, then called George F. Marsh, who, being duly sworn, testified as follows:

I am a member of the firm of Peake, Marsh & Co., of Chicago. We were creditors of the defendant. Our claim, on the 8th of December, was \$203.13 against defendant. I know the plaintiff Bolton. (The abovementioned composition deed was here shown to the witness.) I recognize the signature of our firm, but this is the first time I ever saw the paper; never saw it before. I recollect in the month of September last a proposition was made to us by the defendant for a settlement at 50 cents on the dollar; his own note without any security, which we refused to take. The matter ran along some time, and Bolton came to us and said he wished to fix up this matter of the defendant's, and "put him through," as he expressed it. He also said he was getting up a paper for creditors to sign, taking 50 cents on the dollar; creditors were to take defendant's note without any security; he stated to me he believed defendant was making this offer in good faith, and that if we would sign the paper he would guarantee to us the amount, that is, one-half of our debt; I told my partner to sign the paper when brought in, as the plaintiff had guaranteed the amount to us, \$109.06. I refused to accede to defendant's first proposition. The plaintiff applied to me some three

or four times about it, and we signed it solely upon the agreement made by plaintiff. Our firm signed no other composition paper that I know of; I should have known if there had been any other. Our claim at that time was not in suit; it was our intention to do so. Our firm since that time has looked to Bolton for payment. This agreement was conditional. I know nothing about defendant's intentions, except what plaintiff told me. I do not know whether defendant knew that plaintiff was using his influence with me to procure this compromise. Never have met plaintiff and defendant together. The plaintiff was the only one I ever had any conversation with about the compromise agreement.

On cross examination, by the counsel for the defendant, the said witness testified as follows:

43

I never saw this paper until to-day, that I know of. There are three members of our firm; Peake and myself are here. There is a possibility he may have signed a paper without my knowledge; don't think he would put his name to a paper without consulting me; he is older than I am; we are both equals in the business. I am pretty sure I know everything he has done in behalf of the firm. If we were to sign the paper I wanted some definite understanding with the plaintiff before we did so. Don't know how the paper was when he signed it. Peake told me he had signed the compromise. Have conversed with the plaintiff; no one was around; we were alone; it was twice in the street and once in the store; what I have stated is the substance of all the conversations; the first conversation was in Lake street, along in last fall, in August or September; it was shortly after our bill came due; the first conversation was in the evening; think the plaintiff began the conversation; can't remember the first words; I cannot give details exactly; can't give any part of the conversation verbatim; think it commenced this way: I asked him how defendant was getting along; not positive conversation began this way; what I recollect distinctly was, he said he was going to circulate a paper or was circulating a paper, and in substance he wanted me to sign it; "I want you to sign that compromise of McKinlay's, and it will be all right;" I told him we would not sign any paper and take defendant's notes without security; recollect nothing further then; saw him next at the corner of Lake street and Wabash avenue; we were returning from dinner; this was about 2 o'clock; he asked me then if we had concluded to sign defendant's paper? I told him we had not, unless we had security; not much more passed then.

44

The next conversation was in the front part of our store; no one else was there; this was in the morning; it was last September or first of October; Bolton came in and said if we would sign that paper he would guarantee our debt to us of \$109.06; this was substance of what he said; may not have been his exact words; he may have expressed himself differently; he told me he would see that we were paid; that part I recollect; don't recollect of Bolton's ever using the words to me, "that he would fully protect us, if in his power, as much as his own claim."

Think they were not the words used by him; don't remember that he used such words; I think those were not the substance of his words;

he told me he would see that we got 50 cents, and would guarantee it to us; he spoke to us pretty strong; he said nothing else that I recollect; no one was present at this conversation; he gave me no written evidence or note, but merely his word for it; we have an interest there; if the judgment is paid, we expect our claim to be paid out of it by him, \$109.05; I took plaintiff's word for his promise; I could not prove plaintiff's promise if he denied it; if this judgment is paid, I think we shall receive our whole debt; I have had a conversation with Mr. Clarkson about what I should swear to to-day in this room, and about an hour and a half ago; I have also had a conversation with plaintiff a week or ten days ago; I told him what I could swear to; I made an affidavit in this matter at one time; I told Clarkson the amount was wrong in the affidavit and to alter it; when I signed it, I supposed it was altered; I swore to the affidavit; the plaintiff stated to me in substance as stated in that affidavit.

44
The plaintiff, further to rebut the testimony offered by the defense, then called James B. Allen, who, being duly sworn, testified as follows:

I am a member of the firm of John H. Weber & Co.; on the 8th of last September the said defendant was indebted to us in \$662. No payment was made on it to the 5th of October last, by defendant—not a dollar, nor to Dec. 8th last. An application for the purpose of affecting a compromise with other creditors in behalf of the defendant was made to us by Bolton. Prior to that no application was made by any one. Previous to that, however, a notice had been sent in to us by the defendant that he could not pay over 50 cents; the reason given was, the hard times and a recent fire. Bolton brought this composition paper to us in fore part of September last; he handed it to me; I looked at it; four or five names were then attached to it; I am positive that these two were on it, viz.: Wm H. Bolton, and Downs & Van Wycke, and I think Hazeltine & Co., were upon it, when it was handed to me. Bolton requested our signature to the composition, and advised us to sign it; we declined doing so; he also stated that if we would sign the compromise, we should not lose a dollar; I refused to do so on account of having a judgment against the defendant, and an execution in the hands of the Sheriff at the time. This was about the substance of the conversation at that time.

45
A few days after I had another conversation at Bolton's store; the defendant was there; Bolton and the defendant requested me again to sign; the defendant said it would allow him to go on in business, and he had no doubt it would allow him to pay it in the end. I then told the defendant if he would give us security we would sign the document, otherwise we would not do so. I told the defendant I thought it a dishonest transaction. I also told him I thought he ought to exhibit a statement of his affairs, showing how he stood at the time of the fire, and a statement of his affairs now. This he refused to do. This is all I recollect at this time of what was said to him by me. After that I left the store, leaving both Bolton and the defendant there. Afterwards Bolton spoke to me several times on the subject. He stated that if we would sign the compromise that he would protect our claim, and that we

should not lose a dollar. I asked him how he would do it? He said his influence over the defendant was such that he could make him do almost anything he wanted him to. He said he had helped his credit, and had, in fact, made him what he was. The defendant gave Bolton as a reference to us when we first gave him a credit. I told Bolton we would consider further about the matter, and I declined signing until all the creditors had signed it. I signed the paper myself for the firm. We came to the conclusion that we should eventually realize 100 cents on the dollar, from the representations which Bolton had made to us entirely. This was the inducement. When I signed the document I took it from the hands of Porter; all the creditors had then signed it. The main consideration for signing it is already stated. I told Porter that I would not sign it unless he would deposite the composition deed with us. This was another consideration. He took the document, stating that he would consult with the defendant in regard to leaving the paper with us. He returned with it, with defendant's consent to our holding the composition deed, for which I gave him a receipt. I never heard the defendant say anything as to any particular person being engaged in his behalf for procuring the names of the creditors. Bolton said he had seen the other creditors, to get them to come in. He stated he had no doubt the residue of the creditors would sign the composition. I know nothing of my own knowledge of his efforts to induce other creditors to sign the composition. The only other person who came near us on the subject besides Bolton was Porter. Since the firm signed that paper we have looked to Bolton for our debt. We had no confidence in the defendant. I told the defendant, at the time, we never expected to receive a dollar from him. Our claim was then in execution. It was staid in the hands of the Sheriff, and is there still. It was staid after the signing of this document. I wanted the defendant to make a statement of his affairs.

On cross examination by the defendant's counsel the said witness testified as follows:

46
The first conversation with Bolton was had after the defendant's assignment to Ross. Once he had a composition paper with him at our store, and once I saw it at his store. That paper did not then contain the interlineations now in it; these were afterwards put in it. Our object in requiring the paper to be left with us was to secure our payment before any other creditor. The reason I gave was that the defendant would want to get the paper, and that in order to get possession of it he would pay us; that was one reason. This was a natural supposition. If the defendant had come and paid us one part of the money, I would have given him the paper, although the other creditors had not got anything. I gave Bolton a receipt for the paper. (The receipt was here introduced, and read in evidence.) Porter afterwards called at our store to see the composition; I did not show it to him; it was in the hands of Bolton; I had placed it in his hands for inspection; he called for it; I let him have it, and he promised to return it; Porter called twice I think; he said I ought to let him have it; I told him if he would call on Bolton no doubt he would let him see it; Porter said in substance that he had my receipt for it, and that it was my business to get it; he also wrote me a note; that note requested me to return the composition. I have made

an affidavit in this matter; I saw my affidavit last evening; I did not read the affidavit but took it only for the purpose of looking at the figures; the sum stated in my affidavit is incorrectly stated; it is down \$600, it should be \$622; I read no other part of the affidavit, nor have I read it since I made it.

47

I have had half a dozen conversations with Bolton on the subject; the first was at our store, in fore part of September, after defendant's assignment; dont know what day the assignment was made; the composition was after the assignment; I do not understand that the object of the first composition was to prevent an assignment; I swear that the assignment was made before the first offer of a compromise was made; we had a judgment which was obtained after the assignment, and we took some steps, or intended to, to break up the assignment. The first talk with me about a compromise was after our judgment. The first conversation with Bolton was a week or ten days after we obtained our judgment; we had several conversations from time to time until the first of October; I have no means of arriving at those conversations except from recollection.

Bolton, when he brought the composition paper to our store, stated that he wanted us to sign it; that he had no doubt that he could get all the creditors to come into the arrangement; that if we would sign it he would consider himself holden, or would protect our claim; my recollection is, that he said he would protect us from any loss; that was all he said on the subject, except that he was going around among the creditors, and had no doubt he could procure them to sign it; the papers had two or three names on it.

The next conversation was at Bolton's store. He then requested us to sign the paper; he thought we had better take that than lose the whole debt; that we had better allow the defendant to go on in business. That was all I think he said at that time. The third conversation may have been in the street. He still advised us to sign it. The fourth conversation was the same, in substance, as the last conversation. He advised us to sign that composition deed. We told him we would not sign it, until all the creditors had signed it, and that we would also think of the matter further. He said several times that he had a good deal of influence over the defendant.

48

I made an affidavit in this case. At the time I made the affidavit I think my recollection then was as good as it is now. The affidavit was not drawn by my dictation. I was not present when it was drawn. It was brought to me by Mr. Clarkson at the Court house, and there handed to me. I went to the Court House for the purpose of giving it. I read over the affidavit myself. Think it was right. Bolton did say he had not the least doubt I would get my debt if I would sign it. He gave me no writing to that effect. I have no written evidence of his promise. I asked him for it once, and he would not give it. If the money is collected on this judgment I expect to receive a part of my money from the proceeds of the judgment. I did not think it important that the debt was stated in the affidavit at less than what it actually was.

Our judgment was obtained in the Common Pleas, at September term, 1857, I think from the 5th to the 10th of September.

48 The plaintiff, further to rebut the testimony introduced by the defense, then called John H. Peck, who, being duly sworn, testified as follows:

I know the parties to this suit. I am an attorney. I was attorney for Hecht & Co., in September last. They were then creditors of the defendant, on the 3d of October last. An application was made to me in October to sign a composition paper in behalf of the defendant. [The composition deed was here shown to the witness.] This paper I saw in Bolton's store. Bolton came to me at that time in behalf of the defendant. Previously to that time I had not been applied to for that purpose, either by the defendant or any other person for him. The firm of Hecht & Co. came to me for advice. They first came to me, then Bolton came and stated the circumstances of the case. I told him we were Hecht & Co.'s attorneys, and he then asked me what objections I had to their signing it. I told him none except those I had learned out on the street. He then said he wished I would bring Hecht to his store. I went to the plaintiff's store alone, as Hecht did not come in that day; I waited sometime for the plaintiff to come in; when he came in, we began talking about this McKinlay matter. He sat down and made a statement of the defendant's affairs in figures to me, and said he had lost so much by fire, and so much one way and so much by another; some three or four different ways that he had met with losses. He talked sometime about this and other matters, and I took the figures, telling him I would get Hecht to sign it, if that was a true statement of defendant's affairs. As I was going out, he said, the best thing that Hecht can do is to sign this; if he don't sign it, he won't get a cent, and if he does sign it he may get 50 cents.

49 At the time of the conversation the plaintiff produced this composition deed. It was signed down as far as Lewis Atwood, not including his name, but including Wm. M. Ross & Co. There are two names below Hecht & Co.'s signature, Dougherty's, and Weber & Co.'s. I have stated all that I recollect of that conversation. At another time I went again to plaintiff's store with Hecht. He had a conversation with the plaintiff which I did not hear at length; he came to me in the store and said that he would sign the paper. In the first conversation the plaintiff said that if you can get Hecht & Co. to sign this all the rest will come in. I was applied to by one of the Hechts for advice. My first advice was not to sign; but after the conversation with Bolton I advised them to sign the paper by all means.

After that, about the last of November, I went over to the defendant's store, on the north side, to look after this matter. While standing at the door, before entering, I saw the defendant engaged in a conversation with some person, don't know who, near the door inside of the store. The person the defendant was talking with seemed quite excited, and they were talking about this same business. The first thing that called my attention particularly to what was said, was the mention of the name of

Bolton by that person. The defendant answered that Bolton was a friend of his or had befriended him, I forget which expression was used, and that Bolton was in for him some \$1,600 or \$1,800—either that he was into Bolton or that Bolton was in for him. I transacted my business that I had to do and left. Prior to that time I had been past the store. Had looked in, but had never stopped in after the execution of the composition deed, prior to the time of this conversation. Don't think the defendant named the precise figures. It was as I have given it.

49
On cross examination by the defendant's counsel the same witness testified as follows:

I can't say what particular time this conversation was. I can tell within three weeks, from facts within my knowledge. After this conversation which I heard, I returned home. I had done the business referred to before I heard this conversation. My business over at defendant's store was to see whether defendant was carrying his goods away, as I had heard he was doing. I was standing on the door steps when I overheard the conversation. Was not there more than once about that time. I was there also in 1855, but not in 57, if I recollect. Don't recollect seeing but two persons in the store at the time of this conversation. The other man I did not know. They were standing in the front part of the store, perhaps about six feet from the door. The defendant talked quite low, the other man spoke louder. Can't recollect the first words said. They did not impress themselves strongly on my mind. Don't remember which spoke first. I do not positively know what they were talking about. I was going to wait till the defendant got through before speaking to the defendant. Did not speak to him. One reason why I did not, was my surprise in hearing that he owed the plaintiff so much, when the plaintiff had not said he had such a debt against the defendant. Can't recollect what the other man said. He said he hoped this was all right. Don't know what he meant by it. I stood there three or four minutes. I told my partner what I had heard first. I also told Hecht. Can't recollect the precise words uttered by defendant. I saw this composition paper at Bolton's store, just as it is now. I depended more on Bolton. Did not care about reading that document. The names were not all there. There were five names on it. Will not swear positively that Ross & Co.'s names were there. Am pretty positive Peake, Marsh & Co. were on it. Think the interlineations were upon it as now. Think erasures were there. Can't swear this paper was exactly as now with respect to all the interlineations. It was not my errand to speak to defendant. I did not go there to speak to him, but to see whether goods were being removed.

The direct examination of the witness was here resumed, and he testified as follows:

I went to the store for the purpose of seeing whether the defendant was removing the goods; in that visit I acted professionally and not personally.

57 The plaintiff, further to rebut the testimony offered by the defense, then called Edward Bolton, who, being duly sworn, testified as follows:

I am in the employ of the plaintiff as bookkeeper. I know the defendant. On the 8th day of last September the defendant owed plaintiff \$616 and some odd cents. I speak from knowledge of the sale of goods to defendant. I get my information from the books. I was in the country last September. Have been bookkeeper with the plaintiff since I came here.

It is here admitted by the defendant's counsel that the debt due by defendant to plaintiff in September was	\$616 00
And in October, by a further sale of goods,	100 54
Total,	\$716 54

57 The plaintiff, further to rebut the testimony offered by the defense, then re-called Nathaniel T. Read, who testified as follows:

I know Wm. H. Sharp, who testified here yesterday. I recollect his coming to the plaintiff's store on the 7th day of December last. He left word that the defendant wished to see Mr. Bolton. I delivered the message myself.

52 The defendant, when he came in to Bolton's store on the 8th of December, sat down by the stove with the plaintiff. I was standing there at the time, but they were talking in a very low tone of voice, as if in a private conversation, and I moved away from the store. After they got through the conversation at the store they both got up, and the plaintiff went inside the railing and turned around and asked the defendant if he could meet his payment on his composition when it became due. The defendant said he could not possibly; said he wanted \$100 that day and should want some more in a few days. Bolton then said he would not take a judgment note from him unless he secured him and the other creditors. With that Bolton went to the desk and drew up a statement which is in our reference book, which McKinlay signed. After signing that the plaintiff gave him the check for \$100. This is all that I recollect as passing in that conversation. The loan of \$100 was not refused. Bolton said he would not take a judgment note from him to secure him unless he would secure him and some other creditors whom he felt morally bound to see paid. Mr. Bolton called off to defendant a few names of the creditors he referred to, viz.: Peake, Marsh & Co., J. H. Weber & Co., and Whitely & Hazeltine. These are the parties I heard Bolton name over, when he told defendant he would not take a note without securing other parties. The defendant made no reply at all. He was very anxious to get the \$100. Mr. Bolton then moved off to the desk and wrote this statement.

The statement in our reference book was here read to the jury by the witness, which is as follows:

"Statement of Wm. McKinlay, made 8th Dec. 1857.

"There is no incumbrance on my stock. I have not given any person any judgment note, chattel mortgage, or any other writing by which I may be closed up, and my transactions with Wm. H. Bolton are straightforward and honorable, and I shall protect his interest as I agree in reference to loan, &c. (of to-day) and also the other creditors.

"(Signed)

WM. MCKINLAY.

"(Witness) N. T. READ."

I saw the defendant sign the paper; it was then as now. I witnessed this entry.

On cross examination the said witness testified as follows:

52 There may be other statements in this book I have witnessed. I read the defendant's statement at the time I witnessed it; have read it several times; read it last evening. I wanted to know what he did say, if questioned about it. I know what was in it before. I witnessed it after the defendant left; about two minutes after he went out of the door. Bolton was standing at the desk when I signed as a witness. It was lying on the desk; I read it at the time it was signed; generally read such statements. At the time of the conversation I was standing in the front part of the store, within five or six feet of them. I remember what I have stated; that is the whole of the conversation I heard. When the defendant first came in they sat down by the stove together. They had a private conversation. Bolton asked the defendant if he could meet his composition? and the defendant said he could not possibly; said he wanted \$100 that day, and should want some more in a few days; think he mentioned the amount, from \$200 to \$300. Bolton did not say whether he would let him have it or not. Defendant said he would want more in ten days or two weeks. Bolton then said he would not take a judgment note from him unless he would secure him and other creditors, saying he felt morally bound to see them paid. I have read my affidavit since yesterday. I had a conversation with Edward Bolton.

53 The plaintiff here closed his testimony, and the defendant then recalled William H. Sharp, who testified as follows:

I do remember the time Mr. Peck was at the store; he was not in the store. We have double doors, and he stood eight to ten feet outside of the door. I knew the man, I recollect who the defendant was talking with at the time; his name was Dodge. I can't say what they were talking about; it was about McKinlay. I don't know where Dodge now is. I never heard a word about the defendant's being into the plaintiff; nothing of the kind; I was a great deal nearer to them than he; I heard no such conversation; never heard any such from McKinlay. He was never there before or after. Am quite positive he was never there but at that time; store is opened at half past six and closed by 9 o'clock; I was there all the time; I never saw Peck there before; he was never there while I was there; he may have been there some other time.

The cross examination was waived by the plaintiff's counsel.

The defendant then re-called Wm. A. Porter, who testified as follows:

I made those alterations; I made them shortly before the agreement was executed; from the time I first made the alteration, to the time I obtained all the signatures now on it, it was not out of my possession; I won't be positive whether Ross & Co.'s signatures were upon the paper when I made the alteration.

On cross examination the witness testified as follows:

I made the alterations about the 3d of October; it was a fair paper when I made the alterations. There were no interlineations at that time whatever. Every signature that appears there I procured. The signature of Hecht & Co. I procured. That was written in my presence, at the place of business of that firm. I think it was in Lake street, but will not swear to it. I went around from one to the other as rapidly as possible.

I went to Bolton's store and showed him that agreement and the other agreement, and he signed them. There were some signatures to the paper as it was before it was taken by me. There were some two or three to it before I took it. Don't think Ross & Co.'s signature was on it when I went out with it. I prepared the paper before I went out of my office to procure the signature. I did not prepare part of it one day, and another part the next. During the progress of the alterations, and up to the time it was signed, it was not out of my possession. Don't recollect getting that signature; but recollect going there; but don't recollect whether he actually signed it. I got their acknowledgment. Can't say positively that I got Atwood's signature to it. Don't think there were six signatures on it when I started out. I have no doubt that I procured Wm. R. Williams' signature. His place of business is on Lake st. Whether he acknowledged or signed it to me I will not be positive; I swear positively he either signed or acknowledged it; think he signed it. I took the paper also to B. Hecht & Co.'s place of business. I think they signed the paper when I took it to them. Have no doubt they did. I went to Dougherty's and one of the firm signed the paper in my presence. Weber & Co. was signed by one of the firm. I did not regard it as material whether they had previously signed or not. My object was to get this paper executed; but whether I procured the signature then or before that time, I will not be positive. I will not be positive how many were upon the paper before it was altered. Nor will I be positive that Hecht & Co. were not on the paper. It may have been on it, but I do not think it was; still I cannot say certainly. I do not think there were more than three or four there; but I will not undertake to say there were not more than three or four more. There are seven or eight in all.

The plaintiff's, to rebut the testimony, offered by the defense, then-called Bernhard Hecht, who, being duly sworn, testified as follows:

[The composition was here shown to the witness.]

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I recognize the signature of our firm to this paper; it was signed by me. I was a creditor of Wm. McKinlay. Peck & Hennessy were my counsel. I signed it by the advice of my counsel Peck. I had no interview with Bolton on the subject. At first they gave me no certain advice, but after they had seen the plaintiff they told me it was the best I could do. I had this paper and took it to Mr. Peck and submitted it to him as my counsel; I signed it in my office. I think Mr. Porter brought it there, and gave it to me, and I took it to Peck and brought it back, and then I signed it.

On cross examination by the defendant's counsel the said witness testified as follows:

I am not very sure that I took the paper; think Porter left it with me. If he did so, I took it to my counsel; would not be very certain Porter left it, but it is my impression that he did. If he had it I don't know how long he kept it; might have been a few days. This may have been in August; think it was in September; would not be very positive as to the time. Am sure Porter was present when I signed it. I can't say who brought it there.

This was all the evidence offered, produced and given on the said trial of said cause on behalf of the said plaintiff and of the said defendant, to maintain the issue on their respective parts.

And thereupon the counsel of the plaintiff asked the court to give the two following instructions, which were given.

Plaintiff's Instructions.

1. If the jury believe from the evidence that the note in question was executed by the defendant, or that the said note was filled up as it is over his signature by his knowledge and direction, and without fraud on the part of the plaintiff, then, under the pleadings in this case, the jury will find for the plaintiff, although they should not be fully satisfied from the evidence that there was a consideration therefor then existing from the plaintiff to the defendant to the full amount of said note.

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2. Whether there is a total want, or partial or total failure of the consideration of the note in question is not put in issue under the state of the pleadings in the cause, and the only fact for the jury to determine is, whether the defendant executed the note in question for the amount therein stated, or signed it partly filled up for the amount, and directed or requested the plaintiff to fill up the balance of it with the knowledge of the amount which was inserted therein; and if the jury shall believe from the evidence that the defendant so executed the said note, or signed it and directed it so to be filled up, then they will find for the plaintiff.

And thereupon the said counsel for the said defendant prayed the said Judge to give the instructions following to the jury on behalf of the said defendant.

Defendant's Instructions.

56 1. If the jury shall find from the evidence that the defendant signed a blank note for the plaintiff, with the understanding and agreement that the plaintiff should fill up the same with the sum of one hundred and three dollars, payable thirty days after date; and that the plaintiff, without the knowledge of the defendant and without his consent, fraudulently filled in the said blank note with the sum of seventeen hundred and ninety-three dollars, then the jury will find that the execution of the said note was fraudulently procured, and their verdict on the issue should be for the defendant.

2. The court instruct the jury that even though the evidence establishes that Bolton promised to pay defendant (McKinlay's) debt or debts to any other party or parties, such promise was not valid or of any legal effect, unless some note or memorandum in writing of such promise was made and signed by said Bolton.

Which said instructions the Judge then and there did give to the jury on behalf of the said defendant; and the said plaintiff, by his said counsel, did then and there except to the giving of the last of the same.

And the said issue, with the evidence so given on the trial thereof as aforesaid, with the said instruction of the said court, was given to the said jury; and the jury aforesaid therein rendered their verdict for the said defendant.

And thereupon the said plaintiff, by his said counsel, moved the said court for a new trial of said issue and said cause, for the reasons,

56 1. That the said verdict of the said jury was contrary to the evidence given in said cause.

2. That the said Judge erred in admitting the documentary evidence offered by said defendant on the trial of said cause.

3. That the court erred in admitting the evidence of Wm. A. Porter and Wm. H. Sharpe on behalf of said defendant.

4. That the court erred in overruling the several objections taken by the said counsel for the said plaintiff to the admission of testimony as herein particularly stated.

57 That the said Judge erred in giving the instruction number two prayed for by said defendant's counsel, and herein set forth.

But the said Judge then and there overruled the said motion for a new trial so made by the said counsel for the said plaintiff, and refused to allow the same.

And because none of the said exceptions so offered and made to the rulings and decisions of the said Circuit Judge do appear upon the record of the said trial, therefore, on the prayer of the said plaintiff by his said

counsel, the said Circuit Judge hath to this Bill of Exceptions put his seal, according to the statute in such case made and provided, this 19th day of March, in the year one thousand eight hundred and fifty-eight.

GEORGE MANIERRE, [SEAL.]
Judge of 7th Judicial Circuit.

Errors Assigned.

1. The court below erred in admitting the documentary evidence offered by the said defendant below on the trial of said cause.
2. The court below erred in admitting the evidence of Wm. A. Porter and Wm. H. Sharpe on behalf of said defendant below.
3. The court below erred in overruling the several objections taken by the counsel for the said plaintiff below to the admission of testimony.
4. The court below erred in giving the second instruction asked for by the defendant below.
5. The court below admitted improper evidence on the part of the defendant below.
6. The court below refused to admit proper evidence on the part of the plaintiff below.
7. The court below improperly overruled the motion for a new trial made by the plaintiff below, and gave judgment for defendant below.

CLARKSON & TREE,
Attorneys for Plaintiff in Error.

Joinder in error by counsel for defendant in error,

E. VAN BUREN.

Supreme Court

~~47-78~~ 47-78

Jessie H. Bolton
Plff in Error

vs

Jessie M. Kinlaff
Defdt in Error

Abstract

Filed May 7. 1838.

L. L. Leland
Clerk



Clarkson & Shree
Attys for plff in Error