

12312

No. _____

Supreme Court of Illinois

Roosa

vs.

Crist

65
Charles B. Roosa
vs
Peter M. Crist.

65

1856

~~12312~~

12312

X

1.
The People of the State of Illinois.— By
the Grace of God free and Independent, To all to
whom these presents may come. Greeting: Know Ye that
we having caused to be inspected the Records and proceedings
now remaining in the office of our Clerk of our Circuit Court
in and for our County of Will, do find there certain records
in words and figures following: (To-wit)

Will County Circuit Court

September Term A.D. 1852

United States of America }
State of Illinois } SS
Will County }

Pleas before the Honorable Hugh
Henderson, Judge of the Eleventh Judicial Circuit of said
State of Illinois, at the September Term of the Will
County Circuit Court, began and held at the Court house
in said County, in the City of Alton on the first Monday of
September (the same being the sixth day of said month of
September,) in the year of our Lord one thousand Eight
hundred and Fifty-two.

Present the Hon. Hugh Henderson Judge as aforesaid
Sherman W. Bowen State attorney 11th Judicial Circuit

Robert S. Cunningham Sheriff of Will County
Michael M. Eoy Clerk Will County Circuit Court

And therefore (to-wit) on the twenty-first day of August in the year of our Lord one thousand eight hundred and fifty-two a certain security for costs and price for summons were filed in the office of the Clerk of our said Court in words and figures following, (to-wit):

Will Circuit Court

Charles B. Roosa }

vs.

Peter M. Crist }

We do hereby enter ourselves security for costs in this cause, and acknowledge ourselves bound to pay, or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the officers of this Court in pursuance of the laws of this State. —
Dated 20th August, A.D., 1852.

Parks & Elwood

At the Clerk of the Will Circuit Court:

In the above entitled cause, please issue to Sheriff of Will County, a summons returnable at the next September Term of this Court. Term of action debt. Debit \$200. Damages \$100.

Yours &c

Parks & Elwood,

Attorneys for plaintiff.

3.

And thereupon the said Clerk issued a writ of summons, in words and figures following: (S-wit:)

State of Illinois }
Mill County } ss.

The People of the State of Illinois, to the Sheriff of said County—Greeting: We command you, that you summon Peter M. Crist, if he be found in your County, personally to be and appear before our Circuit Court of our said County, on the first day of the next Term thereof, to be holden at the Court House in Solist, in said County, on the first Monday of September 1852, to answer Charles B. Roosa of a plea that he render unto him a certain debt of two hundred dollars which he owes, and unjustly detains from him the said plaintiff to the damage of him the said plaintiff one hundred dollars as is said, And have you there, there, this writ—



Witness Michael McEvoy Clerk of our said Court, and the seal thereof hereunto affixed at office in Solist, in said County, this 27th day of August A.D. 1852,

M. McEvoy, Clerk.
By R. L. Barber Deput. Clerk.

Which said writ of summons was returned by said Sheriff as follows:

I return the within summons served by reacting the within to the within named Peter M. Crist, this 27th day of August 1852,

4.

one Service — \$0.50
 3 mts. travel — .25
 return of summons — 10
 \$0.85

R. J. Cunningham
 Sheriff of Will County

And afterwards (to-wit) on the ^{twenty-fourth} ~~24th~~ day of August in the year of our Lord one thousand eight hundred and fifty-two a certain declaration was filed in the office of our said Clerk in words and figures following, (to-wit)

Will Circuit Court

Of September Term A.D. 1852

State of Illinois }
 County of Will } ss.

Charles B. Rorer, plaintiff in this suit by Parks & Elwood his attorneys, comes and complains of Peter M. Suit, defendant in this suit, heretofore summoned &c, of a plea that he render unto said plaintiff the sum of two hundred dollars lawful money, which he owes to and unjustly obtains from him.

For that whereas, heretofore, to-wit on the third day of January in the year of our Lord one thousand eight hundred and forty-four at Bethel, in the County of Sullivan, in the State of New York, to-wit at Polist, near the City of Schut, in said County of Will in the State of Illinois aforesaid, the said defendant made his certain promissory note in writing bearing date a certain day and year therein mentioned, to-wit the day and year aforesaid and then and there delivered the said note to one John Barlow to whom or to the bearer thereof the said note was by its terms made payable by which said note he the said defendant then and there promised to pay the said John Barlow or bearer ninety dollars value received (for value received

meaning): and the said John Barlow to whom or the bearer thereof, the payment of the said sum of money therein specified was by the said note to be made, after the making of said note and before the payment of the said sum of money therein specified, to-wit, on the day and year aforesaid, at the place aforesaid duly transferred and delivered the said promissory note to the said plaintiff who thereby then and there became and was and still is the lawful bearer thereof and entitled, according to the laws of the said State of New York, in which said transfer and delivery took place, in his said plaintiff's own name to demand and receive payment of and sue for said sum of money therein specified, whereof the said defendant afterwards, to-wit on the day and year aforesaid at the place aforesaid had notice. By means whereof and by force of the statute in such case made and provided the said defendant then and there became liable to pay the said plaintiff the said sum of money in the said promissory note specified with interest thereon from the day of the date of said promissory note at and after the rate of seven per cent per annum, which said plaintiff avers was the lawful rate of interest in such case made and provided by the laws of the State of New York in force at the date of said promissory note, to-wit, at the day and year first aforesaid, which interest at the date of the filing of this declaration amounts to one hundred and ten dollars. Yet although the said sum of money in the said promissory note specified hath been long since due and payable according to the tenor and effect of said promissory note, yet the said plaintiff in fact saith that the said defendant tho' often requested so to do did not once would pay the said sum of ninety dollars in said note specified or any part thereof nor the interest thereon to the said plaintiff in manner aforesaid or otherwise however, but hath hitherto wholly neglected and refused and still doth neglect and refuse so to do, whereby

6.

an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sum of ninety dollars in the said note specified parcel of the sum above demanded. Yet the said defendant though often requested so to do hath not yet paid the said sum of two hundred dollars above demanded or any part thereof to the said plaintiff. But he to do this hath hitherto wholly refused and still doth refuse to the damage of the said plaintiff of one hundred dollars and therefore he brings his suit &c.

Parks & Chwood

for plff.

Copy of the note

On which this suit is brought.

I promise to pay John Barlow or Bearer

"ninety dollars value received,"

"Bethel January 3^d 1844"

"Peter M. Crist"

Parks & Chwood

for plff.

Charles B. Ross

Def.

Peter M. Crist

Now come the said Plaintiff by Messrs. Parks & Chwood his Attornies on whose motion it is ordered that said Defendant plead to said Plaintiff's declaration herein by Wednesday morning at 8 o'clock of 2 week

And of the said (1844) on the 20th day of September in the year of our Lord one thousand eight hundred and forty-two it appearing one of the regular days of said Court. Whereof said Court for the said year 1844 closed and the said Court being then fully organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following to-wit:

#

And afterwards (to-wit) on the thirteenth day of September in the year of our Lord one thousand eight hundred and fifty-two the following Declaration to have was filed in the office of our said Clerk in words and figures following, (to-wit):

Mill County Circuit Court

Charles B. Rosa

vs.

Peter M. Crist

And the said Defendant, Peter M. Crist, by Oggood & Streeter his attorneys comes & defends the wrong & injury, when &c. & says that the said Declaration & the matters therein contained in manner & form as the same are above stated & set forth, are not sufficient in Law for the said Plaintiff to have or maintain his aforesaid action thereof against the said Defendant, & that he, the said Defendant is not bound by law to answer the same. And this he is ready to verify. Wherefore the said Defendant prays judgment &c.

Oggood & Streeter

Attys. for deft.

And afterwards (to-wit) on the first day of March in the year of our Lord one thousand eight hundred and fifty-three the said Defendant filed his plea in the office of the Clerk of our said Court in words and figures following (to-wit):

Will County Circuit Court

Peter M. Christ

vs.

Charles B. Boora

And the said Defendant by Uri Osgood his Attorney comes & defends the wrong & injury when &c. & says that he does not owe the said sum of money above demanded or any part thereof, in manner & form as the said Plaintiff hath above thereof complained against him, & of this the said Defendant puts himself upon the Country &c.

Uri Osgood, Atty. for Deft.

And for a further plea in this behalf the said defendant by leave &c. saith that the said Plaintiff's "Petition" because he says, that after the making of the said promissory note in said declaration specified, & before the delivery thereof by the payee therein named (John Barlow) to said Plaintiff, to-wit on the sixth day of January, A.D. 1844, at Bethel, to-wit, at Bethel in the county of Will aforesaid, he the said Defendant fully paid to said payee, John Barlow, the said sum of money in said promissory note specified & all interest thereon due, which was accepted by said Barlow as full payment thereof. And thus the said Defendant is ready to verify. Wherefore said Defendant prays judgment, & that said Plaintiff be found

Uri Osgood

Atty. for Deft.

And for a further plea in this behalf the said Defendant, by like leave &c. saith that the said Plaintiff's "Petition" because he says that before the commencement of this suit, to-wit: On the 23rd day of December, A.D. 1845, at Bethel, to-wit, at Bethel in said Will County he fully paid to said Plaintiff the said sum of money in said note in said Plaintiff's declaration mentioned & described & all interest due thereon, which said payment

was accepted by said Plaintiff in full satisfaction of said note & interest thereon. And this the said Defendant is ready to verify. Wherefore he prays judgment &c.

Uri Elegood

Atty for Deft.

And for a further plea in this behalf the said defendant by like leave &c, saith that the said Plaintiff "Actio non," because he saith that the said Plaintiff purchased the said promissory note in his said declaration specified after the same became due & payable, to wit, on the first day of April A. D. 1844, at & for a certain price or sum, to wit, for the sum of twenty-five dollars, and Defendant further saith, that afterwards, to wit, on the 20th day of June, A. D. 1845 at Bethel in the State of New York, to wit, at Poliet, in Well County in the State of Illinois he fully paid to said Plaintiff the said sum of money so by him paid for said note together with all interest thereon due, which said payment was received by the said Plaintiff, & the said Plaintiff then & there agreed to deliver up the said promissory note to the said Defendant to be cancelled and this the said Defendant is ready to verify. Wherefore he prays judgment &c.

Uri Elegood

Atty for Deft.

And for a further plea in this behalf the said defendant, saith that the said Plaintiff "Actio non," because he says that the said supposed promissory note in said Plaintiff's declaration specified, and which is in the words & figure following: (To wit)

"I promise to pay John Barber or bearer ninety dollars value received

Bethel, January 3^d 1844 "

Peter M. Crist "

Was executed & delivered by him, this defendant, to one John Barber, & made payable to said John Barber or bearer, & that the said note is not payable to the said

Plaintiff in this suit, & has now been assigned or indorsed to the said plaintiff in this suit. And this the said Defendant is ready to verify. Wherefore he prays judgment &c.

Uri Osgood

Atty. for Deft.

And for a further plea in this behalf the said Defendant says that the said Plaintiff "dicto mon" because he says that the said promissory note in said Plaintiff's declaration specified & which is in the words & figures following, (to wit):

"I promise to pay John Barlow or bearer
ninety dollars, value received

"Bethel January 8th 1844.

Peter M. Christ"

Was executed & delivered by this Defendant to one John Barlow, & made payable to said John Barlow or bearer, and thereafter, to wit, on the 25th day of January A.D. 1849 the said John Barlow died, without ever having assigned the said note to the said Plaintiff, and this the said Defendant is ready to verify. Wherefore he prays judgment &c.

Uri Osgood

Atty. for Deft.

And for a further plea in this behalf the said Defendant saith that the said Plaintiff "dicto mon" because he saith that the said promissory note in said Plaintiff's declaration mentioned & specified was executed & delivered by him to one John Barlow in the State of New York & in pursuance of & under the laws of said State of New York, and that the execution & delivery thereof as aforesaid & while the said note was in the hands of the said plaintiff in this suit in the State of New York, he the said Defendant became an insolvent debtor & made a full assignment of his property for the benefit

of his creditors, under & by virtue of, & in pursuance of the laws of the State of New York, And that under said assignment & in pursuance of the said Insolvency Laws of the State of New York, the said Plaintiff in this suit received his pro rata share of the proceeds of the said Defendants property so assigned, in full satisfaction, & payment of the said promissory note — & then & there promised & agreed with this defendant in consideration thereof to deliver up the said promissory note to this defendant — All which the said defendant is ready to verify. Wherefore he prays judgment &c.

Uri Algood

Rtly for Deft —

And afterwards (to-wit) on the nineteenth day of March in the year of our Lord one thousand eight hundred and fifty-three the ^{said} plaintiff filed his Replication in the office of our said Clerk in words and figures following: (to-wit:)

Will County Circuit Court

Charles B. Rousa

vs

Peter M. Crut

March Term A. D. 1853

And the said plaintiff as to the plea of the said defendant by him first above pleaded, and whereof he hath put himself upon the country, doth the like.

Parks & Elwood

Attornies for deft

And the said plaintiff as to the said plea of the said defendant by him secondly above pleaded saith that the said plaintiff

12. by reason of anything by the said defendant in that plea alleged ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he saith that the said defendant did not pay the said sum of money in the said promissory note specified and all interest thereon due to the said John Parker the payee therein named in manner and form as the said defendant hath above in his said plea in that behalf alleged — and thus the said plaintiff's prayer may be inquired of by the country

Parks & Elwood

Attornies for plff.

And the said plaintiff as to the said plea of the said defendant by him thrice above pleaded saith that the said plaintiff by reason of anything by the said defendant in that plea alleged ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant because he saith that the said defendant did not pay to said plaintiff the said sum of money in said promissory note specified and all interest due thereon, in manner & form as the said defendant hath above in his said plea in that behalf alleged, and thus the said plaintiff's prayer may be inquired of by the country.

Parks & Elwood

Attornies for plff.

And afterwards (to-wit) on the nineteenth day of March in the year of our Lord one thousand eight hundred and fifty-three the ^{said} Plaintiff filed his Demurrer in the office of our said Clerk in words and figures following, (to-wit):

Will Circuit Court

Charles B. Rusa

vs.

Peter H. Crist

Of March Term A. D. 1853

And the said plaintiff as to the said plea of the said defendant by him fourthly above pleaded swith that the same and the matters therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law to bar or preclude him, the said plaintiff from having or maintaining his aforesaid action thereof against him the said defendant, and that he the said plaintiff is not bound by law to answer the same, and this he is ready to verify. Wherefore by reason of the insufficiency of the said plea in this behalf, the said plaintiff prays judgment and his damages by reason of the not performing of the said promise and undertaking in the said declaration mentioned to be adjudged to him &c.

Parks & Olwood

Attorneys for plff.

And the said plaintiff as to the said plea of the said defendant by him fifthly above pleaded swith that the same and the matters therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law to bar or preclude him the said plaintiff from having or maintaining his aforesaid action thereof against him, the said defendant, and that he the said plaintiff is not bound by law to answer the same. And this he the said plaintiff is ready to verify. Wherefore by reason of the insufficiency of the said plea in this behalf, the said plaintiff prays judgment and his damages, by reason of the not performing of the said promise and undertaking in the said declaration mentioned to be adjudged

*Parks & Elwood**Attornies for plff.*

And the said plaintiff as to the said plea of the said defendant by him
 rightly above pleaded saith that the same and the matters therein contained
 in manner and form as the same are above pleaded and set forth are not
 sufficient in law to bar or preclude him, the said plaintiff from having or
 maintaining his aforesaid action there against the said defendant and that
 he the said plaintiff is not bound by law to answer the same. And this
 he the said plaintiff is ready to verify. Wherefore by reason of the insuffi-
 = cency of the said plea on this behalf the said plaintiff prays judgment
 and his damages by reason of the not performing of the said promise and
 undertaking in the said declaration mentioned to be adjudged to
 him &c.

*Parks & Elwood**Attornies for plff.*

And afterwards (to-wit) on the twenty-sixth day of
 March in the year of our Lord one thousand eight hundred and fifty-three, it
 also being one of the regular days of said March Term of said Court for the said
 year ^{A.D.} 1853 aforesaid and the said Court being then duly organized and sitting in
 open Court for the transaction of business the following proceedings were had
 and entered of record by the said Court in words and figures following (to-wit)

*Charles B. Ross**vs**Debt**Peter M. Crist*

And now come the said parties by their respec-

five Attornies, On whose agreement it is ordered by the Court that the said Plaintiff's Demurrer to fourth, fifth and sixth Pleas herein be argued before the Court at Chambers in vacation on the second Monday of May next and that the decree of the Court be entered as of this present term and that the cause be continued.

And afterwards (to-wit) on the fifth day of September in the year of our Lord one thousand eight hundred and fifty-three it also being one of the regular days of said September Term of said Court for the said year, A.D. 1853 aforesaid. and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in words & figures following (to-wit)

Charles B. Rosse

vs

Debt

Peter M. Crist

And now comes the said Plaintiff by his Attorneys, Parks & Chowell and enter their motion for leave to file their Demurrer to the seventh Plea of the said Defendant, whereupon it is ordered by the Court that said leave be granted.

And afterwards (to-wit) on the sixth day of September in the year of our Lord one thousand eight hundred and fifty-three the said plaintiff filed his Demurrer in the office of the Clerk of our said Court in words and figures following (to-wit)

Of March Term A.D. 1853

Charles B. Rousa

vs

Peter M. Crist

And the said plff. as to the said plea of the said defendant by him verily above pleaded, swears that the same and the matters therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law to bar or preclude him the said plaintiff from having or maintaining his aforesaid action thereof against him the said defendant, and that he the said plaintiff is not bound by law to answer the same, and this he is ready to verify. Wherefore by reason of the insufficiency of the said plea in this behalf the said plaintiff prays judgment and his damages by reason of the not performing of the said promises and undertakings in said declaration mentioned to be adjudged to him &c.

Parks & Chooid

Attorneys for plff.

And afterwards (said) on the eight day of September in the year of our Lord one thousand eight hundred and fifty three, it also being one of the regular days of said September Term of said Court for the said year 1853 aforesaid and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of record by the said Court in words and figures following (to-wit):

Charles B. Rousa

vs

Peter M. Crist

Debt

And now come the said parties to this suit by

17. their respective Attorneys, Parks and Elwood attorneys for the said Plaintiff, and Ogden and Streeter attorneys for the said Defendant. And now comes on to be heard the arguments of Counsel upon the said Plaintiff's Demurrer to the said Defendant's Answer herein. And the Court being fully advised in the premises it is ordered that the same be sustained as to Answer herein. And the said Defendant enters his motion for Judgment against the said Plaintiff for his costs and charges of his said Demurrer. Whereupon it is ordered by the Court that the said Defendant have Judgment against the said Plaintiff for his costs and charges of said Demurrer.

It is thereupon considered by the Court that the said Defendant do recover of said Plaintiff his costs and charges of his said Demurrer herein and that he have execution therefor.

And the said Plaintiff enters his motion for leave to amend Answer. Whereupon it is ordered by the Court that said leave be granted. And the said Defendant enters his motion for a continuance in this cause at the said Plaintiff's costs. Whereupon it is ordered by the Court that this cause be continued, and that said Defendant do have Judgment against the said Plaintiff for his costs and charges herein.

It is thereupon considered by the Court that the said Defendant do recover of the said Plaintiff his costs and charges of this term by him about his suit in this behalf expended and that he have execution therefor.

And afterwards (to-wit) on the ninth day of December in the year of our Lord one thousand eight hundred and fifty-three a amended Declaration was filed in the office of the Clerk of our said Court in words and figures following (to-wit):

17th December Term A.D. 1883

State of Illinois }
 County of Will } ss.

Charles B. Rorer, plaintiff in this suit by Rule & Showed his attorney comes and complains of Peter M. Hunt, Defendant in this suit, who was heretofore summoned according to the statute in such case made and provided, of a plea that he sends unto the said plaintiff the sum of two hundred dollars, lawful money of the United States of America, which he owes to and unjustly detains from him.

For that whereas, heretofore to-wit on the third day of January in the year of our Lord one thousand eight hundred and forty-four, at-Rohd in the County of Sullivan and State of New York, to-wit at Solist in the County of Will and State of Illinois, aforesaid, the said Defendant made his certain promissory note in writing, bearing date the day and year aforesaid, and then and there delivered the said note to one John Barlow, to whom or to the bearer thereof, said note was by its terms made, payable, by which said note he the said defendant then and there promised to pay the said John Barlow or bearer ninety dollars value received. (for value received meaning) whenever he, said Defendant should be thereunto afterwards requested. And the said John Barlow to whom or to the bearer thereof the payment of the said sum of money therein specified was by the said note to be made, did after the making of the said note and before the payment of the said sum of money therein specified, transit on the day and year aforesaid and at the County of Sullivan in the State of New York aforesaid duly transfer and deliver the said promissory note to the said plaintiff, who thereby then and there became and was and still is the lawful bearer thereof, and the said plaintiff avers that said note was so transferred and delivered to said plaintiff by said John Barlow in the State of New York, and under and according to the laws of the State of New York: and that by the laws of the State of

New York in such case made and provided, he the said plaintiff as the
 bearer of said note by such transfer and delivery, became and was and still is
 possessed of both the legal and equitable ownership of said note, and that
 being so possessed of both the legal and equitable ownership of said note, by force
 and effect of the laws of the State of New York, in which said contract of
 transfer and delivery was made as aforesaid and entitled in his own name to
 sue for, demand, and receive the money in said promissory note specified, in the
 State of New York, he said plaintiff hath a right in the State of Illinois to
 sue for, demand and receive the said sum of money in said promissory note
 specified, whereof the said defendant afterwards, ten or more days and years
 aforesaid had notice.

By means whereof and by force of
 the statute in such case made and provided the said defendant then and
 thereafter became liable to pay to the said plaintiff the said sum of money in
 the said promissory note specified, whenever he the said defendant should
 be thereunto afterwards requested, and the said plaintiff saith that he re-
 quested and made demand of the said defendant to pay the said sum of
 money in said promissory note specified, herefor, to-wit on the day and year
 and at the place aforesaid. Yet the said defendant though thus and often-
 times since requested to pay the said sum of money in said promissory note
 specified, according to the tenor and effect thereof, has not yet paid the same
 or any part thereof, but hath hitherto wholly neglected, refused, and still
 doth neglect and refuse so to do, whereby an action hath accrued to the said
 plaintiff to demand and recover of and from the said defendant the said sum
 of money in said note specified. Yet the said defendant tho' after requested
 so to do hath not as yet paid the said sum of money in said promissory note
 specified and above demanded or any part thereof, But to do this he hath hith-
 erto wholly refused; and still doth refuse, to the damage of the said plaintiff.

of one hundred dollars, - and therefore he brings suit &c.

Parks & Clarke

Attorneys for plff.

The following is a copy of the note on which this suit is brought:

"I promise to pay John Barlow or bearer ninety ninety dollars value received."

Bethel January 3^d 1844.

Peter M. Crist.

And of towards (to-wit) on the twentieth day of December in the year of our Lord one thousand eight hundred and fifty-three the defendant filed his plea in the office of the Clerk of our said Court in words and figures following, (to-wit):

Will County Circuit Court

Peter M. Crist
vs
Charles B. Borse

And the said defendant, Peter M. Crist, by Vir Orgood his attorney comes & defends the wrong & injury whereof, & says that he does not owe the said sum of money above demanded, or any part thereof in manner & form as the said plaintiff hath above thereof in his last above amended Declaration complained against him, & if this the said Defendant puts himself upon the country &c.

Vir Orgood Atty
for def^t.

And for a further plea in this behalf the said Defendant

21.

said that the said plaintiff "Actio Non" because he says that ^{the} of the making of the said promissory note in said last amended declaration specified & before the delivery thereof by the payee therein named (John Barlow) to said plaintiff, to-wit on the sixth day of January, A.D. 1841, at Bethel, to-wit, in said County of Will. aforesaid, he the said defendant fully paid to said payee, the said John Barlow, the said sum of money in said promissory note specified & all interest thereon due, which was accepted by said Barlow as full payment thereof. And thus the said Defendant is ready to verify. Wherefore the said Defendant prays judgment, & that the said plaintiff be barred &c.

Uri Asgood

Atty for Deft

And for a further plea in this behalf the said Defendant saith that the said plaintiff Actio Non, because he says, that before the commencement of this suit, to-wit: on the 25th day of December A.D. 1843, at Bethel, to-wit at Bethel in said Will County he fully paid to said Plaintiff the said sum of money in said note, in said Plaintiff's last amended declaration, mentioned & described & all interest due thereon, which said payment was accepted by said Plaintiff in full satisfaction of said note & interest thereon. And thus the said Defendant is ready to verify. Whereupon he prays judgment &c.

Uri Asgood atty

for Plaintiff

And for a further plea in this behalf the said Defendant saith that the said Plaintiff Actio Non, because he says, that the said Plaintiff purchased the said promissory note in his said last amended declaration specified of John Barlow the payee therein named & which is in the words and figures following: (to-wit)

"I promise to pay John Barlow or bearer ninety Dollars value
received. — Bethel January 3^d 1844.

"Peter M. Bird."

After the said note became due & payable, to-wit, on the first day of April, A.D. 1844, at & for a certain sum or price, to-wit: for the sum of twenty-five dollars. And Defendant further saith that afterwards, to-wit: on the 25th day of June A.D. 1845 at & in the State of New York, to-wit: at Bethel in said State of New York, where said Defendant was that the said promissory note was made & delivered & when the said Plaintiff purchased the same, he the said Defendant fully paid to the said Plaintiff the said sum of money or by him paid for said promissory note, together with all the interest thereon due, which said payment was received by said Plaintiff as full & complete payment & satisfaction of said note; and the said Plaintiff, then & there at Bethel in the State of New York to-wit: at Bethel in the County of Willoughby in consideration of said payment & satisfaction of said note by said Defendant, agreed to deliver up the said note to said Defendant. And this the said Defendant is ready to verify, wherefore he prays judgment &c

We Obed

Atty for Defl.

And for a further plea in this behalf the said Defendant saith that the said Plaintiff "Crotis Nun" because he says that the said promissory note in said Plaintiff's said last amended declaration specified, & which is in the words & figures following, to-wit:

"I promise to pay John Barlow or bearer ninety
Dollars value received, — Bethel January 3^d 1844

"Peter M. Bird"

Was executed and delivered by him the said Defendant to one John Barlow & made payable to said John Barlow or bearer, which said promissory note is the said Plaintiff's sole & only cause of action in this suit & in said last amended Declaration specified & is not payable to the said Plaintiff in this suit, & has never been assigned or indorsed to said Plaintiff, and this the said Defendant is ready to verify. Wherefore he prays judgment &c.

Chas. Alsop

Atty for Deft.

And for a further plea in this behalf the said Defendant says that the said Plaintiff "nots on," because he says that the said promissory note in said Plaintiff's last amended Declaration specified, & which is in the words & figures following to-wit:

"I promise to pay John Barlow or bearer or assigns
"dollar value received, — Bethel Sumner 2^d 1844,

"Per M. Grant"

Was executed & delivered by him the said Defendant to one John Barlow in the State of New York, in pursuance of & under the laws of said State of New York & made payable to said John Barlow or bearer, & not otherwise, & after the execution & delivery thereof as aforesaid, the said note came to the hands of the said Plaintiff by delivery merely & without indorsement or assignment, & that while the said note was in the hands of said Plaintiff in said State of New York, & whilst said Plaintiff in said State of New York, claimed to be the owner of said promissory note, to-wit: on the fifteenth day of April A.D. 1846 he the Defendant became an insolvent debtor

24. in said State of New York & made a full assignment of his property for the benefit of his creditors under & by virtue of, & in pursuance of the laws of said State of New York, & was discharged by the Surrogate Court of said State of New York, in pursuance of the laws of said State of New York from his debts & liabilities, & from the said note in said Plaintiff's last amended declaration specified, that the said Surrogate Court had then & there full & complete jurisdiction of the person of the defendant & of the subject matter of his assignment & insolvency & all matters connected therewith, and that under said assignment & in pursuance of the laws of said State of New York, the said Plaintiff in this suit received his pro rata share of the proceeds of the property of this defendant so assigned in full payment & satisfaction of said note & all interest thereon due, & in consideration thereof the said Plaintiff thus & there promised & agreed to deliver up the said promissory note to this defendant. All which the said defendant is ready to verify, Wherefore he prays judgment &c.

Uri Asgood

Atty for Deft

And afterwards (to-wit) on the twenty-first day of December in the year of our Lord one thousand eight hundred and fifty three the Plaintiff filed his Replication in the office of the Clerk of our said Court in words and figures following (to-wit):

Will Circuit Court

Charles B. Rorsa

vs

Peter M. Crist And the said plaintiff, Charles B. Rorsa

by Parks & Elwood his attorneys, as to the plea of the said defendant by him first above pleaded and whereof he hath put himself upon the country, doth the like

Parks & Elwood

Attorneys for plff.

And the said plaintiff, as to the said plea of the said defendant by him secondly above pleaded, saith that he the said plaintiff by reason of anything in that plea alleged ought not to be barred from having and maintaining his aforesaid action ^{thereof} against him said defendant, because he saith that the said defendant did not pay to John Barlow, payee of the promissory note in said plaintiff's amended declaration specified, the said sum of money in said promissory note specified and all the interest thereon due in manner and form as the said defendant hath above in his said plea in that behalf alleged, and this the said plaintiff prays may be inquired of by the country, &c.

Parks & Elwood

Attorneys for plff.

And the said plaintiff, as to the said plea of the said defendant by him ^{secondly} above pleaded, saith that ^{he} the said plaintiff by reason of anything in that plea alleged ought not to be barred from having and maintaining his aforesaid action because he saith that he the said defendant did not pay to the said plaintiff the said sum of money in said promissory note specified and all interest due thereon, in manner and form as the said plaintiff hath above in his said plea in that behalf alleged, and this the said plaintiff prays may be inquired of by the country, &c.

Parks & Elwood

Attorneys for plff.

And afterwards, (to-wit) on the twenty-first day of December in the year of our Lord one thousand eight hundred and fifty-three, the Plaintiff filed his demand in the office of the Clerk of our said Court in words and figures following (to-wit):

Will Circuit Court

Charles B. Roria

vs

Peter M. Cunit

And the said plaintiff, as to the said plea of the said defendant by him fourthly above pleaded with that the same and the matter therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law to bar or preclude him the said plaintiff from having or maintaining his aforesaid action there against the said defendant, and that he the said plaintiff is not bound by law to answer the same. And this he the said plaintiff is ready to verify. Wherefore by reason of the insufficiency of the said plea in this behalf, the said plaintiff forgoes judgment and his debt aforesaid together with his damages by him sustained on occasion of the detection thereof to be adjudged to him &c.

Parks & Church

Attorneys for plff.

And the said plaintiff, as to the said plea of the said defendant by him fifthly above pleaded, with that the same and the matter therein contained in manner and form as the same are above pleaded, and set forth are not sufficient in law to bar or preclude him said plaintiff from having or maintaining his aforesaid action there

27.

against him said defendant, and that he said plaintiff is not bound by law to answer the same. And this he the said plaintiff is ready to verify. Wherefore by reason of the insufficiency of the said plea in the behalf, the said plaintiff prays judgment, and his debt aforesaid together with his damages by him sustained, on occasion of the detention thereof to be adjudged to him &c.

Parks & Elwood

Attornies for plff.

And the said plaintiff as to the said plea of the said defendant by him sixthly above pleaded, avers that the same and the matters therein contained in manner and form as the same are above pleaded: and set forth are not sufficient in law to bar or preclude him the said plaintiff from having or maintaining his aforesaid action thereof against him the said defendant, and that he the said plaintiff is not bound by law to answer the same. And this he ^{the said plaintiff} is ready to verify. Wherefore by reason of the insufficiency of the said plea in the behalf, the said plaintiff prays judgment, and his debt aforesaid together with his damages by him sustained on occasion of the detention thereof to be adjudged to him &c.

Parks & Elwood

Attornies for plff.

And afterwards (to wit) on the ninth day of January in the year of our Lord one thousand eight hundred and fifty-four, it also being one of the regular days of said December Term of said Court

for the said year 1853 aforesaid and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following (to-wit):

Charles B. Rosa
vs. Debt
Peter M. Christ

And now comes the said parties to this suit by their respective attorneys, And now comes on to be heard the arguments of Counsel upon the said plaintiff's Demurrer to the said Defendant's fourth, fifth, and sixth pleas herein. And the Court being fully advised in the premises, it is ordered, that the said Plaintiff's Declaration being faulty, the Demurrer to pleas herein reaches back to Nisi. And the said Plaintiff enters his motion for leave to amend his said Nisi, and that this cause be continued. Whereupon it is ordered by the Court that the said Plaintiff do have such leave to amend his said Nisi, and that this cause be and the same is continued.

And afterwards (to-wit) on the thirteenth day of March in the year of our Lord one thousand eight hundred and fifty-four, it also being one of the regular days of said March Term of said Court for the said year 1854 aforesaid, and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following (to-wit)

29.

Charles B. Rousa }
vs. } Debt
Peter M. Crist }

And now comes the said Plaintiff by Parks and Elwood his attorneys and enters his motion that this cause be continued Whereupon it is ordered by the Court that this cause be and the same is continued.

And afterwards (to-wit) on the Eight-day of December in the year of our Lord one thousand eight hundred and fifty-four, the plaintiff filed his second Amended Ver in the office of the Clerk of in said Court in words and figures following (to-wit):

Well Circuit Court

Of December Term A.D. 1854

State of Illinois }
County of Well } ss.

Charles B. Rousa, plaintiff in this suit by Parks & Elwood his attorneys, comes and complains of Peter M. Crist defendant in this suit who was heretofore summoned according to the statute in such case made and provided of a plea that he render unto ^{the} said plaintiff the sum of two hundred dollars, lawful money of the United States of America, which he owes to and unjustly detains from him.

As that whereas heretofore, to-wit, on the third day of January in the year of our Lord one thousand eight hundred and forty-four, at Bethel in the County of Sullivan and State of New York, to-wit, at Scher in the County of Well and State of Illinois aforesaid, the said defendant, Peter M. Crist made his certain promissory note in writing bearing date the day and year aforesaid, and then and there delivered the said note to one John Barber, to whom or to the bearer

thereof said note was by its terms made payable by which said note he the
 said defendant then and there promised to pay the said John Barlow or
 bearer, ninety dollars value received (for value received meaning) whenever
 he said defendant should be therunto afterwards requested. And the
 said John Barlow, to whom or to the bearer thereof the payment of the
 said sum of money therein specified was by the said note to be made,
 did after the making of the said note and before the payment of the
 said sum of money therein specified, to wit on the day and year aforesaid
 and at the County of Sullivan in the State of New York aforesaid, to wit,
 at the County of Will aforesaid duly transfer and deliver the said
 promissory note to the said plaintiff. - Charles B. Boosa who thereby then
 and there without indorsement in writing on the back thereof became and
 was and still is the lawful bearer and holder of said promissory note, whereof the
 said defendant afterwards, to wit on the day and year aforesaid had notice.
 And the said plaintiff avers that said promissory note was so transferred and
 delivered to him the said plaintiff, and that he so became the bearer and
 holder thereof within the territorial limits of the State of New York, and
 that said transfer and delivery, and the rights of said plaintiff in and
 to said promissory note from such transfer and delivery were subject to and
 governed by the laws of the State of New York aforesaid in force ^{at} the
 date of said promissory note and of the delivery thereof, as aforesaid; and
 that among the laws of the State of New York so in force at the date of said
 promissory note and of the said transfer and delivery thereof to said plaintiff
 was a certain provision in the words and figures following, that is to say: "All
 notes in writing made and signed by any person whereby he shall promise to
 pay to any other person or his order or to the order of any other person, or
 unto the bearer any sum of money therein mentioned, shall be due and
 payable as therein expressed, and shall have the same effect and be
 negotiable in like manner as inland bills of exchange according to

31.

the custom of merchants," designated in the Revised Statutes of the State of New York passed during the years 1827 and 1828, as section one, of title two, of chapter four of Part two thereof, and a certain other provision in the words and figures following, that is to say:

"The payers and endorsees of every such note payable to them or their order, and the holder of every such note payable to bearer may maintain actions for the sums of money therein mentioned against the makers and endorsees of the same respectively in like manner as in case of inland bills of exchange and otherwise" designated in the Revised Statutes last above referred to as section four of title two of chapter four, of Part two thereof; and the said plaintiff further saith, that according to the custom of merchants, in said State of New York, and in England, at the time when the statutes last above recited were passed inland bills of exchange payable to bearer or to any person therein named or bearer were lawfully transferable without endorsement in writing, by transfer and delivery thereof, whereby the bearer became the legal and equitable owner and holder thereof, and entitled to sue thereon at law in his own name by reason of so being both the legal and equitable owner of such supposed inland bill of exchange. And the said plaintiff further saith that by force of the statutes of the State of New York above referred to be the said plaintiff became and was and still is, possessed of the legal and equitable ownership of said promissory note, and the said John Barlow became and was divested of all legal interest in or ownership of the same; and that he the said plaintiff being, by operation of said statutes of the State of New York within the territorial limits of which said contract

of transfer was made and executed, vested with the legal ownership of said promissory note, became and was, and still is entitled to sue for, demand, and receive the money in said promissory note specified in his own name conformably to the laws of the State of Illinois.

By means whereof and by force of the statute in such case made and provided, the said defendants then and there became liable to pay to the said plaintiff the said sum of money in the said promissory note specified whenever by the said defendant should be therunto afterwards requested; and the said plaintiff with he requested and made demand of the said defendant to pay the said sum of money in said promissory note specified hereupon, to-wit, on the day and year and at the place aforesaid. Yet the said defendant though then and oftentimes since requested to pay the said sum of money in said promissory note specified, according to the tenor and effect thereof, ^{has not yet paid the same or any part thereof} but hath hitherto wholly neglected and refused and still doth neglect and refuse so to do, whereby an action hath accrued to the said plaintiff to demand and recover of and from the said defendant the said sum of money in said note specified. Yet the said defendant though often requested so to do hath not as yet paid the said sum of money in said promissory note specified and above demanded or any part thereof. But to do this he hath hitherto wholly refused and still doth refuse to the damage of the said plaintiff of one hundred dollars and therefore he brings suit &c.

Parkes & Cluend

Attornies for plffs.

The following is a copy of the note on which this suit is brought: "I promise to pay John Barlow or bearer ninety dollars value received"

Bethel January 3 1844

Peter M. Crist."

And afterwards (to-wit) on the nineteenth day of December in the year of our Lord one thousand eight hundred and fifty-four it also being one of the regular days of said December Term of said Court for the said year 1854 aforesaid and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following (To-wit):

Charles B. Rouse

vs.

Debt

Peter M. Crist

And now come the said parties to this suit by their respective Attorneys and enter their motion to Continue this suit. Whereupon it is ordered by the Court that this cause be and it is continued.

And afterwards, (to-wit) on the twentieth day of March in the year of our Lord one thousand eight hundred and fifty-five, it also being one of the regular days of said March Term of said Court for the said year 1855 aforesaid and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following, (To-wit):

Charles B. Rosa }
vs. } Sett
Peter M. Crist }

And now comes said plaintiff by Sacks & Elwood his Attorneys and entered his motion that said defendant do plead herein by fourth day of July next and to continue this cause.

Whereupon it is ordered by the Court that the said Defendant do plead herein by the fourth day of July next and that this cause be continued.

And afterwards (to wit) on the thirtieth day of June in the year of our Lord one thousand eight hundred and fifty five the Defendant filed his plea to last amended plea in the office of the Clerk of our Court in words and figures following, (to wit)

State of Illinois, Will County Circuit Court

Peter M. Crist }
vs. } Plea
Charles B. Rosa }

And the said Defendant, Peter M. Crist comes & defend the wrong & injury where, & says that he does not owe the said sum of money above demanded or any part thereof in manner & form as the said plaintiff in last amended declaration hath above thereof complained against him, & of this he puts himself upon the country &c.

Wm Osgood
Atty for Deft.

And for a further plea in this behalf the said Defendant

swear that the said Plaintiff "Actio non" because he says that after the making of the said supposed promissory note on said last amended Declaration specified & before the delivery thereof by the payee therein named, (John Barlow) to said Plaintiff, to-wit, on the 3rd day of January, A.D. 1844, at Bethel, in the State of New York, to-wit, at Solus, in the County of Will & State of Illinois, he the said Defendant fully paid to said payee, the said John Barlow, the said sum of money in said promissory note specified & all interest therein due, which was accepted by said Barlow in full payment & satisfaction thereof. And thus the said Defendant is ready to verify. Wherefore he prays judgment & that said plaintiff be barred, &c.

Wm. C. Ogden

Atty for Def.

And for a further plea in this behalf, the said Defendant swear that the said plaintiff "Actio non" because he says that before the commencement of this suit, to-wit, on the 28th day of December, A.D. 1843, at Bethel in the State of New York, to-wit, at Solus in the County of Will & State of Illinois he fully paid to said plaintiff, the said sum of money in the said supposed promissory note in said plaintiff's last amended Declaration mentioned & described & all interest thereon due, which said payment was received & accepted by said plaintiff in full satisfaction of said note & interest thereon. And thus the said Defendant is ready to verify. Wherefore he prays judgment & that the said Plaintiff may be barred &c.

Wm. C. Ogden

Atty for Def.

And for a further plea in this behalf the said

Defendant saith that the said Plaintiff "Admission", because he says, that the said Plaintiff purchased the said promissory note in his said last amended Declaration specified, of John Barlow, the payee therein named, which said note is in the words & figures following, to-wit:

"I promise to pay John Barlow or bearer ninety dollars
"value received - Bethel January 8th 1844 Peter M. Osgood!"

after the said note became due & payable, to-wit, on the first day of April 1844, without the same being assigned to him in writing, at & for a certain sum of money, or price to-wit, at & for the sum or price of twenty-five Dollars. And defendant further saith that afterwards to-wit, on the 25th day of June 1845 at & in the State of New York, to-wit: at Bethel in said State of ^{New} York, where, said defendant avers, that the said promissory note was made & delivered & where the said plaintiff purchased the same, he the said Defendant fully paid to the said plaintiff the said sum of money so by him, (the said plaintiff) paid to said Barlow for said note together with all interest thereon due, which said payment was received & accepted by said plaintiff as full & complete payment & satisfaction of said note: and the said plaintiff there & there at Bethel in the State of New York, to-wit: at Bethel in the County of Will of said, in consideration of said payment & satisfaction of said note by said Defendant as aforesaid, agreed to deliver up the said note to said Defendant, and thus the said Defendant is ready to verify Wherefore he prays judgment & that said plaintiff be barred &c.

Peter M. Osgood

Atty for Deft

And for a further plea in this behalf the said

37.

Defendant saith that the said Plaintiff "Action" because he says that the said supposed promissory note in said plaintiff's said last amended Declaration specified, & which is in the words and figures following, to-wit:

"I promise to pay John Barlow or bearer ninety dollars, value received — Bethel, January 3^d 1844

"Peter M. Cair"

Was Executed & delivered by him the said Defendant to one John Barlow & made payable to said John Barlow or bearer, & not otherwise, which said promissory note is the said plaintiff's sole and only cause of action in this suit on said last amended Declaration specified, and the said Defendant avers that the said promissory note has not been indorsed or assigned to said plaintiff, & that he is not entitled to sue thereon. And that the said Defendant is ready to verify. Wherefore he prays judgment & that the said plaintiff, be taxed &c.

Per Osgood

Atty for Deft

And for a further plea in this behalf, the said Defendant says that the said plaintiff "Action" because he says that the said promissory note in said plaintiff's last amended Declaration specified & which is in the words & figures following, to-wit:

"I promise to pay John Barlow or bearer, ninety Dollars value received — Bethel January 3^d 1844

"Peter M. Cair"

Was executed & delivered by him the said Defendant to one John Barlow in the State of New York in pursuance of & under the laws of said State of New York & made payable to said John Barlow or bearer & not otherwise, & after the execution & delivery thereof as

aforesaid, the said note came to the hands of the said plaintiff by de-
 livery only, & without indorsement or assignment, & that while the said
 note was in the hands of said plaintiff, in said State of New York & whilst
 said plaintiff, claimed to be the owner of said note in said State of New York,
 to-wit on the fifteenth day of April, A.D. 1846, he the said Defendant
 became, & was an insolvent debtor in said State of New York, & made a full
 assignment of his property for the benefit of his creditors, under & by virtue
 of, & in pursuance of the laws of said State of New York, & was discharged
 by the surrogate Court of said State of New York in & for the County
 of _____ in said State of New York, in pursuance of &
 by virtue of the laws of said State of New York, from his debts & liabilities
 & from the note in said plaintiff's last amended declaration specified;
 That the said Surrogate Court had then & there full & complete jurisdiction
 of the person of this Defendant & of the subject matters connected there-
 with, & that under said assignment & in pursuance & by virtue of
 the laws of said State of New York, the said plaintiff, received his pro-
 rata share of the proceeds of the property of this defendant or assignment
 full payment & satisfaction of said note & all interest thereon due & in
 consideration thereof, the said plaintiff, then & there promised & agreed
 to deliver up the said promissory to this Defendant. All which the
 said Defendant is ready to verify, wherefore he prays judgment &
 that he be discharged &c.

Wm. Rogers

Atty for Deft

And afterwards, (to-wit) on the fourth day of September
 in the year of our Lord one thousand eight hundred and fifty-five, the
 plaintiff filed his Rejoinders to 1st, 2^d, 3^d & 6th pleas, in the office of the Clerk
 of ^{said} Court in words and figures following (to-wit)

Hill Circuit Court

Charles B. Rossa

vs

Peter M. Smith

Replication

And the said plaintiff, Charles B. Rossa by Parks & Elwood his attorneys, as to the plea of the said defendant by him first above pleaded and wherein he hath put himself upon the country, doth the like

Parks & Elwood

Attornies for plff.

And the said plaintiff, as to the said plea of the said defendant by him secondly above pleaded with that he the said plaintiff, by reason of anything in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against him said defendant, because he saith that the said defendant did not pay to John Barclay, payee of the promissory note in said plaintiff's last amended declaration specified, the said sum of money in said promissory note specified and all the interest thereon due in manner and form as the said defendant hath above in his said plea in that behalf alleged, and that the said plaintiff prays may be inquired of by the country &c.

Parks & Elwood

Attornies for plff.

And the said plaintiff, as to the said plea of the said defendant by him thirdly above pleaded, with that he the said plaintiff by reason of anything in that said plea alleged ought not to be barred from having and maintaining his aforesaid action because he saith that the said defendant

did not pay to the said plaintiff the said sum of money on said promissory note specified and all interest due thereon in manner and form as the said plaintiff hath above in his said plea on that behalf alleged, and that the said plaintiff prays may be required of by the country &c.

Pike & Elwood

Attorneys for plff.

And the said plaintiff as to the said plea of him the said defendant by him sixthly above pleaded saith that he the said plaintiff by reason of anything in that plea alleged ought not to be barred from having or maintaining his aforesaid action thereof against him because he saith that he the said defendant did out on the day and at the place, and in ^{the} manner and form in said defendant's plea specified, and set forth become an insolvent debtor in the State of New York, and did not make a full assignment of his property for the benefit of his creditors under and by virtue of and in pursuance of the laws of said State of New York, and was not discharged by the Surrogate Court of the said State of New York in and for the county of _____ in said State of New York from his debts and liabilities and from the note in his said plaintiff's last amended declaration specified; and that he the said plaintiff did not receive any sum as his pro-rata share of the proceeds of the property of said defendant so alleged to have been assigned and in full payment and satisfaction of said note and the interest due thereon and that he the said plaintiff did out then and there in consideration thereof promise and agree to deliver up the said promissory note to said defendant, in manner and form as the said plaintiff hath above in his said plea on that behalf alleged, and that the said plaintiff prays may

be required of by the country &c,

Parks & Osborn

Attorneys for self.

And afterwards (to-wit) on the fourth day of September in the year of our Lord one thousand eight hundred and fifty five, The plaintiff filed his Answer to 1st & 5th pleas in the office of the Clerk of our said Court in words and figures following (to-wit:)

Will Circuit Court.

Charles B. Roose

vs

Peter M. Crist

And the said plaintiff as to the said plea of the said defendant by him fourthly above pleaded saith that the same and the matters therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law to bar or preclude him the said plaintiff from having or maintaining his aforesaid action thereof against him the said defendant, and that he the said plaintiff is not bound by law to answer the same and that he is ready to verify. Wherefore by reason of the insufficiency of the said plea in this behalf, the said plaintiff prays judgment and his damages by reason of the not performing of the said promise and undertaking in the said declaration mentioned to be adjudged to him in Dollars in Damages.

Deborah & Shuter

Atty for self

Parks & Osborn

Attorneys for self

And the said plaintiff as to the said plea of the said defendant by him fifthly above pleaded, saith that the same and the matters therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law to bar or preclude him the said plaintiff from having or maintaining his aforesaid action thereof against him the said defendant and that he the said plaintiff is not bound by law to answer the same. And this he the said plaintiff is ready to verify. Wherefore by reason of the insufficiency of the said plea in this behalf the said plaintiff pray judgment and his damages by reason of the not performing of the said promise and undertaking in the said declaration mentioned to be adjudged to him &c.

And the said plaintiff according to the form of the statute in such case made and provided, states and shows to the Court here the following cause of demurrer to the said plea that is to say that the said plea amounts to the general issue, and that the said defendant has not by his plea traversed or denied or attempted to put in issue any matter of fact alleged by the plaintiff, but has introduced and attempted to put in issue matters of fact not alleged nor necessary to be alleged, and that the plea is an answer in the said first Count, but evasive and argumentative &c.

Parkes & Elwood

Joinder in Demurrer

Attornies for plff.

Elgood & Street

Atty for deft

And afterwards (to-wit) on the fourth day of September in the year of our Lord one thousand eight hundred and fifty-five it also being one of the regular days of said September Term of said Court for the said year 1855. aforesaid, and the said Court being then duly organized and sitting as open Court for the transaction of business the following proceedings were had and entered

of record by the said Court in words and figures following (to-wit)

Charles B. Rosser }
vs } Debt
Peter M. Christ }

This cause being now reached in its order for trial, and the said parties not being ready, it is ordered that it be placed at the foot of the docket.

And afterwards (to-wit) on the fifteenth day of September in the year of our Lord one thousand eight hundred and fifty five it also being one of the regular days of said September of said Court for the said year 1855 aforesaid, and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following (to-wit)

Charles B. Rosser }
vs } Debt
Peter M. Christ }

And now come the said parties to this court by their respective attorneys, Park & Eland, Attorneys for the said plaintiff, and Esgood & Stutter, Attorneys for the said Defendant, And now comes on to be heard the arguments of council upon the said plaintiff's demurrer to the fourth and fifth pleas herein. And after hearing the arguments of council and being fully advised in the premises, it is ordered by the Court that the said demurrer be and it is sustained as to the said declaration of the said plaintiff in this cause, Therefore

said plaintiff move that he have execution thereon. ^{thereupon} It is awarded by the Court that the said defendant do recover of the said plaintiff his costs and charges by him about his defence in this suit in this behalf expended and that he have execution thereon."

I Royal E Barber Clerk of the Circuit
Court of said County in the State aforesaid do
Certify the foregoing to be a true correct and perfect Record
of the aforesaid entitled Cause and of the proceedings of
the said Court therein.

Given under my hand and the
Seal of said Court hereto affixed
at office in Tollet in said County
the 5th day of May A.D., 1856.
R. E. Barber Clerk

~~Charles B. Roosa. Off in Error~~ $\approx$ ~~Error to Mill.~~

M.

~~Peter m. Curt, Deft in Error. } And now comes the~~
~~said Charles B. Rosa, Plaintiff in the said suit in the~~
~~said suit in the Court below, before the Justice of~~

Third Grand Division. Sup. Ct.

45

Charles B. Roosa,

Plff in Err.

vs.

Peter M. Criet

Def in Err.

Of June T. 1856.

Assignment of
Errors.

Afterwards on the second Monday of June AD 1856, before the Justices of the Supreme Court of the State of Illinois at Ottawa, comes the said Charles B. Roosa, plaintiff in said suit in the Court below, by Parks & Curd his attorneys, and says that in the rendering of the judgment aforesaid there is manifest error, and assigns the following as causes thereof:

- I. The declaration sets forth a sufficient cause of action in the plaintiff, because by a great enactment of the laws of Illinois, a note payable to bearer is transferable by delivery without assignment in writing, so as to enable the bona fide holder to institute a suit thereon in his own name.
- II - The declaration alleges that the note in question was transferred to the plff by the original payee in the State of New York, and that by the laws of that state, a note or bill payable to bearer may be fully transferred by delivery, so as to vest in the transferee full property in the note, both legal and equitable. Such being the effect of the contract by the laws of the State when it was made, the rights of the parties under the contract are to be determined by those laws. It is a question, affecting the remedy, only because it is a question

as to who has the legal right to sue.

Wherefore the Court erred in sustaining the demurrer to the declaration, and the said plaintiff in error prays that for these errors in said record the said judgment may be reversed, annulled and made of no effect, and that he may be restored to all things which he has lost by occasion of said judgment, and that said defendant Peter M. Crist may go in herein.

Patrick Elwood
attorney for
Rejoice Error.

~~the Supreme Court at Ottawa on the second day
of June AD 1856, in the time term thereof for the
third Grade Division~~

Hill Circuit Court
Charles B. Roosa

^{vs}
Peter M. Crist
— — —

Record,
and a set of Errors.

Filed May 13, 1886
L. Leland Clerk.

State of Illinois - Supreme Court

Rever. N. Crist. vs. in Error

^{vs.}

Error to Will

Charles B. Roosa Pl. in Error

This was an action of debt brought by the Plaintiff in error in the Will Circuit Court to recover upon a promissory note, as the bearer thereof, without indorsement or assignment in writing, it being alleged in said Plaintiff's last amended declaration that said note was made & transferred by delivery, without indorsement in writing in the State of New York, and that by the Statute of said State of New York, the holder of such note by delivery without indorsement &c. has a legal right to sue thereon in his own name.

The pleadings upon which the case was decided in the Circuit Court, are substantially stated in the Plaintiff's argument filed herein, & the declaration being defective in substance & not showing upon its face a right in the Plaintiff to recover, the Court below decided correctly in sustaining the Plaintiff's demurrer, & applying it to his declaration, that being the first defective pleading in the case - See 1st. Chitty's Pleading, p. 707, where it is laid down as an "established rule, that upon the argument

"of a demurrer, the Court will, notwithstanding
"ing the defect of the pleading demurred to,
"give judgment against the party whose plead-
"ing was first defective in substance"

Under our Statute entitled "Negotiable
Instruments", it is provided by Sect 3.
"that all promissory notes &c. shall be due &
"payable to the person or persons to whom the
"said note &c. in writing is made"

Sect. 4. of the same Statute provides,
that "such notes &c. shall be assignable
"by indorsement thereon, under the hand or
"hands of such persons &c. in the same man-
"ner as bills of exchange are &c."

I do not deem it advisable to take
up the time of the Court by referring to the
"Judicial intimations" alluded to by the
Counsel for the Plaintiff, in error in his
points filed in this case, & referred to in his
argument, under the division "Course
"of judicial decisions on the question", they
not being authority & cutting no figure in
a legal or judicial point of view

At common law promissory notes or

Other choses in action, could not be transferred even by indorsement or assignment so as to vest in the assignee a right of action in his own name, & it is only by virtue of our Statute, that such instruments are transferable in our State. so as to vest in the assignee the legal property therein & the right to sue in his own name - The language of our Statute is explicit on the subject, that "such notes &c. shall be assignable, by indorsement thereon, under the hand or hands of such person &c. in the same manner as bills of exchange are &c."

It is not necessary to refer to authorities to show how bills of exchange are assignable under the hand of the holder; and notwithstanding the Seeming Confidence with which the Counsel for the Plaintiff in Error asserts that notes made payable to bearer are transferable by delivery without assignment in writing, under our Statute; he is not borne out by the Law or the Authorities on the Subject, and it seems to me, that it would be extremely unwise for this Court to say that the law which has received judicial constructions & been acquiesced in both by the Courts & by the bar of the State from the inception of our Government as a

State to the present time, should now be overturned & a different construction adopted or forced upon it, from that which it has heretofore received -

The necessities of the Country do not require it, & even if they did I do not apprehend that the Court would undertake to exercise the functions which the Constitution has given exclusively to the Legislature & legislate upon the subject.

Our laws under the Construction heretofore given them by this Court, are amply sufficient to enable parties to enforce all their rights arising upon negotiable Securities & Chans in Action, without requiring forced Constructions, or alterations by the Court, & the law is so well understood, that no lawyer need be at a loss as to whom should be made a party Plaintiff on the kind of paper upon which this Suit is founded.

In the Case of Hilborn vs. Arthur et al.
D. Seam. 3244, Hilborn vs. Arthur et al. in this Case, came directly before the Court, the Court on page 3245 of said Case, hold the following language - "We think then

"Can be no question, that under our Statute,
"notes payable to a person or bearer cannot be
"transferred or assigned by delivery only, so as to
"authorize the holder to sue in his own name
"there is but one way by which he can do so,
"& that is by virtue of the assignment indorsed
"on the note itself"

This language is clear
& explicit, & cannot be mistaken, & it is un-
doubtedly strictly in accordance with our
statute upon that subject, & I cannot
conceive of any good reason why the Court
should now overturn the doctrine there
laid down, that having been understood
& acted upon as the Law, both by the
Courts & the bar of our State, from the ear-
liest history of our jurisprudence to the
present time

1. bill 153.

Chadsey admr vs. Lewis

See also 2. Scam. 432

Kyle vs. Thompson &
Id. 2478.

Campbell vs. Humphries

In the Case of Chadsey Admr.
vs. Lewis 1. bill. 153. the Court on page
158. holds the following language - viz:
"Under our Statute the legal interest can
"only be transferred by indorsement in
"writing - A mere delivery does not pass
"Such an interest - An action can only
"be maintained in the name of the person
"who has the legal interest"

1. Scam. 289

Ransom vs. Jones

In the Case of Ransom vs. Jones 1. Scam. 289
the Court on Page 293. uses the following lan-
guage - "When there has been a transfer of a
"bond or instrument without a regular as-
"signment, to authorize the assignee to insti-
"tute a suit in his own name, our Courts
"will always permit the use of the name of
"the person to whom it is made payable, with-
"out an express power so to do

14. Mch. 339

Newhall vs. Tunny

In the Case of Newhall vs. Tunny
14. Mch. Sup. 339. the Court on page
holds the following language - "It would
"seem clearly to follow that upon the death
"of the payee, the legal title to the note pass-
"es to the personal representatives who alone
"can sue upon it

Thus it will be seen
that the Supreme Court has unmistake-
ably settled the doctrine, that under our
Statute the holder of a promissory note, &c.
must have the legal, as well as the equitable
interest therein to enable him to bring suit
in his own name, & that such legal in-
-terest can only be acquired by indorse-
-ment, or assignment in writing, & that when
the holder has not such indorsement he

must use the name of the original payee, or
in case of his death the names of his per-
-sonal representatives -

Nor has the Plaintiff
a right to come into our Courts & sue in his
own name, from the fact of having acquired
the note sued on, by transfer as the bearer
thereof, without endorsement, in the State
of New York, under & by virtue of the laws of
said State of New York - The same rule
at Common Law prevails on this subject
in New York as in Illinois, & it is by
Enactment under the Statutes of said State
that the holder of such paper there as the
bearer by delivery merely, is enabled to
maintain suit thereon in his own name
in their own Courts; and I hold it to
be a correct & salutary rule, that the pro-
-per mode of proceeding & the enforcement of
remedies in any given class of cases should
be uniform, & that citizens of Foreign States
coming into our Courts must adopt & per-
-sue the same remedies, that our own
citizens are entitled to in like cases, &
be subject to the same rules & be liable
to the same disabilities - And I main-
-tain that the holder of negotiable paper
when he comes into our Courts to enforce

its Collection must adopt + pursue the remedy prescribed by the laws of Illinois without regard to the place where it was made or transferred - And the authority cited by the Court for the Plaintiff in error in Story on Conflict of Laws is not applicable to the case

The question in this suit, is simply a question affecting the remedy + not a question affecting the validity or construction of the contract sought to be enforced; and in "Story on the Conflict of Laws", where the author is treating specially upon this subject - in the latter part of Sect. 556. the author uses the following language viz:- "It is universally admitted + established, that the forms of remedies + the modes of proceeding, + the execution of judgments are to be regulated solely + exclusively by the laws of the place where the action is instituted; or as the civilians uniformly express it, according to the Lex fori"

And in Sect. 557. of the same, the author ~~uses the following language~~, in the latter part of said Sect. the author uses the following language

Story on Conf. of Laws
Sect. 556

Id. Sect. 557 -

Also note 1. at the
End of said Sect. 557

"All that any nation can therefore be
"justly required to do, is to open its own
"Tribunals to foreigners, in the same man-
"ner, & to the same extent, as they are
"open to its own subjects; & to give them
"the same redress as to rights & wrongs
"which it deems fit to acknowledge in its
"own municipal code for natives &
"residents"

Id. Sect. 558 +
note 2. at end of
the Sect. & author
- this then cited

In Sect. 558. Id. the author
uses the following language, viz: - "The doc-
"trine of the Common Law is so fully es-
"tablished on this point that it would be
"useless to do more than to state the uni-
"versal principle which it has promulga-
"ted; that is to say, that in regard to the
"merits & rights, involved in actions, the
"law of the place where they originated is
"to govern - But the forms of remedies
"& the order of judicial proceedings are to
"be according to the law of the place where
"the action is instituted, without any
"regard to the domicile of the parties, the
"origin of the right or the Country of the
"act" - & see note 2 at end of same
Sect. & authorities then cited

These authorities are clear + explicit + entirely
by refute the positions assumed by the Coun-
-sel for the Plaintiff in Error in his argu-
-ment -

But I apprehend that the Court
has no jurisdiction in the Case, inasmuch
as the record filed in this Case discloses the
fact that no final judgment was ever
rendered by the Circuit Court

Wm Osgood Atty. &
of Counsel for Deft
in Error

Supreme Court

Peter M. Christ diff in error
ads. Thro to W. M.

Charles B. Hooper P. in error

Argument re. on part
of diff in error

Wm. Osgood
J. Connell on

Filed June 28/76
L. Leland
Clerk

Error to Will.

Charles B. Roosa

Plaintiff in error

vs.

Peter M. Crist. Deft in Error.

This was an action of debt, brought in the Will Circuit Court by the plaintiff in error against the defendant in error on a promissory note, made in the State of New York and trans-
-ferred in the State of New York by the payee, John Barlow, to the plaintiff, without endorse-
ment in writing. A copy of the note was attached to the original and amended declarations, and will be found in the Records on page 8.

The last amended declaration, which will be found in the Record on pages 29, 30, 31, 32, and 33, contains but one count. It alleges in substance, that the note was made and executed in the State of New York; that the payee transferred it to the plaintiff by delivery within the territorial limits of the State of New York; that by the laws of the State of New York in force at the time of such transfer, which are recited particularly, the bearer of a promissory note payable to bearer, became to all intents and purposes the legal as well as equitable holder of such note, and concluding with proper averments as to the effect of these laws upon the note and parties in question.

To this declaration the defendant interposed six pleas, to be found on pages 34, 35, 36, 37, & 38. of the Records, as follows.

1st General issue:-

2nd " Payment to payee, before delivery.

3^d " Payment to plaintiff.

4th " Payment to plaintiff of the sum of twenty five dollars, the sum which the defendant alleges the plaintiff paid Barlow for the note, together with interest on that sum, and the acceptance thereof by the plaintiff in full satisfaction, and his agreement thereupon to deliver up the note.

5th " Plea, denying that note was ever endorsed to plaintiff by Barlow, and that plaintiff was entitled to sue thereon.

6th " Plea, insolvent debtor's discharge under the laws of the State of New York, and that plaintiff had received his pro rata share of the proceeds of the assignment.

To the 1st 2nd 3^d and 6th of these pleas, the plaintiff replied, with a conclusion to the contrary. Demurred to the 4th and 5th pleas; and found; which were carried back and sustained to the declaration.

The simple question then presented by the Records is this; in the case of a note made within the State of New York, payable to bearer, and there transferred by delivery, in pursuance of laws which make delivery of this species of negotiable paper equivalent to endorsement, and vest the entire ownership for all legal purposes in the transferee, can such transferee afterwards sue in his own name in the State of Illinois, under our statutes? —

I.

In the first place, we humbly submit, that assuming, the force and effect of the contract of transfer made in New York are to be tested by our statutes on the subject, — yet even by our statutes a note made payable to bearer is transferrable by delivery without endorsement in writing. If this position be tenable, then it is obvious, the suit was properly brought, although the declaration refers to the laws of New York as conferring upon the plaintiff the right of action. The averments in reference to those laws might be considered and stricken out as surplusage.

8. Peters. U.S. Reps 370. 2 Scam 13.

1. Course of judicial decisions on this question.

Uniformity and stability in judicial decisions are no doubt objects of the first importance; but truth and justice are of greater importance. And the force and value of a decision, as an authoritative and binding precedent must be measured by the circumstances under which it was made and the reasoning by which it ~~was~~ is supported. Among these circumstances may be reckoned the fact whether the point decided was argued by counsel, and particularly whether it is apparent that the Court on the occasion carefully and critically reviewed its own ^{previous} decisions.

The only case against us is that of *Hilborn v. Artus et al*, 3 Scam. Re. 344; which undoubtedly lays down the opposite rule. The opinion is short and unsatisfactory. Other points were presented and considered; it does not appear from the report that this question was argued ^{at all} on the part of the appellee; no reference is made to preceding adjudications touching it; no analysis of the statute is attempted; and,

it will not, we hope, be disrespectful to say, nothing like a chain of reasoning presented to the profession, such as the novelty and importance of the doctrine demanded. -

In bulk, as we think it will be easy to show, it was a departure at a right angles from the tenor of preceding decisions in the same court, and has not been very carefully observed by it in succeeding decisions. -

McHenry vs. Ridgely 3 Scam. 310 certainly and in most unequivocal terms intimates the contrary view. The question indeed was not distinctly presented in that case, and the report does not fully advise us how far it was touched in the argument. But in the course of the decision, the court in plain terms recognize the doctrine, as prevailing here under our statute, that notes payable to bearer are transferable by delivery, so as to vest in the holder a right to sue in his own name.

Sappington vs. Pulliam 3 Scam. 385

This case we refer to, not as involving the precise point now in question, but as recognizing the applicability of the ^{English} rules regulating ^{the transfer of} bills of exchange in our State.

Subsequent decisions do not affirm the doctrine laid down in *Wilborn vs. Artus*.

See *Simpson vs. Raulitt* 2 Gil. 314-315.

This case decides that "so far as the assignment is concerned," our own statute is almost identical with the statute of Ann, and that the practice and decisions of the English courts are applicable here,

We have however found but one ^{subsequent} case in which that of *Hilborn v. Artus* is particularly noticed; and the allusion there we cannot but consider a most plain and unequivocal intimation, that the Court were not prepared to approve the doctrine of that case.

See New Hope Delaware Bridge Co. v. Perry et al.,
11 Ill. Rep. 468. The language of the Court is, referring to *Hilborn v. Artus* — "We purposely
"forbear at this time any discussion respecting that
"decision, as the result of this case does not at all
"depend on its correctness."

The determination of the case then at bar did not require a review of the decision referred to; but the phraseology employed in the act of avoiding it plainly signified the dissatisfaction of the Court with the doctrine it set up.

This being the state of our judicial decisions on the question, we cannot consider the rule in *Hilborn v. Artus* as in any sense established authority, but as open to free and bold criticism.

2. True construction of the statute.

If it be true that our statute, respecting promissory notes is almost identical with the Statute of Iowa, as appears by the comparison in *Simpson v. Raulitt* 2 Gil. 314, 315, and that the judicial decisions in England, and in such of the United States as have reenacted it, are applicable in Illinois, — then it would seem quite needless to cite authorities in support of our position. There is no doctrine respecting negotiable paper more familiar than that notes payable to bearer are transferable by delivery, so as to vest in the holder the right to sue in his own name.

The doctrine of *Hilborn v. Artus*, to the contrary grew out of a literal and too narrow view of the meaning of the term "indorsement" as used in the Section of the statute now forming Sec. 4. Chap. 78 R. St.

1. The St. of Anne, referring only to notes in writing for the payment of money, provides that they shall be "assignable by indorsement," "in the same manner that inland bills of exchange are according to the custom of merchants."
2. Our own statute is similar in its terms, with the addition of the words "under the hand or hands of such person or persons," following the words "indorsement." - It seems plain, however, that this does not essentially vary the true meaning of the provision.
 1. The literal meaning of "indorsement," without those words, is a written assignment on the back. With those words, unless it appears from the whole scope of the section, that they were employed studiously to restrict the customary significance of "indorsement," its meaning would not be varied.
 2. But the mode of assigning bills of exchange is referred to and adopted as the standard. If this reference is permitted to have any meaning, the construction can only be, that when by the custom of merchants bills of exchange were assignable by indorsement on the back, the various classes of instruments specified in Sec. 3 should be assigned in like manner. When bills of exchange by the custom

of merchants now assignable otherwise, then these instruments should be so assigned. Any different construction would make the provision utterly absurd.

See 2. Gil. R. 314. —

We cannot but feel confident of the acquiescence of the Court in a view, which seems to us too plain for extended argument, or an accumulation of authorities. —

II. But, if by possibility the Court should differ from us on this point, we contend, that the contract of assignment by Barlow to the plaintiff, having been executed in the State of New York, by the laws of which, notes to bearer are transferable by delivery, so as to vest in the holder the legal and equitable ownership and entitle him to sue in his own name, that right so vested is not divested by ^{was, accordingly, authorized to} removal to Illinois, and the plaintiff ~~exhibits~~ ^{sue} ~~sue~~ ⁱⁿ his own name.

It will be said on the other side, although the lex loci contractus governs as to the construction and validity of a contract, that this is a question affecting the remedy only and therefore to be governed by the lex fori. We take a totally different view, and hope to maintain it by a brief and clear chain of reasoning.

We presume it will not be denied, that every endorsement or transfer of a note is to be considered a contract. The declaration in this case alleges, that the transfer to the plaintiff was made in the State of New York, and sets out the statutes on the subject with sufficient certainty. —

1. - We suppose the chief inquiry is whether, at the time of the institution of this suit, both the legal and equitable ownership of the note in question was combined in the plaintiff. Now, we are at a loss for a single instance, where a person, being both the legal and equitable owner of a chose in action, is required to bring suit in the name of another for his use. The reason, why in Illinois, if the construction put upon our Statute in Hilborn v. Artus should be sustained by the Court — the holder of a negotiable instrument by transfer without endorsement would be compelled to sue in the name of the payee, is solely because the legal ownership is in him; and ^{only} the equitable ownership ~~remains~~ in the transferee. Obviate this distinction, and the restriction upon the form of remedy goes with it.

2. Now here by the laws of New York, the legal and equitable interest ^{in the note} was vested in the plaintiff. That he became the equitable owner will not, of course be disputed. Was he not also the legal owner? This question, in reference to choses in action, must be tested decisively by his right to sue in his own name. And he had that right. Barlow, the original payee, thus was shut completely out of the transaction, and all the rights appertaining to the note were vested in Rosa.

3. Such being the contract and such the effect of the contract in New York, and the rights and relations of the parties being thus fixed, now they changed by coming to Illinois? Was Rosa divested of any of his substantive rights under the contract by coming here to sue? To take such

a position is most manifestly to contravene the rule of the lex loci contractus. Our Courts ^{cannot} consistently with that rule, detach the legal from the equitable property in the note, and replace the former in the person of the original payee.

4. But it may be said that after all this is simply a question affecting the form of the remedy — whether a party who is entitled to redress shall seek it in one mode or another. We admit it is a question affecting the remedy; but in the same sense and no other, that any question of substantial right involves the question who shall bring suit for an infringement of that right. It is easy to see that the character ^{and extent} of the defence to the suit would be governed by the form in which it was brought.

Stacy v. Baker 1. Scam 417.

Kimmel v. Shultz. Breen 128.

The distinctions between what relates to the substance of the contract and what to the remedy are sometimes nice and subtle. But we think an examination of the decisions will show that the latter class has consisted exclusively of cases relating to the limitations of actions, technical forms of pleading and procedure, and rules of evidence. The law of the forum may make the remedy inconvenient and sometimes perhaps impracticable, for the want of required forms of execution or authentication; but in no case has been permitted to abridge a substantive right under the contract.

5. The statute of Illinois, entitled "Negotiable Instruments", cannot be construed to have been designed as a rule for the regulation of citizens of other states. The whole tenor of our judicial

decisions shows this.

1. Scam. 417. Stacy v. Baker
- 2 Scam 465. Holbrook et al v. Vibbard et al
- Breese 94 Bradshaw v. Steerman.
- ib 128. Kimmel v. Shultz.
- ib 231. Humphreys v. Powell.
- 2 Scam 12 Forsyth et al v. Baxter et al
- 15 Ill. 264 Crunch v. Hall.

6. Upon this question we produce an authority which is universally recognized as of the most decisive weight in reference to this branch of the law. Story's Conflict of Laws. § 353^a, referring to, reciting and adopting the decision in Trimby v. Wignier 1 Bing & Leases 157, 159, 160. (27 E. G. S. Rep.)

See also Sec. 354. The learned author here uses this language, speaking of suits in one country when choses in action are now assignable, ^{brought} upon choses in action transferred in another country when such transfers have legal effect:—
"In such a case it would seem that the more
"correct rule would be, that the lex loci contractus
"ought to govern, because the holder under the
"indorsement has an immediate and absolute
"right in the contract vested in him, as much as
"he would have in goods transferred to him.
"Under such circumstances to deny the legal effect
"of the indorsement is to curtail the obligation
"force and effect of a contract made in one place
"by the law of another place. The indorsement
"in the place where it is made creates a direct
"contract between the maker and the first
"indorsee, and if so that contract ought to be enforced
"between them everywhere. It is not a question as
"to the form of the remedy, but as to the right."

For these reasons, we confidently submit to the Court
that the decision of the Circuit Court was
erroneous and that a good cause of action appeared
on the face of the declaration.

Park & Elwood
of Counsel for Plaintiff in Error.

Error to Will.

Charles B. Roosa
Plff in Error

vs.

Peter M. Crist
Def't in Error.

Argument for Plff in Error.

Parks & Filwood
for Plff in Error.

Filed June 14, 1856
L. Deland
Clerk

SUPREME COURT, STATE OF ILLINOIS.

CHARLES B. ROOSA, *Pltff. in Err.*

vs.

PETER M. CRIST, *Deft. in Err.*

} *Points of Pltff in Error.*

I.

We believe by a *just* construction of the statutes of Illinois, a note made payable to bearer is transferable by delivery, without assignment in writing.

1. The 4th Sec. of Chap. 73, R. St. entitled "Negotiable Instruments," is almost identical in its terms with the St. of Anne, as to the form of assignment. So recognized by this Court in *Simpson vs. Ranlett*, 2 Gil. 316. Its chief difference consists in comprehending a greater variety of instruments. The practice and judicial decisions in England and those States which have re-enacted the statute of Anne are applicable therefore to Illinois. And nowhere save in Illinois, has the doctrine ever been judicially declared, that a note made payable to bearer was not transferable by delivery.

2. The decision in *Hilborn vs. Artus* 3 Scam. 344, cannot be regarded as firmly and satisfactorily establishing the doctrine.

1. We respectfully suggest it lacks the elements which give *rational* strength and stability to a judicial determination. The opinion is very brief. Brief as it is, a large part of it is occupied with the discussion of other topics in the case. It contains no reasoning in support of the view adopted, attempts no critical analysis of the statutes in question and shows no evidence that previous decisions of the same Court had been examined. Nor does the report indicate that this point had been at all argued on the part of the appellee.

2. It is not consistent with the uniform tenor of judicial *intimations* both before and after. See *McHenry vs. Ridgley*, 2 Scam., 310. Sap-

ington vs. Pulliam, 3 Scam., 385. Simpson vs. Ranlett, 2 Gil., 314. New Hope Del. Bridge Co. vs. Perry *et al.*, 11th Ill., 468. This last case is referred to, as containing the only direct reference subsequently made to the decision in Hilborn vs. Artus, and as giving what we cannot but consider a plain intimation of the dissatisfaction of the Court with that decision.

The declaration alleges the making of the contract of assignment in New York and avers that it was subject to the laws of that State. If the Court, however, should conclude that the laws of Illinois must govern, as to the point at issue, yet if it should give them the construction we contend for, assimilating them to the laws of New York, these averments would be mere surplusage, and might be considered as stricken out of the case. If sufficient facts are stated to constitute a good cause of action in Illinois, an erroneous averment that the contract was governed by the laws of New York would not vitiate.

Bank of U. S. vs. Donnelly, 8 Peters U. S. R., 370. 2 Scam. R. 12.

II.

But the transfer having taken place in the State of New York, the force and effect of it, and the substantial rights of the parties under it must be governed by the laws of New York.

1. It is not a question merely touching the form of the remedy in the sense of the rule that the *lex fori* governs as to the mode and time in which the suit is to be brought. This doctrine has been usually enforced in reference to the limitations and technical forms of actions, and the rules of evidence here. But it is a question touching the *remedy* only because it touches the *right*; only in the same sense that the question who shall be plaintiff always depends on the question who is possessed of the right of action.

2. It is in fact a question touching the construction of the contract of transfer or assignment. By the laws of New York as averred in the declaration, the mere delivery of a note payable to bearer constitutes a full and perfect assignment and operated in this case to vest in the plttf. both the legal and equitable ownership of the note. Being thus once vested, the legal ownership cannot by the mere fact of the removal of the parties to another State be again divested and restored to the original payee.

3. The authorities recognize a distinction between negotiable instruments, and ordinary choses in action.

In reference to ordinary choses in action other than negotiable paper, there is a conflict of authorities. The case of *O'Callaghan vs. Thomond*, 3 Taunt. 82, 84, goes to the full extent of establishing the principle that when by the local law an assignment of a chose in action, (a judgment for instance) vests in the assignee the legal and equitable ownership by giving him the right to sue in his own name, that right should be respected everywhere. In that case the assignee of an Irish Judgment assignable in Ireland, sued in the English Court of Common Pleas and recovered judgment. The reasoning of that decision seems to meet with the entire approbation of Story in his *Conflict of Laws*. Sec. 566, and note (1.)

But in reference to negotiable instruments we think the authorities settle the question beyond controversy.

Trimbey vs. Vignier, 1 Bing., N. C., 151, 90. (27 Eng. Com. L. Rep. 588.)

See particularly Story's *Conf. of L.* Sec. 353 and 354.

1 Scam. Rep. 417. 2 Scam. Rep. 12, 465.

PARKS & ELWOOD,
Pro Pltff. in Error.

Error to Mill.

Rosa

vs

Crist.

Points of Diff in Err.

Filed June 14 1856

L. Leland
Clerk

Charles B Roosa } Supreme Court, Illinois
vs } 3^d Grand Division
Peter M Coist }

I do hereby enter myself security
for costs in this cause, and acknowledge myself
bound to pay or cause to be paid all costs which
may accrue in this action either to the opposite
party or to any of the officers of this Court
in pursuance of the laws of this state.

Dated at Ottawa this 13th day of May
A.D. 1856,

A. J. Elwood

Chas. B. Ross

vs

Peter M. Best

Bond for oats

Filed May 13. 1856.

S. Island

Chas.

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of Will — Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the circuit court of Will — county, before the Judge thereof, between *Charles B. Roosa* —

plaintiff, and *Peter M. Crist* —

defendant it is said manifest error hath intervened, to the injury of the aforesaid *Roosa* —

as we are informed by *his* complaint, and we being willing that error, should be corrected if any there be in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the county of La Salle, on the *Second Monday in June* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law;

WITNESS, the Hon. ~~Samuel H. Treat~~ *Walker B. Scates*, Chief Justice

of our said Court, and the Seal thereof, at Ottawa, this *13th* day of *May*
in the Year of Our Lord One Thousand Eight Hundred and Fifty-*six*

L. Lehard
Clerk of the Supreme Court.
By J. B. Rice Deputy

Charles B. Roosa
vs
Peter M. Eist

Writ of Error

Filed May 13, 1858.
L. Leland Clerk.

Handwritten notes in left margin:
L. Leland
May 13, 1858



Handwritten notes in right margin:
May 13, 1858
L. Leland
Clerk

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Sheriff of the County of *Will* *in* Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of *Will* *in* county, before the Judge thereof, between

Charles B. Roosa plaintiff

Peter M. Crist

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

plaintiff

as we are informed by *his* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said

Peter M. Crist

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the *2^d* Monday in *June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said

Peter M. Crist

notice, together with this writ.

Walter B. Seates
WITNESS, the Hon. ~~Samuel H. Treat~~, Clerk of Justice of our said Court, and the Seal thereof, at Ottawa, this *13th* day of *May* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*six*

L. Leland

Clerk of the Supreme Court.

Charles B. Roosa
vs
Peter M. Crist

Sci. Fa. —

I have executed this
will by reading the same
in the hearing of the witness
named Peter M. Crist
this 16th day of May 1856

Fees

Filed May 21, 1856,
L. Deland Clerk.

Servis —	—	50
10 Miles —	—	50
Return —	\$	10
		<u>110</u>

P. P. Scarritt
Shff. Will Co

Received my fees in full
by N. D. Elwood

P. P. Scarritt Shff

SUPREME COURT, STATE OF ILLINOIS.

CHARLES B. ROOSA, *Pltff. in Err.*

vs.

PETER M. CRIST, *Def. in Err.*

} *Points of Pltff in Error.*

I.

We believe by a *just* construction of the statutes of Illinois, a note made payable to bearer is transferable by delivery, without assignment in writing.

1. The 4th Sec. of Chap. 73, R. St. entitled "Negotiable Instruments," is almost identical in its terms with the St. of Anne, as to the form of assignment. So recognized by this Court in *Simpson vs. Ranlett*, 2 Gil. 316. Its chief difference consists in comprehending a greater variety of instruments. The practice and judicial decisions in England and those States which have re-enacted the statute of Anne are applicable therefore to Illinois. And nowhere save in Illinois, has the doctrine ever been judicially declared, that a note made payable to bearer was not transferable by delivery.

2. The decision in *Hilborn vs. Artus* 3 Scam. 344, cannot be regarded as firmly and satisfactorily establishing the doctrine.

1. We respectfully suggest it lacks the elements which give *rational* strength and stability to a judicial determination. The opinion is very brief. Brief as it is, a large part of it is occupied with the discussion of other topics in the case. It contains no reasoning in support of the view adopted, attempts no critical analysis of the statutes in question and shows no evidence that previous decisions of the same Court had been examined. Nor does the report indicate that this point had been at all argued on the part of the appellee.

2. It is not consistent with the uniform tenor of judicial *intimations* both before and after. See *McHenry vs. Ridgley*, 2 Scam., 310. *Sap-*

ington vs. Pulliam, 3 Scam., 385. Simpson vs. Ranlett, 2 Gil., 314. New Hope Del. Bridge Co. vs. Perry *et al.*, 11th Ill., 468. This last case is referred to, as containing the only direct reference subsequently made to the decision in Hilborn vs. Artus, and as giving what we cannot but consider a plain intimation of the dissatisfaction of the Court with that decision.

The declaration alleges the making of the contract of assignment in New York and avers that it was subject to the laws of that State. If the Court, however, should conclude that the laws of Illinois must govern, as to the point at issue, yet if it should give them the construction we contend for, assimilating them to the laws of New York, these averments would be mere surplusage, and might be considered as stricken out of the case. If sufficient facts are stated to constitute a good cause of action in Illinois, an erroneous averment that the contract was governed by the laws of New York would not vitiate.

Bank of U. S. vs. Donnelly, 8 Peters U. S. R., 370. 2 Scam. R., 12.

II.

But the transfer having taken place in the State of New York, the force and effect of it, and the substantial rights of the parties under it must be governed by the laws of New York.

1. It is not a question merely touching the form of the remedy in the sense of the rule that the *lex fori* governs as to the mode and time in which the suit is to be brought. This doctrine has been usually enforced in reference to the limitations and technical forms of actions, and the rules of evidence here. But it is a question touching the *remedy* only because it touches the *right*; only in the same sense that the question who shall be plaintiff always depends on the question who is possessed of the right of action.

2. It is in fact a question touching the construction of the contract of transfer or assignment. By the laws of New York as averred in the declaration, the mere delivery of a note payable to bearer constitutes a full and perfect assignment and operated in this case to vest in the plaintiff both the legal and equitable ownership of the note. Being thus once vested, the legal ownership cannot by the mere fact of the removal of the parties to another State be again divested and restored to the original payee.

3. The authorities recognize a distinction between negotiable instruments, and ordinary choses in action.

In reference to ordinary choses in action other than negotiable paper, there is a conflict of authorities. The case of *O'Callaghan vs. Thomond*, 3 Taunt. 82, 84, goes to the full extent of establishing the principle that when by the local law an assignment of a chose in action, (a judgment for instance) vests in the assignee the legal and equitable ownership by giving him the right to sue in his own name, that right should be respected everywhere. In that case the assignee of an Irish Judgment assignable in Ireland, sued in the English Court of Common Pleas and recovered judgment. The reasoning of that decision seems to meet with the entire approbation of Story in his *Conflict of Laws*. Sec. 566, and note (1.)

But in reference to negotiable instruments we think the authorities settle the question beyond controversy.

Trimbey vs. Vignier, 1 Bing., N. C., 151, 90. (27 Eng. Com. L. Rep. 588.)

See particularly Story's *Conf. of L.* Sec. 353 and 354.

1 Scam. Rep. 417. 2 Scam. Rep. 12, 465.

PARKS & ELWOOD,
Pro Pltff. in Error.

Error to rule.

Rossas

vs.

Crist.

Filed June 14, 1852
L. Seland
Clerk.

Error to mill.

Charles B. Rosa. Debt in Error
vs.

Peter M. Crist, Debt in Error.

To L. Leland Eyr,

Clk of the Supreme Court, 3^d J. Div.

Ottawa,

Dear Sir, Please file accompanying
transcript, assignment of Errors and abstract of records, and
exem sci fa to Shff of Mill County for debt in Error,
and oblige

Yours Truly
Parks Chubb,

Error to Mail.

Charles B. Roosa
Prof in Emu

vs.

Peter M. Crist.
Supt in Emu.

Pro for Sci fa

Barth Church
Prof in Emu.

Filed May 13, 1886.
L. Leland Clerk.

State of Illinois - Supreme Court

Peter M. Crist Deft. in Error

advs.

Error to Will

Charles B. Koorz Aff. in Error

And hereupon, afterwards, to wit, at the June Term of said Supreme Court A.D. 1856, Peter M. Crist Defendant in Error by Mr Oggood his attorney Comes here into Court, & says that there is no Error either in the record & proceedings aforesaid, or in the rendition of the judgment aforesaid, & prays that the justices of the said Supreme Court now here, may proceed to examine as well the record & proceedings aforesaid as the Matter aforesaid above assigned for Error, & that the judgment aforesaid, in form aforesaid given, may be in all things affirmed &c.

Mr Oggood Attorney &
of Counsel for
Deft in Error

65

Superior Ct, June 2nd 1856

Peter M. Grist vs. in error

advs

Chas. B. Hoar vs. in error

Joinder in error

Mrs. Osgood
att'y for
vs. in error

Filed June 28, 1856
L. Leland
clerk