

No. 12617

Supreme Court of Illinois

Smith, et al.

vs.

Chicago Carriage & Wagon Co.

205 - 181

Superior Court

Ezra L Sherman

vs

South Star Horn

Plaintiff vs Def
Bail

Filed May 28. 1858
L. Leland
Clerk

Sherman vs
Horn
Plaintiff vs

State of Illinois }
County of Cook } ss

Pleas before the Honorable John M Wilson Judge of the Cook County Court of Common Pleas in and for the County and State aforesaid had at a vacation term of the Cook County Court of Common Pleas begun and holden at the Court House in the City of Chicago in said County & State on the first Monday being the second day of June in the year of our Lord one thousand eight hundred and fifty six, and of the Independence of the United States the Eightieth

Present the Hon John M Wilson Judge
James S Beach Coroner &
Acting Sheriff

Attest

Walter Kimball Clerk

Be it remembered that heretofore to wit on the twenty fifth day of December in the year of our Lord one thousand eight hundred and fifty five Sheldon Smith and Cornelius Van Horn by their Attorneys filed in the office of the Clerk of the Cook County Court of Common Pleas, within and

for the County of Cook and State of
Illinois, their precepe for summons, in
the words and figures as follows to wit

Cook County Court of Common Pleas
Sheldon Smith &
Cornelius Van Horn }
Chicago Carriage & } Assumpsit
Waggon Factory } Dam \$1,500

To the Clerk of the Cook County
Court of Common Pleas

Please issue summons in
above intitled cause and returnable
at the next term of this court

Sherman & Brizer

Reffs Attys

And afterwards to wit on the same
day and year aforesaid Sheldon Smith
and Cornelius Van Horn by their attorneys
filed in the office of the Clerk of said
Court their security for costs in the
words and figures as follows to wit

Sheldon Smith &
Cornelius Van Horn

Chicago Carriage } Cook County Court of
Waggon Factory } Common Pleas

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 this 25 day of }
December 1835 } Sherman & Prigee

And afterwards to wit on the same day and year aforesaid there issued out of the office of the Clerk of said Court the peoples writ of summons, which said writ and the Sheriffs return endorsed thereon are in the words and figures as follows to wit,

State of Illinois }
County of Cook } ss. The People of the State of
Illinois to the Sheriff of said County
Greeting.

We command you that you summon The Chicago Carriage and Waggon Factory if it shall be found in your County personally to be and appear before the Cook County

Court of Common Pleas of said County
on the first day of the next term thereof
to be holden at the Court House in the
City of Chicago in said County on the
First Monday of January next to answer
unto Sheldon Smith and Cornelius
Van Horn in a plea of trespass on the
case upon promises, to the damage of
the said plaintiffs as they say in the sum
of Fifteen Hundred dollars. And have
you then and there this writ with an
endorsement thereon in what manner
you shall have executed the same

Witness Walter Kimball
Clerk of our said Court
and the seal thereof at the
City of Chicago in said County
this 25th day of December 1835
Walter Kimball Clerk



And afterwards to wit on the twenty-
third day of January in the year
of our Lord one thousand eight
hundred and fifty six, said Sheldon
Smith and Cornelius Van Horn
by their Attorneys filed in the office of
the Clerk of said Court their declaration
in the words and figures as follows
to wit

"Sheriff's Return on Summons"

After making diligent search and being unable to find A. Purce President of said Company in my county he being absent, therefore I served by delivering a copy hereof to Ezra S. Sherman the twenty seventh Dec 1835 by delivering a copy hereof to Arthur S. Tucker Secretary of the within named Chicago Carriage & Waggon Factory the 28th Dec 1835

James Andrew Sheriff
By John S. Dart Deputy

Cook County Court of Common Pleas
of the February term in the year
of our Lord one thousand eight
hundred and fifty six

State of Illinois }
Cook County ss }

Sheldon Smith and Cornelius
Van Horn partners in trade and doing
business under the name style and firm
of Smith & Van Horn plaintiffs in this
suit by Sherman & Mizee their attorneys —
complain of the Chicago Carriage and
Waggon Factory a corporation duly in-
corporated under the laws of the State of
Illinois who are summoned &c in a plea
of Trespass on the case on promises.

For that whereas the Chicago carriage
and Waggon Factory heretofore to wit on
the 14th day of May A.D. 1835 at Chicago
by Asahel Pierce then being and acting
as president of said incorporation
made their certain note in writing
commonly called a promissory note
which said note was signed by
A Pierce the president of said corporation
or company by the name ^{and} style of A
Pierce President and bearing date
the day and year therein mentioned
to wit the day and year aforesaid

and then and there delivered the said note to one A Pierce by which said note the said defendant promised to pay in six months after the date thereof to the order of A Pierce the sum of Five Hundred and twenty eight dollars and thirty three cents for value received payable at the office of Geo Smith & Co (in Chicago) with exchange on New York and then and there delivered the said promissory note to the said A Pierce — and the said A Pierce to whom or to whose order the payment of the said sum of money in the said promissory note specified was to be made as aforesaid, after the making of the said promissory note and before the payment of the said sum of money therein specified was to be made as aforesaid to wit on the day and year aforesaid at Chicago aforesaid endorsed the said note in writing by which said endorsement he the said A Pierce then and there appointed and ordered the said sum of money in the said promissory note specified to be paid to the said plaintiffs and then and there delivered the said promissory note so endorsed to the said plaintiffs 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 to the plaintiffs the said sum of money in the said promissory note specified according to the tenor and effect of the said promissory note and the said endorsement so thereon made as aforesaid and these plaintiffs aver that at the time the said note became due and payable the said rate of exchange was worth one and a half per cent which the said defendant ought to pay the plaintiffs in addition to the amount specified in said note together with interest on the same and being so liable the said defendant in consideration thereof afterwards to wit on the day and year aforesaid at Chicago aforesaid then and there faithfully promised the said plaintiffs to pay them the said sums of money in the said promissory notes specified according to the tenor and effect of the said note and of the endorsement so thereon made as aforesaid. And whereas also the said defendant on the first day of December in the year of our Lord one thousand eight hundred and fifty five at Chicago was indebted to the said plaintiffs

in the sum of one thousand dollars of lawful money of the United States of America for divers goods wares and merchandises by the said plaintiffs before that time sold and delivered to the said defendant, and at the special instance and request of the said defendant, and being so indebted to the said plaintiffs the said defendant in consideration thereof afterwards to wit on the same day and year and at the place aforesaid undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned when the said defendant should be thereunto afterwards requested And whereas also the said defendant afterwards to wit on the same day and year and at the place aforesaid in consideration that the said plaintiffs had before that time at the like special instance and request of the said defendant sold and delivered to the said defendant divers other goods wares and merchandises of the said plaintiffs the said defendant then and there undertook and faithfully promised the said plaintiffs that the said defendant would well and truly pay to the said

plaintiffs so much money as the last
aforesaid goods wares and merchand-
ises at the time of the sale and delivery
thereof were reasonably worth when the
said defendant should be thereunto
afterwards requested and the said
plaintiffs aver that the said goods
wares and merchandises last mention-
ed at the time of the sale and delivery there-
of were reasonably worth the further sum
of one thousand dollars of like lawful
money aforesaid to wit at the place
aforesaid whereof the said defendant
afterwards ^{to wit} on the same day and year
and at the place aforesaid had
notice. And whereas also the said
defendant afterwards to wit on the
same day and year aforesaid was
indebted to the said plaintiffs in the
further sum of one thousand dollars
of like lawful money as aforesaid
for money before that time lent and
advanced by the said plaintiffs to the
said defendant and at the like request
of the said defendant. And for other
money by the said plaintiffs before
that time paid laid out and expend-
ed for the said defendant and at the
like request of the said defendant.

And for other money by the said
defendant before that time had and
received to and for the use of the said
plaintiffs And being so indebted the
said ~~the said~~ defendant in consideration
thereof afterwards to wit on the same
day and year and at the place aforesaid
undertook and then and there faithfully
promised the said plaintiffs well and
truly to pay unto the said plaintiffs the
said ^{several} sums of money in this count men-
tioned when the said defendant should
be thereunto afterwards requested. And
whereas also the said defendant after-
wards to wit on the same day and year
and at the place aforesaid accounted
together with the said plaintiffs of and
concerning divers other sums of money
before that time due and owing from
the said defendant to the said plaintiffs
and then and there being in arrear and
unpaid and upon such accounting the
said defendant then and there was
found to be in arrear and indebted
to the said plaintiffs in the further sum
of one thousand dollars of like lawful
money as aforesaid. And being so found
in arrear and indebted to the said
plaintiffs the said defendant in con-

sideration thereof afterwards to wit on the same day and year and at the place aforesaid undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned when the said defendant should be thereunto afterwards requested

Nevertheless the said defendant (although often requested &c) has not yet paid the several sums of money above mentioned or any or either of them or any part thereof to the said plaintiffs but to pay the same or any part thereof to the said plaintiffs the said defendant has hitherto altogether refused and still does refuse to the damage of the said plaintiffs one thousand dollars and therefore the said plaintiffs bring suit &c

Therman & Prigee
Plffs Attys

(Copy of Instrument declared on)
Chicago, May 14th 1835 \$528.33

Six months after date the Chicago Carriage and Waggon Factory promise to pay to the order of A. Pierce Five Hundred

Twenty eight $\frac{33}{100}$ dollars without de-
falcation for value received payable
at the office Geo Smith & Co with
exchange on New York

A Pierce President

And afterwards to wit on the seventh
day of February in the year last aforesaid
said day being one of the days of The February
term of said Court the following among
other proceedings were had in said Court
and entered of record to wit.

Sheldon Smith &
Cornelius Van Horn

vs

Asst

Chicago Carriage &
Waggon Factory

This day come the said plaintiffs by
Sherman & Brice their attorneys, and it app-
earing to the court that due personal service
of process of summons issued in this cause
has been had on Arthur S Tucker Secretary
of the said Chicago Carriage & Waggon
Factory and the said defendant and
said Arthur S Tucker Secretary of said
Factory being three times severally solemnly
called in open Court come not nor does
any person for said defendant it is therefore

on motion of said plaintiffs Ordered that the default of the said defendant be taken and the same is hereby entered. wherefore the said plaintiffs ought to have and recover of the said defendant their damages herein sustained by occasion of the premises and the Court after hearing the allegations and proofs submitted by said plaintiffs being now fully advised in the premises assesses said plaintiffs damages to the sum of Five Hundred and thirty eight dollars and thirty seven cents

Therefore it is considered that the said plaintiffs do have and recover of the said defendant their damages of Five Hundred thirty eight dollars and thirty seven cents in form aforesaid by the Court here assessed and also their costs and charges by them about their suit in this behalf expended and have execution therefor

And afterwards to wit on the twenty second day of March in the year aforesaid. said day being still one of the days of the February Term of said Court, the following among other proceedings were had in said Court and entered of record to wit.

Sheldon Smith &
Cornelius Van Horn

vs

Apt

Chicago Carriage &
Waggon Factory

And now comes the said defendant
by Morris & Blackburn their Attorneys and
enter their motion herein to set aside the de-
fault & judgment entered in this cause at
a former day of this term

And afterwards to wit on the same day
and year last aforesaid. Ezra L Sherman
filed in the office of the clerk of said Court
his affidavit in the words and figures as
follows to wit.

Cook County Ct Com Pleas

State of Illinois }
Cook County }

Chicago Carriage & Waggon Factory

ads

Sheldon Smith & Cornelius Van Horn

partners in trade

} Assumpsit

Ezra L Sherman makes oath & says
that at the time the Sheriff left a copy of
the summons in the above entitled cause
he neither then or before or after that time was
an officer of any kind of said Factory, nor

was the said AS Tucker then or at anytime since "secretary of the said Chicago Carriage & Waggon Factory" as set forth in the Sheriffs return on said summons in said suit, and this affiant further says that he was a stockholder in said company or Factory during its existence, that long prior to the 25 day of December 1835 (the day said summons was issued) the said Chicago Carriage & Waggon Factory sold out all their stock & property to Messrs Steinhaus & Tucker partners in trade and said Carriage & Waggon Factory became dissolved & their rights as a corporation ceased & ended on the sale of their property & stock in trade, and this affiant further says that said note in the plaintiffs declaration described (& on which judgment by default has been rendered against said Factory for \$609⁵⁸/₁₀₀ in damages) purports to have been made by one APierce as President of said Factory on May 14th 1835 and payable in six months to himself or order for \$528³³/₁₀₀ and by him indorsed in blank as will more fully appear by reference had to said declaration note and this affiant further says that he is informed by counsel & believes and so states the fact, that said Factory corporation in said declaration mentioned or said APierce had no power or authority in law to make & issue said

note in said plaintiffs declaration alleged
and that said note was and still is illegal
void in law, and he further says, that said
corporation had no legal or proper notice
of this suit, authorizing the court to render
said judgment by default as the fact was
notorious, that said Tucker was not secretary
of said corporation at the time of said service
or at any time since. This affiant says —
that said judgment was had on said note
for more than principal interest & exchange
as by reference to said note will appear to
a considerable amount which is unjust &c

Sworn & Subscribed

before me this 21st

March 1836

E L Sherman

Calvin DeKoeij J.P.

And afterwards to wit on tenth day of
April in the year aforesaid the defendant
by its attorney filed in the office of the Clerk
of said Court a motion in the words and
figures as follows to wit.

Chicago Carriage & Waggon Factory ads Sheldon Smith & Cornelius Van Horn	}	Cook Co Court Com Pleas
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The Defendant moves the Court to set aside the judgment in this cause on the following grounds to wit, 1st That Tucker was not Secretary at the time of the service of the process upon him, Secondly That E S Sherman was not an officer or agent of said Corporation at the time the process was served upon him or at any time before & that the President resided then & still in the County of Cook

Thirdly that the note in the declaration is not a legal liability of the Deft as the said Pierce had no authority to execute said note

Morris for Deft

And afterwards to wit on the same day and year last aforesaid, Arthur S Tucker filed in the office of the Clerk of said Court his affidavit in the words and figures as follows to wit

Cook County Court of }
Common Pleas } April Vacation term A D 1856

Sheldon Smith & Cornelius Van Horn vs Chicago Carriage & Waggon Factory	} Sheldon Smith & Cornelius Van Horn vs Chicago Carriage & Waggon Factory	}
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State of Illinois }

Cook County ss } Arthur S

Tucker of said County being duly sworn doth depose & say that on or about the twenty sixth day of May AD 1833 this deponent was elected Secretary of the Chicago Carriage & Waggon Factory a Company doing business in the City of Chicago in the said County of Cook

This deponent further saith that immediately after such election this deponent entered upon the discharge of the duties of the said office of Secretary as aforesaid & continued to perform the duties & receive the salary of the said office of Secretary of the said Chicago Carriage & Waggon Factory until the Seventh day of September then next following

This deponent further saith that on the said seventh day of September 1833 and while this deponent was in the discharge of his duties as such Secretary the said Chicago Carriage & Waggon Factory sold & transferred their property goods & effects in part or in whole to this deponent & one Steinhauß and that this deponent ^{thereafter} did not perform the functions of the said office of Secretary of the said Chicago Carriage & Waggon Factory as aforesaid - nor was in the employ of the said Company

And this deponent further saith that
he is the same person upon whom was
served process in two suits wherein said
Chicago Carriage & Waggon Factory was
defendant & Smith & Van Horn were
plaintiffs on or about the 28. December
AD 1835

And further this deponent saith not
Arthur D Tucker

Sworn to & subscribed
before me this 9th day of
April AD 1836

Seal } G W Davenport
} Notary Public in
} & for the City of Chicago in
the County of Cook State of Illinois

And afterwards to wit on the fourth day
of June in the year last aforesaid. said
day being one of the days of the June term of
said Court the following among other proceed-
ings were had in said Court and entered
of record to wit

Sheldon Smith &
Cornelius Van Horn

vs
Chicago Carriage &
Waggon Factory

Apt

And now at this day come the said plaintiffs by Sherman & Brizee their Attorneys and the said defendants by B. S. Morris their Attorney also come and after hearing the argument of counsel on said defendants motion heretofore entered herein, to set aside the default and judgment entered in this cause at the February term last past of this court, the court being now fully advised in the premises overrules said motion, at the costs of said defendants

And thereupon said defendants by their said Attorney enter their exceptions to the opinion of the court herein, and pray an appeal to the Supreme Court of the State of Illinois which is allowed by the court on said defendants filing an appeal bond in the sum of one thousand dollars with security to be approved by the Judge of this Court, said bond and bill of Exceptions to be filed by the sixth day of June instant

And afterwards to wit on the fifth day of June in the year aforesaid, there was filed in the office of the clerk of said court a stipulation in the words and figures as follows to wit,

Chicago Carriage & Waggon Factory
 vs
 Sheldon Smith & Cornelius Van Horn

Cook County Court of Common Pleas
 Judgment \$609

Sheldon Smith & Cornelius Van Horn
 vs
 Chicago Carriage & Waggon Factory

Cook County Court of Common Pleas
 Judgment \$538.41
 Motion to set aside same
 overruled

It is hereby stipulated and agreed by and between the parties to the above named cases

- 1 That one of the above cases is to be appealed and taken to the Supreme Court on the motion as overruled by this court. and the other case is to abide the result of the motion in the case appealed to the supreme court. no execution is to be issued on the case not taken up by appeal till after the decision on the appeal
- 2 If the Supreme Court shall reverse the opinion of the court of common pleas then no execution will be issued in the case not appealed. But the judgment shall share the same fate of the case taken up

B S Morris for Carriage Waggon Factory
 D. F. Sherman for Smith & Van Horn

And afterwards to wit on the same day
and year aforesaid, the defendant by
its Attorney filed in the office of the Clerk
of said Court their Bill of Exceptions in the
words and figures as follows to wit.

Chicago Carriage & Waggon Factory ads Sheldon Smith & Cornelius Van Horn	}	Cook County Ct. Com Pleas Motion to set aside judgt & proceedings in words following
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Chicago Carriage & Waggon Factory ads Sheldon Smith & Cornelius Van Horn	}	Cook Co. court com pleas
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The defendant moves the
court to set aside the judgment in this cause
on the following grounds. To wit, 1st That Tucker
was not secretary at the time of the service
of the process upon him.

Secondly, That E. T. Sherman was not an
officer or agent of said corporation at the
time the process was served upon him or
at any time before & that the President was
dead then & still in the County of Cook

Thirdly, that the note in the declaration is
not a legal liability of the Deft as the said

Pierce had no authority to execute said note

Morris for Deft

Be it remembered that on the Trial of this motion the defendant by its attorney read in evidence to the court the papers & Record in this case. also the affidavit of E L Sherman in the words & figures following to wit,

Cook County Ct Com Pleas

State of Illinois }
Cook County }

Chicago Carriage & Waggon Factory }
ad. }

Sheldon Smith & Cornelius Van }
Horn partners in trade }

Accomp't

Ezra L Sherman makes oath & says that at the time the Sheriff left a copy of the summons in the above entitled cause he neither then or before or after that time was an officer of any kind of said Factory nor was the said AS Tucker then or at any time since "secretary of the said Chicago Carriage & Waggon Factory" as set forth in the Sheriff's return on said summons in said suit and this affiant further says that he was a Stockholder in said company or Factory during its existence, that long prior to the 25 day of December 1855 (the

day said summons was issued) the said
Chicago Carriage & Waggon Factory
sold all their stock & property to Messrs Steinhau
& Tucker partners in trade and said Carriage
& Waggon Factory became dissolved & their rights
as a corporation ceased & ended on the sale of
their property & stock in Trade, and this affiant
further says that said note in the plaintiffs
declaration described (& on which judgment
by default has been rendered against said
Factory for \$609³⁸/₁₀₀ in damages) purports to
have been made by one A Pierce as President
of said Factory on May 14, 1855 and payable
in six months to himself or order for \$528³³/₁₀₀
and by him indorsed in blank as will more
fully appear by reference had to said dec-
laration & note and this affiant further
says, that he is informed by council & believes
and so states the fact, that said Factory
corporation in said declaration mentioned
or said A Pierce had no power or authority
in law to make & issue said note in said
plaintiffs declaration alleged, and that
said note was & still is illegal & void in law
and he further says, that said corporation
had no legal or proper notice of this suit
authorizing the court to render said
judgment by default as the fact was
notorious, that said Tucker was not

secretary of said corporation at the time
of said service or at any time since. This
affiant says that said judgment was had
on said note for more than principal
interest & exchange as by reference to said
note will appear to a considerable amount
which is unjust &c

Sworn & Subscribed
before me this 21st
March 1836

E J Sherman

Calvin D Wolf J.P.

The Defts in this suit resisted this mo-
tion & for that purpose read in evidence
to the court the affidavit of A S Tucker in
the words & figures following to wit.

Cook County Court of }
Common Pleas } April Vacation term AD 1836

Sheldon Smith & } Sheldon Smith & }
Cornelius Van Horn } Cornelius Van Horn }

^{vs} Chicago Carriage & } ^{vs} Chicago Carriage & }
Waggon Factory } Waggon Factory }

State of Illinois }
Cook County ss }

Arthur S Tucker

of said County being duly sworn doth
depose & say, that on or about the twenty

sixth day of May AD 1835 this deponent was elected Secretary of the Chicago Carriage & Waggon Factory a company doing business in the City of Chicago in said County of Cook

This deponent further saith that immediately after such election this deponent entered upon the discharge of the duties of the said office of secretary as aforesaid & continued to perform the duties & receive the salary of the said office of secretary of the said Chicago Carriage & Waggon Factory until the seventh day of September then next following

This deponent further saith that on the said seventh day of September 1835 and while this deponent was in the discharge of his duties as such secretary the said Chicago Carriage & Waggon Factory sold & transferred their property goods & effects in part or in whole to this deponent & one Steinhauis and that this deponent did not thereafter perform the functions of the said office of secretary of the said Chicago Carriage & Waggon Factory as aforesaid - nor was in the employ of the said Company

And this deponent further saith that he is the same person upon whom was served process in two suits wherein

said Chicago Carriage & Waggon
Factory was defendant & Smith & Van
Horn were Plaintiffs on or about the
28 December AD 1835.

And further this deponent saith not
Arthur S Lucker

I sworn to & Subscribed
before me this 9th day of
April AD 1836

G W Davenport
Notary Public in
Seal } & for the City of Chicago in
the County of Cook & State of Illinois

The court overruled the Defts motion with
costs, to which opinion of the court the de-
pendant excepted & prayed the court
to sign & seal this its bill of exceptions
which is done.

John M Wilson Seal

Copy of note filed on the seventh day
of February in the year of our Lord one
thousand eight hundred and fifty six.
in the above entitled case, and of the
endorsements thereon.

Chicago May 14 1835

§ 528³³

Six month after date the —

Chicago Carriage & Wagon Factory
promise to pay to the order of A Pierce
Five Hundred Twenty Eight ³³/₁₀₀ Dolls
without defalcation for value received pay-
able at the office Geo Smith & Co with ex-
change on New York

A Pierce President

November 17th

"Endorsement on note"

I hereby assign & transfer the within note
to E S Sherman or order

A Pierce

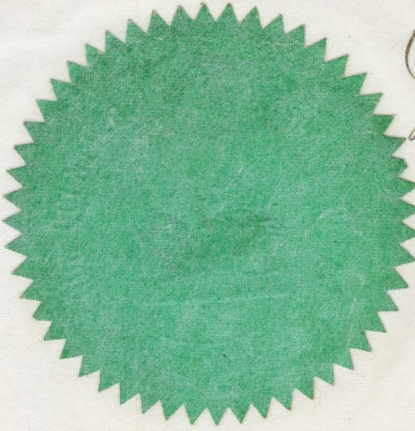
Pay to Smith & Van Horn to whom I
hereby assign & transfer the within note
E S Sherman

State of Illinois {
Cook County { J. S. Waller Kimball Clerk
of the Cook County Court of Common
Pleas in & for the County & State aforesaid
do hereby Certify that the foregoing is a
full & true transcript of all the papers,
proceedings, and orders entered of Record
in said Court as the same now appear in
my office in the case of Sheldon Smith
& Cornelius Van Horn plaintiffs
& the Chicago Carriage & Wagon Factory

defendants, the same being the case
referred to in the Bill of Exceptions
filed in my office wherein the same
persons are plaintiffs and Ezra S
Shenman is defendant

Certified under my hand
& the seal of said Court at
Chicago this 20th day of
May A.D. 1858

Walter Kimball
Clerk



Sheldon Smith &
Cornelius Van Horn

is

Chicago Carriage &
Wagon Factory

Transcript

Filed May 21, 1888.
S. Keland Clk.



Transcript

United States of America
State of Illinois S.S.
Cook County

1.
Pleas before the Honorable John
M. Wilson Judge of the Cook County Court of
Common Pleas within and for the County of Cook
and State aforesaid at a special Term of the
Cook County Court of Common Pleas begun
and held at the Court House in the City of Chicago
in said County in pursuance of an order of the
Judge thereof And to public Notice given in
accordance with the Statute in such case made
and provided - On the First Tuesday being
the second day of June in the year of our
Lord One Thousand Eight Hundred and
fifty seven and of the Independence of the
United States the eighty first.

Present The Honorable John M. Wilson Judge
Carlos Haven Presenting Attorney
John L. Wilson Sheriff
Attest. Walter Formbale Clerk

Be it remembered That heretofore
to wit on the twenty ninth day of August in the
year of our Lord One Thousand Eight
Hundred and fifty six Sheldon Smith &
Cornelius Van Horn by P. L. Sherman their
Attorney filed in the office of the Clerk of the
Court aforesaid his certain precepts for Summons
and security for Costs and security
which said precepts are in the words and
figures following to wit:

Cook County Court of Common Pleas.

Sheldon Smith &
 Cornelius Van Horn } Assumpsit Damages \$1000 -
 " }
 Ezra L Sherman.

Will the Clerk of the above
 Court Please issue Summons in the above
 entitled Cause returnable to the next term
 of Court - Dated Aug 29th/56

To } Yours &c.
 Clerk of Cook County Court } P L Sherman
 of Common Pleas } Atty for Plffs

Sheldon Smith &
 Cornelius Van Horn } Cook County Court of
 " } Common Pleas -
 Ezra L Sherman }

I do hereby enter myself
 Security for Costs in this Cause & 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 the 29 day of Aug^r A.D. 1856 - P L Sherman

And afterwards to wit on the same
 day and year last aforesaid there issued
 out of the Office of the Clerk of said Court
 a Writ of Summons in the words and
 figures following that is to say
 State.

3.

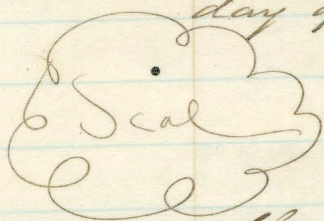
State of Illinois }
County of Cook } S.S.

The people of the State of Illinois
To the Coroner & Acting Sheriff of said County
Greeting.

We command you that you summon
Ezra L. Sherman if he shall be found in your
County personally to be and appear before the
Cook County Court of Common Pleas of said
County on the first day of the next Term
thereof to be holden at the Court House in
the City of Chicago in said County on the
second Monday of September next to answer
unto Sheldon Smith & Cornelius Van Horn
in a plea of trespass on the case on promises
to the damage of the said plaintiffs as they
say in the sum of One Thousand Dollars.

And have you then and there this writ
with an endorsement thereon in what
manner you shall have executed the same.

Witness Walter Kimball Clerk of
our said Court and the Seal thereof at the
City of Chicago in said County this 29th
day of August A.D. 1856.



Walter Kimball Clerk.

Sheriff's Return thereon.

Served by reading this Writ to the within
named Ezra L. Sherman the 29th day of
August 1856.

James S. Beach Coroner
and ex officio Acting Sheriff
By S.C. Lum Deputy.

And afterwards to wit on the same day and year last aforesaid the said Sheldon Smith & Cornelius Van Horn by P. L. Sherman their Attorney filed in the Office of the Clerk of the said Court their Declaration and Copy of Note declared on which said Declaration and Copy of Note are in the words and figures following - to wit

Cook County Court of Common Pleas.

Of the September Term of the Cook County Court of Common Pleas in the year of our Lord One Thousand Eight hundred and fifty six -

State of Illinois

Cook County ss }

Sheldon Smith and Cornelius Van Horn Plaintiffs in this suit by P. L. Sherman their Attorney complain of Ezra L. Sherman Defendant in this Suit who has been duly summoned of a plea of trespass on the case upon promises -

For that whereas heretofore to wit on the fourteenth day of May in the year of our Lord One Thousand Eight Hundred and fifty five to wit at Chicago in the County of Cook aforesaid the Chicago Carriage & Waggon Factory a Corporation duly Incorporated under & by virtue of the Laws of the State of Illinois by Asahel Ponce then being and acting as President of said Corporation made their certain

promissory note in writing which said note
 was signed by A Pierce President bearing
 date the day and year therein mentioned
 to wit; the day and year aforesaid then &
 there delivered the said note to one A Pierce
 by which said note the said Chicago
 Carriage & Waggon Factory promised to pay in
 six months after the date thereof to the
 order of A Pierce the sum of Five thousand
 twenty eight & thirty three one hundredth
 Dollars without defalcation for value
 received payable at the office of George
 Smith Company with exchange on
 New York then & there delivered the said
 promissory note to the said A Pierce &
 the said A Pierce to whom or to whose
 Order the payment of the said sum of
 money in the said promissory note specified
 was to be made as aforesaid after the
 making of the said promissory note &
 before the payment of the said sum of
 money therein specified was to be made as
 aforesaid indorsed the said note in writing
 by which said indorsement he the said A
 Pierce then & there ordered & appointed the
 said sum of money in the said promissory
 note specified to be paid to one Ezra L.
 Sherman Defendant in this suit - & the
 said Ezra L. Sherman Defendant as
 aforesaid afterwards to wit on the day
 and year aforesaid to wit at Chicago
 aforesaid and before the said sum of
 money therein mentioned became due &
 payable then & there by the name style

& description of E. S. Sherman advised the said Note to the said Plaintiffs & then & there delivered the same so advised to the said Plaintiffs and therein & thereby ordered & appointed the said Sum of Money therein specified to be paid to the said Plaintiffs according to the tenor & effect thereof—

And the said Plaintiffs aver & in fact say that afterwards when the said Note became due & payable the said Note was duly presented for payment to the said Chicago Carriage & Waggon Factory & to the said AT Pine President of the said Company & that payment of said Note or any part was neglected & refused. Whereupon a Suit was duly instituted to wit on the twenty fifth day of December 1855 in the Cook County Court of Common Pleas by summons returnable to the January term 1856. of said Court against the Chicago Carriage & Waggon Factory by the said Sheldon Smith & the said Cornelius Van Horn who were then the legal holders & owners of said Note & that said Suit was duly prosecuted & Judgment obtained therein against the said Chicago Carriage & Waggon Factory & in favor of the said Smith & the said Van Horn Plaintiffs in this Suit & that execution was issued on said Judgment & placed in the hands of the Coroner & acting Sheriff of said County as soon as a Motion entered by the Attorney of the Defendant in said Suit to set aside said Judgment aforesaid could be heard and disposed of by the said Court

7.

to wit on the 13th day of June A D 1856 -
That said Execution was returned by ^{the} said
Sheriff with "no property to be found in my
County belonging to the within named
Chicago Carriage & Wagon Factory whereon
to levy this writ. I therefore return it
no part satisfied" endorsed thereon.

That due diligence has been used by the
said Plaintiffs in the institution & prosecution
of the said Suit and by the prosecution of
the makers of the said Note to insolvency;
by execution as aforesaid - All of which
said several premises the said Defendant
Ezra L Sherman afterwards to wit when
said Note became due & when payment
had been refused & when execution had
been returned unsatisfied as aforesaid
had notice - By means whereof & by
force of the Statute in such case made &
provided the said Defendant became
liable to pay to the said Plaintiffs
the said Sum of money in said
Promissory Note specified & being so liable
the said Defendant in consideration
thereof afterwards to wit; the same day
and year aforesaid and at the place
aforesaid undertook & then & there faithfully
promised the said Plaintiffs to pay them the
said Sum of money in the said Promissory
Note specified when he the said Defendant
should be thereunto afterwards requested.

And also for that whereas
heretofore to wit on the fifteenth day
of May in the year of our Lord One

Thousand Eight Hundred Fifty five
 to wit; at Chicago in Cook County aforesaid
 the ^{Chicago} Carriage & Waggon Factory a Corporation
 duly organized under the laws of the State
 of Illinois by Asahel Pierce then acting
 & being President of the said Corporation
 made their certain promissory Note in
 writing which said Note was signed by
 A Pierce President of said Corporation
 by the name style & description of A Pierce
 President, bearing date the day & year
 therein mentioned to wit the day and year
 aforesaid & then & there delivered the said
 Note to one A Pierce by which said
 Note the said Chicago Carriage & Waggon
 Factory promised to pay in six months
 after the date thereof to the order of A.
 Pierce the sum of Five Hundred twenty
 eight & $\frac{33}{100}$ Dollars without defalcation
 for value received payable at the office
 of George Smith & Company with Exchange
 on New York & the said A Pierce to whom
 or to whose order the payment of the said
 Sum of Money in the said promissory Note
 specified was to be made as aforesaid after
 the making of the said Promissory Note
 & before the payment of the said Sum of
 Money therein specified was to be made
 as aforesaid indorsed the said Note in
 writing by which said Indorsement he the
 said A. Pierce then & there ordered & appointed
 the said Sum of Money in the said Note
 specified to be paid to one Ezra L
 Sherman and the said Ezra L Sherman

9.

on the day and year aforesaid to wit,
 afterwards to wit, at Chicago aforesaid
 and before the said sum of money therein
 mentioned became due and payable then
 & there by the name style & description of
 E. L. Sherman indorsed the said Note to the
 said Plaintiffs and then & there delivered the
 said Note so indorsed as aforesaid to the said
 Plaintiffs therein & thereby ordered & appointed
 the said sum of money therein specified to be
 paid to the said Plaintiffs according to the
 tenor and effect thereof. And the said
 Plaintiffs aver and in fact say that
 afterwards when the said Note became
 due & payable the said Note was duly
 presented for payment to the said Chicago
 Carriage & Wagon Factory & to the said A.
 True President of the said Company or
 Corporation & that payment of said Note
 or any part was neglected & refused
whereupon a suit was duly instituted
 against the said Chicago Carriage & Wagon
 Factory by the said Sheldon Smith & Cornelius
 Van Horn who were the legal holders & owners
 of the said Note in the Cook County
 Court of Common Pleas & that said Suit
 was duly presented and judgment obtained
 therein against the said Chicago Carriage
 & Wagon Factory & in favor of the said
 Smith & the said Van Horn Plaintiffs in
 this suit & that execution has been issued
 on said Judgment & placed in the hands
 of the Sheriff of Cook County aforesaid
 and returned by the said Sheriff aforesaid
 unsatisfied and that the said Judgment remains

wholly unpaid & unsatisfied —

And the said Plaintiffs further say that the said Ezra L Sherman at the time of the making of the said promissory Note aforesaid to wit on the fourteenth day of May A.D. 1855 to wit at Chicago aforesaid was a Stockholder in the said Chicago Carriage & Wagon Factory and that the said Chicago Carriage & Wagon Factory was incorporated under an Act "To authorize the formation of Corporations for manufacturing, Agricultural, mining or mechanical purposes" (approved February tenth 1849) by the General Assembly of the State of Illinois and that said Company was organized to carry on business in the County of Cook aforesaid. And the ^{said} Plaintiffs further say that no Certificate stating the amount of Capital Stock fixed and limited by said Company and paid in as required by the eleventh section of the above mentioned Act has been made by the President and majority of Trustees of the said Corporation and recorded in the Office of the County Clerk of said County of Cook where the business of the said Company was and is carried on by means whereof and by force of the Act last aforesaid the said Defendant became liable as such Stockholder to pay to the said Plaintiffs said Sum of Money in the said promissory Note specified and being so liable to the said Defendant in consideration thereof afterwards to wit on the said fourteenth day of May A.D.

11.

1855. to wit at Chicago aforesaid undertook and then and there faithfully promised the said plaintiffs to pay them the said sum of money in the said promissory note specified according to the tenor and effect and the true intent & meaning thereof when he the said Defendant should be thereto afterwards requested.

Nevertheless the said Defendant although often requested &c. has not as yet paid the said sum of money in said notes specified or any part thereof to the said plaintiffs but to pay the same or any part thereof to the said Plaintiffs the said Defendant has hitherto wholly refused & still does refuse to the Damage of the said Plaintiffs One Thousand Dollars & therefore the said plaintiffs bring Suit &c.

P. L. Sherman

Atty for Plff.

(Copy of note declared on)

Chicago May 14th 1855 - \$ 528. 33

Six Months after date the Chicago Carriage and Waggon Factory promise to pay to the order of A Puce Five Hundred Twenty eight ³³/₁₀₀ Dollars without defalcation for value received payable at the office Geo Smith &c with Exchange on New York

Signed A Puce - President

(Indorsed)

A Puce

E L Sherman

P L Sherman

Plff. atty.

And afterwards to wit on the eighth day of September in the year last aforesaid the said Defendant by Morris & Blackburne his attorneys filed in the Office of the Clerk of the said Court his certain Demurrer to the said Declaration of the said Plaintiffs in this suit, which said Demurrer is in the words and figures following to wit.

E L Sherman

at

Smith Hawthorn

Assumpsit.

And the said Defendant comes and says that the first Count of the plaintiffs said Declaration and the matters therein alleged are not sufficient in the Law to have or maintain this said suit against him and that he is not bound to answer the same wherefore he prays Judgment &c

And for causes of Demurrer shows to the Court the following to wit—

1st Because there is no time stated in said Count, when said alleged suit was instituted nor when the alleged judgment was obtained or at what term of the Court or at what time Execution was issued thereon.

Secondly, because there is no legal or sufficient return of said execution alleged in said Count.

Thirdly, Because no diligence is alleged in said Count and said Count is otherwise defective & insufficient to have and maintain said suit &c

Morris & Blackburne for
Defdt.

13.

And the said Defendant says that the second Count in said Declaration and the matters therein alleged is not sufficient in the law for said plaintiffs to have their said action against him Wherefore he prays Judgment &c. - And for cause of Demurrer shows here to the Court the following -

1st Because no date of the time is stated in said Count when said alleged Suit was commenced - or judgment had or execution issued or the Amount of said Judgment or at what time the same was obtained as alleged in said Count.

2^d - Because there is no allegation in said Second Count alleging that said Execution therein stated was returned unsatisfied for want of property on which to levy that same or that said Corporation was insolvent

3^d - Because said Second Count does not show due diligence in suing or commencing their said Suit or prosecuting said Suit to Judgment & Execution or either of them.

4th Because said alleged liability in second Count is double - in stating two causes of action, if any there is, against said Defendant, one as indorser & one as Stockholder of said Company and for that the said Second Count is otherwise defective

and insufficient V.

Morris & Blackburne
for Deft.

And afterwards to wit on the fifteenth day of September in the year last aforesaid the said Sheldon Smith and Cornelius Van Stalen Plaintiffs by P. L. Sherman their attorney aforesaid filed in the Office of the Clerk of the Court aforesaid their certain amended Declaration, which said Declaration is in the words and figures following to wit—

Cook County Court of Common Pleas

Of the September Term
Of the Cook County Court of
Common Pleas in the year of
Our Lord One Thousand Eight
Hundred and Fifty Six—

State of Illinois }
Cook County } {

Sheldon, Smith and
Cornelius Van Horn Plaintiffs in this
Suit by P. L. Sherman their attorney
complain of Ezra L. Sherman Defendant
in this Suit who has been duly summoned
of a plea of non assumpsit on the case upon
promises

For that whereas heretofore
to wit; On the fourteenth day of May

in the year of our Lord One Thousand Eight hundred and fifty five, to wit at Chicago in the County of Cook aforesaid The Chicago Carriage & Waggon Factory, a Corporation duly incorporated under & by virtue of the Laws of the State of Illinois by Athan Pierce then being & acting as President of said Corporation made their certain promissory note in writing which said note was signed by A Pierce President bearing date the day and year therein mentioned to wit, the day and year aforesaid & then & there delivered the said note to one A Pierce by which said note the said Chicago Carriage and Waggon Factory promised to pay in six months after the date thereof to the order of A Pierce The Sum of Five Hundred twenty eight & thirty three one hundredths Dollars without defalcation for value received payable at the office of George Smith Company with Exchange on New York & then & there delivered the said promissory note to the said A Pierce & the said A Pierce to whom or to whose Order the payment of the said Sum of Money in the said promissory note specified was to be made as aforesaid after the making of the said promissory note & before the payment of the said Sum of Money therein specified was to be made as aforesaid indorsed the said note in writing by which said indorsement he

the said St Pierre then & there ordered and appointed the said Sum of Money in the said Promissory Note specified to be paid to one Ezra L Sherman Defendant in this suit & the said Ezra L Sherman Defendant as aforesaid afterwards to wit On the day & year aforesaid to wit at Chicago aforesaid and before the said Sum of Money therein mentioned became due & payable then & there by the name style & description of E L Sherman received the said Note to the said Plaintiffs & then & there delivered the same so indorsed to the said Plaintiffs and therein & thereby ordered & appointed the said Sum of Money therein specified to be paid to the said Plaintiff according to the tenor and effect thereof -

And the said Plaintiffs aver and in fact say that afterwards when the said note became due & payable, the said Note was duly presented for payment to the said Chicago Carriage & Waggon Factory & to the said St Pierre President of the said Company & that payment of said Note or any part was neglected and refused & thereupon a suit was duly instituted to wit on the twenty fifth day of December 1855. in the Cook County Court of Common Pleas by summons returnable to the January Term 1856. of said Court against the Chicago Carriage & Waggon Factory by the said Sheldon Smith & the said Cornelius Van Horn who were then the legal holders & owners of said Note & that,

17.

said suit was duly prosecuted & judgment obtained therein against the said Chicago Carriage & Waggon Factory in favor of the said Smith & the said Van Horn Plaintiffs in this suit & that execution was issued on said judgment and placed in the hands of the Coroner and acting Sheriff of said County as soon as a motion entered by the Attorney for Defendant in said suit to set aside said judgment aforesaid could be heard and disposed of by the said Court to wit on the thirteenth day of June AD 1856 - that said Execution was returned by the said Sheriff with "no property to be found in my County belonging to the within named Chicago Carriage & Waggon Factory whereon to levy this writ I therefore return it, no part satisfied" indorsed thereon

That due diligence has been used by the said Plaintiffs in the institution & prosecution of the said suit and by the prosecution of the makers of said note to insolvency by execution as aforesaid.

All of which said several premises the said Defendant Ezra L Sherman afterwards to wit, when said note became due & when payment had been refused & when execution had been returned unsatisfied as aforesaid had notice - By means whereof, & by force of the Statute in such case made & provided the said Defendant became liable to pay to the said Plaintiffs the said sum of money in said promissory note specified &

being so liable the said Defendant in consideration thereof afterwards to wit; the same day and year aforesaid and at the place aforesaid undertook then & there faithfully promised the said Plaintiffs to pay them the said Sum of money in the said promissory note specified when he the said Defendant should be thereto afterwards requested.

And also for that whereas heretofore to wit on the fourteenth day of May in the year of our Lord One Thousand Eight Hundred and Fifty five to wit at Chicago in Cook County aforesaid the Chicago Carriage & Wagon Factory a Corporation duly organized under the laws of the State of Illinois by Asahel Preece then acting & being President of the said Corporation by the name style & description of A Preece President bearing date the day & year therein mentioned to wit on the day and year aforesaid then & there delivered the said note to one A Preece by which said note the said Chicago Carriage & Wagon Factory promised to pay in six months after the date thereof to the order of A Preece the sum of Five Hundred twenty eight & $\frac{33}{100}$ Dollars without defalcation for value received payable at the office of George Smith Company with Exchange on New York & the said A Preece to whom or to whose order the payment of the said Sum of money in the said promissory note specified was to be made as aforesaid after the making of the said ^{promissory} note therefore

#made there certain promissory note in writing which said note was signed by A Preece President of said corporation

19.

the payment of the said sum of money therein specified was to be made as aforesaid indorsed the said note in writing by which said Indorsement be the said A. Pierce then & there ordered & appointed the said sum of money in the said note specified to be paid to one Ezra L. Sherman and the said Ezra L. Sherman afterwards went on the day and year aforesaid to wit at Chicago aforesaid and before the said sum of money therein mentioned became due and payable then & there by the name style & description of E. L. Sherman indorsed the said note to the said Plaintiffs and then and there delivered the said note so indorsed as aforesaid to the said Plaintiffs therein and. Thereby ordered and appointed the said sum of money therein specified to be paid to the said plaintiffs according to the tenor and effect thereof. And the said Plaintiffs aver and in fact say that afterwards when the said note became due & payable the said note was duly presented for payment to the said Chicago Carriage & Wagon Factory & to the said A. Pierce President of the said Company or Corporation & that payment of said note or any part was neglected & refused whereupon a suit was duly instituted against the said Chicago Carriage & Wagon Factory by the said Sheldon Smith & Cornelius Van Storn who were the legal holders & owners of the said note in the Cook County Court of Common Pleas & that said suit was commenced

aver & presentment
for pay.

Suit brot

Judgt }

Ex. igne }

return }

Suit brot
in 2 years }

against said Company within one year after said Note became due and was duly prosecuted and judgment obtained therein against the said Chicago Carriage & Wagon Factory & in favor of the said Smith & the said Van Horn plaintiffs in this suit & that execution has been issued on said judgment & placed in the hands of the Sheriff of Cook County aforesaid & returned by the said Sheriff aforesaid in no part satisfied & that there is no property to be found in said County belonging to said Company whereon to levy execution - And the said plaintiffs further say that the said Ezra L Sherman at the time of the making of the said promissory note aforesaid to wit on the fourteenth day of May A.D. 1855 - to wit at Chicago aforesaid was a Stockholder and ever since has been a Stockholder in the said Chicago Carriage & Wagon Factory and then held and ever since has held large amount of Stock to wit One Thousand Dollars of Stock of said Company And that this suit was brought against the said Defendant Ezra L Sherman within two years from the time he ceased to be a Stockholder as aforesaid in said Company. And that the said Chicago Carriage & Wagon Factory was incorporated under an Act "To authorize the formation of Corporations for Manufacturing Agricultural Mining or Mechanical purposes" (Approved February tenth A.D. 1849) by the General Assembly of the

State of Illinois, and that said Company was organized to carry on business in the County of Cook aforesaid. And the said Plaintiffs further say that no Certificate stating the amount of Capital stock fixed and limited by said Company and paid in as required by the Eleventh Section of the above mentioned Act has been made by the President and Majority of Trustees of the said Corporation and recorded in the Office of the County Clerk of said County of Cook where the business of the said Company was and is carried on by means whereof and by force of the act last aforesaid the said Defendant became liable as such Stockholder to pay to the said Plaintiffs said Sum of money in the said promissory Note specified and being so liable to the said Defendant in consideration thereof afterwards to wit on the said fourteenth day of May A D 1855 - to wit at Chicago aforesaid - and do look to them and there faithfully promised the said Plaintiffs to pay them the said Sum of money in the said promissory Note specified according to the tenor and effect and the true intent & meaning thereof when to the said Defendant should be thereunto afterwards requested -

Nevertheless the said Defendant not regarding his said several promises & undertakings although often requested has not yet paid the said Sum of money in said Notes specified or any part thereof

to the said Plaintiffs the said Defendant
has hitherto altogether refused & still does
refuse to the damage of the said Plaintiffs
One Thousand Dollars & therefore the
said Plaintiffs bring suit &c.

P L Sherman
Atty for Plffs.

(Copy of Note declared on)

Chicago May 14th 1855 # 528.33

Six Months after date the Chicago
Carriage and Waggon Factory promise to
pay to the order of A Pierce Five Hundred
Twenty eight $\frac{33}{100}$ Dollars without defalcation
for value received payable at the Office Geo
Smith & Co with Exchange on New York.

(Signed) A Pierce President

Indorsed

A Pierce
E L Sherman.

P L Sherman
Plffs atty

And afterwards to wit on the
Seventh day of January in the year of
our Lord One Thousand Eight Hundred
and fifty seven the said E L Sherman
Defendant by Morris & Blackburne his
Attorneys filed in the Office of the Clerk
of the said Court his certain other
Demurrer, which said Demurrer is in
the words & figures following, to wit.

E L Sherman

advs

Assumpsit

Smith & Wauttorn

And the said Defendant again comes and says the first Count of the amended Declaration of said plaintiffs & the matters therein as above pleaded is not sufficient in law to maintain their said Suit against him Wherefore he prays Judgment &c And for causes of Demurrer shows to the Court here the following to wit.

1. For that no time is alleged in said Count when the pretended Suit therein mentioned was commenced, nor any time stated when said alleged judgment was had or obtained or at what term of the Court the same was rendered nor is the time stated when the alleged Execution was issued.
2. For that it is not averred in said Count that said alleged Suit was commenced at the first term of the Court of said County after said alleged note fell due - nor that due diligence was used in the institution & prosecution of said Suit to judgment and Execution.
3. For that is no averment of any legal or sufficient return of said alleged fieri-facias writ of Execution.
4. For that said Count of said Declaration is otherwise defective uncertain & insufficient to have or maintain the said Suit &c.

Morris H Blackburne
Defrs Atty.

And the said Defendant says the Second Count of said Declaration and the matters therein in manner & form above pleaded is not sufficient in the Law for the plaintiffs to have or maintain their said Suit against him and this he is ready to verify wherefore he prays judgment &

And for causes of Demurrer shows here to the Court the following - to wit -

- 1 For that there is no dates given in said Count of the times when said Suit in said Count stated was commenced or when the judgment was had or at what time nor at what time said writ of Execution was issued
- 2^d For that it is not averred in said Second Count that the execution was returned unsatisfied for want of property on which to levy the same nor, that none could be found in said County belonging to said Corporation.
- 3^d For that it is not averred in said Count that due diligence was used in the commencement & prosecution of the suit against the said Corporation for the recovery of the Amount of said Note of the said Corporation -
- 4th For that two pretended causes of action is set out in said Count - one as under & one as Stockholder & the said Count is double & is otherwise defective & insufficient

Morris Mackburne
for Defs -

25,

And afterwards to wit on the
thirtieth day of January in the year
last aforesaid the following among other
proceedings were had and entered of
Record in said Court to wit

Sheldon Smith et al

vs

Defendant.

Ezra L Sherman

This day come the
said plaintiffs by P L Sherman their
Attorney and the said Defendant by
B S Morris, ^{his Attorney} also comes And the Court
after hearing the argument of Counsel
on said Defendant's demurrer to said
Plaintiffs declaration herein being now
fully advised in the premises overrules
said Demurrer And on Motion of said
Plaintiffs it is ordered that the said
Defendant plead to said Plaintiffs
Declaration by Monday next.

And afterwards to wit on the
twenty eighth day of January in the
year last aforesaid the said Defendant
by Morris & Hackburne his Attorneys
filed in the Office of the Clerk of the
said Court his certain plea which
plea follows in the words and figures
following that is to say.

E L Sherman
 vs
 Smith & Austorn } assumpsit.

1 And the said Defendant comes
 & says he did not undertake or promise in manner
 & form as the said Plaintiffs have above thereof
 complained against him and of this he puts
 himself upon the Country - by Morris & Macburne
 his attys.

And the said Plaintiffs do the like

Sherman & thos

Plff attys

2 And the said Defendant for further
 plea to the second Count in the said
 Declaration mentioned says actio non
 because he says that the said Defendant
 was not and still is not Stockholder in
 the said alleged Chicago Carriage and
 Waggon Factory as alleged in said Count
 nor did he promise to pay this debt as
 alleged in said Count This he is ready to
 verify wherefore he prays Judgment &c

3 And for further plea to said second
 Count in this behalf said Deft says
 actio non, because he says that the
 said Note in said Count mentioned was
 made and given by the said Corporation
 in violation of the laws of this State and
 was & still is illegal void and this he is
 ready to verify wherefore he prays Judgment

by Morris & Macburne his

Attys

27.

State of Illinois
Cook County

E. L. Sherman makes
Oath & says he is advised by Counsel &
verily believes he has a good and substantial
defense to the above action
Subscribed & sworn to E. L. Sherman
before me Jan'y 28th
1857. W. Kimbale
Clerk.

And afterwards to wit on the
thirtieth day of February in the year
last aforesaid the said Plaintiffs by
Sherman & Hales their Attorneys filed
in the Office of the Clerk of the Court
aforesaid their Demurrer to the pleas
of the said Defendant which said
Demurrer is in the words and figures
following, to wit -

Cook County Court of Common Pleas

Sheldon Smith and (Of the February Term 1857.
Cornelius Vanstorn
vs
Ezra L. Sherman

And the said Plaintiffs as to the
said pleas of the said Defendant secondly
and thirdly above pleaded to the second
Count of said Pliffs declaration and each
of them, 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 them the said plaintiffs from having or maintaining their aforesaid action thereof in said Second Count of said declaration set forth against the said Defendant And that they the said plaintiffs are not bound by law to answer the same - And this the said plaintiffs are ready to verify wherefore by reason of the insufficiency of said pleas in this behalf the said plaintiffs pray judgment and their damages by reason of the not performing of the said several promises and undertakings in the said Second Count of said declaration mentioned to be adjudged to them &c.

And the said plaintiffs according to the form of the statute in such case made and provided states and shows the Court here the following causes of demurrer to the said Second and third pleas and each of them, that is to say.

That the said Defendant has not concluded his said plea or either of them by putting themselves upon the country &c.

That the said pleas and each of them amount to the General Issue; and also for that the said Defendant has not in and by his said third plea alleged or shown any matter of fact in avoidance of the said promise and undertaking of the said Defendant

29.

in the said Second Count of said declaration mentioned but that the said last mentioned plea consists altogether of matter of Law upon which no apt or material issue can be taken &c.

And also that the said pleas and each of them are in other respects uncertain informal and insufficient &c.

Sherman & Hall
Plffs Attys.

And afterwards to wit on the eleventh day of March in the year last aforesaid the same being one of the days of the February Term of said Court the following among other proceedings were had and entered of Record in said Court—

Sheldon Smith et al
vs
Ezra L Sherman
(Abumpsit.)

Demr Sustained.) And now Come the said plaintiffs by P. L. Sherman their Attorney and the said Defendant by B. S. Morris his Attorney also comes, And the said plaintiffs having filed herein his demurrer to Defendants' plea On argument thereof by Counsel and the Court now here being fully advised in the premises, it is ordered that the same be sustained—

And on Motion of plaintiffs by their said Attorney It is ordered

30th

That the said Defendant do file his pleas
in this Cause by Monday next -

And afterwards to wit on the sixteenth
day of March in the year last aforesaid
the said Defendant by Morris H Blackburn
his Attorney filed in the Office of the Clerk
of the said Court his certain amended
plea which is in the words and figures
following - that is to say.

E L Sherman
advs } Applicant.
Smith Houstorn

3^d (amended) Plea - And the said
Defendant Sherman for further plea
to the said Second Count of said Plaintiffs
declaration says Actio Non, because he
says that prior to the commencement of the
said suit against alleged corporations
and prior to the making of the said
alleged note in said Court mentioned
he the said Defendant actually paid
into said Chicago Carriage and
Waggon Factory Company the sum
of Fifteen Hundred Dollars in money
the amount in full of his Subscription
to the stock of said Company and this
he is ready to verify wherefore he prays
Judgment &c

4th And the said Defendant
for further plea to said Second

Count says Actio non, because he says that before the time of the making of said Note said Count Arret mentioned the whole amount of the Capital Stock fixed and limited by said Corporation was fully paid in by him and the other Stockholders in said Company and this he is ready to verify wherefore he prays Judgment &c. By Morris & Blackburne his attys
5.

And the said Defendant for further to said first Count says actio non because he says that said Note in said Count mentioned was not sued on within one year from the time the same became due and payable and this he is ready to verify wherefore he prays Judgment &c.

By Morris & Blackburne
his Attys.

And afterwards to wit on the third day of June in the year last aforesaid the said Plaintiffs by Sherman & Kales their Attorneys filed in the Office of the Clerk of the Court aforesaid their certain motion, which said motion is in the words and figures following to wit.

Cook County Court of Common Pleas.

Smith & Van Horn

Ayra L Sherman

(Office Special Term

A.D. 1857

And now comes the said Plaintiffs by Sherman & Hales their Attorneys and move the Court to strike from the file the certain pleas filed in the above cause March 16, 1857. pretending to be amended pleas, and numbered 3, 4 + 5 respectively; upon the following grounds to-wit: That on the 28th day of January 1857. the Defendant by Morris & Blackburne Attys. filed three several pleas in said cause and subsequently the plaintiffs demurred to the second + third of said pleas upon the grounds in the demurrer on file stated - And afterwards this Court sustained the demurrer + gave leave to the Defendant to file amended pleas &c. as will appear by reference to the Records of this Court.

And the Plaintiffs show as ground for striking said pretended amended pleas off the files of this Court that instead of the said pleas being amended pleas they are in fact new pleas and set up new and distinct defenses wholly different from the defenses attempted to be set up in the original pleas to which they purport to be amendments and are not in accordance with the rule of this Court in that behalf.

Sherman & Hales
Plffs Attys

33.

And afterwards to wit on the
ninth day of June in the year last
aforesaid the following among other
proceedings was had and entered of
Record in said Court to wit.

Sheldon Smith and
Cornelius Van Horn

Ezra L. Sherman

assumpsit.

And now at this day
come the said plaintiffs by P. L. Sherman
their Attorney And the said Defendant
by B. S. Morris his Attorney also comes ^(see margin) X
And on Argument Defendants Motion
entered herein for leave to file additional
pleas to said plaintiffs Declaration, the
Court now here being now fully advised in
the premises It is Ordered that Defendants
said motion be over ruled - to which ruling the said
Defendant enters his exceptions. And issue
being joined herein It is Ordered that a
Jury come and thereupon comes a Jury of good
and lawful Men, to wit.

E. R. Howland Stephen Moor A. B. Blumstein
S. Warner J. D. Carpenter Jas. Duffer
S. J. Gannis M. S. Nicholls Smith Beardslee
W. B. Hampton Z. A. Macomber M. W. Downs
who being duly elected tried and sworn
well and truly to try the issue joined ^{herein} as
aforesaid after hearing the allegations
and evidence adduced, the Arguments
of Counsel And the instructions of the
Court retire to consider of their Verdict

X And said Plaintiffs enter their motion herein to strike Defendants pleas as
amended pleas from the files, which motion is sustained by the Court, to
which Defendant excepts. - (Corrected by Clerk, J. W. Hubbard)

And afterwards the Jury come into Court and say
We the Jury do find the issue for the plaintiffs
and we assess said plaintiffs damages to the
sum of Five Hundred and Eighty two Dollars
and three Cents.

Motion for
New trial

overruled

And thereupon the said Defendant
enters his motion for a new trial of this Cause
on argument of which by the Counsel of the
said parties the Court being now fully
advised in the premises It is ordered
that Defendants said motion be overruled

\$ 582.03.

Therefore it is considered that
the said plaintiffs do have and recover
of the said Defendant their damages
of Five Hundred and Eighty two Dollars
and three Cents in form aforesaid by the
Jury here assessed and also their costs
and charges by them about this suit
in this behalf expended and have execution
therefor.

And thereupon the said Defendant
joins an Appeal to the Supreme Court of
the State of Illinois - which is allowed
on his filing an appeal Bond in the sum
of One Thousand Dollars with security
to be approved by the Judge of this Court
said Bond and Defendants Bill of
Exceptions to be filed in ten days -

And afterwards to wit on the
nineteenth day of June in the year last
aforesaid the said Defendant filed in the
Office of the Clerk of the said Court his certain
Bill of Exceptions, which said Bill of Exceptions

is in the words and figures following
that is to say.

Cook County Court of Common Pleas
June Special Term 1857.

Smith & Van Horn Plffs

vs

E L Sherman Deft

35.

Be it remembered that on the 3rd
day of June 1857. the plaintiffs moved the
Court to strike from the files certain of the
pleas of Defendants the notice of which motion
is in the words and figures following Viz:
Cook County Court of Common Pleas.

Smith & Van Horn

vs

Ezra L Sherman

{ Of June Special Term
AD. 1857.

And now come the said plaintiffs by
Sherman & Sales their Attorneys And
move the Court to strike from the file
the certain pleas filed in the above cause
March 16. 1857. pretending to be amended
pleas and numbered 3. 4 & 5 respectively;
upon the ^{following} grounds to wit That on the
28th day of January 1857 the Defendant
by Morris & Hackburn Attys. & filed
three several pleas in said Cause, and
subsequently the plaintiffs demurred to
the second & third of said Pleas upon
the grounds in the Demurrer on file
stated - And afterwards the Court

Sustained the Demurrer & gave leave to the Defendant to file amended pleas &c. as will appear by reference to the Records of this Court.

And the Plaintiffs show as ground for striking said pretended amended pleas off the files of this Court that instead of the said pleas being amended pleas they are in fact new pleas and set up new and distinct defenses wholly different from the defenses attempted to be set up in the original pleas to which they purport to be amendments And are not in accordance with the Rule of this Court in that behalf.

Sherman & Hall

Plffs Attys.

Which pleas are in the words and figures following. Viz.

E L Sherman

ad

Smith & Hartorn

Opusculit.

3 (amended) plea - And the said Defendant Sherman for further plea to the said Second Count of said Plaintiffs declaration says Actio non because he says that prior to the commencement of the said Suit against alleged Corporation and prior to the making of the said alleged note in said Count mentioned he the said Defendant actually paid in to

said Chicago Carriage and Wagon Factory Company the sum of Fifteen Hundred Dollars in money the amount in full of his Subscription to the stock of said Company and this he is ready to verify wherefore he prays Judgment &c.

4- And the said Defendant for further plea to said Second Count says Actio non because he says that that before the time of the making of said Note said Count Count mentioned, the whole amount of the Capital Stock fixed and limited by said Corporation was fully paid in by him and the other Stockholders in said Company and this he is ready to verify wherefore he prays Judgment &c.

By Morris & Blackburn his attys.

5- And the said Defendant for further to said first Count says Actio non because he says that said Note in said Count mentioned was not sued on within one year from the time the same became due and payable and this he is ready to verify wherefore he prays Judgment &c.

By Morris & Blackburn his attys.

which Motion on the calling of the Case for trial was sustained by the Court to which ruling of the Court the Defendant accepted and thereupon the Defendant asked leave of the Court to file said pleas in defence to the action, which leave was refused by the Court, to which Opinion

of the Court the deft. excepted and a Jury having been duly empanelled and sworn to try the issues in the Cause, the Plffs introduced Mr Kimball as a witness who testified that he was Clerk of the Cook County Court of Common Pleas - and that a Note with the endorsements thereon given by the Chicago Carriage and Wagon Factory and on which Judgment was rendered in this Court in a suit in the name of these Plffs agt. said Chicago carriage and Wagon factory as maker of said Note together with the proceedings of said Court from the commencement of said suit to the issuing of Execution and return thereof were of record in his said Court which Note with assignments and Judgment and proceedings including execution and return thereon were read to the Jury and are in the words and figures following to wit

Note referred to.

Chicago May 14th 1855 -

\$ 528 ^{33.}

Six Months after date the Chicago Carriage & Wagon Factory promise to pay to the Order of A. Pierce Five Thousand twenty eight ³³/₁₀₀ Dollars without defalcation for value received payable at the Office Geo Smith & Co with Exchange on New York.

A. Pierce President

Assignments referred to.

I hereby assign & transfer the within Note to E. L. Sherman or Order.

A. Pierce

Pay to Smith & Van Horn to whom I
hereby assign & transfer the within Note
E. L. Sherman.

39.

Judgment referred to

Seldon Smith Horrells Van Horn

vs

Chicago Carriage & Wagon Factory

Ap. 5.

This day come the said Plaintiffs
by Sherman & Bruer their Attorneys and it
appearing to the Court that due personal
service of process of Summons issued in this
cause has been had on Arthur S. Tucker
Secretary of the said Chicago Carriage &
Wagon Factory and the said Defendant
And said Arthur S. Tucker Secretary of said
Factory being three times solemnly called
in open Court comes not, nor does any
person for said Defendant It is therefore
On motion of said Plaintiffs Ordered
that the default of the said Defendant
be taken and the same is hereby entered
Wherefore the said Plaintiffs ought to
have and recover of the said Defendant
their damages herein sustained by occasion
of the premises And the Court after hearing
the allegations and proofs submitted by
said Plaintiffs being now fully advised
in the premises asep the said Plaintiffs
damages to the sum of five Hundred
and thirty eight Dollars and thirty
seven Cents —

Thurston

Therefore it is considered that the said Plaintiffs do have and recover of the said Defendant their damages of Five Hundred and thirty eight Dollars and thirty seven Cents in form aforesaid by the Court here assessed and also their Costs and Charges by them about their Suit in this behalf expended and have execution therefor.

Execution referred to.

State of Illinois (S.S.
County of Cook)

The people of the State of Illinois To the Coroner & acting Sheriff of said County Greeting -

We command you that if the Lands and Tenements Goods and Chattels of the Chicago Carriage & Wagon Factory Defendant in your County you cause to be made the Sum of Five Hundred & thirty eight Dollars and thirty seven Cents which Sheldon Smith and Cornelius Van Horn Plaintiffs lately in the Cook County Court of Common Pleas of said County at a term thereof begun and held at Chicago in said County on the first Monday of February A.D. 1856. recovered against the said Defendant and which by the said Court was adjudged to the said plaintiffs for their damages. And also the further Sum of nine

Exm.

41.

Dollars and twenty five Cents which were adjudged to the said Plaintiffs for their Costs and Charges in that behalf expended whereof the said Defendant was convicted as appears to us of Record. And have you these moneys ready to render to the said Plaintiffs for their damages and Costs aforesaid and make return of said writ with an endorsement thereon in what manner you shall have executed the same in ninety days from the date hereof.

Witness Walter Kimball Clerk
of our said Court and the seal
thereof at Chicago in said
County the 13th day of June
A.D. 1856 —

L.S.

Walter Kimball Clerk

Indorsement thereon.

Returns.

No property to be found in my County
belonging to the within named Chicago
Carriage & Waggon Factory whereon to
levy this writ. I therefore return it
no part satisfied August 9th 1856 —

James S Beach Coroner
Ex officio acting Sheriff
By F S Buckley
By Sheriff.

42.

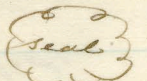
And said Kimball further testified that at the time when the said Execution issued and was returned with the endorsement thereon in what manner the same had been executed that James S. Beack was coroner and acting Sheriff of Cook County that F S Bulkley was at such times a deputy Sheriff of Cook County and that the return on said Execution was in the hand writing of said Bulkley and ^{Said} Kimball further testified that it was ^{at the time} when said Note so read in evidence became due, a custom at the several Banks in the City of Chicago, to allow three days grace on all notes payable at such Banks and that such was the custom at the Office of George Smith & Co where the Note in question was payable and that the Note in question would become due on the 17th day of November 1855. Said Kimball further testified that the said Suit against the Chicago Carriage & Wagon Factory was commenced at the first term of the Cook County Court of Common Pleas after the same became due and payable, to the introduction of Kimball as a witness and to his evidence and every part thereof Def^t objected which objection was overruled by the Court and the Defendant excepted, and it was agreed between the parties at bar that the exchange upon New York when the Note sued on became due was three fourths of one per cent and this was all the evidence in the Cause And thereupon and before the Jury retired the Defendant

moved the Court to reject and exclude from the jury said record as evidence for the following reasons Viz.

1st The Record of the Judgment (its amount) with the day of the rendition thereof as also the amount of the execution and date thereof are not stated in the Declaration

2^d The execution being directed to the Coroner and acting Sheriff it was not competent for a deputy Sheriff to ^{execute or} return the same which motion to reject and exclude the Record the Court refused and overruled and the Deft excepted to that Opinion of the Court and the Record was read as evidence to the jury who thereupon after consultation returned into Court their Verdict.

Whereupon the Defendant moved the Court for a new trial because the Court erred in refusing to reject and exclude said record of the proceedings and Judgment and execution and return thereon. which motion was overruled by the Court and judgment rendered, to the overruling of which last motion and rendering Judgment the Deft excepted and prays this his Bill of Exceptions may be signed sealed and made a part of the Record which is done —

John W. Wilson 

And afterwards to wit on the same day
and year last aforesaid the following, among
other proceedings was had and entered of
Record in said Court to wit.

44.

Sheldon Smith and
Cornelius Vant Horn } Assumpsit.
vs
Ezra L. Sherman }

And now comes the said
Defendant by B S Morris his Attorney
And on his motion it is ordered that the
time allowed him to file his appeal Bond
herein be extended ten days from this
day.

And afterwards to wit on the
twenty ninth day of June in the year
last aforesaid the said Defendant
filed in the Office of the Clerk of the
said Court his certain Appeal Bond
which said Bond is in the words
and figures following to wit—

Know all Men by these presents
that We Ezra L. Sherman and Charles V.
Dyer are held and firmly bound unto Smith
& Vant Horn in the sum of One Thousand
Dollars to the payment of which well and
truly to be made We bind ourselves our heirs &
jointly and severally firmly by these presents
signed and sealed this 26th day of June
1857.—

The Condition of the above Obligation is such that whereas said Smith & Van Horn did at the June Term of the Cook County Court of Common Pleas recover by the consideration and judgment of said Court against said Ezra L Sherman Five Hundred & 82 dollars and 83 Cents together with Costs of said Suit, from which Judgment said Sherman has prayed an appeal to the Supreme Court of the State of Illinois —

Now if said Sherman shall duly prosecute his said Appeal and shall pay said Judgment, Costs, interest and damages in case the Judgment shall be affirmed then this Obligation to be void, else to remain in full force and virtue —

Witness our hands and seals the date above written.

Appeared by me June 29th
1857.

E L Sherman (seal)
Chas V Dryer (seal)

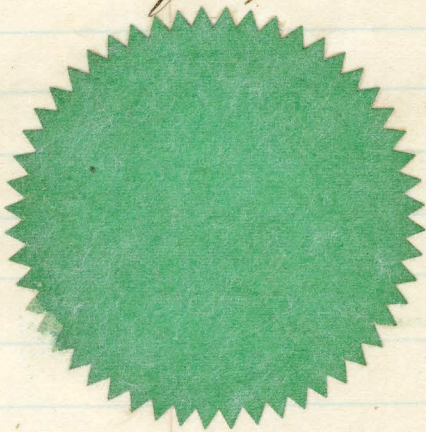
John M Wilson Judge
of the Court C^o C^o of C^o Pleas

State of Illinois
County of Cook

} S.S.

I Walter Kimball Clerk of Cook County Court of Common Pleas in and for said County, do hereby certify that the above and foregoing is a full and true transcript of all the papers on file in my office & of the proceedings entered of Record in said Court in the case in which Sheldon Smith and Cornelius Van Horn are plaintiffs

and Ezra L. Sherman is defendant in an action
of Assumpsit



In testimony whereof I hereunto
subscribe my name and affix the
Seal of said Court at the City of
Chicago in said County this 12th
day of April 1858
Walter Kimball Clerk

Ezra L. Sherman } Supreme Court of Illinois
 vs. } 3^d District.
 Mildon Smith & } Appeal from Cook
 Van Horn } County Court of Com. Pleas.

And the said Ezra L. Sherman
 appellant, by Morris his attorney, assigns for
 error to his prejudice in the foregoing and
 annexed Record as follows viz,

- First. That the Court below erred in over ruling
 the demurrer to the first count of the ^{amended} declaration.
- Second. The said Court erred in over ruling the demurrer
 to the second count of the ^{amended} declaration.
- Third. That said Court erred sustaining the Appellees
 demurrer to the Appellants ~~second~~ and ~~third~~ pleas.
- Fourth. The said Court erred in sustaining the Motion
 to strike Appellants several ^{to second count} pleas from the Record.
- Fifth. The said Court erred in over ruling the
 Appellants Motion for leave to file additional
 Pleas.
- Sixth. The said Court erred in allowing proof of the
 Custom of the Chicago Bankers extending three days
 of grace on notes after due at the time their note
 fell due.
- Seventh. The Court erred in allowing parol proof
 that the Note & Record of former judgment and
 proceedings, were the same Note & Record
 referred to in the declarations and in allowing
 such record record to be used in evidence.

Eighth. The said court erred in overruling Appellants Motion ~~for~~ to exclude the Panel & Record evidence, given in their cases by the Clerk Kimball.

Ninth. That the said court erred in overruling appellants Motions for a new trial in this cause.

Tenth. That the verdict of the jury & judgment thereon are severally erroneous & not warranted by law or the evidence in the cause.

Wherefore the Appellant prays said Judgment may be reversed with costs &c.

Monis & Blackwell attys
for appellant.

And the appellants by W^y Briggs
their attorney come & say there is
no error in

W. Y. Briggs

Eggs L. Sherman

vs. Appellee

Smith & Van Horn

Assignment of Errors

Filed April 23, 1858

A. Belmont

Clerk

Monis & Blackwell attys

In the Supreme court—

Ezra L. Sherman

app't

vs

Sheldon Smith &
Cornelius Van Horn
Appellus

Appeal from
Cm. Pleas.

The Bill of Exceptions states
that the clerk of the court had
the ~~record~~^{proceeding} of that court in the case
of said Smith & Van Horn vs The
Chicago carriage and wagon factory un-
read but does not furnish the
record thereof —
I desire a continuance
for that record.

W. J. Briggs

200-
205

Shuman

as

Smith et al

Motion for Continuance

Filed May 17, 1878

L. Leland
clerk

12/17/78

State of Illinois, ss.

Supreme Court, Third Grand Division, at Ottawa :

The People of the State of Illinois,

To the Clerk of the ^{Cook County} ~~Circuit~~ Court of ~~Common Pleas of Cook~~ County, GREETING :

WHEREAS, in a certain plea between *Sheldon Smith & Cornelius Van Horn* plaintiffs and *Ezra L. Sherman* defendant, lately depending in the ~~Circuit~~ ^{Cook} Court of said county, wherein judgment was rendered for the said *Plaintiff* and against the said *Defendant*

and the said *Defendant* took an appeal from the judgment of said Court, rendered against *him* as aforesaid, to the Supreme Court, held at Ottawa, on the *9th day of June 1857* and in pursuance of the said *appeal* a transcript of the record and the proceedings in the plea aforesaid was transmitted. And, also, whereas it hath been suggested, on the part of said

Appellants that the said record has been diminished, inasmuch as *the records & proceedings of that court in this case lately pending therein wherein said Smith & Van Horn were plaintiffs & The Chicago, & Western Railway, part of the bill of exceptions* hath not been sent up; and forasmuch as the said Supreme Court are not satisfied that there is a sufficient record sent in the plea aforesaid, but in the record there is a diminution: YOU ARE, THEREFORE, HEREBY COMMANDED, that, without delay, the said *records* therein you cause to be transmitted to the Supreme Court, ^{now in session} to be held at Ottawa, *on the further* next, without any diminution or addition whatsoever, to the end that speedy justice may be done in the premises, according to law; whereof you are in no wise to fail; and send you then there this writ.

WITNESS, the Hon. *John D. Baton* ~~SAMUEL H. TREAT~~, Chief Justice of said Court, and the seal thereof, at Ottawa, this *18th* day of *May* in the year of our Lord one thousand eight hundred and fifty- *eight*

L. Ireland Clerk of the Supreme Court.



2051

Sheldon Smith vs

or

Eyre & Sherman

Debtors

Filed May 21, 1858.
J. Delano Clk.

State of Illinois
Cook County

I Walter Kimball Clerk of the
Cook County Court of Common Pleas do in answer
to this writ, hereby transmit & certify to the Supreme
Court of the State of Illinois a true transcript
of the Record & proceedings of the case herein
named as I am in said writ commanded.

May 20 1858

Walter Kimball
Clerk

Ezra L. Sherman

vs

Smith + Van Horn

The Defendant below is sued as
endorser - the note was due Nov.
14/17 ¹⁸⁵⁶ - And the question is whether
suiting brought at the next term
after it became due under our
statute - There was a December
term of the Recorder's Court - And
a term of the Cook County Circuit
Court on the 3rd Monday of Nov.
(vide Laws 1853 - p - 172) -

We say it was necessary to
have sued it at the next term
of the Recorder's Court - The Court
will see by the laws of 1853 - p 150
sec 12 - there was a term of the Court
on the 1st Monday of December -
it is a Court of general juris-
diction on all sums within \$50,000 -
it answers to the old Municipal
Court of Chicago - and the Supreme
Court have decided that it is necessary
to sue & charge the endorser in that
Court -

2nd The Plaintiffs below should have sued at the November Term of the Circuit Court of Cook County - The Term of the Circuit Court as fixed by law (Laws 1853 p 172) on the 3rd Monday of Nov. this in 1856 came on

the note became due Nov. 14 1856 - No days of grace are allowed by law - No Custom at Smiths Bank will fix as law a custom - It must be general + uniform - and long Established - The testimony utterly fails to prove a custom.

But even for agreement admitted
to be established the notes became
due Nov. 14/17 - Consequently
it became due before the 3rd
Monday of November and
it was the duty of the holders
of the note to institute suit if
they would charge Sherman
as Endorser. It may be an-
swered that ten days did
not intervene between the notes
becoming due and the first day
of the term - This question is
not as we are aware settled
but we can not see that it makes
any difference - The defendant
might have entered his appearance
and especially on the defendant's
minor claim nothing from this
agreement for the reason that
though he sued in at the same
Term of another Court he
did not although no defence
was made obtain judgment
till the February Term of said
Court -

Again it can not be said
that the action was recovered
against the defendant as a

member of a Manufacturing Company - for there is no proof in the case that the Plaintiff was ever a Member of any such Company - which we think was necessary to be proved -

Again It cannot be contended that the makers of the note were insolvent - there is no proof of the insolvency.

Again - They failed to file a declaration at the January Term, and did not file a declaration till the February Term of the Cook County Court of Common Pleas - This was not using due diligence, says the Court in *Saunders vs O'Brian* "Due diligence does not consist in merely instituting suit against the maker and prosecuting it to judgment, if the assignee may stop when he has obtained judgment, the very object of the suit is defeated" - As is said in the syllabus of the case - In order to show diligence it is clearly the duty of the assignee to prove that within the County

where the suit was instituted
he had used all the means
within his power". The delay
of one term to commence suit
is fatal. It is no use to com-
mence a suit if not diligent-
ly prosecuted. It is not dil-
igently prosecuting a suit
to neglect for one term to file
a declaration. If you can
delay for one term, you can
on the same reason delay six-
& will any one pretend that
such delay would not dis-
charge the maker.

The suit must not only be
commenced at the first term
but must be prosecuted with
diligence. So in Bledson vs
Graves says Caton Judge -
"if the holder or any oppor-
tunity of collecting the money
of the maker before he proceeds
against the endorser he is
guilty of such laches as will
discharge the endorser". So
again in Porter v Walker the
Court remarks - the law re-
quires diligence not only

instituting the suit, but in
prosecuting it, it is not suf-
ficient that suit be comman-
ced at the first Term of the
proper Court - but judgment
must also be rendered at
that time - or if not such result
must not grow out of the
Plaintiff's negligence - He
must do every thing in his
power to entitle him to a jud-
gment - as by filing his dec-
laration with a copy of the note
sued on &c or he will be guilty
of negligence -

We find from the exami-
nation of the record that the suit
against the maker was commenced
23 of Dec 1835, & served December
28. By reference to the Almanac we
find that the Term commenced Janu-
ary 7, that being the first Monday of
January 1836, and that consequently Dec 28
was the last day of service & it was served
in time for that term, But not in time it
could make no difference, as it was not due diligence
to wait till Dec 25 1835 to commence suit

Samuel Waite & Son
Plaintiff in said Atty

1200-07

1898

~~Smith & Thompson~~

206

Edw L. Thompson
Appellant

vs.

Richard Smith &
Cornelius Van Horn
Appellees

from Cook Co. Common
Pleas Court

Filed April 26, 1898

L. Leland
Clerk

New Transit \$13.00

Chas. W. York

205
205

Sheldon Smith

Ezra L. Sherman²³

205

Sherman

12617

1858

Preserved