

No. 14390

# Supreme Court of Illinois

Ball

---

vs.

Miller.

---

STATE OF ILLINOIS,  
SUPREME COURT,  
THIRD GRAND DIVISION.

1830

No. ~~120~~ 139

*J. W. Middleton & Co., Stationers, 196 Lake St.*

*Ball*

*1869*

Supreme Court of the State of Illinois  
Third Grand Division.

Daniel H. Ball } April Term A.D. 1862  
vs }  
William A. Miller } Error to De Kalb County.

State of Illinois }  
De Kalb County } s.s.

John H. Ball being duly sworn on oath says, that from and since the assignment of said Daniel H. Ball to Samuel A. Downer in November A.D. 1860 this deponent has been acting as the agent of said Daniel H. Ball who is deponent's brother. That soon after the said assignment several judgments were entered up by confession in the De Kalb County Circuit Court against the said Daniel H. Ball and among others was the judgment upon which the writ of error in this case was issued, that this deponent was at the time of the rendition of the said judgments in the employment of E. S. Smith of Chicago. That said Daniel H. Ball employed said E. S. Smith to act as his attorney to stay and set aside said judgments, that said Daniel H. Ball then stated to this deponent and to said E. S. Smith that the the said judgment in favor of said William A. Miller and against said Daniel H. Ball was taken for a sum larger than the actual sum due the said Miller at the time of the rendition of said judgment, that said E. S. Smith did proceed to so act as the attorney of said Daniel H. Ball in the defence of said judgment, that soon after the taking of said judgment by said W<sup>m</sup>. A. Miller and as this

deponent believes some time in December A.D. 1860; said William A Miller filed in said De Kalb County Circuit Court a creditors bill against said Daniel H. Ball upon said judgment, and the said Daniel H. Ball also employed the said E. S. Smith to act as his Solicitor to defend against the same, and the said E. S. Smith proceeded to act and did act in the defence thereof at the request of said Daniel H. Ball and as this deponent believes entered his name upon the records of said court as the solicitor of said Daniel H. Ball in said suit by said Miller. That at the September term of the said De Kalb County Circuit Court for the year A.D. 1861, one J. J. McKinnon an employe of said E. S. Smith and an attorney and solicitor appeared in said Court last named in behalf of said E. S. Smith in said suits and among the other the suit in Chancery brought by said Miller to enforce collection of the judgment which is the basis of this action.

That again in the February term for the year A.D. 1862 One E. A. Stovess an attorney and Solicitor also an employe of said E. S. Smith appeared in said Court last named in behalf of said E. S. Smith in defence of said suits and of said cause in Chancery and had the same continued. Deponent further says that he deponent has frequently urged upon Mr Smith and his clerks to take the case to the Supreme Court.

This deponent further says that a few days before the present term of the said Supreme Court and during the

month of April last the said William  
a Miller applied to said Daniel H Ball  
to sign a paper authorizing Augustus  
M Harrington to dismiss this said cause  
that said Ball then refused and decli-  
ned to so to do,

John H. Ball

Subscribed and sworn to before  
me this 10<sup>th</sup> day of May A D  
1861. My hand and official  
seal Philip A. Hogan  
Notary Public





Daniel H. Ball  
- vs  
William A. Miller  
affidavit of  
John H. Ball

Filed May 10 1842

L. Leland  
Clerk

Refiled Apr 21 1843

L. Leland  
Clerk

State of Illinois  
Supreme Court Third Grand Division

"  
Daniel H Ball  
Plaintiff in Error

vs  
William A Miller  
Defendant in Error  
"

State of Illinois }  
Cook County ss }

Ezekiel S Smith  
being duly sworn doth depose and say that  
he was employed early in December Eighteen  
hundred and sixty by Daniel H Ball the  
plaintiff in this suit to defend him against  
a judgment entered in favor of said defen-  
dant and against him said Ball in the  
DeKalb County Circuit Court which had been  
entered upon Warrants of Attorney and obli-  
gations given to William H Allen, Deponent  
further says that said Daniel H Ball repeatedly  
declared to this affiant that there was not to  
exceed three hundred dollars or thereabouts  
due upon the obligations on which the judgment  
was entered, that Allen had been paid and  
had money and property to an amount suffi-  
-ent to discharge the debts to within that  
small amount, that such amount was to be  
allowed him in payment that Allen had  
transferred the obligations through Hopkins  
to Miller to avoid the payments, & set off so  
existing, that said Allen had been clerk for  
him said Ball for some time in merchandising  
and had turned against him and in the name  
of Miller whose agent he pretended to be to de-  
fraud him said Ball.

State of Illinois  
Supreme Court Third Grand Division

"  
Daniel H Ball  
Plaintiff in Error

vs  
William A Miller  
Defendant in Error  
"

State of Illinois }  
Cook County ss }

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to Miller to avoid the payments, & set off so  
existing, that said Allen had been clerk for  
him said Ball for some time in merchandising  
and had turned against him and in the name  
of Miller whose agent he pretended to be to de-  
fraud him said Ball.

This deponent further says that he directed his clerks to attend to said Ball's suit and such matter necessary to protect his rights against said Miller and Allen and for that purpose directed Mr. Haddock an attorney in deponent's employ to go to DeKalb County and attend the suit there, that after that time said proceeding from time to time has received attention from some one or more of the attorneys in the employ of this deponent, that a writ of Error has been taken on the Judgment in favor of said Miller to this Court by deponent's direction in furtherance of the rights of said Ball as instructed to do in the first instance by him, and that the same is being prosecuted by deponent's law firm accordingly.

This deponent further says that in the prosecution of the defence and rights of said Daniel H. Ball he has expended much time and money to protect his rights in the premises that no time since the employment has said Ball in any way directly or indirectly requested deponent to go no further in this matter, and not to defend his rights against said Miller nor not to prosecute the writ of Error to vacate the Judgment so wrongfully entered in the name of said Miller, This deponent further says that Daniel H. Ball in the commencement of this defence for him did as deponent understood make an affidavit of the facts as to the amount due upon said obligations to be as herein stated, that upon the representations of said Ball and at his request certain of his Creditors have obtained Judgments and have secured rights and liens upon the property in dispute and held by said Miller in his proceedings upon said Judgment, that said Creditors now have an interest

and a right as they believe in the premises and have proceeded in the Federal Court for the Northern District of Illinois by the request of Ball to secure the property in dispute and have expended considerable sums of money therein for the benefit of said Ball and his said Creditors.

This deponent further says that until quite recently this deponent has supposed that said Daniel H Ball was fully satisfied and desired the defeat of the proceedings of said Allen and said Miller, that recently & since the issuing the writ of error deponent has been informed that said Miller endeavoured to get said Ball to sign a writing stating that he Ball had no just defence to the Suit nor to the Judgment entered and authorising Millers attorney to withdraw the Suit in this Court, that said Ball declined to sign any such paper as it was not true that he had no just defence. This deponent now understands that said Ball has signed a paper stating that he did not authorise the writ of Error and withdrew the same, if such is the case it has been done by said Ball without any notice to this deponent and in fraud of his rights and the rights of Judgment Creditors of said Ball whose rights have attached by the proceedings instituted at the request of said Daniel H Ball, here in referred to.

This deponent further says that he has reason to believe and does believe that said Miller, Allen and said Daniel H Ball have recently entered into a conspiracy by which he said Ball will consent to proceedings against him and against his property upon Claims which he has sworn to be unjust

and fraudulently enforced against him for the purpose of preventing the creditors from reaching the same which creditors said Ball induced to expend money to defeat an unjust claim against him that the property might be applied upon bona fide debts, that to carry out such conspiracy said Ball signed the writing presented to this court by the attorney of said Miller

C. S. Smith

I appeared and sworn to before me at Chicago Ill on the 30<sup>th</sup> day of May 1858

Philip A. Hoyle  
Notary Public

45  
~~118~~ 139

D W Ball

vs  
W. A. Miller

affid-

Subscribed and sworn to before me  
J. Delaney  
Clerk

Refused Apr 21. 1863  
J. Delaney Clerk

Supreme Court of the  
State of Illinois  
Third Grand Division

April Term 1863.

Daniel H. Ball  
vs  
William A. Miller

Know all men by these presents, that I have made, constituted and appointed, and by these presents do make, constitute and appoint E. S. Smith my true and lawful Attorney irrevocably for me and in my name place and stead to prosecute the above entitled cause to a final decision, giving and granting unto my said Attorney full power and authority to do and perform all and every act and thing whatsoever, requisite and necessary to be done in said suit, with full power of substitution and revocation, hereby ratifying and confirming all that my said Attorney shall lawfully do or cause to be done by virtue hereof.

In Witness whereof, I have hereunto set my hand and seal the 22<sup>d</sup> day of April A. D. 1863.

Daniel H. Ball (Seal)

State of Illinois  
Cook County, City of Chicago } vs.

Miles Almy being duly sworn deposes and says that he is personally acquainted with Daniel H. Ball and that he saw him sign the above power of Attorney as his free act for the uses and purposes therein set forth.

Subscribed & sworn to before me  
the 23<sup>d</sup> day of April 1863

Philip A. Hays  
Notary Public

Miles Almy

State of Illinois )  
Cook County } ss

Miles Almy being duly sworn deposes and says that on the 22<sup>d</sup> day of April A.D. 1863 Daniel H. Ball told this deponent that he had executed a power of Attorney similar to the within about four weeks ago and gave it to his brother John H. Ball to deliver to E. S. Smith

This deponent further says that said John H. Ball about that time went to New York, without delivering said power of Attorney to said Smith & has not yet returned to this deponent's knowledge

Miles Almy

Subscribed and sworn  
to before me this 23<sup>d</sup>

day of April A.D. 1863

Philip A. Payne

Notary Public

Chicago Ill

45-139

Supreme Court of Illinois  
Third Grand Division

---

Daniel H. Hall.

Defendant in Error

vs

Miller

Plaintiff in Error

---

State of Illinois, ss.

Emery A. Starr, being duly sworn deposes and says: that in the month of 1862, he was present at the Circuit Court of DeKalb County for the purpose of defending two appeals and then pending and in which the said Daniel H. Hall was the defendant interested; that said suits were continued, and that this defendant attended said term at the urgent solicitation of John H. Hall the brother who claimed to act as the agent of said Daniel H. Hall; that this defendant had various interviews with said Daniel H. Hall, and was requested by him to examine the proposed verdict now here in this case, and if there were in the opinion of this defendant any grounds for reversing said judgment

to take a writ of Error to this Court, That  
this defendant examined said record  
and advised said Samuel H Ball  
that there were in his opinion Errors  
therein, and did thereupon ~~to~~ with  
the knowledge of said Ball and  
under his directions file a petition with  
the Clerk of said Court for a copy of  
said judgment record, and that said  
Ball stated to this defendant that  
he desired said judgment might be  
set aside for the purpose of enabling  
other Creditors, who had bills in  
chancery pending against him  
to enforce the lien upon his property  
of those bills, that after said petition  
was filed this defendant received a  
letter from said John H Ball, inquiring  
whether certain Errors had been assigned  
pointing out to this defendant grounds  
which he the said John H Ball  
considered as fatal to the judgment

Sworn & Subscribed  
before me this 17th day of  
May 1862  
S. S. Adams  
Clerk.

Samuel H. Ball

45 ~~48~~ 139

D<sup>o</sup> Ball

ms

W. A. Miller

aff. -

Given May 9. 1812

L. Jelaud

MS

Revised Apr 21. 1813

L. Jelaud MS

State of Illinois.  
Supreme Court 3<sup>d</sup> Grand Division.

Daniel H. Ball  
plaintiff in error  
vs  
William A. Miller  
defendant in error

State of Illinois }  
County of Cook } ss. John J. McKinnow having been  
duly sworn, doth depose & say he is an attorney in the  
employ of E. J. Smith Esq. Counsellor and attorney  
at law of Chicago in said County & State; that he  
attended the September of the Circuit Court for the  
County of DeKalb in the year A.D. 1861. for said  
Smith that among the suits then pending in  
said Court was a suit in Chancery by William  
A. Miller against Daniel H. Ball and Samuel  
Downer, his assignee for the benefit of creditors  
that said suit was upon a judgment <sup>entered</sup>  
in favor of said Miller upon two warrants of  
attorney. That said suit was defended by  
said Smith as attorney and Solicitor for  
said Ball & Downer, that this deponent  
understood the defence <sup>and object</sup> on the part of the  
defendants, was to defeat the judgment so  
entered in favor of said Miller and the  
proceedings thereon and that said Smith  
as attorney of said defendants was to take  
such steps as might be thought best to set  
aside the judgment and protect the rights  
of said Ball and this deponent also under-  
stood from one or both said defendants  
that the judgment had been entered for  
more than was due upon the obligations  
This deponent further says that said

Smith has since that time prosecuted  
the defence in the suit for said Ball  
& Downer, and has taken steps to set  
aside the judgment so entered in said  
Delaware Circuit Court against said Ball  
as a step necessary to successfully to  
defend the rights of said Ball as he  
was by the defendants employed and  
expected to do.

John J. McKinnon

Subscribed and sworn to before  
me this 3<sup>d</sup> day of May A.D.  
1862

Philip A. Hoyle  
Notary Public

45 748-139

D. Mc Ball

vs.  
W. A. Meller

Defendant

Filed May 9, 1862

L. Leland  
Clerk

Replied Apr 21, 1863

L. Leland  
Clerk

State of Illinois  
Supreme Court  
Third Grand Division

Daniel H Ball )  
Plff in Error )  
vs  
William A. Miller )

State of Illinois  
Cook County } ss.

Charles G. Haddock  
being duly sworn doth depose and say that  
during the year of 1860. I was in the employ  
of Ezekiel S. Smith, at his office in Chicago  
as an attorney at law. That on the Eighth day of  
December A.D. 1860 I went to the County of DeKalb in  
said State, to attend to a suit in Chancery between  
William A. Miller Complainant and Daniel H  
Ball & Samuel Downer defendants, on the part of  
said Ball and Downer, who had employed said  
Smith, to defend said suit,

That said proceedings in Chancery were on a  
judgment entered in said County of DeKalb  
upon Warrants of Attorney, in favor of said  
Miller in upon obligations given to one  
Allen. That deponent understood that the defendant  
claimed, that said judgment had been entered  
for more than was due: that a considerable  
portion of said debt had been paid to said  
Allen, that said Allen had, had property  
from said Ball, before the entry of said judgment  
to an amount, together with the payments to,  
nearly discharge the entire indebtedness, that  
said Allen had made transfers of said obligations  
and caused judgment to be entered in the name  
of said Miller, to prevent the allowance of the

of the off set. Said Miller being ~~then~~ absent  
from the State at the time, Deponent further  
says that he recollects that one point relied  
upon by the defendants Bull and Downer to  
defeat the proceedings of said Albert Miller, was  
the fact that one judgment had been rendered  
on two Warrants of Attorney - That the desire  
of said Bull was to defeat the judgment so  
Entered and the Bill in Chancery filed thereon,  
that said Bull had recently made an assignment  
for the benefit of his Creditors to said Downer, &  
as this deponent was informed was desirous of having  
his property Equitably distributed among his Creditors  
under the said assignment; and to defeat the  
fraudulent attempts of said Albert Miller  
Subsequent to the Eighth of December A.D. 1868  
I saw Daniel H. Bull, in said Smiths office  
quite frequently and heard him talking to said  
Smith about said suits and affairs  
And further deponent saith not

Charles Haddock

Subscribed and sworn to before  
me this 30<sup>th</sup> day of May A.D.  
1869 at Chicago Illinois

Witness my hand & official Seal

Thos A. Lyons  
Notary Public

45 ~~##8~~ 139

Dy6 Ball

as

W. A Miller

affil-

Filed May 9, 1862

J. Deland

CMR

Refiled Apr 21, 1863

J. Deland CMR

State of Illinois Supreme }  
Court Third Grand Division }

Daniel H. Ball } April term A.D. 1862  
vs }  
William A. Miller } Error to De Kalb County

I Daniel H. Ball the said —  
plaintiff in error do hereby certify that  
I have never authorized Ezekiel S. Smith  
or any other person or persons to take  
said cause to said Court or to cause a  
writ of error to be issued thereon and  
that the same has been prosecuted without  
my knowledge or approval  
Therefore I do hereby authorize and  
empower Augustus M. Harrington or his  
Substitute as my attorney to dismiss said  
cause from said Court  
Given April 26<sup>th</sup> 1862 Daniel H. Ball

State of Illinois }  
De Kalb County } & Charles W. Branch a Justice of  
the Peace in and for said County do hereby certify  
that Daniel H. Ball known to me as the real person  
who signed the foregoing instrument in writing  
appeared before me in person and acknowledged  
that he executed the same  
Kingston Ill April 26<sup>th</sup> 1862  
Charles W. Branch  
Justice of the Peace

Supreme Court of the State  
of Illinois.

I, Justices M. Armstrong on oath  
state that I am well acquainted  
with the hand writing of the  
Daniel H Ball her and  
that the same <sup>as appearing</sup> ~~is~~ <sup>in the</sup> ~~is~~ <sup>attached</sup>  
from signature as the  
~~same~~ appearing to the  
within power of attorney

Subscribed & sworn  
to before me at Pl.  
30. 1862 L. Leland  
Ck.

M. Armstrong

D H Ball

Wm A Miller

Power of  
attorney

Fris. Apr 30. 1862

L Leland  
clerk

Refiled April 21. 1863

L Leland Ck

Ball. Piffin Eva  
Miller " Diftin Eva

## Suggestions for Piffin Eva

The power of Attorney from  
Ball to prosecute this unit  
of Error has been subpoenaed  
will be here Thursday

2.

The power of Attorney produced  
by defendant Eva is simply  
a power to discuss the future  
but not the present.

3.

Edwards  
for Piffin Eva

45 139.

Dear H. Ball

Wm<sup>r</sup> A. Miller

Supper for  
Puffin Ems

Filed April 21, 1863,  
Leland  
Ch.

Supreme Court of Illinois  
Third Grand Division

David H. Ball

Plaintiff in Error

vs

William A. Miller

Defendant in Error

Error to Take

And the said defendant Miller  
comes & defends & says & i  
that there are no such errors  
of record appearing on either  
as are assigned & stated in  
the said assignment of errors  
herein. But said defendant  
avows & maintains, that the  
record & proceedings therein  
stated & recited are sufficient  
in law for him to have  
& maintain his judgment  
aforesaid. And therefore  
prays an affirmance of the  
same by this court

Thence & by his  
attorney

A. W. Armstrong

45 139 ~~148~~  
Sup let 3 d Grand  
Division

Ball  
Miller  
Joullin in Enns

Filed April 23 1862  
L. Leland  
Clerk.

Refiled Apr 21, 1863  
L Leland Me

IN THE  
**SUPREME COURT OF ILLINOIS,**  
 Third Grand Division.

April Term, A. D. 1862.

DANIEL H. BALL, Plaintiff in Error.	}	ERROR TO DEKALB CIRCUIT COURT.
WILLAM A MILLER, Defendant in Error.		

748-139

Filed June 29. 1862  
 L. P. Howard  
 Register of the Court  
 2nd Grand Div.

PLACITA.

Page 1

DECLARATION, promissory notes and warrants of attorney annexed thereto, and cognovit filed in the office of the clerk of said court, in vacation, after September term, to wit, on the first day of December, A. D. 1860.

*Declaration.*

1, 2, & 3

Declares in debt upon two writings obligatory, executed under seal by plaintiff in error to W. H. Allen, and by him endorsed to Rufus Hopkins, and by Hopkins endorsed to defendant in error.

*First Writing Obligatory.*

3, 4, 5, 6

Executed under seal by plaintiff in error, dated September 1st, 1860, for the payment, ninety days after date, to William H. Allen for sixteen hundred and four dollars and

thirty-four cents with ten per cent. interest, and if not paid when due, with two per cent. per month damages, until paid.

4 *Warrant of Attorney.*

States that plaintiff in error is indebted to William H. Allen, on above note, for sixteen hundred and four dollars and thirty-four cents; recites the terms of the note and authorizes any attorney of any court of record, to "sign a cognovit confessing a judgment in favor of said W. H. Allen or his assignee, upon said note for the above sum with interest and damages at the rate aforesaid, if said note is not paid on the day when it became due; together with all costs, also the sum of ten dollars, as attorney's fee, for entering up said judgment, and also to file a cognovit for the amount that may be unpaid, and to release all errors," &c., &c.

7 *Affidavit of Wm. H. Allen.*

Swears to the signature of plaintiff in error, to said note and power of attorney.

7 *Assignment of Wm. H. Allen.*

Assigning above note without recourse to Rufus Hopkins.

7 *Assignment of Rufus Hopkins.*

Assigning said note to defendant in error without recourse.

7, 8 *Second Obligation in writing.*

Executed under seal by plaintiff in error, dated September 1st, 1860, promising to pay W. H. Allen six hundred and ninety-five dollars and forty-five cents with ten per cent. interest, and if not paid when due, with interest at two per cent. per month until paid, as damages for non-

payment, and authorizing any attorney "to confess judgment in favor of the holder hereof for the amount then due and costs, with ten dollars attorney fees, and to consent to immediate issue of execution," &c., &c.

*Affidavit of W. H. Allen.*

8

Swears to the signature of plaintiff in error, to above note and power of attorney.

*Assignment of W. H. Allen.*

9

Assigns the above note, without recourse, to Rufus Hopkins.

*Assignment of Rufus Hopkins.*

9

Assigns above note to defendant in error, without recourse.

*Cognovit.*

9, 10

Admits that plaintiff in error, "executed the writing obligatory in the said plaintiff's (defendant in error) declaration mentioned, and says: "That the said sum of twenty-two hundred and ninety-nine dollars and seventy-nine cents is justly due," and admits damages "including the sum of twenty dollars for his reasonable attorney's fees for entering this judgment, over and above his other costs and charges by him in this behalf expended to the amount and of sum seventy-seven dollars and forty-nine cents," &c., &c.

*Judgment Entry.*

11

Recites, that on December 1st, A. D. 1860, plaintiff filed his declaration, in an action of trespass on the case, on promises, against the said defendant, and also a warrant of attorney sealed by said defendant, the execution of which is duly proven, authorizing the confession of judgment against said defendant, in favor of said plaintiff, for the amount due upon a certain prommissory note, annexed to said warrant of attorney, also for the sum of twenty dollars,

attorney's fees, besides costs of suit; that defendant's attorney files cognovit, &c.

"It is, therefore, considered and ordered by the court that the said plaintiff have and recover of the said defendant his debt and damages to the said sum of two thousand three hundred and seventy-seven dollars and twenty-eight cents so as aforesaid confessed; together with his costs and charges by him, about his suit on this behalf expended, and that he have execution for the same."

12

*Certificate of Clerk.*

#### ASSIGNMENT OF ERRORS.

1. The court erred in entering the judgment in an action of debt, for the aggregate of principal, interest and attorney's fee, without specifying the amount of either the debt or damages.

2. The court erred in entering the judgment for a greater sum than appeared by computation to be due and owing, at the time upon the obligations declared on.

3. Neither of the warrants of attorney, annexed to the obligations upon which the judgment was entered, authorized the confession of a judgment for so large an amount as entered.

4. The court erred in entering judgment in favor of the above named defendant in error, upon the obligations described in his declaration.

5. The court erred in entering the judgment upon two obligations, to each of which was annexed a warrant of attorney, authorizing a confession of judgment upon that obligation *only*, annexed to such warrant of attorney.

6. ~~The~~ <sup>the</sup> proof of the execution of the obligations, upon which the judgment was rendered, was not sufficient to warrant the entering of the judgment at the time, and in the manner and form as entered.

E. S. SMITH, HART & CLYDE,

*For Plaintiff in Error.*

IN THE  
SUPREME COURT OF ILLINOIS,  
Third Grand Division.

April Term, A. D. 1862.

DANIEL H. BALL,  
Plaintiff in Error.

vs.

<sup>I</sup>  
WILLIAM A MILLER,  
Defendant in Error.

ERROR TO  
DEKALB CIRCUIT COURT.

PLACITA.

Page 1

DECLARATION, promissory notes and warrants of attorney annexed thereto, and cognovit filed in the office of the clerk of said court, in vacation, after September term, to wit, on the first day of December, A. D. 1860.

*Declaration.*

1, 2, & 3

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*First Writing Obligatory.*

3, 4, 5, 6

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#77 139

Filed April 29. 1862  
Refiled April 1862  
J. H. Allen M. Clerk.

thirty-four cents with ten per cent. interest, and if not paid when due, with two per cent. per month damages, until paid.

4 *Warrant of Attorney.*

States that plaintiff in error is indebted to William H. Allen, on above note, for sixteen hundred and four dollars and thirty-four cents; recites the terms of the note and authorizes any attorney of any court of record, to "sign a cognovit confessing a judgment in favor of said W. H. Allen or his assignee, upon said note for the above sum with interest and damages at the rate aforesaid, if said note is not paid on the day when it became due; together with all costs, also the sum of ten dollars, as attorney's fee, for entering up said judgment, and also to file a cognovit for the amount that may be unpaid, and to release all errors," &c., &c.

7 *Affidavit of Wm. H. Allen.*

Swears to the signature of plaintiff in error, to said note and power of attorney.

7 *Assignment of Wm. H. Allen.*

Assigning above note without recourse to Rufus Hopkins.

7 *Assignment of Rufus Hopkins.*

Assigning said note to defendant in error without recourse.

7, 8 *Second Obligation in writing.*

Executed under seal by plaintiff in error, dated September 1st, 1860, promising to pay W. H. Allen six hundred and ninety-five dollars and forty-five cents with ten per cent. interest, and if not paid when due, with interest at two per cent. per month until paid, as damages for non-

*Handwritten notes in left margin:*  
copy of original  
copy of original  
copy of original  
copy of original  
copy of original  
copy of original  
copy of original  
copy of original  
copy of original  
copy of original

*Handwritten initials in right margin:*  
ca  
H

payment, and authorizing any attorney "to confess judgment in favor of the holder hereof for the amount then due and costs, with ten dollars attorney fees, and to consent to immediate issue of execution," &c., &c.

*Affidavit of W. H. Allen.*

8

Swears to the signature of plaintiff in error, to above note and power of attorney.

*Assignment of W. H. Allen.*

9

Assigns the above note, without recourse, to Rufus Hopkins.

*Assignment of Rufus Hopkins.*

9

Assigns above note to defendant in error, without recourse.

*Cognovit.*

9, 10

Admits that plaintiff in error, "executed the writing obligatory in the said plaintiff's (defendant in error) declaration mentioned, and says: "That the said sum of twenty-two hundred and ninety-nine dollars and seventy-nine cents is justly due," and admits damages "including the sum of twenty dollars for his reasonable attorney's fees for entering this judgment, over and above his other costs and charges by him in this behalf expended to the amount and of sum seventy-seven dollars and forty-nine cents," &c., &c.

*Judgment Entry.*

11

Recites, that on December 1st, A. D. 1860, plaintiff filed his declaration, in an action of trespass on the case, on promises, against the said defendant, and also a warrant of attorney sealed by said defendant, the execution of which is duly proven, authorizing the confession of judgment against said defendant, in favor of said plaintiff, for the amount due upon a certain promissory note, annexed to said warrant of attorney, also for the sum of twenty dollars,

attorney's fees, besides costs of suit; that defendant's attorney files cognovit, &c.

"It is, therefore, considered and ordered by the court that the said plaintiff have and recover of the said defendant his debt and damages to the said sum of two thousand three hundred and seventy-seven dollars and twenty-eight cents so as aforesaid confessed; together with his costs and charges by him, about his suit on this behalf expended, and that he have execution for the same."

12

*Certificate of Clerk.*

#### ASSIGNMENT OF ERRORS.

1. The court erred in entering the judgment in an action of debt, for the aggregate of principal, interest and attorney's fee, without specifying the amount of either the debt or damages.

2. The court erred in entering the judgment for a greater sum than appeared by computation to be due and owing, at the time upon the obligations declared on.

3. Neither of the warrants of attorney, annexed to the obligations upon which the judgment was entered, authorized the confession of a judgment for so large an amount as entered.

4. The court erred in entering judgment in favor of the above named defendant in error, upon the obligations described in his declaration.

5. The court erred in entering the judgment upon two obligations, to each of which was annexed a warrant of attorney, authorizing a confession of judgment upon that obligation *only*, annexed to such warrant of attorney.

6. <sup>The</sup> proof of the execution of the obligations, upon which the judgment was rendered, was not sufficient to warrant the entering of the judgment at the time, and in the manner and form as entered.

E. S. SMITH, HART & CLYDE,

*For Plaintiff in Error.*

IN THE  
SUPREME COURT OF ILLINOIS,  
Third Grand Division.

April Term, A. D. 1862.

DANIEL H. BALL,  
Plaintiff in Error.

vs.

<sup>I</sup>  
WILLIAM A MILLER,  
Defendant in Error.

ERROR TO  
DEKALB CIRCUIT COURT.

PLACITA.

Page 1

DECLARATION, promissory notes and warrants of attorney annexed thereto, and cognovit filed in the office of the clerk of said court, in vacation, after September term, to wit, on the first day of December, A. D. 1860.

*Declaration.*

1, 2, & 3

Declares in debt upon two writings obligatory, executed under seal by plaintiff in error to W. H. Allen, and by him endorsed to Rufus Hopkins, and by Hopkins endorsed to defendant in error.

*First Writing Obligatory.*

3, 4, 5, 6

Executed under seal by plaintiff in error, dated September 1st, 1860, for the payment, ninety days after date, to William H. Allen for sixteen hundred and four dollars and

Filed April 28<sup>th</sup> 1862  
Filed April 1<sup>st</sup> 1863  
L. P. Leonard  
D. DeKalb C. M. & C. K.

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~~778~~

thirty-four cents with ten per cent. interest, and if not paid when due, with two per cent. per month damages, until paid.

4 *Warrant of Attorney.*

States that plaintiff in error is indebted to William H. Allen, on above note, for sixteen hundred and four dollars and thirty-four cents; recites the terms of the note and authorizes any attorney of any court of record, to "sign a cognovit confessing a judgment in favor of said W. H. Allen or his assignee, upon said note for the above sum with interest and damages at the rate aforesaid, if said note is not paid on the day when it became due; together with all costs, also the sum of ten dollars, as attorney's fee, for entering up said judgment, and also to file a cognovit for the amount that may be unpaid, and to release all errors," &c., &c.

7 *Affidavit of Wm. H. Allen.*

Swears to the signature of plaintiff in error, to said note and power of attorney.

7 *Assignment of Wm. H. Allen.*

Assigning above note without recourse to Rufus Hopkins.

7 *Assignment of Rufus Hopkins.*

Assigning said note to defendant in error without recourse.

7, 8 *Second Obligation in writing.*

Executed under seal by plaintiff in error, dated September 1st, 1860, promising to pay W. H. Allen six hundred and ninety-five dollars and forty-five cents with ten per cent. interest, and if not paid when due, with interest at two per cent. per month until paid, as damages for non-

payment, and authorizing any attorney "to confess judgment in favor of the holder hereof for the amount then due and costs, with ten dollars attorney fees, and to consent to immediate issue of execution," &c., &c.

*Affidavit of W. H. Allen.*

8

Swears to the signature of plaintiff in error, to above note and power of attorney.

*Assignment of W. H. Allen.*

9

Assigns the above note, without recourse, to Rufus Hopkins.

*Assignment of Rufus Hopkins.*

9

Assigns above note to defendant in error, without recourse.

*Cognovit.*

9, 10

Admits that plaintiff in error, "executed the writing obligatory in the said plaintiff's (defendant in error) declaration mentioned, and says: "That the said sum of twenty-two hundred and ninety-nine dollars and seventy-nine cents is justly due," and admits damages "including the sum of twenty dollars for his reasonable attorney's fees for entering this judgment, over and above his other costs and charges by him in this behalf expended to the amount and of sum seventy-seven dollars and forty-nine cents.," &c., &c.

*Judgment Entry.*

11

Recites, that on December 1st, A. D. 1860, plaintiff filed his declaration, in an action of trespass on the case, on promises, against the said defendant, and also a warrant of attorney sealed by said defendant, the execution of which is duly proven, authorizing the confession of judgment against said defendant, in favor of said plaintiff, for the amount due upon a certain prommissory note, annexed to said warrant of attorney, also for the sum of twenty dollars,

attorney's fees, besides costs of suit; that defendant's attorney files cognovit, &c.

"It is, therefore, considered and ordered by the court that the said plaintiff have and recover of the said defendant his debt and damages to the said sum of two thousand three hundred and seventy-seven dollars and twenty-eight cents so as aforesaid confessed; together with his costs and charges by him, about his suit on this behalf expended, and that he have execution for the same."

12

*Certificate of Clerk.*

#### ASSIGNMENT OF ERRORS.

1. The court erred in entering the judgment in an action of debt, for the aggregate of principal, interest and attorney's fee, without specifying the amount of either the debt or damages.

2. The court erred in entering the judgment for a greater sum than appeared by computation to be due and owing, at the time upon the obligations declared on.

3. Neither of the warrants of attorney, annexed to the obligations upon which the judgment was entered, authorized the confession of a judgment for so large an amount as entered.

4. The court erred in entering judgment in favor of the above named defendant in error, upon the obligations described in his declaration.

5. The court erred in entering the judgment upon two obligations, to each of which was annexed a warrant of attorney, authorizing a confession of judgment upon that obligation *only*, annexed to such warrant of attorney.

6. <sup>the</sup> ~~the~~ proof of the execution of the obligations, upon which the judgment was rendered, was not sufficient to warrant the entering of the judgment at the time, and in the manner and form as entered.

E. S. SMITH, HART & CLYDE,

*For Plaintiff in Error.*

IN THE  
SUPREME COURT OF ILLINOIS,  
Third Grand Division.

April Term, A. D. 1862.

DANIEL H. BALL,  
Plaintiff in Error.

vs.

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I  
WILLIAM A MILLER,  
Defendant in Error.

ERROR TO  
DEKALB CIRCUIT COURT.

PLACITA.

Page 1

DECLARATION, promissory notes and warrants of attorney annexed thereto, and cognovit filed in the office of the clerk of said court, in vacation, after September term, to wit, on the first day of December, A. D. 1860.

*Declaration.*

1, 2, & 3

Declares in debt upon two writings obligatory, executed under seal by plaintiff in error to W. H. Allen, and by him endorsed to Rufus Hopkins, and by Hopkins endorsed to defendant in error.

*First Writing Obligatory.*

3, 4, 5, 6

Executed under seal by plaintiff in error, dated September 1st, 1860, for the payment, ninety days after date, to William H. Allen for sixteen hundred and four dollars and

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Filed 11/29/1862  
Rufus Hopkins  
W. H. Allen  
S. Edwards Clerk.

thirty-four cents with ten per cent. interest, and if not paid when due, with two per cent. per month damages, until paid.

4      *Warrant of Attorney.*

States that plaintiff in error is indebted to William H. Allen, on above note, for sixteen hundred and four dollars and thirty-four cents; recites the terms of the note and authorizes any attorney of any court of record, to "sign a cognovit confessing a judgment in favor of said W. H. Allen or his assignee, upon said note for the above sum with interest and damages at the rate aforesaid, if said note is not paid on the day when it became due; together with all costs, also the sum of ten dollars, as attorney's fee, for entering up said judgment, and also to file a cognovit for the amount that may be unpaid, and to release all errors," &c., &c.

7      *Affidavit of Wm. H. Allen.*

Swears to the signature of plaintiff in error, to said note and power of attorney.

7      *Assignment of Wm. H. Allen.*

Assigning above note without recourse to Rufus Hopkins.

7      *Assignment of Rufus Hopkins.*

Assigning said note to defendant in error without recourse.

7, 8      *Second Obligation in writing.*

Executed under seal by plaintiff in error, dated September 1st, 1860, promising to pay W. H. Allen six hundred and ninety-five dollars and forty-five cents with ten per cent. interest, and if not paid when due, with interest at two per cent. per month until paid, as damages for non-

payment, and authorizing any attorney "to confess judgment in favor of the holder hereof for the amount then due and costs, with ten dollars attorney fees, and to consent to immediate issue of execution," &c., &c.

*Affidavit of W. H. Allen.*

8

Swears to the signature of plaintiff in error, to above note and power of attorney.

*Assignment of W. H. Allen.*

9

Assigns the above note, without recourse, to Rufus Hopkins.

*Assignment of Rufus Hopkins.*

9

Assigns above note to defendant in error, without recourse.

*Cognovit.*

9, 10

Admits that plaintiff in error, "executed the writing obligatory in the said plaintiff's (defendant in error) declaration mentioned, and says: "That the said sum of twenty-two hundred and ninety-nine dollars and seventy-nine cents is justly due," and admits damages "including the sum of twenty dollars for his reasonable attorney's fees for entering this judgment, over and above his other costs and charges by him in this behalf expended to the amount and of sum seventy-seven dollars and forty-nine cents," &c., &c.

*Judgment Entry.*

11

Recites, that on December 1st, A. D. 1860, plaintiff filed his declaration, in an action of trespass on the case, on promises, against the said defendant, and also a warrant of attorney sealed by said defendant, the execution of which is duly proven, authorizing the confession of judgment against said defendant, in favor of said plaintiff, for the amount due upon a certain promissory note, annexed to said warrant of attorney, also for the sum of twenty dollars,

attorney's fees, besides costs of suit; that defendant's attorney files cognovit, &c.

"It is, therefore, considered and ordered by the court that the said plaintiff have and recover of the said defendant his debt and damages to the said sum of two thousand three hundred and seventy-seven dollars and twenty-eight cents so as aforesaid confessed; together with his costs and charges by him, about his suit on this behalf expended, and that he have execution for the same."

12

*Certificate of Clerk.*

#### ASSIGNMENT OF ERRORS.

**1.** The court erred in entering the judgment in an action of debt, for the aggregate of principal, interest and attorney's fee, without specifying the amount of either the debt or damages.

**2.** The court erred in entering the judgment for a greater sum than appeared by computation to be due and owing, at the time upon the obligations declared on.

**3.** Neither of the warrants of attorney, annexed to the obligations upon which the judgment was entered, authorized the confession of a judgment for so large an amount as entered.

**4.** The court erred in entering judgment in favor of the above named defendant in error, upon the obligations described in his declaration.

**5.** The court erred in entering the judgment upon two obligations, to each of which was annexed a warrant of attorney, authorizing a confession of judgment upon that obligation *only*, annexed to such warrant of attorney.

**6.** <sup>The</sup> proof of the execution of the obligations, upon which the judgment was rendered, was not sufficient to warrant the entering of the judgment at the time, and in the manner and form as entered.

E. S. SMITH, HART & CLYDE,

*For Plaintiff in Error.*

STATE OF ILLINOIS, }  
SUPREME COURT, }

ss. The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of De Kalb Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Courts of De Kalb County, before the Judge thereof, between William A. Miller

complainant, and Daniel H. Ball

defendant, it is said manifest error hath intervened, to the injury of the aforesaid Daniel H. Ball

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

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this fourth day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty three.

L. Selind  
Clerk of the Supreme Court.  
J. B. Rice Deputy



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*Bull*

No.

128.

*Miller*

**WRIT OF ERROR.**

FILED

*Apr. 4,*

A. D. 1863

*S. Seland*

*Clerk.*



Supreme Court of Illinois  
Third and District  
April Term AD 1863

Samuel H. Bell  
Plff in Error

vs  
William A. Miller  
Defendant in Error.

To Lorenzo Keland Esq  
Clerk Supreme Court Ills  
Third and District  
Ottawa Ills

Please give a writ of Error in  
above cause to DeKalb County  
Ancient Court, also send papers to  
you.

Chicago April 3, 1863

Smith Hart & Clyde  
Attys for Plff in Error

45 Ball 139

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Miller

Receipt

Filed April 4<sup>th</sup> 1863  
L. Leland  
Clerk

STATE OF ILLINOIS,  
SUPREME COURT.

ss. The People of the State of Illinois,

To the Sheriff of De Kalb County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Court of De Kalb County, before the Judge thereof, between William A. Miller

plaintiff, and Daniel H. Ball

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

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

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April A.D. 1823 ~~next~~ to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said William A. Miller

notice, together with this writ.

Witness, The Hon. John W. Paton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this fourth day of April in the year of our Lord One Thousand Eight Hundred and Sixty-Two.

L. Leland

Clerk of the Supreme Court.

J. D. Rice

457  
139

~~William A. Pass~~

Samuel H. Ball

No. VS.

William A. Miller

SCIRE FACIAS.

Filed April 13 1866 A. D.

A. DeLoe Clerk.

E. S. Smith

attorney for Miller in this

I have served this writ by reading the same to the within named William A. Miller this seventh day of April 1866  
Cherry Bay Low Sheriff

service fee 50  
compensation 3.10  
return 1.00  
\$3.60

Received Payment of ——— E. S. Smith  
Plff. Atty



STATE OF ILLINOIS,  
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of De Kalb County, GREETING:

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of De Kalb County, before the Judge thereof, between

William A. Miller

plaintiff, and

Daniel H. Ball

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

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

William A. Miller

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

William A. Miller

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 3 day of April in the year of our Lord One Thousand Eight Hundred and Sixty-two.

L. Seland

Clerk of the Supreme Court.

James H. Ball

No. 445 VS.

William A. Miller

SOIRE FACIAS.

Filed... April 23<sup>d</sup> 1862 A. D. 1862

J. Ireland Clerk.

Replied Apr 21, 1862

J. Deane

I have served the within writ by reading  
the same to William A. Miller April 11<sup>th</sup> 1862  
Baldwin Woodenoff Sheriff  
by R. C. Woodenoff Deput Sheriff

Service	2	50	
Mileage	22	50	
Ret	1	00	
	\$28	50	Sheriff's fee
			R <sup>d</sup> by Ref's atty

IN THE  
SUPREME COURT OF ILLINOIS,  
Third Grand Division.

April Term, A. D. 1862.

DANIEL H. BALL,  
Plaintiff in Error.

vs.

WILLIAM A MILLER,  
Defendant in Error.

ERROR TO  
DEKALB CIRCUIT COURT.

PLACITA.

Page 1

DECLARATION, promissory notes and warrants of attorney annexed thereto, and cognovit filed in the office of the clerk of said court, in vacation, after September term, to wit, on the first day of December, A. D. 1860.

*Declaration.*

1, 2, & 3

Declares in debt upon two writings obligatory, executed under seal by plaintiff in error to W. H. Allen, and by him endorsed to Rufus Hopkins, and by Hopkins endorsed to defendant in error.

*First Writing Obligatory.*

3, 4, 5, 6

Executed under seal by plaintiff in error, dated September 1st, 1860, for the payment, ninety days after date, to William H. Allen for sixteen hundred and four dollars and

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*Filed April 29, 1862*  
*Refused Apr. 1863*  
*L. P. Selman*  
*Att.*  
*J. Selman*  
*Mc*

thirty-four cents with ten per cent. interest, and if not paid when due, with two per cent. per month damages, until paid.

4 *Warrant of Attorney.*

States that plaintiff in error is indebted to William H. Allen, on above note, for sixteen hundred and four dollars and thirty-four cents; recites the terms of the note and authorizes any attorney of any court of record, to "sign a cognovit confessing a judgment in favor of said W. H. Allen or his assignee, upon said note for the above sum with interest and damages at the rate aforesaid, if said note is not paid on the day when it became due; together with all costs, also the sum of ten dollars, as attorney's fee, for entering up said judgment, and also to file a cognovit for the amount that may be unpaid, and to release all errors," &c., &c.

7 *Affidavit of Wm. H. Allen.*

Swears to the signature of plaintiff in error, to said note and power of attorney.

7 *Assignment of Wm. H. Allen.*

Assigning above note without recourse to Rufus Hopkins.

7 *Assignment of Rufus Hopkins.*

Assigning said note to defendant in error without recourse.

7, 8 *Second Obligation in writing.*

Executed under seal by plaintiff in error, dated September 1st, 1860, promising to pay W. H. Allen six hundred and ninety-five dollars and forty-five cents with ten per cent. interest, and if not paid when due, with interest at two per cent. per month until paid, as damages for non-

payment, and authorizing any attorney "to confess judgment in favor of the holder hereof for the amount then due and costs, with ten dollars attorney fees, and to consent to immediate issue of execution," &c., &c.

*Affidavit of W. H. Allen.*

8

Swears to the signature of plaintiff in error, to above note and power of attorney.

*Assignment of W. H. Allen.*

9

Assigns the above note, without recourse, to Rufus Hopkins.

*Assignment of Rufus Hopkins.*

9

Assigns above note to defendant in error, without recourse.

*Cognovit.*

9, 10

Admits that plaintiff in error, "executed the writing obligatory in the said plaintiff's (defendant in error) declaration mentioned, and says: "That the said sum of twenty-two hundred and ninety-nine dollars and seventy-nine cents is justly due," and admits damages "including the sum of twenty dollars for his reasonable attorney's fees for entering this judgment, over and above his other costs and charges by him in this behalf expended to the amount and of sum seventy-seven dollars and forty-nine cents," &c., &c.

*Judgment Entry.*

11

Recites, that on December 1st, A. D. 1860, plaintiff filed his declaration, in an action of trespass on the case, on promises, against the said defendant, and also a warrant of attorney sealed by said defendant, the execution of which is duly proven, authorizing the confession of judgment against said defendant, in favor of said plaintiff, for the amount due upon a certain promissory note, annexed to said warrant of attorney, also for the sum of twenty dollars,

attorney's fees, besides costs of suit; that defendant's attorney files cognovit, &c.

"It is, therefore, considered and ordered by the court that the said plaintiff have and recover of the said defendant his debt and damages to the said sum of two thousand three hundred and seventy-seven dollars and twenty-eight cents so as aforesaid confessed; together with his costs and charges by him, about his suit on this behalf expended, and that he have execution for the same."

12

*Certificate of Clerk.*

#### ASSIGNMENT OF ERRORS.

**1.** The court erred in entering the judgment in an action of debt, for the aggregate of principal, interest and attorney's fee, without specifying the amount of either the debt or damages.

**2.** The court erred in entering the judgment for a greater sum than appeared by computation to be due and owing, at the time upon the obligations declared on.

**3.** Neither of the warrants of attorney, annexed to the obligations upon which the judgment was entered, authorized the confession of a judgment for so large an amount as entered.

**4.** The court erred in entering judgment in favor of the above named defendant in error, upon the obligations described in his declaration.

**5.** The court erred in entering the judgment upon two obligations, to each of which was annexed a warrant of attorney, authorizing a confession of judgment upon that obligation *only*, annexed to such warrant of attorney.

**6.** <sup>The</sup> ~~The~~ proof of the execution of the obligations, upon which the judgment was rendered, was not sufficient to warrant the entering of the judgment at the time, and in the manner and form as entered.

E. S. SMITH, HART & CLYDE,

*For Plaintiff in Error.*

Whereas heretofore to wit: on the first day of December 1860 in the Circuit Court for the County of De Kalb in the State of Illinois. Judgment was entered against me by Confession in favor of William A Miller for the sum of Two Thousand Three Hundred & Seventy Seven Dollars & Twenty Eight cents as debt and Damages together with Costs and. Whereas the said judgment was improperly & erroneously entered and I am desirous of having the same set aside vacated or declared void,

Now Therefore Know all men by these Presents that I the said Daniel A Ball Defendant in said judgment have made constituted and appointed & by these Presents do make constitute and appoint Ezekiel S. Smith of the City of Chicago & State of Illinois my true & lawful Attorney for me and in my name place & stead as my Attorney in fact and as my Attorney in said Suit to appear in said Circuit Court of DeKalb County or in the Supreme Court of the State of Illinois, and to move to open vacate or set aside said judgment, or to appeal the same or to take the same to the said Supreme Court on writ of Error and in every manner to manage conduct & control the said judgment or any appeal writ of Error or other proceeding thereon which said Smith may see fit to bring or institute both in said Circuit Court and in said Supreme Court in such way as to the said Smith may seem best, and to prosecute any & all such proceedings appeals or writs of Error to final determination as my Attorney in fact & of record, and to employ such other attorney or attorneys to aid and assist him in such proceeding Appeal or writ of Error as he may think best, and to do each and

Every Act, and to sign any and all papers stipulations Bonds &c in My name or otherwise which may be necessary or useful in the Course of such proceeding Appeal or Writ of Error and finally in and about the premises to do each & every act in my name or otherwise which I myself might or could do, hereby making & appointing said Smith My Attorney in the premises irrevocably & fully ratifying & confirming each & every act my said Attorney may do in the premises fully & completely as my own act and deed

In Witness whereof I have hereunto set my hand and Seal this 2 day of March — A.D. 1863

Daniel H. Ball



State of Illinois  
Cook ~~DeKalb~~ County

John H. Ball being duly sworn says that Daniel H. Ball is the brother of the deponent that said Daniel H. Ball signed & sealed the foregoing warrant of attorney and delivered the same to deponent some time in March last to be delivered to the said E. Smith which the deponent has not done before this date because of deponents absence from this city of Chicago

John H. Ball

Subscribed & sworn to before me  
this 24<sup>th</sup> day of April 1863

Miles Almy  
Notary Public

45

✓ 30

Power of Attorney

Dan<sup>d</sup>. H. Ball

E. S. <sup>to</sup> Smith

United States of America  
State of Illinois County of De Kalb.

In Vacation after  
a Term of the Circuit Court of the said County  
of De Kalb, began and held at the Court House  
in Sycamore, in said County and State on the  
Fourth Monday (The same being the twenty  
fourth day of September in the Year of our  
Lord One Thousand Eight hundred and Sixty  
and of the <sup>year of the</sup> Independence of the United States  
the Eighty Fourth:

Present, the Honorable Isaac G. Wilson Judge  
E. S. Joslyn State Atty  
Henry Safford Sheriff  
Attest James H. Beveridge Clerk.

Be it Remembered that in vacation  
after the aforesaid Term of the aforesaid Court,  
to wit, on the 1<sup>st</sup> day of December AD 1860 there  
was filed in the office of the Clerk of the aforesaid  
Court a certain Declaration, Promissory  
Notes and Warrants of Attorney annexed thereto,  
also a certain Cognovit, which said Declaration  
Promissory Notes, Warrants of Attorney and  
Cognovit are in words and figures following  
to wit:

"State of Illinois  
De Kalb County. In Vacation after the September

Term of the De Kalb County Circuit Court A.D.  
1860

William A Miller plaintiff by Rich L. Divine  
his attorney complains of Daniel N Ball de-  
pendant in a plea of Debt.

For that whereas the said dependant on  
the first day of September A.D. 1860 at De Kalb  
in the County of De Kalb aforesaid made his  
certain writing obligatory of that date sealed  
with his seal (and now to the Court here shown)  
and then and there delivered the same to one  
W. H. Allen and thereby bound himself to  
pay to the said W. H. Allen Sixteen Hun-  
dred and four  $\frac{24}{100}$  Dollars in Ninety  
days after the date thereof with interest at the  
rate of ten per cent per annum being for money  
loaned, and the said W. H. Allen then & there  
endorsed the same to Rufus Hopkins who  
then & there by the name of R. Hopkins endor-  
sed the same to the plaintiff; whereof the said  
dependant then & there had notice and then and  
there in consideration of the premises became  
liable to pay the amount of the said writing  
obligatory to the said plaintiff according to the tenor and  
effect thereof, And whereas also the said dependant  
on the first day of September A.D. 1860 at De Kalb  
in said County of De Kalb made his other  
certain writing obligatory of that date sealed

with his Seal (and now here to the court shown)  
 And then and there delivered the same to W. H.  
 Allen, and thereby bound himself to pay to  
 said W. H. Allen Six hundred and ninety  
 five &  $\frac{45}{100}$  Dollars in Ninety days after the  
 date thereof with with interest at the rate of  
 ten per cent per annum. And the said W. H.  
 Allen then and there enclosed the same to  
 Rufus Hopkins and the said Rufus Hopkins  
 by the name of R Hopkins then and there  
 endorsed the same to the plaintiff whereof the  
 said defendant then and there had notice and  
 then and there in consideration of the premises  
 became liable to pay the amount of the said  
 writing obligatory to the plaintiff according  
 to the tenor and effect thereof.

Yet the said defendant has disregarded  
 his said obligations and has not paid the said  
 several sums of money nor any part thereof  
 to the damage of the plaintiff of Twenty five  
 Hundred dollars and therefore he brings suit  
 &c

Rich<sup>d</sup> S. Divine  
 Plffs. Atty"

"Filed Dec 1, 1860 J. H. Beveridge CLK"

"\$ 1604  $\frac{34}{100}$  De Kalk Ill's Sept 1st 1856

Ninety Days after date for value received  
 I Promise to pay W<sup>m</sup> H. Allen Sixteen Hundred

and four  $\frac{34}{100}$  Dollars with Interest at the rate of ten per cent per annum; being for money loaned and if not paid when due, with Damages at the rate of two per cent per month until paid - being for damages for non payment of said note at maturity"

"Daniel N Ball *Geo D*"

Know all men by these presents that whereas I the Subscriber of De Kalb County and State of Illinois, being justly indebted to W. H. Allen upon a certain promissory note dated the 1<sup>st</sup> day of September AD 1860 in the sum of Sixteen Hundred and four  $\frac{34}{100}$  Dollars with interest at the rate of ten per cent per annum, and if not paid when due, with damages at the rate of two per cent per month until paid - being for damages for non payment of said Note at maturity, and which said Note is due Ninety after date,

Now, therefore, in consideration of the premises I do hereby make, constitute and appoint Charles Kellum or any lawful attorney of any Court of Record, to be my true and lawful attorney, irrevocably for me and in my name (or either of our names) place and stand to appear in any Court of Record of this State, in any Justice Court, or in any Court of Record of any of the States or Territories of the United States in Term time or vacation, at any time either

5.

Before or after said note becomes due and to waive the service of process, and sign a Cognovit confessing a Judgment in favor of the said W. H. Allen or his assignee, upon said Note for the above sum with Interest and damages at the rate aforesaid, if said Note is not paid on the day it becomes due together with all costs, also the sum of ten Dollars as attorneys fees for entering up said judgment, and also to file a Cognovit for the amount that may be unpaid, and to release all errors that may accrue or intervene in the entering up said judgment and issuing the execution thereon immediately, and to waive (or either of you) rights to turn out real estate on execution, and to stipulate that no writ of error or appeal shall be prosecuted on said judgment nor any Bill in Equity filed to interfere in any manner with the operation of the same, and in consideration of the money mentioned in said Promissory Note, and one dollar to him in hand paid thereceipt whereof is hereby acknowledged and confessed, (and each of us) do hereby waive, release and relinquish in favor of the said W. H. Allen and his assignees, the benefit of all exemption laws of this state whether relating to real or personal estate and particularly for the consideration aforesaid I do hereby stipulate and agree that all rights claims interests benefits or advantages accruing or belonging to me (or either

6.

of us) former by virtue of the Act of the General Assembly of the State of Illinois, entitled "An Act to exempt homesteads from sale on execution" approved February 11, 1857, and all other acts of a similar nature, passed since, are hereby waived and released, and all property I do now own or may hereafter acquire, until the payment of said Note, is hereby made subject to levy and sale by virtue of an execution issued hereon; and hereby further stipulate and agree that execution may issue upon any judgment entered upon said note at any time either in term time or vacation of the Court in which said judgment is entered. And also in and by this indenture, which is executed subsequent to the making of the Promissory note aforesaid, and in consideration of one dollar to me in hand paid the receipt whereof is hereby acknowledged and confessed, do forever release discharge and acquit the said W H Allen from all penalties, forfeitures, penal actions and causes of action, penal statutes and the defense of usury to or by reason of <sup>the note upon said or by reason of</sup> any matter or thing to the time of executing this indenture, hereby ratifying and confirming all which attorney may do by virtue hereof. Witness my hand and Seal at this the 1<sup>st</sup> day of September A.D. 1860

Daniel N Ball *Real*

Signed sealed and delivered in presence of

7.  
"State of Illinois }  
De Kalb County } William A. Allen being duly  
sworn doth depose & say that  
he is acquainted with the hand-  
writing of Daniel H B all whose name appears  
to the within note and power of attorney, having  
executed the same, and that his signature thereto  
is genuine

Subscribed & sworn to before  
me this 30<sup>th</sup> day of November  
AD 1860

"W A Allen"

Edw A Kellum, Notary Public - "

"For value received I assign all of my right title  
and interest to the within Note to Rufus Hopkins  
without recourse to me  
Nov the 24<sup>th</sup> 1860  
"W A Allen"

"In consideration of One Dollar I hereby assign all  
my right title and interest in the ~~above~~ within  
note to William A. Miller without recourse  
to me"  
"R Hopkins"

Nov 29<sup>th</sup> 1860

"Filed Dec. 1. 1860. J. H. Beveridge Clk"

\$ 695 <sup>45</sup>/<sub>100</sub>      De Kalb Ill Sept the 1<sup>st</sup> 1860

Ninety Days after date for value received I promise  
to pay W. A. Allen Six Hundred and Ninety five  
and <sup>45</sup>/<sub>100</sub> Dollars with Interest at the rate of Ten per  
cent per annum, being for money loaned, and if  
not paid when due, with Interest at the rate of

two per cent per month until paid, being for damages for  
 the non payment of said Note at maturity. In con-  
 sideration whereof I do hereby authorize <sup>in person</sup> Charles Kellum  
 or any other attorney of any Court of Record, in  
 term time or vacation, to enter my appearance therein,  
 at any time after date hereof, waiving all process  
 to confess judgment in favor of the holder hereof  
 for the amount then due and costs with 10 dollars  
 attorneys fees, and to consent to immediate issue  
 of Execution, waiving all benefit of any homestead  
 or exemption law, also any relief from valuation  
 or appraisement laws now or hereafter in force  
 in any State or Territory. Witness my hand this  
 the first day of September 1860

In presence of

Daniel H Ball (S.P.)

"State of Illinois of William H. Allen being duly  
 Du Kalb County of sworn doth depose & say that  
 he is acquainted with the  
 hand writing of Daniel H Ball whose name ap-  
 pears to the annexed note & power of Attorney  
 as having executed the same, and that his signature  
 hereto is genuine" "W. H. Allen"

"Subscribed & sworn to  
 before me this 30<sup>th</sup> day  
 of November A.D. 1860  
 Chas Kellum N.P."

9.

"For value Received I assign all of my right title and interest to the within note to Rufus Hopkins without recourse to me." "W H Allen"

De Kalb Nov 29/1860

"I hereby assign the within note to William A. Miller without recourse to me  
Nov 29/60" "R. Hopkins"

"Filed Dec 1, 1860 J. H. Beveridge CLK"

"State of Illinois

De Kalb County } In Vacation after the September Term of the De Kalb County Circuit Court AD 1860.

Daniel H Ball

vs

William A Miller

Coq in Debt

Debt \$ 299. 79

Debt \$ 77. 49

And now comes the said Daniel H Ball defendant by Chas Killam his attorney and defends the wrong & injury when &c and waives service of process and for a plea in this behalf says that he cannot deny the action aforesaid of the said Plaintiff nor but that he did make execute and deliver the said writing obligatory in the said plaintiffs declaration mentioned and says that said sum of Twenty two Hundred and ninety nine Dollars & Seventy nine cents is justly due; and that this defendant further says that he cannot deny but that the said Plaintiff has sustained damages

by reason of the non performance of his said undertakings contracts & agreements including the sum of Twenty Dollars for his reasonable attorney fees for entering this judgment over and above his other costs & charges by him in this behalf expended to the amount and sum of Seventy Seven  $\frac{49}{100}$  Dollars. And the said defendant consents to immediate execution being issued on the judgment herein rendered and releases all errors in in these proceedings and agrees that no appeal shall be prosecuted on the judgment entered by virtue hereof, nor any Bill in Equity filed to interfere in any manner with the operation of said judgment

Chas Kellum Atty for Defr

"Filed Dec. 1, 1860

J. H. Bevedges CLK"

And be it further Remembered that in Vacation after the aforesaid Term of the aforesaid Court, to wit on the 1<sup>st</sup> day of December A.D. 1860, the following entry of Record in which William A Miller is Plaintiff and Daniel H. Ball is Defendant was made in said Court in words and figures following, to wit:

No 4496.	"William A. Miller vs Daniel H. Ball	} December 1 <sup>st</sup> AD 1860 Cognovit- And now at this day
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11.  
comes the said Plaintiff by R. L. Divine his attorney  
and files his Declaration in an action of Trespass  
on the case on Promises against the said Defendant,  
and files also a Warrant of attorney, signed and sealed  
by the said defendant the execution of which is duly  
proven, authorizing any Attorney of any Court of Rec-  
ord to appear in this Court, waive notice of process,  
and confess judgment in favor of the said Plaintiff  
and against the said defendant for the amount  
due upon a certain promissory note, annexed to  
said Warrant of attorney; also for the sum of twenty  
Dollars attorneys fees besides the costs of this suit.  
Thereupon came also Charles Kellum an attorney of this  
Court in behalf of said defendant and files his Cognovit,  
by which he waives service of process, and confesses  
and consents that judgment may be entered in favor  
of the said Plaintiff and against the said Defen-  
dant for the sum of two thousand two hundred and  
ninety nine  $\frac{29}{100}$  Dollars Debt & seventy seven  $\frac{77}{100}$  Dol-  
lars Dollars Damages amounting to two thousand three hun-  
dred & seventy seven  $\frac{77}{100}$  Dollars, it being the amount  
due upon said note including attorneys fees  
And the said attorney releases all errors in entering  
up this judgment (written in law or equity) or in  
issuing execution thereon and consents to the  
issuing of immediate execution on the same.  
It is thereupon considered and ordered by the Court  
that the said Plaintiff have and recover of

the said defendant his Demand Damages to the said sum of Two thousand three hundred and Seventy Seven Dollars and twenty eight cents as aforesaid confessed; together with his costs and charges by him about his suit in this behalf expended and that he have execution therefor the same."

State of Illinois

De Kank County } I Caleb M Brown Clerk  
of the Circuit Court in  
and for said County in the State aforesaid  
do hereby certify that the above and foregoing  
Instruments contains true copies of the Dec-  
laration, Promissory notes and Powers of attorney  
annexed thereto, also, the Cognovit and filings  
thereon, Also, of the order of Judgment in a  
certain cause lately depending in said Court  
wherein William C. Miller is Plaintiff and David  
H Ball is defendant, as the same appear on  
file and of Record now remaining in my  
office



Witness my hand and the Seal  
of said Court at Sycamore  
in said County & State  
This 20<sup>th</sup> day of March  
AD 1862

C. M. Brown Clerk  
By J. C. Kellogg Deputy

Supreme Court of the  
State of Illinois

Third Grand Division  
April Term 1862

Supreme Court of the  
State of Illinois

} Third Grand Division  
April Term A.D. 1862

Daniel H. Ball

Plaintiff in Error

vs

William A. Miller

Defendant in Error

} Error to DeKalb  
County Circuit Court

And the said Daniel H. Ball now comes and says, that in the record and proceedings aforesaid, there is manifest error, in this, to wit:

First The Court erred in entering the judgment in an action of debt, for the aggregate of principal, interest and attorney fees, without specifying the amount of either the debt or damages

Second The Court erred in entering the judgment for a greater sum than appeared by computation, to be due and owing at the time, upon the obligations declared on

Third Neither of the Warrants of Attorney annexed to the obligations upon which the judgment was entered, authorized the confession of a judgment for so large an amount as entered

Fourth The Court erred in entering the judgment in favor of the above named defendant in

error, upon the obligations described in his declaration

Fifth The Court erred in entering the judgment upon two obligations, to each of which was annexed a warrant of attorney authorizing a confession of judgment upon that obligation, only annexed to such warrant of attorney

Sixth The proof of the execution of the obligations upon which the judgment was entered, was not sufficient to warrant the entering of the judgment at the time, and in the manner and form as entered

And the said Daniel W. Ball prays, that the judgment aforesaid, for the errors aforesaid, and other errors in the Record and proceedings aforesaid, may be reversed, annulled and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment  
re

Smith Hart & Clyde  
Attys for Plff. in Error

There are no Errors in this Record  
∴ Amended Def. all  
by Actions by value of  
Annexed Authorities

Geneva April 28 1843

E A Storrs

Sr Sir

If the Court  
overrules my motion to  
dismiss the Ball vs Miller,  
Case. If I have not  
already done so, I wish  
you would write the  
opinion in error for  
me. And then on our  
Side of the case, submit  
the same upon written  
arguments to be filed, write  
me the result ~~of~~, Saus.  
the late Chicago Election

Yours Respectfully  
A W Armstrong

~~146~~ ~~179~~  
Supreme Court of Illinois  
120 Third Division

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Daniel W. Ball

Plff in error

vs

William A. Miller

Def in error

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Record, and Assignment  
of Errors

Filed April 3<sup>d</sup> 1862

L. Seland

Refiled April 25<sup>th</sup> 1863

L. Seland Clk

Smith, Hart & Clyde

Attys for Plff in error

~~#48~~ ~~139~~  
120

155

*Filed May 5, 1862*  
*J. L. Leland*  
*clerk*

**SUPREME COURT**

OF

**ILLINOIS,**

**THIRD GRAND DIVISION,**

*Refiled Apr. 24, 1863*  
*S. S. Leland*  
*clerk*

APRIL TERM, A. D. 1862.

Daniel H. Ball,

*Plaintiff in Error.*

*Vs.*

William A. Miller,

*Defendant in Error.*

**RECORD.**

E. S. SMITH, HART & CLYDE, FOR PLAINTIFF.

*Beach & Barnard, Printers, 14 South Clark Street, Chicago, Ill.*  
1862.

**SUPREME COURT**  
OF  
**ILLINOIS,**  
**THIRD GRAND DIVISION,**  
APRIL TERM, A. D. 1862.

Daniel H. Ball,

*Plaintiff in Error.*

*Vs.*

William A. Miller,

*Defendant in Error.*

**RECORD.**

E. S. SMITH, HART & CLYDE, FOR PLAINTIFF.

*Beach & Barnard, Printers, 14 South Clark Street, Chicago, Ill.*

1862.

## RECORD.

UNITED STATES OF AMERICA, } ss.  
STATE OF ILLINOIS, COUNTY OF DEKALB.

In vacation after a term of the Circuit Court of the said county, of DeKalb, began and held at the court house in Sycamore, in said county and state, on the fourth Monday, the same being the twenty-fourth day of September, in the year of our Lord one thousand eight hundred and sixty, and of the year of the independence of the United States, the eighty-fourth.

Page 1. Present, the Honorable Isaac G. Wilson, Judge; E. S. Joslyn, State's attorney; Henry Safford, sheriff; Attest, James H. Beveridge, clerk.

Be it remembered that in vacation after the aforesaid term of the aforesaid court, to-wit: on the 1st day of December, A. D. 1860, there was filed in the office of the clerk of the aforesaid court a certain declaration, promissory notes and warrants of attorney annexed thereto; also a certain cognovit, which said declaration, promissory notes, warrants of attorney, and cognovit are in words and figures following, to-wit:

2 DEKALB COUNTY, ss.

In vacation after the September term of the DeKalb County Circuit Court, A. D. 1860.

### DECLARATION.

William A. Miller, plaintiff, by Richard L. Divine, his attorney, complains of Daniel H. Ball, defendant, in a

3 plea of debt. For that whereas, the said defendant on the first day of September, A. D. 1860, at DeKalb, in the county of DeKalb aforesaid, made his certain writing obligatory of that date sealed with his seal (and now to the court here shown) and then and there delivered the same to one W. H. Allen, and thereby bound himself to pay to the said W. H. Allen sixteen hundred and four and 34-100 dollars in ninety days after the date thereof, with interest at the rate of ten per cent. per annum, being for money loaned; and the said W. H. Allen then and there endorsed the same to Rufus Hopkins, who then and there by the name of R. Hopkins endorsed the same to the plaintiff, whereof the said defendant then and there had notice, and then and there in consideration of the premises became liable to pay the amount of the said writing, obligatory to the said plaintiff, according to the tenor and effect thereof; and whereas, also the said defendant on the first day of September, A. D. 1860, at DeKalb, in said county of DeKalb, made his other certain writing obligatory of that date, sealed with his seal (and now here to the court shown), and then and there delivered the same to W. H. Allen, and thereby bound himself to pay to said W. H. Allen, six hundred and and ninety-five and 45-100 dollars, in ninety days after the date thereof, with interest at the rate of ten per cent. per annum. And the said W. H. Allen then and there endorsed the same to Rufus Hopkins, and the said Rufus Hopkins, by the name of R. Hopkins, then and there endorsed the same to the plaintiff, whereof the said defendant then and there had notice, and then and there in consideration of the premises, became liable to pay the amount of the said writing obligatory to the plaintiff, according to the tenor and effect thereof.

4

5

Yet the said defendant has disregarded his said obligations, and has not paid the said several sums of money, nor any part thereof, to the damage of the plaintiff of

twenty-five hundred dollars, and therefore he brings suit,  
and so forth.

RICHARD L. DIVINE,  
*Plaintiff's Attorneys.*

6

### FIRST OBLIGATION.

\$1604 34-100.

DEKALB, Ills., Sept. the 1st, 1860.

Ninety days after date, for value received, I promise to pay Wm. H. Allen, sixteen hundred and four and 34-100 dollars, with interest at the rate of ten per cent. per annum; being for money loaned, and if not paid when due, with damages at the rate of two per cent. per month until paid; being for damages for non payment of said note at maturity.

DANIEL H. BALL, [*Seal.*]

### WARRANT OF ATTORNEY.

7

Know all men by these presents; that whereas, I, the subscriber, of DeKalb county, and State of Illinois, being justly indebted to W. H. Allen upon a certain promissory note, dated the 1st day of September, A. D. 1860, in the sum of sixteen hundred and four and 34-100 dollars, with interest at the rate of ten per. cent. per annum; and if not paid when due, with damages at the rate of of two per cent. per month until paid; being for damages for non-payment of said note at maturity, and which said note is due ninety after date.

8

Now therefore, in consideration of the premises, I do hereby make, constitute and appoint Charles Kellum, or any lawful attorney of any Court of Record, to be my true and lawful attorney, irrevocably for me and in my name (or either of our names), place and stead, to appear in any

Court of Record of this State, in any Justice's Court, or in any Court of Record of any of the States or Territories of the United States in term time or vacation, at any time either before or after said note becomes due, and to waive the service of process, and sign a cognovit, confessing a judgment in favor of the said W. H. Allen, or his assignee, upon said note for the above sum with interest and damages at the rate aforesaid, if said note is not paid on the day it becomes due, together with all costs; also the sum of ten dollars, as attorney's fees, for entering up said judgment; and also to file a cognovit for the amount that may be unpaid, and to release all errors that may accrue or intervene in the entering up said judgment and issuing the execution thereon immediately; and to waive (or either of our) right to turn out real estate on execution, and to stipulate that no writ of error or appeal shall be prosecuted on said judgment, nor any bill in equity filed to interfere in any manner with the operation of the same, and in consideration of the money mentioned in said promissory note, and one dollar to him in hand paid, the receipt whereof is hereby acknowledged and confessed, (and each of us) do hereby waive, release and relinquish in favor of the said W. H. Allen and assignees the benefit of all exemption laws of this State, whether relating to real or personal estate, and particularly for the consideration aforesaid, I do hereby stipulate and agree that all right, claim, interest, benefit or advantage accruing or belonging to me, (or either of us) from or by virtue of the act of the General Assembly of the State of Illinois, entitled, "An act to exempt homesteads from sale on execution;" approved, February 11th, 1851. And all other acts of a similar nature, passed since, are hereby waived and released, and all property I do now own or may hereafter acquire, until the payment of said note, is hereby made subject to levy and sale by virtue of an execution issued hereon; and hereby further stipulate and agree that execution may issue upon any judgment entered upon said

note at any time either in term time or vacation of the court in which said judgment is entered.

13 And also in and by this indenture, which is executed subsequent to the making of the promissory note aforesaid, and in consideration of one dollar to me in hand paid, the receipt whereof is hereby acknowledged and confessed, do forever release, discharge and acquit the said W. H. Allen from all penalties, forfeitures, penal actions and causes of action, penal statutes and the defense of usury or by reason of the note aforesaid, or by reason of any matter or thing, to the time of executing this indenture, hereby ratifying and confirming all which my attorney may do by virtue hereof.

Witness my hand and seal this the 1st day of September, A. D. 1860.

DANIEL H. BALL. [Seal.]

Signed, sealed and delivered in presence of

A F F I D A V I T .

STATE OF ILLINOIS, } ss.  
DEKALB COUNTY, }

14 William H. Allen being duly sworn, doeth depose and say, that he is acquainted with the handwriting of Daniel H. Ball, whose name appears to the within note and power of attorney, as having executed the same, and that his signature thereto is genuine.

Subscribed and sworn to before me this 30th day of November, A. D. 1860.

W. H. ALLEN.

CHARLES KELLUM, *Notary Public.*"

For value received I assign all of my rights, title and interest in the within note to Rufus Hopkins," without recourse to me.

W. H. ALLEN.

Nov. 24th, 1860.

15 In consideration of one dollar, I hereby assign all my right, title and interest in the within note to William A. Miller, without recourse to me.

R. HOPKINS.

Nov. 29th, '60.

## SECOND OBLIGATION.

\$695 45-100.

DEKALB, Ill., Sept. the 1st, 1860.

16 Ninety days after date, for value received, I promise to pay W. H. Allen, six hundred and ninety-five and 45-100 dollars, with interest at the rate of ten per cent. per annum, being for money loaned, and if not paid when due, with interest at the rate of two per cent. per month until paid; being for damages for the non-payment of said note at maturity. In consideration whereof, I do hereby authorize and employ Charles Kellum, or any other attorney of any Court of Record, in term time or vacation, to enter my appearance therein, at any time after date hereof, waiving all process, to confess judgment in favor of the holder hereof for the amount then due and costs, with ten dollars attorneys fee, and to consent to immediate issue of execution, waiving all benefit of any homestead or exemption law; also any relief from valuation or appraisement laws, now or hereafter in force, in any State or Territory.

Witness my hand this the first day of September, 1860.

DANIEL H. BALL. [L. S.]

In presence of

## AFFIDAVIT.

STATE OF ILLINOIS, }  
 DEKALB, COUNTY, } ss.

17 William H. Allen being duly sworn doeth depose and say that he is acquainted with the handwriting of Daniel H. Ball, whose name appears to the annexed note and power of attorney, as having executed the same, and that his signature thereto is genuine.

W. H. ALLEN.

Subscribed and sworn to before me this 30th day of November, A. D. 1860.

CHARLES KELLUM, "N. P."

For value received, I assign all of my right, title and interest to the within note, to Rufus Hopkins, without recourse to me.

W. H. ALLEN.

*DeKalb, Nov. 29, 1860.*

18 I hereby assign the within note to William A. Miller, without recourse to me.

R. HOPKINS.

*Nov. 29, '60.*

## COGNOVIT.

STATE OF ILLINOIS, }  
*DeKalb County.* } ss.

*In vacation, after the September Term of the DeKalb  
 County Circuit Court, A. D. 1860.*

DANIEL H. BALL, }  
*ads. (ats.)* } *Cog. in Debt. Debt, \$2299.79.*  
 WILLIAM A. MILLER, } *Dam. \$77.49.*

19

And now comes the said Daniel H. Ball, defendant, by Charles Kellum, his attorney, and defends the wrong and injury when, &c., and waives service of process, and for a plea in this behalf, says, that he cannot deny the action aforesaid of the said plaintiff, nor but that he did make, execute and deliver the said writing obligatory, in the said plaintiff's declaration mentioned, and says that said sum of twenty-two hundred and ninety-nine dollars and seventy-nine cents is justly due; and this defendant further says that he cannot deny but that the said plaintiff has sustained damages by reason of the non-performance of his said undertakings, contracts and agreements, including the sum of twenty dollars for his reasonable attorney's fees for entering this judgment, over and above his other costs and charges, by him in this behalf expended, to the amount and sum of seventy-seven 49-100 dollars. And the said defendant consents to immediate execution being issued on the judgment herein rendered, and release all errors in, *in* these proceedings, and agrees that no appeal shall be prosecuted on the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of said judgment.

20

CHARLES KELLUM,  
*Attorney for Defendant.*

And be it further remembered, that in vacation, after the aforesaid term of the aforesaid court, to wit, on the 1st day of December, A. D. 1860, the following entry of record, in which William A. Miller is plaintiff, and Daniel H. Ball is defendant, was made in said court, in words and figures following, to wit:

## COGNOVIT.

*December 1st, A. D. 1860.*

WILLIAM A. MILLER	}	No. 4496.
vs.		
DANIEL H. BALL.		

22 And now at this day comes the plaintiff, by R. L. Divine, his attorney, and files his declaration in an action of trespass, on the case on promises, against the said defendant, and files also a warrant of attorney, signed and sealed by the said defendant, the execution of which is duly proven, authorizing any attorney of any court of record to appear in this court, waive notice of process, and confess judgment in favor of said plaintiff, and against the said defendant, for the amount due upon a certain promissory note, annexed to said warrant of attorney; also for the sum of twenty dollars, attorney's fees, besides the costs of this suit.

23 Thereupon, also, came Charles Kellum, an attorney of this court, in behalf of said defendant, and files his cognovit, by which he waives service of process, and confesses and consents that judgment may be entered in favor of the said plaintiff, and against the said defendant, for the sum of two thousand two hundred and ninety-nine 79-100 dollars debt, and seventy-seven 28-100 dollars, it being the amount due upon said note, including attorney's fees; and the said attorney releases all errors in entering up this

24 judgment, either in law or equity, or in issuing execution thereon, and consents to the issuing of immediate execution on the same.

It is, therefore, considered and ordered by the court, that the said plaintiff have and recover of the said defendant his debt and damages, to the said sum of two thousand three hundred and seventy-seven dollars and twenty-eight cents, so as aforesaid confessed, together with his costs and charges, by him about his suit in this behalf expended, and that he have execution for the same.

STATE OF ILLINOIS, }  
DeKalb County. } ss.

25 I, Caleb M. Brown, clerk of the Circuit Court, in and for said county, in the State aforesaid, do hereby certify that the above and foregoing transcript contains true copies of the declaration, promissory notes, and powers of attorney, annexed thereto, also the cognovit and filings thereon, also of the order of judgment in a certain cause, lately depending in said court, wherein William A. Miller is plaintiff, and Daniel H. Ball is defendant, as the same appear on file and of record, now remaining in my office.

26 Witness my hand, and the seal of said court, at Sycamore, in said county and State, this 20th day of March, A. D. 1862.

C. M. BROWN, *Clerk.* [SEAL.]

By J. G. KELLOGG, *Deputy.*

Supreme Court of the State of  
Illinois - For the Grand  
Grand Jurisdiction -

Samuel H. Ball } April Term  
                  <sup>vs</sup> } A.D. 1862  
William A. Miller }

William A. Miller  
the above named defendant  
in the above entitled cause -  
on oath states that he has  
been informed (and fully  
believes the information to be  
true) by the above named  
Samuel H. Ball Plaintiff  
herin. that said Ball  
has not at any time authorized  
empowered or employed  
E. S. Smith or any other  
person whatsoever to prosecute  
this cause in this Court  
and this affiant further  
states that said cause  
is brought to this court and  
is here being prosecuted  
without the knowledge or  
approval of said Samuel H.  
Ball. and that this suit

~~is <sup>here</sup> being prosecuted <sup>and</sup>  
without the consent or approval  
of said Ball~~

Subscribed + sworn *J. M. Amine*  
to before me this 17<sup>th</sup>  
day of April A. D. 1862  
*S. C. Moore*  
Clerk, Cir. Court  
Kane Co. Ill.

#139

Supreme Court  
for the 3<sup>rd</sup> & 4<sup>th</sup> terms  
Ball  
Miller

Filed Apr. 22, 1862  
*L. Ireland*  
Clerk

Refiled Apr. 20, 1863  
*L. Ireland* Clerk

Supreme Court of the  
Third Grand Division

James H Ball } Error from  
                  } S. Kell  
Wm Miller }

And now comes the said  
Miller as heretofore by Harrington  
his attorney and moves the  
court to dismiss this cause.

Because the attorneys  
of record herein for the said  
plaintiff have no authority to  
~~dismiss the~~ prosecute the  
same. See the power of  
attorney of Ball herein, and the  
affidavits of Miller & Harrington.

Because at the last term  
of this court upon the present  
record & papers, upon motion  
of ~~Ball~~ A. W. Harrington for  
Ball this cause was dismissed  
therefore Ball has no right  
now to prosecute the same

all of which is  
Respectfully submitted  
A. W. Harrington

45-139

Bull

vs

Miller

---

Motion to  
dismiss. *see*

---

Overruled.

Filed Apr. 21, 1863

L. L. Case *clerk*

IN THE  
SUPREME COURT OF ILLINOIS,  
Third Grand Division.

April Term, A. D. 1862.

DANIEL H. BALL,  
Plaintiff in Error.

vs.

WILLIAM A MILLER,  
Defendant in Error.

ERROR TO  
DEKALB CIRCUIT COURT.

PLACITA.

Page 1

DECLARATION, promissory notes and warrants of attorney annexed thereto, and cognovit filed in the office of the clerk of said court, in vacation, after September term, to wit, on the first day of December, A. D. 1860.

*Declaration.*

1, 2, & 3

Declares in debt upon two writings obligatory, executed under seal by plaintiff in error to W. H. Allen, and by him endorsed to Rufus Hopkins, and by Hopkins endorsed to defendant in error.

*First Writing Obligatory.*

3, 4, 5, 6

Executed under seal by plaintiff in error, dated September 1st, 1860, for the payment, ninety days after date, to William H. Allen for sixteen hundred and four dollars and

*Filed of Feb. 27. 1862*  
*Refused Mar. 2. Del. and*  
*Ch. 1863*  
*J. Deland CM*

*148*  
*120*

thirty-four cents with ten per cent. interest, and if not paid when due, with two per cent. per month damages, until paid.

4      *Warrant of Attorney.*

States that plaintiff in error is indebted to William H. Allen, on above note, for sixteen hundred and four dollars and thirty-four cents; recites the terms of the note and authorizes any attorney of any court of record, to "sign a cognovit confessing a judgment in favor of said W. H. Allen or his assignee, upon said note for the above sum with interest and damages at the rate aforesaid, if said note is not paid on the day when it became due; together with all costs, also the sum of ten dollars, as attorney's fee, for entering up said judgment, and also to file a cognovit for the amount that may be unpaid, and to release all errors," &c., &c.

7      *Affidavit of Wm. H. Allen.*

Swears to the signature of plaintiff in error, to said note and power of attorney.

7      *Assignment of Wm. H. Allen.*

Assigning above note without recourse to Rufus Hopkins.

7      *Assignment of Rufus Hopkins.*

Assigning said note to defendant in error without recourse.

7, 8      *Second Obligation in writing.*

Executed under seal by plaintiff in error, dated September 1st, 1860, promising to pay W. H. Allen six hundred and ninety-five dollars and forty-five cents with ten per cent. interest, and if not paid when due, with interest at two per cent. per month until paid, as damages for non-

*[Handwritten scribbles on the left margin]*

*[Handwritten scribbles on the right margin]*

payment, and authorizing any attorney "to confess judgment in favor of the holder hereof for the amount then due and costs, with ten dollars attorney fees, and to consent to immediate issue of execution," &c., &c.

*Affidavit of W. H. Allen.*

8

Swears to the signature of plaintiff in error, to above note and power of attorney.

*Assignment of W. H. Allen.*

9

Assigns the above note, without recourse, to Rufus Hopkins.

*Assignment of Rufus Hopkins.*

9

Assigns above note to defendant in error, without recourse.

*Cognovit.*

9, 10

Admits that plaintiff in error, "executed the writing obligatory in the said plaintiff's (defendant in error) declaration mentioned, and says: "That the said sum of twenty-two hundred and ninety-nine dollars and seventy-nine cents is justly due," and admits damages "including the sum of twenty dollars for his reasonable attorney's fees for entering this judgment, over and above his other costs and charges by him in this behalf expended to the amount and of sum seventy-seven dollars and forty-nine cents," &c., &c.

*Judgment Entry.*

11

Recites, that on December 1st, A. D. 1860, plaintiff filed his declaration, in an action of trespass on the case, on promises, against the said defendant, and also a warrant of attorney sealed by said defendant, the execution of which is duly proven, authorizing the confession of judgment against said defendant, in favor of said plaintiff, for the amount due upon a certain prommissory note, annexed to said warrant of attorney, also for the sum of twenty dollars,

attorney's fees, besides costs of suit; that defendant's attorney files cognovit, &c.

"It is, therefore, considered and ordered by the court that the said plaintiff have and recover of the said defendant his debt and damages to the said sum of two thousand three hundred and seventy-seven dollars and twenty-eight cents so as aforesaid confessed; together with his costs and charges by him, about his suit on this behalf expended, and that he have execution for the same."

12

*Certificate of Clerk.*

#### ASSIGNMENT OF ERRORS.

**1.** The court erred in entering the judgment in an action of debt, for the aggregate of principal, interest and attorney's fee, without specifying the amount of either the debt or damages.

**2.** The court erred in entering the judgment for a greater sum than appeared by computation to be due and owing, at the time upon the obligations declared on.

**3.** Neither of the warrants of attorney, annexed to the obligations upon which the judgment was entered, authorized the confession of a judgment for so large an amount as entered.

**4.** The court erred in entering judgment in favor of the above named defendant in error, upon the obligations described in his declaration.

**5.** The court erred in entering the judgment upon two obligations, to each of which was annexed a warrant of attorney, authorizing a confession of judgment upon that obligation *only*, annexed to such warrant of attorney.

**6.** ~~The~~ <sup>the</sup> proof of the execution of the obligations, upon which the judgment was rendered, was not sufficient to warrant the entering of the judgment at the time, and in the manner and form as entered.

E. S. SMITH, HART & CLYDE,

*For Plaintiff in Error.*