

12043

No. _____

Supreme Court of Illinois

New Hope Delaware Bridge Co.

vs.

Perry & Shumway

United States of America }
State of Illinois }
County of Cook } ss

Sheweth before the
Honorable Giles Spring Judge of the Cook County
Court within and for the County of Cook and State
of Illinois aforesaid, at a regular term of said
Court, begun and holden at the Court House in the
City of Chicago in said County and State on the
first Monday being the seventh day of May
in the year of our Lord one thousand eight
hundred and forty nine, and of the Indepen-
-dence of the United States the seventy third

Present the Honorable Giles Spring Judge
Patrick Bullingall Prosecuting attorny
Saanu Cook Sheriff

attest Jamuel Curtis clerk

2

Theodore Perry & Donille Shumway
The President & Managers of the
New Hope Delaware Bridge Company. } attachment

This suit was commenced April
12. 1848 by attachment. Affidant & bond
were duly filed and proceedings thereon in
conformity with the statute. —

It is Remembred that heretofore to wit on the
 Twenty first day of April A.D. 1849 there was filed in the office
 of the Clerk of the Cook County Court by Theodore Perry &
 Borrell Hummery by Larner & Bently their Attornies a
 Declaration which said Declaration is in the words
 and figures following (with the Exception of so much
 thereof as has been omitted by agreement of parties)
 to wit

The said Theodore Perry &
 Borrell Hummery do hereby
 certify that the above is a true
 and correct copy of the original

4

State of Illinois }
Cock County }

Of the May term in
the year One thousand Eight-hun-
dred and forty eight

Cock County } ss

Chicago } Theodore Perry & Bonille
Shumway partners in business under the
name and firm of Theodore Perry & Company
plaintiffs in this suit by Larned & Bentley
their Attorneys complain of The President
& Managers of the New Hope Delaware
Bridge Company a corporation created
by the Legislatures of the States of New Jersey
& Pennsylvania and located established
and doing business at Lambertville in said
State of New Jersey Defendants in this suit
which said Corporation was duly attached
by the Sheriff in an action of Debt wherein
the said plaintiffs demand of said defend-
ants the sum of Three Thousand and
seventeen dollars which the said defendants
own to and unjustly detain from said plain-
tiffs. In that whereas the said defend-
ants heretofore to wit on the eighteenth
day of November AD 1840 at said Lambertville
in the county and State aforesaid

5
to wit at Chicago in said county of Cook
for value received made and executed
their certain promissory bank notes bearing
date the day and year aforesaid signed
by the said Company by the President and
the Cashier thereof. and then and there
delivered the same to the said plaintiffs by
which said note they the said defendants
under the name and style of the Star Hope
Delaware Bridge Company then & there
promised to pay twenty dollars to J Barber
or bearer on demand. And the said
plaintiffs aver that afterwards to wit on
the day and year aforesaid they became
and were the lawful bearers of the said
note and entitled to receive & demand pay-
ment of the said sum of money therein
specified whereof the defendants afterwards
to wit on the day and year aforesaid had
notice by means whereof the said defend-
ants became liable to pay to the said
plaintiff the said sum of money in
the said promissory bank note specified
according to the tenor and effect thereof
yet the said defendants though often
requested did not and would not pay the
said sum of twenty dollars in the said
note specified or any part thereof to the
said plaintiff but hath wholly neglected
and refused so to do whereby an action hath
accrued to the said plaintiffs to have and

6

demand from the said Defendants the said sum of Twenty Dollars in the said note specified part and parcel of the said sum above demanded.

And also for that whereas the said Defendants heretofore to wit on the 23^d day of July A.D. 1843 at Lambertville aforesaid in the County of Cork aforesaid under the name and style of the New Hope Delaware Bridge Company for value received made and executed their certain other promissory bank notes which said promissory bank notes were in the words terms and figures following viz.

A
No. 5975. The New Hope Delaware Bridge Company promises to pay Ten Dollars on demand to A. Wilson or bearer.

Lambertville A.D. July 23. 1845.

J. Mc. Robinson Cash'r A. St. John. Pres't

The said declaration further sets out copies of sixty two notes in addition to the above of the same tenor date & amount as the above.

Also one copy of a note of the same tenor & amount as the above dated June 1 1841

7-
No. 1007. The New Hope Delaware Bridge Company
promises to pay five dollars on demand
to A Wilson a bearer. Lambertville N J.
July 23^d 1845

I McRobinson Cash. At St John Pest.

No 2534. The New Hope Delaware Bridge Company
promises to pay five dollars on demand
to A Wilson a bearer. Nov 1. 1844
Lambertville N J. Nov 1. 1844.

Don^t Fisk Cash. At St John Pest.

The said Declaration further sets out
copies of three hundred and ninety
Bank bills of the same tenor & amount
as the two notes above set forth and of
the same dates or of dates subsequent
to the above payable to various payees.

also the following

" The New Hope Delaware Bridge Company
will pay five dollars to J Coryell a
bearer on demand at their office in
Lambertville

Lambertville N J Nov 18. 1840.

Don^t Fisk Cash. At St. John. Pest

The said declaration further sets out
copies of thirty two bank bills besides the above
of the same tenor and amount & of the
same date payable to various payees.

81

The said declaration further sets out
copies of fourteen bank bills of the same
tenor and amount as the above payable
to various payees and dated in the years
1837 or 1838 or 1839.

The said declaration further sets out a
copy of one bank bill of the same tenor
and as the above - dated Nov 18. 1840 and
of the denomination of ten dollars

The New Hope Delaware Bridge Company
will pay five dollars on demand to A
Wilson a bearer.

Lambertville N J June 1. 1841

Jona Dick Cashr. A St John Best

The said declaration further sets out
copies of twenty seven bank bills in ad-
dition to the one above set forth of the same
tenor and amount and of the same
date as the above

The New Hope Delaware Bridge Company will
pay one dollar to bearer on demand.

Lambertville 20th Sept. 1845

G. M. Robinson Cashr. A St John Best

The New Hope Delaware Bridge Company
will pay ten dollars to bearer on demand

Lambertville N J. 20th Sept. 1845

G M Robinson Cashr. A St John Best.

9

The New Hope Delaware Bridge Company
will pay ten dollars to bearer on demand
Lambertville N.J. Sept 20. 1845—
J. Mc Robinson Cash. At St John Berth

The New Hope Delaware Bridge Company
will pay ten dollars to bearer on demand
Lambertville N.J. Sept 20. 1845—
J. Mc Robinson Cash. At St John Berth

The New Hope Delaware Bridge Company
will pay ten dollars to bearer on demand
Lambertville N.J. Sept 20. 1845—
J. Mc Robinson Cash. At St John Berth

The New Hope Delaware Bridge Company
will pay three dollars to bearer on demand.
Lambertville N.J. Sept 20. 1845
J. Mc Robinson Cash. At St John Berth

And the said plaintiffs aver that after wards to wit on the day and year aforesaid at Lumberton in the county of Brook they became & were the lawful bearers of the said notes and of each and all of ~~them~~ same and entitled to receive and demand the payment of the sum and sums of money therein respectively specified of all which the said Defendants in on the day and year aforesaid had due notice by means whereof the said defendants became liable to pay to the said plaintiffs the said sums of money respectively in the said notes specified according to the tenor and effect thereof and of each of them yet the said defendants not regarding their said indebtedness and not regarding the said several promissory bank notes or any or either of them or the said several sums of money or any part thereof though often requested did not and would not pay the said sums of money mentioned in said notes or in either of them or any part thereof or of either of them but have wholly neglected and refused or to do whereby an action hath accrued to the said plaintiffs to demand and have of and from the said defendants the respective sums in the said several notes specified

11
amounting in all to the sum of
Three thousand and seventeen dollars
parcel of the sum above expressed

And the said plaintiffs are that the
said notes were made executed and
delivered in the State of New Jersey and
that by the laws of said State ^{said} notes are
transferable by delivery

And whereas also the said defendants
afterwards to wit on the twelfth day of
April A.D. 1848 at Lambertville aforesaid
to wit in the said county of Cork were
indebted to the said plaintiffs in the
sum of Five thousand dollars for money
then lent by the said plaintiffs to the
said defendants and in the like sum
for money then paid by the said plaintiffs
to and for the use of the defendants at
their request and in the like sum for
money then had and received by the
said defendants for the use of the
said plaintiffs and in the like sum
for money found to be due from the
defendants to the plaintiffs on an account
stated between them; and in the like
sum for the price & value of goods then
sold and delivered by the plaintiffs to the
defendants; and in the like sum

12

for the labor care skill & diligence of
 person that time done and performed by said Plaintiff,
 said plaintiff, for said defendants;
 which said last mentioned money was
 to be paid by the defendants to the
 plaintiff on request.

Whereby and by reason of the non
 payment of the said last mentioned
 money (being the residue of the sum
 above demanded) an action hath
 accrued to the plaintiff to demand
 and have the same of and from
 the defendants.

Yet the said defendants have
 not paid the said sum above demanded
 or any part thereof.

To the plaintiff's damage Five
 Thousand Dollars and thereupon
 they bring suit

By ^{his} ~~their~~ Attorney
 Larned & Bentley.

And for copies of the notes declared
 on the plaintiff refer to the copies
 thereof contained in the said
 declaration

Larned & Bentley
 Plf Atty

Filed April 21, 1848

Jas Curtis Clerk

13-

A portion of the within notes are marked
on the face thereof with the letter "W" or
the words "Oct 1." in ink

And afterwards to wit on the Fourth day
of October AD 1848 then was filed in the office
of the Clerk of said Cook County Court the a
denumer in the said cause which said denumer
is in the words & figures following to wit

15

State of Illinois }
Clerk County Court }

New Hope Delaware Bridge Company
ads

Theodore Perry & Bonilla Shumway.

And the said New Hope Delaware Bridge Company defendants in this suit by Arnold & Lay their Attorneys come and defend the wrong and injury when to and say that the said declaration and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law for the said plaintiffs who are maintain their aforesaid action thereof against the said defendants and that they the said defendants are not bound in law to answer the same. And thus they are ready to verify. Wherefore for want of a sufficient declaration in this behalf the said defendants pray judgment and that the said plaintiff may be barred from suing or maintaining their aforesaid action thereof against them &c

And the said New Hope Delaware

Budg Company defendants in this suit
 by Arnold & Lay their Attorneys come
 and defend the wrong and injury when
 so and say that the said second count
 of the said declaration & the matter
 and therein contained in manner
 and form as the same are above stated
 and set forth are not sufficient in law
 for the said plaintiff to have or main-
 tain their aforesaid action thereof against
 the said defendants: and that they
 the said defendants are not bound by
 law to answer the same. And thus they
 are ready to verify. Wherefore for want
 of a sufficient second count of the
 said declaration in this behalf the
 said defendants pray judgment and
 that the said plaintiff may be barred
 from having or maintaining their aforesaid
 action thereof against them &c

Isaac A Arnold &
 George W Lay
 Attys for Defs.

And the said Defendants demur
 to the first and second counts of said
 declaration ~~and~~ ^{severally} ~~severally~~ assigns the
 following grounds of demurrer to each
 & prays judgment of each severally

17

1. The first count does not shew ~~where~~ executed the note nor are the defend ants made thereby liable
 2. It does not shew that the ~~Defendants~~ ^{Plaintiffs} are authorised to bring the suit or to sue in ~~any name~~ their name.
 3. The second count is defective in the same manner as above.
 4. It is not shewn how the ~~plffs~~ became the lawful bearers of said notes.
 5. It does not appear in either count that the ~~plffs~~ are legally authorised to sue
 6. The laws of New Jersey are not well pleaded
 7. The notes are not properly set out in second count
 8. For many causes of action in one count. & further defects &c
- Arnold for Defts

The Defendant also assigns the following additional cause of Demurrer to the first & second counts to wit

There is no allegation of ~~deceit~~ demand of payment at the Bank or elsewhere either by payee or bearers.

Arnold for Defts

And afterwards to wit. on the fourteenth day
 of October in the Year of our Lord one
 Thousand eight Hundred & Forty eight being
 one of the days of the October term of said
 Cook County Court in the Year aforesaid
 among other things the following proceeding
 were had and entered of record to wit

12359
19.

Theodore Perry & Porille Shumway
vs
The President & Managers of
the New Hope Delaware Bridge Co. } att.

And now come the plaintiffs
by their Attorneys Larned & Iudd and
said defendants by Isaac & Arnold their
Attorney also come, and the demurrer of
the Defendants to the declaration of
the plaintiffs came on to be heard and
was argued by counsel - and the Court
being fully advised in the premises are
of the opinion and do order that the
said declaration and the matters and
things therein alleged are sufficient
in law for said plaintiffs to have and
maintain their aforesaid action thereof
against said defendants. And thereupon
the said Defendants ask leave to plead
And on motion of the plaintiffs it is
ordered that they plead by the opening
of the Court on Tuesday morning or that
their ^{therein} default for want thereof be entered
It is ^{therefore} further considered that the said
plaintiffs do recover against said Defens
ants their costs by reason of said demurrer
by them in this behalf expended and
have execution therefor.

And afterwards to wit, on the Twenty fourth
day of October A.D. 1848 then was filed
in the office of the Clerk of the Cook County Court
the Defendants Pleas in said Cause, which
said Pleas are in the words and figures follow-
ing to wit

Cook County Court

The President and Managers
of the New Hope Delaware Bridge
Company.

ads.

Theodore Perry & Horville Shumway

And the said
The President, and Managers of the New Hope Delaware
Bridge Company, Defendants in this suit by Arnold
& Lay, their Attorneys, Come and defend the wrong
saying when &c and say they do not owe the
said sum of money above demanded, or any part
thereof, in manner and form, as the said
Plaintiffs have above thereof Complained
against them, and of this they the said Defen-
dants put themselves upon the Country.

Arnold & Lay Defts Atty's.

2^d Plea

And for a further plea in this behalf, the
said Defendants, by leave of the Court, here for
this purpose first had and obtained, say that the
said Plaintiffs ought not to have or maintain
their aforesaid action thereof against them,
because they say that the said notes in the said
declaration mentioned, and upon which suit
is brought, were delivered by the said Defendants,
to A. B. Curtis and D. A. Mitchell, doing and
transacting business in the city of New York,
under the name style and firm of Curtis &
Mitchell, under and by virtue of a certain

agreement, made and entered into by the said Defendants, with the said Curtiss & Mitchell, on the second day of December A.D. 1847. and which said agreement is in substance as follows, to wit:

"This agreement made and concluded this second day of December 1847, by and between the New Hope Delaware Bridge Company, of the State of New Jersey, by A. St John President, parties of the first part, and A. B. Curtiss and D. A. Mitchell, under the firm of Curtiss & Mitchell, of the city of New York, parties of the second part, Witnesseth, That the parties of the first part, for value received, and in consideration of the covenants and agreements hereinafter stipulated and mentioned, have loaned and do hereby loan to the said parties of the second part, the notes or Bills of Circulation of the said Bridge Company, to the amount of Sixty thousand Dollars, to be increased or diminished, as may be from time to time agreed upon by the said A. St John President, and the parties of the second part, as aforesaid.

And the said parties of the second part Covenant and promise, as follows, to wit: That they will so use the notes aforesaid, as to obtain for them, as far as possible, such circulation as shall best prevent their return home, for redemption. That they will provide for and always keep on hand, a fund sufficient for the redemption of said Bills or notes, either by a deposit in the office of said Company at Lambertville, or in New York

city, or Philadelphia, subject to a sight draft from the said Company, so that all said bills, or any that may hereafter be loaned, to said parties of the second part, pursuant to this agreement, when presented for redemption at the office of said Company, shall be redeemed by the fund, and at the expense of the said parties of the second part. That they will keep an account of all sums by them or their agents put in circulation, and will from time to time, as may be required, report the same, to the said Company, and if required, verified by oath. That they will pay the said Bridge Company, semiannually from the date hereof, interest at the rate of three per cent per annum, on all sums, actually put and kept in circulation by them, and at the expiration of this contract, if required by said Company, will repay to the said Company, the full amount that may be then due, according to the provisions of this contract. Provided that the notes or bills issued by the said Bridge Company, shall always be received, at par by them, or their assigns, in payment of any and every indebtedness of the said parties of the second part, arising ~~from~~ under this agreement or otherwise.

And it is further agreed that all of the notes and bills aforesaid which shall be redeemed by the said Bridge Company, with the funds of the said parties of the second

part, shall be deemed out of Circulation, for the purposes of this agreement, and they shall be returned to said parties of the second part, or others in place of them for circulation as herein provided.

And it is further agreed that for all sums deposited by said parties of the second part, with the said parties of the first part, for the purpose of ~~reducing~~ the circulation aforesaid, there shall be allowed to said parties of the second part, interest, at the rate of six per centum per annum, until the same shall be required for such redemption. And if at any time, the said parties of the second ^{part}, shall fail to provide for the redemption of the notes, which may be by them put in circulation, as hereinbefore specified, they shall forthwith pay up principal and interest, of any such sum or sums so returned for redemption, and from the time of such failure, shall pay interest at the rate of six per centum per annum, together with all damages, costs, expenses and exchange justly chargeable thereon.

And if such payment of principal and interest, shall be neglected, or refused for sixty days after notice given by mail or otherwise, then the said Bridge Company, may declare this Contract, annulled in so far, as they are bound to continue it on their part, and may proceed to sue for and collect the

balance due them thereon.

25

And it is further agreed between the said parties, that the notes or bills heretofore mentioned, and agreed to be protected by the said parties of the second part, the same heretofore furnished Warren Jenkins for a similar purpose; marked on the face thereof with the letters "W" in the hand writing of the said Jenkins, and dated "Oct 1." But any other mark or device may be hereafter used, which shall be mutually agreed upon for any ~~notes~~ mutilated notes, returned for exchange, or any new ones furnished.

And the said parties of the first part hereby Covenant and agree to and with the said parties of the second part that they will cause all notes & bills heretofore issued, or which may be hereafter issued by them, to be at all times redeemed at its office in Lambertville, in specie, or its equivalent, and that in all respects they will keep and preserve the faith and credit of said Company inviolate.

And it is further mutually agreed that this Contract shall be and continue in force (unless forfeited, as herein provided) for and during one year; And thereafter it shall continue in force, unless notice shall be given by one party to the other, of an intention to terminate the same. And such notice shall be given at least three months prior

to such intended termination. And to prevent all misunderstanding, it is hereby declared, that this agreement is a simple contract for the loaning of money; and in no wise to be deemed or taken as establishing an agency; and the said Curtis & Mitchell, shall in no sense, be considered, and in no way are authorised to act as agents of the said Knott's Delaware Bridge Company.

And for the faithful performance of this contract, and as collateral security therefor, the said Curtis & Mitchell, have assigned and delivered to the said Delaware Bridge Company, four thousand five hundred shares of the capital stock of said Company, amounting to Ninety thousand dollars at its par value.

And for the mutual performance of the covenants and agreements herein made and specified, the said parties, each to the other, bind themselves, the said Bridge Company for themselves, their successors and assigns, and the said Curtis & Mitchell, for themselves, their heirs, executors, administrators and assigns, in the penal sum of Twenty thousand Dollars.

In witness whereof the said Knott's Delaware Bridge Company, pursuant to an order of the Board of Managers, have caused their corporate seal, and the signature of their President to be hereto affixed,

27 and the said Curtiss & Mitchell, have hereto set their hands and seals the day and year above mentioned.

And which said agreement was duly signed by the said respective parties thereto.

And the said Defendants further aver that in pursuance of the terms of the said agreement, the said defendants delivered their notes to the said Curtiss & Mitchell, of which said notes in said declaration mentioned, are a part, and that the said Curtiss & Mitchell, then were, and from that time became, and still are the true and lawful holders and bearers, exclusively of the said notes in the said declaration mentioned, and that the same were fraudulently, and without any consideration, transferred to the said Plaintiffs, for the purpose, and with the intent and object of defrauding the said Defendants, by not redeeming the said notes, and furnishing funds to redeem the same, according to the terms, and true intent and meaning, of the said agreement, above set forth. And the said Defendants further aver, that the said Curtiss & Mitchell, in violation of the said agreement, have not furnished the said defendants, funds ~~of~~ money to redeem the said notes, in the said declaration mentioned, and which are the identical notes delivered to the said Curtiss & Mitchell, by,

the said Defendants, under and by virtue of the agreement above set forth. And this they are ready to verify. Wherefore they pray judgment, if the said Plaintiffs ought to have or maintain their aforesaid action against them.

3. Plea.

And the said Defendants for a further plea in this behalf, by leave of the Court, here first had and obtained, say that the said Plaintiffs ought not to have or maintain their aforesaid action thereof against them, because they say, that the notes and bank bills, in plaintiffs' declaration mentioned, were heretofore to wit, on the day of their date respectively delivered to A. B. Curtis and D. A. Mitchell, under and in pursuance of the articles of agreement above set forth; and the Defendants aver that it was amongst other things in said articles of agreement stipulated, that said Curtis & Mitchell were always to keep on hand, either by a deposite in the office of said Company, at Lambertville, or in New York City, or Philadelphia, subject to a sight draft of said Company, so that said bills, when presented to said Company, should be redeemed by said fund, and at the expense of said Curtis and Mitchell, which the said Defendants aver that the said Curtis & Mitchell utterly failed to do, but on the contrary thereof afterwards, to wit, on the day and year, and at the place aforesaid.

29

said, fraudulently and with the intention of defrauding the said Defendants, delivered said notes & bills, in the said Declaration mentioned to the plaintiffs, for the purpose of bringing suit thereon, and for the purpose and object of avoiding redeeming the said notes and bills in pursuance of the said agreement above set forth, and which said suit is brought for the sole use and benefit of the said Curtis & Mitchell, of all of which the said plaintiffs then and there had notice. And this they are ready to verify, wherefore they pray judgment if the said Plaintiffs ought to have or maintain their aforesaid action against them &c

4th Plea

And the said Defendants for a further plea in this behalf, by leave of the Court here first had and obtained, say that they ought not to have or maintain their aforesaid action thereof against them, because they say that the said A.B. Curtis & D.M. Mitchell, who are the real holders and owners of said notes and bank bills, in the said declaration mentioned, before and at the time of the commencement of this suit, to-wit: at Chicago, aforesaid, were and still are indebted to the said Defendants in a large sum of money, to-wit: in the sum of five thousand dollars, for money by the said defendants, before

that time lent and advanced to, and paid, laid out and expended for the said ~~S. B. Curtis~~ & ~~D. B. Mitchell~~, and at their request, and for money before that time had and received by the said ~~Curtis~~ & ~~Mitchell~~, to and for the use of the said defendants, for interest upon, and the forbearance of divers large sums of money due and owing from the said ~~Curtis~~ & ~~Mitchell~~, to the said defendants, and by the said defendants forbore to the said ~~Curtis~~ & ~~Mitchell~~, for divers long spaces of times, before then elapsed, and for money due and owing from the said ~~Curtis~~ & ~~Mitchell~~ to the said defendants upon an account stated between them, under and by virtue of the agreement above set forth. And the said Defendants further aver, that at and before the commencement of this suit, and at the time and delivery of the notes & bills in the said declaration mentioned, by the said ~~Curtis~~ & ~~Mitchell~~, to the said plaintiffs, the said plaintiffs well knew of the said agreement above set forth, and that the said defendants had a good, legal and valid claim of set off, against the said ~~Curtis~~ & ~~Mitchell~~. And said Defendants further aver, that the said ~~Curtis~~ & ~~Mitchell~~ are the real and bona fide holders & owners of the notes & bills above declared on, which said sum of money so due and owing to the said defendants as aforesaid, exceed the damages

31

sustained by the said Plaintiffs, by reason of the non performance by the said defendants of the said several supposed promises and undertakings in the said declaration mentioned, and out of which said sum of money, so due and owing from the said Curtis & Mitchell to the said Defendants, the said Defendants are ready and willing, and hereby offer to set off and allow to the said Plaintiffs, the full amount of the said damages, according to the form of the statute in such case made and provided. And this they are ready to verify. Wherefore they pray judgment if the plaintiffs ought further to have or maintain their aforesaid action thereof against them &c

Arnold & Lay

Defrs Attys.

Curtis & Mitchell

To Knowlton Delaware Bridge Co Dr

To money lent and advanced \$5000.

To money paid, laid out & expended 5000.

To money had and received 5000.

On an account stated 5000.

And on the twenty-sixth day of October A.D. 1848 being one of the days of said October Term of said Court the following process was then read and entered of record to wit,

Theodore Perry & Horville Shumway

vs

The President & Managers of the
New Hope Delaware Bridge Company

} att.

Oct 26 1848.

On motion of the Plaintiffs attorneys
leave is granted to reply double in this
cause.

And upon the same day to wit, on the twenty-sixth day of October in the Year of our Lord one thousand eight hundred & forty eight then was filed in the office of the Clerk of said Court the Plaintiffs Repliation in the words and figures following to wit,

Cook County Court
 Theodore Perry & Pontle Shumway
 vs

October Term
 1886

The President & Managers
 of the New Hope Delaware Bridge Co

And the said plaintiff as to the
 plea of the said defendants by them first
 above pleaded and whereof they have put
 themselves upon the country do the like

By their attorney
 Larned Bentley

And as to the said plea of the said
 Defendants by them lastly above pleaded
 the said plaintiff say that by reason of
 anything by the said defendants in the
 above plea alledged they ought not to be
 barred from having and maintaining their
 said action thereof against them because
 they say that at & before the commencement
 of this suit and at the time of the delivery
 of the said Bank notes in the said dec-
 laration mentioned to the said plaintiff
 the said Curtis & Mitchell were not & are
 not now the real and bona fide holders and
 owners of the said notes without this
 that the said notes were delivered to the

Said plaintiffs by the said Curtis & Mitchell + inttunt this that-the said plaintiffs at the time of the delivery of the said notes to them had knowledge of any agreement between said Defendants and said Curtis & Mitchell affecting the said notes. and inttunt this that-the said plaintiffs well knew that the said Defendants had a good legal and valid claim of setoff against the said Curtis & Mitchell.

And this they pray may be inquired of by the country.

By their Attorney

Larned & Bentley

And for further ~~plea~~ answer to the said plea of the said Defendants by them last above pleaded the said plaintiffs by leave of the Court first had and obtained say that-by reason of anything by the said Defendants in the said plea alledged they ought not to be barred from having and maintaining their said action thereof against them because they say that-the said Curtis & Mitchell were not nor are indebted to the said defendants in manner and form as the said defendants have in their said last plea above alledged. And thus the said plaintiffs also pray may be inquired

35

of by the county
By their Attorney
Larned & Bentley

Cook County Court.
Theodore Perry & Berille Shumway
v
The President & Managers of
the New Hope Delaware Bridge
Company } Oct. Term
A.D. 1848

And the said plaintiffs as to
the said plea of the said defendants by them
secondly above pleaded say that the same and
the matters therein contained in manner & form
as the same are above pleaded and set forth
are not sufficient in law to bar or preclude
them the said plaintiffs from having or
maintaining their aforesaid action thereof
against the said defendants and that
they the said defendants plaintiffs are not
bound by law to answer the same. And
thus the said plaintiffs are ready to verify
Wherefore by reason of the insufficiency of the
said plea in this behalf the said plaintiffs
pray judgment and their debt aforesaid
together with their damages by them sustained
on occasion of the detention thereof to be
adjudged to them

By their Attorney
Larned & Bentley

And the said plaintiffs according to the form of the Statute in such case made and provided state the following causes of special demurrer to the said second plea of the said defendant that is to say

1. Recurre the said plea amounts to the general issue.
2. Said plea does not assign any breach of the contract in the said plea set forth by the said Curtis & Mitchell
3. It does not appear by said plea that any of the notes delivered to the said Curtis & Mitchell by the said Defendants were to be redeemed by the said Curtis & Mitchell excepting such notes as should be put in circulation by them
4. It is not averred in said plea that said notes mentioned in said declaration were ever put in circulation by said Curtis & Mitchell
5. It is not averred in said plea that said notes in said declaration described were ever presented to the said Defendants for redemption
6. It is not averred in said plea that the said defendants have ever redeemed the said notes in said declaration mentioned
7. No damage to the said defendants by reason of the non redemption of said bills is averred in said plea

8. In demand by the said defendants upon the said Curtis & Mitchell to redeem the said notes in said declaration mentioned is averred and no refusal of the said Curtis & Mitchell to redeem the same upon such demand is averred in said plea
9. There is no averment in said plea that the said Curtis & Mitchell have neglected or refused for sixty days after notice to redeem said notes or to pay the said defendants the sum or neglected to be redeemed.
10. There is no averment in said plea of notice having been given to the said Curtis & Mitchell by said Defendants of a want of funds of the said Curtis & Mitchell to redeem said notes
11. It is not averred in said plea that the said Curtis & Mitchell did not provide a fund for the redemption of all the notes which were put into circulation by them

And the said Plaintiffs, as to the said plea of the said Defendants by them thirdly above pleaded, say that the same and the matters therein contained in manner and form, as the same are above pleaded and set forth, are not sufficient in law to bar or preclude them the said Plaintiffs, from having or maintaining their aforesaid action thereof against the said Defendants, and that they the said Plaintiffs, are not bound by law to answer the same — And this the said Plaintiffs are ready to verify. Wherefore by reason of the insufficiency of said plea in this behalf, the said Plaintiffs pray judgment, and their debt aforesaid, together with their damages by them sustained on occasion of the detention thereof, to be adjudged to them

By their Attorneys
Larned & Bentley

And the said Plaintiffs according to the form of the statute in such case made and provided, state as causes of special demurrer to the said third plea of the said Defendants, the same causes stated and set forth to the said second plea of the Defendants, And the following other Causes

to wit:

1. The said plea is contradictory, inconsistent and uncertain in this, to wit: the time at which said notes are averred to have been given to the said Curtis & Mitchell, to wit: the day of the dates of the notes, as set forth in said declaration, is long previous to the day of the date of said agreement.
2. The said plea is contradictory, inconsistent and uncertain in this, to wit: said notes are alleged to have been delivered to said Plaintiffs on the day of their dates, for the purpose of avoiding the said agreement, whereas the agreement bears a date long subsequent to the date of the said notes.
3. The said plea is argumentative.

And afterwards to wit on the Eleventh day of May in the Year of our Lord one thousand Eight hundred and forty nine being one of the days of the May Term of said Cook County Court in the Year aforesaid among other things the following proceedings were had and entered of Record to wit

1849
May 11

41

Theodore Perry & Bonito Hummery
vs

The President & Managers of
the New Hope Delaware Bridge Co

} att.

This day again come the said parties by their Attornies and after argument heard on the said plaintiff demurer to the said defendants second and third pleas the Court being now fully advised in the premises are of the opinion that the said pleas are insufficient - And thereupon on motion of the said defendants leave is granted them to amend their said second plea by the coming in of Court tomorrow morning

Thereupon it is considered that the said plaintiff recover of the said defendants their costs and charges by them about their said demurer in this behalf expended shall be entitled therefor

And afterwards to wit, on the twelfth day
of May A.D. 1849. there was filed in the office
of the Clerk of said Cook County Court the amend-
ments to second plea filed by Defts. which
are in the following words and figures follow-
ing to wit,

42

New Hope Delaware
Bridge Company

ad.

Theodore Perry &
Borville Shumway

Amendments to

Second plea, filed by Defendants.

(After the copy of the contract set out in said plea, proceed as follows) And the said Defendants aver that the Bank notes, set out and described in the Plaintiffs declaration, were then and there to wit; on the second day of December AD 1847, to wit in the city of New York, delivered by the said Defendants to the said Curtis & Mitchell, under and upon the terms in the said contract, set forth, and the said Defendants aver, that the said Curtis & Mitchell, did not, nor would they, although said Defendants fulfilled said contract on their part, then and there so use the Bank notes, so delivered, as to obtain for them, as far as possible, such circulation as should best prevent their return home for redemption, nor did they, nor would they provide for and always keep on hand a fund sufficient for the redemption of said Bills and notes, either by a deposit in the office of the said Defendants in Lambertville, nor in New York, nor in Philadelphia, nor elsewhere, subject to a

sight draft from the said Company, so that all said bills, or ~~notes~~ such part as should be loaned by said Curtiss & Mitchell under said agreement, when presented for redemption at the office of said Defendants, should be redeemed by the fund, and at the expense of said Curtiss & Mitchell, nor did they, nor would they keep an account of all sums by them or their agents, put in circulation, nor would they (altho' often requested) from time to time as required & requested, report the same to said Company.

And the said Defendants further aver that said Curtiss & Mitchell, having received said notes as aforesaid, instead of so using the same, as to obtain for them, such circulation, as would best prevent their return home for redemption; and instead of providing for their redemption, as above stipulated, then and there fraudulently and in violation of said Contract, delivered the same to the Plaintiffs, with the understanding that they were not to be circulated, nor placed in circulation, but that suit should be immediately brought upon the same by the said Plaintiffs, against the said defendants, but for the use and benefit of said Curtiss & Mitchell.

And the defendants aver that at the time of the delivery of said

44-

notes to said Plaintiffs, by said Curtiss & Mitchell to wit, at New York, aforesaid, the said Plaintiffs well knew that said notes, had been delivered to said Curtiss & Mitchell, by said defendants, under and in pursuance of said contract, above recited, and well knew the terms thereof, and then and there fraudulently and knowingly received the same, for the purpose of bring suit thereon, in manner aforesaid. And the said Defendants aver that said notes, were never placed in circulation by said Curtiss & Mitchell, as said Plaintiffs then and there well knew, nor were they ever presented by said Curtiss & Mitchell, or said plaintiffs to said Bank, for payment, but were received by said Plaintiffs from said Curtiss & Mitchell, in manner aforesaid; And this suit brought thereon in pursuance of said arrangement. All of which they the said defendants are ready to verify, wherefore they pray judgment &c

Arnold & Lay
Attys for Defts.

45

Theodore Perry & Co

vs

The New Hope Delaware
Bridge Company

May Term A.D. 1849

The Plaintiffs demur
generally and specially to the second plea,
as amended, for the same causes specified
in the demurrer before filed to the original
second and third pleas. And also because
the said plea is bad for multifariousness.

By their Atty^s
Larned & Bentley

46

And afterwards to wit on the Eighteenth day,
and on the twenty second day of May. in
the Year of Our Lord one thousand eight hundred
and forty nine being days of the May Term
of said Cook County Court in the Year aforesaid
among other things the following proceedings
were had and entered of record to wit,

1849
May 18

47

Theodore Perry & Bonile Shumway
v
The President & Managers of the
New Hope Delaware Bridge Co } att.

This day again came the said parties by their Attorneys and after argument heard on the said Plaintiffs special demurrer to the said defendants plea herein the Court not being fully advised in the premises takes the matter under advisement.

May 22. Theodore Perry & Bonile Shumway
v
The President & Managers of the
New Hope Delaware Bridge Co } att.

This day again came the said parties by their Attorneys and the Court being now fully advised in the premises are of the opinion that the said defendants amended plea herein is insufficient on law.

Therefore it is considered that the said Plaintiffs recover of the said Defendants their costs & charges about their said demurrer herein sustained and have Execution therefor.

And afterwards, to wit on the Thirtieth day
 of May in the Year of our Lord One thousand
 Eight Hundred & forty nine being one of the days
 of the May Term of said Court in the Year aforesaid
 among other things the following proceeding
 was had and entered of record to wit

Wednesday
May 30. 1849.

Theodore Perry & Bonelle Shumway
vs

49

The President & Managers of
the New Hope Delaware Bridge
Company } all.

This day again came the said parties & their Attorneys and issue being joined therein let a jury come, and thereupon came the jurors of a jury of good and lawful men to wit: John de Edwards, Leonard Jarvis Isaac Anderson Patrick Higgins E Jiffalls E Kenne J McGrath. J P Ruby James Lee Andrew Campbell Enoch Woods & J W Wallace who were duly elected tried and sworn well and truly to try the issue joined as aforesaid and after hearing the evidence adduced arguments of counsel and instructions of the Court retire under charge of an officer of the Court to consider their verdict and afterwards came into Court and say. We the Jury find that the said defendants are indebted to the said plaintiffs in the sum of three thousand and seven hundred dollars. and assess their damages by reason of the detention thereof to the sum of one hundred and eighty-one dollars and thereupon the said defendants entered their motion for a new trial herein and after argument heard thereon it is ordered that the said

motion be overruled to which opinion of the Court. overruling the said motion the said defendants enter their Exceptions.

Therefore it is considered that the said plaintiff recover their debt of the said defendants. their debt of three thousand and seven hundred dollars in their said declaration mentioned and their damages of One hundred and eight one dollars in form aforesaid assessed amounting in the whole to the sum of three thousand one hundred and ninety eight dollars and also their costs & charges in this behalf expended & have Execution therefor.

And afterwards to wit on the thirty first day of May A.D. 1849. there was filed in the office of the Clerk of said Court the Defendants Bill of Exceptions, which said Bill is in the words & figures following to wit,

51

Cook County
Court.

The New Hope Delaware Bridge Company } att.
add
Theodore Perry, &
Bonnie Shumway }

Be it remembered that on the trial of
this cause the plaintiffs offered to read
in evidence the following instruments
(being the bank notes & bank bills of which
^{the contents of the same being marked on the face with the letter "W" or the}
^{words "copy" in ink}
a copy is set out in the declaration)
to the reading of which the Defendants
by their counsel objected and the court
overruled the objection and permitted them
to be read in evidence to which decision
the Defendants excepted and excepted so-
rally to the reading as evidence each
note.

The Plaintiffs introducing no further
testimony the defendants then offered to
read in evidence to the Jury the follow-
ing deposition taken in this case of
Warren Jenkins

(Here insert the same)

to the

to the reading of which the plaintiff ob-
jected as being irrelevant in this stage
of the case for the reason that no.

evidence had been offered by the said Defendants connecting the said plaintiffs with the transactions between said Curtis & Mitchell & said Defendants sworn to in said deposition and the Court sustained the objection and refused to permit the said deposition to be read to which decision the Defendants excepted.

The Defendants then called Isaac H. Birch who being duly sworn as a witness testified that he is an exchange broker doing business in the City of Chicago and was so in December 1847 and in January 1848. The Defendants by their counsel propounded to him the following Interrogatory

"Do you know when the New Hope Delaware Bridge Company failed if so state?"

To which the plaintiff counsel objected and the Court sustained the objection and refused to permit the question to be answered to which decision the Defendants by their counsel excepted.

The Defendants counsel then asked the following question ~~was~~

"Was the said Bridge Company solvent in January 1848?" to which the plaintiff counsel objected and the Court sustained the objection and refused to permit said question to be asked.

53

answered to which opinions the Defendants excepted

The Defendants then called Charles Walker who testified that he did know the parties and had had no business transactions with plaintiffs in relation to the bills of said Defendants

The above was all the evidence introduced by either party on the trial

The Defendants then moved the Court to exclude the evidence offered on the part of the plaintiffs and the Court overruled the motion and the Defendants excepted

The Defendants then asked the Court to instruct the Jury as follows to wit:

55

The New Hope Delaware Bridge Company }
ads.
Bonilla Hummeray & Theodore Perry }

The Court is requested to instruct the jury on the part of Defendants as follows.

First If the jury believe from the evidence that the notes introduced in evidence were made executed and delivered without the State of Illinois (see of Lin act) and that five years and upwards have elapsed prior to the commencement of this suit since they or any of them became due, this being an action of debt statute of limitations will apply and the plaintiffs are not entitled to recover on any such notes which they find from the evidence have been due more than five years before the commencement of suit.

Second. If the jury believe that these notes were made and transferred by delivery only without endorsement & without the State of Illinois the action not being in the name of the payee and the notes not being endorsed the plaintiffs can not recover.

Referred

Referred

13-

20-

Third. So many of the notes read in evidence as are specifically made payable at Lambertville & on demand the plaintiff are not entitled to recover upon unless the jury believe from the evidence the plaintiff has prior to the institution of the suit demanded payment of the same

Fourth. The plaintiff having averred in the declaration that the notes were made executed and delivered to the plaintiff in New Jersey unless the jury believe from the evidence the allegation is proved the verdict should be for the Defendants.

Fifth. Unless the jury believe from the evidence that by the laws of New Jersey the bearer of a note is authorized to sue in his own name they should find for the Defendants.

Sixth. The plaintiff having alleged in the declaration that the notes on which the action is brought were made & delivered to the plaintiff, in New Jersey and that by the laws of that state they passed by delivery there are material allegations & unless

57

the Jury believe from the evidence they are sustained by proof they should find for the Defendants

Seventh. The plaintiff having plead the laws of New Jersey unless the allegation has been sustained by proof the plaintiff are not entitled to recover

Eighth. If the Jury believe from the evidence that the notes or any of them given in evidence were executed and entered into beyond the limits of this State and that five years have elapsed prior to the institution of this suit - since cause of action has accrued upon them or any of them then the Jury will find for the Defendants as to such notes.

58

And the Court refused to give them and each of them to the refusal to give which said several instructions and each one of them the Defendants excepted.

The Jury returned a verdict for the plaintiff for \$3198.

And thereupon the Defendants entered their motion in arrest of judgment which the Court overruled and the Defendants excepted thereto. And thereupon the Defendants moved for a new trial which the Court overruled and the Defendants then and there excepted to the decision of the Court and prays the Court to sign seal and certify the foregoing bill of Exceptions.

May 31. 1846.

Cates Spring (Seal)

State of Illinois
County of Cook

I Walter Kimball Clerk
of the Cook County Court in and for the County
and State aforesaid do hereby certify that the
foregoing is a true and accurate transcript
of so much of the Records and papers in a
certain Cause wherein Theodore Perry & Powell
Sherman are Plaintiffs & the Wen Hope Delaware
Bridge Company is defendant as are not omit-
ted in this transcript by agreement of parties.

In Witness Whereof I have here-
unto set my Hand and affixed
the Seal of said Court at the City
of Chicago this 9th Day of June
A.D. 1849.

Walter Kimball Clerk

60
Cook County Court
The President & Managers
of the New Hope Delaware
Bridge Company

ad
Boville Shumway
Theodore Perry

we shall apply to the Clerk of this Court at his office on the twenty fourth day of April inst., at ten o'clock in the forenoon of that day to issue a commission in the above cause to be directed to Daniel ~~Andrus~~^{Andrews} Esq., Counsellor at Law at Auburn, County of Cayuga and State of New York to take the deposition of Warren Jenkins of said place, on Interrogatories, copies whereof you are herewith served.

Dated April 13. 1844

Messrs Larned & Bentley

Gentl, Please take notice that

Yours &c

Arnold & Lay, Attys for Def^t

Cook County Court
The President & Managers
of the New Hope Delaware
Bridge Company

ad
Boville Shumway
Theodore Perry

Interrogatories to be administered to Warren Jenkins a non resident witnesses to be produced sworn and examined in the above cause on the part of the Def^t

First Interrogatory, What is your name, age and occupation and where do you now reside:

Second. Do you know the plaintiffs in the title of these interrogatories named and how long have you known them;

Third. Did you ~~know~~ ever see or have in your possession or know of a contract with the said New Hope Delaware Bridge Company of which the following is the substance. "This agreement made and concluded this second day of Dec. 1847, by and between the New Hope Delaware Bridge Company of the State of New Jersey, by A A John President, parties of the first part, and R. B. Curtis

61
and D W Mitchell, under the firm of Cortiss & Mitchell of the City
of New York parties of the second part Witnesseth, That the parties
of the first part, for value received and in consideration of the
covenants and agreements herein after stipulated and mentioned
have loaned and do hereby loan to the said parties of the second part,
the notes or bills of circulation of the said Bridge Company to
the amount of ^{thousand} sixty dollars, to be increased or diminished as may
be from time to time agreed upon by the said D W John
President, and the parties of the second part as aforesaid, And
the said parties of the second part covenant and promise as follows,
to wit: That they will use the notes aforesaid as to obtain for them,
as far as possible such circulation, or shall best prevent their
return home for redemption. That they will provide for and
always keep on hand a fund sufficient for the redemption of
said bills or notes, either by a deposit in the office of said
Company at Lambertville, or in New York City or Philadelphia,
subject to a sight draft from the said Company, so that
all said bills, or any that may hereafter be loaned to said parties
of the second part pursuant to this agreement when presented
for redemption at the office of said Company shall be redeem-
ed by the fund and at the expense of the said parties of the
second part, That they will keep an account of all sums by them
or their agents put in circulation, and will from time to
time as may be required, report the same to the said Compa-
ny, and if required verified by oath, that they will pay the said
Bridge Company semi-annually from the date hereof,
interest at the rate of three per cent per annum on all sums
actually put and kept in circulation by them and at the
expiration of this contract or required by the said Company,
will repay to the said Company the full amount that
may be their due according to the provisions of this contract,
Provided that the notes or bills issued by the said Bridge
Company shall always be received at par by them or their
assigns in payment of any and every indebtedness of the said parties

62
of the second part arising under this agreement or otherwise,
And it is further agreed that all of the notes and bills aforesaid
which shall be redeemed by the said Bridge Company with the
funds of the said parties of the second part, shall be deemed out
of circulation for the purposes of this agreement and they shall
be returned to said parties of the second part, or others, in place of
them for circulation as herein provided.

And it is further agreed that for all sums deposited by said parties
of the second part with the said parties of the first part for
the purpose of reducing the circulation aforesaid, there shall
be allowed to said parties of the second part, interest at
the rate of six per centum per annum, until the same shall
be required for such redemption, and if at any time the said
parties of the second part shall fail to provide for the redemption
of the notes, which may be by them put in circulation as herein
before specified, they shall forthwith pay up, principal and interest
of any such sum or sums so returned for redemption, and from
the time of such failure shall pay interest at the rate of six
per centum per annum, together with all damages, costs, ex-
penses and exchange firstly chargeable thereon, And if such pay-
ment of principal and interest shall be neglected or refused for
sixty days after notice given by mail or otherwise, then the
said Bridge Company may declare this contract annulled in
so far as they are bound to continue it on their part, and may
proceed to sue ^{for} and collect the balance due them thereon.

And it is further agreed between said parties that the notes or bills
hereinbefore mentioned, and agreed to be protected by the said
parties of the second part, and the same heretofore furnished
Warren Jenkins for a similar purpose; marked on the face
thereof with the letter "W" in the hand writing of the said
Jenkins, and dated Oct^r. But any other mark or device may
be hereafter used, which shall be mutually agreed upon for
any mutilated notes returned for exchange or any new ones fur-
nished.

63
And the said parties of the first part hereby covenant and agree to and with the said parties of the second part, that they will cause all notes & bills heretofore issued or which may be hereafter issued by them, to be at all times redeemed at its office in Samburgville in specie or its equivalent, and that in all respects they will keep and preserve the faith and credit of said Company inviolate, And it is further mutually agreed that this contract shall be and continue in force (unless forfeited as herein provided) for and during one year: And thereafter it shall continue in force unless notice shall be given by one party to the other of an intention to terminate the same, And such notice shall be given at least three months prior to such intended termination. And to prevent all misunderstanding it is hereby declared that this agreement is a simple contract for the loaning of money; and in no wise to be deemed or taken as establishing an agency, and the said Curtiss & Mitchell shall in no sense be considered and in no way are authorized to act as agents of the said New Hope Delaware Bridge Company. And for the faithful performance of this contract and as collateral security therefor the said Curtiss & Mitchell have assigned and delivered to the said Delaware Bridge Company four thousand five hundred shares of the capital stock of said Company amounting to ninety thousand dollars at its par value, And for the mutual performance of the covenants and agreements herein made and specified, the said parties each to the other bind themselves the said Bridge Company for themselves their successors and assigns, and the said Curtiss & Mitchell for themselves, their heirs, executors, administrators and assigns in the penal sum of twenty thousand dollars, In witness whereof the said New Hope Delaware Bridge Company pursuant to an order of the board of managers have caused their corporate seal and the signature of their President to be hereto affixed, and the said Curtiss & Mitchell have hereto set their hands, and seals the day and year above mentioned, or any contract similar in substance,

Fourth, Did you enter into a similar contract with the said New Hope Delaware Bridge Company and if so, did you ~~refuse~~ the notes of the said Company under & by virtue of such contract, if not what contract if any did you enter into?

64

Fifth, Did you receive any bank notes from said Company if so how were they marked in what way and for ^{what} purpose, and were said notes when so marked issued by you or your agents?

Sixth, Did you ever deliver to said Curtiss & Mitchell or either of them notes purporting to be made by Deftth and marked by you, if so state when & why & all the facts in relation thereto; Had they any of them letter "W" endorsed in them & were they dated Oct 1st?

Seventh, Were these notes delivered by you to them under the said contract set forth in third Interrogatory? If not under what circumstances & for what purpose state fully?

Eighth, What were Curtiss & Mitchell to do with them; What have they done with them; State all you know on the subject.

Ninth, Do you know of any other matter or thing, touching the matters in question, that may tend to the benefit or advantage of the said Defendants; If you, declare the same, fully and at large, as if you had been particularly interrogated thereto.

Arnold & Lay
Atty's for Defts

66

We do hereby admit service of a copy of the within Interrogatories
this 13th day of April 1849.

Larned & Bentley,

Theodore Perry Co
vs

Cook County Court,
May term A D 1849

President Managers of
New Hope Delaware Bridge Company

And the said plaintiff reserving all
right of exception to the commission & interrogatories issued in the
above entitled cause file their cross interrogatories therein as follows
by their Attorneys.

Larned & Bentley,

Cross Interrogatories to be propounded to Warren Jenkins a witness
on the part of the Defendant in the above entitled cause,

Cross, int 1st. Have you any interest in the event of this suit,

Cross int 2nd. Are you not a stockholder in the New Hope Delaware
Bridge Company or is said Company indebted to you a large
amount?

Cross, int 3rd. What if any connection have you had with the business
of said Company? What office have you had in the same?

Cross, int 4th. If you are not now a stockholder of the said Company
have you ever been so & to how large an amount & when did you
cease to be so?

Cross, int 5th. Do you know of any matter or thing tending the matters
in question that may tend to the benefit or advantage of the said
plaintiffs, if yes, declare the same fully & at large as if you had
been particularly interrogated thereto?

Larned & Bentley attys for plff

67
Deposition of Warren Jenkins of the City of Auburn in the County of
Cayuga and State of New York, a witness produced sworn and examined
on oath on the 23rd day of May in the year of our Lord One Thousand Eight
hundred & forty nine, At my office in the said City of Auburn by me
Daniel Andrews, by virtue of a commission issuing out of the Cook
County Court in the State of Illinois, to me directed and hereto annexed
for the examination of Warren Jenkins a witness in a cause in the
said Court depending between Bozille Shumway and Theodore Perry
Plaintiffs, and the President and Managers of the New Hope
Delaware Bridge Company Defendants, on the part of the Defen-
dants deposes as follows.

For the first interrogatory the said witness answering says —
That his name is Warren Jenkins, his age about forty five years
I am now engaged in the manufacture of paper at the City of Auburn aforesaid.

For the second Interrogatory the said witness answering says, I know the
parties Plaintiff in the title of the interrogatories hereto at-
tached named, and have known them for several years —

For the third Interrogatory, the said witness answering says, I have and
had in my possession on or about the second day of December One
thousand Eight Hundred and forty seven a contract with the said
President and Managers of the New Hope Delaware Bridge
Company, similar to and according to my best recollection thereof
precisely like the one set forth in the said third Interrogatory.

For the fourth Interrogatory the said witness answering says
I did enter into a contract similar to the one set out in the
said third Interrogatory with the said New Hope Delaware
Bridge Company some time prior to the date of the one
mentioned and set out in the said third Interrogatory —
But the precise date of the one I entered into I cannot
now state, and I received the notes of the company on
said Contract.

238043-37

For the fifth Interrogatory the said witness answering says, I did receive from the said New Hope Delaware Bridge Company under and upon the said contract I made with them, Bank notes issued by said Company which were marked by writing with a pen the letter "W" upon their face not far from the right hand end of said notes and about even with the bottom of the vignette - some of them were marked "Oct 1st" others "Oct 1st 46 or Oct 1, 1846 in lieu of the "W" before mentioned, And when so marked I used them all in my business as I did other Bank notes - And that said marks were placed upon said notes so as to distinguish them from other notes issued by said Company, and to enable the Company to ascertain what notes I was to redeem in pursuance of the terms of my said agreement with said Company.

For the sixth Interrogatory the said witness answering says That in the fore part of December 1847, I consummated an agreement between myself & Messrs A. B. Curtiss & D. A. Mitchell by which I transferred to them ninety Thousand Dollars of Stock in the New Hope Delaware Bridge Company and at the same time I delivered to them a large amount of the Bank notes of the said New Hope Delaware Bridge Company and at the same time I delivered to them a large marked and described as set forth in my answer to the fifth Interrogatory above - That the said Bills were delivered to them upon their entering into a contract with said Company similar to the one I had with them and taking my place; and that said Company then settled with me and released me from my liability to them.

For the seventh Interrogatory, the said witness answering says that in pursuance of the agreement between said Company and Curtiss and Mitchell, and myself & Mitchell & Curtiss and the Company; At the request of A. A. John President of the Company I delivered over to them the said Curtiss & Mitchell the Bank notes I then had in my possession issued by, and before then delivered to me by said Company and they were credited to

my account with said Company the same as though payment had been made by me to them -

For the Eighth Interrogatory the said witness answering says -
As I understood this agreement above set forth in the third Interrogatory
Curtiss & Mitchell were to use, and circulate said notes in any man-
ner they chose, but were always & at all times to protect the
Company from being obliged to redeem those notes so marked be-
fore described excepting those they might pay to the Company
for any indebtedness of theirs to the Company, And also excepting
those that came in the hands of the Company in this ordinary
course of Deal of others with the Company, and these last were
to be redeemed by the Company out of the fund to be furnished
provided and previously deposited by said Curtiss & Mitchell, or by
their paying on sight the Drafts of the President of the Company
to equal amount - Curtiss & Mitchell used some of the bills
in the City of New York, and both of them subsequently
told me that they had lent to, or lent by Mr. Chumway one of the
plaintiffs a large amount (I think ten thousand dollars) to Cincinnati
in Ohio, which amount they would be obliged to take back again. They
also told me there was some in Pittsburgh in like situation and
that they had others in their ^{possession} in New York - They refused to redem
the said bills in New York on and after about the 25th of same month
of December and immediately thereupon the credit value of the
money depreciated to forty cents on a dollar and below that sum -

To the ninth Interrogatory the said witness answering says that he does
not know of any other matter or thing touching the matters in
question that will tend to the benefit or advantages of Defendants in this cause
Warren Jenkins,

State of New York
Sageua County ss: I David Andrews the Commissioner named in
the Commission hereto attached do certify that on this 26th day of
May, 1849, Warren Jenkins in the said Commission named

came before me and after being by me duly sworn made the foregoing answers by him signed to the several Interrogatories attached to said commission and here with returned on the part of the Defendants named in said commission —

Daniel Andrews,

Commissioner,

Depositions of Warren Jenkins of the City of Auburn in the County of Cayuga State of New York a witness produced sworn and examined upon oath on the 33rd day of May 1849 at my office in the said City of Auburn by me Daniel Andrews by virtue of a commission issued out of the Cook County Court in the State of Illinois to me directed and hereto annexed and marked for the examination of witness in a Cause in the said Court depending between Bville Plummeray and Theodore Perry Mantiff and The President and managers of the New Hope Delaware Bridge Company Defendants on the part of the Defendants of the Cross Interrogatories to the aforesaid Commission annexed deposes and saith as follows —

To these first Cross Interrogatories the said witness answering says — I have no interest in the event of this suit.

To the second Cross Interrogatory the said witness answering says — I am not a stockholder in the New Hope Delaware Bridge Company; nor is said Company indebted to me in any amount or in any way directly or indirectly —

To the third Cross Interrogatory said witness answering says I have never had any business connection with said Company excepting as a Borrower from its banking department, under a contract similar to the one described & set forth in the third direct Interrogatory above inserted; And while I was indebted to the Bank under that arrangement, I purchased at my office ⁱⁿ New York, all the notes of the company of which were presented at $\frac{3}{4}$ of one per cent discount and redeemed at par all that bore,

my mark as described before which were presented at the banking house, I was not an agent of the company in any way, but purchased the notes of said Company on my own account solely - I was once a Director of said Company, and once only according to my best recollection acted with the board of Directors as one of the board - It is possible that I might have met or acted with them two or three times.

To the fourth Cross Interrogatory said witness answering says I was once a stockholder in said Company to the amount of ninety thousand Dollars, and I sold and transferred all my stock in said Company, to Messrs Curtis & Mitchell in the forepart of December 1847 and have never owned any of its stock or had any interest in it or in the assets of said Company since that time
To the fifth Cross Interrogatory said witness answering says I do not know of any other matter or thing touching the matters in question, that may tend to the benefit or advantage of the said plaintiffs within named.

Warren Jenkins,

State of New York
Cayuga County ss: I, Daniel Andrews the commissioner named in the Commission hereto attached, do certify that on this 22nd day of May 1849 Warren Jenkins in the said Commission named came before me and after being by me duly sworn made the foregoing answers by him signed to the several Cross Interrogatories attached to said Commission and herewith returned on the part of the plaintiffs named in said Commission -

Daniel Andrews
Commissioner

It is agreed that the above certifiers are the depositors
of the said Warren Jenkins on file in this cause
except the copy of the Ammunition which was issued
to take the same. & that the said deposition may
only taken and that the above copy thereof
shall be taken for a correct copy of the same
and no exception thereto taken by either party
on account of the copy of the said Ammunition
being omitted in the copy thereof.

James S. Bennett
Att'y

Arnold & Day attys
for depts

Cook County Court

Boville Shuman

Theodore Perry
vs

The President & Managers
of the New Hope Delaware
Bridge Company

Commissioner

Filed May 29. 1849

W. Kimbell, Clk

It is agreed that the above certifies all the deposition
of the said Francis Jenkins on file in this cause
except the copy of the Circumplex which was issued
to take the same. & that the said deposition may
only taken and that the above copy thereof
shall be taken for a correct copy of the same
and no exception thereto taken by either party
on account of the copy of the said Circumplex
being omitted in the copy thereof.

J. J. Bennett
Att'y

Arnold & Day attys
for depts

Cook County Court

Boville Shuman

Theodore Perry
vs

The President & Managers
of the New Hope Delaware
Bridge Company

Commissioner

Filed May 29. 1849

W. Kimball, Clk

Cook County Court.

Theodore Perry &
Dorville Shumway

vs
The President and
Managers of the New Hope
Delaware Bridge Company

It is stipulated and
agreed between the parties in this cause, that
the foregoing record, shall for all purposes
of argument and decision in the Supreme
Court, be regarded as a complete record in
this case. Some parts of the proceedings having
been omitted in order to avoid a too volumi-
nous case, it is agreed that the foregoing
record, certified by the Clerk of the Cook
County Court on the 9th day of June A.D. 1849,
shall be regarded as an agreed case, between
the parties in this cause. Neither party shall
take any exception because the record is not
perfect.

Larned P. Bentley.
Arnold Day

[7-5000]

56.

Cook County Court

Theodore Perry &
Bonill Shumanay

vs

The Ken Hope Leland
Bridge Company

Transcript

Filed June 28, 1849.
L. Leland Clk.

for pr. Clk.

An Act to amend the sixty sixth Chapter of the Revised Statutes, entitled "Limitations".

Sec 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That all actions of trespass, detinue, trover and replevin, all actions founded on any promissory note, bill of exchange, book account or simple contract, all actions founded on any promissory note, bond, judgment, contract, or indebtedness executed, rendered, entered into or assumed beyond the limits of this State, and all actions on the case, shall be commenced within five years next after such recovery, or the cause of such action shall have accrued and not after. All parts of acts inconsistent with the provisions of this act, be and the same are hereby repealed.

Sec 2. This act shall be subject to the same conditions as are provided in the twelfth section of the sixty sixth section (Chapter) of the revised statutes entitled "Limitations".
Approved. February 10. 1849

Copy of Act
to amend the
Act entitled,
"Limitations"

State of Illinois, Set.

The people of the State of Illinois,

To the Clerk of the ~~Circuit~~ ^{Cook County} court for the county of *Cook* — Greeting :

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the ~~Circuit~~ ^{Cook County} Court of *Cook* — county, before the Judge thereof, between *Theodore Perry & Roselle Shumway*

plaintiff and *The President & Managers*
of the *Chicago Hope Delaware Bridge Company*

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

defendants
as we are informed by *their* complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the county of La Salle, on the *2^d Monday of June A.D. 1880* — ~~next~~, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the Hon. *Samuel H. Treat* Chief Justice of our said Court, and the seal thereof at Ottawa, this *20th* day of *June* in the year of our Lord one thousand eight hundred and forty-*nine*.

L. Heland
Clerk of the Supreme Court.

Clerk of the Supreme Court.

A. Deland

one thousand eight hundred and forty-
in the year of our Lord
and of the said Justice of our said Court, and the
WITNESS, the Hon. *Spencer*

ing to law.

we may choose to be done therein, to correct the error, what it might ought to be done so early-

before our Justices assembled at Ottawa, in the county of La Salle, on the

and to our Justices of the Supreme Court, in record and proceedings of the plaintiff

and, commanding you that if judgment thereof be corrected in due form and manner of that Justice be done to the parties afore-

be corrected in due form and manner of that Justice be done to the parties afore-

are informed by complaint, and we being willing that error, if any there be,

it is said manifest error had taken place, the injury of the aforesaid

56

President & Co. D. B. Company

Perry & Shumway

Writ of Error

Filed June 25, 1849,
A. Deland *clerk*

the judges therein, between

judgment of a jury which was in the County Court of *La Salle* county, before

BECAUSE in the record and proceedings as also in the rendition of the

of the *Chief* of the county court for the county of *La Salle* — *Spencer*

of the *County* of the *County* of *La Salle*

State of *Illinois*, etc.

THIS DEED - LIVE LONG - MAY

Supreme Court.

The President and Managers
of the New Hope Delaware
Bridge Company
vs. Plffs in Error
Boville Skinnerway &
Theodore Perry

Assignment of Errors.

And now come the said plffs
by Arnold Day their Attorneys and say that in the record
and proceedings aforesaid and also in giving ^{the} judgment
aforesaid there is manifest error in this Court;

First. The Court erred in overruling the Defendants demurrers
to the plaintiffs Declaration and in overruling the demurrer
to the second count.

Second. The Court erred in overruling Demurrers special and
general Demurrer to first and second counts.

Third. The Court erred in sustaining plaintiffs demurrers
to Defts second plea as amended.

Fourth. The Court erred in overruling the motion for a
new trial.

Fifth. The judgment ^{includes interest on said notes} ~~for interest~~, whereas the plaintiffs
are not entitled to recover interest on said notes.

Sixth. The Court erred in excluding the evidence of Warren
Senkins.

Seventh. The Court erred in excluding the whole evidence of
Warren Jenkins

Eighth. The Court erred in excluding the evidence of Birch,

think, the Court erred in refusing to give the instructions
asked for by the defendants.

Heath. The Court is reversing the instructions.

And that said The President and Managers of the New
Hope Delaware Bridge Company, pray 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 they may
be restored to all things which they have lost by occasion of the
said judgment &c.

Amold & Lay Attys for Defts

And the Defts Plaintiffs join in
error - & pray for an
affirmance of the judgment
in this case

Samuel H. Buntley

56.

Supreme Court
The President & Managers
of the New Hope
Delaware Bridge Company

vs.

Theodore Perry &
Bridle Shumway

Assignment of Carrots.

& join therein

Filed June 26, 1844.
J. V. Leland Clerk.

17
Residence J. Bridge

Levy & Shumway

1850

Prepared
E

12043