

12315

No. _____

Supreme Court of Illinois

O'Neill

vs.

Stevenson

71641  7

61

Francis O'Neill

by

Sidney P. Stearns

61

~~1200~~

1857

12315

199

State of Illinois
Lee County

Before the Honorable Sir J. Wilkinson
Circuit Judge in and for the 6th Judicial Circuit
in said State.

Be it remembered that herebefore, to-wit:
on the 13th day of August A.D. 1853, a Petition was filed
in the Circuit Court for the County of Lee, in the said
6th Circuit in the words and figures following, to-wit:

Sylvanus P. Stronson

vs

In Chancery

Francis O'Neil

vs
Joseph O'Neil Circuit Court of
the said County of Lee, Illinois A.D. 1853

To the Honorable Sir J. Wilkinson Judge of the 6th Judicial
Circuit in Chancery sitting. Your Petitioner Sylvanus
P. Stronson of the County of Lee and State of Illinois
humbly complaining, sheweth unto your Honor that upon
or about the thirteenth day of January A.D. one thousand
eight hundred and fifty three Your petitioner, at the
request of one Francis O'Neil at & within said County
of Lee signed as security for said O'Neil, and together
with him, two several promissory notes payable to Samuel
Meek administrator of Estate of Joseph Willard deceased
given for personal property purchased at an Administrator's
sale by said O'Neil both payable chosen on or before the
said thirteenth day of January, the one for about the

Sum of eighty four dollars & fifty cents, and the other for about the sum of Forty four dollars & twelve cents. And your Petitioner further Shews unto your Honor that upon or about the twenty first day of April A.D. one thousand eight hundred and fifty three said O'Neil executed and delivered to your Orator his certain promissory note for the sum of twenty five dollars, with interest payable on or before the fifteenth day of September A.D. 1853.

And your Petitioner further States that none of said sums above mentioned, are now due, and each and all of them are unpaid, which said sums amount in all to the sum of One hundred and fifty four dollars & six cents.

And your Orator further Shews unto your Honor, & avers it to be true, that both of said notes of Eighty four dollars & Fifty cents, and forty four dollars and twelve cents were given for property delivered to said O'Neil at said sale and for his exclusive benefit & advantage, and that your Petitioner signed said two last mentioned notes at the request of & at the security of said O'Neil.

And your Petitioner further Shews and avers it to be true, that the said Francis O'Neil, whom your petitioner prays may be made defendant herein, has sold all of his personal property (except a small portion exempt by law from execution) and has advertised, and is about to sell all of his real estate within the limits of said State for the purpose of satisfying your petitioner in the premises, and having all of said notes unpaid, and

that said O'Neil is at the suit hereof as your petitioner
is informed and verily believes it to be true about to
remove without the limits of the state of Illinois for the
purpose of defrauding your petitioner as aforesaid, leaving
your petitioner to pay said notes for which he became
surety as aforesaid, and without any remedy or means
of collecting said note & interest of twenty five dollars
given your petitioner as aforesaid. And your petitioner
avows & charges to be true that said O'Neil is pecuniarily
unable to secure the payment of said twenty five dollar note, &
indemnify your petitioner against the payment of said
note or signed by him as security for said O'Neil, but which
he said O'Neil refuses to do although often requested by
your petitioner so to do; and that your petitioner being
in such circumstances, without the interposition of
the Honorable Court will be liable to pay said security
note and lose said twenty five dollars and the
interest on the same.

Wherefore & for as much as your petitioner has no relief
except in a Court of Equity where matters of this sort
are cognizable and relivable, he prays that a writ
of Habeas Corpus may issue under the seal of the Court
against said defendant, and that he be summoned to
answer (the oath to said answer being hereby expressly
waived) unto each and all of the matters and things in
the Petition contained, and that he be required to give
the security ^{required} herein as required by law, and further that
he abide by and perform the judgment, order and decree

of the Hon^{ble} Court in the premises. And your
Petitioner as in duty bound will ever pray

Wm. & Atherton & C. Solicitors
for Petitioner

State of Illinois

Sa County ss

I Sydney P. Stevenson the above named
petitioner being duly sworn depose
& say ^{that} each and all of the statements, matters, allegations
& things in said Petition set forth are true to the
best of his knowledge & belief.

Subscribed & sworn to before "Sydney P. Stevenson"
on this 9th day of August A.D. 1853
E. Smithwick J.P. &c.

Upon the back of which Petition appears the an endorsement in the
words following to wit:

"To the Clerk of the Circuit Court of Sa County, Illinois
Sir, Upon filing the foregoing petition, & upon the
Complainant Sydney P. Stevenson's accounting & filing
in your office a bond in the penal sum of three
hundred and twenty dollars, with good and sufficient
security to be approved by you, and conditioned that
the said Complainant will prosecute his petition with effect
and that he will reimburse the defendant named in said
petition such damages and costs as he shall wrongfully
sustain by occasion of the said writ, You will issue
a writ of repleat repleat against the defendant
named in the said petition, Commanding, &c. and upon

which you will endorse the requirement that the said
defendant shall give bond with security in the sum of
one hundred and sixty dollars conditioned as required by
statute in such case provided. Dated at Rock Island
Illinois the twelfth day of August A.D. 1853.

"Jas McKimmon Esq Judge 6th Jud. Cir. Ills."
"Filed August 13th 1853. J. B. Cardman Clerk"

At and in the following word & figures appears in the file of
said Cause, To wit, — "Know all men by these presents that
we Sydney P. Stevenson and Abner Smith of the County of
"Lee State of Illinois are held and firmly bound unto
Prisoner Writ of said County in the penal sum of ⁽¹⁵²⁰⁺⁾ ~~thirteen hundred~~
and twenty dollars lawful money of the United States, for the
payment of which well and truly to be made to the said Writ
his heirs executors administrators and assigns we do hereby
bind ourselves and our heirs executors and administrators
jointly and severally firmly by these presents, sealed
with our seals dated the thirteenth day of August A.D. 1853

The condition of this obligation is such that whereas
the said Stevenson has this day filed in the office of the
Clerk of the Circuit Court in and for the County of Lee
State of Illinois his petition for a writ of the writ of Habeas
-corpus against the said Writ, which said writ is about
to issue from the Clerk's Office of said County against
said Writ. Now therefore if the said Stevenson
shall well and truly prosecute his said petition with effect
and shall reimburse to said Writ all such damages

and costs as he the said O'Neil shall wrongfully sustain
by reason & occasion of the opening said writ of Habeas
Corpus against the said O'Neil, then this obligation
to be null and void, but otherwise to remain in full
force & virtue and effect.

Taken & approved for me at } Sydney P. Stinson (Seal)
my office the 13th day of August } Abraham Smith (Seal)
A.D. 1853. J. J. P. Courtman Clerk

Entered "Filed August 13th 1853. J. J. P. Courtman Clerk"

Upon the filing of which petition, order, & writ, a writ
was issued in the words and figures following to wit:

"State of Illinois }

"Lee County }

"To the People of the State of Illinois,

"To the Sheriff of said County, Greeting
You are hereby commanded to summon Francis
O'Neil if he shall be found in your County, personally
to be and appear before our Circuit Court to holden at
Dixon in said County of Lee on the third Monday of the
month of September next, on the first day of said Court
to answer unto a certain Petition filed against him in the
said Court, on the Chancery side thereof, by Sydney P.
Stinson; And unless the said Francis O'Neil shall give
you bond with Surety, conditioned that he will not depart
the State without leave of the said Court; and that he
will render himself in execution to answer any judgment
or decree which the said Court may render against
him, You are commanded to take the body of the

said Francis O'Neil and commit him to jail and
him safely keep so that you have him before our said
Court on the day aforesaid; when and where you
will make return in what manner you have
executed this writ.

S. S.

Witness James H. Boardman Clerk
of our said Circuit Court, and the
truth of aforesaid this 13th day of
August A.D. 1853. J. H. Boardman Clerk

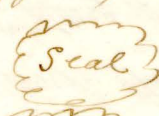
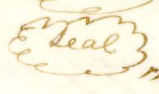
Upon the back of which writ appears the following endorse-
ments, to wit:— "The Sheriff will take bond with surety
in the sum of One hundred and sixty dollars, of the
said defendant, conditioned as required by law
"J. H. Boardman Clerk"
"Arrested the within named Francis O'Neil, and
released him on his giving bond with security. Signed
"15th 1853. "Ozias Wheeler Sheriff"
"Filed August 16th 1853 J. H. Boardman Clerk"

A Bond in the following words and figures appears in
the files of said Cause, to wit:— "Know all men
by these presents that we Francis O. Neil and
William Dolan are held and firmly bound unto to
Sydney P. Stevenson of Lee County in the State of
Illinois in the sum of One hundred and sixty dollars
for the payment of which well and truly to be made

unto the said Stevenson we hereby bind ourselves
our heirs, executors & administrators -

In Witness whereof we have hereunto set our
hands and seals at Dixon, this 15th day of August
A.D. 1853 -

The Condition of the above obligation
is such that Whereas the above named Sydney
P. Stevenson has sued out a writ of "Ne Exeat
republica" against the said Francis O'Neil
entitled of the Lee County Circuit Court on the
Chancery side thereof of the September Term of
said Court for A.D. 1853. - Now if the said
Francis O'Neil shall not depart the State with-
out leave of the said Court and that he the
said O'Neil will and shall render himself in
execution to answer any judgment or decree
which the said Court may render against him
the said O'Neil then and that case this obli-
gation to be null and void but otherwise to be
and remain of full force virtue and effect,

Attested by } Francis ^{his} O'Neil 
Charles Talbot } William ^{mark} Dolan 

Upon the back of which Bond appears the words following
to wit! -

" Approved by me, August 15th 1853

Ozias Wheeler, Sheriff "

" Filed August 16th 1853. J. S. Boardman Clerk "

The Answer to the foregoing petition in the following words
and figures appears in the files of said cause to wit:-

"
Francis O'Sullivan
ads,
Sydney P. Stevenson"

"Of the Sept. Term of the Lee County Circuit
Court A.D. 1853, In Chancery

And the said Francis O'Sullivan by Patrick
his Attorney comes into Court here and saving and
reserving to himself all and all manner of exceptions
and grounds of Demurrer to the manifold defects
uncertainties, insufficiencies, informalities and irreg-
ularities in said Complainant's petition filed
herein contained and appearing Manifest for
answer thereunto or to so much thereof as is suf-
ficient and material to be answered unto, saith
that said Complainant signed said Notes for
the sum of one Hundred and twenty Eight
and fifty one hundredths dollars not as security
for this respondent, this respondent further says
that it is not true as is alleged in said petition
that he has sold his property to defraud said
Complainant or to oblige him to pay said notes,
but this respondent has always intended to pay
said notes and all of them when the same should
become due or as soon thereafter as possible;
and further says that it is not true as is char-
ged in said petition that this respondent has
intended to or was about to remove without the

limits of this State, but he avers that at no time has he intended to remove from the same, that he does not now intend so to do and that he considers himself a permanent citizen of said County of Lee - Wherefore this respondent denying all intention purpose and compination to defraud the said Complainant or other persons whatsoever prays that said petition may be dismissed and that he may be hence discharged with Costs &c

Francis O'Neill By

S. G. Patrick his Solicitor &c

Endorsed " Filed Sept. 19th 1853

J. S. Boardman Clerk "

Exceptions to the Answer in the words and figures following appear upon the files in said Cause to wit: -

"
Sydney P. Stevenson
vs
Francis O'Neill

In Chancery
Of the September Term of the Lee
County Circuit Court A.D. 1853.

An exception taken by the said Stevenson the above Complainant to the insufficient answer of the said O'Neill the above defendant, for that the said Defendant has not in his said answer set forth and answered whether the said twenty five dollar Note in said bill of Complainant mentioned, was executed by said

defendant payable to said Complainant and when dated
and due, nor whether said Defendant was as alleged
in said Complainant's bill or Complaint about to sell
all or has sold all his real estate within the limits
of said State for the purpose as alleged in said
bill of Complaint. The said Compt. also further excepts
to said answer for that it is not admitted or denied
in said answer whether the said Complainant was in-
solvent in circumstances and for other omissions, evasions,
and uncertainties in said answer apparent in all which
particulars the said Complainant excepts to the answer
by said defendant as evasive, imperfect and insufficient
and humbly prays that the said defendant may be
compelled to put in full and perfect answer thereto.

W. W. Heaton & Southwick For Compt.

Endorsed " Filed Sept. 20th 1853.

I. S. Boardman Clerk "

At a Circuit Court begun and held in and for said
County of Lee and State of Illinois on the 3^d
Monday of September 1853, Hon. Ira O. Wilkinson
presiding, William J. Miller States Attorney
Isaac S. Boardman Clerk, Ozias Wheeler
Sheriff. On the 6th day of said Term, writ
on the 24th day of September A.D. 1853 the following
proceedings were had as appears of record.

Sydney P. Stevenson
vs
Francis O'Neil

Petition for writ of Ne Exeat.

This day came the said Complainant by Southwick, Heaton & Altherton his Solicitors and the defendant by Patrick his Solicitor and answers the said Complainant's exceptions to the defendant's answer filed herein coming on to be heard, and the Court being sufficiently advised in the premises, It is considered by the Court that the said Exceptions be sustained, And now on Motion of the said Defendant it is ordered by the Court that he have leave to amend his said answer.

The Answer of the said defendant as amended by permission of the Court as aforesaid is in the words and figures following to wit:

Francis O. Neil
 advs
 Sydney P. Stevenson }

Of the Sept^r Term of the Lee County
 Circuit Court. A.D. 1853.

In Chancery

And the said Francis O. Neil by Patrick his Attorney comes into Court here and saving and reserving to himself all and all manner of exceptions and grounds of demurrer to the manifest defects irregularities uncertainties, insufficiencies, informalities and irregularities in said Complainant's petition filed herein contained and appearing manifest for answer thereto or to so much thereof as is sufficient and material to be answered unto, saith that said Complainant signed said notes for the sum of One

Hundred and twenty eight and fifty one
hundredths dollars not as security for this
respondent, but as respondent's partner jointly
interested with him in the same, and this
respondent further says that it is not true
as is alleged in said petition that he has
sold his any of his property real or personal
to defraud said Complainant or to oblige him
to pay said notes, but this respondent has al-
ways intended to pay his portion said notes
and all of them when the same should become
due or as soon thereafter as possible and to
hold said complainant harmless against more
than his proper share of the same; and
further says that it is not true as is char-
ged in said petition that this respondent has
intended to or was about to remove without the
limits of this state; but he avers that at no
time has he intended to remove from the same,
that he does not now intend so to do and
that he considers himself a permanent cit-
izen of said County of Lee, Wherefore this
respondent denying all intention purpose and
combination to defraud the said Complainant
or other persons Whatsoever prays that said
petition may be dismissed and that he
may be hence discharged with Costs &c —

Francis O'Neil By

S. G. Patrick his Solicitor
 swer herein In addition to the ^{And for amended an-} above amendments by
 leave of the Court first had and obtained
 said respondent says that true it is as is
 alleged in said bill that this respondent at
 the time of filing this amended answer has
 sold a portion of his property real and
 personal, but for a good and adequate and
 fair consideration and this respondent now
 has the avails thereof, and the balance not
 so sold remains in the possession of the
 respondent, and further answering denies
 all manner of combination or confederacy
 and intention to defraud the said Compl-
 ainant, but intends to and believes that he
 will be able to hold said complainant
 harmless - Wherefore he prays as he has
 already prayed &c

S. G. Patrick Complainant's
 Solicitor

The Complainant's Replication to the above answer is in
 the words and figures following to wit:

Sydney P. Stevenson }
 vs }
 Francis O'Hill }

This replicant saves and reserves
 unto himself all and all manner of
 advantage and exception to the manifold
 insufficiencies of the said answer, for rep-

lication thereunto saith that he will aver
and prove to be true his said bill and
certain and sufficient in the law to be
answered unto and that said answer of
the said defendant is uncertain, untrue
and insufficient to be replied to by this
repliant - without this - that any other
matter or thing whatsoever in the said
answer contained material or effectual
in the law to be replied unto, confessed
avoided or denied is true all which
matters and things this repliant is and
will be ready to aver and prove as
this Hon^{ble} ^{Court} ~~Compliment~~ shall direct and
thumblly prays as in and by his said
bill hath already prayed

E. Southwick, Heaton & Altherton
for Compl^t

And afterwards to wit at the September term of said Court
A.D. 1854 to wit on the 23 day of ~~Sept~~ Month of Sept^r.

the following further proceedings were had in said cause as
appears of record.

Sydney P. Stevenson

vs

Petition for Wit of the Exec^t

Francis O'Arl

Now at this time comes the said defendant
by Patrick his Solicitor and on his motion leave
is given him to amend his answer in this cause
and that he have until the first day of

January next to file his said amended answer. Also came the said Complainant by his said Solicitors and on their Motion leave is given him to amend his petition filed in the cause and that he have until the first day of December next to file his said amended petition.

And afterwards to sit at the Spring term of said Court A.D. 1855. but on the 4th day of May of said year the following further proceedings were had in said cause as appears of record..

Sydney P. Stevenson
vs
Francis O'Neil

Petition for a writ of Habeas Corpus.

Now at this day again came the said parties by their said Solicitors and the Complainant, exceptions to the defendant's amended answer coming on to be heard and the said parties Complainant and defendant having been heard thereon it is considered by the Court that said exceptions be overruled, on Motion of said Complainant by his said Solicitors leave is given him to file a supplemental bill in the cause, which Supplemental bill being filed the defendant comes and files his answer thereto, whereupon came the complainant and files his replication to the answer of the defendant to

the complainant's Supplemental bill. It is considered by the Court that this cause be set for hearing at the next term hereof.

The following are the Supplemental Bill, Answer and Replecation as mentioned above as appear in the files of the said cause, in the words and figures to wit:

In Chancery
Sydney P. Stevenson }
vs
Francis O'Neil }

Of the April Term of the See
County Circuit Court A.D. 1855.

And the said Complainant the said Stevenson for a further and Supplemental bill in said cause says that each and all of the Notes in said Complainant's petition mentioned, except the one given for the sum of twenty five dollars were after the commencement of this suit paid by the Complainant to one Samuel Meek as the Administrator of one Joseph Willard as in the said petition alledged, which above statement in relation to the fact of the payment of the said Notes as above herein referred to, these Complainants pray that the said defendant may

18
answer (the oath by said defendant
being expressly waived) as in such cases
are required

Southwick & Stevens
Sols. for Complainant.

Endorsed "Filed May 4th 1855

J. S. Boardman Clerk"

Sydney P. Stevenson }
vs
Francis O'Hill }

April Term of the Lee County
Circuit Court A.D. 1855.

And the said defendant by Pat-
rick his Solicitor saving and reserving
to himself all and all manner of exceptions
to the manifold defects, informalities in
said Complainants Supplemental bill, con-
tained for answer thereto or to so much
thereof as to be material to be answered
unto sayeth that in relation to the matter
in the said Supplemental bill alledged
this respondent of his own knowledge knows
nothing and calls for proof ^{but} that this
respondent has been informed and verily
believes it to be true that the said Steven-
son Complainant herein has not paid to
said Samuel Meek, administrator &c

- 17 -

the amount of said notes so signed by
said Complainant as Partner with this
respondent, but said Complainant has by
virtue of an arrangement with said Mark
taken up said joint notes so made by
this respondent and said Complainant and
given his individual notes in lieu of and
for the amount thereof, which said in-
dividual notes are not yet paid and
satisfied and that as to said Complainant's
solvency as alledged in the original bill
herein filed this respondent knows nothing
but calls for proof, Without this that
any other matter or thing in said original
or Supplemental Bill contained material
to be answered unto is true, Wherefore this
respondent prays as he has already prayed
&c

S. G. Patrick

5th Solicitor

Endorsed "Filed May 5th 1855."

"J. S. Boardman Clerk"

Sydney P. Stevenson
vs
Francis O'Neil

April Term of the Lee County
Circuit Court A.D. 1855.

Replecation of the said Complain-
ant to the answer of said O'Neil defendant.

to Complainants Supplemental bill—

The repliant saving and reserving to himself all and all manner of exception to the manifold insufficiencies of the said answer for replecation thereunto, with that he will aver and prove his said bill to be true certain and sufficient in the Law to be ^{answered} ~~answered~~ unto and that the said answer of the said defendant is uncertain untrue and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the Law to be replied unto confessed and avoided traversed or denied is true, all of which matters and things this repliant is and will be ready to aver and prove as this Honorable Court shall direct, and humbly prays, as in and by his said Bill he hath already prayed

{ Heaton & Atherton and
Southwick & Stevens
Comps Solicitors.

Endorsed "Filed May 5th 1855"

J. S. Boardman Clerk"

The Depositions filed in said cause by the defendant
are in the words and figures following to wit:

Sydney P. Stevens
vs
Francis O'Neil

In Chancery, April Term of the Sec
County Circuit Court A.D. 1856

To the above named Plaintiff or
Heaten & Altherton or E. Southwick his Solicitors:

You are hereby notified that on
Monday the 14th day of April inst. the said
defendant will take the depositions of William
B. Stuart, Charles Talvy and Samuel Mink
before Samuel Brown Esquire, a Justice
of the Peace of said County of Sec, at his
office in the Town of Amboy in said County
or before some other person authorized by Law
to take depositions at the place aforesaid
at the hour of One o'clock P.M. of said
day, said depositions to be read in evidence
on the trial of this cause and the taking
thereof to be continued from day to day as
long as may be necessary, at which time
and place you can appear and Cross-
examine said Witnesses if you think proper.
April 3^d 1856. } S. G. Patrick

Defendants' Solicitor.

Endorsed "We accept service of a copy of
the written Notice this 3^d day of April

A.D. 1856

Heaten & Altherton Compts Solicitors

State of Illinois
Lee County

Suit pending in the Lee County
 Circuit Court on the Chancery
 side thereof, at the May Term
 A.D. 1856.

Sydney P. Stevenson

vs

Francis O'Neil

Depositions of Charles Falry Samuel Meek and William B. Stuart, taken on the part of said defendant, all being of lawful age, before me Samuel Brown a Justice of the Peace in and for said County in pursuance of the enclosed and annexed Notice at the time and place therein specified - Present S. G. Patrick Solicitor for said defendant,

Charles Falry of the County of Bureau in said State being duly sworn deposes and says:

Question 1st - What is your name, age and place of residence?

Answer — My name is Charles Galva, my residence is in Bureau County.

Question — Are you acquainted with the parties in this suit?

Answer — Yes.

Question — Were you ever present at an Administrators Sale at which the Complainant and defendant purchased property together, If you state at what Sale it was, where it took place, what they purchased and how the same was secured or paid for?

Answer — I was present at the ^{an} Administrators Sale at the estate of Joseph Willard Deceased, it took place on the 13th & 14th of January A.D. 1854. They purchased one yoke of Oxen, two Cows, one Wagon, which purchase was secured by two notes payable Eleven Months from the date of said sale, signed by the said Steenson and O'Neil.

Question — Do you know who were the purchasers of said property, whether the same was purchased by one or both parties, and if you do know state your means of knowledge and all you know in relation to it?

Answer— O'Neil was the person who bid off said property for himself and Stevenson to work on the Rail Road with, My means of Knowledge was by being Clerk of said Sale and drew said Notes signed by the Partners, Stevenson told me that himself and O'Neil were in partnership in one and all things about the Rail Road at the time said Notes were signed,

Question— Have you any other means of Knowledge of the partnership of said parties except what said Stevenson told you at the time of the execution of said Notes?

Answer.— I understood them to be partners from the general reputation in the neighborhood and heard Stevenson say that himself and O'Neil were in partnership only a short time before said Notes became due, It was said at the same time that the Sheriff arrested O'Neil by first process in this Suit I think I asked Stevenson at the time O'Neil was arrested why he did have O'Neil arrested? and if the property purchased by Stevenson and O'Neil had not been disposed of to pay their partnership debts, and he answered that said property had been disposed of to pay said debts but alledged that O'Neil was owing

him otherwise,

Question — Did Said Stevenson intimate at that time that Said O'Neil owed him for any other debt for which Stevenson was security for O'Neil?

Answer — He did not

Question — Do you know anything farther of advantage to either in this suit?

Answer — I do not.

Subscribed to by
Subscribed and sworn to Charles Falvey
before me this 14th day
of April A.D. 1856.
Samuel Brown J.P. 

Samuel Meek being duly sworn also in the above case, deposes and says as follows:

Question — What is your name and age, and are you acquainted with the parties in this suit?

Answer — My name is Samuel Meek, my age is Seventy years, and I am acquainted with the parties.

Question — Were you the administrator of the Estate of Joseph Willard deceased?

Answer — I was.

Question— Did the parties to this suit ever execute to you as such administrator a note or notes and if so, the amount and date of said notes, what was their consideration?

Answer— Stevenson and O'Neil gave me ^{as such administrator} two notes, one for Sixty Four dollars, the other for Sixty four dollars and Sixty two cents, both of the date of the 13th of January, 1853. Said notes were given for one yoke of Oxen and two Cows purchased at the Administrator's sale of Joseph Willard deceased.

Question— Do you know whether or not the parties to this suit were in partnership or not at the time and if you do know, state your means of knowledge and all you know about it

Answer— I know only from their conversation at the time of said sale, O'Neil asked me if I would take Stevenson as security on said notes, and told me in the presence of Stevenson that they were in partnership, and I told him I would, Stevenson made no reply. On the day following said sale I heard Stevenson in conversation with Charles Falva, say that the said Oxen and Wagon would do very well for Stevenson and O'Neil to ~~send~~^{ward} on the rail road

Question — Did you know by any other means, that Stevenson and O'Neil were in partnership ~~on~~ the Rail Road?

Answer — Nothing only by general report, which was that they were in partnership.

Question — Did Stevenson and O'Neil purchase a Wagon at said sale?

Answer — O'Neil purchased a wagon at said sale on the 14th of January which was a Continued sale of the estate of Joseph Willard, deceased, and Stevenson signed a Note with O'Neil as security for said Wagon, some two or three weeks after said Note was given, Stevenson exchanged me a note on one — Willard and Daniel Beard for the note given by Stevenson and O'Neil for said Wagon.

Samuel Meek

William B. Stewart being duly sworn doth depose and says as follows.

Question — What is your name and age and are you ^{parties in this suit} acquainted with them?

Answer — My name is William B. Stewart my age is 45 years & I am acquainted with the Parties.

~~William B. Stewart being duly sworn doth depose and say as follows~~

Question — Were you present at any time at an administrator's Sale when the parties to this suit purchased some property, if so state when and

where and all of the ^{facts} ~~particulars~~ in relation to the matter.

Answer — I was crier at the sale of the Estate of Joseph Millard in the Month of January 1853, the Sale was on a Credit, Francis O'Neil bought one yoke of oxen, two cows and one wagon, Sydney P. Stevenson signed the notes with Francis O'Neil for all of said property; the Oxen bought at said sale which were part of the amount of said notes went into the Company as the property of O'Neil & Stevenson, on the Rail Road, so admitted to by both of them to me at different times.

Question — What was said between the parties in relation to their buying in company at any time in your presence.

Answer — They said at different times in my presence that they were in Company at the time of said sale and sundries other times O'Neil said they were in partnership at the time of the sale and Stevenson at other times afterwards said the same.

Question — Did you understand at any time from the parties whether or not said partnership commenced as early as the date of giving of said notes?

Answer — I did understand from the parties that they were in partnership that early.

Question — Do you know whether or not any portion of said property bought at said sale afterward got into the joint possession and use of said Complainant and defendant, if yea: state all you know about it, and about the the final disposition of said property?

Answer — The Oxen went into the Company's work on the Rail-Road and Stevenson and O'Neil both called them our oxen, and they were afterwards sold to pay the Company debts of O'Neil & Stevenson, and the said cows also went to pay said partnership debts on the Rail-road.

Question — How do you know that the said two cows went to pay the partnership debts of the Complainant and Defendant?

Answer — William Dolan as clerk of said Company borrowed sixty dollars of me in presence of Francis O'Neil and paid the same money to Thomas Meek and Michael Kelly the first laborers on the Contract of O'Neil and Stevenson on the Rail-road, and said Dolan took the two cows aforesaid and one horse for security for the money afore-

said and a bill he had ^{against} them of his own ~~for~~ something like one hundred dollars, and all of the personal property of O'Neil in Lee County was sold to satisfy the rail-road debts. N. B. the money referred to above borrowed of me by William Dolan Clerk of said firm was borrowed on this own responsibility.

Question — How do you know that said oxen were partnership property?

Answer — I heard them both Stevnson and O'Neil call them our oxen, have seen both Stevnson and O'Neil use them.

Wm B. Stuart.

State of Illinois }
Lee County } I Samuel Brown a Justice of the Peace of said County do hereby Certify that the foregoing depositions of Charles Falva, Samuel Meek and William B. Stewart, at the time and place in the within notice specified that the interrogatories and answers thereto were by me reduced to writing in the order in the order in which they were propounded and answered,

And that the said several deponents each swore to and subscribed to their own deposition before me and in my presence,

Witness my hand and Seal this 14th day of April 1856

Samuel Brown J.P. 

Indorsed " Opened and filed by Order of Court
April 28th 1856

J.S. Boardman Clerk "

Two Notes in the following words and figures appear in the files of said Cause to wit:—

\$64.00 { " State of Illinois, Lee County, January 13th
A.D. 1853.

Eleven months after date we or either of us promise to pay unto Samuel Meek Administrator of the estate of Joseph Millard deceased or bearer the sum of Sixty four dollars being for value received

Francis O'Neil,

S. P. Stevenson, "

\$64.62½ { State of Illinois, Lee County, January
13th A.D. 1853.

Eleven months after date we or

either of us promise to pay unto Samuel Mott
Administrator of the Estate of J. Willard de-
ceased or bearer the sum of Sixty Four
dollars Sixty two and half cents being for value
received

Attest, by } Francis ^{his} O'Neil
Charles Talvey } S. P. ^{mark} Stevenson "

Endorsed " May the 6, 1854. Received
twenty dollars on the within. — July the 3
Received ten dollars on the within "

An Instrument of writing in the following words and figures
also appears in the files of the said Cause.

Know all men by these presents that I Sydney
P. Stevenson have this day sold and as-
signed all my right title and interest
in sections No 333, 334, 335, of the Illinois
Central Rail Road to Francis O'Neil for a
valuable consideration to me now in hand
payd and the receipt of the same is
hereby acknowledged, the interest being the
undivided half of the Contract of said
Sections of the above mentioned Railroad
the same being conveyed to Francis O'Neil
said O'Neil is to pay all debts that have

eight hundred and fifty three the said Francis O'Neil departed from and without the limits of this state & has ever since said period of time so continued to reside beyond the limits of the same, the said affiants further say that the said O'Neil at the time of his departure from said state of Illinois aforesaid conveyed with him all his personal estate remaining in his possession the said Affiant further says he is informed and ^{verily} believes that said Francis O'Neil is now a resident of the City of New Orleans in the State of Louisiana

Subscribed and sworn } Sydney P. Stevenson
to this Fifth day of } Wm Long
May A.D. 1855

J. S. Boardman Clerk

By M. G. Rudd Spty.

Endorsed " Filed May 5th 1855

J. S. Boardman Clerk

Afterwards to wit at a term of said Court held at Dixon aforesaid, on the fourth Monday of April A.D. 1856. on the Eleventh day of said term to wit on the Ninth day of May A.D. 1856. Honorable J. Wilson Drury presiding the following further proceedings were had in said cause as appears of record.

Sydney P. Stevenson

vs

Francis O'Neil

Petition for Ac. Execut

This day came said Complainant
by Heaton & Atherton his solicitors and the
said defendant by S. G. Patrick his
solicitor and this cause having been
set down for hearing upon bill answer
replication evidence exhibits & proofs, and
the same coming up for hearing and the
Court having heard the same and the
arguments of Counsel & being sufficiently
advised in the premises and it appearing
to the Court & being proved that the said
Francis O'Neil & the said Sydney P. Stevenson
the said Francis O'Neil as principal and
the said Sydney P. Stevenson as security
made their certain promissory notes to the
said Samuel Meek at the time and for
the amount & payable as in said Complain-
ant's bill is alleged to wit: One note
for the sum of Sixty four dollars and
One for the sum of Sixty four (64) dollars
& Sixty two and one half Cents dated the
13th day of January A.D. 1858th & payable
in Eleven Months from date and that the
said Francis O'Neil also executed

and delivered to said Stevenson his other ~~Certain~~ promissory note for the sum of twenty five dollars as in said bill is alleged, and that at the time of granting of the writ of Ne Exeat herein that neither of said notes were due and that the same had not been paid, and it being further proved that soon after the granting said writ and upon the said demands became due & payable that the said Francis O'Neil left the State of Illinois and has ever since remained and still continues out of and beyond the limits of the State & it being further proved that since the granting of said writ the said Sydney P. Stevenson as such security of the said O'Neil has paid said notes with all interest due thereon & that the said O'Neil has as yet paid no part of either of said notes or of the said note for twenty five dollars due to said Stevenson.

It is therefore ordered and decreed by the Court that the said Sydney P. Stevenson have and recover of the said Francis O'Neil the amount of money so paid to said Court as the security for the said Francis O'Neil and interest thereon and also the amount with the interest thereon

due of said note for twenty five dollars
amounting in all of principal an interest
to the time of entering this decree to the
Sum of one Hundred and Twenty Six
dollars and fourteen cents $176 \frac{14}{100}$ and
that he have execution thereupon as in
Case of Judgments of Law and also for
his Costs in about this proceeding appended

State of Illinois
Law County

I Isaac J. Parmesan Clerk of
the Circuit Court for said County do certify
that the foregoing Transcript contains a full
and correct copy of all the proceedings had and
intended of record in the said Cause of Sydney P.
Storrsom v. J. Francis O'Mal, and also all
the proceedings had and in the files thereof, excepting
only one affidavit of the plff. as to the nonresidence
of the defendant, also defendants deposition filed Sept.
29th 1855, which were not read in evidence on the
trial of said Cause, and which the defendant does
not wish to put into the record.

Witness my hand and the seal of
said Court at Dixon this 7th day of
June A.D. 1856.
I. J. Parmesan Clerk

State of Maine } Supreme Court
3^d Grand division

Francis O'Neil }
vs } What of error
Seamus P. Stephenson }

And now comes the said
Francis O'Neil plaintiff in error by Island
& Island his attorney & says that on the
record & proceedings in said case there
is manifest error as thus

1 The Court made in rendering a
decree for the complainant the law

2 The decree should have been one
dismissing the bill

Island Island
for plaintiff in error

File 9 June 12 1886

L. Leland
Clerk

STATE OF ILLINOIS,
Supreme Court,

} ss. The People of the State of Illinois,

To the Sheriff of the County of Lee ——— 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 Lee ——— county, before the Judge thereof, between Sidney P. Stevenson Plaintiff and Francis O'Neil Defendant

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

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

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 Second Monday in June next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said Stevenson

notice, together with this writ.

Walter B. Scates

WITNESS, the Hon. Samuel H. Treat, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 12th day of June in the Year of Our Lord One Thousand Eight Hundred and Fifty-Six

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

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of *Lee* Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the circuit court of *Lee* county, before the Judge thereof, between *Sidney R. Stevenson*

plaintiff, and *Francis O'Neill*

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

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

WITNESS, the Hon. *Walter B. Scates* **SAMUEL H. TREAT**, Chief Justice

of our said Court, and the Seal thereof, at Ottawa, this *12th* day of *June*
in the Year of Our Lord One Thousand Eight Hundred and Fifty-*six*

L. Leland

Clerk of the Supreme Court.

By J. B. Rice Deputy

07

Stevenson

Filed June 12, 1856

L. Leland
Clerk

Francis O. Mill plaintiff } Supreme Court of the State of
in error vs. } Illinois, Third Judicial District
By Amos P. Stevenson } June Term, A.D. 1856.

I do hereby enter myself security for costs in this cause
and acknowledge myself bound to pay or cause to be paid
all costs which may accrue in this action either to the
opposite party or to any of the officers of this court in
pursuance of the laws of this State dated this 12th day
of June 1856

A. S. Patrick

James Atwell

Plff in error

vs.

Sydney P. Stevenson

Security for costs