

1
Pleas at the Courthouse in the town
of Edwardsville County of Madison before
the Honorable Joseph Phillips Chief Jus-
tice of the Supreme Court of the State of
Illinois presiding in the first Judicial
Circuit on the Twenty ninth day of
May 1820.

100
Be it remembered that heretofore to wit, on
the fourth day of September 1819 Robert Wash
who sues to the use of the President Directors
and Company of the City Bank of New
York filed with the Clerk of the Circuit
Court of Madison County his Declaration
in Case and sued out a capias ad respon-
den dum thereon against James Mason
returnable to the October Term of
the said Court which capias and
Declaration are in the word and figures
following to wit, The people of the
State of Illinois, To the Sheriff of Madison
County, Greeting: We comin and you
to take James Mason if he be found

101
[7-1]

within your bailiwick, and him safely keep,
so that you have his body before the Cir-
cuit Court for Madison County, at the
next Term to be holden at Edwardsville,
at the Courthouse thereof, on the fourth
Monday in the month of October next,
to answer Robert Wash, who sues to
the use of the president Directors & Company
of the City Bank of New York in a plea
of Trespass on the case Damage Eight
hundred dollars and have you then
to return this writ. Witness Joseph Conway,
Clerk of the said Court, at Edwardsville,
this 4th day of September in the year of
our Lord one thousand eight hundred
and nineteen and of the Independence
of the United States the forty fourth.
Joseph Conway
(seal)

On which said writ is the following
endorsement to wit, This is an action of
Trespass on the case to recover the
Amount of an endorsed note Bail

required in the sum of \$800. R. Wash atty
 and annexed to said Capias is the
 following Declaration to wit, - State of
 Illinois County of Madison? Robert Wash
 who sues to the use of the President Directors
 & Company of the City Bank of New York
 complains of James Mason in a plea of
 30a Trespass on the case; for that whereas
 one S S & C Porter by the name design-
 tion style & firm of S S & C Porter heretofore
 viz on the twelfth day of January eight-
 teen hundred and sixteen at New
 York viz at the County aforesaid made
 30b their certain promissory note in writing
 bearing date the day & year aforesaid,
 & then and there delivered the said
 note to the said James Mason by which
 said note the said S S & C Porter then
 and there promised six months after
 30c the date thereof to pay to the said
 James Mason by the name & addi-
 tion of Mr. James Mason or order
 the sum of Four Hundred & twenty

one Dollar & eighty Seven cents for
value received And the said James
Mason to whom or to whose order the pay-
ment of the said sum of money in the
said note specified, was to be made,
after the making of the said note, and
before the payment of the said sum
of money in ~~the said note~~ therein specified
viz, on the same day & year aforesaid
at New York viz at the County aforesaid,
indorsed the said note, by which said
indorsement, he the said James Mason
there ordered & appointed the
said sum of money in the said note
specified, to be paid to the said R. Wash
who owes to the use of the President
Directors & company of the City Bank
of New York & there & there delivered
the same to the said plaintiff - and
the said plaintiff in fact says that
afterwards, when the said note became
due & payable according to the tenor
& effect thereof viz on the fifteenth
day of July eighteen hundred

and sixteen at New York viz at the
 County aforesaid the said note so indorsed
 as aforesaid, was duly presented & shewn
 to the said S S & C Porter for payment
 thereof, who ~~where~~ were then & there
 requested to pay the said sum of money
 in the said note specified according
 to the tenor & effect of the said note,
 and of the said indorsement so made
 thereon as aforesaid but that the said
 S S & C Porter did not, nor would
 at the time when the said note
 was so presented & shewn to them for payment
 thereof as aforesaid or at any ^{time} afterwards,
 pay the said sum of money therein
 specified or any part thereof, but wholly
 neglected & refused ^{to} do ^{so} of all which
 said several promises the said James
 afterwards viz on the day and year
 last aforesaid at New York viz at the
 County aforesaid had notice By means
 whereof the said James then & there

became liable to pay to the said plain-
tiff the said sum of money in the said
note specified when he the said James
should be thereunto afterwards requested.
And being so liable, he the said James
in consideration thereof afterwards viz.
on the day & year last aforesaid at
New York viz. at the County aforesaid
undertook & then & there faithfully
promised the said plaintiff to pay
him the said sum of money in the
said note specified, when he the
said James should be thereunto
afterwards requested; Nevertheless
the said James the said sum of money
(although often thereunto afterwards re-
quested) to the plaintiff yet hath not
paid nor any part thereof but the
same to pay hitherto hath wholly
refused & doth still refuse to the plaintiff
Damage eight hundred dollars & therefore
he being his said R wash Ally, p.p.
Copy of the note used on

7a Dollars 421.87/100 New York January
12th 1816 Six months after date we
promise to pay Mr. James Albason or
order four hundred twenty one Dollars
+ eighty seven cents value received
signed S. & C. Porter

7a And afterwards towit, on the Twenty
fifth day of October ~~1819~~ towit, on the
fourth Monday in the month of
October 1819. John W. Scott made
return of said capias into the said
Circuit Court, ^{on said capias} in the word and
figures following: Executed this writ
Sept. 1819 John W. Scott Sept. 1819
m. C. And at the same time
returned into Court the following
Bail Bond towit, "Know all men
by these presents that we James
Albason & Hail Albason of Madison
County, in the State of Illinois, are
held and firmly bound unto William
B. Whiteside, Esq. Sheriff of the
County aforesaid, and his successors

in office, in the penal sum of Eight
hundred dollars, current money of the
United States; which payment well and
truly to be made, we bind ourselves, our
heirs, executors, and administrators jointly,
severally, and firmly by these presents.
Witness our hands and seals this 7. day
of Sept- 1819. The Condition of this
obligation is such, That whereas the
above bound James Mason ^{now} is in
custody of said Sheriff, upon a capias
arrest warrant, issued from the
clerk's office of the said Circuit Court
of Madison County, at the suit of the
President Directors and Company of the
City Bank of New York returnable
to the October Term of said Court
1819 now if judgment be given in the
said suit against the said James Mason
the said James Mason shall pay all
the costs and condemnations of the
said Court, or surrender his body to
prison in execution for the same or that
he the said Bail Mason will do

it for him then this obligation to be void
 And of no effect, otherwise to remain
 in full force and virtue James Mason
 Seal Thail mason Seal

And afterwards to wit, At a Circuit Court
 held on the 27th day of October
 1820 came the parties by their attorneys
 and filed the following Demurrer and
 Joinder to wit, And the said Deft
 by his Attorney comes and defends the
 wrong and injury when &c and says
 the plaintiff his action aforesaid ought
 not to have and maintain against
 him because he says that said declaration
 and the matters and things therein
 contained are not sufficient ~~therein~~
~~contained in~~ law to enable the plain-
 tiff to have and maintain his action
 aforesaid against him and this he is
 ready to verify Starr & Blackwell
 for the Deft's part
 Joinder in Demurrer Bain & Winchester
 for the Deft's part.

And afterwards to wit, at a Circuit Court
held for the aforesaid County of Madison
on the first day of November in the
year last aforesaid, The Demurrer
in this case being argued and overruled.
The Defendant as well as the plaintiff filed
the following Pleas Replications Demurrer
and Joinder in Demurrer to wit, "And
the said Defendant by his attorney comes
and defends the wrong and injury where
&c And says that the ^{plaintiff} has a claim afore-
said ought not to have and maintain
against him, because he says that be-
fore the Execution of the note mentioned
in the plaintiffs Declaration and also
before the Transfer and Assignment
of the same to him the said plaintiff
to wit, on the 12th day of April 1813 the
Legislature of the State of New York (said
State being one of the U. States of America)
passed an act entitled "An act for
giving relief in cases of Insolvency"
which said act is as follows to wit,

Be it ~~enacted~~ ^{here copy it} and
the said Deft further says that at the
time of the dates hereafter mentioned
he was a citizen and resident of said
State of New York and that at these
dates said act was in full force and
unrepealed, and that on the ~~29~~²⁹ day of
November 1816 he was in prison in said
City of N. Y. on an Execution issued
against him in a civil action and had
so been in prison for 60 days and
upwards then immediately preceding
the ^{said} 29th day of November 1816, on
which day one James Morgan then
a creditor of him the said Deft made
application to Richard Riker then
Recorder of the said City of N. York
for relief having previously made
~~application~~ affidavit agreeably to the
requisitions of said recited act, that
he the said Deft was then justly in-
debted to him the said Morgan in
a certain sum of money then due

not less than 25 dollars and which said
sum of money was set forth or specified
in said affidavit, and that he the said
Deft was then in prison on an execution
issued against him in some civil action
and had been so imprisoned for 60 days and
upwards then next previous. And the
said Deft further alleges that on such
application being made as aforesaid,
the said Richard Riker caused ^a pub-
lication to be made according to the
directions of said act that all the cre-
ditors of him the ^{said} defendant should
shew cause if any they had before
him the said recorder at his office
in the City Hall of the said City of
New York on the 7th day of February
then next following the 29th day of Nov.
1816, why an assignment of all the estate
of him the said Deft should not be
made for the benefit of all his then
creditors agreeably to the directions of the
before recited act of the Legislature of
the State of New York. And the said

Deft further avers that on the said 7th day
 of February so many of the creditors of
 him the deft as had debts owing to them
 by him to the amount of two thirds in
 value of all the debts owing by him the
 said Deft requested such assignment
 to be made of the estate of him the
 Deft for the benefit of all his creditors
 whereupon the said Richard Riker
 Recorder as aforesaid directed an assign-
 ment to be made according to the requi-
 sitions of said act to one Eben Stosson
 Esquire, which said Stosson was nomi-
 nated as the assignee by the said cre-
 ditors. And the said Deft further avers
 that he afterwards produced a certificate
 to the said Richard Riker from the
 said assignee executed by him on
 the 10th day of February 1817 under his
 hand seal in the presence of two wit-
 nesses that he the said Deft had assigned
 unto him the said Stosson assignee
 as aforesaid for the benefit of all his

creditors all the estate real and personal
of him the debt both in law and equity
either in possession reversion or remainder
~~for~~, and all the books, vouchers and
securities relating to the same, with the
exception of such articles as by said
act were exempted from assignment,
And the said debt further says that having
performed all things required by said act
to entitle him to a discharge under it, the
said Richard Riker did on the 10th
day of Feby 1817 then being Recorder
of said City of New York, and at the
City Hall of the said City of N. York
under his hand and seal duly executed
discharge him the said debt from all
debts due from him at the time of
the assignment aforesaid or contracted
for before that time though payable
afterwards, which said discharge was
then and there delivered to him the
said debt and is now here shewn
to the Court, all which he is ready

15

to verify. And for further plea the
Deft says he did not assume and promise
in manner and form as the plff in
his declaration has alledged against him
and of this he puts himself up on the
Country. Stain & Blackwell for Deft
and the plff doth the like here for plff
And the plaintiff for replications
to the plea of the said Defendant
says he ought not to be barred & preclu-
ded from having or maintaining his
said Action because he says that said
plea & the matters and things therein
contained are not sufficient in law
to bar said Action and this plaintiff
hath no necessity nor is he bound
by the laws of the land to make
any or further answer thereto Where-
fore he prays &c. Here for plff
The Deft joins in Demurrer stain & Blackwell
for Deft. The Court after hearing
the arguments of ~~counsel~~ counsel on
the Demurrer adjudge the same to be good.

157

158

159

And the plaintiff by his attorney Joins
Issue to the second plea and leave is
given the plaintiff to remove this suit
to the District Court for the United
States and for the District of Illinois
at the next Term, provided that the
law be such that he could remove it
at this Term, and the cause is con-
tinued until the next Term. And After
wards to wit, at a Circuit Court held on
the 29th day of May in the year one
thousand eight hundred and Twenty
Came the parties by their attorneys
and thereupon came a Jury to wit,
Isaac Ferguson, Andrew Turner Joseph
Eberman Jesse Maddle Abraham
Howard Readias C. Gillham Thomas
Cox James Reynolds, Thomas Gillham James
Gillham William Moore and James
H. Gillham who being sworn well and
truly to try the Issue Joined upon
their oath do say We the Jury find
for the plaintiff and assess his damages
to Five Hundred and twelve Dollars.

And fifty five and a half cents whereupon
the Defendant by his attorney moves for a
new trial in this case. And afterward
to wit, At a Court held on the 30th day
of the month of year aforesaid
The Defendant by his attorney files the
following reasons for a new trial to wit
The Defendant moves the Court to set
aside the verdict of the Jury in the above
cause and to grant a new trial of the
issue on the following grounds to wit,
1st The verdict of the Jury is against law
& evidence 2nd The Court erred in permitting
the deposition of ^{to the jury} alsoffer
to go in evidence 3rd There was no
evidence that the plaintiff or any person
for him demanded payment of the
promissory note sued on of the
maker when it fell due. Stan &
Blackwell for Cleft. which motion
was overruled by the Court. The
Defendant by his attorney files the
following bill of Exceptions to wit,

17a
New trial

17b

17c

Exceptions -

Will

Be it remembered that on the trial of
this cause the plaintiff offered in evidence
to the jury the following notice interro-
gatories depositions protest and
notice notarial and promissory note
and endorsement to wit, Robert Wash
sues to the use of S B vs James Mason
In the Circuit Court for the County
of Madison State of Illinois. Inter-
rogatories to be submitted to Michael
Ulshoeffer of the City of New York
and such other witnesses or witnesses as
may be produced to Samuel Newell
Charles Wilkes & Nathaniel Prime of
said City, commissioners for that pur-
pose to be appointed by the Clerk
of the said Madison Circuit Court to the
end that the answers to said questions
when obtained, may be read in evidence
on the trial of the above cause, on
behalf of the plaintiff 1st Do you
know any thing of the original note
here exhibited, signed S B & B Porter
& indorsed by James Mason & of the

protest to which it is attached marked
(A) if so state all you know.
2nd At the time the note was protested,
were you in the habit, as notary public,
of giving the Indorsers notice of protest
by the earliest post & did you duly
notify James Mason? If you did
not, state why it was omitted.

James Mason take notice that I shall
apply to Joseph Conway clerk of Madison
County on Friday the eleventh of February
1820 for a commission to take the
deposition of witnesses of the City of
New York and such other witnesses
as may be produced there & there,
to testify in a suit, wherein I am plain-
tiff & you Defendant R Wash
served James Mason with a copy of
the within interrogatories on the
first day of February 1820 p. New chapter
the Interrogatories were filed in
the clerk's office on the first day of
February 1820. The people of the
State of Illinois, To Samuel New

19a

Bill of Exceptions.

19b

19c

I leave willing Charles Wilkes and Nathaniel Prime of the City of New York Greeting. Know ye that we trusting to your fidelity and provident circumspection in diligently examining Michael ~~and~~ W. Schoeffer of the said City of New York and such other witnesses as may be produced to you, on behalf of Robert Wash who sues to the use of the President Directors and Company of the City Bank of New York in a certain suit depending in the Circuit Court of Madison State of Illinois in which the said Robert Wash is plaintiff and James Mason is defendant Command you that at such day and place as you shall appoint you assemble yourselves and the witnesses aforesaid before you call and cause to come, and then ~~to~~ examine diligently touching the questions contained in the foregoing interrogatories and their examination and answers to the same commit to writing plainly

21

and distinctly and without delay you
 send and certify under your hands
 and seals inclosed, returning also to
 us this writ. witness Joseph Conway
 clerk of the said Court at Edwards-
 ville the 11th day of February in the
 year of our Lord one thousand eight
 hundred and twenty and of the Inde-
 pendence of the United States the
 44th Joseph Conway

United States of America State of
 New York § 50 The examination
 and deposition of Michael Alshoeffer,
 of the City of New York, Notary Public,
 before Samuel Flewelling, Charles
 Wilkes and Nathaniel Prime,
 Commissioners named in the annexed
 commission: Taken at the City of
 New York, the Seventeenth day of
 April 1820. In Answer to the first
 interrogatory annexed to the said
 Commission, the said Michael Al-
 shoeffer deposes and saith: That the

21/2 Bill of Examinations

21/2

Bill of Exceptions

said protest is made out by and
in the name of this Depoant, who
then was, and now is notary public
for the City Bank in the said
City of New York - that the protest is
made at the request of G B N room, Esq
who then was cashier of the said Bank
- that the said protest corresponds with
the original entries or minutes in
this Depoant's notary Book - that
the copy of the note upon the pro-
test is the copy of the original note
annexed, to the best of this Depoant's
knowledge and belief - that the said
original note was presented for payment
by this Depoant at the time and
in the manner stated in the
protest - that the said original
note is signed by the firm of S S & P
Porter, and endorsed by James H. Mason
but of their hand writing this Depoant
has not any particular knowledge
except by frequently seeing their
names on promissory notes, and that

23a
23B
23C
Bill of Exchange

he verily believes the same to be
their true hand writing - To the
second interrogatory the said Michael
Ulshoeffer Deposeth, answereth
and saith, that at the time the said
note was protested he was in the
habit as notary public of giving the
indorses notice of protest - that by the
minute in his protest Register it ap-
pears that on the sixteenth day of
July 1816 this deponent served notice
on James Mason personally at Paris
Masons 125 front St where I saw
him as I went by, having been to
his office 91 pine St, and no one being
there - that the said entry is correct
and true, as this deponent verily
believes - and that the notice of
protest was of the note referred to
in these Interrogatories, and the
original of which note is now shown
to this Depoent. M Ulshoeffer
Taken subscribed & sworn to before us
this 17 day of April 1820 Chas. Milnes
S. Flew writing.

25

one thousand eight hundred and sixteen
 at the request of G B Nroom, Esquire
 I, Michael Ulschaeffer, Notary Public,
 duly admitted and sworn, dwelling in
 the city of New York, did present the
 original note, (a true copy whereof
 is on the other side written) at the
 Drawers Store, to their Clerk attending,
 and demanded payment thereof,
 Whereunto he replied that he could ^{not} pay
 the same, Whereupon I, the said Notary,
 at the request aforesaid, did protest, and
 by these presents do publicly and solemnly
 protest, as well against the Drawers and
 Endorser of the said Note, as against
 all others whom it doth or may concern,
 for exchange, reexchange, and all costs,
 damages, and interest, already in-
 curred, and to be hereafter incurred,
 for want of payment of the said
 Note. Thus done and protested in
 the City of New York aforesaid, in the

 259
 Bill of Exchange

2513

252

presence of John Doe and Richard
Roe, witnesses. In Testimonium Verita-
tis. M. W. Schaeffer Notary Public
(Copy) Dollars 421.87/100 New York
January 12th 1816. Six months af-
ter date we promise to pay Mr. James
Mason or order Four Hundred twenty
one dollars and eighty seven cents
value received - S. & C. Porter
"Endorsed" James Mason." The

Bill of Exceptions
Defendant objected to the reading of said
deposition protest and notice notarial
and promissory note and endorsement
in evidence to the jury which objec-
tion was overruled by the Court and
the said deposition protest & notice
notarial and promissory note and en-
dorsement in evidence to the jury
were allowed & permitted to go in evi-
dence to the jury; Paris Mason
was called and examined as a witness
for plaintiff and stated that at the

time said promissory note fell due S S & C
 Porter kept an office in the City of New
 York where they transacted ^{their} business the
 witnesses did not know that said S S & C
 Porter kept a clerk but believed that
 one of the partners was in the habit of
 transacting the business of the firm of
 S S & C Porter which firm consisted of ^{three}
 or more persons there was no other evidence
 offered to the jury to which opinion
 of the Court the defendant excepts and prays that
 this his bill of exception may be signed
 sealed & enrolled &c which is done
 J. S. Philips

The Defendant by his attorneys files
 the following reasons in arrest of Judg-
 ment to wit, 1st The declaration is insuffi-
 cient 2nd The declaration does not aver
 that by the laws of New York that the
 demand of payment of the note sued
 on of the maker S S & C Porter and their
 refusal to pay & notice of nonpayment
 to the endorser who is defendant in
 the above suit as set forth in said

declaration, gave a right of action against
this defendant for the amount of the
said note - 3rd The declaration does
not shew that payment of said note
was demanded by any person entitled
to receive payment of the makers. Stair
& Blackwell for Deft. The Court after
hearing the parties by their Attornies
are of the opinion that the motion
in arrest of Judgment be overruled
It is therefore considered by the Court
that the plaintiff recover against the said
defendant Five hundred and twelve
Dollars and fifty five and a half cents
the Damages assessed by the Jury
and also his costs by him about his
suit in this behalf expended and
the said defendant in mercy &c
And afterwards to wit, At a Court held
on the first day of June in the year
1820 The Defendant in this cause pays
an appeal to the Supreme Court, which
is granted upon his entering into
Bond in the clerks office of this Court

in fifteen days with Hail Mason
 and Paris Mason his security as the
 law directs. Which said appeal
 Bond entered into in this suit, is in
 the words and figures following, to wit
 "Know all men by these presents that
 we James Mason Hail Mason & Paris
 Mason are held and firmly bound
 unto Robert Wash who sues for the
 City Bank of New York in the sum
 of one thousand Dollars, for the which
 payment well and truly to be made
 we bind ourselves and each of us firm
 by these presents, sealed with our seals
 and dated this 2nd day of June 1820
 The condition of this obligation is such
 that whereas the above named Robert
 Wash has recovered a Judgment against
 the said James Mason in the Madison
 Circuit Court for \$512.55/- Damages
 besides costs of suit, from which Judg-
 ment the said James Mason has taken
 an appeal to the supreme Court

of the State of Illinois, now if the said
 James Mason shall well and speedily
 prosecute said appeal with effect and
 if said Judgment shall be affirmed
 shall pay the same together with all
 costs & damages which may be awarded
 to the said Robert Wash who sues as
 aforesaid, then this obligation to be
 void otherwise to remain in full
 force and virtue

James Mason *seal*
 Thail Mason *seal*
 Paris Mason *seal*

Witness
 Jos. Conway

Plaintiffs costs \$ 18.14
 Defendants costs 5.00

State of Illinois }
 Madison County } sct

I Joseph Conway clerk of
 the Circuit Court of the County of
 Madison aforesaid, Do certify that
 the foregoing transcript of record
 from pages 1 To 30 contains a true
 and perfect History of all the proceed

30

ings had in this case as the same remain
on file in my office, In Testimony
whereof I have hereunto set my hand
and affixed the seal of the said
Court at Edwardsville the
6th day of July 1820 and of
the Independance of the
United States of America
the 45th Joseph Conway

30a

Price of complete Record \$11.00
Certificate & seal 75
\$12.37

- Joseph Conway bbbme

30B

James Watson

24

Robt Wash who sees
for the City Bank
of New York

vs
James Mason

Filed July 11. 1840

John Duncan

17

Robt Wash who sees
for the City Bank
of New York
vs

James Mason

(17)

Supreme Court

James Mason

vs

Robt Wash

who resides

assignment of Groves on an
appeal from the Madison Circuit
Court, to July term 1820.

And now at this term, - that
is to say at the July term 1820 of the said Court
comes the said James Mason by Haver & Blackwell his
attorneys and says that in the record and proceedings aforesaid
and as also in giving the judgment aforesaid there
is manifest error in this to wit - That the said declara-
tion and the matters ~~and the matters & things~~ therein con-
tained are not sufficient in law for the said Robert
Wash to have and maintain his action aforesaid against
the said James Mason, - 2^{ly} There is also error in this to
wit, that by the record aforesaid, it appears, that the judge
ment aforesaid was given for the said Robert Wash against
the said James Mason, whereas by the laws of the land, the
said judgment ought to have been given for the said James
Mason against the said Robt Wash. - 3^{ly} There is also error
in this to wit, in as much as the court below overruled the
demurrer to the declaration the same being insufficient
for the said Wash to have and maintain his action against the
said Mason, which insufficiency consists 1st That said Wash
thence no right of action in himself but in the President and
directors of the City Bank of New-York, - that he can not
be made a party by indorsement, - 2^{ly} The declaration is
bad for uncertainty in as much as it does not appear who
or how many were the makers of the note set forth therein
or the names of the persons who made it, 3^{ly} The declaration
is bad because it does not show that due diligence had been
used to obtain payment of the note of the makers or that
they were insolvent or unable to pay it.

4 by There is error also in this to wit, that the court below erred in maintaining the demurrer of the said Wash to the plea in bar of the said Mason, bring his discharge under the insolvent laws of New York.

5 by There is error also in this to wit, in as much as the court below permitted the deposition of M. McShaffer to be read in evidence to the jury, (the same being objected to) there having been no notice of the time & place of taking it, nor was it taken by all the commissioners to whom it was directed, but by two of them only. —

6 by There is error also in this to wit, that the court below erred in not granting a new trial, for the reasons set forth in the bill of exceptions, being all the evidence exhibited on the trial, and first because that evidence did not show that the note was ever indorsed to the plaintiff, 2^d because that evidence being the deposition of M. McShaffer did not show that he was in any way authorized by the p^lff Wash to demand payment of the note of those who made it, nor 3^d that he did demand payment of them but of a person who he understood to be their clerk, 4th That said Mason had no notice of the non-payment of the note till the 16 July the same having been protested on the 15th & the said Mason being then a resident of New York. 5. Because that evidence does not show that due diligence was ever used to obtain payment of the note of the Makers, that the only diligence used was that their clerk was requested to pay it, but said he would not. 6 Because that evidence does not show that the makers of the note at the time it became due & at the time of the demand were insolvent or unable to pay it.

or any thing of the kind, - or that they were unable to pay it at the time the suit in the court below was commenced. - 7th Because that evidence shows that the Makers of the note at the time it became due had no debt but that one of them did the business of the firm, - 8th Because that evidence shows that the Makers of the note were three or more persons - 9th Because that evidence does not show that by the laws of New-York where the note was executed ~~that~~ such note was assignable or that a recovery could be had against an indorser on the mere refusal of the Makers to pay it. -

10th There is error also in this writ, that the court below erred in not sustaining the motion of the said Motion to arrest the Judgment of said Court on account of insufficiency in the declaration, not having allegations of facts which by the laws of Illinois would authorize a recovery against an indorser and 11th For not availing that the laws of the State of New-York authorize a recovery on the facts stated therein. -

And the said Motion prays that the Judgment aforesaid for the errors aforesaid and for other errors in the record and proceedings aforesaid, may be reversed, & that he may be restored to all things he hath lost by occasion of said Judgment -

Starr & Blackwell for
M^r M^r Error.

and the since Robert Weir says this
is no error in the record proceedings
in this cause

Kauai Oct 1890

Sup. Court -

James Mason vs. Effigant

Robt Weir }
who sues de } Goods

(17)

~~James Mason vs. Effigant~~
~~Robt Weir vs. Goods~~
~~James Mason vs. Effigant~~