

11961

No. _____

Supreme Court of Illinois

Cowles.

vs.

Lawrence.

71641  7

William P Cowles vs The Supreme Court of the
State of Illinois of the June
Leander Lawrence Term A.D. 1852
Appeal from Jollamup

And the said Appellant Leander Lawrence
for an assignment of error comes and says
that there is error in the Record and
proceedings of said Cause in the 10th:

First. The Court erred in sustaining the
demures to defendants second amended
plea.

Second. The Court erred in finding the
fine for the plaintiff Cowles.

Third. The Court erred in finding the sum
of three hundred and ninety eight
Dollars to be due from defendant.

Fourth. The Court erred in finding for the
plaintiff Cowles on the testimony and
in not allowing the payments to go
in liquidation of the first items of the
account.

Fifth. The finding and judgment of the Court
was against the testimony and was
contrary to law and evidence.

Sixth. The Court erred in refusing to grant
a new trial and in rendering judgment
on the finding.

Seventh. That said judgment was given
in favor of the said plaintiff Couler
when by the laws of the land it ought to
have been given in favor of said
Leander Lawrence.

Wherefore the said
Leander Lawrence prays that the
said judgment may be reversed and
that he may be restored to all things
which he has lost by reason thereof

Chas. S. Strother

Att'y for Lawrence

State of Illinois }
So (Davies County } Pleas in the Circuit Court of
said County, begun and held
within and for the County of So (Davies aforesaid
on the second Monday of March, in the year A.D. 1850
before the then Judge of the sixth Judicial Circuit (now
of the fourteenth Judicial Circuit) in said State, to-wit,
The Hon. Benjamin R. Sheldon
Wm. H. Bradley Clerk
M. B. Pierce Sheriff

William P. Cowles } Plaintiff
vs. }
Leander Lawrence } Defendant

Be it Remembered, that hereto-
fore, to wit, on the 22^d day of December A.D. 1849, the
said Plaintiff by his attorney, filed in the Clerk's
office of the Circuit Court of said So (Davies County
his Process and bond for costs, and affidavit in
said entitled cause, which are in the words and figures
following, to wit;

William P. Cowles } In the Circuit Court
vs. }
Leander Lawrence } March Term 1850

In Assumpsit, damages \$1000. 00
Amount Sworn to \$6 00.

Clerk of Cir. Court will issue a capias against the
deft returnable to next Term, on filing the annexed
cost bond and affidavit &c

M. Y. Johnson atty Plff

Cowles vs Lawrence

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 to laws of this State

(Dated this the 24th A.D. 1849

M. Y. Johnson *Seal*

Approved

W^m H. Bradley *Clk*

Filed 22^d Dec. 1849

W^m H. Bradley *Clk*

State of Illinois $\supset$ Circuit Court of So (Davis)
So (Davis County) $\supset$ County March Term A.D. 1850

William F. Cowles of lawful age after being duly sworn according to law makes oath and states that he is about instituting an action of assumpsit against Leander Lawrence returnable to the next Circuit Court of So (Davis County) to the March Term thereof to recover the amount of a certain promissory note and interest thereon - made and executed by the said Leander Lawrence in favor of this affiant and dated at Saint Louis the 22nd day of June A.D. 1847, at four months after date, for five hundred dollars with interest thereon at the rate of ten per cent per annum after maturity, that said note with the interest thereon now amounts to more than six hundred dollars, and that the same is now justly due and unpaid, and that the same will be in danger of being lost, and the benefit of whatever Judgment may be obtained will be in danger unless the defendant is held to bail in conformity with the laws of this State, and prays that a Capias may issue &c

W^m F. Cowles

State of Missouri

St. Louis County $\supset$ personally appeared before

me Mann Butler, a notary public in and for the County of Saint Louis and State of Missouri the within named William P. Cowles who is personally known to me, and after being by me duly sworn, deposes and says the facts set forth in annexed affidavit by him subscribed are true. and further saith not.

Seal

Given under my hand and seal of my said Office at the City of Saint Louis this the fourteenth day of December 1849

Filed 22^d Decr 1849

Wm H. Bradley
Clerk

Mann Butler
Notary Public

And afterwards, to wit, on the same day, to wit, on the 22^d day of December A.D. 1849 a writ of Capias ad respondendum was sued out of the said Clerk's Office in said entitled cause, which, together with the return thereon, and the bail bond taken, by the Sheriff, of the said defendant, are in the words and figures following, to wit

State of Illinois
So (Davies County) 3^d Sect.

The People of the State of Illinois
To the Sheriff of the County of (Davies; Greeting—
We command you that you take Leander Lawrence and him safely keep, so that you have his body before the Circuit Court of So (Davies County, at the next term, to be holden at Galena, on the 2^d Monday of March next, to answer William P. Cowles in a plea of assumpsit. Damages one thousand dollars. And have you then there this writ.

Seal

Witness William H. Bradley, Clerk of the Circuit Court
of So (Davies County, Illinois, ^{at Galena,} this 22^d day of December A.D.
1849 Attest Wm H. Bradley Clerk

The Sheriff is directed to hold the defendant to bail in the sum of six hundred dollars.

W. H. Bradley Clk.

Executed the within writ by arresting the within named Leander Lawrence this 22^d day of December A.D. 1849, after which on same day he gave bond with security and was released from my custody on said bond.

M. B. Pierce Sheriff

Know all men by these presents, That we, Leander Lawrence Charles R. Perkins & Nicholas Kribbs, are held and firmly bound unto Marshall B. Pierce, Sheriff of the County of Jo. Davis, and State of Illinois, and to his successor in Office, in the penal sum of twelve hundred (\$1200) dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly, severally, and firmly. Signed with our names and sealed with our seals this twenty second day of December A.D. 1849

The condition of the above obligation is such, that whereas William P. Cowles has lately sued out of the Circuit Court, of the County of Jo. Davis, a certain writ of capias ad respondendum in a certain plea of Assumpsit returnable to the next term of the Circuit Court, to be holden at Galena, on the second Monday of March next. Now if the said Leander Lawrence shall be and appear at the said Court, to be holden at Galena on the said second Monday of March next, and in case the said Charles R. Perkins & Nicholas Kribbs shall not be received as bail in the said action, shall put in good and sufficient bail, which shall be received by the Plaintiff, or shall be adjudged sufficient by the Court, or the said Charles R. Perkins & Nicholas Kribbs being accepted as bail, shall pay and satisfy the costs and condemnation money,

which may be rendered against the said Leander Lawrence in the Plea aforesaid, or surrender the body of the said Leander Lawrence in execution, in case the said Leander Lawrence shall not pay and satisfy the said costs and condemnation money, or surrender himself in execution, when by law such surrender is required; then this obligation to be null and void, otherwise to remain in full force and effect.

Taken and entered
into before me, this
22^d day of December
A.D. 1849

L. Lawrence *Seal*
Charles R. Perkins *Seal*
N. Krieb *Seal*

W. B. Pierce
Sheriff of So Davis County Ill

And on the same day to wit, on the 22^d day of December A.D. 1849 the said Plaintiff by his attorney filed in said Clerk's Office his declaration against the said defendant, in the words and figures following, to wit;

State of Illinois *3/4*

So Davis County *3* In the Circuit Court of So Davis
County March Term A.D. 1850

William P. Cowles, the Plaintiff in this suit, by M. Y. Johnson his atty, complains of Leander Lawrence the defendant, in a plea of assumpsit.

For that whereas the said defendant, by the name and style of L. Lawrence, on the twenty second day of June eighteen hundred and forty seven, at Saint Louis, To wit at the County and Circuit aforesaid, made his certain promissory note in writing, and delivered the same to the said Plaintiff, and thereby promised to pay to the order of William P. Cowles, the Plaintiff herein, the sum of five hundred dollars, in four months after the date thereof, with interest after maturity, at the rate of ten per cent per

annum, which period has now elapsed, and the said defendant then and there, in consideration of the premises, promised to pay the amount of the said note to the Plaintiff, according to the tenor and effect thereof

Yet the said Leander Lawrence hath disregarded his promises and hath ^{not} paid the said sum of money, or any part thereof, to the great damage of the said Plaintiff of one thousand dollars, therefore he brings this suit &c.

M. Y. Johnson

Plff atty &c

Copy of the note & acct sued on

\$ 500. 00

Saint Louis June 22nd 1847

Four months after date I promise to pay to the order of William P. Bowles Five hundred ~~to~~ dollars for value received, negotiable and payable without defalcation or discount with interest from maturity at the rate of ten per cent per annum

Due 22/25

L. Lawrence

Endorsed

Wm P. Bowles

Leander Lawrence

In acct with

1847

William P. Bowles Dr.

To cash advanced &c	\$ 1000. 00
To Goods wares and Merchandise	1000. 00
To Money paid for his use	1000. 00
To interest -	1000. 00
To Money due on acct -	1000. 00
To amount due on settlement	1000. 00

Whereas also the said defendant, at the City of Saint Louis, to wit, on the first day of November 1847 at the County and Circuit ^{aforsaid.} was indebted to the said Plaintiff in the further sum of one thousand dollars

for the work and labor, care and diligence of the said Plaintiff, by the said Plaintiff, before that time done, performed, and bestowed, in and about the business of the said defendant, for the said defendant, and at his special instance and request, and also in the further sum of one thousand dollars like lawful money for divers goods wares and merchandises, by the said Plaintiff, before that time sold and delivered to the said defendant, and at his special instance and request, and also in the further sum of one thousand dollars like lawful ^{for other money} money, by the said defendant, before that time had and received, to ~~and~~ for the use of the said Plaintiff, and also in the further sum of one thousand dollars, like lawful money, for interest for the forbearance by the said Plaintiff, at the defendants request, of monies due and owing from the defendant to the Plaintiff, and also in the further sum of One thousand dollars like lawful money, for money then and there found to be due from the defendant to the Plaintiff, on an account stated between them, and being so indebted, he the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the County and Circuit aforesaid undertook, and then and there faithfully promised the said Plaintiff, to pay Plaintiff the said several sums of money in this Court mentioned, when he the said defendant should be ^{thereunto} afterwards requested. Nevertheless the said defendant, not regarding his said several promises and undertakings but contriving and fraudulently intending craftily and subtly to deceive and defraud the said Plaintiff in this behalf has not, as yet, paid the said several sums of money, or any or either of them, or any part thereof to the said Plaintiff but the said defendant to pay him the same hath hitherto wholly neglected and refused, and still doth neglect and refuse to the damage of the said Plaintiff of one thousand dollars; and therefore he bring this suit, Etc.

Filed 22nd Dec 1849

Wm H. Bradley Clerk

M. Y. Johnson
Attorney to Plaintiff

And afterwards, to wit, on the 16th day of March A. D. 1850 in the March Term A. D. 1850, of said Circuit Court the said defendant, by his attorney, filed in said Court with the Clerk thereof, his Pleas to the Plaintiffs declaration which Pleas together with the demurrer of the Plaintiff filed thereto are in the words and figures following, to wit:

State of Illinois $\frac{3}{4}$ vs, Daviss Circuit Court
So, Daviss County $\frac{3}{4}$ March Term A. D. 1850

Slender Lawrence $\frac{3}{4}$
vs

William T. Cowles $\frac{3}{4}$

And the said defendant comes and defends the wrong and injury whereof he and says that he did not undertake & promise in manner and form as the said Plaintiff hath above thereof complained against him, and of this he puts himself upon the Country

And the Plff. doth the like $\frac{3}{4}$
Johnson Plff atty $\frac{3}{4}$

And for a further plea in this behalf as to the Plaintiffs declaration, said defendant says, etio now, because he says that the Plaintiff hath taken and reserved from him the said defendant, for the loan and forbearance, and giving day of payment, of the sum mentioned in said note in said Plaintiffs declaration mentioned, a copy whereof is thereto annexed, more than at the rate of six dollars in the one hundred dollars by the year, to wit, ten dollars in the one hundred dollars by the year, to wit, at the County aforesaid on &c. to wit on the first day of October, A. D. 1849. And this the said defendant is ready to verify by his oath according to the form of the Statute in such case made and provided - Wherefore he prays judgment &c.

(Douglass & Higgins
for deft.)

Demurra

And the said Plff. comes and defends &c
and says the the above plea, by the deft. pleaded is not
sufficient in law, and he is not bound to answer the same
and for special cause of demurror shows to the Court
1st said Plea is defective in this, it does not shew usury
in the face of the Plea, where &c he prays judgt &c.

(Endorsed)

Johnson

Filed March 16th 1850

Wm H. Bradley Clerk

And afterwards, to wit, on the 27th day of May A.D. 1850
in the May Term of said Circuit Court A.D. 1850 in the
Record of the proceedings of said Court, in the above
entitled Cause, is the following entry, to wit;

William F. Cowles

vs

Case

Leander Lawrence

Now came on to heard the Demur-
rer of the Plaintiff, heretofore filed to the defendants second
plea, which after argument by counsel, is overruled by the
Court; and on motion of the Plaintiff by his attorney leave
is granted him by the Court to withdraw his demurror
and answer the said plea

And afterwards, to wit; on the 29th day of August A.D.
1851, in the August Term of said Circuit Court A.D.
1851 in the Record of the proceedings of said Court
in the above entitled case, is an entry in the
words and figures following to wit.

William P. Bowles }
vs } Case
Leander Lawrence } 3

Now at this day came the parties by their attorneys, and by agreement and leave of the Court the replications to defendant's second plea, rejoinders to said replications, and demurrer to said rejoinders, are all withdrawn, and on motion of Plaintiff's attorney, leave is granted him to file two replications to defendant's second plea, which is accordingly done, and the defendant by his attorney comes and files his demurrer to said replications and after argument by counsel, the Court sustains the said demurrer, and the defendant by his attorney takes leave to amend his 2nd plea.

And on the same day, to wit, on the 29th day of August A.D. 1851 Plaintiff, by his attorney files his replication in the words and figures following to wit

Bowles }
vs } August Term 1851
Lawrence }

And the said Plaintiff for second replication to deft second amended plea says, precluding now, Because he says, that the said indebtedness for which this suit is brought, was created in the City of St. Louis, in the State of Missouri, and by the laws of the said State of Missouri, the Plaintiff was authorized to take and receive ten per cent interest, per annum from the maturity of said note untill the same was paid. And this he is ready to verify &c.

W. Y. Johnson

Filed August 29th /51

W. H. Bradley Clerk

And on the same day, to wit, on the 29th day of August
A.D. 1857 the said defendant by his attorneys files his
demurrer, in the words and figures following, to wit;

William P. Bowles — In the So Davie's Circuit Court
vs — of the August Term A.D. 1857
Sander Lawrence —

And the said defendant comes
and defends, and says, *actio non*, because he
says, that the said replication of the said Plaintiff.
to the said amended plea, secondly above pleaded, are
insufficient in law, and this he is ready to verify,
wherefore he prays judgment &c.

(Douglass & Higgins

Filed August 29th 1857 —
Wm. H. Bradley Clerk —

And on the next day, to wit, on the 30th day of August
A.D. 1857, in the aforesaid August Term of said Circuit
Court, in the Record of the proceedings of said Court
in the above entitled Cause is the following entry
to wit;

William P. Bowles —
vs — Case
Sander Lawrence —

The defendant by his attorney
comes and files his amended plea, to which the Plain-
-tiff by his attorney files his demurrer.

Which said defendant's amended plea is in the words
and figures following, to wit;

State of Illinois — In the So Davie's Circuit Court
So Davie's County — of the August Term A.D. 1857

Leander Lawrence

Ads.

William P. Cowles

Amended plea

And the said defendant comes and defends the wrong and injury when it, and for further plea in this behalf says, Actio non, because he says, that the cause of action in this case is a promissory note made in the City of Galena and State of Illinois, at the time of its date, which is in the words and figures following, to wit, \$500. 00 Saint Louis June 22^d. 1847

Four months after date, I promise to pay to the order of William P. Cowles Five hundred ~~to~~ dollars, for value received, negotiable and payable without defalcation or discount, with interest from maturity, at the rate of ten per cent per annum. L. Lawrence, and this defendant says, he is not indebted to said Plaintiff for any other cause matter or thing, and that the said Plaintiff hath corruptly and unlawfully taken and reserved from him, the said defendant, for the loan and forbearance & giving day of payment of the sum mentioned in said note, more than at the rate of six dollars in one hundred dollars, by the year, to wit, ten dollars in the one hundred by the year, to wit, at the County aforesaid on & to wit on the 22^d day of June A.D. 1847 [as in and by said note appears, and said Plaintiff did contract to receive and did reserve more than six per cent interest on said note after the maturity thereof, at the time of making said note, to wit, ten per cent on said note after maturity thereof,] and this the said defendant is ready to verify according to the form of the Statute. Wherefore he prays judgment &c

Higgins & Strother

Filed August 30th 1851

Wm H. Bradley Clerk

And the Plaintiff, by his attorney files his said answer which is in words and figures following, to wit;

this part introduced in the bracket was introduced in the amended plea
made on the record of the proceedings as given by the clerk of the court
1851

W. F. Cowles
vs
L. Lawrence
Cir. Court Augt. Term 1857

And the said Plff comes and defends &c
and says that the said amended second plea by the
defendant above pleaded is not sufficient in law, and
he is not bound to answer the same, and in pursuance
to the Statute shows for special causes of demurrer

1st Because said plea shows no interest has been taken
and reserved from the said defendant for the
loan and forbearance and giving day of payment

2nd Because said plea shows no interest was taken
or reserved - but said note sued on was payable without
defalcation or discount with interest from maturity
at the rate of ten per cent per annum.

3^d Because said interest named was a penalty for the
nonpayment of said promissory note at maturity and
reserved as such.

4th and for other causes -

Wherefore he prays judgt &c

M. V. Johnson
attly &c.

Filed Augt 30th 1857

Wm. H. Bradley Clk

And afterwards, to wit, on the 4th day of September A.D. 1857
being yet of the August Term of said Circuit Court A.D.
1857 in the Record of the proceedings in the above en-
titled case is the following entry, to wit;

William F. Cowles
vs.
Leander Lawrence
Case

Now came on to heard the demurrer
heretofore filed by the Plaintiff, by his attorney, to the defend-
ant's amended plea, which after argument is sustained

by the Court, and on motion of the defendants attorney leave is given him by the Court to amend his plea - and the Plaintiff by his attorney comes and files exceptions to the deposition of Freleigh on file in this case -

Which exceptions to the deposition refered to in the last order of Court, ^{as aforesaid} are in the words and figures following, to wit,

Cowles

vs

Cir. Court

Lawrence

Augt. Term 1857

And said Plaintiff comes and moves the Court to exclude such parts of the deposition of Freleigh as are irrelevant and illegal and improper as evidence under the issues in this case, to wit, being part of the answers to Questions five two and three, as marked on the margin of said deposition

M. V. Johnson
Plff. Atty.

Filed 4th Sept. 1857

W. H. Bradley Clk

And afterwards, to wit, on the next day, to wit, on the 5th day of September A.D. 1857 being yet of the August Term of said Court A.D. 1857 in the Record of the proceedings in the above entitled cause, is the following entry, to wit;

Wm P. Cowles

vs

Case

Scander Lawrence

The defendant having filed his amended plea and the Plaintiff having demurred to the same, now came on to be heard the said demurrer to said amended plea, which after argument is sustained by the Court.

And afterwards, to wit, on the 26th day of November A.D. 1857

being of the November Term of said Circuit Court
A.D. 1857, in the Record of the proceedings of said Court
in the above entitled cause is an entry in the following
words, to wit,

William P. Bowles
vs
Leander Lawrence } Case

Now at this day came the parties
by their attorneys and by agreement they waive the in-
tervention of a jury, and for trial put themselves upon
the Court, and the Court, after ^{hearing} the evidence and argu-
ments of Counsel, takes the case under advisement

And afterwards, to wit, on the 28th day of November, A.D.
1857 of the aforesaid November Term of said Circuit
Court A.D. 1857 in the Record of the proceedings of
said Court is an Entry in the words and figures fol-
lowing, to wit,

William P. Bowles
vs
Leander Lawrence } Case

The Court having fully considered
and being fully advised upon the issue herein, finds
for the Plaintiff, and assesses his damages at the sum
of three hundred and ninety eight dollars and ninety
two cents. And the defendants attorney moves the
Court for a new trial herein -

And afterwards, to wit, on the 25th day of December
A.D. 1857 as yet of the November Term of said Circuit
Court A.D. 1857 in the Records of the proceedings of said
Court in the above entitled cause is the following
Entry, to wit;

William P. Bowles
vs.
Sander Lawrence

Case

Now came on to be heard the motion of the defendant heretofore filed by his attorney for a new trial herein, which motion, after argument by counsel, is taken under advisement by the Court

And afterwards, to wit, on the second day of January A. D. 1852 being ^{as yet} of the November Term of said Circuit Court A. D. 1851, in the Record of the proceedings of said Court in the above entitled Cause is the following Entry, to wit;

William P. Bowles
vs.
Sander Lawrence

Case

The Court, having fully considered, and being fully advised upon the motion of the defendant heretofore filed, by his attorney for a new trial herein, overrules the motion; to which ruling and decision of the Court, the defendant, by his attorney, excepts; and the Plaintiff, by his attorney, moves the Court for judgment upon the Verdict of the Court, heretofore entered. It is therefore considered by the Court that the Plaintiff have and recover of the defendant the sum of three hundred and ninety eight dollars and ninety two cents, so as aforesaid assessed by the Court together with his costs in this behalf expended, and that Execution issue therefor; and the defendant by his attorney, pays an appeal to the Supreme Court which is granted, conditioned that he enter into Bond in the sum of six hundred dollars with Van H. Higgins as security within sixty days, from this date -

On the trial of the said entitled case the following exceptions were made and allowed, and are in the words and figures following.

to wit;

William P. Cowles

vs

In the St Davids County Circuit Court of the November Term 1851

Leander Lawrence

Be it remembered that on the trial of this cause the following proceedings were had, to wit: The parties, after waiving the intervention of a jury, put themselves for trial upon the Court. And the Plaintiff to sustain the issues on his part offered and read in evidence the following note

\$ 500,00 Saint Louis June 22^d 1847
Four months after date, I promise to pay to the order of William P. Cowles five hundred dollars for value received, negotiable and payable, without defalcation or discount, with interest from maturity, at the rate of ten percent per annum.

(Indorsed)

L. Lawrence

Wm P. Cowles

And also offered and read in evidence the deposition of Nathan Cole which is in the words and figures following, to wit:

William P. Cowles

vs.

In the St Davids County Circuit Court, State of Illinois,

Deposition of Witnesses, produced sworn and examined at St. Louis, in the County of St. Louis and State of Missouri, before me, Peter W. Johnston a Justice of the Peace in and for said County, in a certain case now pending, in the St Davids County Circuit Court, State of Illinois, between William P. Cowles

Plaintiff and Leander Lawrence defendant, taken on the part of the Plaintiff, and taken agreeable to the Decimus hereto attached.

Nathan Cole, being produced, sworn and examined on the part of the Plaintiff, deposes and saith that in answer to

Question 1.st (Do you know the parties Plaintiff and Defendant in the title of the interrogatories mentioned, or either, and which of them, and how long have you known them respectively?)

Answer. I know the Plaintiff. I have known him about five years. I was book keeper in his house nearly a year.

Question 2.nd In what way, if any, are you connected with the Plaintiff - have you been book-keeper in his establishment?

Answer. I was book-keeper in his establishment in 1847

Question 3. State all you know of the defendant Lawrence's indebtedness to the Plaintiff, and if any payments were made by Wellington or any other person on said indebtedness.

Answer. There was an account against Lawrence for which he gave his notes, one of which was nearly paid. I know that Wellington bought goods and paid money. I can only go by the books now, and the books do not show any payment on notes by Wellington - the first note of Lawrence was nearly paid by Mr. Freleigh

Question 4.th Did Wellington make payments to your house, and if so on what indebtedness?

Answer. Wellington made payments on goods he purchased of Plff.

Question 5th State all you know fully.

Answer. There is an Entry of a note executed by Lawrence for \$500. Wellington has not made any payments on that note, to my knowledge -

Cross Questions

Question 1st If you state that the defendant Lawrence was indebted to the said Plaintiff William P. Cowles. State how you know he was so indebted, and when and where said indebtedness was created; was it by Lawrence himself personally, or by a written order from him?

Answer. Wellington always bought the goods, there was no written order that I know of. Lawrence gave notes for part of the goods bought by Wellington, and Wellington also paid money on goods bought by him, and the account went under Lawrence's name.

Question 2^d Are you acquainted with the said defendant Lawrence, if so, where did you become acquainted with him. Was he present when the indebtedness (if any) was created. How did he become indebted. Was it by note or otherwise, and at what particular time?

Answer. I do not know Lawrence; Wellington purchased goods and Lawrence gave his notes on account of said purchase, but he did not give his notes in full for said account, some money was given also by Wellington. The first note was received I think in March 1847. The second note appears at his credit in July 1847 which was for five hundred dollars, and was dated 22^d of June 1847. The first note was nearly all paid. I have no knowledge of any payment being made on the second note specially.

Nathan Cole

I Peter W. Johnston, a Justice of the Peace
in and for the County of St. Louis, do hereby certify
that Nathan Cole, the deponent, whose place of
residence is St. Louis in the State of Missouri,
was by me sworn to testify the whole truth of his
knowledge touching the matter in controversy in the
cause aforesaid, that deponent was examined, and
his examination reduced to writing, and subscribed
by said deponent in my presence, on the 30.th day
of December 1850, between the hours of eight O'clock
in the forenoon and six O'clock in the afternoon at
my Office in the City and County of St. Louis and
State of Missouri. Given and certified this 31.st
day of December 1850

Peter W. Johnston Justice of the Peace

State of Missouri
County of St. Louis
I, Lewis J. Lacy, Clerk of
the St. Louis County Court, certify that Peter W. Johnston
Esqr. whose name is signed to the preceding certifi-
cate was, on the day of the date thereof, a Justice of
the Peace in and for said County, duly commissioned
and sworn, that his signature is genuine, and full
faith due all such his Official acts
given under my hand and Seal
of said Court, at Office in
St. Louis December 31.st 1850
Lewis J. Lacy Clerk

Seal

Opened & filed this 13.th -- of January 1851
Wm H. Bradley Clk
By E. C. Ripley Depy

Question 5th State all you know fully.

Answer. There is an Entry of a note executed by Lawrence for \$500. Wellington has not made any payments on that note, to my knowledge -

Cross Questions

Question 1st If you state that the defendant Lawrence was indebted to the said Plaintiff William P. Cowles. State how you know he was so indebted, and when and where said indebtedness was created; was it by Lawrence himself personally, or by a written order from him?

Answer. Wellington always bought the goods, there was no written order that I know of. Lawrence gave notes for part of the goods bought by Wellington, and Wellington also paid money on goods bought by him, and the account went under Lawrence's name.

Question 2^d Are you acquainted with the said defendant Lawrence, if so, where did you become acquainted with him. Was he present when the indebtedness (if any) was created. How did he become indebted. Was it by note or otherwise, and at what particular time?

Answer. I do not know Lawrence; Wellington purchased goods and Lawrence gave his notes on account of said purchase, but he did not give his notes in full for said account, some money was given also by Wellington. The first note was received I think in March 1847. The second note appears at his credit in July 1847 which was for five hundred dollars, and was dated 22^d of June 1847. The first note was nearly all paid. I have no knowledge of any payment being made on the second note specially.

Nathan Cole

Which was all the testimony offered by the plaintiff in this cause.

The defendant then introduced as testimony, and read in evidence the deposition of John S. Freleigh, which is in the words and figures following to wit.

Deposition of Witness produced sworn and examined before me (Diogenes Wetmore, a Commissioner appointed by So (Davis Circuit Court Ill. to be read in evidence in a certain case now pending in So Davis County Circuit Court, between William P. Cowles Plaintiff, and Alexander Lawrence defendant, taken at the City of St. Louis and State of Missouri at the Office of said Wetmore and by special commission from said Circuit Court as aforesaid, on 13th and 14th May, ¹⁹1850, between the rising and sitting of the sun on said days, on the part of defendant, John S. Freleigh, being of lawful age produced and sworn upon the following interrogatories

Question 1st Do you know the parties, Plaintiff and defendant in the title of the interrogatories mentioned, or either, and which of them, and how long have you known them, respectively?

John S. Freleigh being produced sworn and examined saith. Answer 1st I have known the Plaintiff about ten years, and the defendant about eighteen years.

Question 2^d. Do you know of the defendant Lawrence executing a promissory note to the said Plaintiff at any time, and if so, when, and for what amount. Give the date and description of the note, as near as you can, and if you can attach a copy of the note.

Answer 2^d. Some time in the latter part of June 1847 the Plaintiff handed me a note for five hundred dollars dated at St. Louis on or about the twenty second June eighteen hundred and forty seven, payable four months

after date, with a request to forward it to Galena to defendant to sign and send back to me to be delivered to him, which I did, said note was made payable to the order of Plaintiff, with interest from maturity at the rate of ten per cent per annum -

Question 3^d. State the circumstances under which said note was executed, if any note was executed, and the consideration of said note, how you came to know about it, and how said defendant came to execute it. If you ever heard the Plaintiff say he had sued the defendant upon any note, state what note it was, and state any other conversation with Plaintiff about the identity of the note sued on at Galena.

Answer 3^d. The circumstances under which said note was executed are as follows, to wit; a short time previous to the date of said note, I received a letter, I think by the hand of E. F. Wellington, from defendant at Galena Illinois requesting me to go to Plaintiff and say that he, defendant, would be responsible, or go security, to the Plaintiff for liquors and groceries to an amount not to exceed five hundred dollars, for E. F. Wellington, at four months credit, which letter I read to Plaintiff, and he accordingly sold Wellington the goods, and brought me the note to be signed as above stated, and it is my impression that Plaintiff agreed at my request to apply the first monies received from said Wellington towards the payment of said \$500. until the whole was paid. Plaintiff called on me some time in the latter part of June 1847, with the note above referred to, and requested me to send it to the defendant in Galena Illinois, for his signature, after obtaining which signature, he requested it to be sent back to me to be handed to him, all of which was accordingly done the said note being delivered by me

to Plaintiff in the latter part of July 1847 to the best of my knowledge. Said note was given to Plaintiff for goods delivered to said Wellington on defendant's guarantee of five hundred dollars as above stated. The Plaintiff told me some time last winter that he had sued defendant at Galena on the note above referred to.

Question 4.th State when said note was executed and the time and place where, and all about it as well as the manner in which it came to be executed.

Answer 4.th The note above referred to was enclosed in a letter by me (before it was signed) and sent to defendant at Galena for his signature and the deponent received the same signed by defendant in a letter directed to deponent by defendant from Galena, about the latter part of July 1847, and by deponent was handed to Plaintiff in St. Louis Missouri.

Question 5.th State particularly the consideration of said note, whose debt it was given to secure, if any ones, and if you know, state whether said debt was paid by any one, and if so by whom, and when, state also, if you know, whether Lawrence the defendant was a principal debtor or mere surety.

Answer 5.th Deponent further states that said note was given to secure the payment of the liquors and groceries sold by Plaintiff to E. F. Wellington according to directions of defendant as mentioned in deponent's answer to third interrogatory. Some time in the Spring of 1849 the Plaintiff told deponent a part of the above mentioned note had been paid by Wellington, the precise amount deponent does not now recollect, but thinks it was nearly or about one half. after which

and in the same Spring the Plaintiff showed deponent the said note, and there was no indorsement on it, upon which deponent remarked to said Plaintiff that he, Plaintiff, once told deponent that a part of said note had been paid, and Plaintiff did not deny it. Deponent always considered defendant as ~~being~~ said Wellington's security, for the payment of the goods to Plaintiff for which said note was given.

Question 6.th State if you know on what terms he became security, if he was a surety, and who was to pay, and how was he to pay, and was any thing paid on account of said debt.

Answer 6.th Deponent can give no other answer to this interrogatory than what is embraced in the foregoing answers -

Question 7.th State if you know whether E. F. Wellington was indebted to said Plaintiff at the time when said goods and groceries were purchased, for which said note was given, if said note was given for ^{and groceries} goods, and where said goods and groceries were taken to -

Answer 7.th Deponent has heard Plaintiff say that said Wellington owed him nothing when said liquors and groceries were purchased for which said note was given, deponent heard Plaintiff say that said liquors and groceries were taken up the Illinois River by said Wellington, and that he had credited said Wellington at the same time a larger amount than said note.

Question 8.th If Plaintiff ever had any conversation ^{with you} about the consideration of said note or about

the payment of any moneys on account of the consideration of said note by any person, state the consideration and give the amount of payments which he said had been made, if any had been made. State whether they were given to you in writing, or taken from Plaintiff's book give all the particulars -

Answer 8.th ~~All~~ ^{deponent} remembers of conversations with Plaintiff respecting said note, are embodied in deponent's answer to the previous interrogatories. Deponent would state, however, that he called on Plaintiff at request of Defendant in November last for a statement of monies received by him from said Wellington, and the subjoined statement in pencil by the Plaintiff's own hand, and marked exhibit A. Plaintiff gave to deponent, after copying them from his book, in deponent's presence, as payments made to Plaintiff by said Wellington in the year eighteen hundred and forty seven, on account of goods purchased of Plaintiff by said Wellington. Plaintiff has told deponent that said Wellington had purchased goods of him on credit at different times since said note was given, and also after its maturity and was still owing him on account.

Question 9.th If you know any other thing beneficial to the Defendant in this suit, state it as if particularly interrogated thereto -

Answer 9.th The letter referred to in deponent's answer to the third interrogatory, in which defendant agreed to become responsible or go security to the Plaintiff for liquors and groceries to an amount not to exceed

five hundred dollars for E. J. Wellington at four months credit, has been lost or mislaid or left in the store of Plaintiff, as deponent has made diligent ^{search} at his house and in his office among all the files of letters at both places received from defendant for several years past, and ^{could} not find it. (Deponent has also asked Plaintiff if said letter was left with him, or at his store, and Plaintiff replied that he did not, or had no recollection of said letter being left with him or at his store, but the contents and substance of said letter in all that regards the Plaintiff and defendant deponent has stated in his answer to third interrogatory. The annexed memorandum marked exhibit B shows a copy of memorandum marked exhibit A.

John S. Freleigh

Sworn to and subscribed before me this
14th day of May 1850. (Diogenes Wetmore Comr.

Cross Interrogatories by Plaintiff

What is your age; and what business are you engaged in; State what relationship exists between you and the defendant, if any - and how you came to be interested in learning the particulars of this business so minutely - are you in any way interested with the defendant in business and in what way if interested -

Answer & Questions to Plaintiffs Interrogatories

Answer 1st Deponent further states under oath, that he was forty five years old on the 13th day of May eight - een hundred and forty nine, and follows the business of license Pawn broker in the City of Saint Louis Missou - ri, Deponent is a brother in law to defendant by marry - ing defendant's sister. Deponent is in no way interested in learning or knowing the particulars of any business transactions between Plaintiff and Defendant -

Deponent is no way interested with defendant in business

Question 2^d. Were you present when the note sued on was executed - If so, where was it executed, for what given - and how came Lawrence to be on said note - Is he a principal or surety on the same -

Answer 2^d. Deponent was not present when the note sued on was executed, understood from Plaintiff said note was executed for the payment of liquors and groceries delivered to E. F. Wellington on or about June twenty second eighteen hundred and forty seven, deponent also understood that defendant was said Wellingtons security for the payment of the liquors and groceries above referred to -

Question 3^d. Where does the Plaintiff Cowles reside and what business was he engaged in when said note was given - what was the note given for - If given for goods, was Lawrence interested - and how, and from whom do you obtain the facts, spoken of in your answer above -

Answer 3^d. Plaintiff resides in St Louis, and was a whole sale and commission Merchant when said note was given for the payment of liquors and groceries delivered to E. F. Wellington, as above stated. Deponent does not know whether defendant was interested with Wellington in said transaction, the facts spoken of by deponent in the above case were obtained from said Wellington and the Plaintiff; chiefly from the latter the statement of both Wellington and Plaintiff to me agreed, one corroborating that of the other as far as each stated

Question 4th. Have you not offered to renew this note by giving your own. If you are not interested in this matter why take such interest. How did you come in possession of the facts and circumstances you testify to -

Answer 4th. Deponent has never offered to renew said note by giving his own, deponent is not interested in this matter directly or indirectly, and takes no more interest in this case, than deponent would in any other when called upon to testify - the facts and circumstances deponent testifies to were obtained as answered by deponent in his answer to ~~third~~ interrogatory -

Question 6th. What payments do you allude to in your answers, do you know whether Wellington had an account, or was indebted to the Plaintiff, and whether the payment spoken of was on this note, or on his own indebtedness. If made on this note why was the same not credited on it.

Answer 6th. Deponent further states that he has alluded to no payment except one admitted by Plaintiff as paid on said note by said Wellington, also the memorandum from Plaintiff's books of payments made to Plaintiff by said Wellington, which memorandum was copied by Plaintiff from his books in deponent's presence and handed to deponent by him and is annexed to deponent's answers to the interrogatories of defendant, all deponent knows of any account or indebtedness of said Wellington to Plaintiff is what Plaintiff has told deponent, which was that said Wellington had purchased goods of Plaintiff on credit at the time said note was given

and at different times since said note was given, the payment spoken of Plaintiff told deponent was on said note of Five hundred dollars, and was nearly or about one half the amount of said note, but deponent does not know why it was not endorsed on same Plaintiff has also told deponent of payments frequently made on account by said Wellington -

Question 7th Was Wellington's indebtedness by note or book account, who made the payment spoken of - was it paid by draft or in person - were you present when such payment was made - If so what direction was given - to whom given, and by whom - did you ever see defendant pay any thing on this note - when, where and what amount, if yes?

Answer 7th Deponent does not know any thing more respecting Wellington's indebtedness to Plaintiff by note or Book account, except what Plaintiff has told deponent, which deponent has stated in his other answers above, the payments spoken of, Plaintiff said were made by said Wellington. (Do not know whether by draft or in person, was not present at any time to deponents recollection when said Wellington paid Plaintiff monies, never saw defendant pay any thing on said note -

Question 8th What part of the information testified to by you, did you learn from defendant, and what part from Plaintiff, and what of your own knowledge - Can you not be mistaken in regard to the admissions of the Plaintiff testified to - was the object and purpose in going to Plaintiff to get admissions so as to be a witness in this case - Have you ever been a witness for Lawrence before -

Answer 8th With regard to the information testified to by

deponent, deponent learned that part of defendant, as related in deponent's answer to the 3^d interrogatory of defendant above, and for the rest deponent can only refer to his previous answers - deponent does ^{not think} he can be mistaken in regard to admissions by Plaintiff as testified to by deponent. The object in going to Plaintiff was not to get admissions so as to be a witness in this case, it was at the request of defendant that deponent called at different times on Plaintiff, deponent being defendant's general agent in St. Louis for several years past, and did not think of being called on as witness in this case - deponent has no recollection of ever being a witness for defendant except in one instance, some eight or nine years ago - and further deponent saith not -

John S. Frelight

Exhibit A. referred to in the foregoing deposition
in pencil

Recd of Wellington	July 24 th	Cash	\$200.00
	" 29	L. S. note	500.00
	Aug 10	Cash	400.00
	Sept 6	"	40.00
	Oct. 19	"	22.53
	Dec 4	"	581.50

(Exhibit B, referred to in the above deposition)

The following is a copy of Plaintiff's memorandum of credits to Wellington copied by Plaintiff in Pencil from his Books in my presence and handed to me to wit,

Recd of Wellington	July 24 th	Cash	\$200.00
	" 29	L. S. note	500.00
	Aug. 10	Cash	400.00
	Sept. 6	"	40.00
	Oct. 19	"	22.53
	Dec 4	"	581.50

Sworn to and subscribed
before me this 14th day of
May A.D. 1850

Diogenes Wetmore
Commissioner appointed by Dedimus
Potestatem sued out of the Circuit
Court of St. Davie County Illinois

State of Missouri } set
County of St. Louis } S. Diogenes Wetmore, being
commissioned specially by a Dedimus Potestatem
issued from the Clerk's Office of the Circuit Court
of St. Davie County in the State of Illinois on the
2^d of May 1850 for the purpose of taking the dep-
osition of John S. Frelich in a cause now pending
in said Circuit Court, wherein William P. Cowles
is Plaintiff and Leander Lawrence is defendant, do
heretby certify that the witness John S. Frelich appeared
before me at my Office in the City of St. Louis and
State of Missouri, and that said examination and
interrogatories were reduced to writing, and, in the
order in which they were propounded, by him respectively
sworn to and subscribed on the part of the Plaintiff
and defendant, and that said examination reduced
to writing was in conformity with said Commission
and taken before me and in my presence -

Commissioner's Fee }
\$15.00 paid by }
defendant Lawrence }

Given under my hand at
Office in the City of St. Louis
in the State of Missouri this 14th
day of May A.D. 1850

Diogenes Wetmore Commissioner
appointed by the Circuit Court as
aforesaid -

And said defendant then offered and read in evidence
a letter of the Plaintiff in the words following, to wit,

Sworn to and subscribed
before me this 14th day of
May A.D. 1850

Diogenes Wetmore
Commissioner appointed by Dedimus
Potestatem sued out of the Circuit
Court of St. Davie County Illinois

State of Missouri } set
County of St. Louis } S. Diogenes Wetmore, being
commissioned specially by a Dedimus Potestatem
issued from the Clerk's Office of the Circuit Court
of St. Davie County in the State of Illinois on the
2^d of May 1850 for the purpose of taking the dep-
osition of John S. Frelich in a cause now pending
in said Circuit Court, wherein William P. Cowles
is Plaintiff and Leander Lawrence is defendant, do
hereby certify that the witness John S. Frelich appeared
before me at my Office in the City of St. Louis and
State of Missouri, and that said examination and
interrogatories were reduced to writing, and, in the
order in which they were propounded, by him respectively
sworn to and subscribed on the part of the Plaintiff
and defendant, and that said examination reduced
to writing was in conformity with said Commission
and taken before me and in my presence -

Commissioner's Fee }
\$15.00 paid by }
defendant Lawrence }

Given under my hand at
Office in the City of St. Louis
in the State of Missouri this 14th
day of May A.D. 1850

Diogenes Wetmore Commissioner
appointed by the Circuit Court as
aforesaid -

And said defendant then offered and read in evidence
a letter of the Plaintiff in the words following, to wit,

Saint Louis April 6th 1849

Mr. S. Lawrence

Galena Ill.

Dr. Sir,

Mr. Alfred Vinton agt
for Lyon Short & Co. having failed to collect your note
(in my favor dated June 22^d. 1847 for \$500.) from
Mr. Wellington has handed it back to me.

Mr. Paul who had the note at Peru Ill. informs me
that Mr. Wellington has removed to Chicago, and all
further hopes of getting the money from him are
at an end. He owes me several hundred dollars
which I have no hopes, at present of getting, and will
thank you for any information which may lead
to obtaining security. Mr. Freleigh informs me
he will write you, to day, but I have thought best
to write also giving you such information as
I think ^{will} at all refer to the matter.

Your attention to this matter will oblige

Yours Respectfully

Wm P. Cowles

(Indorsed or directed)

S. Lawrence Esqr.

Galena

Ill.

Which was all the evidence given or received, or offered
in said cause of William P. Cowles vs. Sander Lawrence
The Court found in favor of the Plaintiff the sum of
three hundred and seventy eight dollars and ninety
two cents and costs of suit.

Whereupon the said defendant, then and there moved
the Court to set aside said finding, and for a new
trial in this cause.

1st Because the finding is contrary to law

2^d Because the finding is contrary to evidence

3^d For other reasons.

which motion was taken under advisement by the Court. and afterwards being still of the November Term 1851 the Court overruled said motion for a new trial, to which ruling of the Court, the defendant by his Counsel, then and there excepted and prayed that his bill of exceptions might be signed and sealed, which is done. And afterwards the Court rendered judgement upon the finding, and the defendant prayed an appeal to the Supreme Court, which is allowed upon entering into an appeal bond in the sum of six hundred dollars, conditioned according to law, with Van H. Higgins as security within sixty days.

Signed, Sealed and allowed this 3^d day of January A.D. 1852

Benj. R. Sheldon *Sealed*

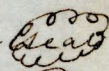
(Indorsed)

Filed Jan'y 5th 1852

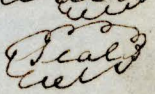
Wm H. Bradley Clk

And afterwards, to wit on the 26th day of February A.D. 1852 the said defendant filed in the Clerk's office of said Circuit Court his writing obligatory, commonly called an appeal bond, which is in the words and figures following, to wit;

Know all men by these presents, that we, Leander Lawrence and Van H. Higgins, of St. Davids County Illinois, are held and firmly bound unto William P. Cowles, in the penal sum of six hundred dollars current money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents with our hands and seals this day of February A.D. 1852

The condition of the above obligation is such, that whereas the said William P. Cowles, did, on the second day of January A.D. 1852, in the Circuit Court in and for the County of St. Davids and State of Illinois, recover a judgment against the above bounden Leander Lawrence for the sum of three hundred and ninety eight dollars and ninety two cents damages, and sixteen $\frac{95}{100}$ dollars costs, from which said judgment of the said Circuit Court, the said Leander Lawrence has prayed for and obtained an appeal to the Supreme Court of said State. Now if the said Leander Lawrence shall duly prosecute his said appeal without delay and with effect, and shall moreover pay the amount of the judgment, costs, interest and damages rendered and to be rendered, against him in case the said judgment shall be affirmed in the said Supreme Court, then the above obligation to be void, otherwise to remain in full force and virtue. Leander Lawrence 

Taken & entered into this 26th day
of Feby A.D. 1852

Van H. Higgins 

Filed February 26th 1852 Wm H. Bradley Clerk

State of Illinois
Jo Daviess County

I William A Brady Clerk
of the Circuit Court in and for said County, do hereby
certify that the foregoing transcript is a true, full
and correct copy from the record of all the proceedings
which have been had in said Circuit Court in the
aforesaid case of William P Cowles vs Leander
Laurence.

In testimony whereof I have hereunto
set my hand and affixed the Seal
of said Court at my Office in Galena
in said County, this 28th day of May
A.D. 1852

Attest William A Brady Clerk

Fee for this Record \$9 84

Wm P. Davis
Combs
cuts. 3
transcript
Landon Lunsford
W. P. Davis

1852

Filed June 3-1852
A. Leland Clerk.

11961

Deference

\$2.44 for transcript