

No. 14395

# Supreme Court of Illinois

Williams

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vs.

Corbett

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124

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

No. 14

1862

~~Carbott~~

vs

Williams

vs

Carbott

14395

Prepared

# SUPREME COURT OF ILLINOIS.

*Third Grand Division at Ottawa—April Term, 1862.*

VAUGHN WILLIAMS, *Appellant,*

vs.

DANIEL CORBET, *Appellee.*

APPEAL FROM PEORIA.

## APPELLEE'S BRIEF.

1 There was no error in striking from the files, appellants plea<sup>a</sup> setting up the statute of frauds as the same issue was already in the case, being on appeal from a Justice of the Peace and trial *de novo* in which this plea and all others are oral by strute.

2 Motion to reinstate cause on the docket is addressed to the discretion of the Court and will be allowed on proper cause shown, and such allowance is not error. Defendant below went to trial upon the merits and cannot now object that he was not properly in Court.

3 This suit was brought to recover the value of certain cattle. The proof is conclusive that the cattle were sold and delivered, and that the verdict is for their reasonable and contract value, and that appellant promised to pay the same, but appellant maintains that his promise to pay is collateral to the promise of one Caldwell, and is within the statute of frauds

Appellee urges that said promise of appellant was an original undertaking, a promise to pay his own debt and not collateral to any promise of Caldwell.

The issue thus made is a proper question for the Jury.

Chitty on Cont's 507.

Sinclair vs. Richardson, 12 Vermont, 33.

Bull. N. P. 250.

1 Saund. 211.

Harris vs. Huntback, 1 Burr. 381.

Matson vs. Wharane, 2 Term, R. 80.

Doyles vs. White, 26 Maine.

Upon this question the evidence was fairly submitted to the Jury, and their verdict will not be disturbed if substantial justice has been done, although the evidence was conflicting.

Lowry vs. Orr et al, 1 Gil. 84.

Dawson vs. Robinson, 5 Gil. 72.

Johnson vs. Moulton, 1 Seam. 532.

Gillett vs. Sweat, 1 Gil. 475.

Allen vs. Smith et al., 3 Seam. 97.

Sullivan vs. Dollins, 13 Ill. 85.

Blanchard vs. Morris, 15 Ill. 35.

The evidence justifies the verdict, because it shows,

1st that the cattle were sold alone on appellant's credit. A promise to pay for property sold to one, though for the use of, and delivered to another, is not within statute of frauds

Chitty on Contracts, 511.

2d Because it shows that such promise to pay was founded upon a fresh consideration between the said parties, viz. : that appellant agreed to receive of Caldwell his note for the cattle, and to pay appellee for the same, and that he did so receive said note.

Such contract is not within the statute of frauds.

Chitty on Cont. 511.

Meech *vs.* Smith, 7 Wend 315.

Reed *vs.* Nash, 1 Wils. R. 305.

Harris *vs.* Hantback, 1 Burr 371.

Williams *vs.* Laper, 3 Burr R. 1886.

Castting *vs.* Aubert, 2 East. R. 325.

Austley *vs.* Marden, 1 New R. 124.

Bird *vs.* Gamner, 8 B. and C. 365.

Leonard *vs.* Venderberg, 8 John. 23.

Beasley *vs.* Spring, 12 Mass. 297.

Fanley *vs.* Cleveland, 8 Cowen. 432.

Gold & Sill *vs.* Phillips, 10 John., 412.

3d Because it shows that there existed no indebtedness of Caldwell to appellee to which appellant's promise could be collateral, but as a part of the bargain and sale, Cadwell became indebted by note to appellant for the cattle and not to appellee.

Agreement to pay a debt for which no other person is liable is not collateral.

Chitty on Con. 507.

Beaman *vs.* Russel, 20 Vert. 205.

This last named case is closely analogous in principle to the case at bar. See also

Homans *vs.* Lumbard, 8 Ship. 398.

Allen *vs.* Thompson, 10 N. H. 32.

Anderson *vs.* Davis, 9 Vermont 136.

Turner *vs.* Hubble, 2 Day 457.

Armstrong *vs.* Flora, 3 Munroe 43.

Proprietors of upper Locks *vs.* Abbot, 14 N. H. 157. #

There is believed to be no error in the instructions of the Court. Those given by the Court of their own motion state the law correctly.

Chitty on Con. 511.

Hite *vs.* Wellès, 17 Ill. 91.

JOHNSON & HOPKINS.  
Attorneys for Appellee.

The evidence shows that the conversation about appellant giving security for Caldwell or making an engagement collateral to his wife's negotiations merely touches of between the parties & not the final contract between the parties to say that the cattle should be delivered by appellee to Caldwell, that Caldwell should give appellant his note for the cattle & that appellant should pay appellee for them





law per head, which offer the appellee had not accepted, and the next morning appellee offered to sell at that price; which Caldwell did not accept as he could not pay for them on delivery.

There was no stipulation for credit in the offer, and none in the acceptance of the offer the next morning. Caldwell could not pay and could not make his offer good, and appellant declined to let him have the cattle, and started to drive them back, and there was no sale.

There was an end of all treaty between Corbet and Caldwell, and there was no debt in existence at the time of appellants promise and undertaking. It could have been no promise to pay an existing debt of Caldwell's, for there had been no sale or contract, and was no promise or debt in existence.

The first treaty for a sale having been abandoned the rights and relation of the parties were the same as before the treaty, except that appellee was two or three miles from home with his cattle, which he desired to sell rather than to drive back.

A new contract and sale was then made and the cattle were sold and delivered upon the credit of appellant.

Appellee parted with his property upon appellants promise and credit, the cattle were driven off by appellant and Caldwell, and appellant took Caldwell's note to himself for appellee's cattle, and his own, which he had sold at the same time to Caldwell, and has received @ part of same from Caldwell and paid part of it over to appellee.

The form of words used is of less consequence than the fact; no particular form of words was necessary to charge appellant. The fact was that appellee sold and delivered his property, <sup>sold</sup> upon the credit and promise of the appellant, and that appellant took @ note to himself for the payment of the cattle, and has received and paid over @ portion of appellee's claim. Whatever took place between the parties subsequently, as shown by the case, did not affect the original status of the parties. At the time of the sale appellee took no note from Caldwell, and made no charge to him, but looked for his pay only to appellant.

All the acts of the parties at and about the time of the sale and subsequently also were consistent with the undertaking of the appellant

The sale was practically to appellant for the benefit of Caldwell, sale to Caldwell was expressly refused by appellee, was made to appellant, and appellant delivered all the cattle to Caldwell at Princeville and took his (Caldwell's) note for the whole.

All the acts of the parties, as shown by the record harmonize with this view of the case, and justice is done the parties, and will be undone by @ different view.

Appellant trusted Caldwell, appellee did not, but appellee credited appellant and he is justly made to pay.

All the facts were before the jury, and their verdict does no violence to the law, or the fact, and ought not to be set aside.

The Statute of frauds does not apply to this case.

The promise of appellant was not to pay @ debt of another, but was an independent undertaking, founded upon the consideration that appellee would part with his property, and he parted with his cattle upon the promise of appellant alone. Appellee took no note because it was not convenient, but the credit was given and the charge made to appellant.

The fact that the cattle were

for the use of another cuts no figure in the case. Appellant could deliver them to whom he pleased, without effect upon his liability.

Appellee had no cause of action against Caldwell, and neither took his note, or charged him with the property.

Caldwell had given his note for the cattle to appellant and was never liable to appellee: Appellee had no claim legal or equitable upon Caldwell.

Had Appellee sued Caldwell for the price of the cattle, he must have failed in his suit; he had no claim upon him.

It would have been a good defence to the suit: that Caldwell had settled the amount with appellant by giving his note, and with the consent and understanding of all parties. Caldwell testified that "Corbet would not let him have the cattle, and went around them to drive them back, and that he asked him if he would take Williams for the cattle, and he said that he would, he would not let me have the cattle till I got Williams to become responsible."

This negatives all presumption of a collateral undertaking. There was no debt of another, for the promise of appellant to be collateral to

There is believed to be no case where on

@ similar state of facts, the promise has been held  
as @ matter of law, to be collateral.

There is @ class of mixed cases near the  
line, where from the form of words, which were  
used in making the promise, it is difficult to  
decide what was the fact, where testimony is  
indefinite, and contradictory, which are submit-  
ted to @ jury to find the fact, and when pass-  
ed upon by the jury, their finding is rarely  
disturbed.

In such cases no court can decide  
as @ matter of law, what is essentially @ mat-  
ter of fact, when the fact is found, the court  
will apply the law.

The evidence in this case was  
not without conflict, and the jury from @  
consideration of the whole facts have found  
the fact that the undertaking was not collat-  
eral, and it was their appropriate province to do  
so. It cannot be said the verdict does injustice  
to the parties, or violence to the evidence.

Appellant ought not to find fault  
with the instructions of the court to the jury.

An inspection of the record will show, that  
the court gave very full, clear, and proper  
instructions, upon all the points in the case  
as asked by the counsel for the appellant,  
and the voluntary instructions of the court

are almost a literal copy from the previous decisions of this court and therefore unobjectionable.

The change of the word void to voidable, in appellants instructions, could have made no possible difference in the verdict of the jury, as either word had the same significance to a party defending against a void or voidable contract, (A voidable is a void contract is a void contract to a party seeking to avoid it,

The court did not err in refusing to <sup>not</sup> disturb <sup>ing</sup> the verdict of the jury, and their judgment ought not to be reversed.

Johnson & Hopkins  
Appellees City

<sup>124</sup>  
Daniel Corbett  
No 14 at  
Vaughn Williams  
Appelles Argonien A

Filio May 7. 1862  
L. Leland  
clerk.

Vaughan Williams vs Samuel Corbett  
In the Supreme Court of Illinois  
Third Grand Division  
at Alton  
April Term  
AD 1861.

It is agreed by the said parties that the above case stand continued until the next term of said Court.  
Ingersoll Brothers  
attys for Appellant  
Johnson & Hopkins

14) Williams<sup>42</sup>  
v  
Corbett

Filed April 19. 1861

L. Leland  
Clerk

In the Supreme Court  
at Ottawa, April term 1860

Vaughan Williams - appellant

Daniel Corbett - appellee

The parties to the  
above suit agree that  
the same may be con-  
tinued to the next term  
of said Court

J. Russell Bro  
atty for Appellant  
Johnson & Stephens

14 ~~172~~ 42

Williams

<sup>vs</sup>  
Corbett

Agreement  
& Continuance

Filed April 19, 1860  
L. Leland  
clerk

Jay Corbett

SUPREME COURT OF ILLINOIS.

Third Grand Division at Ottawa—April Term, 1862.

VAUGHN WILLIAMS, *Appellant,*

vs.

DANIEL CORBETT, *Appellee.*

APPEAL FROM PEORIA COUNTY COURT.

Brief and Argument of Attorneys for Appellant.

This was an action in assumpsit commenced before a Justice of the Peace of Peoria County, and a judgment rendered for the Defendant, from which judgment, the Plaintiff appealed to the County Court of Peoria County, where the case was tried and judgment rendered against the Defendant below, for the sum of fifty dollars and cost, from which said judgment, the said Defendant appeals to this Court.

The Appellant assigns several errors for the reversal of said judgment which will be discussed in the order in which they appear in the record.

I

It appears from the evidence in this case, that sometime in the Fall of 1858, one Thomas Calwell purchased of Daniel Corbett, the Appellee, five head of cattle for which Calwell promised to pay the sum of fifteen dollars per head, and that on the day subsequent to the time of making the contract, Corbett drove the cattle, which he had sold to Calwell to the house of one Thomas Kirk, where Calwell had other cattle, and where he directed Corbett to deliver the cattle, and that after Corbett had driven the cattle over to Kirk's Calwell informed him that he had paid out more money than he expected, and would not then be able to pay for the cattle, but proposed to give Vaughn Williams, the Appellant, as security, and that Williams in pursuance of that arrangement, became security for Calwell, to Williams for the amount Calwell had promised to pay Corbett for the cattle. The promise or agreement was not reduced to writing. The Appellant insists that the undertaking and promise of Williams was clearly within the statute of Frauds, and therefore void.

It is not necessary for us to discuss at this late day the construction which this Court will give to the Statute of Frauds, or whether or not, promises such as is attempted to be enforced in this case, are within that statute. This Court has repeatedly interpreted that statute, and with those interpretations we are willing to rest this case.

In this case the contract had been completed, the property been delivered at the place designated by the purchaser, and the price to be paid agreed upon between the parties. Nothing remained to be done, to complete the contract: the liability of the purchaser of the property commenced at the time of the delivery of the same to him, and after this, the Appellant makes the promise which is now

sought to be enforced against him. Was this promise, collateral to, and dependant upon the liability of Calwell? If it was, then it is clearly within the statute, and cannot be enforced.

Revised Statute, Chap. 44, P. 258.  
 Hite vs. Wells, 17th Ill. R. 88.  
 Eddy et al. vs. Roberts, 17th Ill., R. 505.  
 Chapin vs. Lapham, 20th Pick. 468.  
 Russel vs. Buck, 11 Vt. 166.  
 Nelson vs. Boynton, 3 Met. 396.  
 Carville vs. Crane, 5 Hill 483.  
 Barber vs. Bucklin, 2 Denio 45.  
 Jackson vs. Rayner, 12 John. 291.  
 Simpson vs. Patton, 4 John. 422.  
 Cabill vs. Begelow, 18 Pick. 369.

It may however be insisted in reply to these authorities, that the undertaking and promise of the Appellant, although collateral and subsidiary to the undertaking and promise of Calwell, was founded upon a new and sufficient consideration and therefore binding. If such assumptions as this, were at all warranted by the evidence, they would be unavailing in this case, because the statute has not changed the common law in this respect. This statute not only requires that there should be some sufficient consideration for the undertaking and promise, but in addition to this, requires that the promise be in writing. This requirement of the statute is inflexible.

Eddy et al. vs. Roberts, 17th Ill. R. 507.

In the same case, the Court also say, that "where the collateral promise is subsequent to the creation of the principal contract or debt, the collateral promise must not only be founded on a new consideration, but be in writing." The facts in this case show that the contract was made, the debt, created, and the liability of Calwell, complete before the promise of Williams was made. No new consideration passed for the making of this collateral promise from Corbett to Williams, nor was the same in writing. The promise was therefore void, and cannot be enforced.

## II

1. The instructions given on the part of the Plaintiff below, are not applicable to the facts existing in this case. The 1st, 2nd and 4th instructions given on the part of the Plaintiff, are based upon an assumed state of facts, which have no existence, as far as this case is concerned, they are simply abstract propositions of law, not in the least degree warranted by the evidence. They all assume that the cattle were sold by Corbett to Calwell, upon the sole credit, and upon the responsibility of Williams, when in fact Williams was unknown to the transaction, until after the contract had been made, and the cattle delivered by Corbett at the place appointed by Calwell.

2. The 6th and 8th instructions given for the Plaintiff, assumes that Williams was acting as the agent of Corbett in taking a note for the amount Calwell was to pay to both Williams and Corbett for their cattle. This assumption is unauthorized and was only an ingenious suggestion of counsel adopted by a Court blessed with

neither wit nor wisdom. That the relation of principal and agent did not exist between Corbett and Williams, is too clear for argument. Williams took the note as a matter of safety to himself and for no other purpose, and after his proportion of it had been paid he delivered the note to Corbett who treated it as his own, and attempted to collect it of Calwell.

3. The objections made to the other instructions given on the part of the Plaintiff apply with equal force to the 7th instruction. It is an instruction that means nothing and was only calculated to confuse and mislead the Jury.

Instructions should be applicable to the evidence and correctly state the propositions of law, which are to be applied in the decision of a case.

Hosely vs. Brooks et ux., 20th Ill., 115.  
 Riley vs. Dickens, 19th Ill., 29.  
 Chicago Burlington & Quincy R.R. vs. George, 19 Ill. 510.  
 Coughlen vs. The People, 18th Ill., 266.

### III.

The Court improperly modified the instructions, asked by Defendant below. The position that a contract within the Statute of Frauds, is "*voidable*" instead of *void* will, doubtless seem, a new one to this Court. This distinction, has never so far as we are advised, been applied to contracts of this character. They are absolutely void or else they are binding. A void contract is one which cannot in any event be enforced against the party making it—while a contract only voidable may be enforced, unless some act be done by the party making it, by which he may avoid its operation. Yet, the learned? Judge of the Court below, in the plenitude of his learning and wisdom, was pleased to change the 3d and 8th instruction asked by the Defendant below, so as to inform the jury, that although the agreement or promise made by Williams to pay the debt of Calwell was not in writing, still, said contract was not absolutely void, (as we insist it is) but only voidable and might be enforced. These amendments of Defendant's instructions misled the jury. They could not find from the evidence that the Defendant had done any act by which he could avoid the contract, and instructing them that the contract was voidable would imply that he must do that.

### IV.

The Court erred in overruling the motion of Defendant below for a new trial. This conclusion is inevitable, if the positions we have assumed in this argument are correct.

1st A new trial should have been granted, because the the Court below misdirected the jury by giving improper instructions on the part of the Plaintiff below. We have called the attention of the Court specifically, to those instructions, and do not deem it necessary to discuss them further, their irrelvancy will be readily apparent to any one who may make himself familiar with this case.

2d. The verdict should have been set aside for another season—which is, that the contract being within the Statute of Frauds, could not be enforced. There was no evidence, even tending to prove that anything had been done to relieve the contract from the provisions of that Statute. The verdict was therefore contrary to law, and should have been set aside.

3d. The Court upon his own motion gave instructions to the jury, which were not at all applicable to the case. The first instruction given by Court, instructs the jury that parties may make valid contracts to pay the debt of another, although the same be not reduced to writing, but that in such cases, the suit must be instituted upon such new contract. That is not the law, and the promise to pay the debt of another, although founded upon a new and sufficient consideration, *must be in writing* in order to relieve it from the provisions of the Statute, and make it binding, (see case of *Eddy et al vs. Roberts* before cited.) The Second, Third and Fourth instructions given on the part of the Court were all equally erroneous and inapplicable. There is no pretence that this suit was instituted upon any other promise or undertaking than that made by Williams, to pay the debt of Calwell, and that there was no consideration for that promise, except the original debt from Calwell to Corbett.

We insist, therefore, that for all these reasons, any one of which is sufficient to warrant such a result, the judgment of the Court below should be reversed and the cause remanded for a re-hearing.

INGERSOLL & WEED.  
*Attorneys for Appellant.*

Jaugh Williams  
v.  
Daniel Corbett

Argument & Brief  
of appellants -

Filed May 10. 1842  
J. Leina  
ck

Be it remembered, That on the Fifth day of August A.D. 1859, there was filed, in the office of the clerk of the County Court of Peoria County 2<sup>nd</sup> State of Illinois, a certain Transcript of the Judgment, had in the Court below; <sup>and a certain account</sup> which in Words and Figures, are as follows.

To Wit;

State of Illinois }  
Peoria County } ss.

Justice Court before Geo. B. Harlan J.P.  
Daniel Corbett

vs.

Vaughn Williams

Plaintiff claims \$77.72 cts on account

Sum issued May 11<sup>th</sup> 1859 returnable on 21<sup>st</sup> Inst @ 3 o'clock P.M.

Parties met after hearing proofs Judgt was entered against plain

tiff for \$557 cts costs of suit

Justice fees \$1.37 1/2 cts

Cons' fees 170

Witness fees 250

\$ 5,57

Treas<sup>r</sup> 25

Entering up fees \$6.07

State of Illinois }  
Peoria County } ss. I, the subscriber, a Justice of the Peace for said County, do certify that the above transcript and papers annexed contain a full and perfect statement of the proceedings and of the judgment before me, in the above entitled cause.

Transcript filed Aug 5, 1859.

Dated the 10<sup>th</sup> day of June A.D. 1859

Geo. W. Harlan J.P.

Vaughn Williams in asc with Daniel Corbett

To ballance due on cattto sold per del year \$77.70

And afterwards, To Wit, on the 5<sup>th</sup> day of August A.D. 1859, there issued from the said Clerks Office of Peoria County, a *Summons*, which, in words and figures, is as follows  
To Wit:

State of Illinois

Peoria County.

The People of the State of Illinois, to the Sheriff of Peoria County, Greeting =

We command you that you summon

Vaughn Williams if he shall be found in your County, personally to be and appear before the County Court of said Peoria County on the first day of the next Term thereof, to be holden at the Court-House in Peoria, <sup>in said Peoria County</sup> on the fourth Monday of August 1859 to answer unto Daniel Corbet.

in a suit lately appealed to our said court from before Geo Harlan a Justice of the Peace of said County And have you then and then this writ, with an endorsement thereon in what manner you shall have executed the same.



Witness, Charles Kettelle, Clerk of our said Court. And the seal thereof, at Peoria, aforesaid, this 5 day of August A.D. 1859. Charles Kettelle Clerk

By Geo W Kettelle Deputy Clerk

*Summons*  
David Corbett vs. Vaughn Williams State of Illinois, Peoria County  
I have duly served the within by giving the same to the within named Vaughn Williams August 8 - 1859  
John Rogers Sheriff  
Geo W Kettelle Deputy  
Filed Aug 20 1859  
Charles Kettelle Clerk  
O. G. Johnson Atty

5

And afterwards, To Wit, on the 29<sup>th</sup> day of Feby: 29<sup>th</sup> 1860, there was filed in the Clerk's office aforesaid, a certain Verdict, which in words, is as follows.

To Wit

Daniel Corbet

vs.

Vaughn Williams

Verdict

We the jury find the issues for the plantiff and assess the damages at fifty dollaw

Simon Scovell

Edwin Matthews

William Robinson

G. W. Schnebley

George Skidmore

M. Tagart

David Vantassle

J. Witherell

O. C. Peters

P. M. Doyle

Tho. Johnston

De. Camp. Thompson

Filed Feby 29 1860  
Clerk's Office

Proceedings of the County Court of Peoria County State of Illinois held at the Court house at Peoria, in said County, for judicial and other business, under the Extended Jurisdiction of said Court: And Presiding

The Hon<sup>ble</sup> Wellington Loucks Judge  
Charles Kittell<sup>Clk</sup> and John Bryner Sheriff  
on Monday August 22<sup>nd</sup> 1859.

Tuesday August 23<sup>rd</sup> 1859.

Daniel Corbett

vs: Appeal from J.P.  
Vaughn Williams

This day came the said Plff. the appellant in this cause by E. G. Johnson his Attorney, and says he will not further prosecute this suit. It is therefore ordered by the Court that this cause be dismissed at Plffs costs. Afterwards came the said Plff. by E. G. Johnson his attorney and on his motion the above order is set aside and this cause ordered to be redocketed and continued until the Sep Term 1859.

Proceedings of the County Court of Peoria County State of Illinois began and held at the Court house in the city of Peoria in said County on Monday September 26<sup>th</sup> 1859.

for judicial and other business Present Hon<sup>ble</sup> Wellington Loucks Judge Charles Kittell<sup>Clk</sup> and John Bryner Sheriff

And also *For* on the 3<sup>d</sup> of November 1859.  
There was filed in the Clerk's office aforesaid  
a certain *Plea*, which in words to be  
is as follows *To Wit*

In the Case of  
Daniel Corbett } In County Court  
vs. } October Term 1859  
Vaughan Williams } *Appeal*

And the said defendant Vaughan Williams by his attorney  
saith that there is no cause of action against him  
in the above suit because he says that the said suit  
was brought upon a special promise for the debt of  
another person to wit our Thomas Caldwell, and that  
no agreement in respect of or relating to the cause or causes  
of action set forth in the account filed by the said plaintiff  
nor any memorandum or note thereof wherein the consi-  
deration or considerations for the said special promises or  
promises or any or either of them was or were stated or  
shown was or is in writing or was or is signed by the  
said defendant or by any other person thereunto by him  
lawfully authorized according to the form of the Statute  
in such case made and provided

And thus in the said defendant is ready to comply  
whenever he  
*J. M. Brooks*  
Atty for def.

*Endorsed:* Stricken from the files by order of court made on the 23 January A.D. 1860.  
Chas. H. Little, clerk.

Thursday September 29 1859  
Daniel Corbett

vs  
Vaughn Williams

Appeal from J. P.

By agreement of parties this cause  
is ordered to be continued until the October Term.

Proceedings of the County Court of Peoria County began  
and held at the Court House in the City of Peoria  
in said county on

Monday October 24<sup>th</sup> 1859. - for  
Judicial and other business. Present How Wellington  
Loucks Judge Charles Pettitt<sup>Clerk</sup> and John Bryner Sheriff

Daniel Corbett

vs.

Vaughn Williams

Appeal from Justice of the Peace

It is this<sup>day</sup> ordered by the court that this  
cause be continued at defendants costs. It is therefore considered  
by the court that the said Daniel Corbett do have and recover  
of and from the said Vaughn Williams his costs and charges  
by him about this<sup>suit</sup> in his behalf expended<sup>at this term</sup> and that he have  
Execution therefor. It is further ordered that when the said  
parties shall place their agreement on file that the Venue  
in this cause may be changed to the Circuit Court of this  
County and that the Clerk transmit a transcript of the  
proceedings herein and the papers herein to the Clerk of said  
Court when such agreement is placed on file.

Proceedings of the County Court of Peoria County  
under its extended jurisdiction began and held at the  
Court house in the city of Peoria County of Peoria  
State of Illinois on

Monday November 28<sup>th</sup> 1859.  
for judicial and other business. Present Hon Wellington  
Loucks Judge Charles Kettelle <sup>Clk</sup> and John Boyner Sheriff

Wednesday November 30<sup>th</sup> 1859.  
Daniel Corbett

vs: <sup>Appeal from J.P.</sup>  
Vaughn Williams

By agreement of Parties this cause  
is ordered to be continued until December Term 1859

Proceedings of the County Court of Peoria County State  
of Illinois began and held at the Court House in the City  
of Peoria in said County on

Monday December 26<sup>th</sup> 1859.  
for judicial and other business. Present Hon Wellington  
Loucks Judge Charles Kettelle <sup>Clk</sup> and John Boyner Sheriff

Daniel Corbett  
vs: <sup>Appeal</sup>  
Vaughn Williams

On Motion of E. Johnson <sup>Atty for</sup>  
Plff this cause is continued to the 4<sup>th</sup> Monday of January  
1860.

7 Proceedings of the County Court Peoria County State  
of Illinois, began<sup>nd</sup> held at the Court House in the city  
of Peoria in said county<sup>nd</sup> State on  
Monday January 23<sup>d</sup> 1860 for  
judicial<sup>nd</sup> other business Present Hon Wellington Loucks  
Judge, Charles Pettullo Clerk<sup>nd</sup> John Bryner Sheriff

Wednesday January 25<sup>th</sup> 1860  
Daniel Corbett  
vs. Vaughn Williams  
Appeal from Justice of the Peace

This day came the said plaintiff by  
Ely Johnson his Attorney<sup>nd</sup> and the said Vaughn Williams  
by Engersoll Boos, his attys<sup>nd</sup> and the said Plaintiff moves  
to strike said plea filed by said defendant from the file.  
The court being fully advised in the premises sustaining  
said motion Thereupon it is ordered by the  
court that a jury be empannelled to try said cause  
whereupon came a jury of twelve good<sup>nd</sup> lawful  
men to wit: C. Doming, A. O. Gamet, A. W. Woodry, M. M. Bammon,  
Willis Smith, James Elson, S. R. Baker, Ellis Reddin, John W.  
Shaw, W. W. Corrington, James Daugherty<sup>nd</sup> C. P. Westcott, who  
were duly chosen tried<sup>nd</sup> sworn<sup>nd</sup> having the heard the Evidence  
in the case returned to Consider of their verdict.

10  
Thursday January 26<sup>th</sup> 1860

Daniel Corbett

vs.

Appeal from Justice of the Peace

Vaughn Williams

This day came again the parties to this suit and also the jury empannelled yesterday and the said jury stated to the Court that they were unable to agree upon a verdict. Therefore it is ordered by the Court that the said jury be discharged from any further consideration of said cause and this case be redocketed for trial and continued until the 4<sup>th</sup> Monday day in February 1860

Proceedings of the County Court of Peoria County State of Illinois began and held at the Court House in the City of Peoria in said County on  
Monday February 27<sup>th</sup> 1860  
being the 4<sup>th</sup> Monday of said month for judicial and other business.

Present Hon Wellington Loucks Judge  
Charles Kettle Clerk and John Brynes Sheriff

Tuesday February 28<sup>th</sup> 1860

Daniel Corbett

vs.

Appeal from Justice of Peace.

Vaughn Williams

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This day came the said Plff: by Johnson and Hopkins  
his Attorney, and the said defendant by Ingersoll & Bro. his  
attorneys, and it is ordered by the Court that a jury be empan-  
nelled to try said cause. Whereupon came a jury of twelve  
good and lawful men to wit, Edwin Matthews, Matthew  
Taggart, J. D. Thompson, D. C. Peters, George Skidmore  
F. M. Doyle, J. Withnell, William Robinson, George W  
Schubley, Thomas Johnson, Linus Scoville and David  
Vantassel, who were duly chosen tried and sworn and hav-  
ing heard the Evidence in the case and the arguments of counsel  
retired to consider of their Verdict.

Wednesday February 29<sup>th</sup> 1860

Daniel Corbett  
vs.  
Vaughn Williams

Appeal from Judge

This day came again both parties to this suit and also  
the jury empaneled yesterday who returned into the Court the following  
verdict "We the jury find the issues for the plaintiff and assess the damages at  
fifty dollars" Thereupon the said defendant by his attys entered his motion  
for a new trial of this cause and arrest of judgment for reasons on file.

The Court being sufficiently advised in the premises doth overrule  
the said motion. Therefore it is considered by the Court, that the  
said Daniel Corbett do have and recover of and from the said Vaughn  
Williams the aforesaid sum of Fifty dollars (\$50.00) his damages aforesaid  
paid, in full as assessed and also his costs and charges by him about  
his suit in this behalf expended in this Court and also in the Court below,  
and that he have Execution therefor. Thereupon the said defendant pray an  
appeal of this cause to the Supreme Court of this State which is allowed on  
his entering into bonds in the penal sum of Two Hundred Dollars <sup>condition</sup>  
according to law, within twenty days with Thompson & Bouton as Security

And, afterwards, To Wit; on the 3<sup>d</sup> day of March A.D. 1860.  
This was filed in the Clerk's office aforesaid, a certain  
Bill of Exceptions, which, in words and figures, is as follows  
To Wit

State of Illinois | of the February Term of the Peoria County  
Peoria County | Court A.D. 1860  
Daniel Corbett

vs. appeal from Justice of the peace  
Vaughn Williams

Be it remembered that on the trial  
of this cause at the February Term of the Peoria County  
Court before the Hon Wellington Loucks judge of said  
court and a jury, the plaintiff to maintain the issue upon  
his part introduced as a witness one Thomas Kirk  
who after being sworn testified as follows, to wit:  
Sometime in the fall of 1858 I went in company with  
Thomas Caldwell (who was at that time buying cat-  
tle for the Chicago market) to the house of the plaintiff  
Daniel Corbett who had some cattle to sell; Thomas  
Caldwell offered the plaintiff fifteen dollars per head for five  
head of cattle. The plaintiff said that he would take  
fifteen a head for two, and seventeen per head for the other  
three. Thomas Caldwell said that he would not  
give any more than fifteen dollars per head. The plain-  
tiff said he would study about it, until the next morning  
and Caldwell told the Plaintiff that if he the plaintiff conclu-  
ded to take fifteen dollars per head, that he might drive  
the cattle over to my house, the next morning, and the

Plaintiff said that he would do so, And that the next morning the plaintiff drove over the five head of cattle the next morning (my house was on the farm of the defendant I was one of his tenants) to my house and left them in the law with some other cattle belonging to Caldwell. Caldwell came there after a while and said he reckoned that the cattle would have to go back as he had had to pay out more money than he expected and could not pay the plaintiff for them. The plaintiff then went round the cattle, and started to drive them back. Somebody suggested that Caldwell give security. That Caldwell said he would see if he could get security, and that the defendant at that time was over near his house, in the field. And Caldwell called to him & defendant came over to where we were and Caldwell asked the defendant if he would go his security to Corbett the plaintiff for ten or twelve days till he Caldwell should get back from Chicago. That the defendant said that he did not like to go security for anybody but that he would go his Caldwell's security for ten or twelve days till he Caldwell should return from Chicago. And that something was said about putting it in writing, but that there was no pen or ink at my house and J. Kirk said that a witness would do as well.

I never knew of Williams the defendant buying any cattle of Corbett. And he further testified that the cattle in dispute are the same cattle that Caldwell ~~that Caldwell~~ had traded for from Corbett. I saw a tenant of defendant. When the cattle were driven off William Caldwell & others went as far as Princesville.

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The plaintiff also called on Hudson Rogers as a witness in the above cause who after being duly sworn upon oath testified that "about the last of October, in the Year 1858, I saw the defendant Vaughn Williams. I was on my way to see Caldwell and Williams told me he was not at home I asked Williams if Caldwell had paid him for his cattle which he (Williams) had sold Caldwell and he said that Caldwell had paid him. He also said that he went security to Corbett for Caldwell. I witness said to Williams It would have been a bad joke if you had lost it and Williams said it would have been a worse joke still if he had lost his and Corbets too for he had become security to Corbett and he should have it to pay. This was about four weeks after the Sale. I was present when Corbett had his cattle driven in the lane for Caldwell. Caldwell came up and said he could not pay for the cattle, Corbet said then he could not have them, and went around the cattle and started to drive them back. Mr Williams was in the field, not far off, within speaking distance. Williams also told me that he had taken Caldwell's note to himself for the amount of his own cattle and those of Corbits. The plaintiff also introduced as a witness Wilson Wakefield, who after having been duly sworn upon oath testified, That he was with Hudson Rogers in Oct. 1858, at the house of the defendant and the defendant said that he went Caldwell's security to Corbet and told me to tell Caldwell if I saw him, that Corbett wanted his money & for him to come down and pay Cor-

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bett. That he expected that if Caldwell did not pay Corbett that he would have to

This was about the 25<sup>th</sup> of Oct 1858 Williams said he had taken Caldwell's note for his own cattle and those of Corbits

The plaintiff also introduced as a witness one William Gordon. who after having been duly sworn testified that on the 24<sup>th</sup> day of February AD 1859, he saw Corbett pull out a piece of paper which he called a note and offered it to the defendant, and said Here is the note I got of you to get money of Caldwell. take it back it is of no use to me Williams refused to take it back. Corbet told Williams then that if he would endorse it he Corbet would try to make it out of Caldwell.

Williams said he would not endorse it, if I do, you will pop me. meaning sue him as I understand it Corbet replied he could sue him any way

X

Plaintiff said to defendant "either take the note back or endorse it"

Williams refused to do either. and told Corbett the plaintiff to go and sue Caldwell and make the money out of him and that he defendant would never pay it as long as he could help it. All of which testimony was objected to then and then by said defendant. And objection overruled by the Court. and the same permitted to go to the jury. - to which the said Defendant then and there excepted. The Plaintiff then showed the witness a note and asked him if that was the note offered by the plaintiff to the defendant and witness stated that he did not read or look at the note at

the time enough to tell & did not know - that he never read it nor had it in his hands but that it looked like it It was on such a piece of paper.

To all of which evidence of Gordon the defendant objected. And objections overruled. To which the defendant then adds this excepted

Here the plaintiff rested

127.  
When upon the said defendant to maintain the issues upon his part introduced as a witness on Thomas Caldwell who after having been duly sworn testified. That in the fall of 1858, he was in the business of buying Cattle for the Chicago Market, for the purpose of buying cattle I went to Corbets house He, the plaintiff, told me that he had five head to sell, I looked at them and offered him fifteen dollars per head for five. He said that for two he would take fifteen dollars a piece but that he asked seventeen per head for the other three. I told him that I would not give it. I told him that I had bought several head, in the neighbourhood and that I would have some down at Kirks the next morning. He said he would study about my offer. And if he concluded to take fifteen dollars per head, that he would drive the cattle down to Kirks in the morning. The next morning the plaintiff drove the cattle over to where Mr Kirk lived. After a while I told Corbett that I had paid out more money than I expected to when I left home, and had not enough left to pay him. And he said that he would have to drive them back & went round the cattle for the purpose of turning them back. I proposed to give Williams the defendant a security for 10 days or two weeks till I could go to Chicago & back. Williams at the time was near the house quite a distance from us, I called him, He came down where we were, I asked him if he would

go my security to Corbett till I could get back from  
 Chicago. He said that he did not like to go security for  
 any body, but finally said that he would go my secu-  
 rity to Corbett the Plaintiff for ten or twelve days till  
 I could get back from Chicago. Something was  
 said about it & being put in writing but Kirk said  
 that there was no pen or ink in the place and someone  
 said that a witness would do as well, I took the cat-  
 tle to Chicago, and I returned in about two weeks.  
 I gave a note for 199. # \$ 75 for those I bought of  
 Corbett & # 124 for those I bought of Williams to Wil-  
 liams on the same day that I bought the cattle I gave  
 the note at Princiville when I bought the plaintiffs  
 cattle I bought some from the dept. which amounted  
 to 124 # There was no paper or ink at  
 Kirk's house, Corbett did not go with us to Princiville  
 at Princiville I included the amt. of Corbett's Cattle  
 in the note I gave Vaughn Williams - About four  
 weeks after I returned from Chicago I sent Vaughn  
 Williams one hundred Dollars to apply upon  
 the note the same day I paid him Twenty four  
 Dollars more which was all I owed him. I gave  
 Williams a few days afterwards Twenty five Dollars  
 to give to Corbett. I had not seen Corbett but  
 Williams said that Corbett wanted his money  
 and so I gave him Twenty five Dollars  
 About three or four weeks afterwards Corbett came  
 up when I lived to see him, and said that he came

to get his pay Did not know whether he had the note or not.

I bought the Cattle of Corbett I made the trade with Corbett and I agreed upon the price and Corbett delivered them to me I took them to Chicago and sold them on my account  
(Plaintiff on Cross Examination) showed witness the Note before mentioned & asked him if it was the one given by him to Williams for the cattle in question. Witness examined it and said "it was" and the note was given to the Jury.

(Note.)

"Princeton Sept 22 1858

"Ten days after date for value Received of J. Williams to pay O. Williams or bearer. The sum of one hundred & Ninety Nine Dollars.

Thomas Colwell

(Endorsements)

Oct 13<sup>th</sup> /58 received on the within one hundred dollars  
November the 10/58. received on the with. twenty five dollars.

On further Cross Examination witness said Corbett would not let me have the Cattle and went round them to drive them back I asked him if he would substitute Williams for the Cattle He said he would, He would not let me have the Cattle till I got Williams to become responsible

The Defendant then recalled Thomas Kirk who had been duly sworn, who testified that the defendant gave him Twenty five dollars to hand to the plaintiff Corbett. That he went to Corbett's house and gave the money to Corbett's wife. And that the next day he saw Corbett the plaintiff & Corbett told him that he had rec<sup>d</sup> the money and had credited it on Caldwell's note. And that he had heard that Caldwell was going to be in Teoria in a few days and that if the roads were not so bad he would go down and capias Caldwell. Corbett also told me that he had left the note with Mr Antew to have it collected from Caldwell.

The Defendant then introduced one Erastus Pete as a witness, who after being duly sworn testified that sometime in the fall of 1858. I was at Thomas Kirks, where Caldwell had some cattle, I helped to drive them to Prineville. The plaintiff went with us a part of the way about a mile on his way home I did not hear the trade between the plaintiff and Caldwell but the plaintiff told me that he had sold the cattle to Caldwell and that the defendant Vaughn Williams had gone the security. While on the way to Prineville the plaintiff asked the defendant how he was going to arrange with Caldwell about the cattle that he the defendant had sold to Caldwell. And the defendant said that as soon as they got to Prineville he was going to take Caldwell's note.

Corbett said you had better put my amount in with yours and secure yourself. Corbett did not go with us but turned off before we got to Princeville to his own house. And this conversation happened just as we turned off.

Some two or three months after the trade was made Corbett told me that when he drove the cattle to Caldwell he expected to get the money. Caldwell said that he could not pay him down and asked him if he would take Vaughn Williams for security and that he said that he would. And Vaughn Williams came up and said that he would go Caldwell's security for ten or twelve days till Caldwell got back from Chicago. This conversation was in January 1859. In the same conversation Corbett told me that afterwards he (Corbett) met Williams and said to him, "I am now on my way to see Caldwell to get pay for my cattle." Williams replied that he did not think Caldwell was at home. Corbett said that he had heard a report that Caldwell was not good. Williams said that Caldwell the year before had purchased some around the country and paid for them and that he had understood that Caldwell owned a farm and also that he had then a check for some six hundred dollars.

The Defendant then introduced one Peter Auten, who after having been duly sworn testified as follows:  
 "That note was left with me by Daniel Corbett the plaintiff for collection in the fall of 1858. I had

the note in my possession about two months I never commenced any suit on it I returned it to Mr Corbett: the plaintiff The reason I did not sue Caldwell was that I suppose that it was of no use.

The following note was then introduced as evidence by the plaintiff

Princeton Sept 22 1858

- " Ten days after date for value Received I promise
- " to pay, V. Williams or bearer the sum of one
- " hundred & Ninety nine Dollars.

Thomas Colwell

- " Oct 13<sup>th</sup>/58. received on the within one hundred dollar.
- " November the 18/58. received on the with twenty five dollars

To which the defendant then and then objected. Objection overruled, note read to the jury, to which the said Defendant then & then excepted.

This is all the evidence in said case both upon the part of the Plaintiff & defendant

The Court on behalf of the Plaintiff then gave the following instructions

Corbet vs Williams } County Court Feb Term 1860

- 1 If the jury find from the evidence that the Cattle in question were sold <sup>by the Plaintiff to the defendant</sup> and delivered, upon the contract and <sup>sole</sup> credit of the defendant - and have not been paid for the jury will find for the Plaintiff notwithstanding the cattle were bought for Caldwell and were delivered to him and for his benefit.
- 2 If the jury find <sup>from the evidence</sup> that the Plaintiff would not sell or deliver his cattle to Caldwell - or upon his credit - and that Williams <sup>bought and</sup> became responsible for the cattle - and that the cattle were <sup>sold to defendant and</sup> delivered <sup>solely</sup> upon the <sup>contract</sup> credit and responsibility <sup>of the defendant</sup> the jury will find for the Plaintiff

Given as amended

Given as amended

3 If the jury find from the evidence that the defendant <sup>without any request from the Plaintiff to do so</sup> received from Caldwell a note to himself for the amount of the cattle - this is a circumstance proper for the jury to consider, as tending to prove the character of his understanding of his contract at the time of the sale

Given as amended

4 If <sup>the jury find from the evidence that</sup> the cattle were sold <sup>to defendant and not to Caldwell</sup> and delivered only upon the verbal promise of the defendant to be responsible for the same - and the cattle have not been paid for - the jury will find for the Plaintiff - and the promise need not be

Given as amended

in writing to hold the defendant for the payment.

Seen as amended

6. If a note was taken by Williams for the amount due him and for Plaintiff <sup>as his agent</sup> from Caldwell - any payment made by Caldwell to Williams <sup>to apply</sup> upon said note <sup>generally</sup> such money would legally belong pro rata to both said parties and should be divided in proportion to their several claims <sup>which each one had in said note</sup>

Seen as amended

7. If the jury believe from the evidence that Corbit sold Cattle to Caldwell, and Vaughn Williams became security that Caldwell should pay in a given time & Caldwell did not pay in a ~~that~~ <sup>that</sup> time Williams became liable & Corbit was not bound by law to attempt to collect pay of Caldwell <sup>provided such promise or security was reduced to writing, and unless there was some new consideration moving from plaintiff to defendant.</sup>

Seen as amended

8. The jury are instructed that if they believe from the evidence that a note for 199 \$ dollars was given by Caldwell, for 124 \$ worth of Cattle bought of Vaughn Williams and seventy five dollar for the value of cattle bought of Corbit the plaintiff, then the note belonged to Williams & the Plaintiff in <sup>the</sup> proportion of 124 \$ to 75 \$ and any payments made <sup>generally</sup> on such note <sup>for the</sup> cattle belong to the <sup>said</sup> parties in that ratio and if the jury believe <sup>from the evidence</sup> that Williams has received more than his pro rata of the payments made on the said note, Williams is liable to the Plaintiff <sup>as his agent</sup> for such excess and that without reference to any contract of guaranty or security shop & without any reference to the Statute of frauds provided that it appears from the evidence that Williams in ~~and~~ taking the note acted as the

25,

agent of the plaintiff and included in said note the 75¢ for cattle belonging to the Plaintiff

To the giving of each and all the said defendant  
them there excepted.

The Court on behalf of the deft gave the following instructions

"Instructions for the Defendant.

- 1 The Court instructs the jury that if they believe from the evidence that Caldwell is liable to Corbett on a contract with him for the price of the cattle in question and that they were not sold to Williams upon a contract between him & Corbett then they should find for the defendant.

Given as amended

2. If the jury believe from the evidence that the defendant went the security of Caldwell, verbally, <sup>or contract for</sup> and did not actually buy the cattle in question himself, they should find a verdict for the defendant.

Given as amended

3. A promise to pay the debt of another, or to go the security of another unless the same, <sup>and signed by the party charged</sup> is void, <sup>able and not binding in law.</sup>

Given as amended

4. If the jury believe from the evidence that Corbett sold the cattle in question <sup>to Caldwell</sup> and that Williams went his security without any promise <sup>signed by defendant</sup> in writing, then they should find a verdict for the defendant.

Given

5<sup>th</sup> If the jury from the evidence find that Caldwell was the principal and that Williams was the security and that the promise was not in writing then they should find a verdict for the defendant.

Given

6<sup>th</sup> If the jury believe from the evidence that Corbett did make any efforts or attempts in any manner to collect the amount due upon the Cattle Trade from Caldwell then, that is a circumstance from which the jury may infer that Corbett considered Caldwell his debtor and Williams as the security, and if they believe from the evidence that Williams was only the security, & no promise was made in writing then they should find a verdict for the defendant.

7<sup>th</sup> The court instructs the jury although they may believe from the evidence that Williams promised to go the security of Caldwell for ten or twelve days. Yet if the promise was to stand for the debt of another and not in writing it is within the Statute of frauds and void.

Given

8 If the jury believe from the evidence that the Undertaking of Williams was collateral to the original undertaking of Caldwell and was not in writing then it is void, <sup>and</sup> and the jury should find a verdict for the defendant.

Given

Instruction of the Court

9<sup>th</sup> If the jury find from the evidence that the defendant only agreed with the plaintiff to go Colwell's security or to pay the plaintiff for cattle sold to Colwell, then such promise is not binding in law upon the defendant unless such agreement or promise was reduced to writing and signed by the defendant.

Given

10. If the jury believe from the evidence that Williams only rec<sup>d</sup> on the note 124 \$ & that was the amount due him, <sup>and paid by Colwell solely for his benefit</sup> for the cattle sold by himself to Colwell & that afterwards Corbett took the note in his possession without objection & afterwards rec<sup>d</sup> 25 \$ & endorsed the same on the note, then Williams would not be liable to the plaintiff for any <sup>part of</sup> money he (Williams) had rec<sup>d</sup> on said note.

Given

x The Court refused to give upon the part of the Defendant the following <sup>foregoing</sup> instructions, <sup>Numbered 1378-</sup> as asked by the said Defendants but interlined the same & gave them as amended by the Court. And the said defendant then & there excepted to the refusal to give such instructions to the interlineations of the court.

The said Court then without request of either the plaintiff or defendant gave the following additional instruction to the jury.

### Instructions of the Court.

" Parties may make valid contracts, though not  
 " in writing, to pay the debt of another, but in such  
 " case the plaintiff must bring his suit upon such  
 " new contract and it must be founded upon a  
 " new and independent or original consideration of  
 " benefit to the defendant or harm to the plaintiff, mov-  
 " ing to the party making the promise, either from the  
 " plaintiff or some other person, and the debt or liability

of the original debtor must not be the moving cause, or the consideration of the promise, nor must the promise be incidental and collateral to the debt or liability of such original debtor.

The force and substance given to such contract, by the acts of the parties to this suit at the time, if it appears from the evidence that any contract was entered into by the parties, is to govern and aid the jury in determining whether the contract was an original or new one, or only incidental and collateral to secure the payment of the debt or liability of Colwell.

A contract to pay the debt of another, is valid, though not in writing, if it is founded upon a new or original consideration moving to the party making the promise but the debt of the original debtor must not be the consideration for the promise and the suit must be brought upon the new contract and not for the debt of the original debtor.

The Statute of frauds requires the promise to pay the debt of another to be reduced to writing and signed by the party to be charged, and the jury should find for defendant, unless they believe from the evidence that the defendant entered into a new contract, based upon a consideration moving to the defendant from the plaintiff and for the benefit of the defendant or for some one for him.

Deft then and then excepted

The jury returned into Court the following  
verdict.

"Daniel Corbet

vs:

"Vaughn Williams We the jury find the issues  
"for the Plaintiff and assess the damages at fifty  
"dollars

Linus Scoville

Edwin Matthews

William Robinson

G. W. Schubly.

George Skidmore

Ed Taggart.

David VanAestli

J. Withieff

J. C. Peters

Ed Doyle

Thos Johnson

De Camp Thompson.

Whereupon the defendant filed the following motion  
& reasons for a new trial in arrest of judgment.

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In the County Court of Georgia County  
February Term 1860.

Daniel Corbett

vs.

Paughan Williams

} appeal

And now the said defend-  
dant comes by Ingersoll Brothers his attorneys  
and moves the Court here for a new trial of said  
cause and in arrest of Judgment for the following  
reasons, to wit,

- 1 The Verdict of the Jury is against the law
- 2 The Verdict of the Jury is against the evidence
- 3 The Verdict of the Jury is against both the law  
& the evidence
- 4 The Court permitted improper evidence to go to the  
Jury
- 5 The Court gave improper instructions on behalf  
of the plaintiff which were calculated to and did  
mislead the Jury.
- 6 The Court gave instructions on behalf of the  
plaintiff not applicable to the case & which were  
calculated to mislead the Jury.
- 7 The Court committed error in refusing to give  
the instructions as asked for by the defendant.  
And by giving the same as amended by the Court
- 8 The Court committed an error in giving inst-  
ructions on its own motion which were not.

applicable to the Case on trial  
 For which reasons the defendants  
 ask for a new trial & in arrest of judgment  
 Ingersoll Brothers  
 Atty for Deft.

Which said Motion was by the Court overruled  
 & caused Judgment to be entered on said verdict  
 To which ruling of the Court & the entering of  
 the said Judgment the defendant then and there  
 accepted & objected

And the said Defendant then & there prayed an  
 Appeal to the Supreme Court of the State of Illinois  
 which was then & there allowed

This Contains all the evidence in said Case,  
 as well as all instructions given, refused and  
 intimated by the Court.  
 And the said defendant brings this her said bill  
 of Exceptions and prays that the same may be  
 signed & sealed by the said Court which is accordingly done  
 Wellington Soule Clerk

33.

And afterwards, To wit, on the 1<sup>st</sup> day of March  
AD 1860. this was Filed in the Clerks office  
of aforesaid, *an Appeal Bond,*  
which in words &c was follows.

To wit.

Know all men by these presents that we Vaughn  
Williams and Thompson P. Bouton are held  
and firmly bound unto Daniel Corbett in the  
penal sum of Two Hundred Dollars lawful  
money of the United States for the payment of which  
well and truly to be made, we bind ourselves our  
heirs and administrators jointly severally and  
primly by these presents. Witness our hands and  
seals this 29<sup>th</sup> day of February AD 1860  
The condition of the above obligation is such, that  
whereas the said Daniel Corbett. did in the  
29<sup>th</sup> day of February AD 1860. in the County Court  
of Peoria County State of Illinois recover a Judgment  
against the above bounden Vaughn Williams  
for the sum of Fifty Dollars. And costs of  
Suit. from which said Judgment the said  
Vaughn Williams has taken an appeal to the Sup-  
reme Court of the State of Illinois

Now if the said Vaughn Williams shall prosecute  
his appeal with effect. And without delay, and  
shall pay whatever judgments costs interest and  
damages which may be rendered by the said  
Supreme Court upon dismissal or trial of  
said appeal then the above obligation to be void

thence to remain in full force and effect

Vaughn William Seal  
Thompson & Bouton Seal

State of Illinois }  
County of Peoria }

I Charles Kettelle Clerk of the  
County Court of Peoria County State of Illinois  
do hereby certify that the foregoing is a full  
true and perfect transcript from the files and records  
in my office in a certain Cause in said Court,  
wherein Daniel Corbett is Plaintiff and Vaughn  
Williams is defendant

In Witness whereof I have hereunto  
set my Hand and Seal of office  
this 9<sup>th</sup> March 1850

Charles Kettelle *clerk*  
per Geo. H. Kettelle *Jr*

Rec'd C. C. Inquest atty for Spdr \$10.55  
Ten and 55/100 Dols costs transcript  
Kettelle *clerk*

Vaughn Williams, Appellant,  
vs.  
Daniel Corbett, Appellee

State of Illinois  
Supreme Court. 3<sup>rd</sup> Grand Div<sup>n</sup>.  
April Term. A. D. 1860.

And now comes the said appellant, Vaughn Williams, by Ingersoll Brothers, his Attorneys<sup>and</sup> says that in the records, and proceedings, of said County-Court, there is manifest and manifold error, and assigns for error:

- 1<sup>st</sup> Said Court erred in giving the instructions, on behalf of the plaintiff.
- 2<sup>nd</sup> Said Court erred, by giving improper instructions, on behalf of the plaintiff, which were calculated to mislead, and did mislead the jury.
- 3<sup>rd</sup>. Said Court erred by refusing to give proper instructions, on behalf of the said defendant.
- 4<sup>th</sup> Said Court erred by refusing to give the instructions, on behalf of said defendant, as asked by Counsel of defendant, and interlining and amending the same.
- 5<sup>th</sup>. Said Court erred by giving instructions, on behalf of said plaintiff, which were contrary to the law of said cause.
- 6<sup>th</sup> The verdict of the jury is against the evidence.

- 7<sup>th</sup> The verdict of the jury is against the law.
- 8<sup>th</sup> The said Court erred, in not granting the said defendant a new trial.
- 9<sup>th</sup> Said Court erred in overruling the motion of said defendant for a new trial in arrest of judgment, for the reasons stated in said motion.
- 10<sup>th</sup> Said Court erred in rendering judgment, against said defendant, upon said verdict.

Wherefore, for the errors aforesaid, the said Vaughn Williams prays that the said judgment, of the said Court, may be reversed, set aside, and for naught, had, held, and estimated.

Ingersoll Brothers

Attorneys for Appellant.

And the said Appellee by Johnson & Hopkins his Attorneys for juries in error says that there is no error of any nature in any of the two exceptions of said Court below or the charge of said judge to the jury or in any other matter appearing by the foregoing record and prays the judgment of this Court affirming the judgment below.

Johnson & Hopkins  
Attys for Appellee

~~172~~ 42124

14

William B. Appellant  
<sup>vs</sup>  
Corbett } appellee

Filed April 18, 1880  
L. Leland  
Clerk