

12035

No. _____

Supreme Court of Illinois

Sherman

vs.

Baddely

71641  7

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

Was before the Honorable Giles Spring Judge
of the Cook County Court within and for the County
of Cook and State of Illinois aforesaid, at a regular
term of said Court begun and holden at the Court house
in the City of Chicago in said County and State, on the
first Monday being the seventh day of May in
the Year of Our Lord one thousand eight hundred
and forty nine, one of the Independence of the
United States the seventy second.

Present the Honorable Giles Spring Judge
Patrick W. Gallagher, Prosecuting Attorney
Isaac Cook Sheriff

Attest
James Curtis Clerk.

Be it Remembered, that on the twenty
sixth day of May in the Year of Our Lord one thousand
eight hundred and forty nine, the said day being
one of the days of the May Term of the Cook County Court
of said County, for the Year aforesaid, came Owen
Sherman by C. B. Warner his attorney and filed
in said Court a Declaration, Note, and affidavit,
which said Declaration, is in the words and figures
following to wit,

State of Illinois Cook County Court of the Term
Cook County, Ill. of May in the Year One thousand
eight hundred and forty nine.

Oren Sherman Plaintiff in this suit, by C. B. Hornum
his attorney complains of John W Baddley Defendant
in this suit, who is summoned in a plea of trespass on the
case on promises. For that whereas the said Defendant
heretofore to wit; on the twenty fifth day of May in the
Year of Our Lord one thousand eight hundred and forty
nine at Chicago in the County of Cook aforesaid
made and signed his certain Promissory Note, in wit-
ness, and then and there delivered the same, bearing date
the same day and Year aforesaid, to the said Plain-
tiff, in and by which said Note said Defendant prom-
ised to pay to said Plaintiff or order Five hundred
& fifty three & 00/100 dollars with interest from date
for value received. By means whereof, and by
force of the Statute in such case made and pro-
vided, the said Defendant became liable to pay
said Plaintiff said sum of Money mentioned in
said Note, and being so liable, in consideration
thereof, then and there undertook and promised
to pay the same to said Plaintiff according to the
tenor and effect, to the intent and meaning of said
Note, to wit, at the place aforesaid.

And to heretofore also, the said Defendant afterwards
to wit on the 25th day of May in the Year of Our
Lord One thousand eight hundred and forty nine to
wit, at Chicago in the said County, became indebted
unto the Plaintiff in a large sum of Money to
wit; the sum of Five hundred Dollars, for Money
before that time lent and advanced to, and paid back
out and expended for said Defendant by said Plain-
tiff at said Defendants request. And for Money before
that time had and received by said Defendant to and

for the use of said Plaintiff: And also in the like sum,
for goods wares and merchandize, before that time
sold and delivered by said Plaintiff to said Defendant
at the special instance and request: And also in the
like sum for labor, care, and diligence of said plain-
tiff, before that time done and performed by said
Plaintiff, for said Defendant, and at the like instance
and request of said Defendant: And also in the
like sum for Money found to be due from the de-
fendant to the Plaintiff on an account then and
then stated between them, and being so indebted,
said Defendant in consideration thereof, then and
then undertook and promised, to pay said plain-
tiff said last mentioned sum of money, when then
unto afterwards requested: But the said Defend-
ant, not regarding his said promises and undertaking
but contriving to, although often requested so to do,
has not paid said Plaintiff, either of said sums
of money, or any part thereof, but so to do, has hitherto
wholly neglected and refused, and still does neglect
and refuse, to the damage of said Plaintiff of
Five hundred Dollars, and therefore he brings suit, &c.
C. B. Warner
Atty for Plaintiff."

And which said Note is in the words and figures fol-
lowing to wit:
"p453⁶⁰ Chicago, May 25 1849
Ninety days after date, for Value Received, I
promise to pay to O. Sherman or order, Four Hundred
Fifty three & 60/100 dollars with interest from date
John W. Biddleley"

and which said affidavit filed as aforesaid is
in the words and figures following to wit:

"State of Illinois, Cook County Court of May Term
Cook County, Ill. A.D. 1849.

Owen Sherman

vs
John W. Biddleby

} Trow on Promiss

Owen Sherman being duly sworn
deposes & saith that he is acquainted with the pecuniary
circumstances of the said John W. Biddleby & that he
verily believes the benefit of his said judgment will
be lost unless execution issue forthwith.

Sworn to before me this 26th day of May, A.D. 1849,

Walter Kimball, Clerk.

And thereupon, upon the same day, to wit the
twenty sixth day of May in the year aforesaid, came
John W. Biddleby by Ed. Rich his attorney, and filed
in said Court his warrant of Attorney, and Cogni-
vit, which said warrant of Attorney is in the
words and figures following to wit,

"Know all men by these presents, that whereas, the
Subscriber justly indebted to Owen Sherman in the sum
of Four thousand fifty three & 60/100 dollars, for which
sum the said Subscriber has executed a promissory
note of even date herewith, bearing interest at the rate
of six per cent per annum, payable ninety days from
date to the order of O. Sherman. Now therefore, in con-

consideration of the premises, I do hereby make constitute
and appoint Ebenezer Peck or any Attorney of any Court
of Record, to be my true and lawful Attorney irrevocably
for me and in my name and stead, to enter my
appearance before any Justice of the Peace, or any Court
of Record, in the United States of America, or any
of the Territories thereof, at any time from and after
the date hereof, to waive the service of process, and con-
fess a judgment in favor of the said O'Brien man
for the sum of Four hundred & fifty three ^{dollars} 00 cts dol-
lars with interest thereon from the ^{date} of this writ to the en-
try of such judgment, it being for the same sum men-
tioned in the said Promissory Note, and to release
all errors that may occur in the pleadings, orders,
and proceedings which may be had in entering
up such judgment, and in issuing execution
thereon. Hereby ratifying and confirming all which
my Attorney may do in the premises.

Witness my hand and Seal this twenty fifth day of May
A D 1849 John W Baddely, Seal

In presence of
George R. Blakie

State of Illinois
Cook County

George R. Blakie being duly
sworn deponent & oath that he is the subscribing witness
to the foregoing Warrant of Attorney, that the same was
executed by the said John W Baddely in his presence
on the day of the date thereof, the said Baddely then
then acknowledged that he executed & delivered the said
warrant of attorney freely and voluntarily for

the uses & purposes therein expressed
Subscribed & sworn } George H. Blakie
before me this 26th day }
of May A.D. 1849. }
W. L. Rucker, Justice }
of the Peace " }

And which said Cognovit is in the words and
figures following to wit,

"State of Illinois } Cook County Court of the
Cook County } May Term A.D. 1849.

And the said John W. Baddley by C. Peck his
attorney comes & defends the wrong & injury when he &
says that he cannot deny the action of the said Oren
Sherman, nor but that he the said John W. Baddley
did undertake & promise in manner & form as the said
Oren Sherman hath borne thereof complaints against
him, nor but that the said Oren Sherman hath sus-
tained damages on occasion of the not performing
of the said several promises & undertakings in the
said Declaration mentioned to Four Hundred
Fifty three & ⁰⁰/₁₀₀ dollars as by the said Declaration
is above supposed. And the said John W. Baddley
hereby confesses judgment in favor of the said Oren Sher-
man to the amount of Four hundred & Fifty three & ⁰⁰/₁₀₀
dollars & costs of suit. And hereby
releases all errors that may occur in the preceding
pleadings and orders which may be had in entering
up such judgment, and ifuing execution thereon
C. Peck. Atty for Deft

And thereupon the following proceedings were had
in said cause and entered of Record to wit,

Owen Sherman

vs
John W Baddely

Confession

This day comes the said Plaintiff
by C B Horner his attorney and files his declaration
herein of a plea of trespass on the case upon promises,
And thereupon comes the said Defendant by C Peck his
attorney in fact and files his letter of attorney herein
the execution whereof is duly proved, And together
whereunto his Confession of Judgment in favor of the
said Plaintiff for the sum of Four Hundred and fifty
three dollars and sixty cents.

Wherefore it is considered that the said Plaintiff recover
of the said Defendant his damages of Four Hundred
and fifty three dollars and sixty cents in form
aforesaid confessed and also his costs and charges
in this behalf expended and have execution.

And on motion of the said Plaintiff founded on
affidavit filed, and the court being satisfied that
there would be danger of the said Plaintiff losing the
benefit of his said Judgment herein by delay in the issue
of Execution until the adjournment of the present term
of this Court. It is Ordered that Execution issue herein
instantly.,

And afterwards to wit on the Twenty eighth day
of May A D 1849 being one of the days of the May
Term of said Court for the Year aforesaid the follow
ing proceedings were had in said cause and entered
of Record to wit,

Oren Sherman

John W Baddely

Confession

This day comes the said defendant
to Sherman his attorney and enters his motion to vacate
the Judgment and quash the execution issued herein,

And thereafter to wit on the Twenty Ninth day of May
A.D. 1844. then was filed in said Court by the said
Defendants attorney an Affidavit, which said Affidavit
is in the words and figures following to wit,

Oren Sherman

John W Baddely

Cook County Court

Confession of Judgment

John W Baddely the
above named Defendant, being first duly sworn
doth depose and say, that the Note upon which the judg-
ment was confessed in this cause is not due. That
he executed said Note and the power of Attorney
thereto attached with the express understanding that
judgment could not be entered thereon until the
expiration of Ninety days from the date thereof.
That said Plaintiff represented to this Deponent when
he ^{first} requested him to execute said Note & power of
Attorney, that the power of Attorney attached to
said Note authorized the Confession of a judgment
at the expiration of Ninety days and not before.
This Deponent further saith that he never intended
to execute any power of Attorney & did not suppose
he had in this matter, to confess a judgment
until the expiration of said Ninety days. This Deponent

Further saith that he is unacquainted with legal papers. & in executing said power of attorney relied entirely upon the representations of said Sherman as to the effect thereof, and if said power of attorney authorizes the Confession of a Judgment upon said Note before it falls due, it is not matter asserted by this defendant, & as represented by said Plaintiff to this defendant & as this defendant supposed at the time of the execution thereof, This defendant therefore prays that said judgment may be set aside, & the execution upon thereon quashed.

Subscribed & sworn } John W Baddley,
to before me this 24th }
day of May A.D. 1849 }
W Kimball Clerk }

And upon the same day to wit the Twenty fourth day of May A.D. 1849 there was filed in said Court by the Plaintiffs attorney the affidavits of O Sherman and Isaac Cook, which said affidavits are in the words and figures following to wit

" Oren Sherman } Cook County Court May
John W Baddley } Term 1849

Nathaniel Sherman deposes that he was present at the time the said O Sherman and the said John W Baddley settled the matter of account existing between them, at which time the said John W Baddley proffered to give the said O Sherman a Judgment bond so that judgment could be entered against him at any time, and offered to go then and Confess judgment, or do any thing in the premises

to save costs, thereupon the said Sherman & the said
John W Baddely went into an office and were absent a
very short time, and the said Sherman returned
with a Note and Warrant of attorney, upon which
the judgment in this behalf was rendered, That the said
John W Baddely did not ask that any time should be
given him upon the said debt then due the said O
Sherman. That this deponent believes that the said
John W Baddely was willing that judgment should
be entered against him at that time.

Emitted before me { At Sherman Jr
this 2nd May 1844 {
Halter Kimball {
Clerk {

Oren Sherman {
vs {
John W Baddely {

Isaac Coon master of
oath that he was present at or about the time when
the Note and power of attorney upon which this jud-
gment was rendered were given, that before the
said Note and power of attorney were given, he
heard the said Baddely propose to said Sherman
to go forthwith into Court and give a confession of
judgment for the amount claimed of him, and he
moreover heard the said Baddely propose to give
said Sherman a judgment bond, that thereupon
the said Sherman and Baddely were absent
a few minutes and closed their business by the
papers upon which this is furnished, That he
did not understand from said Baddely that

He desired to have or was to have any time within
which judgment should not be rendered against
him. That the foregoing facts and conversations
transpired on the twenty fifth instant
Sworn to 29th J. C. & W.
May 1849

W. Kimball, Clerk }
Cook County Court

And thereafter to wit on the Thirty First day of May
A.D. 1849 the said O. Sherman filed in said Cause
his affidavit which said affidavit is in the words
and figures following to wit

Oren Sherman } Cook County Court
vs } May Term A.D. 1849
John W. Buddely }

Oren Sherman being duly
sworn deposes & saith that the promissory Note upon
which the judgment in this behalf was rendered &
the power of Attorney given therewith were executed
at the same time that the said John W. Buddely
authorized the said Plaintiff, his deponent to draw the
said power of Attorney in the manner in which it
was drawn that before signing the said power of Attorney
the said John W. Buddely took the same & read the same
to him in his satisfaction & said that the same was
right that the said Buddely had offered before
signing the said power of Attorney to go at once
& on the instant into Court & give a confession of
judgment for the sum expressed in the said Note
that the proposition to take a power of Attorney
upon which a judgment might forthwith be rendered

first proceeded from the said Baddely, that no fraud or de-
ception was practiced upon the said Baddely in any way
or manner whatever to induce the said Baddely to make
& sign the said power of attorney in the way & in the lan-
guage in which the same was given, that the amount of
the said Note had been for a long time due from the
said Baddely to this deponent & that said Baddely
professed his willingness to save costs & do all things which
might advance this deponent in the premises, that
said Note was drawn at ninety days without any
agreement with or any suggestion or request from the
said Baddely, but it was so drawn upon the men-
tion of this deponent in the belief this deponent
then entertained that he could convert the said
Note to his benefit without a suit.

Sworn to before me } Owen Sherman
this 29 day of May }
A D 1849 }
Walter Kimball Clerk }

And thereupon came the said John M Baddely
by his attorney & filed in said cause his affidavit
in the words & figures following to wit,

Cook County Court. May Term 1849.
Owen Sherman

vs
John M Baddely } John M Baddely being first
duly sworn, both deposed and say, that at the time
the Note & power of attorney upon which the judgment
was confessed in this cause, were executed he was

under arrest at the suit of said Sherman & in the close
custody of the Sheriff of Cook County upon a capias is-
sued from this Court returnable to the October term
of this Court 1849. That his offer to go into Court and con-
fess judgment, related to & was intended by this de-
ponent to refer solely to the next term of this Court.
That said Sherman was the only person present when
the Note & power of Attorney was executed, except the
Subscribing Witness to the same, who this Depo-
nent was hard of hearing. That the said Owen Sher-
man distinctly offered to this defendant in case he
would execute said Note & power of Attorney, to ex-
tend the time of payment for ninety days. That this
deponent read the Note but did not read the
power of Attorney. Nor was it read to him or in his hear-
ing but relied upon the representation of said Sherman
that said paper extended the payment for ninety days that
if he made any remark about the paper being right it
was based entirely upon his reading of the Note, & the rep-
resentations of said Sherman, that the time was ex-
tended for ninety days. That he never in any way or
manner proposed or offered to give a power of attor-
ney upon which a judgment could be confessed
in this case short of ninety days, and said Sherman
never intimated to this defendant that such would
be the effect of the power of Attorney executed in this case.
But on the contrary distinctly & unequivocally represented
to this defendant that by executing said power of attorney
& Note, said debt was extended & would not be due
until the expiration of ninety days by which time this
defendant expected & most expects to be able to pay the
same. That this defendant said to said Sherman when
said Note was executed & delivered to him, that he

hoped he would not enter judgment, at the expiration
of the Ninety Days, as this Defendant would pay him
a part of the Amount, if possible, before that time, &
hoped he would give this Defendant a little longer
lenity if necessary. To which said Sherman assented.
Subscribed & sworn { John W. Baddley
to before me this 31st
day of May A.D. 1849 }
W. Kimball cllr }

And afterwards, to wit on the First day of June
A.D. 1849, the said day being one of the days of the May
Term in the Year aforesaid, of the said Court, the fol-
lowing proceedings were had and entered of record
in said Cause, to wit,

"Clerk Sherman

vs { Confession
John W. Baddley }

This day again come the
said Parties by their attorneys and the Court being
satisfiedly advised in the premises, it is Ordered, that
the said Defendants Motion be sustained, and the
judgment heretofore entered therein vacated, and
set aside, and that the Executions issued thereon
be quashed and the said Suit dismissed.

To which opinion of the Court vacating the said judg-
ment and quashing the said executions and dis-
missing the said Suit the said Plaintiff enters his
exception, and prays an appeal, which is granted
upon his entering into Bond with the usual conditions.

in the sum of Five Hundred Dollars with Alson
Sherman as security by Monday next.

And afterwards, to wit on the fourth day of June
A D 1849. came the said Oren Sherman and filed
in said cause his appeal Bond, which said ap-
peal Bond is in the words and signs following to wit:

Know all Men by these Presents, That we Oren
Sherman and Alson Sherman both of the County
of Cook and State of Illinois, are held and firmly bound
unto John W Baddely also of the same County and
State, in the penal sum of Five Hundred Dollars,
lawful 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. Witness our Hands and
Seals, this fourth day of June A D 1849.

The Condition of the above Obligation is such
that whereas the said John W Baddely did on
the first day of June A D 1849 before the Judge of
the Cook County Court in and for the County of Cook
recover a judgment against the above bounden
Oren Sherman setting aside a certain judgment
rendered in the said Court in favor of the said
Oren Sherman and against John W Baddely and
Seven Hundred Dollars costs, from which said judgment
of the said Judge of the Cook County Court the said
Oren Sherman has taken an appeal to the Supreme
Court of the State of Illinois. Now if the said Oren
Sherman shall prosecute his appeal with effect,
and shall pay whatever judgment may be ren-

den against him, and all costs, interests and dam-
ages by the Supreme Court, then the above obligation
to be void, otherwise to remain in full force and
virtue.

Oren Sherman Seal

A. J. Sherman Seal

State of Illinois
County of Cook

I, Walter Kimball Clerk
of the Cook County Court of Common Pleas within
and for the County & State aforesaid do hereby
certify that the foregoing is a true and correct
copy and transcript of the paper and of the
Records of said Court now on file in my office
in the case of Oren Sherman vs John W. Baddley.

In Testimony whereof I have hereunto
set my hand and affixed the seal
of said Court at the City of Chicago
in said County this 31st day of May

A.D. 1850

Walter Kimball

Do Clerk

And now comes the said Appellant by
Peck his attorney and says that there is
manifest error in the records judgments and
proceedings of the said Court and he therefore

Mays that the said judgment for the
error aforesaid may be reversed - for the
following reasons -

Because the said Court erred in
setting aside the judgment rendered
upon the confession of the said appellee

Wright

Wick
for appellee.

48.
Cook County, Court
of Common Pleas

Oren Sherman

vs
John W Budd
et al

Transcript

Filed June 11. 1858.
J. Ireland Clk.

\$5. per Clerk.
Fees &c.

Shenman
Baddely.

Appeal from Cook.

Points of appellee.

1. The declaration is upon the note and the attorney seeks to confess a judgment upon a declaration on the note.
2. The power of attorney and the note were both executed at the same time, and the note is described in the power: the power relates to it and authorizes a judgment to be entered upon it. The general expressions contained in the instrument are to be controlled by the recital in it and it appearing from that that the debt is not due, the attorney had no authority to confess the judgment and it was properly set aside.
~~The affls show~~
3. The statute does not authorize a confession of judgment to be entered at all until the note falls due, or the debt is bona fide due: the plaintiff was therefore not entitled to a judgment upon the debt with a stay of execution. But if this were the case then the execution should be quashed as having been imprudently issued.
4. If the debt was not due the party has no right to a judgment and the Court properly set it aside.
5. Papers executed at the same time and in reference to the same subject matter must be construed together. The plf states

himself that these were so executed in his
off^{ce}, and the papers bear date at the same
time and the Power of Attorney refers by
description to the note. The declaration is
upon the note and the Power Attorney pro-
fesses to confess a ^{general} judgment on all the
counts in the declaration; thus in effect
causing judgment to be entered on the
note set forth in the power.

6th The note and power having been
thus executed together and the note not
falling due in 90 days was an extension
of credit on the debt; for it would be
absurd to say that the ~~power~~ ^{plaintiff} had given
the plaintiff a credit on a debt which
he was presently authorized to enter a
judgment upon. If the power is to be
so construed then the extension of time
of payment would be nugatory and the
whole transaction without any meaning.
~~If it was the answer~~

7th Language used by a party to a
Contract is to receive such a con-
struction as he, at the time, supposed the
other party would give to it, or such
a construction as the other party was
fairly justified in giving to it.

11 Oct 490.

State of Illinois }
Sasalle County } p

In the Supreme Court

Ebenezer Peck being duly sworn
makes the oath. That the transcript in this cause
was filed in this court within the first three
days of the present term. That during the first
week of the present term a motion was made to rule
the appellant to assign his errors, whereupon the
errors were assigned instantly, that the motion
to assign errors was made by George Mannie
Esq., who was informed that the errors were
assigned, and as this deponent believes he
examined the same, at all events he knew that
the errors had been assigned. That on the
twenty first of June during the present term
the appellee was ruled to join in error on the
Wednesday following ~~the term~~ which was the
twenty sixth of June, that on the twenty eighth
of June a default was taken for nonprosecution
in error and the judgment herein reversed.

That this deponent repeatedly informed
J. Young Scammon the attorney of appellee
that he was anxious to have this cause
decided, that said Scammon repeatedly
promised to forward a written argument
in this cause to be submitted to the Court -
that during the second week in July this
deponent was in Chicago, and conferred with
said Scammon in relation to this cause and
pressed said Scammon to send an argument
if he wished this cause to be submitted to the
Court, and that this deponent would consent
to submit this cause, if said Scammon

would forward to him an argument in
this cause for appellee which said
Scammon said he would do. That
the default in this case and the
reversal of the judgment, did not take
the parties by surprise - that if they
have suffered any injury it is through
sheer neglect and carelessness. That
this department thinks it now too late
at the heel of the term, at a time
when this department must be about
to apply to open the default and
thereby continue the cause for a
year, by reason of their own omission
and negligence -

Adm to and subscribed }
before me this 25th July 1850 }
a. Island Ck.

Week

21.20.13

48

Sherman vs Buddely

affet.

Filed July 26. 1850.
H. C. Land Clerk.

In Supreme Court
3rd Grand Division
Oren Sherman
John W. Baddenly. } On appeal.

George Maniue being first duly sworn deposes and saith that ~~that~~ on the 18th or 19th of June last past, he prepared at Chicago, a joinder in error, and enclosed the same by mail from Chicago to the Clerk of this Honorable Court with instructions to have the same filed in this cause: And this deponent further states that he is informed by the Clerk that he did receive by letter a joinder in Error about the time alluded to though he is not able to state whether the same was in this cause, and filed the paper as received: And this deponent would further state that he has looked at the files for the paper alluded to and cannot find the same:

This deponent would further say that he has had ~~no frequent~~ conversations with said Cheney Peck one of the attorneys of the said appellant in reference to the argument of this case since the said order dismissing this suit for want of a joinder in error was entered, and he has never made any allusion to it, ^{but} on the contrary has by his manner lead this deponent to suppose that the cause was standing for argument: And that sometime about the 16th of July ^{at Ottawa} ^{then at} he wrote a letter to the said Peck asking him when certain causes therein mentioned, any which was this, would probably be reached on the docket,

for the purpose of fixing the time when
 this deponent should return to Ottawa
 and argue the same, in reply to which
 letter the said Peck made no allusion
 to the default which had been entered,
 and stated in these words "that it is impossi-
 ble to say now when the cases you refer
 to will come on": thus leading this
 deponent to suppose that ^{the order in}
 error, ^{which had been transmitted by mail as aforesaid,} had been filed and that the cause
 stood for argument. And this deponent
 would further state that the letter referred to
 of said Peck was dated Ottawa July 19th
 inst, and gave this deponent many reasons
 showing that in all probability the causes
 alluded to in the letter of this deponent and
 which was this, would not be taken up
 until the latter part of the present or the
 beginning of the week ^{together with the date of the affd.} ensuing, which is
 the reason this motion to set aside the
 default aforesaid has not been made at
 an earlier day. And this deponent would
 further say that ^{his} first knowledge of the
 default herein was acquired by an exam-
 ination of the records of this Court on
 the morning of the 25th inst. And this deponent
 would further say that he has had the full management of this
 case in this Court.
 before me this 26th July 1850.
 A. Deland Clerk.

George Manville.

Filed July 26th 1850.
 A. Deland Clerk.

Sheena
 by
 Bradden.

Affd.

Oren Sherman
vs
John W. Baddely } appeal from Cook County Court
of Anna Pleas-

E. Peck & T. L. Dickey for appellant

Geo. Channing for appellee-

Sherman
vs
Baddley } appeal from Cook -

Points of appellant by T. L. Dickey.

- 1st - Altho the giving of ~~the~~ note in the absence of other evidence - postpones the day of payment, ^{of this debt} until maturity of the note - yet the power of attorney rebuts this presumption and leaves the original debt due and unpostponed - and pl^{ff} had a legal right to his judgment & execution presently and to be collected presently.
- 2nd - At all events he had a right to the security of a lien on the real estate of defendant. By judgment & execution ^{presently} ~~of the debt~~ ^{after maturity of the note} and the utmost effect that the giving and accepting of the note could have would be an order to stay proceedings in the collection thereof until the ninety days had expired -
- 3rd - Even if the judgment was improvidently entered - the Court erred in dismissing the suit - the plaintiff had a right still to prosecute the suit on the allegations of his declaration -

23	29	26	18	13	26
<u>4</u>	<u>9</u>	<u>9</u>	<u>9</u>	<u>9</u>	<u>9</u>
207	261	234	162	117	234
		18			117
216		<u>52</u>			162
<u>9</u>		234			234
25		<u>9</u>			261
		43			207

14
9

216
234
225-
36
252
225-
243
261
120

3033

[Faint, mostly illegible handwriting covering the lower half of the page, possibly bleed-through from the reverse side.]

48

Allen Sherman

vs

John W. Baddely

1850

/ 2035

Refused