

No. 13202

Supreme Court of Illinois

Hurd

vs.

Till et al

STATE OF ILLINOIS,
SUPREME COURT.
Third Grand Division.

No. 55.

*Hand
Full*

*1864
1320*

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

HARVEY B. HURD, Appellant, }
vs. }
TILL & COOK, Appellees. }

BRIEF.

The suit was for bill of goods sold on letter of credit from appellant.

See Record 30 & 31

1st. The first point we make is, could the plaintiff prove the contents of the letter of credit without having shown notice upon the defendant to produce it, or in any event, the plaintiff having shown where it was, and shown no effort to procure it?

The case of *John L. Marriner vs. Hiram Saunders*, 5 Gilman, 113, is directly in point, and by reference to the case the Court will see that in that case the deed was proved to be out of the State. In the case at bar the plaintiff proved as the only foundation of his right to introduce secondary evidence, that the letter of credit was in New York in hands of certain merchants. The Court say: "As a general rule, when a paper is shown to be in a particular place, or in particular hands, then that place must be reached by the witness proving the loss, with the utmost good faith, and as thoroughly and vigilantly as if, were it not found, its benefit would be lost, or in the other case the party into whose hands the paper has been traced, must be produced."

See *Rankin vs. Crow*, 19 Ill. 620.

2d. The second point is, Was any authority shown?

See Record 1 & 31

The whole substance of the testimony on that point was, that Hurd admitted to witness, Helme, that the letter was addressed "to all whom it might concern," but that it was peculiar in its terms, and did not cover the claim that he, Helme, represented. Not a word of its contents was stated.

See Record 1 & 23 & 29

3d. There is not a word of proof that E. B. Hurd represented that he purchased on the credit of Hurd. The plaintiff's witnesses state that they heard no conversation when goods were purchased.

See Record p 37

4th. The Court committed a great wrong upon the defendant in allowing the plff. to recall and re-examine his witnesses *ex party* six months after the case had been submitted to him and after he had '*probably forgotten*' (words of record) the testimony, no notice having been given to the defendant, and he not being present at the time. The plaintiff took a new view of the case when he re-called his witnesses and called out other facts than those testified to on the trial.

5th. Did the November term of the Court expire on the last Saturday, or did it continue while the Jumperts case continued?

See Record p 45-

The Jumperts trial commenced before the last Saturday in November, and continued to the 12th December. The Court refused to entertain a motion in this cause on the 6th December, on the ground that the November term had expired by operation of law. The Statute says "the term shall commence, &c., and may be continued and held from time of its commencement, every day, Sundays excepted, until and including the last Saturday of the same month, and *longer if necessary to complete the trial of any cause then on trial.*"

Laws of 1859, page 85.

H. B. HURD.

Pro per.

58-

SUPREME COURT OF ILLINOIS :

APRIL TERM, 1861.

HARVEY B. HURD,
Appellant,
vs.
TILL & COOK,
Appellees.

BRIEF.

H. B. HURD.

Filed April 18. 1861
A. deland
clerk

STATE OF ILLINOIS.
IN THE SUPREME COURT.

APRIL TERM, A. D. 1861.

THIRD GRAND DIVISION.

HARVEY B. HURD, APPELLANT,	}	<i>Appeal.</i>
vs.		
CHARLES G. LILL, AND		
SAMUEL A. COOK, APPELLEES.		

ABSTRACT.

THIS was an action to recover for a bill of goods which the plaintiff's claim Edward B. Hurd purchased in the name of Harvey B. Hurd, his brother, in pursuance of authority given to said E. B. Hurd.

The defense was: 1st, That Edward B. Hurd had *no authority* to buy the goods in question in the name of the appellant; 2nd, That the goods were purchased by E. B. Hurd in his own name, and for his own use.

Page 2. The declaration is for goods sold and delivered to defendant and his servants and agents.

5. The account attached to the declaration contained bills under
6. dates as follows: June 19, 1855; June 22, 1855; September 14,
7. 1855; September 19, 1855; June 18, 1856.
8.

General issue.

10. Cause submitted to court (VAN H. HIGGINS, Judge,) by agreement, 15th June, 1859, and taken under advisement.

Testimony of plaintiffs:

Page 17. *Deposition of James Doyle.*—Salesmen with plaintiffs in New

- York City, from February, 1846, continually, till the closing of the firm, and am with their successors to the present. Know plaintiffs;
 18. not defendant, Harvey B. Hurd—never saw him. I know of no transactions or business between plaintiffs and defendant, except this: In October, 1856, one E. B. Hurd, a brother of Harvey B. Hurd, called at the store of Lill & Cook, the plaintiffs, who were then partners, to purchase a bill of goods for his brother, and a bill was accordingly sold to the defendant, to the amount of \$134.46. The account of sale was entered and charged to H. B. Hurd. The goods were packed in paper packages, and addressed to H. B. Hurd, and sent by order of E. B. Hurd to Wilson, Medgley & Jennings', 114 Church street, there to be packed in cases, with other goods. Don't know anything else.

20. *Cross-Examination.*—I know of no payment being made on account of these goods.

I have never heard anything said on the subject of payment, except I heard one of the plaintiffs say that they had received of the defendant, or E. B. Hurd, about two hundred dollars on account of a former bill sold by them to him, or E. B. Hurd.

21. *Third Cross-Interrogatory.*—July. Do you know that the said Harvey B. Hurd was the person who purchased the goods mentioned in the plaintiffs' bill? Were not the goods purchased by E. B. Hurd?

Ans.—I know nothing further than what I have stated in my answer to the fourth direct interrogatory, except that plaintiffs would not sell goods to E. B. Hurd, or trust him with goods; that they declined to sell him goods, but stated that they sold to H. B. Hurd, and not E. B. Hurd.

The items were general tailoring goods; aggregate 134.46; the value of each article was specified in the bill rendered at the time the same were purchased, about October 3rd, 1856.

22. The bills "A" and "B," which were made out to E. B. Hurd, I know nothing about, except that they were not made out or sent for the goods of which I have spoken as having been sold October, 1856.

They do not form a part of the goods sued for in this suit. (The Court will see that they are identical with the items, in part, of the account sued upon, and bear the same date. See page 43 of record.) They do not form part of the goods which I swear were sold to the defendant.

I know E. B. Hurd was agent of H. B. Hurd, because he was represented to be, and bought the goods in his name, and bought goods of others as such agent.

Page 23. I don't know anything about the letter of credit.

Ninth Cross-Interrogatory.—Did you hear any conversation between E. B. Hurd and plaintiffs at time the last bills of goods were purchased? If so, state all of such conversation, except such part as refers to the contents of the writing of H. B. Hurd to E. B. Hurd.

Ans.—I heard no conversation between E. B. Hurd and plaintiffs.

Last Cross-Interrogatory.—State whether all the bills of goods were not made to E. B. Hurd, and whether they were not all sold to him.

Ans.—No.

24. *Deposition of Gustavus Nichols.*

Second Ans.—Was book-keeper for plaintiffs in September, 1855, in New York City.

Third Ans.—I know all the plaintiffs. Don't know defendant personally.

25. *Fourth Ans.*—I know of no transactions between plaintiffs and defendant, except on September 14, 1855, when the plaintiffs sold and delivered to the defendant goods of the value and amount of \$170.68; and on 19th September, 1856, when the plaintiffs sold and delivered to him goods of the value and amount of \$3.75. Total, \$180.43. The goods were entered in plaintiffs' books as goods sold to H. B. Hurd. I entered them. The goods were sent to Van Wagner, Yeomans & Co.'s, 37 and 39 Murray street,

addressed to H. B. Hurd, Chicago, to be forwarded; they were sent there by the defendant's direction.

Page 26. *Cross-Examination.—First Ans.*—I know of no payments.

27. *Second Ans.*—I have not heard plaintiffs admit any.

Third Ans.—The person who purchased the goods was E. B. Hurd, but he purchased them in the name of and for H. B. Hurd.

Fourth Ans.—I can only state generally (as to what items were purchased), that the articles were tailors' trimmings. The value I have already stated in my answer to a direct interrogatory. I am not now with Till & Cook.

28. *Fifth Ans.*—I don't know that the bills, exhibits "A" and "B," were made out in the store of plaintiffs, or by any one in their employ. They are not the bills sent for the goods of which I have testified.

Sixth Ans.—I cannot say if these bills form a part of the bills sued upon in this suit. I don't know what bills are sued on in this suit; those bills do not form any part of the goods which I swear were purchased in the name of the defendant.

Seventh Ans.—I don't know that E. B. Hurd was the agent of H. B. Hurd, except by common repute, and that he assumed to be.

29. *Eighth Ans.*—I know nothing about the writing (letter of credit).

Ninth Ans.—I do not recollect of any conversation at the time E. B. Hurd purchased the goods.

Tenth Ans.—I never knew or heard of any bills or sales being made to E. B. Hurd, except those annexed to the cross-interrogatories; all the others were made to H. B. Hurd. I never knew of these except by exhibits.

30. *Henry S. Helm.—Direct Testimony.*—We held a claim against defendant, in favor of Chas. Duncomb, of New York. I saw Hurd

about it; the first conversation was in Ottawa, in spring of 1857; Hurd then stated that he was not liable on that claim (Duncomb's).

Plaintiffs' Attorney asked witness—

If Hurd had said anything further at that time, and, if so, what?

The defendant objected to plaintiffs giving testimony as to the contents of letter of credits. Objection over-ruled. Defendant excepted, and witness was permitted by the court to testify, as follows: "Afterwards, in the Circuit Court room, I had another conversation, in which I told Hurd I had a letter from Duncombe, in which they stated that E. B. Hurd had purchased goods by virtue of a power of attorney, or letter of credit, given by defendant, H. B. Hurd. Defendant replied, 'No; they were not bought under it, or the purchase was not authorized by it.' Hurd's language was such as to make me ask the question what there was about the power of attorney that was peculiar? I immediately asked him if it was addressed to any particular person? This question was asked before Hurd could answer the first. He replied, 'No; or else it was a mere open letter of credit to merchants, addressed "To whom it may concern," or some such way as that.' He said there was an understanding between Edward and him in relation to that; there were persons who would trust him on his own credit, and it was understood that with such and such persons he was not to use the letter of credit; that the Duncombes knew Edward in Connecticut, and would trust him. But the Duncombes wrote me that Edward bought those goods under that letter. Hurd replied, 'Edward will swear that he did not use the name.' Hurd said, 'The power of attorney was in New York, either with P. L. Rodgers or Hatch & Blaney.'"

Page 31.

Cross-Examination.—Hurd's language was such as to make me ask the question what there was peculiar about the power of attorney. Do not recollect what his language was. I was a witness in the Duncombe case. The plaintiff was defeated in that suit. I do not recollect whether I said that Hurd said that there was something peculiar about the power of attorney. He said something about it that caused me to ask him what there was peculiar about it. I did not give him time to answer me that question. I followed it up

32. *with the other so quick that he did not have time to answer. I do*

not recollect that I promised not to testify about the conversation I had with Hurd about the claim I held. We were standing near the bar, in the court room, at that time. The conversation was short.

Edward L. Ives' Direct Testimony.—Know the \$1,800 note given by Underhill & Bradford, and passed by E. B. Hurd to A. D. Titsworth & Co.; that H. B. Hurd told him that his brother, E. B. Hurd, had no right to give it to Titsworth; it was his note.

Page 33. *Cross-Examination.*—I was cutter for E. B. Hurd; he had a store on Clark street. E. B. Hurd hired me; saw H. B. Hurd occasionally; he came in as any brother would; never saw him do anything there. Bills were made out in the name of E. B. Hurd; he had printed bill heads in that name; never heard anything said about his doing business for H. B. Hurd. E. B. Hurd was the name over the door; he paid me my wages; E. B. Hurd used to consult his brother sometimes as a lawyer: H. B. Hurd was practicing law at that time in Chicago, on opposite side of the street; heard H. B. Hurd say that he held *some* of the notes given by Underhill & Bradford, on the purchase of the stock in E. B. Hurd's store. Underhill & Bradford bought out E. B. Hurd. Harvey said he had lost by E. B. That the notes were turned out to him to secure him for goods he had become liable for. E. B. Hurd bought goods in Chicago in his own name; don't know that H. B. took any part in the sale to Underhill & Bradford; I was then there. E. B. Hurd went into partnership with me after that. One of the Underhill & Bradford notes was used by us. E. B. turned it out to A. D. Titsworth & Co., as collateral for his indorsing the notes I gave for goods we purchased. E. B. Hurd paid some of the money he got from Underhill & Bradford to one of his creditors here, Phillips & Co.

34. *George C. Bradford.—Direct Testimony.*—We bought out E. B. Hurd's stock of goods; he was doing business in the store we now occupy; we negotiated for the goods with E. B. Hurd. When we were closing up, we wanted longer time on the last note, and E. B. said he would consult his brother, H. B., before he could answer. We paid some of the notes to H. B.; can't say how many. H. B. came into the store after the notes were paid, and complimented us on our promptness in paying those notes. We found goods in the stock bought by us corresponding to the goods in the bill of Till &

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Cook appended to this declaration. I knew them to be from Till & Cook from the mark which was on them. We buy goods of Till & Cook.

Cross-Examination.—E. B. Hurd's name was over the door. H. B. took no part in the sale of the goods to us, except as above stated, that I remember; he may have come into the store while the sale was progressing. We paid E. B. Hurd \$500, two \$500 notes, one note for \$1,000, and two \$1,800 notes. I don't know what became of the cash; one \$500 note came back to us through Phillips & Co., creditors of E. B. Hurd; one \$1,800 note through A. D. Titsworth & Co.; and the balance of the notes through H. B. Hurd; don't know how H. B. came by them. E. B. Hurd was payee in the notes, and he indorsed them.

Page 35.

Samuel E. Underhill.—Direct Testimony.—Am one of the firm of Underhill & Bradford; we bought out the store No. 64 Clark street. In closing up, when we gave E. B. Hurd the notes and cash, he signed a receipt in full; the receipt was signed "E. B. Hurd, Agent." About the time we were taking account of stock in the store, H. B. Hurd came into the store several times; might have been three times, or more, or less. When the stock was found to be more than it was supposed to be, we told E. B. Hurd we must have longer time on the last note; he said, "I will ask H. B. about it." He went out, came back, and said his brother was willing. All the notes given by us came back through H. B. Hurd, except the Titsworth one, and one to Phillips. We paid the notes at Brown's. H. B. came in several times during the taking of the stock. After we were through, he came in in regard to the extending the last note—did extend it; and once or twice during the taking of the stock, he asked how we were getting along. When the last note was paid, he came in and thanked us for the prompt manner the business had been done.

36.

Cross-Examination.—I had been living in Chicago some time before we bought out Hurd. He had been doing business in Chicago for some time. He had charge of the business. He did not state who he was agent for. Nothing was said about it. The agreement for the purchase was in writing, and was signed by E. Hurd and by us. The receipt was the only thing that said agent upon it. Sign over the door was "E. B. Hurd." Never saw H.

B. Hurd there till we were taking account of stock. H. B. Hurd took no part in the sale, except he was in there several times when we were taking account of stock, and as stated above in regard to the last note.

The above was all the testimony given on the trial of the said cause.

Court stated to the counsel that he was of opinion that the evidence did not show any authority in the said E. B. Hurd to purchase goods in the name of said defendant.

Page 37. On 26th November, A. D. 1859, (last Saturday in the month,) one of the days of November term, E. G. Asay, plaintiffs' attorney, appearing, defendant not appearing, no notice of the intention of the Court to dispose of the cause having been given to said defendant, the Court, VAN H. HIGGINS, having probably forgotten the testimony given in the trial of the said cause as aforesaid, allowed the plaintiffs' attorney to recall said *Henry T. Helm*, who was examined by the Judge and plaintiffs' attorney, when he testified he had testified on former examination as follows:

Had a conversation with said H. B. Hurd, in which Hurd stated that he had given his brother, E. B. Hurd, a power of attorney to buy goods in his (H. B. Hurd's) name; that he, witness, had other claims against H. B. Hurd for goods purchased in New York, and that said Hurd had paid them without objection.

38. *George C. Bradford* was also recalled, and examined by said Court and said plaintiffs' attorney, and he stated that on the former trial of this cause, he had testified, that at the time they (Underhill & Bradford) bought the stock of goods, there were goods of the kind mentioned in the bill attached to the declaration in said cause, and had on them the private marks of plaintiffs' house.

Thereupon Court gave judgment for \$180.43.

39. Court caused motion for new trial to be entered for defendant, and overruled the same; and the Court caused exceptions to be entered for defendant to the overruling of said motion, and to the giving judgment, and granted an appeal.

On the 6th December, defendant asked leave to file a motion to set aside the order overruling motion for new trial, and to grant a new trial, which was denied, on the ground that in the opinion of the Court the November term had closed on the 26th November, as to all matters except trial of Henri Jumpertz, and Court had no power over its records to set aside said order, etc. Defendant excepted.

The cause of *The People vs. Henri Jumpertz* was commenced in said Court, before GRANT GOODRICH, on 21st November, and continued from day to day until 12th day of December, 1859, and was continuing at the time of said application and denial, and no order of adjournment of said term had been made at the time of said application.

Page 46. Errors assigned :

1st. Court erred in admitting testimony of Henry T. Helm in regard to the contents of the letter of credit.

2nd. Court erred in taking up and disposing of the cause in the absence of defendant, and without notice to him.

3rd. Court erred in recalling the witnesses Helm and Bradford, in absence of defendant, and without notice to him.

4th. Court erred in allowing plaintiffs' attorney to re-examine said witnesses, and in re-examining them himself, in the absence of said defendant, and without notice to defendant.

5th. Court erred in receiving said testimony in the absence of defendant.

6th. Court erred in finding for said plaintiffs.

7th. Court erred in overruling defendant's motion for a new trial.

8th. Court erred in refusing to allow the defendant to enter his motion to set aside the order overruling said motion for new trial, etc.

9th. Other errors.

H. B. HURD,
Defendant.

192 5-5-34

H. B. Hunt

vs

Chas. B. Hill et al

Abstract

Filed Apr 16. 1861

d. L. Hunt

clerk

United States of America
State of Illinois Cook Co., Ill.

Now before the
Honorable Judges of the Superior Court of Chicago
Within and for the County of Cook and State of
Illinois at a ^{regular} term of said Superior Court of Chicago
Agon 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 November in the
Year of Our Lord (Eighteen Hundred and fifty Nine)
and of the Independence of the United States of
America the Eighty fourth,

Present, The Honorable John W.
Wildson Chief Justice of the Superior Court of
Chicago, Van N. Higgins and Grant Goodrich
Judges, Carlos Haven Prosecuting Attorney,
John Gray Sheriff of Cook County,
Attest

Walter Kimball Clerk.

Be it Remembered that heretofore to wit on the
Ninth day of May in the Year of our Lord one
Thousand eight hundred and fifty seven came
Charles G. Dill and Samuel A. Cook by Assay
and now solemn their Attorney and filed in
the office of the Clerk of the Cook County

12624

Court of Common Pleas their certain Declaration
in words and figures as follows to wit,

In the Cook County Court of Common Pleas,

June Term A.D. 1857.

State of Illinois }
Cook County } ss.

Charles G. Dill and Samuel
A. Cook doing and carrying on business
under the Name Style and Firm of "Dill and
Cook" at the City of New York in the County
of New York and State of New York the
Plaintiffs in this action by Asay and Bondaden
their Attorneys Complain of Harvey P. Bond
the Defendant in this Suit of a plea of
Inesap on the Case upon promises.

For that Whereas the said
Defendant heretofore to wit on the First
day of April in the year of our Lord One
Thousand Eight Hundred and Fifty Seven at
New York to wit at the City of Chicago in the
County of Cook and State of Illinois was
indebted to the said plaintiffs in the Sum
of Five Hundred Dollars of lawful Money of
the United States for goods wares and mer-
chandise sold and delivered by the plaintiffs
to the said defendant and to his servants

and agents at the special instance and request of said defendant and being so indebted he the said Defendant in consideration thereof afterwards to wit on the day and year last aforesaid undertook and then and there faithfully promised the said plaintiff to pay him the said sum of money when he the said Defendant should be thereunto afterwards requested. And whereas also afterwards to wit on the day and year last aforesaid at New York aforesaid to wit at Chicago aforesaid the said Defendant was indebted to the said plaintiff in the further sum of Five Hundred Dollars of like lawful money for work and labor done and performed and Materials for the same provided by the said plaintiff for the said defendant at his request and for money paid, laid out and Expended by the plaintiff for the Defendant at his like request. And for interest money due upon and the forbearance of divers large sums of money for a long space of time due and owing from the said Defendant to the said plaintiff. And for so much money ^{found to be} due from the said Defendant to the said plaintiff on an account then stated between them. And being so indebted to said Defendant afterwards to wit on the day

and year last aforesaid at Chicago aforesaid
understood and then and there faithfully promised
the said plaintiff to pay him the said sums
of money respectively when he the said Defen-
dant should be thereunto afterwards requested.
Yet the said Defendant has not paid the said
sums of money or any or either of them or
any part thereof to the said plaintiffs although
often requested so to do to the damage of the
said plaintiffs of one thousand Dollars and
therefore they bring their suit &c.

Asay and Van Soden
Plffs. Atty.

5

New York May 5th 1857.

Mr. A. B. Ward

Bot. of Lill & Cook

Importers & Dealers in Tailors Trimmings &c. 299 Broadway N.Y.

1853					
June 19,	1/2 lb.	Super BLEN. Silk	@ 8."	4	00
	1/2 "	" " " "	" 7.50	11	25
	2	Bunches Gold "	" 1."	2	00
	3	ps. colored Silk Braid	" 12/-	4	50
	1	" BLEN " "		1	25
	2	Sets fancy Gilt L. B.	" 1.25	2	50
	2	" Mounted Gold Stone V. B.	" 3.50	7	00
	6	" Assorted " V. B.	" 2.75	16	50
	2	" " " "	" 1.50	3	00
	3	" " " "	" 1.50	4	50
	5	pairs Gilt Scales V. B.	" 1.50	7	50
	2	" Gold Stone "	" 1.50	3	00
	3	" White & Black "	" 1.50	4	50
	1	" Black Stone "	"	1	50
	1	" Mounted Gilt "		1	50
	1	Set Studs		1	00
	1/2	Gro. Woot V. B.	" 1.25	1	88
June 20	7	" Sen. BLEN. Lastings (The whole)		7	"
	1	" Cold Pocket Buttons.			63
	1	" BLEN, " "			37
	4	Bulls Colored (Cut Cord	8/-	2	50
Spt. 14, 1853	1/3	Gro. Woot Shawl V. B.	20/-	1	25
	3	" Embroidered O. C. B.	4."	8	"
	1	" " " "			1.50
		Forward,		8	98 63

Forward.			\$ 98.63
3	Gro. Figured Cord Edge C.B.	2.50	7.50
1	" " " " B.O.B.		1.00
2	" Mat " " C.B.	3.00	6.00
1	" Miteo BEN. Lastings		1.25
3	" Lino " "	9/-	2.25
3/4	" Mat B.O.B.	12/-	4.13
1	" Shell Horn C.B.		1.50
3	" Colored Paper fall B.	4/-	1.50
6	" BEN. " " "	3/-	2.25
3/4	" Shank Wood C.B.	5. "	3.75
1	" Japan Buckles.		1.00
5/6	gr. grps Silvered Suspender B.	5.00	4.17
1	" " fall "		4.50
1	Gro. BEN. Lino. Cord		6.00
3	Balls " "	2.00	6.00
1	" Mixed " "		.75
5	" Assorted " "	4/-	2.50
7	No. Wide French Lino Braid	2. "	14.00
20	" BEN. " " "	4/-	10.00
8	" Ladd " " "	10/-	10.00
1/2	Gro. Mohair " " "	5. "	2.50
2	ps. Russia Rob Binding	4/-	1.00
5	Sets fancy B.O.B.	2. "	10.00
2	" " Gift B.O.B.	2.50	5.00
5	" " " " "	12/-	7.50
3	" Mounted Gold Stone "	12/-	3.00
3	" BEN. V. White " "	1.00	3.00
2	" " " " "	14/-	3.50
1	Box Sleeve B.		3.00
1	Sets Mixed " "	2. "	4.00
1	" " " " "		1.00

7

	5 Boxes Assorted Huds.	@ 10/-	6. 2
	2 Lbs Rich Gilt C.B.	1. "	2. 0
	1 " Basket "		1. 1
	3 " Plain " "	6/-	2. 2
	3 " fine Assorted " " fancy	14/-	5. 2
	2 Lbs. Superior Blk. Silk.	7. 50	15. 00
Sept. 14. 1855	1/4 Grs. Embroidered velvet V.B.	3. "	2. 75
June 14. 1856	1 " Silk. Blk. Lustrous C.B.		1. 25
	1 " " " " " "	9/-	1. 13
	1 " Grenadine " "		1. 25
	1 " Orat Silk " "		1. 50
	1 " Figured Cord Edge " "		2. 00
	2 " " " " " " V.B. 1. "		2. 00
	1 " Satin V.B.		. 75
	3 " Wool " "	12/-	4. 50
	1 Bale Silk Cord		1. 50
	2 ps. Mohair Braid	. 75	1. 50
	4 Lbs White and Gold Stone V.B.	2. "	8. 00
	1 " Blk. & White plaid "		3. 00
	1 " " " " " "		1. 75
	2 " Colored Apple " "	6/-	1. 50
	1 Lb Blk. & Gold Stone "		1. 75
	2 " Fine Mosaic	2. "	4. 00
	2 " Colored Ivory	2/-	. 50
	1 Doz. White Gilt Ring		. 25
	1 Grs Embroidered Cloth C. C. B.		7. 00
	2 " Colored Galloons	3. 50	7. 00
	1 " Embroidered Cloth C. B.		4. 50
	1 " " velvet C. C. B.		6. 00
	1 " Brown " Centre "		4. 50
	1 " Silk Centre velvet C.B.		4. 00
	1 " Figured Wide Ring "		2. 00
	Forward,		

8 341. 44

Forward				\$ 341.44
1	Gr. Grenadine Wide Rim C.B.			3.00
1	" Plaid Center C.B.			2.75
2	" Mst Cord Edge	3.50		7.00
3/2	" " Twist P.B.	1.50		3.75
3/4	" Colored Black B.B.	3.00		9.75
1	" Silk. Blk. Lacing C.C.B.			1.75
4	" " " " Mst Cord	5/-		2.00
1	" " " " "			1.70
2	" Japan Buckles	1.00		2.00
1	" Gilt " "	13/-		1.63
1	gr. gr. 2 Hole Japan Fast.			4.50
1/3	" " " Bronze "	9.00		3.00
1/3	" " " " fall	7.50		2.50
2	Balls Blk. Silk Cord.	2.50		5.00
1	Set. fine fancy t.B.			2.00
2	" " " " "	2.00		4.00
12	" " " " "	1.50		18.00
4	" " " " "	10/-		5.00
2	" White " " "	6/-		1.50
2	po. Pongee Silk	5.00		10.00
2	" French Elastic Laces $\left. \begin{smallmatrix} 27^3 \\ 28^2 \end{smallmatrix} \right\}$ 56' 0 26			14.63

~~446.90~~

The above are the particulars of the
plaintiff's claim in this suit.

Asay and Son Sdew
Plff. Atty.

And afterwards to wit on the second day of May in the year aforesaid came Harvey B. Hurd and filed in the office of the Clerk aforesaid his certain plea & affidavit of Merits in words & figures as follows to wit.

Cook County Court of Common Pleas
June Term A. D. 1857.

Charles E. Dill &
Samuel A. Cook
vs.
Harvey B. Hurd

And the said defendant in his own proper person comes and defends the wrong & injury when &c. & says he did not undertake & promise in manner and form as set forth in the said plaintiff's declaration & if this he puts himself upon the country.

A. B. Hurd.

Pro. Jure,

State of Illinois

Cook County } Harvey B. Hurd defendant being
duly sworn says he believes he has a good
defence upon the merits of this cause.

A. B. Hurd

Sworn to before me

this 2^d day of May 1857

W. Kimball, Clerk,

And afterwards to wit on the fifteenth day of June in the year of our Lord Eighteen Hundred & fifty nine said day being one of the days of the June term of ^{the Superior} ~~said~~ Court of Chicago the following among other proceedings was had and entered of Record to wit,

Charles G. Dill
and Samuel A. Cook

vs. Appellant
Harry B. Hurd.

This day comes said plaintiffs by Asay & Son Soden their Attorneys and the said defendant in his own proper person also comes and issues being joined herein upon agreement of parties this cause is submitted to the Court for trial without intervention of a jury, and the Court now here after hearing the allegations and proof submitted and arguments of Counsel, takes the matter under advisement.

And afterwards to wit on the twenty sixth day of November in the year of our Lord Eighteen Hundred and fifty nine said day being one of the days of the November term of ^{Superior} ~~said~~ Court

of Chicago

The following among other proceedings was had and entered of Record to wit,

Saturday

Charles B. Till and

Nov. 26 C.D. 1887

Samuel A. Cobb

vs

Assumpsit

Harvey B. Hurd

And now comes said plaintiffs by Asay their Attorney and said defendant in person also comes and issue being joined herein upon agreement of the parties made now here in open Court this cause is submitted to the Court for trial without intervention of a jury and the Court now here after hearing evidence and arguments of counsel and being fully advised in the premises finds issues for said plaintiffs and assesses their damages herein to the sum of one hundred and eighty Dollars and forty three cents. And thereupon defendant submits his motion herein for a new trial in this cause which motion is overruled whereupon defendant enters his exceptions.

Therefore it is considered said plaintiffs do have and recover of said defendant their damages of One Hundred and eighty Dollars and forty three cents in form aforesaid by the Court

were found and assessed and also their costs
 and charges in this behalf expended and
 have execution therefor. And thereupon said
 defendant having entered his exceptions
 prays an appeal herein to The Supreme
 Court which is allowed upon filing his
 appeal Bond in the sum of three hun-
 dred Dollars with security to be approved
 by a Judge of this Court in twenty days
 with his bill of exceptions.

And afterwards is wit on the sixth day
 of December in the year of our Lord Eighteen
 Hundred and fifty nine said day being
 one of the days of the December term
 of said Court the following among
 other proceedings was had and entered
 of Record to wit,

Charles A. Till and
 Samuel A. Cook

vs Appr.

Harry B. Hurd }

On motion defendant in person it is ordered
 that time to file his Bond and bill of
 exceptions on his appeal prayed herein be
 extended 20 days.

And afterwards to wit on the fifth day on January
in the year of our Lord Eighteen Hundred and
Sixty, said day being one of the days of the
January term of said Court the following among
other proceedings was had and entered of Record
to wit:

Charles G. Tice and

Samuel A. Cook

vs

Appraiser

Harvey B. Hurd.

On Motion of defendant it is ordered that time to file
bond and list of exceptions herein be extended
thirty days.

And afterwards to wit on the ^{Sixteenth} ~~Sixteenth~~ day
of February in the year of our Lord Eighteen
Hundred and Sixty came H. B. Hurd
and filed in the office of the Clerk aforesaid
a certain Stipulation in words and figures
as follow to wit.

Superior Court of Chicago

Charles G. Tice

vs et al

Harvey B. Hurd

It is hereby stipulated that
the time of filing list of exceptions and bond

may be extended till the seventeenth day of February A. D. 1860

E. G. Asay,
Atty. for Plffs.

And afterwards to wit on the seventh day of February in the year of our Lord Eighteen Hundred and sixty, said day being one of the days of the February Term of said Court the following among other proceedings was had and entered of Record to wit,

Charles G. Geo
vs

Harvey B. Hund

By stipulation with the plaintiffs filed herein by their attorney time to file bill of exceptions and bond ^{on} ~~appealed~~ ^{the} herein to Supreme Court is hereby extended until the 17th ^{day} of February instant.

And afterwards to wit on the Fifteenth day of February in the year of our Lord eighteen hundred and Sixty came H. B. Hunt and filed in the office of the Clerk of the Supreme Court his certain Bill of Exemption in words and figures as follows to wit.

Be it Remembered that issue being joined in the suit between Charles G. Till and Samuel A. Cook plaintiffs and Harvey B Hunt defendants then pending in the Supreme Court of Chicago holden in Chicago in County of Cook John W. Wilson, Grant Goodrich and Bar. H. Higgins being judges of said Court the same cause came out to be heard on the fifteenth day of June A. D. 1859, it being one of the days of the June term 1859 Bar H Higgins then presiding as Judge of said Court the plaintiffs appearing by C. H. May their attorney and the said defendant appearing

in his own proper person by agreement
a jury

was waived and the cause submitted to the Court (said Van D Higgins) for trial and thereupon to maintain the issue the plaintiffs read in evidence the depositions of James Doyle and Gustavus Nicholas as follows.

Interrogatories propounded to the said James Doyle, a witness produced and sworn, as aforesaid on the part of the plaintiffs and his answers thereto as follows.

First Interrogatory. What is your name, age and occupation, and where do you now reside -

Answer to the First Interrogatory - My name is James Doyle, my age thirty three years and upwards, my occupation is salerian with C. J. Felt & Co. late Felt & Co. I reside at No 158 Rivington Street New York City.

Second Interrogatory. Where did you reside and what was your occupation during the months of -

Answer to the second Interrogatory - I have resided in New York City all my life, except when temporarily absent, my occupation before my present, was that of a salerian with Felt & Co. and I was so with them, from February 1846 continuously until the closing of that firm, and have been with their successors

C. J. Rice & Co. until the present time.

Third Interrogatory - Do you know the parties plaintiffs and defendant mentioned in the above entitled cause, or either and which of them, and how long have you known them or any, either and which of them?

Answer to the Third Interrogatory - I know the parties Plaintiffs all of them; have known them for several years; I don't know the defendant Harvey B. Hurd; I never saw him to my knowledge.

Fourth Interrogatory - If in answer to the last Interrogatory you state that you know the parties Plaintiffs and defendant above mentioned, State whether you know of any and what business transactions between them? State the same fully, and, particularly, and all matters and circumstances in any ^{manner} ~~any~~ relating thereto, or connected therewith.

Answer to the fourth Interrogatory - I know of no transaction or business between the plaintiffs and Harvey B. Hurd except this. In October 1856 one E. B. Hurd a brother of Harvey B. Hurd, the defendant called at the store of Rice and Cook the plaintiffs who were then

said Harvey B. Hurd was the person who purchased the goods mentioned in the plaintiffs bill and do you not know that the person who purchased the said goods was E. B. Hurd.?

Answer to the Third Corp - Interrogatory - I know nothing further than what I have stated in my answer to the Fourth direct Interrogatory except that the plaintiffs would not sell goods at that time to E. B. Hurd or trust him with goods. That they declined to sell him goods but stated that they sold to H. B. Hurd and not to E. B. Hurd.

Fourth Corp - Interrogatory - State what items if any you know were purchased, if any was purchased by said Hurd, what was the value of each article and when were the same purchased.?

Answer to the Fourth Corp Interrogatory - The items purchased were Buttons and general Tailor's Trimmings, the value of the articles in the aggregate was \$134.46 the value of each article was specified in the Bill rendered at the time. The same were purchased about October 3. 1856

Fifth Corp - Interrogatory - State whether the Bills here attached marked "C" & "B" were not made out in the store of the plaintiffs or by some one in their employ, and whether these are not

the Bills sent for said goods.².

^X Answer to the Fifth Cross-Interrogatory - I know nothing about the Bills A. & B. annexed to cross-Interrogatories, except that they were not made out or sent for the goods of which I have heretofore spoken as having been sold in October 1856.

Fifth Cross-Interrogatory - Do not these Bills form a part of the bills sued upon in this suit. State whether these form any part of the goods which you swear were purchased in the name of said defendant.

Answer to the Sixth Cross-Interrogatory - These bills do not form a part of the bill sued upon in this suit; they do not form part of the goods, which I swear were sold to the defendant.

Seventh Cross-Interrogatory - If you state that any part of the goods were purchased by E. B. Hurd, ^{as the agent of H. B. Hurd} the defendant, state how you know he was such agent whether his authority was in writing and in whose hands was it then?

Answer to the Seventh Cross-Interrogatory - I know E. B. Hurd was agent of H. B. Hurd because he was reputed to be, and bought the goods in H. B. Hurd's name, and bought goods

of others as such agent. -

Eighth Corp-Interrogatory. - Do you know in whose hand such writing is?

Answer to the Eighth Corp-Interrogatory. - I know nothing on the subject.

Ninth Corp-Interrogatory. - Did you hear any conversation between the said E. B. Hurd and the plaintiff at the time the last bills of goods were purchased. If so, state all of such conversation except such as refers to the contents of the writing from H. B. Hurd to E. B. Hurd clothing him with authority to purchase goods in the name of H. B. Hurd?

Answer to the Ninth Corp-Interrogatory. - I heard no conversation between E. B. Hurd and the plaintiff.

Last Corp-Interrogatory - State whether all the bills of goods were not made to E. B. Hurd and whether they were not all sold to them instead of H. B. Hurd.

Answer to last Corp-Interrogatory. - No.

James Doyle.

(For Exhibits attached to deposition of James Doyle. See last page of this Record.)

W. H. M. Ball
ccw

Part of one the
with a duplicate
they are
in the
100 copies.

Interrogatories propounded to the said Gustavus Michels, a witness produced and sworn aforesaid, on the part of the said Plaintiffs, and his answers thereto as follows,

First Interrogatory - What is your name, age and occupation and where do you now reside?

Answer to First Interrogatory - My name is Gustavus Michels; my age Twenty Four, 'occupation Park-keeper.' I now reside at No. 357 Broome Street, New York.

Second Interrogatory - Where did you reside and what was your occupation during the month of September 1855 -

Answer to the Second Interrogatory - I resided in the Month of September 1855 at 117 Hudson Street, my occupation then was Park Keeper for Hill & Cook at 399 Broadway, New-York.

Third Interrogatory - Do you know the parties plaintiffs and defendants mentioned in the above entitled cause, or either and which of them, and how long have you known them, or any either and which of them?

Answer to the Third Interrogatory - I know the plaintiffs and all of them, and have known them several years. I do not know Harvey

W. B. Hund personally.

Fourth Interrogatory. - In answer to the last Interrogatory you state that you know the parties plaintiffs and defendant above mentioned. State whether you know of any and what business transactions between them. State the same fully and particularly relating thereto or connected therewith?

Answer to the Fourth Interrogatory. - I know of no business transactions between ~~these~~ plaintiffs and defendant, except on September 14, 1855, when the plaintiffs sold and delivered to the defendant goods of the value and amount of One Hundred and Sixty six dollars and sixty eight cents, and on the 19th of September 1855, when the plaintiffs sold and delivered to ~~the defendant~~ ^{him} goods of the value and amount of ~~one hundred and~~ \$3.75. Total \$180.43. The goods were entered in Plaintiffs Books as goods sold to W. B. Hund; I entered them; the goods were sent to Van Wageningen Yeoman's Co, 37 and 39 Murray Street, addressed to W. B. Hund Chicago, to be forwarded, they were sent thus by the defendant's direction.

Last Interrogatory. - Do you know of any

other matters or things touching the matters in question in this cause which tend to the benefit or advantage of said plaintiffs; If you set forth the same and all the circumstances and particulars thereof fully and at large according to the best of your knowledge, remembrance and belief - as if you had been thereto particularly interrogated; -

Answer to the last interrogatory. - I do not.

Gustavus Michels.

Cross-Interrogatories, and answers thereto by the witness Gustavus Michels on the part of the plaintiffs. -

First Cross-Interrogatory - If you state that you know of any business transactions between the plaintiffs and defendant and that the defendant bought any goods of the plaintiffs, State whether any payment has been made upon the goods purchased by said defendant and if so how much has been paid?

Answer to the first Cross-Interrogatory. I know of no payments.

Second Cross-Interrogatory - Have you ever heard the plaintiffs or any one of them say or admit whether any payment was made and

if so how much?

Answer to the second Cross Interrogatory. I have not.

Third Cross Interrogatory. - Do you know that the said Harvey W. Hurd, was the person who purchased the goods mentioned in the plaintiff's bill and do you not know that the person who purchased the said goods was E. B. Hurd?

Answer to the third Cross-Interrogatory. - The person who purchased the goods was E. B. Hurd, but he purchased them in the name of and for H. W. Hurd.

Fourth Cross-Interrogatory. - State what items if any were purchased by said Hurd, what was the value of each article and when was the same purchased?

Answer to the fourth Cross-Interrogatory. - I can only state generally that the articles were Tailor's trimmings, the value I have already stated in my answer to a Direct Interrogatory. I am now with Till and Co -

Fifth Cross-Interrogatory. - State whether the bills hereto attached, marked "A" and "B" were not made out in the store of the plaintiff, or by some one in their employ, and whether

these are not the bills sent for said goods.¹

Answer to the Fifth Cross-Interrogatory - I don't know that the bills, Exhibits "A," and "B," were made out in the store of the plaintiffs or by any one in their employ. They are not the bills sent for the goods of which I have testified. -

Sixth Cross-Interrogatory - Do not these bills form a part of the bill sued upon in this suit, State whether these form any part of the goods, which you swear were purchased in the name of said defendant.²

Answer to the Sixth Cross-Interrogatory - I cannot say, I don't know what bills are sued on in this suit; these bills do not form any part of the goods which I swear were purchased in the name of the defendant. -

Seventh Cross-Interrogatory - If you state that any part of the goods were purchased by E. B. Hurd as the agent of H. B. Hurd the defendant, state how you know he was such agent, whether his authority was in writing and in whose hands was it then.²

Answer to the Seventh Cross-Interrogatory - I don't know that E. B. Hurd was the agent of H. B. Hurd except by common repute and that he assumed to be. -

^{8.} Eighth Corp-Interrogatory. — Do you know in whose hands such writing is?

Answer to the Eighth Corp-Interrogatory. — I know nothing about it.

Ninth Corp-Interrogatory. — Did you hear any conversation between the said E. B. Hurd and the said Plaintiff at the time the last bills of goods were purchased? If so, state all of such conversation, except such as refers to the contents of the writing from H. B. Hurd to E. B. Hurd, clothing him with authority to purchase goods in the name of H. B. Hurd.

Answer to the ninth Corp-Interrogatory. — I recollect none.

Tenth Corp-Interrogatory. — State whether all the bills of goods were not made to E. B. Hurd, and whether they were not all sold to him instead of H. B. Hurd.

Answer to the tenth Corp-Interrogatory. — I never knew or heard of any bills or sales being made to E. B. Hurd, except those annexed to the Corp-Interrogatories; all others were made to H. B. Hurd; I never knew of those specified in the Exhibits annexed to the Corp. Interrogatories except by seeing those Exhibits.

Guillaume Michèle,

Henry T. Nelson testified on direct examination as follows - He held a claim against Hurd, the Defendant, in favor of Charles Duncomb of N.Y., I saw Hurd about it - The first conversation was in Ottawa in spring of 1857 - Hurd then stated he was not liable on that claim - Plaintiffs Atty. then asked witness, if Hurd then said anything further, at that time, if yes, what? The defendant objected to Plaintiffs giving testimony as to the contents of letter of credit, which objection the Court overruled, and the defendant excepted excepted to the overruling of said objection, and the witness was permitted by the Court to testify as follows - "Afterwards in the Circuit Court room I had another conversation, in which I told Hurd I had a letter from Duncomb in which they stated that E. B. Hurd had purchased goods by virtue of a power of Attorney or letter of credit given by defendant E. B. Hurd. Defendant replied, "No, they were not bought under it, or the purchase was not authorized by it." Hurd's language was such as to make me ask the question what there was about the Power of Attorney that was peculiar - I immediately asked him if it was addressed to any particular person - This question was asked before Hurd could answer the first - he replied "No, or else said, "it was a mere

open letter of credit to Merchants addressed "to whom it may concern," or some such way as that - he said there was an understanding between Edward & him in relation to that there were persons who would trust him on his own credit, and it was understood that with such and such persons he was not to use the letter of credit - that the Luncombs knew Edward in Connecticut and would trust him - But the Luncombs write me that Edward bought those goods under that letter - Hurd replied "Edward will swear that he did not use the same." Hurd said the Power of Atty. was in N.Y. City either with P. T. Rodgers or Hatch and Barney.

Cross Examination

Hurd's language was such as to make me ask the question what there was peculiar about the power of Attorney - do not recollect what his language was - I was a witness in the Luncomb suit - the Plaintiff was defeated - I do not recollect whether I said that Hurd said there was something peculiar about the power of Attorney - He said something about it that caused me to ask him what there was peculiar about it - I did not give him time to answer me that question - I followed it up with the other so quick that he did not

have time to answer - I do not recollect that I promised not to testify about the conversations I had with Hurd about the claim I held - We were standing inside the bar in the Court room - at that time the conversation was short -

Edward L. Ives testified that he knew that he knew that the \$1800 Notes given by Underhill and Bradford and as passed by E. B. Hurd to A. H. Pitworth & Co. and that Harvey B. Hurd told him (Ives) that his brother (E. B. Hurd) had no right to give it to Pitworth that it was his (H. B. Hurd's) Note.

Cross Examination. -

I was called for Edward B. Hurd - He had a Store on Clark St. under the Sherman House - E. B. Hurd hired me - saw H. B. Hurd come to the store occasionally - he came in as any brother would - Never saw him do anything there - Bills were made out in the Name of E. B. Hurd - he had printed Bill Heads in that name - Never heard anything said about his doing business for H. B. Hurd - E. B. Hurd was the name over the door - he paid me my wages - E. B. Hurd used to consult his Brother, sometimes as a lawyer, H. B. Hurd was practicing law

at that time in Chicago on opposite side of the street - Heard H. B. Hurd say that he held some of the Notes given by Underhill and Bradford on the purchase of the stock in E. B. Hurd's store - Underhill and Bradford bought out E. B. Hurd - He said he had lost by him - that the Notes were turned out to him to secure him for goods he had become liable for - E. B. Hurd bought goods in Chicago in his own name - don't know that H. B. Hurd took any part in the sale to Underhill and Bradford - Was then there - E. B. Hurd went into partnership after that, one of the Underhill and Bradford Notes was used by us - E. B. Hurd turned it out to A. D. Titeworth & Co. collateral for his endorsing the Notes I gave for goods we purchased - Hurd paid some of the Money he got from Underhill & B. to one of his creditors here, Philips & Co.

George O. Bradford testified - We bought out E. B. Hurd's Stock of goods - he was doing business in the store we now occupy under the Sherman House - we negotiated for the goods with E. B. Hurd - when we were closing up we wanted longer time on the last Note, and E. B. Hurd said he would consult

his Brother A. B. Hurd before he could answer -
 we paid some of the Notes to A. B. Hurd -
 Cant say how many - A. B. Hurd came
 into the store after the Notes were paid and
 complimented us on our promptness in paying
 these Notes - we found goods in the store
 bought by us corresponding to the goods
 on the Bill of Till and Cook appended to this
 declaration - I know them to be from Till
 & Cook from the Mark which was on them -
 we buy goods of Till & Cook.

Crop Examination.

E. B. Hurd's Name was over the store -
 A. B. Hurd took no part in the sale of
 the goods to us except as above stated that
 I remember - he may have come into the
 store while the trade was progressing - we
 paid E. B. Hurd \$500.00 - 2 \$500 Notes and
 1 \$1000 Note and 2 \$1800 Notes - I dont know
 what became of the cash - one of the \$500
 Notes came back to us through Phillips & Co.,
 creditors of E. B. Hurd and one \$1800,
 Note through A. D. Fittsworth & Co. and the
 balance of the Notes through A. B. Hurd
 dont know how A. B. Hurd came by them -
 E. B. Hurd was payee in the Notes, she
 endorsed them -

Samuel E. Underhill testified - am one of the
 firm of Underhill and Bradford - we bought
 out the Store No. 64 Clark St. under the
 Sherman House - in closing up, when we
 gave E. B. Hurd the Notes and Cash he signed
 a receipt in full - the receipt was signed
 "E. B. Hurd Agent" - the receipt was here pro-
 duced and is appended about the time we
 were taking account of the stock in the Store
 H. B. Hurd the defendant came into the
 Store several times, might have been three
 times or more or less, and when the stock
 was found to be more than it was supposed
 to be we told E. B. Hurd we must have longer
 time on the last Note - he said "I will ask H.
 B. Hurd about it" - he went out, came back
 and said his Brother was willing - all the Notes
 given by us on account of the purchase,
 except the one Pitworth and Co. had, and
 the one from Phillips came back to us through
 H. B. Hurd - we paid the Notes at Benton's
 H. B. Hurd came in several times during
 the time we were taking account of stock
 and after we were through in regard to the
 last note and agreed to extend it and did

colored it, and once or twice during talking of stock asked how we were getting along. When the last Note was paid he came in and thanked me for the prompt manner in which the business had been done.

Cross Examined.

I had been living in Chicago some time before he bought out Hurd - Merrill had ~~not~~ been doing business in Chicago for some time - He had charge of the business - He did not state who he was agent for - Nothing was said about it - The agreement for the purchase of the goods was in writing and signed by us and E. B. Hurd - receipt is only thing that says agent upon it - Sign over the door was E. B. Hurd - never saw H. B. Hurd there until we were taking account of stock - H. B. Hurd took no part in the sale except he was in there several times when we were taking account of stock and as stated in regard to the last note - The above was all the testimony given on the trial of said cause - H

The testimony being closed after agreement of counsel the Court took the case under advisement, stating to the counsel that he was of opinion that the evidence did not show any authority in the said E. B. Hurd to purchase

goods in the name of said Defendant -

And afterwards, to wit, on the 26th day of November A. D. 1859, being one of the days of the November Term 1859 of said Court, the said E. G. Aray Attorney for said Plaintiffs appearing and the said defendant not appearing, no notice of the intention of Court to dispose of said cause having been given to said defendant, the said Court (San A. Higgins), having probably forgotten the testimony given on the trial of the said cause as aforesaid allowed said Plaintiffs Attorney to recall said Henry T. Helms who was examined by said Judge and by said Plaintiffs Attorney, in which examination he testified that on the former trial he had testified "that he had a conversation with said St. B. Hurd ^{his wife's conversation with said St. B. Hurd} stated that he had given his Brother E. B. Hurd a ^{power of} Attorney to buy goods in his (St. B. Hurd's) name; "that he (Witness) had other claims against St. B. Hurd for goods purchased in New York and that said Hurd had paid them without objection" and said George C. Bradford was also recalled and examined by said Court and said Plaintiffs Attorney and he stated "that on the former trial of said cause

he has testified that at the time they (Undersigned & B.) bought the stock of goods, they were goods of the kind mentioned in the Bill attached to the declaration in said cause, and that said goods so found there had on them the private mark of the Plaintiff's House. Thereupon the said Court found for said Plaintiffs in the sum of ^{\$180.43} (Amount of Judgment), and the said Court thereupon caused a motion for a New trial to be entered for the said defendant - and afterwards, to wit. on the same day the said Court overruled said Motion and Judgment was entered in favor of said Plaintiffs for the sum of \$ To which overruling of said motion and the rendering of the said Judgment, the Court returned exceptions for said defendant and an appeal to the Supreme Court in favor of said defendant and Twenty days given to said defendant to file a Bill of Exceptions and a Bond in the sum of Three Hundred Dollars with security to be approved by the Court;

And afterwards to wit on the 6th day of December 1857 the said Defendant asked leave of the said Court to file a Motion to set aside the said

Judgment and order overruling the Motion
 for a new trial entered in the said cause
 which was denied on the ground that in the
 opinion of the Court the said November Term
 had closed on the 26th day of November
 as to all matters except the trial of Henry
 Jumperetz, and that the Court had not power
 over its Records to set aside said judgment or
 order the overruling of the motion for a new
 trial - to which ruling of the Court and
 the denial to allow said motion the said de-
 fendant excepted - The plaintiff then and
 there offered a new trial upon the consid-
 eration that defendant be required to pay all
 the costs including twenty dollars paid by the
 plaintiffs for taking the depositions on file and
 used in this trial - Which offer the defendant
 refused but offered to take a new trial and
 pay all the taxable costs in the suit whether
 for depositions or otherwise. - That the cause of
 the people of the State of Illinois against
 Henry Jumperetz was commenced in said
 Court before Grant Goodrich one of the
 Judges of said Court on the 21st day of November
 and continued from day to day, Sundays
 excepted till the 12th day of December
 1859 and was continuing at the time said
 defendant applied for leave to file said

Motion, and at the time of the denial of the same and the exceptions aforesaid, and that no order of adjournment of said term had at the time of offering the said motion been made by said Court.

That by agreement of Council the time to file a Bill of exceptions in this cause and Bond was extended 20 days,

That by agreement of Council the time to file a bill of exceptions and bond was extended to 18th day of February A.D. 1860

Therefore the said Judge on the prayer of the defendant doth sign and seal these exceptions to the end that this bill may become a part of the record in this cause, Feb. 15th 1860,

Van H. Higgins
Judge

And afterwards to wit on the sixteenth day of February in the year of our Lord Eighteen hundred and Sixty came H. B. Ward and filed in the Office of the Clerk of the Superior Court Chicago his certain appeal bond in words and figures as follows to wit:

Know all Men by these Presents - that we Harvey B. Hurd principal and E. Franklin Pomeroy of the County of Cook and State of Illinois are held and firmly bound unto Charles G. Till and Samuel A. Cook in the penal sum of Three Hundred (\$300.) 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 finally, by these presents.

Witness our hands and seals, this Sixteenth day of February A. D. 1860.

The condition of the above obligation is such, that whereas, the said Charles G. Till and Samuel A. Cook did, on the Twenty Sixth day of November A. D. 1859 in the Superior Court of Chicago in and for the County of Cook, and State aforesaid, and of the November Term thereof, A. D. 1859 recover a judgment against the above bounden Harvey B. Hurd for the sum of One Hundred and Eighty dollars and Forty three cents, besides costs of suit, from which said judgment of the said Superior Court of Chicago the said Harvey B. Hurd has prayed for and obtained an appeal, ^{to} the Supreme Court of said State.

Now therefore, if the said Harvey B. Hurd

shall duly prosecute his said appeal with effect, and moreover, pay the amount of the judgment, costs, interest and damages rendered, and to be rendered against him in case the said judgment shall be affirmed in said Supreme Court. Then the above obligation to be void, otherwise to remain in full force and virtue

A. B. Hurd

seal

E. F. Tomney

seal

Approved Feb. 16th.

1860

Saml H Higgins

Judge.

Exhibit C. J. Croft Interrogations to the deposition of James Doyle, (McKinnell C.M.)

New York June 21st 1855
 Mr E. B. Herd

Bought of Dick Hook

299 Broadway, up stairs, a few doors above the Irving House,

7 Croft S. B. Lasting	8/-	7.00
1 " Col Pocket	5/-	.63
1 " Bk " "	3/-	.37
4 Balls col vest Cord	5	2.50
		<u>\$10.50</u>

Exhibit "A" to Croft Interrogations to the deposition of James Doyle,

New York June 19th 1855
 Mr E. B. Herd

Bought of Tice Hook

1/2 " Sopr Bk Silk	8	4.00
1 1/2 " " " "	7.50	11.25
2 Bunches col "	8/-	2.00
3. Ps. col French Silk Brains	12/-	4.50
1 " Bk " " "	10/-	1.25
2 Sets Nancy Silk Coat Buttons	10/-	2.50
2 " Rich mounted Gold Stone Vert	3.50	7.00

44

57853

6 Set Rich Mounted Apartments Call 22/- 14.50

2 " " Nancy " 12/- 3.00

3 " " " " 12/- 4.50

5 Hair fine Girl Steam Buttons 12/- 7.50

2 " Good Stone " 12/- 3.00

3 " White & Ben " 12/- 4.50

7004

1 " Blood Stone " 12/- 1.50

7008

1 " Mounted Girl 12/- 1.50

1 " Set Studs 8/- 1.00

1/2 Grof most Vert Buttons 10/- 1.88

77.38

Deduct 2 Bunches Silk 8/- 2.00

75.38

44

57853

6	Sets Rich Mounted <i>Aspidochelys</i> Coll.	22/-	14.50
2	" " <i>Amey</i>	12/-	3.00
3	" " " "	12/-	4.50
5	Fair fine <i>Geit</i> Steam Buttons	12/-	7.50
2	" <i>Good Stone</i> "	12/-	3.00
3	" <i>White & Ben</i> "	12/-	4.50
1	" <i>Good Stone</i> "	12/-	1.50
1	" <i>Mounted Geit</i>	12/-	1.50
1	" <i>Set Studs</i>	8/-	1.00
1 1/2	<i>Good most Vert Buttons</i>	10/-	1.88

77.38

deduct 2 Bunches *Seik* 8/- 2.00

75.38

44

57853

6	Sett Rich Mounted Apartments Call	22/-	14.50
2	" " Nancy	12/-	3.00
3	" " " "	12/-	4.50
5	Pair fine Girl Steam Buttons	12/-	7.50
2	" Good Stone	12/-	3.00
3	" White & Ben	12/-	4.50
1	" Blood Stone	12/-	1.50
1	" Mounted Girl	12/-	1.50
1	" Set Studs	8/-	1.00
1 1/2	Prof most Vert Buttons	10/-	1.88

77.38

deduct 2 Bunches Silk 8/- 2.00

75.38

45-

State of Illinois
County of Cook & S.S.

I. Walter Kimball Clerk of the
Superior Court of Chicago. in and for said
County (formerly the Cook County Court of
Common Pleas.) do hereby Certify that the
 foregoing is a full, true, and complete transcript
of all the pleadings on file in my office and of
the proceedings and judgment entered of record
in said Court in the case wherein Charles G. Till
and Samuel A. Cook are plaintiffs and Harvey
B. Ward defendant.

In testimony whereof I hereunto
subscribe my name, and affix
the Seal of said Superior Court
of Chicago. at the City of Chicago
in said County this 6th day of April
AD 1860. Walter Kimball Clerk



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for said plaintiffs

Seventh - The court erred in overruling the said motion for a new trial

Eighth - The court erred in refusing to allow the said defendant to enter his said motion to set aside the order overruling said motion for a new trial or

Ninth - Thus ^{court made} ~~an~~ other manifest error in the wording in said cases

H B Hunt

Pro per.

State of Illinois } Third Term Division.
Supreme Court } April Term AD 1860

Harvey B. Hunt } Appeal

vs

Charles F. Lill. et al.

} And now comes the
Appellées by P. H. Asay &
W. B. Bushnell their Attorneys and
say that there is no error nor
manner of error in said record
or proceedings. Wherefore they pray
that the judgment of the Court
below may in all things may
be affirmed &c

E. H. Asay
Bushnell & Asay
for Appellées

Supreme Court

Harvey B. Thurl

vs

Lill et al

finder in Error

~~227~~ 55.
Till & Book

^{pt.}
H. B. Hurd.

Record & Error

Filed April 18, 1860

L. L. Levent

Clerk

founder in error

Filed April 12, 1860

L. L. Levent

Clerk

\$5.00. Clerk -

\$8.00. pd by Hurd.

W. H. Hurd