

12546

No. _____

Supreme Court of Illinois

Clark, Imp.

vs.

McLowry.

United States of America
State of Illinois
Kane County J.S.
City of Aurora

Heas before the Honorable
Alexander Gibson the Judge
of the Court of Common Pleas of the City
of Aurora, at a regular term of the Court
of Common Pleas of the City of Aurora, begun
and held at the Court Room at the City
of Aurora in said County on the fourteenth
day of December in the year of our Lord
one thousand eight hundred and
fifty seven

Present the Honorable Alexander Gibson Judge
" B. F. Parks States Attorney
" George E. Corwin Sheriff
Attest
James G. Parr Clerk

Be it remembered that on the 3rd
day of December A.D. 1857, there was filed
in the office of the Clerk of the Court
of Common Pleas of the City of Aurora
aforesaid a certain precept for summons
which is in the words and figures
following to wit; —

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Robert M. Linn
 vs
 James K. Stephenson
 James Clark
 The Court of Common Pleas
 of the City of Aurora
 Dec Term 1837

The Clerk will please issue a summons in
 the above Cause returnable at the next
 Term of Court — a sum of — Damages
 Six Hundred Dollars
 & Much oblige

Aurora Dec 2 1837

A B Fuller
 Atty for Pless

And afterwards Court on the same day
 last aforesaid there issued out of the office
 of the Clerk of said Court a certain
 Writ of Summons directed to
 the Sheriff of Kane County which
 said writ is in the words & figures follow-
 ing to wit;

State of Illinois
 County of Kane
 City of Aurora

The people of the state of Illinois to the
 Sheriff of said County Greeting: We command
 you that you summon James K. Stephenson
 and James Clark if they shall be found

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in your county, personally to appear before the
court of Common Pleas of the city of
Aurora, in said county, on the first day
of the next term thereof, to be holden at the
court House, in the city of Aurora, in said
county, on the second Monday of December
1857, to answer unto Robert M. Lowry
in plea of assumpsit to the damage of the
said plaintiff as he says in the sum of six
hundred dollars.

And have you then and there this writ
with an endorsement thereon, in what
manner you shall have executed the
same

Witness. James C Barr clerk of
our said court: and the seal thereof,
at Aurora aforesaid, this 3^d day
of December A.D. 1857

J C Barr clerk

And on the back of said writ appears an
endorsement which is the words and figures
following to wit:

Filed December 7th 1857

J C Barr clerk

Personally served by reading to the within
named defendants Dec 9th 1857

Geo C Corwin sheriff
By C Pinney Deft

4.

2 services

\$1.00

2 No Trav

.10

Return

.10

\$1.20

And afterwards Dorrit on the same day & year last aforesaid December 3^d 1837, was filed in the office of the Clerk of said Court a certain declaration which is in the words & figures following to wit;

State of Illinois (ss. December Term 1837)
 Hancock County The Court of Common
 City of Hannibal Pleas of the City of Hannibal

Robert M. Scurry Plaintiff in this Suit
 by Fuller his attorney Complaines of
 James W. Stephenson & James Clark
 Defendants herein who have been turned
 &c of a plea of Trespass on the Case
 upon promises; For that whereas the
 said Defendants unto said Dorrit; on the
 12th day of February in the year of our Lord
 one thousand Eight hundred and fifty Seven

5 at Aurora Inn at the City of Aurora the County
of Kane and State of Illinois made their
~~Contracting~~ Note in writing commonly
called a promissory Note, bearing date
a certain day and year therein mentioned to wit:
the day and year last aforesaid, and then and there
delivered the said note, to Robert M Lowry
Plaintiff under the name and style of R M Lowry.
fifty four days after date four hundred and sixty
one dollars and eighty one hundredths of a dollar with
interest at ten percent, which note is now due and unpaid.
By Reason whereof, and by force of the statute in such
case made and provided, the said defendants became
liable to pay to the said plaintiff the ^{said} sum of
money in the said note specified, according to the
tenor and effect of the said note; and being so liable,
the said defendants in consideration thereof, afterwards
to wit: on the same day and year, and at the place
aforesaid, undertook, and then and there faithfully
promised the said plaintiff well and truly to pay unto
the said plaintiff the said sum of money in the said
note specified, according to the tenor and effect of the
said note. And whereas, also, the said defendants
afterwards, to wit: on the second day of December A.D.
1857 at Aurora to wit: at the City of Aurora County
and state aforesaid were indebted to the said plaintiff in
the sum of six hundred dollars for goods then sold by the
plaintiff to the said defendants at their request; and

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and in the sum of six hundred dollars for money then paid by the plaintiff for the use of the said defendants at their request;

in the sum of six hundred dollars for work then done and materials for the same, provided by the plaintiff for the said defendants at their request; and in the sum of six hundred dollars, for money then lent by the plaintiff to the said defendants at their request; # and in the sum of six hundred dollars for money then received by the defendants for the use of the plaintiff; and in the sum of six hundred dollars for interest then due from said defendants to said plaintiff for the loan and forbearance of larger sums of money before then by the said plaintiff loaned and advanced to the said defendants at their request; and in the sum of six hundred dollars for money found to be due from the said defendants to the said plaintiff upon an account then and there stated between them. And in consideration of said indebtedness the defendants then and there promised the plaintiff to pay him the several moneys aforesaid upon request. Nevertheless the said defendants (although often requested, so to wit, on the day when the said note became due and payable, according to the tenor and effect thereof, and oftentimes since, to wit, at the place aforesaid) have not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff but to pay the same or any part thereof, to the said plaintiff the said defendants have hitherto altogether refused, and still do refuse, to the damage of the said plaintiff of six hundred dollars, and therefore the said plaintiff bring suit &c

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A. B. Fuller

~~Attorney~~ atty

Copy of note and account

\$461.83

Aurora February 12th 1857

Fifty four days after date for value received we promise to pay to R. M. Lowry or bearer Four Hundred & sixty one ¹³/₁₀₀ ^{dts} dollars with interest at ten percent

J. R. Stephenson
James Clark

also

For Money lent

\$600.00

" " had received

" 600.00

Goods sold & delivered

" 600.00

Balance due on settlement

" 600.00

And afterwards to wit on the 18th day of December A. D. 1857 there was filed in the office of the clerk of the court of common pleas aforesaid a certain pleas which are in the words and figures to wit

James Clark impleaded	}	Court of common
with James R. Stephenson		pleas of the city of
A to		Aurora December
Robert M. Lowry	}	Term A. D. 1857

And the said defendant James Clark by B. F. Parks his attorney comes and defendants the wrong and injury where se and saith that

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he did not undertake and promise in manner and
form as the said plaintiff hath avowed thereof
complained against him and of this he puts
himself upon the country &c

And the P^lff. doth
the like

B F Parks

Deft's Clarks atty

Fridly & Fuller

his attys

State of Illinois
Kankakee County

James Clark being duly
sworn on oath does depose and say that the above
plea of general issue signed by his attorney —
B F Parks is true in substance and in fact
and this affiant would farther state that
he once signed a note with James B Stephenson
payable to said plaintiff fifty four days after date
with interest at ten percent said note being date
about February 12th 1857 That said note so signed
was the individual note of James B Stephenson to
said Dowsy and had been signed some days by
said Stephenson, and was written "I promise to
pay," and this affiant signed said note thus written
as surety only and this affiant farther states, that
since he signed said note and without his
knowledge or consent the same has been altered
so as to read "we promise to pay," that said
alterations has been made on this affiant —

verily believes by said Lowry or at his
instance knowledge and request

Sworn & subscribed }
before me this 18th } James Clark
day of December 1857 }
J. G. Barr Clerk

And for a farther plea in this behalf the said
defendant Clark says Actio Non because he
says that the said promissary note in plaintiffs
declaration mentioned since the same was signed
by him has been altered for this to wit: That said
promissary note was written at the time said Clark
signed the same with said Stephenson "I promise
to pay, and without his knowledge or consent
the same has been altered so as to read "We promise
to pay, and he farther avers that the count on said
promissary note and said common counts are given
for one and the same cause of action and this he
is ready to verify wherefore he prays judgment &c.
B. F. Parks
Clark's atty

State of Illinois }

Wane County }

James Clark being duly
sworn on oath does depose and say that the
above plea marked "A." is true in substance and in
fact

Sworn & subscribed }
before me this 18th day }
of December A. D. 1857 }

J. G. Barr Clerk

James Clark

And for a further plea in this behalf the said defendant Clark says Actio Non because he says that he signed the said supposed promissory note in plaintiffs declaration without an consideration whatever in this to wit that on the to wit twelfth day of February A D 1857 at Aurora to wit at the City of Aurora. The said plaintiff loaned and advanced to the said Defendant James H Stephenson a large sum of money to wit four hundred dollars and the said Stephenson then and there gave to the said plaintiff his said promissory note as security for the payment of said money to loaned and advanced to wit the said supposed promissory note in plaintiffs declaration mentioned and this defendant avers that said promissory note so made was delivered to said plaintiff on the same day to wit the 12th day of February A D 1857. And afterwards to wit on the 26th day of February A D 1857 without any new consideration or other or different consideration the said defendant Clark signed said supposed promissory note in plaintiffs declaration mentioned and that the same afterwards was altered in a material part by said Plaintiff without the knowledge of this defendant and this defendant further avers that the said count on said promissory note and the common counts in plaintiffs declaration mentioned and for one and the same cause of actions and this

11 the said defendant is ready to verify wherefore he prays judgment &c

B F Parks
clarks atty

And for a further plea in this behalf the said defendant-Clark says Actio non, because he says that said supposed promissary note in Plaintiffs declaration mentioned was made and entered into without any good or valuable consideration whatever by this defendant and that said count on said note and the common counts are for one and the same cause of action and this the said defendant Clark is ready to verify Wherefore he prays judgment &c

B F Parks
Sgt Clarks atty

5 And for a further plea in this behalf the said defendant-Clark by Parks his attorney says Actio non because he says. That said promissary note in Plaintiffs declaration mentioned if any such note was made was given in Payment of the individual indebtedness of one James H. Stephenson to wit in payment of a large sum of money borrowed by said Stephenson of said Lowry to wit four hundred dollars. and afterwards to wit on the 20th day of February A.D. 1857 after said note had been

signed by said Stephenson and delivered to said Lowry
 at the special instance and request of said Stephenson
 and said Lowry the said defendant Clark signed
 said note as ~~security~~ security for said Stephenson and the
 said note was again delivered to said Lowry. And
 defendant avers that said Plaintiff well knew that
 this defendant was simply and only security thereon
 and said note was given for the individual benefit of
 said Stephenson. And defendant Clark farther avers
 that said Stephenson at the time the said supposed
 promissary note became due to wit on the 7th day
 of April A D 1857 and for a long space of time
 thereafter to wit three months thereafter the said James
 R Stephenson was perfectly able to pay said note
 and the same could have been collected of him said
 Stephenson by law. And this defendant farther
 avers that on the to wit 7th day of April A D 1857
 the said Plaintiff without the knowledge of this -
 defendant and against his wish for and in consideration
 of a note to him paid by said Stephenson of a large
 amount to wit one hundred dollars there and then
 extended the time of payment of said promissary
 for a long space of time to wit for four months
 after the same became due without the knowledge
 of the said defendant Clark. And this defendant
 farther avers that before the expiration of said
 extended time of payment the said Stephenson
 became utterly worthless so that no money could

be collected of him whatever by law and from
 thence hitherto has been and is utterly insolvent and
 worthless. Wherefore by means of said Plaintiff
 giving said extended time of payment on said note
 aforesaid. to said Stephenson, this said defendant
 has lost all chance of collecting the same of said
 Stephenson should a judgment be rendered
 thereon ^{against} this defendant - and that the said
 first count and common counts were for same
 cause of action ^{And this} the said defendant is ready to
 verify Wherefore he prays judgment &c

B F Parks
 Left Clerk Atty

And afterwards to wit on the same day there
 was filed with the Clerk of said court a certain
 demurrer ^{to pleas} which is in the words and figures
 following to wit -

Robert M Lowry	} The court of common Pleas of the city of Aurora Dec Term 1857
vs	
James R Stephenson	
James Clark	

And the said plaintiff as to the said pleas
 by the said defendant James Clark firstly.

secondly. thirdly. fourthly. & fifthly above pleaded by him says that he ought not to be barred from having and maintaining his aforesaid action for anything in said pleas alledged. Because he says that said pleas and each of them are not sufficient in law for him to reply unto. Wherefore he prays judgment &c

Fuller Atty for Diff

And for special cause says.
to 1st plea the affidavit attached forming part of said plea. the affiant after swearing that the plea of general issue is true, goes on to set out his defence under oath

2nd plea is informal, insufficient, not sufficient in law to be replied to, & that said plea is sworn to. does not aver that said alteration is a material alteration, or in any manner changes the liability of said makers

3^d plea is double, avers no consideration as to said Clark that he signed it as surety hence did not get the money but Stephenson did, also avers that said note was altered after signing, defective in not averring that neither defendants received no consideration other wise defective informal & insufficient. does not aver alteration is material the plea

is double. alleges failure of consideration.
signed by Clark on different day. the note is
altered. all averred said 4th plea

4th plea avers that S^{gt} Clark received no
consideration ^{being} action ~~joint~~ should aver that
neither of defendant^s received any consideration
otherwise defection informal insufficient. Does
not aver that neither of the defendants received
any consideration

5th plea is defective in not ~~only~~ averring that
that he S^{gt} Clark served a written notice on S^{eff} after
note became due for said P^{lff} to sue said note
per Statute that said plea is double informal
& insufficient.

And afterwards do wit on the 18th day of
December A.D. 1837 the same being one of the
days of the regular December Term A.D.
1837 of the Court of Common Pleas of the
City of Surra. The following among
other proceedings were had and entered
of record in said Court do wit;

Robert M. Lowry

Assumpit

James K. Stephens & James Clark

This day comes the Plaintiff
by Fuller & Widby his attorneys and files
this Demurrer to the second, third, fourth
and fifth pleas of Defendant Clark, and
his motion to strike out the affidavit
attached to the first plea, in which
Demurrer said Defendant joins, and the
Court being fully advised sustains said
Demurrer to said Pleas, and the Defend-
-ant Clark refusing to answer further

This considered by the Court that
the Plaintiff be not barred from
having or maintaining his aforesaid
action there against said Defendant
by reason of anything in said Pleas
contained. And that the Plaintiff
have and recover of said Defendant
James Clark his costs by him
about this Demurrer Expended and
have Execution therefor, and it is
further ordered that all that part
of the affidavit except such as relates
to the truth of the Plea be stricken
out.

And afterwards to wit on the
19th day of December AD 1837 the

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same still being one of the days
of the said December Term of said
Court aforesaid the following among
other proceedings were had and
entered of record in said Court
to wit;

Robert M. Lowry }
as } Assumpsit
Jaynes K. Stephenson }
& James Clark }

This day comes the
said Plaintiff by Fuller & Fildes his attorneys
and due personal process of summons in
this cause being had on the Defendant James
K. Stephenson, and he having failed to comply
with the rule heretofore entered for plead-
ing herein but wholly makes default,
on motion of Plaintiff it is ordered that
the default of said Defendant Stephenson
be taken and entered of record and
that Plaintiff have judgment by default
against him for want of a plea, and
issue being joined herein as to said Defendant
James Clark, on motion of Plaintiff it is
ordered that a jury come, whereupon come
a jury of good and lawful men to wit;

Harvey C. Brown George W. Fiddell Charles L. Hoyt
Henry V. Bruce Elias D. Terry Richard Dewey

S. Hitchcock Charles Taylor John Dow
 Charles Johnson George D. McK P. Street.
 who being severally tried elected and sworn
 to try the issue joined as to defendant James
 Clark, and assess the damages against the
 defendant James K. Stephenson and a true
 verdict render according to the evidence then
 come, and after hearing the evidence
 adduced, instructions of the Court and
 arguments of counsel, retire in charge
 of a sworn officer of this Court to consider
 of their verdict, and afterwards come
 into Court, and for a verdict upon their
 oaths say. That the jury find the issue
 joined for the Plaintiff, and assess
 the damages sustained by Plaintiff
 herein at Five hundred and one dollars
 and Twenty cents, and thereupon comes
 the defendant Clark and enters his
 motion for a new trial herein

And afterwards To wit; on the same
 day, the following among other proceedings
 were had and entered of record in
 said Court To wit;

Robert M. Lowry
 vs
 James K. Stephenson
 & James Clark } Assumpsit

This day this cause again coming on to be heard upon Defendant Clark's motion for a new trial herein, and the Court being fully advised overrules said motion.

Therefore it is considered by the Court that Plaintiff have and recover of the Defendants his damages of Five Hundred and one dollars and twenty cents in form as heretofore specified, and also his costs and charges by him about this suit expended and have Execution therefor.

To which decision of the Court overruling said motion and rendering judgment herein Defendant Clark by his Counsel Excepts, and prays an appeal in this cause to the Supreme Court of the State of Illinois. And it is ordered by the Court that the appeal be allowed to said Defendant giving Bond in the sum of Seven Hundred Dollars to be approved by the Clerk of this Court

And afterwards Court on the 22nd day of December A.D. 1837. the same still being one of the days of said Term of said Court the following among other proceedings were had and entered of Record in said Court to wit;

Robert M. Gorry (Assumpsit)
 vs
 August K. Stephens &
 James Clark

This day comes the Defendant Clark by Parks his attorney and enters his motion in arrest of Judgment in this cause and the Court being fully advised overrules said motion. To which decision said Defendant excepts and on motion of said Defendant the rule for filing Bond on appeal is extended ten days. and Defendant offered John Clark as Security which is approved by the Court

and afterwards Court on the 23rd day of

December A.D. 1887 the same still being one of the days of said Court said Defendant Clark filed with the Clerk of said Court his Plea of Exception duly signed by the Judge thereof which is in the words & figures following To wit;

Robert M. Lorry	} Court of Common Pleas of the City of Kansas
vs	
James Clark impleaded	} December Term A.D. 1887
with James H. Stephenson	

Be it remembered that upon the trial of the above entitled cause to prove the issue on his part the Plaintiff offered Edward R. Allen who being duly sworn on oath does depose and say. That he is well acquainted with the signature of James Clark. That the name written to the note is the true and genuine signature of James Clark as he believes. he has frequently seen him write & do business with him & has no doubt whatever that the signature is James Clark.

N. J. Smith Stated that he knows the signature of James Clark and believes that the signature attached to said note is the signature of James Clark have no doubt of whatever

On Cross Examination

The Defendant's counsel put the following question
Look at the note now shown you and state whether

or not there are any alterations, erasures
 or interlineations in said Note if yea. in
 what respect? Objected to by Plaintiffs
 counsel and objection sustained by
 Court and Defendant Clark excepts—

State whether or not the Note now shown to you has been altered and if altered state to the best of your judgment when that alteration took place? Objected to by Plaintiff - objection sustained by Court and defendant Clark excepts. Smith states that he was an attorney had some knowledge and experience in writing

James Pass the Clerk of this Court was called & sworn says he knows Clark's handwriting. The signature has the appearance of being in his handwriting.

The body of the Note is in my handwriting. I wrote the Note before it was signed.

I wrote the Note. I wrote the Note first I promise. I changed the "I" to "we". The I & the we and all the Note I wrote is in my handwriting. all done before Stephenson or Clark signed. I have never touched a pen to the Note since it was signed by said Clark & Stephenson.

S. H. Brown says that he knows Clark's handwriting. Thinks the signature to the Note is in Clark's ^{handwriting} & have no doubt about it whatever. which was all the evidence on the part of Plaintiff as it regards signatures

25 The Plaintiff then offered in Evidence the
Note to the Jury
"461..83 Aurora February 12th 1887

Fifty four days after date for value received
we promise to pay to R M Soursy or bearer Four
Hundred & sixty one $\frac{83}{100}$ ^{ths} dollars with interest
at Ten per cent

J. K. Stephenson
James Clark "

to the reading of which note to the jury the defend-
ant then and there objected - The Court
overruled the objection and permitted the
same to be received to the overruling
of which motion the defendant then and
there Excepted

Copy of Note

"461..83 Aurora February 12th 1887

Fifty four days after date for value received
we promise to pay to R M Soursy or bearer Four
Hundred & sixty one $\frac{83}{100}$ ^{ths} dollars with interest
at Ten per cent

J. K. Stephenson
James Clark "

which was all the Evidence, and the Plaintiff
here rested his case

The Defendant then offered James G.
Parr who said the note seems to have
been altered. It was written first I promise

To pay them changed to we promise to pay
 I wrote it I have no recollection about
 the alteration. I presume it was all done
 at one time. The note was not signed
 in my presence. All I recollect about
 it was Soursy wanted me to write a note
 that Clark and Stephenson were going to
 sign it. The note was not signed in my
 presence. The whole body of the note is
 in my handwriting the "I" and "we" are
 both in my handwriting. I never touched
 a pen to the note after it was signed by
 Clark & Stephenson to the best of my recollection

The Defendant then offered James N.
 Stephenson ^{one of the defendants against whom}
 a default ^{had been taken}. The Plaintiff objected and the
 Court refused to let him testify. and the
 Defendant then and then Excepted to
 such ruling of the Court

N. J. Smith was then recalled by the
 Defendant. Witness said note had appear-
 -ance of being altered from an I to a we
 but should think it was all done by
 one person, same pen ink and at the same time
 should think it was altered at the time the body
 of the note was written & before signing

He also stated that on several different days last winter Gury was in his office talking with Stephenson and wanting to get Clark's name upon note. That he never saw the note in question till today — On Cross Examination he said that the note was in the same handwriting should think the "I" & "Me" were made at the same time of the body of the note it was made with the same pen & same ink

J. D. Day said the paper looks as though it had been altered from an "I" to a "Me"

On Cross Examination said it appears to be in the same handwriting same pen and same ink & should call all of it the handwriting of said C. G. Barr the "I" & "Me"

The Defendant then offered in Evidence the affidavit of the defendant Clark which was permitted to go in Evidence to the jury except that portion stricken out by the Court, and defendant Clark excepted to not permitting the whole go in Evidence to the jury — which was all the Evidence offered in the Case, and no other evidence being offered on the part of the Plaintiff or Defendant —

31. The Court instructed the jury on the part
of the Plaintiff as follows

(There are no instructions on
file in said Cause in my
office. J. P. Van Clus)

To the giving of which the Defendant
Clark Excepted

and the Defendant then asked the Court to instruct the jury as follows on the part of the Defendant

1 That the affidavit of Clark is evidence and it throws upon the Plaintiff the burden of proving two facts, first The signature of Clark - second That the note was originally written the promise to pay, and in the absence of such proof on the part of the Plaintiff, the jury should find for the Defendant -

2 If the jury believe from the Evidence that that the note in question has been altered from "I promise to pay," to "we promise," since the Execution thereof without the Knowledge of the Defendant Clark. Then the jury should find for the Defendant Clark

3 If the note appears to be altered upon its face, then the Plaintiff must by proof affirmatively show that it was done without the Knowledge or Consent of Defendant Clark and in the absence of proof removing

34. Such suspicion on the part of the Plaintiff they should find for the Defendant —

4 That the time when and place where said note was altered, if altered is a question of fact for the jury to pass upon, and if the jury believe from the Evidence that the same has been altered without Clarks knowledge then the Jury should find for the Defendant

5 That the affidavit of Clark attached to the note is evidence to the Jury, and unless that evidence is rebutted by the Plaintiff, then they should find for the Defendant Clark.

That the Jury must find for the Defendant

which instructions were then and then refused by the Court. To the refusal of the Court to give said instructions and each of them the Defendant then and there Excepted —

The Jury retired to consider of their verdict, and subsequently returned into Court the following verdict in the words and figures following To Wit;

We the Jury find for the Plaintiff and assess the amount of costs and interest to this date \$871.²⁰/₁₀₀
Dec 19 1857 S. Hitchcock

Foreman

whereupon the Defendant Clark made a motion for a new trial and also in arrest of Judgment for the reasons following To Wit;

First The Court erred in sustaining a demurrer to Defendant Clark's Pleas and each of them, and also in striking out affidavit

Second The Court erred in refusing to allow the questions to be answered by Smith, and in ruling out testimony offered by Defendant Clark, and in not permitting Stephenson to be sworn

Third The Court erred in permitting

Judge of the Court of
Common Pleas of the City of Toronto

the note to go in evidence without proving the signature of Stephenson and also before the Plaintiff had Explained the alteration of the note.

Fourth The Court erred in giving Plaintiffs instructions and also in refusing Defendants instructions and each of them.

Fifth The verdict is contrary to Law and is contrary to the evidence.

Sixth The verdict finds nothing and no judgment could be rendered on the same.

which motion for a new trial was overruled by the Court and also the motion in arrest of judgment. To the overruling of which motions and each of them by the Court the Defendant Clark excepts, and prays that this his Bill of Exceptions may be signed and sealed by the Court and made part of the record herein which is done.

Alfred Gibson (S)

And afterwards to wit on the 29th day of December A.D. 1857 the said defendant James Clark filed in the office of the Clerk of said Court his Certain Appeal Bond which is in the words & figures following to wit;

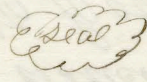
"Know all men by these presents that we James Clark and John Clark are held and firmly bound unto Robert M Lowry in the penal sum of seven hundred dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs and legal representatives jointly severally and firmly by these presents.

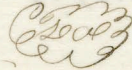
Witness our hands and seals this 28th day of December A.D. 1857.

The condition of the above obligations is such that Whereas the above named Robert M Lowry did at the December Term A.D. 1857 of the Court of Common Pleas of the City of Aurora County of Kane and State of Illinois did recover a judgment against the above named James Clark impleaded with James F. Stephenson for the sum of five hundred and one ²⁴/₁₀₀ dollars besides costs from which said judgment the said James Clark Prayed

an appeal to the Supreme Court of the State of Illinois.

Now if the said James Clark shall prosecute said appeal promptly and without delay and and pay and satisfy such judgment costs interest and damages in case said judgment shall be affirmed then the above obligation to be void otherwise to be and remain in full force and virtue

James Clark 

John S. Clark 

State of Illinois
Kane County
City of Aurora

I James G. Bran Clerk of the Court of Common Pleas of the City of Aurora in the County and State aforesaid do hereby certify that the above and foregoing Transcript is a true perfect and complete copy of the Declaration. Pleas. replication

Remuner. With Exceptions Instructions of
the Court on the part of Defendant. With
on appeal, and all the orders and
Judgments of the Court as entered of
record in said Court of Common
Pleas of the City of Aurora aforesaid in a
case lately pending in said Court
wherein Robert M. Lowry was Plaintiff
and James K. Stephenson and James
Clark were Defendants and of the whole
whereof as appears by record

In witness whereof I have hereunto
set my hand and affixed
the seal of said Court at
Aurora this 25th day of
March A.D. 1858

James G. Parr
Clerk



Fus for Recon

76^{1/2} Folio \$7.65

Cert & seal

35 = \$8.00

Paid by Plff

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James Clark Kimpes

vs
Robert M. Lowery

Record

Filed April 22, 1888
Leland
C. K.



H. S. P.

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State of Illinois
 Supreme Court 3^d Division

James Clarke ^{impendere} ^{appellant}
 vs. Robert M. Lowrey ^{appellee} } appeal from same

April Term 1858

Afterwards to wit on the 26th day
 of April A.D. 1858. at this same term
 of said court before the judges then
 being the said James Clarke by
 A. A. Parks his attorney and says that
 in the record and proceedings aforesaid
 and in the rendition of judgment aforesaid
 there is manifest error in their
 1. Verdict. That the declaration aforesaid
 and the matter therein ^{contained} are not sufficient
 in law for the said Robert M. Lowrey to
 hear and maintain his aforesaid action
 then against him the said James
 Clarke.

2. There is also error in the rendition of the
 judgment aforesaid against the said
 James Clarke and in favour of the
 said Robert M. Lowrey upon the demand
 of the said Robert M. Lowrey to the
 plus of the said James Clarke

3. There is also error in ~~the~~ proceedings to try said Cause before a jury and rendering the judgment aforesaid while there was an issue of Law pending in said Cause
4. There is also error in stating out a portion of the affidavit of said James Clarke appended to the plea of the General Issue
5. There is also error in sustaining the objection to the interrogatory propounded by ^{said} James Clarke to the witness N J Smith called and sworn on the part of said James Clarke
6. There is also error in the refusal of the Court allowing the note to be read to the jury under the pleadings and evidence
7. There is also error in the refusal of the Court to receive the testimony of James W. Stevens one of the parties to the suit against whom a default had been previously entered
8. There is also error in not allowing the

whole of claims offered to go to the
Jury

- 9 There is also error in the Refusal of
the Court to give the instructions asked
for by Clark and particularly nos. 2, 4
& 5
- 11 There is also error in the verdict of the
Jury and the rendition of judgment
thereon
- 12 There is also error in the overruling of
the motion of the said James Clark
for a new trial
- 13 There is also error in the overruling of
the motion of the said James Clark
in arrest of judgment
- 14 There is also error in this Court, that by
the record aforesaid it appears that the
Judgment aforesaid in form aforesaid
given for the said Robert McSorley against
the said James Clarke impeached or
whenever by the Law of the land Judgment
ought to have been given for the said James
Clarke and against the said Robert McSorley

50
And the said James Clark prays
that the judgment aforesaid for the sum
aforesaid may be deemed annulled
and altogether null & void and
that he may be restored to

C. C. Clark

per atty

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James Clark and Co

by

Robert M. Gregory

Attorney at Law

Filed April 27, 1858

Delaware
County

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James Colver

vs

Robert M. Lowry

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