

No. 14632

Supreme Court of Illinois

Lemon

vs.

Baldwin

71641  7

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 152

J. W. Middleton & Co., Stationers, 196 Lake St.

Lemon

1864

Subscribed at

Peary

14632

State of Illinois }
La Salle County } E. Collector the Judge of the ninth judi-
cial circuit of the state of Illinois and
the presiding judge of the La Salle county Circuit Court at a
term of said court commenced and held at the court house in
Ottawa in said county on Monday the eighth day of June
AD. 1863. the same being the second Monday in said month of
June, and of the year of the Independence of the United States
of America the eighty seventh.

Present the Honorable William E. Collector. Presiding Judge
Theodore B. Wood Clerk
David P. Jones State Attorney
Wm. R. Milligan Sheriff.

It is remembered that, heretofore to wit, on the 25th day of
April AD. 1863, in a certain cause then and there pending in
the Circuit Court of said county on the Law side thereof, wherein
William Baldwin was Plaintiff and George C. Lemow and
Azor Capron were defendants, such proceedings were had
that upon application of said defendants attorneys a change of
venue was made to the Circuit Court of La Salle county
Illinois, and that on the 29th day of May 1863, a certain
draft of the proceedings in said cause before the said
Circuit Court of said county aforesaid was filed in
the office of the Clerk of said La Salle county Circuit Court
which said draft is in the words and figuresd follow
ing to wit:

Proceedings of the proceedings at the April Term AD.
1863 of the Circuit Court of said county wherein William
Baldwin was Plaintiff and George C. Lemow and Azor

Superior Court of the
 United States of America,
 District of Illinois }
 Chicago }
 1863 }

At a regular term of the Circuit Court of the County Third Judicial Circuit of the State of Illinois begun and held at the town of Metamora within and for the county of Woodford, on the thirteenth day of April in the year of our Lord one thousand eight hundred and sixty three.

Present, the Honorable Judge Samuel S. Richmond, Judge James D. Perry, Clerk Louis H. Bullock, Sheriff
 Most of the jury, James St. C. Bond, State Attorney,
 Tuesday, April 13, 1863. Court met pursuant to adjournment,
 Benjamin Baldwin

vs. }
 George B. Simon }
 and }
 Azor Caprow }
 Now on this day comes the Defendants George B. Simon and Azor Caprow by W. B. Chapman their attorney and move the court to extend the rule to plead and submit the first day of the present term of this Court, which motion being in consideration by the Court, allowed, and the rule is extended in this cause until Thursday, April 15, 1863.

Monday, April 13, 1863. Court met pursuant to adjournment,
 Benjamin Baldwin.
 vs. }
 George B. Simon }
 and }
 Azor Caprow }

This day came the parties the plaintiff Herman Baldwin by H. E. Stevenson his attorney and the Defendants, George B. Simon and Jor Capron by Hopkins & Chitty their attorneys and the cause came on to be heard on the Demurrer of the defendants to the plaintiffs Declaration filed in the cause and the Court being fully advised in the premises do hereby order that the said demurrer be and the same is hereby overruled. And thereupon came again the said Defendants by their attorneys and move the Court for leave to plead and the same is upon consideration by the Court sustained. And leave is given the said defendants to plead.

Monday April 22nd 1863. Court met pursuant to adjournment.

George B. Simon and Jor Capron } Assumpsit, No. 621

This day came the parties the said plaintiff Herman Baldwin by H. E. Stevenson his attorney and the said defendants George B. Simon and Jor Capron by Hopkins & Chitty their attorneys, and the cause came on to be heard on the demurrer of the plaintiff to the second plea of the defendants, and the Court being fully advised in the premises is of opinion that the said second plea is insufficient in law, and it is considered that the plaintiff be not barred from maintaining the action by any thing in said plea contained and set forth. And the Court is of opinion that the said second plea is insufficient in law to bar the plaintiffs action. And thereupon came again the said Plaintiff by his attorney and move the Court for leave to reply to said

said plea, which motion is upon consideration by the court allowed, and leave is given the said plaintiff to reply to said third plea.

Thursday April 28th 1863. Court met pursuant to adjournment

Hermon Baldwin.

v.

} Assumpsit. Chs. 621

George C. Bennett & Azor Capron }

On this day came the said defendants by their attorneys & Chitty their attorneys and moved the court for leave to amend their second plea filed herein, which motion is upon consideration by the court, allowed and leave is given them to amend said plea. and now again comes the said plaintiff by A. E. Stevenson his attorney and files a demurrer to the defendants second plea as amended, and the cause came on further to be heard upon said demurrer and the court being fully advised in the premises it is ordered and adjudged that said demurrer be sustained (the same is overruled), and leave is given the said plaintiff to reply double to said plea. and now again comes the said defendants by their attorneys and move the court for leave to file an additional plea of set-off which motion is by the court allowed and leave is given them to file said plea. and now again comes the said plaintiff by his attorney and files his demurrer to said additional plea of set-off, and the court being fully advised in the premises, it is ordered and adjudged that the said Demurrer be sustained and the same is sustained, and thereupon the said defendants by their attorneys come and abide by said additional plea of set-off.

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Saturday April 25, 1863. Court met pursuant to adjournment,
 Herman Baldwin,

vs.

Assumpsit. No. 631

George H. Lemow and Azor Capron

This day came the said defendants by their Attorney and enter their motion for a change of venue, which motion is by the Court allowed, and it is ordered that the venue in this cause be changed to the county of the district of the state. It is further ordered that the clerk of the Court transmit to the clerk of the Circuit Court of the County, the papers in this cause, together with a transcript of the proceedings in this Court, properly certified.

State of Illinois
 Woodford County ss. J. James D. Perry, clerk of the circuit court for said county, do hereby certify that there are on file in said court one (1), two (2) three (3), and four (4) copies of a transcript of the proceedings in said Court in said cause wherein Herman Baldwin is plaintiff and George H. Lemow and Azor Capron are defendants. I further certify that the papers hereinafter mentioned "A" "B" "C" "D" "E" "F" "G" "H" "I" "J" and "K", are all the papers now on file in said cause.

In testimony whereof I have hereunto set my hand and affixed the Seal of said Court at my office in Metamora in said County this twenty third day of May, A.D. 1863.
 James D. Perry, Clerk.

And be further remembered that hereafter to wit on the 27th day of May A.D. 1863 were filed in the office of the clerk of the said Tallapoosa county circuit court. The papers mentioned in said transcripts from said circuit court of Woodford county marked respectively from "A" to "K." inclusive. The first of which marked "A" is in the order and figured following, to wit:

State of Illinois }
Woodford County } To the April Term A.D. 1863. of said
circuit court of Woodford county,
John M. Baldwin the plaintiff in
the suit by him brought on his attorney complains of George
L. Semow and A. Caprow defendants in this suit,
as a plea of payment. For that whereas the said de-
fendants heretofore to wit, on the thirteenth day of April
in the year eighteen hundred and fifty one, at Boston. To
wit at the county and state aforesaid by the names and de-
scriptions of George L. Semow and A. Caprow made their cer-
tain promissory note writing, and then and there delivered
the same to Pierre B. Bois, and then and there said defen-
dants promised to pay the order of said Pierre Bois to
the exchange, eight hundred and ninety six Dollars and
eighty five cents payable at A. H. Danforth & Co.,
Washington, D.C. and received, six months after the
date thereof, which period has now elapsed, and the
said Pierre Bois, afterwards to wit, on the day and
year last aforesaid endorsed and delivered said note.
The said plaintiff, at the county and state aforesaid,
whereof the said defendants then and there had notice,
whereupon the said defendants then and there became liable

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to pay the said sum of money, according to the tenor and effect of said note, and also said defendants became liable to pay the exchange mentioned in said note, and plaintiff avers that the current rate of exchange at the time of the maturity of said note was twenty per cent on each Dollar, and said defendants delivered there in consideration of the promise promised the said plaintiff to pay him the amount of the said note according to the tenor and effect thereof, and also promised to pay the amount of exchange above mentioned. And whereas the said defendants, also to wit, on the 13th day of April 1861, at Boston, to wit at the county of Suffolk State aforesaid bought of Pierce Bros & Co, goods of the value of \$896 ⁸⁵ and as an evidence of their indebtedness to said Pierce Bros & Co, on the day and year last aforesaid made their certain other promissory note as follows to wit,

\$896. ⁸⁵

Boston April 13. 1861

Six months after date I promise to pay to the order of Pierce Bros & Co. the exchange eight hundred ninety six Dollars ⁸⁵ Payable at A. H. & Sanford & Co, Washington D.C. value received

George C. Lemow

A. Capron - and

said defendants, then and there delivered said note to said Pierce Bros & Co, and thereby said defendants then and there, in and by the name and description of George C. Lemow and A. Capron promised to pay to the order of said Pierce Bros & Co. the said sum of money now herein mentioned according to the tenor and effect

thereof, and also to pay the exchange mentioned in said
 note, and the said Price Booi & Co. afterwards to wit,
 on the day and year last aforesaid at the county and
 state aforesaid indorsed and delivered said note to the
 said plaintiff, whereof the said defendants had notice
 whereby said defendants then and there became liable to
 pay said plaintiff the said sum of money according to
 the tenor and effect of said note, and also at the same
 time and place became liable to pay said plaintiff said
 exchange mentioned in said note, and plaintiff avers that
 exchange was at the rate of twenty per cent on each Dollar at the
 time of the making of said note, and said defendants
 then and there in consideration of the premises promised
 the said plaintiff to pay him the amount of said note
 according to the tenor and effect thereof, and also at the
 same time and place promised said plaintiff to pay
 him said current rate of exchange mentioned in said
 note, and whereupon the said defendants afterwards to wit
 of the 20th day of February. A.D. 1863. at Wetumora in the county
 of Bradford and state aforesaid now and still are indebted
 to the said plaintiff in the sum of twelve hundred Dollars
 for the price and value of goods ware and merchandise
 then and there before that time bargained and sold by
 the said plaintiff to the said defendants at their special
 instance and request, and in the sum of Twelve hundred
 dollars for the price and value of goods ware and merchan-
 dize then and there before that time sold and delivered
 by the said plaintiff to the said defendants at their
 special instance and request. And in the sum of

9 Twelve hundred dollars for money then and there before that time paid laid out and expended by the said plaintiff in and about the business of the said defendants at their special instance and request. and in the sum of Twelve hundred dollars for money then and there before that time lent and advanced ^{to the defendants} by the said plaintiff and for the use and benefit of the said defendants at their special instance and request.

And in the sum of Twelve hundred dollars for money then and there before that time had and received by the said defendants to and for the use of the said plaintiff.

And in the sum of Twelve hundred dollars for the price and value of work labor and services then and there before that time done performed and bestowed and materials for the same provided by the said plaintiff for the said defendants at their special instance and request.

And in the sum of Twelve hundred dollars for money found to be due from the said defendants to the said plaintiff on an account then and there before that time stated between them.. and in the sum of Twelve hundred for so much money before that time, then and there due and payable from the said defendants to the said plaintiff for interest upon and for the forbearance of diverse large sums of money before then due and owing from the said defendants to the said plaintiff and by the said plaintiff forborne to the said defendants for diverse long spaces of time before then elapsed at the like special instances and requests of the said defendants, whereby defendants became liable to pay plaintiff the

said several sums of money when they should thereto after
 orders requested, and the defendants afterwards on the 20
 day of February 1863. in consideration of the premises then
 and there promised to pay the several sums of money to the
 plaintiff on request, yet said defendants have disregarded
 their said promises herein made and have not, though often
 requested so to do. paid the said several sums of money nor
 either of them, nor any part thereof, nor the said current
 rate of exchange nor any part thereof to the damage of the
 said plaintiff of Twelve hundred Dollars, wherefore he
 brings suit &c. by

C. E. Stevenson

Plaintiffs Attorney.

* State of Illinois } To April Term, 1863 of said cir-
 Woodford County } cent Court.

Wernan Baldwin,

vs.
 George C. Lemmon & Azor. Kapron.

} In assumpsit,
 } Damages \$1200.
 } Clerk please issue

summons to Sheriff of said County.

C. E. Stevenson

Plffs Atty.

* Copy of account paid on.

To goods owned & merchandise bargained and sold	\$1200.
To goods owned & merchandise sold and delivered	\$1200
To money paid laid out and expended	\$1200
To money lent and advanced	\$1200

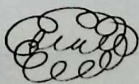
To money had and received \$1200
 To work labor and service performed ^{provided.} & bestowed and materials,, \$1200,
 To money due on an account stated, \$1200.

To money due for interest on divers large ^{money} sums of, \$1200
 A correct copy of note sued on is set out in 2d count of
 foregoing declaration. Copy of endorsement on said note,
 "Pay to the order of Herman Baldwin,

Pierce Bros & Co.,

And the said paper marked "B" is in the words and
 figured following to wit:

State of Illinois } is The People of the state of Ill-
 County of Woodford. } linois to the Sheriff of said county
 Greeting. We command you that
 you summon George L. Lemon and Azor Capron if
 they shall be found in your county personally to do and ap-
 pear before the Circuit Court of said Woodford County, on
 the second Monday of April A.D., 1863. To answer unto
 Herman Baldwin in a plea of assumpsit to the damage
 of said plaintiff as he says in the sum of Twelve hundred
 dollars. And have you then and there the writ with an
 endorsement thereon in what manner you have executed
 the same. Witness James D. Perry, clerk of our said
 Court, and the seal thereof at Wetmore the Seventeenth
 day of March, A.D., 1863.



James D. Perry,
 Clerk

Endorsed as follows

Summons. Woodford Circuit Court. D. Pocket No. 621.
 Herman Baldwin, vs. George L. Lemon & Azor Capron

State of Illinois } I have duly served the within
Woodford County } writ by reading the same to the within
named George C. Lemow on the 17th day
of March 1863. as I am therein commanded. I have return-
ed this writ on the 23rd day of March 1863.

S. W. Bullock, Sheriff

Fees. service. 1.00

Mileage .35

Return. $\frac{10}{\$1.45}$

I have served the within writ by reading the same
to the within named Agor Capron on the 21st day of
March 1863.

S. W. Bullock, Sheriff

And said paper marked "C" is in the words & figures fol-
lowing to wit.

Wesley Baldwin, } Circuit Court.
vs. } Woodford County. April
George C. Lemow, et al. } Term 10, 1863.

And now comes said defend-
ants and demur to the declaration filed in this court
& each and every count thereof and say that they are not
bound to answer the same on account of their insufficien-
cy in law, and for special cause of demurrer says
that there is no sufficient allegation of consideration for
the making of the contracts sued & declared on therein

Wesley Baldwin.

Atty.

And the said paper marked "D" is in the words and
figures following to wit.

Herman Baldwin

Circuit Court.

vs.

Woodford County.

George C. Lemow &

April Term A.D. 1863.

Azor Laforest

vs.

and now comes said de-

fendants, by Josephine Whitty their

so 1 attorneys and defend the wrong and injury when & and say they did not assume & promise in manner and form as alleged in plaintiffs' declaration, and of this they put themselves upon the country. when &.

Plaintiff doth the like.

Josephine Whitty.

Stevenson for self.

Atty.

so 2 And for further plea in this behalf. said defendants by leave of court. & by their ^{said} attorneys and say adit now because they say. that the said cause of action in plaintiffs declaration mentioned and each and every count thereof are all one and the same and not other & different to wit, the note described in the first count thereof. and defendants aver that said note was indorsed to plaintiff after the maturity thereof; and defendants further aver that said note is still the property of Pierce Booverles. and is indorsed to plaintiff for the purpose of collection only, and long after maturity. and that the plaintiff has no other interest therein. and defendants further aver that the said note ^{was} made by the said defendants expressly for the purpose of paying the same over to the firm of Pierce Booverles in payment of an indebtedness of the defendants to said firm for goods purchased of them through the agency of one George C. Lemow Jr. and in pursuance of a previous contract for that purpose. between the def-

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defendants and said firm, and the said note was at the date
thereof handed over to said firm in pursuance of said con-
tract & in payment of said indebtedness, and defend-
ants further aver that said firm held and were the
owners of said note long after its maturity, and after
the maturity thereof said firm placed the said note in the
hands of said Norman Baldwin of Chicago, the Plaintiff
for collection, and the said Baldwin, acting as the agent
of said Percie Bros & Co came from Chicago to Mount-
ain said Woodford county for the purpose of making collec-
tion of said note to wit about the first of May AD, 1862
and said defendant George C. Lemow, was then the
owner of the thousand bushels of corn, and said Baldwin
agent of said Percie Bros & Co was desirous of securing
the said corn in payment of said note and of other
indebtedness of defendants to said firm which said Bald-
win held for collection, as agent of said firm, and said
defendant Lemow, & said Baldwin agent of said firm agreed
that said Baldwin should take the said corn and should
allow and credit on said indebtedness including said note
so much as the said corn would bring in the Boston market
on the first day of August AD, 1862. after deducting the expen-
ses of transporting the same to said Boston & the storage &
charges on the same and the said corn was then & there de-
livered to the said firm, through their said agent in payment
of said note at the rate aforesaid, and defendants aver
that the said corn was worth in said market on said
first of August the sum of \$7000. after paying the said ex-
penses & charges sufficient to pay the said note & said

No. 3

And for further plea in this behalf, defendants say and say they say that all the causes of action named in the plaintiffs declaration & in the several counts hereof are one & the same & not other & different to wit. the note described in the first count thereof and defendants say and say further over that the said note was at the date thereof made by the defendants in pursuance of a previous contract for that purpose made with said firm, & in payment of a stock of goods which defendants Simon had purchased by his agent George C. Simon Jr. of said firm, and the note was thereupon handed over to said firm for the purpose aforesaid, and said firm were the owners & holders of said note from that time until long after its maturity and are still the owners thereof & the same is endorsed to the plaintiff for collection only & he has no other interest therein, and defendants aver that during the said time while said Perei Brothers still held said note and at the commencement of this suit said Perei Brothers who were and still are indebted to the defendants in the sum of Two thousand dollars for the price & value of goods named and sundry commodities before that time sold and delivered by the defendants to the said firm at the special instance and request, and in the further sum of Two thousand dollars for money lent and there have and received of the defendants for the use and benefit, and in the further sum of Two thousand dollars for so much money that

and have paid out by the defendants for the use and
benefit of the said fund at their special instance and
request of the said fund, and that they are ready
to verify, therefore they pray judgment, &c

Wopstun & Chittys

Attys

other indebtedness. so defendant says the said note is wholly paid and this they are ready to verify wherefore they pray judgment, &c.

Hafeknie Hebrity,

Attys

And said paper. "E" is in the name & figures following to wit.
State of Illinois } April term. 1863. of said court.
Woodford county }

Herman Baldwin,

vs

Geo. C. Lemow et al }

And said plaintiffs say that the 2d. & 3d. pleas & each of them of said defts is insufficient in Law.

Stevenson.

Plaffer Attys.

And said paper "F" is in the name and figures following, to wit.
Woodford county Circuit Court April term 1863.

Herman Baldwin,

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vs

Assumpsit.

George C. Lemow et al. } And as to sd defendants 2d amended plea plaintiff says that the same is insufficient in law. & wherefore he prays judgment, &c.

Stevenson. Atty.

And said paper marked "G" is in the name & figures following to wit.
Herman Baldwin,

vs

Geo. C. Lemow et al } Circuit Court. Woodford county
April Term 22d 1863

And for further plea in their behalf defendants say &c. now because they say all the causes

of action in plaintiff's declaration mentioned, ~~and decreed~~
 are one and the same and not different to wit the note set
 out in first counts, and defendants aver that ^{the} said note is
 the property of the firm of Pierce, Burdett & Co. and was en-
 dowed to the plaintiff long after maturity only as their
 agent, and for the purpose of collection, and defend-
 ants aver that said plaintiff as agent said firm came
 to Metamora in said county to negotiate for a settlement
 of said note & all indebtedness of Defendants to said firm
 & then on or about the first day of May¹⁸⁶² said
 agent and defendant Lemow, made a contract by which
 said firm were to receive of said Lemow 10,000 bushels
 of corn & transport the same to Boston Mass. & store
 the same properly until the first day of August thereafter
 & then sell the same at the best price the same would
 bring in said Boston market & apply the proceeds thereof
 in payment of the said note and said other indebtedness
 of said firm, and defendants aver that the said 10,000
 bushels of corn was furnished and delivered to said
 firm, or to their said agent Baldwin for the purpose
 aforesaid. But said firm refused to keep & hold ^{the} said corn
 until said first day of August, but in violation of
 said agreement sold the same in May & June pre-
 vious at a greatly less price than the same was worth
 and would have sold for in said market on said
 first day of August to wit, the sum of fifteen hundred
 dollars less than the same was worth and would have
 brought in said market on said day, whereby defend-
 ants have sustained damage in the sum of fifteen

hundred dollars out of which said defendants offer to apply so much as may be due the plaintiff by reason of anything alleged in his said declaration, and that they are ready to verify, wherefore they pray judgment so.

Wesley's Whitty. atty.

The said paper "He" is in the words and figures to wit,
 State of Illinois } April Term 1863. of said
 Woodford County } Circuit Court.

Herman Baldwin, S

vs.

Geo. C. Lemon, et al }

and said plaintiff demands to plea additional of set off herein filed by said Deft. Stevenson.

Plff atty

The said paper "I" is in the words and figures following to wit,
 State of Illinois } April Term 1863. of Woodford
 Woodford County } Circuit Court.

Herman Baldwin S

vs.

Geo. C. Lemon et al, }

And now comes said plaintiff and as to said defts second plea herein pleaded says precludi non because he says that defendants have not wholly paid said note in said declaration described in manner and form as alleged by said defendants in said plea second above pleaded and thus he prays may be engaged of by the country.

Stevenson.

Plff atty

The said paper. "It is in the words and figures following, to wit:
 State of Illinois } ss. In the circuit court. In the
 Woodford county } April Term A.D. 1863.

George W. Senow.

Azor Capron.

ats,

Wernau Baldwin

Assumpsit

And the said plaintiff by Stev-
 son his attorney for replication to the third plea by
 the defendant above pleaded says precludi non - because
 he says that the causes of action in the plaintiffs de-
 claration mentioned are not the same but other and dif-
 ferent; as in said declaration alleged and of this he
 puts himself upon the country.

A. E. Stevenson.

Atty for Plff.

and for further replication to the plea by the defend-
 ant thirdly above pleaded plaintiff says precludi non
 because he says that the said promissory note in said
 plaintiffs declaration mentioned was not endorsed to plaintiff
 after the same became due and this he prays may be en-
 gured of by the country.

A. E. Stevenson.

Atty for Plff

and for further replication to third plea by the defendant
 above pleaded the plaintiff says precludi non because
 he says that the said promissory note in the plaintiffs
 declaration mentioned is not the property of Price Bros.
 & Co and was not endorsed to plaintiff for the purpose

of collection only. and of this he puts himself upon the country.

A. E. Stevenson.

Atty for Pftt.

and for further replication to said third plea plaintiff by leave says precludi now. because he says at the time when re. the said Perie Brothers fled were not indebted to the defendants in manner and form and in the said several sums of money as therein alleged or any nor either of said sums or any part thereof and this he prays may be engaged of by the country. &c.

Stevenson for Plaintiff.

State of Illinois }
Woodford County } Circuit Court of said
county, April Term. 1863.

Norman Baldwin.

vs.

George C. Lemon et al.

Assumpsit.

A. E. Stevenson plaintiffs

Atty. being duly sworn on his oath says that it is necessary and material to the rights of the Plaintiff that the foregoing several replications should be filed herein.

Subscribed and sworn to
before me this 21st day of May.

A. E. Stevenson,

A.D. 1863.

James D. Perry, Clerk

The said paper "K" is in the words & figures following to wit:
Norman Baldwin.

vs.

George C. Lemon (Jas. Capron) } Circuit Court Woodford
county April Term A.D. 1863

George C. Lemow Sr. one of the above named defendants respectfully petitioning shews unto your Honour that he fears he cannot have a fair trial in the above entitled cause in the said court wherein the same is pending on account that the Judge thereof is prejudiced against him and he therefore prays that a change of venue may be awarded in the said cause, and affiant shews that this application is made with the consent of said co-defendant. Agos Capron

George C. Lemow.

State of Illinois }
Woodford county } Personally appeared before me
George C. Lemow Sr. who being duly sworn on oath says that the facts & matters set forth in the foregoing application are true this 23 day of April, 1863.

Subscribed & sworn to George C. Lemow.
before me this, 23^d day of
April A.D. 1863. Admrs. Paup ^{J.P.} Creed

I consent to the within application for change of venue.
Agos. Capron by
Apr. 23^d 1863. Ulophene Hebitty
his atty.

And be it further remembered that heretofore to wit the same being one of the days of the June term of said Court, A.D. 1863 on the 9th day of June, A.D. 1863, certain other proceedings were had in said cause, and entered on the records of said said circuit court, which said proceedings so entered as aforesaid are in the words and figures following to wit.

Norman Baldwin.

195. vs.

Assumpsit.

George E. Lemow v

Ozger Capron

By agreement of parties this cause
is set for trial on Friday P.M. of the
20 week of the present term of this court.

And be it further remembered that heretofore to wit on the
18 of June A.D. 1863 the same being one of the days of the June term
of said court. for A.D. 1863. certain other proceedings were had
in said cause which said proceedings were entered on
the records of said court in the words & figures following. To wit

Norman Baldwin.

195.

vs.

Assumpsit.

George E. Lemow v

Ozger Capron

This day the defendants came
by Hopkins & Leland & Blanchard
their attorneys and move the court

for leave to file an additional plea herein which motion is
sustained by the court. and now on further motion of
defendants attorneys, it is ordered by the court that this
cause be continued at the defendants costs to be taxed;

And be it further remembered that heretofore to wit, on
the 18th day of June 1863. a certain plea was filed in
said cause, in the office of the clerk of said court. which
said plea was & is in the words & figures following,
to wit.

Norman Baldwin.

vs.

Geo. E. Lemow et al

Circuit Court. La Salle Co

June Term 1863.

And for further plea in this

behalf by leave of court re. defendants say act as now because
 they say that all the several causes of action in the plaintiffs
 declaration mentioned are one & the same & not other or
 different to wit the promissory note named in the first count
 thereof, and that the payees thereof to wit, Purie Bros & Co
 were the owners and holders thereof at & long after the ma-
 turity of the same. and while said payees were so the own-
 ers of said note to wit. in the month of May 1862. they
 made a contract with the defendants for the payment of the
 same together with other indebtedness which they held against
 the defendants by which contract said firm agreed to receive
 of the defendants a large quantity of corn to wit. about ten
 thousand bushels & ship the same to Boston Mass & prop-
 erly store & preserve the same until the first day of the fol-
 lowing August & then sell the same for the best price that
 it would bring in said Boston market, and after deduct-
 ing the expenses of shipment storage & charges thereon
 to apply the net avails to the payment of said indebted-
 ness. & in pursuance of said contract the said corn
 was delivered by the defendants to the said firm. But
 said firm wholly neglecting & refusing to fulfil their
 said agreement sold the said corn at other places
 than said Boston market and before said first day
 of August to wit. in ~~July~~ June & July previous
 & for a much less net value than the same would
 have sold for in said market on said first day
 of August to wit. sixteen hundred dollars less &
 applied the proceeds at said reduced value to the
 payment of the said other indebtedness, leaving this said

96

note unpaid, whereas said corn on the said first day of August, at said market would have sold for a sufficient amount after deducting expenses & charges as aforesaid, to have paid all said indebtedness inclusive, of this said note wherefore defendants say that they have sustained damage in the manner aforesaid in the sum of fifteen hundred dollars, and defendants aver that Plaintiff holds the said note for collection only and not as owner but the same is still the property of said firm, and that they are ready to verify wherefore they pray judgment.

Leland & Blanchard &

W. B. Hopkins, attys

And be it further remembered that heretofore to wit on the 18th day of June, 1863 a certain affidavit was filed in said cause in the office of the clerk of said court which said affidavit is in the words & figures following to wit,

State of Illinois } This day personally appeared
Peoria County } Before me George C. Lemow, Justice
who being duly sworn on oath says that the defendants in the following named cause to wit, A. E. Stevenson vs. George C. Lemow et al. and Herman Baldwin vs. George C. Lemow et al., cannot go to trial in said cause at the present term of this court for want of the testimony of Thomas Hamilton a resident of Toledo in the state of Ohio, and Harvey Scudder and William Taylor residents of Boston in the state of Massachusetts and affiant says that said defendants expect to prove by the said witnesses each and all of the facts alleged

in defence of said actions in the pleas marked filed therein on the 20th day of April 1863. & numbered two as amended all of which facts are true as therein alleged & the same were made part of this affidavit the same as if herein copied, and affiant further shows that the said defendants could not procure the testimony of said witnesses in season for the present term of court for the following reasons to wit. The said suits were commenced in the Woodford circuit court, on the & summons served on or about 23rd day of March A.D. 1863 only some 15 days before the April Term thereof & so near the same date defendants had no time to procure said testimony, & at said term the venue of said causes was changed to this court and at the time of said change of venue said defendants did not know the christian names nor the place of residence of said witnesses and could not cause a commission to issue for taking said testimony until they had first learned their said names & residence, affiant has acted & is still acting as the agent of said defendant for the purpose of finding the said witnesses & procuring their said testimony, and for this purpose affiant wrote letters to witness Scudder, only a few days after the said change of venue, and learned his christian name & residence, & the christian name & residence of said witness Taylor, only a few days since & affiant went personally to Toledo in the State of Ohio, and looked up the said Hamilton, & learned his said first name & place where his deposition might be taken

and he has but recently returned from said trip to Ohio for the purpose aforesaid among others, to wit. on the second day of the present term of this court, and he was not able to procure all the facts aforesaid and return at an earlier day, and which time it has not been possible to procure the depositions of said witnesses prior to this date but defendant will be able to procure the same by the next term of this court, and neither they nor affiant knew of any other person by whom the said facts can be proved. This affidavit is not made for delay only but that justice may be done

Subscribed & sworn to George C. Lemou Jr.
before me this 11th day of June, A.D.
1863.

Enoch P. Sloan clerk.

Enoch P. Sloan

for J. Newton Esq.

And be it further remembered that heretofore to wit on the 5th day of November, 1863 a certain demurrer was filed in said cause, in the office of the clerk of said court, & said demurrer is in the annexed figures following to wit,

State of Illinois } To the November Term 1863, of said
La Salle county } circuit court.

Norman Baldwin,

George C. Lemou et al.

And now comes the said plaintiff by his attys. Sloan & Stevenson and comes to the defendants fifth plea herein filed to plaintiff declarative, and says that said plea and

the matter and things ^{therein} contained are insufficient in Law wherefore he prays judgment &c.

Shaw & Stevenson

Plaintiffs Attys

And be it further remembered that heretofore to wit on the 6th day of November 1863, the same being one of the days of the November term A.D. 1863 of said court, certain other proceedings were had in said cause, which said proceedings were entered on the record of said court in the words & figures following to wit,

Herman Baldwin,

vs
George C. Lemmon & Azor Capron } assumpsit.

This day came the Plaintiff by Stevenson Bange & Shaw his attorneys and the defendants by Liband & Blanchard their attorneys, and thereupon came the following Jurors of a jury to wit, Donat Wollicker, Samuel Black H. A. Frobridge L. B. Crooker, Michael Budd, Abel Campbell, Joshua Straight, J. V. Waterman James Poolittle P. W. Dick, W^m Pitzer and John Lambart, who are elected tried and sworn to well and truly try the issue herein and a true verdict render according to the evidence. After hearing the testimony and arguments of counsel the Jury retire to consider of their verdict, after due deliberation thereon had, they return into open court with the following verdict, to wit, That the jury find the issue in favor of the plaintiff and assess his damages at

one thousand and eight dollars, and five cents. The defendant by his counsel now moves the court for a new trial herein which is overruled by the court. It is therefore considered by the court that the plaintiff have and recover of the defendants the said sum of one thousand ^{& eight} dollars and five cents for his damages also his costs and charges by him herein expended and that he have execution therefor. And again come the plaintiff and files an affidavit herein stating that he fears that the benefit of the judgment herein rendered against the said defendants will be lost, unless execution is -
 sue thereon instantly. It is therefore ordered by the Court on motion of ^{attorney} plaintiff, that execution issue instantly against the said defendants.

And be it further remembered that heretofore to wit on the 6th day of November 1863. a certain affidavit in said case was filed in the office of the clerk of said court which said affidavit is in the words and figures following to wit,

State of Illinois } In Circuit Court of said County
 Sed Said County } Nov. Term AD, 1863.

Welman Baldwin,

vs. } Assumpsit.
 George L. Larson & Azor Leaprow } Leavings of revenue
 from Brookford.

Welman Baldwin plaintiff in said suit being duly sworn on oath says that he fears that the benefit of the judgment herein rendered against defendants will be lost unless execution issue thereon immediately, that he fears that said defendants who now have no affiant

believe sufficient property liable to execution to satisfy said judgment will immediately sell, dispose of such property or in some manner dispose of the same, so that no part of said judgment can be made in execution.

Subscribed and sworn to Herman Baldwin,
before me, this 6th day of
Nov. 1863.

A. B. Moore, clerk

And be it further remembered that heretofore to wit, on the 6th day of November A.D. 1863 a certain note in said case was filed in the office of the clerk of said court, which said note & the endorsements thereon are in the words and figures following to wit.

\$896 ⁸⁵/₁₀₀

Boston April 18 1861

Six months after date I promise to pay to the order of Pierce Bros & Co with exchange eight hundred and ninety six Dollars, ⁸⁵/₁₀₀. Payable at, A. B. Danforth & Co. Washington D.C. value received.

Due Oct. 16. 1861

George C. Lemon
A. Capron

Endorsed. — "Pay to the order of Herman Baldwin.
Pierce Bros & Co"

And be it further remembered that heretofore to wit on the 6th of November 1863, a Bill of exceptions was filed in said case & filed in the office of the clerk of said court, which said bill of exceptions is in the words & figures following to wit.

State of Illinois La. Salle County, 3 ss

Deputy Court of said county. November Term, 1863

Wenaw Baldwin,

vs.

assumpsit,

George E. Lemow &

Abr. Capron

Be it remembered that on the trial of the above cause the plaintiff to maintain the issue on his part introduced in evidence the note described in his declaration, and the assignment thereof by the payee to the plaintiff. The defendant then offered as a witness, George E. Lemow Jr. the son of the defendant Lemow, the plaintiff objected to the witness testifying, because he had an interest in the result of this suit, and to prove the interest of the witness introduced, A. E. Stevenson who testified that some time before the commencement of this suit, he had a conversation with both of the defendants, they each admitted to him that they executed the note declared upon, as security for the witness Lemow and that he the witness was the party who ought to pay it, and that it was the debt of the witness Lemow Junior. This admission of the defendants was in reply to a demand by the witness Stevenson for payment, he being the attorney for the plaintiff. The defendants then called the witness Lemow and propounded to him the following interrogatory

"Please state whether the interest in the result of the suit mentioned by the witness Stevenson has been released or discharged by any subsequent arrangement

and if so state in what manner.

The plaintiff objected to the witness answering this question. The court sustained the objection and excluded the answer thereto, and to the opinion of the court in so doing the defendants then and there excepted at the time thereof. The foreman was all the witness in this cause. The jury found a verdict for the plaintiff. The defendants moved for a new trial. The court overruled the motion and rendered judgment on the verdict, and to this decision of the court in overruling the motion for a new trial & rendering judgment the defendant then and there excepted, at the time thereof, and the defendant pray the court to sign & seal this their bill of exceptions which is done in open court. this 6th day of Nov. 1863.

M. E. Wallister, Judge

And be it further remembered that heretofore to wit on 29th of November, 1863 the same being one of the days of the November term 1863 of said court. certain other proceedings were had in an said cause and said proceedings entered on the record of said court in the words & figures following to wit,

Ureman Baldwin

17

vs,

Cassmeyer.

George W. Simon &

Agm. Keppow

This day come the defendants by Seland and Blanchard their attorneys and pray an appeal herein to the Supreme Court of the state of Illinois which is all

ordered by the court. upon condition that the defendants
enter into bonds payable to the plaintiff in the penal sum
of Two Thousand Five Hundred Dollars with William
P. Buckingham as security within five days from the
date of this order.

And be it further remembered that heretofore to wit, on the 2^d
day of November, 1863. a certain appeal bond was filed in
said court in the office of the clerk of said court. which said
bond is in the words & figures following to wit.

Know all men by these presents that we George C. Lemon
and Azor Capron as justices and William E. Buckingham
have as security all of the county of Woodford and state
of Illinois, are held and firmly bound unto Herman
Baldwin in the penal sum of Twenty five hundred dollars
for the payment of which well and truly to be made we bind
ourselves and each of our heirs administrators and executors
firmly by these presents, witness our hands and seals
this 22^d day of November, A.D. 1863.

The condition of the above obligation is such that
whereas the above named Herman Baldwin did on
the seventh day of November A.D. 1863 the same being
one of the days of the November Term of La Salle
county circuit court by the consideration and judg-
ment of said court recover a judgment against
the above named George C. Lemon and Azor Capron
for the sum of one thousand eight dollars five cents
and costs of suit from which judgment said
George C. Lemon & Azor Capron have prayed an
appeal to the supreme court of the state of Illinois.

Now if the said George C. Lemmon and Agor Capron
shall prosecute their said appeal with effect and
without delay and shall pay whatever judgment
may be rendered against them or either of them upon
trial or dismissal of said appeal then this ob-
ligation to be null & void otherwise to remain in full
force and virtue,

George C. Lemmon (Ed)
A. Capron (Ed)
Wm E. Buckingham (Ed)

State of Illinois }
Leasalle County }

I, Absalom B Moore, Clerk
of the Circuit Court, in
for said County do hereby certify that
the foregoing is a true, full & perfect copy
of the records, in the foregoing mentioned
Cause, also of the papers that appear
on file in said Cause, as now appears
of record, and on my file, in my office.



In witness my hand and Seal
of said Court at Ottawa this
31st day of March AD 1864
A B Moore
Clerk

Just 10

Supreme Court of Illinois
3rd Grand Division April term 1864

George L. Simon and } appellants
Azor Capron }

^{vs}
Herman Baldwin } appellees

And now comes the said
appellants by Seland & Blanchard their
attorneys and say that in the above record and
proceedings there is manifest error and pray the
judgment of this court upon the same and for
special assignments of errors ~~as the say~~
That the Court Erred

- 1st In refusing proper testimony
- 2nd In admitting improper testimony
- 3^d In sustaining demurrer to N-4 & 5 additional pleas
- 4th In overruling motion for new trial
- 5th In giving judgment for Plaintiff
- 6th The judgment is against law and evidence
and for other errors and insufficiencies

Seland & Blanchard
for Appellants

And appellees joins in Error
by N. E. Stevenson)
I. M. Shaw
Counsel

^{us}
Norman Baldwin

^{us}
George C. Simon

et al

abstracted

George C. Emmons
Agent
vs

Hermon Baldwin

Filed April 18. 1864
L. Leland
Clerk

152

102

Supreme Court of Illinois:

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

GEORGE O. LEMON AND AZOR
CAPRON, Appellants,
vs.
HEMAN BALDWIN, Appellee.

ABSTRACT OF RECORD.

6 Declaration in assumpsit, by appellee vs. appellants, upon this note and common counts added.

\$896.85.

Boston, April 13, 1861.

Six months after date, I promise to pay to the order of Pierce Bros. & Co., with exchange, Eight Hundred and Ninety-six Dollars 85-100, payable at A. S. Danforth & Co.'s, Washington, Illinois, value received.

GEORGE O. LEMON.
A. CAPRON.

11 Endorsed, "Pay to the order of Heman Baldwin."

13 Pleas 1st. General issue.

2d Special plea. The only cause of action being said note. Said note was enclosed to plaintiff after maturity. Said note is

enclosed
Filed April 18, 1864
L. L. Leland
Clerk

still the property of Pierce Bros. & Co., and is endorsed to plaintiff for the purpose of collection only. Said note was made by defendants expressly for the purpose of paying the same over to the firm of Pierce Bros. & Co., in payment of an indebtedness of the defendants to said firm for goods purchased of them, and in pursuance of a previous contract between the defendants and said firm; and said note was placed in the hands of Baldwin (plaintiff) for collection, about May 1st, 1862. Defendant, Lemon, was then the owner of 10,000 bushels of corn. Said Baldwin, as agent of Pierce Bros. & Co., was desirous of securing said corn in payment of said note and other indebtedness. And said defendant, Lemon, and said Baldwin, agent of said firm, agreed that said Baldwin should take said corn, and credit on said note and indebtedness, so much as said corn would bring in the Boston market, August 1st, 1862, after deducting the expense of transportation to Boston, and storage and charges thereon. And said corn was then and there delivered to said firm through their said agent, (Baldwin,) in payment of said note. Said corn was worth, on said first day of August, in said market, \$7,000, after paying said expenses, sufficient to pay said note and other indebtedness, so they aver said note is wholly paid.

15 Third Special Plea. Sett-off.

Note is property of Pierce Bros. & Co., who were and are indebted to defendants in the sum of \$2,000, for the price and value of goods, wares, merchandize, corn and produce, before that time sold and delivered by defendants to Pierce Bros. & Co., &c.

4th Additional Plea by leave of Court.

17 Averments that the note was the property of Pierce Bros. & Co.

About May 1st, 1862, Pierce Bros. & Co., by said Baldwin, their agent, and said defendant, Lemon, by which said firm were to receive 10,000 bushels of corn and transport the same to Boston, and store same ~~property~~ until the first day of August there-

Made an averment

after, and then sell the same at the Boston market price, and apply the proceeds in payment of said note and other indebtedness. Said corn was delivered to their said agent for said purpose, but said firm refused to keep and hold the same until said first day of August, but sold the same in May or June previous, at \$1,500 less than the same was worth on said August 1st, 1862, whereby defendants had sustained damages to the amount of \$1,500, out of which sum defendants offer to apply so much as may be due the plaintiff.

20 Replication to 2d plea. Denies payment in manner and form as therein alleged.

21 Replications to 3d plea. 1st. That said causes of action in declaration mentioned are not one and the same, but different.

2d. Note was not endorsed after maturity.

22 3d Replication. Pierce Bros. & Co. were not indebted to defendants.

4. Demurrer sustained to additional plea, which is marked No. 4.

23 Change of venue to La Salle county.

24 June 18, 1863, leave to file additional plea, (No. 5.) All causes of action are the same, to-wit: said note. Pierce

25 Bros. & Co. were the owners long after the maturity. May 1862, made contract with defendants for payment of the same. Agreed to receive of defendants 10,000 bushels of corn, ship to Boston and store the same until August 1st, following, then sell the same for best price in Boston market, after deducting expenses of shipment and storage, to apply net avails to the payment of said indebtedness. Said corn was delivered by defendants to said firm. Said firm refused to fulfill their said agreement, and sold said corn at other places than Boston, before

said first day of August, to-wit: in June and July, for sixteen hundred dollars less than it would have brought in said Boston market on said August 1st, 1862; and applied the pro rata to said other indebtedness, leaving said note unpaid. Said corn at said time would have sold in said Boston market for a sufficient amount, after deducting expenses and charge, to have paid all said indebtedness. Sustained damages in \$1,600.

28 Demurrer sustained to said plea.

33-29 Trial Nov. 6, 1863. Verdict for plaintiff, \$1,008.05.

33-30 Motion for new trial overruled, and exception. Judgment on verdict.

32

BILL OF EXCEPTIONS.

Note introduced by plaintiff.

Defendants offered George C. Lemon, Jr., as a witness. Plaintiffs objected to his testifying, because he had an interest in the result of the suit, and introduced A. E. Stevenson, who testified: That sometime before the commencement of this suit, he had a conversation with both the defendants. They each admitted to him that they executed the note, declared upon, as security for the witness, Lemon, and that he, the witness, was the party who ought to pay it, and that it was the debt of the witness, Lemon, Junior. This admission was in reply to a demand by the witness, Stevenson, for payment, he being the attorney for plaintiff.

12 The defendants profounded to witness, Lemon, the following interrogatory:

"Please state whether the interest in the result of the suit, mentioned by the witness, Stevenson, has been released or

"discharged by any subsequent arrangement; and if so,
33 state in what manner."

Plaintiff objected. Sustained. Exception by defendants.

This was all the evidence.

Defendants pray an appeal.

Allowal upon filing bond within five days, in sum of \$2,000, with William E. Buckingham as security.

ERRORS ASSIGNED.

- 1st. In refusing proper testimony.
- 2d. In admitting improper testimony.
- 3d. In overruling motion for new trial.
- 4th. In giving judgment for plaintiff.
- 5th. In sustaining demurrer to additional pleas, (Nos. 4 and 5.)
- 6th. Judgment is against law and evidence.

LELAND & BLANCHARD.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1864.

GEORGE C. LEMON *et al.*,
Appellants, }
vs.
ADLAI E. STEVENSON,
Appellee. } *Appeal from La Salle.*

The only questions in this case arise on the demurrer sustained to 4th and 5th pleas.

I.

Admitting that the Court erred in sustaining demurrer, still this Court will not reverse the judgment, for the reason that the defence set out in those pleas could have been given in evidence under the third plea; the only difference between them and the third plea being, that it concluded properly as a plea of payment, and the 4th and 5th improperly as a plea of set off.

Williams vs. Reil, 20 Ill. 147.
Curtis vs. Martin, 20 Ill. 571.
Parmelee vs. Fisher, Ill. 212.

II.

The pleas were bad as pleas of set-off, for want of an averment that the damages, or indebtedness, offered to be set-off, were due and owing from said firm to defendants at the time of the commencement of the suit.

III.

If the transaction amounted to a plea of payment, it might and ought to have been so pleaded; but the damages were not a proper set-off.

A—The contract, out of the violation of which the damages were suffered, was a separate contract with defendant Lemon, and not joint, and the damages are due him alone.

B—Could appellees bring a joint action for the damages? and if not, then they can not set them off when sued jointly. If they could do so, they could recover the balance in their favor, if any should be found, which is clearly not the law.

IV.

The 4th plea is bad. It shows on its face that the contract made by Baldwin was unauthorized by his principals, he being their agent for collection merely, and is not the contract of the firm.

V.

The pleas attempt to set-off unliquidated damages, arising out of a breach of a distinct contract, made long after the original contract out of which the action grew, and between different parties, to wit: the endorsee of the note and one of the makers.

Hawks vs. Sands, 3 Gil. 227.

A. E. STEVENSON AND
T. M. SHAW,
Defendant's Attorneys.

152 102
 G. C. Somner et al
 vs
 H. C. Baldwin

Depts Brief

Filed May 2, 1894
 L. L. Lawrence

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1864.

GEORGE C. LEMON <i>et al.</i> , <i>Appellants</i> ,	}	<i>Appeal from La Salle.</i>
<i>vs.</i> HEMAN BALDWIN, <i>Appellee.</i>		

APPELLEE'S BRIEF AND POINTS.

The questions arising in this case, except one, are identical with those in No. 151, and to which counsel beg leave to refer; and in last case they submit the following further point and authorities:

VI.

The interest of the witness Lemon being shown *aliunde*, he was incompetent for any purpose.

1 Greenleaf Ev. sec. 423.

Hall vs. Conn. R. S. Co. 8 Conn. (new series,) 324.

3 Phil. on Evidence, (7,) p. 120.

Diversy vs. Will, and cases there cited, 28 Ill. 218.

A. E. STEVENSON AND
T. M. SHAW, *Counsel.*

152

102

G. C. Linné et al

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W. B. Linné

Appellus Biny

Lucie Mary E. 1864

L. Linné et al

SUPREME COURT OF ILLINOIS:

THIRD GRAND DIVISION.

April Term, A. D. 1864.

GEORGE C. LEMON, *et. al.*, }
 vs. } 151 Error to LaSalle.
ADLAI E. STEVENSON. }

GEORGE C. LEMON, *et. als.* }
 vs. } 151 Error to LaSalle.
HEMAN BALDWIN. }

For brevity we print one brief for both causes. We thought there might be a point in No. 152, not in No. 151, but we are afraid that the decision in the 28th Ill. 216, together with the influence of those other courts upon your Honors will cause it to be considered that the witness, Lemon, had an interest in the question whether he had an interest in the suit. It looks, however, a good deal like begging the question that he is interested in the event of the suit in order to hold him to be interested in the question whether he is interested in the event. It seems to us that it would be as well to let a witness so situated go for what he is worth on the preliminary question, but the law does not appear to be so written and we will not press a point unless we think it a fairly debatable one.

The only point common to both cases is the sustaining a demurrer to pleas in each case in substance the same. We select the 5th plea on No. 151. (Record p. 29.) For the one like it in No. 152, see Record p. 24. The gist of these pleas is this: A owes B on a note and furnishes him with corn to be sold in Boston on the 1st of Aug., 1852, the price then and there to be allowed on the note. B sells another at time and place for a price,

which, being applied, leaves a balance due on the note when a sale at the agreed time and place would have produced money enough to have paid the note in full. The difference between what the corn did bring and what it would have brought is claimed as damages for a breach of the contract, to sell at Boston, Aug. 1, 1862.

The ground upon which the defence was disallowed below was that it was unliquidated damages for the recovery of which a separate action was necessary.

We think the damages, though unliquidated, are so intimately connected with the plff's cause of action that the principle of the cases in our court is applicable and that the set off should have been allowed.

1 Scam. 462.

1 Gilm. 15.

5 Gilm, 273.

3 Scam. 298.

3 Gilm. 227.

But it may be said on the other side that whatever the damages amount to is so much money paid on the note and payment is admissible under the general issue or under another plea in which the damages are called payments of the note.

If the corn had been sold Aug. 1, '62, for what it *would have* then brought the note *would have* been paid, but the corn was not sold *then* and the note *was not* paid.

It is for the unliquidated damages caused by the breach of the contract to sell then and there that we plead. Unliquidated damages growing out of a breach of contract might always be called payment in whole or in part if it be allowable to so call them in this case. Suppose the consideration of this note was the sale of a horse, warranted sound, could the damages be properly called payment so as to come in under a plea of payment or under the general issue. Damages of this character cannot be called with propriety, payment. It is a misnomer. The special plea was necessary or evidence offered would have been excluded.

LELAND & BLANCHARD,

For Appellants.

152 102
G. C. Simon & Co
As
H. Baldwin

Appellants brief

Given April 28. 1864
J. L. Linnell

State of Illinois
Third Grand Division

In Supreme Court.

April Term A.D. 1864

Geo. C. Leonard

vs.
Cyro Copron

Appell

from Cass

Hermon Baldwin

And now comes the said
Appellee by Stevenson Barr &
Shaw his Attys, and moves
the Court to dismiss the
Appeal in this case, for the
want of a sufficient
and proper Appeal Bond
Stevenson B. & S.

And for objection to the
Appeal Bond herein
Appellee shows that the
judgt appealed from was
rendered on the 6th day
of Nov. 1863 - and the
judgment from which
Appeal was taken as
recited in Bond was
rendered on the 7th day
of Nov. 1863

Stevenson B. & S.

152

Rev. L. L. Linn
vs -

Volman Baldwin

Motion to dismiss

Official

Filed April 19, 1864

J. L. Linn MR

I know all men by these presents that we
George C. Leman and Uxor Lepron as
principal and William C. Buckingham
as security all of the County of Woodford
and State of Illinois are held and firmly
bound unto Herman Baldwin in the
penal sum of twenty five hundred
dollars for the payment of which well
and truly to be made we bind ourselves
and each of our heirs administrators
and executors firmly by these presents
witness our hands and seals this 25th
day of April. A.D. 1864

The condition of the above obligation is
such that whereas the above named
Herman Baldwin did on the sixth day
of November A.D. 1863 the same being
one of the days of the November term
of LaSalle County Circuit Court by
the consideration & judgment of said
Court recover judgment against
the above bounden George C. Leman
and Uxor Lepron for the sum of one
thousand eight hundred dollars & five
cents and costs of suit from which
judgment said George C. Leman and
Uxor Lepron paid an appeal to the
Supreme Court of the State of Illinois

and on the 21st of November 1863 filed in
the office of the Clerk of the Circuit Court
of said LaSalle County their appeal bond
executed by said Lemmon & Capron as principal
and said William C. Buckingham as
security. which bond is defective in
this that it recites the judgment as being
rendered on the Seventh of November
when it should be on the Sixth of November
and this bond is executed as an amended
bond to perfect such appeal
now if the said George C. Lemmon and
Azor Capron shall prosecute their said
appeal with effect and without delay
and shall pay whatever judgment may
be rendered against them or either of
them upon a trial or dismissal of said
appeal then this obligation to be void
otherwise to remain in full force and
virtue

George C. Lemmon sen 
Azor Capron 
W. C. Buckingham 

13-2

George C. Lemm
Azor Caprine

5

Herman Baldwin
Amendulofful bond

Feb April 26, 1864
L. L. Linn
Club

Supreme Court of Illinois:

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

GEORGE C. LEMON AND AZOR
 CAFRON, Appellants,
vs.
 HEMAN BALDWIN, Appellee. }

ABSTRACT OF RECORD.

6 Declaration in assumpsit, by appellee vs. appellants, upon this note and common counts added.

\$896.85.

Boston, April 13, 1861.

Six months after date, I promise to pay to the order of Pierce Bros. & Co., with exchange, Eight Hundred and Ninety-six Dollars 85-100, payable at A. S. Danforth & Co.'s, Washington, Illinois, value received.

GEORGE C. LEMON.
 A. CAPRON.

11 Endorsed, "Pay to the order of Heman Baldwin."

13 Pleas 1st. General issue.

2d Special plea. The only cause of action being said note. Said note was enclosed to plaintiff after maturity. Said note is

Enclosed
 Filed April 18, 1864
 L. L. Leland C.M.

still the property of Pierce Bros. & Co., and is endorsed to plaintiff for the purpose of collection only. Said note was made by defendants expressly for the purpose of paying the same over to the firm of Pierce Bros. & Co., in payment of an indebtedness of the defendants to said firm for goods purchased of them, and in pursuance of a previous contract between the defendants and said firm; and said note was placed in the hands of Baldwin (plaintiff) for collection, about May 1st, 1862. Defendant, Lemon, was then the owner of 10,000 bushels of corn. Said Baldwin, as agent of Pierce Bros. & Co., was desirous of securing said corn in payment of said note and other indebtedness. And said defendant, Lemon, and said Baldwin, agent of said firm, agreed that said Baldwin should take said corn, and credit on said note and indebtedness, so much as said corn would bring in the Boston market, August 1st, 1862, after deducting the expense of transportation to Boston, and storage and charges thereon. And said corn was then and there delivered to said firm through their said agent, (Baldwin,) in payment of said note. Said corn was worth, on said first day of August, in said market, \$7,000, after paying said expenses, sufficient to pay said note and other indebtedness, so they aver said note is wholly paid.

15 Third Special Plea. Sett-off.

Note is property of Pierce Bros. & Co., who were and are indebted to defendants in the sum of \$2,000, for the price and value of goods, wares, merchandize, corn and produce, before that time sold and delivered by defendants to Pierce Bros. & Co., &c.

4th Additional Plea by leave of Court.

17 Averments that the note was the property of Pierce Bros. & Co.

About May 1st, 1862, Pierce Bros. & Co., by said Baldwin, their agent, and said defendant, Lemon, by which said firm were to receive 10,000 bushels of corn and transport the same to Boston, and store same property until the first day of August there-

Made an assignment

after, and then sell the same at the Boston market price, and apply the proceeds in payment of said note and other indebtedness. Said corn was delivered to their said agent for said purpose, but said firm refused to keep and hold the same until said first day of August, but sold the same in May or June previous, at \$1,500 less than the same was worth on said August 1st, 1862, whereby defendants had sustained damages to the amount of \$1,500, out of which sum defendants offer to apply so much as may be due the plaintiff.

20 Replication to 2d plea. Denies payment in manner and form as therein alleged.

21 Replications to 3d plea. 1st. That said causes of action in declaration mentioned are not one and the same, but different.

2d. Note was not endorsed after maturity.

22 3d Replication. Pierce Bros. & Co. were not indebted to defendants.

4. Demurrer sustained to additional plea, which is marked No. 4.

23 Change of venue to La Salle county.

24 June 18, 1863, leave to file additional plea, (No. 5.) All causes of action are the same, to-wit: said note. Pierce

25 Bros. & Co. were the owners long after the maturity. May 1862, made contract with defendants for payment of the same. Agreed to receive of defendants 10,000 bushels of corn, ship to Boston and store the same until August 1st, following, then sell the same for best price in Boston market, after deducting expenses of shipment and storage, to apply net avails to the payment of said indebtedness. Said corn was delivered by defendants to said firm. Said firm refused to fulfill their said agreement, and sold said corn at other places than Boston, before

said first day of August, to-wit: in June and July, for sixteen hundred dollars less than it would have brought in said Boston market on said August 1st, 1862, and applied the pro rata to said other indebtedness, leaving said note unpaid. Said corn at said time would have sold in said Boston market for a sufficient amount, after deducting expenses and charge, to have paid all said indebtedness. Sustained damages in \$1,600.

28 Demurrer sustained to said plea.

33-29 Trial Nov. 6, 1863. Verdict for plaintiff, \$1,008.05.

33-30 Motion for new trial overruled, and exception. Judgment on verdict.

32 BILL OF EXCEPTIONS.

Note introduced by plaintiff.

Defendants offered George C. Lemon, Jr., as a witness. Plaintiffs objected to his testifying, because he had an interest in the result of the suit, and introduced A. E. Stevenson, who testified: That sometime before the commencement of this suit, he had a conversation with both the defendants. They each admitted to him that they executed the note declared upon, as security for the witness, Lemon, and that he, the witness, was the party who ought to pay it, and that it was the debt of the witness, Lemon, Junior. This admission was in reply to a demand by the witness; Stevenson, for payment, he being the attorney for plaintiff.

The defendants profounded to witness, Lemon, the following interrogatory:

"Please state whether the interest in the result of the suit, mentioned by the witness, Stevenson, has been released or discharged by any subsequent arrangement; and if so, state in what manner."

Plaintiff objected. Sustained. Exception by defendants.

This was all the evidence.

Defendants pray an appeal.

Allowal upon filing bond within five days, in sum of \$2,000, with William E. Buckingham as security.

ERRORS ASSIGNED.

- 1st. In refusing proper testimony.
- 2d. In admitting improper testimony.
- 3d. In overruling motion for new trial.
- 4th. In giving judgment for plaintiff.
- 5th. In sustaining demurrei to additional pleas, (Nos. 4 and 5.)
- 6th. Judgment is against law and evidence.

LELAND & BLANCHARD.

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1864.

GEORGE C. LEMON <i>et al.</i> , <i>Appellants</i> ,	}	<i>Appeal from La Salle.</i>
<i>vs.</i> HEMAN BALDWIN, <i>Appellee.</i>		

APPELLEE'S BRIEF AND POINTS.

The questions arising in this case, except one, are identical with those in No. 151, and to which counsel beg leave to refer; and in last case they submit the following further point and authorities:

VI.

The interest of the witness Lemon being shown *aliunde*, he was incompetent for any purpose.

1 Greenleaf Ev. sec. 423.
Hall vs. Conn. R. S. Co. 8 Conn. (new series,) 324.
3 Phil. on Evidence, (7,) p. 120.
Diversy vs. Will, and cases there cited, 28 Ill. 218.

A. E. STEVENSON AND
T. M. SHAW, *Counsel.*

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G. C. Sumner & Co

11

No. Baldwin

Appellus Brief & Pines

Given May E. 1864

L. L. L. O. W. R.