

No. 3275

Supreme Court of Illinois

⁷
Wm. H. Harris.

vs.

Theophilus Turner.

(379)  7

Pleas at the Circuit Court
begun and held at Petersburg within and
for the County of Menard and State
of Illinois on Tuesday the 3^d day of April
A D 1861 (being the second day of the
April term of said court), before the
Honorable James Harriott Judge of the
21st Judicial Circuit of the State of
Illinois

Heretofore to wit on the
3rd day of January A D 1861. There
was filed in the Clerk's office of the
Circuit Court of Menard County, Illinois.
The following Transcript and Bond, which
are in words and figures following,
to wit:

Theophilus D. Cuneo



vs.

William A. Harris & George Mc Coy.

Justice fee 2.87 1/2	}	Justice Court - Before the
Const. Sec't Williams fee 2.47 1/2		undersigned. Summons issued
Witnesses Claimed.		to Jacob Williams, C. M. C.,
H. C. Bond .50		this 1 st day of September
Jacob Williams .50		1860 on A. C. on file - De-
Henry Cluter .50		= mand \$100.00. Returnable
Smith Harris .50	}	The 7 th day of December
1860 at 2 o'clock.		Subpoena issued this 3 rd
		day of December. Summons returned endorsed
		"served by reading to defendants. December

dollars lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs and administrators, jointly, severally and firmly by these presents. Witness our hands and seals this 24th day of December 1860.

The Condition of the above obligation is such that whereas the said Theophilus Linnell did, on the 7th day of December, A. D. 1860, before A. H. Whitney, a Justice of the Peace of the County of Menard, recover a Judgment against the above bounden Mrs. A. Harris and George McCoy for the sum of eighty dollars and eighteen cents, from which Judgment the said Mrs. A. Harris and George McCoy have taken an appeal to the Circuit Court of the County of Menard aforesaid, and State of Illinois. Now if the said Mrs. A. Harris and George McCoy shall prosecute their suit to effect, and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

George McCoy 
Mrs. A. Harris 

A. H. Stow *Attest*

Approved before me at my office, this
24th day of December, A. D. 1860.

A. H. Whitney, J. P. *Attest*

And afterwards, to wit, on the
19th day of March A. D. 1861, there
was filed in the office of the Clerk
of the Circuit Court of Menard County
and State of Illinois, the following
summons with an endorsement on
the same, in words and figures fol-
-lowing, to wit:

State of Illinois, 3^d J.
Menard County, 3^d J. The People of
the State of Illinois, to the Sheriff of
Menard County - Greeting:

We command you to summon J.
D. Cunniff if to be found in your
County, to appear before the Circuit Court
of said County on the first day of
the next term thereof, to be holden
at the Court House in Petersburg, on
the first Monday in the month of
April next, to answer W. S. Harris &
George McCoy on an appeal from Justice
Whitney's docket, and hereof make due
return to said Court at the law

directs.



Witness, Joseph Johnson, Clerk
of our said Court, and the
Judicial Seal thereof, at Peters-
burg, this 5th day of Jan-
uary A. D. 1861.

Joseph Johnson, Clerk.

The following is the indorsement:
I served the within
on J. D. Turner by reading the within
to him, March 10th 1861.

Service .50

8 miles .40

Return $\frac{.10}{1.00}$



A. R. Johnson, Sheriff

By V. Caldwell, Deput.

And afterwards, to wit, on the
4th day of April, 1861, there was
filed in the office of the Clerk of the
Circuit Court of Menard County, State
of Illinois, the following affidavit, which
is in words and figures following, to wit:

In the Circuit Court of Menard
County, State of Illinois, April Term
A. D. 1861.

Theophilus D. Turner

vs. $\frac{3}{3}$ Appeal

William A. Harris &

George Mc Coy.

Theophilus D. Turner, Plaintiff in the above

b.

entitled cause, having been duly sworn, deposes & says, that the promissory note which was the foundation of this suit as it was originally tried before a Justice of the Peace, has since that trial been lost; that the affiant has used much diligence in searching for said note, and has searched for it in every place where he has been in the habit of keeping his notes or where said note would be likely to be found, but that he has not been able to find said note; and that to the best of his knowledge and belief, said note is as follows:

"\$100. Twelve months after date I promise to pay Mrs. A. Harris One Hundred for value received.

Sept 10th, 1859. Signed - A. J. Center."

On which said note affiant further says was the following endorsement: "For value received I assign the within note to Theoph B. Turner. Harris & Co. Secy."

And the affiant says that he has seen said note once since the said trial before, and that since he saw said note he burnt up a number of papers and writings which he had

Called out of the crowd when he had
been in the habit of keeping said note,
and that said note might have been
burnt at this time. And the affiant
further says, that on the said trial
below, the said defendants admitted the
copy herewith filed, with the endorsement
thereon, to be a true copy of said note
and endorsement, and admitted said
copy as evidence.

Thophilus B. Turner.

Subscribed & sworn to before
me, this April 2nd, A.D. 1861.
Joseph Johnson, Clerk.

And afterwards, to wit, on the
9th day of April A. D. 1861, there was
entered of record the following Judgment,
which is in words and figures following.
To wit:

P. D. Turner

vs.

William A. Harris &
George McCoy.

Appeal.

Now on this day came the parties
by their attorneys, and by the mutual
agreement of the parties this cause is
tried by the Court without the inter-
vention of a Jury. And the Court

Theophilus B. Cumes

vs.

William A. Harris &
George Mc Coy.

It is remembered, that on
this 9th day of April A.D. 1861, this
cause came on for hearing, and by
consent Jury waived and trial by
the Court. Thereupon the defendants re=
=newed their motion to dismiss this
suit on account of a misjoinder of
parties - defendants appearing in the sum=
=mons issued by A. H. Whitney, J.P., of
-fidavit of dep. and copy of the note filed,
as the foundation of this suit, [which are
heretofore copied]. Which motion was by
the Court overruled, to which ruling the
defendants excepted. The plaintiff there=
=upon moved the Court to introduce a
copy of the note as evidence, to which
motion the defendants objected, which ob=
-jection the Court overruled, to which
ruling the defendants then and there
excepted. And the said copy with the
indorsements thereon was by order of
the Court read in evidence. Which
copy and indorsements are as follows,
to wit:

"\$100. Twelve months after date I

promis to pay Wm. A. Harris One Hund=
red for value received.

Sept 10th, 1859. Signed - A. L. Center."

Indorsed, as follows, to wit:

"For value received I assign the within note
to Theoph B. Lunn.

Harris & the boy."

Thereupon the plaintiff introduced

1. Wiley C. Ward, who testified that at
the trial of this cause before the I. P.,
that defendants admitted copy of note
offered as above to be a true copy
of original note.

2. Jacob Williams testified that he knew
Alfred Center, maker of note; was con=
stable in precinct in which Center lived;
and it was reported that Center was
insolvent at the time the note be=
came due. As Constable he took
possession of mare mortgaged by Center
to secure the payment of the note sud=
upon; took the mare 11 or 12 Sept
A. D. 1860; sold mare under mort=
gage for \$20, which amt. was in=
dorsed on note, less three dollars con=
stable's fee. Center was absent at time
of said sale. Had sale put-off once
on account of Center's absence once. -

Readmitted & sold mow.

Crop &c. — That he had no execution against Center and made no search for property. Center might have had property and he not have known it.

Plaintiff stated his case.

The defendants thereupon introduced Robert Erwin, who testified as follows, to wit: That he knew Center, the maker of note; that he sold Center a horse on the 10 day of September A. D. 1860; that he considered Center good at that time, and considers him good yet; that Center is a single mow, makes it his home at his father's, about 1 1/2 miles from Athens. Horse sold Center worth sixty dollars; that Center had in his possession personal property in September A. D. 1860. It was his habit to ride horseback; was a horse doctor; had seen Center with horse & sulky; could not say whether it was the sulky Center bought of W. C. Brand or not.

Lewis View

Testified that he sold Alfred Center a horse about the tenth day of September A. D. 1860. Center at that time had in his possession horse

The horse I sold him; was worth about thirty dollars; saw same horse in Center's possession after the time he sold him.

A. L. Center

Has the maker of the note sued upon; had between the 10 and 30th September A. D. 1860, two horses, shot gun & watch; horses he bought of Vile & Erwin; was at home at his father's one & one-half miles South of Athens, Meigs Co. Ill., from 10th day of Sept to 20th Sept A. D. 1860.

Crop Etc. — Jacob Williams came to him 11 or 12 Sept for mare which was mortgaged to secure the payment of note sued upon; mare was at Chan-
= alserville; went down after her; rode down one horse & led another; rode one back & led the mare; left one horse at brother's in Chandler'sville, Cop. Co. Ill.; mare was delivered up to Williams on 12 Sept as soon as I got back; horse I rode back I kept until I went away the 20th of September A. D. 1860; rode him away when I went; took my property with me; came back in January A. D. 1861.

Defendants here rest their case.

Thereupon the Court rendered Judgment for Plaintiff for the amt. of \$84.84. Co which reversing the defendants Chen & Chen excepted, and from which Judgment the defendants prayed an appeal to the Supreme Court, Second Grand Division in and for State of Illinois. Which appeal was granted on condition that defendants enter into bond for one hundred & seventy-five dollars, with George S. Dana & Asa A. Brown security, within thirty days; which security was approved by the Court. And on motion of defendants this their bill of exceptions was signed & sealed by the Court, and filed as part of the record herein.

April 9, A. D. 1861.

James Harriott 

The following is the "Appeal Bond":
Know all men by these presents, that we, William A. Harris & George McCoy as principals, & Asa A. Brown & George S. Dana as security, are held and firmly bound unto Theophilus B. Currier in the penal sum of One Hundred and Seventy-Five Dollars, current money of the ^{United} States, for the payment of which

well and truly to be made, we bind ourselves, our heirs and administrators, jointly, severally and firmly by these presents. Witness our hands and seals, this 4th day of May 1861.



The condition of the above obligation is such, that whereas the said Theophilus B. Vines did on the 9th day of April A. D. 1861, at the April term of the Circuit Court in and for the County of Menard & State of Illinois, receive a judgment against the above bound William A. Harris & George McKoy, for the sum of Eighty-Four Dollars & Eighty-Four cts, from which judgment the said Harris & McKoy both took an appeal to the Second Grand Division of the Supreme Court in and for the State of Illinois.

Now if the said William A. Harris & George McKoy shall prosecute their said appeal with effect, and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal, and abide whatever said Court may direct, then the above obligation to be void, otherwise to remain in full force and effect.

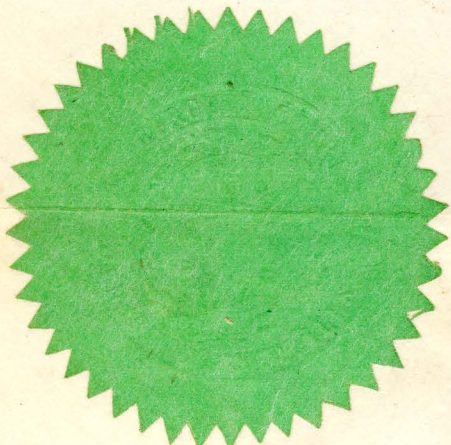
Wm. A. Harris 

George Mc Coy Seal
Asa A. Brown Seal
George S. Dana Seal

Taken and entered into before
me, Joseph Johnson, at my office.
this 6th day of May 1861.
Test — Joseph Johnson, Clerk.

State of Illinois. 
Menard County.  J. Joseph Johnson,
Clerk of the Circuit Court in and for the
County and State aforesaid, do certify
that the foregoing papers contain a
true and correct transcript of the
records and proceedings had in the cause
therein stated, as fully as the same ap-
pear to me of record, and on file
in my said office.

In testimony whereof I
have hereunto set my hand
and affixed the seal of
said Court, at Petersburg,
this 6th day of
July A. D. 1861.
Joseph Johnson, Clerk.



Theophilus B. Cumes

ms. ^{manuscript} Transcript.

William A. Harris &

George Mc Coy.

Filed July 29/61
Wm. A. Harris
G. Mc Coy

Harris & Jones

SUPREME COURT
OF
ILLINOIS,
SECOND GRAND DIVISION.

3275 **41**
1862

W. H.

1862