

8841

No. \_\_\_\_\_

# Supreme Court of Illinois

Peter Zimmerman

---

vs.

*Jacob Zimmerman*

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71641  7



Pleas in the Circuit Court of Jackson County in  
the State of Illinois at the May Term thereof  
A.D. 1857 before The Honorable William A  
Denning, Judge of the Third Judicial Circuit  
of said State and presiding Judge of said  
Jackson Circuit Court.

Be it remembered that heretofore, to wit: on the 31<sup>st</sup> day  
of January A.D. 1857, W. B. Robinson a Justice of the Peace in  
and for said County and State issued a certain summons  
against Jacob Zimmerman at the suit of Peter Zim-  
merman, assignee of John St. Rumbly: which summons  
is in the words and figures following to wit:

“ State of Illinois } The People of the State of Illinois to any  
Jackson County } Constable of said County Greeting

You are hereby commanded to summon Jacob Zimmere-  
man to appear before me at my office on the 11<sup>th</sup> day  
of Feb'y next at 12 o'clock of said day to answer the com-  
plaint of Peter Zimmerman assignee of John St. Rumbly  
for a failure to pay him a certain demand not  
exceeding one hundred dollars and hereof make  
due return to me as the law directs. Given under my  
hand and seal this 31<sup>st</sup> day of January A.D. 1857.  
W. B. Robinson J.P. Exd. ”

On which summons the following return was made  
“ Executed by the within J. Zimmerman acknowledging the  
service of the within this 4<sup>th</sup> Feb'y 1857 R. L. York Const ”

That thereafter, to wit: on the 11<sup>th</sup> day of February  
A.D. 1857 the said Justice of the Peace entered up a judgment  
in said case in the words and figures following, to wit:  
“ I give judgment in favor of Plaintiff for Twenty Dollars  
thirty nine cents with costs of suit by me this 11<sup>th</sup> day  
of Feb'y A.D. 1857. W. B. Robinson J.P. ”

That thereafter the said Peter Zimmerman took  
an appeal from the said judgment to the Circuit Court  
of said County and on 28<sup>th</sup> day of February 1857



the said Plaintiff Peter Lemmerman filed with the said Justice of the Peace a certain appeal Bond: which said appeal Bond is in the words & figures following to wit:

" Know all men by these presents that we Peter Lemmerman and Jacob Schmutz are held and firmly bound bound unto Jacob Lemmerman in the personal sum of forty three dollars and fifty eight cents lawful money of the United States for the payment of which well and truly to be made we bind ourselves our selves our heirs and administrators jointly severally and firmly by these presents. Witness our hands and seals this 28<sup>th</sup> day of July A.D. 1857 before W. Robinson a Justice of the Peace for the County of Jackson, recovered a judgment against Jacob Lemmerman for twenty dollars and thirty nine cents, from which judgment the said Peter Lemmerman has taken an appeal to the Circuit Court of the County aforesaid and State of Illinois Now if the said Peter Lemmerman shall prosecute his appeal with 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.

approved by me at my office this 28<sup>th</sup> day of July 1857. W. Robinson C.J.P.

} Peter Lemmerman *Eme*  
 } Jacob Schmutz *Eme* "

That thereafter, to wit: on the 6<sup>th</sup> day of March A.D. 1857. a Transcript of the above mentioned judgment was filed in the Clerk's office of said Circuit Court, which said transcript is in the words and figures following to wit:

" Peter Lemmerman assignee of John St Rumilly Jacob Lemmerman Debt _____ \$20.39 Interest fees Summons & docket _____ 31 <sup>24</sup> / <sub>100</sub> 30 cents _____ 18 <sup>24</sup> / <sub>100</sub> Judgment _____ 25	} Action of Weldon Pomeroy Note signed by John St Rumilly payable to Jacob Lemmerman for \$50.00 to be discharged in Cattle, Oats or Wheat dated 7 <sup>th</sup> July 1856 due the 27 <sup>th</sup> Sept following - one credit Sept 1856 for \$18.20 said Note was assigned from
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Entering appeal — 25  
 Transcript — 25  
 Bond — 25  
 1.50  
 Const fees  
 Serving summons 25  
 Smit's Court — 40  
 65

Rumbly to Peter Zimmerman the 10<sup>th</sup>  
 July 1856. Summons issued for trial  
 the 11 July 1857 at 12 o'clock of said day,  
 Summons returned by R L York Constable  
 Executed on 14<sup>th</sup> July 1857, and the parties  
 met at the time set for trial and the  
 defendant pled that the said Note had  
 been in suit before N B Collins Esq of Union  
 County and that he there proved payment  
 and he also produced a transcript of  
 a judgment and pled for nonsuit but was

over ruled by the Court he then proved Cows & Calves to be  
 worth seven dollars at the time the Note became due  
 and also proved by his own oath that he by contract had  
 paid ten dollars for Plaintiff to Wm Sumner, and after  
 hearing all the testimony aduced in the case I give  
 judgment in favor of Plaintiff for twenty dollars  
 thirty nine cents with costs of suit by me this 11<sup>th</sup> day of  
 July A D 1857. W B Robinson Co J. P.

State of Illinois }  
 Jackson County } I certify that the above is a true copy  
 from my docket - March the 1<sup>st</sup> 1857. W B Robinson Co J. P.

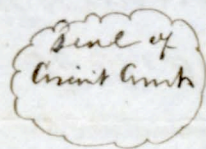
That thereafter, to wit: on the 7<sup>th</sup> day of March A D  
 1857 a summons issued from the Clerk's office of said  
 Circuit Court against the said Jacob Zimmerman, which  
 summons is in the words & figures following, to wit:

65 State of Illinois }  
 Jackson County } ss.

The People of the State of Illinois  
 To The Sheriff of Jackson County Greeting  
 We command you, that you summon Jacob Zimmerman  
 if he may be found in your County, or that he be and ap-  
 pear in the Circuit Court, within and for the County of Jackson  
 and State of Illinois, on the first day of the next Term thereof,  
 to be holden at the Court House, in the Town of Murphytown  
 in said County, on the second Monday of April next, then  
 and there to answer an appeal entered into by Peter  
 Zimmerman from a judgment of W B Robinson Esq a



Jurisdiction of the Peace, within and for the said County of Jackson, in favor of said Peter Zimmerman and against said Jacob Zimmerman, which appeal is set for the third day of said Term, and further to do and receive what the said Court shall consider of and concerning the premises - and have you then and there this writ with your return thereon.



Witness Donald St Bruck, Clerk of our said Court, at his office in Murphysboro this 7 day of March in the year of our Lord, one thousand eight hundred and fifty and the seal of said Court after said D St Bruck Clerk

On which summons the Sheriff of said County of Jackson made a return, which return is in the words and figures following, to-wit:

Executed by reading to Jacob Zimmerman on the 21<sup>st</sup> day of March 1857. Shift fees serving on 1 ——— 50  
 15 miles travel ——— 75  
 Per ——— 10  
 1.35

Ino B Clinton Shift

That thereafter, to-wit. at the May Term AD 1857, of said Circuit Court an order was made and entered of record in said cause, which order is in the following words, to-wit: "Peter Zimmerman } appeal  
Jacob Zimmerman }

"This day on motion leave is granted to amend the appeal Bond herein"

That thereafter, to-wit. at the same Term of said Court, and on the 16<sup>th</sup> day of said month of May, a judgment was made in said cause and entered of record: which judgment is in the words following to-wit:

And now, again the Plaintiff in person and by Dougherty & Jenkins his Atty, and the said Defendant in person and by Semois his Atty, and on motion of the Plaintiffs Atty leave was granted for the Justice to amend - And this matter being submitted to the Court after proofs heard it is considered by the Court that the said Plaintiff do recover of the said defendant the sum of Thirty two Dollars and Eight Cents and



15  
monety cents damages for the detention thereof, amount-  
-ing together to the sum of Forty Dollars and monety cents,  
together with his costs and charges herein to be taxed &c"

That thereafter to wit at the said May Term  
A D 1851 and on the 17<sup>th</sup> day of said month of May a-  
-nother order was by said Court made in said cause  
and entered of record: which order is in the words  
following, to wit:

Peter Zimmerman }  
vs }  
Jacob Zimmerman } appeal

16  
And now <sup>came</sup> again the said parties by their  
attys and the defendant prayed an appeal in this  
case to the Supreme Court, which is allowed in 30  
days on defts entering Bond as the law directs in  
the sum of one hundred and fifty dollars with John  
B Clinton or James Morgan as security "

That thereafter, to wit on the 17<sup>th</sup> day of May A D  
1851, the said defendant filed in the office of the Clerk  
of said Circuit Court, a Bond duly executed by him  
and John B Clinton and James M Morgan as security  
in the sum of one hundred & fifty dollars conditioned  
as the law directs.

17  
That thereafter, to wit on the 17<sup>th</sup> day of November  
A D 1851 the defendant Jacob Zimmerman was filed in  
office of the Clerk of the said Circuit Court a Bill  
of Exceptions; which said Bill of Exceptions is in the  
words and figures following, to wit

"In the Jackson Circuit Court May Term A D 1851

Peter Zimmerman }  
vs } appeal  
Jacob Zimmerman }

18  
Be it remembered that at a Circuit Court begun  
and held at the County of Jackson in the State of Illinois, at  
the May Term thereof A D 1851 the following proceedings  
were had therein. The action was originally commenced  
before W B Robinson a Justice of the Peace of said County  
upon a Note for fifty dollars payable in Corn and Culves  
wheat or Oats - which is mentioned in the proceedings in  
this cause, and a judgment rendered thereon for the amount



dismissed, and an appeal taken to the Circuit Court when the following proceedings were had before the Court without a Jury-

The Plaintiff offered the Note in evidence and rested his cause.

The Defendant then called James Soready who testified that the Note offered in evidence was to be paid or might be paid at his house - that it became due on Sunday, that on the next day Monday the parties met at his house - the Defendant brought with him a Cow and Calf - I owed to the Deft at the time one hundred dollars which was to be paid in part in the same kind of property called for by the Note. I was then ready and willing to pay it at the time - but the P<sup>t</sup> and Deft could not agree upon the price of the property. Jacob Zimmerman then proposed for each of them to send for a person to appraise the property and the Deft was about to send for Thomas Ferrill for that purpose - but Peter Zimmerman said that his child was sick and that he could not attend to it on that day. They finally mutually agreed to put the payment off until the next week - when they were both to appear at my house - the Deft to give and the P<sup>t</sup> to receive the property, - both were to have men there to appraise it. Something was said about a Cow to be paid or given by Deft to John Sumner in payment of a debt owed said Sumner by P<sup>t</sup> which was to be credited on this Note, but I do not recollect about what was said on the subject - that he could not say much about it.

Upon his cross-examination he stated that the property was not set out on the Monday after the Note became due to the P<sup>t</sup> it was neither appraised nor was he ready to pay it if the parties agreed about the price - Deft had one Cow & Calf there on that day - he did not recollect the agreement about the Cow to be paid to Sumner - there was some talk about it. Direct resumed. The Deft came to my house with two Cows on the Wednesday of the next week - I still owed him the hundred dollars before mentioned, and was ready to pay it.

Upon his cross examination he said the property was not set out on that day - the P<sup>t</sup> did not come there to receive it - he had two Cows, but they did



not have Cubes - but they were not set out to the P<sup>off</sup> and appraised.

23  
24  
William Sumner was then called and testified as follows I was present on the Monday after the Sunday when the Note became due - I heard the Defor tell the P<sup>off</sup> that he was ready to pay him - that he had the property there, but they could not agree as to the price of it - Jacob Zimmerman requested me to go and get Thomas Ferrill to come and appraise the property for him, and he wanted Peter Zimmerman to also get a man on his part. But Peter said his child was sick and could not attend to it but that he would attend to it and receive the amount some other day - Jacob Zimmerman told Peter that he could not attend to it that week, but if he wanted to put it off until the next week he would agree to it - They both finally agreed to wait until the next week when they were both to come to Tordys each bringing his appraiser, to appraise and set out the property to the P<sup>off</sup> - Peter Zimmerman said he would not take any advantage of Jacob in consequence of the Note not being paid on that day - this conversation was at Tordys. I heard it all - I heard something about a Cor to be given to John Sumner - as well as I remember Peter said he owed John Sumner a Cor and Jacob said he had a Note against Sumner for considerable - and if Peter would credit his Note he would credit ten dollars on Sumner's Note - Peter said he had agreed to give John a Cor, but if he would turn it that way he was willing it should go so - they finally agreed that Peter should let Jake know what Sumner would do on their next meeting there - Jake was to have a Cor there at Tordys to let Sumner have provided he would not let him credit the Note he held against him - I know that the Defor went to Tordys with two Cors on Wednesday of the next week - he took two Cors with him, one for Peter and one for Sumner if he would take it, and would not have the credit on the Note - Jacob notified Peter the day he was going to Tordys as they had agreed - Peter did not go there at all - I understood that he sold the Note before the day -  
Upon his cross examination he stated that the property was not set out nor delivered to Peter on the next



day after it became due - it was not appraised nor did he receive it. - I don't know whether Jacob went to Freedig's the second time with the two Cows, but he said he was going and started for there - I don't know that he notified Peter to come and receive the property only from what he stated about it. I don't know whether Sumner got the Cows or not nor do I know whether he consented to let the amount due from Peter be credited on Jacob's Note. Jake brought both of the Cows home with him again.

Isaac Vanil was then called, sworn for deft and testified that he had paid Rumibly a yoke of Steers but that that payment was on a different account, and was on the Note sued and before this note became due.

The deft then made oath that he knew of no Witness by whom he could prove that he gave Peter notice that on Wednesday of the next week after the Note became due he would be at James Freedig's to give up the property on the Note and with a man to appraise it. The defendant was then sworn and testified that Jacob Zimmerman did give him such notice, to come to Freedig's on Wednesday of the next week after the Note became due, to receive the property - but that he had sold the Note at the time and did not go.

The defendant also offered a "Transcript from the Docket of Napoleon Collins in evidence, a Justice of the Peace of Union County, Illinois, duly certified"

A true copy of said Transcript is herewith exhibited and marked "Exhibit letter A. and is hereto appended ~~and~~ ~~and~~ called the said Napoleon Collins a Witness on the part and in behalf of the Pff being duly sworn deposed in explanation of the transcript and explanation of what kind of a judgment he intended to render? This was objected by deft and all his explanation was objected to by deft, but the objection was over ruled by the Court. He then testified as follows. At the time there was nothing said about a non suit. I considered that Peter Zimmerman had broken his contract with Jacob about the matter and that he had no right to claim the money off from Jacob - I thought he should take the property and my judgment was intended only to effect this object that is to make him take yet the property. I did not consider the Note paid - upon these grounds I rendered a judgment that Plaintiff should pay the costs.

Upon his cross examination he stated that nothing was said about a non-suit at the time of the judgment.



The P.H. did not ask to submit to a non suit. The parties went into a full investigation of the matter on both sides on the Note, and I rendered a judgment after a hearing of the whole matter. I afterwards gave up the Note to Plaintiff because I thought he was still entitled to the property on the Note though not the money - that this Note sued on is the same Note specified in the transcript. The deft did not know that the Note was given up to P.H. he was not present - here both parties rested and judgment was rendered for the P.H. for the amount due on the Note -

- The defendant alleges the following causes of error -
- 1<sup>st</sup> That the Verdict was against law -
  - 2<sup>nd</sup> That it was against the evidence and,
  - 3<sup>rd</sup> That the Court erred in permitting the explanation and statements of J. Collins Esq. the J.P. before whom the judgment was rendered upon which or from which the transcript was taken

W. A. Denning (Clerk)

The Promissory Note sued on before W. Robinson Justice of the Peace is in the words & figures following to wit

"By the 24<sup>th</sup> of September next I promise to pay John St Rumbly fifty dollars to be discharged in Cattle Cotes or wheat at the rates of a good second rate Cow and Calf at Ten dollars to be delivered where I now live or on the farm whar said Rumbly now lives or at James Forests for value recd this 7<sup>th</sup> February 1846 Jacob Zimmerman"

The said Promissory Note has endorsed on the back thereof several assignments and a credit which said assignments and credit are in the words and figures following, to wit.

- "For value received I assign this Note to Peter Lemorman this 10<sup>th</sup> of February 1846 John St Rumbly"
- "Recd on the within Eighteen dollars & 20 Cents 1846"
- "For value received I assign the Note to Thomas Craft this 8<sup>th</sup> of October 1846"
- "for value received I assign the within to Peter Lemorman this 25 January 1851 Thomas Craft"



Exhibit letter A

Copy

Exhibit letter A

State of Illinois }  
Union County }

Thomas Craft assignee of Peter }  
Zimmerman assignee of }  
John St Rumbly by John }  
Zimmerman as his next }  
friend do }  
Jacob Zimmerman }

Action of debt on a note of hand for }  
\$32.30 }  
Summons issued the 2<sup>nd</sup> day }  
of January 1847 case set for trial the }  
13<sup>th</sup> day of the same instant at one o'clock }  
P.M. Summons returned in due time }  
Served by reading the same by Albert }  
Condit at the time set for trial the }

parties met and proceeded to trial after hearing the testimony }  
Judgment is therefore rendered against the Plaintiff for cost of }  
suit By me given from under my hand and seal this }  
13<sup>th</sup> day of January A.D. 1847 Napoleon B Collins (S)

I do hereby certify that the above is a true copy taken of my }  
Docket that I recd from Napoleon B Collins Esq Given from under }  
my hand and seal this 7<sup>th</sup> day of February 1857.

Samuel Butcher (S)

State of Illinois }  
County of Union }

I, Randolph V Marshalls, Clerk of the County }  
Court in said County, do hereby certify that Samuel }  
Butcher Esq whose name appears to the above and foregoing Trans- }  
cript, is and was at the time of signing the same, an acting }  
Justice of the Peace, in and for the County of Union duly elected }  
Commissioned and sworn, that his signature is genuine, and }  
that full faith and credit are and of right ought to be due }  
all his official acts as well without the County as within. I }  
also certify that N. B. Collins was at the time rendering the }  
judgment of which the foregoing is a transcript, was at the }  
time of so doing a duly elected and commissioned Justice }  
of the Peace within and for the County and State aforesaid }

Given under my hand and the seal of said }  
Court here affixed at my office in Danabon }  
this 8<sup>th</sup> day of February Anno Domini 1857.

R. V. Marshalls (S)

Seal of }  
County Court }

State of Illinois }  
Jackson County }

I Daniel H. Bush Clerk }  
of the Circuit Court in and for the said County }  
do hereby certify the foregoing to be a true }  
and correct copy of the Record and proceedings }  
in the said Case of Peter Zimmerman against }  
Jacob Zimmerman in the said Court as the }

20



same now stands of Record, with the exception of  
the Writ of Procedendo & the Copy of the Judgment  
of the Supreme Court this day filed.

In Witness Whereof I hereunto set  
My name and affix the seal of  
our said Court at My Office  
in Murphysboro this 18<sup>th</sup> day of  
November. A.D. 1854.  
David H. Brush Clerk

Clerks Fees for this copy of Record  
387 1/2 folio at 10c — \$3.87 1/2  
Certificate & Seal — 25c  
\$4.12 1/2  
D. H. Brush Clerk

And the said P<sup>ty</sup> in error and shows the following  
Causes of error. First that the verdict was against law  
& 2<sup>d</sup> that it was against the evidence. Third - that the Court  
erred in rendering judgment. Fourth - that the Court erred  
in permitting Napoleon Collins to explain the kind of judgment the  
jury were to render as J. D. and also erred in permitting him  
to explain the transcript from his copy - no objection appearing  
to the same. Fifth - that the P<sup>ty</sup> in error  
erred in

Lawyer in error  
J. D. [unclear] Clerk  
for [unclear]

Jackson Circuit Court  
Peter Zimmerman  
vs  
Jacob Zimmerman  
Copy of Record  
Exhibit letter A

The writ of error may be made a Deposition, in the  
self in our return into him to the effect in error in  
the penalty of \$150, with the names of Messrs. or John B.  
Clinton, in penalty, established on the law books.  
January 5<sup>th</sup> 1852.  
J. H. Hunt, C. J. Substantive



Peter Zimmerman } Dep't in error  
 & do }  
 Jacob Zimmerman } Dep't in error  
 See the Supreme Court  
 Term Jan 1832

And now on this day comes the defendant in error Peter Zimmerman by J. Bayly his attorney, and moves this Court, that the default be set aside and that the above cause — which was dismissed by this Court, as this Term for want of complying with a rule to join in error; be reinstated on the docket, for the following reasons

1<sup>st</sup> Because defendant has used due diligence in prosecuting his said suit and has not intentionally or negligently been guilty of laches

2<sup>d</sup> Because the record in this cause shows merits in his said cause & that manifest error is done him by its dismissal

J. Bayly att' for dep't in error,

A motion to set aside a default, is addressed to the said description of the cause. See 4 Deni. p 456 I shall be obedt



The Courts will an affidavit of Murtō see aside  
a judge of default <sup>the negator</sup> for 1<sup>st</sup> Lidds practice p 667  
r of



Peter Zimmerman } Left in error  
                           } ~~Error~~ to Jackson  
                           } pliff in error  
 Jacob Zimmerman }

- 1 In this case the depts did not except to the rendition of judge or refusal to grant a new trial
- 2 The transcript copied into the record by the clerk from justice's docket is no part of the record
- 3 Justice may claim his docket - 633. see 2<sup>d</sup> Decemur p 538.
- Dec 13<sup>th</sup> Ills Reports p 635. Edwards vs Vandercloack
- " 5 Gilman " 126 Edwards vs Pattison.
- " # 2 " 734, 729-
- " 11 Ills Reports 72. Deakes vs Durall

I do hereby for pliff return



2<sup>nd</sup> Gulben 10725-  
 3 " 380 + 366  
 6 " 126 (affidavits approved by clerk)  
 11 Ills 72 defect of Bill Execut.  
 13 " 633 {affidavits approved by clerk  
 & also, explanatory of  
 justices acts}

Def

L. Scamman 442 Deft. cannot  
 man suit.

Simons. The deft could  
 not set out and the  
 property in absence of  
 self.

Why not set out the  
 property Next week  
 Jacob went - not work with  
 his property & appraiser  
 went - did not set it out  
 or appraise it.

11<sup>th</sup> Ills 177.  
 [1842]



1854  
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Benjamin Brown  
 Mary Ann Smalley  
 Amos Colvin  
 Lot Walden  
 Jacob Frisvold  
 Abram Lambert



Peter Zimmerman } <sup>deft in error</sup>  
 ad }  
 Jacob Zimmerman } <sup>deft in error</sup> - in Error to Judge

I am very sorry my friends you see  
 deposes that Peter Zimmerman the defendant  
 in error in this cause employed this affiant to  
 attend to this cause in this court on his behalf  
 and did not as he is advised <sup>employ</sup> any other attorney  
 to attend to it. That affiant left his residence  
 in Merriam County, on Sunday last taking the  
 route of public conveyance by the Missouri  
 R.R. river to St Louis Mo, and by stage lines  
 to this place that steam boats usually run  
 from this affiant's usual place of landing to  
 St Louis Missouri in a period from 12 to 24  
 hours and the public stage lines from St Louis  
 Missouri by way of Salem in this state to this place  
 of holding this court in 37 hours which would  
 mean in the usual course of travel enabled  
 this affiant to have been in attendance on this  
 court on Wednesday last by an O'clock P.M.  
 of that day as far west of that on Tuesday  
 last by an attack. That from causes over  
 which this affiant had no control, <sup>to wit</sup> the least  
 an which he proceeded a passage to St Louis  
 on Sunday last about 12 O'clock. He did  
 not reach the landing at St Louis until  
~~Wednesday last~~ late last Tuesday night, <sup>arrived</sup>  
 on Wednesday last too late however for him  
 to get a passage by the stage lines to this place  
 on Wednesday but that on Thursday he did  
 that being the earliest period that he could  
 do so and arrived in court after the default  
 was taken that his client has merits in his  
 said cause, & has given due notice with a copy  
 of this affidavit & further by earth & sea  
 Simon to and Subscribed  
 before me this 13th day  
 of November 1852

F. D. Preston clk



Green on  
110

Green  
affidavit



The Supreme Court Nov. Term 1852

Jacob Guinerman  
Plff in error

Peter Guinerman  
Def in error

Errors to Jackdown

Abstract

This was an action originally commenced before W. E. Robertson J. P. of Jackson County when a trial was had and judgment for the Plff. <sup>on 11<sup>th</sup> Feb. 1851</sup> The Deft took an appeal to the Circuit Court where there was a second trial before the Court a jury being waived by the parties - and where the following proceedings were had

The Plaintiff offered the following note in evidence and rested his case:

"By the 27<sup>th</sup> of September next I promise to pay John St. Rumby fifty dollars, to be discharged in Cotton, oats or wheat, at the rate of a good second rate cow & calf at two dollars, to be delivered where I now live, or on the farm where said Rumby now lives or at James Leudy's place  
Value received this 7<sup>th</sup> February 1846"

Signed Jacob Guinerman

The Deft then offered in evidence a transcript of a judgment recovered before Napoleon Collins J. P. of Union County, on the same note rendered on the 13<sup>th</sup> of January A.D. 1847, duly certified by the Clerk of Union County

The Deft then introduced James Leudy as a witness who testified that the note became due on Sunday, parties met the next day, to value the property, when both parties agreed to postpone payment until next week at same place - Plff did not comply



Defendant also introduced, William Sumner and others to the same point, and also The Vault but as his ~~entire~~ testimony as it appears in the record is not material, not material <sup>and</sup> <sup>is</sup> not material.

The ~~Defendant~~ then introduced Napoleon Collins as a witness to explain the judgment he intended to render and the case was submitted. Judgment was rendered for the Plaintiff for the amount due on the note. The Jt. made a Motion for a new trial which was overruled and Jt. excepted.

He then prayed an appeal to this Court which was allowed - but appeal dismissed because the record was not filed by the third day of Term and now Jt. brings his case here on writ of error, when he assigns the following causes

- 1<sup>st</sup> That the verdict ~~is~~ against the law
- 2<sup>nd</sup> That it ~~is~~ against the evidence
- 3<sup>rd</sup> That the Court erred in rendering judgment
- 4<sup>th</sup> That the Court erred in permitting, Napoleon Collins to explain the ~~part~~ of judgment he intended to render at J. P. and also erred in permitting him to explain a transcript from his pocket no ambiguity appearing therein

Wherefore for the causes aforesaid and others apparent in the proceedings of the Court below, the Plaintiff in error prays that said judgment may be reversed &c.

L. G. Simons

Atty for the Plff. in error



In the Supreme Court  
November Term 1852

Jacob Zimmerman  
Plff in error

v

Peter Zimmerman  
Defendant in error.

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Attorneys

C. G. Simons

Atty for Plff.



In the Supreme Court Nov. Term 1852

Jacob Gimmelman  
Plaintiff in error

Peter Gimmelman  
Defendant in error

Error to Jackson

Brief

1<sup>st</sup>

A Recovery in a Court having jurisdiction of the subject matter, is a bar to a subsequent suit for the same cause unless the former was a new suit merely. Vide 1 Whitt's Pleading 195, 212, 478 note. *Whitney v. Clarendon* 18. Vermont (3 Pabbe) 252. *Perry v. Barnes* 17. Connecticut 420.

2<sup>nd</sup>

A Court will not permit parol testimony to explain a written agreement, unless there is a latent ambiguity appearing therein. And a judgment rendered by a Court having competent jurisdiction, cannot within the above rule. Vide *Baldwin vs. Carter* 17 Connecticut Rep. 201. *Hebble v. Luce* 3<sup>d</sup> McLean's Rep. 272. *Smith v. Kirby* 10 Meb. 150. *Stell v. Glass* 1 Kelly 475.

3<sup>rd</sup>

That in this case, the Justice Napoleon Collins, actually rendered a judgment on the merits at law, and not a new suit and was, therefore, a bar to the suit instituted before Mr. C. Robinson, and in the Circuit Court.

4<sup>th</sup>

That a parol agreement, made on the day a note became due between the holder and



In the Supreme Court  
of Vermont Term 1852

Jacob Zimmerman  
Plaintiff in error

v.

Peter Zimmerman  
Defendant in error

=====  
Brief

Le. G. Simon  
Atty. for Plaintiff in error

pages to extend the time of payment, was a  
valid and obligatory contract on the holder  
Vide Waddworth v. Thompson 3<sup>d</sup> Selman 423  
Le. G. Simon  
Atty. for Plaintiff in error



Jacob Gimmurman )

vs.

Peter Gimmurman )

If the maker of a note, payable at a particular place, pleads that he was ready to make payment at the time and place it operates as a tender, in bar of claim and costs. See 11 Alb. Repats. New Hope Delaware Bridge Company vs. Theodore Perry et. al 481. and notes there cited.

Seems

Atty for Plff in error



In the Supreme Court May Term A.D. 1852

Jacob Gimmelman  
Plaintiff in error

Peter Gimmelman  
Defendant in error

Term to Jackson

Abstract

This was an action originally commenced before W. C. Robinson J. P. of Jackson County when a trial was had and judgment for the plaintiff on the 11<sup>th</sup> of February 1851. The defendant took an appeal to the Circuit Court when there was a trial before the Court a jury being waived by the parties and when the following proceedings were had

The Plaintiff offered a note in evidence of which the following is a copy, and then submitted the Cause  
(copy)

"By the 31<sup>th</sup> of September next I promise to  
"pay John N. Bumsby fifty dollars, to be dis-  
"charged in Cattle, oats or wheat, at the rates  
"of a good second rate Cow and Calf at ten  
"dollars, to be delivered where I now live  
"or on the farm where the said Bumsby  
"now lives, or at James Lenders for value  
"received this 7<sup>th</sup> of February 1846"  
(Signed) Jacob Gimmelman

"The defendants then offered in evidence  
"a transcript of a judgment, returned before  
"Stephen Collins J. P. of Union County on  
"the same note rendered on the 13<sup>th</sup> of Jan-  
"uary 1847 duly certified by the Clerk of  
"the County of the Union County, Court



The Defendant then introduced as a witness James Grundy, who testified that the note in question became due on Sunday, On Monday parties met at his house the next day to value the property. When both parties agreed to postpone payment until next week at the same place. Plff. did not comply

Defendant also introduced William Sumner and others to the same point. He also introduced Isaac Vance, but as his testimony as it appears in the record is not material it is not relied on & settled his cause

The Plaintiff then introduced as a witness Napoleon Collins as a witness to explain the judgment he intended to render and the cause was submitted.

Judgment was rendered for the Plaintiff for the Plaintiff for the amount due on the Note, the defendant made a motion for a new trial which was overruled by the Court and defendant excepted

He then prayed an appeal to this Court which was allowed, but the appeal was dismissed, because the record was not filed by the third day of Term, and now Defendant brings his Cause here on writ of error where he assigns the following Causes

1<sup>st</sup> That the verdict was against the law

2<sup>nd</sup> That it was also against the evidence



14<sup>th</sup>

That the Court erred in permitting Samuel Collins to explain the kind of judgment he intended to render as J. J. and also erred in permitting him to explain a transcript from his clerk no ambiguity appearing therein

Wherefore for the causes aforesaid and others apparent in the proceedings of the Court below, the plaintiff in error prays that said judgment may be reversed

L. G. Simons

Atty for Deft in error



In the Supreme Court  
November Term 1852

Jacob Zimmerman  
Plaintiff in error

v.  
Peter Zimmerman  
Defendant in error

— — — — —  
Abstract

C. M. Simons  
Att'y for Plff.



~~No 21 19~~

No 5

Peter Zimmerman

v

Jacob Zimmerman

Ernst to Jackson

May 1832

disposed of -

Continued

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Prussia & Anarchy