

8549

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

# Supreme Court of Illinois

James Finley

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vs.

Jesse Steele

---

State of Illinois  
Marion County

I Pleas and Proceedings had in the Circuit Court in and for the County of Marion and State of Illinois in a certain Cause hereafter pending in said Court between Jesse Steub Plaintiff and Joel H Finley and William Finley Defendants.

Be it Remembered that on the 9<sup>th</sup> day of July A.D. 1858 the above named Plaintiff filed in the office of the Clerk of the Circuit Court of said County his Declaration against said Defendants which is in the words and figures following to-wit

Of the August Term of the Marion County Circuit Court for the Year A.D. 1858

Jesse Steub

vs  
Joel H Finley  
William Finley

Assumpsit  
Damages \$357.00

State of Illinois  
Marion County

Joel H Finley and William Finley

The Defendants herein were summoned to answer Jesse Steub the Plaintiff in a plea of trespass on the case on promises whereupon the said Plaintiff by Bryan & Schaeffer his attorneys complains. For that whereas herebefore to-wit on the seventeenth day of December A.D. 1856 at Jales to-wit in the County of Marion aforesaid the said Defendants made their certain promissory Note in writing bearing date a certain day and year therein mentioned to-wit the day and year aforesaid and thereby

then and then promised to pay one year after the date thereof to one Sarah Hamilton or order the sum of three hundred Dollars at ten percent Interest per annum for value received; and then and there delivered the said Note to the said Sarah Hamilton. And the said Sarah Hamilton to whom or to whose order the payment of the said sum of money in the said promissory Note specified, was to be made, after the making of the said promissory Note, before the payment of the said sum of money therein specified do wit on the day and year aforesaid at &c aforesaid indorsed the said promissory Note, by which said indorsement the said Sarah Hamilton then and there ordered and appropriated the said sum of money in the said promissory Note specified to be paid to the said Plaintiff and then and there delivered the said promissory Note so indorsed as aforesaid to the said Plaintiff by means whereof and by force of the Statute in such case made and provided the said Defendants then and there became liable to pay to the said Plaintiff the said sum of money in the said promissory Note specified with Interest as aforesaid according to the tenor and effect of the said promissory Note, and being so liable they the said Defendants in consideration thereof afterwards do wit the day and year aforesaid at &c aforesaid undertook and then and there faithfully promised the said Plaintiff to pay him the said sum of money in the said promissory Note specified with Interest as aforesaid according to the tenor and effect of the said promissory Note.

Nevertheless the said Defendants not regarding their said promise and undertaking, but contriving and fraudulently intending craftily and slyly to deceive and defraud the said Plaintiff in this behalf have not as yet paid the

said sums of money or the interest due thereon or any part thereof to the said Plaintiff although often requested so to do; but the said Defendants to pay him the same have hitherto wholly neglected and refused and still do neglect and refuse to the damage of the said Plaintiff of three hundred and fifty dollars.

And therefore he brings his suit &c

Bryan & Schaffer Atty for Plff

Note filed herewith

One Year after date for value received I promise to pay Sarah Hamilton or order Three hundred Dollars at ten per cent Interest per annum

Salem Dec 17<sup>th</sup> 1856

Joel K Finley  
William Finley

Upon the back of which Note are endorsements in words and figures following

\$35 Dec 22<sup>nd</sup> 1857

Rec<sup>d</sup> on within Note Twenty five Dollars

\$10,

March 10<sup>th</sup> /58 Rec<sup>d</sup> on the within ten Dollars

Sarah Hamilton



And afterwards at the August Term A.D. 1838 of said Court  
Dowit on the 10<sup>th</sup> day of August A.D. 1838 The following order  
was made by the Court Dowit

" Jesse Steele

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vs

Assumpsit

Joel H. Dinley and  
William Dinky

And now at this day came the  
parties here by their attorneys,  
and the Defendants by Haynie their attorney enter  
their motion to quash the writ herein, whereupon the  
Plaintiff by Bryan and Schaffer his attorneys enter  
their cross motion to amend the Declaration herein.

And the Court having duly considered said motion  
to quash the writ, disallows same, and allows said cross  
motion, with leave to amend the writ as they may  
be advised. And it is ordered by the Court that  
this cause be and the same is continued until the  
first day of the next Term of this Court at the costs of the  
Plaintiff."

And afterwards at the March Term A.D. 1839  
of said Court Dowit on Tuesday March 22<sup>o</sup> The follow-  
ing order was made by the Court Dowit

" Jesse Steele

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vs

Assumpsit

Joel H. Dinley and  
William Dinky

And now at this day came the  
Plaintiff by Bryan Schaffer his attorneys  
and on their motion leave is given to amend the writ herein  
and which being done One motion of the Defendants by

Willard & Bond their attorneys leave is given to plead  
by tomorrow morning."

And afterwards at said Term the following  
order was made by the Court on Wednesday March

22<sup>nd</sup> 1839 Court

"Jesse Steel

Assumpsit

vs  
Jacob H Dinley  
William Dinley

Time to plead herein extended  
until tomorrow morning.

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And afterwards at said Term of said Court  
Court on the 22<sup>nd</sup> day of March A.D. 1839 said Defendants  
by his attorneys filed their plea in words & figures follow-  
ing Court:

"State of Illinois March Term of Marion  
Marion County County Cir Court A.D. 1839

Dinley vs al

vs  
Steel

And Defendant comes & defends  
the wrong & injury when he says that  
they did not undertake and promise in manner and form  
as Plaintiff in his Declaration thereof against him has  
complained and of this he puts himself upon the  
Country &c

Bond & Willard  
for Defs

And the Plff does the same

Bryaw & Schaeffer attys for Plff

7 Also on the date last aforesaid said Defendant files his further plea &c which in words as follows Court.

2<sup>nd</sup> Plea. And for a further plea in this behalf leave &c Defendant says as two hundred Dollars more of sum above demanded Actio non because he says that the promissory Note declared upon which was assigned after become due payable was given by Defendant Joel K and William K Dingley (as security) at &c aforesaid in part consideration of of the purchase by Deft Joel K Dingley for and in the name of Marada Dingley his wife of the said Sarah of a certain tract of Land situate in the County of Marion State aforesaid & described as follows the W<sup>th</sup> of the S W<sup>th</sup> of Sec (22) T 2 N R 8 East for which said Deft paid the sum of \$1300 and the said Sarah on the 18<sup>th</sup> day of December 1856 executed and delivered to Deft Joel a Warranty Deed of conveyance in which Deed it was covenanted amongst other things by the said Sarah that the Land was free from encumbrances done or suffered from the Grantor Defendant avers that said Land was not free from encumbrances, but on the contrary thereof one John W Cyleby on the 3<sup>rd</sup> day of May 1856 had obtained a judgment against the said Sarah for the sum of seventy five Dollars fifty eight Cents & costs of suit before one J W Jones a Justice of the Peace in & of said County which said judgment was filed & recorded in the office of the Clerk of the Circuit Court of said Marion County upon which transcript a writ of execution issued on the 15<sup>th</sup> day of October A D 1856 directed to Sheriff &c to execute, by virtue of which execution said



Shff levied upon said Land & same was sold to John W Ogleby to whom a certificate of purchase was given thereof by said Shff and that he the said Defendant was compelled to pay the said John W Ogleby the sum of two hundred Dollars the time for Redemption having refused to procure the assignment by him of said Certificate to Amos Clark Sr to whom the said Merada Finley and Defendant Joel H Finley had before that time conveyed said Land by general Warranted Deed.

Defendant avers that said Promissory Note was assigned to said Plaintiff after its maturity Court on the 22<sup>d</sup> day of December A.D. 1837.

Defendant avers that to the extent of the sum of said two hundred Dollars the consideration of said Note has failed All of which Dft is ready to verify wherefore he prays Judgment &c

R S Bond

Atty for Dft  
or replication

So the foregoing is attached Plffs Answer in the words and figures following to wit

"And the said Plaintiff as to the second plea of the said Defendant by him secondly pleaded saith that he the said Plaintiff, by reason of any thing by the said Dft in this Plea alleged ought not to be barred from having and maintaining his aforesaid action thereof against the said Dft because he the said Plff says that the said Promissory Note in his said Declaration mentioned.

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was not given for Land as in the said Defts said second plea stated; That the said Note was assigned to him the said Plff before its maturity and that the said Note was received by him the said Plaintiff from the said Sarah Hamilton upon the representations of the said Defendant Joel H Dinley made at the time of the said assignment that the Note was good and valid and that he the said Joel H Dinley would pay it or see it paid - And this the said Plaintiff prays may be inquired of by the country &c

Jesse Steele  
Per Bryan Schaffer attys

And Defendant prays the like

Willard Bond

Attys for Deft

And afterwards Dourt on the 29<sup>th</sup> day of March 1859 said Plff filed his further Demurrer to said Defts 2<sup>nd</sup> Plea which is in the words & figures following Dourt

March term of the Union Circuit Court for the Year A.D. 1859

Jesse Steele

vs

Joel H Dinley &  
William Dinley

Assumpsit

And the said Plaintiff, as to the further or second plea of the said Defts by them pleaded saith that the same and the matters therein contained in manner and form as the same are in his said further or second plea pleaded and set forth are not sufficient in Law to bar or preclude him the said Plaintiff from having or maintaining

his aforesaid action thereof against them the said defen-  
 dants and that he the said Plaintiff is not bound  
 by Law to answer the same. And he the said  
 Plaintiff is ready to verify Wherefore, by reason of the  
 insufficiency of the said further plea in this behalf the  
 said Plaintiff prays Judgment and his Damages  
 by reason of the not performing of the said several  
 promises and undertakings in the said Declaration  
 mentioned to be adjudged to him &c

Jesse Steele  
 Per Bryan & Schaffer atty

And afterwards at said Term of said Court Bowit  
 on the 4<sup>th</sup> day of April 1839 an order was made by the  
 Court in the words & figures following Bowit—

"Jesse Steele

24/5

vs



Assumpsit

Jacob H Dinley  
 William Dinley

This Cause being called and the  
 Plaintiff having specially demurred  
 to the plea herein the same came on for  
 Argument And the Court having heard argument thereon  
 sustains same with leave to Defendants to amend their  
 2<sup>nd</sup> plea."

And afterwards Bowit April 6<sup>th</sup> 1839 said  
 Defendants filed their Demurrer to Pliffs Replication  
 which is in the words and figures following Bowit—

"Dinley et al  
 ats

Steele et al And the said Defendants come & defend  
 the wrong & injury when &c and say that the Pliffs

Replication to Defendants 2<sup>nd</sup> plea above pleaded is insuffi-  
cient in Law to compel Defs to answer unto same  
whereas they pray Courts &c

Bond & Hillard

Attys for Defs

For special cause of Demurrer Defs sets down  
that said replication presents an immaterial  
issue in this that it puts directly in issue the notice  
to Plff of the existence of encumbrances

B & H for Defs

And afterwards at said Term of said Court  
the following order was on the 7<sup>th</sup> day of April 1859 made  
by the Court Dornit

Given Seal

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os

Assumpsit

Joel H. Dingley <sup>and</sup> William Dingley vs This Cause being now called for  
Trial and the parties consenting  
that same be tried by the Court  
without a jury. And the Defendants having filed  
their Demurrer to the Plaintiffs Replication to the 2<sup>nd</sup>  
plea pleaded. The Court overrules same And  
this Cause being at issue upon said Replication  
the Court doth now proceed to Trial thereof And  
the Plaintiff produces and reads in evidence the  
promissory Note in the Declaration mentioned upon  
which this action is founded and sets his case  
whereupon the Defendant proved in evidence that  
said promissory Note was given on the purchase  
of certain land assigned to the Plaintiff after same

in the second plea described and that said promissory Note was described assigned to the Plaintiff after the same became due. And then and there introduced in evidence a Deed of Warranty in said 2<sup>nd</sup> plea mentioned. And the Plaintiff by his attorney objected to the reading said Deed in evidence. The Court sustains said objection. And the Defendants offered to read same in evidence under the words therein "Grant bargain and sell" and the Plaintiff further objecting and the Court sustained same and ruled that said Deed be excluded.

The Defendants thereupon offered to prove other facts in said plea alleged. The Court ruled that same be excluded. to all which rulings of the Court the Defendants take exception. And the Court proceeded to render its judgment and this action being on a promissory Note and the damages being uncertain. It is ordered by the Court that the Clerk assess the damages thereon and report to this Court, whereupon the Clerk reports the amount due upon said promissory Note for principal debt and damages at \$334.00. It is therefore ordered and adjudged by the Court that said Plaintiff do have and recover of and from said Defendants said sum of \$334.00 Debt and damages together with his costs in this behalf expended and may have execution therefor.

And the said Defendants moved the Court for a New Trial, which motion the Court overruled and thereupon said Defendants prayed an appeal which is granted on entering into Bond in \$200. with R & Bond as security and time to prepare Bill of Exceptions is given to the sitting of the Washington County Circuit Court. said Bill of Exceptions to be approved by the opposite Counsel

And afterwards Dowd on the 6<sup>th</sup> day of May A.D. 1839 said  
 Defendant filed his appeal Bond which is in the words  
 and figures following Dowd.

Know all Men by these presents that We Joel H Dinley  
 and Richard S Bond are held and firmly bound unto  
 said State in the penal sum of two hundred and fifty 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            day of April  
 A.D. 1839

The Condition of the above obligation is such  
 that whereas the said Jesse Stebbins did obtain judg-  
 ment against the above bounden Joel H Dinley  
 and William Dinley at the March term of the Marion  
 Circuit Court A.D. 1839 for the amount of three hundred  
 and thirty four and 5/100 dollars from which judgment the  
 said Joel H Dinley has taken an appeal to the Supreme  
 Court of the State of Illinois: Now if the said Joel  
 H Dinley 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

Joel H Dinley Seal  
 Richard S Bond Seal

Defendants also filed his Bill of Exceptions on the date  
 last aforesaid which is in the words and figures follow-  
 ing Dowd.

Be it Remembered That at the March

True of the Marion Circuit Court, A.D. 1837 a certain cause wherein Jesse Steele was Plaintiff Joel H Finley and William Finley were Defendants came on to trial and was tried by his Honor H H O'Melveny by agreement of parties.

And the said Plaintiff to maintain his cause introduced the promissory Note of the said Defendants which is in the words and figures following to wit

One Year after date for Value received I promise to pay Sarah Hamilton or order three hundred dollars at ten per cent Interest per annum

Salem December 17<sup>th</sup> A.D. 1836

signed Joel H Finley  
William Finley

Endorsed in blank by Sarah Hamilton

Plaintiff closed his case.

Defendants introduced Urial Mills who testified as follows.

That he Mills was present at the time of the endorsing of said note by said Sarah Hamilton and the delivery of the same to the Plaintiff Jesse Steele

That the said assignment or endorsing and delivery was, after the Note became due that it took place on the same day that the first payment was endorsed on the back of said Note which was the 22<sup>d</sup> day of December A.D. 1837 and the said Note was given for the sum described in the foregoing Deed Defendant then offered the following deed in evidence to wit.

This Deed made and entered into this eighteenth day of December Eighteen hundred and fifty six

Agreed Between Sarah Hamilton of the County of Marion  
of State of Illinois party of the first part and Meralda  
Dinley of the County and State aforesaid party of the  
second part Witnesseth that the said party of the  
first part in consideration of fourteen hundred dollars  
\$1400.00 to her paid by the said party of the second part  
the receipt of which is hereby acknowledged does by these  
present words grant bargain sell and convey unto the said  
party of the second part the following described  
piece or parcel of Land to wit the West half of the  
south West Quarter of section No twenty two (22) in Township  
No three North of Range No two East of the third principal  
Meridian being and being in the County of Marion and State  
of Illinois containing eighty acres

Do Stand and I hold the same together with all the  
rights immunities privileges and appurtenances to the same  
belonging unto the said party of the second part and to her  
heirs and assigns forever the said party of the first part  
herby covenanting that she and her heirs Executors and  
Administrators shall and will warrant and defend the  
title to the premises to the said party of the second part  
and to her heirs and assigns forever against the lawful  
claims of all persons

In Testimony whereof the said party of the  
first part has hereunto set her hand and seal the day and  
Year above written

Signed

Sarah Hamilton (S)

(with proper acknowledgment)

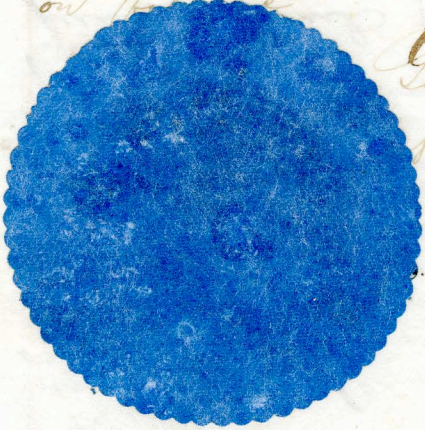
The Court then ruled that the said deed was



under the 2<sup>d</sup> Acts found Special plea not admissible  
 not admissible in evidence under the 2<sup>d</sup> Acts second  
 special plea. To which ruling Defendant accepted  
 and thereupon rendered judgment for the Plaintiff  
 for \$334.50 to all of which Defendant then  
 and there at the time excepted as contrary to Law  
 and now prays his Bill to be signed & sealed and  
 made a part of the Record in this cause which  
 is done &c

H. J. O'Melroy  
 Judge &c

State of Illinois  
 Morgan County  
 J. H. W. Egan Clerk of the Circuit  
 Court of said County do certify the  
 foregoing to be a complete Record of all the proceedings  
 had in our said Court in the above entitled cause  
 as the Original papers remain on file in my office  
 and that the Bill of Exceptions hereto annexed and  
 made part of this Record is truly copied from the original  
 on file



Given under my hand & official seal  
 at Salem this October 20<sup>th</sup> 1839

H. W. Egan  
 J. O. Chamberlain

Finley et al

vs

Stuck

et

Assignment of errors

The Court erred in not admitting the deed and other evidence under the defendant's 2nd plea and. Court erred in overruling Deft's motion for a new trial and rendering judgment on verdict.

The Court erred in giving judgment for Deft and damages when it should have been in damages alone the deed was the actus being in conspiracy

Willard & R. S. Bond

for Plaintiff in error

And signed by Bryan Atty  
Corns and says that there is  
no error in the foregoing record  
Cris S. Stewart

Dr. J. J. [unclear]

vs  
J. K. [unclear]

vs  
[unclear]



Record

Joel H. Pinley &  
Wm. Pinley

vs

Jesse Stebbins

Filed to Nov. 1857

J. S. [unclear] clk

Paid by [unclear] \$5.00

State of Illinois Supreme Court  
First Grand Division November Term 1859

Joel H. Amley  
 William Trilly  
 vs  
 Jesse Steele  
 Defendants in Error } Appeal from  
 } Marrow  
 } Plaintiffs Brief

Plaintiffs Assign the following Errors  
1<sup>st</sup> The Court Erred in not admitting the  
Deed and other evidence under 2<sup>d</sup> Plow

Rowle on Covenants 384 Note 1  
" " 385  
XIX Ill 242 XXI, 220 386-7 Note 1

2<sup>d</sup> The Court Erred in overruling Motion for  
New Trial and rendering Judgment on  
the Verdict

3<sup>d</sup> The Court Erred in rendering Judgment  
in Debt and Damages when it should  
have been in Damages only the Action  
being in Assumpsit

XXI Ill 30 " Gilman 266  
XIV " 248 1 " 667

Handwritten notes in the left margin, including the word "troub" and "with" written vertically.

Large handwritten notes in the middle section, including the word "troub" and "with" written vertically, and "Plants to be" written horizontally.

Handwritten notes in the lower middle section, including the word "troub" and "with" written vertically, and "Plants to be" written horizontally.

Handwritten notes in the lower right section, including the word "troub" and "with" written vertically, and "Plants to be" written horizontally.

Handwritten notes in the bottom right section, including the word "troub" and "with" written vertically, and "Plants to be" written horizontally.

State of Illinois Supreme Court Mt Vernon  
November Term 1859

Garb H Finley &  
William Finley

Plaintiffs in Error

vs  
Jesse State

Defendant in Error

Appeal from  
Marion

Plaintiffs Brief

Plaintiffs assign for Error

1<sup>st</sup> That the Court erred in not admit-  
ting the Deed and other evidence  
under the Second Plea

XIX Ills 242

XXI Ills 220,

Rawls on Covenants 384 Note 1

" " " 385-6-7 " "

2<sup>d</sup> That the Court erred in overruling the  
motion for a new trial and rendering  
Judgment on the verdict

3<sup>d</sup> That the Court erred in rendering  
Judgment for debt and damages, when  
it should have been for damages only  
the action being in assumpsit

1<sup>st</sup> Gilman 667

XIV Ills 248

2 " 266

XXI " 30,

Willard & R. S. Bond  
Plaintiffs

... .. 1829

... ..

... ..

... ..

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... ..

July et al  
to  
Steel

Preps

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211  
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217  
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...

Joel K. P.

# ABSTRACT.

JESSE STEELE,  
vs.  
JOEL K. FINLEY & WILLIAM FINLEY.

} Appeal from Marion.

JESSE STEELE sued JOEL K. FINLEY and WILLIAM FINLEY, on a note given by the said JOEL K. FINLEY and WILLIAM FINLEY (as security) to SARAH HAMILTON, and endorsed in Blank by SARAH HAMILTON, and delivered to the said JESSE STEELE, after the same became due. Plaintiff filed his declaration at the August Term of the Marion Circuit Court 1858. writ issued, made returnable at said term—defendants moved the Court to quash the writ—Plaintiff entered cross motion to amend Declaration, which motion to quash writ was disallowed, and motion to amend declaration allowed and cause continued to next term. (Note sued on) "One year after date for Value received, I promise to pay SARAH HAMILTON or order, three hundred dollars at ten per cent Interest per Annum.

JOEL K. FINLEY  
WILLIAM FINLEY."

SALEM, December 17th, A. D., 1856.

On the back of said note were the following endorsements.) Dec. 22d, 1857, twenty-five dollars.

Received on the within note twenty-five dollars.

March 10th, 1858, Re'd., on the within ten dollars, (endorsed)

SARAH HAMILTON.

At the March Term, 1859,

Plaintiff's Attorney moved the Court for leave to amend the writ—motion allowed and Defendants by WILLARD & BOND, filed their Pleas, to-wit: the General Issue, and Special Plea, setting up a partial failure of consideration, in this, that said note was given for the purchase of Land, and for which the said SARAH HAMILTON, Executed her Warrantee Deed.

in which said deed it was covenanted, amongst other things that the same was free from all incumbrances.

That at the time of the said warrantee Deed, there was a judgment against the said Sarah Hamilton, on the records of the Marion County Circuit Court, upon which an execution was issued, and said land was sold to satisfy the same, and certificates issued and time of redemption expired, and Def't. Joel was compelled to pay the sum of \$200 to remove said incumbrance.

Plaintiff joined issue upon Def't's. 1st plea—genl. issue.

Replication to 2nd and similiter, and cause submitted to court to try by parties without jury.

Plaintiff introduced the foregoing note in evidence, and Plaintiff closed his case.

Defendants introduced URIAL MILLS who testified that, he MILLS was present at the time said note was endorsed by said SARAH HAMILTON, and delivered to the said Plaintiff: That the said assignment, or endorsing and delivery of said note to Plaintiff, was after the same became due: that it took place on the same day, that the first payment was made, and endorsed on the back of said note, which was the 22d day of December, 1857, and that said Land described in the Deed offered in Evidence, was the consideration for which said note was given.

Defendant then offered said Deed in evidence,—objected to by Plaintiff's Counsel, objection sustained by the Court, and the Court rendered Judgment on said note for three hundred and thirty-four dollars and fifty cents.

And excluded all further testimony of said Defendant, the defendant below, now brings this cause into this Court by Appeal, and assigns the following causes for Error.

## ERRORS ASSIGNED.

- 1st. ~~The Court erred in sustaining Plaintiff's Demurrer to Defendant's 2d Plea.~~
- 2nd. ~~The Court erred in overruling Defendant's Demurrer to Plaintiff's Replication.~~
- 3rd. The Court erred in not admitting the Deed and other evidence under the Defendant's 2d Plea.
- 4th. The Court erred in overruling Defendant's Motion for New trial and rendering judgment on verdict.

WILLARD & BOND, Defendant's Attorneys.

Advocate Print, Salem, Ill.

*3rd The Court erred in not admitting the Deed and other evidence under the Defendant's 2d Plea.*

*4th The Court erred in giving Judgment for debt and damages when it should have been in damages the action being in Assumpsit*

*Willard & Bond  
Atty for Appellant*



For 12 Friday  
Museum Friday -  
April 25

from Clarke

Albino of

Nov. 17, 1859.  
A. S. Lincoln M.D.

Abstract

Nov Term Sup Court 1859

Joel R. Amley et al  
vs  
Jesse Steele

Sol. Kinley & Mr. Kinley appl<sup>ts</sup> }  
vs } Appeal from  
Jesse Stude appl<sup>ts</sup> } Union  
The Court of Supreme  
Court please docket above cause & file the  
record &c

Willard for P<sup>ty</sup>

Doct H. Pirley &  
Wm Pirley  
in

Esq. State

Receipt

Filed Nov. 15. 1889  
A. Johnston Clerk

*Joel K. Finley* **ABSTRACT.**

**JESSE STEELE,**  
vs.  
**JOEL K. FINLEY & WILLIAM FINLEY.**

} Appeal from Marion.

JESSE STEELE sued JOEL K. FINLEY and WILLIAM FINLEY, on a note given by the said JOEL K. FINLEY and WILLIAM FINLEY (as security) to SARAH HAMILTON, and endorsed in Blank by SARAH HAMILTON, and delivered to the said JESSE STEELE, after the same became due. Plaintiff filed his declaration at the August Term of the Marion Circuit Court 1858. writ issued, made returnable at said term—defendants moved the Court to quash the writ—Plaintiff entered cross motion to amend Declaration, which motion to quash writ was disallowed, and motion to amend declaration allowed and cause continued to next term. (Note sued on) "One year after date for Value received, I promise to pay SARAH HAMILTON or order, three hundred dollars at ten per cent Interest per Annum.

JOEL K. FINLEY  
WILLIAM FINLEY."

SALEM, December 17th, A. D., 1856.

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in which said deed it was covenanted, amongst other things that the same was free from all incumbrances.

That at the time of the said warrantee Deed, there was a judgment against the said Sarah Hamilton, on the records of the Marion County Circuit Court, upon which an execution was issued, and said land was sold to satisfy the same, and certificates issued and time of redemption expired, and Def't. Joel was compelled to pay the sum of \$200 to remove said incumbrance.

Plaintiff joined issue upon Def'ts. 1st plea—genl. issue.

Replication to 2nd and similiter, and cause submitted to court to try by parties without jury.

Plaintiff introduced the foregoing note in evidence, and Plaintiff closed his case.

Defendants introduced URIAL MILLS who testified that, he MILLS was present at the time said note was endorsed by said SARAH HAMILTON, and delivered to the said Plaintiff: That the said assignment, or endorsing and delivery of said note to Plaintiff, was after the same became due: that it took place on the same day, that the first payment was made, and endorsed on the back of said note, which was the 22d day of December, 1857, and that said Land described in the Deed offered in Evidence, was the consideration for which said note was given.

Defendant then offered said Deed in evidence,—objected to by Plaintiff's Counsel, objection sustained by the Court, and the Court rendered Judgment on said note for three hundred and thirty-four dollars and fifty cents.

And excluded all further testimony of said Defendant, the defendant below, now brings this cause into this Court by Appeal, and assigns the following causes for Error.

**ERRORS ASSIGNED.**

- 1st. ~~The Court erred in sustaining Plaintiff's Demurrer to Defendant's 2d Plea.~~
- 2nd. ~~The Court erred in overruling Defendant's Demurrer to Plaintiff's Replication.~~
- 3rd. The Court erred in not admitting the Deed and other evidence under the Defendant's 2d Plea.
- 4th. The Court erred in overruling Defendant's Motion for New trial and rendering judgment on verdict.

**WILLARD & BOND, Defendant's Attorneys.**

Advocate Print, Salem, Ill.

*3<sup>rd</sup> The Court erred in excluding other evidence tending to prove plff's 2<sup>nd</sup> plea*

*4<sup>th</sup> The Court erred in giving judgment for debt and damages when it should have been in damages the action being in assumpsit*

*Wm. & R. S. Bond  
Attys for deft & Plaintiff*

46-46  
Supreme Court, substance

Division Nov Term 1859

John R. Finley & Wm

Finley appellants

vs

James Steele appellee

Abstract

Sup Court 1859  
Finley vs  
Steele

Abstract

Nov Term Supreme Court 1849

Joel K. Finkley }  
vs } Appeal from Honorable  
Jesse Steel }  
Debit Brief

1st point. There is a substantial variance  
between the plea of the plaintiff and the  
evidence—a deed which offered & rejected  
2nd point the deed offered in evidence does  
not contain a covenant against incum-  
brances, but the covenant of title only  
authorities relied on to support the judge-  
ment of the circuit court

Illinois Reports vol. 14th page (168 & 304)  
19th ditto page 242—21st ditto (720) & Cases & C.  
Statute of Illinois page (961), Rules on  
Covenants for title page (397 to 412)  
Smedley & Church Reports Miss prop 427  
Cruise on Real property (448)  
11th Johnson Reports page (122)  
10th Reports page 460  
2 Cases Reports page 192  
7th Johnson Reports 258

Silas L. Wynn Atty for Deft.

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Nov-Dec 1859-

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Joe Finley

Jessie <sup>my</sup> Steele

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Appl. from Mason's

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Affirmation

8549