

8428

No.

Supreme Court of Illinois

Welcome Martin

vs.

Jacob Morlock

71641  7

26-72

Martin
vs

نور محمد
Morlock

Free Bill on page 571 - and
Clerks Court fund

1863

8428

State of Illinois
Marion County



SS Pleas and proceedings had in the
Circuit Court in and for the County
of Marion and State of Illinois, The
Hon Silas L Bryan presiding, in
a certain cause heretofore pending in
said Court wherein Jacob Morelock
was Plaintiff and Wilcom Martin
Defendant,

Be it Remembered That on the 5th day of March
A.D. 1862 the above named plaintiff filed in the office
of the Clerk of the Circuit Court of said Marion County his
precipe for summons against the above named defend-
ant which is in words & figures following To-wit

"State of Illinois
Marion County
March Term Marion Circuit
Court A.D. 1862

Jacob Morelock vs Wilcom Martin
Ass't Damages \$5.00
Pleas issued
Summons in ass't

in this cause pursuant to law

Haynie & Smith
for Pffs"

Whereupon summons issued in words and figures
following To-wit

"State of Illinois
County of Marion
SS The People

of the State of Illinois O. the Sheriff of said County
Greeting

We Command you to summon Welcom
Martin if to be found in your County, to appear before
the Circuit Court of Marion County, on the first day of
the next term thereof, to be holden at the Court House,
in Salem, on the Third Monday in the Month of March
Inst, to answer Jacob Wozelock of a plea of tres-
pass on the case on promises to his damage \$500 &
as he says. And hereof make due return to our said
Court as the Law directs.

J Seal

Witness Jacob O. Chaner Clerk of our
said Court, and the seal thereof at
Salem, this 5th day of March A.D. 1862
J. O. Chaner
Clerk

Endorsed as follows

"Served March the 7th 1862 by leaving
a copy of summons at the house of Welcom Martin with
his wife Believing that he evaded service by secreting him-
self so that service by reading could not be had upon
him

J. J. Black Sheriff
per A. A. Drew
deputy

And afterwards Dourt on the 7th day of March 1862
said Plaintiff by his Counsel filed in the office of
the clerk of said Circuit Court his Declaration which
is in words & figures following Dourt

"State of Illinois) March Term Marion Circuit
Marion County) Court AD 1862

Jacob Morlock)
vs) Asspt

Welcom Martin) Damages \$500

Welcom Martin the

Defendant in this suit was summoned to answer Jacob
Morlock the pff in this suit of a plea of trespass on the
case upon promises and thereupon the said pff by
Hayme Smith his attys complains For that
Whereas the said Defendant heretofore Dourt on the
9th day of November 1859 at Cincinnati that is to
say at the County of Marion and State of Illinois made
his certain promissory note in writing bearing date a
certain day and year therein mentioned Dourt the day
and year aforesaid and thereby then and there promised
to pay to the order of Monheimer Friedman & Co five
hundred and six ⁷⁵/₁₀₀ Dollars with ten per cent interest
after maturity for value received and then and there
delivered the said promissory note to the said
Monheimer Friedman & Co then and there endorsed
and delivered the said promissory note to the said
pff By means whereof and by force of the Statutes in such
case made and provided the said Defendant then and

then became liable to pay to the said pff the said sum of money in the said promissory note specified according to the tenor and effect of the said promissory note and being so liable he the said defendant in consideration thereof afterwards on the day and year aforesaid at &c aforesaid undertook and then and there faithfully promised the said pff to pay him the said sum of money in the said promissory note specified according to the tenor and effect thereof.

And whereas also the said defendant on the 8th day of October 1860 at Cincinnati that is to say at the County of Marion and State of Illinois made his certain other promissory note in writing bearing date a certain day and year therein mentioned to wit the day and year aforesaid and thereby then and there promised to pay to the order of Friedman & Stern fifty six ³⁵/₁₀₀ Dollars for Value received with ten per cent Interest after maturity and then and there delivered the said promissory note to the said Friedman & Stern and the said Friedman & Stern then and there indorsed and delivered the said promissory note to the said pff by means whereof and by force of the statute in such case made and provided he the said defendant then and there became liable to pay to the said pff the said sum of money in the said promissory note specified according to the tenor and effect of the said promissory note and being so liable he the said defendant in consideration thereof afterwards on the day and year aforesaid at &c aforesaid undertook and faithfully promised the said pff to pay him the said sum of money in the said promissory note specified according to the tenor and effect thereof

And whereas also the said Defendant afterwards
sought on the 1st day of March A.D. 1862 a^{re} aforesaid was fur-
ther indebted to the said p^{ff} in the further sum of \$500⁰⁰ for so much
money by the said p^{ff} before that time lent and advanced
to and paid laid out and expended for the said Defendant
and at his special instance and request and in the further sum
of \$500 for so much money before that then and there due and
payable from the said Defendant to the said p^{ff} for interest
upon and larger sums of money
before then due and owing from said Defendant to said p^{ff} and by
said p^{ff} to the said Defendant for divers long
spaces of time before then elapsed at the like special instance
and request for the said Defendant and being so indebted he
the said Defendant in consideration thereof afterwards sought
and a^{re} aforesaid undertook and then and there
faithfully promised the said p^{ff} to pay him the said
several sums of money when he the said Defendant should
be thereto afterwards requested. Nevertheless the said
Defendant not regarding his said several promises and
undertakings but contriving and fraudulently intending craftily
and subtly to deceive and defraud the said p^{ff} in this behalf
hath not as yet paid the said several sums of money or
any or either of them or any part thereof to the said p^{ff}
(although afterwards requested so to do) but to do this
he the said Defendant hath hitherto neglected and refused
and still doth neglect and refuse to p^{ff} damages \$500⁰⁰
Maryie Smith
for p^{ff}

Wileom Martin

Mar 1st 1862

To Jacob Merlock

To Money paid

500.00

Money lent

500.00

Interest

500.00

\$506 ⁷⁵/₁₀₀

Cincinnati November 9th 1859

Six Months after date, I the subscriber of Sandoval County of Marion ^{and} State of Illinois promise to pay to the order of Monheimer Friedman & Co. Five hundred ^{and} six ⁷⁵/₁₀₀ Dollars with ten per cent interest after maturity.

No.

W. Martin

Endorsement on note

"Without recourse on us

Monheimer Friedman & Co

Rec^d Oct 5th 1860 Forty eight Dollars on within
\$48.75

Rec^d within note thirty five Dollars on within

\$35 - November 5th 1860

Rec^d Feb 22/61 One hundred Dollars on within

\$100 ⁰⁰/₁₀₀

2^d note

\$56 ³⁵/₁₀₀

Cincinnati October 8th 1860

Six Months after date I the subscriber of Sandoval County of Marion State of Illinois promise to pay to the order of Friedman & Fifty six ³⁵/₁₀₀ Dollars Value received, payable at with 10 percent interest after maturity.

oro - due Apr 8/61

W Martin

Endorsed as follows,

Rec^d fourteen dollars & 25/100
Oct 8th 1860."

Fredman Stern

And afterwards at the March Term 1862 of said
Court the following order appears of Record
in said cause ~~to wit~~

No 247

Jacob Morelocks }
vs } Assumpsit
Welcome Martin }

And now at this day Court
Saturday March 24th 1862 It is ordered that
this cause stand continued to the next term of
this Court for service."

Whereupon Summons issued
in words and figures following ~~to wit~~

"State of Illinois }
County of Marion } ss The People of the
State of Illinois to the
Sheriff of said County Greeting,
We Command you to summon Welcome Martin
if to be found in your County, to appear before the
Circuit Court of Marion County, on the first day of
the next Term thereof, to be holden at the Court House
in Salem, on the third Monday in the Month of

August next, to answer Jacob Morelock of a plea
of trespass on the case on promises to his damage
\$500⁰⁰ as he says and hereof make due return to
our said Court as the Law directs.

Lord

Witness Jacob O Chaves, Clerk
of our said Court, at Salem this
19th day of June AD 1862
J O Chaves Clerk.

Indorsed as follows

"I have served the within writ by
reading to Welcom Martin July 18th 1862

Servin	50
My	50
Retz	10
	1,10

J J Black Shff
By J Shultz deputy

Afterwards at the August Term 1862 of said Court
the following order appears of Record in said cause
Dowit

"Jacob Morelock
No 131 vs Assumpsait
Welcom Martin

And now at this day
Dowit Monday August 18th 1862 On motion leave is
given to open depositions herein"

Afterwards at said Term the following additional order appears of Record in said Cause Court

"Afterwards on this day Court Tuesday August 19th 1862 came the parties by their attorneys and application is made by defendant, and the Court having duly considered same allows said application upon payment by defendant of the costs of continuance"

Afterwards Court on the 20th day of August A.D. 1862 said defendant by his counsel filed in the office of the Clerk of said Circuit Court his Demurrer to said Puffs Declaration in words & figures following Court

"Welcome Martin
vs
Demurrer

Jacob Morelock And the said defendant by Willard & Goodnow his attorneys comes and defends the wrong and injury where and says that the said 1st & 2^d counts plaintiffs Declaration and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in Law for the said plaintiff to have and maintain his aforesaid action thereof against the said defendant and the said defendant is not bound to answer the same and this he is ready to verify wherefore he by reason of the insufficiency of the said Counts of the said Declaration in this behalf the said defendant prays judgment &c

Willard & Goodnow
Deft attys

1st Cause in the first Count of said Declaration does not show that Monheimer ever assigned endorsed and delivered said note to p^l. 2^d In second Count the statement of assignment in Declaration is insufficient and uncertain

Also on the date last aforesaid said Defendant filed in said cause his affidavit for Continuance which is in words and figures following to wit

"State of Illinois
Marion County

Jacob Warelock

vs

Wilcome Martin

Assumpsit

Wilcome Martin Defendant

in this suit being first duly sworn deposes and says that he cannot safely proceed to the trial of this cause at this term of this Court for the want of the testimony Charles Woodward and Isaac W. Horgan who are residents of the City of Cincinnati Ohio local agents of the Adams Express Company and that affiant was served with process in this case on the 18th day of July 1862 that since the service of the said process his attorneys have made diligent inquiry to ascertain who was the local agents of the express Co at Cincinnati by writing two letters to Cincinnati Ohio and were informed that one John R. Patterson was the agent and proceeded to sue out a *Subpoena potestatum* sent same to Cincinnati directed one William Pullin

which was returned on account of the absence of said
Pullen from the City affiant atty procured a new dectimus
directed to J D Bank and took the deposition of said Patte-
-son which Depositions discloses the fact that said Patterson
was at the time referred to in said Depositions General travel-
-ing agent for said Express Co not the local agent at the
Time affiant also received information on the night of
the 19th of this month for the first time that Charles Woodward
and Isaac W Horgan were such agents and affiant expects
to prove by said Witnesses the receipt and delivery of money
to the firms of Monheimer Freedman and Freedman
Stem during the years of 1860 & 1861 at divers times
amounting to five hundred Dollars and upwards affiant
further says that the notes sued on in this case been
date respectively November 9th 1859 and October 8th 1860 one
for 506²⁵/₁₀₀ Dollars payable to Monheimer Freedman & Co
one for 56³⁵/₁₀₀ to Freedman & Stem and affiant further
say that said notes were both assigned long after the
same became due and affiant further says that the
aforesaid sums of money was sent by Adams Express
from Sandoval during the years aforesaid for the Ex-
-press purpose of paying off and discharging said
notes and affiant further states that he was in-
-formed that William P Patterson whose Depositions
was taken as aforesaid was the proper person by whom
to prove the delivery of the aforesaid packages of money
and did not learn his error until last night since the
sitting this Court that Charles Woodward and Isaac
W Horgan were the proper persons by whom to prove

the delivery of said packages of money and affiant
knows of no other witnesses by whom he can prove the
same facts and that he expects to procure their evidence
before the next term of this Court and that this affidavit
is not made for delay but that justice may be done.

Subscribed and sworn
to before me this 20th

day of August 1862

J O Chace CJ

By W W Eagan depy

W Martin

Afterwards at the March term 1863 the
following order appears of Record in said Cause Douth

90 "Jacob Marlock

vs

Welcome Martin



Assumpsit

And now at this day Wednesday
March 18th 1863 on motion leave is given to open depositions
and the plaintiff by his attorney moves the Court that the
depositions be suppressed which motion the Court refused.

Afterwards Douth on the 20th day of March 1863
said defendant by his Counsel filed his plea^{and Motion} which
are in the words and figures following Douth

"Marion Circuit Court

March Term A D 1863

Welcom Martin
at
Jacob Monlock



Pleas

State of Illinois
Marion County



And the said defendant
by Willard & Goodnow his attorneys, comes and defends
the wrong and injury, when he and saith that he did not
undertake or promise in manner and form as the said
plaintiff hath above thereof complained against him, and
of this he puts himself upon the country &c

Willard & Goodnow
attys for deft
ppf doth the like
O'Melveny & Smith for pff

B. B. Smith plaintiffs attor
-ney you will please take notice that ^{above named} the defendant
defendant on the trial of this cause will give his evidence
and insist that the notes described in Plaintiffs dec-
-laration & sued on in this suit were assigned to said
Plaintiff long after the same became due and payable
and that defendant paid a large sum of money to the
original payee of said notes before the same became
due and before the same were assigned to Plaintiff defend-
-ant sent by Express from Sandoral Illinois February
7th 1860 one hundred dollars April 19th 1860 sent by
Express One hundred Dollars June 21st 1860 sent one
hundred dollars October 3rd 1860 sent one hundred

dollars February 20th 1861 Express one hundred dollars
to Monheimer Freedman & Co original payees of the
aforesaid notes and that the aforesaid sums of money
were respectively paid over to the aforesaid Monheimer
Freedman & Co by the agent of said Express Co in the
City of Cincinnati Ohio. And that the said defend-
ant will and that the aforesaid sums of money are
other than the sums already endorsed on said notes
set off and allow to the said Plaintiff on the ^{said} trial so much
of said sums so due and owing from the said plaintiff
to the said defendant against the said demand in said
declaration specified to be proved on the said trial
as well be sufficient to satisfy said demand accord-
-ing to the form of the Statute in such case made and
made and provided

Wellard & Goodnow
Attorneys;

Afterwards at said March term 1863 the following order
appears of Record in said cause To wit

90 "Jacob Morelock
vs Assumpsit
Welcome Martin

Afterwards To wit on Friday March
20th 1863 this cause is called for trial, come the parties
by their attorneys and issue is joined Let a jury come
and thereupon came the following jury To wit, Thomas C

Day, William Day, William Hill Owen & Gate App.
Allison, Joseph Deadwood, J Howard, Ed Ray, Edward
Young John W Crane, Hubbard Jones and Noah Stevenson,
twelve good and lawful men who being tried elected and
sworn well and truly to try the issue joined, having heard
the testimony arguments of counsel and instructions of the
Court retired to consider of their verdict and afterwards
brought into Court the following verdict We the jury
find for the plaintiff four hundred and ninety four
Dollars and ninety seven, whereupon the defendant moves
for a new trial, which motion the Court refused.

The plaintiff remits from said judgment eight Dollars
and sixty cents and the verdict to stand for the residue
to wit \$486.37 It is therefore ordered and adjudged
by the Court that the plaintiff do have and recover of
and from the defendant the sum of \$486.37 damages
with his costs herein expended and may have Execution
and Dist^{ts} except &c.

Afterwards to wit on the 23^d
day of March 28th 1863 said Defendant by his atty
filed his affidavit for new trial in words and
figures following to wit

"Jacob Morlock } March Term of the
vs } Marion Circuit Court
Welcome Martin } A D 1863
State of Illinois } ss
Marion County }

W. W. Willard

one of the attorneys for Welcome Martin defendant
in the above entitled cause upon his oath deposes
and says that by agreement of counsel on both
sides of this case the jury retired and delivered a sealed
verdict to the officer and jury dispersed after Court adjourn-
ed that after said verdict was sealed and returned
to said officer one of the attorneys for plaintiff had
a conversation or conversations with some one or more
of the jury upon the subject of the verdict and after
said conversation the next day said jury came into
Court and signified their dissatisfaction with said
verdict and the Court permitted said jury to retire
and return an other and different verdict or modify same
as affiant is informed and believes further deponent
saith not

W. W. Willard

Subscribed and sworn to before me this 23^d day of
March 1863

J. O. Chancer Clerk

Whereupon the following order was entered in said
cause To wit

"Afterwards To wit April 3^d 1863 the
Defendant prayed an appeal which is granted Bond
to be perfected in 30 days with William Bird as security
in penalty of six hundred Dollars, Bill of Exceptions
to be perfected in said thirty days"

Whereupon the Defendant on the 20th day of April 1863
filed his Bond in words and figures following to-wit

"Know all men By these presents that we Wel-
come Martin William Aird & R P McElvain of the
County of Marion and State of Illinois are held and
firmly bound unto Jacob Morelock of the County and State
aforesaid in the penal sum of six hundred Dollars to be
paid to the said Jacob Morelock his Executors, adminis-
trators or assigns to the payment whereof I bind myself
my heirs Executors and Administrators firmly by these
presents sealed with our seals and dated this 18th day
of April A D 1863

The Condition of the above obligation is such
that whereas the said Jacob Morelock did at the March
Term of the Marion County Circuit Court A D 1863 obtained
a judgment on two promissory notes against the said
Welcome Martin for the sum of four hundred and
ninety eight Dollars & ninety seven cents from which said
judgment the said Welcome Martin has taken an appeal
to the Supreme Court of the State of Illinois.

Now if the said Welcome
Martin shall prosecute his appeal with effect and
shall pay whatever judgment may be rendered by the
said Supreme Court upon dismissal or trial of said
appeal then the above obligation to be void and of none
effect otherwise to remain in full force and effect
Taken and approved by me

This 20th day of April 1863

J O Chance Clerk

Welcome Martin *[Signature]*

William Aird *[Signature]*

R P McElvain *[Signature]*

Also on the date last aforesaid To wit April 20th 1863
said Defendant filed his Bill of Exceptions herein
which is in words and figures following To wit

"It is Remembered That at the March Term of the
Marion Circuit Court AD 1863 a certain cause came on
to be tried by the Court and a jury wherein Jacob Morelock
was Plaintiff and Welcome Martin was Defendant Declaration
in assumpsit containing two counts and common counts Defen-
-dant filed general issue and notice of set off upon which
Plt joined issue and the Plaintiff to maintain his cause
introduced the following notes in evidence

\$ 36³⁵ Cincinnati October 8th 1860
Six months after date the subscriber of Landonal County
of Marion State of Illinois promise to pay to the order
of Friedman & Sterne Fifty six ³⁵/₁₀₀ Dollars Value
received payable at with ten per cent after
maturity signed W Martin

And on the back of said notes was the following
endorsement Rd fourteen and ²⁵/₁₀₀ Dollars Oct 8th
1860

Friedman & Sterne

The other note was introduced as follows To wit
\$ 506⁷⁵ Cincinnati November 9th 1859 Six months
after date of the subscriber of Landonal County of Marion
and State of Illinois promise to pay to the order of
Monheimer Friedman & Co Five hundred and six ⁷⁵/₁₀₀
Dollars with ten per cent Interest after maturity
signed W Martin

and on the back of said note was the following indorse-
ment) without recourse on us Monheimer Friedman
& Co Rec^d October 5th 1860 Forty eight Dollars on the
within \$48 received on the within Thirty five Dollars \$35-
November 5th 1860 Rec^d Feb 22^d 1860 one hundred
Dollars within \$100 here plaintiff closed his case
Deft introduced P P McElwain who testified as
follows I saw the notes here sued on one of them after
they became due and before Plaintiff purchased them
a person representing himself to be one of the firm of
Monheimer Friedman & Co offered to sell me the
notes either one or two notes, notes ~~same~~ which referred to
in Declaration he said there was due on the notes at the
time he offered to sell the same to me about three
hundred and seventy five Dollars this was a year and
a half or such a matter ago

Here Deft closed his case and this was all the evi-
dence in the case

Jury retired and counsel on both sides agreed
to take a sealed verdict

and Court adjourned until 8 1/2 o'clock next morn-
ing

The Court was called at 9 o'clock next morning
jury in their seats. The verdict was read as follows

✖ The jury find for the Plaintiff three hundred and
ninety two Dollars and forty cents

The jury then said they were dissatisfied with the
verdict & had made a mistake in computing
Interest and the Court permitted the jury to retire

and return another and different verdict or modify same
as affiant is informed and believes further deponent
saith not

Subscribed and sworn

W W Willard

to before me this 23^d day of

April 1863

J O Chauver clk

Court overruled motion for new trial
and entered judgment or verdict

Silas L Bryan ^{clerk}
Judge 2^d Ju Cir Ills.

State of Illinois
Harrison County ⁵³ J O Chauver clerk of the
Circuit Court of said County do

Certify the foregoing to be a true and correct transcript
of the records and proceedings had in our said Court
in the above entitled cause as the same remains on
file and of record in my office

Given under my hand and official
Seal at Salem this 3^d day of November
A D 1863

J O Chauver clerk
Errors Assigned

And now comes said plaintiff by Willard & Goodnow his atty and
sets down and assigns the following causes of Error

- 1st The court erred in refusing motion for new trial, and to set
aside the verdict because the verdict is contrary to the evidence.
- 2^d The court erred in permitting the jury to retire and bring

in another and different verdict from the one they had rendered, and by consent of parties sealed and delivered to the officer and then separated, the first verdict being in proper form

3 The Court erred in refusing motions for new trial because of the gross misconduct of the jury: They having had conversations with depts Atty upon the subject of the first verdict after they separated and were thereby influenced to become dissatisfied with their first verdict

Willard Gavelman

Atty for P'ty in Error

26
Welcom Hart
ms
Jacob Worlock

~~Willard Gavelman~~
S
Record
26

Filed Nov. 9. 1863 -
A. Johnston clk
Paid by Gavelman
\$11-

A C Gavelman
Atty for P'ty
Dec 8/63

26 — 12

Martin

New York

Apprentice from
Massachusetts

Reversed &
Remanded

Reported

Nov. 7. 1863

Willcome Marlow } oppo
vs
Jacob Morelock } oppo

The said Court is so founded
in error says that there is no
error in the records & says that
this may be required &c

A. K. S. O'Illevary
for dep^t

State of Illinois }
Marion County }^{ss}

Welcom Martin

vs

Jacob Monelock

} Appeal from Marion

Mr Clerk please

docket this above entitled

cause

D C Goodnow

Atty for Pltf

26

Preprie

Filed Nov. 9. 1863 -
S. Johnston Clerk

Chicago Feb. 29

Wm

I send you the papers
in the case of Martin vs
Minchok retaining
the wrapper as it will
increase the postage.
The opinion is written
and in the hands of
Judge Walker who
will send it to you when
he has examined and approved
it. You had better notify the
attorneys when you get the
opinion, as they may want
a trial next month.

Yours
Sidney Mason

Cincinnati March 13th 1864

Major Johnson

Your note laid down the
record remanding the case, I will see
Monlock Monday and get him to come
to your office and pay off the costs -
I desire if possible to get a verdict at
the completion of court.

Yours Respy

A. K. S. O'Connell

ABSTRACT.

In Supreme Court---1st Grand Division, in the State of Illinois.

WELCOM MARTIN, }
vs. } APPEAL FROM MARION.
JACOB MORELOCK. }

- Pleas and proceeding had in Circuit Court of Marion county.
- 2 Summons.
- 3 Declarations, Jacob Morelock vs. Welcom Martin in assumpsit on two promissory notes.
- 5 Common counts.
- 6 Copy of notes.
- 7 and 8 Cause continued and summons.
- 9 Demurrer to declaration.
- 10 and 11 Special causes of demurer and affidavit for continuance.
- 12 Motion to suppress depositions ; motion refused.
- 13 and 14 Plea and notice cause called for trial and jury empannelled, and having heard the testimony re-
- 15 tired to consider the verdict, and return the following verdict : We the jury find for the Plaintiff four hundred and ninety-four dollars and ninety seven cents. Defendant moves for a new trial and the Court refuses the motion.

The Plaintiff remits from said judgment eight dollars and sixty cents, and the verdict to stand for the residue, to-wit : \$486-37. It is ordered by the Court that Plaintiff have and recover from the Defendant the sum of \$486,37 damages with costs.

Afterwards on the 23rd of March, 1863, filed his affidavit for new trial, to-wit :

JACOB MORELOCK, }
vs. } March term of the
WELCOM MARTIN. } Marion Circuit Court,
A. D., 1863.

STATE OF ILLINOIS, }
MARION COUNTY. } W. W. WILLARD,

- 16 One of the Attorneys for Welcom Martin, defendant in the above entitled cause upon his oath deposes and says that by agreement of counsel on both sides of this case the jury retired and delivered a sealed verdict to the officer and jury dispersed after Court adjourned, that after said verdict was sealed and returned to said officer, one of the Attorneys for Plaintiff had a conversation or conversations with some one or more of the jury upon the subject of the verdict, and after said conversation the next day, said jury came into Court and signified ther dissatisfaction with said verdict, and the Court permitted said jury to retire and bring in another verdict or modify same as affiant is informed and believes further deponent saith not. Subscribed and sworn to the 23rd of March, 1863.

Afterwards to-wit : April 3rd, 1863, Defendant prayed an appeal which is granted, bond to be filed in thirty days with William Aird as security. Bill of exceptions to be perfected in said thirty days.

- 17 Defendant filed bond April 20th, 1863.

- 18 April 20th, 1863, Defendant filed bill of exception.

Be it remembered that at March term, Marion Circuit Court, 1863, this cause came on to be tried Jacob Morelock, Plaintiff, and Welcom Martin, Defendant. Declaration in assumpsit containing two counts and common counts. Plaintiff to maintain his cause introduced the following notes :
\$56,85.
Cincinnati, October 8th, 1860.

Six months after date, I the subscriber of Sandoval, County of Marion, State of Illinois, promise to pay to the order of Freedman and Stern, fifty-six dollars and thirty-five cents value received.

Payable at with ten per cent after maturity.

W. MARTIN.

Endorsements received, fourteen dollars and twenty-five cents. October 8th, 1860.

FREEDMAN & STERN.

\$506,75.

Cincinnati, November 9th, 1859.

Six months after date, I, the subscriber of Sandoval, County of Marion, and State of Illinois, promise to pay to the order of Monheimer, Freedman & Co., five hundred and six dollars and seventy-five cents, with ten per cent. interest after maturity.

W. MARTIN.

- 19 On the back of this note is, without recourse on us, Moheimer, Freedman and Co., received October 5th, 1860, forty-eight dollars, on the within November 5th, 1860, \$35. February 22nd, 1860, \$100. Plaintiff closed. Defendant introduced R. P. McElwain, who testified, I saw the notes here sued on, one of them after they became due, and before Plaintiff purchased them. A person representing himself to be one of the firm of Monheimer, Freedman and Co., offered to sell me the notes either one or two notes the same referred to in declaration; he said there was due on the notes at the time he offered to sell the same to me, about three hundred and seventy-five dollars; this was a year and a half or such a matter ago.

This was all the testimony in the case.

The Court was called at 9 o'clock next morning.

The verdict was read as follows: We, the jury, find for the Plaintiff three hundred and ninety-two dollars and forty cents.

The jury said they were dissatisfied with the verdict, had made a mistake in computing interest.
20 The court permitted the jury to retire and bring in the second verdict in the case, as follows: "We the jury find for the Plaintiff, \$494.97." Plaintiff remits from said judgment \$8 60, judgment for remainder. Jacob Morelock vs. Welcom Martin. State of Illinois, Marion County.

I, W. W. Willard, one of the attorneys for Welcom Martin, the defendant in the above entitled cause, upon his oath, deposes and says that by agreement of counsel on both sides of this case, the jury returned and delivered a sealed verdict to the officer, and the jury dispersed after court adjourned. That after said verdict was sealed and returned to said officer, one of the attorneys for plaintiff had a conversation or conversations with some one or more of the jury upon the subject of the verdict, and after said verdict, and after said conversations, the jury came into court and signified their dissatisfaction with said verdict, and the court instructed said jury to retire and return another and different verdict or modify same as affiant is informed and believes. Further deponent saith not.
21

W. W. WILLARD.

Sworn to before J. O. Chance, April 23d, 1863.

Court overruled motion for new trial and entered judgment on verdict.

SILAS L. BRYAN, Judge 2d Judicial Circuit, Illinois.

Clerk's Certificate, Seal, &c.

ERRORS ASSIGNED.

And now comes said plaintiff, by Willard & Goodnow, his attorneys, and sets down and assigns the following causes of Error:

1st. The court erred in refusing motion for new trial, and to set aside the verdict, because the verdict is contrary to evidence.

2d. The court erred in permitting the jury to retire and bring in another and different verdict from the one they had rendered and by consent of parties sealed and delivered to the officer and then separated, the first verdict being in proper form.

3d. The court erred in refusing motion for new trial, because of the gross misconduct of the jury. They having had conversations with defendant's attorneys upon the subject of the first verdict after separation and were thereby influenced to become dissatisfied with their first verdict.

WILLARD & GOODNOW, Atty's for Martin,

BRIEF.

The Court will ^{not} permit the jury to retire to consider their verdict, the second time ^{unless} when their verdict is informal and insufficient. 16 Illinois, page 40.

When the jury have manifestly found against the evidence, the verdict will be set aside. 12 Illinois, page 99.

The verdict will be set aside by reason of any gross misconduct of the jury. 2 Scammon, page 70.

A jury cannot willfully disregard the testimony of an unimpeached witness 28 Ills page 181

IN THE SUPREME COURT OF ILLINOIS,

FIRST GRAND DIVISION-----NOVEMBER TERM, 1863.

BRIEF.

Welcome Martin,
VS.
Jacob Morlock. } Defendant's Brief.

1. The evidence of McElwain is uncertain. He speaks of "about" \$350 and "about" one or one and a half years ago.

2. The written notes and credits were, if he spoke of INTEREST & PRINCIPAL, in conflict with the notes & credits. *his evidence*

3. He evidently spoke of the PRINCIPAL of the notes, which, less the credits, was about the sum stated, to-wit: \$385.

The motion for new trial was correctly overruled. The affidavit of Willard is not positive, but on "information & belief." What was said is not stated, that the court can see whether it was or was not calculated to ^{allow} the verdict. The verdict was sealed up and delivered to the officer. When read the jury asked to correct the mistake in computation, & the court permitted them to do so, without objection of plaintiff in error or Counsel at the time.

2. "Conversed upon the subject of the verdict—is exceedingly indefinite—whether of approval or disapproval is left as an inference.

In looking into the whole case no injustice is done to plaintiff in error, on the contrary, substantial justice to all.

2 Scam., p. 70, is a case wholly dissimilar from the one at ~~law~~. *for sure* Now there was only an effort on the part of the jury to correct a mistake, the verdict they had rendered was not in fact their verdict.

H. K. S. O'MELVENY, For Defendant in Error.

The question is which is most worthy of credit, a man relating from another the amt. due on a note on the note itself? It is a question of weights of evidence and the notes ought to prevail, and witness spoke not positively.

as to my account of jury

Martin 26
vs
Moorlock

Dyts. P. P. P.

FIRST GRAND DIVISION
IN THE SUPREME COURT OF ILLINOIS
NOVEMBER TERM 1865

McCombs Martin,
vs
Jacob Moorlock,
Defendant's Trial.

The evidence of McE. Martin is uncertain. His speech of "about \$2000" is not

on one side a bill years ago.

The other side is a bill years ago.

The other side is a bill years ago.

It is certainly spoke of the purchase of the note, which, but the receipt, is

not stated, to be: \$2000

The motion for new trial was correctly denied. The bill part of William is

not on "information & belief". It was not said to be "proved", that the note was

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Filed Nov-12-1865
A. Johnston, Clk.

ABSTRACT.

In Supreme Court---1st Grand Division, in the State of Illinois.

WELCOM MARTIN, }
vs. } APPEAL FROM MARION.
JACOB MORELOCK. }

Pleas and proceeding had in Circuit Court of Marion county.

- 2 Summons.
3 Declarations, Jacob Morelock vs, Welcom Martin in assumpsit on two promissory notes.
5 Common counts.
6 Copy of notes.
7 and 8 Cause continued and summons.
9 Demurrer to declaration.
10 and 11 Special causes of demurer and affidavit for continuance.
12 Motion to suppress depositions ; motion refused.
13 and 14 Plea and notice cause called for trial and jury empannelled, and having heard the testimony re-
15 tired to consider the verdict, and return the following verdict : We the jury find for the Plaintiff four hundred and ninety-four dollars and ninety seven cents. Defendant moves for a new trial and the Court refuses the motion.

The Plaintiff remits from said judgment eight dollars and sixty cents, and the verdict to stand for the residue, to-wit : \$486-37. It is ordered by the Court that Plaintiff have and recover from the Defendant the sum of \$486,37 damages with costs.

Afterwards on the 23rd of March, 1863, filed his affidavit for new trial, to-wit :

JACOB MORELOCK, }
vs. } March term of the
WELCOM MARTIN. } Marion Circuit Court,
A. D., 1863.

STATE OF ILLINOIS, }
MARION COUNTY. } W. W. WILLARD,

- 16 One of the Attorneys for Welcom Martin, defendant in the above entitled cause upon his oath deposes and says that by agreement of counsel on both sides of this case the jury retired and delivered a sealed verdict to the officer and jury dispersed after Court adjourned, that after said verdict was sealed and returned to said officer, one of the Attorneys for Plaintiff had a conversation or conversations with some one or more of the jury upon the subject of the verdict, and after said conversation the next day, said jury came into Court and signified ther dissatisfaction with said verdict, and the Court permitted said jury to retire and bring in another verdict or modify same as affiant is informed and believes further deponent saith not. Subscribed and sworn to the 23rd of March, 1863.

Afterwards to-wit : April 3rd, 1863, Defendant prayed an appeal which is granted, bond to be filed in thirty days with William Aird as security. Bill of exceptions to be perfected in said thirty days.

- 17 Defendant filed bond April 20th, 1863.

- 18 April 20th, 1863, Defendant filed bill of exception.

Be it remembered that at March term, Marion Circuit Court, 1863, this cause came on to be tried Jacob Morelock, Plaintiff, and Welcom Martin, Defendant. Declaration in assumpsit containing two counts and common counts. Plaintiff to maintain his cause introduced the following notes :
\$56,85. Cincinnati, October 8th, 1860.

Six months after date, I the subscriber of Sandoval, County of Marion, State of Illinois, promise to pay to the order of Freedman and Stern, fifty-six dollars and thirty-five cents value received. Payable at with ten per cent after maturity. W. MARTIN.

Endorsements received, fourteen dollars and twenty-five cents. October 8th, 1860.

FREEDMAN & STERN.

\$506,75.

Cincinnati, November 9th, 1859.

Six months after date, I, the subscriber of Sandoval, County of Marion, and State of Illinois, promise to pay to the order of Monheimer, Freedman & Co., five hundred and six dollars and seventy-five cents, with ten per cent. interest after maturity. W. MARTIN.

- 19 On the back of this note is, without recourse on us, Moheimer, Freedman and Co., received October 5th, 1860, forty-eight dollars, on the within November 5th, 1860, \$35. February 22nd, 1860, \$100. Plaintiff closed. Defendant introduced R. P. McElwain, who testified, I saw the notes here sued on, one of them after they became due, and before Plaintiff purchased them. A person representing himself to be one of the firm of Monheimer, Freedman and Co., offered to sell me the notes either one or two notes the same referred to in declaration; he said there was due on the notes at the time he offered to sell the same to me, about three hundred and seventy-five dollars; this was a year and a half or such a matter ago.

This was all the testimony in the case.

The Court was called at 9 o'clock next morning.

The verdict was read as follows: We, the jury, find for the Plaintiff three hundred and ninety-two dollars and forty cents.

20 The jury said they were dissatisfied with the verdict, had made a mistake in computing interest. The court permitted the jury to retire and bring in the second verdict in the case, as follows: "We the jury find for the Plaintiff, \$494.97." Plaintiff remits from said judgment \$860, judgment for remainder. Jacob Morelock vs. Welcom Martin. State of Illinois, Marion County.

21 I, W. W. Willard, one of the attorneys for Welcom Martin, the defendant in the above entitled cause, upon his oath, deposes and says that by agreement of counsel on both sides of this case, the jury returned and delivered a sealed verdict to the officer, and the jury dispersed after court adjourned. That after said verdict was sealed and returned to said officer, one of the attorneys for plaintiff had a conversation or conversations with some one or more of the jury upon the subject of the verdict, and after said verdict, and after said conversations, the jury came into court and signified their dissatisfaction with said verdict, and the court instructed said jury to retire and return another and different verdict or modify same as affiant is informed and believes. Further deponent saith not. W. W. WILLARD.

Sworn to before J. O. Chance, April 23d, 1863.

Court overruled motion for new trial and entered judgment on verdict.

SILAS L. BRYAN, Judge 2d Judicial Circuit, Illinois.

Clerk's Certificate, Seal, &c.

ERRORS ASSIGNED.

And now comes said plaintiff, by Willard & Goodnow, his attorneys, and sets down and assigns the following causes of Error:

1st. The court erred in refusing motion for new trial, and to set aside the verdict, because the verdict is contrary to evidence.

2d. The court erred in permitting the jury to retire and bring in another and different verdict from the one they had rendered and by consent of parties sealed and delivered to the officer and then separated, the first verdict being in proper form.

3d. The court erred in refusing motion for new trial, because of the gross misconduct of the jury. They having had conversations with defendant's attorneys upon the subject of the first verdict after separation and were thereby influenced to become dissatisfied with their first verdict.

WILLARD & GOODNOW, Atty's for Martin,

BRIEF.

The Court will ^{not} permit the jury to retire to consider their verdict, ^{unless} the second time when their verdict is informal and insufficient. 16 Illinois, page 40.

When the jury have manifestly found against the evidence, the verdict will be set aside. 12 Illinois, page 99.

The verdict will be set aside by reason of any gross misconduct of the jury. 2 Scammon, page 70.

A jury can not willfully disregard the testimony of an unimpeached witness
28 Ills page 181

Welcom Martin
^{vs}
Jacob Morelock

Abstract

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They having had conversations with defendant and a relation upon the subject of the first verdict after
then retracted, the first verdict being in favor of the
from the one they had rendered and by consent of parties sealed and delivered to the officer and
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which is contrary to evidence.

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And now comes said plaintiff by Willard & Goodnow, his attorneys, and sets out the following
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And now comes said plaintiff by Willard & Goodnow, his attorneys, and sets out the following
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26
G. Chance April 23d, 1863.
H. W. WILLARD

Filed Nov. 9-1863.
N. Johnston Clk

case, upon his oath, deposes and says that by agreement of counsel on both sides of this case the
remains. Jacob Morelock vs. Welcom Martin. State of Illinois, Marion County.
the jury had for the Plaintiff, \$404.00. Plaintiff remains from said judgment \$380. Judgment for
The jury said they were dissatisfied with the verdict, and made a mistake in computing interest,
two dollars and forty cents.
The verdict was read as follows: We, the jury, find for the Plaintiff three hundred and a ninth.
The Court was asked at 9 o'clock next morning.
This was all the testimony in the case.

26
H. W. WILLARD
G. Chance April 23d, 1863.
H. W. WILLARD

The verdict will be set aside by reason of any gross misconduct of the jury.
When the jury have manifestly acted against the evidence, the verdict will be set aside.
The Court will not permit the jury to retire to consider their verdict the second time they were
separated and more thereby influenced to become dissatisfied with their first verdict.
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IN THE SUPREME COURT OF ILLINOIS,

FIRST GRAND DIVISION-----NOVEMBER TERM, 1863.

H E R E I N

Welcome Martin,
VS.
Jacob Morlock. } Defendant's Brief.

1. The evidence of McElwain is uncertain. He speaks of "about" \$375, and "about" one or one and a half years ago.

2. The written notes and credits were, if he spoke of INTEREST & PRINCIPAL, in conflict with the notes & credits *his evidence*

3. He evidently spoke of the PRINCIPAL of the notes, which, less the credits, was about the sum stated, to wit: \$385.

The motion for new trial was correctly overruled. The affidavit of Willard is not positive, but on 'information & belief.' *What* was said is not stated, that the court can see whether it was or was not calculated to *allow* the verdict. The verdict was sealed up and delivered to the officer. When read the jury asked to correct the mistake in computation, & the court permitted them to do so, without objection of plaintiff in error or Counsel at the time.

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In looking into the whole case no injustice is done to plaintiff in error, on the contrary, substantial justice to all.

2 Scam. p. 70, is a case wholly dissimilar from the one at *has been* ~~NA NA~~ there was only an effort on the part of the jury to correct a mistake, the verdict they had rendered was not in fact their verdict.

H. K. S. O'MELVENY, For Defendant in Error.

Martin
vs
Morlock
Dys Brief

H. R. OMBRETT
Per D. J. [illegible]

FIRST GRAND JURORS
JANUARY TERM, 1863.

IN THE SUPREME COURT OF ILLINOIS

George Martin
vs
Dorland's Trust

1. The evidence of [illegible] is unavailing. It shows that [illegible] was not a party to the [illegible] and that [illegible] was not a party to the [illegible].

2. It is the duty of the jury to [illegible] the facts of the case, and to [illegible] the law as given to them by the court. In this case, the jury [illegible] the facts of the case, and [illegible] the law as given to them by the court.

3. The court is of the opinion that the [illegible] of the jury is [illegible] and that the [illegible] of the court is [illegible].